

Sec. 3—Legislative, Diplomatic, and Law Enforcement Duties of the President

statements by Hamilton, Marshall, James Wilson, and Story having to do with the President's power in the field of foreign relations.

The Court rejected the implication with emphasis. There are, it pointed out, "certain political duties imposed upon many officers in the executive department, the discharge of which is under the direction of the President. But it would be an alarming doctrine, that Congress cannot impose upon any executive officer any duty they may think proper, which is not repugnant to any rights secured and protected by the Constitution; and in such cases the duty and responsibility grow out of and are subject to the control of the law, and not to the direction of the President. And this is emphatically the case, where the duty enjoined is of a mere ministerial character."⁷²⁶ In short, the Court recognized the underlying question of the case to be whether the President's duty to "take Care that the Laws be faithfully executed" made it constitutionally impossible for Congress ever to entrust the construction of its statutes to anybody but the President, and it answered this in the negative.

Myers Versus Morrison.—How does this issue stand today? The answer to this question, so far as there is one, is to be sought in a comparison of the Court's decision in *Myers*, on the one hand, and its decision in *Morrison*, on the other.⁷²⁷ The first decision is still valid to support the President's right to remove, and hence to control the decisions of, all officials through whom he exercises the great political powers which he derives from the Constitution, and also to remove many but not all officials—usually heads of departments—through whom he exercises powers conferred upon him by statute. *Morrison*, however, recasts *Myers* to be about the constitutional inability of Congress to participate in removal decisions. It permits Congress to limit the removal power of the President, and those acting for him, by imposition of a "good cause" standard, subject to a balancing test. That is, the Court now regards the critical issue not as what officials do, whether they perform "purely executive" functions or "quasi" legislative or judicial functions, though the duties and functions must be considered. Rather, the Courts must "ensure that Congress does not interfere with the President's exercise of the 'executive power'" and his constitutionally appointed duty under Article II to take care that the laws be faithfully executed.⁷²⁸ Thus, the Court continued, *Myers* was correct in its holding and in its suggestion that there are some executive officials who must be

⁷²⁶ 37 U.S. (12 Pet.) at 610.

⁷²⁷ *Myers v. United States*, 272 U.S. 52 (1926); *Morrison v. Olson*, 487 U.S. 654 (1988).

⁷²⁸ *Morrison v. Olson*, 487 U.S. at 689–90.