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Can the Federal Reserve Be Split in Two?

An emerging dilemma for the Supreme Court's unitary executive policy

Daniel K. Tarullo

HARVARD LAW SCHOOL

HUTCHINS CENTER ON FISCAL AND MONETARY POLICY AT BROOKINGS

Abstract

The Supreme Court has moved toward invalidating statutory for cause removal protections for independent agency leaders under its expanding unitary executive doctrine. It has hinted that the Federal Reserve may be exempt because of its unique historical pedigree. At the same time, in an order grounded in the court's expansive notion of the President's Article II executive power, the Trump administration's Executive Order 14215 seeks to subject the Fed's regulatory functions—but not its monetary policy—to presidential oversight. The threat or fact of removal, the usual means by which a President can enforce Executive Orders, could only be exercised for regulatory reasons. This bifurcation is unworkable: Enforcing presidential control over regulation inevitably threatens monetary policy independence. The only durable solution is to respect the Federal Reserve Act's for cause protection for Fed governors across all the board's functions.

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Introduction

Since the Supreme Court's decision in *Seila Law v. CFPB*, the independence of traditionally "independent" federal agencies has been eroding.[1] This erosion has accelerated dramatically in the first year of President Trump's second term. The President has dismissed several officials who had statutory for cause removal protection,[2] and the Supreme Court has strongly suggested it will uphold those dismissals.[3] In doing so, it will effectively overrule its 90-year-old precedent in *Humphrey's Executor*,[4] the case that was long understood to validate Congressional grants of for cause removal protection to Senate-confirmed principals of independent agencies. A majority of the court now insists that the Constitution requires that any non-trivial exercise of "executive" authority in the U.S. government be subject to Presidential control. Meanwhile, in an exercise of just such control, President Trump issued Executive Order 14215, which for the first time requires traditionally independent agencies to adhere to the same White House approval process for proposed regulations that Cabinet departments have had to follow since the Reagan administration.[5]

The Federal Reserve initially appeared to be an exception to the subordination of those agencies to Presidential control. In May, the Court went out of its way to indicate that the Fed's unique structure and pedigree, tracing to the First Bank of the United States, meant that it would not be covered by the impending extension of the *Seila Law* holding to multi-member agencies.[6] Despite his regular, and often harsh, criticism of Chair Jerome Powell for not leading the Fed to lower interest rates, the President did not attempt to remove him.

But whatever relief supporters of an independent Fed may have felt proved short-lived. With the statutory for cause removal protection for Fed governors seemingly accepted by the Supreme Court, the President in August posted on social media a letter to Governor Lisa Cook informing her that she was being removed on the basis of the allegations of mortgage fraud.[7] The ensuing litigation addresses the questions

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1. 591 U.S. 197 (2020). In this case, the Supreme Court ruled that it is an unconstitutional infringement on the President's powers for Congress to grant for cause removal protection to an individual who heads an agency who "wield[s]" significant executive power." The logic of the majority opinion written by Chief Justice Roberts suggested that the more traditional multi-member independent agencies, such as the Federal Trade Commission, were also unconstitutional.

2. The two dismissals of officials with for cause removal protection occurred in the first few weeks of President Trump's second term. Danielle Kaye and Rebecca Davis O'Brien, Trump Firings at Labor Board Paralyze the Agency, N. Y. Times, Jan. 28, 2025, https://www.nytimes.com/2025/01/28/us/politics/trump-nlrb-jennifer-abruzzo.html?searchResultPosition=11; Olivia George, Judge Stops Trump Ouster of Merit Systems Protection Board Chair, Washington Post, Feb. 18, 2025, https://www.washingtonpost.com/dc-md-va/2025/02/18/merit-systems-protection-board-cathy-harris-restored-trump-ouster/.

3. Trump v. Wilcox, 145 S.Ct. 1415 (2025).

4. Humphrey's Executor v. United States, 295 U.S. 602 (1935).

5. Executive Order 14215 of February 18, 2025, 90 Fed. Reg. 10447 (Feb. 24, 2025).

6. The court rejected the contention of the dismissed officials that invalidating their statutory for cause removal protection would necessarily implicate the independence of the Fed. Trump v. Wilcox, 145 S.Ct. 1415. The court offered only the briefest of explanations: "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." Id.

7. Matt Grossman and Alex Leary, Trump Says He Is Removing Fed Governor Lisa Cook, Wall Street Journal, Aug. 25, 2025, https://www.wsj.com/politics/policy/trump-says-he-is-removing-fed-governor-lisa-cook-5e2ec2dd?mod=itp_wsj.

of what kind of conduct constitutes "cause" within the meaning of the Federal Reserve Act, and what kind of process, if any, is necessary to establish the factual foundation of that cause.

Humphrey's Executor v. United States, 295 U.S. 602 (1935)

The Supreme Court upheld the constitutionality of a provision of the Federal Trade Commission Act that protected commissioners from removal before the end of their statutory terms except for "inefficiency, neglect of duty, or malfeasance in office." President Franklin Roosevelt had attempted to remove Commissioner Humphrey because of policy differences. This case narrowed substantially the applicability of another court decision a decade before, which had suggested that the Constitution forbade for cause removal protection in most instances. Up until relatively recently, *Humphrey's Executor* was understood to validate Congressional grants of for cause removal protection to principals of independent regulatory agencies.

Seila Law LLC v. Consumer Financial Protection Bureau, 591 U.S. 197 (2020)

The Supreme Court held unconstitutional a statutory provision giving "for cause" removal protection to the director of the CFPB, which had been created by the 2010 Dodd-Frank Act. Although the court majority cited the "single-headed" nature of the CFPB (as opposed to the usual multi-member nature of independent agencies) as the basis for its relatively narrow holding, Chief Justice Roberts' reasoning in the majority opinion suggested that the constitutionality of for cause removal protections for principals of some or all traditionally independent agencies might be at risk. The Chief Justice gave a broad definition of what constitutes the exercise of "executive power" and that, according to his reasoning, must be under the control of the president. While the court stated that it was not reconsidering the holding in *Humphrey's Executor*, the Chief Justice cast the 1935 decision as being more of an advisory than decision-making agency, and thus reinforced suspicions that modern administrative regulatory agencies might be considered unconstitutional.

Trump v. Wilcox, 145 S. Ct. 1415 (2025)

This brief unsigned order stayed the order of lower courts that allowed NLRB Member Wilcox to remain in her position during the pendency of her lawsuit challenging her dismissal by President Trump that cited only policy differences (i.e., not "cause"). The order was notable for two reasons. First, it noted that the president was likely to prevail on the merits once the case was fully litigated, thereby suggesting that the traditional understanding of *Humphrey's Executor* as validating congressional for cause protections would be overturned. Second, it rejected the suggestion by Wilcox that if she was not protected, then Federal Reserve Board Members would also be subject to dismissal even in the absence of "cause." The Court cited the Federal Reserve's historical legacy to distinguish it from other agencies.

If the judiciary ultimately gives the President wide discretion to determine what constitutes an acceptable cause for dismissal and demands little in the way of process, the Court's intention to preserve the for cause protection of Fed board members would be significantly undermined. This article explains why, regardless of the outcome of the Cook case, there remains another threat to the monetary policy independence of the Fed. The Court is poised to create an exception to its new rule, based on its assumption that monetary policy has a unique legacy dating back to the earliest years of the Republic. But, the Fed's *regulatory* authority seems precisely the kind of "executive power" that under the court's doctrine must be subject to presidential control.

The February 2025 executive order and the Court's evolving unitary executive doctrines place the Fed at risk of being split in two—one part being monetary policy and the other regulations. The former would remain independent of presidential control once board members were confirmed by the Senate, while the latter would be subject to ongoing direction from the president. The Executive Order purports to effect such a bifurcation by exempting only the Fed's monetary policy activities from its application. A month earlier, under pressure from the incoming administration, Vice Chair for Supervision Michael Barr had announced his resignation from his leadership role overseeing the Fed's regulatory and supervisory activities, while remaining on the Board of Governors.

There are already important legal distinctions drawn by the judiciary between the Fed's monetary policy actions and its other activities. In 1929, the United States Court of Appeals held that its monetary policy actions were not judicially reviewable.[8] That decision has never since been seriously questioned, at least by a court. But other Fed activities are subject to judicial review in essentially the same way they would be if conducted by another agency. Most notably, the Fed's bank regulations and enforcement orders are reviewed by courts under the Administrative Procedure Act, just as similar activities of the other two federal bank regulatory agencies are.[9] It might seem, then, that the division of the Fed's activities that exists for purposes of judicial review could readily be extended to specifying the extent of presidential control over the Fed.

Things are not so simple. The most troublesome issue is how the president could enforce his oversight of the Fed's regulatory activities. The enforcement mechanism for presidential direction is straightforward: Cabinet officials and their subordinates will nearly always conform to expressed presidential wishes, so long as those wishes do not require violation of the law. An official who does not comply may be fired by the president. But if members of the Board of Governors retain for cause removal protection in their monetary policy capacity, complications set in. If the president wishes to remove a board member, someone—presumably a court—will have to determine whether the attempted removal is for regulatory reasons, or really for monetary policy disagreements. Such a determination may be exceedingly difficult for a court to make.

This paper proceeds as follows. Part I introduces the idea of a bifurcated agency by recounting the resignation of Vice Chair Barr. Had Barr chosen to litigate an effort by the President to remove him, a court would have had to decide whether the Federal Reserve Act allowed Barr to be displaced as the Fed's lead regulatory official without endangering Chair Powell's position as the Fed's lead monetary policy official.

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8. Raichle v. Federal Reserve Bank of New York, 34 F.2d 910 (2d Cir. 1929).

9. Judicial review is also available for some Federal Reserve actions that lie closer to its monetary policy role, such as the granting or withholding of a "master account" to financial institutions. See, e.g., Custodia Bank, Inc. v. Federal Reserve Board of Governors, 728 F. Supp. 3d 1227 (D. Wyo. 2024). A master account gives an institution access to the Fed's electronic payments system, which is the backbone of dollar-based payments.

Part II shows why a split Fed is doctrinally unworkable. In the face of a challenge by a board member dismissed by the President for the stated reason of differences on regulatory policy, it would—as a practical matter—be very difficult for a court to distinguish regulatory policy disagreements from monetary policy disagreements. A court would thus be hard pressed to decide the case in a way that preserved both the Fed's monetary policy independence and the President's now-presumed prerogatives over regulatory policy. Part II also considers the possibility of allowing private enforcement of the president's executive order, though this option is even less promising than use of the president's removal power.

Part III makes the case that the only way for the court to preserve the legal status of the Fed's monetary policy independence is to frame the Fed exception in a way that tracks the Federal Reserve Act—a plenary for cause removal protection for members of the Board of Governors. Part IV emphasizes what is at stake here. The court has injected uncertainty into the scope of Fed independence. If it does not create a broad exception to its doctrine of presidential control for the Fed's Board of Governors, the only way to preserve the effective monetary policy independence of the Fed as a legal matter may be to remove its regulatory functions.

I. Removal protection for Fed leadership positions

Even before President Trump's inauguration for a second term, press outlets reported that he might attempt to remove Vice Chair for Supervision Barr from his leadership position on the Board of Governors.[10] Insofar as Chair Powell had stated unequivocally that a president did not have legal authority to remove the chair for policy disagreements,[11] this possibility raised the prospect of a messy legal showdown between the incoming administration and the Fed.[12]

At a House Financial Services Committee hearing on November 20, 2024, Vice Chair Barr indicated that he intended to serve in that role until his four-year term expired in July 2026.[13] However, on January 6, 2025, he announced his resignation, explaining that over the ensuing weeks he had concluded that a prolonged legal battle would be too much of a distraction for the Fed.[14]

Whether or not intended by Barr, his decision to resign from the vice chair post while remaining on the Board of Governors can be interpreted as reflecting a distinction in the Fed's degree of independence between its regulatory role and its monetary policy mission. That, of course, is precisely the distinction that would be drawn the following month in E.O. 14215. But his resignation also highlighted a possible

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10. Pete Schroeder, Exclusive: Fed's Barr seeks legal advice amid speculation Trump might remove him, sources say, Reuters, Dec. 23, 2024, https://www.reuters.com/world/us/feds-barr-seeks-legal-advice-amid-speculation-trump-might-remove-him-sources-say-2024-12-20.

11. Board of Governors of the Federal Reserve, Transcript of Chair Powell's Press Conference, Nov. 7, 2024, at 18, https://www.federalreserve.gov/mediacenter/files/FOMCpresconf20241107.pdf.

12. Deborah B. Solomon and Jeanna Smialek, Fed Vice Chair Says He's Leaving Role Early to Avoid Fight With Trump, N.Y. Times, Jan. 6, 2025, https://www.nytimes.com/2025/01/06/business/economy/fed-barr-vice-chair.html.

13. Katanga Johnson, Michael Barr Plans to Serve Full Term as Fed's Top Bank Cop, Bloomberg, Nov. 20, 2024, https://www.bloomberg.com/news/articles/2024-11-20/barr-plans-to-serve-full-term-as-fed-s-top-bank-cop.

14. Board of Governors of the Federal Reserve, Press Release, "Federal Reserve Board Announces Michael S. Barr Will Step Down From His Position as Federal Reserve Board Vice Chair for Supervision, effective February 28, 2025, and Will Continue to Serve as Governor," Jan. 06, 2025, https://www.federalreserve.gov/newsevents/pressreleases/other20250106a.htm.

distinction in the degree of legal certainty in a board member's position *as a governor* and the degree of legal certainty that the member is secure in one of the three leadership positions of chair, vice chair, and vice chair for supervision.[15] The issues raised by this distinction reveal the considerable difficulties in trying to untangle the Fed's monetary policy and regulatory roles.

As enacted in 1913, Section 10 of the Federal Reserve Act specified that members of the board were to have long statutory terms "unless sooner removed for cause."[16] Although the courts have not had occasion to build out the scope of the "cause" for which the president may remove a member of the board, the term is generally understood to preclude removal simply for policy disagreement.[17] The original Section 10 empowered the President to appoint one of the confirmed members as "governor" and a second as "vice governor," with no designated terms and with no requirement for Senate confirmation specifically for those leadership positions.[18] The Banking Act of 1935 specified that the "chairman" and "vice chairman," as they were now redesignated, were to have four-year terms.[19] In the Federal Reserve Reform Act of 1977, Congress added the requirement that individuals designated as chair and vice chair by the president be subject to Senate confirmation,[20] but it did not indicate whether or not the occupants of those positions had for cause removal protection. In creating the position of vice chair for Supervision in 2010, Congress simply added that position to the existing provision on appointment of the chair and vice chair.[21] Thus, while it is generally assumed that the statute does not authorize the president to remove a board member because, for example, she opposed a reduction in interest rates that the president would have preferred,

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15. The positions of chair and vice chair are longstanding. The position of vice chair for supervision was created by the 2010 Dodd-Frank Act following the Global Financial Crisis.

16. Pub. L. 63-48, 38 Stat. 251, 260 (1913). This provision was removed by Congress when it amended the Federal Reserve Act in 1933, perhaps by accident or perhaps because of a Supreme Court decision that was widely read as limiting such for cause removal protection. See Gary Richardson and David W. Wilcox, How Congress Designed the Federal Reserve to Be Independent of Presidential Control, 39 J. Econ. Perspectives 221, 228-229 (2025). Following the *Humphrey's Executor* decision in 1935, Congress restored the for cause protection when it again amended the Federal Reserve Act later that year.

17. In Free Enterprise Fund v. Public Company Oversight Accounting Bd, 561 U.S. 477, 487 (2010), the court accepted the shared position of the parties that protection against removal except "for good cause shown" was essentially equivalent to the formulation found in other statutes, including the Federal Trade Commission Act provision at issue in *Humphrey's Executor,* that an official cannot be removed by the President except under the Humphrey's Executor standard of "inefficiency, neglect of duty, or malfeasance in office." That standard, in turn, requires something considerably more than policy disagreement. See Jane Manners and Lev Menand, The Three Permissions: Presidential Removal and the Statutory Limits of Agency Independence, 121 Columbia Law Review. 1, 27-52 (2021).

18. Id.

19. Pub. L. 74-305, Ch. 614, §203(b), 49 Stat. 684, 705 (Aug. 23, 1935).

20. Pub. L. 95-188, §204(a), 31 Stat. 1387, 1288, (Nov. 16, 1977).

21. Pub. L. 111-203 §1108, amending 12 U.S.C §242, 124 Stat. 1376, 2126 (July 21, 2010). The current statutory provision reads, in relevant part:

> [E]ach member shall hold office for a term of fourteen years from the expiration of the term of his predecessor, unless sooner removed for cause by the President. Of the persons thus appointed, 1 shall be designated by the President, by and with the advice and consent of the Senate, to serve as Chairman of the Board for a term of 4 years, and 2 shall be designated by the President, by and with the advice and consent of the Senate, to serve as Vice Chairmen of the Board, each for a term of 4 years, 1 of whom shall serve in the absence of the Chairman, as provided in the fourth undesignated paragraph of this section, and 1 of whom shall be designated Vice Chairman for Supervision.

12 U.S.C. §242.

there is some ambiguity as to whether the president may remove the vice chair for supervision from only that position (not from serving as a member of the board) because he favored a stricter capital requirement for banks than the president would have preferred.

Had Vice Chair Barr resisted the administration and the president removed him, the resulting litigation would have produced an interesting contest in statutory interpretation.[22] On the one hand, the administration could have adopted a straightforward textualist argument that the omission of a for cause removal provision in the leadership appointment sentence indicated that no such protection applied to those positions.[23] This reasoning might have been supplemented with the argument that derogations of the president's removal authority ought not to be inferred from arguably ambiguous language.[24]

Barr, on the other hand, could have argued that the sentence on leadership appointments added in 1977 had constrained both the appointment and removal prerogative of the president by requiring Senate confirmation and specifying a term. Moreover, to jurists at least somewhat open to considering legislative history in interpreting statutes, Barr might also have argued that the legislative history of the 1977 legislation demonstrated that in adding the requirement for Senate confirmation, Congress understood that under existing law the chair and vice chair could not be removed during their four-year terms.[25]

No matter how the case was decided, the outcome would have highlighted the difficulties in untangling the Fed's monetary policy and regulatory functions. While Barr's actions and Executive Order 14215 suggest a difference between the accountability of the board to the president for regulatory policy, as opposed to monetary policy, the Federal Reserve Act itself does not distinguish the job protection afforded the chair, as leader of the Fed's monetary policy, from that of the vice chair for supervision charged with

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22. Indeed, a hypothetical problem in which a president attempts to remove the chair *qua* chair has proven a very fruitful vehicle for a law class discussion that combines elements of statutory interpretation and constitutional considerations.

23. The administration might have argued even if the vice chair enjoyed for cause protection, there was in fact "cause" present here. That kind of argument would have made the litigation considerably more complicated, both because a court would need to make factual determinations on whatever allegations the administration made to back up its claim that there was "cause," and because the courts would have had to wrestle with the issue of what kinds of facts amount to "cause" within the meaning of the Federal Reserve Act. Since there was no hint of any personal impropriety on Vice Chair Barr's part, the argument would have presumably needed to focus on alleged failures in his job that amounted to "cause." Just such a line of attack on Chair Powell began in July 2025, when administration officials questioned whether Powell had lied to Congress about cost overruns and other issues related to the renovation of the Fed's Eccles Building. Nick Timiraos, White House Seizes on Fed Renovations as Opening to Oust Powell, The Wall Street Journal, July 11, 2025, https://www.wsj.com/economy/central-banking/jerome-powell-fed-renovations-trump-fb9793df?mod=itp_wsj. And, ultimately, of course, the President invoked "cause" in attempting to remove Governor Lisa Cook.

24. The Office of Legal Counsel made just such a suggestion in opining that the President had authority to remove the Chair of the Consumer Products Safety Commission. Office of Legal Counsel, The President's Authority to Remove the Chairman of the Consumer Product Safety Commission, Opinions of the Office of Legal Counsel in Volume 25, at 171, 173 (July 31, 2001). The statute at issue, like the Federal Reserve Act, provided for cause protection for the members of the Commission, but not explicitly for the chair, who was to be appointed by the president with the advice and consent of the Senate. 15 U.S.C. §2053(a). Unlike the Federal Reserve Act, however, the statute creating the CPSC does not specify a term for the chair.

25. For an explanation of the argument and relevant history, see Lev Menand, The Logic and Limits of the Federal Reserve Act, 40 Yale Journal on Regulation, 197, 252, fn. 298 (2023).

overseeing the supervision and regulation of financial firms.[26] Section 10 appears to give for cause protection either to both or to neither.[27]

If both have for cause protection, then a principal channel by which the president can oversee the Fed's financial regulation is eliminated. But if Section 10 were read as not providing for cause removal protection for the leadership positions, then monetary policy independence will have been significantly compromised. Though the chair must always garner the votes on the FOMC for his or her preferred monetary policy action, in practice this is usually possible.[28] Congress, markets, the public and—clearly—the President himself all regard the chair as the key player in formulating monetary policy.[29]

II. Administration control of Fed regulation

The President's February 18, 2025 executive order brings to the fore the difficulty in separating the monetary policy and regulatory functions of the Fed.

Since 1993, White House review and approval of agency rulemaking has been governed by Executive Order 12866 which, among other things, requires agencies to conduct a cost-benefit analysis as specified by the Office of Management and Budget (OMB).[30] President Clinton excluded from most of the order's requirements "independent regulatory agencies," as defined in a section of the Paperwork Reduction Act,[31] the legislation that not coincidentally created the Office of Information and Regulatory Affairs (OIRA) as a statutory entity within OMB. That definition listed most of the agencies one would traditionally have thought of as "independent," including the Board of Governors. Later presidents amended the order in various respects. But, until February 2025, the exclusion remained, and the Fed did not submit its proposed regulations to OMB.

President Trump's order removes the longstanding exception and subjects "independent" agencies to the full scope of the Executive Order 12866 framework.[32] These agencies now must submit significant proposed rulemakings, along with the cost-benefit analysis, for OMB approval. No regulation may be

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26. 12 U.S.C. §242.

27. Indeed, one factor that might have been working in Barr's favor should he have chosen to fight an attempt to remove him would have been the concern of at least some justices that a decision against him would have placed the chair's position in jeopardy.

28. Contrary to what is sometimes suggested, the chair cannot simply dictate a monetary policy outcome to the rest of the Federal Open Market Committee (FOMC). As former Chair Ben Bernanke explained in his memoir, the desirability of a consensus, or at least a strong majority, of the FOMC sometimes requires the chair to propose a monetary policy action that is not exactly what he or she would prefer. See Ben S. Bernanke, The Courage to Act, 539–46 (2015). However, the other members of the Board of Governors and, to a lesser extent, the presidents of the regional reserve banks who also sit on the FOMC, are generally inclined to accommodate the chair's preference.

29. Perhaps, if faced with this case, the court could have continued its recent practice of reshaping the structure of government by finding a way to distinguish the two positions. For example, it might read Section 10 as providing for cause protection to all three leadership positions, but then conclude that—as applied to the vice chair for supervision—that protection is unconstitutional.

30. President Clinton rescinded President Reagan's executive orders, but his own order continued the basic requirement for OMB review.

31. 44 U.S.C. §3502(5).

32. Executive Order 14215 of February 18, 2025, 90 Fed. Reg. 10447 (Feb. 24, 2025).

issued without OMB's acquiescence.[33] If an agency disagrees with OMB, its only recourse is directly to the president.[34] President Trump's order also subjects independent regulatory agencies to some requirements beyond the OMB clearance process for rules: Those agencies must consult on their allocation of resources to their regulatory activities with the Director of OMB, who is empowered to "prohibit independent regulatory agencies from expending appropriations on particular activities, functions, projects, or objects, so long as such restrictions are consistent with law."[35] The agencies must establish "a position of White House Liaison" in their agencies.[36] The chairs of those agencies must "regularly consult with and coordinate policies" with OMB, the Domestic Policy Council, and the National Economic Council,[37] and also submit agency strategic plans to OMB for clearance.

In short, Executive Order 14215 is a very strong assertion of unitary executive authority. But there is an important exception:

> This order shall not apply to the Board of Governors of the Federal Reserve System or to the Federal Open Market Committee in its conduct of monetary policy. This order shall apply to the Board of Governors of the Federal Reserve System only in connection with its conduct and authorities directly related to its supervision and regulation of financial institutions.[38]

The administration is signaling that it does not plan to interfere in the Fed's monetary policy, while asserting that the bank regulatory functions of the Fed *are* subject to the OIRA clearance process. Because this language applies to the whole of E.O. 14215, the order appears to subject the Fed to the other requirements noted earlier, such as establishing a White House Liaison Office at the Board of Governors, though presumably only for matters relating to regulation.

The executive order and the OMB guidance issued to date[39] leave several questions unanswered. Most obvious is how the line is to be drawn between the Fed's monetary and regulatory activities. For example, how should one classify the Fed's solvency criteria for banks to access discount window borrowing?[40] When a bank borrows from the discount window, the Fed creates reserves, thereby increasing the money

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33. E.O. 12866 §8. OMB's acquiescence can be of two types: (1) a communication from OMB that it has waived review or has completed its review with no further questions, or (2) the passage of a specified period, usually 90 days, during which OMB has not communicated any reservations or requests for further analysis by the agency. An Executive Order issued by President Trump during his first term makes clear that the OIRA approval process in E.O. 12866 applies to agency guidance, as well as notice-and-comment rules. Executive Order 13891 of October 9, 2019 § 4(iii)(C), 84 Fed Reg 55235, October 15, 2019. That order, though revoked by President Biden on his first day in office, was reinstated when President Trump revoked the Biden revocation.

34. E.O. 12866, §7.

35. E.O. 14215 §5(b).

36. E.O. 14215 §6(a).

37. E.O. 14215 §6(b).

38. This same language appears in two sections of the order. E.O. 14215 §2(b); §3(a), amending §3(b) of E.O. 12866.

39. Thus far OMB has issued guidance only on §3 of E.O. 14215, the provision that subjects proposed regulations of independent agencies to the OIRA review process.

40. In contemporary usage, the discount window refers to the standing Fed lending facility to which depository institutions facing short-term liquidity pressures turn for collateralized borrowing. The Federal Reserve, The Discount Window, https://www.frbdiscountwindow.org/pages/general-information/the-discount-window.

supply.[41] That is something only a central bank can do. In fact, reserve creation (or elimination) was long fundamental to the Fed's conduct of monetary policy.[42] Policies on discount window borrowing *were* part of monetary policy.[43] Yet the eligibility of banks to borrow, and the terms on which they may do so, are set by reference to criteria such as "undercapitalized,"[44] a statutory term whose concrete meaning is established in the capital regulations of the federal banking agencies.[45] Moreover, the Fed's Regulation A, which sets discount window policy, gives Fed officials discretion to decide whether a bank qualifies based on an assessment of the financial condition of the bank.[46] That kind of assessment is a prototypical element of bank supervision. So is Regulation A "monetary" policy or "related to [the Fed's] supervision and regulation of financial institutions"? In truth, of course, it blends the two.[47]

Although there are some Fed regulations that are far removed from monetary policy, such as the Community Reinvestment Act,[48] many are relevant to its core monetary policy mandates. Bank regulation . . .

41. If it is concerned that the additional reserves created through Discount Window, or other emergency, lending will contribute to an unnecessary relaxation of credit conditions, the Fed can sterilize this lending.

42. The classic example is a central bank's open market operations. When the Fed buys Treasuries on the open market, it is increasing the amount of reserves (money) in the banking system, which generally puts downward pressure on interest rates. Conversely, when the Fed sells Treasuries, the private buyers will, through their banks, pay for those Treasuries with reserves, thereby leading to upward pressure on interest rates, since money is now tighter.

43. In its regularly revised publication, The Fed Explained, the Fed has always included its description of discount window operations in the chapter on monetary policy, not the chapter on banking regulation. The Federal Reserve System, The Fed Explained 39 (11th ed. 2021), https://www.federalreserve.gov/aboutthefed/files/the-fed-explained.pdf. This placement is probably partly for historical reasons, insofar as the Fed's ability to "discount" commercial paper was its primary tool for controlling interest rates in its early decades. But the Fed continues to regard the discount window as supporting, albeit in a less important role, monetary policy: "By providing ready access to liquidity at a fixed rate, the discount window helps to damp upward pressures on the federal funds rate and other short-term bank funding rates." Id.

44. 12 C.F.R. §201.2(e).

45. Federal banking law requires the banking agencies to establish various levels of bank capitalization which, when breached by a bank, carry certain adverse regulatory consequences. The statute requires the categories—"well capitalized," "adequately capitalized," "undercapitalized," and "significantly undercapitalized"—but the actual capital levels associated with those categories are to be established "by regulation" of the federal banking agencies. 12 U.S.C. §1831o(c)(2).

46. 12 C.F.R. §201.4(a) ("A Federal Reserve Bank may extend primary credit on a very short-term basis, usually overnight, as a backup source of funding to a depository institution that is in generally sound financial condition in the judgment of the Reserve Bank").

47. Another example of a monetary policy instrument that takes the form of a regulation imposed on banks is the reserve requirement—a minimum percentage of certain kinds of deposits that banks must hold in cash or, directly or indirectly, in accounts at the Federal Reserve. These requirements create a floor on the demand for central bank reserves, and thereby facilitate a monetary policy regime that operates through adjusting the level of reserves in the banking system in order to affect interest rates. Reserve requirements were considered a key monetary policy instrument and were originally set by Congress when it created the Federal Reserve. Federal Reserve Act, Pub. L. No. 63-43, Ch. 6, §19, 38 Stat. 251, 270 (1913). Today the Fed has discretion where to set reserve ratios "for the purpose of implementing monetary policy." 12 U.S.C. §461(b)(2)(A). Because the Fed has moved away from a "scarce reserves" regime for conducting monetary policy to an "ample reserves" regime, reserve requirements are currently unnecessary and have been reduced to zero. See Board of Governors of the Federal Reserve System, Press Release, March 15, 2020, https://www.federalreserve.gov/newsevents/pressreleases/monetary20200315b.htm. Should the Fed someday return to a scarce reserves regime, however, reserve requirements might again play a role, though likely a decidedly secondary one.

48. The Community Reinvestment Act, Pub. L. 95–128, title VIII, 91 Stat. 1147, Oct. 12, 1977, *codified at* 12 U.S.C. §§2901-2908, is designed to ensure that depository institutions meet the credit needs of the communities in which they operate, especially low- and moderate-income areas.

serves multiple purposes, to be sure. But one is to ensure that creditworthy businesses and households will continue to have access to credit even after financial shocks or during deep recessions. Prudential regulations such as minimum capital requirements buttress bank resiliency in the event of unexpectedly high loan losses, so that they can remain viable financial intermediaries even in these stressed conditions. The Fed will, at the same time, be lowering interest rates to stimulate economic activity. The regulatory aim of a reliable bank intermediation function is thus a complement to the Fed's monetary policy—low rates will not have the desired stimulative effect if bank losses have eroded their capital to the point where they cannot make new loans.[49]

Perhaps the discount window question, and others like it, could be answered by recourse to the specification in E.O. 14215 that it applies "only in connection with its [the board's] conduct and authorities *directly* related to its supervision and regulation of financial institutions."[50] That is, where a Fed activity related to monetary policy or emergency liquidity provision affected banks in some way, it could be considered only an *indirect* regulation of financial institutions. In reality, though, this provision in the executive order has the relationship backwards. Once the connection between financial regulation and monetary policy is recognized, the question is not whether the Fed activity directly relates to the supervision and regulation of financial institutions, but whether that regulation relates to the Fed's monetary policy mandate of stable prices and maximum employment.

In any case, OMB would presumably regard itself as the arbiter of any such issues, a circumstance that leads to the more fundamental question: How does the administration intend to enforce its application to the regulatory functions of the Federal Reserve if the board does not comply?

In general, of course, a president can enforce the terms of an executive order against recalcitrant administration officials with threats to remove them or by actually firing them. Indeed, Executive Order 14215 is explicitly premised on the assumption that statutory removal protections for principals of traditionally independent agencies are unconstitutional.[51] Based on the court's brief order in *Trump v. Wilcox,* that assumption seems well grounded. But that same order strongly suggests, without quite saying so unequivocally, that neither the members of the Board of Governors nor the presidents of the regional reserve banks who also sit on the Federal Open Market Committee are covered by this evolving doctrine. If this suggestion is confirmed in the Court's eventual decision(s) on the merits of the removal cases, the administration's means of enforcement of Executive Order 14215 against the Fed is unclear.

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49. This aim is an explicit motivation for the board's annual "stress test" of the nation's largest banks: "The Federal Reserve conducts stress tests to help ensure that large banks are sufficiently capitalized and able to lend to households and businesses even in a severe recession." Board of Governors of the Federal Reserve System, 2025 Federal Reserve Stress Test Results iii (June 2025), https://www.federalreserve.gov/publications/files/2025-dfast-results-20250627.pdf. In adopting a "countercyclical capital buffer," the Fed and the Office of the Comptroller of the Currency similarly stated "[W]hen the credit cycle turns following a period of excessive credit growth, accumulated capital buffers act to absorb the above-normal losses that a banking organization likely would face. Consequently, even after these losses are realized, banking organizations would remain healthy and able to access funding, meet obligations, and continue to serve as credit intermediaries." 78 Fed. Reg. 62,018, 62,038 (Oct. 11, 2013).

50. E.O. 14215 §2(b) (emphasis added).

51. The statement of policy and purpose in Section 1 of the order begins with an invocation of the Vesting and Take Care Clauses of Article II and tracks Chief Justice Roberts' reasoning in *Seila Law.* The OMB guidance memorandum begins with a quote from *Seila Law.*

A. Removal of non-compliant board members

Courts have sometimes alluded to the possibility of the president firing non-compliant officials in declining to grant relief to private parties arguing that agencies have ignored an executive order.[52] So long as the president's at will removal power applies to all agencies subject to an executive order, this is a feasible approach. Just as a Secretary of Labor who balks at the president's order to minimize enforcement of the Fair Labor Standards Act can be removed by the President, so a member of the National Labor Relations Board whose decisions generally favor unions will now also be removable. But, assuming the Supreme Court follows through on its suggestion in the *Wilcox* order of an exception for the Board of Governors, then it is not obvious that the reach of E.O. 14215 and the president's at will removal power are coterminous.

One can see the theoretical attractiveness to the Court of cleaving board members into monetary policy officials and bank regulatory officials—removable only for cause in the former role, but at will in the latter. This approach would be consistent with the Court's emerging doctrine that all regulatory activity falls within the executive power allocated to the president by Article II, Section 1,[53] while maintaining its presumptive embrace of an independent central bank in *Wilcox*. So, for example, a refusal to submit for OIRA review a proposed board regulation increasing minimum bank capital levels would seem a clear-cut instance of action by board members that was unrelated to monetary policy and could justify removing one or more of the non-compliant members.[54]

But things quickly get messy, because determining whether a dismissal was for permitted regulatory reasons or prohibited monetary policy reasons would be daunting. First, deciding what Fed actions are matters "directly related to its supervision and regulation of financial institutions" may not always be straightforward. And the question of who decides the issue is critical.

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52. See, e.g., Zhang v. Slattery 55 F.3d 732, 748 (2d Cir. 1995) ("For whatever reasons, the Attorney General did not adhere to this order, and the Bush administration did not follow up on it. However, it is not the role of the federal courts to administer the executive branch."); Manhattan-Bronx Postal Union v. Gronowski, 350 F.2d 451, 457 (D.C. Cir. 1965) ("If appellants disagreed with the [agency's] decision as to [the matter covered in an executive order], and believed it to be contrary to the President's wishes, it is obvious to whom their complaint should have been directed").

53. Although the court has not yet said outright that any non-trivial exercise of regulatory power is, by definition, executive power, Chief Justice Roberts' opinion in *Seila Law* makes that conclusion reasonably clear:

> In addition, the CFPB Director is hardly a mere legislative or judicial aid. Instead of making reports and recommendations to Congress, as the 1935 FTC did, the Director possesses the authority to promulgate binding rules fleshing out 19 federal statutes, including a broad prohibition on unfair and deceptive practices in a major segment of the U.S. economy. And instead of submitting recommended dispositions to an Article III court, the Director may unilaterally issue final decisions awarding legal and equitable relief in administrative adjudications. Finally, the Director's enforcement authority includes the power to seek daunting monetary penalties against private parties on behalf of the United States in federal court—a quintessentially executive power.

Seila Law LLC v. Consumer Financial Protection Bureau, 591 U.S. 218-219 (2020).

54. Which board members would, in such a situation, be "non-compliant" is not obvious. All board members, on the theory that the whole institution had failed? Only those who voted for a proposed regulation? Only the leadership (chair and vice chair for supervision) on the theory that they both had special responsibilities, as set forth in 12 U.S.C. §242: "The Vice Chairman for Supervision shall develop policy recommendations for the Board regarding supervision and regulation of depository institution holding companies and other financial firms supervised by the Board, and shall oversee the supervision and regulation of such firms. The Chairman of the Board, subject to its supervision, shall be its active executive officer."

Second, if the basis for splitting the personalities of board members is the idea that bank regulation is an "executive" function and thus squarely covered by the Court's separation of powers doctrine, then the president's control over those functions at the Fed must extend beyond requiring OIRA review of proposed banking regulations.[55] This implication is evident in Executive Order 14215 itself, which empowers the OMB Director to "adjust such agencies' apportionments by activity, function, project or object, as necessary and appropriate, to advance the President's policies,"[56] and to "coordinate policies and priorities with" specified senior White House officials.[57] Presumably, then, the president could not only halt a proposed agency regulation through the OIRA process, but also order the Fed to initiate a rulemaking to issue a new regulation or to revoke an existing one.[58] Further, if all the regulatory policy positions—those favoring inaction, as well as action—of board members are relevant, then the president might claim authority to remove one or more members even in the absence of a specific disagreement. He could summarily assert that he did not find their overall approach to regulation compatible with his priorities. Indeed, in removing NLRB Member Wilcox from her position, the Deputy Director of the White House Personnel Office simply informed her in an email that she did not "share the objectives" of the president's administration.[59]

But if all that is needed for removal is a brief statement of this sort, then what is to stop a president who wishes to remove a member of the board of Governors for monetary policy reasons from sending a removal letter that tersely presents the reason as disagreement with "your approach to financial regulation"? More to the point, *who* is to stop a president from doing so?

As a legal matter, the answer must be the courts. Just as Ms. Wilcox and other removed principals of traditionally independent agencies have sued for reinstatement, and just as Federal Trade Commissioner William Humphrey's executor sued for back pay 90 years ago, so a member of the Board of Governors seeking redress from a president's action would turn to the courts.[60] But the task for a court in deciding that dispute would be different. In the cases just mentioned, the main issue was the constitutional one of whether the statutory removal protection enjoyed by the plaintiffs was an infringement on the Article II

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55. This point was emphasized by Justice Alito in another removal case:

> The President must be able to remove not just officers who disobey his commands but also those he finds ''negligent and inefficient,'' Myers, 272 U.S. at 135, those who exercise their discretion in a way that is not ''intelligen[t] or wis[e],'' ibid., those who have ''different views of policy,'' id., at 131, those who come ''from a competing political party who is dead set against [the President's] agenda,'' Seila Law, supra, at——, 140 S.Ct., at 2204 (emphasis deleted), and those in whom he has simply lost confidence, Myers, supra, at 124.

Collins v. Yellen, 590 U.S. 220, 256 (2021).

56. E.O. 14215 §5(b). Since the Fed is self-funding, and thus not reliant on congressional appropriations, it is unclear whether—or to what extent—the administration intends to exercise budgetary control over Fed regulatory activities.

57. E.O. 14215 §6(a).

58. Section 2 of Executive Order 14219 of February 19, 2025, https://www.federalregister.gov/documents/2025/02/25/2025-03138/ensuring-lawful-governance-and-implementing-the-presidents-department-of-government-efficiency, seems to contemplate action of this sort.

59. Wilcox v. Trump, 775 F.Supp. 3d 215, 222 (D.D.C, March 6, 2025).

60. This, recall, was the choice confronting former Vice Chair Barr when he learned of administration plans to oust him from his leadership role.

powers of the president.[61] The relevant facts were largely uncontested. Here, though, we would begin with what appears to be the Supreme Court's view that the statutory for cause removal protection of board members *is* constitutional. So the judiciary—ultimately the Supreme Court—would need to decide whether the protection was constitutional only for the monetary policy activities of board members. If that question was answered in the affirmative, a court would need to answer the factual question of why the board member was dismissed.

The ousted board member would argue that the president's statement of regulatory policy differences was pretextual and that, in fact, the real reason for the member's dismissal was that the member resisted the president's call for lower interest rates. So, the argument would go, the president had dismissed the board member without "cause," in violation of the for cause removal protection in the Federal Reserve Act, which the Supreme Court had sustained as constitutional, at least as applied to monetary policy. How would a court go about handling this claim?

Would the court need to sift through publicly available information pertaining to the board member's views on regulatory policy to determine if these positions were sufficiently at odds with the administration's to support the conclusion that the dismissal was not the result of differences over monetary policy? Even putting aside the possibility that the member's record on regulatory matters would be sparse, it is hard to envisage a judicially administrable standard to frame such an inquiry. Moreover, of course, the administration might create a convenient record by stating as its positions certain regulatory policies that were at odds with something the board member had said—or asserting that the failure to enthusiastically embrace those policies showed that the member was out of sync with administration policy.

Yet even this judicial inquiry, problematic as it might be, would not answer what is arguably the pertinent question—what had motivated the president to remove the board member in the first place? That, indeed, would be the core of the ousted board member's claim—that the president had acted on pretext. Preserving a meaningful distinction between the monetary policy and regulatory functions of the Fed could thus require judicial inquiry into the president's motivation for removing the board member.

Such a course of action seems fraught, to say the least. Even in the context of an agency action covered by the Administrative Procedure Act, courts are reluctant to inquire into the motivation of officials who made, or participated in, an agency action.[62] Presidential actions are outside the scope of the APA,[63] so there is no record to be certified or augmented.[64] In any case, here the president would not be acting under authority granted him in a statute, but—at least in the view of the Supreme Court—would instead be exercising his constitutionally based executive authority to take care that the laws are faithfully executed. In *Trump v. Hawaii*,[65] Chief Justice Roberts brushed aside the president's public statements that were at

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61. *Humphrey's Executor* also involved the threshold issue of whether the specification in the FTC Act that commissioners could be removed for "inefficiency, neglect of duty, or malfeasance in office" meant that these were the only reasons that could justify presidential removal of commissioners before their statutory terms had run. The court answered that question in the affirmative.

62. "[W]e have recognized a narrow exception to the general rule against inquiring into 'the mental processes of administrative decisionmakers.' *Overton Park,* 401 U.S. at 420. On a 'strong showing of bad faith or improper behavior,' such an inquiry may be warranted and may justify extra-record discovery." Department of Commerce v. New York, 588 U.S. 742, 781 (2019).

63. Franklin v. Massachusetts, 505 U.S. 788 (1992).

64. This is an important, though not the only, point of difference between the situation hypothesized here and that confronted by the court in Department of Commerce.

65. 585 U.S. 667 (2018).

odds with the reasons given in his executive order banning travel to the U.S. by residents of certain foreign countries. It is difficult to imagine him fashioning a doctrine that would require an investigation into the private statements of a president to his most senior advisors.[66]

B. Judicial enforcement of the executive order

Courts will, of course, invalidate agency action directed by an executive order that exceeds the president's constitutional and statutory authority.[67] They generally will not, however, enforce an executive order at the behest of a private party aggrieved by agency action, or inaction, that arguably conflicts with the order, unless it is founded on a specific statutory grant of authority.[68] Recourse for the private party thus traditionally lies with the president, who has discretion whether to insist that an agency follow a valid executive order in specific instances. Still, might a court aware of the thorny removal issue described in the preceding section nonetheless consider invalidating a regulation adopted by the Board of Governors because it was not referred to OMB for approval?

This alternative, at least at first glance, appears more tractable than trying to fashion a bifurcated removal power for board members. A private plaintiff with standing, such as a bank holding company seeking to avoid the requirements of the new Fed regulation, would presumably simply add this claim to other complaints about the regulation based on the APA – that, for example, it was arbitrary and capricious on its own terms.[69] The argument for invalidation would be quite straightforward: The president has both the authority and the duty to oversee the "executive" regulatory activities of the Federal Reserve, and has issued E.O. 14215 in furtherance of his authority. When the Board of Governors failed to submit its proposed regulation to OMB, it violated a lawful order from the president and obstructed his exercise of his Article II responsibilities. Hence the regulation should be invalidated in accordance with the Administrative Procedure Act judicial review standard that a court shall "hold unlawful and set aside agency action . . . otherwise not in accordance with law."[70] It would obviously be easy for a court to determine whether, in fact, the Fed had followed the procedures required under applicable executive orders.

The immediate problem would be that E.O. 14215, like many executive orders, states explicitly that it does not create any right of action "against the United States."[71] That provision shows that the president intends to maintain his, and perhaps OMB's, discretion to decide when and how to enforce the order. And there is a more fundamental problem—one of constitutional dimensions.

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66. Lower court cases in the wake of Department of Commerce have given no hope that the court's pretextual inquiry will be applied when the actions of the president are at issue. See, e.g., Center for Biological Diversity v. Trump, 453 F.Supp.3d 11 (D.D.C. 2020); Mayor and City Council of Baltimore v. Trump, 429 F.Supp.3d 128 (D.Md. 2019).

67. Most famously, of course, in Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579 (1952).

68. Greer v. General Dynamics Information Technology, Inc., 808 Fed. Appx. 191, 194-5 (4th Cir. 2020).

69. The private plaintiff might also try to bootstrap the E.O. argument into an arbitrary and capricious objection if the Fed had not conducted the precise kind of cost-benefit analysis required by OMB. That is, the bank would argue that the E.O. had defined the kind of analysis necessary to keep the regulation from running afoul of the arbitrary and capricious standard.

70. 5 U.S.C. §706(2).

71. "This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person." E.O. 14215 §8(b)(d).

Despite the increasing proliferation of often far-reaching executive orders during recent presidential administrations, the Supreme Court has not had occasion to consider when they can be enforceable by private plaintiffs. But there is a long and, for the most part, consistent line of opinions from courts of appeals making clear that there is a constitutional constraint on the president creating rights in private parties in the absence of an authorizing statute.[72] The creation of such rights is a legislative power, reserved to the Congress. Indeed, the Justice Department's Office of Legal Counsel opinion on the legality of President Reagan's Executive Order 12,291, which is the forerunner of the current order requiring the OIRA process, states that "compliance with the order would probably be immunized from review because the order has not been promulgated pursuant to a specific grant of authority from Congress to the President and thus lacks the 'force and effect of law' concerning private parties."[73]

Even were courts somehow to contrive a doctrine that allowed private parties to enforce E.O. 14215 in the clean case of the Fed not submitting a proposed regulation to OMB, there would remain the problem of enforcing the other requirements in that order. Suppose, for example, that the president directed the Fed to initiate a rulemaking to reduce capital requirements for large banks, and the Fed declined to do so. Or that the president instructed all three federal banking regulators (including the Fed) to eliminate certain kinds of supervisory exams of banking practices. Quite apart from possible standing hurdles, it is hard to see how a court could enforce these kinds of directions at the behest of a private party without enmeshing itself deep in the ongoing activities of the Fed.

III. Confronting the doctrinal quandary

One suspects that most Supreme Court justices have not thought through the complications that could be created by a collision between its far-reaching notion of the president's executive power and the exception for the Federal Reserve foreshadowed in its May 2025 *Wilcox* order. The Court majority may have intended to signal an exception for the Fed as a monetary policy institution without taking into account the fact that the Fed is also a financial regulator.[74]

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72. See, e.g., Marin Audubon Society v. Federal Aviation Administration, 121 F.4th 902, 914 (D.C. Cir. 2024); California v. Environmental Protection Agency, 72 F.4th 308, 318 (D.C. Cir. 2023) (in absence of a statutory authorization, "an executive order is not 'law' within the meaning of the Constitution or the APA"). Micei Int'l v. Dep't of Commerce, 613 F. 3d 1147, 1153 (D.C. Cir. 2010) ("the Constitution vests the power to confer jurisdiction in Congress alone"). For a much earlier statement of the same principle, see Independent Meat Packers Association v. Butz, 526 F.2d 228, 235 (8th Cir. 1975). Older decisions did sometimes find that an executive order could create protections for individuals even in the absence of explicit statutory authorization. But that line of cases came to an end in the 1960s. See Erica Newland, Executive Orders in Court, 124 Yale Law Journal 2026, 2077-2079 (2015).

73. Office of Legal Counsel, U.S. Department of Justice, Memorandum Re Proposed Executive Order Entitled "Federal Regulations," *citing* Independent Meat Packers Association v. Butz, 526 F.2d 228, (8th Cir. 1975)., 5 Opinions of Office of Legal Counsel 61 (Feb. 13, 1981).

74. Support for the inference drawn in the text may be found in Chief Justice Roberts' observation in what has become an important footnote in Seila Law: "But even assuming financial institutions like the Second Bank and the Federal Reserve can claim a special historical status, the CFPB is in an entirely different league. It acts as a mini-legislature, prosecutor, and court, responsible for creating substantive rules for a wide swath of industries, prosecuting violations, and levying knee-buckling penalties against private citizens." Seila Law, 591 U.S. at 222. The Fed, of course, has broad regulatory jurisdiction over every large bank in the United States, as well as a number of critical payments and settlement systems. It sets requirements that are

The Court's best hope of escaping these doctrinal complications is that the issue never gets litigated. That is, in fact, a distinct possibility, at least in the near term. A clash between the Fed and the administration over regulatory policy seems quite unlikely in the months that remain until Chair Jerome Powell's term as chair ends in May 2026. While the President's strong disagreement with the Fed over monetary policy is regularly reported, a less noticed fact is that the Fed has generally accommodated administration priorities outside of core monetary policy.[75] And joint rulemakings with the Federal Deposit Insurance Corporation and the Office of the Comptroller of the Currency will already be submitted to OMB, since those agencies have publicly acquiesced to E.O. 14215. Looking further ahead, we can fairly assume that whoever succeeds Powell as Fed chair will share the basic deregulatory policy orientation of the Trump administration and, in any event, will have agreed before being nominated to abide by the E.O. 14215 instructions to regulatory agencies.

Still, one can imagine scenarios where a confrontation between the Fed and a president over regulatory policy does occur, including ones in which a president is unhappy with monetary policy but invokes differences over bank regulation as the reason for removing one or more board members.[76] If the president removed the Fed chair from the board entirely, a court—ultimately the Supreme Court—would be forced to move beyond its epigrammatic bestowal of exceptional status on the Fed in *Trump v. Wilcox* and specify the scope of that status.

As the discussion in Part II showed, the doctrinal dilemma is likely to play out in the context of the removal power. Broadly speaking, a court would have three options, each quite problematic within the doctrinal terms and policy leanings heretofore revealed by the Supreme Court. First, it could simply validate the president's dismissal by holding the Constitution requires unconditional power to remove any government official not in Congress or the judiciary. Second, it could try to fashion a standard that distinguished between acceptable and unacceptable reasons for dismissing a board member. Third, it could uphold the terms of the Federal Reserve Act and hold that board members are insulated from removal except for "cause."

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much more central to banks' business models than those of the CFPB. It prosecutes violations and can levy large penalties against those banks and individuals associated with them.

75. So, for example, days before President Trump's inauguration, the Fed withdrew from an international group of central banks considering the impact of climate change. Board of Governors of the Federal Reserve System, Press Release, Jan. 17, 2025. https://www.federalreserve.gov/newsevents/pressreleases/bcreg20250117a.htm. Two weeks later it scaled back its Office of Diversity, Equity, and Inclusion, Amara Omeokwe and Catarina Saraiva, Powell's Fed on Defensive as Diversity Effort Comes Under Fire, Bloomberg, Jan. 31, 2025, https://www.bloomberg.com/news/articles/2025-01-31/powell-s-fed-on-defensive-as-diversity-effort-comes-under-fire. The bank regulatory agenda of the Fed for the duration of Powell's tenure is likely to be fairly limited and in keeping with administration policies. The Fed has already gone along with proposing a reduction in the "enhanced supplementary leverage ratio," a capital requirement applicable to the largest U.S. banks. Joint Press Release, June 27, 2025. https://www.federalreserve.gov/newsevents/pressreleases/bcreg20250627a.htm.

76. Here are three: First, and probably least likely, a majority of the Board of Governors unexpectedly resists some far-reaching deregulatory proposal favored by the administration. Second, the chair appointed by President Trump to succeed Chair Powell faces financial markets that are driving up longer-term interest rates in the belief that the new chair will pursue accommodative monetary policies that will ultimately prove inflationary. In order to establish his or her own credibility with the markets, and to confirm the institutional credibility of the Fed, the new chair reluctantly leads the Fed to a more restrictive monetary policy. The President, deeply displeased, seeks to remove the chair, but in doing so cites unhappiness with the chair's regulatory policies. Third, a Democrat who wins the 2028 election wants to waste no time in reversing some of the Trump era deregulatory measure. The new president, recognizing that the Trump appointees will retain a majority of the board for another three years, decides to take advantage of the lack of doctrinal clarity and seek removal of one of those board members in order to accelerate re-regulation of banks.

The first option would take the Court's reasoning over the last 15 years on the breadth of presidential power to its furthest reaches. It would obviously eliminate any legal foundation for monetary policy independence and, as such, contradict the court's own suggestion of Fed independence in the *Trump v. Wilcox* order. It could well produce a strong negative reaction from financial markets, which would probably drive up longer-term interest rates to the detriment of investment, mortgage markets, and the government's debt servicing capacity. Indeed, the prospect of these economic consequences is likely a good part of the Court's motivation for establishing an exception for monetary policy in the first place.

A key argument for an independent central bank is that political authorities, whose focus is understandably on opinion polls and upcoming elections, are usually concerned principally with achieving shorter-term economic expansion, even at the cost of longer-term risks of high inflation. But stimulating the economy to run significantly hotter than its structural potential for growth over an extended period risks embedding inflationary expectations in, and associated counterproductive responses by, economic actors. A related point is that to allow more spending, government officials may want to monetize government debt to avoid spending cuts or tax increases—that is, to keep printing more money to repay previously issued debt and thus, in real terms, reduce the value of the repaid principal. In the absence of other measures such as wage and price controls, debt monetization may lead to substantial inflation and eventually to the higher interest rates demanded by lenders to protect themselves against the depreciation of their principal.[77]

To the degree these significant economic concerns have been part of the motivation prompting the Court to seek legal rationales for keeping the Fed out of the expanding perimeter of the unitary executive, they would be completely undermined by adoption of the first option.

The second option would obviously be attractive conceptually, since it would mediate the court's revealed desire to protect the Fed from its expanding removal doctrine. However, as the discussion in Part II showed, any such effort quickly becomes fraught with problems of administrability. A version of that option that limits the president's removal power to clear cut cases of Fed failure to adhere to the OIRA process would be administrable, but it is obviously insufficient to realize what the Court would presumably see as the president's prerogative to oversee regulation in all parts of the United States government.

The tidiest variant of this option would be simply to accept at face value whatever a president had said in dismissing a board member. That approach would allow the courts to affirm for cause protection for monetary policy activities, while sparing the judiciary the daunting task of determining the reality and severity of regulatory policy differences between a board member and the president—or, worse, the actual motivation of the president. Of course, that outcome would severely compromise, if not effectively eliminate, the very removal protection for the Fed that the court seems to have validated in its *Wilcox* order. All the President would need to do is assert regulatory policy differences with a board member. Here there is an echo of the current litigation over the removal of Governor Lisa Cook, which presents the question of whether the president's assertion of the facts in support of a for cause removal of a board member are judicially reviewable, or whether they must simply be accepted on their face.

Thus this apparently administrable standard effectively collapses a doctrine that differentiates between the board's two roles for Article II purposes into the first option—a doctrine that allows the president to

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77. Because central banks can effectively control only short-term rates, the debt servicing implications of a more accommodative monetary policy are not clear unless the central bank commits to keeping longer-term rates down through yield curve control policies, whose eventual distortionary effects can be considerable.

remove any board member for any reason.[78] The distinction between a board member's monetary policy and regulatory activities might be maintained as a formalistic matter, but only as that. This formalist option, while allowing the Court to assert a theoretically consistent doctrinal position, would in practice likely elicit a reaction in financial markets not very different from a holding that a president may remove a Fed governor for any reason.[79]

In fact, even were a court to wade into the murky waters of determining whether there was genuine disagreement over regulatory policy between the president and a board member before upholding that member's dismissal, markets might react negatively. Financial markets may not distinguish reasons for a board member's dismissal, at least in the absence of a plausible "cause" such as malfeasance. For them, the salient fact would be that a member of the Federal Open Market Committee has been dismissed by the president, from which they conclude that monetary policy independence has been diminished.

Effectively, then, the third option is the only one that the Court could be confident would support monetary policy independence. That is, the court might simply uphold the congressional choice, as expressed in Section 10 of the Federal Reserve Act, to provide for cause removal protection to board members, whatever mandates Congress may impose on the Fed in addition to monetary policy. Yet this option is the hardest to square with the Court's own expansive doctrine on the scope of the executive power created by Article II, including the breadth of the president's removal power.[80] It would also undermine, if not conflict with, Executive Order 14215.

As I have suggested elsewhere,[81] there *is* an argument for distinguishing the Fed's regulation of financial institutions from the regulatory functions at other agencies pertaining to securities trading, communications technologies, consumer protection, and labor organizing. In brief, the argument is that banking regulation directly affects the cost of credit in the financial system, the economic variable that is at the center of conventional monetary policy. When the Fed establishes minimum capital requirements, for example, it is constraining the amount of lending a bank can do. Because bank lending is a form of private money creation,[82] prudential financial regulation can be characterized as a complementary tool for regulating the money supply. Moreover, a good part of the Fed's contemporary regulation is aimed at preserving financial stability—a key motivation for the Fed's creation and a condition for achieving the price stability and maximum employment that the Federal Reserve Act mandates as the goals of monetary policy. Thus, the argument would go, the Fed's banking regulation may be understood as an extension of monetary policy, and should be placed under the protective umbrella of the historical monetary policy

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78. Variants on that approach—such as one that looked for even a scrap of evidence of regulatory disagreement or that created a presumption that the president's assertions were valid—would not be much different in practice.

79. We have already seen the administration use a variation on this approach to dealing with the monetary policy/regulation distinction in its filings in the Cook case. In seeking to have Governor Cook excluded from Fed activities pending the final outcome of the litigation, the Justice Department argued—among other things—that harm would be done to the government if she were allowed to remain in place as the litigation proceeded because the president must be able to oversee exercises of regulatory power.

80. *See* Trump v. Wilcox at 1415: "Because the Constitution vests the executive power in the President, see Art. II, §1, cl. 1, he may remove without cause executive officers who exercise that power on his behalf, subject to narrow exceptions recognized by our precedents…"

81. Daniel K. Tarullo, The Federal Reserve and the Constitution, 97 S. Cal. L. Rev. 1, 84-88 (2024).

82. When a bank lends money to a household or firm by crediting its transaction (checking) account, it creates money, since no other economic actor has seen a reduction in its funds. For a fuller explanation, see N. Gregory Mankiw, Principles of Economics 611-616 (8th ed. 2016).

legacy that the court seems on its way to embracing as justification for excluding the Fed from the Article II executive power.

A problem with this argument is that the historical justification is considerably weaker than the already controversial historical rationale[83] for monetary policy independence as an exception to the Court's doctrine that any non-trivial exercise of "executive" power must be subject to presidential control. It's one thing to note that there is precedent from the earliest days of the republic for a monetary policy institution largely outside the control of the president, and to argue this fact as relevant in interpreting Article II. The First and Second Banks of the United States can plausibly be cast as the late 18th and early 19th century versions of a central bank.[84] It's quite another thing, though, to bootstrap this argument based on pedigree into an exception for bank regulation. While the First and Second Banks of the United States did sometimes discipline excessive credit creation by state banks (essentially the only others that existed at the time),[85] it would stretch the meaning of "regulation" beyond recognition to say that they practiced even a rudimentary form of that function. The congressionally enacted charters of those entities contained no power to impose any form of direct restraint on other banks, such as through capital requirements or activities restrictions. Nor did they have the supervisory leverage of state legislatures and banking commissioners, which could threaten termination of the charter of a bank that persistently engaged in reckless or harmful activities.[86]

The counterargument would have to be that just as much of what we regard today as monetary policy is vastly different from what the Second Bank of the United States or the Bank of England did two centuries ago, so bank regulation was a 20th century extension of monetary policy. One of the purposes explicitly stated by Congress in creating the Federal Reserve in 1913 was "to establish a more effective supervision of banking in the United States").[87] But this counter also rests on contestable ground. For one thing, there are two other federal banking agencies—the Federal Deposit Insurance Corporation (FDIC) and the Office of the Comptroller of the Currency (OCC)—that share many of the statutory bank regulatory powers delegated to the Fed. For another, a number of significant central banks—including the Bank of Canada and the Bank of Japan—do not have bank regulatory powers.[88] Thus the modern concept of a central bank seems not to require the possession of exclusive bank regulatory powers or, indeed, any at all.[89]

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83. The problems with the court using the legacy of the Banks of the United States as an exception to its formalistic analysis of executive power are explained in Lev Menand, The Unitary Executive and the Federal Reserve (forthcoming *Fordham Law Review*).

84. See Tarullo, The Federal Reserve and the Constitution, supra note 81 at pp. 77-79.

85. See Bray Hammond, Banks and Politics in America: From the Revolution to the Civil War 198-199, 301, 304-306 (1957); Jane Ellen Knodell, The Second Bank of the United States: "Central" Banker in an Era of Nation-Building, 1816-1836, 158-160 (2017).

86. The first federal agency to have chartering authority—and thus a form of leverage that could be used as a surrogate for direct regulation—was the Office of the Comptroller of the Currency, established in 1863. It is perhaps significant that, except for the first year in that office's existence, the Comptroller has not had for cause removal protection. Even so, the Comptroller did not have what we would recognize as direct regulatory power until well into the 20th century.

87. Federal Reserve Act, Pub. L. 63-43, 38 Stat. 251 (Dec. 23, 1913).

88. Central banks that do not themselves have regulatory and supervisory roles must maintain cooperative relationships with the bank regulatory agencies in order to fulfill their lender of last resort function.

89. See Donato Masciandaro & Marc Quintyn, The Governance of Financial Supervision: Recent Developments, 30 J. Econ. Surveys 982, 987-991 (2016).

The Court's juristic gymnastics could become even more awkward if Congress chose to give the Fed other regulatory powers that are even further afield from monetary policy than core bank regulatory requirements such as capital and liquidity standards. In fact, the Fed had authority over consumer financial protection regulation until the creation of the Consumer Financial Protection Bureau. And as Congress transferred that authority away in 2010, it gave the Fed another regulatory task—that of setting maximum interchange fees for debit cards.[90]

Even the most determined use of history, or arguments based on distinctions between monetary policy and other forms of government action, can get the Court just so far.[91] In the end, the only practical way to preserve the legal status of the Fed's monetary policy independence may be for the Court to declare that the Fed as an institution is just different—an "anomaly," as then-Judge Kavanaugh once put it.[92] As such, the members of the Board of Governors should have what we might term a plenary form of for cause removal protection—one that applies to their performance of whatever statutory duties Congress may choose to delegate to the central bank.

This is hardly an elegant solution. It could be unsatisfying to law professors, the dissenting justices in *Trump v. Wilcox*, and perhaps the sitting president as well. But we should not lose sight of the fact that such an outcome would simply uphold the law that Congress wrote into Section 10 of the Federal Reserve Act. The problem to which this solution would be addressed was created by the Court itself when it adopted its aggressive separation of powers doctrine that is sweeping away a core feature of regulatory agencies created by Congress over more than a century.[93] The doctrine is not based on the Court's self-proclaimed originalism,[94] or even good history.[95] It overstates the weight of the Article II Vesting Clause, decontextualizes the Take Care Clause, and glosses over the Necessary and Proper Clause.[96]

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90. 15 U.S.C. § 1693o-2.

91. See Tarullo, The Federal Reserve and the Constitution, supra note ___ at 68-88.

92. PHH Corp. v. Consumer Financial Protection Bureau, 881 F.3d 75, 175, 192 n.17 (D.C. Cir. 2018) (en banc) (Kavanaugh, J., dissenting).

93. It is worth noting that there is considerable variety in the composition, protections, and leadership appointments of different agencies. These variations doubtless reflect some combination of congressional views based on the nature of the agency's work and congressional experience with the governance structures of other agencies. This prototypically legislative function of differentiating based on experience and policy choice is undermined by Supreme Court doctrines that lean towards binary standards.

94. See Cass R. Sunstein and Adrian Vermeule, The Unitary Executive: Past, Present, and Future, 2020 Supreme Court Review 83(2021).

95. The problems with the court's reading of history in *Seila Law,* and in *Myers v. United States* a century earlier, have been extensively document by Professor Jed Shugerman. Jed H. Shugerman, The Indecisions of 1789: Inconstant Originalism and Strategic Ambiguity, 171 University of Pennsylvania Law Review753 (2023); Jed H. Shugerman, Movement on Removal an Emerging Consensus and the First Congress, 63 American Journal of Legal History 258 (2023); Jed H. Shugerman, Removal of Context: Blackstone, Limited Monarchy, and the Limits of Unitary Originalism, 33 Yale Journal of Law & Humanities 125 (2022).

96. These points were crisply but powerfully made by Justice Kagan in her *Seila Law* dissent. Seila Law, 591 U.S. 197, 267-69 (Kagan, J. dissenting). Her arguments have been echoed, and other criticisms offered, by numerous scholars. See, e.g., Andrea Scoseria Katz & Noah A. Rosenblum, Becoming the Administrator-In-Chief: *Myers* and The Progressive Presidency, 123 Columbia Law Review 2153 (2023); Leah M. Litman , The New Substantive Due Process, 103 Tex. L. Rev. 565, 602-615 (2025); Joshua C. Macey & Brian M. Richardson, Checks, Not Balances, 101 Tex. L. Rev. 89 (2022); Cass R. Sunstein & Adrian Vermeule, The Unitary Executive: Past, Present, Future, 2020 Sup. Ct. Rev. 83 (2020).

It is hardly surprising that in imposing its robust version of unitary executive theory, the Court would not have anticipated some of the problems it would create. The court's affirmation of the Fed's exceptional status in *Trump v. Wilcox* should be welcomed, however much one may disagree with its line of decisions invalidating Congressional grants of for cause removal protection to agency principals.[97] Similarly, were the Court to be squarely faced with a removal question framed as implicating the board's regulatory powers, we should not insist on impeccable logic for an exception to such a poorly grounded underlying doctrine.

IV. Conclusion

The Federal Reserve's degree of independence from the executive in its conduct of monetary policy depends on the interaction of law, practice, and markets. This paper has argued that judicial acceptance of presidential control over the Fed's regulatory policy will erode not only the regulatory independence granted the Fed by Congress, but also its monetary policy independence. This prospect is of particular concern at a time when conventional practices buttressing Fed independence appear increasingly fragile.

The legal underpinnings of Fed monetary policy independence are substantial. In addition to for cause removal protection over the course of 14-year terms, Congress has allowed the Fed to be self-funding, thereby precluding a significant source of leverage for the political branches to indirectly pressure the central bank by starving it of resources. The judiciary long ago foreswore review of monetary policy decisions. Congress has to a greater or lesser extent also exempted monetary policy from generally applicable administrative requirements such as the Government in the Sunshine Act, the Freedom of Information Act, and investigations by the Government Accountability Office. Although the Supreme Court's sweeping notion of the president's constitutional prerogative created the possibility that the Fed's congressionally created independence would be invalidated, its order in *Trump v. Wilcox* has confirmed the view of those who thought this outcome unlikely.

Ultimately, though, the law *enables* the Fed to conduct monetary policy independent of control by the incumbent administration; it does not *guarantee* independence. Indeed, it cannot do so, short of creating a self-perpetuating central bank that is completely insulated from democratic processes. Most significantly, of course, the president appoints the members of the Board of Governors with the consent of the Senate. Here is where practice, or, to use Adrian Vemeule's terms, "conventions," supporting agency independence become relevant.[98] The most salient of these conventions are the president's attitude towards the Fed and the degree to which legally protected members of the Board of Governors in fact adopt a posture of independence.

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97. See, for example, Justice Kagan's remark in her dissent in *Wilcox*:

> The majority closes today's order by stating, out of the blue, that it has no bearing on "the constitutionality of for-cause removal protections" for members of the Federal Reserve board or Open Market Committee. I am glad to hear it, and do not doubt the majority's intention to avoid imperiling the Fed. But then, today's order poses a puzzle. For the Federal Reserve's independence rests on the same constitutional and analytic foundations as that of the NLRB, MSPB, FTC, FCC, and so on—which is to say it rests largely on Humphrey's.

Trump v Wilcox, 145 S.Ct. at 1417 (Kagan, J., dissenting).

98. Adrian Vermeule, Conventions of Agency Independence, 113 Columbia Law Review 1163, 1196-99 (2013).

While the hands-off policies of Presidents Clinton, George W. Bush, Obama, and Biden might seem to reflect a convention of respect for Fed operational independence that President Trump has broken, in fact most presidents in the post-World War II period have exerted varying degrees of public or private pressure on the Fed to pursue more accommodative monetary policies.[99] The efforts of Presidents Kennedy, Johnson, Ford, Reagan, and George H.W. Bush had only limited success, in large part because of what has been a more robust convention of board members acting independently. Members of the Board of Governors have surely understood that they were appointed based on their expected compatibility with the president's general monetary policy views. But once they were actually making monetary policy, they have equally understood they must make their decisions based on their own analysis of economic conditions in pursuit of the Fed's statutory dual mandate of price stability and maximum employment.

Presidents Truman and Nixon were more aggressive. Yet Truman failed spectacularly in his high-handed attempt to coerce the entire Board of Governors, at least partly because Marriner Eccles orchestrated the board's assertion of its independence in responding to Truman's misleading public statement following a meeting in the Oval Office.[100] Nixon appears to have been more successful in pressuring his former economic advisor Arthur Burns.[101] Many regard Chairman Burns' acquiescence to his long-time political mentor as having planted the seeds of the high inflation of the 1970s. This episode illustrates how, despite the Fed's legal protections, the practices of a president and the Board of Governors can result in some cession of its monetary policy independence.

President Trump has raised public criticism of the Fed, and of Chair Powell in particular, to an unprecedented level. Unlike even the most critical of prior presidents, he has attempted to remove a sitting Fed governor from office. He has also made no secret of his expectation that his designated successor to Chair Powell will be aligned with administration policies.[102] His past and prospective appointments of board members have accordingly raised the question of whether by the middle of next year the Board of Governors will in fact exercise the independent judgment made possible by the Federal Reserve Act and seemingly accepted by the Supreme Court.

In part because there is nothing in the law to stop a president or Fed chair from breaching these conventions, financial markets may today be more powerful than the law in protecting monetary policy autonomy from presidential direction. Appointment of a Fed chair who is expected by markets and the public to follow administration preferences could elicit negative market reactions, such as the significant increase in longer-duration interest rates that accompany expectations of higher future inflation. Financial market actors would hold open the possibility that, once installed, the new chair would strike a more independent policy path. But if those expectations were dashed by the new chair seeming to acquiesce in

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99. Presidents Eisenhower and Carter are the other exceptions. President Carter is especially noteworthy. Whether out of courage, desperation, or some combination of the two in the face of sustained high inflation, he appointed Paul Volcker knowing that a very tight period of monetary policy would ensue.

100. See A. Jerome Clifford, The Independence of the Federal Reserve System 239-245 (1965).

101. Burton A. Abrams, How Richard Nixon Pressured Arthur Burns: Evidence from the Nixon Tapes, J. Econ. Perspectives 177 (2006).

102. See Josh Wingrove, Trump Says He'll Pick a Fed Chair Who Wants to Cut Rates, Bloomberg, June 27, 2025, https://www.bloomberg.com/news/articles/2025-06-27/trump-says-he-ll-pick-a-fed-chair-who-wants-to-cut-rates.

administration preferences, markets would again react.[103] Market movements might then convince the Fed that a less accommodative policy was needed.

But, like law and practice, markets alone cannot ultimately guarantee monetary policy independence. One can imagine a president at some point making the judgment, even if ultimately ill-advised, that the politically more salient near-term economic or fiscal benefits of lower short-term rates might be worth the costs. This would especially be the case insofar as the longer-term costs of persistently high inflation would be borne by successor administrations.[104] If the president could invoke regulatory reasons as the basis for threatening or removing one or more members of the board, the space for them to exercise their independent judgment would be narrowed or eliminated. The Court's affirmation of a "plenary" for cause removal protection for members of the Board of Governors would eliminate the possibility that a president could use this pretext for encroaching on the Fed's monetary policy.[105] This clarification of the board's legal protection would permit its members to hew more closely to the convention of members exercising their own judgment in making monetary policy decisions. In this respect, the law remains an important element contributing to Fed independence.

The difficulties encountered in trying to untangle the monetary and regulatory functions of the Fed demonstrate the unintended consequences of the Court's virtual displacement of Congress as the arbiter of why and when agency independence from the president is justified. At this point, it is surely too much to hope that the court will return to a more nuanced view of constitutional constraints on congressional authority. But, if it truly wants to ensure Fed independence on monetary policy, it should at least limit the damage it has caused by preemptively indicating that for cause protection covers Fed board members in all their roles. If it fails to do so, preservation of the Fed's monetary policy independence may require Congress to remove its regulatory functions from the control of the for cause protected Board of Governors. Whatever the policy merits or demerits of that change, it would stand as a stark example of Congress being effectively forced into a policy change by the aggressive separation of powers doctrines of the current Supreme Court.

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103. Ironically, with market expectations of acquiescence to administration preferences, a new chair seeking credibility might need to pursue a more restrictive monetary policy than someone originally perceived as independent.

104. In addition to possible stimulus of near term economic activity, an additional motivation for an administration to seek lower short-term rates even at the risk of later high inflation could be debt management. If short-term rates are low, the Treasury can shift towards issuing more short maturity securities to finance the country's large and growing indebtedness. The probability that such a maneuver would be successful in bringing down even near-term debt servicing costs as a whole is debatable. But governments faced with seemingly intractable problems sometimes take a chance on untried policies.

105. Obviously the path of removal for purportedly regulatory reasons would be most tempting for a president when the chair and/or a majority of the board were appointees of prior administrations.

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