

Sec. 1—The President

Clause 1—Powers and Term of the President

The counsel is assured full power and independent authority to investigate and, if warranted, to prosecute. Such counsel may be removed from office by the Attorney General only for cause as prescribed in the statute.⁶⁰ The independent counsel was assuredly more free from executive supervision than other federal prosecutors. Instead of striking down the law, however, the Court carefully assessed the degree to which executive power was invaded and the degree to which the President retained sufficient powers to carry out his constitutionally assigned duties. The Court also considered whether in enacting the statute Congress had attempted to aggrandize itself or had attempted to enlarge the judicial power at the expense of the executive.⁶¹

In the course of deciding that the President's action in approving the closure of a military base, pursuant to statutory authority, was not subject to judicial review, the Court enunciated a principle that may mean a great deal, constitutionally speaking, or that may not mean much of anything.⁶² The lower court had held that, although review of presidential decisions on statutory grounds might be precluded, his decisions were reviewable for constitutionality; in that court's view, whenever the President acts in excess of his statutory authority, he also violates the Constitution's separation-of-powers doctrine. The Supreme Court found this analysis flawed. "Our cases do not support the proposition that every action by the President, or by another executive official, in excess of his statutory authority is *ipso facto* in violation of the Constitution. On the contrary, we have often distinguished between claims of constitutional violations and claims that an official has acted in excess of his statutory authority."⁶³ Thus, the Court distinguished between executive action undertaken without even the purported warrant of statutory authorization and executive action in excess of statutory authority. The former may violate separation of powers, but the latter will not.⁶⁴

⁶⁰ 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.

⁶¹ *Morrison v. Olson*, 487 U.S. at 693-96. See also *Mistretta v. United States*, 488 U.S. 361, 380-84, 390-91, 408-11 (1989).

⁶² *Dalton v. Specter*, 511 U.S. 462 (1994).

⁶³ 511 U.S. at 472.

⁶⁴ See *The Supreme Court, Leading Cases, 1993 Term*, 108 HARV. L. REV. 139, 300-10 (1994).