

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

Relying expressly upon *Myers*, the Court concluded that “Congress cannot reserve for itself the power of removal of an officer charged with the execution of the laws except by impeachment.”⁵⁷⁴ But *Humphrey’s Executor* was also cited with approval, and to the contention that invalidation of this law would cast doubt on the status of the independent agencies the Court rejoined that the statutory measure of the independence of those agencies was the assurance of “for cause” removal by the President rather than congressional involvement as in the instance of the Comptroller General.⁵⁷⁵ This reconciliation of *Myers* and *Humphrey’s Executor* was made clear and express in *Morrison v. Olson*.⁵⁷⁶

That case sustained the independent counsel statute.⁵⁷⁷ Under that law, the independent counsel, appointed by a special court upon application by the Attorney General, may be removed by the Attorney General “only for good cause, physical disability, mental incapacity, or any other condition that substantially impairs the performance of such independent counsel’s duties.” Because the counsel was clearly exercising “purely” executive duties, in the sense that term was used in *Myers*, it was urged that *Myers* governed and required the invalidation of the statute. The Court, however, said that *Myers* stood only for the proposition that Congress could not involve itself in the removal of executive officers. Its broad dicta that the President must be able to remove at will officers performing “purely” executive functions had not survived *Humphrey’s Executor*.

It was true, the Court admitted, that, in the latter case, it had distinguished between “purely” executive officers and officers who exercise “quasi-legislative” and “quasi-judicial” powers in marking the line between officials who may be presidentially removed at will and officials who can be protected through some form of good cause removal limits. “[B]ut our present considered view is that the determination of whether the Constitution allows Congress to impose a ‘good cause’-type restriction on the President’s power to remove an official cannot be made to turn on whether or not that official is classified as ‘purely executive.’ The analysis contained in our removal cases is designed not to define rigid categories of those officials who may or may not be removed at will by the President, but

removal provision rather than the Deficit Act’s conferral of executive power in the Comptroller General. To do so would frustrate congressional intention and significantly alter the Comptroller General’s office. *Id.* at 734–36.

⁵⁷⁴ 478 U.S. at 726.

⁵⁷⁵ 478 U.S. at 725 n.4.

⁵⁷⁶ 487 U.S. 654 (1988).

⁵⁷⁷ Pub. L. 95–521, title VI, 92 Stat. 1867, as amended by Pub. L. 97–409, 96 Stat. 2039, and Pub. L. 100–191, 101 Stat. 1293, 28 U.S.C. §§ 49, 591 *et seq.*