The Demise of Congress

The U.S. Congress's Abandonment of its Power of the Purse

David Super

22.07.2025 doi: 10.59704/f220bf005189399b

Last week, Congress passed a bill permitting deep cuts to foreign aid and public broadcasting programs – just days after enacting what Donald Trump hailed as the "Big Beautiful Bill," widely seen as a legislative disaster. These developments are not isolated. They reflect a deeper trend: Congress is increasingly surrendering its constitutional power of the purse and, with it, its institutional identity in relation to the presidency. For centuries, the American system of separation of powers has relied on such institutional identities. Because the Constitution's Framers failed to anticipate the rise of political parties, the institutional and regional identities central to the Framers' thinking have been dueling with the partisan identities that they did not consider. As long as officials identified at least partially as Members of Congress or judges, or identified as Northerners or Southerners, the constitutional architecture could hold. This year, we have seen a remarkable collapse of those institutional and regional identities in favor of pure partisanship, and with them, the system of checks and balances central to our Constitution.

The power of the purse's centrality to the constitution

One of the Framers' greatest fears was that the presidency could amass excessive power, especially given its control of the army. A crucial argument against this fear was that the Constitution separated the purse from the sword. The Constitution prohibited appropriations for the army of more than two years' duration. Thus, the people's representatives in Congress could starve the army of resources should the President employ it in oppression. The Framers were deeply aware that one of the most effective constraints on English monarchs' powers had been their need to ask Parliament for funding. Charles I convened Parliament, and ultimately lost his head, because he ran out of money. Thus, the congressional power of the purse was not merely about symbolism: the Framers saw it as fundamental to preserving republicanism.

Because the Constitution prohibits expenditures without congressional appropriations, drafting and passing appropriations has comprised a major part of Congress's work. The House and Senate Appropriations Committees largely write these bills, causing legislators to pursue seats on those panels zealously. The Appropriations Committees historically have been among the most bipartisan in Congress, in part because the minority party's votes are generally required to pass any appropriations bill through the Senate. When President Richard Nixon sought to establish an imperial presidency by, among other things, arbitrarily refusing to spend appropriated funds on programs he disliked, Congress rose up in bipartisan anger, led by members of the Appropriations Committees.

Times have changed. Shortly after taking office the Administration successfully pressured Republican appropriators to break off negotiations with their Democratic counterparts on full-year funding for the fiscal year that began last October 1. Instead, days before the previous funding bill was due to expire on March 17, Republicans introduced and began moving their own bill to fund the federal government. Republicans claimed their bill continued the same funding levels established the prior year, albeit without adjustment for inflation. The bill in fact shifted billions of dollars from human services programs to immigration enforcement and other Administration priorities. Senate Democrats nonetheless concluded that the public would back President Trump if they withheld their votes and shut down the government over these

changes. Although Democrats' disempowerment was most obvious, Republican appropriators, too, lost. Without negotiations, they lost the chance to shape funding decisions to advance preferred policies, to benefit their districts, or to please key donors. President Trump signed the bill written at his behest on March 17. Charles I would have been terribly jealous.

"Deficit Hawks" and the "Big Beautiful Bill"

The collapse of congressional autonomy continued as Congress took the preliminary steps required to enact President Trump's multi-year fiscal policy proposal, the so-called "Big Beautiful Bill". The President sought tax cuts skewed to the affluent only partially offset by deep cuts in anti-poverty programs while adding funds for anti-immigrant actions. Senate Republicans sought to split the proposal into two parts, moving the relatively popular anti-immigrant measures first and leaving the more controversial cuts to health and nutrition programs, such as Medicaid, as well as the deficit-swelling tax cuts, for later consideration and possible compromise. President Trump saw the risk that the second bill might stall and insisted on "One Big Beautiful Bill". House Republicans immediately complied, soon followed by Senate Republicans. Only four of the 53 Republican senators would have sufficed to insist on the two-stage process, but none did.

The actual legislation emphatically rejected principles often espoused by numerous House and Senate Republicans. It savaged health care coverage for low-income people, which moderates had vowed not to allow. And it added trillions of dollars to the deficit, contrary to the pledges of dozens of self-described "deficit hawks" (and even drawing condemnation from Elon Musk). Many Republican senators and representatives announced their opposition for these and other reasons only to go through a ritual of meeting with the President and declaring that he had resolved their concerns. In the end, however, only one Republican representative and one Republican senator made and stuck by firm commitments to vote against the legislation on its merits. President Trump fiercely attacked both, threatening to deny them renomination; the senator then announced his retirement. A few other Republicans voted "no" once the President was assured of votes he needed but clearly were unwilling to obstruct its passage. With almost no legislators willing to credibly threaten to bring down the bill, the Administration largely ignored requests for face-saving amendments. This forced numerous Republicans into humiliating public reversals.

The Administration's bill violated Senate rules that prevent legislation passed under expedited procedures from increasing the deficit in the period beyond the next decade. When a similar problem threatened President Trump's signature tax cut bill during his first term, Republicans made necessary adjustments to meet deficit targets. This time, however, the Administration refused to scale back the bill. This forced Senate Republicans to undertake an elaborate maneuver leading to a party-lines vote to sideline the Parliamentarian – by refusing to meet with her in advance and then ruling from the chair on two points of order without her guidance. The Parliamentarian, Elizabeth MacDonough, is a non-partisan Senate employee whose advice to the presiding officer on rules questions is customarily considered binding. Several Republicans were loathe to cast these votes as the Parliamentarian's non-partisan enforcement of the Senate's rules will be crucial to Republican senators' relevance next time Democrats have a majority. Senators value the chamber's rules limiting the majority's power because those rules keep them relevant during their frequent stints in the minority. The Democrats could marginalize the parliamentarian in a similar manner when they regain a majority and want to pass legislation that Senate rules say requires a supermajority.

Adding insult to injury, section 20011 of the legislation provides an appropriation for the military to join actions against immigrants that will remain available for over four years. This brazenly violates the Constitution's two-year limit on appropriations for the army.

Making appropriations acts irrelevant

The Impoundment Control Act of 1974 sought to replace President Nixon's unilateral freezing of appro-

priated funds with an orderly process by which the President could propose rescinding funds and receive a timely congressional decision. At the time the President determines appropriated funds should not be spent, the Act requires him to request that Congress rescind those funds (i.e., approve withholding them). It then provides an expedited procedure, immune from filibusters – and thus requiring only a simple majority to pass – by which Congress may consider that request.

Within days of his resuming office, President Trump began withholding money from a wide range of programs, including international assistance, scientific research, public broadcasting, education, and other human services. Although the Impoundment Control Act required President Trump to seek Congress's permission as soon as he began withholding funds, he did not do so until June. Even then, he failed to mention the great majority of the funds he had impounded. He did ask Congress to rescind funding for several international programs as well as for public broadcasting. Numerous radio stations in rural areas – disproportionately represented by Republicans – warned that these cuts would likely force them to close. Republicans in both chambers sought to reduce the cuts and threatened to vote down the rescissions, but the Administration would not budge. The legislators again capitulated rather than casting votes that would anger the President.

These events create something of a paradox. Most legislation requires a three-fifths majority to pass the Senate, which almost always requires votes from the minority party. Appropriations acts are subject to those rules and hence need bipartisan support whichever party is in the majority. Customarily, this leads to negotiated agreements. But the Impoundment Control Act allows a bare partisan majority to rescind funds that the minority party won in such an agreement. Traditionally, senators of both parties regarded their fidelity to agreements as both a matter of honor and necessity to allow their chamber to function. Republican senators' willingness to undo on a partisan basis legislation enacted with Democratic votes, and their passivity in the face of the Administration's continuing illegal impoundments, means that Democrats can no longer have any expectation that the funding that appears in the appropriations bills they are asked to support will actually materialize. This will severely complicate future spending negotiations. Nonetheless, President Trump's budget director, Russell Vought, appears to believe he holds all the cards as he publicly scoffed at the value of bipartisanship on appropriations.

The decline of constitutional identities

Over Donald Trump's first presidency, he and the Republican Party came to understand that he is the Party's absolute leader and that the consequence for open defiance of him would generally be political oblivion. The only remaining question was whether he needed to observe any limits on his demands that Republican officials disregard their institutional interests to benefit him. This question has been answered in the negative over these past weeks.

Past attempts to establish such an "imperial presidency" have failed. The enigmatic President Richard Nixon faced resolute resistance not only from Democrats but from much of his own Republican Party. Institutional and regional identities could override partisan ones in the early 1970s because both parties were politically diverse: the most liberal senators of each party, and the most conservative, were largely indistinguishable. Across party lines, Southerners were conservative and Northeasterners were liberal. Today, this separation of institutional, regional and partisan identities no longer holds. And with its collapse, we have also seen a collapse of the system of checks and balances central to our Constitution.

Past presidents also leveraged strong electoral mandates to shape legislation. President Trump, however, won a close election and has continued to have weak polling results. Although the funding freezes and mass lay-offs President Trump empowered Elon Musk to undertake were initially popular, their costs are becoming increasingly visible. Over a hundred people died last month in Texas flash floods after Musk's personnel purge forced out the federal meteorologist responsible for that region. The legisla-

tion cutting taxes and social programs polled terribly but nonetheless became unstoppable.

The lesson appears to be that our pre-partisan Constitution's checks and balances collapse when partisan identities completely swamp institutional and regional ones. Accordingly, the country's future depends more on the courses its parties take than on the rules or characteristics of its institutions.

Republicans hold thin majorities in both houses of Congress. They are redrawing district boundaries in states they control to maintain their majority in the House of Representatives next year even if voters turn against them. And they likely will hold the Senate even if President Trump's capricious trade policy plunges the country into a recession. Republicans, however, have no obvious heir to their 79-year-old President, certainly not one who can maintain the same degree of party discipline.

The norms that constrained prior presidents and protected prior Congresses' prerogatives will require a very long time, and a renewed bipartisan consensus, to restore. Such consensus seems unlikely in the near-term: the electorate is so closely divided that both parties imagine that they can vanquish their opponent definitively. I fear that the partisan identities will only recede after they have inflicted enormous damage on our civic fabric, on our economy, and on innocent people here and abroad.

ABOUT THE AUTHOR

David Super

David A. Super is Carmack Waterhouse Professor of Law and Economics at the Georgetown University Law Center.

SUGGESTED CITATION

Super, David: The Demise of Congress: The U.S. Congress's Abandonment of its Power of the Purse, Verfassungsblog, 22.07.2025, doi: 10.59704/f220bf005189399b.

Licensed under CC BY-SA 4.0.

Langzeitarchiviert bei IntRechtDok unter: doi.org/10.17176/20250722-143219-0.