
THE SHAREHOLDER PRESIDENT: GOVERNMENT OWNERSHIP OF PRIVATE COMPANIES IN THE UNITARY EXECUTIVE ERA

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In August 2025, President Trump announced that the federal government would be taking a 10% ownership stake in Intel Corporation, making the government the company's largest shareholder. This acquisition of an equity stake in a U.S. company is unprecedented, given that no emergency circumstances justified the deal, no authorizing legislation was enacted, and there is no stated timeline for exiting the position. While government interventions of this sort have long been viewed with disfavor, there is special reason to be wary of them today. Independent agencies that have historically stood ready to oversee and enforce laws relating to private companies like Intel can no longer be assumed to be independent of the president in light of the Supreme Court's embrace of the unitary executive theory. Unlike in prior interventions, the president has the unfettered authority to use, or mis-use, government ownership interests in private companies in any way, including for political or personal purposes. An unpoliceable shareholder president gives rise to grave risks to the government's traditional roles and obligations to act in the public interest.

INTRODUCTION

Suppose the United States ("U.S.") government purchases a significant stake in ChemCo, a large, publicly-traded American company that develops and sells chemical cleaning products containing ingredients known to pose risks to human health. The federal government becomes ChemCo's largest shareholder. In announcing the deal, the president touts it as a savvy investment that will fill the government's coffers and give it an influential voice in an important industry. ChemCo's stock rises and it significantly outperforms the market. The president

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cites the profitable investment as a success story and evidence of his dealmaking acumen.

Six months after the deal closes, a whistleblower contacts the Securities and Exchange Commission (“SEC”), claiming that ChemCo has, for several quarters, made false statements in its public filings about the safety of its products. In fact, the whistleblower claims, ChemCo has concealed evidence that its market-leading consumer cleaning product—responsible for a significant portion of the company’s revenue—is highly carcinogenic. The SEC’s enforcement division opens an investigation and begins requesting information from the company about its safety disclosures.

A ChemCo executive calls a contact at the White House and complains about the SEC’s unfounded fishing expedition. There is no merit to the whistleblower’s claims, he says, and if it became public that the SEC was investigating the company’s disclosures about its leading product, ChemCo’s share price would tank. The president is up for re-election in a few months, and the government’s deal with ChemCo has been a key success in his first term. A crash in the company’s share price would damage his standing and harm his reelection chances. After learning of the investigation, the president picks up the phone and calls the chairman of the SEC. Shut it down, he says. The chairman objects, arguing that the whistleblower’s allegations are credible and that the matter is important to both the capital markets and public safety. The president is unmoved. Shut it down, he says again. Or you’re fired.

The investigation is closed. ChemCo continues selling its product and making the same safety disclosures. The president continues his reelection campaign. If the whistleblower’s allegations are true, then perhaps rising cancer rates tied to the use of ChemCo’s product will eventually lead to public disclosure—and a cratering stock price. But it certainly won’t be before the next election.

While this is a hypothetical, President Trump’s actions, coupled with those of the Supreme Court, have made it a distressingly realistic one. On August 22, 2025, the Intel Corporation announced that the United States government had agreed to acquire \$8.9 billion in Intel common stock, amounting to 9.9% of the company.¹ The deal, which is funded by commitments the government had already made under the U.S. CHIPS and Science Act and Secure Enclave Program,² makes the United States Intel’s largest shareholder.³ President Trump

1. Press Release, Intel Corp., Intel and Trump Administration Reach Historic Agreement to Accelerate American Technology and Manufacturing Leadership (Aug. 22, 2025), <https://www.intc.com/news-events/press-releases/detail/1748/intel-and-trump-administration-reach-historic-agreement-to> [https://perma.cc/WFN9-77FN].

2. *Id.*

3. Amrith Ramkumar, Robbie Whelan & Brian Schwartz, *Trump, Intel Agree to 10% U.S. Stake as President Promises More Deals*, WALL ST. J. (Aug. 23, 2025, at 19:10 ET), https://www.wsj.com/tech/trump-to-announce-u-s-taking-nearly-10-stake-in-intel-1a38225d?gaa_at=eafs [https://perma.cc/Q5V7-HU2T].

touted the acquisition as a “great Deal [sic] for America,” because the nation “now fully owns and controls 10% of INTEL.”⁴

Government ownership interests in private enterprises have historically been disfavored in the United States.⁵ Sometimes, the government has chartered private entities to undertake activities deeply intertwined with public interests, such as certain banking institutions and railroads.⁶ A newer form of intervention involves the acquisition of ownership interests in otherwise purely private enterprises in response to emergency circumstances. Most prominently, the global financial crisis of 2008 and 2009 moved the United States government to take on significant ownership interests in a number of private enterprises in the financial services and automotive sectors.⁷

The government’s responses to the financial crisis were justified by emergency circumstances. In the absence of aggressive intervention by the federal government, the viability and stability of entire sectors of the American economy, or of the economy itself, were at risk. Congress was deeply involved in designing the regimes surrounding the interventions, as well as controls and protections intended to mitigate the risks of conflict between the government’s interests as an investor and its role in protecting the public interest.⁸

The Intel deal is quite different. There is no emergency. Congress has played no role in conceiving of or authorizing the deal. Nor does the deal include features to help protect against conflict and overreach by the government.

The acquisition puts the United States government in three roles. First, it is a regulator with the power to promulgate and enforce (or decline to promulgate or enforce) rules and regulations that could materially impact Intel. Second, it is an investor, presumably seeking to maximize returns. Third, it is, through the individual officials that direct the government, a political actor.

These overlapping roles inevitably pose risks of conflict and abuse, which helps explain the historical skepticism about government interventions. But the risks are uniquely great today. As a result of the ascendance of the unitary executive theory among a majority of Supreme Court justices, the independence of many agencies with direct influence and authority over companies like Intel is no longer secure. *Humphrey’s Executor v. United States*,⁹ the key decision allowing Congress to insert a layer of insulation between select federal agencies and the president, is all but dead.¹⁰ Once it is formally interred, nothing will

4. Donald J. Trump (@realDonaldTrump), TRUTH SOC. (Aug. 22, 2025, at 16:04 CT), <https://truthsocial.com/@realDonaldTrump/posts/115074444617901812> [<https://perma.cc/5J3U-ZS39>].

5. See Marcel Kahan & Edward B. Rock, *When the Government Is the Controlling Shareholder*, 89 TEX. L. REV. 1293, 1297 (2011) (“The United States does not have much history with government ownership of private industry.”).

6. See J.W. Verret, *Treasury Inc.: How the Bailout Reshapes Corporate Theory and Practice*, 27 YALE J. ON REGUL. 283, 289–93 (2010) (describing history of federal creation and sponsorship of private entities).

7. See Kahan & Rock, *supra* note 5, at 1299–1301 (identifying selected investments in private enterprises made by federal government in response to Financial Crisis).

8. See *id.* at 1307–13.

9. *Humphrey’s Ex’r v. United States*, 295 U.S. 602 (1935).

11. See *Trump v. Wilcox*, 145 S. Ct. 1415, 1416–17 (2025) (per curiam).

prevent the President from using the government's ownership stake to advance his personal or political interests. While this would be a scary prospect at any time, it is especially frightening today. President Trump has enthusiastically embraced his Article II authority as a powerful tool for accomplishing personal and political goals.¹¹ There is little reason to believe he will exercise restraint if the government's investment in Intel—or any other company in which the government might acquire an interest—can be wielded as a weapon. Nor is there much reason to believe that agency leaders subject to his plenary control will exercise such restraint.

The Intel deal thus exposes one of the great risks of the unitary executive theory: that an unconstrained president can wield the full power of the executive branch for personal or political purposes unmoored to any conception of the broader public interest.

I. GOVERNMENT OWNERSHIP OF PRIVATE ENTERPRISES

The federal government has long played important roles in the oversight of private enterprises and maintaining the regulatory substrate onto which private markets are grafted. Federal regulators oversee securities trading markets and the banking industry, as well as specific industries and products through health and safety regulation, antifraud and competition laws, and consumer protection rules.¹² While the administrative state's arm is long, actual government ownership of private enterprise has been exceptional and generally undertaken only where necessary to protect important public interests or respond to emergencies.

A. *Early Interventions*

For the nation's first two hundred years, government ownership of private enterprise was rare. More common, but still unusual, were instances in which Congress chartered or established a private entity for the purpose of advancing some public interest. An early example was the establishment of the privately organized Bank of the United States in 1791.¹³ The legislation creating the bank provided that the United States would own 20% of its stock.¹⁴ The federal government would continue to charter private corporations over the following

11. See Michael Brice-Saddler, *While Bemoaning Mueller Probe, Trump Falsely Says the Constitution Gives Him "The Right to Do Whatever I Want,"* WASH. POST (July 23, 2019), <https://www.washingtonpost.com/politics/2019/07/23/trump-falsely-tells-auditorium-full-teens-constitution-gives-him-right-do-whatever-i-want/> [<https://perma.cc/S6W5-74MK>] (quoting President Trump as stating, "I have an Article II, where I have to the right to do whatever I want as president").

12. See, e.g., Ryan J. Clarkson, Timothy K. Giordano & Lauren E. Anderson, *Consumer Protection Laws and Regulations USA 2025*, ICLG (Sep. 4, 2025), <https://iclg.com/practice-areas/consumer-protection-laws-and-regulations/usa> [<https://perma.cc/872K-JPPX>].

13. *Lebron v. Nat'l R.R. Passenger Corp.*, 513 U.S. 374, 386 (1995); see also Verret, *supra* note 6, at 289 ("The first government-created business in the United States was the Bank of the United States, created by a congressional action in 1791 . . .").

14. *Lebron*, 513 U.S. at 387.

century, but only rarely assume an actual ownership stake. Many of these enterprises involved the country's burgeoning railroad network. Among others, Congress created the Union Pacific Railroad in 1862 and the Northern Pacific Railroad Company in 1864.¹⁵ In 1902, "Congress authorized the President to purchase the assets of the New Panama Canal Company of France, including that company's stock holdings in the Panama Railroad Company."¹⁶ These purchases made the United States the sole shareholder of the Panama Railroad and facilitated the purchase of the Panama Canal.¹⁷

While these early interventions were prompted primarily by the urge to expand the country's railroad network and encourage economic growth, crises in the early twentieth century prompted additional waves of similar activity. During World War I, the government created a number of private entities for purposes relating to the war. These included "the United States Grain Corporation, the United States Emergency Fleet Corporation, the United States Spruce Production Corporation, and the War Finance Corporation."¹⁸ All were dissolved after the war. The next national emergency—the Great Depression—led to the government-sponsored creation of more private enterprises, including for the purpose of supporting the cratering economy.¹⁹ And the government-established Tennessee Valley Authority was a central feature of the New Deal.²⁰

World War II likewise generated a wave of government-created corporations. Under the auspices of the Reconstruction Finance Corporation ("RFC"), which had been established in 1932 in response to the Great Depression, a number of new companies were created to support the war effort, including the Metals Reserve Company, Rubber Reserve Company, Defense Plant Corporation, Defense Supplies Corporation, War Damage Corporation, U.S. Commercial Company, and Petroleum Reserve Corporation.²¹

By the 1950s, the crises that precipitated the interventions of the first half of the century had abated. Government participation in private enterprise as a means of responding to emergency conditions largely ceased. However, the government continued to establish private entities for purposes relating to the general welfare of the public. Government-sponsored enterprises created in the latter half of the twentieth century and early twenty-first included, among others, the Communications Satellite Corporation (COMSAT) (created in 1962 to

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.* at 388.

19. *See* Verret, *supra* note 6, at 290.

20. *See* Lebron, 513 U.S. at 388; *see also* William J. Novak, *Law and the Social Control of American Capitalism*, 60 EMORY L.J. 377, 400 (2010) (describing the Tennessee Valley Authority as "one of the most ambitious administrative and regional planning initiatives of the New Deal").

21. *See generally* Walker F. Todd, *History of and Rationales for the Reconstruction Finance Corporation*, 28 ECON. REV., no. 4, 1992, at 22, 23–27 (describing history of RFC); DEP'T OF THE TREAS., FINAL REPORT ON THE RECONSTRUCTION FINANCE CORPORATION 30 (1959), https://fraser.stlouisfed.org/files/docs/publications/rcf/rfc_19590506_finalreport.pdf [https://perma.cc/3W72-8ENX].

develop and operate satellite communication systems),²² Freddie Mac (created in 1970 to buy and pool mortgages to create and sell mortgage-backed securities),²³ Amtrak (founded in 1970 to operate passenger rail services),²⁴ Sallie Mae (created in 1972 to create, service, and collect student loans),²⁵ and the Public Company Accounting Oversight Board (“PCAOB”) (a non-profit corporation created in 2002 to oversee and regulate public accounting firms).²⁶

This summary describes only a few of the private enterprises established pursuant to federal legislation. It also elides the significant differences in structure and governance among these entities. The degree to which these entities have operated as private, as opposed to public, enterprises varies widely. Compare Amtrak and the PCAOB. Both are private entities created by legislation, but to a lay observer, Amtrak appears and operates much as any private company would, while the PCAOB is difficult to distinguish from a typical government regulator. Despite these differences, some themes emerge. First, in every case, these public-private arrangements were put in place in order to respond to a pressing need created by either national emergency or a significant public interest of national character. Government participation in private enterprise facilitated the country’s responses to World War I, the Great Depression, and World War II. Similarly, such participation enabled the country to be on the forefront of technological and social change, such as the expansion of the railroads in the nineteenth century, communications technology in the twentieth, and economic change throughout.

B. The Financial Crisis

The most recent wave of government participation in private enterprise occurred in 2008 and 2009 in response to the financial crisis. In many respects, these interventions resembled prior interventions. That the nation faced an emergency was unquestioned, even among those who believed the government’s response was inappropriate or unwise. And while profit-making turned out to be a side effect of some of these interventions, it was not a motive for undertaking the activity in the first place. The United States was a reluctant investor eager to exit its positions, even if those positions ended up yielding profits.

The interventions of 2008 and 2009 are often characterized as a series of “bailouts” but, as with prior interventions, they differed in their structures and

22. See *Lebron*, 513 U.S. at 390–91.

23. See DARRYL E. GETTER, CONG. RSCH. SERV., R44525, FANNIE MAE AND FREDDIE MAC IN CONSERVATORSHIP: FREQUENTLY ASKED QUESTIONS 3 (2020).

24. See NAT’L R.R. PASSENGER CORP., AMTRAK: COMPANY PROFILE (FY2017), at 8 (2018), <https://www.amtrak.com/content/dam/projects/dotcom/english/public/documents/corporate/nationalfactsheets/Amtrak-Company-Profile-FY2017-0318.pdf> [<https://perma.cc/4C9H-3AE5?type=image>].

25. See Press Release, Dep’t of the Treas., Treasury Announces Successful Privatization of Sallie Mae (Dec. 29, 2004), <https://home.treasury.gov/news/press-releases/js2173> [<https://perma.cc/RWY8-2TGT>].

26. See RAJ GNANARAJAH, CONG. RSCH. SERV., R48647, PRIVATE SECTOR: ACCOUNTING AND AUDITING REGULATORY STRUCTURE 1, 8 (2025).

outcomes.²⁷ Many included acquisitions of significant equity interests in firms.²⁸ These transactions resulted in government ownership of 77.9% of A.I.G.'s voting stock, 34% of Citigroup's outstanding voting stock, an 8% ownership interest in Chrysler, a 56% ownership interest in GMAC, and a 79.9% ownership interest in Fannie Mae and Freddie Mac.²⁹ The federal government also acquired \$200 billion in preferred stock and warrants in 707 institutions under the Capital Purchase Program and \$20 billion of nonvoting preferred stock in Bank of America.³⁰

In some of these deals, the size of the government's ownership interest gave rise to a presumption of control.³¹ And as to all of them, the government's unique status and access to mechanisms to influence corporate behavior meant that it could exercise an outsized role in governance.³² For instance, with respect to banks, the government held "the ability to substantially affect the bank's underlying business through its discretion in setting capital requirements and limiting bank operations."³³ In other industries, the government could use the power inherent in its stake and authority to influence decision-making.³⁴

Because of the unprecedented nature of these deals and the risks they posed (discussed more fully below), they were accompanied by controls—both legal and normative—intended to constrain the government's role.³⁵ Perhaps most importantly, the government's ownership positions were intended to be temporary.³⁶ There was also general agreement that the purpose of the interventions was to ensure that the firms could thrive in markets without government and that business decisions should be insulated from government influence.³⁷

C. *The Intel Deal*

On August 22, 2025, the U.S. government entered uncharted territory. Intel announced that the government would make an \$8.9 billion investment in Intel

28. See Kahan & Rock, *supra* note 5, at 1299–1310.

28. See *id.* at 1299–1301.

29. *Id.* at 1299–1300.

30. *Id.* at 1301.

31. See Verrett, *supra* note 6, at 304–05 (noting that although the government took only minority stakes where possible, "this ignores analysis of real control" and describing regulatory definitions of control that encompass minority stakes).

32. See Kahan & Rock, *supra* note 5, at 1317 ("[F]or many of the companies in which the U.S. government has obtained a controlling stake, the influence of the government extends beyond its influence as a large shareholder."); Matthew R. Shahabian, Note, *The Government as Shareholder and Political Risk: Procedural Protections in the Bailout*, 86 N.Y.U. L. REV. 351, 352 (2011) ("For the most troubled institutions—Citigroup, A.I.G., and Bank of America—the government became their largest shareholder. In this position, the government wielded considerable influence over corporate policy.")

33. Verrett, *supra* note 6, at 301.

34. See Kahan & Rock, *supra* note 5, at 1314.

35. See *infra* Section II.B.

36. See Kahan & Rock, *supra* note 5, at 1298, 1348–49.

37. See *id.* at 1348.

common stock.³⁸ The deal, funded by commitments the government had already made under existing federal programs, would result in the United States owning a 9.9% stake in Intel, and the company touted it as “enabling the U.S. and existing shareholders to benefit from Intel’s long-term business success.”³⁹ The purchase was a creature of the executive branch; no legislation called for or contemplated the deal. It includes no timeline for exit and, in fact, includes provisions that could lead to additional future investment.⁴⁰

While the impetus for the Intel deal is not entirely clear, it followed on the heels of a call by President Trump for the CEO of Intel to resign in light of alleged ties to the Chinese government.⁴¹ The president has touted the deal as a part of a broader effort to “get as much as I can” from major companies.⁴² According to President Trump, “[p]eople come in and they need something.”⁴³ He added, “I hope I’m going to have many more cases like it”⁴⁴ and he has already taken steps to acquire equity stakes in other companies.⁴⁵ Advisors to the president suggested that the Intel deal may foreshadow the creation of something resembling a sovereign wealth fund, noting that in the past, the government had dispensed funds with “the taxpayers . . . receiv[ing] nothing in return.”⁴⁶ Indeed, earlier this year, President Trump signed an executive order directing the Secretaries of the Treasury and Commerce to develop a plan to create such a fund.⁴⁷

II. THE OVERLAPPING ROLES OF THE GOVERNMENT SHAREHOLDER

With respect to any private company, the federal government is a maker of laws and policies that may impact the company’s governance, operations, and profitability. When the government takes on a material ownership interest in a company, it assumes at least two more roles. It is an investor, and it is a political actor. The government’s simultaneous assumption of these roles gives rise to serious risks.

38. See Press Release, Intel Corp., *supra* note 1.

39. *Id.*

40. See Ramkumar, Whelan & Schwartz, *supra* note 3 (“The government could get more stock depending on what happens to Intel’s chip manufacturing business.”).

41. See Tony Romm & Ana Swanson, *After U.S. Takes Stake in Intel, Trump Pledges ‘Many More’ Deals*, N.Y. TIMES (Aug. 25, 2025, 15:27 ET), <https://www.nytimes.com/2025/08/25/us/politics/trump-intel-economy-strategy.html> [<https://perma.cc/Z883-2NPA>].

42. *Id.*

43. *Id.*

44. *Id.*

45. Ana Swanson, *How a Top Trump Official Is Using Government Power to Pressure Private Companies*, N.Y. TIMES (Sep. 10, 2025, 22:34 ET), <https://www.nytimes.com/2025/09/10/us/politics/howard-lutnick-government-private-companies.html> [<https://perma.cc/73R9-4TG5>] (“In addition to Intel, the administration has moved to take a stake in U.S. Steel and in a rare earths producer, MP Materials. Officials have suggested that the United States could take shares in other industries like defense and shipbuilding.”).

46. Romm & Swanson, *supra* note 41.

47. Exec. Order No. 14,196, 90 Fed. Reg. 9181 (Feb. 3, 2025).

A. Conflicts and Biases

A critical problem with government ownership of private interests is the difficulty of disentangling the roles of investor and regulator. The goals of investors may not be aligned with those of regulators. In classical models of market behavior, investors are motivated solely by personal financial interest.⁴⁸ Moreover, they are likely to be disproportionately interested in maximizing short-term financial gain. Regulators, on the other hand, are charged with executing statutory schemes that have as their principal aim the advancement of a public interest or the avoidance of a public injury. Achieving those goals is often in tension with a company's financial interests—it is no accident that private industry is generally predisposed to deregulation.

The government occupies a third role as well. The government is not a corporeal entity. It is comprised of officials, some of whom (including leaders) are political actors and may function as such in their dealings with market participants. The degree to which the government acts politically is defined in part by the prevailing legal regime. Congress has historically attempted to protect independent agencies from political influence through various structural features, such as partisan balancing requirements and removal protection.⁴⁹ However, the less officials are insulated from political influence, the more we can expect to function as political actors.

Many conflicts can arise when the government holds these multiple roles:

- As an investor, the government could favor regulatory outcomes that benefit the company's financial condition or stock price. Regulators could exert influence over the company accordingly, even where the action is not supported by the best evidence or is inconsistent with broader public interests.
- On the other hand, the government could use its position as an influential shareholder to induce (or coerce) the company to act in a way that promotes the political or personal interests of government officials, up to and including the president. Those actions might or might not be in the best interests of the company, its shareholders, or the public.
- Even in the absence of explicit political pressure, a company in which the government has an ownership interest may seek to curry favor in order to procure better regulatory outcomes in the future.
- The government may be incentivized to “bail out” the company in the event of financial distress even if there is no broader emergency that would justify intervention under traditional conceptions of the government's role. Political actors could seek to preserve the government's investment in order to avoid the reputational and political damage that could follow from a failed deal.

49. Cathy Pareto, *Understanding Investor Behavior*, INVESTOPEDIA (July 30, 2022), <https://www.investopedia.com/articles/05/032905.asp> [<https://perma.cc/GP8H-TE7T>].

50. See, e.g., *Humphrey's Ex'r v. United States*, 295 U.S. 602, 626–32 (1935).

- The mere possibility that the government may act more favorably toward one company could function as a market-moving force, as that company will be seen as having the “backing” of the government.
- Competition in the relevant markets could be distorted. The government could act in a way that favors the company to the detriment of other market participants.

This is only a sampling of the risks that follow from government ownership of private enterprise. J.W. Verret has argued that corporate and securities law theory breaks down in the presence of a government shareholder, generating complex compliance puzzles and insider trading risks.⁵⁰ Matthew Shahibian has argued that government ownership interests introduce “political risk” into investor decision-making, as investors must account for the government’s multiple roles.⁵¹ Marcel Kahan and Edward Rock have contended that existing state law coupled with sovereign immunity make it challenging to monitor self-dealing and conflicts.⁵² The multiplicity of risks makes it critical that government intervention be accompanied by thoughtful controls.

B. Policing Risk

The risks associated with government intervention can be mitigated in several ways. First, when an intervention is undertaken pursuant to legislative authority, Congress can put structural and procedural protections in place. The measures taken in response to the Financial Crisis were authorized by the Emergency Economic Stabilization Act of 2008 (“EESA”).⁵³ To be sure, EESA was light on procedural controls to police government intervention. EESA effectively blocked judicial review of government action under the law, in part because it was enacted “in a time of crisis and panic.”⁵⁴ But the fact that Congress enacted the law signaled agreement that an emergency existed and required immediate action. To that end, EESA included statements of purpose to guide government action, including the protection of consumer financial assets, preservation of jobs, maximizing taxpayer return, and public accountability.⁵⁵ EESA also created the Financial Stability Oversight Board, the duties of which included review of the Department of the Treasury’s exercise of authority under EESA.⁵⁶ A Congressional Oversight Panel was also created to review Treasury’s actions and report to Congress every thirty days.⁵⁷ The Government Accountability Office was required to monitor the activities of the Troubled Assets Relief Program,⁵⁸ and a Special Inspector General was established to

50. See Verret, *supra* note 6, at 315–33.

51. See Shahabian, *supra* note 32, at 363–66.

52. See Kahan & Rock, *supra* note 5, at 1315–45.

53. Emergency Economic Stabilization Act of 2008, Pub. L. No. 110-343, 122 Stat. 3765.

54. See Shahabian, *supra* note 32, at 352.

55. See *id.* at 355–56.

56. Emergency Economic Stabilization Act of 2008 § 104, 12 U.S.C. § 5214.

57. *Id.* § 125, 12 U.S.C. § 5233.

58. *Id.* § 116, 12 U.S.C. § 5226.

audit and investigate the operations of TARP itself.⁵⁹ EESA also included tranching limitations, such that escalations in committed funds would require Congressional resolutions.⁶⁰

The political and economic environment in which an intervention takes place can also reduce the risk of abuse. Given that government interventions in the ownership of private enterprises are inconsistent with the traditional role of government, they are typically justified by extraordinary circumstances. There is a resulting presumption that when the extraordinary circumstances pass, the government will relinquish its ownership interest. During the financial crisis, for example, there was an explicit and widespread understanding that the government's actions were temporary and that when the emergency had passed, the government would dispose of its interests.⁶¹ And it did so.⁶²

While Congress can do much to police risks of conflict and abuse created by legislation addressing emergency circumstances, agencies also play an important role in mitigating these risks. Part of what drives agencies to play this role is normative. Federal agencies have statutory missions and professional workforces charged with evenhanded administration of the law.⁶³ For many agencies, however, their role is not defined solely normatively. Independent agencies are also structured in ways that insulate them from political pressure, even if imperfectly. This insulation is erected through several mechanisms, including partisan balancing requirements, bespoke funding mechanisms, and—most importantly—protections against removal for cause.⁶⁴ For-cause removal

59. *Id.* § 121, 12 U.S.C. § 5231.

60. *Id.* § 115, 12 U.S.C. § 5225.

61. *See, e.g.*, U.S. DEP'T OF THE TREAS., TROUBLED ASSETS RELIEF PROGRAM, MONTHLY 105(A) REPORT – DECEMBER 2009, at 35 (2010), https://home.treasury.gov/system/files/136/December%20105%28a%29_final_1-11-10.pdf [<https://perma.cc/23WW-ALZR>] (referring to “Treasury’s commitment to seek to dispose of its ownership interests as soon as practicable”); U.S. GOV'T ACCOUNTABILITY OFF., GAO-11-471, TREASURY'S EXIT FROM GM AND CHRYSLER HIGHLIGHTS COMPETING GOALS, AND RESULTS OF SUPPORT TO AUTO COMMUNITIES ARE UNCLEAR 5 (2011), <https://www.gao.gov/assets/gao-11-471.pdf> [<https://perma.cc/2GPD-9ZXR>] (describing “exiting its investments as soon as practicable” as a “guiding principle[]” in government investment in auto companies).

62. *See* Jonathan Weisman, *U.S. Declares Bank and Auto Bailouts Over, and Profitable*, N.Y. TIMES (Dec. 20, 2014), <https://www.nytimes.com/2014/12/20/business/us-signals-end-of-bailouts-of-automakers-and-wall-street.html> [<https://perma.cc/JM3M-A9JZ>].

63. *See, e.g.*, *Mission*, U.S. SEC. & EXCH. COMM'N (Aug. 9, 2023), <https://www.sec.gov/about/mission> [<https://perma.cc/F6VG-4CF9>] (describing SEC mission as “protecting investors, maintaining fair, orderly, and efficient markets, and facilitating capital formation”); *Mission*, U.S. FED. TRADE COMM'N, <https://www.ftc.gov/about-ftc/mission> [<https://perma.cc/HL4Y-BBMK>] (last visited Dec. 22, 2025) (describing FTC mission as “protecting the public from deceptive or unfair business practices and from unfair methods of competition”); *The FCC's Mission*, U.S. FED. COMM'N COMM'N, <https://www.fcc.gov/about/overview> [<https://perma.cc/9UL2-J8QV>] (last visited Dec. 22, 2025) (describing FCC mission as “implementing and enforcing America’s communications law and regulations”).

64. *See* Elena Kagan, *Presidential Administration*, 114 HARV. L. REV. 2245, 2276–77 (2001) (“[W]hen (1) insulation from presidential removal power combines, as in most independent agencies, with (2) an organizational structure featuring multiple agency heads of diverse parties serving staggered terms and (3) longstanding (even if psychological) norms of independence, widely held within both the bureaucracy and Congress, the gap between the agency and the President almost inexorably widens.”). *See generally* Peter L.

protection helps to ensure that agency decision-making is not—or, at least, less—
influenced by political pressure. An agency leader who acts in a manner
inconsistent with the political or policy agenda of the leader’s principal need not
fear that his or her job is at risk.

Principles of good government would suggest that any government
investment in private enterprise should thus be managed with the interests of the
public in mind. Those public interests may not always be aligned with the
interests of the private enterprise or of political actors in the government. The
oversight exercised by independent agencies is an important part of the legal
framework that helps ensure that public interest drives decision-making. Take
Intel as an example—a number of independent agencies oversee regulatory
regimes that directly impact the company. The Securities and Exchange
Commission oversees the U.S. markets on which Intel trades, reviews filings
related to securities offerings, polices insider trading, and enforces laws requiring
periodic financial reporting, among a host of other regulatory activities that
directly bear on public companies.⁶⁵ The Federal Trade Commission has the
authority to enforce laws relating to anticompetitive conduct and to examine
mergers or acquisitions that could result in market concentration.⁶⁶ The Federal
Communications Commission regulates certain Intel products that have wireless
transmission capabilities.⁶⁷ The National Labor Relations Board has authority
over labor practices and union-related disputes.⁶⁸

III. THE PRESIDENT SHAREHOLDER

The Intel deal is unique among government interventions in private
enterprise. There has been no emergency requiring immediate, drastic
government action in order to preserve the stability of the economy or a sector
thereof. Congress has not authorized the transaction through legislation or
enacted any overarching framework to set forth governing principles or put
protective mechanisms in place. There is no apparent timeline for exiting the
ownership position. And, crucially, the independence of agencies with oversight
over Intel can no longer be assumed.

As created by Congress, independent agencies have generally been
designed to be led by commissioners or board members protected from removal

Strauss, *The Place of Agencies in Government: Separation of Powers and the Fourth Branch*, 84 COLUM. L. REV. 573 (1984).

65. See EVA SU, CONG. RSCH. SERV., IF11714, INTRODUCTION TO FINANCIAL SERVICES: THE SECURITIES AND EXCHANGE COMMISSION (SEC) (2025).

66. *A Brief Overview of the Federal Trade Commission's Investigative, Law Enforcement, and Rulemaking Authority*, FED. TRADE COMM’N (July 2025), <https://www.ftc.gov/about-ftc/mission/enforcement-authority> [<https://perma.cc/BDC5-472F>].

67. See *Wireless Telecommunications*, FED. COMM’N COMM’N, <https://www.fcc.gov/wireless-telecommunications> [<https://perma.cc/37YU-NMQ9>] (last visited Dec. 22, 2025).

68. *About NLRB*, NAT’L LAB. RELS. BD., <https://www.nlr.gov/about-nlr> [<https://perma.cc/JP2C-TSEG>] (last visited Dec. 22, 2025).

without cause.⁶⁹ During the most recent set of government interventions, independent agencies played key roles in navigating the financial crisis. The Federal Reserve was perhaps the central player in the interventions.⁷⁰ The Securities and Exchange Commission, which exercises authority over securities transactions, played a key role in the government's market activities and loomed in the background as a potential enforcer of securities law violations.⁷¹ Other relevant independent regulators in the administrative firmament included the Commodity Futures Trading Commission, the Federal Trade Commission, and the Public Company Accounting Oversight Board.

Each of these regulators was insulated from political influence through laws that protected their leaders from removal without cause. At the time, the law was considered well-settled that Congress could appropriately impose such protections as to agencies headed by multi-member bodies⁷² (some of these agencies also had other structural features aimed at ensuring independence, such as partisan-balancing rules and special budget processes).

That is no longer the case. In a series of decisions over the past several years, The Supreme Court has increasingly invoked a version of the unitary executive theory ("UET") that is hostile to agency independence. The UET derives primarily from the statement in Article II that "[t]he executive Power shall be vested in a President of the United States of America," rather than in a plural executive or in an executive branch.⁷³ The text of Article II does not define the "executive Power," but most UET advocates claim that it must include the president's unfettered authority to direct and to remove any person in the executive branch.⁷⁴ UET theorists further assert that "independent" agencies reside in the executive branch, and thus Congressional efforts to restrict the president's removal authority over their members are invalid.⁷⁵

The Court's embrace of a strong UET has been gradual and, in recent years, unrelenting. In the context of removal authority, the Court has held that agency leaders cannot be protected by two layers of removal protection (in other words, that it is unconstitutional to require cause to remove leaders who are in turn removable only by officials similarly protected).⁷⁶ The Court has also held that

69. See Kagan, *supra* note 64, at 2250 (defining independent agencies as those "whose heads have substantial protection from presidential removal").

70. See Colleen Baker, *The Federal Reserve as Last Resort*, 46 U. MICH. J.L. REFORM 69, 71 (2012) (describing the Federal Reserve as "one of the most important and powerful institutions in the world" and arguing that, "[d]uring the financial crisis, the Federal Reserve was essential both in its traditional function as the 'lender of last resort' and in a newly improvised, ad hoc capacity as a 'market-maker of last resort'").

72. See SU, *supra* note 65.

72. See *Humphrey's Ex'r v. United States*, 295 U.S. 602, 626–32 (1935).

73. U.S. CONST. art. II, § 1, cl. 1.

74. See, e.g., STEVEN G. CALABRESI & CHRISTOPHER S. YOO, *THE UNITARY EXECUTIVE* 418 (2008) ("We think the text of the Constitution plainly gives the president the power to control and remove subordinates in the executive branch and we think this is normatively desirable.")

75. See, e.g., Steven G. Calabresi & Saikrishna B. Prakash, *The President's Power to Execute the Laws*, 104 YALE L.J. 541, 569 (1994) ("The administrative power, if it exists, must be a subset of the President's 'executive Power' and not one of the other two traditional powers of government.")

76. *Free Enter. Fund v. Pub. Co. Acct. Oversight Bd.*, 561 U.S. 477, 514 (2010) ("While we have sustained in certain cases limits on the President's removal power, the Act before us imposes a new type of restriction—

the president has the unfettered authority remove the heads of single-member agencies.⁷⁷ But, as of writing, the Court's 1935 decision in *Humphrey's Executor* remains good law—officially, at least.⁷⁸ In *Humphrey's Executor*, the Court held that Congress may restrict the president from removing the heads of multi-member agencies that exercise not only judicial power but also quasi-judicial and quasi-legislative power.⁷⁹

Humphrey's Executor is on life support, and it seems clear that the plug will soon be pulled.⁸⁰ Once agency independence is dead and buried, government ownership of private interests will mean something different from what it has meant during past interventions. When every part of the executive branch, including agencies with direct supervisory and enforcement authority over private enterprises, is subject to the total control of the president, there will be no structural protections against misuse of the government's interests for the president's own personal or political gain.⁸¹

Congress could attempt to fill that gap with statutory protections, but it has not done so with respect to the Intel deal, and there is no reason to believe it would do so with future interests acquired by the government. And even if Congress were to put protections in place, the president could challenge those protections as violative of his Article II authority under the same UET-based reasoning that eviscerated agencies' ability to act as a check against abuse.

The demise of independent agencies, along with the lack of legislatively imposed controls (or even legislative interest), means that the government's investment in Intel, and whatever other companies become the targets of

two levels of protection from removal for those who nonetheless exercise significant executive power. Congress cannot limit the President's authority in this way.”).

77. *Seila Law LLC v. Consumer Fin. Prot. Bureau*, 591 U.S. 197, 225 (2020) (“The CFPB Director’s insulation from removal by an accountable President is enough to render the agency’s structure unconstitutional.”).

78. *Humphrey’s Ex’r v. United States*, 295 U.S. 602 (1935).

79. *Id.* at 629 (“We think it plain under the Constitution that illimitable power of removal is not possessed by the President in respect of officers of the character of those just named. The authority of Congress, in creating quasi-legislative or quasi-judicial agencies, to require them to act in discharge of their duties independently of executive control cannot well be doubted”)

80. As of writing, the issue of *Humphrey’s Executor*’s continuing viability is before the Court in several cases, and the Court has already issued interim relief suggesting it is likely to overrule *Humphrey’s Executor*. See *Trump v. Wilcox*, 145 S. Ct. 1415, 1416–17 (2025) (per curiam) (granting application to stay district court order enjoining termination of members of National Labor Relations Board and Merit Systems Protection Board); see also *Trump v. Slaughter*, 222 L. Ed. 2d 1233, 1233 (2025) (granting application to stay district court order enjoining termination of member of Federal Trade Commission); *Trump v. Cook*, 222 L. Ed. 2d 1240, 1240 (2025) (in case involving termination of member of Federal Reserve Board, staying decision on application for stay pending oral argument in January 2026). It appears very likely that, at a minimum, the Court will hold that removal protections for the majority of independent agencies are unconstitutional. The Court has expressed hesitation about disallowing such restrictions in the context of the Federal Reserve, see *Wilcox*, 145 S. Ct. at 1417, and it is possible that it will adopt reasoning that (somehow) distinguishes the Fed from other agencies. While such a carve-out might allow for some degree of continuing independence when it comes to the regulation of financial institutions within the Fed’s jurisdiction, it would do nothing to preserve independence at the agencies responsible for oversight of Intel and other public companies.

81. Even if the president were to use his influence over government-owned enterprises to engage in or abet conduct that might be criminal in other contexts, he would likely be immune from prosecution. See *Trump v. United States*, 603 U.S. 593, 605–06 (2024).

government investment, is subject to the plenary control of a single person: the president. The president is free to use that investment, and his influence over the company, in whatever way he wants, without check, balance, or regard to whether it is used for the benefit of the public.

Consider a few examples of what is possible. Recall the hypothetical that began this article and imagine that the Securities and Exchange Commission initiates an investigation of Intel concerning potential accounting fraud. The president very well may feel that such an investigation could harm Intel's stock price and make the government's investment appear unwise. That outcome could harm the president's political standing, or that of the political party on which he relies to carry out his legislative agenda. There has never been a legal impediment to the president calling the chairman of the SEC and expressing his view that an investigation should be closed.⁸² However, in the past, the chairman could simply thank the president for the input, hang up, and then proceed with the agency's usual decision-making process.⁸³ In the post-independence era, however, the president can now add a footnote to his modest request: "By the way, if you don't terminate the investigation, you're fired."

Or imagine that Intel is contemplating a merger with a rival chipmaker. In the past, the Federal Trade Commission might scrutinize such a transaction closely, with an eye toward impact on competition in the semiconductor manufacturing market. But the president might believe (like Intel) that the financial and operational benefits of the transaction are more important than any anticompetitive effects. Again, he can phone the chairman of the FTC and express his views and—now—he can add the same footnote as he did the chairman of the SEC. Cut it out or you're fired.

Similar situations could arise across the regulatory landscape. How would a presidentially-controlled National Labor Relations Board deal with charges that Intel has interfered with workers' rights to unionize and bargain collectively? What if the Federal Communications Commission were, if left to its own devices, inclined to disapprove a request by Intel to approve a new wireless technology with major financial significance to the company?

The common feature of these hypotheticals is that the president would have the unfettered right to compel an agency to do his bidding, even if it would mean action contrary to the agency's mission or the public interest. To be sure, even without the UET, a president not interested in normative constraints can bring considerable power to bear in causing the government to act as he directs. The Department of Justice, for instance, is not an independent agency as traditionally

82. Historical norms of agency relations would make such a phone call highly irregular and potentially controversial. I do not address these norms here, partly because they appear to be as dead as agency independence.

83. There is, of course, no guarantee that a chairman receiving such a call would not accede to the president's demand anyway, regardless of independence protections. The president can exercise considerable political pressure even without the legal authority to compel action or remove officials. See Rachel E. Barkow, *Insulating Agencies: Avoiding Capture Through Institutional Design*, 89 TEX. L. REV. 15, 30 (2010) ("Regardless of the reason, presidential acceptance is likely to matter to agency heads even without the threat of removal hanging over them."). Independence can nevertheless be a powerful influence on agency behavior. See *id.* ("A removal restriction undoubtedly gives an agency head greater confidence to challenge presidential pressure.").

defined. While a system of norms developed over time that created an ethos of independence at the Department,⁸⁴ those norms have deteriorated.⁸⁵ Attorneys general do not serve specified statutory terms and, under most theories of executive power, can be terminated at will. Other cabinet departments similarly can be wielded by the president without appeal to the UET. But the loss of independent agencies as a bulwark against abuse is a serious one. An independent SEC can investigate and file fraud charges even if the Department of Justice chooses not to. Same with an independent FTC considering antitrust charges that could also be brought by the Department. But a non-independent SEC or FTC can be compelled to fall into lockstep with the Department. The entire force of the executive branch can be made to march in line with the president's agenda, regardless of the aims to which that agenda is addressed.

CONCLUSION

The Intel deal demonstrates how the UET can undermine a fundamental presumption of government: that it exists to serve public, not private, interests. We cannot know today whether the government's investment in Intel will, in fact, be weaponized and added to the president's political and personal armory. Nor can we know what future investments the president might cause the government to make, and the ends to which those investments may be put. But temptation will present itself, and this administration has shown little ability, or desire, to resist it.

Whether the UET is a historically sound and well-reasoned interpretation of Article II is not a question taken on here. Others have debated its validity for decades and continue to do so today. Every participant in that debate, however, should understand that a full-throated embrace of the UET coupled with a president unafraid to discard longstanding norms of governance can lead to noxious real-world outcomes. A government shareholder is dangerous enough; a president shareholder is an unpoliceable threat.

84. See Jack Goldsmith, *Independence and Accountability at the Department of Justice*, LAWFARE (Jan. 30, 2018, at 14:16 CT), <https://www.lawfaremedia.org/article/independence-and-accountability-department-justice> [<https://perma.cc/7U6F-WMYK>] ("The most important guarantees of DOJ/FBI come not from the Constitution or statutes, but from norms and practices that since Watergate have emerged within the Executive branch.").

85. See Quinta Jurecic, *Trump's Attacks on Justice Department Independence, Then and Now*, LAWFARE (Mar. 27, 2025, at 10:27 CT), <https://www.lawfaremedia.org/article/trump-s-attacks-on-justice-department-independence--then-and-now> [<https://perma.cc/K4BY-PF3Z>] ("During Trump's first term, the president chipped away at the independence of federal law enforcement bit by bit over the course of four years. In the first few months of Trump's second term, the new administration smashed through many of the remaining barriers . . .").