

**IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

AMERICA’S FRONTLINE)
DOCTORS, et al,)
)
Plaintiffs,)
)
v.)
)
The UNITED STATES OF AMERICA,)
et al,)
)
Defendants.)

Case No. 2:21-cv-702-CLM

PLAINTIFFS’ REPLY TO DEFENSE MOTION TO DISMISS

Come now the Plaintiffs, through their undersigned counsel, and respectfully submit the following as a reply to the Defendants’ motion to dismiss the amended complaint filed herein.

SUMMARY

This case is based upon recent events. In December, 2020, the HHS Secretary began the process for approving 3 COVID-19 vaccines, one produced by Pfizer, Inc., another by Johnson & Johnson/Janssen, and the last by Moderna. At first, public officials sought to persuade Americans to voluntarily “take the jab,” but President Biden changed his mind on September 9, 2021, and issued two Executive Orders, Executive Order 14042 (“EO 14042”, ECF 37-1) and Executive Order 14043 (“EO 14043”, ECF 37-2) that provided the legal foundation for other “requirements” to

address and hopefully remedy the current COVID-19 pandemic. Based on these Executive Orders, the Safer Federal Workforce Task Force (“SFWTF”) has promulgated several “Guidelines” applicable to federal civilian employees as well as employees of government contractors that dictate vaccines, mask wearing, and “social distancing.” Further, deadlines have been set regarding when these employees must be vaccinated, must wear masks in certain situations, and must engaged in “social distancing.” These requirements were in place when the Plaintiffs amended complaint (ECF 32-1) was filed herein.

Plaintiffs Joseph Makowski, Lyle Bloom, Ellen Millen, Jody Sobczak, Michael Nelson and Joseph Leahy work for either government agencies or government contractors, and these employers have set conditions for further employment: they must get vaccinated, or in lieu thereof, they must submit and obtain an “accommodation” in lieu of vaccination. Furthermore, especially if they get an accommodation, they must wear masks and engage in social distancing.

This reply addresses just the circumstances of three of the Plaintiffs, Joseph Makowski (who is employed by a government contractor), Michael Nelson and Joseph Leahy (who both are employed by a government agency, NASA). All three of these Plaintiffs have been required to comply with the dictates of the several Guidelines issued by the SFWTF. They have been required to submit paperwork to their employers in order to secure an accommodation. Makowski has been granted an

accommodation, but Nelson and Leahy have not. But the important fact relevant here is that these Plaintiffs (as well as the others) are currently experiencing the implementation of the above mentioned Executive Orders and the Guidelines based thereon. Because the Plaintiffs are so being subjected to these mandates, they have the constitutional standing to maintain this lawsuit.

The defense contends otherwise and challenges by means of their motion the Plaintiffs standing. The argument of the defense is perhaps imaginative, but it is still incorrect. By rephrasing the factual basis for the Plaintiffs standing and limiting it to just a complaint about being forced to take vaccines, the defense asserts that standing for the Plaintiffs is absent and consequently their amended complaint must be dismissed.

But this is a flawed argument best demonstrated and exposed by means of a hypothetical illustration. Suppose that a criminal defendant had been convicted of a heinous crime and sentenced to be “shot at dawn.” In the early morning of the day of execution, some deputies go to the jail but drag out the wrong party, a man simply awaiting trial for shop-lifting, and it is this man who gets executed.

The defense’s argument about standing leads to some illogical and improper conclusions. Suppose in the above example, the lawyer for the man about to be shot files a lawsuit in the local court attempting to enjoin the execution of his client. The argument of the defense that is asserted here would, in this hypothetical example, be

that an injunction could not be granted to stop the execution of the wrong man who lacked standing. Moreover, the defense contends that the only remedy in a case like this fictitious example is a lawsuit by the executed man's estate for wrongful death. However, such a plaintiff need not wait for "Damocles's sword ... to actually fall on" him "before the court will issue an injunction." *League of Women Voters of U.S. v. Newby*, 838 F.3d 1, 8–9 (D.C. Cir. 2016).

THE PLAINTIFFS DO HAVE STANDING

President Biden's EO 14042 is applicable to government contractors and their employees, and it directed the SFWTF to issue a "Guidance" that would mandate that the contracts of the federal government with private contractors be amended to include provisions compelling several measures to address the current COVID-19 pandemic. The foundation for these measures was set forth in EO 14042:

Section 1. *Policy*. This order promotes economy and efficiency in Federal procurement by ensuring that the parties that contract with the Federal Government provide adequate COVID–19 safeguards to their workers performing on or in connection with a Federal Government contract or contract-like instrument as described in section 5(a) of this order. These safeguards will decrease the spread of COVID–19, which will decrease worker absence, reduce labor costs, and improve the efficiency of contractors and subcontractors at sites where they are performing work for the Federal Government. Accordingly, ensuring that Federal contractors and subcontractors are adequately protected from COVID–19 will bolster economy and efficiency in Federal procurement.

Sec. 2. *Providing for Adequate COVID–19 Safety Protocols for Federal Contractors and Subcontractors*. (a) Executive departments and agencies, including independent establishments subject to the Federal Property and

Administrative Services Act, 40 U.S.C. 102(4)(A) (agencies), shall, to the extent permitted by law, ensure that contracts and contract-like instruments (as described in section 5(a) of this order) include a clause that the contractor and any subcontractors (at any tier) shall incorporate into lower-tier subcontracts. This clause shall specify that the contractor or subcontractor shall, for the duration of the contract, comply with all guidance for contractor or subcontractor workplace locations published by the Safer Federal Workforce Task Force (Task Force Guidance or Guidance), provided that the Director of the Office of Management and Budget (Director) approves the Task Force Guidance and determines that the Guidance, if adhered to by contractors or subcontractors, will promote economy and efficiency in Federal contracting.

The current Task Force “Guidance” that implements EO 14042 is dated November 10, 2021,¹ and relevant provisions thereof provides:

Pursuant to this Guidance, and in addition to any requirements or workplace safety protocols that are applicable because a contractor or subcontractor employee is present at a Federal workplace, Federal contractors and subcontractors with a covered contract will be required to conform to the following workplace safety protocols:

1. COVID-19 vaccination of covered contractor employees, except in limited circumstances where an employee is legally entitled to an accommodation;
2. Compliance by individuals, including covered contractor employees and visitors, with the Guidance related to masking and physical distancing while in covered contractor workplaces; and
3. Designation by covered contractors of a person or persons to coordinate COVID-19 workplace safety efforts at covered contractor workplaces.

Thus, this Guidance compels government contractors to perform the following in reference to their employees: (1) require “COVID-19 vaccination of covered contractor employees”; (2), in lieu of compelling a vaccination, establish procedures

¹ See:

https://www.saferfederalworkforce.gov/downloads/Guidance%20for%20Federal%20Contractors_Safer%20Federal%20Workforce%20Task%20Force_20211110.pdf

wherein those employees who are “legally entitled to an accommodation” may obtain such, and (3) establish procedures for “masking and physical distancing while in covered contractor workplaces.” If employees of government contractors are being subjected to any of these three requirements, it is clear that the employer contractor is implementing this Guidance required by EO 14042.

Although having a different foundation and basis, civilian employees of the United States confront a similar mandate. EO 14043 likewise, although more directly, imposes a vaccine mandate. EO 14043, titled “Requiring Coronavirus Disease 2019 Vaccination for Federal Employees,” provides:

Section 1. *Policy.* It is the policy of my Administration to halt the spread of coronavirus disease 2019 (COVID–19). . . The Centers for Disease Control and Prevention (CDC) within the Department of Health and Human Services has determined that the best way to slow the spread of COVID–19 and to prevent infection by the Delta variant or other variants is to be vaccinated. . . I have determined that to promote the health and safety of the Federal workforce and the efficiency of the civil service, it is necessary to require COVID–19 vaccination for all Federal employees, subject to such exceptions as required by law.

Sec. 2. *Mandatory Coronavirus Disease 2019 Vaccination for Federal Employees.*

Each agency shall implement, to the extent consistent with applicable law, a program to require COVID–19 vaccination for all of its Federal employees, with exceptions only as required by law.

Again, a SFWTF Guidance that relates to the mandates of EO 14043 for federal civilian employees has been promulgated. This Guidance (posted on several different places on the Internet) provides as follows:

Vaccination Requirements for Federal Employees.

Q: By what date do Federal employees need to be fully vaccinated?

A: Federal employees need to be fully vaccinated by November 22, 2021. Employees will be considered fully vaccinated for COVID-19 2 weeks after they have received the requisite number of doses of a COVID-19 vaccine approved or authorized for emergency use by the U.S. Food and Drug Administration or that has been listed for emergency use by the World Health Organization. For Pfizer-BioNTech, Moderna, or AstraZeneca/Oxford, that is 2 weeks after an employee has received the second dose in a 2-dose series. For Johnson and Johnson (J&J)/Janssen, that is 2 weeks after an employee has received a single-dose.²

Vaccinations

Federal Executive Branch employees must be fully vaccinated by November 22, 2021, except in limited circumstances where an employee is legally entitled to an accommodation, pursuant to E.O. 14043, Requiring Coronavirus Disease 2019 Vaccination for Federal Employees. Employees covered by Executive Order 14043 who fail to comply with a requirement to be fully vaccinated or provide proof of vaccination and have neither received an exception nor have an exception request under consideration, are in violation of a lawful order. Employees who violate lawful orders are subject to discipline, up to and including termination or removal.³

Thus, federal civilian employees were required “to be fully vaccinated by November 22, 2021” unless they are “legally entitled to an accommodation.” One requirement of EO 14043 and the Guidance applied to those who decided to refuse a vaccination and chose to pursue “an accommodation.” Two of the Plaintiffs here, Nelson and Leahy, work for NASA and are currently seeking an accommodation.

² See: <https://www.saferfederalworkforce.gov/faq/vaccinations/>

³ See: <https://www.hhs.gov/about/agencies/asa/hhs-covid-19-workplace-safety-plan/index.html>

“To have standing under Article III, a plaintiff ‘must have suffered or be imminently threatened with a concrete and particularized ‘injury in fact’ that is fairly traceable to the challenged action of the defendant and likely to be redressed by a favorable judicial decision.” *Wollschlaeger v. Governor*, 848 F.3d 1293, 1303-04 (11th Cir. 2017).⁴ The Plaintiffs in this case have clearly plead sufficient facts to show they have standing to maintain this suit: they have suffered or confront immediately an “injury,” that is traceable to the actions of the President, and this court can certainly redress this wrong by a favorable decision.

Plaintiffs Joseph Makowski, Lyle Bloom, Ellen Millen, Jody Sobczak, Michael Nelson and Joseph Leahy are employed by either private companies that have government contracts or are actually federal civilian employees. This vaccine mandate at issue in this case was imposed by the President and his agent, the SFWTF. But neither the President or the SFWTF are actually implementing the requirements of these Executive Orders and Guidances on the Plaintiffs. Regarding Joseph Makowski, these requirements are being imposed by his employer, Phoenix Industries; for Lyle Bloom, they are being imposed by his employer, Cummings Aerospace; for Ellen Millen, they are being imposed by her employer, Raytheon Technologies; for Jody Sobczak, they are being imposed by his employer, The Boeing

⁴ See also *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992).

Company; for Michael Nelson and Joseph Leahy, they are being imposed by NASA, their employer. But, standing for these parties is not affected when the harm they suffer has been caused by third parties such as these employers.

“The Supreme Court’s decisions on this point show that mere indirectness of causation is no barrier to standing, and thus, an injury worked on one party by another through a third party intermediary may suffice.” *National Wildlife Federation v. Hodel*, 839 F.2d 694, 705 (D.C. Cir. 1988).⁵ See also *Bristol-Myers Squibb Co. v. Shalala*, 91 F.3d 1493, 1499 (D.C. Cir. 1996)(“injurious private conduct is fairly traceable to the administrative action contested in the suit if that action authorized the conduct or established its legality”); *Motor & Equip. Mfrs. Ass’n v. Nichols*, 142 F.3d 449, 457-58 (D.C. Cir. 1998)(party had standing to challenge government action based on the independent conduct of third parties where evidence demonstrated that the challenged action “resulted in an almost unanimous decision” by those third parties to take action); *America’s Community Bankers v. FDIC*, 200 F.3d 822, 827 (D.C. Cir. 2000)(“an agency does not have to be the direct actor in the injurious conduct, but that indirect causation through authorization is sufficient to fulfill the causation requirement for Article III standing.”); *Consumer Federation of America*

⁵ See *Simon v. Eastern Kentucky Welfare Rights Org.*, 426 U.S. 26, 45 n.25 (1976) (noting cases providing that privately inflicted injury is traceable to government action if the injurious conduct “would have been illegal without that action”).

v. F.C.C., 348 F.3d 1009, 1012 (D.C. Cir. 2003)(“When an agency order permits a third-party to engage in conduct that allegedly injures a person, the person has satisfied the causation aspect of the standing analysis.”); *Telephone and Data Systems, Inc. v. FCC*, 19 F.3d 42, 47 (D.C. Cir. 1994)(“injurious private conduct is fairly traceable to the administrative action contested in the suit if that action authorized the conduct or established its legality.”); and *Competitive Enter. Inst. v. Nat’l Highway Traffic Safety Admin.*, 901 F.2d 107, 113-18 (D.C. Cir. 1990) (finding “overwhelming evidence” in the administrative record to support a conclusion that third parties’ decisions were not substantially independent of the challenged government action and that those third parties were likely to alter their behavior in response to favorable judicial action).

Here, causation is clear and directly arises from the implementation of EO 14042 and EO 14043 by the Plaintiffs’ employers. For example, Plaintiff Millen works for Raytheon Technologies. Via a document dated December 9, 2021, titled “Frequently Asked Questions: COVID-19 Health and Safety Updates,” Raytheon posed several common questions asked by its employees and provided answers thereto:

6. I live in a U.S. state that prohibits mandating COVID-19 vaccinations. Does this policy apply to me?

Yes. In every U.S. state, irrespective of state law, the company must comply with its obligations under federal Executive Order 14042, which requires federal contractors to ensure that all employees working on or in connection

with covered federal contracts, including those working remotely or at a covered contractor workplace, are fully vaccinated by Jan. 18, 2021. These requirements have been promulgated pursuant to federal law and supersede any contrary state or local law ordinance.

See attached Ex. 1.

But, what about the problem of imminent harm? For declaratory relief, the Plaintiffs must “allege facts from which it appears there is a substantial likelihood that he will suffer injury in the future,” and that injury must be “real,” “immediate,” and “definite.” *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992). “When a party brings a pre-enforcement challenge to a statute, regulation or ordinance, the federal court must ask whether ‘the conflicting parties present a real, substantial controversy which is definite and concrete rather than hypothetical and abstract.’ * * * In order to prove that a real and substantial controversy exists, * * *, a plaintiff must show ‘a realistic danger of sustaining direct injury as a result of the statute’s operation or enforcement.’ * * * When a plaintiff has stated that he intends to engage in a specific course of conduct ‘arguably affected with a constitutional interest,’ however, he does not have to expose himself to enforcement to be able to challenge the law. * * * ‘If the injury is certainly impending, that is enough.’” *Am. Civil Liberties Union v. The Fla. Bar*, 999 F.2d 1486, 1491 (11th Cir. 1993). See also *Robinson v. Attorney General*, 957 F.3d 1171, 1177 (11th Cir. 2020). Moreover, even small injuries provide standing. See *Losch v. Nationstar Mortg. LLC*, 995 F.3d 937, 943 (11th Cir.

2021)(“Losch has shown a concrete injury in the form of the emotional distress and time he spent contesting the inaccurate information.”).

The defense takes issue with apparent omissions in the amended complaint, and claims that the Plaintiffs have avoided taking any vaccine which falls short of showing standing. But, this is not a problem at all because it is clear that they have engaged in self-avoidance of imminent harm they fear can be caused by the vaccines. “Supreme Court jurisprudence is more rare regarding application of the Declaratory Judgment Act to situations in which the plaintiffs self-avoidance of imminent injury is coerced by threatened enforcement action of a private party rather than the government. Lower federal courts, however (and state courts interpreting declaratory-judgment acts requiring ‘actual controversy’), have long accepted jurisdiction in such cases.” *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118 (2007).

The Plaintiffs in this case have certainly suffered injuries. For example, Plaintiff Joseph Makowski was vaccine injured as a child. When he became old enough to work, he got a job with Phoenix Industries, which is a company located in Huntsville that provides job for the handicapped. Phoenix has a contract to provide janitorial services for government buildings located on Redstone Arsenal. When EO 14042 became effective, Phoenix informed its employees, including Makowski, about the requirement to get vaccinated. Upon being so informed, Makowski became very alarmed and concerned because he believed that he could be further harmed by

another vaccine. Makowski and his father then consulted with Plaintiff Dr. Calderwood, who after interviewing Makowski, adamantly stated he should not get vaccinated.

Thereafter, Makowski consulted a company in Denver named Disabled Rights Advocates, PLLC, about his rights under the Americans With Disabilities Act. By letter dated November 17, 2021, Makowski was informed that he should seek an accommodation from his employer. Following this advice, on November 21, 2021, Makowski submitted to his employer a request for a medical accommodation, which was granted on November 29. However, his request for an exemption from masking requirements and testing was not approved. Currently, Makowski is concerned that he still may be subjected in the future to another vaccine mandate, and wearing masks at work is particularly bothersome. Further, the weekly testing consumes his time and also causes inconvenience, stress and fear.

Plaintiff Michael Nelson has worked for NASA for 39 years and really enjoys his job. In early October, he was informed by his superiors about the vaccine mandate that would be effective on November 22, 2021. After inquiries, he learned that he could submit a request for a religious accommodation, and he submitted one on October 15, 2021. Currently, that request is under review, although NASA has requested that he supply additional information to justify his request.

But because Nelson is not vaccinated and has requested a religious

accommodation, the environment in which he works has decidedly changed. He must wear masks at meetings, engage in social distancing, and is ostracized by his fellow workers because he is not vaccinated and is seeking a religious accommodation. But for the ramifications of EO 14043 and the applicable Guideline, Nelson would not have had to investigate how to secure a vaccine exemption, draft and present such to his superiors, and deal with everything that has followed, all of which has consumed a substantial amount of time. Further, he is concerned that even though he has requested an exemption, it may be denied and he may very well lose his job. In summary, the imposition of the vaccine mandate has required him to devote time to addressing this requirement, and in any event, he may eventually be terminated, all of which causes serious concerns. Clearly, the imposition of the requirements dictated by EO 14043 and the applicable Guideline have been felt by Nelson.

Parties objecting to the vaccine and related mandates solely on religious grounds have been found to have proper standing to institute suit. On January 3, 2022, Judge Reed O'Connor in the Northern District of Texas, Fort Worth Division, in a case styled U.S. Navy Seals v. Biden, Case No. 4:21-cv-01236-O, entered an injunction in that case. The plaintiffs there established their standing based on the fact that they had submitted requests for religious accommodations. If standing was upheld in that case, it should similarly be recognized here.

Both Makowski and Nelson have suffered injuries no different from those

found valid in *Losch v. Nationstar Mortg. LLC*, supra. If there is need for further clarification and pleading in the amended complaint in this respect, the particulars noted above may be added to ¶¶ 15 and 19 of the amended complaint. Further, the other Plaintiffs have had similar experiences, which can also be recounted in amendments to various paragraphs of the amended complaint related to them.

The defense also asserts that the imposition of a vaccine requirement, the wearing of masks or periodic testing to retain a job is inconsequential. But, the “unconstitutional conditions doctrine” prohibits the government from conditioning continued employment “on a basis that infringes [] constitutionally protected interests . . .” *Perry v. Sindermann*, 408 U.S. 593, 597 (1972). “[T]he very purpose of the unconstitutional conditions doctrine is to prevent the government from subtly pressuring citizens, whether purposely or inadvertently, into surrendering their rights.” *Lebron v. Secretary, Florida Dept. of Children and Families*, 710 F.3d 1202, 1218 (11th Cir. 2013) (quoting *Bourgeois v. Peters*, 387 F.3d 1303, 1324-25 (11th Cir. 2004)).

Any employee who is forced to choose between retaining a job on the condition of submitting to an experimental vaccine or being terminated from their employment is being given an ultimatum, not a choice. The threat of termination of employment is, by nature, coercive. See, e.g., *Am. Fed’n of State, County & Mun. Employees Council 79 v. Rick Scott*, 717 F.3d 851, 874 (11th Cir. 2013) (“In effect, the State is

offering its employees this Hobson's choice: either they relinquish their Fourth Amendment rights and produce a urine sample which carries the potential for termination, or they accept termination immediately. * * * To begin with, we do not agree that employees' submission to drug testing, on pain of termination, constitutes consent under governing Supreme Court case law"). Employees who must submit to taking a vaccine or be fired are hardly acting voluntarily, free of either express or implied duress and coercion. See *Bostic v. McClendon*, 650 F.Supp. 245, 249 (N.D.Ga.1986); cf. *Garrity v. New Jersey*, 385 U.S. 493, 497–98 (1967) (holding that the government cannot require its employees to relinquish their Fifth Amendment rights on pain of termination because "[t]he option to lose their means of livelihood or to pay the penalty of self-incrimination" was "the antithesis of free choice").

The defense argument that the Executive Orders will not force the Plaintiffs "to take a shot against their will" falls short as it fails to acknowledge the result of not taking the shot. The defense claims that the Plaintiffs have the "choice" to refuse the shot and face termination. Being forced to choose between taking a COVID vaccine or termination of employment is no choice at all.

The contentions of the defense that the Plaintiffs lack standing to maintain this suit are without foundation.

THE MERITS OF THE COUNTS IN THE AMENDED COMPLAINT

A. The President as a Defendant.

Presidents have been made defendants in litigation, and some of the reported cases include *Nat'l Treasury Emps. Union v. Nixon*, 492 F.2d 587 (D.C. Cir. 1974); *TikTok Inc. v. Trump*, 507 F. Supp. 3d 92, 96 (D.D.C. 2020); *Gomez v. Trump*, 485 F. Supp. 3d 145, 165, 205 (D.D.C. 2020). And some courts have approved judgments against the President. *Clinton v. City of New York*, 524 U.S. 417, 425 n.9 (1998); *CREW v. Trump*, 302 F. Supp. 3d 127, 139 n.5 (D.D.C. 2018). No federal official, from the highest to the lowest, is above the law. *United States v. Nixon*, 418 U.S. 683, 715 (1974).

In *Nat'l Treasury Emps. Union*, supra, that court concluded that the President, in reference to a ministerial act, could be subjected to a suit for declaratory relief: “This case presents a most appropriate instance for the use of a declaratory decree. Accordingly, we confine ourselves at this time to a declaration of the law, that is, that the President has a constitutional duty forthwith to grant, effective as of October, 1972, the federal pay increase mandated by the Congress and sought by NTEU herein so that the members of NTEU can collect what has been due them for many months.” *Id.*, at 616. Plaintiffs here seek declaratory relief, but not for a ministerial act.

Since the onset of this COVID-19 pandemic, and especially since September 9 of last year, a number lawsuit have been filed making the President a defendant. It appears that the reason for doing so is because declaratory relief has been sought in those cases. In this case, the President is not an essential party and the United States

is a party here. For this reason, the Plaintiffs do not object to releasing the President as a defendant.

B. The Merits of Count I.

Whether there is an emergency some place in America is a matter seldom litigated, primarily because there have been few of them. Nonetheless, the Supreme Court has addressed the question of whether an emergency exists in at least 3 prior decisions: *Chastleton Corp. v. Sinclair*, 264 U.S. 543 (1924); *Sterling v. Constantin*, 287 U.S. 378 (1932); and *Home Building and Loan Association v. Blaisdell*, 290 U.S. 398 (1934). That Court considers the question of whether an emergency exists as a proper matter for judicial inquiry. This question is directly raised in this count.

The defense contends that this question of the existence of an emergency related to the COVID-19 pandemic was administratively addressed when the HHS Secretary or FDA was considering this issue in relation to the grant of EUAs for the vaccines in current use. For this reason, the defense argues that nobody contested this issue administratively, agency officials exercised their discretion, and then determined that an emergency existed.

Plaintiffs contend, however, that whether an emergency exists is not a matter committed to the discretion of any agency, and is a matter that a court can determine at any time when raised in litigation. This count is therefore valid and not due to be dismissed.

C. The Merits of Count VI.

This count challenges EO 14042 and EO 14043 as being invalid and unlawful because the President lacks the statutory authority to issue them. While the defense broadly asserts that the President does have authority to issue them, that claim is questionable because within the last several months, a number of other district courts have concluded otherwise. See *Missouri v. Biden*, No. 4:21-cv- 01329-MTS, 2021 U.S. Dist. LEXIS 227410 (E.D. Mo. Nov. 29, 2021); *Louisiana v. Becerra*, No. 3:21-CV-03970, 2021 U.S. Dist. LEXIS 229949 (W.D. La. Nov. 30, 2021); *Louisiana v. Becerra*, No. 21-30734, 2021 U.S. App. LEXIS 37035 (5th Cir. Dec. 15, 2021); *Georgia v. Biden*, No. 1:21-cv-163, 2021 U.S. Dist. LEXIS 234032 (S.D. Ga. Dec. 7, 2021); and *Florida v. Nelson*, No. 8:21-cv-2524-SDM-TGW, 2021 U.S. Dist. LEXIS 246185 (M.D. Fla. Dec. 22, 2021). On January 1, 2022, Judge Terry Doughty entered another similar order in a case styled *Louisiana v. Becerra*, Case No. 3:21-cv-0437, U.S. District Court for the Western District of Louisiana.

District Judge Tatenhove posed this interesting question in response to a similar motion for a preliminary injunction seeking to enjoin implementation of EO 14042: “Can the president use congressionally delegated authority to manage the federal procurement of goods and services to impose vaccines on the employees of federal contractors and subcontractors?” He answered: “In all likelihood, the answer to that question is no.” See *Commonwealth of Kentucky v. Biden*, No.

3:21-cv-00055-GFVT, 2021 U.S. Dist. LEXIS 228316 (E.D. Ky. Nov. 30, 2021).

In reference to the recent OSHA vaccine mandate,⁶ the Fifth Circuit has held such to be invalid in *BST Holdings, LLC v. Occupational Safety and Health Admin.*, 17 F.4th 604 (5th Cir. 2021):

Second, concerns over separation of powers principles cast doubt over the Mandate’s assertion of virtually unlimited power to control individual conduct under the guise of a workplace regulation. As Judge Duncan points out, the major questions doctrine confirms that the Mandate exceeds the bounds of OSHA’s statutory authority. Congress must “speak clearly if it wishes to assign to an agency decisions of vast economic and political significance.” *Util. Air Regul. Grp. v. EPA*, 573 U.S. 302, 324 (2014) (cleaned up). The Mandate derives its authority from an old statute employed in a novel manner, imposes nearly \$3 billion in compliance costs, involves broad medical considerations that lie outside of OSHA’s core competencies, and purports to definitively resolve one of today’s most hotly debated political issues. *Cf. MCI Telecomms. Corp. v. AT&T*, 512 U.S. 218, 231 (1994) (declining to hold that the FCC could eliminate telecommunications rate-filing requirements); *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 159–60 (2000) (declining to hold that the FDA could regulate cigarettes); *Gonzales v. Oregon*, 546 U.S. 243, 262 (2006) (declining to allow DOJ to ban physician-assisted suicide). There is no clear expression of congressional intent in § 655(c) to convey OSHA such broad authority, and this court will not infer one. Nor can the Article II executive breathe new power into OSHA’s authority – no matter how thin patience wears.

There have been profound consequences as a result of the Fifth Circuit’s holding in *BST Holdings*. Last Fall, there were a number of petitions to challenge those OSHA regulations filed in the U.S. Courts of Appeal around the country like that involving *BST Holdings*, and they have been consolidated into one case pending

⁶ See 86 Fed.Reg. 61402 (Nov. 5, 2021).

in the Sixth Circuit. A panel of that court recently vacated the stay imposed by the Fifth Circuit, and now a large number of petitions have been filed with the Supreme Court to challenge the Sixth Circuit's vacatur of the Fifth Circuit's stay. See Case Nos. 21A240 through 21A260.⁷ Today, the U.S. Supreme Court heard those petitions, and Justices Roberts and Kavanaugh made statements during argument that at least indicated that something such as stay might be issued shortly.

To demonstrate the merits of this count and to assist the court, Plaintiffs attach a series of exhibits. EO 14042 claims that it is authorized via 3 U.S.C. §301 and 40 U.S.C. §101, *et seq.* These statutes DO NOT provide authority for this Executive Order.

In 1926, Congress created the United States Code with its then 50 titles, and that Code included a Title 3, which did not include this §301. On June 25, 1948, Congress enacted Title 3 into positive law. See An Act To codify and enact into law Title 3 of the United States Code, 62 Stat. 672, ch. 644. This title at that time had no §301.

On October 31, 1951, §301 of this title was inserted therein via Pub. L. 248,

⁷ As *amici curiae*, 183 members of Congress have submitted a brief in Case No. No. 21A244 wherein they similarly argue that Congress never delegated authority to OSHA to impose vaccine mandates. See: https://www.supremecourt.gov/DocketPDF/21/21A244/207079/20211230171756458_MOC%20Amicus%20FINAL.pdf

65 Stat. 710, ch. 655. This 20 page act had nothing to do with vaccines or authorizing the President to impose vaccines. Consequently, §301 does not provide the statutory foundation for this Executive Order.

EO 14042 also asserts that 40 U.S.C. §101, and possibly other provisions of the Federal Property and Administrative Services Act provide the statutory foundation for a vaccine mandate.⁸ But, nothing in Title 40 remotely indicates that the President is authorized to impose vaccine mandates.

In 1926, Congress codified most of the federal laws and thus created Title 40 of the U.S. Code. The 1926 version of this title was only 22 pages long, and the President was mentioned only 23 times therein. The 1940 version of title 40, U.S. Code, was only 63 pages long and the President was mentioned therein only 59 times. In the 1952 version of 40 U.S.C.⁹ (which was 127 pages long), the President was mentioned only 64 times. In title 40 of the 1964 U.S. Code (which was 151 pages long), the President was mentioned only 98 times. The 1996 version of this title was

⁸ 40 U.S. Code was enacted into positive law in August, 2002. See Pub. L. 107–217, 116 Stat. 1062. The legislative report for this codification, House Report 107–479, 107th Congress, 2d Session, made clear that the act made no substantive changes in the law. *Stewart v. Kahn*, 78 U.S. 493, 502 (1871) (“A change of language in a revised statute will not change the law from what it was before unless it be apparent that such was the intention of the legislature.”).

⁹ The “Federal Property and Administrative Services Act of 1949” was enacted by Congress on June 30, 1949, 63 Stat. 377, ch. 288. It was codified into 40 U.S.C. and has been subject to a number of amendment ever since.

316 pages long, and the President was mentioned therein 192 times. The 2003 version of this title was 219 pages long, and the President was mentioned therein only 132 times. Finally, the latest version of this title published in the 2019 U.S. Code, is 263 pages and the President is mentioned therein 153 times.¹⁰

The prior versions of this title were only “evidence of the law,” but on August 21, 2002, this title was enacted into positive law by Pub. L. 107–217, 116 Stat. 1062. House Report 107-479 related to the enactment of this title and it stated that the “purpose of the bill [was] to revise, codify, and enact without substantive change the general and permanent laws of the United States related to public buildings, property, and works, as as [sic] title 40, United States Code, ‘Public Buildings, Property, and Works’”.

However, these laws codified in 40 U.S.C. do not provide the President with authority to impose vaccine mandates, and thus he lacks the statutory as well as constitutional authority to impose these mandates he may believe will assist in a speedy resolution of the current COVID-19 crisis.

EO 14043 claims that it is authorized via 5 U.S.C. §§ 3301, 3302, and 7301. Contrary to the claims of the defense, these statutes DO NOT provide authority for this Executive Order as shown by the attached exhibits.

¹⁰ On request, counsel for the Plaintiffs will provide to the defense or the court searchable PDF images of these various versions of 40 U.S.C.

The origin of § 3301 is found in § 9 of “An Act Making Appropriations for sundry civil Expenses of the Government for the fiscal Year ending June 30, eighteen hundred and seventy-two, and for other Purposes”, 16 Stat. 495, 514, ch. 114 (see Ex. 2 hereto, pp. 1-4). This section was later incorporated into the Revised Statutes of 1873 as § 1753 (see Ex. 2, pp. 5-7), and thereafter was incorporated into 5 U.S.C. § 631 when the U.S. Code was created in 1926 (Ex. 2, pp. 8-11). See also 5 U.S.C. § 631 in the 1946 U.S. Code (Ex. 2, pp. 12-13). A part of this § 631 became § 3301 when this title of the U.S. Code was enacted into positive law in 1966. See Pub.L. 89-554, 80 Stat. 378, at 417 (Ex. 2, pp. 14-16).

Section 2 of “An act to regulate and improve the civil service of the United States”, 22 Stat. 403, ch. 27, enacted by Congress on January 16, 1883, is the genesis of § 3302 (Ex. 3, pp. 2-3). When the current U.S. Code was created in 1926, parts of this section were incorporated into 5 U.S.C. § 633 (Ex. 3, pp. 4-6). See also 5 U.S.C. § 633 in the 1946 U.S. Code (Ex. 3, pp. 7-11). When this title of the U.S. Code was enacted into positive law in 1966, this section became § 3302. See Pub.L. 89-554, 80 Stat. 378, at 417 (Ex. 3, pp. 12-16).

The origin of § 7301 is the same as that for § 3301: § 9 of “An Act Making Appropriations for sundry civil Expenses of the Government for the fiscal Year ending June 30, eighteen hundred and seventy-two, and for other Purposes”, 16 Stat. 495, 514, ch. 114 (Ex. 4, pp. 1-4). This § 9 was later incorporated into the Revised

Statutes of 1873 as § 1753 (Ex. 4, pp. 5-7) and was later incorporated into 5 U.S.C. § 631 when the U.S. Code was created in 1926 (Ex. 4, pp. 8-11). A single sentence of § 631 became § 7301 when this title of the U.S. Code was enacted into positive law in 1966. See Pub.L. 89-554, 80 Stat. 378, at 417 (Ex. 4, pp. 12-15).

These laws were enacted by Congress in 1872 and 1883, and there is absolutely no proof or indication that at that time Congress intended to authorize the President by means of these laws to impose vaccine mandates on any or all federal employees. See *Bostock v. Clayton County*, 140 S. Ct. 1731, 1737 (2020) (“This Court normally interprets a statute in accord with the ordinary public meaning of its terms at the time of its enactment.”).

Because no law authorizes the President to issue these two executive orders, the Plaintiffs are entitled to judgment in their favor on this count.

D. The Merits of the Other Counts.

The authority of the HHS Secretary and other federal officials to grant EUA status to the 3 currently FDA approved COVID-19 vaccines is based on 21 U.S.C. § 360bbb-3. Actions taken by agency officials pursuant to this section are subject to the discretion of these officials. See *Heckler v. Chaney*, 470 U.S. 821 (1985). When federal officials and agencies have such discretion, their decisions are not subject to judicial review.

The defense in this case has presented the administrative record related to the

approval of these 3 vaccines, and it asserts that the remaining counts in the amended complaint constitute an invalid attempt to seek judicial review of decisions made by an agency that are within its sole discretion. However, this is an inaccurate description of the purpose and objective of these counts. Actions of an agency may be judicially reviewed for an abuse of discretion or for violations of the law. “In all cases agency action must be set aside if the action was ‘arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law’ or if the action failed to meet statutory, procedural, or constitutional requirements.” *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U. S. 402, 413-414 (1971). “The Administrative Procedure Act requires federal courts to set aside federal agency action that is ‘not in accordance with law,’ 5 U. S. C. §706(2)(A) – which means, of course, any law, and not merely those laws that the agency itself is charged with administering.” *FCC v. Nextwave Personal Communications, Inc.*, 537 U.S. 293, 300 (2003).

Two of the vaccine manufacturers, Pfizer and Johnson & Johnson, are well aware of the crime of misbranding, proscribed by 21 U.S.C. § 331, as they have been prosecuted and convicted of this crime (see ECF 37, pp. 20-23). The elements of this crime are set forth in 21 U.S.C. § 352(j), and encompass the matter of whether a vaccine or other drug “is dangerous to health when used in the dosage or manner, or with the frequency or duration prescribed, recommended, or suggested in the labeling thereof.” See *Kordel v. United States*, 335 U.S. 345 (1948).

The attached Ex. 5 is the declaration of Dr. Henry Ealy, which reveals that he has been analyzing the statistics related to COVID-19 deaths and injuries since the start of this pandemic. Based on his studies, which includes data derived from the VAERS data base (among others), it is possible and very realistic to assert that as many as 427,640 Americans have died as a result of taking the vaccines (see 7th page of Ealy declaration).

It is fair to presume that the vaccines being used today are better than when they were first tested by the manufacturers before they were approved by federal officials. If there has been this number of deaths since the vaccines have been administered to the American public, the vaccines that were tested before approval were likely worse, and probably the vaccine manufacturers would have been aware of this tendency for death and other injuries.¹¹ It is very likely the vaccine manufacturers knew of the serious danger to the health of vaccine recipients, and the logical conclusion is that the manufacturers have again committed misbranding.

If these likely events were happening, it is also logical to ask: how much did federal officials know about this serious problem? But, whether federal officials merely suspected some problem or were aware of more, the possibility of the occurrence of what is stated above leads to but one conclusion: the decisions of

¹¹ Vaccines are unavoidably unsafe. See *Bruesewitz v. Wyeth LLC*, 562 U.S. 223, 234 (2011).

federal officials in this respect are not clothed with discretion, as discretion has been abused.

Because of the possibility that serious wrongs have likely been committed, the defense here cannot assert that judicial review is foreclosed. The defense claim of discretion, under these circumstances, cannot prevent this case from moving forward.

CONCLUSION

For the reasons shown above, the motion to dismiss of the defense should be denied.

Respectfully submitted this the 7th day of January, 2022.

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CERTIFICATE OF SERVICE

I hereby certify that on this date, January 7, 2022, I electronically transmitted this pleading to the Clerk of the Court using the CM/ECF system for filing, which will send notification of such filing to all counsel for the parties in this case.

/s/ Lowell H. Becraft, Jr.

Lowell H. Becraft, Jr.

**IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

AMERICA’S FRONTLINE)
DOCTORS, et al,)
)
Plaintiffs,)
)
v.)
)
The UNITED STATES OF AMERICA,)
et al,)
)
Defendants.)

Case No. 2:21-cv-702-CLM

EXHIBIT 1

Frequently Asked Questions: COVID-19 Health and Safety Updates

*This policy applies to employees who work in the United States, including Puerto Rico and other U.S. territories, where allowed by local law. Any requirements for employees working outside the U.S. are subject to the laws of each country and will be communicated locally. Where applicable, we will engage in relevant union or works council discussions prior to implementation. **Please regularly refresh your browser cache to ensure you're viewing the most up-to-date FAQs.***

[Vaccination and disclosure policy](#)
[Disclosure and verification process](#)
[Getting fully vaccinated / booster shots](#)
[Reasonable accommodations](#)

Updated Dec. 9, 2021

COVID-19 Vaccination and Disclosure Requirements

1. Why is the company taking this action?

COVID-19 continues to significantly impact our communities, families and employees. With employee health and safety as our top priority, Raytheon Technologies is taking action to address the increased risk and uncertainty COVID variants pose in the workplace.

2. Who is required to be vaccinated?

Full COVID-19 vaccination is required for all U.S. employees and onsite contractors. Effective dates for this requirement are:

- Effective immediately, **any employee traveling for company business** must be fully vaccinated prior to traveling.
- By Nov. 15, 2021,
 - **All company executives and new hires** must be fully vaccinated.
 - **Contractors and employees who have worked from home** either full or part time during the pandemic must be fully vaccinated in order to enter a company facility.
- By Dec. 8, 2021, supplier personnel with un-escorted access privileges (e.g. badged access) must be fully vaccinated in order to enter a company facility.
- By Jan. 18, 2022, **all U.S. employees** must be fully vaccinated. Some employees may be required to be fully vaccinated sooner based on customer requirements and/or federal guidance.

Fully vaccinated means two weeks have passed since a single-shot vaccine or the second dose of a two-shot vaccine. Once the FDA requirements are defined for COVID-19 vaccine booster shots, employees will be required to obtain the shots at the recommended interval to be considered fully vaccinated. Requests for medical or religious exceptions will be considered on a case-by-case basis.

3. Is this legal?

Yes. U.S. employers are legally entitled to collect vaccination-related information, including vaccination status, and may require vaccination to control the risk of transmission during a pandemic.

The company will abide by all applicable state and federal laws on the collection, storage, protection, and deletion of personal medical information. Vaccination requirements have been promulgated pursuant to federal law and supersede any contrary state or local law or ordinance. The company will, however, comply with any applicable state law or municipal ordinance establishing more protective workplace safety protocols than those established under current federal guidance.

4. Doesn't this policy violate the Health Insurance Portability & Accountability Act (HIPAA)?

No. This policy and the data collected in the vaccination form are not subject to HIPAA. While vaccination status is not Protected Health Information, it is Sensitive Personal Information under RTX's Privacy Policy, General Corporate Policy 24, and will be collected, stored, protected, and disposed of appropriately.

5. Doesn't this policy violate my rights under the Nuremberg Code which prohibits forced use of experimental drugs?

No. Although the Nuremberg Code applies only to governments and not private employers, COVID-19 vaccines are not experimental because the vaccines went through rigorous clinical trials and have either received emergency use authorization by the FDA (Moderna and J&J vaccines) or have received full FDA approval (Pfizer/Comirnaty vaccine). The company's policy has been carefully reviewed and is fully lawful under all applicable laws.

6. I live in a U.S. state that prohibits mandating COVID-19 vaccinations. Does this policy apply to me?

Yes. In every U.S. state, irrespective of state law, the company must comply with its obligations under federal Executive Order 14042, which requires federal contractors to ensure that all employees working on or in connection with covered federal contracts, including those working remotely or at a covered contractor workplace, are fully vaccinated by Jan. 18, 2021. These requirements have been promulgated pursuant to federal law and supersede any contrary state or local law ordinance. The company will, however, comply with any applicable state law or municipal ordinance establishing more protective workplace safety protocols than those established under current federal guidance.

7. I would like the company to complete a COVID-19 inquiry form, who can I have complete it?

To answer questions or concerns about the company's policy, please see the policy announcement and FAQs that were issued by the company. Should you have concerns about any particular vaccine, we recommend you contact your medical provider to ask any questions you may have. If you feel that you need an accommodation for medical or religious reasons, please submit your accommodation request to People Services by calling 1-866-295-HRHR (4747). The company will not complete the form you've submitted. Instead, please see the documentation referenced above.

8. Will employees working outside of the U.S. follow this policy?

**IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

AMERICA’S FRONTLINE)
DOCTORS, et al,)
)
Plaintiffs,)
)
v.)
)
The UNITED STATES OF AMERICA,)
et al,)
)
Defendants.)

Case No. 2:21-cv-702-CLM

EXHIBIT 2

BY AUTHORITY OF CONGRESS.

THE
Statutes at Large
AND
PROCLAMATIONS
OF THE
UNITED STATES OF AMERICA,
FROM DECEMBER 1869 TO MARCH 1871,

AND
TREATIES AND POSTAL CONVENTIONS

*Arranged in Chronological Order and carefully collated with
the Originals at Washington,*

WITH
REFERENCES TO THE MATTER OF EACH ACT AND TO THE SUBSEQUENT
ACTS ON THE SAME SUBJECT.

EDITED BY
GEORGE P. SANGER,
COUNSELLOR AT LAW.

The rights and interest of the United States in the stereotype plates from which this work is printed are hereby recognized, acknowledged, and declared by the publishers, according to the provisions of the joint resolution of Congress, passed March 3, 1845.

VOL. XVI.

BOSTON:
LITTLE, BROWN, AND COMPANY.
1871.

FORTY-FIRST CONGRESS. SESS. III. CH. 113, 114. 1871.

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any judicial district within his circuit to hold a district or circuit court in the place or aid of any other district judge within the same circuit; and it shall be the duty of such district judge as shall be for that purpose designated and appointed to hold the district or circuit court as aforesaid without any other compensation than his regular salary as established by law.

No additional pay.

SEC. 4. That the salaries provided for in the foregoing section of this act shall be payable in quarterly instalments on the first days of April, July, October, and January of each year, and an amount sufficient to pay the same is hereby appropriated out of any money in the treasury not otherwise appropriated.

Salaries payable quarterly.

Appropriation.

APPROVED, March 3, 1871.

CHAP. CXIV. — *An Act making Appropriations for sundry civil Expenses of the Government for the fiscal Year ending June thirty, eighteen hundred and seventy-two, and for other Purposes.* March 3, 1871.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums be, and the same are hereby, appropriated, for the objects hereinafter expressed, for the fiscal year ending the thirtieth June, eighteen hundred and seventy-two, viz. :—

Civil expenses appropriation.

STATE DEPARTMENT.

State Department.

For defraying the expenses of defending claims under the convention with Mexico of July four, eighteen hundred and sixty-eight, to be expended under the direction of the Attorney-General, twenty thousand dollars.

Claims convention with Mexico. Vol. xv. p. 679.

For the compensation and expenses of the commission for determining the pending questions between Great Britain and the United States, twenty-five thousand dollars.

Commission upon questions pending with Great Britain; with Spain.

For the compensation and expenses of a commission for determining the questions pending between the United States and Spain, growing out of the acts of the Spanish officials in and about Cuba, fifteen thousand dollars.

For the increase in the expenses of the diplomatic and consular officers of the United States in Paris, caused by a state of war; and also for compensation for extraordinary services performed by such officers during the war; and also for the additional expense caused to the legations and consulates of the United States in Madrid, Paris, Berlin, and London, by reason of the war, and by reason of the protection assumed by the United States of persons, legations, and consulates of other powers in Paris, a sum not to exceed fifty thousand dollars in all, or so much thereof as may be necessary, to be expended under the direction of the Secretary of State, on the approval of the President, and on vouchers to be filed in the Treasury Department, and a statement thereof to be reported to Congress by the Secretary of State.

Expenses of diplomatic and consular officers in Paris caused by the war; in Madrid, Berlin, and London;

To defray the expenses incurred by the United States legation in Paris, in protecting the subjects of the North German Confédération in France during the war between France and Prussia, including extra compensation to the secretaries, messenger, and use of carriage of said legation, four thousand dollars; and the foregoing appropriations are hereby made available immediately upon the passage of this act.

legation in Paris in protecting Germans.

TREASURY DEPARTMENT.

Treasury Department.

Supervising Inspectors of Steam-Vessels. — For carrying out the provisions of the act of thirtieth August, eighteen hundred and fifty-two, for the better protection of the lives of passengers on vessels propelled in whole or in part by steam, and of the acts amendatory thereof, the following sums, viz. :—

Supervising inspectors of steam-vessels. 1852, ch. 106. Vol. x. p. 61.

Persons entitled to refunding of duties under certain acts to be paid. 1870, ch. 255, § 26. *Ante*, p. 269. Pub. Res. No. 18. *Post*, p. 592.

Appropriation for minister, secretary, &c. to German Empire;

for building for court-house and post-office at Columbia, S. C.

State first to relinquish right to tax the site, &c.

Fines, penalties, &c. incurred under acts 1868, ch. 273. Vol. xv. p. 240. 1870, ch. 189. *Ante*, p. 180. to be disposed of according to act 1867, ch. 188. Vol. xiv. p. 646.

Pay of assistant marshals for taking the ninth census may be increased by the Secretary of the Interior. Vol. xvii. pp. 9, 12.

Limit. *Ante*, 380.

President to prescribe rules, &c. for the admission of persons into the civil service. Vol. xvii. p. 7.

Secretary of the Treasury that parties are entitled to refund of duties under the twenty-sixth section of the act of July fourteen, eighteen hundred and seventy, and joint resolution approved January thirtieth, eighteen hundred and seventy-one, it shall be the duty of the Secretary of the Treasury to draw his warrant upon the treasurer, directing said treasurer to refund the same out of any money in the treasury not otherwise appropriated.

SEC. 5. That there be appropriated, out of any money in the treasury not otherwise appropriated, the sum of seventeen thousand five hundred dollars for the salary of an envoy extraordinary and minister plenipotentiary, and twenty-five hundred dollars for the salary of a secretary, and eighteen hundred dollars for that of an assistant secretary of legation to the German Empire.

SEC. 6. That the appropriation made March three, eighteen hundred and sixty-nine, having been covered into the treasury, the Secretary of the Treasury be, and he is hereby, authorized and directed to cause to be constructed, upon the site already given to and owned by the United States, a suitable building, fire-proof, at Columbia, South Carolina, for the accommodation of the post-office and United States circuit and district courts; and for this purpose there is hereby appropriated, out of any money in the treasury not otherwise appropriated, seventy-five thousand dollars, to be expended under the direction of the Secretary of the Treasury, who shall cause proper plans and estimates to be made, so that no expenditure shall be made or authorized for the full completion of said building beyond the amount herein appropriated: *Provided*, That no money hereby appropriated shall be used or applied for the purposes mentioned until it shall appear that the State has duly released and relinquished to the United States the right to tax or in any way assess the site, or the property of the United States that may be thereon, during the time that the United States shall be or remain the owner thereof.

SEC. 7. That all fines, penalties, and forfeitures, heretofore or that may be hereafter incurred, the acts entitled respectively, "An act to extend the laws of the United States relating to customs, commerce, and navigation over the territory ceded to the United States by Russia, to establish a collection district therein, and for other purposes," approved July twenty-seven, eighteen hundred and sixty-eight, and "An act to prevent the extermination of fur-bearing animals in Alaska," approved July one, eighteen hundred and seventy, shall be disposed of according to the provisions of the act entitled "An act to regulate the disposition of the proceeds of fines, penalties, and forfeitures incurred under the laws relating to the customs, and for other purposes," approved March two, eighteen hundred and sixty-seven.

SEC. 8. That the Secretary of the Interior be, and he hereby is, authorized to increase the compensation of assistant marshals in taking the census of eighteen hundred and seventy, whenever, in his judgment, the same shall be necessary: *Provided*, That in no case shall such increase exceed fifty per centum of the amount of compensation now allowed by law, nor shall the entire compensation be more than eight dollars per day for the time actually employed; and the joint resolution entitled "A resolution in relation to the compensation of assistant marshals for taking the census of eighteen hundred and seventy," approved June nine, eighteen hundred and seventy, be, and the same is hereby, repealed.

SEC. 9. That the President of the United States be, and he is hereby, authorized to prescribe such rules and regulations for the admission of persons into the civil service of the United States as will best promote the efficiency thereof, and ascertain the fitness of each candidate in respect to age, health, character, knowledge, and ability for the branch of service into which he seeks to enter; and for this purpose the President is au-

FOETY-FIRST CONGRESS. SESS. III. CH. 114, 115. 1871.

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thorized to employ suitable persons to conduct said inquiries, to prescribe their duties, and to establish regulations for the conduct of persons who may receive appointments in the civil service.

to appoint persons to conduct inquiries, &c.

APPROVED, March 3, 1871.

CHAP. CXV. — *An Act making Appropriations to supply Deficiencies in the Appropriations for the Service of the Government for the fiscal Years ending June thirty, eighteen hundred and seventy, and June thirty, eighteen hundred and seventy-one and for former Years, and for other Purposes.*

March 3, 1871.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are [or] so much thereof as may be necessary, be, and the same are hereby, appropriated for the objects hereinafter expressed, namely: —

Deficiency appropriations for the years ending June 30, 1870 and 1871. Senate. Assistant engineer.

Senate. — To pay an additional assistant engineer authorized by the Senate, at the rate of one thousand four hundred and forty dollars per annum, commencing on the first day of December, eighteen hundred and seventy, for the fiscal year ending the thirtieth day of June, eighteen hundred and seventy-one, eight hundred and forty dollars.

For steam-pump for the heating and ventilating apparatus of the Senate, under the direction of the sergeant-at-arms, one thousand dollars.

Heating and ventilating apparatus.

For expenses of heating and ventilating apparatus of the Senate, one thousand dollars.

House of Representatives. — For cartage, three thousand dollars.

House of Representatives.

For laborers, one thousand six hundred dollars.

For furniture and repairs thereof, two thousand dollars.

For fuel, two thousand dollars.

For paying teller in the office of the sergeant-at-arms, one thousand two hundred and twenty dollars.

For the miscellaneous item of the contingent fund of the House, ten thousand dollars.

Miscellaneous.

For the following sums due under resolutions of the House passed during the first session of the Thirty-ninth Congress, namely: To the late first assistant door-keeper, eight hundred and forty dollars; to the superintendent of the document-room, eight hundred and forty dollars; and to E. Spicer, late superintendent of the folding-room, seven hundred and twenty dollars; to John J. McElhone, Wm. Hineks, W. Blair Lord, D. Wolfe Brown, Theodore F. Andrews, and William Henry Burr, reporters for the Congressional Globe during the first session of the Thirty-ninth Congress, seven hundred dollars each; in all, six thousand four hundred dollars, additional compensation for the Thirty-ninth Congress.

Doorkeeper and superintendents of document and folding rooms.

Reporters for Congressional Globe.

For compensation of the tally-clerk of the House of Representatives, from the first day of February, eighteen hundred and seventy, to the first day of July, eighteen hundred and seventy-one, six hundred and twelve dollars, the same making his compensation equal to that of his predecessor, (R. U. Sherman,) and as fixed in the legislative bill for himself.

Tally-clerk.

To pay Rives and Bailey for the reporting and publication of the debates and proceedings of the Forty-first Congress, under the joint resolution approved March three, eighteen hundred and sixty-nine, and contract of April fourteen, eighteen hundred and sixty-nine, so far as may have been provided for by law, one hundred and twenty thousand dollars, or so much thereof as may be necessary.

Rives and Bailey. Vol. xv. p. 347.

Public Buildings under the Treasury Department. — For continuing the work on the building for post-office and court-house in New York City, to be applied only to finishing the foundations up to and including the sill course, and receiving and setting the granite of the first story above that course, and subject to no other limitations or restriction, five hundred thousand dollars.

Public buildings under the Treasury Department.

Post office and court-house in New York.

For the building for post-office and sub-treasury in Boston, the unexpended balance of appropriation remaining on the thirtieth June, eighteen

Post-office and sub-treasury in Boston.

SECOND EDITION.

REVISED STATUTES

OF

THE UNITED STATES,

PASSED AT THE

FIRST SESSION OF THE FORTY-THIRD CONGRESS,

1873-'74;

EMBRACING THE STATUTES OF THE UNITED STATES, GENERAL AND PERMANENT IN THEIR NATURE, IN FORCE ON THE FIRST DAY OF DECEMBER, ONE THOUSAND EIGHT HUNDRED AND SEVENTY-THREE, AS REVISED AND CONSOLIDATED BY COMMISSIONERS APPOINTED UNDER AN ACT OF CONGRESS; AND AS REPRINTED, WITH AMENDMENTS, UNDER AUTHORITY OF AN ACT OF CONGRESS APPROVED THE SECOND DAY OF MARCH, IN THE YEAR ONE THOUSAND EIGHT HUNDRED AND SEVENTY-SEVEN,

WITH

AN APPENDIX.

EDITED, PRINTED, AND PUBLISHED UNDER THE AUTHORITY OF AN ACT OF CONGRESS,
AND UNDER THE DIRECTION OF THE SECRETARY OF STATE.

WASHINGTON:
GOVERNMENT PRINTING OFFICE.

1878.

TITLE XIX.

PROVISIONS APPLICABLE TO SEVERAL CLASSES OF OFFICERS.

Sec.	Sec.
1753. President to regulate admissions to the civil service.	1775. Notification of nominations, rejections, &c., to Secretary of Treasury.
1754. Preference of persons disabled in military or naval service.	1776. Removal of office.
1755. Recommendation for employment of such persons.	1777. Preservation of copies of Statutes at Large.
1756. Form of oath of office.	1778. Taking oaths, acknowledgments, &c.
1757. Oath for certain persons.	1779. Restriction upon payments for newspapers, &c.
1758. Who may administer oath.	1780. Failure to make returns or reports.
1759. Custody of oath.	1781. Prohibition upon taking consideration for procuring contracts, offices, &c.
1760. Unauthorized office, no salary for.	1782. Upon taking compensation in matters to which United States is a party.
1761. Appointees to fill vacancies during recess of Senate.	1783. Persons interested not to act as agents of the government.
1762. Salaries to officers improperly holding over.	1784. Prohibition of contributions, presents, &c., to superiors.
1763. Double salaries.	1785. Punishment for aiding, &c., in importing or trading in obscene literature.
1764. Extra services.	1786. Proceedings against persons illegally holding office.
1765. Extra allowances.	1787. Penalty for illegally holding office.
1766. Officer in arrears.	1788. Disbursing officers forbidden to trade in public funds or property.
1767. Tenure of office.	1789. Collecting officers forbidden to trade in public property.
1768. Suspension and filling vacancies.	1790. Restriction on payment for services.
1769. Filling vacancies temporarily.	
1770. Term of office not to be extended.	
1771. Accepting or exercising office contrary to law.	
1772. Removing, appointing, or commissioning officer contrary to law.	
1773. Commissions.	
1774. Notification of appointments to Secretary of Treasury.	

President to regulate admissions to the civil service.

3 March, 1871, c. 114, s. 9, v. 16, p. 514.

Preference of persons disabled in military or naval service.

3 Mar., 1865, Res. No. 27, s. 1, v. 13, p. 571.

Recommendation for employment of such persons.

3 Mar., 1865, Res. No. 27, s. 2, v. 13, p. 571.

Form of oath of office.

2 July, 1862, c. 128, v. 12, p. 502.

Ex parte Garland, 4 Wall., 333.

SEC. 1753. The President is authorized to prescribe such regulations for the admission of persons into the civil service of the United States as may best promote the efficiency thereof, and ascertain the fitness of each candidate in respect to age, health, character, knowledge, and ability for the branch of service into which he seeks to enter; and for this purpose he may employ suitable persons to conduct such inquiries, and may prescribe their duties, and establish regulations for the conduct of persons who may receive appointments in the civil service.

SEC. 1754. Persons honorably discharged from the military or naval service by reason of disability resulting from wounds or sickness incurred in the line of duty, shall be preferred for appointments to civil offices, provided they are found to possess the business capacity necessary for the proper discharge of the duties of such offices.

SEC. 1755. In grateful recognition of the services, sacrifices, and sufferings of persons honorably discharged from the military and naval service of the country, by reason of wounds, disease, or the expiration of terms of enlistment, it is respectfully recommended to bankers, merchants, manufacturers, mechanics, farmers, and persons engaged in industrial pursuits, to give them the preference for appointments to remunerative situations and employments.

SEC. 1756. Every person elected or appointed to any office of honor or profit, either in the civil, military, or naval service, excepting the President and the persons embraced by the section following, shall, before entering upon the duties of such office, and before being entitled to any part of the salary or other emoluments thereof, take and subscribe the following oath: "I, A B, do solemnly swear (or affirm) that I have

Date.	C.	S.	V.	P.	Sec.R.S.	Date.	C.	S.	V.	P.	Sec.R.S.
3 March, 1871,	113	3	16	492	416	20 April, 1871,	21	16	17	10	2287
				494	596			27		12	4243
				494	607					12	4244
		4		495	607	20 "	22	1		13	563
3 "	114	1		500	1816					13	629
				506	2038					13	699
		4		514	3689					13	1979
		9		514	1753			2		13	563
3 "	115	1		517	3789					13	629
		2		521	3687					13	699
3 "	116	5		525	3689					13	1980
		6		525	3689					13	5336
3 "	117	3		535	3723					13	5406
		5		535	1368					13	5407
				536	1370					13	5518
				535	1474					13	5519
				535	1556					13	5520
		6		536	1376			3		14	5299
				536	1385			5		15	800
				536	1475					15	801
				536	1556					15	822
		7		536	1390				6	15	629
				536	1476					15	1981
		8		536	1392	20 "	24			16	2683
		9		536	1402	1 February, 1872,	10			27	572
				536	1477					27	658
				536	1478	2 "	11	1		28	20
				536	1479			2		28	23
		10		537	421			3		28	25
				537	1436			4		28	26
				537	1485			6		29	22
				537	1486	2 "	12	1		29	300
				537	1487					29	3646
		11		537	1481			2		29	300
				537	1482					29	3647
		12		537	1468	1 March,	22			29	5191
				537	1469	1 "	24	1		32	2474
				537	1470	1 "	25	2		33	2475
				537	1471	1 "				33	2568
				537	1472					33	2569
				537	1473					33	2700
				537	1489	5 "	29			35	2512
				537	1565	5 "	30	1		35	5543
3 "	120	1		566	2079					35	5545
				568	2107					35	5546
		3		570	2103					35	5547
				570	2105					35	5549
3 "	125			580	2496					35	5550
3 "	127			581	2403			2		35	353
3 "	130	1		583	2582	5 "	31	1		35	1973
				583	2583					35	1974
				583	2698					35	1975
		2		583	2585				3	35	1976
		3		583	2583	5 "	33			36	3419
				583	2698	5 "	34			36	2990
				583	2824					36	2997
3 "	132			583	4895	5 "	35			36	597
3 "	136			584	91	12 "	47			40	1168
2 "	1		17	1	5579	18 "	56	1		40	902
				1	5580			2		41	963
24 "	2	1		1	995			3		41	964
				1	5504					41	2997
		2		1	996	18 "	57			41	2997
		3		2	798	30 "	72			44	644
				2	798	2 April,	79	3		47	54
		4		2	5504	2 "	80			47	2543
		5		2	5505	2 "	81			48	5572
24 "	5	1		2	492					48	5574
		2		3	493	5 "	86			50	2994
				3	4934	5 "	88	2		51	3689
				3	2518	9 "	90			51	4250
30 "	7			4	4720	9 "	99			52	572
19 April,	16			4	2552	13 "				52	658
19 "	17	1		4	2553	17 "	103			53	2578
		2		4	2699	22 "	114			55	3689
				5	2552	30 "	129			58	3004
		3		10	2600	1 May,	131			59	2505
20 "	21	15		10	2990					59	2775

OF THE
UNITED STATES OF AMERICA
OF A GENERAL AND PERMANENT CHARACTER

IN FORCE

DECEMBER 7, 1925

AND APPENDIX WITH LAWS TO DECEMBER 6, 1926

CONSOLIDATED, CODIFIED, SET FORTH, AND PUBLISHED IN 1926,
IN THE ONE HUNDRED AND FIFTIETH YEAR OF THE REPUBLIC,
AT ITS FIRST SESSION, BY THE SIXTY-NINTH CONGRESS

[WITH ANCILLARIES AND INDEX]

VOLUME 44 - PART 1

OF THE

UNITED STATES STATUTES AT LARGE



UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON

1926 ..

613. Second Assistant Secretary; appointment; duties.—There shall be in said department an additional Secretary, who shall be known and designated as Second Assistant Secretary of Labor. He shall be appointed by the President. He shall perform such duties as shall be prescribed by the Secretary of Labor, or required by law, and in case of the death, resignation, absence, or sickness of the Assistant Secretary shall, until a successor is appointed or such absence or sickness shall cease, perform the duties devolving upon the Assistant Secretary by reason of section 4 of this title, unless otherwise directed by the President, as provided by section 6 of this title. (June 30, 1922, c. 254, § 1, 42 Stat. 766; Feb. 27, 1925, c. 364, Title IV, 43 Stat. 1048.)

614. Private secretary to Second Assistant Secretary.—There shall be in said Department of Labor one private secretary to the Second Assistant Secretary of Labor. (June 30, 1922, c. 254, § 2, 42 Stat. 766; Feb. 27, 1925, c. 364, Title IV, 43 Stat. 1048.)

615. Chief clerk; disbursing clerk.—There shall be in said department a chief clerk and a disbursing clerk. (Mar. 4, 1913, c. 141, § 2, 37 Stat. 738.)

616. Bureaus and offices in department.—The following-named offices, bureaus, divisions, and branches of the public service, and all that pertains to the same, shall be under the jurisdiction and supervision of the Department of Labor.

1. The office of the Commissioner General of Immigration, the Bureau of Immigration and the Bureau of Naturalization, the Commissioners of Immigration, the Division of Information, and the Immigration Service at Large.

2. The Bureau of Labor Statistics and the office of the Commissioner of Labor Statistics.

3. The Children's Bureau.

4. The Women's Bureau. (Feb. 14, 1903, c. 552, § 4, 32 Stat. 826; Mar. 4, 1913, c. 141, § 3, 37 Stat. 737; June 5, 1920, c. 248, § 1, 41 Stat. 987.)

617. Library, records, etc., of department.—The Secretary of Labor shall have charge in the buildings or premises occupied by or appropriated to the Department of Labor, of the library, furniture, fixtures, records, and other property pertaining to it or acquired for use in its business. He shall be allowed to expend for periodicals and the purposes of the library and for rental of appropriate quarters for the accommodation of the Department of Labor within the District of Columbia, and for all other incidental expenses, such sums as Congress may provide from time to time. (Mar. 4, 1913, c. 141, § 6, 37 Stat. 738.)

618. Rented quarters.—Where any office, bureau, or branch of the public service transferred to the Department of Labor is occupying rented buildings or premises, it may continue to do so until other suitable quarters are provided for its use. (Mar. 4, 1913, c. 141, § 6, 37 Stat. 738.)

619. Mediation of labor disputes; duties, powers, etc., transferred to department.—The Secretary of Labor shall have power to act as mediator and to appoint commissioners of conciliation in labor disputes whenever in his judgment the interests of industrial peace may require it to be done; and all duties performed and all power and authority on March 4, 1913, possessed or exercised by the head of any executive department in and over any bureau, office, officer, board, branch, or division of the public service transferred to the Department of Labor, or any business arising therefrom or pertaining thereto, or in relation to the duties performed by and authority conferred by law upon such bureau, officer, office, board, branch, or division of the public service, whether of an appellate or revisory character or otherwise, shall be vested in and exercised by the head of the said Department of Labor. (Mar. 4, 1913, c. 141, § 8, 37 Stat. 738.)

620. Report and investigations.—The Secretary of Labor shall annually, at the close of each fiscal year, make a report

in writing to Congress, giving an account of all moneys received and disbursed by him and his department and describing the work done by the department. He shall also, from time to time, make such special investigations and reports as he may be required to do by the President, or by Congress, or which he himself may deem necessary. (Mar. 4, 1913, c. 141, § 9, 37 Stat. 738.)

621. Same; records and papers and furniture transferred to department.—The official records and papers on file in and pertaining exclusively to the business of any bureau, office, department, or branch of the public service transferred to the Department of Labor, together with the furniture in use in such bureau, office, department, or branch of the public service, are transferred to the Department of Labor. (Mar. 4, 1913, c. 141, § 5, 37 Stat. 737.)

622. Same; laws operative.—All laws prescribing the work and defining the duties of the several bureaus, offices, departments, or branches of the public service transferred to and made a part of the Department of Labor shall, so far as the same are not in conflict with the provisions of this chapter, remain in full force and effect, to be executed under the direction of the Secretary of Labor. (Mar. 4, 1913, c. 141, § 6, 37 Stat. 738.)

Chapter 12.—CIVIL SERVICE COMMISSION AND CLASSIFIED CIVIL SERVICE.

Sec.

631. Regulation of admissions to civil service.

632. Civil Service Commission; appointment; removal.

633. Rules.

(1) Preparation of.

(2) Provisions of.

1. Competitive examinations.

2. Selection of officers, etc., according to results of examinations.

3. Apportionment of appointments; applications for examinations.

4. Probation before absolute appointment.

5. Contributions for political purposes.

6. Political coercion by officers.

7. Noncompetitive examinations in certain cases.

8. Notice of appointments, rejections, transfers, resignations, and removals; exceptions to be set forth with rules.

(3) Regulations for examinations, and records.

(4) Investigations and reports.

(5) Annual reports.

634. Oaths to witnesses.

635. Chief examiner; secretary; employees; boards of examiners.

636. Detail of employees.

637. Violation of duties by commissioners or officers, etc.

638. Appointments and promotions in classified service; examinations.

639. Deputy collectors of internal revenue and deputy marshals.

640. Habitual users of intoxicants.

641. Members of same family.

642. Recommendations by Senators or Representatives.

643. Applications for examinations; certificate of residence.

644. Place of examinations; persons afflicted with tuberculosis; certificate of health; appointments from same family.

645. Civil service status of soldiers, sailors, and marines.

646. Bureau of Efficiency.

647. Same; chief of bureau reports.

648. Same; efficiency ratings for classified service in executive departments.

649. Same; reports as to needs of personnel in departments.

650. Same; information furnished to by departments.

651. Same; records, and papers transferred to.

652. Removals from classified civil service only for cause.

Section 631. Regulation of admissions to civil service.—The President is authorized to prescribe such regulations for the admission of persons into the civil service of the United States as may best promote the efficiency thereof, and ascertain the fitness of each candidate in respect to age, health, character, knowledge, and ability for the branch of service into which he seeks to enter; and for this purpose he may employ suitable persons to conduct such inquiries, and may prescribe their

duties, and establish regulations for the conduct of persons who may receive appointments in the civil service. (R. S. § 1753.)

632. Civil Service Commission; appointment; removal.—The President is authorized to appoint, by and with the advice and consent of the Senate, three persons, not more than two of whom shall be adherents of the same party, as civil service commissioners, and said three commissioners shall constitute the United States Civil Service Commission. Said commissioners shall hold no other official place under the United States.

The President may remove any commissioner; and any vacancy in the position of commissioner shall be so filled by the President, by and with the advice and consent of the Senate, as to conform to said conditions for the first selection of commissioners.

Each of said commissioners shall be paid, in addition to his salary, his necessary traveling expenses incurred in the discharge of his duty as a commissioner. (Jan. 16, 1883, c. 27, § 1, 22 Stat. 403.)

633. Rules.—It shall be the duty of said commissioners:

(1) **Preparation of.**—First. To aid the President, as he may request, in preparing suitable rules for carrying this section and sections 632, 635, 637, 638, and 640 to 642 of this title, into effect, and when said rules shall have been promulgated it shall be the duty of all officers of the United States in the departments and offices to which any such rules may relate to aid, in all proper ways, in carrying said rules, and any modification thereof, into effect.

(2) **Provisions of.**—Second. Among other things, said rules shall provide and declare, as nearly as the conditions of good administration will warrant, as follows:

1. Competitive examinations.

First. For open, competitive examinations for testing the fitness of applicants for the public service classified on January 16, 1883, or thereafter, or to be classified hereunder. Such examinations shall be practical in their character, and so far as may be shall relate to those matters which will fairly test the relative capacity and fitness of the persons examined to discharge the duties of the service into which they seek to be appointed.

2. Selection of officers, etc., according to results of examinations.

Second. All the offices, places, and employments so arranged or to be arranged in classes shall be filled by selections according to grade from among those graded highest as the results of such competitive examinations.

3. Apportionment of appointments; applications for examinations.

Third. Appointments to the public service aforesaid in the departments at Washington shall be apportioned among the several States and Territories and the District of Columbia upon the basis of population as ascertained at the last preceding census. Every application for an examination shall contain, among other things, a statement, under oath, setting forth his or her actual bona fide residence at the time of making the application, as well as how long he or she has been a resident of such place.

4. Probation before absolute appointment.

Fourth. There shall be a period of probation before any absolute appointment or employment aforesaid.

5. Contributions for political purposes.

Fifth. No person in the public service is for that reason under any obligations to contribute to any political fund, or to render any political service, and that he will not be removed or otherwise prejudiced for refusing to do so.

6. Political coercion by officers.

Sixth. No person in said service has any right to use his official authority or influence to coerce the political action of any person or body.

7. Noncompetitive examinations in certain cases.

Seventh. There shall be noncompetitive examinations in all proper cases before the commission, when competent persons do not compete, after notice has been given of the existence of the vacancy, under such rules as may be prescribed by the commissioners as to the manner of giving notice.

8. Notice of appointments, rejections, transfers, resignations, and removals; exceptions to be set forth with rules.

Eighth. Notice shall be given in writing by the appointing power to said commission of the persons selected for appointment or employment from among those who have been examined, of the place of residence of such persons, of the rejection of any such persons after probation, of transfers, resignations, and removals, and of the date thereof, and a record of the same shall be kept by said commission. Any necessary exceptions from said eight fundamental provisions of the rules shall be set forth in connection with such rules, and the reasons therefor shall be stated in the annual reports of the commission.

(3) **Regulations for examinations, and records.**—Third. Said commission shall, subject to the rules that may be made by the President, make regulations for, and have control of, such examinations, and, through its members or the examiners, it shall supervise and preserve the records of the same; and said commission shall keep minutes of its own proceedings.

(4) **Investigations and reports.**—Fourth. Said commission may make investigations concerning the facts, and may report upon all matters touching the enforcement and effects of said rules and regulations, and concerning the action of any examiner or board of examiners hereinafter provided for, and its own subordinates, and those in the public service, in respect to the execution of this section and sections 632, 635, 637, 638, and 640 to 642 of this title.

(5) **Annual reports.**—Fifth. Said commission shall make an annual report to the President for transmission to Congress, showing its own action, the rules and regulations and the exceptions thereto in force, the practical effects thereof, and any suggestions it may approve for the more effectual accomplishment of the purposes of sections 632, 633, 635, 637, 638 and 640 to 642. (Jan. 16, 1883, c. 27, § 2, 22 Stat. 403.)

634. Oaths to witnesses.—Members of the Civil Service Commission and its duly authorized representatives are authorized to administer oaths to witnesses in any matter depending before the Civil Service Commission. (Aug. 23, 1912, c. 350, § 1, 37 Stat. 372.)

635. Chief examiner; secretary; employees; boards of examiners.—Said commission is authorized to employ a chief examiner, a part of whose duty it shall be, under its direction, to act with the examining boards, so far as practicable, whether at Washington or elsewhere, and to secure accuracy, uniformity, and justice in all their proceedings, which shall be at all times open to him. The chief examiner shall be paid in addition to his salary, his necessary traveling expenses incurred in the discharge of his duty. The commission shall have a secretary, to be appointed by the President. It may, when necessary, employ a stenographer, and a messenger. The commission shall, at Washington, and in one or more places in each State and Territory where examinations are to take place, designate and select a suitable number of persons, not less than three, in the official service of the United States, residing in said State or Territory, after consulting the head of the department or office in which such persons serve, to be members of boards of

R. S.			U. S. C.			R. S.			U. S. C.			R. S.			U. S. C.			R. S.			U. S. C.		
Sec.	Title	Sec.	Sec.	Title	Sec.	Sec.	Title	Sec.	Sec.	Title	Sec.	Sec.	Title	Sec.	Sec.	Title	Sec.	Sec.	Title	Sec.	Sec.	Title	
856	28	599	971	28	819	1108	10	282	1325	10	1104	1495	34	273	1709	22	75						
857	28	609	972	28	820	1111	10	1140	1327	10	1051	1496	34	274	1710	22	76						
858	28	631	973	28	821			1161	1328	10	1053	1498	34	275	1711	22	77						
859	28	634	974	28	822	1112	10	611	1330	10	1144	1499	34	276	1712	22	80						
861	28	635	975	28	823	1116	10	621	1331	10	1041	1500	34	277	1713	22	82						
862	28	637	976	28	824	1118	10	622	1333	10	1080	1501	34	278	1714	22	71						
863	28	639	977	28	825	1122	10	235	1334	10	1131	1502	34	279	1715	22	83						
864	28	640	978	28	826	1125	10	238	1335	10	1132	1503	34	281	1716	22	85						
865	28	641	979	28	827	1127	10	239	1336	10	1133	1504	34	282	1717	22	87						
866	28	644	981	28	828	1132	10	7	1337	10	1135	1505	34	283	1718	22	88						
867	28	645	982	28	829	(2d ed.)			1338	10	1085	1506	34	341	1719	22	90						
868	28	646	983	28	830	1135	10	76	1341	10	1142	1507	34	342	1722	22	91						
869	28	647	984	28	831	1135	34	541	1362	34	1	1508	34	345	1723	22	92						
870	28	648	985	28	838	1136	10	1339	1367	34	111	1509	34	346	1724	22	93						
871	28	649	986	28	839	1138	10	1315	1369	34	11, 21	1510	34	347	1725	22	94						
872	28	650	987	28	840	1143	10	75	1370	34	23	1511	34	1021	1726	22	95						
873	28	651	988	28	841	1143	34	541	1373	34	24	1512	34	1031	1727	22	95, 96						
874	28	652	989	28	842	1145	10	1232	1374	34	25	1515	34	1043	1728	22	97						
875	28	653	990	28	843	1150	10	1315	1375	5	451	1516	34	1044	1731	22	101						
876	28	654	991	28	844	1153	10	185	1378	34	11	1517	34	1045	1734	22	102						
877	28	655	992	28	845	1156	10	182	1379	34	61	1518	34	1046	1735	22	103						
878	28	656	993	28	846	1157	10	184	1380	34	323	1519	34	1053	1736	22	103						
879	28	657	994	28	850	1158	10	183	1381	34	62	1520	34	1054	1737	22	104						
880	28	658	995	28	851	1164	10	192	1382	34	63	1521	34	1057	1738	22	105						
881	28	659	996	28	852	1165	10	193	1383	34	64	1526	34	1056	1740	22	121						
882	28	661	997	28	862	1166	10	194	1384	34	65	1527	34	1101	1742	22	123						
883	28	662	998	28	867	1167	10	195, 196	1385	34	66	1528	34	1072	1743	22	125						
884	28	663	999	28	868	1169	10	95	1389	34	67	1532	34	462	1744	22	33						
885	28	664	1000	28	869	1174	10	104	1393	34	76	1533	34	463	1745	22	127						
886	28	665	1001	28	870	1175	10	726	1395	34	11	1534	34	452	1746	22	128						
887	28	668	1003	28	871	1176	38	247	1396	34	91	1535	34	453	1748	22	129						
888	28	669	1004	28	872	1177	38	248	1397	34	95	1536	34	454	1749	22	130						
889	28	671	1005	28	873	1178	38	249	1398	34	96	1536	34	471	1750	22	131						
890	28	670	1006	34	1146	1183	10	176	1401	34	102	1537	34	483	1752	22	132						
891	28	672	1007	28	874	1189	10	862	1402	34	11	1538	34	484	1753	22	631						
892	28	673	1008	28	350	1191	10	1312	1403	34	81	1539	34	485	1754	5	35						
893	28	674	1010	28	878	1192	10	1314	1404	34	223	1542	34	501	1758	5	16						
894	28	675	1011	28	879	1199	10	62	1405	34	122	1543	34	502	1757	5	16						
895	28	676	1013	28	881	1201	10	63	1406	34	121	1544	34	507	1758	5	18						
896	28	677	1014	18	591	1209	10	521	1407	34	134, 951	1546	34	510	1759	5	21						
897	28	678	1015	18	592	1210	10	522	1408	34	174	1547	34	591	1760	5	52						
898	28	679	1016	18	597	1211	10	524	1409	34	198	1548	34	592	1761	5	56						
899	28	681	1017	18	598	1212	10	528	1410	34	146	1549	34	529	1763	5	58						
900	28	682	1018	18	599	1222	10	576	1411	34	21	1550	34	594	1764	5	69						
901	28	683	1019	18	600	1223	10	577	1413	34	11, 141	1551	34	595	1765	5	70						
902	28	684	1020	18	601	1224	10	495	1414	34	142	1553	18	94	1766	5	82						
903	28	685	1021	18	554	1226	10	1392	1415	34	143	1554	5	418	1773	5	10						
904	28	686	1022	18	555	1227	10	1426	1417	34	123	1555	5	418	1774	5	13						
905	28	687	1023	18	560	1228	10	579	1418	34	181, 182	1557	34	881	1775	5	14						
906	28	688	1024	18	557	1229	10	572, 575	1419	34	161	1560	34	862	1776	5	88						
907	28	689	1025	18	556	1229	34	1200,	1420	34	161, 163	1563	34	875	1777	5	89						
910	28	690	1026	18	561	art. 36		1200,	1421	34	177	1564	34	876	1778	5	92						
911	28	721	1027	18	602	1230	10	573	1422	34	201	1571	34	224	1779	5	102						
912	28	722	1028	18	603	1231	10	1172	1426	34	192	1574	34	951	1780	18	188						
913	28	723	1029	18	604	1232	10	608	1427	34	193	1575	34	952	1781	18	190, 202						
914	28	724	1030	18	605	1234	10	497	1428	34	211	1576	34	932	1782	18	203						
915	28	726	1031	28	425	1237	10	610	1429	34	194	1580	34	902	1783	18	93						
916	28	727	1032	18	554	1241	10	1261	1430	34	219	1581	34	903	1784	5	113						
917	28	730	1033	18	562	1242	10	1317	1431	34	220	1582	34	904	1785	18	190						
918	28	731	1034	18	563	1243	10	941, 943	1432	34	218	1583	34	905	1788	18	192						
919	28	732	1035	18	565	1244	10	944	1433	34	217	1585	34	907	1789	18	192						
920	28	733	1036	18	566	1245	10	931	1434	34	216	1586	34	921	1790	19	49						
921	28	734	1041	18	569	1246	10	961	1435	34	221	1587	34	922	1790	26	70						
922	28	735	1042	18	641	1247	10	962	1436	34	225	1588	34	991	1791	4	1						
923	28	736	1043	18	581	1248	10	963	1437	10	1866	1591	34	993	1792	4	2						
924	28	737	1044	18	582	1249	10	964	1437	34	447	1592	34	994 (a)	1793	4	4						
925	28	738	1045	18	583	1250	10	965	1438	34	144	1593	34	998	1794	4	5						
926	28	739	1046	18	584	1251	10	933	1439	34	145	1600	34	653	1795	4	6						
927	28	740	1047	28	791	1252	10	934	1440	34	226	1604	34	651	1796	4	7						
928	28	741	1049	28	241	1253	10	966	1441	34	227	1605	34	652	1797	40	19						
929	28	742	1050	28	242	1254	10	1025	1442	34	228	1606	34	670	1798	40	19						
930	28	743	1052	28	243	1255	10	1024</															

UNITED STATES CODE

1946 EDITION

CONTAINING THE GENERAL AND PERMANENT LAWS
OF THE UNITED STATES, IN FORCE
ON JANUARY 2, 1947

Prepared and published under authority of Title 1, U. S. Code, Section 52 (d)
by the Committee on Revision of the Laws and the Committee
on the Judiciary of the House of Representatives



VOLUME ONE
TITLE 1—GENERAL PROVISIONS
TO
TITLE 15—COMMERCE AND TRADE

UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1947

with the furniture in use in such bureau, office, department, or branch of the public service, are transferred to the Department of Labor. (Mar. 4, 1913, ch. 141, § 5, 37 Stat. 737.)

§ 622. Same; laws operative.

All laws prescribing the work and defining the duties of the several bureaus, offices, departments, or branches of the public service transferred to and made a part of the Department of Labor shall, so far as the same are not in conflict with the provisions of this chapter, remain in full force and effect, to be executed under the direction of the Secretary of Labor. (Mar. 4, 1913, ch. 141, § 6, 37 Stat. 738.)

REFERENCES IN TEXT

Word "chapter" is translation of word "Act", meaning act Mar. 4, 1913, cited to text, which is classified in part to this chapter and to sections in other titles. For complete distribution see Tables.

Chapter 12.—CIVIL SERVICE COMMISSION AND CLASSIFIED CIVIL SERVICE

Sec.

631. Regulation of admissions to Civil Service.
- 631a. Authority of President to cover positions in executive departments, independent establishments, and other Government agencies into classified civil service.
- 631b. Same; civil service status of incumbents of positions covered into civil service and of certain legislative branch employees.
632. Civil Service Commission; appointment; removal, and compensation of commissioners.
633. Rules.
- (1) Preparation of.
 - (2) Provisions of.
 - (3) Regulations for examinations, and records.
 - (4) Investigations and reports.
 - (5) Annual reports.
- 633a, 633b. Personnel Classification Board abolished.
- 633c. Personnel Classification Board orders, rules, laws, etc., continued.
- 633d. Same; appropriations transferred.
- 633e. Adjustment of classification or compensation.
634. Oaths to witnesses.
635. Chief examiner; secretary; employees; boards of examiners.
636. Detail of employees.
637. Violation of duties by commissioners or officers, etc.; punishment.
638. Appointments and promotions in classified service; examinations.
639. Deputy collectors of internal revenue and deputy marshals.
640. Habitual users of intoxicants.
641. Members of same family.
642. Recommendations by Senators or Representatives.
643. Applications for examinations; certificate of residence.
644. Repeated.
645. Civil service status of soldiers, sailors, and marines.
- 645a. Benefits to employees ineligible for earlier appointment because of military service; persons excluded.
- 645b. Same; period of compensation.
- 646-651b. Bureau of Efficiency.
652. Removals from classified Civil Service for cause only.
653. Same; summary removal from Military Establishment for conduct inimical to defense program; notice and hearing.
654. Duties of Commission as to Official Register.

§ 631. Regulation of admissions to Civil Service.

The President is authorized to prescribe such regulations for the admission of persons into the civil

service of the United States as may best promote the efficiency thereof, and ascertain the fitness of each candidate in respect to age, health, character, knowledge, and ability for the branch of service into which he seeks to enter; and for this purpose he may employ suitable persons to conduct such inquiries, and may prescribe their duties, and establish regulations for the conduct of persons who may receive appointments in the civil service. (R. S. § 1753.)

DERIVATION

Act Mar. 3, 1871, ch. 114, § 9, 16 Stat. 514.

TRANSFER AND RELEASE OF PERSONNEL

Ex. Ord. No. 9695, Feb. 8, 1946, 11 F. R. 1559, revoked Ex. Ord. No. 9243, Sept. 12, 1943, 7 F. R. 7213, as amended by Ex. Ord. No. 9451, June 20, 1944, 9 F. R. 6905, eff. July 1, 1944, which related to the transfer and release of Federal personnel.

SUBVERSIVE ACTIVITIES

An Interdepartmental Committee to consider cases of subversive activity on part of Federal employees was established within Department of Justice by Ex. Ord. No. 9300, Feb. 5, 1943, 8 F. R. 1701.

CROSS REFERENCES

Army Specialist Corps created for duration of present war abolished; see note preceding section 181 of this title.

EX. ORD. NO. 9367. PROHIBITING, WITH CERTAIN EXCEPTIONS, INSTRUCTION OF APPLICANTS FOR CIVIL SERVICE AND FOREIGN SERVICE EXAMINATIONS BY OFFICERS OR EMPLOYEES OF THE GOVERNMENT

Ex. Ord. No. 9367, Aug. 4, 1943, 8 F. R. 11017, provided: By virtue of the authority vested in me by section 1753 of the Revised Statutes of the United States (U. S. C., title 5, sec. 631) [this section], and as President of the United States, it is hereby ordered as follows:

1. No officer or employee of the Government shall directly or indirectly instruct or be concerned in any manner in the instruction of any person or classes of persons with a view to their special preparation for the examinations of the United States Civil Service Commission or the examinations of the Boards of Examiners for the Foreign Service of the Department of State: *Provided*, That this order shall not be construed to prevent any agency of the Government from utilizing Government facilities and the services of Federal officers and employees whenever such facilities or services may be necessary or useful in carrying out the duties imposed upon such agency by law in the training and testing of disabled members or former members of the armed forces of the United States or in the conduct of educational or training programs which are open exclusively to members or former members of the armed forces: *Provided further*, That due credit in civil service examinations shall be given by the Civil Service Commission to any member or former member of the armed forces of the United States who has satisfactorily completed any such educational or training program conducted by a Government agency.

2. Violation of the provisions of this order by any officer or employee of the Government shall be considered sufficient cause for removal from the service.

3. This order supersedes Executive Orders No. 359 of October 13, 1905, No. 1277 of December 23, 1910, No. 3088 of May 17, 1919, and No. 3215 of January 13, 1920.

§ 631a. Authority of President to cover positions in executive departments, independent establishments, and other Government agencies into classified civil service.

Notwithstanding any provisions of law to the contrary, the President is authorized by Executive order to cover into the classified civil service any offices or positions in or under an executive department, independent establishment, or other agency of the Government: *Provided*, That in the case of any fed-

Public Law 89-554

AN ACT

September 6, 1966
[H. R. 10 104]

To enact title 5, United States Code, "Government Organization and Employees", codifying the general and permanent laws relating to the organization of the Government of the United States and to its civilian officers and employees.

Title 5, USC,
Government Or-
ganization and
Employees.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the laws relating to the organization of the Government of the United States and to its civilian officers and employees, generally, are revised, codified, and enacted as title 5 of the United States Code, entitled "Government Organization and Employees", and may be cited as "5 U.S.C., § ", as follows:

TITLE 5—GOVERNMENT ORGANIZATION AND EMPLOYEES

PART	Sec.
I. THE AGENCIES GENERALLY.....	101
II. THE UNITED STATES CIVIL SERVICE COMMISSION.....	1101
III. EMPLOYEES.....	2101

PART I—THE AGENCIES GENERALLY

CHAPTER	Sec.
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3. POWERS.....	301
5. ADMINISTRATIVE PROCEDURE.....	501
7. JUDICIAL REVIEW.....	701
9. EXECUTIVE REORGANIZATION.....	901

CHAPTER 1—ORGANIZATION

Sec.
101. Executive departments.
102. Military departments.
103. Government corporation.
104. Independent establishment.
105. Executive agency.

§ 101. Executive departments

The Executive departments are:

- The Department of State.
- The Department of the Treasury.
- The Department of Defense.
- The Department of Justice.
- The Post Office Department.
- The Department of the Interior.
- The Department of Agriculture.
- The Department of Commerce.
- The Department of Labor.
- The Department of Health, Education, and Welfare.

§ 102. Military departments

The military departments are:

- The Department of the Army.
- The Department of the Navy.
- The Department of the Air Force.

§ 103. Government corporation

For the purpose of this title—

- (1) "Government corporation" means a corporation owned or controlled by the Government of the United States; and

Sec.

- 3312. Preference eligibles; physical qualifications; waiver.
- 3313. Competitive service; registers of eligibles.
- 3314. Registers; preference eligibles who resigned.
- 3315. Registers; preference eligibles furloughed or separated.
- 3316. Preference eligibles; reinstatement.
- 3317. Competitive service; certification from registers.
- 3318. Competitive service; selection from certificates.
- 3319. Competitive service; selection; members of family restriction.
- 3320. Excepted service; government of the District of Columbia; selection.
- 3321. Competitive service; probation; period of.
- 3322. Competitive service; temporary appointments after age 70.
- 3323. Automatic separations; reappointment; reemployment of annuitants.
- 3324. Appointments at GS-16, 17, and 18.
- 3325. Appointments to scientific and professional positions.
- 3326. Appointments of retired members of the armed forces to positions in the Department of Defense.
- 3327. Postmasters; standards for determination of qualifications.

SUBCHAPTER II—OATH OF OFFICE

Sec.

- 3331. Oath of office.
- 3332. Officer affidavit; no consideration paid for appointment.
- 3333. Employee affidavit; loyalty and striking against the Government.

SUBCHAPTER III—DETAILS

Sec.

- 3341. Details; within Executive or military departments.
- 3342. Details; field to departmental service prohibited.
- 3343. Details; to international organizations.
- 3344. Details; hearing examiners.
- 3345. Details; to office of head of Executive or military department.
- 3346. Details; to subordinate offices.
- 3347. Details; Presidential authority.
- 3348. Details; limited in time.
- 3349. Details; to fill vacancies; restrictions.

SUBCHAPTER IV—TRANSFERS

Sec.

- 3351. Preference eligibles; transfer; physical qualifications; waiver.

SUBCHAPTER V—PROMOTION

Sec.

- 3361. Promotion; competitive service; examination.
- 3362. Promotion; effect of incentive award.
- 3363. Preference eligibles; promotion; physical qualifications; waiver.
- 3364. Promotion; substitute employees in the postal field service.

SUBCHAPTER I—EXAMINATION, CERTIFICATION, AND APPOINTMENT

§ 3301. Civil service; generally

The President may—

- (1) prescribe such regulations for the admission of individuals into the civil service in the executive branch as will best promote the efficiency of that service;
- (2) ascertain the fitness of applicants as to age, health, character, knowledge, and ability for the employment sought; and
- (3) appoint and prescribe the duties of individuals to make inquiries for the purpose of this section.

§ 3302. Competitive service; rules

The President may prescribe rules governing the competitive service. The rules shall provide, as nearly as conditions of good administration warrant, for—

- (1) necessary exceptions of positions from the competitive service; and

“§ 558. Income tax deferment

“Notwithstanding any other provision of law, a Federal income tax return of, or the payment of a Federal income tax by, a member of a uniformed service who, at the time the return or payment would otherwise become due, is in a missing status, does not become due until the earlier of the following dates—

“(1) the fifteenth day of the third month in which he ceased (except by reason of death or incompetency) being in a missing status, unless before the end of that fifteenth day he is again in a missing status; or

“(2) the fifteenth day of the third month after the month in which an executor, administrator, or conservator of the estate of the taxpayer is appointed.

That due date is prescribed subject to the power of the Secretary of the Treasury or his delegate to extend the time for filing the return or paying the tax, as in other cases, and to assess and collect the tax as provided by sections 6851, 6861, and 6871 of title 26 in cases in which the assessment or collection is jeopardized and in cases of bankruptcy or receivership.”

SEC. 6. (a) The analysis of chapter 95 of title 39, United States Code, is amended by adding the following:

74 Stat. 689.

“6216. Railroad operations, receipts and expenditures.”

(b) Chapter 95 of title 39, United States Code, is amended by adding the following new section:

“§ 6216. Railroad operations, receipts and expenditures

“The Postmaster General shall request all railroad companies transporting the mails to furnish, under seal, such data relating to the operating, receipts and expenditures of such roads as may, in his judgment, be deemed necessary to enable him to ascertain the cost of mail transportation and the proper compensation to be paid for the same. He shall, in his annual report to Congress, make such recommendations, founded on the information obtained under this section, as shall, in his opinion, be just and equitable.”

SEC. 7. (a) The legislative purpose in enacting sections 1-6 of this Act is to restate, without substantive change, the laws replaced by those sections on the effective date of this Act. Laws effective after June 30, 1965, that are inconsistent with this Act are considered as superseding it to the extent of the inconsistency.

Savings provisions.

(b) A reference to a law replaced by sections 1-6 of this Act, including a reference in a regulation, order, or other law, is deemed to refer to the corresponding provision enacted by this Act.

(c) An order, rule, or regulation in effect under a law replaced by sections 1-6 of this Act continues in effect under the corresponding provision enacted by this Act until repealed, amended, or superseded.

(d) An action taken or an offense committed under a law replaced by sections 1-6 of this Act is deemed to have been taken or committed under the corresponding provision enacted by this Act.

(e) An inference of a legislative construction is not to be drawn by reason of the location in the United States Code of a provision enacted by this Act or by reason of the caption or catchline thereof.

(f) The enactment of this Act does not increase or decrease the pay, allowances, compensation, or annuity of any person.

(g) If a provision enacted by this Act is held invalid, all valid

TITLE 5—GOVERNMENT ORGANIZATION AND EMPLOYEES

This title was enacted by Pub. L. 89-554, §1, Sept. 6, 1966, 80 Stat. 378

Part		Sec.
I.	The Agencies Generally	101
II.	Civil Service Functions and Re-	
	sponsibilities	1101
III.	Employees	2101

AMENDMENTS

1979—Pub. L. 96-54, §2(a)(1), Aug. 14, 1979, 93 Stat. 381, substituted “Civil Service Functions and Responsibilities” for “The United States Civil Service Commission” in item for part II.

TABLE SHOWING DISPOSITION OF ALL SECTIONS OF FORMER TITLE 5

<i>Title 5 Former Sections</i>	<i>Title 5 New Sections</i>
1, 2	101
3	Rep.
4	3345
5	3346
6	3347
7	3348
8	3349
9	5535
10	2901
11, 12	2902
13-14a, 15	Rep.
16	3331
16a	2903, 2904
17, 17a	Rep.
17b, 17c	2905
18	2903
19	Rep.
20	2904
21	2906
21a	3332
21b	5507
22	301
22-1 (less 3d-5th provisos)	7532
22-1 (3d proviso)	3571, 5594
22-1 (4th and 5th provisos)	7312
22-2	7533
22-3	7531
22a	302
23-26c	Rep.
27	6106
28	6105
29, 29a, 30 to 30b-1, 30c to 30e-1, 30f-30m.	Rep.
30n	6322
30n-1	T. 28 § 1823
30o	5537
30p	5515
30q	6321
30r(a)	6323
30r(b)	3551
30r(c)	502, 5534
30r(d)	2105
31-31b, 32	Rep.
33	7154
34-35a, 36-37a	Rep.
38	3341
39, 40	3342
41	T. 14 § 632
42, 42a	Rep.
43	3101
43a	3102
44	T. 31 § 492-1 (See Rev. T. 31 Table)
45	Rep.

TABLE SHOWING DISPOSITION OF ALL SECTIONS OF FORMER TITLE 5—Continued

<i>Title 5 Former Sections</i>	<i>Title 5 New Sections</i>
46	3103
46a	5511
46b	5513
46c	T. 31 § 699a (See Rev. T. 31 Table)
46d, 46e	5514
47	3103; T. 18 § 1916
47a	8301; T. 10 § 1221
48	T. 28 § 514
49	3106
50	5501; T. 18 § 1916
51	5536
52	5502
53	3108
54	3107
55	Rep.
55a	3109
56	5503
57-59c	Rep.
60	T. 2 § 162
61	D.C. Code, §31-1009
61a	5552
61a-1(a), (f)	5534a
61a-1(b)-(e)	Rep.
61b (1st, 2d sentences)	5551
61b (3d-5th sentences)	6306
61b (6th sentence)	5551
61c-61e	Rep.
61f	5582
61g	5581
61h	5583
61i	5581
61j	5582
61k	5581
62-64a	Rep.
65	T. 2 § 162
66	T. 18 § 1914
67	T. 7 § 2220
68	T. 8 § 1353c
69	5535, 5536
70	5536
70a, 70b	5945
70c	5942
71	5536
72	5535
73, 73a	Rep.
73b	5731
73b-1(a), (b)	5724
73b-1(c)	5730
73b-1(d)	5725
73b-1(e)	5726
73b-1(f)	5727
73b-2	5703
73b-3(a) (less 3d-6th provisos)	5722
73b-3(a) (3d, 4th provisos)	5728
73b-3(a) (5th, 6th provisos)	5729
73b-3 (less (a))	5723
73b-4	T. 41 § 5a
73b-4a, 73b-4b	5724a
73b-4c	5726
73b-4d	5724
73b-4e	5724a
73b-4f	5724
73b-5	5732
73c	5727
73c-1, 73c-2, 73d	Rep.
73e	5731
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Page 6

TABLE SHOWING DISPOSITION OF ALL SECTIONS OF
FORMER TITLE 5—Continued

<i>Title 5 Former Sections</i>	<i>Title 5 New Sections</i>
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611b	T. 29 § 553
611c	Rep. and Elim.
612, 613	Rep.
613a	T. 29 § 554
613b	T. 29 § 555
614	Rep.
615	T. 29 § 556
616	T. 29 § 557
617	T. 29 § 558
618	T. 29 § 559
619	Rep.
620	T. 29 § 560
621	T. 29 § 561
622	T. 29 § 562
622a	T. 29 § 563
623	T. 42 § 3501
623a	T. 42 § 3508
623b	T. 42 § 3503
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623e	T. 42 § 3507
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623g	T. 42 § 3502
623h	T. 42 § 3501a
623i	Elim.
624	T. 42 § 3531
624a	T. 42 § 3532
624b	T. 42 § 3533
624c	T. 42 § 3534
624d	T. 42 § 3535
624e	T. 42 § 3536
624f	T. 42 § 3537
626(a)	T. 10 § 8012
626(b)	Rep.
626(c)	T. 10 § 101(5); T. 50 § 409(c)
626(d)	T. 10 § 8013
626(e)	T. 10 § 8012
626(f)	T. 10 § 8033
626(g)	T. 10 § 8011
626-1	T. 10 § 8013, 8017
626-2	T. 10 §§ 8012, 9532
626a	T. 10 § 8012
626b	T. 10 § 8013
626c(a), (f)	T. 10 § 8062
626c(b)	T. 10 § 743
626c(c)-(e), 626c-1 to 626c-3, 626d, 626e.	Rep.
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626g-626j	(See former 150q-150t)
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626t, 626u	T. 10 § 1581
626v-626y, 627	Rep.
627a	T. 10 §§ 8208, 8215
627b	T. 10 §§ 8071, 8208, 8297, 8299, 8305, 8504, 8685, 8888, 8915, 8916, 8927, 8962, 8991
627c	Rep.
627d	T. 10 § 8256
627e	T. 10 § 8685
627f	T. 10 §§ 8549, 8580, 8818
627g-627l	Rep.
628	T. 10 § 9531
628a	T. 10 § 9503
628b	T. 10 § 174
628c	T. 10 § 1584
628d	T. 10 § 2352
628e	T. 10 §§ 2353, 2357
628f, 628g	T. 10 §§ 2354, 2355
628h	T. 10 §§ 174, 2356
630	T. 40 § 751 (See Rev. T. 40 Table)
630a	T. 40 § 752 (See Rev. T. 40 Table)
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TABLE SHOWING DISPOSITION OF ALL SECTIONS OF
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630e	T. 40 § 755 Rep.
630f	Rep.
630g	T. 40 § 756 (See Rev. T. 40 Table)
630g-1	T. 40 § 757 (See Rev. T. 40 Table)
630g-2	T. 40 § 759 Rep.
630h	T. 40 § 758 (See Rev. T. 40 Table)
630i	Elim.
630j	Rep.
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631a, 631b(a)	Elim.
631b(b), (c)	3304
632 (1st par.)	1101
632 (2d-4th pars.)	1102
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633(1)	1301, 3302
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633(2)7	1302, 3304
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633a-633e	Rep.
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635 (6th sentence)	1105, 3305
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655-657	1304
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673c (1st par., less provisos)	Rep.
673c (1st proviso)	6102
673c (2d, 3d provisos)	5544
673c (2d par.), 674-678b	Rep.
679	Elim.
680-684, 691, 691a, 692-692d, 693 to 693-2, 693a-693d, 694, 649a, 695, 695a, 696, 696a, 697, 697a, 698-698b, 699, 699a, 700, 700a, 701, 701a, 702, 702a, 703, 703a, 704, 704a, 705, 705a, 706, 706a, 707, 707a, 708, 708a, 709-615.	Rep.
715a	3323
715b-715d, 716-718a, 719, 719-1, 719a, 719b, 720-729a, 730-736c, 737-739b, 740, 740a.	Rep.
740b-740i	(See former 2281-2288)
745-745r	Rep.
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753	8105
754	8106
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755(c)	8108
755(d)	8109
756(a)	8110
756(b)	8111

**IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

AMERICA’S FRONTLINE)
DOCTORS, et al,)
)
Plaintiffs,)
)
v.)
)
The UNITED STATES OF AMERICA,)
et al,)
)
Defendants.)

Case No. 2:21-cv-702-CLM

EXHIBIT 3

THE
STATUTES AT LARGE

OF THE

UNITED STATES OF AMERICA,

FROM

DECEMBER, 1881, TO MARCH, 1883.

AND

RECENT TREATIES, POSTAL CONVENTIONS, AND EXECUTIVE PROCLAMATIONS.

EDITED, PRINTED, AND PUBLISHED UNDER THE AUTHORITY OF
AN ACT OF CONGRESS, AND UNDER THE DIRECTION
OF THE SECRETARY OF STATE.

VOL. XXII.

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1883.

States before the passage of this act shall be cognisable in the court of the western division of the western district of Tennessee held at Memphis, and actions or proceedings now pending at Memphis against defendants residing in said county of Hardeman may, on the application of either party, be transferred to the court at Jackson; and in case of such transfer, all papers and files therein, with copies of all journal entries, shall be transferred to the office of the clerk of the court at Jackson, and the same shall proceed in all respects as though originally commenced in said court.

Approved, January 15, 1883.

CHAP. 26.—An act to increase the fees of witnesses in the United States courts in certain cases.

Jan. 15, 1883.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all persons residing west of the Mississippi River, excepting those who are by law entitled to a higher compensation, who have been or may hereafter be in attendance at Washington, District of Columbia, under subpoena or under the direction of the Department of Justice as witnesses in any of the courts of said district, in any of the cases known as star-routes prosecutions, shall be entitled to receive a total per diem of two dollars and fifty cents per day, and mileage for actual travel only to and from their place of residence, by the usual routes of travel, at the rate of seven cents per mile.

Increase of fees of witnesses in U. S. courts in certain cases.

Approved, January 15, 1883.

CHAP. 27.—An act to regulate and improve the civil service of the United States.

Jan. 16, 1883.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President is authorized to appoint, by and with the advice and consent of the Senate, three persons, not more than two of whom shall be adherents of the same party, as Civil Service Commissioners, and said three commissioners shall constitute the United States Civil Service Commission. Said commissioners shall hold no other official place under the United States.

Civil service.

Commission.

The President may remove any commissioner; and any vacancy in the position of commissioner shall be so filled by the President, by and with the advice and consent of the Senate, as to conform to said conditions for the first selection of commissioners.

Removals. Vacancies, how filled.

The commissioners shall each receive a salary of three thousand five hundred dollars a year. And each of said commissioners shall be paid his necessary traveling expenses incurred in the discharge of his duty as a commissioner.

Compensation.

SEC. 2. That it shall be the duty of said commissioners:

Duties.

FIRST. To aid the President, as he may request, in preparing suitable rules for carrying this act into effect, and when said rules shall have been promulgated it shall be the duty of all officers of the United States in the departments and offices to which any such rules may relate to aid, in all proper ways, in carrying said rules, and any modifications thereof, into effect.

Rules.

SECOND. And, among other things, said rules shall provide and declare, as nearly as the conditions of good administration will warrant, as follows:

First, for open, competitive examinations for testing the fitness of applicants for the public service now classified or to be classified hereunder. Such examinations shall be practical in their character, and so far as may be shall relate to those matters which will fairly test the

Competitive examinations.

- relative capacity and fitness of the persons examined to discharge the duties of the service into which they seek to be appointed.
- Offices, etc., how filled.** Second, that all the offices, places, and employments so arranged or to be arranged in classes shall be filled by selections according to grade from among those graded highest as the results of such competitive examinations.
- Appointments, how apportioned.** Third, appointments to the public service aforesaid in the departments at Washington shall be apportioned among the several States and Territories and the District of Columbia upon the basis of population as ascertained at the last preceding census. Every application for an examination shall contain, among other things, a statement, under oath, setting forth his or her actual bona fide residence at the time of making the application, as well as how long he or she has been a resident of such place.
- Contributions for political purposes prohibited.** Fourth, that there shall be a period of probation before any absolute appointment or employment aforesaid.
- Fifth, that no person in the public service is for that reason under any obligations to contribute to any political fund, or to render any political service, and that he will not be removed or otherwise prejudiced for refusing to do so.
- Sixth, that no person in said service has any right to use his official authority or influence to coerce the political action of any person or body.
- Non-competitive examinations.** Seventh, there shall be non-competitive examinations in all proper cases before the commission, when competent persons do not compete, after notice has been given of the existence of the vacancy, under such rules as may be prescribed by the commissioners as to the manner of giving notice.
- Notice of appointment, etc.** Eighth, that notice shall be given in writing by the appointing power to said commission of the persons selected for appointment or employment from among those who have been examined, of the place of residence of such persons, of the rejection of any such persons after probation, of transfers, resignations, and removals, and of the date thereof, and a record of the same shall be kept by said commission. And any necessary exceptions from said eight fundamental provisions of the rules shall be set forth in connection with such rules, and the reasons therefor shall be stated in the annual reports of the commission.
- Regulations for examinations; record to be kept.** THIRD. Said commission shall, subject to the rules that may be made by the President, make regulations for, and have control of, such examinations, and, through its members or the examiners, it shall supervise and preserve the records of the same; and said commission shall keep minutes of its own proceedings.
- Duties of commissioners.** FOURTH. Said commission may make investigations concerning the facts, and may report upon all matters touching the enforcement and effects of said rules and regulations, and concerning the action of any examiner or board of examiners hereinafter provided for, and its own subordinates, and those in the public service, in respect to the execution of this act.
- Report of commissioners.** FIFTH. Said commission shall make an annual report to the President for transmission to Congress, showing its own action, the rules and regulations and the exceptions thereto in force, the practical effects thereof, and any suggestions it may approve for the more effectual accomplishment of the purposes of this act.
- Chief examiner.** SEC. 3. That said commission is authorized to employ a chief examiner, a part of whose duty it shall be, under its direction, to act with the examining boards, so far as practicable, whether at Washington or elsewhere, and to secure accuracy, uniformity, and justice in all their proceedings, which shall be at all times open to him. The chief examiner shall be entitled to receive a salary at the rate of three thousand dollars a year, and he shall be paid his necessary traveling expenses incurred in the discharge of his duty. The commission shall have a secretary, to be appointed by the President, who shall receive a salary
- Compensation.**
- Traveling expenses.**
- Secretary.**

OF THE
UNITED STATES OF AMERICA
OF A GENERAL AND PERMANENT CHARACTER

IN FORCE

DECEMBER 7, 1925

AND APPENDIX WITH LAWS TO DECEMBER 6, 1926

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OF THE

UNITED STATES STATUTES AT LARGE



UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON

1926 ..

duties, and establish regulations for the conduct of persons who may receive appointments in the civil service. (R. S. § 1753.)

632. Civil Service Commission; appointment; removal.—The President is authorized to appoint, by and with the advice and consent of the Senate, three persons, not more than two of whom shall be adherents of the same party, as civil service commissioners, and said three commissioners shall constitute the United States Civil Service Commission. Said commissioners shall hold no other official place under the United States.

The President may remove any commissioner; and any vacancy in the position of commissioner shall be so filled by the President, by and with the advice and consent of the Senate, as to conform to said conditions for the first selection of commissioners.

Each of said commissioners shall be paid, in addition to his salary, his necessary traveling expenses incurred in the discharge of his duty as a commissioner. (Jan. 16, 1883, c. 27, § 1, 22 Stat. 403.)

633. Rules.—It shall be the duty of said commissioners:

(1) **Preparation of.**—First. To aid the President, as he may request, in preparing suitable rules for carrying this section and sections 632, 635, 637, 638, and 640 to 642 of this title, into effect, and when said rules shall have been promulgated it shall be the duty of all officers of the United States in the departments and offices to which any such rules may relate to aid, in all proper ways, in carrying said rules, and any modification thereof, into effect.

(2) **Provisions of.**—Second. Among other things, said rules shall provide and declare, as nearly as the conditions of good administration will warrant, as follows:

1. Competitive examinations.

First. For open, competitive examinations for testing the fitness of applicants for the public service classified on January 16, 1883, or thereafter, or to be classified hereunder. Such examinations shall be practical in their character, and so far as may be shall relate to those matters which will fairly test the relative capacity and fitness of the persons examined to discharge the duties of the service into which they seek to be appointed.

2. Selection of officers, etc., according to results of examinations.

Second. All the offices, places, and employments so arranged or to be arranged in classes shall be filled by selections according to grade from among those graded highest as the results of such competitive examinations.

3. Apportionment of appointments; applications for examinations.

Third. Appointments to the public service aforesaid in the departments at Washington shall be apportioned among the several States and Territories and the District of Columbia upon the basis of population as ascertained at the last preceding census. Every application for an examination shall contain, among other things, a statement, under oath, setting forth his or her actual bona fide residence at the time of making the application, as well as how long he or she has been a resident of such place.

4. Probation before absolute appointment.

Fourth. There shall be a period of probation before any absolute appointment or employment aforesaid.

5. Contributions for political purposes.

Fifth. No person in the public service is for that reason under any obligations to contribute to any political fund, or to render any political service, and that he will not be removed or otherwise prejudiced for refusing to do so.

6. Political coercion by officers.

Sixth. No person in said service has any right to use his official authority or influence to coerce the political action of any person or body.

7. Noncompetitive examinations in certain cases.

Seventh. There shall be noncompetitive examinations in all proper cases before the commission, when competent persons do not compete, after notice has been given of the existence of the vacancy, under such rules as may be prescribed by the commissioners as to the manner of giving notice.

8. Notice of appointments, rejections, transfers, resignations, and removals; exceptions to be set forth with rules.

Eighth. Notice shall be given in writing by the appointing power to said commission of the persons selected for appointment or employment from among those who have been examined, of the place of residence of such persons, of the rejection of any such persons after probation, of transfers, resignations, and removals, and of the date thereof, and a record of the same shall be kept by said commission. Any necessary exceptions from said eight fundamental provisions of the rules shall be set forth in connection with such rules, and the reasons therefor shall be stated in the annual reports of the commission.

(3) **Regulations for examinations, and records.**—Third. Said commission shall, subject to the rules that may be made by the President, make regulations for, and have control of, such examinations, and, through its members or the examiners, it shall supervise and preserve the records of the same; and said commission shall keep minutes of its own proceedings.

(4) **Investigations and reports.**—Fourth. Said commission may make investigations concerning the facts, and may report upon all matters touching the enforcement and effects of said rules and regulations, and concerning the action of any examiner or board of examiners hereinafter provided for, and its own subordinates, and those in the public service, in respect to the execution of this section and sections 632, 635, 637, 638, and 640 to 642 of this title.

(5) **Annual reports.**—Fifth. Said commission shall make an annual report to the President for transmission to Congress, showing its own action, the rules and regulations and the exceptions thereto in force, the practical effects thereof, and any suggestions it may approve for the more effectual accomplishment of the purposes of sections 632, 633, 635, 637, 638 and 640 to 642. (Jan. 16, 1883, c. 27, § 2, 22 Stat. 403.)

634. Oaths to witnesses.—Members of the Civil Service Commission and its duly authorized representatives are authorized to administer oaths to witnesses in any matter depending before the Civil Service Commission. (Aug. 23, 1912, c. 350, § 1, 37 Stat. 372.)

635. Chief examiner; secretary; employees; boards of examiners.—Said commission is authorized to employ a chief examiner, a part of whose duty it shall be, under its direction, to act with the examining boards, so far as practicable, whether at Washington or elsewhere, and to secure accuracy, uniformity, and justice in all their proceedings, which shall be at all times open to him. The chief examiner shall be paid in addition to his salary, his necessary traveling expenses incurred in the discharge of his duty. The commission shall have a secretary, to be appointed by the President. It may, when necessary, employ a stenographer, and a messenger. The commission shall, at Washington, and in one or more places in each State and Territory where examinations are to take place, designate and select a suitable number of persons, not less than three, in the official service of the United States, residing in said State or Territory, after consulting the head of the department or office in which such persons serve, to be members of boards of

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VOLUME ONE
TITLE 1—GENERAL PROVISIONS
TO
TITLE 15—COMMERCE AND TRADE

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with the furniture in use in such bureau, office, department, or branch of the public service, are transferred to the Department of Labor. (Mar. 4, 1913, ch. 141, § 5, 37 Stat. 737.)

§ 622. Same; laws operative.

All laws prescribing the work and defining the duties of the several bureaus, offices, departments, or branches of the public service transferred to and made a part of the Department of Labor shall, so far as the same are not in conflict with the provisions of this chapter, remain in full force and effect, to be executed under the direction of the Secretary of Labor. (Mar. 4, 1913, ch. 141, § 6, 37 Stat. 738.)

REFERENCES IN TEXT

Word "chapter" is translation of word "Act", meaning act Mar. 4, 1913, cited to text, which is classified in part to this chapter and to sections in other titles. For complete distribution see Tables.

Chapter 12.—CIVIL SERVICE COMMISSION AND CLASSIFIED CIVIL SERVICE

Sec.

- 631. Regulation of admissions to Civil Service.
- 631a. Authority of President to cover positions in executive departments, independent establishments, and other Government agencies into classified civil service.
- 631b. Same; civil service status of incumbents of positions covered into civil service and of certain legislative branch employees.
- 632. Civil Service Commission; appointment; removal, and compensation of commissioners.
- 633. Rules.
 - (1) Preparation of.
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 - (3) Regulations for examinations, and records.
 - (4) Investigations and reports.
 - (5) Annual reports.
- 633a, 633b. Personnel Classification Board abolished.
- 633c. Personnel Classification Board orders, rules, laws, etc., continued.
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- 634. Oaths to witnesses.
- 635. Chief examiner; secretary; employees; boards of examiners.
- 636. Detail of employees.
- 637. Violation of duties by commissioners or officers, etc.; punishment.
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- 639. Deputy collectors of internal revenue and deputy marshals.
- 640. Habitual users of intoxicants.
- 641. Members of same family.
- 642. Recommendations by Senators or Representatives.
- 643. Applications for examinations; certificate of residence.
- 644. Repeated.
- 645. Civil service status of soldiers, sailors, and marines.
- 645a. Benefits to employees ineligible for earlier appointment because of military service; persons excluded.
- 645b. Same; period of compensation.
- 646-651b. Bureau of Efficiency.
- 652. Removals from classified Civil Service for cause only.
- 653. Same; summary removal from Military Establishment for conduct inimical to defense program; notice and hearing.
- 654. Duties of Commission as to Official Register.

§ 631. Regulation of admissions to Civil Service.

The President is authorized to prescribe such regulations for the admission of persons into the civil

service of the United States as may best promote the efficiency thereof, and ascertain the fitness of each candidate in respect to age, health, character, knowledge, and ability for the branch of service into which he seeks to enter; and for this purpose he may employ suitable persons to conduct such inquiries, and may prescribe their duties, and establish regulations for the conduct of persons who may receive appointments in the civil service. (R. S. § 1753.)

DERIVATION

Act Mar. 3, 1871, ch. 114, § 9, 16 Stat. 514.

TRANSFER AND RELEASE OF PERSONNEL

Ex. Ord. No. 9695, Feb. 8, 1946, 11 F. R. 1559, revoked Ex. Ord. No. 9243, Sept. 12, 1943, 7 F. R. 7213, as amended by Ex. Ord. No. 9451, June 20, 1944, 9 F. R. 6905, eff. July 1, 1944, which related to the transfer and release of Federal personnel.

SUBVERSIVE ACTIVITIES

An Interdepartmental Committee to consider cases of subversive activity on part of Federal employees was established within Department of Justice by Ex. Ord. No. 9300, Feb. 5, 1943, 8 F. R. 1701.

CROSS REFERENCES

Army Specialist Corps created for duration of present war abolished; see note preceding section 181 of this title.

EX. ORD. NO. 9367. PROHIBITING, WITH CERTAIN EXCEPTIONS, INSTRUCTION OF APPLICANTS FOR CIVIL SERVICE AND FOREIGN SERVICE EXAMINATIONS BY OFFICERS OR EMPLOYEES OF THE GOVERNMENT

Ex. Ord. No. 9367, Aug. 4, 1943, 8 F. R. 11017, provided: By virtue of the authority vested in me by section 1753 of the Revised Statutes of the United States (U. S. C., title 5, sec. 631) [this section], and as President of the United States, it is hereby ordered as follows:

1. No officer or employee of the Government shall directly or indirectly instruct or be concerned in any manner in the instruction of any person or classes of persons with a view to their special preparation for the examinations of the United States Civil Service Commission or the examinations of the Boards of Examiners for the Foreign Service of the Department of State: *Provided*, That this order shall not be construed to prevent any agency of the Government from utilizing Government facilities and the services of Federal officers and employees whenever such facilities or services may be necessary or useful in carrying out the duties imposed upon such agency by law in the training and testing of disabled members or former members of the armed forces of the United States or in the conduct of educational or training programs which are open exclusively to members or former members of the armed forces: *Provided further*, That due credit in civil service examinations shall be given by the Civil Service Commission to any member or former member of the armed forces of the United States who has satisfactorily completed any such educational or training program conducted by a Government agency.

2. Violation of the provisions of this order by any officer or employee of the Government shall be considered sufficient cause for removal from the service.

3. This order supersedes Executive Orders No. 359 of October 13, 1905, No. 1277 of December 23, 1910, No. 3088 of May 17, 1919, and No. 3215 of January 13, 1920.

§ 631a. Authority of President to cover positions in executive departments, independent establishments, and other Government agencies into classified civil service.

Notwithstanding any provisions of law to the contrary, the President is authorized by Executive order to cover into the classified civil service any offices or positions in or under an executive department, independent establishment, or other agency of the Government: *Provided*, That in the case of any fed-

erally owned and controlled corporation organized under the laws of any State, Territory, or possession of the United States, or the District of Columbia, the President is authorized to direct that such action be taken as will permit appointments to offices or positions in any such corporation to be made in accordance with the civil-service laws, consistently with the laws of any such State, Territory, or possession, or the District of Columbia, or with the charter or articles of incorporation of any such corporation: *Provided further*, That the provisions of this section shall not apply to offices or positions in the Tennessee Valley Authority or to any positions in the Work Projects Administration or to any position to which appointments are made by the President by and with the advice and consent of the Senate, or to positions of assistant United States district attorney. (Nov. 26, 1940, ch. 919, title I, § 1, 54 Stat. 1211; Proc. No. 2695, July 4, 1946, 11 F. R. 7517, 60 Stat. 1352.)

CODIFICATION

A reference to the Philippine Islands, formerly contained in this section, was omitted in view of the independence of the Philippines proclaimed by the President of the United States in Proc. No. 2695, cited to text, and set out as a note under section 1240 of Title 48, Territories and Insular Possessions.

§ 631b. Same; civil service status of incumbents of positions covered into civil service and of certain legislative branch employees.

(a) The incumbent of any office or position which is covered into the classified civil service under the provisions of section 631a of this title shall not thereby acquire a classified civil-service status, except (1) upon a finding by the Civil Service Commission on the basis of the personal record of the incumbent that such incumbent has served with merit for not less than six months immediately prior to the date such office or position was covered into the classified civil service; and (2) upon passing such suitable noncompetitive examination as the Commission may prescribe: *Provided*, That any such incumbent shall be given only one such noncompetitive examination: *Provided further*, That any such incumbent who fails to pass the noncompetitive examination provided in his case shall be separated from the service not later than six months after the Commission advises the appointing officer that such employee has failed.

The appointment of any person occupying any position covered into the apportioned civil service in the District of Columbia under the provisions of section 631a of this title shall be charged to the apportionment of his State. As used in this section "State" includes a Territory and the District of Columbia.

(b) From and after November 26, 1940, any person who shall have served for four years as a secretary, clerk or assistant clerk to a Senator, Representative, Delegate or Resident Commissioner, or as a clerk or assistant clerk to a standing committee of the Senate or House of Representatives or as a clerical employee of the Senate or House of Representatives and whose separation from the service is involuntary and without prejudice shall acquire,

upon passing such suitable noncompetitive examination as the Civil Service Commission may prescribe, a classified civil service status for transfer to a position in the classified civil service notwithstanding any contrary provisions of the civil service laws or regulations: *Provided*, That any individual who may hold such a position in the legislative branch must obtain such transfer within one year from the date of separation, and nothing in sections 631a, 631b, 632, 635, 669, 681–684 of this title shall be construed to impair any right of retransfer provided for under civil service laws or regulations made thereunder. In the case of an individual who shall have held such a position in the legislative branch for at least two years and who shall have been separated from such position for the purpose of entering the military or naval service, such individual shall be deemed, for the purposes of this subsection, to have held such position during the period within which he shall have served in the military or naval forces. (Nov. 26, 1940, ch. 919, title I, § 2, 54 Stat. 1212; Dec. 28, 1945, ch. 603, 59 Stat. 666; Feb. 12, 1946, ch. 3, 60 Stat. 3.)

AMENDMENTS

1946—Subsec. (b) amended by act Feb. 12, 1946, cited to text, which added last sentence beginning "In the case * * *".

1945—Subsec. (a) (1) amended by act Dec. 28, 1945, cited to text, which substituted "upon a finding * * * of the incumbent" in lieu of "upon recommendation by the head of the agency concerned within one year after such office or position has been covered into the classified civil service, and certification within such period by such head to the Civil Service Commission that" in clause (1).

§ 632. Civil Service Commission; appointment; removal, and compensation of commissioners.

The President is authorized to appoint, by and with the advice and consent of the Senate, three persons, not more than two of whom shall be adherents of the same party, as civil service commissioners, and said three commissioners shall constitute the United States Civil Service Commission. Said commissioners shall hold no other official place under the United States.

The President may remove any commissioner; and any vacancy in the position of commissioner shall be so filled by the President, by and with the advice and consent of the Senate, as to conform to said conditions for the first selection of commissioners.

The commissioners shall each receive a salary of \$10,000 per annum. And each of said commissioners shall be paid his necessary traveling expenses incurred in the discharge of his duty as a commissioner. (Jan. 16, 1883, ch. 27, § 1, 22 Stat. 403; Nov. 26, 1940, ch. 919, title II, § 8, 54 Stat. 1211.)

AMENDMENTS

1940—Act Nov. 26, 1940, cited to text, provided that thereafter "the compensation of the Civil Service Commissioners shall be fixed at \$10,000 each per annum."

§ 633. Rules.

It shall be the duty of said commissioners:

(1) Preparation of.

First. To aid the President, as he may request, in preparing suitable rules for carrying this section and sections 632, 635, 637, 638, and 640–642 of this title, into effect, and when said rules shall have

been promulgated it shall be the duty of all officers of the United States in the departments and offices to which any such rules may relate to aid, in all proper ways, in carrying said rules, and any modification thereof, into effect.

(2) Provisions of.

Second. Among other things, said rules shall provide and declare, as nearly as the conditions of good administration will warrant, as follows:

1. *Competitive examinations.*

First. For open, competitive examinations for testing the fitness of applicants for the public service classified on January 16, 1883, or thereafter, or to be classified hereunder. Such examinations shall be practical in their character, and so far as may be shall relate to those matters which will fairly test the relative capacity and fitness of the persons examined to discharge the duties of the service into which they seek to be appointed.

2. *Selection of officers, etc., according to results of examinations.*

Second. All the offices, places, and employments so arranged or to be arranged in classes shall be filled by selections according to grade from among those graded highest as the results of such competitive examinations.

3. *Apportionment of appointments; applications for examinations.*

Third. Appointments to the public service aforesaid in the departments at Washington shall be apportioned among the several States and Territories and the District of Columbia upon the basis of population as ascertained at the last preceding census. Every application for an examination shall contain, among other things, a statement, under oath, setting forth his or her actual bona fide residence at the time of making the application, as well as how long he or she has been a resident of such place.

4. *Probation before absolute appointment.*

Fourth. There shall be a period of probation before any absolute appointment or employment aforesaid.

5. *Contributions for political purposes.*

Fifth. No person in the public service is for that reason under any obligations to contribute to any political fund, or to render any political service, and that he will not be removed or otherwise prejudiced for refusing to do so.

6. *Political coercion by officers; discrimination due to marital status.*

Sixth. No person in said service has any right to use his official authority or influence to coerce the political action of any person or body. And no person shall be discriminated against in any case because of his or her marital status in examination, appointment, reappointment, reinstatement, reemployment, promotion, transfer, retransfer, demotion, removal, or retirement. All Acts or parts of Acts inconsistent herewith are repealed.

7. *Noncompetitive examinations in certain cases.*

Seventh. There shall be noncompetitive examinations in all proper cases before the commission, when competent persons do not compete, after notice has been given of the existence of the vacancy, under such rules as may be prescribed by the commissioners as to the manner of giving notice.

8. *Notice of appointments, rejections, transfers, resignations, and removals; exceptions to be set forth with rules.*

Eighth. Notice shall be given in writing by the appointing power to said commission of the persons selected for appointment or employment from among those who have been examined, of the place of residence of such persons, of the rejection of any such persons after probation, of transfers, resignations, and removals, and of the date thereof, and a record of the same shall be kept by said commission. Any necessary exceptions from said eight fundamental provisions of the rules shall be set forth in connection with such rules, and the reasons therefor shall be stated in the annual reports of the commission.

(3) *Regulations for examinations, and records.*

Third. Said commission shall, subject to the rules that may be made by the President, make regulations for, and have control of, such examinations, and, through its members or the examiners, it shall supervise and preserve the records of the same; and said commission shall keep minutes of its own proceedings.

(4) *Investigations and reports.*

Fourth. Said commission may make investigations concerning the facts, and may report upon all matters touching the enforcement and effects of said rules and regulations, and concerning the action of any examiner or board of examiners hereinafter provided for, and its own subordinates, and those in the public service, in respect to the execution of this section and sections 632, 635, 637, 638, and 640-642 of this title.

(5) *Annual reports.*

Fifth. Said commission shall make an annual report to the President for transmission to Congress, showing its own action, the rules and regulations and the exceptions thereto in force, the practical effects thereof, and any suggestions it may approve for the more effectual accomplishment of the purposes of sections 632, 633, 635, 637, 638, and 640-642. (Jan. 16, 1883, ch. 27, § 2, 22 Stat. 403; July 26, 1937, ch. 522, 50 Stat. 533.)

CROSS REFERENCES

Dismissal of husband or wife of Government employees before any other employee, see section 37a of this title.

Hatch Political Activity Act, see section 61 et seq. of Title 18, Criminal Code and Criminal Procedure.

Preference to persons other than husband or wife of Government employees in civil service appointments, see section 35a of this title.

§§ 633a, 633b. Personnel Classification Board abolished.

CODIFICATION

Sections, act June 30, 1932, ch. 314, §§ 505, 506, 47 Stat. 416, related to the abolition of the Personnel Classification Board, the transfer of its duties, powers, functions and personnel to the Civil Service Commission.

§ 633c. Personnel Classification Board; orders, rules, laws, etc., continued.

(a) All orders, determinations, rules, or regulations made or issued by the former Personnel Classification Board, and in effect at the time of the transfer of such board to the Civil Service Commission, shall continue in effect to the same extent as if such

Public Law 89-554

AN ACT

September 6, 1966
[H. R. 10 104]

To enact **title 5, United States Code**, "Government Organization and Employees", codifying the general and permanent laws relating to the organization of the Government of the United States and to its civilian officers and employees.

Title 5, USC,
Government Or-
ganization and
Employees.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the laws relating to the organization of the Government of the United States and to its civilian officers and employees, generally, are revised, codified, and enacted as title 5 of the United States Code, entitled "Government Organization and Employees", and may be cited as "5 U.S.C., § ", as follows:

TITLE 5—GOVERNMENT ORGANIZATION AND EMPLOYEES

PART	Sec.
I. THE AGENCIES GENERALLY.....	101
II. THE UNITED STATES CIVIL SERVICE COMMISSION.....	1101
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PART I—THE AGENCIES GENERALLY

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CHAPTER 1—ORGANIZATION

Sec.
101. Executive departments.
102. Military departments.
103. Government corporation.
104. Independent establishment.
105. Executive agency.

§ 101. Executive departments

The Executive departments are:

- The Department of State.
- The Department of the Treasury.
- The Department of Defense.
- The Department of Justice.
- The Post Office Department.
- The Department of the Interior.
- The Department of Agriculture.
- The Department of Commerce.
- The Department of Labor.
- The Department of Health, Education, and Welfare.

§ 102. Military departments

The military departments are:

- The Department of the Army.
- The Department of the Navy.
- The Department of the Air Force.

§ 103. Government corporation

For the purpose of this title—

- (1) "Government corporation" means a corporation owned or controlled by the Government of the United States; and

Sec.

- 3312. Preference eligibles; physical qualifications; waiver.
- 3313. Competitive service; registers of eligibles.
- 3314. Registers; preference eligibles who resigned.
- 3315. Registers; preference eligibles furloughed or separated.
- 3316. Preference eligibles; reinstatement.
- 3317. Competitive service; certification from registers.
- 3318. Competitive service; selection from certificates.
- 3319. Competitive service; selection; members of family restriction.
- 3320. Excepted service; government of the District of Columbia; selection.
- 3321. Competitive service; probation; period of.
- 3322. Competitive service; temporary appointments after age 70.
- 3323. Automatic separations; reappointment; reemployment of annuitants.
- 3324. Appointments at GS-16, 17, and 18.
- 3325. Appointments to scientific and professional positions.
- 3326. Appointments of retired members of the armed forces to positions in the Department of Defense.
- 3327. Postmasters; standards for determination of qualifications.

SUBCHAPTER II—OATH OF OFFICE

Sec.

- 3331. Oath of office.
- 3332. Officer affidavit; no consideration paid for appointment.
- 3333. Employee affidavit; loyalty and striking against the Government.

SUBCHAPTER III—DETAILS

Sec.

- 3341. Details; within Executive or military departments.
- 3342. Details; field to departmental service prohibited.
- 3343. Details; to international organizations.
- 3344. Details; hearing examiners.
- 3345. Details; to office of head of Executive or military department.
- 3346. Details; to subordinate offices.
- 3347. Details; Presidential authority.
- 3348. Details; limited in time.
- 3349. Details; to fill vacancies; restrictions.

SUBCHAPTER IV—TRANSFERS

Sec.

- 3351. Preference eligibles; transfer; physical qualifications; waiver.

SUBCHAPTER V—PROMOTION

Sec.

- 3361. Promotion; competitive service; examination.
- 3362. Promotion; effect of incentive award.
- 3363. Preference eligibles; promotion; physical qualifications; waiver.
- 3364. Promotion; substitute employees in the postal field service.

SUBCHAPTER I—EXAMINATION, CERTIFICATION, AND APPOINTMENT

§ 3301. Civil service; generally

The President may—

- (1) prescribe such regulations for the admission of individuals into the civil service in the executive branch as will best promote the efficiency of that service;
- (2) ascertain the fitness of applicants as to age, health, character, knowledge, and ability for the employment sought; and
- (3) appoint and prescribe the duties of individuals to make inquiries for the purpose of this section.

§ 3302. Competitive service; rules

The President may prescribe rules governing the competitive service. The rules shall provide, as nearly as conditions of good administration warrant, for—

- (1) necessary exceptions of positions from the competitive service; and

(2) necessary exceptions from the provisions of sections 2951, 3304(a), 3306(a) (1), 3321, 7152, 7153, 7321, and 7322 of this title. Each officer and individual employed in an agency to which the rules apply shall aid in carrying out the rules.

§ 3303. Competitive service; recommendations of Senators or Representatives

An individual concerned in examining an applicant for or appointing him in the competitive service may not receive or consider a recommendation of the applicant by a Senator or Representative, except as to the character or residence of the applicant.

§ 3304. Competitive service; examinations

(a) The President may prescribe rules which shall provide, as nearly as conditions of good administration warrant, for—

(1) open, competitive examinations for testing applicants for appointment in the competitive service which are practical in character and as far as possible relate to matters that fairly test the relative capacity and fitness of the applicants for the appointment sought; and

(2) noncompetitive examinations when competent applicants do not compete after notice has been given of the existence of the vacancy.

(b) An individual may be appointed in the competitive service only if he has passed an examination or is specifically excepted from examination under section 3302 of this title. This subsection does not take from the President any authority conferred by section 3301 of this title that is consistent with the provisions of this title governing the competitive service.

(c) Notwithstanding a contrary provision of this title or of the rules and regulations prescribed under this title for the administration of the competitive service, an individual who served—

(1) for at least 3 years in the legislative branch in a position in which he was paid by the Secretary of the Senate or the Clerk of the House of Representatives; or

(2) for at least 4 years as a secretary or law clerk, or both, to a justice or judge of the United States;

acquires a competitive status for transfer to the competitive service if he is involuntarily separated without prejudice from the legislative or judicial branch, passes a suitable noncompetitive examination, and transfers to the competitive service within 1 year of the separation from the legislative or judicial branch. For the purpose of this subsection, an individual who has served for at least 2 years in a position in the legislative branch described by paragraph (1) of this subsection and who is separated from that position to enter the armed forces is deemed to have held that position during his service in the armed forces.

(d) Employees at any place outside the District of Columbia where the President or a Civil Service Commission board of examiners directs that examinations be held shall allow the reasonable use of public buildings for, and in all proper ways facilitate, holding the examinations.

§ 3305. Competitive service; examinations; when held

(a) The Civil Service Commission shall hold examinations for the competitive service at least twice a year in each State and territory or possession of the United States where there are individuals to be examined.

TITLE 5—GOVERNMENT ORGANIZATION AND EMPLOYEES

This title was enacted by Pub. L. 89-554, §1, Sept. 6, 1966, 80 Stat. 378

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	sponsibilities	1101
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AMENDMENTS

1979—Pub. L. 96-54, §2(a)(1), Aug. 14, 1979, 93 Stat. 381, substituted “Civil Service Functions and Responsibilities” for “The United States Civil Service Commission” in item for part II.

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45	Rep.

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47	3103; T. 18 § 1916
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50	5501; T. 18 § 1916
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60	T. 2 § 162
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65	T. 2 § 162
66	T. 18 § 1914
67	T. 7 § 2220
68	T. 8 § 1353c
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626c(c)-(e), 626c-1 to 626c-3, 626d, 626e.	Rep.
626f	(See former 150p)
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626k	Rep.
626l, 626m	T. 10 § 9441
626n	T. 10 § 2632
626o	Rep.
626p	T. 10 § 9774
626q, 626r	T. 10 § 9301
626s to 626s-2	T. 10 § 2481
626s-3	T. 10 § 2667
626s-4, 626s-5	Rep.
626s-6	T. 10 § 2667
626t, 626u	T. 10 § 1581
626v-626y, 627	Rep.
627a	T. 10 §§ 8208, 8215
627b	T. 10 §§ 8071, 8208, 8297, 8299, 8305, 8504, 8685, 8888, 8915, 8916, 8927, 8962, 8991
627c	Rep.
627d	T. 10 § 8256
627e	T. 10 § 8685
627f	T. 10 §§ 8549, 8580, 8818
627g-627l	Rep.
628	T. 10 § 9531
628a	T. 10 § 9503
628b	T. 10 § 174
628c	T. 10 § 1584
628d	T. 10 § 2352
628e	T. 10 §§ 2353, 2357
628f, 628g	T. 10 §§ 2354, 2355
628h	T. 10 §§ 174, 2356
630	T. 40 § 751 (See Rev. T. 40 Table)
630a	T. 40 § 752 (See Rev. T. 40 Table)
630b	T. 40 § 753 (See Rev. T. 40 Table)

TABLE SHOWING DISPOSITION OF ALL SECTIONS OF
FORMER TITLE 5—Continued

<i>Title 5 Former Sections</i>	<i>Title 5 New Sections</i>
630c	Rep.
630d	T. 40 § 754 (See Rev. T. 40 Table)
630e	T. 40 § 755 Rep.
630f	Rep.
630g	T. 40 § 756 (See Rev. T. 40 Table)
630g-1	T. 40 § 757 (See Rev. T. 40 Table)
630g-2	T. 40 § 759 Rep.
630h	T. 40 § 758 (See Rev. T. 40 Table)
630i	Elim.
630j	Rep.
631	3301, 7301
631a, 631b(a)	Elim.
631b(b), (c)	3304
632 (1st par.)	1101
632 (2d-4th pars.)	1102
632 (5th par.)	1103
633(1)	1301, 3302
633(2)1	3304
633(2)2	3318
633(2)3	3306
633(2)4	3321
633(2)5	7321
633(2)6	7152, 7322
633(2)7	1302, 3304
633(2)8	2951, 3302
633(2)9	7153
633(3)	1302, 1307
633(4)	1303
633(5)	1308
633a-633e	Rep.
634	1306
635 (1st 5 sentences)	1104, 1105
635 (6th sentence)	1105, 3305
635 (7th sentence)	3304
636	Rep.
637	T. 18 § 1917
638	2102, 3304, 3361
638a	Rep.
638b	3307, 3322
639	Rep.
640	7352
641	3319
642	3303
642a	2953
643-645b	Rep.
645c-645e	Elim.
646-651b	Rep.
652(a)	7501
652(b)	5591-5593
652(c)	7101
652(d)	7102
652a-652c	5596
653, 654	Rep.
655-657	1304
658	Elim.
659	3327
661-663b, 664-669a, 670-672c, 673-673b.	Rep.
673c (1st par., less provisos)	Rep.
673c (1st proviso)	6102
673c (2d, 3d provisos)	5544
673c (2d par.), 674-678b	Rep.
679	Elim.
680-684, 691, 691a, 692-692d, 693 to 693-2, 693a-693d, 694, 649a, 695, 695a, 696, 696a, 697, 697a, 698-698b, 699, 699a, 700, 700a, 701, 701a, 702, 702a, 703, 703a, 704, 704a, 705, 705a, 706, 706a, 707, 707a, 708, 708a, 709-615.	Rep.
715a	3323
715b-715d, 716-718a, 719, 719-1, 719a, 719b, 720-729a, 730-736c, 737-739b, 740, 740a.	Rep.
740b-740i	(See former 2281-2288)
745-745r	Rep.
751	8102
752	8117
753	8105
754	8106
755(a), (b)	8107
755(c)	8108
755(d)	8109
756(a)	8110
756(b)	8111

**IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

AMERICA’S FRONTLINE)
DOCTORS, et al,)
)
Plaintiffs,)
)
v.)
)
The UNITED STATES OF AMERICA,)
et al,)
)
Defendants.)

Case No. 2:21-cv-702-CLM

EXHIBIT 4

BY AUTHORITY OF CONGRESS.

THE
Statutes at Large
AND
PROCLAMATIONS
OF THE
UNITED STATES OF AMERICA,
FROM **DECEMBER 1869 TO MARCH 1871,**

AND
TREATIES AND POSTAL CONVENTIONS

*Arranged in Chronological Order and carefully collated with
the Originals at Washington,*

WITH
: REFERENCES TO THE MATTER OF EACH ACT AND TO THE SUBSEQUENT
ACTS ON THE SAME SUBJECT.

EDITED BY
GEORGE P. SANGER,
COUNSELLOR AT LAW.

The rights and interest of the United States in the stereotype plates from which this work is printed are hereby recognized, acknowledged, and declared by the publishers, according to the provisions of the joint resolution of Congress, passed March 3, 1845.

VOL. XVI.

BOSTON:
LITTLE, BROWN, AND COMPANY.
1871.

FORTY-FIRST CONGRESS. SESS. III. CH. 113, 114. 1871.

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any judicial district within his circuit to hold a district or circuit court in the place or aid of any other district judge within the same circuit; and it shall be the duty of such district judge as shall be for that purpose designated and appointed to hold the district or circuit court as aforesaid without any other compensation than his regular salary as established by law.

No additional pay.

SEC. 4. That the salaries provided for in the foregoing section of this act shall be payable in quarterly instalments on the first days of April, July, October, and January of each year, and an amount sufficient to pay the same is hereby appropriated out of any money in the treasury not otherwise appropriated.

Salaries payable quarterly.

Appropriation.

APPROVED, March 3, 1871.

CHAP. CXIV. — *An Act making Appropriations for sundry civil Expenses of the Government for the fiscal Year ending June thirty, eighteen hundred and seventy-two, and for other Purposes.* March 3, 1871.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums be, and the same are hereby, appropriated, for the objects hereinafter expressed, for the fiscal year ending the thirtieth June, eighteen hundred and seventy-two, viz. :—

Civil expenses appropriation.

STATE DEPARTMENT.

State Department.

For defraying the expenses of defending claims under the convention with Mexico of July four, eighteen hundred and sixty-eight, to be expended under the direction of the Attorney-General, twenty thousand dollars.

Claims convention with Mexico. Vol. xv. p. 679.

For the compensation and expenses of the commission for determining the pending questions between Great Britain and the United States, twenty-five thousand dollars.

Commission upon questions pending with Great Britain; with Spain.

For the compensation and expenses of a commission for determining the questions pending between the United States and Spain, growing out of the acts of the Spanish officials in and about Cuba, fifteen thousand dollars.

For the increase in the expenses of the diplomatic and consular officers of the United States in Paris, caused by a state of war; and also for compensation for extraordinary services performed by such officers during the war; and also for the additional expense caused to the legations and consulates of the United States in Madrid, Paris, Berlin, and London, by reason of the war, and by reason of the protection assumed by the United States of persons, legations, and consulates of other powers in Paris, a sum not to exceed fifty thousand dollars in all, or so much thereof as may be necessary, to be expended under the direction of the Secretary of State, on the approval of the President, and on vouchers to be filed in the Treasury Department, and a statement thereof to be reported to Congress by the Secretary of State.

Expenses of diplomatic and consular officers in Paris caused by the war; in Madrid, Berlin, and London;

To defray the expenses incurred by the United States legation in Paris, in protecting the subjects of the North German Confédération in France during the war between France and Prussia, including extra compensation to the secretaries, messenger, and use of carriage of said legation, four thousand dollars; and the foregoing appropriations are hereby made available immediately upon the passage of this act.

legation in Paris in protecting Germans.

TREASURY DEPARTMENT.

Treasury Department.

Supervising Inspectors of Steam-Vessels. — For carrying out the provisions of the act of thirtieth August, eighteen hundred and fifty-two, for the better protection of the lives of passengers on vessels propelled in whole or in part by steam, and of the acts amendatory thereof, the following sums, viz. :—

Supervising inspectors of steam-vessels. 1852, ch. 106. Vol. x. p. 61.

Persons entitled to refunding of duties under certain acts to be paid. 1870, ch. 255, § 26. *Ante*, p. 269. Pub. Res. No. 18. *Post*, p. 592.

Appropriation for minister, secretary, &c. to German Empire;

for building for court-house and post-office at Columbia, S. C.

State first to relinquish right to tax the site, &c.

Fines, penalties, &c. incurred under acts 1868, ch. 273. Vol. xv. p. 240. 1870, ch. 189. *Ante*, p. 180. to be disposed of according to act 1867, ch. 188. Vol. xiv. p. 646.

Pay of assistant marshals for taking the ninth census may be increased by the Secretary of the Interior. Vol. xvii. pp. 9, 12.

Limit. *Ante*, 380.

President to prescribe rules, &c. for the admission of persons into the civil service. Vol. xvii. p. 7.

Secretary of the Treasury that parties are entitled to refund of duties under the twenty-sixth section of the act of July fourteen, eighteen hundred and seventy, and joint resolution approved January thirtieth, eighteen hundred and seventy-one, it shall be the duty of the Secretary of the Treasury to draw his warrant upon the treasurer, directing said treasurer to refund the same out of any money in the treasury not otherwise appropriated.

SEC. 5. That there be appropriated, out of any money in the treasury not otherwise appropriated, the sum of seventeen thousand five hundred dollars for the salary of an envoy extraordinary and minister plenipotentiary, and twenty-five hundred dollars for the salary of a secretary, and eighteen hundred dollars for that of an assistant secretary of legation to the German Empire.

SEC. 6. That the appropriation made March three, eighteen hundred and sixty-nine, having been covered into the treasury, the Secretary of the Treasury be, and he is hereby, authorized and directed to cause to be constructed, upon the site already given to and owned by the United States, a suitable building, fire-proof, at Columbia, South Carolina, for the accommodation of the post-office and United States circuit and district courts; and for this purpose there is hereby appropriated, out of any money in the treasury not otherwise appropriated, seventy-five thousand dollars, to be expended under the direction of the Secretary of the Treasury, who shall cause proper plans and estimates to be made, so that no expenditure shall be made or authorized for the full completion of said building beyond the amount herein appropriated: *Provided*, That no money hereby appropriated shall be used or applied for the purposes mentioned until it shall appear that the State has duly released and relinquished to the United States the right to tax or in any way assess the site, or the property of the United States that may be thereon, during the time that the United States shall be or remain the owner thereof.

SEC. 7. That all fines, penalties, and forfeitures, heretofore or that may be hereafter incurred, the acts entitled respectively, "An act to extend the laws of the United States relating to customs, commerce, and navigation over the territory ceded to the United States by Russia, to establish a collection district therein, and for other purposes," approved July twenty-seven, eighteen hundred and sixty-eight, and "An act to prevent the extermination of fur-bearing animals in Alaska," approved July one, eighteen hundred and seventy, shall be disposed of according to the provisions of the act entitled "An act to regulate the disposition of the proceeds of fines, penalties, and forfeitures incurred under the laws relating to the customs, and for other purposes," approved March two, eighteen hundred and sixty-seven.

SEC. 8. That the Secretary of the Interior be, and he hereby is, authorized to increase the compensation of assistant marshals in taking the census of eighteen hundred and seventy, whenever, in his judgment, the same shall be necessary: *Provided*, That in no case shall such increase exceed fifty per centum of the amount of compensation now allowed by law, nor shall the entire compensation be more than eight dollars per day for the time actually employed; and the joint resolution entitled "A resolution in relation to the compensation of assistant marshals for taking the census of eighteen hundred and seventy," approved June nine, eighteen hundred and seventy, be, and the same is hereby, repealed.

SEC. 9. That the President of the United States be, and he is hereby, authorized to prescribe such rules and regulations for the admission of persons into the civil service of the United States as will best promote the efficiency thereof, and ascertain the fitness of each candidate in respect to age, health, character, knowledge, and ability for the branch of service into which he seeks to enter; and for this purpose the President is au-

FOETY-FIRST CONGRESS. SESS. III. CH. 114, 115. 1871.

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thorized to employ suitable persons to conduct said inquiries, to prescribe their duties, and to establish regulations for the conduct of persons who may receive appointments in the civil service.

to appoint persons to conduct inquiries, &c.

APPROVED, March 3, 1871.

CHAP. CXV. — *An Act making Appropriations to supply Deficiencies in the Appropriations for the Service of the Government for the fiscal Years ending June thirty, eighteen hundred and seventy, and June thirty, eighteen hundred and seventy-one and for former Years, and for other Purposes.*

March 3, 1871.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are [or] so much thereof as may be necessary, be, and the same are hereby, appropriated for the objects hereinafter expressed, namely: —

Deficiency appropriations for the years ending June 30, 1870 and 1871. Senate. Assistant engineer.

Senate. — To pay an additional assistant engineer authorized by the Senate, at the rate of one thousand four hundred and forty dollars per annum, commencing on the first day of December, eighteen hundred and seventy, for the fiscal year ending the thirtieth day of June, eighteen hundred and seventy-one, eight hundred and forty dollars.

For steam-pump for the heating and ventilating apparatus of the Senate, under the direction of the sergeant-at-arms, one thousand dollars.

Heating and ventilating apparatus.

For expenses of heating and ventilating apparatus of the Senate, one thousand dollars.

House of Representatives. — For cartage, three thousand dollars.

House of Representatives.

For laborers, one thousand six hundred dollars.

For furniture and repairs thereof, two thousand dollars.

For fuel, two thousand dollars.

For paying teller in the office of the sergeant-at-arms, one thousand two hundred and twenty dollars.

For the miscellaneous item of the contingent fund of the House, ten thousand dollars.

Miscellaneous.

For the following sums due under resolutions of the House passed during the first session of the Thirty-ninth Congress, namely: To the late first assistant door-keeper, eight hundred and forty dollars; to the superintendent of the document-room, eight hundred and forty dollars; and to E. Spicer, late superintendent of the folding-room, seven hundred and twenty dollars; to John J. McElhone, Wm. Hineks, W. Blair Lord, D. Wolfe Brown, Theodore F. Andrews, and William Henry Burr, reporters for the Congressional Globe during the first session of the Thirty-ninth Congress, seven hundred dollars each; in all, six thousand four hundred dollars, additional compensation for the Thirty-ninth Congress.

Doorkeeper and superintendents of document and folding rooms.

Reporters for Congressional Globe.

For compensation of the tally-clerk of the House of Representatives, from the first day of February, eighteen hundred and seventy, to the first day of July, eighteen hundred and seventy-one, six hundred and twelve dollars, the same making his compensation equal to that of his predecessor, (R. U. Sherman,) and as fixed in the legislative bill for himself.

Tally-clerk.

To pay Rives and Bailey for the reporting and publication of the debates and proceedings of the Forty-first Congress, under the joint resolution approved March three, eighteen hundred and sixty-nine, and contract of April fourteen, eighteen hundred and sixty-nine, so far as may have been provided for by law, one hundred and twenty thousand dollars, or so much thereof as may be necessary.

Rives and Bailey. Vol. xv. p. 347.

Public Buildings under the Treasury Department. — For continuing the work on the building for post-office and court-house in New York City, to be applied only to finishing the foundations up to and including the sill course, and receiving and setting the granite of the first story above that course, and subject to no other limitations or restriction, five hundred thousand dollars.

Public buildings under the Treasury Department.

Post office and court-house in New York.

For the building for post-office and sub-treasury in Boston, the unexpended balance of appropriation remaining on the thirtieth June, eighteen

Post-office and sub-treasury in Boston.

SECOND EDITION.

REVISED STATUTES

OF

THE UNITED STATES,

PASSED AT THE

FIRST SESSION OF THE FORTY-THIRD CONGRESS,

1873-'74;

EMBRACING THE STATUTES OF THE UNITED STATES, GENERAL AND PERMANENT IN THEIR NATURE, IN FORCE ON THE FIRST DAY OF DECEMBER, ONE THOUSAND EIGHT HUNDRED AND SEVENTY-THREE, AS REVISED AND CONSOLIDATED BY COMMISSIONERS APPOINTED UNDER AN ACT OF CONGRESS; AND AS REPRINTED, WITH AMENDMENTS, UNDER AUTHORITY OF AN ACT OF CONGRESS APPROVED THE SECOND DAY OF MARCH, IN THE YEAR ONE THOUSAND EIGHT HUNDRED AND SEVENTY-SEVEN,

WITH

AN APPENDIX.

EDITED, PRINTED, AND PUBLISHED UNDER THE AUTHORITY OF AN ACT OF CONGRESS,
AND UNDER THE DIRECTION OF THE SECRETARY OF STATE.

WASHINGTON:
GOVERNMENT PRINTING OFFICE.

1878.

TITLE XIX.

PROVISIONS APPLICABLE TO SEVERAL CLASSES OF OFFICERS.

<p>Sec. 1753. President to regulate admissions to the civil service. 1754. Preference of persons disabled in military or naval service. 1755. Recommendation for employment of such persons. 1756. Form of oath of office. 1757. Oath for certain persons. 1758. Who may administer oath. 1759. Custody of oath. 1760. Unauthorized office, no salary for. 1761. Appointees to fill vacancies during recess of Senate. 1762. Salaries to officers improperly holding over. 1763. Double salaries. 1764. Extra services. 1765. Extra allowances. 1766. Officer in arrears. 1767. Tenure of office. 1768. Suspension and filling vacancies. 1769. Filling vacancies temporarily. 1770. Term of office not to be extended. 1771. Accepting or exercising office contrary to law. 1772. Removing, appointing, or commissioning officer contrary to law. 1773. Commissions. 1774. Notification of appointments to Secretary of Treasury.</p>	<p>Sec. 1775. Notification of nominations, rejections, &c., to Secretary of Treasury. 1776. Removal of office. 1777. Preservation of copies of Statutes at Large. 1778. Taking oaths, acknowledgments, &c. 1779. Restriction upon payments for newspapers, &c. 1780. Failure to make returns or reports. 1781. Prohibition upon taking consideration for procuring contracts, offices, &c. 1782. Upon taking compensation in matters to which United States is a party. 1783. Persons interested not to act as agents of the government. 1784. Prohibition of contributions, presents, &c., to superiors. 1785. Punishment for aiding, &c., in importing or trading in obscene literature. 1786. Proceedings against persons illegally holding office. 1787. Penalty for illegally holding office. 1788. Disbursing officers forbidden to trade in public funds or property. 1789. Collecting officers forbidden to trade in public property. 1790. Restriction on payment for services.</p>
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President to regulate admissions to the civil service.

3 March, 1871, c. 114, s. 9, v. 16, p. 514.

Preference of persons disabled in military or naval service.

3 Mar., 1865, Res. No. 27, s. 1, v. 13, p. 571.

Recommendation for employment of such persons.

3 Mar., 1865, Res. No. 27, s. 2, v. 13, p. 571.

Form of oath of office.

2 July, 1862, c. 128, v. 12, p. 502.

Ex parte Garland, 4 Wall., 333.

SEC. 1753. The President is authorized to prescribe such regulations for the admission of persons into the civil service of the United States as may best promote the efficiency thereof, and ascertain the fitness of each candidate in respect to age, health, character, knowledge, and ability for the branch of service into which he seeks to enter; and for this purpose he may employ suitable persons to conduct such inquiries, and may prescribe their duties, and establish regulations for the conduct of persons who may receive appointments in the civil service.

SEC. 1754. Persons honorably discharged from the military or naval service by reason of disability resulting from wounds or sickness incurred in the line of duty, shall be preferred for appointments to civil offices, provided they are found to possess the business capacity necessary for the proper discharge of the duties of such offices.

SEC. 1755. In grateful recognition of the services, sacrifices, and sufferings of persons honorably discharged from the military and naval service of the country, by reason of wounds, disease, or the expiration of terms of enlistment, it is respectfully recommended to bankers, merchants, manufacturers, mechanics, farmers, and persons engaged in industrial pursuits, to give them the preference for appointments to remunerative situations and employments.

SEC. 1756. Every person elected or appointed to any office of honor or profit, either in the civil, military, or naval service, excepting the President and the persons embraced by the section following, shall, before entering upon the duties of such office, and before being entitled to any part of the salary or other emoluments thereof, take and subscribe the following oath: "I, A B, do solemnly swear (or affirm) that I have

Date.	C.	S.	V.	P.	Sec.R.S.	Date.	C.	S.	V.	P.	Sec.R.S.
3 March, 1871,	113	3	16	492	416	20 April, 1871,	21	16	17	10	2287
				494	596			27		12	4243
				494	607					12	4244
		4		495	607	20 "	22	1		13	563
3 "	114	1		500	1816					13	629
				506	2038					13	699
		4		514	3689					13	1979
		9		514	1753			2		13	563
3 "	115	1		517	3789					13	629
		2		521	3687					13	699
3 "	116	5		525	3689					13	1980
		6		525	3689					13	5336
3 "	117	3		535	3723					13	5406
		5		535	1368					13	5407
				536	1370					13	5518
				535	1474					13	5519
				535	1556					13	5520
		6		536	1376			3		14	5299
				536	1385			5		15	800
				536	1475					15	801
				536	1556					15	822
		7		536	1390				6	15	629
				536	1476					15	1981
		8		536	1392	20 "	24			16	2683
		9		536	1402	1 February, 1872,	10			27	572
				536	1477					27	658
				536	1478	2 "	11	1		28	20
				536	1479			2		28	23
		10		537	421			3		28	25
				537	1436			4		28	26
				537	1485			6		29	22
				537	1486	2 "	12	1		29	300
				537	1487					29	3646
		11		537	1481			2		29	300
				537	1482					29	3647
		12		537	1468	1 March,	22			32	5191
				537	1469	1 "	24	1		32	2474
				537	1470			2		33	2475
				537	1471	1 "	25			33	2568
				537	1472					33	2569
				537	1473					33	2700
				537	1489	5 "	29			35	2512
				537	1565	5 "	30	1		35	5543
3 "	120	1		566	2079					35	5545
				568	2107					35	5546
		3		570	2103					35	5547
				570	2105					35	5549
3 "	125			580	2496					35	5550
3 "	127			581	2403			2		35	353
3 "	130	1		583	2582	5 "	31	1		35	1973
				583	2583					35	1974
				583	2698					35	1975
		2		583	2585				3	35	1976
		3		583	2583	5 "	33			36	3419
				583	2698	5 "	34			36	2990
				583	2824					36	2997
3 "	132			583	4895	5 "	35			36	597
3 "	136			584	91	12 "	47			40	1168
2 "	1		17	1	5579	18 "	56	1		40	902
				1	5580			2		41	963
24 "	2	1		1	995			3		41	964
				1	5504					41	2997
		2		1	996	18 "	57			41	2997
		3		2	798	30 "	72			44	644
				2	798	2 April,	79	3		47	54
		4		2	5504		80			47	2543
		5		2	5505	2 "	81			48	5572
24 "	5	1		2	492					48	5574
		2		3	493	5 "	86			50	2994
				3	4934	5 "	88	2		51	3689
				3	2518	9 "	90			51	4250
30 "	7			4	4720	13 "	99			52	572
19 April,	16			4	2552					52	658
19 "	17	1		4	2553	17 "	103			53	2578
		2		4	2699	22 "	114			55	3689
				5	2552	30 "	129			58	3004
		3		10	2600	1 May,	131			59	2505
20 "	21	15		10	2990					59	2775

THE CODE OF THE LAWS
OF THE
UNITED STATES OF AMERICA
OF A GENERAL AND PERMANENT CHARACTER

IN FORCE

DECEMBER 7, 1925

AND APPENDIX WITH LAWS TO DECEMBER 6, 1926

CONSOLIDATED, CODIFIED, SET FORTH, AND PUBLISHED IN 1926,
IN THE ONE HUNDRED AND FIFTIETH YEAR OF THE REPUBLIC,
AT ITS FIRST SESSION, BY THE SIXTY-NINTH CONGRESS

[WITH ANCILLARIES AND INDEX]

VOLUME 44 - PART 1

OF THE

UNITED STATES STATUTES AT LARGE



UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON

1926 ..

613. Second Assistant Secretary; appointment; duties.—There shall be in said department an additional Secretary, who shall be known and designated as Second Assistant Secretary of Labor. He shall be appointed by the President. He shall perform such duties as shall be prescribed by the Secretary of Labor, or required by law, and in case of the death, resignation, absence, or sickness of the Assistant Secretary shall, until a successor is appointed or such absence or sickness shall cease, perform the duties devolving upon the Assistant Secretary by reason of section 4 of this title, unless otherwise directed by the President, as provided by section 6 of this title. (June 30, 1922, c. 254, § 1, 42 Stat. 766; Feb. 27, 1925, c. 364, Title IV, 43 Stat. 1048.)

614. Private secretary to Second Assistant Secretary.—There shall be in said Department of Labor one private secretary to the Second Assistant Secretary of Labor. (June 30, 1922, c. 254, § 2, 42 Stat. 766; Feb. 27, 1925, c. 364, Title IV, 43 Stat. 1048.)

615. Chief clerk; disbursing clerk.—There shall be in said department a chief clerk and a disbursing clerk. (Mar. 4, 1913, c. 141, § 2, 37 Stat. 738.)

616. Bureaus and offices in department.—The following-named offices, bureaus, divisions, and branches of the public service, and all that pertains to the same, shall be under the jurisdiction and supervision of the Department of Labor.

1. The office of the Commissioner General of Immigration, the Bureau of Immigration and the Bureau of Naturalization, the Commissioners of Immigration, the Division of Information, and the Immigration Service at Large.

2. The Bureau of Labor Statistics and the office of the Commissioner of Labor Statistics.

3. The Children's Bureau.

4. The Women's Bureau. (Feb. 14, 1903, c. 552, § 4, 32 Stat. 826; Mar. 4, 1913, c. 141, § 3, 37 Stat. 737; June 5, 1920, c. 248, § 1, 41 Stat. 987.)

617. Library, records, etc., of department.—The Secretary of Labor shall have charge in the buildings or premises occupied by or appropriated to the Department of Labor, of the library, furniture, fixtures, records, and other property pertaining to it or acquired for use in its business. He shall be allowed to expend for periodicals and the purposes of the library and for rental of appropriate quarters for the accommodation of the Department of Labor within the District of Columbia, and for all other incidental expenses, such sums as Congress may provide from time to time. (Mar. 4, 1913, c. 141, § 6, 37 Stat. 738.)

618. Rented quarters.—Where any office, bureau, or branch of the public service transferred to the Department of Labor is occupying rented buildings or premises, it may continue to do so until other suitable quarters are provided for its use. (Mar. 4, 1913, c. 141, § 6, 37 Stat. 738.)

619. Mediation of labor disputes; duties, powers, etc., transferred to department.—The Secretary of Labor shall have power to act as mediator and to appoint commissioners of conciliation in labor disputes whenever in his judgment the interests of industrial peace may require it to be done; and all duties performed and all power and authority on March 4, 1913, possessed or exercised by the head of any executive department in and over any bureau, office, officer, board, branch, or division of the public service transferred to the Department of Labor, or any business arising therefrom or pertaining thereto, or in relation to the duties performed by and authority conferred by law upon such bureau, officer, office, board, branch, or division of the public service, whether of an appellate or revisory character or otherwise, shall be vested in and exercised by the head of the said Department of Labor. (Mar. 4, 1913, c. 141, § 8, 37 Stat. 738.)

620. Report and investigations.—The Secretary of Labor shall annually, at the close of each fiscal year, make a report

in writing to Congress, giving an account of all moneys received and disbursed by him and his department and describing the work done by the department. He shall also, from time to time, make such special investigations and reports as he may be required to do by the President, or by Congress, or which he himself may deem necessary. (Mar. 4, 1913, c. 141, § 9, 37 Stat. 738.)

621. Same; records and papers and furniture transferred to department.—The official records and papers on file in and pertaining exclusively to the business of any bureau, office, department, or branch of the public service transferred to the Department of Labor, together with the furniture in use in such bureau, office, department, or branch of the public service, are transferred to the Department of Labor. (Mar. 4, 1913, c. 141, § 5, 37 Stat. 737.)

622. Same; laws operative.—All laws prescribing the work and defining the duties of the several bureaus, offices, departments, or branches of the public service transferred to and made a part of the Department of Labor shall, so far as the same are not in conflict with the provisions of this chapter, remain in full force and effect, to be executed under the direction of the Secretary of Labor. (Mar. 4, 1913, c. 141, § 6, 37 Stat. 738.)

Chapter 12.—CIVIL SERVICE COMMISSION AND CLASSIFIED CIVIL SERVICE.

Sec.

631. Regulation of admissions to civil service.

632. Civil Service Commission; appointment; removal.

633. Rules.

(1) Preparation of.

(2) Provisions of.

1. Competitive examinations.

2. Selection of officers, etc., according to results of examinations.

3. Apportionment of appointments; applications for examinations.

4. Probation before absolute appointment.

5. Contributions for political purposes.

6. Political coercion by officers.

7. Noncompetitive examinations in certain cases.

8. Notice of appointments, rejections, transfers, resignations, and removals; exceptions to be set forth with rules.

(3) Regulations for examinations, and records.

(4) Investigations and reports.

(5) Annual reports.

634. Oaths to witnesses.

635. Chief examiner; secretary; employees; boards of examiners.

636. Detail of employees.

637. Violation of duties by commissioners or officers, etc.

638. Appointments and promotions in classified service; examinations.

639. Deputy collectors of internal revenue and deputy marshals.

640. Habitual users of intoxicants.

641. Members of same family.

642. Recommendations by Senators or Representatives.

643. Applications for examinations; certificate of residence.

644. Place of examinations; persons afflicted with tuberculosis; certificate of health; appointments from same family.

645. Civil service status of soldiers, sailors, and marines.

646. Bureau of Efficiency.

647. Same; chief of bureau reports.

648. Same; efficiency ratings for classified service in executive departments.

649. Same; reports as to needs of personnel in departments.

650. Same; information furnished to by departments.

651. Same; records, and papers transferred to.

652. Removals from classified civil service only for cause.

Section 631. Regulation of admissions to civil service.—The President is authorized to prescribe such regulations for the admission of persons into the civil service of the United States as may best promote the efficiency thereof, and ascertain the fitness of each candidate in respect to age, health, character, knowledge, and ability for the branch of service into which he seeks to enter; and for this purpose he may employ suitable persons to conduct such inquiries, and may prescribe their

duties, and establish regulations for the conduct of persons who may receive appointments in the civil service. (R. S. § 1753.)

632. Civil Service Commission; appointment; removal.—The President is authorized to appoint, by and with the advice and consent of the Senate, three persons, not more than two of whom shall be adherents of the same party, as civil service commissioners, and said three commissioners shall constitute the United States Civil Service Commission. Said commissioners shall hold no other official place under the United States.

The President may remove any commissioner; and any vacancy in the position of commissioner shall be so filled by the President, by and with the advice and consent of the Senate, as to conform to said conditions for the first selection of commissioners.

Each of said commissioners shall be paid, in addition to his salary, his necessary traveling expenses incurred in the discharge of his duty as a commissioner. (Jan. 16, 1883, c. 27, § 1, 22 Stat. 403.)

633. Rules.—It shall be the duty of said commissioners:

(1) **Preparation of.**—First. To aid the President, as he may request, in preparing suitable rules for carrying this section and sections 632, 635, 637, 638, and 640 to 642 of this title, into effect, and when said rules shall have been promulgated it shall be the duty of all officers of the United States in the departments and offices to which any such rules may relate to aid, in all proper ways, in carrying said rules, and any modification thereof, into effect.

(2) **Provisions of.**—Second. Among other things, said rules shall provide and declare, as nearly as the conditions of good administration will warrant, as follows:

1. Competitive examinations.

First. For open, competitive examinations for testing the fitness of applicants for the public service classified on January 16, 1883, or thereafter, or to be classified hereunder. Such examinations shall be practical in their character, and so far as may be shall relate to those matters which will fairly test the relative capacity and fitness of the persons examined to discharge the duties of the service into which they seek to be appointed.

2. Selection of officers, etc., according to results of examinations.

Second. All the offices, places, and employments so arranged or to be arranged in classes shall be filled by selections according to grade from among those graded highest as the results of such competitive examinations.

3. Apportionment of appointments; applications for examinations.

Third. Appointments to the public service aforesaid in the departments at Washington shall be apportioned among the several States and Territories and the District of Columbia upon the basis of population as ascertained at the last preceding census. Every application for an examination shall contain, among other things, a statement, under oath, setting forth his or her actual bona fide residence at the time of making the application, as well as how long he or she has been a resident of such place.

4. Probation before absolute appointment.

Fourth. There shall be a period of probation before any absolute appointment or employment aforesaid.

5. Contributions for political purposes.

Fifth. No person in the public service is for that reason under any obligations to contribute to any political fund, or to render any political service, and that he will not be removed or otherwise prejudiced for refusing to do so.

6. Political coercion by officers.

Sixth. No person in said service has any right to use his official authority or influence to coerce the political action of any person or body.

7. Noncompetitive examinations in certain cases.

Seventh. There shall be noncompetitive examinations in all proper cases before the commission, when competent persons do not compete, after notice has been given of the existence of the vacancy, under such rules as may be prescribed by the commissioners as to the manner of giving notice.

8. Notice of appointments, rejections, transfers, resignations, and removals; exceptions to be set forth with rules.

Eighth. Notice shall be given in writing by the appointing power to said commission of the persons selected for appointment or employment from among those who have been examined, of the place of residence of such persons, of the rejection of any such persons after probation, of transfers, resignations, and removals, and of the date thereof, and a record of the same shall be kept by said commission. Any necessary exceptions from said eight fundamental provisions of the rules shall be set forth in connection with such rules, and the reasons therefor shall be stated in the annual reports of the commission.

(3) **Regulations for examinations, and records.**—Third. Said commission shall, subject to the rules that may be made by the President, make regulations for, and have control of, such examinations, and, through its members or the examiners, it shall supervise and preserve the records of the same; and said commission shall keep minutes of its own proceedings.

(4) **Investigations and reports.**—Fourth. Said commission may make investigations concerning the facts, and may report upon all matters touching the enforcement and effects of said rules and regulations, and concerning the action of any examiner or board of examiners hereinafter provided for, and its own subordinates, and those in the public service, in respect to the execution of this section and sections 632, 635, 637, 638, and 640 to 642 of this title.

(5) **Annual reports.**—Fifth. Said commission shall make an annual report to the President for transmission to Congress, showing its own action, the rules and regulations and the exceptions thereto in force, the practical effects thereof, and any suggestions it may approve for the more effectual accomplishment of the purposes of sections 632, 633, 635, 637, 638 and 640 to 642. (Jan. 16, 1883, c. 27, § 2, 22 Stat. 403.)

634. Oaths to witnesses.—Members of the Civil Service Commission and its duly authorized representatives are authorized to administer oaths to witnesses in any matter depending before the Civil Service Commission. (Aug. 23, 1912, c. 350, § 1, 37 Stat. 372.)

635. Chief examiner; secretary; employees; boards of examiners.—Said commission is authorized to employ a chief examiner, a part of whose duty it shall be, under its direction, to act with the examining boards, so far as practicable, whether at Washington or elsewhere, and to secure accuracy, uniformity, and justice in all their proceedings, which shall be at all times open to him. The chief examiner shall be paid in addition to his salary, his necessary traveling expenses incurred in the discharge of his duty. The commission shall have a secretary, to be appointed by the President. It may, when necessary, employ a stenographer, and a messenger. The commission shall, at Washington, and in one or more places in each State and Territory where examinations are to take place, designate and select a suitable number of persons, not less than three, in the official service of the United States, residing in said State or Territory, after consulting the head of the department or office in which such persons serve, to be members of boards of

R. S.		U. S. C.		R. S.		U. S. C.		R. S.		U. S. C.		R. S.		U. S. C.	
Sec.	Title	Sec.	Title	Sec.	Title	Sec.	Title	Sec.	Title	Sec.	Title	Sec.	Title	Sec.	Title
856	28	599		971	28	819		1325	10	1104		1495	34	273	
857	28	609		972	28	820		1327	10	1051		1496	34	274	
858	28	631		973	28	821		1328	10	1053		1498	34	275	
859	28	634		974	28	822		1330	10	1144		1499	34	276	
861	28	635		975	28	823		1331	10	1041		1500	34	277	
862	28	637		976	28	824		1333	10	1080		1501	34	278	
863	28	639		977	28	825		1334	10	1131		1502	34	279	
864	28	640		978	28	826		1335	10	1132		1503	34	281	
865	28	641		979	28	827		1336	10	1133		1504	34	282	
866	28	644		981	28	828		1337	10	1135		1505	34	283	
867	28	645		982	28	829		1338	10	1085		1506	34	341	
868	28	646		983	28	830		1341	10	1142		1507	34	342	
869	28	647		984	28	831		1362	34	1		1508	34	345	
870	28	648		985	28	838		1367	34	111		1509	34	346	
871	28	649		986	28	839		1369	34	11, 21		1510	34	347	
872	28	650		987	28	840		1370	34	23		1511	34	1021	
873	28	651		988	28	841		1373	34	24		1512	34	1031	
874	28	652		989	28	842		1374	34	25		1515	34	1043	
875	28	653		990	28	843		1375	5	451		1516	34	1044	
876	28	654		991	28	844		1378	34	11		1517	34	1045	
877	28	655		992	28	845		1379	34	61		1518	34	1046	
878	28	656		993	28	846		1380	34	323		1519	34	1053	
879	28	657		994	28	850		1381	34	62		1520	34	1054	
880	28	658		995	28	851		1382	34	63		1521	34	1057	
881	28	659		996	28	852		1383	34	64		1526	34	1056	
882	28	661		997	28	862		1384	34	65		1527	34	1101	
883	28	662		998	28	867		1385	34	66		1528	34	1072	
884	28	663		999	28	868		1389	34	67		1532	34	462	
885	28	664		1000	28	869		1393	34	76		1533	34	463	
886	28	665		1001	28	870		1395	34	11		1534	34	452	
887	28	668		1003	28	871		1396	34	91		1535	34	453	
888	28	669		1004	28	872		1397	34	95		1536	34	454	
889	28	671		1005	28	873		1398	34	96		1537	34	471	
890	28	670		1006	34	1146		1401	34	102		1538	34	483	
891	28	672		1007	28	874		1402	34	11		1539	34	484	
892	28	673		1008	28	350		1403	34	81		1540	34	485	
893	28	674		1010	28	878		1404	34	223		1542	34	501	
894	28	675		1011	28	879		1405	34	122		1543	34	502	
895	28	676		1013	28	881		1406	34	121		1544	34	507	
896	28	677		1014	18	864		1407	34	134, 951		1546	34	510	
897	28	678		1015	18	591		1408	34	174		1547	34	591	
898	28	679		1016	18	597		1409	34	198		1548	34	592	
899	28	681		1017	18	598		1410	34	146		1549	34	529	
900	28	682		1018	18	599		1411	34	21		1550	34	594	
901	28	683		1019	18	600		1413	34	11, 141		1551	34	595	
902	28	684		1020	18	601		1414	34	142		1553	18	94	
903	28	685		1021	18	554		1415	34	143		1554	5	418	
904	28	686		1022	18	555		1417	34	123		1555	5	418	
905	28	687		1023	18	560		1418	34	181, 182		1557	34	881	
906	28	688		1024	18	557		1419	34	161		1560	34	862	
907	28	689		1025	18	556		1420	34	161, 163		1563	34	875	
910	28	690		1026	18	561		1421	34	177		1564	34	876	
911	28	721		1027	18	602		1422	34	201		1571	34	224	
912	28	722		1028	18	603		1426	34	192		1574	34	951	
913	28	723		1029	18	604		1427	34	193		1575	34	952	
914	28	724		1030	18	605		1428	34	211		1576	34	932	
915	28	726		1031	28	425		1429	34	194		1580	34	902	
916	28	727		1032	18	554		1430	34	219		1581	34	903	
917	28	730		1033	18	562		1431	34	220		1582	34	904	
918	28	731		1034	18	563		1432	34	218		1583	34	905	
919	28	732		1035	18	565		1433	34	217		1585	34	907	
920	28	733		1036	18	566		1434	34	216		1586	34	921	
921	28	734		1041	18	569		1435	34	221		1587	34	922	
922	28	735		1042	18	641		1436	34	225		1588	34	991	
923	28	736		1043	18	581		1437	10	1866		1591	34	993	
924	28	737		1044	18	582		1437	34	447		1592	34	994 (a)	
925	28	738		1045	18	583		1438	34	144		1593	34	998	
926	28	739		1046	18	584		1439	34	145		1600	34	998	
927	28	740		1047	28	791		1440	34	226		1603	34	651	
928	28	741		1049	28	241		1441	34	227		1604	34	652	
929	28	742		1050	28	242		1442	34	228		1605	34	670	
930	28	743		1052	28	243		1443	34	381		1606	34	671	
931	28	744		1053	28	244		1444	34	384		1607	34	672	
932	28	745		1054	28	245		1445	34	382		1608	34	673	
933	28	746		1055	28	246		1448	34	411		1609	34	694	
934	28	747		1056	28	247		1449	34	413		1610	34	695	
935	28	748		1057	28	248		1450	34	414		1611	34	717	
936	28	749		1058	28	249		1451	34	415		1612	34	971	
937	28	750		1059	28	250		1452	34	416		1613	34	972	
938	28	751		1061	28	252		1453	34	417		1614	24	3	
939	28	752		1062	28	253		1454	34	418		1616	34	711	
940	28	753		1063	28	254		1455	34	412		1617	34	713	
941	28	754		1064	28	255		1456	34	385		1619	34	712	
942	28	755		1065	28	256		1457	34	389		1620	34	714	
943	28	756		1066	28	259		1458	34	400		1621	34	715	
944	28	757		1067	28	260		1459	34	401		1622	34	681	
945	28	758		1068	28	261		1462	34	421		1623	34	681	
946	28	759		1069	28	262		1463	34	424		1624	34	1200	
947	28	760		1070	28	263		1464	34	425		1624	34	161	
948	28	767		1071	28	264		1465	34	426		Art. 19			
949	28	768		1072	28	265		1466	34	241		1665	50	53	
950	28	769		1073	28	266		1467	34	242		1666	50	55	
951	28	774		1074	28	267		1468	34	246		1668	18	95	
952	28	775		1075	28	271		1469	34	247		1669	50	56	
953	28	776		1076	28	272		1470	34	248		1671	50	57	
954	28	777		1077	28	273		1471	5	440		1674	22	40, 51	
955	28	778		1078	28	292		1473	5	442		1675	22	32	
956	28	779		1080	28	274		1474	34	251		1685	22	20	
957	28	781		1081	28	275		1475	34	251		1686	22	36	
958	28	782		1082	28	276		1477	34	251		1688	22	39	
959	28	783		1083	28	277		1480	34	252		1689	22	53	
960	28	784		1084	28	278		1481	34	395		1693	22	168	
961	28	785		1086	28	279		1482	34	397		1695	22	55	
962	28	786		1087	28	281									

Public Law 89-554

AN ACT

September 6, 1966
[H. R. 10 104]

To enact **title 5, United States Code**, "Government Organization and Employees", codifying the general and permanent laws relating to the organization of the Government of the United States and to its civilian officers and employees.

Title 5, USC,
Government Or-
ganization and
Employees.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the laws relating to the organization of the Government of the United States and to its civilian officers and employees, generally, are revised, codified, and enacted as title 5 of the United States Code, entitled "Government Organization and Employees", and may be cited as "5 U.S.C., § ", as follows:

TITLE 5—GOVERNMENT ORGANIZATION AND EMPLOYEES

PART	Sec.
I. THE AGENCIES GENERALLY.....	101
II. THE UNITED STATES CIVIL SERVICE COMMISSION.....	1101
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PART I—THE AGENCIES GENERALLY

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CHAPTER 1—ORGANIZATION

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101. Executive departments.	
102. Military departments.	
103. Government corporation.	
104. Independent establishment.	
105. Executive agency.	

§ 101. Executive departments

The Executive departments are:

- The Department of State.
- The Department of the Treasury.
- The Department of Defense.
- The Department of Justice.
- The Post Office Department.
- The Department of the Interior.
- The Department of Agriculture.
- The Department of Commerce.
- The Department of Labor.
- The Department of Health, Education, and Welfare.

§ 102. Military departments

The military departments are:

- The Department of the Army.
- The Department of the Navy.
- The Department of the Air Force.

§ 103. Government corporation

For the purpose of this title—

- (1) "Government corporation" means a corporation owned or controlled by the Government of the United States; and

CHAPTER 73—SUITABILITY, SECURITY, AND CONDUCT**SUBCHAPTER I—REGULATION OF CONDUCT**

Sec.

7301. Presidential regulations.**SUBCHAPTER II—LOYALTY, SECURITY, AND STRIKING**

Sec.

7311. Loyalty and striking.**7312. Employment and clearance; individuals removed for national security.****SUBCHAPTER III—POLITICAL ACTIVITIES**

Sec.

7321. Political contributions and services.**7322. Political use of authority or influence; prohibition.****7323. Political contributions; prohibition.****7324. Influencing elections; taking part in political campaigns; prohibitions; exceptions.****7325. Penalties.****7326. Nonpartisan political activity permitted.****7327. Political activity permitted; employees residing in certain municipalities.****SUBCHAPTER IV—FOREIGN DECORATIONS**

Sec.

7341. Receipt and display of foreign decorations.**SUBCHAPTER V—MISCONDUCT**

Sec.

7351. Gifts to superiors.**7352. Excessive and habitual use of intoxicants.****SUBCHAPTER I—REGULATION OF CONDUCT****§ 7301. Presidential regulations**

The President may prescribe regulations for the conduct of employees in the executive branch.

SUBCHAPTER II—LOYALTY, SECURITY, AND STRIKING**§ 7311. Loyalty and striking**

An individual may not accept or hold a position in the Government of the United States or the government of the District of Columbia if he—

- (1) advocates the overthrow of our constitutional form of government;
- (2) is a member of an organization that he knows advocates the overthrow of our constitutional form of government;
- (3) participates in a strike, or asserts the right to strike, against the Government of the United States or the government of the District of Columbia; or
- (4) is a member of an organization of employees of the Government of the United States or of individuals employed by the government of the District of Columbia that he knows asserts the right to strike against the Government of the United States or the government of the District of Columbia.

§ 7312. Employment and clearance; individuals removed for national security

Removal under section 7332 of this title does not affect the right of an individual so removed to seek or accept employment in an agency of the United States other than the agency from which removed. However, the appointment of an individual so removed may be made only after the head of the agency concerned has consulted with the Civil

TITLE 5—GOVERNMENT ORGANIZATION AND EMPLOYEES

This title was enacted by Pub. L. 89-554, §1, Sept. 6, 1966, 80 Stat. 378

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AMENDMENTS

1979—Pub. L. 96-54, §2(a)(1), Aug. 14, 1979, 93 Stat. 381, substituted “Civil Service Functions and Responsibilities” for “The United States Civil Service Commission” in item for part II.

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43	3101
43a	3102
44	T. 31 § 492-1 (See Rev. T. 31 Table)
45	Rep.

TABLE SHOWING DISPOSITION OF ALL SECTIONS OF FORMER TITLE 5—Continued

<i>Title 5 Former Sections</i>	<i>Title 5 New Sections</i>
46	3103
46a	5511
46b	5513
46c	T. 31 § 699a (See Rev. T. 31 Table)
46d, 46e	5514
47	3103; T. 18 § 1916
47a	8301; T. 10 § 1221
48	T. 28 § 514
49	3106
50	5501; T. 18 § 1916
51	5536
52	5502
53	3108
54	3107
55	Rep.
55a	3109
56	5503
57-59c	Rep.
60	T. 2 § 162
61	D.C. Code, §31-1009
61a	5552
61a-1(a), (f)	5534a
61a-1(b)-(e)	Rep.
61b (1st, 2d sentences)	5551
61b (3d-5th sentences)	6306
61b (6th sentence)	5551
61c-61e	Rep.
61f	5582
61g	5581
61h	5583
61i	5581
61j	5582
61k	5581
62-64a	Rep.
65	T. 2 § 162
66	T. 18 § 1914
67	T. 7 § 2220
68	T. 8 § 1353c
69	5535, 5536
70	5536
70a, 70b	5945
70c	5942
71	5536
72	5535
73, 73a	Rep.
73b	5731
73b-1(a), (b)	5724
73b-1(c)	5730
73b-1(d)	5725
73b-1(e)	5726
73b-1(f)	5727
73b-2	5703
73b-3(a) (less 3d-6th provisos)	5722
73b-3(a) (3d, 4th provisos)	5728
73b-3(a) (5th, 6th provisos)	5729
73b-3 (less (a))	5723
73b-4	T. 41 § 5a
73b-4a, 73b-4b	5724a
73b-4c	5726
73b-4d	5724
73b-4e	5724a
73b-4f	5724
73b-5	5732
73c	5727
73c-1, 73c-2, 73d	Rep.
73e	5731
73f, 74-75a	Rep.

TITLE 5—GOVERNMENT ORGANIZATION AND EMPLOYEES

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TABLE SHOWING DISPOSITION OF ALL SECTIONS OF
FORMER TITLE 5—Continued

<i>Title 5 Former Sections</i>	<i>Title 5 New Sections</i>
608b	T. 15 § 1523
608c	T. 15 § 1524
611	T. 29 § 551
611a	T. 29 § 552
611b	T. 29 § 553
611c	Rep. and Elim.
612, 613	Rep.
613a	T. 29 § 554
613b	T. 29 § 555
614	Rep.
615	T. 29 § 556
616	T. 29 § 557
617	T. 29 § 558
618	T. 29 § 559
619	Rep.
620	T. 29 § 560
621	T. 29 § 561
622	T. 29 § 562
622a	T. 29 § 563
623	T. 42 § 3501
623a	T. 42 § 3508
623b	T. 42 § 3503
623c	T. 42 § 3504
623d	T. 42 § 3505
623e	T. 42 § 3507
623f	T. 42 § 3506
623g	T. 42 § 3502
623h	T. 42 § 3501a
623i	Elim.
624	T. 42 § 3531
624a	T. 42 § 3532
624b	T. 42 § 3533
624c	T. 42 § 3534
624d	T. 42 § 3535
624e	T. 42 § 3536
624f	T. 42 § 3537
626(a)	T. 10 § 8012
626(b)	Rep.
626(c)	T. 10 § 101(5); T. 50 § 409(c)
626(d)	T. 10 § 8013
626(e)	T. 10 § 8012
626(f)	T. 10 § 8033
626(g)	T. 10 § 8011
626-1	T. 10 § 8013, 8017
626-2	T. 10 §§ 8012, 9532
626a	T. 10 § 8012
626b	T. 10 § 8013
626c(a), (f)	T. 10 § 8062
626c(b)	T. 10 § 743
626c(c)-(e), 626c-1 to 626c-3, 626d, 626e.	Rep.
626f	(See former 150p)
626g-626j	(See former 150q-150t)
626k	Rep.
626l, 626m	T. 10 § 9441
626n	T. 10 § 2632
626o	Rep.
626p	T. 10 § 9774
626q, 626r	T. 10 § 9301
626s to 626s-2	T. 10 § 2481
626s-3	T. 10 § 2667
626s-4, 626s-5	Rep.
626s-6	T. 10 § 2667
626t, 626u	T. 10 § 1581
626v-626y, 627	Rep.
627a	T. 10 §§ 8208, 8215
627b	T. 10 §§ 8071, 8208, 8297, 8299, 8305, 8504, 8685, 8888, 8915, 8916, 8927, 8962, 8991
627c	Rep.
627d	T. 10 § 8256
627e	T. 10 § 8685
627f	T. 10 §§ 8549, 8580, 8818
627g-627l	Rep.
628	T. 10 § 9531
628a	T. 10 § 9503
628b	T. 10 § 174
628c	T. 10 § 1584
628d	T. 10 § 2352
628e	T. 10 §§ 2353, 2357
628f, 628g	T. 10 §§ 2354, 2355
628h	T. 10 §§ 174, 2356
630	T. 40 § 751 (See Rev. T. 40 Table)
630a	T. 40 § 752 (See Rev. T. 40 Table)
630b	T. 40 § 753 (See Rev. T. 40 Table)

TABLE SHOWING DISPOSITION OF ALL SECTIONS OF
FORMER TITLE 5—Continued

<i>Title 5 Former Sections</i>	<i>Title 5 New Sections</i>
630c	Rep.
630d	T. 40 § 754 (See Rev. T. 40 Table)
630e	T. 40 § 755 Rep.
630f	Rep.
630g	T. 40 § 756 (See Rev. T. 40 Table)
630g-1	T. 40 § 757 (See Rev. T. 40 Table)
630g-2	T. 40 § 759 Rep.
630h	T. 40 § 758 (See Rev. T. 40 Table)
630i	Elim.
630j	Rep.
631	3301, 7301
631a, 631b(a)	Elim.
631b(b), (c)	3304
632 (1st par.)	1101
632 (2d-4th pars.)	1102
632 (5th par.)	1103
633(1)	1301, 3302
633(2)1	3304
633(2)2	3318
633(2)3	3306
633(2)4	3321
633(2)5	7321
633(2)6	7152, 7322
633(2)7	1302, 3304
633(2)8	2951, 3302
633(2)9	7153
633(3)	1302, 1307
633(4)	1303
633(5)	1308
633a-633e	Rep.
634	1306
635 (1st 5 sentences)	1104, 1105
635 (6th sentence)	1105, 3305
635 (7th sentence)	3304
636	Rep.
637	T. 18 § 1917
638	2102, 3304, 3361
638a	Rep.
638b	3307, 3322
639	Rep.
640	7352
641	3319
642	3303
642a	2953
643-645b	Rep.
645c-645e	Elim.
646-651b	Rep.
652(a)	7501
652(b)	5591-5593
652(c)	7101
652(d)	7102
652a-652c	5596
653, 654	Rep.
655-657	1304
658	Elim.
659	3327
661-663b, 664-669a, 670-672c, 673-673b.	Rep.
673c (1st par., less provisos)	Rep.
673c (1st proviso)	6102
673c (2d, 3d provisos)	5544
673c (2d par.), 674-678b	Rep.
679	Elim.
680-684, 691, 691a, 692-692d, 693 to 693-2, 693a-693d, 694, 649a, 695, 695a, 696, 696a, 697, 697a, 698-698b, 699, 699a, 700, 700a, 701, 701a, 702, 702a, 703, 703a, 704, 704a, 705, 705a, 706, 706a, 707, 707a, 708, 708a, 709-615.	Rep.
715a	3323
715b-715d, 716-718a, 719, 719-1, 719a, 719b, 720-729a, 730-736c, 737-739b, 740, 740a.	Rep.
740b-740i	(See former 2281-2288)
745-745r	Rep.
751	8102
752	8117
753	8105
754	8106
755(a), (b)	8107
755(c)	8108
755(d)	8109
756(a)	8110
756(b)	8111

**IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

AMERICA’S FRONTLINE)
DOCTORS, et al,)
)
Plaintiffs,)
)
v.)
)
The UNITED STATES OF AMERICA,)
et al,)
)
Defendants.)

Case No. 2:21-cv-702-CLM

EXHIBIT 5

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF ALABAMA

AMERICA'S FRONTLINE DOCTORS, INC.,
a 501C3 Organization; DR. DAVID CALDERWOOD, an
individual; JOSEPH MAKOWSKI, an individual; LYLE BLOOM,
an individual; ELLEN MILLEN, an individual; JODY SOBCZAK,
an individual; MICHAEL NELSON, an individual; and JOSEPH
LEAHY, an individual;

Plaintiffs,

vs.

the UNITED STATES OF AMERICA; JOSEPH R. BIDEN, JR., in
his official capacity as President of the United States; XAVIER
BECERRA, Secretary of the U.S. Department of Health and
Human Services, in his official capacity, DR. ANTHONY
FAUCI, Director of the National Institute of Allergies and
Infectious Diseases, in his official capacity, DR. JANET
WOODCOCK, Acting Commissioner of the Food and Drug
Administration, in her official capacity, U.S. DEPARTMENT
OF HEALTH AND HUMAN SERVICES; the FOOD AND DRUG
ADMINISTRATION; the CENTER FOR DISEASE CONTROL AND
PREVENTION; the NATIONAL INSTITUTE OF HEALTH; the
NATIONAL INSTITUTE OF ALLERGIES AND INFECTIOUS
DISEASES; and DOES I-X

Defendants.

Civil Action No.
2:21-cv-00702-CLM

**DECLARATION OF
Dr. Henry L. Ealy, III**

DECLARATION

I, Henry L. Ealy III, declare as follows.

1. I hold a Doctorate in Naturopathic Medicine, a Bachelor of Science in Mechanical Engineering, and I have worked professionally on the International Space Station project as both a lead database developer and data analyst.

2. I am the founder of the Energetic Health Institute and the lead researcher and author for the COVID Research Team.
3. The COVID Research Team collects, analyzes, and publishes our data analysis, investigative research, and key findings of this evolving crisis on a weekly basis. We began reporting on March 12, 2020, and have been consistent in our weekly research and publication since the inception of our work together in early 2020.
4. Our publications include 2 peer-reviewed investigational manuscripts [COVID-19 Data Collection, Comorbidity & Federal Law: A Historical Retrospective](#) and the 444 page peer-reviewed position statement [COVID-19: Restoring Public Trust During A Public Health Crisis](#).
5. Based upon my professional experience and extensive knowledge of the published data and peer-reviewed research, I am uniquely qualified to provide expert testimony that I believe to be of the highest accuracy and integrity, and can also be independently verified.
6. I routinely collect, analyze, and publish data on the following topics:
 - Infective Spread Data Analysis - Cases, Deaths, Recoveries, Odds Of Dying - By Age
 - Data Source - <https://covid.cdc.gov/covid-data-tracker>

Infective Spread Data Analysis - Cases, Deaths, Recoveries, Odds Of Dying - By Age						
Data Source CDC COVID Data Tracker - Jan 21, 2020 to Jan 6, 2022						
Demographic	Cases ¹	Deaths ²	% Of Deaths	Recoveries ³	Recovery Rate	Odds Of Dying
Age 0 to 4	1,261,771	344	0.05%	1,173,469	99.97%	1 in 3,667
Age 5 to 11	2,714,042	225	0.03%	2,524,621	99.99%	1 in 12,062
Age 12 to 17	3,240,519	504	0.07%	3,014,119	99.98%	1 in 6,429
Total 0 to 17	7,216,332	1,073	0.15%	6,712,209	99.99%	1 in 6,725
Age 18 to 29	9,833,119	5,304	0.75%	9,142,349	99.95%	1 in 1,853
Age 30 to 39	7,635,200	12,362	1.74%	7,090,589	99.84%	1 in 617
Age 40 to 49	6,542,670	28,002	3.95%	6,058,579	99.57%	1 in 233
Total 18 to 49	24,010,989	45,668	6.45%	22,291,517	99.81%	1 in 525
Age 50 to 64	8,551,286	123,637	17.45%	7,831,539	98.55%	1 in 69
Age 65 to 74	3,147,783	156,062	22.03%	2,772,289	95.04%	1 in 20
Age 75 to 84	1,573,840	184,563	26.05%	1,279,565	88.27%	1 in 9
Age 85+	822,954	197,540	27.88%	568,046	76.00%	1 in 4
Total 50 & Over	14,095,863	661,802	93.40%	12,451,439	95.30%	1 in 21
Total	45,323,184	708,543	100.00%	41,455,165	98.44%	1 in 64

Data Source Cases, Fatalities, People Inoculated - NVSS Published By CDC - <https://covid.cdc.gov/covid-data-tracker>

1 - Data Published from Jan 21, 2020 to Jan 6, 2022 (716 Days). Typically Data Collection Is Reset Every Jan 1st. That Has Not Happened For COVID Data

2 - Deaths May Include Some People Who Died Due To Experimental COVID Inoculation As Well As Some People Who Were Incorrectly Categorized As A COVID Death

3 - Recoveries Are Calculated By Subtracting An Age Demographic Estimate Of New Cases Over The Previous 5 Days, The Number Of Hospitalizations & The Number Of Deaths From Total Published Cases

- Vaccine Breakthrough Data Analysis
- Data Source – All State Public Health Departments Currently Publishing Data
- **Please See Attached December 2021 Full Analysis with Citations**

State, Agency or Corporation	Breakthrough Cases	Prior Month	% Monthly Increase	Breakthrough Hospitalizations	Prior Month	% Monthly Increase	Breakthrough Deaths	Prior Month	% Monthly Increase	Notes
CDC	10,162	10,162	0.0%	30,270	30,270	0.0%	10,857	10,857	0.0%	The CDC Stopped Reporting Vaccine Breakthrough Cases On A Reporting Vaccine Breakthrough Hospitalizations & Deaths On Breakthrough Case Is Defined As A Case Where The Person Has R Inoculations In The Series, There Have Been At Least 14-Days Sin Series, And There Is A Positive PCR Test With A Cycle Threshold B Standard For A Confirmed Case Of Infection Is A PCR Test With A Which Has Been Proven To Encourage False Positive Results For
Kaiser	61,983	61,983	0.0%	4,193	4,193	0.0%	870	870	0.0%	Last Data Report - July 30, 2021. As Of July 30, 2021 Only 25 OF T Were Reporting Any Data On Vaccine Breakthrough. AK, AZ, AR, C MA, MI, MT, NE, NJ, NM, OK, OR, RI, TN, UT, VT, VA, WA
State Health Department Totals	2,586,927	1,446,807	78.8%	90,119	56,324	60.0%	24,903	16,111	54.6%	As of December 28th, only 31 out of 51 US Health Department: monthly basis. at least partial data on COVID Vaccine Breakthro published data previously. Colorado & Wisconsin are publishin totals, so their data cannot be analyzed independently.
Alabama	190			0			0	0		Last Data Report - April 19, 2021. No Vaccine Breakthrough Dat Breakthrough is not published on https://www.alabamapubliche and there is no weekly or monthly report to reference.
Alaska	16,171	16,171	0.0%	257	257	0.0%	77	77	0.0%	Last Data Report - September 2021. Vaccine Breakthrough is not coronavirus-vaccine-outreach-alaska-dhss.hub.arcgis.com/ and t reports to reference.
Arizona	1,759	1,759	0.0%				92	92		Last Data Report - July 14th. Vaccine Breakthrough is not publish https://azdhhs.gov/covid19/data/index.php and there are no wee reference. The information presented by Kaiser is unable to be ve No Vaccine Breakthrough Data is Available. Vaccine Breakthro

- Vaccine Adverse Events Reporting System (VAERS) Data Analysis
- Data Source - <https://wonder.cdc.gov/vaers.html>

Demographic	Injuries Reported	Myocarditis or Pericarditis	Hospitalizations	Life Threatening	Permanently Injured	All Deaths	Deaths within 48 Hours
Age < 6 Months	134	3	19	6	3	2	1
Age 6 to 11 Months	66	1	7	1	3	0	0
Age 1 to 2	92	0	5	2	4	2	2
Age 3 to 5	739	1	21	1	6	1	0
Age 6 to 17	34,803	1,142	2,442	444	260	66	16
Age 18 to 29	98,809	2,890	7,212	1,497	2,404	246	97
Age 30 to 39	132,106	2,035	7,919	2,196	3,964	381	130
Age 40 to 49	130,335	1,717	8,617	2,664	4,348	558	198
Age 50 to 59	131,962	1,613	10,530	2,933	4,261	1,164	405
Age 60 to 64	61,777	662	5,812	1,490	1,816	999	331
Age 65 to 79	142,149	1,380	19,116	3,840	3,670	4,643	1,444
Age 80+	41,452	231	11,300	1,658	1,195	5,203	1,823
Unknown Age	242,577	12,338	40,303	7,611	14,824	8,117	1,998
Total	1,017,001	24,013	113,303	24,343	36,758	21,382	6,445

Data Source VAERS Published by CDC - https://wonder.cdc.gov/
1 - Data Published from Dec 13, 2020 to Dec 17, 2021 (570 Days)

- The Vaccine Adverse Events Reporting System (VAERS) has a one-week delay in data publishing.
- What this means is that for data made available to the public on January 7, 2022, the data being published only totals through what is known on December 31, 2021.
- Additionally, we do not know if data backlogs exist. So, the data available is incomplete.

10. For data released on January 7, 2022, but collected through December 31, 2021, we know the following:

- Based upon my independent analysis of the data provided, at least 21,382 deaths have occurred in the United States directly attributed to the experimental COVID inoculations.
- Additionally, at least 6,445 of the 21,382 deaths have occurred within 48 hours of inoculation, which is a safety signal that suggests definitive causation in these cases.
- Finally, when analyzing the data available in VAERS it is very concerning that a significant percentages of deaths (38.0%) are entered with an 'Unknown Age'.

11. This is significant because under Emergency Use Authorization, medical providers are required by law to report all adverse events, including death, to VAERS, so the vast majority of these records are entered by medical providers.

12. "The reporting requirements for COVID-19 vaccines are the same for those authorized under emergency use or fully approved. Healthcare providers who administer COVID-19 vaccines are **required by law** to report the following to VAERS:

- Vaccine administration errors, whether or not associated with an adverse event (AE).
 - If the incorrect mRNA COVID-19 vaccine product was inadvertently administered for a second dose in a 2-dose series, VAERS reporting **is** required.
 - If a different product from the primary series is inadvertently administered for the additional or booster (third dose), VAERS reporting **is** required.
 - **VAERS reporting is not required for the following situations:**
 - If a mixed series is given intentionally (e.g., due to hypersensitivity to a vaccine ingredient)
 - Mixing and matching of booster doses (as of October 21, 2021, mixing and matching of booster doses is allowed)
- Serious AEs regardless of whether the reporter thinks the vaccine caused the AE. Serious AEs per FDA are defined as:
 - Death
 - A life-threatening AE
 - Inpatient hospitalization or prolongation of existing hospitalization
 - A persistent or significant incapacity or substantial disruption of the ability to conduct normal life functions
 - A congenital anomaly/birth defect

- An important medical event that based on appropriate medical judgement may jeopardize the individual and may require medical or surgical intervention to prevent one of the outcomes listed above
- Cases of Multisystem Inflammatory Syndrome
- Cases of COVID-19 that result in hospitalization or death

<https://vaers.hhs.gov/reportevent.html>

13. If we reduce data analysis to the case reports available in VAERS, we can prove that at least 21,282 deaths have occurred in connection with administration of the experimental COVID inoculations.
14. However, it was known prior to COVID that less than 1% of actual vaccine related injuries were reported to VAERS by medical providers even though they are required to report by law all vaccine injuries.
15. “Adverse events from drugs and vaccines are common but underreported. Although 25% of ambulatory patients experience an adverse drug event, less than 0.3% of all adverse drug events and 1-13% of serious events are reported to the Food and Drug Administration (FDA). **Likewise, fewer than 1% of vaccine adverse events are reported.**”
<https://digital.ahrq.gov/sites/default/files/docs/publication/r18hs017045-lazarus-final-report-2011.pdf>
16. While this is certainly a significant finding, it is difficult to reasonably conclude, from this alone, that less than 1% of experimental COVID inoculation injuries are being reported due to the legal requirement to report and additional pressure created by this unrelenting crisis.
17. Therefore, we are forced to seek additional analysis to determine what level of underreporting is currently taking place.
18. For that my research has taken me to two extremes of underreporting for analysis.
19. Looking at the potential high end of the extreme of underreporting for analysis, my research points to the Columbia University study published by Pantazatos and Seligmann.

20. “Comparing our estimate with the CDC-reported VFR (0.002%) suggests **VAERS deaths are underreported by a factor of 20**, consistent with known VAERS under-ascertainment bias.”

https://www.researchgate.net/publication/355581860_COVID_vaccination_and_age-stratified_all-cause_mortality_risk

21. Looking at the potential low end of the extreme of underreporting for analysis, my research points to a CMS whistleblower who has provided testimony under penalty of perjury to the United States District Court for the Northern District of Alabama. [Case 2:21-cv-00702-CLM].

22. “Over the last 20 years, she [Jane Doe] has developed over 100 distinct healthcare fraud detection algorithms for use in the public and private sectors. In her expert opinion, **VAERS under-reports deaths caused by the Vaccines by a conservative factor of at least 5.**”

23. As a result, this provided me a reasonable range with which to establish the extent of VAERS underreporting in order to better understand the likely scope of actual deaths related to the experimental COVID inoculations.

24. That range of underreporting is by a factor of 5 to 20 times.

25. Extrapolating the Columbia University study and the sworn testimony of Jane Doe whistleblower, who has 20 years of experience detecting healthcare fraud, it is reasonable to arrive at the following conclusions:

- Underreporting to VAERS is occurring.
- Adjusting for underreporting could mean that VAERS deaths as of December 31, 2021 could be **as high as $21,382 \times 20 = 427,640$ deaths overall.**
- Additionally, VAERS deaths within 48 hours post inoculation, as of December 31, 2021, could be **as high as $6,445 \times 20 = 128,900$ deaths within 48 hours** post experimental COVID inoculation.
- Adjusting for underreporting could mean that VAERS deaths as of December 31, 2021 could be **as low as $21,382 \times 5 = 106,910$ deaths overall.**

- Additionally, VAERS deaths within 48 hours post inoculation, as of December 31, 2021, could be as low as $6,445 \times 5 = 32,225$ deaths within 48 hours post experimental COVID inoculation.

26. Further, I reviewed the **5.3.6 CUMULATIVE ANALYSIS OF POST-AUTHORIZATION ADVERSE EVENT REPORTS OF PF-07302048 (BNT162B2) RECEIVED THROUGH 28-FEB-2021** published by Pfizer, for the benefit of its Regulatory Agencies, among others, in which they review post adverse event data for their experimental COVID inoculation from its temporary emergency use authorization in December 2020 through February 28, 2021. In that brief timespan, Pfizer reported 1223 deaths and 9,400 unknown outcomes, along with 11,361 more who were “not recovered” at time of report.
27. Adjusting for underreporting, as above, means that the range of fatalities from the Pfizer injection alone was between 6,115 and 24,460. All fatalities occurred in less than 3 months and without factoring in fatalities from the other two manufacturers during the same time range.
28. Adjusting for underreporting, as above, means that the range of unknown outcomes from the Pfizer injection alone was between 47,000 and 188,000. All in less than 3 months and without factoring in unknown injuries from the other two manufacturers during the same time frame.

I declare under the penalty of perjury that the foregoing is true and correct to the best of my information, knowledge and belief.

Dated: January 07, 2022



HENRY L. EALY, III, N.D.
Founder, Energetic Health Institute
Lead Researcher & Author, COVID Research Team