

The \$4.9 Billion Question: What Happens Now with the “*Power of the Purse*”

December 2025

A Test of Congressional Spending Authority

On September 30, 2025, \$4.9 billion in congressionally appropriated foreign assistance funding expired following executive branch inaction, a practice commonly described as a “pocket rescission.” This outcome occurred despite multiple federal court orders reaffirming Congress’s constitutional authority over appropriations and the “power of the purse” as well as the [Government Accountability Office \(GAO\)](#), which in August 2025 reiterated that cutting any federal programming through pocket rescissions was illegal.

The [Supreme Court’s September 26 emergency stay](#) marked a significant departure from over five decades of separation-of-powers precedent established by the Impoundment Control Act of 1974 (ICA). Although the immediate impact involved foreign assistance funding, the ruling threatens congressional authority over appropriations more broadly. **By allowing appropriated funds to lapse through executive inaction, the decision creates a mechanism by which future presidents can bypass congressional spending decisions without formally rejecting them.**

Timeline

January 20, 2025	Executive Order 14169 “Reevaluating and Realigning United States Foreign Aid,” pauses all foreign assistance programs pending review.
February 2025	Two coalitions file suit arguing that the Executive Order violated the Constitution, the Administrative Procedure Act, and the ICA. A district judge issued a temporary restraining order prohibiting the administration from suspending the obligation of appropriated funds. District court affirmed that Congress holds significant foreign affairs authority and the exclusive Article I power of the purse , and that the Executive must execute appropriations as enacted.

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March 2025	<p><u>Preliminary injunction</u> granted, requiring the Government to make the funds appropriated by Congress available for obligation.</p>
March-August 2025	<p>The <u>Administration continues to slow-roll payments and obligations, risking the expiration of funds.</u> When asked by the Court about potential pocket rescissions,¹ the Administration assured the court it would not pursue such tactics.</p>
August 29, 2025	<p>While the legal battle over the impoundment of foreign aid funds continued to wind through the DC courts, on August 29, the Administration notified Congress of its intent to cancel \$4.9 billion of the expiring funds through a pocket rescission.</p> <p>When the DC Courts granted an injunction that required the Administration to obligate all of the expiring foreign aid funds, the Administration appealed to the Supreme Court.</p>
September 2025	<p><u>On September 26, the Supreme Court partially granted the Administration's request for an emergency stay of the DC Court's injunction.</u></p> <p>By the close of the fiscal year on September 30, \$4.9 billion in Congressionally appropriated aid expired unspent.</p>

What has been lost?

In June, 22 state attorneys general and the Attorney General for the District of Columbia filed an [amicus brief](#) which laid out the massive impacts of foreign aid cuts had across the United States: [tens of thousands](#) of American-based contractor staff furloughed and laid off, American crops valued at [\\$2+ billion annually](#) destined for international food assistance in humanitarian settings sitting unused,² and more than [\\$500 million in cutting-edge research](#) at some of the country's premier public institutions halted due to the withholding of funds.

The Supreme Court's decision giving way to the [\\$4.9 billion pocket rescission](#) included \$3.2 billion in "development assistance" funding that supported American-run schools and hospitals abroad as well as food security programs; \$900 million for the United Nations; and \$393 million for international peacekeeping missions.

¹ Last-minute rescission requests designed to let funds lapse.

² For example, as of February 2025, Pawnee County Co-Op in Larned, Kansas, was sitting on nearly \$5,000,000 worth of grain sorghum with no buyers. ([NPR](#))

What can Congress do?

The administration's actions undercut Congress' Article I spending powers, as well as previous [GAO decisions](#) which held that withholding funds for policy reasons violates the ICA. This precedent could embolden future administrations to impose programmatic priorities by withholding funds, leading to abuse of conditional funding mechanisms.

These Congressional actions can strengthen Appropriations law and Article I spending powers:

- 1. Restore Congressional budget authority.**

ASK: Impose automatic release mechanisms for unlawful withholdings. Congress could require that any funds withheld without statutory justification **automatically become available** for obligation after a set number of days (e.g., 15 or 30), unless Congress affirmatively acts to rescind them.

ASK: Require that OMB release funding at least 90 days before it expires. This would prevent “run-out-the-clock” pocket rescissions and force prompt compliance with legislative intent.

- 2. Strengthen GAO's enforcement powers.** GAO currently issues opinions but cannot compel executive compliance.

ASK: Increase staffing and analytical support for the **GAO and Congressional Budget Office** to track impoundments.

- 3. Clarify judicial review and legal standing under the ICA.**

ASK: Congress could explicitly grant **standing to affected entities**—state governments, contractors, grantees—to seek injunctive relief when the executive branch unlawfully withholds Congressionally appropriated funds. This can be done either by amending the ICA, or by clarifying that the Comptroller General's authority to bring litigation does not preclude other parties' efforts to enforce the statute.



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Frequently Asked Questions

Q: What is a "pocket rescission"?

A pocket rescission is a tactic where the executive branch delays implementing Congressionally appropriated funds until they reach their expiration date, then submits a rescission request to Congress at the last minute—too late for Congress to take action. This allows the executive to effectively cancel spending without Congressional approval, circumventing the ICA.

Q: How does this differ from normal rescission authority?

Under the ICA, the President can propose rescissions, but Congress must approve them within 45 days. During that time, the President must continue to make the funds available for obligation. A pocket rescission exploits timing: by waiting until funds are about to expire and then requesting rescission, the executive ensures funds lapse before Congress can act, effectively nullifying Congressional appropriations.

Q: Has any administration done this before?

No. The ICA was enacted in 1974 specifically to prevent such executive overreach after President Nixon impounded funds appropriated by Congress. For 50 years, administrations have followed the ICA's procedures. This is the first time since the ICA's enactment that an administration has successfully circumvented Congressional appropriations on this scale through pocket rescissions.

Q: What makes the Supreme Court's decision unprecedented?

The Supreme Court's emergency stay effectively blessed the pocket rescission tactic despite multiple lower court findings that it violated the Administrative Procedure Act and the ICA. By allowing \$4.9 billion in appropriated funds to expire while the legal challenge was still pending, the Court created a precedent that gives future Presidents broad discretion to refuse to spend Congressionally appropriated funds, fundamentally undermining the separation of powers.

Q: Can this tactic be used on domestic spending?

Yes. The Supreme Court's decision creates a precedent that could apply to *any* Congressional appropriation. While the immediate impact was on foreign assistance, the legal reasoning would allow future administrations to apply the same tactic to domestic programs—from infrastructure to education to veterans' benefits. Any appropriation with an expiration date is now vulnerable to executive defiance through pocket rescissions.

Expanded Details on the 2025 Court Decisions

Background

For more than six decades, Congress has appropriated billions annually for U.S. foreign assistance, funding lifesaving health care, humanitarian relief, education, democracy, and development programs. These funds, programmed primarily through USAID and the Department of State, have long reflected bipartisan support for foreign aid and the Constitutional provision that Congress—not the Executive—determines whether or not public funds are spent.

To preserve this balance, Congress enacted the ICA of 1974, which prohibits the Executive Branch from withholding or delaying spending of appropriated funds without Congressional approval. The ICA ensures that the President must “faithfully execute” Congress’s funding decisions, consistent with the Constitution’s separation of powers.

Legal Challenge and Judicial Findings

In February 2025, two coalitions³ filed suit against the President, the Secretary of State, and the OMB Director, arguing that the executive order, *“Reevaluating and Realigning United States Foreign Aid,”* violated the Administrative Procedure Act, the Take Care Clause, and the ICA.

Federal courts quickly intervened. A district judge issued a temporary restraining order prohibiting the administration from withholding or canceling obligated funds. The court affirmed that Congress holds significant foreign affairs authority and the exclusive Article I power of the purse, and that the Executive must execute appropriations as enacted:

“The provision and administration of foreign aid has been a joint enterprise between our two political branches. That partnership is built not out of convenience, but of constitutional necessity. It reflects Congress and the Executive’s “firmly established,” shared constitutional responsibilities over foreign policy...and it reflects the division of authorities dictated by the Constitution as it relates to the appropriation of funds and executing on those appropriations.”⁴

“The Executive has unilaterally deemed that funds Congress appropriated for foreign aid will not be spent. That action usurps Congress’s exclusive authority to decide whether those funds should be spent in the first place.”⁵

³ [AIDS Vaccine Advocacy Coalition v. Department of State](#) and [Global Health Council v. Trump](#).

⁴ <https://thehill.com/regulation/court-battles/5187212-judge-orders-release-certain-owed-foreign-aid-payments/>

⁵ AIDS Vaccine Advocacy Coalition v. United States Department of State, No. 1:25-cv-00400 (D.D.C. Feb. 10, 2025) (available at <https://caselaw.findlaw.com/court/us-dis-crt-dis-col/117038725.html>)

Despite these rulings, the Administration proceeded to terminate [roughly 9,900 of 13,100 USAID and State Department awards](#) and delayed payments for completed work, prompting further court orders requiring immediate disbursement.

Continuing Impoundment and “Pocket Rescissions”

Even after the March 2025 preliminary injunction, the Administration continued to slow-roll payments and prohibit new obligations, even for activities the Administration had nominally authorized to proceed, risking the expiration of funds. When questioned by the court about potential “pocket rescissions,” last-minute rescission requests designed to let funds lapse, the Administration assured the court it would not pursue such tactics. The judge explicitly cautioned the government against such strategic gamesmanship.

“It would be quite a thing, for Defendants to make the above, reiterated representations—that they understand they must, they can, they will, and they do have a plan to obligate the funds—as merely a smokescreen to buy time for a pocket rescission that, aside from any statutory question, would circumvent precisely what they are representing to the courts that they are prepared to do.”⁶

However, on August 29, the government filed with Congress the very pocket rescission they had previously denied having planned. In September, after the DC District Court issued an injunction requiring the Administration to obligate the appropriated funds and the DC Circuit Court of Appeals, the Administration filed an emergency request for a stay with the Supreme Court. In a brief opinion, the Supreme Court majority granted a stay of the injunction with respect to the \$4.9 billion in funds subject to the Administration’s pocket rescission. Four days later, \$4.9 billion in Congressionally appropriated aid expired unspent.

The Supreme Court’s emergency docket decision applied to \$4.9 billion in foreign aid funding covered by the Administration’s pocket rescission request; it included \$3.2 billion in development assistance funding, \$900 million for United Nations contributions and \$393 million for international peacekeeping missions. Above and beyond the funding lost, the Supreme Court’s decision would appear to grant huge discretion to future Administrations to essentially refuse to spend any funding related to the conduct of foreign policy—and perhaps any funding at all—so long as the President lets Congress know that he intends to do so. It is a clear upending of Congress’ appropriations authority as set forth in the Constitution—and it will further the irreparable financial and human toll the dismantling of USAID has wrought on USAID’s partners and beneficiaries.

⁶ Dept. of State v. AIDS Vaccine Advocacy Coalition, Appendix (Mar. 10, 2025), Docket No. 25A269, pg. 6, available at supremecourt.gov/DocketPDF/25/25A269/373945/20250908080917381_GHC_Appendix_9.8_Final.pdf