

No. 25A269

In the Supreme Court of the United States

DEPARTMENT OF STATE, ET AL., APPLICANTS

v.

AIDS VACCINE ADVOCACY COALITION, ET AL.

On Application for Stay of the Order of the
United States District Court for the District of Columbia

**BRIEF OF REPRESENTATIVE ROSA L. DELAURO AS *AMICUS CURIAE*
IN OPPOSITION TO APPLICATION FOR PARTIAL STAY OF THE
INJUNCTION ISSUED BY THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF COLUMBIA**

CHRISTINA L. WENTWORTH
Counsel of Record
DONALD K. SHERMAN
CITIZENS FOR RESPONSIBILITY
AND ETHICS IN WASHINGTON
P.O. Box 14596
Washington, D.C. 20044
(202) 408-5565
cwentworth@citizensforethics.org

Counsel for Amicus Curiae

TABLE OF CONTENTS

Table of Contents	i
Table of Authorities	ii
Statement of Interest.....	1
Introduction and Summary of Argument	2
Argument	4
I. Congress passed the ICA to protect its power of the purse.....	4
II. The ICA does not permit the President to withhold funds through their date of expiration.....	8
III. Withholding funds through their date of expiration constitutes an unconstitutional line item veto.....	12
IV. The district court's injunction does not conflict with the President's limited authority to withhold funds under the ICA.....	14
Conclusion.....	15

TABLE OF AUTHORITIES

Cases

<i>City of New Haven v. United States</i> , 809 F.2d 900 (D.C. Cir. 1987)	6, 7, 11
<i>Clinton v. New York</i> , 524 U.S. 417 (1998).	13
<i>Harrington v. Bush</i> , 553 F.2d 190 (D.C. Cir. 1977)	4
<i>Train v. City of New York</i> , 420 U.S. 35 (1975)	5
<i>United States v. MacCollom</i> , 426 U.S. 317 (1976)	4

Statutes

2 U.S.C. § 681	6, 8
2 U.S.C. § 682	6, 7, 12
2 U.S.C. § 683	6, 7, 8, 10, 14
2 U.S.C. § 684	6, 7
2 U.S.C. § 685	6
2 U.S.C. § 686	6, 9
2 U.S.C. § 687	6
2 U.S.C. § 688	6, 7
31 U.S.C. § 1301(a)	5
31 U.S.C. § 1341	5
31 U.S.C. § 1342	5
31 U.S.C. § 1349	5
31 U.S.C. § 1350	5
31 U.S.C. § 1512	5
31 U.S.C. § 1513	5
31 U.S.C. § 1517	5
31 U.S.C. § 1518	5
31 U.S.C. § 1519	5

31 U.S.C. § 1532.....	5
31 U.S.C. § 3302(b)	5
31 U.S.C. § 3529.....	9
31 U.S.C. § 712(1)	9
31 U.S.C. § 717(b)	9
Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987, Pub. L. No. 100–119, 101 Stat. 754 (1987)	7
Further Consolidated Appropriations Act, 2024, Pub. L. No. 118-47, 138 Stat. 460 (2024)	5
Impoundment Control Act, Pub. L. No. 93-344, tit. X, 88 Stat. 297 (1974)	11
Other Authorities	
<i>Appropriations Law, Gov’t Accountability Off.</i> , https://www.gao.gov/legal/appropriations-law	9
Cerin Lindgrensavage and William Ford, <i>Past Pocket Rescissions Are Not Precedents for Power Vought Claims</i> , Lawfare (Aug. 15, 2025).....	12
Gov’t Accountability Off., B-241514.5 (May 7, 1991)	7
Gov’t Accountability Off., B-330045, Impoundment Control Act of 1974: Review of the President’s Special Message of May 8, 2018 (May 22, 2018).....	8
Gov’t Accountability Off., B-330330, Impoundment Control Act—Withholding of Funds through Their Date of Expiration (Dec. 10, 2018)	7, 9, 10, 11, 14
Gov’t Accountability Off., B-337137, U.S. Department of Transportation, Federal Highway Administration—Application of the Impoundment Control Act to Memorandum Suspending Approval of State Electric Vehicle Infrastructure Deployment Plans (May 22, 2025)	8
Gov’t Accountability Off., GAO-04-261SP, Principles of Federal Appropriations Law (3d ed. 2004).....	9
Gov’t Accountability Off., GAO-05-734SP, A Glossary of Terms Used in the Federal Budget Process (Sept. 2005).....	12
Gov’t Accountability Off., GAO-10-320T, Impoundment Control Act: Use and Impact of Rescission Procedures (Dec. 16, 2009)	7

Kate Stith, <i>Congress’ Power of the Purse</i> , 97 Yale L.J. 1343 (1988)	4
Off. Mgmt. & Budget, Exec. Off. of the President, OMB Approved Apportionment – FY 2025, Department of State, International Assistance Programs (Aug. 29, 2025)	8
<i>Senator Collins’ Statement on OMB’s Rescissions Proposal</i> , U.S. Sen. Comm. on Appropriations (Aug. 29, 2025)	4
The Federalist No. 58 (James Madison)	4
Constitutional Provisions	
U.S. Const. art. I, § 8, cl. 1.....	4
U.S. Const. art. I, § 8, cl. 18.....	4
U.S. Const. art. I, § 8, cl. 2.....	4
U.S. Const. art. I, § 8, cl. 5.....	4
U.S. Const. art. I, § 9, cl. 7.....	4
Congressional Materials	
171 Cong. Rec. H3715 (daily ed. Aug. 29, 2025)	8
171 Cong. Rec. S6401 (daily ed. Sept. 8, 2025)	8
H.R. Rep. No. 93-658 (1973)	5, 11
S. Conf. Rep. 93-924 (1974)	6
S. Rep. No. 93-688 (1974)	5, 6

STATEMENT OF INTEREST

*Amicus curiae*¹ Rosa L. DeLauro represents Connecticut's Third Congressional District in the United States House of Representatives. Representative DeLauro has served in the House of Representatives for 34 years and is the former chair and current ranking member of the House Committee on Appropriations. Representative DeLauro seeks to assist the Court in assessing the government's application for a partial stay by explaining, from the unique perspective of a leader of the Appropriations Committee with responsibility for overseeing appropriations legislation and evaluating the President's rescission proposals under the Impoundment Control Act of 1974 (ICA), why the ICA does not permit the President to withhold funds through their date of expiration.

¹ *Amicus curiae* states that no party's counsel authored this brief in whole or in part and that no one other than the amicus curiae or their counsel contributed money that was intended to fund preparing or submitting the brief.

INTRODUCTION AND SUMMARY OF ARGUMENT

Article I of the Constitution assigns to Congress the power of the purse. In furtherance of this important constitutional responsibility, each fiscal year Congress appropriates trillions of dollars for government activities. The multi-month process of developing bipartisan, bicameral appropriations legislation requires Congress to closely analyze the President's annual budget request, review executive branch agencies' detailed budget justifications, and draft, mark up, and compile written reports on regular appropriations bills. Following months of extensive interbranch coordination and demanding negotiations, it is ultimately Congress's duty to pass legislation that balances Congress's responsibility to the American people with the need for responsible fiscal management.

As part of this process, Congress often passes fixed-period appropriations, which have a limited period of availability and, thus, remain available for obligation for only a certain period of time. Such limits establish both tighter congressional control over an agency's appropriation and a direction to the agency to fulfill the purpose of the appropriation within the established time period.

In direct contrast to Congress's intent and the plain statutory text of these fixed-period appropriations, in its application for a partial stay the government sets forth the extraordinary argument that the ICA gives Presidents the authority to withhold time-limited funds through their date of expiration (i.e., when they can no longer be used), effectively rescinding those amounts without congressional approval. This suggestion—that the government can use congressionally imposed time limits

as a sword to unilaterally amend laws making appropriations under the ICA—defies the plain text of the ICA and purports to give Presidents the same line item veto power the Supreme Court definitively rejected as unconstitutional more than 25 years ago.

Because the President’s limited authority to temporarily withhold funds proposed for rescission under the ICA does not permit the President to withhold those funds through their date of expiration without action from Congress, the district court’s injunction imposes no greater burden on the government than already exists under that law. The stakes for Congress and the public, however, are high. The fiscal year ends on September 30, less than three weeks from today. Congress is actively negotiating annual appropriations acts for the upcoming fiscal year, and earlier this week the House of Representatives agreed to the motion, offered by the chairman of the House Appropriations Committee, to proceed to conference on three regular appropriations acts. These ongoing negotiations require stability and predictability in the executive branch’s execution of laws making appropriations. Affording any credibility to the government’s argument that the President can unilaterally rescind appropriations without congressional approval—an argument already soundly rejected by the Chair of the Senate Committee on Appropriations—threatens to disrupt this process. *Senator Collins’ Statement on OMB’s Rescissions Proposal*, U.S.

Sen. Comm. on Appropriations (Aug. 29, 2025) (stating that “[a]ny effort to rescind appropriated funds without congressional approval is a clear violation of the law”).²

The Court should deny the government’s application for a partial stay.

ARGUMENT

I. Congress passed the ICA to protect its power of the purse.

Article I of the Constitution assigns to Congress the power of the purse. U.S. Const. art. I, § 9, cl. 7 (Appropriations Clause); *id.* § 8, cl. 18 (Necessary and Proper Clause); *United States v. MacCollom*, 426 U.S. 317, 321 (1976); Kate Stith, *Congress’ Power of the Purse*, 97 Yale L.J. 1343, 1350 (1988) (“The requirement of legislative control over federal funds is a source of congressional authority over the operating arm of the federal government.”). *Cf. also* U.S. Const. art. I, § 8, cls. 1, 2, 5. This exclusive power, which checks “all the overgrown prerogatives of the other branches of the government,” serves “as the most complete and effectual weapon with which any constitution can arm the immediate representatives of the people.” The Federalist No. 58 (James Madison).

Since the founding, Congress has exercised this power of the purse by passing both laws making appropriations and myriad statutes that govern the executive branch’s use of those funds. *See Harrington v. Bush*, 553 F.2d 190, 194 (D.C. Cir. 1977) (explaining that “Congress has plenary power to give meaning to” the appropriations clause). Such laws include permanent, government-wide restrictions

² <https://www.appropriations.senate.gov/news/majority/senator-collins-statement-on-ombs-rescissions-proposal>.

on the use of funds, such as the Purpose Statute, 31 U.S.C. § 1301(a), Miscellaneous Receipts Act, 31 U.S.C. § 3302(b), or Transfer Statute, 31 U.S.C. § 1532, annual governmentwide restrictions on the use of funds, *see generally, e.g.*, Further Consolidated Appropriations Act, 2024, Pub. L. No. 118-47, div. B, tit. VII, 138 Stat. 460, 572 (2024), and time, purpose, or amount limitations on appropriated funds, *see, e.g., id.* div. F, tit. II, 138 Stat. at 742; *id.* div. F, tit. VII, § 7019, 138 Stat. at 771. To give additional force to these restrictions and to laws making appropriations, Congress also passed the Antideficiency Act, which explicitly prohibits the government from spending more than Congress appropriates and provides administrative discipline and potential criminal penalties for violations of the Act. 31 U.S.C. §§ 1341–42, 1349–50; *see also* §§ 1512–13, 1517–19.

In its application for a partial stay, the government relies on another fiscal law that Congress passed in furtherance of its constitutional responsibilities: the Impoundment Control Act of 1974. In the 1970s, President Nixon launched an “unprecedented impoundment,” “creat[ing] chaos in the operations of State and local governments.” *See, e.g.*, H.R. Rep. No. 93-658 (1973); *Train v. City of New York*, 420 U.S. 35, 41 (1975). Congress, at risk “of losing effective control of the purse,” sought to reassert and to reject the executive’s encroachment on its role. H.R. Rep. No. 93-658 (1973). As a congressional committee explained: “[T]here is no authority either in Article II of the Constitution or in the case law, for the [government’s] position that [the President] may achieve [control of federal spending] by refusing to comply with the terms of a statute.” S. Rep. No. 93-688 (1974) (citation omitted).

Congress thus passed the ICA, a law designed to affirm congressional control over unlawful executive branch impoundments. *See* S. Conf. Rep. 93-924 (1974); *City of New Haven v. United States*, 809 F.2d 900, 907 (D.C. Cir. 1987) (explaining that “the ‘*raison d’être*’ of the entire legislative effort was to assert *control* over presidential impoundments”). In this law, Congress affirmed its authority over federal spending by providing for itself the principal role of determining whether to approve funding changes proposed by the President. The ICA gave the President strictly circumscribed authority to temporarily withhold amounts after following either of two “special message” procedures, established procedures to permit expedited congressional consideration of a President’s proposal to rescind funds, provided the Comptroller General authority to sue for noncompliance with the Act, reserved the right for other parties to bring suits to contest unlawful withholdings, and confirmed the underlying constitutional principle that the President may not unilaterally impound taxpayer money appropriated by Congress. 2 U.S.C. §§ 681–88.³

Beginning with the “deferral” special message procedure under the ICA, if a President wishes to temporarily withhold or delay the obligation or expenditure of budget authority, then the President must send a special message to the House of Representatives and the Senate proposing to defer those amounts. 2 U.S.C. §§ 682, 684. However, a President may defer budget authority in only three narrow circumstances: “to provide for contingencies,” “to achieve savings made possible

³ *See also* S. Rep. 93-688 (1974) (“The authority of the Comptroller General is not intended to infringe upon the right of any Members of Congress, or any other party, to initiate litigation.”).

by . . . changes in requirements or greater efficiency of operations,” or “as specifically provided by law.” *Id.* § 684(b). Critically, the ICA is express that a President may not defer budget authority for any other reason, including policy reasons,⁴ may not propose a deferral beyond the end of the fiscal year, and must release withheld amounts in time to be prudently obligated before the appropriation expires. *Id.* § 684(a)–(b); Gov’t Accountability Off., GAO-10-320T, Impoundment Control Act: Use and Impact of Rescission Procedures at 2 (Dec. 16, 2009); Gov’t Accountability Off., B-241514.5 (May 7, 1991).

Additionally, if a President wishes to permanently cancel budget authority, then the President must send a special message to both Houses of Congress proposing a “rescission” under the ICA. 2 U.S.C. §§ 682, 683. A President may propose a rescission for any reason, including policy reasons, and after the President sends the proposal to Congress the President generally may withhold the funds for up to 45 calendar days of continuous congressional session while Congress considers whether to pass a rescission bill under expedited procedures.⁵ 2 U.S.C. §§ 683(b), 688.

⁴ See *City of New Haven*, 809 F.2d at 909 (invalidating the deferral provision because the Supreme Court’s decision in *Immigr. Naturalization Serv. v. Chadha*, 462 U.S. 919, 923 (1983), effectively transformed that provision “into a license to impound funds for policy reasons,” contrary to Congress’s will in passing the ICA); see also Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987, Pub. L. No. 100–119, tit. II, § 206(a), 101 Stat. 754, 785 (1987) (amending ICA to prohibit policy deferrals).

⁵ There are two exceptions to this 45-day withholding period. As explained in greater detail in Part II, *infra*, if a president transmits a special message proposing to rescind funds that are available for a fixed time period, and the 45-day withholding period approaches or spans the expiration date for those funds, the president must release the funds in time for the agency to prudently obligate them. Gov’t Accountability Off., B-330330, Impoundment Control Act—Withholding of Funds

But if Congress has not passed such a bill by the end of the 45-day period, the funds “shall be made available for obligation” and the President may not propose those funds for rescission again. *Id.* § 683(b) (“Requirement to make available for obligation”).

II. The ICA does not permit the President to withhold funds through their date of expiration.

The President has transmitted to the House of Representatives and the Senate a special message proposing to rescind \$4.9 billion in foreign assistance funding. 171 Cong. Rec. H3715 (daily ed. Aug. 29, 2025); 171 Cong. Rec. S6401 (daily ed. Sept. 8, 2025). The Office of Management and Budget (OMB) also has issued an apportionment withholding from obligation the funds proposed for rescission. Off. Mgmt. & Budget, Exec. Off. of the President, OMB Approved Apportionment – FY 2025, Department of State, International Assistance Programs (Aug. 29, 2025).⁶

Of the amounts proposed for rescission and currently withheld by OMB, \$4 billion is relevant to the government’s present application for a partial stay and is

through Their Date of Expiration at 6 (Dec. 10, 2018). Second, the president cannot withhold funds proposed for rescission if the law falls under what is known as the “fourth disclaimer.” 2 U.S.C. § 681(4); *see also* Gov’t Accountability Off., B-330045, Impoundment Control Act of 1974: Review of the President’s Special Message of May 8, 2018 at 10–11 (May 22, 2018); Gov’t Accountability Off., B-337137, U.S. Department of Transportation, Federal Highway Administration—Application of the Impoundment Control Act to Memorandum Suspending Approval of State Electric Vehicle Infrastructure Deployment Plans at 16, 17 (May 22, 2025).

⁶ <https://appportionment-public.max.gov/Fiscal%20Year%202025/Multiple%20Agencies/PDF/FY2025%20Department%20of%20State%20and%20International%20Assistance%20Programs%20letter%20appportionment.pdf.pdf>.

set to lapse on September 30, 2025.⁷ Appl. at 8, 14. The government argues that, despite the impending expiration of these funds, under the ICA the President can withhold these amounts for the full 45 days of continuous congressional session.⁸ Appl. at 25. In other words, the government contends that—even if Congress does not complete action on legislation rescinding any of these funds—the President can withhold the amounts through their date of expiration and unilaterally reduce the amount of funding available for obligation in the affected accounts.

This contention plainly lacks merit. As the non-partisan Government Accountability Office stated when it so held in 2018⁹: “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.” Gov’t Accountability Off., B-330330, Impoundment Control Act—Withholding of Funds through Their Date of Expiration at 1 (Dec. 10, 2018) (response to request from bipartisan leadership of the House Budget Committee).

⁷ See Gov’t Accountability Off., GAO-04-261SP, Principles of Federal Appropriations Law at 5-4 (3d ed. 2004) (explaining that a fixed-period appropriation is available for new obligations only during its period of availability).

⁸ The question is not whether the ICA allows the President to *transmit* a special message proposing to rescind funds that will expire during the 45-day period, but whether, after transmitting a special message to Congress, under the ICA the President may *withhold* those funds through their date of expiration.

⁹ GAO issues legal decisions to Congress and federal agencies on the use of appropriated funds, including potential withholdings under the ICA. *Appropriations Law*, Gov’t Accountability Off., <https://www.gao.gov/legal/appropriations-law> (last visited Sept. 11, 2025); see also 2 U.S.C. § 686; 31 U.S.C. §§ 712(1), 717(b), 3529.

Beginning with the plain text, the ICA explicitly requires that funds proposed for rescission “*shall be made available for obligation* unless, within the prescribed 45-day period, the Congress has completed action on a rescission bill rescinding all or part of the amount proposed to be rescinded” Gov’t Accountability Off., B-330330, at 4 (quoting 2 U.S.C. § 683(b) (emphasis added)). And the mandatory term “shall,” paired with the conjunction “unless,” constitutes a mandatory directive to make the funds available for obligation “unless” the sole exception identified in the law applies: that Congress complete action on a rescission bill rescinding those amounts. *Id.* at 4; *see also id.* at 7 (explaining that amounts are permanently rescinded “only if Congress takes affirmative legislative action through the constitutional processes of bicameralism and presentment”). Thus, if the period of availability for budget authority extends only until the end of the fiscal year, then to comply with the ICA’s requirement that funds be made available for *obligation*, the President must make any budget authority proposed for rescission available before the funds expire—and “in sufficient time to be prudently obligated.” *Id.* at 6.¹⁰ The text creates no exception to this requirement for funds that would otherwise lapse during the 45-day period.

Although this statutory language plainly prohibits the President from withholding funds through their date of expiration absent action from Congress, a key feature of this statutory scheme merits brief discussion: Congress’s decision to require affirmative congressional action for rescission proposals.

¹⁰ *See also id.* (explaining that “[t]he amount of time required for prudent obligation will vary from one program to another”).

Before Congress passed the ICA, it considered bill text that would have permitted impoundments of funds proposed for both deferral and rescission to continue unless either chamber disapproved of the withholding. H.R. Rep. 93-658 (1973); *see also* Gov’t Accountability Off., B-330330, at 7. Ultimately, however, Congress adopted this “negative” approach—whereby an impoundment continues absent action from Congress—only for deferral proposals. Impoundment Control Act, Pub. L. No. 93-344, tit. X, § 1013, 88 Stat. 297, 334 (1974) (also limiting deferral proposals by fiscal year); *City of New Haven*, 809 F.2d at 907–8. For rescission proposals, on the other hand, Congress required affirmative congressional action before a rescission could take effect. Pub. L. No. 93-344, tit. X, § 1012, 88 Stat. at 333; *City of New Haven*, 809 F.2d at 907–8. It would be irrational for Congress to design the ICA such that Congress *must act* for a rescission bill to become law and, simultaneously, “craft[] the ICA to allow” the executive branch—*without any action from Congress*—to effectively rescind funds by using the 45-day period to withhold duly enacted appropriations until they expire. Appl. at 26.

The legislative history of and historical context in which Congress considered the ICA make clear that in passing this law “Congress did not cede” its power of the purse but, rather, reasserted its control over federal spending.¹¹ Gov’t Accountability Off., B-330330, at 1. The Court should interpret the law to reflect that clear purpose.

¹¹ The government contends that, if funding expires during the 45-day withholding period, it is up to Congress to take action to extend the period of availability of those funds. Appl. at 25. But Congress designed the ICA so that Congress’s failure to act on a rescission proposal would maintain the status quo, leaving in place the laws Congress already carefully negotiated and allowing

III. Withholding funds through their date of expiration constitutes an unconstitutional line item veto.

The government also cites two examples—one from 1975 and one from 1977—in which Presidents sent special messages proposing to rescind funds that would lapse before the expiration of the 45-day withholding period. Appl. at 6, 26. Experts already have addressed why, factually, these examples are not analogous to the government’s present “pocket rescission” argument.¹² Cerin Lindgrensavage and William Ford, *Past Pocket Rescissions Are Not Precedents for Power Vought Claims*, Lawfare (Aug. 15, 2025).¹³ But regardless of any similarities to or differences from the present proposal, in the years since those Presidents proposed funds for rescission the Supreme Court has foreclosed any argument that the executive branch may

Congress to turn to its many other legislative priorities—including funding the government for future fiscal years. Cf. Appl. at 25 (acknowledging that, in the circumstance the government proposes, “congressional inaction triggers a different result than it usually does under the ICA.”).

¹² The government argues that “[t]his type of rescission is . . . sometimes called a ‘pocket rescission.’” Appl. at 25. But the government’s actions do not constitute a “rescission,” which requires affirmative action by Congress. Gov’t Accountability Off., GAO-05-734SP, A Glossary of Terms Used in the Federal Budget Process, at 85 (Sept. 2005) (defining “rescission” as “[l]egislation enacted by Congress that cancels the availability of budget authority previously enacted before the authority would otherwise expire”); 2 U.S.C. § 682(3) (defining “rescission bill” as a bill that “rescinds, in whole or in part, budget authority proposed to be rescinded in a special message transmitted by the President . . . , and upon which the Congress completes action” within the 45-day period). Unless Congress responds to the present rescission proposal by passing a bill to rescind the funds before they expire, no funds will be “rescinded” under the definition of that term. *See also infra* Part III (discussing the constitutional requirements of bicameralism and presentment).

¹³ <https://www.lawfaremedia.org/article/past-pocket-rescissions-are-not-precedents-for-power-vought-claims>.

unilaterally amend a law, which is precisely what the President seeks to accomplish by withholding funds through their date of expiration.

In *Clinton v. New York*, the Supreme Court considered the constitutionality of the President's cancellation of two portions of enacted laws under the Line Item Veto Act. See 524 U.S. 417 (1998). In that Act, Congress had given the President authority to cancel—that is, prevent “from having legal force or effect”—certain types of provisions already signed into law. *Id.* at 437–38 (identifying the three types of provisions as any dollar amount of discretionary budget authority, an item of new direct spending, or a limited tax benefit). The Court explained that for a bill to become a law, the Constitution requires three procedural steps:

(1) a bill containing [the law's] exact text [must be] approved by a majority of the Members of the House of Representatives; (2) the Senate [must] approve[] precisely the same text; and (3) that text [must be] signed into law by the President.

Id. at 448. The Line Item Veto Act contravened these constitutional mandates by “authoriz[ing] the President to create a different law—one whose text was not voted on by either House of Congress or presented to the President for signature.” *Id.* The Court thus held that the Act violated Article I, § 7: “There is no provision in the Constitution that authorizes the President to enact, to amend, or to repeal statutes.” *Id.* at 438.

Withholding funds through their date of expiration, and thus effectively amending the laws making these appropriations, is simply a different name for an unconstitutional line item veto. *Clinton* thus precludes the government's interpretation of the ICA.

IV. The district court’s injunction does not conflict with the President’s limited authority to withhold funds under the ICA.

Finally, the government contends that respondents’ suit would “severely disrupt’ the ICA’s scheme,” claiming that the district court’s injunction requiring the obligation of funds conflicts with the President’s authority to withhold them under the ICA. Appl. at 23. But no such conflict exists.

As explained in Part II, *supra*, under the ICA the President may temporarily withhold amounts proposed for rescission while Congress considers the President’s proposal. 2 U.S.C. § 683. But the President also must make those amounts available with sufficient time to prudently obligate them. *See supra* Part III; Gov’t Accountability Off., B-330330, at 6; *see also* 2 U.S.C. § 683(b). And here, in describing the “near-irrevocable” steps the government must take to obligate the funds at issue, the government has explained that it must start to complete those steps by a date that already has come and gone. *See, e.g.*, Appl. at 36 (stating that, to obligate the funds by September 30, the government would need to begin taking pre-obligation steps by September 2). Accordingly, the requirements of the ICA effectively mirror the requirements of the district court’s order: to ensure—by taking appropriate steps now—the prudent obligation of the funds before they lapse. Because the ICA does not permit the President to withhold the funds proposed for rescission through their date of expiration, the government’s compliance with the district court’s injunction imposes no irreparable harm.¹⁴

¹⁴ Given the unique circumstances raised by the timing of the President’s pending rescission proposal, the Court need not reach whether there might be any

In fact, it is staying the district court’s injunction—amid delicate congressional negotiations to avert a government shutdown—that would pose irreparable harm. Any indication by this Court that the President possesses the authority to unilaterally cancel duly enacted appropriations would destabilize these congressional negotiations and the appropriations process writ large.

CONCLUSION

For the foregoing reasons, the Court should deny the government’s Application for Partial Stay of the Injunction Issued by the United States District Court for the District of Columbia.

Respectfully submitted,

/s/ Christina L. Wentworth

CHRISTINA L. WENTWORTH

Counsel of Record

DONALD K. SHERMAN

CITIZENS FOR RESPONSIBILITY

AND ETHICS IN WASHINGTON

P.O. Box 14596

Washington, D.C. 20044

(202) 408-5565

cwentworth@citizensforethics.org

Counsel for Amicus Curiae

other instance in which the president’s statutory authority to temporarily withhold funds under the ICA conflicts with a court order requiring the obligation of funds or “disrupt[s]” the ICA’s statutory scheme. Appl. at 20.