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President Trump, Using Existing Presidential Powers, Can Ban Public-Sector Unions for Federal Employees in Agencies Related to U.S. National Security (Civil Service Reform Act of 1978)

Through the creation of the Department of Government Efficiency (DOGE), President Trump and his administration have made clear their commitment to increasing the efficiency of government to better serve American families and taxpayers.

One major roadblock to ensuring more efficient use of taxpayer resources is the control that large, public-sector labor union bosses hold over government agencies. Fortunately, the President has already been granted some powers to roll back this control.

The administration can begin its effort to reduce government inefficiency by using the presidential powers to end obstructive collective bargaining efforts at agencies which deal with national security issues, as outlined in the Civil Service Reform Act of 1978.

Attached is a copy of 5 U.S.C. § 7102, which defines the collective bargaining rules for federal workers, and 5 U.S.C. § 7103(b), which defines the President's ability to issue executive orders which may remove agencies or subdivisions from those collective bargaining rules if such body has a "primary function" dealing with national security, intelligence, counterintelligence, or investigative matters.

Also attached are three memos describing how these presidential powers can be used to make the Department of Defense, Department of Veterans Affairs (VA), and Transportation Security Administration (TSA) more efficient while also making America safer.

These agencies are only a start. There are further subdivisions within the Department of Transportation, Department of Homeland Security, Department of the Treasury, Department of State, and other government bodies which can be excluded from inefficient collective bargaining rules under the presidential powers contained in 5 U.S.C. § 7103(b).

Nearly all former Presidents since Jimmy Carter have taken some small, gradual actions to exclude certain national security bodies from collective bargaining regulations. With DOGE's strong focus on government efficiency, the Trump administration has the potential to take greater, more meaningful actions under 5 U.S.C. § 7103(b) than any administration before it. These actions would make government more efficient, make America safer, and make the bureaucracy more answerable to the American people.

5 U.S. Code § 7102 - Employees’ rights

U.S. Code Notes

Each employee shall have the right to form, join, or assist any labor organization, or to refrain from any such activity, freely and without fear of penalty or reprisal, and each employee shall be protected in the exercise of such right. Except as otherwise provided under this chapter, such right includes the right—

(1) to act for a labor organization in the capacity of a representative and the right, in that capacity, to present the views of the labor organization to heads of agencies and other officials of the executive branch of the Government, the Congress, or other appropriate authorities, and

(2) to engage in collective bargaining with respect to conditions of employment through representatives chosen by employees under this chapter.

(Added Pub. L. 95–454, title VII, § 701, Oct. 13, 1978, 92 Stat. 1192.)

5 U.S. Code § 7103 - Definitions; application

U.S. Code Notes

(b)

(1) The President may issue an order excluding any agency or subdivision thereof from coverage under this chapter if the President determines that—

(A) the agency or subdivision has as a primary function intelligence, counterintelligence, investigative, or national security work, and

(B) the provisions of this chapter cannot be applied to that agency or subdivision in a manner consistent with national security requirements and considerations.

(2) The President may issue an order suspending any provision of this chapter with respect to any agency, installation, or activity located outside the 50 States and the District of Columbia, if the President determines that the suspension is necessary in the interest of national security.

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Defend the Defenders: Toward a Union-Free Pentagon

Congress passed the Lloyd-La Follette Act in 1912 in order to protect federal employees from getting fired for speaking with Congress without their supervisors' permissions. This act was a result of executive orders from the Theodore Roosevelt and Taft administrations prohibiting this speech, particularly on matters such as pay and employment conditions.

The result of the Act was that federal employees were allowed to organize together and advocate for better working conditions, though they had no bargaining power.

The Civil Service Reform Act of 1978, however, changed this by stating the rights of federal employees and creating the Federal Labor Relations Authority (FLRA), which supervises the right of federal employees to bargain collectively.

Section 7102 of the Act reads:

> *Each employee shall have the right to form, join, or assist any labor organization, or to refrain from any such activity, freely and without fear of penalty or reprisal, and each employee shall be protected in the exercise of such right.*

Interestingly though, the Act **excludes some employees and agencies**. Employees excluded include members of the armed services and Foreign Service officers in the State Department, Agency for International Development, and the International Communication Agency, among others.

Excluded agencies include the Federal Bureau of Investigation, the Central Intelligence Agency, the Federal Labor Relations Authority, and others.

More interesting though is that the **President can exclude agencies with an order if there is a national security concern:**

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> *(A) the agency or subdivision has as a primary function intelligence, counterintelligence, investigative, or national security work, and*
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> *(B) the provisions of this chapter cannot be applied to that agency or subdivision in a manner consistent with national security requirements and considerations.*

President Donald Trump could therefore exclude an agency if the primary role of the agency is national security as his predecessors have done. Since President Jimmy Carter, all Presidents have excluded agencies from collective bargaining.

For example, on November 19, 1979, **President Jimmy Carter excluded** the Office of Naval Intelligence (Department of the Navy), the Defense Intelligence Agency, and the Defense Investigative Service of the Department of Defense and others from collective bargaining through Executive Order 12171.

President Ronald Reagan likewise amended the Federal Labor-Management Relations Program with four Executive Orders. On January 11, 1982, President Reagan amended

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Executive Order 12171 with Executive Order 12338 and excluded the Atlantic Command Electronic Intelligence Center and the European Defense Analysis Center of the Joint Chiefs of Staff and others. President Reagan also excluded the Joint Special Operations Command by Executive Order 12410 on March 28, 1983. Also, on May 20, 1986, with Executive Order 12559, Reagan excluded the Office of Enforcement and the Office of Intelligence of the Drug Enforcement Administration, among others (On March 23, 1988, he excluded the same agencies with Executive Order 12632 after a judge invalidated Executive Order 12559). Finally, President Reagan issued Executive Order 12666 on January 12, 1989 to exclude the Federal Air Marshal Branch, International Civil Aviation Security Division, Office of Civil Aviation Security of the Federal Aviation Administration, Department of Transportation, and others.

Similarly, **President George H. W. Bush excluded** the Office of Enforcement, U.S. Customs Service from collective bargaining with Executive Order 12671 on March 14, 1989. With Executive Order 12681, President Bush excluded some subdivisions of the National Preparedness Directorate of the Federal Emergency Management Agency on July 6, 1989. He also excluded the Defense Mapping Agency Reston Center, Department of Defense on September 29, 1989 with Executive Order 12693.

On March 11, 1997, **President Bill Clinton excluded** the Naval Special Warfare Development Group with Executive Order 13039. **President George W. Bush excluded** the United States Attorney's Offices and the Criminal Division of the Department of Justice, as well as others on January 7, 2002 through Executive Order 13252. On November 26, 2008, Bush further excluded some subdivisions of the Department of Energy, the Department of Homeland Security, the Department of the Treasury, and others with Executive Order 13840. In his final days in office, **President Barack Obama excluded** some subdivisions of the Department of Defense from collective bargaining through Executive Order 13760 on January 12, 2017.

Americans for Tax Reform and the Center for Worker Freedom therefore urge President Trump to exclude the Department of Defense from this Act.

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The American Federation of Government Employees (AFGE) represents more than 240,000 employees at the Defense Department, the largest federal employer. AFGE is the largest federal employee union and represents 670,000 government workers in the Department of Defense, the Department of Veterans Affairs, the Department of Homeland Security, the Department of Justice, and others. It was founded in 1932 as an affiliate of the AFL-CIO.

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Protect the Protectors: Toward a Union-Free TSA

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Americans for Tax Reform and the Center for Worker Freedom therefore urge President Trump to exclude the Transportation Security Administration (TSA) from this Act.

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The American Federation of Government Employees (AFGE) represents more than 16,000 employees at the TSA. AFGE is the largest federal employee union and represents 670,000 government workers in the Department of Defense, the Department of Veterans Affairs, the Department of Homeland Security, the Department of Justice, and others. tI was founded ni 1932 as an affiliate of the AFL-CIO.

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Support Our Veterans: Toward a Union-Free VA

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Americans for Tax Reform and the Center for Worker Freedom therefore urge President Trump to exclude the Department of Veterans Affairs (VA) from this Act.

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The American Federation of Government Employees (AFGE) represents more than 200,000 employees at the Department of Veterans Affairs. AFGE is the largest federal employee union and represents 670,000 government workers in the Department of Defense, the Department of Veterans Affairs, the Department of Homeland Security, the Department of Justice, and others. It was founded in 1932 as an affiliate of the AFL-CIO. The Service Employees International Union and the National Federation of Federal Employees (NFFE), among others, also represent VA workers.