

# Will Congress Defend The Constitution?

by Carl Osgood

The U.S. Congress has a make-or-break opportunity to live up to its Congressional responsibilities by shooting down Secretary of Defense Donald Rumsfeld's "emergency" legislation, which would effectively scrap the 100-year-old Civil Service system, eliminate collective bargaining rights, and greatly weaken protections against discrimination, and strong-arming of whistle blowers, among the nearly 700,000 civilian Defense Department employees. At stake in the fight over H.R. 1836, The Civil Service and National Security Personnel Improvement Act, is more than the fate of Federal employees. The larger issue is whether Congress will stand up on a bipartisan basis to defeat a flagrantly unconstitutional power-grab by the same Straussian gang in the Executive Branch that was behind the Iraq War and the drive to permanently transform the United States from a Constitutional Republic into a caricature of the Napoleonic or Roman Empire.

The Rumsfeld-Wolfowitz cabal at the Pentagon is dead set on ramming through this piece of fascist legislation (Adolf Hitler imposed almost the identical civil service "reforms" in Nazi Germany in Spring 1933, as part of his consolidation of dictatorial power). In a clear signal of this, Deputy Secretary of Defense Paul Wolfowitz himself appeared before the House Armed Services Committee on May 1, and the House Government Reform Committee on May 6, the day before that committee's markup. Other big guns the Pentagon deployed to turn up the heat on Capitol Hill included Chairman of the Joint Chiefs of Staff Gen. Richard Myers, Vice Chairman Gen. Peter Pace, Chief of Naval Operations Adm. Vern Clark, and Undersecretary of Defense for Personnel and Readiness David Chu. The four hearings—an April 29 hearing before the Government Reform Committee's Civil Service Subcommittee, the May 6 hearing of the full committee, and two hearings of the Armed Services Committee on May 1 and May 2—were highlighted by sharp attacks by the Democrats of both committees, who attacked both the bill's railroad speed and its content.

That railroad speed was shown by the fact that the bill was first sent up by the Defense Department on April 11, just as the Congress was trying to get out of town for the Easter recess. Members of the House, upon returning from the recess on April 28, were confronted with a schedule that called for a Civil Service Subcommittee and a full committee markup

in two days. In an April 25 letter to chairman Tom Davis (R-Va.), ranking Democrat Henry Waxman (Calif.) had written that, because of the magnitude of the reforms contemplated in the bill, "It is clear to me that additional hearings are necessary, as well as consultations with outside experts and affected groups, in particular DoD employees." He noted that the start-

## Rumsfeld's 'Notverordnung'

*This statement was released by the LaRouche in 2004 Presidential campaign committee on May 10, 2003.*

On the subject of the proposed "Defense Transformation Act of the 21st Century," which has been presented on behalf of Secretary of Defense Donald Rumsfeld:

1. Our U.S. Federal Constitution was crafted under the authority of that natural law stipulated by our 1776 Declaration of Independence and Preamble of that Constitution. The separation of powers is the principal functional distinction of that Constitution as a whole. In the matter of the proposed legislation, the authorities demanded for Secretary of Defense Donald Rumsfeld would be a grave material breach of that Constitution, a leak in the dike which opens the way for the kinds of dictatorial powers assumed by the Adolf Hitler regime on Feb. 28, 1933, powers from which all the principal crimes of the Hitler regime ensued.

2. In this matter, we can not be blind to the fact that leading members of the present Administration, such as Vice-President Cheney and Secretary Rumsfeld, have associated themselves with a philosophy of unconstitutional and other insurrectionary practices, formerly identified as "Synarchist: Nazi-Communist." The stated premises of the most clearly objectionable features of the draft legislation are also peculiarly consistent with the Nazi legal doctrine of Carl Schmitt, a notorious confederate of the late Professor Leo Strauss and Alexandre Kojève whose synarchist connections and style in philosophy are those of relevant high-ranking officers of Secretary Rumsfeld's Department of Defense.

The relevant language presented within the proposed legislation should therefore be outlawed, root and branch.

3. Such features of the proposed legislation might be grounds to seek impeachment of those who are considered as conspiring to destroy our Constitution through imitation of Nazi-like emergency powers.

—Lyndon H. LaRouche, Jr.

ing point for the authorities being demanded by the Pentagon are those granted to the Department of Homeland Security. "Before we grant these requests," he added, "we need to evaluate how well the Homeland Security Department implements its flexibilities, whether they are working, and what problems have arisen."

The entire package includes more than just civil service reforms. It also "reforms" the military personnel system—including giving the Secretary of Defense more control over promotion and assignment of flag-rank military officers—the defense acquisition system, and the Pentagon's internal management system. The civilian personnel provision in the bill would give the department the unilateral ability to develop its own personnel system, exempt from most of the laws governing the civil service, including those portions of the law that provide for performance appraisal, pay rates and classification systems, collective bargaining rights, and due process and appeal rights. Those authorities were already given to the Homeland Security Department, but the Pentagon also wants more authority over the hiring and firing of employees.

In an unusual show of unity, the Democrats on both the Armed Services and Government Reform Committees came out swinging against the bill. The May 6 Government Reform Committee hearing was particularly tumultuous. Nearly all of the committee's Democrats showed up to grill Wolfowitz, and a half-dozen Republicans showed up to express grave concerns about the race to pass the bill.

## Wolfowitz Lies to Committee

Wolfowitz's "Straussian" performance (committee members repeatedly caught him lying about the content of the bill, and simply contradicted him by reading from the draft text) was interrupted by House Minority Whip Steny Hoyer (D-Md.). Hoyer, whose district is dominated by government workers, was allowed to give his own testimony strongly opposing the bill. He compared the mad race to ram it through to the lengthy and careful review that preceded the 1978 Civil Service Reform Act. Hoyer warned that Rumsfeld and Wolfowitz are planning to ram the bill through the House committees and then attach it to the defense authorization bill, so that it would never be taken up as a self-standing piece of legislation. He charged that the DoD intends to have the bill passed and signed by President Bush by Memorial Day.

Armed Services Committee Democrats have been equally energetic in their protests. At the May 1 hearing, Rep. John Spratt (R-S.C.) said, "I keep coming across this phrase in the draft, 'at the Secretary's sole, exclusive and unreviewable discretion.' In other words, the Secretary is isolated and insulated from any kind of challenge. Sole and unreviewable discretion. Those are strange words for the government of the United States." Spratt said to Undersecretary Chu, "I'm telling you, this is a hell of a grant of authority."

Rep. Jim Cooper (D-Tenn.), also a member of the Government Reform panel, said, "Because there's so much sole,

exclusive, and unreviewable discretion here, I worry that we're abrogating our Constitutional responsibilities." When the Government Reform Committee met, on May 7, to mark up the bill, Cooper offered an amendment to strike the portion giving the Secretary of Defense such authority over the civilian personnel system. He noted that the responsibilities of the Congress are derived from the Constitution and that "we're not supposed to delegate that authority, but that's precisely what we're being asked to do." Cooper's amendment was defeated on a party-line vote of 16-24.

The Constitutional issue also came up with respect to the military personnel provision. Under the bill, the four-star generals and admirals would literally serve at the pleasure of the Secretary of Defense, for as long or as short a time as he would like to keep them on. Lawrence Korb, the director of national security studies at the Council on Foreign Relations, and a former Reagan-era defense official, told the May 2 Armed Services Committee hearing that senior military officers "serve the Constitution. They serve both Houses of Congress as well as the Executive Branch." He told the committee, "You have the power . . . to raise and support armies, provide and maintain a navy, as well as to declare war; and you need their honest opinion."

### House Version on Fast Track

At least a handful of labor unions have been noisy, as well. The American Federation of Government Employees packed the April 29 hearing of the Civil Service Subcommittee. AFGE president Bobby Harnage told the subcommittee that the DoD proposal "erases decades of social progress in employment standards, punishes a workforce that has just made a crucial contribution to our victory in Operation Iraqi Freedom, and takes away from Congress and affected employees the opportunity they now possess to have a voice in crafting and approving the personnel and other systems of the Department of Defense." He added that "if this legislation is enacted, each individual Secretary of Defense, in cooperation with the President, will effectively own the Department of Defense as if it were a private concern."

However, so far, the runaway legislative train is not slowing down, at least in the House. On May 7, the Government Reform Committee passed a slightly amended version of H.R. 1836 on a straight party-line 24-18 vote. Throughout the markup, Chairman Davis kept assuring the Democrats that there was no Constitutional problem with the bill. However, as Waxman and others pointed out, there is absolutely no language in the bill preventing the Defense Department from abusing the authority granted it.

All that remains is the final disposition of the legislation. It could go straight to the House floor, through the Rules Committee, for passage as a free-standing bill; or it could be added to the Fiscal 2004 defense authorization bill. Either way, it's likely to be muscled through the House by the GOP. What is completely unclear is the fate of the bill in the Senate.

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## Documentation

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# Testimony on Rumsfeld's 'Emergency Legislation'

### Rep. Henry Waxman (D-Calif.) to the May 6 Government Reform Committee hearing:

Mr. Chairman, I'd like to thank you for holding this hearing. The Bush Administration's proposal to rewrite the rules for civilian employees at the Department of Defense is breathtaking in its scope and implications. . . . We're working at a break-neck pace on a bill that will directly affect almost 700,000 civilian employees at the Defense Department.

Why, you might ask, are we doing this? No one seems to know. At a subcommittee hearing last week, I asked Undersecretary of Defense David Chu how the current personnel system had hindered DoD's war efforts in Iraq. He wasn't able to give me any examples. When Dr. Chu was asked whether Secretary Rumsfeld would consider delaying consideration of the bill, Dr. Chu pointed to "the three weeks it took our troops to get from the Kuwait border to Baghdad." Dr. Chu added that the Secretary "is not someone who is patient with a long, indecisive process."

In other words, now that the Defense Department has marched through Iraq in three weeks, it intends to do the same with Congress.

I might understand this better if we at least knew what DoD was going to do with the enormous flexibilities that it's seeking. But we have virtually no idea. Basically, the DoD proposal is nothing more than a blank check. DoD is asking to be exempted from 100 years of civil service laws enacted specifically to prevent a patronage system. Yet the Department isn't telling us how it's going to replace these laws. That's not the right way to deal with one of the most sweeping civil service reforms in history. . . . I urge my colleagues to slow down this runaway legislative train.

### House Minority Whip Steny Hoyer (D-Md.) to the May 6 Government Reform Committee hearing:

Thank you Mr. Chairman, and members of the committee, for the opportunity to present to you my views on the Civil Service and National Security Personnel Improvement Act.

I am dismayed by the manner in which a civil service reform of this magnitude is being rushed through the legislative process. It is shameful that we will give no more than cursory consideration to legislation that will strip from more than a third of our Federal civilian employees, their most basic worker protections.

The last piece of legislation to affect this many Federal

employees was the 1978 Civil Service Reform Act; and the process by which it was developed and considered could not be more different than what we see today. Months prior to submitting his proposal to the Congress, President Carter established a working group to study personnel policies. The group heard from more than 7,000 individuals, held 17 public hearings and scores of meetings, and issued a three-volume report. Upon subsequent introduction of the legislation, House and Senate Committees held 25 days of hearings. . . .

This thorough, open, and fair process resulted in civil service reform legislation that garnered near-unanimous bipartisan support in both chambers.

The contrast to the current process could not be more clear. This measure was conceived by a handful of the President's closest advisors without any public input; regrettably, not a single Federal employee group was consulted. Since introduction of the legislation last week, the House has scheduled a couple of hearings; a handful of witnesses will provide testimony; and it will likely be attached to the Defense Authorization bill and approved by the full House prior to the Memorial Day recess. But why the urgency to enact such sweeping reforms? . . .

But this bill is even more objectionable for what it does than for how it came to be. This proposal will have the chilling effect of undoing decades of some of the most important worker protections enacted by Congress. Among its most egregious provisions, the legislation grants the Secretary of Defense the authority to strip Federal workers of their collective bargaining rights, deny employees their right to appeal unfair treatment, grant supervisors complete discretion in setting salaries and determining raises, and abolish rules requiring that reductions-in-force be based on seniority and job performance.

**Deputy Secretary of Defense Paul Wolfowitz to the May 6 Government Reform Committee hearing:**

As we have seen so vividly in recent days, lives depend, not just on technology, but on a culture that fosters leadership, flexibility, agility and adaptability. To foster these qualities and bring DoD into the 21st Century, we need legislative help. One of the key areas in which we need your help, is in transforming our system of personnel management so that we can gain more flexibility and agility in how we handle the more than 700,000 civilians who provide the Department vital support, or to deal efficiently with those who don't. The ability to do so is nothing less than a national security requirement, because it goes straight to how well we will be able to defend our country in the years to come. . . .

In an age when terrorists move information at the speed of an e-mail, money at the speed of a wire transfer, and people at the speed of a commercial jetliner, the Defense Department is still bogged down, to a great extent, in the micro-management and bureaucratic processes of the industrial age, when the world has surged ahead into the information age.