

Ten Historical Examples Undermining Russ Vought's Claim That Presidents Have a Constitutional Impoundment Power

Russ Vought, the nominee to lead the Office of Management and Budget (OMB), has repeatedly claimed that presidents have exercised this power to impound funds for 200 years.

The historical record is full of examples that undermine this broad claim of executive authority. Below are ten such examples illustrating that: (1) in many instances where presidents spent less than the full amount appropriated, Congress had actually granted statutory discretion to spend less; (2) in several instances, Congress expressly directed the president to impound funds; and (3) in some instances when the executive branch has actually impounded funds in defiance of Congress, courts have acted to check that abuse of authority as unconstitutional.

Congressional Grants of Statutory Discretion to Spend Less

1. In 1803, Congress [authorized](#) President Jefferson to construct "a number not exceeding fifteen gun boats" using a "sum not exceeding fifty thousand dollars." Jefferson chose not to spend that money—as the law Congress passed allowed him to do.
2. In 1809, Congress [authorized](#) President Madison to employ additional gunboat crews and appropriated "a sum not exceeding four hundreds thousand dollars" for this purpose. Madison ultimately decided to reduce the number of gunboat crews and saved some of the money Congress appropriated—actions both expressly permitted by the law.
3. In 1941, Congress [appropriated](#) a total of \$246 million for the Civilian Conservation Corps, but provided that no more than \$1,000 could be spent on each enrollee in the Corps. That year, there were about [148,000 enrollees](#). So the Roosevelt administration spent about \$150 million and withheld about \$95 million—as the law required.

Congressional Direction to the President to Impound

4. In 1939, Congress [passed](#) the Reorganization Act to "reduce expenditures to the fullest extent consistent with the efficient operation of the Government" and [provided](#) that "appropriations unexpended by reason of the operation of this title shall not be used for any purpose, but shall be impounded and returned to the Treasury."
5. In 1946, Congress [appropriated](#) funds for constructing a dam, but provided that none of the funds could be spent until the Secretary of War received certain reports on the costs of the project. President Truman thus [withheld](#) the money in accordance with Congress's command—and released it, per the law, only after the secretary received and submitted the relevant reports to Congress.

6. In 1950, during the Korean War, Congress [passed a law](#) directing President Truman to "reduce[] in the amount of not less than \$550,000,000" appropriations and contract authorization for programs that were not essential to the war effort.

Judicial Intervention to Block Impoundments

7. In 1838, the Supreme Court held that the postmaster general did not have the power to withhold money Congress required him to spend. When the attorney general asserted that the Constitution gave the president that power, the Supreme Court roundly rejected the argument: "To contend that the obligation imposed on the President to see the laws faithfully executed, implies a power to forbid their execution, is a novel construction of the constitution, and entirely inadmissible." *Kendall v. United States ex rel. Stokes*, [37 U.S. 524](#), 612-13 (1838).
8. In 1973, Community Mental Health Centers won a court order requiring the Nixon administration to spend about \$50 million in grants for health centers that Nixon's health department impounded. The court held that "there is no basis for defendants' assertion of inherent constitutional power in the Executive to decline to spend [those funds] in the face of a clear statutory intent and directive to do so. . . . The defendants have no residual constitutional authority to refuse to spend the money." *Nat'l Council of Cmty. Mental Health Ctrs. v. Weinberger*, [361 F. Supp. 897](#), 901, 903 (D.D.C. 1973).
9. In 1973, after the Nixon administration impounded millions in education funds, a federal court in Louisiana held: "[T]his Court is decidedly unable to accept defendants' position that, regardless of the clear intent of Congress as expressed in the wording of a statute, the executive may exercise his broad powers pursuant to Article II of the Constitution. . . even where this means refusal to comply with the terms of a statute." *Louisiana v. Weinberger*, [369 F. Supp. 856](#), 864 (E.D. La. 1973).
10. In 1975, a D.C. federal court in D.C. ruled that the Nixon administration had no power to withhold federal highway funding from states seeking their share of grants. It held that "the President's veto power under Article I, section 7 of the Constitution certainly could have been utilized to prohibit" the spending, and flatly rejected the "argument. . . that the President's express or implied constitutional powers justify holding back authorized funds." *Louisiana ex rel. Guste v. Brinegar*, [388 F. Supp. 1319](#), 1324-25 (D.D.C. 1975).