

EVERYTHING YOU EVER WANTED TO KNOW ABOUT SEPARATION OF POWERS BUT WERE AFRAID TO ASK

Is there a potential Separation of Powers problem?

What level of government is acting?

State Gov't      Federal Gov't

No SOP problem

Possible SOP problem

Basic doctrine → One branch exercises or interferes with the powers of another

Which branch of fed'l gov't is acting?

Congress

Executive

Judiciary

Don't know

What power is being exercised?

Legislative    Executive    Judicial

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Branch with the power to remove the officer is the one that's acting

SOP Rule:

Bicameralism & Presentment

Per se SOP Violation

Jackson 3-zone test

Agencies exercise quasi-legis. & quasi-judicial powers

Executive immunity

Pol. Qu. doctrine

Congress may set subst. limits on Pres' power to remove executive officers, but cannot participate in removal

Impeachment doesn't count: it is a special const provision

Zone 0: Congressional abdication

Zone 1: Congressional concurrence

Zone 1a: Congressional acquiescence

Zone 2: Congressional silence

Zone 3: Congressional opposition

Advisory opinions

Delegation of core legislative powers violates presentment cl.

No SoP violation

Probably no violation of SOP

Balance need for unilateral pres. action vs. damage to const'l rights & structure

President can exercise only textual & inherent powers

Appointment clause

Justiciability doctrines

Related to SOP - Restricts judicial power to cases & controversies

Clinton v. NY

Most federal laws

Dames & Moore v. Regan

Many Exec. Orders

War Powers Act

Youngstown v. Sawyer

Morrison v. Olson

Not all cited cases covered this term

Examples →

-1- INS v. Chadha

-2- Bowsher v. Synar

-3- US v. Klein

-4- Chevron v. NRDC

-5- US v. Nixon

-6- Powell v. McCormick

-7- Opinion of the Justices

-8- Humphrey's Executor