

The Shutdown and the Safety Gap

THOMAS O. MCGARITY

FEBRUARY 5, 2019

During the 35-day partial government shutdown, many Americans got an overdue civics lesson in all the useful things government does.



AP Photo/Nam Y. Huh

A TSA worker works at O'Hare International Airport in Chicago.

President Trump's recent shutdown of much of the federal government created a safety gap that provides a stark reminder of the extent to which we depend upon the federal government to protect us from very real risks to our persons, our pocketbooks, and our

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shared environment. One silver lining: The 35-day furlough for government workers gave the citizenry a renewed appreciation for the contributions of public servants to safe communities and a well-functioning economy.

Trump capitulated on January 25 as a shortage of Federal Aviation Administration (FAA) air traffic controllers caused lengthy flight delays along the East Coast that affected thousands of passengers. But that was only the most vivid and visible of vital safety functions that were suspended.

Innumerable critical protections were not provided because the employees responsible for providing them were not deemed “essential.” The Food and Drug Administration ceased inspections of foods at high risk for contamination.

The Environmental Protection Agency halted routine inspections of refineries, chemical plants, and other manufacturing facilities.

The National Highway Traffic Safety Administration quit reviewing consumer complaints, suspended new car assessments, stopped compliance testing of existing vehicles, and halted 13 active investigations into automobile defects.

The Coast Guard canceled some of its enforcement missions aimed at ensuring that fishing vessels were in compliance with maritime safety laws.

The Consumer Product Safety Commission stopped analyzing hazards posed by toys, appliances, and other consumer products, and its inspectors were no longer monitoring for dangerous products at the nation’s ports.

The lost protections were not limited to direct threats to health and safety. The Federal Trade Commission (FTC) had to close the “Do Not Call” list that it maintains to prevent irritating robocalls. Victims of identity theft seeking assistance and recourse from the FTC were told that “we are unable to offer this website service at this time.”

About the Author

Thomas O. McGarity holds the Joe R. and Teresa Lozano Long Endowed Chair in Administrative Law at the University of Texas School of Law and is a board member at the Center for Progressive Reform. He is the author of *The Preemption War*.

Furloughed cybersecurity experts at the FTC, the Department of Homeland Security, and the Department of Justice were not monitoring for threats from malevolent actors in foreign countries to the national electricity grid and to trade-secret information on company computers. The State Department had to cancel its 16th annual gathering of experts from 85 nations to share information on export controls and, ironically, on border security.

The agencies responsible for protecting our shared national resources were also hobbled. The Trump administration decided to leave the “iconic areas” in the national parks open to the public, but it furloughed nearly all of the staff who managed and maintained those national treasures. The absence of the familiar park rangers yielded a “Wild West” atmosphere in which off-road vehicles ran rampant in areas designed for hiking, fires burned in restricted areas, poachers killed wild game, garbage cluttered the ground around overfilled trash cans, and human feces piled up near shuttered restrooms. In the famous Joshua Tree National Park, miscreants cut down trees to create new roads in the desert. Bad things happen when there are no cops on the beat.

Congress has frequently enacted laws that require government approval before companies can undertake many kinds of potentially risky behavior. The absence of civil servants to oversee and approve regulated products and activities effectively deprived companies of access to the marketplace.

The Food and Drug Administration stopped accepting new drug applications, and its ongoing approval of a new drug to treat peanut allergies was delayed until the end of the year. Airlines could not add to their fleets or to their routes because the FAA’s 3100 safety inspectors were furloughed.

Without agents from the National Marine Fisheries Service available to debrief onboard observers on commercial fishing vessels, Alaskan fishermen were effectively grounded. The Securities and Exchange Commission stopped approving registration statements that were needed for privately held companies to make initial public offerings to prospective shareholders.

Developers of 5G internet technologies could not get innovative equipment authorized by a closed Federal Communications Commission. And craft brewers were unable to market new seasonal beers because the Bureau of Alcohol, Tobacco and Firearms in the Justice Department must approve the label for each new variety, and its staff was not on the job.

The Forest Service was unable to conduct firefighting training courses for the crews that will be needed to fight this year's wildfires, and it had to cancel projects to clear deadwood and conduct controlled burns to reduce the risk of future fires.

The Federal Emergency Management Agency did not process grants to assist states in preparing for terrorist attacks, and it did not conduct training exercises or planning for this year's hurricane season. Furloughed scientists at the National Weather Service were not updating hurricane forecast models.

The Chemical Safety Board, a small federal agency that investigates the causes of chemical spills, was out of commission throughout the shutdown. Scientists conducting ongoing observations of invasive and endangered species had to halt or delay their studies. Climate change research sponsored by the Department of the Interior was crippled. And critical economic data upon which the Federal Reserve Board bases interest rates were unavailable for more than a month.

Strategic Use of Callbacks

As the shutdown began to inflict real suffering among the president's favored constituencies in the business community and rural America, the Trump administration scrambled to limit that pain with ad hoc declarations that selected federal workers were "essential." In mid-January, the administration called back furloughed workers in the IRS to process tax returns, in the Federal Aviation Administration to inspect airplanes, in the Interior Department to facilitate offshore oil-drilling leases, and in the Food and Drug Administration to conduct safe food inspections.

Not all of these callbacks were legitimate under the Antideficiency Act, which limits callbacks to situations that involve immediate threats to human life or property. House

Democrats wanted to know how the absence of drilling rigs off the Atlantic coast threatened safety or property. One might also wonder why providing “additional administrative services to farmers and ranchers” in the Department of Agriculture’s Farm Service Agency met the statutory test while inspecting oil refineries for air pollution violations did not.

The federal employees who staffed the clock tower at the federally owned building housing the Trump International Hotel were apparently essential under the Department of the Interior’s classification scheme, while the park rangers at Joshua Tree National Park were not.

When the Occupational Safety and Health Administration (OSHA) sent a final rule gutting the Obama administration’s injury-reporting regulations to the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget, it was quickly approved for publication in the *Federal Register*, despite the fact that most of OIRA’s staff had been furloughed. Apparently, deregulatory governmental actions that reduce health and environmental protections were essential, but actions that advance such protections were not.

A Debilitated Federal Workforce

The lengthy shutdown and the president’s obvious contempt for most civil servants deeply eroded the long-standing bargain that has in the past attracted highly qualified professionals to public service. The civil service has many attractive benefits, including access to good medical insurance, reasonable working hours (for the most part), generous retirement benefits, and a measure of job security. The shutdown, however, displayed a considerable downside to government employment.

Having devoted your career to serving the public, you may find yourself forced to work overtime during a

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shutdown during which you receive no pay. And who needs that kind of frustration when you can work in the private sector for twice the pay?

As air traffic controllers continued to work 10-hour days with no pay to ensure the safety of air travel, a union representative explained that they were “coming to work stressed because they can’t pay the bills and at the same time fatigued because they are working around the clock to try to make ends meet.” The union could not “calculate the level of risk currently at play, nor predict the point at which the entire system will break.”

Trump administration officials showed little concern for the plight of federal workers during the shutdown. Billionaire Secretary of Commerce Wilbur Ross was mystified by the financial hardship of federal workers making \$28,000 per year. He ventured that banks should be happy to provide loans at low interest rates to furloughed employees because they were virtually guaranteed back pay.

In the real world, however, workers were hocking precious possessions at pawnshops at interest rates of 20 percent or more. In the Washington, D.C., region, furloughed federal workers were lined up at food banks and at state unemployment offices. Trump convinced himself that most of the civil servants who remained on the job were happy to work for free because they supported his position on the border wall.

The shutdown was the last straw for many longtime civil servants who decided to seek other opportunities or simply to retire. Indeed, the shutdown may have triggered the long-expected “tsunami” of baby boomer retirements from the federal government, leaving large gaps in expertise that will be very difficult to fill. Young scientists, engineers, policy analysts, and lawyers eager to serve the public may now see federal-government service as a risky occupation in which they are constantly subject to shutdowns and disparaged as minions of a malevolent “deep state.” The net result will be a debilitated federal workforce that will find it even harder to provide the protections upon which we all depend.

All of this was good news to small-government Republicans in the White House, Congress, and conservative think tanks, who saw the shutdown as a validation of their belief that the country could get by with many fewer federal employees. Convinced that most federal

workers do nothing of any value, they were not chagrined to see civil servants standing in food lines and departing for the private sector. The federal workforce had already shrunk by 17,000 employees during Trump's first two years in office due to a hiring freeze and attrition, and they applauded when the president announced just before Christmas that he would not be seeking cost-of-living increases for federal employees in 2019.

Recognizing the Value of Government

It turns out that the vast majority of Americans disagreed. By mid-January, most of us were well aware of the risks that the shutdown was posing to our safety, our treasured national parks, and our national economy. As his disapproval ratings approached 60 percent, President Trump relented and agreed to sign a continuing resolution re-opening the federal government and providing back pay to federal workers. While the president's capitulation outraged Ann Coulter and other immigrant bashers, most Americans and all federal employees breathed a deep sigh of relief.

By the time that the shutdown ended on January 25, most Americans had a renewed appreciation for the federal government and the vital role that federal regulatory programs play in protecting us from harm, in assisting victims of misfortune, and in facilitating a smoothly running economy. While die-hard free-marketeers still mimic Ronald Reagan's unsupported claim that government is the problem, the shutdown once again made it painfully apparent that effective government is needed to take the rough edges off a hyper-capitalist economy.

We may never know how much economic loss the shutdown caused, because much of the data necessary to estimate its cost was not collected during the shutdown. The Congressional Budget Office estimated the net loss at around \$3 billion, but the number could be much higher. What we do know is that 300 million work hours evaporated into thin air over a little more than a month. FDA officials predicted that it would take a year to catch up with neglected approvals of new drugs. And it may take years for some national parks to recover from the damage they suffered when park rangers were on furlough.

Federal workers are back on the job for three weeks, and Congress has enacted legislation providing for back pay totaling more than \$2.8 billion for services rendered and not rendered. But we should not easily forget the risks to our pocketbooks, our health, our safety, and our shared environment that shutdowns invariably create.

Many Senate Republicans made it clear to Majority Leader Mitch McConnell that they have no stomach for another shutdown on February 15. Yet avoiding another shutdown over Trump's symbolic wall is not a sufficient response to this colossal waste of monetary resources and threat to the continued viability of the civil service. Congress should enact legislation ensuring that President Trump and future presidents cannot hold federal employees hostage to future shutdowns.

The shutdown demonstrated to all but the most committed conservative ideologues that a properly functioning federal government is essential to a well-functioning society. It's time to show our federal agencies and the public servants who work for them a little respect.