Session 4: Appropriations, Government Shutdowns, & Emergency Authority

I. Congressional Appropriations Power and Spending

• A. Governing Constitutional Provisions
  o Spending Must Be Authorized: “No Money shall be drawn from the Treasury, but in Consequence of Appropriations Made by Law.” U.S. Const. art. I, § 9
  o Unique Role of the House: All bills raising Revenue must originate in the House. The Senate may propose amendments to that original legislation. U.S. Const. art. I, § 7, cl. 1
  o Limitation on Certain Military Funding: Congress may not appropriate money to raise and support Armies that extends for any longer than a two-year period, U.S. Const. Art. I, § 8.
    ▪ Purpose: electoral accountability; the House was viewed as closer to the electoral will of the people through biennial elections
    ▪ Sunset Provisions? Changed incentives derived from this mechanism—very challenging to enact legislation, by design
    ▪ Beyond enumerated powers?
    ▪ Conditions on spending in the States, South Dakota v. Doe (1987)
    ▪ No unconstitutional conditions
    ▪ Significant deference to Congress, but see NFIB v. Sebelius (2012)

• B. Appropriations Riders
  o Generally broad congressional authority
o Areas of presidential authority—e.g., pardons, nomination decisions, foreign affairs, national security, Recommendations Clause, power to receive ambassadors or engage in diplomatic communications

o Use of signing statements and veto power

o Zeroing out funds versus imposing narrowing restrictions or mandates

• C. Congressional reporting requirements and limitations?

  o No Legislative Vetoes: The Supreme Court held in INS v. Chadha, 462 U.S. 919 (1983), that “legislative veto” provisions are unconstitutional.

  o Reporting Requirements Leading to Oversight

  o Notice and Wait Provisions

  o Guantanamo Bay Restrictions

  o The Impoundment Control Act—imposes consequences on government official decisions not to spend money (i.e., to withhold expenditures on obligated government funds)

  o Foreign Affairs/National Security/Ukraine

II. Government Shutdowns

• A. Anti-Deficiency Act

  o Cannot conduct government operations without appropriations

    ▪ 31 U.S.C. § 1341 (limitations related to expenditures, obligation of funds, government contracts, sequestered funds)

  o Certain exceptions for

    ▪ emergencies involving human safety

    ▪ funding that does not depend on annual appropriations

    ▪ Funding in which the government has already incurred an obligation. That includes the work of PAS officers

    ▪ Funding that is necessary to constitutional functions of the President or incidental to funded activities
• **B. Mechanics of administering a shutdown in the Executive Branch**
  
  o Continuing resolutions to avoid shutdowns
  
  o Based on advice of the Office of Legal Counsel (“OLC”), OMB has developed extensive guidance to carry out statutory requirements
  
  o Requirements apply to which operations must cease & which can carry on as essential (“excepted activities”)

**III. Emergency Authority Expanding Executive Power Beyond the Ordinary Course**

• **Any Inherent Executive Emergency Authority? Youngstown**

• **Statutory Emergency Powers**
  
  o *National Emergencies Act*—broad statutory authority, 50 U.S.C. §§ 1601-1651 (was initially enacted to rein in and streamline uses of emergency authority)
  
  o *Framework*—statutory authority tends to follow a two-part framework:

    ▪ (i) Trigger provisions & emergency declarations
    
    ▪ (ii) Scope of the emergency power
  
  o Recent examples of uses of emergency authority: pandemic, border wall construction, Title 42 border authority, Defense Production Act, Stafford Act