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The Unitary Executive Theory: An Attack on the Independence of Certain Federal Agencies or the Proper Exercise of Presidential Authority?

Richard. J. Hunter
University of Tulsa

John H. Shannon
Seton Hall University

ABSTRACT

The assertion by President Donald J. Trump of authority to remove certain subordinate executive officers "without cause" has sparked a constitutional debate that literally began in 1789 at the founding of the Republic and has carried on until the present. Proponents of the doctrine of a "unitary executive" claim that the Constitution created a system of separated powers in which the President possesses plenary removal power, affording the President with "exclusive and total control" over all subordinates in the executive branch. Opponents cite the necessity of truly "independent agencies" designed for societal protections whose members are above politics and who can only be removed "for cause." This paper explicates these issues in light of several Supreme Court opinions and offers examples of the constitutional and practical dangers associated with unfettered executive authority, as well as providing arguments in support of the doctrine.

Keywords: unitary executive, separation of powers, Humphrey's Executor, independent agencies, "for cause" firing, universal injunction.

INTRODUCTION: WHAT IS THE "UNITARY EXECUTIVE" THEORY?

Dearborn, King, and Skowronek (2025) provide a proper context for this study when they write:

> *"As a candidate in 2024, Trump pledged to reissue his "Schedule F" executive order: "I will immediately re-issue my 2020 Executive Order restoring the President's authority to remove rogue bureaucrats." Upon taking office again, the president followed through, issuing an order to make it easier to reclassify and potentially dismiss any federal civil servant if their role has a "policy-determining, policy-making, or policy-advocating character."*

The unitary executive theory is a constitutional interpretation that argues that the President of the United States holds exclusive control over the entire executive branch (see Calabresi and Christopher Yoo, 2008; Chabot, 2022). In its strongest or most "unambiguous" form, the theory asserts that all executive power is vested solely in the President, meaning the President can direct, control, and remove any executive branch official at will (Waldman, 2024). Sunstein and Vermeule (2020) note: "It follows, as the night follows the day, that Congress lacks the power to carve up the executive—to say, for example, that the Secretary of Transportation is a free agent, immune from presidential control, or that the Secretary of Commerce can maintain their job unless the President is able to establish some kind of 'cause' for removing them."

In constitutional terms, "the unitary executive theory raises fundamental questions about the proper balance of power among the three branches of government" (Attorneys.media, 2025). The Constitution establishes a system of separated-powers between Executive, Legislative, and Judicial branches, with each branch exercising distinct functions, at the same time serving as a check on the other branches (Klassen, 2011; Roisman, 2024). As James Madison warned in *The Federalist Papers* (Number 47), "the accumulation of all powers, legislative, executive, and judiciary, in the same hands… may justly be pronounced the very definition of tyranny" (see Anderson, 2002).

Proponents of the unitary executive argue that a unitary executive actually reinforces the separation of powers by preventing Congress from *encroaching on executive functions*. "By ensuring that the president controls all executive power, the theory maintains clear boundaries between the branches and preserves the constitutional design" (Attorneys.media, 2025). Proponents contend that the very existence of independent agencies and placing other limitations on presidential control "represent an unconstitutional attempt by Congress to exercise executive power or create a 'headless fourth branch' of government not contemplated by the Constitution" (Attorneys Media, 2025).

On the other hand, critics of the theory argue that the unitary executive undermines the system of checks and balances by concentrating excessive power in the executive branch—more specifically, in the presidency (see Shane, 2023). They argue that the Framers of the Constitution created "a complex system with overlapping authorities and mutual constraints to prevent any single branch from becoming dominant. Independent agencies, congressional oversight, and judicial review all serve as essential checks on executive power that the unitary executive theory would weaken or eliminate" (Attorneys Media, 2025). Birk (2021) states that "… the unitarians' claim about the original meaning of the executive power are largely unfounded."

On a more practical level, critics of the unitary executive theory argue that the theory represents a "grave danger to governmental transparency and openness" (Crouch, Rozell, & Sollenberger, 2020). Presidents who espouse a strong unitary executive theory tend to keep the public, Congress, and the judiciary in the dark because of their "[h]abits of secrecy and of hoarding information; the jealous assertion of the exclusive right to decide; and the[ir] refusal to share or cooperate with other branches" (MacKenzie, 2008, p. 43). MacKenzie adds: "In all of this, opportunities for public or congressional deliberation are replaced with inconspicuous signing statements, executive orders, and presidential vetoes."

ORIGINS OF THE DOCTRINE

The theory of the unitary executive may be traced to Article II of the U.S. Constitution, particularly to what is termed as the "*Vesting Clause*," which states that "the executive power shall be vested in a President"—including a grant of the power to execute the laws. The theory finds its roots to the Constitutional Convention of 1787 (Center for the Study of the American

Constitution, 2024), where the Framers engaged in a spirited debate on the structure of the executive branch centered around the Virginia Plan, introduced by Governor Edmund Randolph of Virginia (Wigington, 2020). McConnell (2019) wrote that "this provision called for all of the executive powers of the nation to be vested in this national executive, which would probably be a single person." As a reflection of this view, President Trump has asserted that "Article II contains implied powers to remove all subordinates within the executive branch, control spending, punish national security threats, deport immigrants without due process, and ignore judicial orders related to foreign affairs" (quoted in Bednar, 2025a). President Trump put it this way: "I have an Article II where I have the right to do whatever I want as President" (quoted in O'Donnell, 2019).

Meyers v. United States

Support for this "unambiguous" view may be found in the case of *Myers v. United States* (1926). The case was argued on December 5, 1923, reargued on April 13–14, 1925, and finally decided on October 25, 1926 (Constitutional Law Reporter, 2025). Chief Justice William Howard Taft delivered the opinion of the Court and was joined by Justices Van Devanter, Sutherland, Butler, Sanford, and Stone. Justices Holmes, McReynolds, and Brandeis dissented from the majority opinion. The Chief Justice phrased the issue as follows:

> *"This case presents the question whether, under the Constitution, the President has the exclusive power of removing executive officers of the United States whom he has appointed by and with the advice and consent of the Senate; or, whether such a requirement is unconstitutional in its attempt to make the President's power of removal dependent upon consent of the Senate" (Myers, p. 107).*

The facts of *Myers* were simple and straightforward. Postmaster Frank S. Myers was removed from his position by President Woodrow Wilson. It was alleged that Myers management style was "high-handed and divisive," although political considerations may have played a part in the decision to fire Myers (Entin, 2015). Myers petitioned the President and the Senate Committee on Post Offices for a hearing on the matter of his removal. Myers had been reappointed by the President as a postmaster of the first class by and with the advice and consent of the Senate. The *Postal Appropriation Act of July 12, 1876* provided that such postmasters shall hold office for four years, unless sooner removed or suspended according to law, and provided that they may be removed by the President "by and with the advice and consent of the Senate." Myers was removed before the expiration of his term by an order of the Postmaster General, an action apparently sanctioned by the President.

Myers filed a lawsuit in the United States Court of Claims for the payment of his salary for the period of his removal to the end of the four year term based on Section 6 of the Act which provided that: "Postmasters of the first, second and third classes shall be appointed and may be removed by the President by and with the advice and consent of the Senate and shall hold their offices for four years unless sooner removed or suspended according to law."

Chief Justice Taft summarized the majority's view: "The President is empowered by the Constitution to remove any executive officer appointed by him by and with the advice and consent of the Senate, and this power is not subject in its exercise to the assent of the Senate, nor can it be made so by an act of Congress" (*Myers*, p. 119).

As the Chief Justice pointed out, the President could not execute the laws "alone and unaided." In carrying out this executive authority, the President must execute laws with the assistance of subordinates (citing *Wilcox v. Jackson,* 1839; *United States v. Eliason,* 1842; *Cunningham v. Neagle,* 1890; *Russell Co. v. United States,* 1923).

> *"As he is charged specifically to take care that they be faithfully executed, the reasonable implication, even in the absence of express words, was that, as part of his executive power, he should select those who were to act for him under his direction in the execution of the laws. The further implication must be, in the absence of any express limitation respecting removals, that, as his selection of administrative officers is essential to the execution of the laws by him, so must be his power of removing those for whom he cannot continue to be responsible" (Annals of Congress, 1834, p. 474).*

Thus, the "natural meaning" of the term "executive power" granted to the President included the *appointment and removal* of executive department subordinates. Chief Justice Taft raised this question: "If such appointments and removals were not an exercise of the executive power, what were they? They certainly were not the exercise of legislative or judicial power in government as usually understood." As such, the power to:

> *"[P]revent the removal of an officer who has served under the President is different from the authority to consent to or reject his appointment. When a nomination is made, it may be presumed that the Senate is, or may become, as well advised as to the fitness of the nominee as the President, but, in the nature of things, the defects in ability or intelligence or loyalty in the administration of the laws of one who has served as an officer under the President are facts as to which the President, or his trusted subordinates, must be better informed than the Senate, and the power to remove him may, therefore, be regarded as confined, for very sound and practical reasons, to the governmental authority which has administrative control. The power of removal is incident to the power of appointment, not to the power of advising and consenting to appointment, and when the grant of the executive power is enforced by the express mandate to take care that the laws be faithfully executed, it emphasizes the necessity for including within the executive power as conferred the exclusive power of removal" (Myers, p. 135).*

The Chief Justice noted that the duties of the heads of departments and bureaus in which the discretion of the President is exercised and are "the most important in the whole field of executive action of the Government." Thus, noted the Chief Justice, "there is nothing in the Constitution which calls for a distinction between the *removal* of the head of a department or a bureau, when he discharges a political duty of the President or exercises his discretion, and the removal of executive officers engaged in the discharge of their other normal duties." In sum, the Chief Justice stated: "The imperative reasons requiring an unrestricted power to remove the most important of his subordinates in their most important duties must, therefore, control the interpretation of the Constitution as to all appointed by him" (*Myers*, p. 135).

THEN CAME *HUMPHREY'S EXECUTOR* (1935)

The theory behind *Humphrey's Executor v. United States* (1935) centers on the assertion that Congress can constitutionally limit the President's power to remove *certain* executive officials, especially those serving in "independent" regulatory agencies. Shane (2025) summarizes the theory behind *Humphrey's Executor,* which he describes as "straightforward."

> *"It starts with the recognition that the executive branch of government draws on two streams of legal authority. Some of what it does involves carrying out powers vested directly in the President by the Constitution. Treaty-making and fulfilling the President's commander-in-chief role are prominent examples. But most of what the executive establishment does—nearly all of what it does in domestic affairs—draws on authority that Congress has given to the executive branch by creating administrative agencies and assigning them missions, such as protecting the environment or enforcing civil rights."*

What is an Independent Regulatory Agency?

An independent regulatory agency is a governmental body created by Congress to oversee and enforce administrative rules and regulations in a specific area—such as finance, communications, consumer protection, securities, or labor—without direct control from the President. Examples include the Federal Reserve, the Securities and Exchange Commission (SEC), and the Federal Communications Commission (FCC). [For a full listing of independent agencies see Appendix I.]

While these agencies are part of the executive branch, they are structured to operate with a degree of autonomy in order to help "insulate them from excessive political pressure" (Govfacts, 2025). Independent agencies are often run by bipartisan boards or commissions, whose members serve fixed terms and cannot be removed by the President "without cause" (see Darnell, Husat, & Sheldon, 2021).

The functions of independent regulatory agencies may include:

- *Rulemaking*, creating rules and regulations that have the force of law, often filling in the details or "gaps" in broad legislation passed by Congress (McArdle, 2008). This is known as *quasi-legislative* power. The Legal Clarity Team (2025) described the processes of quasi-legislative powers:

"Quasi-legislative powers derive their authority from constitutional provisions, legislative statutes, and judicial interpretations. The U.S. Constitution, through the Necessary and Proper Clause, permits Congress to delegate rulemaking powers to agencies, aligning regulations with legislative intent" (Legal Clarity Team, 2025).

Rulemaking Steps:

The rulemaking process involves three key steps: notice, a comment period, and promulgation, which are designed to ensure transparency and the involvement of the public.

Notice: The notice, published in the Federal Register, announces the agency's intent to create or amend a regulation or rule, detailing its purpose and legal authority. The *Administrative Procedure Act of 1946* (APA) mandates this step-in order to keep stakeholders and the public informed and to ensure accountability of the agencies.

Comment Period: During the comment period, stakeholders and the general public are invited to provide feedback in writing on the proposed rule. This process incorporates diverse perspectives and often provides expertise, improving upon the proposed regulation or rule. Agencies are required by the *Administrative Procedure Act of 1946* to address significant comments and document their responses in the Federal Register.

Promulgation: Promulgation is the formal adoption of the rule, which will be published in the Federal Register (see Office of Privacy and Open Government, 2025). This step specifies the rule's effective date and includes an explanation of its provisions and any agency responses to significant public comments, "ensuring legal defensibility and adherence to statutory authority" (Legal Clarity Team, 2025).

- *Enforcement:* This step involves monitoring compliance with the rule. Independent agencies can take enforcement actions—such as issuing fines, sanctions, or seeking a "cease and desist" order—against individuals or organizations that violate administrative rules or regulations (see, e.g., Newman, 2017).
- *Adjudication:* Many independent regulatory agencies wield *quasi-judicial* authority in which agencies hold hearings and resolve disputes, often through administrative law judges (ALJ) who operate outside the traditional court system (see Wade, 1949; Wooding, 2024).

Independent regulatory agencies often control entry into certain industries or professions by issuing licenses or permits, ensuring that only "trained, qualified, and authorized" entities or persons operate in regulated fields (see, e.g., *Markus and Nocka v. Julian Goodrich Architects, Inc.*, 1969).

Independent regulatory agencies also provide expert recommendations to Congress and to the President, helping to shape policy and legislation based on technical knowledge and an analysis of industry trends (see Law Pulse, 2024).

Ultimately, the mission of independent regulatory agencies is to protect the public interest by ensuring fair financial markets (SEC), safe communications (FCC), fairness in the labor market (NLRB), or a stable monetary policy (the Federal Reserve). As an example, in 1914, President Woodrow Wilson signed the *Federal Trade Commission Act*. The law established a commission to "prevent unfair trade practices." In order to ensure that the commission remained nonpartisan, the law stipulated that its commissioners could be removed by the president only "for cause," that is, for "inefficiency, neglect of duty, or malfeasance in office," and not for political or ideological reasons (Manners & Menard, 2021).

Back to *Humphrey's Executor*

The case arose when President Franklin D. Roosevelt fired William Humphrey, a commissioner of the Federal Trade Commission (FTC), because of "policy disagreements." Humphrey had served as a commissioner of the Federal Trade Commission since 1925, having been appointed by President Calvin Coolidge. Coolidge's successor, President Herbert Hoover, whom Roosevelt would defeat in the Presidential election of 1932, reappointed Humphrey to a second seven-year term in 1931. Humphrey had uniformly opposed most of the agency's enforcement actions against businesses and corporations on policy grounds and had exhibited a strong personal antipathy to the President.

When Roosevelt became President in 1933, he twice wrote to Humphrey asking him to resign because his policies did not align with Roosevelt administration policies, but Humphrey refused. On August 31, 1933, Roosevelt wrote to Humphrey:

> *"You will, I know, realize that I do not feel that your mind and my mind go along together on either the policies or the administering of the Federal Trade Commission, and, frankly, I think it is best for the people of this country that I should have a full confidence."*

Roosevelt then fired Humphrey. Nevertheless, Humphrey continued to come to work at the FTC even after he was formally fired. After Humphrey's death, his estate sued in the United States Court of Claims in order to recover his salary, arguing that the firing was unlawful.

The Court of Claims certified two questions to the U.S. Supreme Court:

1. "Do the provisions of section 1 of the Federal Trade Commission Act, stating that 'any commissioner may be removed by the President for inefficiency, neglect of duty, or malfeasance in office', restrict or limit the power of the President to remove a commissioner except upon one or more of the causes named?"
2. "If the foregoing question is answered in the affirmative, then—If the power of the President to remove a commissioner is restricted or limited as shown by the foregoing interrogatory and the answer made thereto, is such a restriction or limitation valid under the Constitution of the United States?"

Citing *Myers v. United States* as precedent, the government argued that the provision of the *Federal Trade Commission Act* regarding "for-cause" termination is unconstitutional since it limited the President's general removal power. However, on May 27, 1935, the Supreme Court disagreed and issued a unanimous 9–0 decision, holding that the removal restrictions placed on the President in the Federal Trade Act (FTC) did not violate the Constitution.

In an opinion written by Justice George Sutherland, the Court distinguished between executive officers and quasi-legislative or quasi-judicial officers. The Court concluded that Congress had intended to create an independent, non-partisan agency "free from 'political domination or control'" by providing tenure protection to "limit the executive power of removal to the causes enumerated" (see Strauss, 1984).

Interestingly, the Court focused on the principle of separation of powers. The Court distinguished *Myers* and rejected its *dicta* that the President has unencumbered removal powers to control areas of legislative authority such as interstate commerce without an express delegation of power. Justice Southerland wrote:

> *"The office of postmaster is so essentially unlike the office now involved that the decision in the Myers case cannot be accepted as controlling our decision here. A postmaster is an executive officer restricted to the performance of executive functions. He is charged with no duty at all related to either the legislative or the judicial power. The actual decision in the Myers case finds support in the theory that such an officer is merely one of the units in the executive department and, hence, inherently subject to the exclusive and illimitable power of removal by the Chief Executive, whose subordinate and aid he is."*

The Court's decision limited the President's inherent supervisory power, including the right to fire without cause, to "purely executive officers." In so doing, *Humphrey's Executor* carved out a constitutional "space" for independent agencies, as distinct from purely executive departments, and placed limits on presidential control over them. *Humphrey's Executor* would counter the argument in favor of the unitary executive theory, which stood for more centralized presidential control. "The ruling in *Humphrey's Executor* continued to cast a long shadow over modern executive power by reinforcing the idea that Congress can limit the president's ability to remove officials from independent agencies—as a key check on the unitary executive theory" (see Sunstein and Vermeule, 2020).

Would the decision in *Humphrey's Executor* put an end to the debate over the unitary executive or merely postpone one?

PRESIDENTS REAGAN AND BUSH

Stromberg (2009) writes that "Steven G. Calabresi and Christopher S. Yoo count as founding fathers of the much-debated unitary executive theory (UET), which they named in 1992." Calabresi and Yoo (2008) themselves note that the theory gained "traction" during the Reagan administration, championed by some conservative legal scholars and Justices of the United States Supreme Court (see also Dodds & Kelley, 2024). Interestingly, the theory would be tested not in the case of the removal of an individual departmental head or official as in *Myers* or *Humphrey's Executor* but rather in a case relating to the exercise of executive power involving a disagreement with an agency in terms of political philosophy or policy (Dearborn, 2025).

In 1983, the Reagan Administration attempted to assert control over the Equal Employment Opportunity Commission (EEOC)—which was created by the *Civil Rights Act of 1964* and which was subsequently strengthened by the *Equal Employment Opportunity Act of 1972*, an act designed to enforce federal laws against employment discrimination—and the United States Commission on Civil Rights (USCCR), which was established by the *Civil Rights Act of 1957*, and which was designed to investigate and report on the status of civil rights policy and enforcement actions. The issue centered around the scope and nature of affirmative action (see Finn, 1982; Pear, 1983). [For a listing and description of the various anti-discrimination laws enforced by the EEOC see Appendix II.]

Officials at the White House and the Department of Justice (DOJ) (most notably Attorney General Edwin Meese, Chairman of the Equal Employment Opportunity Commission Clarence Thomas, and Assistant Attorney General for Civil Rights William Bradford Reynolds (Finn, 1982)) came into open conflict with the EEOC and the USCCR. In the case of the USCCR, the conflict involved a policy dispute about busing as well. The United Press International (UPI) (1981) reported that "In a dramatic shift from previous administrations, [Reynolds] said that the policy of the Reagan Administration will be to adopt mandatory busing only as a last resort" (see also Stengel, 2025). As Mageli (2022) noted: "No new busing orders were implemented under Republican President Ronald Reagan, an outspoken foe of busing."

The Reagan administration also advocated for "colorblind" employment policies and argued that both the EEOC and the USCCR supported "quotas." Thomas (1985) noted that at President Reagan's first press conference after he took office in 1981, the President argued that some affirmative action programs had been "distorted" into quota systems. Under President Reagan, the Justice Department began to aggressively attack the use of racial preferences in hiring and promotion. William Bradford Reynolds, the chief of the Justice Department's civil rights division, insisted that affirmative action "has done more harm than good." Reynolds was quoted as saying: "It's demeaning because it says people are going to get ahead not because of what they can do, but because of their race" (Thomas, 1985).

Officials at the EEOC and the USCCR, supported by allies in the civil rights community, "viewed themselves as carrying out longstanding responsibilities, particularly as determined by the legislative branch through statutes and the judiciary through relevant court cases" (Dearborn, 2025, p. 2; see also Frye, Gerber, Pees, & Richardson, 1987). Underscoring the conflict that existed *within* the Executive Branch, Mirga (1982) noted that "The U.S. Commission on Civil Rights has accused the Reagan Administration of retreating from the goal of school desegregation in both its attempts to dismantle existing student-transportation plans and its attempts to eliminate programs for the disadvantaged 'by the 'back-door' approach of fiscal strangulation."

Disputes over civil and employment rights turned into clashes over institutional structures, as the nature of the President's relationship with each agency was questioned. The EEOC was composed of five commissioners, with no more than three appointed from one political party. The commissioners were appointed for a term of five years, subject to confirmation by the United States Senate. The statute relating to the composition of the EEOC failed to include language relating to "for-cause removal protections." The statute did provide for continuation of service and stated that:

> *"All members of the Commission shall continue to serve until their successors are appointed and qualified, except that no such member of the Commission shall continue to serve (1) for more than sixty days when the Congress is in session unless a nomination to fill such vacancy shall have been submitted to the Senate, or (2) after the adjournment sine die of the session of the Senate in which such nomination was submitted."*

The President also appointed the EEOC general counsel to a 4-year term, again subject to Senate confirmation (see Guerin, 2023; U.S. Equal Employment Opportunity Commission, 2025).

Questions relating to the structure of the USCCR were raised as well. Prior to its reauthorization by the Congress in 1983, the USCCR was composed of six commissioners, with no more than three appointed by the President from one political party, subject to confirmation by the United States Senate. The President also appointed the USCCR staff director in consultation with the commissioners, subject to Senate consent. Issues relating to the length of term and potential removal of the commissioners by the President were not explicitly addressed in the statute (see Congressional Research Service, 2008).

In the evolving series of 1983 conflicts, defenders of the USCCR and the EEOC portrayed these agencies as "independent of the president," while the Reagan Administration and the Department of Justice sought to exercise more direct control over agency policies and personnel by articulating principles of the unitary executive theory (see Grossmann, 2025).

First, in the case of the EEOC, the Department of Justice's Office of Legal Counsel (OLC) issued an opinion that questioned the EEOC's independent *litigating authority*, specifically over whether it could file an *amicus brief* in civil rights-related state or local government employment cases which was at odds with the position of the White House and DOJ (see Hollis-Brusky & Cui. 2021). The OLC argued that allowing divergent legal opinions within the executive branch would infringe on the President's control of the executive power and would impede the administration's ability to be able to speak with "one voice" in advocating for its civil rights policies.

Second, in the case of the USCCR, the Reagan administration attempted to fire commissioners whom it viewed as hostile to its agenda (see Pear, 1983; Stengel, 2009). President Reagan had ''terminated the appointments'' of the three Democratic commissioners: Mary Frances Berry, a professor of history and law at Howard University; Blandina Cardenas Ramirez, an educator in San Antonio; and Rabbi Murray Saltzman of Baltimore. Not unsurprisingly, when the OLC's proposal produced controversy in Congress over the commission's reauthorization, the Reagan administration agreed to a compromise. Congressional leaders would now select half of the commissioners, and the new appointees would have "for-cause" removal protections. As a result, the USCCR was reconstituted with a majority of Reagan-preferred appointees. However, having signed the legislation, President Reagan nevertheless issued a signing statement asserting that the appointment and removal provisions infringed on the President's constitutional control of the executive branch (National Archives, 1983). The Department of Justice made the Administration's opinion clear:

> *"Agencies which are inconsistent with the tripartite system of government established by the Framers of our Constitution should not be created. Equally unacceptable are proposals which impermissibly dilute the powers of the President to appoint and remove officers of the United States. The Civil Rights Commission is, however, unique in form and function and should therefore not become a precedent for the creation of similar agencies in the future."*
>
> *"The new appointment procedure created by the Congress has effectively imposed constitutional limitations on the duties that the Commission may perform. The basic purpose of the old Commission on Civil Rights -- to investigate, study, appraise, and report on discrimination -- would be maintained, and most of its current authorities would remain intact. However, because half of the members of the Commission will be appointed by the Congress, the Constitution does not permit the*

> *Commission to exercise responsibilities that may be performed only by ``Officers of the United States'' who are appointed in accordance with the Appointments Clause of the United States Constitution (Article II, Section 2, clause 2).”*

Having been dormant for most of the 1990’s, Knutson (2025) stated that the unitary executive principle” gained significant “traction” during George W. Bush’s presidency [2001-2009] as it was key to administration attempts to legitimize unprecedented presidential powers including those over the use of military force, state-sponsored kidnapping, the detention and interrogation of prisoners and intelligence gathering.” As Aborisade (2019) noted, “The effects of the unitary theory could be seen in full force after the 9/11 attacks when the Bush administration orchestrated many questionable acts under the veil of national security.”

It should be pointed out, however, that these actions were raised in the context of a President’s inherent powers as Commander-in-Chief and *not* in the context of issues relating to control over administrative agencies (see Venterink & Olthof, 2025)—with the exception of the Bush Administration’s views on racial preferences which mirrored those of the Reagan Administration (see Clegg, 2009). That debate would have to wait for the emergence in 2017 and reemergence in 2025 of Donald Trump as President.

It should be noted, however, that in at least one case decided in 1988, the United States Supreme Court had rejected an exercise of executive power based on the unitary executive principle. In *Morrison v. Olson* (1988), the Court upheld the constitutionality of the independent counsel statute, which had limited the President’s ability to remove special prosecutors (Martin, 2000; Harriger, 2001). The Court adopted a functional approach, asking whether the restriction on removal “impermissibly interferes with the President’s exercise of his constitutionally appointed functions” (Knutson, 2025).

Not all the Justices agreed. Harriger (2001) writes: “[Justice] Scalia characterized the independent counsel law as one "acrid with the smell of impeachment" and with enormous potential to seriously damage the presidency and undermine executive authority.” However, the majority of the Court viewed the statute as a limited and therefore constitutional intrusion into the traditional power of the executive to control law enforcement, justified by the need for an independent investigation of executive misconduct. Perhaps the specter of *Watergate* was still found in the minds of the Court’s majority.

A Hint of the Future

Even before Donald Trump assumed the presidency in 2017, courts would be asked to weigh into issues relating to the powers of the President in relation to seemingly “independent” governmental agencies. The Supreme Court showed greater receptivity to unitary executive arguments in *Free Enterprise Fund v. Public Company Accounting Oversight Board* (2010), in which the Court struck down a provision of a statute creating two layers of “for-cause” removal protections, finding that the provision unconstitutionally limited presidential authority. Chief Justice Roberts emphasized that the President alone is responsible for the execution of the laws. This trend continued in *Seila Law v. Consumer Financial Protection Bureau* (2020), where the Court held that the structure of the Consumer Financial Protection Bureau (CFPB), which was headed by a single director removable only “for cause,” was unconstitutional.

The creation of the CFPB as a part of the *Dodd-Frank Wall Street Reform and Consumer Protection Act* (2010) was controversial in itself (Arnold). Hawkins (2020) provides a description of the CFPB: "In the wake of the 2008 financial crisis, Congress established the Consumer Financial Protection Bureau (CFPB), an independent regulatory agency tasked with ensuring that consumer debt products are safe and transparent." In so doing, Congress transferred the administration of eighteen existing federal statutes to the CFPB, including the *Fair Credit Reporting Act*, the *Fair Debt Collection Practices Act*, and the *Truth in Lending Act*. Congress also enacted a new prohibition on "unfair and deceptive practices" in the consumer-finance sector. "In doing so, Congress gave the CFPB extensive rulemaking, enforcement, and adjudicatory powers" (Hawkins, 2020).

Seila Law

Seila Law LLC is a California-based law firm that provides debt-related legal services to clients. In 2017, the CFPB issued a civil investigative demand to Seila Law to determine whether the firm had "engag[ed] in unlawful acts or practices in the advertising, marketing, or sale of debt relief services." The statute creating the CFPB authorized the agency to issue demands for information to persons who "may have any information [] relevant to a violation" of one of the laws enforced by the CFPB. The demand directed Seila Law to produce information and documents related to its business practices which were under scrutiny.

Seila Law asked the CFPB to set aside the demand on the basis that the agency's leadership by a single Director, removable only "for cause," violated the separation of powers doctrine (see Hovie, 2019). The CFPB declined to address that claim and directed Seila Law to comply with the demand.

When Seila Law refused, the CFPB filed a petition to enforce the demand in the District Court. In response, Seila Law renewed its defense that the demand was invalid and should be set aside because the CFPB's structure violated the Constitution. The District Court disagreed and ordered Seila Law to comply with the demand. Seila Law appealed the decision of the District Court to the D.C Circuit Court of Appeals.

The Court of Appeals affirmed the decision of the District Court. The Court of Appeals observed that the "arguments for and against" the constitutionality of the CFPB's structure had already been "thoroughly canvassed" in majority, concurring, and dissenting opinions by the *en banc* Court of Appeals for the District of Columbia Circuit in *PHH Corp.* v. *CFPB* (2018), which had rejected a challenge similar to the one presented in *Seila Law*. The Court of Appeals took as its starting point *Humphrey's Executor*, which had approved for-cause removal protection for the Commissioners of the Federal Trade Commission (FTC) more than seventy years earlier.

In applying the precedent of *Humphrey's Executor*, the Court of Appeals recognized that the CFPB wields "substantially more executive power than the FTC did back in 1935" and that the CFPB's leadership by a single Director (as opposed to a multimember commission) presented a "structural difference" that some of the judges had found "dispositive." However, the Court of Appeals felt bound to disregard those differences in light of its decision in *Morrison v. Olsen* (1988), which permitted a single individual (an independent counsel) to exercise a core executive power (prosecuting criminal offenses) despite being insulated from removal except "for cause." Because the Court of Appeals found *Humphrey's Executor* and *Morrison* "controlling," it affirmed the District Court's order requiring compliance with the demand. The Supreme Court granted certiorari to address the constitutionality of the CFPB's structure.

Chief Justice Roberts delivered the opinion of the Court:

> *"In organizing the CFPB, Congress deviated from the structure of nearly every other independent administrative agency in our history. Instead of placing the agency under the leadership of a board with multiple members, Congress provided that the CFPB would be led by a single Director, who serves for a longer term than the President and cannot be removed by the President except for inefficiency, neglect, or malfeasance. The CFPB Director has no boss, peers, or voters to report to. Yet the Director wields vast rulemaking, enforcement, and adjudicatory authority over a significant portion of the U. S. economy. The question before us is whether this arrangement violates the Constitution's separation of powers."*

The Supreme Court answered that question in the affirmative. The Court distinguished *Humphrey's Executor* and held that *Humphrey's' Executor* had recognized an exception for multimember, non-partisan expert bodies with "quasi-judicial" or "quasi-legislative" powers. The Court reaffirmed "the core holding of *Myers* that the President has 'unrestrictable power... to remove purely executive officers.'" The Court's conservative majority decided that *Humphrey's Executor* was not controlling in the case of an agency that was vested with significant executive power and led by a *single director*. The Chief Justice wrote:

> *"We therefore hold that the structure of the CFPB violates the separation of powers. We go on to hold that the CFPB Director's removal protection is severable from the other statutory provisions bearing on the CFPB's authority. The agency may therefore continue to operate, but its Director, in light of our decision, must be removable by the President at will."*

The CFPB had been saved but not its Director for termination other than "for cause"!

ENTER AND RE-ENTER DONALD TRUMP

Knutson (2025) writes:

> *"Since taking office, President Donald Trump has executed a whirlwind of dismissals across the federal government that violated federal statutes and decreed numerous executive orders, including one that blatantly defied the plain language of the Constitution…. legal analysts see a common goal: to test a once-fringe legal theory which asserts that the president has unlimited power to control the actions of the four million people who make up the executive branch."*

During President Donald J. Trumps two administrations, legal battles regularly emerged over whether a Presidents can fire members of several major administrative agencies and boards, as well as members of several lesser known boards like the National Credit Union

Administration (NCUA) (Lambe, 2025) or the Board of the John F. Kennedy Center for the Performing Arts (Weissert, 2025) "without cause." Numerous lawsuits were filed which argued that such actions violated statutory protections rooted in *Humphrey's Executor* and argued that these boards operated independently of the President.

The Trump administration advanced the unitary executive theory for the authority to fire these individuals by invoking Article II of the Constitution which vests executive power in the President, allowing the President to use the "whole of the executive branch" in order to carry out administrative policy and attain the administration's political ends.

Executive Order 14215: A Move to Formalize Presidential Authority

A significant event took place on February 18, 2025, when the White House invoked Article II in support of an executive order (Executive Order 14215, 2025), *Ensuring Accountability for All Agencies*, signed that same day. The Order formally asserted the President's authority over regulatory agencies that were created by Congress to act "independently or semi-independently" (see Davis, Kennedy, & Gervasi, 2025; Smith, 2025a; Smith, 2025b; Baio, 2025), including the Federal Trade Commission (FTC), the Federal Communications Commission (FCC), the Securities Exchange Commission (SEC) (Newman, 2017), and the National Labor Relations Board (NLRB) (Broughel, 2025).

Bednar (2025b) writes about the policy perspective underlying President Trump's actions:

> *"Presidential control is the power to direct administrative capacity toward the President's own policy objectives. Accordingly, presidential power vis-à-vis administrative policymaking has two necessary components: control and capacity. First, the President must have the ability to set the agency's policymaking agenda and direct the day-to-day activities of its leadership and career employees. Second, the agency needs a well-managed team of policymakers with expertise and experience in both the substantive policy area and the policymaking process."*

In order to explain (or perhaps to justify) this action, President Trump wrote:

> *"However, previous administrations have allowed so-called "independent regulatory agencies" to operate with minimal Presidential supervision. These regulatory agencies currently exercise substantial executive authority without sufficient accountability to the President, and through him, to the American people. Moreover, these regulatory agencies have been permitted to promulgate significant regulations without review by the President."*
>
> *"These practices undermine such regulatory agencies' accountability to the American people and prevent a unified and coherent execution of Federal law. For the Federal Government to be truly accountable to the American people, officials who wield vast executive power must be supervised and controlled by the people's elected President."*
>
> *"Therefore, in order to improve the administration of the executive branch and to increase regulatory officials' accountability to the American people, it shall be the policy of the executive branch to ensure Presidential supervision and control of the*

entire executive branch. Moreover, all executive departments and agencies, including so-called independent agencies, shall submit for review all proposed and final significant regulatory actions to the Office of Information and Regulatory Affairs (OIRA) within the Executive Office of the President before publication in the Federal Register."

In furtherance of this policy, the President ordered the Director of the Office of Management and Budget (OMB) to, on an ongoing basis:

> *"(a) review independent regulatory agencies' obligations for consistency with the President's policies and priorities; and*
>
> *(b) consult with independent regulatory agency chairmen and adjust such agencies' apportionments by activity, function, project, or object, as necessary and appropriate, to advance the President's policies and priorities. Such adjustments to apportionments may prohibit independent regulatory agencies from expending appropriations on particular activities, functions, projects, or objects, so long as such restrictions are consistent with law."*

The Order directs each of the agencies covered by the Order to create a White House liaison position and to consult regularly with the White House. The Order gives the OMB direct oversight over independent agencies' spending.

Perhaps more importantly, the Order also directs that the "authoritative interpretations of law for the executive branch" shall be made by the "President and the Attorney General" and, perhaps most notably, *prohibits executive branch officials from taking a legal position contrary to those interpretations*—essentially the same argument made by President Reagan thirty-five years earlier.

Executive Order 14215 was met almost immediately with a torrent of criticism. Polychroniu (2025) wrote: "Trump's executive orders build toward dictatorial 'unitary executive power.'" Peter Margulies, a professor at Roger Williams University School of Law in Rhode Island, adds that Trump's executive orders "double down on the most extreme versions of the unitary executive theory" (reported in Kruzel, 2025). Would the courts agree?

RECENT DEVELOPMENTS MAY AUGER THE FUTURE

Abeles (2025) noted that

> *"President Trump's actions have embraced the same view [as the Executor Order]. He "fired" a Democratic member of the National Labor Relations Board [Gwynne Wilcox, a former Chair] though the law restricts removal of such members to neglect of duty or malfeasance in office. He also has announced his intention to fold the U.S. Postal Service, an independent establishment within the executive branch, into the Commerce Department. Challenges to these actions, or similar actions, will almost certainly make it to the Supreme Court, which will decide whether cases like Humprey's Executor and Morrison survive."*

Kruzel (2025) writes that "The theory's view of the president's removal power has been embraced gradually in recent decades by the Supreme Court, whose current 6-3 conservative majority includes three justices appointed by Trump. But it has yet to endorse actions like some of Trump's sweeping assertions of executive power since returning to office on January 20."

Three recent developments have directly challenged the legitimacy of *Humphrey's Executor*, signaling a shift in how Federal courts—and especially the United States Supreme Court—may view the issue of presidential control over independent agencies and the import of the unitary executive theory.

Department of Justice Letter (2025)

In February of 2025, the DOJ formally notified Congress that it would no longer defend statutory protections for officials in agencies like the FTC and the NLRB (McGuireWoods, 2025; Godoy, 2025). The announcement came in a letter written by Acting Solicitor General Sarah M. Harris addressed to Sen. Dick Durbin, Assistant Democratic leader and ranking member on the Senate Judiciary Committee (Ahluwalia, 2025). The letter stated that the DOJ believes these protections—rooted in *Humphrey's Executor*—are unconstitutional and that it would ask the Supreme Court to overturn the precedent.

Trump v. Wilcox (2025)

On May 22, 2025, the Supreme Court issued an order in *Trump v. Wilcox* (2025), over the objections of Justices Kaga, Sotomayor, and Ketanji Brown Jackson, allowing President Trump to remove officials of the National Labor Relations Board and the Merit Systems Protection Board (Friedman, 2025) while these officials continued to challenge their terminations in federal court. The order includes two key determinations.

First, it indicates that "for-cause" removal protections for many so-called independent agencies are unconstitutional. "The Court concluded that President Trump was "likely" to succeed on the merits of the argument, signaling its view that the Constitution authorizes the President to remove at will the leadership of agencies that 'exercise considerable executive power'" (Sullivan & Cromwell, 2025). It is clear that *Humphrey's Executor* was clearly on the line (Gerstein, 2025).

In a vigorous dissent, Justice Kagan – joined by Justice Sotomayor and Justice Jackson – expressed concern that *Humphrey's Executor* was being effectively overruled in a peremptory manner such as to render it impotent without and formal action by the Court.

Second, the order indicates that the Court would, by contrast, *uphold removal protections* for the Federal Reserve. The Court went out of its way to clarify that its decision does not implicate the "for-cause" removal protections for the members of the Board of Governors of the Federal Reserve System because "the Federal Reserve is a uniquely structured, quasi private entity that follows in the distinct historical tradition of the First and Second Banks of the United States.

Nationwide or Universal Injunctions: *Trump v. CASA, Inc.* (2025)

By the end of the Biden administration, the United States had reached "a state of affairs where almost every major presidential act [was] immediately frozen by a federal district court" (see

Baude & Bray, 2023). The trend continued during the first 100 days of the second Trump administration when district courts throughout the country had issued approximately twenty-five universal injunctions against presidential actions undertaken in removing members of various agencies and boards (Lampe, 2025). Universal injunctions are orders against the government that "prevent the government from implementing a challenged law, regulation, or other policy against all relevant parties or entities, whether or not such persons or entities are parties participating in the litigation" (Lampe, 2025). The particular controversy concerned Executive Order 14160.

United States District Courts in Washington, Maryland, and Massachusetts had found that Executive Order No. 14160, *Protecting the Meaning and Value of American Citizenship,* was "likely unconstitutional" and had issued preliminary nationwide injunctions prohibiting enforcement of the Order. The Order, which provides that the protections afforded to individuals under the *Citizenship Clause of the Fourteenth Amendment*, known as "birthright citizenship," shall not apply to certain individuals born in the United States to specified categories of alien parents (Walley, 2025). The Order had been signed on January 20, 2025, the date of Trump's second inauguration as President.

On June 27, 2025, the six-member conservative majority on the Court held that the *Judiciary Act of 1789* did not authorize nationwide injunctions that reach more broadly than needed to provide "complete relief to parties to a case," i.e., the particular plaintiffs (Villagomez & Warner, 2025). At the same time, the Court left open several potential avenues for litigants to seek universal relief such as through the filing of a class action suit by "similarly situated persons" (Howe, 2025). Justice Barrett wrote for the Court:

> *"Traditionally, courts issued injunctions prohibiting executive officials from enforcing a challenged law or policy only against the plaintiffs in the lawsuit. The injunctions before us today reflect a more recent development: district courts asserting the power to prohibit enforcement of a law or policy against anyone. These injunctions—known as "universal injunctions"—likely exceed the equitable authority that Congress has granted to federal courts" (Trump v. CASA, Inc., 2025).*

Ironically, none of the parties had briefed the constitutionality of the Executive Order before the Supreme Court. With that procedural question resolved by the Court, the cases will now return to the district courts for consideration of the proper scope of injunctive relief in each case. Determining the constitutionality of the Executive Order would have to wait for another day. The import of *Trump v. CASA, Inc.* on issues related to nationwide injunctions blocking executive authority to terminate certain officials of "supposed" independent agencies was yet to be determined. On July 2, 2025, the Department of Justice filed an emergency appeal which asked the Supreme Court to permit President Trump to dismiss three members of the Consumer Product Safety Commission who were appointed by his predecessor, President Joe Biden.

CONCLUDING REMARKS

What is particularly interesting is what Executive Order 14215 does *not* reference: The Order specifically exempts Federal Reserve decision-making on interest rates – but not its oversight of its regulatory and supervisory responsibilities (Smith, 2025a). The law firm of McGuireWoods (2025) suggests that "While EO 14215 pushes the boundaries of that precedent, the exemption for monetary policy likely acknowledges the legal and institutional complexities involved. By exempting only, the Fed's monetary policy role, the order attempts to strike a balance—asserting presidential oversight where feasible while avoiding disruption to the Fed's core economic functions."

The law firm of Sullivan & Cromwell (2025) reaffirms this view and adds that "Although the Court's decision signals that the President likely has broad authority to remove officials who exercise executive power, the Court explained that its analysis would not "necessarily implicate the constitutionality of for-cause removal protections for the members of the Federal Reserve's Board of Governors or other members of the Federal Open Market Committee."

However, according to the Court in *Trump v. Wilcox*, the Federal Reserve differs from other agencies because it "is a uniquely structured, quasi-private entity that follows in the distinct historical tradition of the First and Second Banks of the United States." The Federal Reserve may be safe – for now!

So, while *Humphrey's Executor* still technically stands, it is clearly on "constitutional life support." "Following *Wilcox*, it is likely that the Court will ultimately strike down for-cause removal protections for most federal agencies that exercise executive power. But given the Court's explicit carve-out for the Federal Reserve, any decision involving another agency is unlikely to affect the constitutionality of existing for-cause protections for Federal Reserve officials" (Sullivan & Cromwell, 2025), although President Trump has persisted in his criticisms of both the Federal Reserve and its Chair, Jerome Powell (Chai, 2025). Smith (2025b) writes that "President Trump continued his assault on the chair of the Federal Reserve on Friday [June 27, 2025], saying he would like Jerome H. Powell to resign. The president, who has berated Mr. Powell for weeks, called the chair a 'stubborn mule' who has 'Trump derangement syndrome' for his refusal to immediately lower borrowing costs. 'I'd love for him to resign if he wanted to,' the president told reporters in the Oval Office."

In fact, Schwartz and Timiraos (2025) add that "In recent weeks, the president has toyed with the idea of selecting and announcing Powell's replacement by September or October, according to people familiar with the matter. One of these people said the president's ire toward Powell could prompt an even-earlier announcement sometime this summer."

What is readily apparent is that the delicate balance between agency independence and presidential control is once again in question. This view is certainly underscored by the authors of *Project 2025*, the "brainchild of Kevin Rogers of the Heritage Foundation, which has informed and shaped many policies of the Trump Administration (Durkee, 2025). Interestingly, Russell Vought who served as co-author and reported "architect" of *Project 25* was confirmed as the Director of the Office of Management and Budget. During the fall 2024 presidential election campaign, the former President had denied any knowledge of Project 25 or any of its authors. Waldman (2024) commented:

> *"Above all else, it espouses a maximalist version of the "unitary executive theory," the notion that the president personally controls the executive branch and can act*

> *free from checks and balances. It's a fancy version of what Trump told civics students in 2019: "I have an Article II [of the Constitution], where I have the right to do whatever I want as president." This agenda, which would undermine the independence of executive branch agencies, would reverse decades of efforts to depoliticize law enforcement, fiscal policy, and science."*

At its core, the debate over the unitary executive theory is not merely a legal question about the scope of presidential power; it is an ethical inquiry into the character of our democracy. The assertion of exclusive presidential control over executive officers may offer administrative clarity, but it risks undermining the essential checks and balances that prevent authoritarian drift. Independent agencies such as the FTC, SEC, and CFPB were deliberately designed to uphold public interest beyond the reach of partisan influence. When the President can unilaterally remove officials charged with regulating financial markets, safeguarding consumers, or enforcing civil rights, independence becomes vulnerability. What suffers in the process is not just administrative efficiency; it is justice, particularly for those whose protection depends on the even-handed application of regulatory authority.

These concerns extend beyond law into the civic fabric of the republic. At a time of declining public trust in government, the integrity of administrative institutions plays a critical role in maintaining democratic legitimacy. If the public perceives regulatory decisions as tools of executive will rather than as impartial, evidence-based outcomes, confidence in the rule of law erodes. The danger is not hypothetical; the last decade has demonstrated how rapidly norms can deteriorate and how easily constitutional arguments can be weaponized. A robust democracy demands more than formal powers; it requires civic restraint, ethical leadership, and enduring institutional integrity. The unitary executive theory, especially in its strongest form, may satisfy particular structural ambitions, but it must be evaluated through the lens of democratic resilience and public accountability.

The debate over the unitary executive theory underscores that our constitutional structure is not static but evolves through interpretation, precedent, and political practice. As the contours of presidential authority continue to shift, we must remain attentive not only to what the Constitution permits but to what democracy demands. For legal scholars, this means moving beyond binary models of "unitary" versus "plural" executive structures to explore hybrid frameworks that uphold both coordination and independence. For lawmakers, the imperative is clarity, Congress must articulate statutory removal protections where agency independence is warranted, lest judicial silence become executive license. Public servants, too, must navigate shifting political currents with professional integrity, upholding agency missions amid legal uncertainty and political pressure.

The broader takeaway is civic: the question of who controls the administrative state is ultimately about whom it serves. A vigilant and informed public is the most effective defense against executive overreach and institutional erosion. Students, educators, and citizens alike should treat this debate not as arcane legalism, but as a living test of democratic resilience. As we face new constitutional challenges, from emerging technologies to intensifying political polarization, we must evaluate theories of power through the lens of civic accountability, ethical stewardship, and institutional trust. The unitary executive theory may offer structural coherence. Still, democracy demands more than hierarchy, it requires humility, deliberation, and a system of government that remains accountable to the people it exists to serve.

The outcome of this debate most assuredly will reshape how the federal government functions for decades to come—well beyond the presidency of Donalds Trump—and could dramatically reshape the structure of the federal government itself, the powers of the President, and the balance of power between the three branches of our government.

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APPENDIX I – LISTING OF INDEPENDENT AGENCIES

- Central Intelligence Agency
- Commodity Futures Trading Commission
- Consumer Financial Protection Bureau
- Consumer Product Safety Commission
- Defense Nuclear Facilities Safety Board
- Equal Employment Opportunity Commission
- Export-Import Bank of the United States
- Farm Credit Administration
- Federal Communications Commission
- Federal Deposit Insurance Corporation
- Federal Election Commission
- Federal Housing Finance Agency
- Federal Labor Relations Authority
- Federal Maritime Commission
- Federal Mediation & Conciliation Service

- Federal Mine Safety and Health Review Commission
- The Federal Reserve System
- Federal Trade Commission
- General Services Administration
- Inter-American Foundation
- Merit Systems Protection Board
- National Aeronautics and Space Administration
- National Archives and Records Administration
- National Council on Disabilities
- National Credit Union Administration
- National Endowment for the Arts
- National Indian Gaming Commission
- National Labor Relations Board
- National Mediation Board
- National Railroad Passenger Corporation (Amtrak)
- National Science Foundation
- National Transportation Safety Board
- Nuclear Regulatory Commission
- Nuclear Waste Technical Review Board
- Occupational Safety and Health Review Commission
- Office of Government Ethics
- Office of Personnel Management
- Office of Special Counsel
- Peace Corps
- Pension Benefit Guaranty Corporation
- Postal Regulatory Commission
- Railroad Retirement Board
- Security and Exchange Commission
- Selective Service Board
- Small Business Administration
- Smithsonian Institution
- Social Security Administration
- Social Security Advisory Board
- Taxpayer Advocacy Panel
- Tennessee Valley Authority
- U.S. Agency for International Development (USAID)

- United States Commission on Civil Rights
- United States International Trade Commission
- United States Postal Service
- United States Trade and Development Agency

Source: See United States Government Information at Pitt, https://pitt.libguides.com/usgovinfo

APPENDIX II: EQUAL EMPLOYMENT OPPORTUNITY LAWS

Equal Pay Act of 1963 (EPA)
The EPA prohibits sex-based pay discrimination between workers for the same employer who perform jobs that require substantially equal skill, effort, and responsibility under similar working conditions.

Title VII of the Civil Rights Act of 1964 (Title VII)
Title VII prohibits employment discrimination based on race, color, religion, sex (including sexual orientation and transgender status), and national origin.

Pregnancy Discrimination Act (PDA) of 1978
The PDA amended Title VII to prohibit discrimination on the basis of pregnancy, childbirth, or related medical conditions

Age Discrimination in Employment Act (ADEA) of 1967
The ADEA prohibits employment discrimination against people who are 40 years of age or older.

Sections 501 and 505 of the Rehabilitation Act (Section 501 and Section 505) of 1973
Section 501 prohibits employment discrimination against applicants or employees of the federal government who are individuals with disabilities. Section 505 contains provisions governing remedies and attorneys' fees under Section 501.

Rehabilitation Act Amendments of 1992
The 1992 Amendments changed the earlier Rehabilitation Act term "handicapped person" to "individual with a disability" and provided that the standards applied under Title I of the ADA apply to employment discrimination determinations.

Section 504 of the Rehabilitation Act (Section 504) of 1973
Section 504 prohibits organizations and employers from excluding or denying individuals with disabilities an equal opportunity to receive program benefits and services. EEOC has two primary roles with respect to Section 504: Advising federal agencies on compliance with employment-related matters under Section 504, in its coordination role, and ensuring EEOC compliance with 504 in its own federally conducted activities.

Americans with Disabilities Act (ADA) of 1990 (Titles I and V)
Titles I and V of the ADA make discrimination against a qualified individual on the basis of disability by private employers, most businesses, and state and local governments illegal. Title I addresses employment discrimination on the basis of disability. Title V addresses related matters, including regulations, technical assistance, retaliation, and more.

ADA Amendments Act (ADAAA) of 2008
The ADAAA amends the ADA. The ADAAA clarifies that the definition of disability does not require extensive analysis and should be construed in favor of broad coverage of individuals, to the maximum extent permitted by the ADA.

Sections 102 and 103 of the Civil Rights Act (CRA) of 1991
Sections 102 and 103 of the CRA amend Title VII, Section 501 of the Rehabilitation Act, and the ADA to permit jury trials and compensatory and punitive damage awards in intentional discrimination cases, among other statutory changes

Government Employee Rights Act (GERA) of 1991
GERA protects certain state government employees from discrimination on the basis of race, color, religion, sex,

national origin, age, or disability. Protected applicants or employees include any individual chosen or appointed by a person elected to public office in any State or political subdivision of any State to be a member of the elected official's personal or policymaking staff or to advise the official on the constitutional or legal powers of the office.

Notification and Federal Employee Antidiscrimination and Retaliation Act (No FEAR Act) of 2002
The No FEAR Act requires federal agencies to be accountable for violations of anti-discrimination and whistleblower protection laws by paying for settlements, awards, or judgments against them in whistleblower and discrimination cases out of their own budgets.

Elijah E. Cummings Federal Employee Antidiscrimination Act (Elijah E. Cummings Act) of 2020
The Cummings Act requires federal agencies to enhance transparency relating to discrimination or retaliation affecting their own workforce.

Genetic Information Nondiscrimination Act (GINA) of 2008 (Title II)
GINA's Title II prohibits the use of genetic information, including family medical history, in making employment decisions, such as hiring, firing, advancement, pay, and other terms, conditions, and privileges of employment.

Lilly Ledbetter Fair Pay Act of 2009
The Lilly Ledbetter Fair Pay Act Amends Title VII, the ADA, and the ADEA to clarify that a discriminatory compensation decision unlawful under those acts occurs each time compensation is paid pursuant to the discriminatory decision.

Pregnant Workers Fairness Act of 2022
The PWFA requires covered employers to provide reasonable accommodations to an employee's or applicant's known limitations related to pregnancy, childbirth, or related medical conditions, unless the accommodation will cause the employer an undue hardship.

Source: https://www.eeoc.gov/equal-employment-opportunity-laws