



# CONGRESS' POWER OF THE PURSE

July 2025

President Trump and his Office of Management and Budget have asserted a sweeping executive authority to withhold (“impound”) funds that Congress has appropriated, challenging decades of constitutional understanding and established law.<sup>1</sup> Administration officials have directly contested the constitutionality of the Impoundment Control Act—legislation specifically designed to set a narrow process for the executive branch to seek congressional permission to withhold funds. Meanwhile, the administration has already terminated billions of dollars in grants, contracts, and employment positions while appearing unlikely to expend appropriated funds before fiscal year deadlines.

This controversy strikes at the heart of the Constitution’s separation of powers and raises fundamental questions about Congress’ power of the purse. While the administration claims inherent executive power to control federal spending, the plain text of the Constitution and the consistent interpretations from courts, the Department of Justice, and prior administrations of both parties conflict with this view.

## What the Constitution Says

Article I of the Constitution gives the power of the purse to Congress. Under the Spending Clause, “The Congress shall have Power . . . to pay the Debts and provide for the common Defence and general Welfare of the United States.” The Appropriations Clause clarifies that only Congress can decide how federal money is spent: “No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law.”<sup>2</sup>

By contrast, the Constitution contains no provision authorizing the President to impound funding. Instead, the Take Care Clause places a *duty* on the President to “take care that the laws be faithfully executed.”<sup>3</sup> Because appropriations are laws, the Constitution requires the executive branch to implement them as Congress directed. For that reason, it has been generally recognized across institutional and partisan lines throughout American history that the President cannot second guess Congress’ policy judgment and decline to spend funds.

## How Congress Appropriates

When appropriating funds, Congress can grant the executive branch different levels of flexibility. It may set a spending limit in an appropriation, allowing an agency discretion to spend less than the full amount provided. This practice was more common during the founding era. For example, Congress authorized President Jefferson to purchase up to fifteen gunboats, appropriating “a sum not exceeding fifty thousand dollars” for that purpose.<sup>4</sup>

In modern times, however, Congress typically does not grant agencies this discretion. Instead, it sets the exact amount the agency must spend within a specific timeframe. A typical provision now reads: “For

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<sup>1</sup> Greg Rosalsky, *Can President Trump Ignore Congress’ Spending Laws? The Debate Over ‘Impoundment,’* National Public Radio (Feb. 18, 2025), <https://www.npr.org/sections/planet-money/2025/02/18/g-s1-49220/trump-ignore-congress-spending-laws-impoundment>; Mark Paoletta & Daniel Shapiro, *The President’s Constitutional Power of Impoundment*, Center for Renewing America (Sept. 10, 2024), <https://americarenewing.com/the-presidents-constitutional-power-of-impoundment>.

<sup>2</sup> U.S. Const. art. I, § 9.

<sup>3</sup> U.S. Const. art. III, § 3.

<sup>4</sup> Act of Feb. 28, 1803, ch. 11, § 3, 2 Stat. 206, <https://tinyurl.com/5byhrt3c>.

necessary expenses for the Office of Labor-Management Standards, \$48,515,000.”<sup>5</sup> Taken with the Impoundment Control Act (discussed below), this language requires the office to obligate all of the funds within the fiscal year, with no executive discretion to save less.

## The Limited History of Impoundments

Historically, presidential impoundments were extremely rare. A comprehensive study of alleged impoundments from the founding to 1968 identified only 12 instances in which presidents impounded funds against congressional instructions. Half of them occurred within a three-year period during Franklin Roosevelt’s presidency, and nearly all 12 were: (1) purportedly justified, at least in part, by statutory—not constitutional—authority; (2) strongly opposed by Congress; or (3) in one case, overturned by the courts.<sup>6</sup>

The Nixon administration marked a stark contrast with historical practice. President Nixon asserted an independent constitutional authority to withhold funds, stating “[t]he constitutional right for the President of the United States to impound funds, and that is not to spend money, when the spending of money would mean either increasing prices or increasing taxes for all the people, . . . is absolutely clear.”<sup>7</sup> In 1972 and 1973, his administration impounded \$18 billion, primarily targeting domestic programs it opposed.<sup>8</sup> These impoundments were followed by litigation and a unanimous ruling by the Supreme Court invalidating the impoundments.<sup>9</sup>

## The Impoundment Control Act

In response to the illegal impoundments, Congress enacted the Impoundment Control Act of 1974 to clarify the narrow circumstances in which the president may impound funds.<sup>10</sup> The Act allows a president to:

- Defer spending temporarily, but only for three specific reasons: (1) to provide for contingencies (e.g., delaying spending in light of a natural disaster), (2) to achieve savings through increased efficiency or changing needs, or (3) as expressly authorized by law. The President must notify Congress of any deferral through a special message. Any other deferral is prohibited.
- Request a rescission by sending a special message to Congress, urging it to pass legislation canceling the funds. If Congress does not approve the rescission within 45 days of continuous session, the agency must spend the funds as appropriated.

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<sup>5</sup> Further Consolidated Appropriations Act, 2024, div. D, tit. I, Pub. L. No. 118-47, 138 Stat. 636 (2023).

<sup>6</sup> Protect Democracy, *The Myth of Presidential Impoundment Power* 13 (Mar. 2025), <https://protectdemocracy.org/impoundment-myth>.

<sup>7</sup> 9 Weekly Compilation of Presidential Documents 105, 110 (1973).

<sup>8</sup> Allen Schick, *Congress and Money: Budgeting, Spending, and Taxing* 46 (1980).

<sup>9</sup> *Train v. City of New York*, 420 U.S. 35 (1975).

<sup>10</sup> Originally, the ICA permitted deferrals subject to a legislative veto by either house of Congress. But after the legislative veto was held unconstitutional, the President’s deferral authority was narrowed to allow for deferrals only under the circumstances described above. See James V. Saturno, Congressional Research Service, R48432, *The Impoundment Control Act of 1974: Background and Congressional Consideration of Rescissions* 5 (Feb. 25, 2025), [https://www.congress.gov/crs\\_external\\_products/R/PDF/R48432/R48432.2.pdf](https://www.congress.gov/crs_external_products/R/PDF/R48432/R48432.2.pdf).

Until President Trump, presidents had abided by the Impoundment Control Act, and it had effectively constrained the executive branch from withholding congressionally appropriated funds.<sup>11</sup> However, in 2019, the Office of Management and Budget (OMB) withheld from obligation funding appropriated to the Department of Defense for security assistance to Ukraine. The Government Accountability Office later concluded that this withholding violated the Impoundment Control Act, as it was made not for a statutorily permitted reason but for policy reasons. Specifically, OMB had justified the withholding by claiming it was necessary to prevent the funds from being spent “in a manner that could conflict with the President’s foreign policy.”<sup>12</sup>

The second Trump administration has now asserted a presidential power to impound funds and already impounded billions of dollars. For example, just hours after his inauguration, President Trump issued Executive Order 14169, which immediately stopped all congressionally appropriated foreign assistance funding pending future review. A district court blocked the freeze,<sup>13</sup> and it later ordered the restoration of the withheld funds, concluding that the freeze violated the Impoundment Control Act and infringed on Congress’ exclusive spending power.<sup>14</sup>

On January 27, the Trump administration issued a memorandum ordering agencies to pause the obligation or disbursement of all federal financial assistance, not just foreign assistance. A series of district court rulings blocked the order from taking effect.<sup>15</sup> In a committee hearing on April 29, GAO testified that it had 39 ongoing investigations into potentially illegal impoundments.<sup>16</sup> In May 2025, GAO found that the Trump administration illegally withheld funding for state electric vehicle charger programs without congressional approval in violation of the ICA.<sup>17</sup> The following month, GAO determined that the

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<sup>11</sup> Josh Chafetz, *Congress’s Constitution: Legislative Authority and the Separation of Powers* 65 (2017). For examples of past congressional notifications under the law, see 144 Cong. Rec. H195 (Feb. 3, 1998) (message from the President on deferrals of budgetary resources), <https://www.congress.gov/105/crec/1998/02/03/144/5/CREC-1998-02-03-house.pdf>; 128 Cong. Rec. 7672 (Apr. 26, 1982) (statement on recession and deferral of certain budget authority), <https://www.congress.gov/97/crecb/1982/04/26/GPO-CRECB-1982-pt6-6-2.pdf>; Walter Pincus, *Carter Impounding Mo. Water Funds*, Washington Post, (Mar. 25, 1977), <https://www.washingtonpost.com/archive/politics/1977/03/26/carter-impounding-mo-water-funds/462bf03c-3a30-49db-9ad2-108046b85d97>.

<sup>12</sup> U.S. Government Accountability Office, B-331564, Office of Management and Budget—Withholding of Ukraine Security Assistance 6 (2020), <https://www.gao.gov/products/b-331564> (quoting OMB Response).

<sup>13</sup> *AIDS Vaccine Advoc. Coal. v. U.S. Dep’t of State*, No. 25-400, 2025 U.S. Dist. LEXIS 27639 (D.D.C. Feb. 13, 2025).

<sup>14</sup> See, e.g., *AIDS Vaccine Advoc. Coal. v. U.S. Dep’t of State*, No. 25-400, 2025 U.S. Dist. LEXIS 42875, at \*44-\*56 (D.D.C. Mar. 10, 2025) (concluding that plaintiffs were likely to succeed in challenging the Trump Administration’s freeze on foreign development assistance as unconstitutional).

<sup>15</sup> See Elena Moore, *Trump Administration Federal Spending Freeze Blocked by a Second U.S. Judge*, National Public Radio (Mar. 6, 2025), <https://www.npr.org/2025/03/06/nx-s1-5312069/trump-federal-funding-freeze-court-order>.

<sup>16</sup> A Review of the Fiscal Year 2026 Budget Requests for the Congressional Budget Office, the Government Accountability Office, and the Government Publishing Office: Hearing Before the Subcomm. on the Legis. Branch of the S. Comm. on Appropriations, 118th Cong. (Apr. 29, 2025), <https://www.appropriations.senate.gov/hearings/a-review-of-the-fiscal-year-2026-budget-requests-for-the-congressional-budget-office-the-government-accountability-office-and-the-government-publishing-office>.

<sup>17</sup> U.S. Government Accountability Office, B-337137, U.S. Department of Transportation, Federal Highway Administration—Application of the Impoundment Control Act to Memorandum Suspending Approval of State Electric Vehicle Infrastructure Deployment Plans (2025), <https://www.gao.gov/assets/880/877916.pdf>.

Trump administration again violated the ICA when the Institute of Museum and Library Services halted operations and withheld appropriated funds without congressional approval.<sup>18</sup>

## Legality of the Trump Impoundments

The Constitution vests power of appropriations in Congress, and Congress has used this power in the Impoundment Control Act to define the circumstances under which a president may impound funds. President Trump's clear obligation is to "faithfully execute" this law, not defy it.

This authority has been recognized in two Supreme Court decisions: (1) the 1838 decision in *Kendall v. United States*, which held that Congress can impose mandatory spending obligations on the executive branch,<sup>19</sup> and (2) the 1975 decision in *Train v. City of New York*, which held that President Nixon lacked constitutional authority to unilaterally spend "less than the entire amounts authorized to be appropriated."<sup>20</sup> In 2013, then-Judge Kavanaugh, writing for the D.C. Circuit, reaffirmed that a president "does not have unilateral authority to refuse to spend the [appropriated] funds."<sup>21</sup>

Congress' authority has also been recognized in multiple Department of Justice, White House Counsel, and Government Accountability Office legal opinions:

- **Department of Justice:** The Department of Justice's Office of Legal Counsel (OLC) has consistently recognized that the President must execute appropriations as enacted:<sup>22</sup>
  - In 1969, future Chief Justice William Rehnquist, writing for OLC, advised President Nixon that the President "does not have a constitutional right to impound [appropriated] funds notwithstanding a congressional direction that they be spent."<sup>23</sup>
  - OLC reaffirmed this in 1988, stating, "This Office has long held that the 'existence of such a broad power is supported by neither reason nor precedent.'"<sup>24</sup>
- **White House Counsel:** The White House Counsel's Office, which advises the President on legal matters, has also acknowledged these constraints. In a 1985 memorandum for the Counsel's Office, future Chief Justice John Roberts advised that as a general matter, "the President has no

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<sup>18</sup> U.S. Government Accountability Office, B-337375, Institute of Museum and Library Services—Applicability of the Impoundment Control Act to Reduction of Agency Functions (2025), <https://www.gao.gov/assets/880/878908.pdf>.

<sup>19</sup> *Kendall v. United States ex rel. Stokes*, 37 U.S. 524 (1838).

<sup>20</sup> *Train v. City of New York*, 420 U.S. 35, 41 (1975); see also *Clinton v. City of New York*, 524 U.S. 417, 468 (1998) (Scalia, J.) *concurring in part and dissenting in part*, ("President Nixon, the Mahatma Gandhi of all impounders, asserted at a press conference in 1973 that his 'constitutional right' to impound appropriated funds was 'absolutely clear.' Our decision two years later in *Train v. City of New York* . . . proved him wrong[.]").

<sup>21</sup> *In re Aiken County*, 725 F.3d 255, 261 n.1 (D.C. Cir. 2013) (Kavanaugh, J.).

<sup>22</sup> See Protect Democracy, The Myth of Presidential Impoundment Power 10 n.44 (Mar. 2025), <https://protectdemocracy.org/impoundment-myth> ("Rehnquist's OLC opinion is in accord with every other OLC opinion to consider the matter.").

<sup>23</sup> Presidential Authority to Impound Funds Appropriated for Assistance to Federally Impacted Schools, 1 Supp. Op. O.L.C. 303, 308 (Dec. 1, 1969), <https://www.justice.gov/file/147706/dl?inline> (hereinafter "Presidential Authority to Impound Funds").

<sup>24</sup> The President's Veto Power, 12 Op. O.L.C. 128, 166 (July 8, 1988), <https://www.justice.gov/file/150991/dl?inline> (quoting Presidential Authority to Impound Funds).

independent constitutional authority to impound funds” and that “no area seems more clearly the province of Congress than the power of the purse.”<sup>25</sup>

- **Government Accountability Office (GAO):** The GAO has been clear that the “president doesn’t have any constitutional authority to withhold, doesn’t have any inherent authority to withhold.”<sup>26</sup>

In fact, the Trump administration has implicitly acknowledged the legal force of the Impoundment Control Act. In multiple cases challenging its impoundments, the administration has not contested the Act’s constitutionality, implicitly accepting the Act’s validity as binding law.<sup>27</sup>

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<sup>25</sup> Memorandum from John G. Roberts, Assoc. White House Couns., for Fred F. Fielding, Couns. to the President, Regarding Impoundment Authority 1, 2 (Aug. 15, 1985), [www.reaganlibrary.gov/public/digitallibrary/smf/counsel/roberts/box-028/40-485-6908381-028-012-2017.pdf](http://www.reaganlibrary.gov/public/digitallibrary/smf/counsel/roberts/box-028/40-485-6908381-028-012-2017.pdf).

<sup>26</sup> *Hearing on Protecting Congress’ Power of the Purse* Before the House Budget Committee, 116th Cong. 117 (2020) (statement of Thomas H. Armstrong, General Counsel, U.S. Government Accountability Office), <https://www.congress.gov/116/chrg/CHRG-116hhrg41966/CHRG-116hhrg41966.pdf>.

<sup>27</sup> See, e.g., *AIDS Vaccine Advoc. Coal. v. U.S. Dep’t of State*, No. 25-400, 2025 U.S. Dist. LEXIS 42875, at \*53 (D.D.C. Mar. 10, 2025) (“The Government has] not raised any challenge to the constitutionality of the . . . Impoundment Control Act.”); DOJ Emergency Motion to Stay, *New York v. Trump*, No. 25-1236 (1st Cir. Mar. 10, 2025), <https://storage.courtlistener.com/recap/gov.uscourts.ca1.52591/gov.uscourts.ca1.52591.00108257486.1.pdf> (not challenging the ICA’s constitutionality); *New York v. Trump*, No. 1:25-cv-39, 2025 U.S. Dist. LEXIS 17593, \*11 (D.R.I. Jan. 31, 2025), <https://perma.cc/43B7-V7VU> (“The Executive cites no legal authority allowing it to [unilaterally suspend the payment of federal funds to states and other grantees.]”).