
November 21, 2024

FAQs on Impoundment: Presidential Actions Are Constrained by Long-Standing Constitutional Restrictions

By Richard Kogan

The incoming Trump Administration is reportedly exploring whether it can impound — that is, not spend — funds that Congress has provided in legislation.¹ Supporters of this position argue that the Impoundment Control Act of 1974 (ICA) restricts the President’s ability to impound funds, and they recommend that it be repealed.

This notion that the ICA is what restricts presidential authority to impound funds enacted by law is contrary to legal precedent — and to the Constitution. The Constitution gave Congress the power of the purse, and that power precludes the President from unilaterally deciding not to spend money that Congress has provided. Courts — including the Supreme Court — protected this congressional power and repeatedly rejected presidential attempts to spend less than Congress had provided, overturning President Nixon’s impoundments, all of which *predated* the ICA.

The ICA does not create new restrictions on presidential authority, but rather specifies how a President can request that Congress change the law on an expedited basis to spend less than Congress initially provided. It establishes a formal process whereby the President submits a request to Congress to rescind (take away) funding, and Congress can choose how much, if any, of the President’s proposed rescission to accept. If Congress does not approve legislation that enacts the rescission within 45 days of the request, *then the President must spend the funds*.

The ICA was enacted not to create a new restriction to impoundment but, following court cases that upheld the congressional power of the purse, to provide a specified, fast-track legislative process that would allow the President to request and Congress to consider a funding change. The ICA also granted the Government Accountability Office (GAO) the authority to trigger the process if the President fails to report an impoundment, and to sue for release of funds after the 45 days elapse, if necessary.

¹ Jeff Stein *et al.*, “Trump aides explore plans to boost Musk effort by wresting control from Congress,” Washington Post, November 13, 2024, <https://www.washingtonpost.com/business/2024/11/13/elon-musk-government-efficiency-congress-budget-law/>.

This FAQ addresses a number of questions related to impoundment and the ICA.

1. **What does “impoundment” mean?** Impoundment is a deliberate action by the President² to withhold some funding that Congress has enacted in an appropriations bill, so that not all of it would be used during the period for which it is made available. (Most appropriated funds are available for only one year, but some are available for longer.) Thus an appropriations bill both sets the amounts that can be spent and establishes the expectation that the funds will be used for their intended purpose.³

If an agency can fully accomplish at a cheaper price what Congress had intended when it authorized and funded the activity (for example, build a specific dam that Congress designated when it provided the funds), that’s not an impoundment as the term is commonly used.

2. **Was impoundment legal before the Impoundment Control Act?** No. “The president doesn’t have any constitutional authority to withhold, doesn’t have any inherent authority to withhold,”⁴ explained the general counsel of the GAO, the office given authority to enforce the ICA. Despite its name, the Impoundment Control Act did not make impoundment illegal; *it already was*.

Attempted impoundments were rare until President Nixon took office. Unlike his predecessors, he ordered funding withheld in many different programs, by large amounts, and claimed a right to do so. The intended recipients of the funding — often state or local governments — regularly sued for release of the withheld funds.

And they regularly won. The cases seldom made it past lower courts, which invariably concluded that the specific authorization and appropriations law in question had not provided any such authority to the President.⁵ (Some courts did not rule on the merits, finding the cases before them non-justiciable, that is, not capable of being decided by a court.) In general, the Nixon Administration released the impounded funds after losing, but it appealed one case to the Supreme Court. The Court ruled 9-0 against President Nixon.⁶

In some of the lower court cases, all of which occurred before enactment of the ICA, the judges also made clear that the President does not have any inherent impoundment authority. For instance, one judge stated that it is “not within the discretion of the Executive to refuse to execute laws passed by Congress but with which the Executive presently disagrees.”⁷ Similarly, another judge stated that “Money has been appropriated by the Congress to achieve the

² Throughout this piece, we use the term “President” in this context, but it could refer to some other executive branch official.

³ Congressional Research Service, “Introduction to the Federal Budget Process,” updated January 10, 2023, <https://crsreports.congress.gov/product/pdf/R/R46240#page30>.

⁴ Thomas H. Armstrong (General Counsel, U.S. Government Accountability Office), testimony before the Committee on the Budget, U.S. House of Representatives, March 13, 2020, <https://www.congress.gov/116/chrg/CHRG-116hhrg41966/CHRG-116hhrg41966.pdf>, at p. 117.

⁵ Louis Fisher, “Court Cases on Impoundment of Funds: a Public Policy Analysis,” Congressional Research Service, March 15, 1974.

⁶ See *Train v. City of New York*, 420 U.S. 35 (1975), <https://supreme.justia.com/cases/federal/us/420/35/>

⁷ Fisher.

purposes of both programs [that Nixon had impounded] and the Executive has no residual power to refuse to spend those appropriations.”⁸

Also, the Supreme Court’s 1998 decision overturning the Line-Item Veto Act reinforced the conclusion that presidents have no inherent constitutional authority to impound funds. See Question 6, below.

3. **If impoundment wasn’t inherently legal, why did Congress enact the Impoundment Control Act?** The ICA established a specific, clear, and *public* procedure for what Presidents should do if they want Congress to change its mind and reduce — or eliminate — some funding it enacted. Specifically, the ICA created a special, fast-track procedure for Congress to consider a President’s request (called a “special message”) to rescind specified funds. Under the ICA, a President may defer spending those funds for up to 45 days following such a request. In that regard, the ICA gave the President authority to withhold funds for a limited period that previously did not exist.⁹ If Congress does not approve the President’s rescission request within 45 days of receiving it, then the funds must be spent.

The ICA granted GAO a special enforcement role. GAO can trigger the start of the 45-day withholding period if it finds that the President has been withholding funds but has not requested a rescission under the ICA. It can also sue in federal court, if needed, to get impounded funds released after the 45 days. In addition, GAO’s enforcement role allows it to clarify the application of the ICA. For instance, it has ruled that the 45-day period cannot begin so late that the funds in question might lapse (expire) before the period ends or be released so close to their expiration date as to be effectively unusable.

The ICA’s 45-day withholding period only applies to certain funds provided in appropriations bills. It does not allow any withholding from a law that “*requires* the obligation of [funding]” such as for benefit payments to individuals, states, localities, health care providers, and so on, in programs such as Social Security, Medicare, or Medicaid. Nor does it allow the withholding of funds appropriated for formula grants to states and localities (because the distribution of those funds are generally *required* to be paid to each state or locality once they have been provided in the appropriation bill).¹⁰

4. **What’s an apportionment, and how does it relate to impoundment?** Apportionment is the process the Office of Management and Budget (OMB) uses to allocate funds to an agency (typically every three months, but sometimes every month) to ensure that the funds last as long as Congress had intended. In most cases, that means the funds should last for the entire fiscal year (though funds do not have to go out at a steady pace — funds for home heating assistance, for example, are almost all distributed in the autumn so they can be used in the winter). Prior to enactment of legislation in 1950 strengthening apportionment, some agencies would deliberately spend their annual appropriation in a few months and then return to Congress for supplemental funding.

⁸ *Ibid.*

⁹ In his testimony, the GAO general counsel noted, “The Impoundment Control Act is the only authority that a president has to withhold funds from obligation.”

¹⁰ Emphasis added. See Section 1001 of the ICA, a general disclaimer. Also see Richard Kogan, “Procedural Advantages for ‘Rescissions’ Don’t Apply to Mandatory Programs,” CBPP, April 26, 2018, <https://www.cbpp.org/blog/procedural-advantages-for-rescissions-dont-apply-to-mandatory-programs>.

If the President requests that Congress rescind appropriated funds under the ICA, OMB is likely to withhold those funds from the agency's apportionment for the 45-day period beginning when the President submits the request to Congress.

5. **Do Presidents use the procedures created by the Impoundment Control Act a lot? Does Congress therefore regularly reconsider its appropriations?** Not really. President Ford was the exception, regularly using the authority to request Congress to reconsider some of the money it had provided in appropriations bills, sending up rescission requests shortly after the bills were enacted each fall. President Reagan and the first President Bush requested some rescissions, while Presidents Carter and Clinton requested smaller amounts, and the second President Bush requested none.

The rareness of impoundment requests — even though they would be considered under a fast-track process that precludes a Senate filibuster — may be because appropriations are negotiated in detail between both houses of Congress and the President and so reflect compromises broadly accepted. If negotiators reach an agreement and the President signs the resulting appropriations bills but then turns around and presses for a large number of rescissions, it could make negotiating future agreements more difficult; some in Congress may worry that the agreement won't stand but instead be re-litigated through a rescission process.

6. **Didn't the Line-Item Veto Act try to make some impoundments legal?** Yes, but it failed. The Line-Item Veto Act of 1996,¹¹ now overturned, granted the President the authority to unilaterally veto (and so effectively impound) individual provisions of certain types of legislation, mostly funding in appropriations bills. It granted Congress special fast-track procedures for considering legislation to *disapprove* whatever line-item vetoes the President made; the *de facto* rescission of funds permitted by the Line-Item Veto Act would stand unless Congress overturned them by statute (which the President could veto, of course). In other words, Congress had to act to stop the impoundment rather than needing to act to agree to a reduction in funding, as under the ICA.

President Clinton used the authority granted by the Act, but in *Clinton v. City of New York* the Supreme Court ruled 6-3 that the Line-Item Veto Act was unconstitutional.¹² The Court said that the presidential withholding of appropriated funds constituted an amendment to the appropriations law providing those funds and, as a result, could only be accomplished by Congress passing a new law. The Court held that Congress *can't delegate to the President its authority to rewrite enacted laws*; only Congress can change a law it's written. By requiring congressional authorization for impoundments, the Impoundment Control Act honors that principle; any unilateral presidential authority to impound would not.

7. **Could Congress deliberately make some or all funding in an appropriations bill optional, effectively giving the President the authority to impound these funds?** Possibly, on a case-by-case basis, Congress may be able to specify in appropriations bills that some particular funding in *that* bill was optional — but it has never done that. While Congress has sometimes provided funding that is conditional on the executive determining if certain criteria have been met, Congress has never given a President blanket authority to spend less than the

¹¹ Public Law 104-130, enacted 4-9-1996, <https://www.govinfo.gov/content/pkg/PLAW-104publ130/pdf/PLAW-104publ130.pdf>.

¹² See *Clinton v. City of New York*, 524 U.S. 417 (1998), <https://supreme.justia.com/cases/federal/us/524/417/>.

amount provided in an appropriations bill or to use the funds for different purposes than specified in the bill. (As a result, constructing legislation this way has never been tested in court.)

The term “appropriation” means to provide funds for a specific purpose. Prior to the American Revolution, the British Parliament often allocated funds to the King without limiting how those funds could be spent. This country’s founders believed that this allocation practice enabled tyranny and therefore required that all funding provided to the President come by way of appropriations for specific purposes.