

## Sec. 2—Powers, Duties of the President    Cl. 2—Treaties and Appointment of Officers

ernment.”<sup>558</sup> In *Humphrey’s Executor v. United States*,<sup>559</sup> the Court seized upon “the nature of the office” concept and applied it as a corrective to the overbroad *Myers* holding.

**The Humphrey Case.**—The material element of *Humphrey’s Executor* was that Humphrey, a member of the Federal Trade Commission, was on October 7, 1933, notified by President Roosevelt that he was “removed” from office, the reason being their divergent views of public policy. In due course, Humphrey sued for salary. Distinguishing the *Myers* case, Justice Sutherland, speaking for the unanimous Court, said: “A postmaster is an executive officer restricted to the performance of executive functions. He is charged with no duty at all related to either the legislative or judicial power. The actual decision in the *Myers* case finds support in the theory that such an office is merely one of the units in the executive department and, hence, inherently subject to the exclusive and illimitable power of removal by the Chief Executive, whose subordinate and aide he is. . . . It goes no farther; much less does it include an officer who occupies no place in the executive department and who exercises no part of the executive power vested by the Constitution in the President.”

“The Federal Trade Commission is an administrative body created by Congress to carry into effect legislative policies embodied in the statute. . . . Such a body cannot in any proper sense be characterized as an arm or eye of the executive. Its duties are performed without executive leave and, in the contemplation of the statute, must be free from executive control. . . . We think it plain under the Constitution that illimitable power of removal is not possessed by the President in respect of officers of the character of those just named, [the Interstate Commerce Commission, the Federal Trade Commission, the Court of Claims]. The authority of Congress, in creating quasi-legislative or quasi-judicial agencies, to require them to act in discharge of their duties independently of executive control cannot well be doubted; and that authority includes, as an appropriate incident, power to fix the period during which they shall continue in office, and to forbid their removal except for cause in the meantime. For it is quite evident that one who holds his office

<sup>558</sup> ANNALS OF CONGRESS 611–612 (1789).

<sup>559</sup> 295 U.S. 602 (1935). The case is also styled *Rathbun, Executor v. United States*, Humphrey having, like Myers before him, died in the course of his suit for salary. Proponents of strong presidential powers long argued that *Humphrey’s Executor*, like *A.L.A. Schechter Poultry Corp. v. United States*, 295 U.S. 495 (1935), both cases argued and decided contemporaneously, reflected the anti-New Deal views of a conservative Court and wrongfully departed from *Myers*. See Scalia, *Historical Anomalies in Administrative Law*, 1985 YEARBOOK OF THE SUPREME COURT HISTORICAL SOCIETY 103, 106–10. Now-Justice Scalia continues to adhere to his views and to *Myers*. *Morrison v. Olson*, 487 U.S. 654, 697, 707–11, 723–27 (1988) (dissenting).