

ARE “POCKET RECISSIONS” OF FUNDS FOR GOVERNMENT CONTRACTS AND OTHER GOVERNMENT EXPENDITURES LAWFUL?

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Can the President (normally through the Office of Management and Budget—“OMB”) use a pocket rescission in order to withhold budget authority (funding) without Congressional consideration of a rescission proposal? The Government Accountability Office (“GAO”) says this procedure is unlawful, however, to date, the Supreme Court has allowed it to happen in the Trump administration, albeit only with an Emergency Ruling that promised a more complete review.

Review of Relevant Constitutional and Appropriations Law

The Constitution states that “No money shall be drawn from the Treasury but in consequence of Appropriations made by Law.” U.S. Const. Art. I, § 9, cl. 7. An appropriation is available to incur new obligations for a fixed period. Although there are some “permanent indefinite” appropriations, and some activities like construction, procurement of complex military systems, and research & development activities which are funded in multiple year appropriations, most of the operations of agencies (including most government contracts, the award of which obligates the funds) are funded through *annual* appropriations the budget authority of which expires at the end of the fiscal year (September 30th) in which funded. The government is not permitted to incur obligations against appropriations after the relevant time period of availability expires.

The Impoundment Control Act & Rescissions.

The President has no unilateral authority to withhold money appropriated by Congress, but may temporarily “defer” funds, or seek a permanent cancellation or termination of funds by proposing a rescission as specified in the Impoundment Control Act. Rescission (or the withholding of) previously issued budget authority is accomplished through use of the Impoundment Control Act of 1974 (the “ICA”), codified at 2 U.S.C. §§ 681-688, a statute that permits the temporary withholding of budget authority and provides that unless Congress rescinds the amounts at issue, they must be made available for obligation. The ICA states as follows:

Whenever the President determines that all or part of any budget authority will not be required to carry out the full objectives or scope of programs for which it is provided or that such budget authority should be rescinded for fiscal policy or other reasons (including the termination of authorized projects or activities for which budget authority has been provided), or whenever all or part of budget authority provided for only one fiscal year is to be reserved from obligation for such fiscal year, the President shall transmit to both Houses of Congress a special message [specifying the funds to be rescinded and the reasons]...

Any amount of budget authority proposed to be rescinded or that is to be reserved as set forth in such special message shall be made available for obligation unless, within the [a] 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.

The plain language of the statute provides that without Congress’s completion of passage on a rescission bill rescinding all or part of amounts the President proposed to be rescinded within the 45 day period, these amounts *must be made available for obligation*.

So, there are two ways that a Presidentially requested rescission can take place:

- The Congress completes action on a rescission bill that rescinds all or part of the amount proposed to be rescinded; or
- The President makes a “pocket rescission,” where the President proposes cutting funds so close to the end of the fiscal year (September 30th) that the statutory 45-day congressional review period cannot conclude before the funds have already expired for obligation. By withholding the money during this review window, the administration ensures that the funding lapses (can no longer be obligated) and returns to the Treasury regardless of whether Congress approves the rescission.

Are Pocket Rescissions Constitutional

There are conflicting reviews of the constitutionality of the use of a pocket rescission. (The pocket rescission is somewhat similar to the President’s constitutionally accepted ability to “pocket veto” a bill—which occurs when Congress passes a bill and sends it to the President for signature to become law, but the President does not sign the bill within the required 10-day period specified in the Constitution in Article I, § 7, cl. 2. During that 10-day period, if the Congress adjourns (ends its session), the bill automatically dies without becoming law, acting as an absolute veto that can’t be overridden by the Congress).

The Government Accountability Office (“GAO”) ruled in 2018 that “[r]egardless of whether the 45 day period for congressional consideration provided in the ICA approaches or spans the date on which funds would expire, [2 U.S.C. § 683(b)] requires that budget authority be made available in sufficient time to be prudently obligated.” Letter to Hon. Steve Womack and John Yarmuth, “Impoundment Control Act-Withholding of Funds Through Their Date of Expiration,” B-330330, Dec. 10, 2018. GAO held that expiration of the budget authority proposed for rescission “would frustrate the design of the ICA, as it would contravene the plain meaning of section [2 U.S.C. §683(b)] which requires that amounts not rescinded during [the 45 day period] of consideration be ‘made available for obligation.’” GAO concluded that such “amounts proposed for rescission must be made available for “prudent consideration, even where the 45 day period for congressional consideration approaches or spans the date on which the funds would expire.” *Id.*, 2 U.S.C. §681 *et seq.*

The Supreme Court has taken a different view of the ICA, although its view is stated only in an interim Emergency Ruling, with the specific proviso that that the ruling “should not be read as a final determination on the merits” but instead “reflects our preliminary view, consistent with the standards for interim relief.” When presented with a proposed pocket rescission of over \$4 billion of expiring aid funds at the end of fiscal year 2025, and an emergency request to overrule a district court injunction requiring the expenditure of these funds (appropriated to the U.S. Agency for International Development), the Court paused the district court’s ruling, and the Chief Justice issued the following Emergency Decision:

Supreme Court Emergency Decision No. 25A269

DEPARTMENT OF STATE, ET AL. v. AIDS VACCINE ADVOCACY COALITION, ET AL.
ON APPLICATION FOR STAY [September 26, 2025] On September 3, the United States District Court for the District of Columbia entered a preliminary injunction directing the Executive to obligate roughly \$10.5 billion of appropriated aid funding set to expire on September 30. Of that \$10.5 billion, \$4 billion was proposed to be rescinded in a “special message” transmitted pursuant to the Impoundment Control Act. See 2 U. S. C. §681 *et seq.* After the District Court and the United States Court of Appeals for the District of Columbia Circuit denied stays of that order, the

Government filed this application to stay the District Court's injunction. The application for stay presented to THE CHIEF JUSTICE and by him referred to the Court is granted. The 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. The Government has also made a sufficient showing that mandamus relief is unavailable to respondents. And, on the record before the Court, the asserted harms to the Executive's conduct of foreign affairs appear to outweigh the potential harm faced by respondents. This order should not be read as a final determination on the merits. The relief granted by the Court today reflects our preliminary view, consistent with the standards for interim relief.

Therefore, the pocket rescission was allowed and the \$4 billion in aid funds expired. However, the Supreme Court clearly intends to revisit this use of the ICA, provided that the litigants continue to pursue the issue.

Takeaway. The President has won the first round in the pocket rescission battle, overcoming the GAO legal opinion and rescinding the aid funds. But the final view of the Supreme Court on the constitutionality of the pocket rescission is yet to come. And the outcome of this battle will definitely impact government contractors—many of which had their contracts terminated when the \$4 billion was ultimately rescinded. If the pocket rescission is ultimately held to be constitutional, the President can use it to rescind, without the concurrence of the Congress, any expiring appropriation for “fiscal policy” or “other reasons,” the basis stated in the ICA.

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