



Stepping on the Bureaucrat's Cape

by Richard W. Rahn

CONGRESS MUST REIN IN SPECIAL IMMUNITIES FOR FEDERAL EMPLOYEES

Should government employees have privileges and legal immunities that the rest of us do not have? The government shutdown battle is, in part, a dispute about the extra subsidies members of Congress and their staffs are slated to get from Obamacare.

Civilian government employees often whine about the lack of respect they receive from their fellow Americans. Part of the antipathy many feel toward the government class is because they, on average, are paid more, receive more benefits, are almost impossible to fire, and are rarely penalized for abusive, rude and even illegal conduct that would get civilian workers fired, fined and, in some cases, sent to jail.

It can be argued that it is unfair to paint all government workers with a charge that they are impertinent slackers when, in fact, many government employees work very hard and take many risks to help their fellow Americans. If civilian government employees were put on a more level playing field, where the real slackers and abusers were either fired or forced to shape up, the respect for all government employees would grow. Most Americans have a high respect for those in the military because people understand the real

risks they take, and they also understand that the military does not tolerate incompetence or misbehavior regardless of rank. For example, two generals have just been dismissed because they failed to adequately protect some of their troops in Afghanistan.

If someone unfairly causes a person to suffer loss or harm resulting in a legal liability, it's known as a "tort." The victim may recover the loss as damages in a lawsuit. Legal injuries may be physical, emotional, economic or reputational, as well as violations of privacy, property or constitutional rights. If someone commits a tort in the course of his employment, both the employee and the employer may be sued. However, if a tort is committed by a government employee for approximately the same offense, it is far harder to sue the government because of the doctrine of "sovereign immunity." Likewise, it is far harder to sue the government employee because of the concept of "official immunity" and certain laws designed to protect government employees. The Federal Tort Claims Act specifies and authorizes which tort suits can be brought against the U.S. government.

If a top executive of a corporation misrepresents the financial condition of the company or fails to produce properly audited financial statements, the executive is subject to both civil and criminal sanctions by the government, as well as stockholder lawsuits. Yet, government officials routinely fail to produce timely, adequate and correct financial statements — particularly regarding unfunded liabilities — without fear of legal action.

Government agencies are legally required to keep confidential much of the information they obtain about citizens, such as taxpayer records. Yet we now know that someone leaked tax information about some of Mitt Romney's donors and organizations opposed to the Obama administration's policies. Private organizations and their employees would face major fines and other penalties for doing such things. Yet the Internal Revenue Service and the Justice Department continue their cover-ups of official and employee misbehavior — with almost no fear by the individuals involved in these misdeeds.

The federal government is required to administer laws and regulations on an impartial basis, without regard to one's race, sex, religion or political beliefs. There are numerous

cases in which the IRS, Justice and other government agencies have violated this requirement. Regulatory agencies are required to do proper cost-benefit analyses for new regulations, but many of the agencies ignore the requirement, and no one is held accountable.

Too many executives in government who have the responsibility for making sure government employees follow the law fail to do so because they are either complicit in the wrongdoing or think it is not in their political interest to do so. The conflict of interest between those who are supposed to enforce the law and the miscreants is obvious. What can be done?

Congress can and should make it far easier for private parties — individuals, companies or other organizations — to sue individual government employees for their failure to follow the law and for the resulting financial, emotional or reputational harm. Individuals and companies ought to be able to easily sue IRS employees who disclose protected information and who engage in abusive and discriminatory audits. Companies should be able to easily sue individuals in the Environmental Protection Agency, the Consumer Product Safety Commission and other government regulatory agencies who fail to do proper cost-benefit analyses, or who inflict damage on them or their businesses by taking unwarranted actions against them.

Congress has passed several laws to protect civil servants against individual suits out of a concern that employees might refrain from taking action in areas that would expose them to litigation, and the courts have expanded these protections. However, it is obvious that the pendulum has swung too far against private parties, citizens and taxpayers. Congress needs to pass corrective legislation to rein in government employees who engage in lawless, abusive and irresponsible behavior, allowing private suits against them.

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