

A statute passed by both houses of Congress and signed by the President created a federal agency to regulate consumer financial products such as credit cards, student loans, and mortgages. The federal statute authorizes the agency to issue regulatory rules, conduct administrative proceedings, and initiate suits in federal court on behalf of consumers. A statutory provision establishes that the agency is led by a single director who must be appointed by the President with the advice and consent of the Senate. The provision also states that the director serves a five-year term and can only be removed from office by the President for good cause.

Is the provision allowing the director to be removed by the President for good cause constitutional?

- A. No, because the President may remove a federal executive officer only with the advice and consent of the Senate.
- B. No, because the provision amounts to an unconstitutional legislative interference with an executive function.
- C. Yes, because Congress may require the President to show good cause to remove a federal executive officer.
- D. Yes, because the provision is part of a statute that was passed by both houses of Congress and signed by the President.

Explanation:

The Constitution divides the federal government into three coequal branches that possess distinct powers (ie, [separation of powers](#)). Article II vests the executive power in the **President**, including the power to **faithfully execute federal laws**. Since it is impossible for one person to carry out this power, **federal executive officers** may be appointed pursuant to the appointments clause to assist the President.

The Constitution is silent about the removal of federal executive officers, but the U.S. Supreme Court has repeatedly held that the **President has absolute authority to remove** such officers absent two exceptions. This means that Congress cannot impose any removal restrictions, including good-cause requirements, **except for officers** who either:

- **belong to a multimember body** that is balanced along partisan lines and **exercises no executive power** (eg, committees that conduct investigations on behalf of Congress) *or*
- **lack policymaking or administrative authority** (eg, independent counsel who investigates and prosecutes alleged crimes by government officials).

Here, Congress created a federal agency headed by a single director. The director exercises significant executive power and administrative authority by issuing regulatory rules, conducting administrative proceedings, and initiating suits in federal court. As a result, the President has the absolute authority to remove the director. The provision requiring good cause for removal therefore amounts to an unconstitutional legislative interference with an executive function (**Choice C**).

(Choice A) The President must *appoint* certain federal executive officers (eg, cabinet secretaries) with the advice and consent of the Senate. However, the Senate's advice and consent is not required for the President to *remove* such officers.

(Choice D) The removal provision is part of a statute that satisfied the [federal legislative process](#) because it was passed by both houses of Congress and signed by the President. But the provision is still an unconstitutional legislative interference with an executive power.

Educational objective:

The President has absolute authority to remove federal executive officers. Congress may impose restrictions on this power only for officers who (1) belong to a multimember body that is balanced along partisan lines and exercises no executive power or (2) lack policymaking or administrative authority.

References

- *Seila Law Ltd. Liab. Corp. v. Consumer Fin. Prot. Bureau*, 140 S. Ct. 2183, 2197–2200 (2020) (explaining that the President has the absolute power to remove federal executive officers subject to very narrow exceptions).

Appointment and removal of executive officers

