



HOW NOT TO REFORM GOVERNMENT

**An Article Prepared by
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ABOUT THE AUTHOR

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This article should be of interest to the Executive Office of the President, senior management of the Postal Service, congressional committees and staff, the Academy, and private sector organizations and interest groups. Murray Comarow published a prior paper, "The Demise of the Postal Service?" in October 2002.

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HOW NOT TO REFORM GOVERNMENT

There exists a government agency that employs almost three-fourths of a million people. It is vital to the existence of thousands of private sector enterprises that employ some nine million workers. It represents over eight percent of the national economy. It touches virtually every home and business every day. It is the U.S. Postal Service, and it is in big trouble, largely due to external forces. Few Americans know that. The Congress and the White House know it and are about to make things worse, as they did in creating the Department of Homeland Security and “reforming” the Internal Revenue Service.

Both the Postal Service’s Board of Governors and a 2003 presidential commission said it must be reformed if it is to survive. Comptroller General David Walker has placed it on a “High Risk” list, calling it “unsustainable.” Congressional committees have been working on reform for the last eleven years. The House passed a reform bill, H.R. 22, on July 26, 2005. The Senate passed a similar bill, S. 662, on February 9, 2006. (The Senate accepted the “H.R. 22” designation, dropping “S. 662,” so I will employ “H.R. 22” for this article.) Differences between the bills are to be ironed out in conference. If enacted without substantial change, H.R. 22 is likely to have a severely negative impact on all who rely on the mail.

Both versions of H.R. 22 were publicly supported by most mailers. I say “publicly” because some of their leaders have privately expressed serious concerns. One described the House bill as an abomination, adding that the Senate bill was not quite as bad. Yet he and others in the same camp publicly acclaimed passage of both bills. Of the two largest postal unions, one supports H.R. 22, the other opposes it. Of the two postmasters associations, the larger supports the bills, the other has not taken a position. Postal competitors such as the United Parcel Service are pleased with the bills. Think about that.

On May 20, 1996, in a Washington Post op-ed piece, several colleagues and I argued that the Postal Service should be reformed. Indeed, it must be if it is to continue to provide good and affordable universal service. The 1970 statute which changed the old patronage-saturated, tax-supported Post Office Department was a huge step forward. The USPS is self-supporting and patronage is forbidden by the 1970 law. The Congress demanded then, and has continued to demand ever since, that the Postal Service operate like a business. Trouble is, it can’t. The same 1970 law created a regulatory agency, the Postal Rate Commission (PRC), that effectively decides the price of stamps. (The nine postal governors can reverse the PRC, but only under certain conditions and only if they are unanimous. Happens about every ten years.)

The same statute provides for collective bargaining on wages. If there is a wage impasse, the dispute goes to an independent arbitrator who decides how much postal workers will be paid. No other U.S. government agency is burdened with this procedure. Arbitrators are not responsible for the financial well-being of the agency, yet they, not postal managers, control eighty percent of costs. Any move to merge postal facilities, or close

them, must run legal and political gauntlets, but Congressional pressure to cut costs and be businesslike continues unabated. The process is daunting.

The current reform bills had their roots in the House of Representatives, spearheaded by Congressman John McHugh, eleven years ago. The drafts, amendments, hearings, and reports fill many linear feet of shelves, but diverse interests within the mailing community, and the clashing goals of mailers, unions, postmasters, and competitors throttled progress. The Postal Service itself stood on the sidelines much of that decade, having decided that it would waste whatever political capital it had in a futile effort to seek relief from its statutory constraints.

In that atmosphere, I and a few others began to beat the drums for a presidential commission, a step I would not normally favor. Most such commissions fail, either by appointing the wrong people, or by ill-defined objectives, or by design. Some do succeed, however, and since the normal political process was in gridlock, we presented our views to the Clinton and Bush administrations, to postmasters general and postal governors, and to the mailing community in articles and speeches.

As governors and stakeholders became aware that standing pat was a recipe for disaster, pressure on the White House mounted, and on December 11, 2002, the President established a bipartisan commission. Its July 31, 2003 report included a number of useful and sensible recommendations, and some that gave me concern, but the latter are not pertinent to this essay. What is pertinent is that on February 7, 2006, two and a half years after their report, seven of the nine presidential commission members (“The Seven”), signed a letter to Senate and House leaders, opposing H.R. 22. The Seven concluded that “the Postal Service has very little control over the majority of its costs,” almost 80 percent of which are labor-connected. Not giving the Postal Service such ability, the commissioners said, would inevitably diminish universal service or transfer postal costs to taxpayers.

Even more important, they charged that the bills further eroded the Postal Service’s ability to operate like a business. On February 12, 2006, on another issue, George Will wrote: “Civilization depends on the ability to make even majorities blush, so it is momentous news that shame may be making a comeback, even on Capitol Hill.” For well over three decades Congress has demanded that the USPS act like a business, while making it impossible for it to do so. I have never heard any member of Congress even acknowledge this contradiction, much less seem embarrassed by it.

The Seven also took on the vastly increased power of the Postal Regulatory Commission under H.R. 22. “Giving the regulator the ability to receive, adjudicate, and order remedies on virtually any complaint on any action the Postal Service takes essentially transfers oversight and operational authority from the Board of Governors and management to the regulator. This is a governance model that simply won’t work.”

That seven former commissioners would assemble so long after their report is extraordinary. It received almost no media attention, a sad commentary on the media.

I'm guessing that The Seven came to the fray as a result of bitter accusations by Senators Collins and Carper: "The Postal Service appears to have sunk to a new low." They claimed that the USPS broke its promise "at the last minute" not to oppose the legislation, an assertion flatly denied by postal officials in its January 27, 2006 letter. They charged that the USPS misled Senators "about what's in S. 662 in an effort to block it."

The Board of Governors did express concern about the legislation a number of times since 1996, although not as specifically as it might have. Their September 13, 2005 letter, however, was clear, saying that the Board would prefer no reform at all to the legislation being considered. The Collins/Carper blast struck me as lacking civility; it may have resulted from a communications breakdown, since Board Chairman Jim Miller and PMG Jack Potter are too smart and experienced to put themselves in such an untenable position.

Given the reasoned and bipartisan judgment of the Governors and The Seven, why do most mailers support this legislation? They believe that H.R. 22 will give them relief on the escrow and military pension issues, and that improvements will be made in the Senate-House Conference. Their other reasons will be explored presently, but let us examine those two.

In 2003, Senator Lieberman asked the Government Accountability Office to audit the Postal Service's payments into the Civil Service Retirement System (CSRS). Those payments had been made on the basis of Office of Personnel Management (OPM) invoices. GAO found, and OPM ultimately agreed, that OPM had overbilled the USPS for many years and that, unless changed, future overpayments would take at least \$71 billion more out of customers' pockets.

In the business world, if customers are overcharged, they are reimbursed. Some years ago, that is what Pepco, our local electric power company, did when overcharges were discovered. Not in the political world. Rather, Congress enacted P.L. 108-18 of April 23, 2003 which said that USPS could reduce its yearly payments to the Treasury by \$3.5 billion in each of the next two years. But the overpayments still had to be made. They would be held in an escrow account, pending further action by Congress. We are talking big money. Over \$43 billion would thus be collected from postal customers from 2006 to 2015, according to the Congressional Budget Office.

Here H.R. 22 moves in the direction of fairness: abolish the escrow which holds billions of customer dollars and use the money to run the USPS. This would indirectly reimburse mail users, something Congress should have done in 2003, but is prepared to do now. Not so fast; administration spokesmen state flatly that President Bush will veto any version of H.R. 22 that is not "budget neutral."

Those words have a fine ring to them—the administration as guardian of the budget, a good spin. True meaning: Sorry you were overcharged, you won't get it back. They know very well that in the case of a customer-supported agency, the corollary is that customers should not bear costs that are not directly related to operating that

organization. This amounts to a tax on a specific group, which raises not only questions of fairness, but constitutional issues.

The military pension story is an even more glaring example of a disguised tax. Postal customers took another hit from P.L. 108-18, which Congress now seems willing to fix. It transferred to customers responsibility for paying for time served in the military when employees retired. On the other hand, if a veteran worked for any other federal agency—Interior, Labor, State, etc.—that agency would pay only for the time he worked for it. His military pension share would come out of Treasury, as it should. More big money is involved—\$27 billion—and the Administration’s “budget neutral” spin and veto threat are at work here as well. If the Administration should convince the Senate/House conferees to eliminate or weaken the escrow and military pension provisions of H.R. 22, mailers should withdraw their support and vigorously oppose enactment.

I said earlier that some mailers support the bills for other reasons, one of which is the proposed rate cap. The February 7, 2006 letter from The Seven noted that the bills don’t give USPS “any additional flexibility or authority to reduce costs,” especially labor, which still absorbs 79.1 percent of postal costs. In fact, H.R. 22 tightens the handcuffs on the Board and postal management. The USPS had made the same point earlier. I entirely agree, but they seem to have avoided, or just missed, a deeper flaw. There is no effective rate cap. True, H.R. 22 speaks of one, but so long as an arbitrator is free to set wages as he sees fit, the notion that there is an effective rate cap is a pipe dream. It is not enough to hope or assume that arbitrators would restrain themselves. If they have the authority to set wages, the chances are that they will.

Of course, if concrete language should be added in conference to forbid the arbitrator from breaking the cap, the unions would bring all their guns to bear, as would I, in their place. Postal unions have worked the system well for their members, whose average income, including benefits, is about \$65,000 a year. H.R. 22 would protect all union rights, including health care and pension benefits. This would block the USPS from negotiating these benefits in the course of collective bargaining.

A fourth reason some mailers support H.R. 22 is that they don’t trust postal management, and would like to have a tough Postal Regulatory Commission with greatly expanded powers. In a seminar last fall, a well-known lawyer accused postal management of systematically abusing its customers. Several USPS officials present chose not to respond.

I cannot judge the extent or breadth of this view, but if “perception is reality,” as the cliché goes, it is disturbing. It surely should be tempered by recognizing that USPS has cut 83,000 career jobs from its payroll in the last five years, while delivery points grow at a rate of 1.8 million a year. I have long criticized the Postal Service for its shortcomings as I saw them, but I feel obliged to say that Jack Potter is the best Postmaster General since Winton M. Blount, who deserves major credit for postal reform.

Even assuming, for the sake of argument, that there may be grounds for lack of confidence, an enhanced Postal Regulatory Commission is the wrong response. H.R. 22 authorizes the PRC to impose draconian remedies, including fines, on the USPS. Note to conferees: Who do you think will pay the fines? Clue: Where does the USPS get its money?

Conservative business executives and members of Congress often criticize excessive bureaucratic layering as well as government regulations that impose complex and expensive reporting requirements on their companies. I share these views. I believe that they also apply to the USPS, and will create a torpid and glacial business environment. The ultimate burden will be borne by customers. “Confusion hath now made his masterpiece.”—Macbeth II, iii.

If the Congress should defy the President’s “budget neutral” stance, and is determined to enact H.R. 22, it will make a huge mistake, but at least it should include provisions that

- Permit third party experts to review OPM’s pension and health recalculations.
- Permit USPS to redesign its network with minimal political or procedural interference.
- Permit USPS to employ negotiated service agreements, as businesses do, without prior regulatory approval.
- Permit USPS to pay its executives at more sensible levels.
- Resolve the pay cap/arbitrator issue; it cannot be ignored.

Congress can not responsibly ignore the alarming conclusions of the Board of Governors and The Seven.