and the executive branch lay at the heart of the 1793 decision by the early justices to decline President Washington's request that they serve as his informal legal advisers. For details, see Chapter 8, n. 22.

54 Testimony of March 17, 1999, Before the Senate Committee on Governmental Affairs.

55 Though Saxbe fixes have not generated an extensive academic literature, they have not escaped the eagle eyes of two of America's preeminent scholars of constitutional method. See Philip Bobbitt, *Constitutional Fate: Theory of the Constitution* (1982), 226; Michael Stokes Paulsen, "Is Lloyd Bentsen Unconstitutional?," *Stanford LR* 46 (1994): 907. The current discussion aims to allay the concerns about Saxbe fixes raised by these scholars.

56 *Buckley v. Valeo*, 424 U.S. 1 (1976). For an argument that congressional leaders continue to call the shots informally, see Jamin B. Raskin, "'A Complicated and Indirect Encroachment': Is the Federal Election Commission Unconstitutionally Composed?," *Administrative LR* 52 (2000): 609, 615–618. For an explanation of how the informality of this revised arrangement can make all the difference constitutionally, see supra text accompanying nn. 48–50.

57 The most notable exception—the Tenure of Office Act of 1867—is discussed in detail at Chapter 8, n. 18. In brief, this act was repealed by Congress in the late nineteenth century, was emphatically repudiated by the Supreme Court in a landmark case early in the twentieth century, and has no visible advocates on the current Court. No modern president has ever supported this act or its underlying principles.

58 Whereas statutes establishing cabinet offices have typically allowed the president virtual carte blanche in picking the person of his choice, the laws creating independent agencies have often provided for a partisan balance on the agency, restricting the number of commissioners or board members who may be picked from any single political party. For more on this aspect, see Chapter 10.

59 See, e.g., Federal Trade Commission Act of 1914, sec. 1, 38 Stat. 717, 718, 15 U.S.C. 41 (giving Federal Trade Commissioners seven-year terms subject to presidential removal for "inefficiency, neglect of duty, or malfeasance in office"); National Labor Relations Act of 1935, sec. 3(a), 49 Stat. 449, 451, 29 U.S.C. 153(a) (1935) (giving NLRB members five-year terms subject to removal for "neglect of duty or malfeasance in office, but for no other cause"); Banking Act of 1935, sec. 203(b), 49 Stat. 684, 704–705, 12 U.S.C. 242 (giving Federal Reserve board members fourteen-year terms "unless sooner removed for cause by the President"); Consumer Product Safety Act of 1972, sec. 4, 86 Stat. 1207, 1210, 15 U.S.C. 2053 (giving Consumer Product Safety Commissioners seven-year terms subject to removal for "neglect of duty or malfeasance in office but for no other cause"). Similar rules apply to many other agencies, including the Federal Energy Regulatory Commission, 42 U.S.C. 7171 ("Members shall hold office for a term of 5 years and may be removed by the President only for inefficiency, neglect of duty, or malfeasance in office"), and the Nuclear Regulatory Commission, 42 U.S.C. 5841 ("Each member shall serve for a term of five years. . . . Any member of the Commission may be removed by the President for inefficiency, neglect of duty, or malfeasance in office."). Although some