

Trump II and the Presidency 3

The Spending Power

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Government and Politics of the US - Lecture xiv

Just In Time For Christmas, Nation Gifts Service Members \$1,776 'Warrior Dividend'

Dec. 18, 2025 | By [C. Todd Lopez](#), Pentagon News |   

President Donald J. Trump announced last night that nearly 1.5 million service members would receive a \$1,776 bonus to both thank them for their military service and to commemorate the 250 years the U.S. military has been defending the nation.

1. The spending disputes background

1.1 The constitutional setting

- Recall the convenient summary of tax raising powers:

Article I tax powers:

“The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States”

Article I Section 8

Article II tax powers: ○

1.1 The constitutional setting

- what about *spending* powers?

Article I spending powers:

“No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time. “

Article I Section 9

Article II spending powers: ○ (perhaps “shall take care that the laws be faithfully executed”)

1.2 Impoundment as an historical example

impoundment the power to refuse to spend money that has been appropriated

- Nixonian but not quite an innovation (not programmatically and not partisan)
- Courts slow *Train v. City of New York* 420 U.S. 35 (1975))

1.3 Impoundment Control Act of 1974

- [2 United States Code Chapter 17B](#)
- i. President transmits a *special message* requesting and explaining a proposed *rescission*
- ii. needs *rescission bill* within 45 days of Congressional sitting
- iii. the Comptroller General's responsibilities...

1.3 Impoundment Control Act of 1974

“the Comptroller General is hereby expressly empowered, through attorneys of his own selection, to bring a civil action in the United States District Court for the District of Columbia to require such budget authority to be made available for obligation, and such court is hereby expressly empowered to enter in such civil action, against any department, agency, officer, or employee of the United States, any decree, judgment, or order which may be necessary or appropriate to make such budget authority available for obligation. “

2 USC § 687

1.3 Impoundment Control Act of 1974

- in sum, in response to the Nixonian impoundment crisis Congress:
 - **created** a route for impoundment (rescissions for up to 45 days)
 - **constrained** that route (limited process for rescissions)
 - **controlled** rescissions (they can be sustained only if Congress takes positive legislative action)
 - **enforced** the new system (by empowering agents to do so)
- **permissive** from Congress' point of view
- explicitly **majoritarian** - no filibuster

1.4 Impoundment control 1974-2024

	Number	Dollar amount
<i>Proposed by President</i>	1,245	\$92.0 billion
<i>Accepted by Congress</i>	461	\$25.0 billion
<i>Initiated by Congress</i>	3,252	\$383.9 billion
<i>Presidential success rate</i>	37%	27%

Source: GAO report B-330828. Ford through Trump I (FY1974–2020). Dollar amounts in 2020 billions.

1.4 Impoundment control 1974-2024

- a site of some conflict! see (GAO 2020; Metzger 2021)
- Trump I rescissions proposals unsuccessful
- threatened impoundment (of foreign aid to Ukraine) as an element of the first impeachment under Trump I

2. Trump II and impoundment

2.1 The funding pause

“to the extent permissible under applicable law, Federal agencies must 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.”

OMB Memorandum M-25-13, 27.i.25

2.2 A plethora of court cases

- 22 states sued a range of government agencies
- *Department of Education v. California* 604 U.S. ____ (2025)
- does ICA language (ie “*Comptroller-General is hereby expressly empowered...*”) mean *only* the Comptroller-General can sue?
- see the foreign aid case (esp Kagan dissent) - *Department of State v. Aids Vaccine Advocacy Coalition* 606 U.S. ____ (2025)
- Comptroller-General lawsuit?
- confusion reigns

2.3 Use of the Impoundment Control Act

- Trump admin proposes a rescission of \$9 billion which passes! first successful use of the ICA process since 1992
- but this is a fraction of what has been at stake (Democrats claim up to \$400bn)
- the \$9 billion concerned (“just”) foreign aid and the Corporation for Public Broadcasting
- proposals amended to reduce the rescission by about 5% (Senators protecting PEPFAR)

2.4 Ongoing impoundment

- it continues! sometimes overtly and sometimes through quiet resistance to spending funds

- January '26 cuts to California, Colorado, Illinois, Minnesota and New York:

TANF Temporary Aid to Needy Families *\$7.4 billion*

CCDF Child Care and Development Fund *\$2.4 billion*

SSBG Social Services Block Grant *\$0.9 billion*

- February '26 cuts to California, Colorado, Illinois, Minnesota:

CDC Centers for Disease Control *\$0.6 billion*

2.4 Ongoing impoundment

- February '26 just Minnesota:

Medicaid *\$0.3 billion*

- 5 state cuts - TRO then injunction ([litigation continues](#))
- 4 state cuts - TRO in place until 12.iii.26 ([litigation continues](#))

2.5 Outside the budget - Intel

- August 2025: Trump announces a 10% share of Intel
- reporting says the US is paying \$11 billion
- but this is already allocated funds from CHIPS and Science Act of 2022
- [money which was appropriated as grants to Intel](#) but has not yet been handed over
- Trump ceases campaign against Intel CEO

2.6 Outside the budget - Nvidia

- April 2025: administration bans Nvidia from selling its H2O chips to China. (Export Reform Control Act of 2018)
- August 2025: Trump announces permission now granted! but would be receiving 15% of the value of any such sales

2.6 Outside the budget - Nvidia

“They restrict it. It’s really known as a restrictive covenant. And I said, if I’m going to do that, I want you to pay us as a country something, because I’m giving you a release. “

Trump press conference 11.viii.2025

- *“No Tax or Duty shall be laid on Articles exported from any State. “*

US Constitution Article I Section 9

2.7 Venezuelan oil



Donald J. Trump  

@realDonaldTrump

I am pleased to announce that the Interim Authorities in Venezuela will be turning over between 30 and 50 MILLION Barrels of High Quality, Sanctioned Oil, to the United States of America. This Oil will be sold at its Market Price, and that money will be controlled by me, as President of the United States of America, to ensure it is used to benefit the people of Venezuela and the United States! I have asked Energy Secretary Chris Wright to execute this plan, immediately. It will be taken by storage ships, and brought directly to unloading docks in the United States. Thank you for your attention to this matter!

DONALD J. TRUMP
PRESIDENT OF THE UNITED STATES OF
AMERICA

2.8 The slushy wilds

- in common:
 - the exercise of US power
 - through government speech (Intel case)
 - through government control of technology licensing rules (Nvidia/AMD)
 - through the use of military power to depose a country's leadership and the threat of further use of that power
 - the receipt of resources (10% of intel, a 15% export tax, 50 million barrels of crude oil)
 - with essentially no involvement by Congress

2.8 The slushy wilds

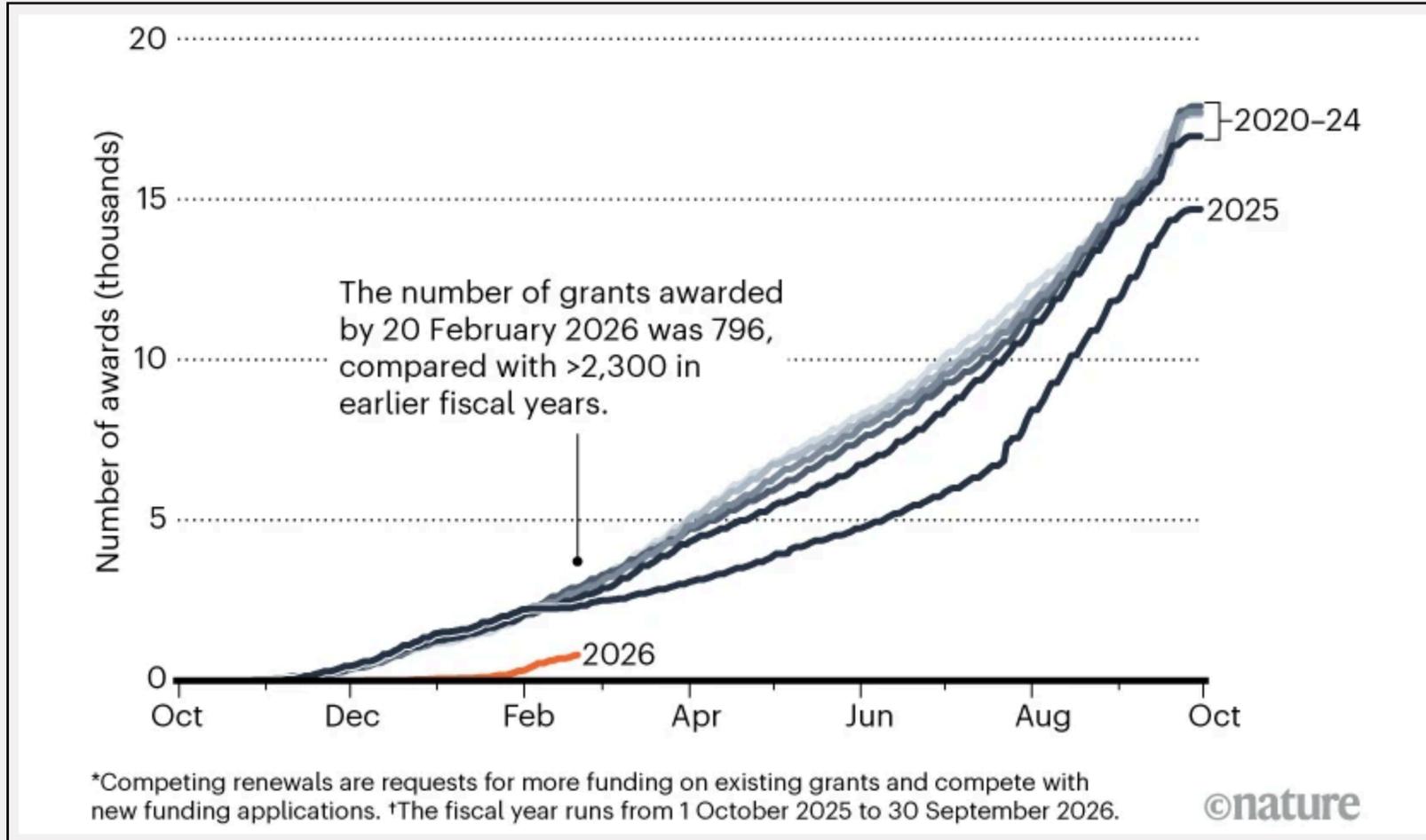
- unclear legal status
- qv also “Board of Peace”?

3. Conclusion

3.1 A constitutional crisis?

- “constitutional crisis” as essentially contested term...
- can be a political problem that the constitution doesn't resolve?
- the *status quo* has been changed (irrevocably) - futures are all post-Trumpian
- not just politics but also eg shaping state capacity

3.1 A constitutional crisis?



3.1 A constitutional crisis?

Chafetz, Josh. 2025. “The Chadha Presidency.” *Georgetown Law Journal* 115 (Chafetz, Josh, The Chadha Presidency (October 31, 2025). *Georgetown Law Journal*, vol. 115, forthcoming, Available at SSRN: <https://ssrn.com/abstract=5360131> or <http://dx.doi.org/10.2139/ssrn.5360131>).

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Lawrence, Matthew B., Eloise Pasachoff, and Zachary S. Price. 2025. “Appropriations Presidentialism.” *Georgetown Law Journal*,

Metzger, Gillian E. 2021. “Taking Appropriations Seriously.” *Columbia Law Review* 121 : 1075.

3.1 A constitutional crisis?

Whittington, Keith E. 1999. *Constitutional Construction: Divided Powers and Constitutional Meaning*. Harvard University Press.