

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

port to establish, in the latter case, a mode of analysis for resolving separation-of-powers disputes respecting the removal of persons appointed under the Appointments Clause.⁵⁷⁰ *Myers* actually struck down only a law involving the Senate in the removal of postmasters, but the broad-ranging opinion had long stood for the proposition that inherent in the President's obligation to see to the faithful execution of the laws was his right to remove any executive officer as a means of discipline. *Humphrey's Executor* had qualified this proposition by upholding "for cause" removal restrictions for members of independent regulatory agencies, at least in part on the assertion that they exercised "quasi-" legislative and adjudicative functions as well as some form of executive function. Maintaining the holding of the latter case was essential to retaining the independent agencies, but the emphasis upon the execution of the laws as a core executive function in recent cases had cast considerable doubt on the continuing validity of *Humphrey's Executor*.

In *Bowsher v. Synar*,⁵⁷¹ the Court held that when Congress itself retains the power to remove an official it could not vest him with the exercise of executive power. Invalidated in *Synar* were provisions of the 1985 "Gramm-Rudman-Hollings" Deficit Control Act⁵⁷² vesting in the Comptroller General authority to prepare a detailed report on projected federal revenue and expenditures and to determine mandatory across-the-board cuts in federal expenditures necessary to reduce the projected budget deficit by statutory targets. By a 1921 statute, the Comptroller General was removable by joint congressional resolution for, *inter alia*, "inefficiency," "neglect of duty," or "malfeasance." "These terms are very broad," the Court noted, and "could sustain removal of a Comptroller General for any number of actual or perceived transgressions of the legislative will." Consequently, the Court determined, "the removal powers over the Comptroller General's office dictate that he will be subservient to Congress."⁵⁷³

⁵⁷⁰ *Bowsher v. Synar*, 478 U.S. 714 (1986); *Morrison v. Olson*, 487 U.S. 654 (1988). This is not to say that the language and analytical approach of *Synar* are not in conflict with that of *Morrison*; it is to say that the results are consistent and the analytical basis of the latter case does resolve the ambiguity present in some of the reservations in *Synar*.

⁵⁷¹ 478 U.S. 714 (1986).

⁵⁷² The Balanced Budget and Emergency Deficit Control Act of 1985, Pub. L. 99-177, 99 Stat. 1038.

⁵⁷³ 478 U.S. at 729, 730. "By placing the responsibility for execution of the . . . Act in the hands of an officer who is subject to removal only by itself, Congress in effect has retained control over the execution of the Act and has intruded into the executive function." *Id.* at 734. Because the Act contained contingency procedures for implementing the budget reductions in the event that the primary mechanism was invalidated, the Court rejected the suggestion that it should invalidate the 1921