

Sec. 1—The President

Clause 1—Powers and Term of the President

to delegate the power to the judiciary.⁵⁰ On the other hand, in the independent counsel case, although acknowledging that the contested statute restricted a constitutionally delegated function (law enforcement), the Court upheld the statute, using a flexible analysis that emphasized that neither the legislative nor the judicial branch had aggrandized its power and that the incursion into executive power did not impermissibly interfere with the President's constitutionally assigned functions.⁵¹

At issue in *Synar* were the responsibilities vested in the Comptroller General by the "Gramm-Rudman-Hollings" Deficit Control Act,⁵² which set maximum deficit amounts for federal spending for fiscal years 1986 through 1991, and which directed across-the-board cuts in spending when projected deficits would exceed the target deficits. The Comptroller was to prepare a report for each fiscal year containing detailed estimates of projected federal revenues and expenditures, and specifying the reductions, if any, necessary to meet the statutory target. The President was required to implement the reductions specified in the Comptroller's report. The Court viewed these functions of the Comptroller "as plainly entailing execution of the law in constitutional terms. Interpreting a law . . . to implement the legislative mandate is the very essence of 'execution' of the law," especially where "exercise [of] judgment" is called for, and where the President is required to implement the interpretation.⁵³ Because Congress by earlier enactment had retained authority to remove the Comptroller General from office, the Court held, executive powers may not be delegated to him. "By placing the responsibility for execution of the [Act] in the hands of an officer who is

⁵⁰ *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 576–78 (1992). Evidently, however, although Justices Kennedy and Souter joined this part of the opinion, *id.* at 579 (concurring in part and concurring in the judgment), they do not fully subscribe to the apparent full reach of Justice Scalia's doctrinal position, leaving the position, if that be true, supported in full only by a plurality.

⁵¹ *Morrison v. Olson*, 487 U.S. 654 (1988). The opinion by Chief Justice Rehnquist was joined by seven of the eight participating Justices. Only Justice Scalia dissented. In *Mistretta v. United States*, 488 U.S. 361, 390–91 (1989), the Court, approving the placement of the Sentencing Commission in the judicial branch, denied that executive powers were diminished because of the historic judicial responsibility to determine what sentence to impose on a convicted offender. Earlier, in *Young v. United States ex rel. Vuitton*, 481 U.S. 787 (1987), the Court, in upholding the power of federal judges to appoint private counsel to prosecute contempt of court actions, rejected the assertion that the judiciary usurped executive power in appointing such counsel.

⁵² The Balanced Budget and Emergency Deficit Control Act of 1985, Pub. L. 99–177, 99 Stat. 1038.

⁵³ 478 U.S. at 732–33.