THE CRISIS OF APPROPRIATIONS LAW

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INTRODUCTION

Appropriations law is a unique body of federal law. Appropriations law imposes its own somewhat baroque set of statutory interpretation rules, approves of very broad delegations to the Executive Branch without meaningful limiting principles, and is often exempt from judicial review. One leading scholar has referred to these and related differences from ordinary public law doctrine as reflecting "appropriations marginalization" and "appropriations exceptionalism."[1]

But perhaps that is all about to change. Donald Trump's historically aggressive challenge to Congress's power of the purse has spurred an unusually large volume of exceptionally high-stakes appropriations law litigation. That litigation has already prompted lower courts to abandon a

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1. Gillian E. Metzger, *Taking Appropriations Seriously*, 121 COLUM. L. REV. 1075, 1083–84 (2021).

hands-off approach. The Supreme Court's initial responses have largely sought to divert these issues out of the federal district courts and to the Court of Federal Claims.[2] But the Supreme Court may yet find itself expanding judicial enforcement of appropriations law principles—particularly the constitutional and statutory prohibition on executive impoundment of funds appropriated by the legislature.

The potential implications go beyond the availability of judicial review for impoundment cases, however. The baroque statutory interpretation principles governing federal spending have been developed largely by the Government Accountability Office (GAO)—an agency of the Legislative Branch—as well as by lawyers within the Executive Branch. Although courts have occasionally weighed in on those principles, they have not been the prime movers. Rather, they have largely confirmed and entrenched the practices of those Article I and Article II entities.

And those appropriations-specific statutory interpretation principles, as well as the general reticence of courts to engage in typically intrusive judicial review, are built on a particular vision of interbranch relations. In that vision, it is the annual appropriations process, bolstered by ongoing congressional oversight, that is the principal check on the Executive Branch: The Constitution gives Congress the power of the purse, it gives Congress the tools to enforce that power, and Congress can be expected to use those tools. Judicial enforcement is thus largely unnecessary. Rather, the Executive Branch has an incentive to create a robust internal system of enforcing the expectations that congressional appropriators had when they adopted the relevant spending legislation.

Many of the unusual features of appropriations law can be well understood as implementing that robust internal system. The corpus of appropriations law is full of highly specific statutory interpretation principles that seem to depart significantly from the rules ordinarily applied by courts. But those principles make a lot more sense when seen as reflecting Congress's expectations when crafting legislation in the very specific context of federal spending. Executive Branch lawyers and budget officers hold their agencies to these principles so that they do not disregard those congressional expectations, lest the agencies be punished by funding cuts or restrictive riders in the next appropriations cycle. And when the GAO elaborates and implements these principles, it is performing a form of congressional oversight that helps to inform the Executive Branch and Members of Congress when agencies have not satisfied appropriators'

2. *See* NIH v. Am. Pub. Health Ass'n, 145 S. Ct. 2658, 2659 (2025); Dep't of Educ. v. California, 604 U.S. 650, 651 (2025).

expectations. Legislators can follow up with their own, increasingly intrusive forms of oversight, as well as responsive action in later spending bills.

So long as this vision of interbranch relations holds, there is no particular need for courts to engage in searching judicial review; the agencies already have a strong incentive to heed congressional expectations, and the annual appropriations process provides a much more effective remedy than litigation if the agencies fail to do so. Nor is there any need to fear unduly broad delegation. Congress adopts new, must-pass legislation every year that can correct the Executive Branch if it is misusing delegated authority. And congressional appropriators are constantly supervising the exercise of that authority through the oversight process—backed by the threat of withholding or restricting further funds.

The first Trump Administration put pressure on the vision of interbranch relations on which so much of appropriations law is premised. The impoundment of security assistance funds intended for Ukraine—which led to Trump's first impeachment, and in which GAO found a violation of the Impoundment Control Act—is only the most notable example.

But the second Trump Administration has gone significantly farther. The administration has engaged in impoundment on a massive scale. It has refused to comply with the apportionment transparency law Congress passed in the wake of the Ukraine scandal. And it has repeatedly removed, sidelined, or run roughshod over those offices and officials within the Executive Branch who would otherwise impose internal checks on its actions. Although GAO has now issued several opinions finding the administration in violation of appropriations laws, congressional appropriators have largely remained passive in the face of Trump's actions—thinking that if they can just pass full-year appropriations laws, perhaps with some tweaks to make them slightly more specific and concrete than in the past, the administration will (this time) feel bound to carry them out.

The vision of interbranch relations that underlies appropriations law doctrine seems to be breaking down before our eyes. The Executive Branch is abandoning its robust system of internal checks. And Congress does not seem to be enforcing its power of the purse through oversight and the annual appropriations process. It is thus sensible to consider whether these changes in the world should spur changes in the law.

Many will argue that the right response is to expand the judicial role. There may well be a place for expanded judicial review, especially in this moment of crisis, but the courts are unlikely to be the solution. That is in part because many of the most significant appropriations law questions will not present an Article III case or controversy. And it is in part because judicial formalism is not well suited to resolving the merits of appropriations disputes, which involve complex and evolving situations where there's a need for flexibility and mutual accommodation between the branches. The best solution would be for Congress to take steps to reclaim its power.

After elaborating on the analysis discussed above, this Article will identify some steps Congress could take, ranging from the simple to the complex. The Article will offer the most robust case in modern scholarship for primarily political, rather than judicial, enforcement of appropriations law.

I. WHY IS APPROPRIATIONS LAW EXCEPTIONAL?

A. A Brief Precis of Appropriations Law Exceptionalism

Appropriations law departs from ordinary public law principles in many respects. Professor Gillian Metzger labeled this phenomenon "appropriations exceptionalism."[3]

Examples of appropriations exceptionalism include significant limitations on judicial review. Some of these come from statute, such as the channeling to the Court of Federal Claims of cases seeking recovery of federal funds that were unlawfully withheld.[4] When a party can obtain relief in the Court of Federal Claims—even if that relief will come many years down the line—that party will not be able to invoke federal district court jurisdiction under the Administrative Procedure Act (APA) to seek immediate relief.[5] Thanks in large part to the Supreme Court's recent underexplained actions on the "shadow docket," there remains great uncertainty regarding when APA jurisdiction exists to stop an ongoing refusal to spend money.[6]

Even when remedies in the Court of Federal Claims do not oust the federal district courts of jurisdiction under the APA, procedural doctrines will often keep appropriations-related cases out of court. When an Executive Branch appropriations decision is understood to be the "allocation of funds from a lump-sum appropriation," for example, the

3. Metzger, *supra* note 1, at 1083–84.
4. *See* 28 U.S.C. § 1491(a)(1).
5. *See* 5 U.S.C. § 702 ("Nothing herein . . . confers authority to grant relief if any other statute that grants consent to suit expressly or impliedly forbids the relief which is sought.").
6. *See NIH*, 145 S. Ct. at 2659; *Dep't of Educ.*, 604 U.S. at 651. On the continued confusion created by the Court's shadow docket rulings, see President & Fellows of Harvard Coll. v. U.S. Dep't of Health & Hum. Servs., 798 F. Supp. 3d 77, 105 n.9 (D. Mass. 2025).

Supreme Court has held that the decision will not be reviewable under the APA because "the decision to allocate funds 'is committed to agency discretion by law.'"[7] As Professor Matthew Lawrence has shown, that holding stands in tension with typical understandings of the APA's "committed to agency discretion" doctrine.[8] Plaintiffs will also often find it difficult to establish standing to challenge Executive Branch appropriations decisions, because they cannot show injury, causation, or redressability,[9] or because they cannot satisfy the APA "zone of interests" test.[10] In general, courts have "[o]ften . . . declined to decide cases on the merits" when they address "issue[s] of executive compliance with appropriations limitations."[11]

As a result of these doctrines, appropriations law, more than perhaps any other area of federal law, is primarily elaborated and enforced as something like "internal administrative law."[12] Even here, though, appropriations law is distinctive: Counsel within Executive Branch agencies, with guidance and direction from the Department of Justice's Office of Legal Counsel and the Office of Management and Budget's General Counsel, address appropriations law issues in the first instance.[13] But a Legislative Branch agency, the GAO, plays a central role as well—both in elaborating general principles through its widely consulted *Red Book* and in issuing decisions addressing whether particular Executive Branch actions complied with appropriations law.[14]

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7. *See* Lincoln v. Vigil, 508 U.S. 182, 192–93 (1993) (quoting 5 U.S.C. § 701(a)(2)); Metzger, *supra* note 1, at 1120–21.

8. *See* Matthew B. Lawrence, *Second-Class Administrative Law:* Lincoln v. Vigil*'s Puzzling Presumption of Unreviewability*, 101 WASH. U. L. REV. 1029 (2024).

9. Many spending decisions aren't targeted at particular beneficiaries of government programs; they simply limit spending that benefits the public at large. *Cf.* United States v. Richardson, 418 U.S. 166 (1974).

10. *See* Metzger, *supra* note 1, at 1122–23.

11. Kate Stith, *Congress' Power of the Purse*, 97 YALE L.J. 1343, 1387 (1988).

12. *See, e.g.*, Matthew B. Lawrence, *Disappropriation*, 120 COLUM. L. REV. 1, 82–83 (2020); Christopher J. Walker, *Administrative Law Without Courts*, 65 UCLA L. REV. 1620, 1638 (2018); Eloise Pasachoff, Craig Schulman & Angelene Superable, *GAO's Role in Appropriations Oversight*, BROOKINGS INST. (June 18, 2025), https://www.brookings.edu/articles/gaos-role-in-appropriations-oversight/ [https://perma.cc/9Z9C-QUAV]. The term "internal administrative law" was coined by Jerry Mashaw. *See generally* JERRY L. MASHAW, BUREAUCRATIC JUSTICE: MANAGING SOCIAL SECURITY DISABILITY CLAIMS (1983). For subsequent discussions, see Anya Bernstein & Cristina Rodríguez, *The Accountable Bureaucrat*, 132 YALE L.J. 1600 (2023); Elizabeth Magill, Foreword, *Agency Self-Regulation*, 77 GEO. WASH. L. REV. 859 (2009); Gillian E. Metzger & Kevin M. Stack, *Internal Administrative Law*, 115 MICH. L. REV. 1239 (2017); Christopher J. Walker, *Constraining Bureaucracy Beyond Judicial Review*, DAEDALUS, Summer 2021, at 155; Christopher J. Walker & Rebecca Turnbull, *Operationalizing Internal Administrative Law*, 71 HASTINGS L.J. 1225 (2020).

13. *See* Stith, *supra note* 11, at 1388–89.

14. *See* Metzger, *supra* note 1, at 1130; Stith, *supra note* 11, at 1389–91.

Exceptionalism does not end with the *forum* in which appropriations law questions are resolved. It also extends to the *substance* of appropriations law. Exceptionalist doctrines include a ready acceptance of broad grants of authority to the Executive Branch to determine how (and sometimes even how much) to spend, often without specific statutory constraints, yet with little suggestion that nondelegation principles might impose any limits.[15]

Those doctrines also include a number of statutory interpretation principles that are "specific to the appropriations context."[16] For example, the Supreme Court has said that the general presumption against repeals by implication "is 'especially' strong 'in the appropriations context.'"[17] This super-strong presumption against repeal stems from a more general principle of appropriations law—that provisions in appropriations statutes are strongly presumed to apply only to the particular fiscal year for which they are enacted.[18] The Supreme Court established the rule before the Civil War.[19] GAO has said that the "presumption can be overcome if the provision uses language indicating futurity or if the provision is of a general character bearing no relation to the object of the appropriation."[20] But both GAO and the courts have read these exceptions in an extremely limited way. As for words of futurity, Congress's use of the word "hereafter" will "often" suffice—but it "may not guarantee that an appropriation act provision will be found to constitute permanent law."[21] In *Auburn Housing Authority v. Martinez*,[22] for example, the Second Circuit held that the following language should be interpreted as applying only to the 1999 Fiscal Year:

> Notwithstanding any other provision of law, no funds in this Act or any other Act may hereafter be used by the Secretary of Housing and

15. *See* Consumer Fin. Prot. Bureau v. Cmty. Fin. Servs. Ass'n of Am., 601 U.S. 416, 421 (2024); Lincoln v. Vigil, 508 U.S. 182, 192 (1993). *See generally* Christine Kexel Chabot, *The Founders' Purse*, 110 VA. L. REV. 1027 (2024); Michael B. Rappaport, *The Selective Nondelegation Doctrine and the Line Item Veto: A New Approach to the Nondelegation Doctrine and Its Implications for* Clinton v. City of New York, 76 TUL. L. REV. 265 (2001). Broadly written appropriations statutes date from the beginning of the Republic. *See* Louis Fisher, *Presidential Spending Discretion and Congressional Controls*, 37 LAW & CONTEMP. PROBS. 135, 136 (1972) (describing how President Jefferson quickly concluded that narrowly specifying appropriations would be impractical).

16. Metzger, *supra* note 1, at 1127.

17. Me. Cmty. Health Options v. United States, 590 U.S. 296, 315 (2020) (quoting Robertson v. Seattle Audubon Soc'y, 503 U.S. 429, 440 (1992)); *see also* Tenn. Valley Auth. v. Hill, 437 U.S. 153, 190 (1978) (stating that "[t]he doctrine disfavoring repeals by implication . . . . applies with even *greater* force when the claimed repeal rests solely on an Appropriations Act").

18. *See* GAO, PRINCIPLES OF FEDERAL APPROPRIATIONS LAW 2-86 (4th ed. 2016) [hereinafter GAO RED BOOK].

19. Minis v. United States, 40 U.S. (15 Pet.) 423, 445 (1841).

20. GAO RED BOOK, *supra* note 18, at 2-86.

21. *Id.*

22. 277 F.3d 138 (2d Cir. 2002).

> Urban Development to determine allocations or provide assistance for operating subsidies or modernization for certain State and city funded and locally developed public housing units.[23]

The court held that another provision of the same appropriations law, which included even stronger permanent-law language, demonstrated that Congress knew how to make its intentions clearer if it wanted to.[24]

As *Auburn Housing Authority* demonstrates, even language that prohibits the spending of funds from "this [Act] or any other Act" will often be held to apply only to the particular fiscal year for which the underlying appropriations law is enacted.[25] And that is true despite the use of the word "any," the addition of the word "hereafter," and the lack of any express temporal limitation. That is not ordinary plain-text interpretation.

Other rules of statutory construction in the appropriations context differ substantially from ordinary plain-text interpretation. When Congress adopts an appropriations statute, it provides that the money will be spent for some purpose it identifies. That purpose may be defined very specifically, very generally, or somewhere in between.[26] If Congress identifies the relevant purpose at a high level of generality, that will give the Executive Branch substantial discretion to decide how to spend the money.[27] But administrators will be bound by whatever purpose, at whatever level of generality, Congress has specified.[28]

In many cases, however, GAO and the courts have determined that expenditures made by agencies go beyond the statutorily authorized purpose even when they are fully consistent with the appropriations text enacted by Congress. One example is the very unusual application in the appropriations context of the specific-controls-the-general canon of statutory interpretation. In ordinary statutory interpretation, that canon applies only when two different provisions conflict with each other. As Scalia and Garner say, it "deals with what to do when conflicting provisions simply cannot be reconciled—when the attribution of no permissible meaning can

23. *Id.* at 144.

24. *See id.* ("Section 519(n)(4) explicitly states that '[t]his subsection shall apply to fiscal year 1999 and each fiscal year thereafter.'").

25. *See* GAO RED BOOK, *supra* note 18, at 2-88.

26. *See id.* at 3-20.

27. *See* Lincoln v. Vigil, 508 U.S. 182, 192 (1993).

28. *See* 31 U.S.C. § 1301(a) ("Appropriations shall be applied only to the objects for which the appropriations were made except as otherwise provided by law."); *Lincoln*, 508 U.S. at 193 (stating that "an agency is not free simply to disregard statutory responsibilities" and that "Congress may always circumscribe agency discretion to allocate resources by putting restrictions in the operative statutes").

eliminate the conflict."[29] In the face of such a conflict, the rule that the specific controls the general would treat the more specific provision "as an exception to the general" one.[30]

In the appropriations context, however, GAO and the courts have often applied the specific-controls-the-general canon not to *resolve* conflicts between appropriations provisions but to *create* them. Consider one of the classic Comptroller General opinions on this topic.[31] In 1909, Congress adopted a statute that authorized the use of court fines and fees to pay for, among other things, the construction and maintenance of jails in Alaska.[32] In a later appropriations statute, Congress appropriated funds "for repairs, betterments, and improvements of United States jails" during 1925.[33] When repairs to the jail in Nome, Alaska, cost more than court administrators could pay for with the fines and fees they had collected, they sought to use the 1925 appropriation. But the Comptroller General concluded that the expenditure was impermissible. He recognized that the 1925 appropriation "provides for repairs of jails generally and would include Alaska if not otherwise provided for."[34] But he said that the 1909 statute providing specifically for Alaska jails was "in the nature of a specific appropriation which operates to exclude use of the general appropriation."[35]

Under ordinary statutory interpretation principles, the specific-controls-the-general canon would not have even come into play. That canon applies only in the case of conflict, and there was no conflict between the two statutes. By their terms, *both* statutes authorized spending money to repair the Nome jail—the fines and fees statute because it was a jail in Alaska, and the 1925 appropriation because it was a United States jail. And nothing in the text of either statute said it provided the exclusive means of financing anything that was covered by its terms. Just as the same criminal conduct often violates both a general fraud statute and a more specific statute prohibiting fraud in a particular context—without a need for prosecutors or a court to choose between them—under general statutory interpretation principles both statutes should have provided a basis for funding the Nome jail, without a need for administrators to choose between them.

29. ANTONIN SCALIA & BRYAN A. GARNER, READING LAW: THE INTERPRETATION OF LEGAL TEXTS § 28 (2012).
30. *Id.*
31. *See* A-5216, 4 Comp. Gen. 476 (1924).
32. *See id.* at 478.
33. *See id.* ("Miscellaneous expenses, U. S. Courts, 1925" (citing Act of May 28, 1924, ch. 204, 43 Stat. 205, 221)).
34. *Id.* at 478.
35. *Id.*

The Alaska jails opinion is hardly an outlier. To the contrary, it represents the mainstream understanding of appropriations law. As GAO says, "[t]he cases illustrating this rule are legion," and the "key point is that the agency does not have an option. If a specific appropriation exists for a particular item, then that appropriation must be used and it is improper to charge any other appropriation for that item."[36]

Or consider a 2005 decision from the D.C. Circuit. In its Fiscal Year 2004 appropriations law, Congress appropriated $190 million to the Department of Energy's Nuclear Waste Fund "'[f]or nuclear waste disposal activities to carry out the purposes of'" the Nuclear Waste Policy Act (NWPA).[37] But the statute separately stated that, under the Department's Defense Environmental Services fund, "'$1,000,000 shall be provided to the State of Nevada . . . to conduct scientific oversight responsibilities and participate in licensing activities pursuant to the' NWPA."[38]

Nevada argued it should be eligible not just for the $1 million Congress specifically appropriated under the Defense Environmental Services fund, but also for a share of the $190 million Congress appropriated nationwide under the Nuclear Waste Fund. The D.C. Circuit rejected that argument. It held that "the $1 million appropriated expressly for Nevada would seem to bar any grants from the $190 million Waste Fund appropriation."[39]

Again, though, there was no reason to apply the specific-controls-the-general canon. On the face of the statutory provisions, *both* would provide a proper source of funding for Nevada's nuclear waste disposal activities. And neither provision contained any language that purported to make it exclusive of the other. The D.C. Circuit applied the specific-controls-the-general canon to create a statutory conflict where one did not exist.

Indeed, GAO has gone further and held that even where two *equally general* appropriations would, on their face, provide authority to pay for a particular object, an agency may not use both. Instead, under the rule appropriations lawyers call "pick and stick," the agency must choose which appropriation it will use, and stick with that choice at least until the next fiscal year—and if an agency does wish to change in the next fiscal year, it must inform Congress of its intent "as early as possible in the fiscal year, so that Congress is aware of that information during the annual appropriations cycle."[40] This rule massively departs from ordinary statutory interpretation,

36. GAO RED BOOK, *supra* note 18, at 3-409.

37. Nevada v. Dep't of Energy, 400 F.3d 9, 12 (D.C. Cir. 2005) (quoting Energy and Water Development Appropriations Act, 2004, Pub. L. No. 108-137, 117 Stat. 1827, 1855 (2003)).

38. *Id.* (quoting Energy and Water Development Appropriations Act, 2004, Pub. L. No. 108-137, 117 Stat. 1827, 1865 (2003)).

39. *Id.* at 16 (citations omitted).

40. GAO RED BOOK, *supra* note 18, at 3-410.

where there is no need to choose which of two statutory provisions applies to a particular situation if there is no conflict between them.

B. The Vision of Interbranch Relations on Which Appropriations Law Exceptionalism Rests

What explains these unusual features of appropriations law? Obviously, there can be no single explanation for a phenomenon that extends so broadly across an area of the law, with many individual applications.[41] To a significant extent, though, all of these features can be understood as resting on a particular vision of interbranch relations. In this vision, Congress is extremely active in superintending the appropriations process. Through annual spending legislation and ongoing oversight, Congress has powerful tools to ensure that the Executive Branch carries out its will in implementing appropriations laws. And these tools give the Executive Branch an incentive to create a robust internal system of ensuring that its agencies will carry out Congress's will.[42]

As I show later in this Section, that vision does a good job of explaining the unusual features of appropriations law. And for a long time, it was a vision that was very well grounded in reality.[43] As Professor Zachary Price notes, "[t]hrough the ingenious practice, begun with the very first Congress, of appropriating funds only one year at a time, Congress has ensured that presidents must always come back every year seeking money just to keep the government's lights on."[44] Because Congress must pass new appropriations every year, congressional appropriators can punish the

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41. Professor Metzger identifies three rationales that have been repeatedly articulated to support the unusual aspects of appropriations law: "a perception of appropriations as primarily an issue for the political branches; an identification of government funds as especially tied to sovereignty; and a normative prioritization of substantive legislation." Metzger, *supra* note 1, at 1132. I focus in the text on the first of these rationales, because I think it makes—or at least once made—the most sense of the doctrine.

42. As Professor Kate Stith put it in her classic article on Congress's power of the purse, "[t]he genius of regulating executive branch activities by limitations on appropriations is that these limitations can be bureaucratically and contemporaneously enforced without the need for litigation or after-the-fact congressional investigations in every case." Stith, *supra note* 11, at 1360 (footnote omitted).

43. For a book-length argument that Congress retains significant control of the appropriations process despite facially broad delegations to the Executive Branch, see D. RODERICK KIEWIET & MATHEW D. MCCUBBINS, THE LOGIC OF DELEGATION: CONGRESSIONAL PARTIES AND THE APPROPRIATIONS PROCESS (1991); *see also* Mathew D. McCubbins & Daniel B. Rodriguez, *Canonical Construction and Statutory Revisionism: The Strange Case of the Appropriations Canon*, 14 J. CONTEMP. LEGAL ISSUES 669, 670 (2005).

44. Zachary S. Price, *Funding Restrictions and Separation of Powers*, 71 VAND. L. REV. 357, 367–68 (2018); *see* JOSH CHAFETZ, CONGRESS'S CONSTITUTION: LEGISLATIVE AUTHORITY AND THE SEPARATION OF POWERS 58 (2017) ("Notwithstanding the fact that the text of the Constitution allows for indefinite appropriations in all contexts other than the army, the practice from the beginning of the Republic has largely been one of annual appropriations.").

Executive Branch's failure to heed their intentions by cutting funding for the offending program,[45] cutting funding for other programs that are priorities of the incumbent administration, adding funding specifically "earmarked" for congressional priorities,[46] or adopting corrective legislative language as "riders" to the appropriations bill.[47]

These tools give Congress "ongoing leverage over executive policy."[48] Knowing they have that leverage available to them, congressional appropriators often frame their spending bills in broad terms, with the understanding that the money will be used in accordance with plans set forth in legislative history, Executive Branch budget submissions, or even more informal communications between the branches.[49] Agencies have tended to adhere to these understandings, because "[t]hey would be foolish, except in extreme cases where the language is flatly inconsistent with the statute, to defy the committees on which they depend for appropriations by ignoring" them.[50]

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45. *See* Lawrence, *supra* note 12, at 59–60.

46. *See* Jack M. Beermann, *Congressional Administration*, 43 SAN DIEGO L. REV. 61, 89 (2006).

47. *See id.* at 85; Metzger, *supra* note 1, at 1093–94. *See generally* Neal E. Devins, *Regulation of Government Agencies Through Limitation Riders*, 1987 DUKE L.J. 456 (criticizing the use of appropriations riders). For a discussion of the variety of riders Congress has adopted in the environmental context, see Richard J. Lazarus, *Congressional Descent: The Demise of Deliberative Democracy in Environmental Law*, 94 GEO. L.J. 619 (2006). On the use of appropriations riders in the national security context, see Peter Raven-Hansen & William C. Banks, *Pulling the Purse Strings of the Commander in Chief*, 80 VA. L. REV. 833, 834–35 (1994).

48. Price, *supra* note 44, at 368. To similar effect, see Jonathan H. Adler & Christopher J. Walker, *Delegation and Time*, 105 IOWA L. REV. 1931, 1956 (2020); Devins, *supra* note 47, at 461; Jonathan S. Gould, *A Republic of Spending*, 123 MICH. L. REV. 209, 267 (2024); Jennifer L. Selin, *What Makes an Agency Independent?*, 59 AM. J. POL. SCI. 971, 975 (2015). *See generally* CHAFETZ, *supra* note 44, at 71–73; Alexander Bolton, *Gridlock, Bureaucratic Control, and Nonstatutory Policymaking in Congress*, 66 AM. J. POL. SCI. 238 (2022).

49. *See* Beermann, *supra* note 46, at 137; Daniel A. Farber, Jonathan S. Gould & Matthew C. Stephenson, *Workarounds in American Public Law*, 103 TEX. L. REV. 503, 526 (2025); *see also* RICHARD F. FENNO, JR., THE POWER OF THE PURSE: APPROPRIATIONS POLITICS IN CONGRESS 291 (1966) ("Once the Committee's ability to hurt it is recognized, the most obvious way for the agency to ensure a favorable kind of relationship with the Committee is simply to do each year precisely what the Committee tells it to do . . . ."); Fisher, *supra* note 15, at 137 ("Theoretically, the money could be spent for just about anything, and yet there exists a moral understanding between the Commission and the appropriations subcommittees that the money will be spent in accordance with the Commission's budget estimates, as amended by congressional actions and directives included in committee reports."); Abbe R. Gluck & Lisa Schultz Bressman, *Statutory Interpretation from the Inside—An Empirical Study of Congressional Drafting, Delegation, and the Canons* (pt. 1), 65 STAN. L. REV. 901, 980 (2013) (reporting that 32 percent of congressional staff surveyed reported that "the purpose of the committee report in the appropriations context is essentially to legislate—that is, to direct where the money appropriated is going").

50. John C. Roberts, *Are Congressional Committees Constitutional?: Radical Textualism, Separation of Powers, and the Enactment Process*, 52 CASE W. RES. L. REV. 489, 564 (2001); *see also* LOUIS FISHER, CONGRESSIONAL ABDICATION ON WAR & SPENDING 182 (2000) (similar).

Moreover, the Executive Branch and Congress have developed a practice that, despite the Supreme Court's holding in *INS v. Chadha*,[51] amounts to a legislative veto of administrative reallocations of spending ("reprogrammings") that deviate from the understandings developed during the appropriations process. The Executive Branch generally will not "reprogram" appropriated funds without first seeking permission from the Chairs and Ranking Members of the Appropriations Committees or relevant subcommittees.[52] Notwithstanding *Chadha*, agencies have tended to adhere to this practice precisely because they do not wish to provoke retaliation from Congress in the next appropriations cycle.[53] Sometimes, appropriations laws have included statutory text that on its face authorizes Appropriations Committee vetoes of reprogramming, transfer, or other spending decisions[54]—text that on its face violates *Chadha*. Yet "[d]espite frequently protesting the provisions in presidential signing statements, the executive has since *Chadha* often chosen to work informally with the relevant congressional committees to address their concerns as expressed in vetoes or threatened vetoes."[55] Other times, those laws include requirements that the Executive Branch notify the Appropriations Committees a certain period of time in advance of particular spending decisions, to give the appropriators time to object.[56] Although such notification requirements do not purport to bind agencies to heed appropriators' objections, agencies tend to do so.[57] Failure to heed those objections would come "at great peril" of retaliation by Congress in the next year's appropriation.[58] As Professor Michael Berry put it in 2016, "[t]he increased use of the committee veto during the last two decades has disproportionately enhanced the oversight reach of the Appropriations Committees of both Houses."[59] Even absent committee veto provisions, agencies have tended to engage frequently with their appropriators throughout the fiscal year to ensure that they do not deviate too greatly from congressional expectations.[60]

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51. 462 U.S. 919 (1983).
52. *See* Roberts, *supra* note 50, at 564.
53. *See* Beermann, *supra* note 46, at 138.
54. *See* MICHAEL J. BERRY, THE MODERN LEGISLATIVE VETO: MACROPOLITICAL CONFLICT AND THE LEGACY OF *CHADHA* 85, 97 (2016).
55. Curtis A. Bradley, *Reassessing the Legislative Veto: The Statutory President, Foreign Affairs, and Congressional Workarounds*, 13 J. LEGAL ANALYSIS 439, 461 (2021) (citations omitted).
56. *See* BERRY, *supra* note 54, at 86, 97.
57. *See id.* at 86–87.
58. Louis Fisher, *The Legislative Veto: Invalidated, It Survives*, 56 LAW & CONTEMP. PROBS. 273, 290 (1993); *see also* Conor Clarke & Daniel Epps, *The Practice of Executive Constitutionalism*, 111 VA. L. REV. 1531, 1567 (2025).
59. BERRY, *supra* note 54, at 96–97.
60. Matthew B. Lawrence, Eloise Pasachoff & Zachary S. Price, *Appropriations Presidentialism*, 114 GEO. L.J. ONLINE 1, 8–9 (2025).

There is reason to believe that the drafters of the Constitution intended, by giving Congress the appropriations power, to give it precisely that sort of control over Executive Branch decisions. It is a commonplace that the drafters took as a given the legislative power of the purse as it had evolved in England, particularly after the Glorious Revolution of 1688, when Parliament "secured supremacy in fiscal matters."[61] The post-Revolution Parliament instituted the practice of annual appropriations precisely to secure control over the King: "the granting of revenue only for a short duration not only forced the regular calling of parliaments—something all four of the Stuart monarchs had tried, at one time or another, to do without—but also forced regular negotiation with Parliament, and those negotiations often led to concessions."[62] Indeed, "parliamentary control of appropriations served as a means of leverage to degrade royal authority over time."[63] As Montesquieu noted just a few decades before the Founding, annual parliamentary appropriations made the executive power "dependent" on the legislative power, thus providing that leverage.[64] The same idea seems to lie behind Madison's statement, in Federalist 58, that the "power over the purse may, in fact, be regarded as the most complete and effectual weapon with which any constitution can arm the immediate representatives of the people, for obtaining a redress of every grievance, and for carrying into effect every just and salutary measure."[65]

In short, a coherent vision of interbranch relations regarding appropriations would say that Congress is extremely vocal in letting the Executive Branch know what it wants in the appropriations process, that Congress is extremely active in policing implementation of spending laws to ensure that the Executive Branch follows its will, and that Congress has—and is willing to use—powerful tools to punish the Executive Branch if it deviates from Congress's desires.[66] That vision, at least until recently, fit

61. Consumer Fin. Prot. Bureau v. Cmty. Fin. Servs. Ass'n of Am., 601 U.S. 416, 428 (2024).

62. CHAFETZ, *supra* note 44, at 51.

63. Price, *supra* note 44, at 371. Professor Price expresses doubts that this understanding of legislative power—to the extent that it gave Parliament leverage to renegotiate the constitutional balance of power with the King over time—translates perfectly to a U.S. constitutional system that might be understood "to fix in place a system of separated powers." *Id.* at 371–72.

64. *See* MONTESQUIEU, THE SPIRIT OF THE LAWS, Book XI, Ch. 6 (1748), https://montesquieu.ens-lyon.fr/spip.php?article2730 [https://perma.cc/F2ST-HGMG].

65. THE FEDERALIST NO. 58 (James Madison).

66. Yes, Congress is a "they," not an "it," Kenneth A. Shepsle, *Congress is a "They," Not an "It": Legislative Intent as Oxymoron*, 12 INT'L REV. L. & ECON. 239 (1992), and here I am writing mostly about the members of the congressional Appropriations Committees. Yet there is good reason to think that those committees are representative of, and see themselves as bound to represent, the broader membership of their party caucuses. *See* McCubbins & Rodriguez, *supra* note 43, at 695–707. Gluck, O'Connell, and Po argue that "[a]gencies fearing the punishing (or seeking the rewarding) 'power of the

well with experience. It also seems to have fit with Founding-Era understandings of the power of the purse.

Under that vision of interbranch relations, the unusual features of appropriations law make a lot of sense. A strong judicial role is unnecessary, because Congress has the tools to enforce the law and is willing to use them. Nor need we worry about broad formal delegations to the Executive Branch, because Congress has—and is willing to use—its own means of constraining the administration of those delegations. The Supreme Court expressly noted this point when it held the allocation of a lump-sum appropriation unreviewable: "of course, we hardly need to note that an agency's decision to ignore congressional expectations may expose it to grave political consequences."[67]

And the odd statutory interpretation principles that apply to appropriations laws may simply implement the understandings of appropriators. The strong presumptions against reading appropriations statutes as permanent law, or as effecting repeals of prior statutes, may be understood as presuming that Congress followed its own rules barring the use of appropriations bills to make substantive legislation.[68] Although Congress does not always follow its own rules in this regard[69]—and if Congress *does* adopt substantive legislation in an appropriations bill, that legislation is fully binding and valid—we might treat the rules as at the least establishing a strong interpretive presumption against reading appropriations text as permanent or substantive legislation.[70]

The unusual application of the specific-controls-the-general rule in the appropriations context may simply reflect appropriators' baseline premise—that they generally do not intend to fund the same activity out of separate line items, even if the language describing multiple line items might textually be read to cover that activity. The extension of this

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purse' may want to please appropriations committees and party leaders more than their oversight committees." Abbe R. Gluck, Anne Joseph O'Connell & Rosa Po, *Unorthodox Lawmaking, Unorthodox Rulemaking*, 115 COLUM. L. REV. 1789, 1834 (2015). But if the Appropriations Committees are broadly representative of their caucuses, that may not be a bad thing.

67. Lincoln v. Vigil, 508 U.S. 182, 193 (1993).

68. *See* Rebecca M. Kysar, *Interpreting by the Rules*, 99 TEX. L. REV. 1115, 1130–31 (2021).

69. *See, e.g.*, BARBARA SINCLAIR, UNORTHODOX LAWMAKING: NEW LEGISLATIVE PROCESSES IN THE U.S. CONGRESS 77 (5th ed. 2017) (noting that must-pass legislation, including appropriations bills, "evokes high amending activity, suggesting that senators are using such bills as vehicles for legislating").

70. For a contrary suggestion, see Kysar, *supra* note 68, at 1133; *see also* Victoria F. Nourse, *A Decision Theory of Statutory Interpretation: Legislative History by the Rules*, 122 YALE L.J. 70, 132 (2012) (arguing that the Supreme Court's super-strong presumption against repeal by implication in appropriations statutes misunderstands the legislative process). My point is not to defend the unusual principles of appropriations law on the merits, but rather to explain why they might be understood as reflecting a particular view of interbranch relations.

application in the "pick and stick" rule—which requires an agency to notify appropriators one budget cycle in advance if it wishes to change which of two equally specific appropriations it wishes to use to fund a particular activity—highlights the connection with appropriators' expectations. And, indeed, congressional staff report that they rely on GAO's *Red Book*, which has extensively elaborated the specific-controls-the-general and pick-and-stick principles, in drafting appropriations bills.[71]

The GAO plays a key role in general in this vision of interbranch relations, as the guardian of "Congress's constitutional prerogatives."[72] It systematizes and communicates congressional expectations by publishing and periodically updating its *Red Book*. It further elaborates on those principles by investigating and issuing decisions on appropriations law controversies that Members of Congress refer to it. Those decisions inform congressional appropriators about instances in which agencies have not heeded their expectations and directives, setting the scene for Congress to punish the Executive Branch in the next budget cycle if the agency does not change its ways. All of this gives the Executive Branch a strong incentive to create a robust internal system to ensure compliance with appropriations law as elaborated by the GAO.

II. TRUMP AND THE DEATH OF THE VISION OF INTERBRANCH RELATIONS ON WHICH APPROPRIATIONS LAW EXCEPTIONALISM RESTS

As I showed in the last Part, much of what makes appropriations law exceptional can be understood as resting on a particular vision of interbranch relations—one in which Congress has substantial power over the Executive Branch and will effectually use it. That vision was one that seems to have informed the Constitution's founders. And it largely reflected reality until very recently.

But reality is increasingly diverging from that vision. The first Trump Administration put substantial pressure on it, and the second Trump Administration bids fair to kill it entirely. In this Part, I describe the massive change we are undergoing.

71. *See* Lisa Schultz Bressman & Abbe R. Gluck, *Statutory Interpretation from the Inside—An Empirical Study of Congressional Drafting, Delegation, and the Canons* (pt. 2), 66 STAN. L. REV. 725, 750 (2014).

72. Jesse M. Cross & Abbe R. Gluck, *The Congressional Bureaucracy*, 168 U. PA. L. REV. 1541, 1594 (2020) (quoting an anonymous GAO staffer); *see also* FREDERICK C. MOSHER, THE GAO: THE QUEST FOR ACCOUNTABILITY IN AMERICAN GOVERNMENT 277–281 (1979) (describing the many aspects of GAO's role as a servant of Congress).

A. Pressure on the Vision: The First Trump Administration

During President Trump's first term, his administration took a number of steps that pressed hard against prior understandings of the relationship between the Executive and Legislative Branches regarding spending.

One of the clearest instances involved the funding of President Trump's border wall project. When Trump and Congress reached an impasse over border wall funding during negotiations for the Fiscal Year 2019 appropriations, a thirty-five-day partial government shutdown ensued.[73] The President asked for the Department of Homeland Security (DHS) to receive $5.7 billion in border wall funding for that year, but, in the end, Congress appropriated only $1.375 billion.[74]

But on the same day he signed the appropriations bill containing the smaller number, Trump "announced that his Administration had identified 'up to $8.1 billion' from three additional funding sources 'to build the border wall.'"[75] First, he declared a national emergency,[76] and directed the Department of Defense (DOD) to spend on the project $3.6 billion that had been appropriated for military construction. Under 10 U.S.C. § 2808, DOD may "undertake military construction projects . . . not otherwise authorized by law that are necessary to support such use of the armed forces," when the President declares a national emergency.[77] Second, he directed DOD to use its internal transfer authorities to transfer $2.5 billion into the Drug Interdiction Account, and he directed that the money be used for border wall construction. Under 10 U.S.C. § 284, DOD may "provide support for the counterdrug activities or activities to counter transnational organized crime of any other department or agency," including through "[c]onstruction of roads and fences and installation of lighting to block drug smuggling corridors across international boundaries of the United States."[78] And under the transfer provision of the relevant appropriation act, DOD had the power to transfer up to $4 billion from other Department accounts "for higher priority items, based on unforeseen military requirements, than those for which originally appropriated and in no case where the item for which funds

73. *See, e.g.*, JENNIFER K. ELSEA & EDWARD C. LIU, CONG. RSCH. SERV., R45908, LEGAL AUTHORITY TO REPURPOSE FUNDS FOR BORDER BARRIER CONSTRUCTION, 2 (2019), https://www.congress.gov/crs_external_products/R/PDF/R45908/R45908.7.pdf [https://perma.cc/BB4L-YHUJ].

74. *See id.*; Pub. L. No. 116-6, § 230(a)(1), 133 Stat. 13, 28 (2019).

75. ELSEA & LIU, *supra* note 73, at 2.

76. *See* Proclamation No. 9844, 84 Fed. Reg. 4949 (Feb. 15, 2019).

77. 10 U.S.C. § 2808(a).

78. 10 U.S.C. § 284(a), (b)(7).

are requested has been denied by the Congress."[79] Finally, he directed the Department of the Treasury to use $601 million from the Treasury Forfeiture Fund to pay for wall construction. The statute governing that fund permits it to be used "in connection with the law enforcement activities of any Federal agency."[80]

It sure looked like Trump was trying unilaterally to reverse Congress's decision not to appropriate additional money for the border wall. Critics in Congress charged that Trump was disregarding Congress's constitutional power of the purse. And both litigation and a GAO investigation quickly ensued.

The litigation proved inconclusive: A district court enjoined the $2.5 billion transfer into the Drug Interdiction Account,[81] but the Supreme Court stayed that order.[82] On the merits appeals, the Ninth Circuit held that the transfer violated the appropriations act's provision limiting DOD transfers to those "based on unforeseen military requirements" for items that had not "been denied by the Congress."[83] The court concluded that "the need for a border wall was not unforeseen," that "the need was unrelated to a military requirement," and that "surely when Congress withheld additional funding for the border wall, it intended to withhold additional funding for the wall, regardless of its source."[84] And the court also concluded that it was unlawful for the administration to spend the $3.6 billion in military construction on the border wall, because "the projects fail to satisfy two of the statutory requirements: they are neither necessary to support the use of the armed forces, nor are they military construction projects."[85] But while appeals of the Ninth Circuit's decisions were pending in the Supreme Court, President Biden took office and issued a day-one executive order ending the Trump-declared national emergency, reversing the transfers, and ceasing the use of military construction, counterdrug, and Treasury Forfeiture Fund money for the border wall.[86] The Supreme Court accordingly vacated the Ninth Circuit's decisions in light of the changed circumstances.[87] In the end, "[d]espite some isolated injunctions over the course of the year, none was

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79. Department of Defense and Labor, Health and Human Services, and Education Appropriations Act, 2019 and Continuing Appropriations Act, 2019, Pub. L. No. 115-245, § 8005, 132 Stat. 2981, 2999 (2018).

80. 31 U.S.C. § 9705(g)(4)(B).

81. Sierra Club v. Trump, No. 19-cv-00892, 2019 WL 2715422 (N.D. Cal. June 28, 2019).

82. Trump v. Sierra Club, 588 U.S. 930 (2019).

83. California v. Trump, 963 F.3d 926, 934 (9th Cir. 2020).

84. *Id.* at 944, 949.

85. Sierra Club v. Trump, 977 F.3d 853, 879 (9th Cir. 2020), *vacated sub nom.* Biden v. Sierra Club, 142 S. Ct. 56 (2021).

86. *See* Proclamation No. 10142, 86 Fed. Reg. 7225 (Jan. 20, 2021).

87. *See* Biden v. Sierra Club, 142 S. Ct. 46 (2021); Biden v. Sierra Club, 142 S. Ct. 56 (2021).

kept in place by an appeals court, and several lawsuits foundered on 'standing' grounds."[88]

GAO's inquiry reached a more definitive conclusion. GAO determined that the transfers into the counterdrug account were consistent with the appropriations act's transfer provision, and that the use of those funds on the border wall was proper.[89] The office concluded that the "military requirements" that underlay the transfers to the counterdrug fund were "unforeseen" at the time Congress adopted the appropriations act, because DHS did not request assistance from DOD until after the President signed that act into law.[90] And it determined that the funds transferred by DOD had not been "denied by Congress," for two reasons: First, DOD had not requested *any* border wall funds from Congress; only DHS had.[91] Second, "a reduction from the amount requested is not tantamount to a denial of the item by Congress."[92]

In light of GAO's determination, and the inconclusive end to the litigation, one might reasonably see the first Trump Administration's efforts to circumvent the denial of border wall appropriations as a hardball tactic but not a *violation* of the power of the purse. But those efforts nonetheless put substantial pressure on traditional understandings of the relationship between the Executive Branch and Congress in spending matters.

The partial government shutdown triggered by the border wall fight put additional pressure on those traditional understandings. During the shutdown, the Trump Administration expansively interpreted the exceptions to the Antideficiency Act to enable a number of public-facing government functions to continue even though Congress had not appropriated money for them.[93] In many instances, it reversed longstanding positions held by both the Executive Branch and the GAO. For example, although the Office of Management and Budget (OMB) had long concluded that the Internal Revenue Service could not pay tax refunds during a lapse

88. Eloise Pasachoff, *The President's Budget Powers in the Trump Era*, *in* EXECUTIVE POLICYMAKING: THE ROLE OF OMB IN THE PRESIDENCY 69, 81 (Meena Bose & Andrew Rudalevige eds., 2020).

89. *See* Dep't of Defense—Availability of Appropriations for Border Fence Construction, B-330862, 2019 WL 4200949 (Comp. Gen. Sept. 5, 2019).

90. *See id.* at *8 ("DOD's authority to construct fences in support of civilian agencies is dependent upon a request from such agency under section 284. That authority, and a corresponding military requirement for construction, did not materialize until after submission of the President's Budget and enactment of DOD's appropriations and thus was not forecast in DOD's budget submission.").

91. *See id.* at *9.

92. *Id.* at *10.

93. The Antideficiency Act generally prohibits making obligations or expenditures in the absence of, or in excess of, an appropriation. *See* 31 U.S.C. § 1341(a)(1). It also prohibits the government from "accept[ing] voluntary services . . . except for emergencies involving the safety of human life or the protection of property." 31 U.S.C. § 1342.

in appropriations, Trump's OMB flipped that position during the 2019 shutdown.[94] The administration also kept county offices of the Department of Agriculture's Farm Service Agency open,[95] continued work on the Office of Information and Regulatory Affairs' review of agency regulations,[96] and continued publishing regulations and other documents in the Federal Register.[97] And the administration unilaterally shifted spending for some key programs to funds that did not depend on the passage of a new appropriations bill. For instance, it moved up the date on which it would pay funds to states for their February 2019 Supplemental Nutrition Assistance Program allocation, so that it could spend the money before funding lapsed.[98] And it used recreation fees for trash collection and maintenance at national parks, so they could remain open during the shutdown.[99]

In each of these instances, GAO concluded that the administration had violated Congress's power of the purse.[100] And GAO said that future actions along the same lines would constitute "knowing and willful" violations of the Antideficiency Act[101]—a statute that carries criminal penalties.[102]

The first Trump Administration did not accept these determinations. Instead, Trump's OMB General Counsel issued a memorandum to the General Counsels of other agencies "remind[ing]" them that the GAO is a Legislative Branch agency, and that "[w]hen an agency of the Legislative Branch interprets a law differently than the Executive Branch, the Executive Branch is not bound by its views."[103] As a news report on the memorandum noted, the OMB General Counsel's stiff-arm to GAO was part of a pattern:

94. *See* U.S. Dep't of the Treasury—Tax Return Activities During the Fiscal Year 2019 Lapse in Appropriations, B-331093, 2019 WL 5390179, at *3 (Comp. Gen. Oct. 22, 2019).

95. *See* U.S. Dep't of Agric.—Operations of the Farm Service Agency During the Fiscal Year 2019 Lapse in Appropriations, B-331092, 2020 WL 3501349, at *1–2 (Comp. Gen. June 29, 2020).

96. *See* Off. of Mgmt. & Budget—Regulatory Review Activities During the Fiscal Year 2019 Lapse in Appropriations, B-331132, 2019 WL 6909516 (Comp. Gen. Dec. 19, 2019).

97. *See* Nat'l Archives & Records Admin.—Publication of Federal Register During the Fiscal Year 2019 Lapse in Appropriations, B-331091, 2020 WL 4013489 (Comp. Gen. July 16, 2020).

98. *See* U.S. Dep't of Agric.—Early Payment of SNAP Benefits, B-331094, 2019 WL 4241055 (Comp. Gen. Sept. 5, 2019).

99. *See* Dep't of the Interior—Activities at National Parks During the Fiscal Year 2019 Lapse in Appropriations, B-330776, 2019 WL 4200991 (Comp. Gen. Sept. 5, 2019).

100. *See* sources cited *supra* notes 94–99.

101. *See* sources cited *supra* notes 94–99.

102. *See* 31 U.S.C. § 1350.

103. Memorandum from Mark Paoletta, Gen. Couns., Off. of Mgmt. & Budget, Exec. Off. of the President, to Agency General Counsels (Nov. 5, 2019), https://trumpwhitehouse.archives.gov/wp-content/uploads/2019/11/Memo-to-Agencies-on-A-11.pdf [https://perma.cc/7J2G-ZXSS].

"The Trump administration ha[d] rebuffed the watchdog on multiple occasions."[104]

The administration's stance toward GAO became even more hostile with the investigations of the summer 2019 withholding of security funds from Ukraine. The Ukraine withholdings formed the basis for President Trump's first impeachment, so their story is well known. During July and August of 2019, the Trump Administration held off on sending Ukraine hundreds of millions of dollars in aid that Congress had appropriated. The evidence, most notably the transcript of Trump's "perfect phone call" with Ukraine President Volodymyr Zelenskyy, suggested that the Trump Administration was intentionally holding up the aid to pressure the Ukraine government to dig up dirt on Hunter Biden.[105] But the official story proffered by the Administration was that OMB had paused the spending "to allow for an interagency process to determine the best use of such funds."[106]

The Senate acquitted the President in the impeachment proceedings. While those proceedings were pending, however, GAO issued its own ruling that the Trump Administration had violated the Impoundment Control Act (ICA) by withholding the Ukraine Security Assistance funds. GAO emphasized that the ICA "does not permit deferrals for policy reasons."[107] It reasoned that "[f]aithful execution of the law does not permit the President to substitute his own policy priorities for those that Congress has enacted into law."[108] Because Congress had appropriated the funds for Ukraine security, GAO explained, the Administration could not delay spending the funds to determine whether it agreed with Congress's policy judgment—and that, it said, is just what the Administration had done.[109]

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104. Eric Katz, *White House Tells Agencies They Can Ignore Legal Decisions on Spending Violations*, GOV'T EXEC. (Nov. 19, 2019), https://www.govexec.com/management/2019/11/white-house-tells-agencies-they-can-ignore-legal-decisions-spending-violations/161395/ [https://perma.cc/ZAX4-JLEP].

105. *See* RACHAEL BADE & KAROUN DEMIRJIAN, UNCHECKED: THE UNTOLD STORY BEHIND CONGRESS'S BOTCHED IMPEACHMENTS OF DONALD TRUMP 120, 330 (2022).

106. Off. of Mgmt. & Budget—Withholding of Ukraine Security Assistance, B-331564, 2020 WL 241373, at *2–3 (Comp. Gen. Jan. 16, 2020) (quoting footnotes to the relevant apportionments of DOD Ukraine Security Assistance funds).

107. *Id.* at *5.

108. *Id.* at *6.

109. *See id.* At essentially the same time as the Administration was holding up the spending of DOD's Ukraine Security Assistance funds, it was also holding up a State Department proposal to send congressionally appropriated Foreign Military Financing (FMF) funds to Ukraine. Unlike with the Ukraine Security Assistance funds, GAO determined that the delay in spending the FMF funds was permissible. Off. of Mgmt. & Budget—Application of the Impoundment Control Act to 2019 Apportionment Letters and Congressional Notification for State Department Foreign Military Financing, B-331564.1, 2022 WL 407112, at *8–9 (Comp. Gen. Feb. 10, 2022). GAO emphasized that "Congress did not designate FMF funds for Ukraine, and the administration was free to consider whether to provide

Two aspects of the Ukraine episode are especially relevant. First, the investigations surrounding the Ukraine withholdings unearthed the first Trump Administration's pervasive use of apportionment authority as a tool for questioning Congress's judgments about how to spend federal funds. Congress established the apportionment procedure in the Antideficiency Act to ensure that agencies did not overspend their appropriations.[110] Under that procedure, an agency may not spend appropriated money until it is "apportioned" by OMB, and it may not spend more than OMB has apportioned.[111] OMB, in turn, is supposed to apportion the money to ensure that it is fully spent before the appropriation expires, but not spent so soon that the agency will come back to Congress seeking an extra "deficiency" appropriation.[112] Indeed, the ICA specifically amended the Antideficiency Act to state that "[i]n apportioning or reapportioning an appropriation, a reserve may be established only": "to provide for contingencies"; "to achieve savings made possible by or through changes in requirements or greater efficiency of operations"; or "as specifically provided by law."[113]

Although the apportionment process has long been a tool by which OMB exercises policy control over the agencies, the ICA's amendments made clear that apportionments may not be a vehicle for second-guessing Congress's policy judgments.[114] Rather, they are the means by which Congress enlists the Executive Branch in carrying out the legislative policy judgments set forth in the appropriations acts. Yet the Ukraine controversy revealed that the first Trump Administration had turned this principle on its head.

Second, Trump's OMB responded by aggressively attacking Congress's existing understandings, institutions, and protections of its power of the purse. Most notably, on January 19, 2021—the last full day of the first Trump Administration—OMB Director Russell Vought sent a fourteen-page letter to the House Budget Committee Chair, which argued, among other things, that: "the Committee and Government Accountability Office (GAO) take an over-expansive and incorrect view of Congress's power of the purse, which infringes upon the President's own constitutional

any FMF assistance for Ukraine at all." *Id.* at *13. Given "[t]hat wide grant of discretion" from Congress, GAO found it appropriate for OMB to have engaged in "a policy process to permit executive branch officials to determine a use of the FMF funds that was consistent foremost with the law but also with the President's policy priorities." *Id.*

110. *See* Samuel R. Bagenstos, Opinion, *Trump Is Openly Defying a Law Created to Rein in His First-Term Abuses*, WASH. POST (Apr. 8, 2025), https://www.washingtonpost.com/opinions/2025/04/08/apportionments-congress-trump-omb-vought/ [https://perma.cc/S83V-2H4K].

111. *See* 31 U.S.C. § 1517(a).

112. *See* 31 U.S.C. § 1512(a).

113. 31 U.S.C. § 1512(c)(1).

114. *See* City of New Haven v. United States, 809 F.2d 900, 906 n.18 (D.C. Cir. 1987).

authorities"; that "the Committee's and GAO's view on the proper balance of power between the Legislative and Executive Branches is historically inaccurate"; and that "the Impoundment Control Act of 1974 (ICA) is unworkable in practice and should be significantly reformed or repealed."[115] This last-minute poison pen letter prefigured the extraordinarily aggressive posture Vought—who would return as OMB Director—would take in the second Trump Administration.

B. Can the Vision Survive? The Second Trump Administration

When he returned to his job as OMB Director in 2025, Vought picked up where he left off in January 2021—though at a much more frenetic pace. And he wasn't shy about what he was doing. In an on-the-record presentation to reporters, he made the case for "chang[ing] the paradigm" of appropriations, specifically in an effort to make it "less bipartisan."[116] He said that "[t]here is no voter in the country that went to the polls and said, 'I'm voting for a bipartisan appropriations process,'" even though he thought such a process was "something that appropriators want to maintain."[117] During his second stint, Vought has repeatedly said that the ICA is unconstitutional, and that the apportionment process gives OMB the power to shut off spending that Congress appropriated.[118]

It is not just words. As three leading scholars have described it, "the new Trump Administration has asserted broad unilateral authority to defy congressional control over federal spending."[119]

The second Trump Administration has acted aggressively to withhold funds that Congress appropriated but that do not fit the President's policy priorities. These actions began on day one of the administration, when the President signed three key executive orders. One required termination of "equity-related" grants and contracts.[120] Another required all agencies to

115. Letter from Russell T. Vought, Dir., & Mark R. Paoletta, Gen. Couns., Off. of Mgmt. & Budget, Exec. Off. of the President, to John Yarmuth, Chairman, Comm. on the Budget, H.R. (Jan. 19, 2021), https://trumpwhitehouse.archives.gov/wp-content/uploads/2021/01/Response-to-House-Budget-Committee-Investigation.pdf [https://perma.cc/VG68-2JAG].

116. Katherine Tully-McManus, *Russ Vought: Appropriations Process 'Has to Be Less Bipartisan,'* POLITICO (July 17, 2025), https://www.politico.com/live-updates/2025/07/17/congress/russ-vought-appropriations-process-has-to-be-less-bipartisan-00459479 [https://perma.cc/4YFX-MQR3].

117. *Id.*

118. *See id.*; Riley Beggin & Jacob Bogage, *Trump Budget Officials Claim Sweeping Spending Power from Congress, Records Show*, WASH. POST (Aug. 19, 2025), https://wapo.st/4fWF74f [https://perma.cc/7DV3-TZF9]; Alan Rappeport, *Russell Vought Poised to Expand Power of White House Budget Office*, N.Y. TIMES (Jan. 20, 2025), https://www.nytimes.com/2025/01/15/business/russell-vought-budget-office-confirmation-hearing.html [https://perma.cc/G4DJ-Y9XA].

119. Lawrence, Pasachoff & Price, *supra* note 60, at 3–4.

120. Exec. Order No. 14151 § 2(b)(i), 90 Fed. Reg. 8339, 8339 (Jan. 20, 2025).

"immediately pause the disbursement of funds appropriated through the Inflation Reduction Act of 2022 (Public Law 117-169) or the Infrastructure Investment and Jobs Act (Public Law 117-58), including but not limited to funds for electric vehicle charging stations made available through the National Electric Vehicle Infrastructure Formula Program and the Charging and Fueling Infrastructure Discretionary Grant Program."[121] And a third ordered "[a]ll department and agency heads with responsibility for United States foreign development assistance programs" to "immediately pause new obligations and disbursements of development assistance funds to foreign countries and implementing non-governmental organizations, international organizations, and contractors pending reviews of such programs for programmatic efficiency and consistency with United States foreign policy, to be conducted within 90 days of this order."[122] The order directed OMB to "enforce this pause through its apportionment authority."[123]

A week later, OMB issued a memorandum requiring agencies across the government to "*temporarily pause* all activities related to obligation or disbursement of all Federal financial assistance, and other relevant agency activities that may be implicated by the executive orders, including, but not limited to, financial assistance for foreign aid, nongovernmental organizations, DEI, woke gender ideology, and the green new deal."[124] The administration withdrew the grants-freeze memo the next day, but the White House Press Secretary announced at the same time that "this is NOT a rescission of the federal funding freeze."[125] Two courts quickly determined that the withdrawal of the memo did not moot challenges to the freeze and issued orders blocking the freeze.[126]

But agencies continued to hold up spending grant funds that had previously been appropriated. In many cases involving existing grants, the administration canceled them based on the assertion that they no longer effectuated agency priorities—sometimes with no further explanation, but often with a brief boilerplate statement that the grant involved "equity," "DEI," climate change, foreign aid, or some other topic disfavored by the

121. Exec. Order No. 14154 § 7(a), 90 Fed. Reg. 8353, 8357 (Jan. 20, 2025).

122. Exec. Order No. 14169 § 3(a), 90 Fed. Reg. 8619, 8619 (Jan. 20, 2025).

123. *Id.*

124. Memorandum from Matthew J. Vaeth, Acting Dir., Off. of Mgmt. & Budget, Exec. Off. of the President, for Heads of Exec. Depts. and Agencies (Jan. 27, 2025), https://www.nytimes.com/interactive/2025/01/27/us/omb-memo.html [https://perma.cc/SR7L-E6WP] (emphasis added).

125. New York v. Trump, 769 F. Supp. 3d 119, 133 (D.R.I. 2025).

126. *See id.* at 131–32 (discussing grant of the temporary restraining order); Nat'l Council of Nonprofits v. Off. of Mgmt. & Budget, 775 F. Supp. 3d 100, 111–12 (D.D.C. 2025) (same). The First Circuit recently affirmed in substantial part the District of Rhode Island's preliminary injunction against the grants freeze. *See* New York v. Trump, 171 F.4th 1 (1st Cir. 2026).

Trump regime (even in cases where the statutes creating the grants programs specifically directed them to address these topics).[127] In other cases, particularly those involving new grant awards, the administration slow-walked approvals and imposed new internal procedural barriers.[128]

All of these actions triggered further litigation, including enforcement actions in the original grants-freeze cases,[129] and separate challenges to grants terminations on the ground that they were arbitrary and capricious, violated the authorizing statutes, or violated the Constitution.[130] Some of these cases resulted in district court orders issuing injunctive relief.[131]

But the Trump Administration has appealed virtually all of the significant decisions.[132] In shadow-docket rulings involving requests to stay those district court orders, the Supreme Court has increasingly suggested that federal district courts cannot generally issue injunctions against specific grant terminations; rather, terminated grantees must file in the Court of Federal Claims and seek damages, while their research projects will likely terminate—and their labs in many cases close—in the meantime.[133] As Professor Matthew Lawrence has noted, relief in the Court of Federal Claims will typically "come, if at all, many days late and many dollars short."[134] And a D.C. Circuit opinion involving foreign-aid grants held that grantees could not sue to challenge the termination of their grants; any

127. *See, e.g.*, Am. Pub. Health Ass'n v. NIH, 791 F. Supp. 3d 119 (D. Mass. 2025) (describing grant cancellations at NIH). In a few cases, the first Trump Administration canceled grants for similar reasons. *See* Eloise Pasachoff, *Executive Branch Control of Federal Grants: Policy, Pork, and Punishment*, 83 OHIO ST. L.J. 1113, 1183–84 (2022). But the second Trump Administration has done so on a much more widespread basis.

128. *See, e.g.*, New York v. Trump, 777 F. Supp. 3d 112 (D.R.I. 2025) (holding that FEMA had violated the court's earlier preliminary injunction by imposing new procedural hurdles).

129. *See, e.g.*, *id. See generally Nat'l Council of Nonprofits*, 775 F. Supp. at 121 (noting that "agencies continued implementing OMB's freeze" and that "the District of Rhode Island had to enforce its TRO mere days after it was entered").

130. *See, e.g.*, *Am. Pub. Health Ass'n*, 791 F. Supp. 3d 119; Am. Ass'n of Physicians for Hum. Rts. v. NIH, 795 F. Supp. 3d 678 (D. Md. 2025).

131. *See, e.g.*, *New York*, 777 F. Supp. 3d at 112; *Am. Pub. Health Ass'n*, 791 F. Supp. 3d at 119; *Am. Ass'n of Physicians for Hum. Rts.*, 795 F. Supp. 3d at 678.

132. In a few instances, the Trump Administration has given in after litigation and bipartisan political pressure. The most notable of these include the Administration's precipitous withholding of $5 billion in education funding, on which states and school districts across the country were relying to pay their bills in the approaching school year, in late June 2025, *see* Sequoia Carrillo, *Education Department Says It's Releasing More Than $5 Billion in Frozen Grants*, NPR (July 25, 2025), https://www.npr.org/2025/07/25/nx-s1-5480226/trump-school-funding-grants [https://perma.cc/2H9L-G8YX], and its cancellation of funds for the Americorps program. *See* McKenna Horsley, *Kentucky Americorps Funding Restored After Democrats Sue Trump Administration*, WKMS (Aug. 31, 2025), https://www.wkms.org/government-politics/2025-08-31/kentucky-americorps-funding-restored-after-democrats-sue-trump-administration [https://perma.cc/2EZR-DG9R].

133. *See* NIH v. Am. Pub. Health Ass'n, 145 S. Ct. 2658 (2025); Dep't of Educ. v. California, 604 U.S. 650 (2025).

134. Lawrence, *supra* note 12, at 74.

private right of action, it held, was foreclosed by the Comptroller General's authority to sue to enforce the ICA—though a subsequent amendment to the decision indicated that its holding applied only to a private right of action to enforce the ICA itself, rather than to a private right of action to enforce the underlying appropriations act.[135]

The freezes, terminations, and impediments to grants represented one important category of Trump's effort to unilaterally override Congress's power of the purse. Another important category involved Trump's actions to close agencies created and funded by Congress, or lay off so many agency staff that they could not perform the tasks for which Congress created and funded them. The most prominent agency closure cases involved the United States Agency for International Development—which then-Department of Government Efficiency (DOGE) head Elon Musk pledged to feed to a "wood chipper"[136]—and the Department of Education,[137] though Trump also sought to close less prominent agencies like the United States Institute of Peace[138] and the Institute of Museum and Library Services.[139] And mass layoff cases spanned the government—including most notably the Department of Education itself (which the President recognized he could not formally close, but which his administration gutted by "slash[ing] the agency's work force in half")[140] and the Department of Health and Human Services (where his administration cut almost a quarter of agency staff).[141] Once again, though, litigation against these actions has had limited effect. Although district courts have issued relief in some cases, and appeals remain pending, the Supreme Court has shown a willingness to let the Trump Administration have its way.[142]

In the meantime, GAO has repeatedly found that actions of the second Trump Administration violated the ICA. In particular, the office held that the administration unlawfully impounded appropriated funds when agencies:

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135. Glob. Health Council v. Trump, No. 25-5097, 2025 WL 2326021, at *1 (D.C. Cir. Aug. 13, 2025), *amended by* 153 F.4th 1 (D.C. Cir. 2025).

136. *See* Donald Moynihan & Rachael Zuppke, *The Death of USAID: How Elon Musk and Donald Trump Ended America's Foreign Aid Agency*, 45 PUB. ADMIN. & DEV. 327 (2025).

137. *See* Exec. Order No. 14242, 90 Fed. Reg. 13679 (Mar. 20, 2025).

138. *See* U.S. Inst. of Peace v. Jackson, 783 F. Supp. 3d 316 (D.D.C. 2025).

139. *See* Rhode Island v. Trump, 781 F. Supp. 3d 25 (D.R.I. 2025).

140. McMahon v. New York, 145 S. Ct. 2643, 2650 (2025) (Sotomayor, J., dissenting).

141. *See* Brandon Roberts, Annie Waldman & Pratheek Rebala, *How Deeply Trump Has Cut Federal Health Agencies*, PROPUBLICA (Aug. 21, 2025), https://projects.propublica.org/federal-health-worker-cuts-rfk-trump-administration/ [https://perma.cc/3SQ8-3XKZ].

142. *See* Trump v. Am. Fed'n of Gov't Emps., 145 S. Ct. 2635 (2025) (granting stay of injunction against government-wide reductions in force); *McMahon*, 145 S. Ct. 2643 (granting stay of injunction against reductions in force at the Department of Education).

- withheld appropriations for the National Electric Vehicle Infrastructure Formula Program created by the Biden-era Bipartisan Infrastructure Law;[143]
- terminated thousands of grants, and reduced overall spending to about 19 percent of the congressional appropriation, in the Institute of Museum and Library Services;[144]
- withheld funds from Head Start grant programs;[145]
- withheld grants Congress created in the Bipartisan Infrastructure Law to enable schools to make energy efficiency improvements;[146]
- terminated over 1,800 grants at the National Institutes of Health (NIH) and imposed substantial procedural barriers and delays on new NIH grants;[147] and
- delayed funds for the Emergency Food and Shelter Program, Shelter and Services Program, and Next Generation Warning Assistance at the Federal Emergency Management Agency.[148]

OMB Director Vought and General Counsel Mark Paoletta (who also returned to his first-term role) responded by attacking the GAO, picking up where they left off at the end of the first Trump Administration. They tried to cut GAO's budget and limit its power to go to court to enforce the ICA.[149] They repeatedly told agencies to disregard GAO's legal conclusions.[150] And they informed GAO that the administration would cooperate with GAO

143. U.S. Dep't of Transp.—Application of the Impoundment Control Act to Memorandum Suspending Approval of State Electric Vehicle Infrastructure Deployment Plans, B-337137, 2025 WL 1521234 (Comp. Gen. May 22, 2025).

144. Inst. of Museum & Library Servs.—Applicability of the Impoundment Control Act to Reduction of Agency Functions, B-337375, 2025 WL 1714233 (Comp. Gen. June 16, 2025).

145. Dep't of Health & Hum. Servs.—Application of Impoundment Control Act to Availability of Head Start Program Funds, B-337202, 2025 WL 2096054 (Comp. Gen. July 23, 2025).

146. Dep't of Energy—Application of the Impoundment Control Act to Renew America's School Program Appropriations, B-337208, 2025 WL 2170988 (Comp. Gen. July 31, 2025).

147. Dep't of Health & Hum. Servs.—Application of Impoundment Control Act to Availability of Funds for Grants, B-337203, 2025 WL 2238152 (Comp. Gen. Aug. 5, 2025).

148. Dep't of Homeland Sec.—Application of the Impoundment Control Act to Federal Emergency Management Agency Fiscal Year 2025 Federal Assistance Appropriations, B-337204.1, 2025 WL 2641529 (Comp. Gen. Sept. 15, 2025); Dep't of Homeland Sec.—Application of the Impoundment Control Act to Federal Emergency Management Agency Prior Year Federal Assistance Appropriations, B-337204.2, 2025 WL 2780320 (Comp. Gen. Sept. 29, 2025).

149. *See* Tony Romm, *White House Leads Push to Block Watchdog's Inquiries into Spending Cuts*, N.Y. TIMES (July 22, 2025), https://www.nytimes.com/2025/07/22/us/politics/trump-spending-government-accountability-office.html [https://perma.cc/8PPS-NHP5].

150. *See id.*; *see also* Chris Marquette, *White House Directs DOT to Ignore GAO Ruling on EV Funding Pause*, POLITICO (June 4, 2025), https://www.politico.com/news/2025/06/04/white-house-dot-gao-ev-funding-00384230 [https://perma.cc/PA4Q-2XLF].

inquiries only "when doing so does not impede its ability to carry out President Trump's agenda."[151]

Taken together, these actions amount in practice to the assertion of a presidential power to impound funds appropriated by Congress.[152] Add in the attacks on GAO in response to findings of ICA violations, and the picture gets even clearer.

The renewed attack on GAO is just one way the second Trump Administration has sought to undermine the institutions that enable congressional oversight of its execution of appropriations laws. Another key example relates to what has become known as "apportionment transparency." In response to the first Trump Administration's use of apportionment authority to second-guess the policy judgments incorporated in appropriations acts, Congress in 2022 adopted "a statute requiring the Executive Branch to publish its apportionment decisions on a publicly available online database within two days of the decision."[153] OMB complied with the statute until March 2025, when it took the database offline.[154] In a letter to congressional leaders, Director Vought explained that publishing the apportionments had "a chilling effect on the deliberations within the Executive Branch," "undermined OMB's effectiveness in supervising agency spending," and potentially risked disclosing information in a way that would "pose a danger to national security and foreign policy."[155]

Here, litigation has proven fruitful. A federal district court held that the administration had violated the apportionment transparency law. It permanently enjoined OMB "from removing the Public Apportionments Database or otherwise ceasing to post apportionment information on a publicly available website in the time and manner required by the 2022 and 2023 Acts without statutory authorization."[156] Although the Trump Administration appealed, the D.C. Circuit denied a stay. And OMB has

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151. Eric Katz, *White House Says It Will Cooperate with Top Watchdog Only When It Does Not 'Unduly Burden' Trump's Agenda*, GOV'T EXEC. (May 30, 2025), https://www.govexec.com/oversight/2025/05/white-house-says-it-will-cooperate-top-watchdog-only-when-it-does-not-unduly-burden-trumps-agenda/405713/ [https://perma.cc/8HC9-TCQV].

152. *See* Zachary S. Price, Essay, *Trumpian Impoundments in Historical Perspective*, 78 STAN. L. REV. ONLINE 19, 21 (2025).

153. Citizens for Resp. & Ethics in Wash. v. Off. of Mgmt. & Budget, 791 F. Supp. 3d 29, 37 (D.D.C. 2025). Congress added this requirement as a one-year provision in the 2022 appropriations act, *see* Pub. L. No. 117-103, § 204(b), 136 Stat. 49, 257 (2022) (codified at 31 U.S.C. § 1513 note), then made it permanent law in the 2023 appropriations act, *see* Pub. L. No. 117-328, § 204(1), 136 Stat. 4459, 4667 (2022) (codified at 31 U.S.C. § 1513 note).

154. *See Citizens for Resp. & Ethics in Wash.*, 791 F. Supp. 3d at 37.

155. *Id.* at 41 (quoting letters from Russell Vought, Dir. OMB, to H.R. & S. Appropriations Comms (Mar. 29, 2025)).

156. *Id.* at 61.

resumed posting apportionment documents on its website (though there are indications that it has moved some important information out of the formal apportionment documents in an effort to evade or skirt the court's ruling).[157] Those documents showed that Trump's OMB was using the apportionment process to hold up "billions of dollars from low-income housing services, education assistance, medical research grants and other programs approved by Congress."[158]

Perhaps the administration's most aggressive attack on the traditional understanding of interbranch relations has come in the rescission process. The ICA set up a process in which the President may propose to rescind appropriations.[159] The proposal must detail the particular spending the President seeks to rescind, as well as the reasons for the rescission.[160] Congress considers the proposed rescission under special fast-track rules—crucially, ones that require only a simple majority in the Senate.[161] Congress must "complete[] action" on any rescission bill "before the end of the first period of 45 calendar days of continuous session of the Congress after the date on which the President's message is received by the Congress."[162] To enable Congress to consider and vote on the proposal, the ICA gives the Executive Branch the authority to hold off on spending the money the President seeks to rescind, but the statute emphasizes that "[a]ny amount of budget authority proposed to be rescinded . . . shall be made available for obligation unless, within the prescribed 45-day period, the Congress has completed action on a rescission bill rescinding all or part of the amount proposed to be rescinded or that is to be reserved."[163]

When the same party controls the presidency and both houses of Congress, the ICA's rescission process provides a tool for unraveling some key presuppositions about how the appropriations process works. The requirement that annual appropriations bills overcome a Senate filibuster has helped ensure that the process remains relatively bipartisan even in a highly polarized era, because it is extremely rare for one party to have a

157. *See* DEVIN O'CONNOR & JOE CARLILE, CTR. ON BUDGET AND POL'Y PRIORITIES, TRUMP ADMINISTRATION ABUSED SPENDING SAFEGUARDS TO ADVANCE ITS AGENDA — AND ILLEGALLY HID ITS ACTIONS (2025), https://www.cbpp.org/research/federal-budget/trump-administration-abused-spending-safeguards-to-advance-its-agenda-and [https://perma.cc/E5T5-KZFW].

158. Beggin & Bogage, *supra* note 118; *see also* Alicia Parlapiano, Emily Badger & Alex Lemonides, *In Budget Logs It Tried to Hide, White House Wrests More Control over Spending*, N.Y. TIMES (Aug. 29, 2025), https://www.nytimes.com/2025/08/29/upshot/trump-congress-federal-budget.html [https://perma.cc/RQ8V-72J6].

159. 2 U.S.C. § 683.

160. *Id.*

161. 2 U.S.C. § 688.

162. 2 U.S.C. § 682(3).

163. 2 U.S.C. § 683(b).

sixty-vote supermajority.[164] The bipartisan nature of the process has been somewhat eroded by the increasing use of budget reconciliation bills during periods of unified government, because those bills require only a simple majority in the Senate to pass.[165] But the reconciliation process is generally limited to mandatory funding, rather than annual discretionary appropriations.[166] And the Byrd Rule has significantly limited the degree to which reconciliation bills can make new policy, even if that rule has come under pressure in recent years.[167]

But the rescissions process could, in times of unified government, completely undermine the bipartisan nature of even the annual appropriations process. Democrats and Republicans can negotiate an appropriations bill that gives enough to both sides to obtain sixty votes in the Senate, the President can sign it into law, then the majority party can turn around and pass a rescission bill that eliminates the concessions they made to the minority. If Presidents use the rescission process too freely—in particular, to second-guess policy concessions made when negotiating an appropriations bill, rather than to respond to circumstances that changed since the enactment of such a bill—the appropriations process could break down. Why would the minority party engage in negotiations and give their votes to pass an annual appropriation if they knew that the majority could use the ICA's rescission provisions to go back on the deal the next day?

Perhaps out of a norm of forbearance,[168] presidents prior to Trump had used the ICA's rescission provisions sparingly, and Congress had passed rescission laws under those provisions even more sparingly. Before the second Trump Administration, Congress had voted on bills under the special ICA rescission procedures only twice since 1979.[169] Congress enacted a very large number of rescissions during that time, of course, but

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164. *See* Sahil Kapur & Frank Thorp V, *Bipartisan Government Funding Is at Risk of Dying in Trump's Washington*, NBC NEWS (July 20, 2025), https://www.nbcnews.com/politics/congress/bipartisan-government-funding-dying-trump-spending-cuts-shutdown-rcna219344 [https://perma.cc/YQ4U-75F6].

165. *See* MEGAN S. LYNCH, CONG. RSCH. SERV., R40480, BUDGET RECONCILIATION MEASURES ENACTED INTO LAW SINCE 1980 (2025).

166. *See* RICHARD KOGAN & DAVID REICH, CTR. ON BUDGET AND POL'Y PRIORITIES, INTRODUCTION TO BUDGET "RECONCILIATION," (2022), https://www.cbpp.org/research/introduction-to-budget-reconciliation [https://perma.cc/N94G-2ABF].

167. *See* Jonathan S. Gould, *The Senate's Shadow Doctrine*, 61 HARV. J. ON LEGIS. 317 (2024).

168. *See* STEVEN LEVITSKY & DANIEL ZIBLATT, HOW DEMOCRACIES DIE: WHAT HISTORY REVEALS ABOUT OUR FUTURE 8 (2018) (describing "forbearance, or the idea that politicians should exercise restraint in deploying their institutional prerogatives" as among the "basic norms [that] have preserved America's checks and balances in ways we have come to take for granted").

169. JAMES V. SATURNO, CONG. RSCH. SERV., R48432, THE IMPOUNDMENT CONTROL ACT OF 1974: BACKGROUND AND CONGRESSIONAL CONSIDERATION OF RESCISSIONS 9 (2025).

it relied on unanimous consent and regular-order procedures, rather than the ICA procedures that skirt the filibuster.[170]

But in July 2025 the second Trump Administration pushed through a rescission bill that cut $9 billion in previously appropriated funds.[171] The bill passed with only Republican votes, and it was justified purely by the Administration's policy disagreement with the prior appropriation.[172] Although $9 billion is a relatively small number in the context of the overall federal budget, the 2025 rescission bill was proof of concept that a bare Republican majority in the Senate is willing to use the ICA's rescission process to go back on bipartisan agreements that were necessary to get sixty votes for the annual appropriations bill.

The Trump Administration upped the ante on August 29, 2025, when it proposed a new $5 billion rescission of foreign aid funds. Because he sent Congress the proposal within forty-five days of the end of the fiscal year, when the funds at issue were set to expire, Vought asserted that the ICA's forty-five-day deferral provision permitted the administration to refuse *ever* to spend the funds, regardless of whether Congress acted on a rescission bill.[173] Although GAO had previously concluded that the ICA does not authorize such "pocket rescissions"[174]—and a federal district court agreed when it enjoined the Administration's action[175]—Vought has emphatically disputed that conclusion.[176] The Supreme Court stayed the injunction on the shadow docket; it stated that "[t]he Government, at this early stage, has made a sufficient showing that the Impoundment Control Act precludes respondents' suit, brought pursuant to the Administrative Procedure Act, to enforce the appropriations at issue here."[177]

In any context, the assertion of a "pocket rescission" power would have been understood as an aggressive challenge to congressional prerogatives; after all, it is effectively a claim that the ICA, which Congress adopted to *limit* the executive refusal to spend appropriated funds, actually *authorizes*

170. *See id.* at 9, 11.

171. Pub. L. No. 119-28, 139 Stat. 467 (July 24, 2025).

172. *See* Scott Neuman & Lexie Schapitl, *Congress Rolls Back $9 Billion in Public Media Funding and Foreign Aid*, NPR (July 18, 2025), https://www.npr.org/2025/07/18/nx-s1-5469912/npr-congress-rescission-funding-trump [https://perma.cc/V6SX-PWEN].

173. *See* Ryan Nobles & Alexandra Marquez, *White House Plans to Use 'Pocket Rescissions' to Slash Billions in Foreign Aid*, NBC NEWS (Aug. 29, 2025), https://www.nbcnews.com/politics/white-house/trump-pocket-rescissions-slash-foreign-aid-congress-rcna227973 [https://perma.cc/U94F-NQU2].

174. *See* Impoundment Control Act—Withholding of Funds Through Their Date of Expiration, B-330330, 2018 WL 6445752 (Comp. Gen. Dec. 10, 2018).

175. *See* AIDS Vaccine Advocacy Coal. v. U.S. Dep't of State, 803 F. Supp. 3d 164, 194 (D.D.C. 2025), *appeal dismissed*, No. 25-5317, 2026 WL 476138 (D.C. Cir. Feb. 18, 2026).

176. *See* Letter from Russell T. Vought, *supra* note 115.

177. Dep't of State v. AIDS Vaccine Advocacy Coal., 146 S. Ct. 19, 19 (2025).

that very refusal. And the assertion was even more aggressive in the context of the particular funds the Trump Administration targeted: The administration had been sitting on those funds, refusing to spend them, for months, triggering litigation that alleged an unlawful impoundment. A pocket rescission here would thus effectively ratify an ongoing impoundment of funds.

With its aggressive actions to aggrandize executive power, the second Trump Administration has threatened to overturn the understanding of interbranch relations that has long informed appropriations law. But there is another side to the equation. Under the received wisdom, Congress is not powerless when the Executive Branch oversteps its role in federal spending. Rather, as we saw in Section II.A, Congress has powerful tools to discipline the President.

But Congress has not taken any effective action—or even particularly *tried* to take any effective action—to strike back at the most significant aspects of Trump's self-aggrandizement. Across the administration, executive officials have disregarded appropriations laws, impounded funds, stiff-armed oversight, and used rescissions in unprecedented ways to undo bipartisan deals made in Congress. And Congress has had opportunities to clap back. When annual government funding expired in March and September 2025, it could have adopted extremely short-term extensions to ensure that the Executive Branch would actually spend the funds appropriated; it could have cut funds for programs the President cared about if the President did not lift the grant freezes and spend funds appropriated to other programs; it could have restricted the use of federal funds to pay officials who engage in impoundments; and it could have just straightforwardly cut the salaries of individuals who have engaged the most egregious behavior challenging Congress's power of the purse. (I include a fuller menu of potential congressional responses in Part III below.) But it did none of these things.[178] Indeed, although Democratic legislators triggered the longest government shutdown in history when they refused to pass new appropriations at the end of September 2025, they focused almost entirely on the policy issue of extending health insurance subsidies; they did not insist on any provisions to protect Congress's power of the purse.

Perhaps most notably, despite some grumbling, and defections from a couple of members of the majority party, Congress affirmatively cooperated

178. *See Trump Signs GOP's 6-Month Government Funding Bill Passed by Congress*, PBS NEWS (Mar. 15, 2025), https://www.pbs.org/newshour/politics/trump-signs-gops-6-month-government-funding-bill-passed-by-congress [https://perma.cc/4FEG-742G]. On a few occasions, pressure from Members of Congress has encouraged the administration to restore funding for particular programs, *see, e.g.*, cases cited *supra* note 132, but this is a small part of the overall picture.

in passing the July rescissions package that threatens to unravel the whole structure of inter-party bargaining on which the appropriations process relies.[179] And the appropriations bills reopening the government in late 2025 contained no language to bar use of the ICA's rescission process on them—even for "pocket" rescissions. When Congress passed full-year appropriations for every agency but DHS in early February 2026, appropriators bragged that they had seized back the power of the purse from the President.[180] But in fact they limited their actions to ones that made their appropriations more specific,[181] along with some essentially unenforceable language designed to prevent the Trump Administration from closing the Department of Education.[182] But, once again, Congress did not include specific language to address the ICA rescissions issue, visit any consequence on the administration for violating Congress's instructions, or otherwise protect the power of the purse. Small wonder that an administration spokesperson described the law as not "compromis[ing]" its "executive authorities to control spending" in any way.[183] Nor is it a surprise that, even after the adoption of full-year appropriations that refused to make cuts to NIH and other grant programs, all indications are that OMB continues to hold up release of the funds.[184]

It is perhaps not surprising that Republicans, who occupy the majority, have not pushed back against the Trump Administration. The Trump experience confirms the wisdom that we now live in a system of "separation of parties, not powers."[185] Even so, Republican appropriators have undermined their own role both by going along with the President's actions in general and, in particular, by voting for the July 2025 rescissions package

179. *See* Sean Michael Newhouse, *Senate Clears Amended Bill to Claw Back Billions in Foreign Aid and Public Media Funding*, GOV'T EXEC. (July 17, 2025), https://www.govexec.com/management/2025/07/senate-clears-amended-bill-claw-back-billions-foreign-aid-and-public-media-funding/406793/ [https://perma.cc/S2AF-GRF9] (noting that Senators Susan Collins and Lisa Murkowski voted no).

180. *See* Catie Edmondson, *Congress Quietly Used Funding Law to Try to Rein in Trump on Spending*, N.Y. TIMES (Feb. 10, 2026), https://www.nytimes.com/2026/02/10/us/politics/congress-white-house-spending-law.html [https://perma.cc/D9J8-XHX6].

181. *See id.*

182. *See* Pub. L. No. 119-75, div. B, tit. III, 140 Stat. 173, 304 (Feb. 3, 2026) (stating that "the Department of Education shall support staffing levels necessary to fulfill its statutory responsibilities including carrying out programs, projects, and activities funded in this title of this Act in a timely manner").

183. Edmondson, *supra* note 180.

184. *See, e.g.*, Max Kozlov, Alexandra Witze & Dan Garisto, *White House Stalls Release of Approved US Science Budgets*, SCIENCE (Feb. 27, 2026), https://www.nature.com/articles/d41586-026-00601-0 [https://perma.cc/5TMN-JG2Z]; Sandhya Raman, *Trump Administration Funding Delays Worry NIH Grant Recipients*, BLOOMBERG L. (Mar. 3, 2026), https://news.bloomberglaw.com/health-law-and-business/trump-administration-funding-delays-worry-nih-grant-recipients-23 [https://perma.cc/LP67-9XGX].

185. *See* Daryl J. Levinson & Richard H. Pildes, *Separation of Parties, Not Powers*, 119 HARV. L. REV. 2311 (2006).

that threatens to undermine their ability to make deals on appropriations bills in the future. In this regard, it's notable that the two Republican Senators who voted against the rescissions package, Susan Collins and Lisa Murkowski, are senior appropriators; Collins chairs the Senate Appropriations Committee.[186] Senator Collins also forcefully criticized the Trump Administration's "pocket rescissions" on the day OMB Director Vought announced them.[187] But these noises of Republican opposition have not been matched by effectual action to check the Trump Administration.

What might be more surprising is that Democrats have not significantly pushed back, either. The sixty-vote threshold for appropriations bills gives them a tool to do so: They can withhold support for government funding if the bill does not include provisions establishing effective checks on Executive Branch overreach. But Democrats refused to play that card when they provided the necessary votes to fund the government in March 2025.[188] And they ultimately agreed to end the late 2025 shutdown without any new power-of-the-purse provisions. With Congress so closely divided, and the Democrats focused on retaking power in the midterms, they chose to focus on the issues they thought would resonate with the public—health care costs, not Congress's power of the purse. As Professor Frances Lee has written, "When majority control of Congress hangs in the balance, members have more reason to prioritize their partisan identity over their institutional identity."[189]

At this point, it looks like the vision of interbranch relations that informs the odd shape of appropriations law is all but dead. The second Trump Administration has demonstrated that a determined President can systematically and pervasively override Congress's spending decisions, and thwart key tools of congressional oversight, without triggering any effective response from Congress or the courts. In this context, it is hard to believe that Executive Branch officials still fear retribution for crossing their appropriators.[190] As a result, agencies no longer have a powerful incentive

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186. *See Roll Call Vote 119th Congress – 1st Session*, U.S. SENATE, (July 17, 2025), https://www.senate.gov/legislative/LIS/roll_call_votes/vote1191/vote_119_1_00411.htm [https://perma.cc/743F-6H2Y].

187. *See* Jennifer Bendery, *Susan Collins Rips Trump's 'Unlawful' Effort to Cancel $5 Billion in Foreign Aid*, HUFFPOST (Aug. 29, 2025), https://www.huffpost.com/entry/susan-collins-pocket-rescission-unlawful-russ-vought_n_68b1c678e4b072bf6d646310 [https://perma.cc/AF4K-J2RD].

188. *See* Annie Karni, *Schumer, Facing Backlash for Not Forcing a Shutdown, Says He'll Take 'the Bullets*,*'* N.Y. TIMES (Mar. 14, 2025), https://www.nytimes.com/2025/03/14/us/politics/schumer-trump-government-shutdown.html [https://perma.cc/D54D-GUBR].

189. FRANCES E. LEE, INSECURE MAJORITIES: CONGRESS AND THE PERPETUAL CAMPAIGN 287 (2016).

190. *See* Josh Chafetz, *The* Chadha *Presidency*, 115 GEO. L.J. (forthcoming 2026) (manuscript at 40–41) (on file with author).

to create a robust body of "internal administrative law" anticipating and enforcing congressional expectations. If the vision of interbranch relations on which appropriations law is built has so substantially changed, there is every reason to expect the doctrines and institutional structures of appropriations law to change as well. In the next Part, I offer some proposals for how to address the new reality.

III. RESPONDING TO THE CRISIS IN APPROPRIATIONS LAW

To review the bidding: In Part I, I argued that the odd rules and institutional structures of appropriations law rest on a particular vision of interbranch relations—one in which Congress has, and is willing to use, powerful tools to enforce on the Executive Branch its intent in adopting appropriations legislation. That vision makes sense of some of the unusual features of appropriations law doctrine, as well as of its implementation primarily through internal administrative law rather than through judicial review. In Part II, I showed that appropriations law's animating vision is increasingly divorced from reality, as the Trump Administration aggrandizes the Executive Branch and Congress fails to push back effectively.

In this Part, I explore how to respond to this crisis. It is natural to think that the response should take the form of a more robust judicial role in enforcing appropriations law.[191] And I will get there. But Congress is in a far better position to take action—and it is after all Congress's own power of the purse that is at issue. I thus begin, in Section III.A, with steps that Congress can take to push back on Executive Branch overreach in the immediate term. In Section III.B, I turn to more systemic changes that Congress can make to the appropriations law framework. Although the first Trump Administration spurred some calls for reform to existing laws like the ICA and the Antideficiency Act,[192] the second Trump Administration has shown that those proposed reforms were too tame. I suggest some more radical statutory changes. Finally, in Section III.C, I turn to judicial remedies. There is a role for the courts, particularly in providing immediate relief to those who rely on federal grants. But I am skeptical that judicial review is the most significant part of the solution here. Congress needs to stand up for its power of the purse. If it does, a much more robust judicial

191. Prior scholarship has argued for such an expanded judicial role. *See* Metzger, *supra* note 1, at 1164–67.

192. *See, e.g.*, Eloise Pasachoff, *Modernizing the Power of the Purse Statutes*, 92 GEO. WASH. L. REV. 359 (2024).

role will be unnecessary. If it does not, courts are unlikely to solve the problem whatever we might want them to do.

A. What Congress Can Do in the Immediate Term

As I showed in Part II, Congress has not taken effective action to check the Trump Administration's disregard of its power of the purse. Many would argue that there is nothing they *can* do about Trump's actions. Congress can adopt appropriations laws, but if the President doesn't spend the money, how can Congress make him? Many legislators have offered up this argument to deflect criticism of their failure to respond to Trump. They have said that if Trump refuses to follow the law it is the courts, not Congress, that can make him comply.[193]

This argument is initially alluring. But it ultimately lets legislators off the hook too easily. Congress in fact has any number of tools to effectively force action by the Executive Branch. The use of these tools would be unorthodox, to be sure. But Congress hasn't needed to use them much—or in some cases at all—in the past. Now that the Executive Branch is mounting an unprecedented challenge to the legislative power of the purse, it would be more than appropriate for Congress to respond with equally unprecedented force.

What might Congress do? A Congress committed to defending its power of the purse could use annual appropriations as leverage in a much more aggressive way than legislators have in the recent past. If the Executive Branch refuses to spend funds appropriated for projects or programs that the President doesn't like, Congress can respond by refusing to appropriate funds for programs that he does like—and specifically prohibiting transfers or reprogrammings that would evade this refusal.

Congress can also attach riders that prohibit the spending of funds for the salaries of officials who withhold appropriated funds.[194] Congress can use the "Holman Rule" to single out the officials who are particularly responsible for impounding funds, and cut their salaries to $1.[195] (OMB Director Vought would be an obvious candidate here, but one can imagine many others.) Constitutional objections might be raised against specific salary restrictions—particularly those that target named individuals or high-

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193. *See, e.g.*, Robin Young & Julia Corcoran, *House Minority Leader Hakeem Jeffries on the Democrats' Fight Against Trump*, WBUR (Mar. 28, 2025), https://www.wbur.org/hereandnow/2025/03/28/hakeem-jeffries-trump [https://perma.cc/CPK6-CZC7].

194. *See generally* L. Anthony Sutin, *Check, Please: Constitutional Dimensions of Halting the Pay of Public Officials*, 26 J. LEGIS. 221 (2000).

195. *See* JAMES V. SATURNO, CONG. RSCH. SERV., R44736, THE HOLMAN RULE (HOUSE RULE XXI, CLAUSE 2(B)) (2023).

ranking White House aides[196]—but Congress might well decide that the President's aggressive attacks on its power deserve an equally aggressive response.

Nor need Congress wait to impose these costs until the next appropriations cycle. Congress could write them into an appropriations act as self-executing conditions for obligating funds, or as self-executing consequences for not obligating funds. It could, for example, provide in an appropriations act that money for specific programs that are a high presidential priority would not be available until the government obligates money for other specific programs that the Executive Branch would otherwise be tempted not to spend. (Congress could say that funds appropriated for Immigration and Customs Enforcement (ICE) detention could not be obligated until the Executive Branch obligated funds appropriated for foreign aid, vaccines, or medical research, for example.) Congress could also say that unless a certain percentage of funds appropriated for particular programs are obligated by a given date, no money shall be spent on salaries for the political appointees responsible for that program for the rest of the fiscal year.[197]

Should Congress find these sorts of conditional appropriations (or conditional riders) too cumbersome, it has a ready response—shortening the terms of appropriations acts. If the Executive Branch has to come back to Congress for funding not every year but every couple of months, it will have a strong incentive to hold to any deal it negotiated to unlock funds in the first place. Congress could adopt special fast-track procedures to limit the debate and floor time occupied by these short-term appropriations, without sacrificing the sixty-vote requirement in the Senate.

Congress can also take action specifically directed at the techniques the Trump Administration has used to override the policy decisions embedded in appropriations acts. One of these techniques is relying on the special procedures governing rescissions in Sections 1012 and 1017 of the ICA.[198] Trump has used these procedures to enable a bare partisan majority to unravel bipartisan deals enacted in prior appropriations bills, as well as to justify its "pocket rescissions." Congress could foreclose these techniques

196. *See* United States v. Lovett, 328 U.S. 303, 315–18 (1946). *See generally* Price, *supra* note 44; Sutin, *supra* note 194.

197. Congress did something like this in the most recent iteration of the National Defense Authorization Act for Fiscal Year 2026. *See* Pub. L. No. 119-60, § 1052, 139 Stat. 718, 1043 (providing that "not more than 75 percent" of the Secretary of Defense's travel budget "may be obligated or expended until the Secretary of Defense" submits to Congress various overdue reports and "provides to the Committees on Armed Services of the House of Representatives and the Senate unedited video of strikes conducted against designated terrorist organizations in the area of responsibility of the United States Southern Command").

198. 2 U.S.C. §§ 683, 688.

in any annual appropriations act by simply including a provision that the special procedures governing rescission shall not apply to any appropriation in that act. Going further, Congress could, and should, eliminate the ICA's rescission provisions as a matter of permanent law. Congress frequently makes rescissions as part of the ordinary appropriations process. There is no need for a special fast-track procedure for presidentially proposed rescissions, nor is there a need for a provision allowing funds to be withheld pending a rescission request. Recent experience has shown that the ICA's rescission procedures empower executive abuses that cannot be justified by any public-regarding benefit those procedures offer. I discuss this issue further in Section III.B below.

Apportionment is the other technique the Trump Administration has employed to thwart Congress's policy decisions. The Antideficiency Act generally requires the President (or OMB, his delegee) to apportion appropriated funds before an agency may spend them.[199] But Congress has the power to eliminate or change that requirement, or to create exceptions to it. In the immediate term, appropriations acts could identify those programs the Trump Administration is particularly likely to resist and provide its own apportionment schedule for them. For example, the act could state that the apportionment requirement of 31 U.S.C. § 1512 shall not apply to a $1 billion appropriation for foreign aid, and that $250 million shall be available for obligation on each of October 1, January 1, April 1, and July 1. Such a provision would deny OMB the opportunity to use the apportionment process to delay or withhold funds from that account. (More general reforms to the apportionment requirement would offer a longer-term solution; I offer some suggestions in that regard in Section III.B below.)

Finally, although I do not believe the courts will provide the ultimate solution here, individuals and entities who depend on federal funds have suffered great harm by being denied an immediate remedy to keep the money flowing when the Trump Administration has refused to spend appropriated dollars. An appropriations act could include a provision stating that the prospect of subsequent availability of a damages remedy in the Court of Federal Claims will not foreclose a cause of action in federal district court seeking immediate injunctive relief against an unlawful termination or withholding of a federal grant. Such a provision would flip the Supreme Court's emerging doctrine, which originated in its *Department of Education v. California* stay order, making the Tucker Act the exclusive

199. 31 U.S.C. §§ 1512, 1517.

remedy for unlawful grants terminations.[200] Congress could, and should, make that provision permanent law.

B. Changing the Appropriations Law Framework Statutes

1. Existing Proposals

Responding to the first Trump Administration's encroachments on congressional power, good-government groups coalesced around a major proposal to amend the key framework statutes that govern the appropriations process.[201] Some significant aspects of that proposal have been adopted in various appropriations statutes since then—including, most notably, the apportionment transparency requirement discussed in Section II.B, which Congress made permanent law in 2023.[202]

Professor Eloise Pasachoff, who testified in Congress to support the good-government groups' proposal, has provided the most extensive academic defense of the amendments the proposal would effectuate—and has added a few suggestions that go further. She describes the proposals she supports as falling into four categories:

1. "***[T]ransparency and Informational Reforms.***"[203]
2. "***[S]ubstantive reforms,***" including, with respect to OMB, making clear that "the power to apportion appropriated spending is not an independent source of policy authority"; "requiring timely apportionment; and restricting the ability to propose rescissions or deferrals in the final ninety days of the fiscal year," and, with respect to agencies, "making agencies report and explain their disagreements with GAO's findings of Antideficiency Act violations; adding the potential for civil penalties for violations of the Impoundment Control Act; and requiring identification and explanation of whether Antideficiency Act violations merited criminal investigation."[204]
3. ***Strengthening "GAO's authority*** to conduct investigations and obtain information relating to potential Antideficiency Act and Impoundment Control Act violations."[205]

200. *See* Dep't of Educ. v. California, 604 U.S. 650, 651 (2025); NIH v. Am. Pub. Health Ass'n, 145 S. Ct. 2658, 2658–59 (2025).
201. For a good discussion of their efforts, see Pasachoff, *supra* note 192.
202. *See supra* note 153.
203. Pasachoff, *supra* note 192, at 405–06 (emphasis added).
204. *Id.* at 410 (emphasis added).
205. *Id.* at 415 (emphasis added).

4. ***Expanding the ICA*** by "clarifying that special messages are required even in the context of the GAO-created category of programmatic delay,"[206] and "add[ing] a fast-track mechanism to review the administration's policy choices stemming from" OMB and agency spending decisions "based on expansive interpretations of spending statutes."[207]

These proposals seem to me worthy, by and large. Aside from the provision barring "pocket rescissions" by prohibiting rescission proposals in the last ninety days of a fiscal year, though, they fail to respond to the significance of the current crisis in appropriations law. For the most part, these proposals are informational in nature—they will ensure that we all *know* more about Executive Branch violations of the power of the purse, but they will leave it to Congress to respond in each instance. Yet Congress has proved itself unwilling to act in the face of even highly aggressive presidential encroachments on its appropriations power, particularly in times of unified government. There is no reason to believe that just shedding more light on what the Executive Branch is doing in particular cases will make a difference.

That is especially true in light of the continued room for disagreement about how to apply the basic substantive principles of appropriations law. The proposal to clarify that the apportionment power is not an independent source of policymaking authority for the Executive Branch illustrates the problem. Both the courts and GAO have already recognized that the apportionment power does not give the President authority to second-guess the policy judgments made by Congress in appropriations acts.[208] It is true that OMB Director Vought and General Counsel Paoletta have disagreed with that proposition, so clarifying it in statute may do some good (though you could easily imagine Vought and Paoletta challenging such a statute on Article II grounds). But that change would not in any significant way rein in abuse of the apportionments authority, because a smart administration official can virtually always find some "programmatic" reason to hold up or condition an apportionment. Even in the cases in which GAO has found a violation of the ICA, the administration has typically had at least a colorable, though not ultimately persuasive, argument that it was acting to serve the efficiency and economy goals that underlie the apportionment requirement.[209] It will thus be difficult to override a determined

206. *Id.* at 420.
207. *Id.* at 421–22.
208. *See supra* text accompanying notes 106–13.
209. *See supra* text accompanying notes 107–09.

administrator's argument that a delay is programmatic even with an effective procedural means of enforcing the ICA. And absent a truly effective means of enforcing the ICA, it will be all but impossible.

That brings me to the proposed (slight) expansion of GAO's authority to sue to enforce the ICA. For reasons discussed in Section III.C below, I am doubtful that the courts will ultimately vindicate Congress's power of the purse in these cases, particularly where the question whether the Executive Branch was asserting an independent power to make policy is arguable. And I am especially wary about relying on GAO for such litigation. For one thing, the prohibition on presidential removal of the Comptroller General, on which the Supreme Court relied in categorizing GAO as an agency of Congress in *Bowsher v. Synar*,[210] has not been tested against the current Supreme Court's much more aggressive unitary-executive approach. It is entirely possible that the Supreme Court, as currently constituted, would permit the President to fire a Comptroller General who brought suit against the Executive Branch. Perhaps more likely, courts will continue to consider GAO a Legislative Branch agency, but will apply limitations on congressional standing to bar it from suing the administration for violating the ICA.[211] I am fully on board with the project of overturning the Supreme Court's current expansive understanding of executive power. But that is a longer-term project. In the near term, GAO litigation is likely an insufficient response to the crisis of appropriations law.

Something similar can be said about proposals to expand the use of legislative vetoes in appropriations law matters. I fully agree with Professor Josh Chafetz that *Chadha* is one of the most pernicious Supreme Court decisions in recent decades and should be overturned.[212] *A fortiori*, I agree with the more narrow suggestion, offered by Professor Metzger and Professor Peter Strauss, that legislative vetoes should be permitted in the context of appropriations law even if nowhere else.[213] But getting the Court to overrule or find significant exceptions to *Chadha*, while worthy, is also a longer-term project. It will not provide a response to the crisis any time soon.

And, indeed, given Congress's current supine posture on the power of the purse, there is reason to doubt that Congress would actually use the legislative veto tool on matters of significance even if that tool were

210. 478 U.S. 714, 727–28 (1986).

211. *See* Pasachoff, *supra* note 192, at 419 n.398 (stating that it is "an open question" whether GAO would have standing in such a suit); *cf.* Metzger, *supra* note 1, at 1165 (stating that "it is far from clear that Congress could have standing to sue for a violation of an appropriations statute").

212. *See* Chafetz, *supra* note 190.

213. *See* Metzger, *supra* note 1, at 1159–60; Peter L. Strauss, *Was There a Baby in the Bathwater? A Comment on the Supreme Court's Legislative Veto Decision*, 1983 DUKE L.J. 789, 813–15.

available.[214] As with the process-based reforms championed by good-government groups, legislative-veto legislation that relies on Congress to respond to individual instances of Executive Branch overreach is likely to fail, as legislators bow to Presidential and electoral pressure to keep their powder dry.

2. New Proposals

So what reforms to the appropriations framework statutes might work? The good-government groups and Professor Pasachoff are not wrong to target the portions of the Antideficiency Act (ADA) and the ICA that the two Trump Administrations have abused. But their proposals merely seek to limit those abuses around the edges; effective amendments to these statutes will need to cut much more deeply.

Start with the ADA. In both Trump Administrations, OMB has used the apportionment power as a tool to substitute its policy judgments for those Congress embodied in appropriations acts. And because the ADA prohibits agencies from spending money that exceeds an apportionment—on pain of criminal penalties, no less—agencies have had no effective recourse. Transparency reforms may help to call attention to instances in which OMB is abusing the apportionment power, but they will not effectively constrain those abuses. Nor will efforts to emphasize, yet again, that the apportionment power does not grant independent policymaking authority to the executive.

Instead, Congress needs to seize control of apportionments. Currently, the ADA's apportionment provisions require that "an appropriation available for obligation for a definite period shall be apportioned to prevent obligation or expenditure at a rate that would indicate a necessity for a deficiency or supplemental appropriation for the period," and "[a]n appropriation for an indefinite period and authority to make obligations by contract before appropriations shall be apportioned to achieve the most effective and economical use."[215] They grant the President (and OMB, to whom he delegated this power) discretion to achieve these goals by apportioning "as [he] considers appropriate."[216]

Congress adopted the apportionment requirement in 1905 because agencies had repeatedly demonstrated a tendency to spend down their appropriations early in the fiscal year, and then come back to Congress

214. On this point, I might quibble with Chafetz, *supra* note 190, but a full treatment would take me outside the scope of this paper.
215. 31 U.S.C. § 1512(a).
216. 31 U.S.C. § 1512(b)(2).

seeking more.[217] Even if some kind of apportionment process may remain necessary to achieve that goal, there is no reason why Congress must trust the Executive Branch to determine how and when to apportion funds. Congress could specify the apportionment itself. It might, for example, repeal the apportionment provisions of the ADA and state that, unless a contrary provision appears in a particular appropriations act, spending appropriated for a single fiscal year shall be available for obligation on a quarterly basis, with one-fourth of the appropriation available at the start of the first quarter of the fiscal year, one-fourth at the start of the second quarter, and so forth. Multi-year appropriations could be available in equal fractions each quarter as well. For no-year appropriations, Congress could adopt a similar presumptive rule of time-based availability. These rules would limit the ability of agencies to overspend early in the period of availability of an appropriation, without relying on OMB to determine how to do that.

Crucially, these time-based rules would simply be off-the-rack terms. For any specific appropriation, Congress would be free to depart from those terms by specifying a different basis for doling out funds. An appropriation for a construction project, for example, might specify that a certain portion would be available immediately for the agency to engage in planning activities, another chunk would be available for ground-clearing activities once the agency completed the plan, and another chunk would be available to finish construction once the ground clearing was done—or whatever other more precise formula for doling out the money makes sense for that particular project. And Congress would be free, in a particular appropriations act or in a framework statute, to apply non-time-based rules like these to broad categories of appropriations. It could even decide, for certain appropriations or categories of appropriations, that the issues were so complex and contingent on fast-moving events, and the risk of executive overreach was so small, that it would be appropriate for OMB to make apportionment decisions. But absent some special provision like that, the new framework would take apportionment authority away from the Executive Branch and return it to Congress itself.

A more modest proposal would retain the executive apportionment authority in the first instance, but give an agency the power to spend funds if OMB did not apportion them within a specified period of time, such as ninety days. Such a proposal would preserve any coordination and planning benefits that the current apportionment process provides, without

217. *See* Bagenstos, *supra* note 110.

empowering the White House to hold up congressionally enacted funding indefinitely.

As to the ICA, the rescission provisions have proved to be the significant source of Executive Branch abuse. The Trump Administration's assertion of a "pocket rescission" power, which reads a statute intended to *limit* presidential impoundments as somehow affirmatively *authorizing* those impoundments during the last forty-five days of a fiscal year, cries out for a response.[218] As noted in the previous Section, the good-government groups have offered an effective countermove by proposing that the ICA's rescission provisions may not be used during the last ninety days of a fiscal year.[219] (The groups use ninety, rather than forty-five, days to acknowledge the reality that it may as a practical matter take some time to obligate funds once they become available after the end of the forty-five-day withholding period.)

That is a good start, but it does not address the other abuse of the ICA's rescissions provisions—the use of those provisions to unravel bipartisan deals made during the annual appropriations process.[220] Beyond simply making pocket rescissions unavailable, Congress should entirely repeal the ICA provisions setting up the special process for rescissions. That special process is unnecessary—Congress is free to, and very frequently does, rescind spending without using that process. For decades, the President and Congress barely used the ICA's special rescission process, despite adopting many, many rescissions.[221] Now that the Trump Administration has shown that presidents can and will use that process, however, it threatens to unravel Congress's ability to enter into bipartisan agreements to pass appropriations acts in the first place. The costs of the ICA's rescissions provisions now clearly exceed their benefits.[222]

Finally, Congress should provide a right to immediate judicial relief to keep federal grants from being unlawfully cut off. In particular, as I argued above, Congress should specify that the prospect of subsequent availability of a damages remedy in the Court of Federal Claims will not foreclose a cause of action in federal district court seeking immediate injunctive relief

218. *See supra* text accompanying notes 173–77.

219. *See supra* text accompanying note 204.

220. *See supra* text accompanying notes 167–72.

221. *See supra* text accompanying notes 168–69.

222. Again, one could consider a more modest but still significant reform along these lines: Barring the use of the ICA's rescission process for one-year appropriations, or for multi-year or no-year appropriations during the first year in which they are available. Such a reform would prevent the ICA from unraveling the bipartisan appropriations process while leaving the fast-track rescission procedures available for use after an appropriations cycle ends.

against an unlawful termination or withholding of a federal grant.[223] Such a provision could be included in an appropriations act (preferably with sufficient words of futurity to make it permanent law). But Congress could also codify it as an amendment to the ICA, the Administrative Procedure Act, or the Tucker Act.

C. The Role of Judicial Remedies

As my discussion of relief for improperly terminated grants suggests, I believe there is a role for expanded judicial remedies in addressing the crisis in appropriations law. Other commentators have also suggested that courts should become more intensively involved in policing the Executive Branch's compliance with Congress's power of the purse. As I noted above, Professor Pasachoff argues for expanding GAO's power to sue for ICA violations.[224] And Professor Metzger makes at least a tentative case "that the specific limits Congress includes in appropriations acts be judicially enforceable," primarily through broader congressional standing to sue.[225] Professor Lawrence, by contrast, has expressed wariness of a robust judicial role in appropriations disputes[226]—and Professor Pasachoff herself has noted that "[g]iven the unceasing nature of the executive budget process and the slow pace of litigation, there is no way for courts reliably to police executive budget decisions."[227]

Although courts may play an important role in providing immediate relief to federal grantees who have unlawfully lost their federal funds, I am skeptical that judicial review is a systemic, long-term solution to the crisis in appropriations law. Rather, it is Congress that needs to step up, use the tools it has, and develop more creative tools to assert its power.[228] In Sections III.A and III.B, I have described what I think Congress should do. Here, I explain why I think the solution should not rely significantly on courts.

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223. *See supra* text accompanying note 200.
224. *See supra* text accompanying notes 203–07.
225. Metzger, *supra* note 1, at 1164–67.
226. *See* Lawrence, *supra* note 12, at 74–88.
227. Pasachoff, *supra* note 88.
228. One way to think of my argument is as using appropriations law as a salutary example of what Professors Bowie and Renan have called "the republican separation of powers," which "relies on representative institutions using political negotiation, statecraft, and the check of public opinion to decide which reading of the Constitution's abstract commitments to build upon." Nikolas Bowie & Daphna Renan, *The Separation-of-Powers Counterrevolution*, 131 YALE L.J. 2020, 2029 (2022). I argue that Congress's power of the purse is best defended and elaborated through such a give-and-take republican process, rather than principally through the courts.

For one thing, judicial formalism is not well suited to resolving the merits of appropriations disputes. Judging, at least in our current era, is highly formalist and rule bound. But many appropriations issues—including a very large fraction of those that result in major disputes—involve complex and evolving situations where flexibility, adaptation, and mutual accommodation are the order of the day. These are the kinds of issues best addressed by a political rather than a judicial process. The Supreme Court emphasized these dynamics when it held that the allocation of funds from a lump-sum appropriation is committed to agency discretion by law. The Court noted that "the very point of a lump-sum appropriation is to give an agency the capacity to adapt to changing circumstances and meet its statutory responsibilities in what it sees as the most effective or desirable way."[229] When Congress departs from the lump-sum approach and imposes more specific restrictions or requirements on the use of funds, an agency's failure to heed those specific demands might well be an appropriate target for judges.[230] But that is a different question than whether Congress should place principal reliance on judicial review to ensure that the Executive Branch complies with its funding conditions.

Indeed, the judicial process is unlikely to prove an effective champion of Congress's power of the purse, even in the best-case scenario. Under prevailing interpretations of Article III's case-or-controversy requirement, federal courts will look for discrete violations of law, rather than broad policies that seem somehow disrespectful of law.[231] That has been a problem in the cases involving Trump's allegedly unlawful dismantlement of agencies and mass firing of federal employees.[232] The plaintiffs made a strong case that it would be impossible to prudently obligate agency appropriations after having eliminated various offices and fired so many

229. Lincoln v. Vigil, 508 U.S. 182, 192 (1993).

230. *Id.* at 193 (stating that "Congress may always circumscribe agency discretion to allocate resources by putting restrictions in the operative statutes").

231. *See* Lujan v. Nat'l Wildlife Fed'n, 497 U.S. 871, 891 (1990); Norton v. S. Utah Wilderness All., 542 U.S. 55, 64–65 (2004).

232. *See, e.g.*, Nat'l Treasury Emps. Union v. Vought, 149 F.4th 762 (D.C. Cir. 2025) (relying on these principles to reject challenge to shutdown of the Consumer Financial Protection Bureau); Ass'n for Educ. Fin. & Pol'y, Inc. v. McMahon, 786 F. Supp. 3d 13 (D.D.C. 2025) (relying on these principles to reject challenge to dismantlement of the Institution for Education Sciences); *see also* McMahon v. New York, 145 S. Ct. 2643 (2025) (granting stay of injunction barring layoffs at the Department of Education); Trump v. Am. Fed'n of Gov't Emps., 145 S. Ct. 2635 (2025) (granting stay of injunction barring implementation of government-wide orders directing layoffs); *cf.* Maryland v. USDA, 151 F.4th 197, 204 (4th Cir. 2025) (rejecting, on standing grounds, states' challenge to mass layoff of federal probationary workers, and stating that the "clash of views" regarding whether the layoffs were "a harsh and dislocating action that works significant hardship on many civil servants—individuals who committed their considerable energy and talents to serving the nation" or instead "part of a long-overdue effort to downsize the federal government and trim unnecessary expenses" must "ultimately be resolved by the voters").

staff. But there was no way to conclusively establish the point—and in particular no clear point at which understaffing becomes an illegal impoundment. (Is firing 10 percent of the staff enough? 25? 50?) Although GAO was willing to find that a substantial slowdown in agency spending constituted an impoundment, despite the absence of any clear line dividing the lawful from the unlawful,[233] formalist judges are likely to be extremely uncomfortable engaging in that sort of reasoning.

Moreover, courts are historically a highly conservative force within government.[234] During the Roberts Court in particular, the federal courts have adopted an aggressive version of the "unitary executive theory" that has cleared away key limits Congress has sought to place on the President.[235] It is doubtful that a judiciary with such strong pro-executive leanings can be expected to vigorously defend Congress's power of the purse. Even if they might be inclined to do so, they certainly will not—or will not do so effectively—if Congress appears not to care and fails to stand up for its own rights. As Justice Robert Jackson wrote in his *Youngstown* concurrence, we should "have no illusion that any decision by [the Supreme] Court can keep power in the hands of Congress if it is not wise and timely in meeting its problems"; "only Congress itself can prevent power from slipping through its fingers."[236] Congress needs to take the lead in asserting its power here, and in challenging Executive Branch intrusions.[237]

CONCLUSION

The Trump Era has already worked a massive change in the practice of interbranch relations on which the doctrines of appropriations law are premised. And the Trump Administration continues to press for further aggrandizement of executive authority over spending. If Congress does not fight back, and soon, we may see a durable shift, in which the Legislative Branch loses significant aspects of the power of the purse. If so, we will have experienced an Ackermanian "constitutional moment" as significant

233. *See supra* text accompanying note 144.

234. *See, e.g.*, Ryan D. Doerfler & Samuel Moyn, *The Ghost of John Hart Ely*, 75 VAND. L. REV. 769 (2022). For a critique of this view, though one I do not find fully persuasive, see Joshua Braver & Gregory Elinson, *A Progressive Judiciary? Judicial Review and National Politics from Reconstruction to the Present*, 66 ARIZ. L. REV. 841 (2024).

235. *See generally* Gillian E. Metzger, *The Roberts Court and Executive Power*, 713 ANNALS AM. ACAD. POL. & SOC. SCI. 88 (2024).

236. Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 654 (1952) (Jackson, J., concurring); *see also* FISHER, *supra* note 50, at 183 (suggesting courts won't stand up for Congress if Congress won't stand up for itself).

237. To similar effect, see Lawrence, Pasachoff & Price, *supra* note 60, at 27.

as those in the New Deal, the First Reconstruction, and the Civil Rights Era.[238]

The question is whether Congress will indeed fight back. I have offered an agenda for Congress to follow if it chooses to do so. The political dynamics I described above might make us skeptical that enough, and influential enough, Members of Congress will make that choice.[239] But if we believe that legislative control of the purse strings is a core democratic institution—and an essential check on executive oppression—we should do what we can to press Congress to stand up for itself.

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238. *See* BRUCE ACKERMAN, WE THE PEOPLE: THE CIVIL RIGHTS REVOLUTION (2014); BRUCE ACKERMAN, WE THE PEOPLE: TRANSFORMATIONS (1998); BRUCE ACKERMAN, WE THE PEOPLE: FOUNDATIONS (1991).

239. *See supra* text accompanying notes 185–89.