

WHAT IS CONGRESS'S POWER OF THE PURSE?

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What is Congress's power of the purse, and what does it mean for constitutional self-government today?

In principle, Congress's control over spending and taxing was a fundamental bulwark against executive overreach. On this point, James Madison did not mince words: "This power over the purse," he wrote in *Federalist 58*, "may in fact be regarded as the most complete and effectual weapon with which any constitution can arm the immediate representatives of the people, for obtaining a redress of every grievance, and for carrying into effect every just and salutary measure."² English history had shown it to be the legislature's "powerful instrument" for resisting "all the overgrown prerogatives of the other branches of the government."³

And in practice, Congress's power to fund agencies, or to deny them funding, long served—or at least was thought to serve—as a key legislative tool for constraining or influencing the administrative state.⁴

Yet all of this has been strangely absent from the field of Administrative Law, at least in terms of legal doctrines for judicial review of agency action. As Prof. Metzger keenly observed just a few years ago, "despite their importance, appropriations are marginalized in

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2. FEDERALIST NO. 58 (Madison).

3. *Id.*

4. See, e.g., Arthur W. Macmahon, *Congressional Oversight of Administration: The Power of the Purse—II*, 58 POLI. SCI. Q. 380 (1943); S. COMM. ON GOV'T OPS., 95TH CONG., STUDY ON FEDERAL REGULATION 18-43 (1977); JOSH CHAFETZ, CONGRESS'S CONSTITUTION 45-77 (2017).

public law doctrine," especially in "constitutional and administrative law doctrines, where appropriations are often ignored or given little weight."⁵

But recent political disputes and judicial decisions have placed the purse front and center. From the Consumer Financial Protection Bureau's astonishing power to fund itself out of the Federal Reserve,⁶ to President Biden's waivers of student loans,⁷ to President Trump's attempts to unilaterally redirect funding for his border wall,⁸ to the new Trump Administration's sweeping efforts to defund federal agencies and programs,⁹ the Constitution's fiscal powers are suddenly a central issue in constitutional law. And the Supreme Court recently turned back a nondelegation challenge to the Federal Communications Commission's power to impose "user fees" to fund its Universal Service Fund.¹⁰ By the time this symposium issue is published, there may be litigation over the meaning—or even constitutionality—of the Congressional Budget and Impoundment Control Act of 1974.¹¹

In short, as Alissa Ardito observes in this symposium, "appropriations law, tranquil for two centuries, now enjoys the spotlight."¹² Recent years have seen several significant new articles on Congress's power of the purse.¹³ This symposium is intended to

5. Gillian E. Metzger, *Taking Appropriations Seriously*, 121 COLUM. L. REV. 1075, 1103 (2021).

6. CFPB v. Cmty. Fin. Servs. Ass'n of Am., 144 S. Ct. 1474 (2024).

7. Biden v. Nebraska, 143 S. Ct. 2355 (2023).

8. California v. Trump, 963 F.3d 926 (9th Cir. 2020), *vacated and remanded*, Biden v. Sierra Club, 142 S. Ct. 46 (2021).

9. See, e.g., John Does 1–26 v. Musk, 2025 WL 840574 (D. Md. Mar. 18, 2025) (granting preliminary injunction); New Mexico v. Musk, 2025 WL 520583 (D.D.C. Feb. 18, 2025) (denying TRO).

10. FCC v. Consumers' Rsch., 145 S. Ct. 2482 (2025).

11. Pub. L. 93-344, 88 Stat. 297 (July 12, 1974), *codified at* 2 U.S.C. §§ 681 *et seq.*

12. Alissa Ardito Ashcroft, *What is the Power of the Purse in Constitutional Government?*, 48 HARV. J.L. PUB. POL'Y 853, 866 (2026).

13. See, e.g., Christine Kexel Chabot, *The Founders' Purse*, 110 VA. L. REV. 1027 (2024); Gillian E. Metzger, *Taking Appropriations Seriously*, 121 COLUM. L. REV. 1075 (2021); Matthew B. Lawrence, *Disappropriation*, 120 COLUM. L. REV. 1 (2020); Matthew B. Lawrence, *Congress's Domain: Appropriations, Time, and Chevron*, 70 DUKE L.J. 1057 (2021); Eloise Pasachoff, *Modernizing the Power of the Purse Statutes*, 92 GEO. WASH. L. REV. 359

continue that conversation, and to expand it, with essays looking back into constitutional text and history, and peering over the horizon to the next era of constitutional and administrative litigation.

First, Professor Chabot reflects on the Supreme Court's decision in the recent CFPB funding case, considering "how broader questions about the spending power and future separation of powers challenges might fare under a textualist analysis of the Constitution."¹⁴ Building on her landmark study of the founders' view of the power of the purse,¹⁵ she reflects on Justice Thomas's opinion for the Court, and Justices Alito's and Jackson's dissenting and concurring opinions. She grapples with a fundamental challenge of constitutional originalism and textualism: namely, how should the Constitution's words be understood in light of the historical context that originally surrounded them, and the philosophical principles that undergirds them? "The spending power," she writes, "illustrates the value of an interpretive framework allowing the consideration of contextual evidence."¹⁶ And this may become only more important in the years ahead, as the Court grapples with questions about whether Congress has unconstitutionally delegated its power of the purse to agencies such as the Federal Communications Commission.¹⁷

Next, Alissa Ardito looks further back, before the Constitution itself, for the republican origins of our Constitution's power of the purse. From the Roman Senate to the English Civil War, she explores "the intellectual history of the power of the purse," and the prospects for future debates over the budget process¹⁸ One can

(2024); Matthew B. Lawrence, Eloise Pasachoff & Zachary S. Price, *Appropriations Presidentialism*, 114 GEO. L.J. ONLINE (2025), https://www.law.georgetown.edu/georgetown-law-journal/wp-content/uploads/sites/26/2025/08/appropriations_presidentialism.pdf

[<https://perma.cc/GZZ2-TB64>]. See also PHILIP HAMBURGER, PURCHASING SUBMISSION: CONDITIONS, POWER, AND FREEDOM (2021).

14. Christine Kexel Chabot, *The Power of the Purse and the Constitution's Missing Text*, 48 HARV. J.L. PUB. POL'Y 817, 818 (2026).

15. Chabot, *supra* note 13.

16. Chabot, *supra* note 14, at 822

17. *Id.* at 829–31.

18. Ardito, *supra* note 12, at 855.

scarcely imagine someone better positioned to connect history to practice: after receiving her doctorate in political theory,¹⁹ Ardito served in both the Administrative Conference of the United States and the Congressional Budget Office before moving to her current role in the International Monetary Fund. In her contribution to this symposium, she notes that constitutional debates around the purse are difficult today because they have *always* been difficult. “How public money is spent is a conundrum of constitutional history as well as of civic republican theory and practice,” she writes.²⁰ American’s constitutional texts and traditions arose in reaction to what immediately preceded them: “If eighteenth century Britain witnessed an overweening parliament and the collusion between crown and parliament,” she explains, “the colonial experience was more akin to the preceding history, with colonial legislatures disputing royal governors’ free and easy indulgence in prerogatives that had sunk into desuetude at home.”²¹

Prof. Ronald Cass looks to more recent history: the last few decades of constitutional and administrative law, an area of “restraining power while preserving power.” On the “preserving” side of the ledger, he recounts how the Court has empowered agencies by nullifying the legislative veto and minimizing the nondelegation doctrine, among other things.²² On the “restraining” side, the Court recently ended *Chevron* deference and preserved congressional subpoena power.²³ But, Prof. Cass candidly admits, “[e]nhancements on the ‘defense’ side—giving more power to Congress to control administrators—generates a much smaller list.”²⁴ The net result, he warns, is cause for great concern. “Although the Constitution remains the formal touchstone for American government, many of its protections against concentration of discretionary official power

19. See ALISSA M. ARDITO, *MACHIAVELLI AND THE MODERN STATE* (2015).

20. Ardito, *supra* note 12, at 853.

21. *Id.* at 865.

22. Ronald A. Cass, *The Power of the Purse Untethered, The Administrative State Unchained—Kind Of*, 48 HARV. J.L. PUB. POL’Y 871, 877–83 (2026).

23. *Id.* at 883–87.

24. *Id.* at 883.

have been weakened and some of its structures are listing.” And “while executive power has grown relative to congressional power to restrain it, executive power that is less directly responsive to public influence has risen even more.”²⁵ His conclusion is blunt: “The power of the purse remains as a potent potential source of control, but only if Congress has the will to use it.”²⁶

Professor Elliott raises concerns, too: he worries that the Supreme Court’s approach to the Constitution’s power of the purse suffers from an unduly narrow reading of the text.²⁷ And here he builds on his own earlier writings. “The essential flaw in prevailing separation of powers jurisprudence,” he once wrote, “is that it (mis)understands the task of constitutional interpretation in too literal a way. . . . By enforcing the words of the Constitution too mechanically and uncreatively in ‘formalistic’ decisions, the Court loses sight of, and frequently violates, the true meaning of the Constitution.”²⁸ So too here, in the Court’s reading of the Constitution’s Appropriations Clause: the Founders’ deeper understanding of separated legislative and executive powers, with respect to spending and taxing, “really *are* part of the [Constitution’s] text,” which “enlightened textualists can and should take into account in interpreting the words that were used.”²⁹ Prof. Elliott’s argument echoes Justice Alito’s dissent in the CFPB case: surveying the Founding era debates and the history preceding them, Justice Alito concluded that the Court’s interpretation of the constitutional text “is not what the Appropriations Clause was understood to mean when it was adopted.”³⁰

To be sure, Americans have debated the Constitution’s power of the purse from nearly the start. The Supreme Court’s first

25. *Id.* at 893.

26. *Id.*

27. See generally E. Donald Elliott, *Monomaniacal Textualism Undermined Congress’s Power of the Purse*, 48 HARV. J.L. PUB. POL’Y 833 (2026).

28. E. Donald Elliott, *Why Our Separation of Powers Jurisprudence Is So Abysmal*, 57 GEO. WASH. L. REV. 506, 508–09 (1989).

29. Elliott, *supra* note 27, at 838 (emphasis in original).

30. CFPB v. Cmty. Fin. Servs. Ass’n of Am., 144 S. Ct. 1474, 601 U.S. at 1493–94 (Alito, J., dissenting).

nondelegation case centered around tariff laws—had Congress unconstitutionally delegated that power to the president?³¹ And for decade after decade, judges and scholars have debated how to draw lines between legislative and executive powers on spending, often worrying that presidents were overpowering congresses.³²

The goal of this symposium is to stand on the shoulders of those thoughtful scholars, so that we might see still further ahead. Perhaps these essays help to stir more research and discussion. The C. Boyden Gray Center for the Study of the Administrative State is grateful to the authors for writing these essays, and to the *Harvard Journal of Law & Public Policy* for publishing them.

31. *No*, the Court concluded, in *The Cargo of the Brig Aurora v. United States*, 11 U.S. (7 Cranch) 382 (1813). See also Jennifer Mascott, *Early Customs Laws and Delegation*, 87 GEO. WASH. L. REV. 1388 (2019).

32. See, e.g., *Clinton v. City of New York*, 524 U.S. 417 (1998) (on the “line-item veto”); LUCIUS WILMERDING, JR., *THE SPENDING POWER* (1943); RICHARD F. FENNO, *THE POWER OF THE PURSE* (1966); LOUIS FISHER, *PRESIDENTIAL SPENDING POWER* (1975); JOHN MARINI, *THE POLITICS OF BUDGET CONTROL: CONGRESS, THE PRESIDENCY, AND THE GROWTH OF THE ADMINISTRATIVE STATE* (1992); Kate Stith, *Congress' Power of the Purse*, 97 YALE L.J. 1343 (1988); J. Gregory Sidak, *The President's Power of the Purse*, 1989 DUKE L.J. 1162; PHILIP A. WALLACH, *WHY CONGRESS* 172 – 74 (2023).