

Conservative Justices Have Rejected an Inherent Presidential Impoundment Power

Russ Vought, the nominee to lead the Office of Management and Budget, has repeatedly claimed that the president has the power to refuse to spend money Congress has appropriated.

Even conservative Supreme Court justices with a broad view of presidential power—like Justices Scalia, Rehnquist, and Kavanaugh—have all agreed that the president does not have inherent authority to impound funds, but rather must be granted authority from Congress to spend less or rescind funds.

Justice Scalia wrote in [Clinton v. City of New York](#): “President Nixon, the Mahatma Gandhi of all impounders, asserted at a press conference in 1973 that his “constitutional right” to impound appropriated funds was ‘absolutely clear.’ . . . Our decision two years later in *Train v. City of New York*, 420 U. S. 35 (1975), proved him wrong. . . .”

Justice Rehnquist wrote a [memorandum](#) as head of the Justice Department’s Office of Legal Counsel concluding that “[w]ith respect to the suggestion that the President has a constitutional power to decline to spend appropriated funds, we must conclude that existence of such a broad power is supported by neither reason nor precedent.”

Justice Kavanaugh, in a 2013 [case](#) before the D.C. Circuit Court of Appeals, recognized that “a President sometimes has policy reasons (as distinct from constitutional reasons. . .) for wanting to spend less than the full amount appropriated by Congress for a particular project or program. But in those circumstances, even the President does not have unilateral authority to refuse to spend the funds. Instead, the President must propose the rescission of funds, and Congress then may decide whether to approve a rescission bill.”

Just as these Justices rejected the notion of an inherent presidential impoundment power, the Supreme Court recently affirmed Congress’s power—namely that the legislature’s power of the purse has long included the power to require the executive to spend a particular amount of money.

Justice Thomas, in [the 2024 CFPB case](#), explained that “early legislative bodies exercised a wide range of discretion. Some appropriations required expenditure of a particular amount, while others allowed the recipient of the appropriated money to spend up to a cap.”

Congress’s power to require the president to spend a particular sum, in short, has deep roots in our nation’s history.