

# The Supreme Court is headed toward a radically new vision of unlimited presidential power

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In a series of cases over the past 15 years, the Supreme Court has moved in a pro-presidential direction.

*Geoff Livingston/Getty Images*

President Donald Trump set the tone for his second term by issuing 26 executive orders, four proclamations and 12 memorandums on his first day back in office. The barrage of unilateral presidential actions has not yet let up.

These have included Trump's efforts to remove thousands of government workers and fire several prominent officials, such as members of the Corporation for Public Broadcasting and the chair of the Commission on Civil Rights. He has also attempted to shut down entire agencies, such as the Department of Education and the U.S. Agency for International Development.

For some scholars, these actions appear rooted in the psychology of an unrestrained politician with an overdeveloped ego.

But it's more than that.

As a political science scholar who studies presidential power, I believe Trump's recent actions mark the culmination of the unitary executive theory, which is perhaps the most contentious and consequential constitutional theory of the past several decades.

## **A prescription for a potent presidency**

In 2017, Trump complained that the scope of his power as president was limited: "You know, the saddest thing is that because I'm the president of the United States, I am not supposed to be involved with the Justice Department. I am not supposed to be involved with the FBI, I'm not supposed to be doing the kind of things that I would love to be doing. And I'm very frustrated by it."

The unitary executive theory suggests that such limits wrongly curtail the powers of the chief executive.

Formed by conservative legal theorists in the 1980s to help President Ronald Reagan roll back liberal policies, the unitary executive theory promises to radically expand presidential power.

There is no widely agreed upon definition of the theory. And even its proponents disagree about what it says and what it might justify. But in its most basic version, the unitary executive theory claims that whatever the federal government does that is executive in nature – from implementing and enforcing laws to managing most of what the federal government does – the president alone should personally control it.

This means the president should have total control over the entire executive branch, with its dozens of major governmental institutions and millions of employees. Put simply, the theory says the president should be able to issue orders to subordinates and to fire them at will.



President Donald Trump signs executive orders in the Oval Office next to a poster displaying the Trump Gold Card on Sept. 19, 2025.

*AP Photo/Alex Brandon*

The president could boss around the FBI or order the U.S. attorney general to investigate his political opponents, as Trump has done. The president could issue signing statements – a written pronouncement – that reinterpret or ignore parts of the laws, like George W. Bush did in 2006 to circumvent a ban on torture. The president could control independent agencies such as the Securities and Exchange Commission and the Consumer Product Safety Commission. The president might be able to force the Federal Reserve to change interest rates, as Trump has suggested. And the president might possess inherent power to wage war as he sees fit without a formal authorization from Congress, as officials argued during Bush’s presidency.

## **A constitutionally questionable doctrine**

A theory is one thing. But if it gains the official endorsement of the Supreme Court, it can become governing orthodoxy. It appears to many observers and scholars that Trump's actions have intentionally invited court cases by which he hopes the judiciary will embrace the theory and thus permit him to do even more. And the current Supreme Court appears ready to grant that wish.

Until recently, the judiciary tended to indirectly address the claims that now appear more formally as the unitary executive theory.

During the country's first two centuries, courts touched on aspects of the theory in cases such as *Kendall v. U.S.* in 1838, which limited presidential control of the postmaster general, and *Myers v. U.S.* in 1926, which held that the president could remove a postmaster in Oregon.

In 1935, in *Humphrey's Executor v. U.S.*, the high court unanimously held that Congress could limit the president's ability to fire a commissioner of the Federal Trade Commission. And in *Morrison v. Olson* the court in 1988 upheld the ability of Congress to limit the president's ability to fire an independent counsel.

Some of those decisions aligned with some unitary executive claims, but others directly repudiated them.

## **Warming up to a unitary executive**

In a series of cases over the past 15 years, the Supreme Court has moved in an unambiguously unitarian, pro-presidential direction. In these cases, the court has struck down statutory limits on the president's ability to remove federal officials, enabling much greater presidential control.

These decisions clearly suggest that long-standing, anti-unitarian landmark decisions such as *Humphrey's* are on increasingly thin ice. In fact, in Justice Clarence Thomas' 2019 concurring opinion in *Seila Law LLC v. CFPB*, where the court ruled the Consumer Financial Protection Bureau's leadership structure was unconstitutional, he articulated his desire to "repudiate" the "erroneous precedent" of *Humphrey's*.

Several cases from the court's emergency docket, or shadow docket, in recent months indicate that other justices share that desire. Such cases do not require full arguments but can indicate where the court is headed.

In *Trump v. Wilcox*, *Trump v. Boyle* and *Trump v. Slaughter*, all from 2025, the court upheld Trump's firing of officials from the National Labor Relations Board, the Merit Systems Protection Board, the Consumer Product Safety Commission and the Federal Trade Commission.

Previously, these officials had appeared to be protected from political interference.



President George W. Bush signed statements in 2006 to bypass a ban on torture.

*AP Photo/Pablo Martinez Monsivais, File*

## **Total control**

Remarks by conservative justices in those cases indicated that the court will soon reassess anti-unitary precedents.

In *Trump v. Boyle*, Justice Brett Kavanaugh wrote, “whether this Court will narrow or overrule a precedent ... there is at least a fair prospect (not certainty, but at least a reasonable prospect) that we will do so.” And in her dissent in *Trump v. Slaughter*, Justice Elena Kagan said the conservative majority was “raring” to overturn *Humphrey’s* and finally officially embrace the unitary executive.

In short, the writing is on the wall, and *Humphrey’s* may soon go the way of *Roe v. Wade* and other landmark decisions that had guided American life for decades.

As for what judicial endorsement of the unitary executive theory could mean in practice, Trump seems to hope it will mean total control and hence the ability to eradicate the so-called “deep state.” Other conservatives hope it will diminish the government’s regulatory role.

Kagan recently warned it could mean the end of administrative governance – the ways that the federal government provides services, oversees businesses and enforces the law – as we know it:

“*Humphrey’s* undergirds a significant feature of American governance: bipartisan administrative bodies carrying out expertise-based functions with a measure of independence from presidential control. Congress created them ... out of one basic vision. It thought that in certain spheres of government, a group of knowledgeable people from both parties – none of whom a President could remove without cause – would make decisions likely to advance the long-term public good.”

If the Supreme Court officially makes the chief executive a unitary executive, the advancement of the public good may depend on little more than the whims of the president, a state of affairs normally more characteristic of dictatorship than democracy.

Graham G. Dodds does not work for, consult, own shares in or receive funding from any company or organization that would benefit from this article, and has disclosed no relevant affiliations beyond their academic appointment.

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