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Legal Sidebar

District Court Upholds Civil Service Protections Over Arguments for Executive Power in *Comey v. DOJ*

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Through the Civil Service Reform Act of 1978 (CSRA), Congress established procedural and for-cause removal protections for federal employees, including Assistant United States Attorneys (AUSAs). In October 2026, the U.S. District Court for the Southern District of New York issued a decision in *Comey v. DOJ* considering whether an AUSA could be removed from office as an exercise of executive power, even if the removal was not for a reason authorized by the CSRA.

The plaintiff in *Comey v. DOJ*, Maurene Comey, was an AUSA for the Southern District of New York. She alleged the defendants fired her either because her father is former Director of the Federal Bureau of Investigation, James Comey, who has criticized the Trump Administration, or because of her "perceived political affiliation and beliefs." On July 16, 2025, the plaintiff received an email ending her employment "'[p]ursuant to Article II of the United States Constitution and the laws of the United States.'" Article II of the Constitution vests "the executive Power" in a President of the United States and describes various powers and duties of that office that give rise to the President's authority to remove executive branch officials. The plaintiff filed suit in federal district court challenging her termination on various grounds, including as a violation of the Constitution's separation of powers and the CSRA, among other constitutional and statutory claims. The court ruled for the plaintiff, concluding the defendant violated the separation of powers, the Administrative Procedure Act (APA), and the plaintiff's due process and statutory rights. This Legal Sidebar highlights the core legal issues presented, with a focus on the scope of congressional and executive power over the civil service, and identifies some topics that this case might raise for Congress.

Case Background

The district court in *Comey* found the undisputed facts to include that the plaintiff had regularly received outstanding ratings and awards lauding her work as an attorney and supervisor. The same day she was asked to join the trial team for a major case, she received an email from the agency's human resources arm indicating that she was being removed from her position "[p]ursuant to Article II of the United States

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Constitution and the law of the United States ….” The plaintiff then received standard separation paperwork showing “ART II CONSTITUTION” as the sole legal authority for her termination. The defendants did not assert that the plaintiff’s termination was “for cause”; that is, for reasons the statute recognizes as sufficient to warrant removal. The plaintiff then filed suit alleging various categories of claims, including: (1) violation of the separation of powers, (2) violation of the APA, (3) an *ultra vires* claim, (4) violation of the First Amendment, and (5) violation of the Fifth Amendment Due Process Clause. The defendants in turn asserted various defenses, including that the Attorney General had removed the plaintiff at her discretion pursuant to 28 U.S.C. § 542(b) and further that the removal was valid under the CSRA’s for-cause provision, 5 U.S.C. § 7513(a).

Issues Decided by the District Court

District Court Says Statutes Did Not Authorize Plaintiff’s Removal

The defendants argued that the plaintiff’s removal was lawful under the CSRA and 28 U.S.C. § 542(b), which provides that “[e]ach assistant United States attorney is subject to removal by the Attorney General.” Congress enacted the CSRA in 1978 following earlier laws like the Civil Service Act of 1883 (also known as the Pendleton Act), which sought to eliminate a patronage system in federal employment, and the Lloyd-La Follette Act of 1912, which recognized removal protections for employees in the civil service. The CSRA overhauled the civil service system and established a “new framework for evaluating adverse personnel actions” against federal employees. Under Subchapter II of Chapter 75 of the CSRA, for example, an employee may be removed, in relevant part to this case, “only for such cause as will promote the efficiency of the service” and the employee must be provided advance written notice of the removal, an opportunity to respond, and a written decision and specific reasons for the removal. As enacted, the CSRA’s due process protections did not apply to most excepted service employees, including AUSAs. In 1990, however, Congress amended the CSRA to extend these protections to excepted service employees who were no longer serving in probationary or trial periods, or who had completed two years of current continuous service in the same or a similar position.

Per the district court, the defendants contended that 28 U.S.C. § 542(b) authorizes the Attorney General to remove the plaintiff at will and effectively overrides the CSRA’s for-cause and due process protections. The defendants argued that Congress had to use “clear and explicit language” to deny an appointing officer the ability to remove an employee at will, and that Section 542(b) does not include any limitation on that authority. The court rejected this argument, reasoning that “it ignores the plain language of the CSRA, which was enacted and amended … *after* Section 542.” The court observed that “the CSRA, by its terms, applies to DOJ and the Attorney General,” and limits how and when the Attorney General may remove an AUSA. The court also cited a 2002 Merit Systems Protection Board (MSPB) decision that found AUSAs to be covered by the CSRA’s removal protections, noting the defendants’ acknowledgement that the Executive has “consistently maintained that [MSPB] position until this Administration.”

According to the district court, the defendants further argued that even if the plaintiff were protected by the CSRA, the Attorney General’s decision to remove her constituted “an implicit determination” that it was permissible and “for such cause as will promote the efficiency of the service.” To establish that a removal will promote the efficiency of the service, courts have concluded that an agency must show by a preponderance of the evidence that the employee’s misconduct is likely to have an adverse effect on its functioning. In this case, the district court maintained that the defendants “could not meet that standard even if they tried, as it is undisputed that Comey’s performance as an AUSA was outstanding.”

District Court Says Article II Also Did Not Authorize Plaintiff's Removal

Article II of the Constitution vests "the executive Power … in a President of the United States of America" (the Vesting Clause). The precise scope of this executive power has been debated since the early days of the United States. While vesting executive power in the President, Article II also says further that the President "shall take [c]are that the [l]aws be faithfully executed" (the Take Care Clause). The Executive has argued that this language conveys both a duty and an inherent power of the President, although cases have yet to articulate this interpretation explicitly in a holding. Although courts and various scholars debate this view, the interpretation that the Constitution vests the entirety of "the executive power" in a President alone, together with the constitutional requirement that he be able to ensure executive officials are "faithfully execut[ing]" the laws, gives rise to the Executive's argument, that some question, supporting the President's implicit constitutional power to remove subordinates.

In *Comey*, the defendants argued that even if the plaintiff's termination was not lawful according to statute, Article II of the Constitution supports the termination and thus, the CSRA is unconstitutional where it restricts that constitutional power. The district court was unpersuaded by the argument, declaring that it would "overturn nearly two centuries of Supreme Court precedent" and that it "fall[s] short on the merits." The district court made the following observations contravening the defendants' claim of constitutional power to fire an AUSA:

- **The Appointments Clause Creates Officers Who Are Not "Mere Employees."** The district court explained that the Appointments Clause contemplates that the President will carry out his faithful execution of the laws while aided by other officers who comprise a class of personnel different from "'mere employees,'" as the Supreme Court has recognized. In general, the Appointments Clause creates two categories of officials—principal officers (appointed with advice and consent of the Senate) and inferior officers (appointed by default with Senate confirmation, but also appointed in other ways determined by Congress, most commonly via agency heads). The parties agreed that the plaintiff was an inferior officer (while also being an employee for statutory purposes under the CSRA). The district court wrote that the Supreme Court has recognized Congress's constitutional right to "regulate and limit the removal of inferior officers" and specifically relied upon an 1839 Supreme Court case called *Ex parte Hennen* for the proposition that Congress can decide the constraints of an inferior officer's removal (confirmed further by an 1886 Supreme Court case called *United States v. Perkins*).
- **No Supreme Court Caselaw Addresses the Executive's "Sweeping" Article II "Theory."** The defendants argued that AUSAs wield "core" executive power in their role investigating and prosecuting crimes, which they described as a "quintessentially executive function within the President's 'conclusive and preclusive' authority." They offered for support the Supreme Court's ruling in *Trump v. United States*, which held that the President is absolutely immune from criminal prosecution in exercising powers "within his exclusive constitutional authority," including "[i]nvestigative and prosecutorial decisionmaking." As another Legal Sidebar discusses, the majority's reasoning in that case builds on a view of the President's role as unique and unlike any other in the constitutional frame. The conclusions in *Trump v. United States* stand in some contrast to earlier Supreme Court opinions like *Morrison v. Olson*, where the Supreme Court considered the constitutionality of an independent counsel appointment under the Ethics in Government Act of 1978 and also Congress's limitation on that official's removal, the Court finding in the affirmative on both inquiries. At the same time, the district court in *Comey* acknowledged that the expansive language in *Trump v. United States* renders the defendants' argument "at least colorable." Even so, the district court determined that the defendants' position would call into question removal protections for

many more officials beyond AUSAs, and as such was an overbroad reading of *Trump v. United States*, which the court said would more appropriately apply to congressional regulation of "the removal of an Executive Branch official at the behest of the President himself."

- ***Trump v. Slaughter* is Limited in Scope to Principal Officers.** In a 6-3 decision on June 29, 2026, the Supreme Court held in *Slaughter* that statutory provisions that allow the President to remove Federal Trade Commission commissioners only "for cause" violate the Constitution. The district court in *Comey* remained unpersuaded by the defendants' arguments extending the holding in *Slaughter* to say that "exercising … core executive functions triggers at-will removability" in contravention of for-cause removal statutes for all executive branch officials. The Supreme Court made clear that its *Slaughter* opinion was limited to the litigant in question (a principal officer) rather than "officials not before [the Court]." The district court thus limited its interpretation of the case, explaining that the Supreme Court did not purport to "overrul[e] two centuries of jurisprudence regarding Congress's authority to restrict the removal of inferior officers."

Relevance for Congress

Media reporting indicates that the defendants expect to appeal the district court's decision in *Comey*. One question arising from the litigation is whether the CSRA reflects Congress's current priorities for the retention and removal of civil servants. The Trump Administration has indicated that those goals, inasmuch as they include restrictions on removal of various types of officers, could be at odds with its views of executive power. For example, during oral argument for the *Slaughter* case, the Trump Administration stated plainly that removal "restrictions on inferior officers … would be problematic." Another CRS product addresses changes the Trump Administration has made to the way the CSRA is applied in furtherance of that view. If Congress shares the executive branch view, Congress could consider amending the CSRA to remove for-cause removal protections for AUSAs or other employee positions that remain subject to the CSRA. As noted above, prior to the 1990 Civil Service Due Process Amendments, these protections were not available to nonpreference eligible excepted service employees, a group that included many AUSAs. Alternatively, Congress could consider strengthening the CSRA's removal protections by permitting removal for only specified misconduct, such as neglect of duty or malfeasance in office, although such a change would not cure a constitutional infirmity. Congress could also consider whether a statutory scheme other than for-cause removal protections would preserve congressional interests in the status of inferior officers as employees of the executive branch without constraining the President's priorities. For instance, Congress could consider whether continued employment in another capacity that may not infringe upon perceived "core" executive power could serve as an off-ramp short of termination. Strengthening removal protections could prompt legal challenge. Alternatively, Congress could wait to ascertain whether federal appeals result in changes in interpretation of removal protections for civil servants. While Congress has no obligation to act, Congress retains its traditional powers, such as those of the purse and of inquiry, to reinforce its own legislative choices and prerogatives should it seek to do so.

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