



Written by [Steve Byas](#) on April 16, 2020

Every President Has Constitutional Authority to Fire Advisors

Senator Edward Markey (D-Mass.) has introduced legislation designed to prevent President Donald Trump from firing Dr. Anthony Fauci from his position as the expert in the National Institute of Allergy and Infectious Diseases, according to a Tuesday press release from Markey.

If enacted, Markey's proposed National Institutes of Health Director Protection Act would allow directors to be removed "only for malfeasance, neglect of duty, or incapacity — not for having differing views on policy or expressing positions that are politically inconvenient," Markey's press release said. While the chances of Markey's bill actually passing both houses of Congress and surviving a presidential veto are slim, it is important to challenge the blatantly unconstitutionality of the proposal.

Trump said on Monday that he has no plans to dismiss Fauci, who has been advising presidents on issues involving public health since President Ronald Reagan.

Speculation spiked that the doctor-advisor's days as a presidential advisor may be numbered when Fauci said in an interview with CNN's *State of the Union* on Sunday that had the United States launched "mitigation earlier, you could have saved lives" in the coronavirus pandemic. Fauci added that there was "pushback about shutting things down" any earlier than that, and was taken by some as implied criticism of Trump.

Trump added to the speculation when he retweeted a tweet — not Trump's — that was highly critical of Fauci, entitled "Time to #FireFauci." On Monday, however, White House spokesman Hogan Gidley issued a statement, "This media chatter is ridiculous — President Trump is not firing Dr. Fauci."

"I like him, I think he's terrific," Trump said of Fauci. "This was a person's view. Not everybody's happy with Anthony. Not everybody's happy with everybody."

Under current law, a president is legally able to fire the directors of national research institutes and centers under the National Institutes of Health for any reason. Some agency heads, on the other hand, are specifically protected by law from presidential termination.

Senator Markey betrayed the partisan nature of his bill in his statement supporting the legislative proposal. "Dr. Fauci has become the most trusted voice of the science community in responding to this pandemic. He is not afraid to speak truth to power. But Donald Trump has an allergy to both — science and the truth. Our response to the coronavirus crisis must be based on science, data, and on the truth.





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We cannot allow Donald Trump to silence Dr. Fauci or any other government scientists.”

Even if Markey’s politically inspired invective were true, it really would not matter. Markey can tout the résumé of Fauci all he wants, and any other person in America can support Fauci, but under the Constitution, Fauci’s continuation in that position is a decision for one person to make — the president of the United States.

Article II, Section 1 of the Constitution is quite clear: “The executive power shall be vested in a president of the United States of America.” As such, the president he “shall take care that the laws be faithfully executed.” In other words, if a president decides that someone — including Dr Fauci — stands in the way of that constitutional duty, it is his right to fire that person.

Whether Fauci deserves to be axed from his position is highly subjective, and totally irrelevant to whether Trump has the authority to fire him. A president should be able to determine, by whatever criteria he chooses, to remove advisors and pick new ones. By Markey’s reasoning, Speaker of the House Nancy Pelosi should have to get someone else’s permission to fire her aides, and Supreme Court Chief Justice John Roberts would have to get prior approval to get rid of a clerk.

This was the issue when the Radical Republican Congress, in the period after the Civil War, attempted to limit the president’s constitutional authority to be commander in chief of the armed forces by passing the Command of the Army Act, which required President Andrew Johnson to issue all military orders through the secretary of war, Edwin Stanton. Since Stanton was a foe of Johnson, this was clearly an attempt to subvert the president’s authority as commander in chief.

To make sure that Johnson did not then summarily fire Stanton and get someone more to his liking, Congress also passed the Tenure of Office Act, which prohibited Johnson from firing any Cabinet officer, without the consent of the Senate. Johnson fired him anyway, the House of Representatives swiftly impeached him, and he was acquitted by one vote in the Senate.

Again, under our Constitution, this was Johnson’s decision to make, not the Senate’s. What Markey is proposing is a new Tenure of Office Act. Historians are almost universally in agreement that had Johnson been removed by the Senate, it would have not only been a violation of the Constitution, it would have turned the United States into a parliamentary system, rather than a presidential system, as designed by the Founders. The Founders created the office of president largely as a check on the power of Congress, which they envisioned as the most powerful of the three branches.

Regardless of what one thinks of Fauci or Trump, the principle that presidents should be able to rid themselves of advisors they no longer trust should remain the paramount consideration.

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