

# Trump issues executive order asserting absolute authority over independent federal agencies

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In an executive order issued Tuesday evening, President Donald Trump asserted absolute authority over federal agencies created by Congress that were intended to have a degree of independence from the White House. Embracing the most extreme version of the so-called “unitary executive” theory put forward by the late Justice Antonin Scalia, Trump claims that any congressional restriction on presidential control of the executive branch is unconstitutional.

The order asserts that independent agencies like the Federal Communications Commission (FCC), the Securities and Exchange Commission (SEC) and the Federal Election Commission (FEC) must be directly subordinated to the president in both their decision-making and their financial resources, and names Russell Vought, director of the White House Office of Management and Budget (OMB), to be their overseer.

The language of the order is a chilling declaration of quasi-dictatorial power, stating:

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

It continues, mandating the OMB director to “provide guidance on implementation of this order to the heads of executive departments and agencies,” to “establish performance standards and management objectives for independent agency heads,” and to “report periodically to the President on their performance and efficiency in attaining such standards and objectives.”

In effect, the directors and boards of these “independent”

agencies will be nothing more than junior employees of Vought, who will act for Trump, setting their budgets and the scope of their jurisdiction, and overruling their actions if they should clash with Trump’s dictates.

Section 7 of the executive order specifically prohibits the general counsels for these agencies from making any interpretation of the law that contradicts that set by the White House. It reads:

The President and the Attorney General, subject to the President’s supervision and control, shall provide authoritative interpretations of law for the executive branch. The President and the Attorney General’s opinions on questions of law are controlling on all employees in the conduct of their official duties. No employee of the executive branch acting in their official capacity may advance an interpretation of the law as the position of the United States that contravenes the President or the Attorney General’s opinion on a matter of law, including but not limited to the issuance of regulations, guidance, and positions advanced in litigation, unless authorized to do so by the President or in writing by the Attorney General.

This begs the question why any of these agencies should have attorneys on their staff at all, since they are bound hand and foot by the legal interpretations set by the White House and Attorney General Pamela Bondi.

The executive order is based the theory of the “unitary executive,” long derided by historians and constitutional scholars, regarded as a fringe theory cooked up by Scalia and the Federalist Society, the organization of right-wing lawyers and judges from which Trump selected every one of his court nominees during his first term.

This “theory” repudiates the 90-year-old Supreme Court precedent, set in the *Humphrey’s Executor* case, which held that Congress had the power to set up independent agencies whose directors were not replaced with each new administration in the White House but could only be fired for cause, such as misconduct in office.

While Scalia’s successors in the fascist wing of the Court, like Clarence Thomas and Samuel Alito, have indicated their desire to overturn the *Humphrey’s* ruling, claiming that Article II of the Constitution makes the president the sole possessor of the whole power of the executive branch, this position falls apart upon the slightest historical analysis.

The Constitution was clearly written with the intention of making Congress, not the president, the most powerful branch of government. Congress legislates, and the president is charged with faithfully executing those laws, not making the laws himself.

The separation of powers is not absolute. There are numerous instances in which the powers of the legislative and executive branches intermingle: the president can veto legislation, but Congress can override his veto; the president can pardon but not in cases of impeachment by Congress.

Moreover, those sections of the Constitution where the president is given explicit authority, such as his role as “commander-in-chief” of the armed forces, would be superfluous if he had 100 percent control over the executive branch at all times, as the “unitary executive” theory claims.

Only one exception to the “unitary executive” is laid out in Trump’s order, when it declares:

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.

From an intellectual and legal standpoint, this exception is nonsense. If the president possesses inherent constitutional authority over all independent agencies, that applies to the Federal Reserve as well. Like the other independent agencies, he appoints the members of its board of governors, including the chairman, with the advice and consent of the Senate.

Trump asserts authority over the regulatory powers of the Fed but not over its “conduct of monetary policy.” This is a limitation that concedes that the real power under capitalism

lies with the financial markets and those who control and manipulate them: the banks, hedge funds, private equity groups and giant investment trusts. Wall Street would react with extreme disapproval to any assertion of presidential authority over the setting of interest rates. World financial markets would doubtless be even more alarmed.

The practical consequences of the executive order are likely to be felt immediately. Even before it was issued, Trump had named Vought as interim director of the Consumer Financial Protection Board (CFPB), the independent agency set up under the Obama administration after the Wall Street crash of 2008-2009. Vought has shut down the agency and fired all its workers.

White House control of the FCC will allow Trump to directly intervene into the operations of the corporate media, blocking or promoting mergers and takeovers depending on which group of media barons is aligned with him, and imposing the policies demanded by Rupert Murdoch’s News Corporation, the corporate owner of Fox News, and Elon Musk, owner of Twitter/X and head of Trump’s budget-slashing Department of Government Efficiency.

Trump’s executive order portrays his sweeping assertion of presidential authority as the essence of democracy, since “The President in turn is regularly elected by and accountable to the American people.” But the president will now have direct control over the Federal Election Commission (FEC), putting him in a position to manipulate the election process, imposing requirements to hamstring the campaigns of those who may seek to run against him or against his minions in Congress.

The first legal challenge that could bring the “unitary executive” theory to the Supreme Court has already been filed. Hampton Dellinger, head of the Office of Special Counsel, the independent agency that handles whistleblower complaints against federal agencies, challenged his firing by Trump and won favorable rulings first from a federal district court, then from the US Court of Appeals for the D.C. Circuit.

Acting Solicitor General Sarah Harris announced last weekend that she would appeal the Dellinger case to the US Supreme Court, seeking a ruling from the court overturning the *Humphrey’s* precedent and establishing Trump’s unlimited power over the independent agencies.



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