“Pocket Rescissions” Are Illegal

By David Super and Sam Berger

The Trump Administration has been engaging in a wholesale attack on Congress’s spending power by refusing to provide legally required funding for programs and activities it does not support. This is known as “impoundment.” The Impoundment Control Act (ICA), passed in the wake of President Richard Nixon’s illegal impoundments, offers a limited pathway for Presidents to request Congress’s permission to withhold funding by submitting a request to rescind previously appropriated funds. As part of President Trump’s effort to undermine congressional spending authority, he and his top budget advisor — Office of Management and Budget (OMB) Director Russell Vought — have declared that the constraints imposed by the ICA on the President’s ability to impound funds are unconstitutional. At the same time, the Administration is claiming that the ICA gives the President the authority to rescind legally appropriated funds without an affirmative vote of Congress, calling this approach a “pocket rescission.”

A “pocket rescission” involves transmitting a rescission request so late in the fiscal year that the funds would expire before Congress acts. The Administration presents this idea as a loophole in the ICA. But no such loophole exists. The Administration’s “pocket rescission” approach finds no support in law, is essentially identical to an idea the Supreme Court has held unconstitutional and seeks to bend the ICA to ends precisely opposite to those for which Congress enacted it. The Trump Administration has already illegally withheld billions in federal funds that Congress has provided to support a wide range of critical investments, including in schools, community libraries, disaster preparation, medical innovation, and scientific research. “Pocket rescissions” would be yet another avenue for illegally withholding funds in contravention of federal spending laws.

Congress Reined in Presidential Attempts at Impoundment Through the Impoundment Control Act

Late in the Nixon Administration, the President asserted the right to withhold — or impound — money Congress had appropriated for a wide range of domestic programs. These actions were immediately challenged in court. Every case decided on the merits held that the President lacked legal authority to block spending of appropriated funds without congressional approval. One of these cases reached the

U.S. Supreme Court, which held unanimously that President Nixon's impoundment of sewage treatment funds violated the Clean Water Act. Members of Congress from both parties strongly objected to President Nixon's unilateral actions, but they did recognize that changed circumstances could merit rescinding money previously appropriated. Accordingly, they provided a streamlined, expedited procedure for Congress to consider presidential proposals to rescind appropriate funds. This came in 1974 through the Impoundment Control Act (ICA), which passed the Senate unanimously and the House by a vote of 401-6. The ICA allows the President to send Congress a special message "whenever the President determines that all or part of any budget authority … should be rescinded for fiscal policy or other reasons." Under the Act as amended in 1987, this special message triggers expedited procedures in Congress designed to allow both chambers to vote within 45 days on the President's proposal. If Congress does not agree to the President's recommendation within 45 days, the ICA requires that the funds that Congress does not agree to rescind "be made available for obligation" and forbids the President from re-proposing that those funds be rescinded. The ICA is explicit that it does not provide a basis for overriding any other law, stating that "Nothing contained in this Act, or in any amendments made by this Act, shall be construed as … superseding any provision of law which requires the obligation of budget authority or the making of outlays thereunder." Thus, the ICA makes clear it does not provide any authority to impound funds without congressional approval. The Act only provides an expedited mechanism for Congress, following a request from the President, to decide whether to modify previously enacted appropriations laws. The authority created by the ICA has rarely been used. In July 2025, Congress used the ICA process to enact a rescission for the first time this century.

"Pocket Rescissions" Require a Radical Reinterpretation of the ICA

Most appropriations provide funds for a specific period of time, commonly one year. Any appropriated funds that are not "obligated" — i.e., committed to a particular person or purpose — by the appropriation's expiration date will lapse and ultimately revert back to the Treasury. OMB Director Vought has proposed that the Administration take advantage of appropriations expiration dates to further its widespread efforts to impound funds.12 His idea has three parts:

• The President would send Congress a "special message" proposing to rescind appropriated funds within the final 45 days before an appropriation is scheduled to expire.

• The Administration argues, incorrectly, that the Act's requirement that funds be made available for obligation after 45 days gives the President an unlimited right to withhold those funds during the 45-day congressional consideration period.

• By proposing a rescission so late in the year, even if Congress does not take action to rescind the funds, the Administration contends that the funds will have lapsed before the 45-day period expires and hence no funds will be available to be obligated. Thus, this "pocket rescission" theory would convert the ICA, a statute enacted by overwhelming bipartisan majorities in Congress to curb executive power, into a vehicle for enabling the President to act unilaterally to impound funds and override enacted appropriations laws.

"Pocket Rescissions" Violate Statutes and Supreme Court Precedents

To argue that the ICA allows unilateral presidential impoundment would require exceptionally clear statutory language. This is particularly true under the Supreme Court's recently articulated major questions doctrine, which warns that when an agency asserts sweeping authority, "both separation of powers principles and a practical understanding of legislative intent make us reluctant to read into ambiguous statutory text the delegation claimed to be lurking there. To convince us otherwise, something more than a merely plausible textual basis for the agency action is necessary. The agency instead must point to clear congressional authorization for the power it claims." Here, the Administration lacks even a plausible textual basis for the powers it claims. Instead, the ICA makes clear that the authority it provides to propose rescissions does not supersede funding laws, and those laws are clear that funding must be spent. Indeed, numerous courts, including a unanimous Supreme Court, held that the President lacks legal authority to impound appropriated funds based on laws on the books prior to the ICA. As the Supreme Court held in declaring President Nixon's impoundments unlawful, authorizing statutes and appropriations acts are laws that the President is bound to follow. The funds that the Trump Administration is proposing to withhold are covered by such laws directing that they be spent. For example, section 640(a)(1) of the Head Start Act, which authorizes the Head Start program, provides that "[u]sing the sums appropriated … for a fiscal year, the Secretary shall allocate such sums in accordance with paragraphs (2) through (5)." Paragraphs (2) through (5), in turn, set out a detailed formula for allocating appropriated funds that accounts for every dollar Congress provides. The Administration cannot withhold any Head Start funds without violating one or another grantee's rights to the funding under this law. Yet it has done exactly that. Nothing in the ICA authorizes the Administration to violate the Head Start Act; as noted above, the

ICA specifically provides that it shall not be "construed as … superseding any provision of law which requires the obligation of budget authority or the making of outlays thereunder." The same is true of appropriations acts. For example, the fiscal year 2025 appropriation for the National Institute of General Medical Sciences, part of the National Institutes of Health, provides that "not less than $430,956,000 is provided for the Institutional Development Awards program." Spending any less would violate this law. And yet the Trump Administration has deliberately done so. Here again, the ICA not only fails to authorize such a violation but expressly condemns one. The Trump Administration argues that the ICA grants the President the right to withhold appropriated funds for 45 days. But the Act nowhere grants the President that power: it merely requires that funds be made available for obligation after 45 days. It has been widely inferred that 3 Presidents may hold funds for up to 45 days while awaiting the results of Congress's consideration of their rescission requests, but only if the hold would not prevent compliance with authorizing and appropriations statutes that require money to be spent. For example, if a program's authorizing and appropriations statutes allow money to be spent at any time during a fiscal year, the President may wait 45 days to spend in order to give Congress time to act, so long as enough time would remain afterwards to spend the money as the program's statutes require. But the President does not have the power to contradict the commands of authorizing and appropriations acts, since the ICA expressly disavows any interpretation that would prevent funds from being spent as required by other laws. A presidential special message proposing a "pocket rescission" also would likely violate the ICA itself. The Act requires the President to submit a special message to Congress "whenever the President determines that all or part of any budget authority … should be rescinded for fiscal policy or other reasons." The idea of a "pocket rescission" is that the President identifies funding that should be rescinded and then waits to submit the special message to Congress until the end of the fiscal year. But the special message is due to Congress when the President determines that funds should be rescinded, not weeks or months later. Given these many legal issues with the notion of "pocket rescissions," it is no surprise that the nonpartisan Government Accountability Office, which Congress assigned to oversee compliance with the Impoundment Control Act, opined that the President may not invoke the Act to withhold funds past their expiration date: [T]he ICA does not permit the withholding of funds through their date of expiration. The statutory text and legislative history of the ICA, Supreme Court case law, and the overarching constitutional framework of the legislative and executive powers provide no basis to interpret the ICA as a mechanism by which the President may unilaterally abridge the enacted period of

availability of a fixed-period appropriation. The Constitution vests in Congress the power of the purse, and Congress did not cede this important power through the ICA. Instead, the terms of the ICA are strictly limited. The ICA permits only the temporary withholding of budget authority and provides that unless Congress rescinds the amounts at issue, they must be made available for obligation. The President cannot rely on the authority in the ICA to withhold amounts from obligation, while simultaneously disregarding the ICA's limitations.

If the Impoundment Control Act Granted Presidents the "Pocket Rescission" Power, It Would Be Unconstitutional

In 1996, Congress tried to give the President a much more limited version of the power over spending that the Trump Administration now claims. The Line-Item Veto Act authorized the President to eliminate items of spending without congressional approval within ten days of the enactment of the laws providing for that spending. President Bill Clinton exercised that power to cut funds, and the beneficiaries of those funds sued. The Supreme Court held that allowing the President to cancel spending provided for in enacted statutes was equivalent to allowing the President to unilaterally amend those statutes. This, the Court held, violated Article I of the U.S. Constitution, which vests all legislative power in the Congress. The Court reaffirmed that laws may only be amended by a measure that passes both houses of Congress and is signed by the President or passed over a presidential veto. The Court's six-member majority included Justice Clarence Thomas, who remains on the Court today. 4 OMB Director Vought's concept of "pocket rescissions" appears to draw from his oft-stated view that the President has inherent constitutional powers to refuse to spend appropriated funds. If this were the case, the Line-Item Veto Act would have posed no constitutional problems at all. But no such authority exists. Indeed, during one brief period when the ICA was inoperable for technical reasons which have since been corrected, President Ronald Reagan sought to withhold funds from four housing programs. The designated beneficiaries of those funds sued, and the U.S. Court of Appeals for the District of Columbia Circuit ruled that, without the ICA, the President had no authority at all to withhold appropriated funds. One of the judges joining this decision was noted conservative legal scholar Robert Bork, who had represented President Nixon in the challenges to his impoundments. If even a carefully limited power such as a line-item veto is unconstitutional, surely the much broader powers to cancel funding that the Trump Administration now asserts is unconstitutional as well. Indeed, the very enactment of the Line-Item Veto Act provides more evidence that Congress did not believe that these sweeping powers already existed. Conclusion Congress

enacted the Impoundment Control Act to provide the President with an orderly means of proposing rescission of appropriated funds, after courts had held unilateral presidential impoundments unlawful. Neither the ICA's language nor its purpose offer any support for the practice of unilaterally withholding funds that Congress has appropriated. Even if the Act could be read this way, authorizing and appropriations statutes clearly command that appropriated funds be spent, and the ICA expressly disavows overriding those acts. Finally, any legislative grant to the President of the power the Trump Administration claims would be unconstitutional.