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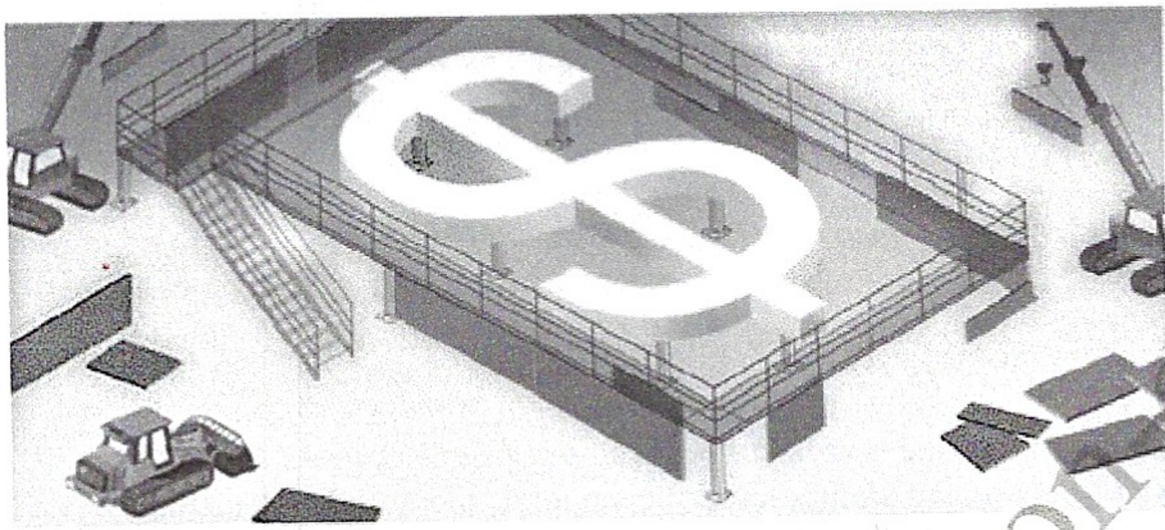
The Constitution grants Congress authority over monetary policy—the power 'to coin Money.'



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The GAO Precedent for Fed Independence

By Alton Frye

The independence of the Federal Reserve is in peril. In *Trump v. Slaughter,* the Supreme Court vastly expanded the president's power over so-called independent agencies. In *Trump v. Cook,* decided the same day, the court recognized the unique standing of the Federal Reserve Board but left its independence in a precarious state. The vote was 5- 4. If the Federal Reserve's independence is to be protected, it needs a mechanism more powerful than presidential self-restraint or a tenuous balance of opinion in the Supreme Court.

How best to assure independence for the central bank? In the Budget and Accounting Act of 1921, Congress can find a definitive answer based on a longstanding agreement between the political branches backed by a century of precedent.

Note

That act passed with overwhelming legislative support—335-3 in the House and a voice vote in the Senate— and was signed by President Warren Harding. It established the General Accounting Office, specifying that it "shall be independent of the executive departments." The act abolished the offices of comptroller and assistant comptroller of the Treasury and transferred all their other officers and employees to the new GAO. "All books, records, documents, papers, furniture, office equipment and other property" of the Treasury Comptroller's Office became GAO property.

Note

By this act, Congress and the president agreed to shift executive-branch functions to the independent GAO, which reported to Congress. The GAO's role expanded after the 1970s to include not only audits but evaluations of executive-branch performance. Its name was changed to Government Accountability Office by a 2004 statute that described the GAO as "an instrumentality of the United States Government independent of the executive departments." President

George W. Bush aligned the executive branch with Congress in affirming the modernization of the GAO as a legislative agency. The president continues to nominate the comptroller general, who is chosen for a 15-year term from a list of three candidates proposed by a bipartisan commission of congressional leaders.

Note

Applying the GAO model to the Fed would insulate the central bank from political influence. The Fed's mission meshes more clearly with powers assigned by the Constitution to Congress than to the president. In fulfilling its monetary-policy responsibilities, the Fed is acting on Congress's powers "to coin Money" and "to borrow Money on the credit of the United States." Those powers are enhanced by the legislature's authority "to make all laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States." The Constitution gives no comparable authority to the president.

The Supreme Court's embrace of the unitary executive theory, allowing the president to dismiss appointees to other independent agencies, shows why the Fed's status needs protection. In the court's *Cook* decision justifying the unique status of the Fed as an independent body, Chief Justice John Roberts invoked common-law tradition. He and his like-minded colleagues should welcome statutory reinforcement of that tradition.

Note

If the Fed were to become a legislative agency like the GAO, the president would retain power to nominate board governors, including the chairman, for confirmation by the Senate. Board governors' terms would remain staggered at 14 years and the chairman's at four years. The Fed already reports to Congress semiannually through its chairman, as well as through other testimony and submissions. The critical constraint would be on the president's power to remove Fed governors.

The simplest approach would be to amend the statutory language to stipulate that, similar to the GAO, the Federal Reserve is "an instrumentality of the United States Government independent of the executive departments." The Fed would continue to collaborate with Treasury and other departments, but Fed governors would be protected from arbitrary removal without cause. That should suffice to shore up the Fed's independence, although Congress might elect to follow the comptroller- general model, requiring either impeachment for cause or a joint resolution for removal of governors and the chairman.

Would this reform expose the Fed to political interference similar to what it seeks to prevent, but from Congress instead of the executive branch? Certainly not, for the basic reason that a pluralistic legislature lacks the singular, hierarchical decision-making that a president brings to bear. The continued centrality of the chief executive in nominating Fed governors would be one effective counterbalance to any congressional impulse to intimidate the Fed board. And since the Federal Reserve system is entirely self-funded with no tax money or public appropriations, Congress couldn't use its budgetary and appropriations controls to influence the board.

Mr. Trump's renewed attempts to dismiss Fed Gov. Lisa Cook underscore the need to safeguard the Fed. There is little likelihood that the current president or his congressional supporters will advance this kind of proposal. Over the long haul, however, the enduring bipartisan commitment to an independent Federal Reserve could make this reform possible. It isn't too early to start building the coalition to make it happen.

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