

Session 4: Appropriations, Government Shutdowns, & Emergency Authority

I. Congressional Appropriations Power and Spending

• A. Governing Constitutional Provisions

- 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
- 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
- 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
- General Welfare Clause: “The Congress shall have Power . . . to pay the Debts and provide for the common Defence and general Welfare of the United States” U.S. Const. art. I, § 8, cl. 1.
 - Beyond enumerated powers?
 - Conditions on spending in the States, *South Dakota v. Dole* (1987)
 - No unconstitutional conditions
 - Significant deference to Congress, *but see NFIB v. Sebelius* (2012)

• B. Appropriations Riders

- Generally broad congressional authority

- Areas of presidential authority—e.g., pardons, nomination decisions, foreign affairs, national security, Recommendations Clause, power to receive ambassadors or engage in diplomatic communications
- Use of signing statements and veto power
- Zeroing out funds versus imposing narrowing restrictions or mandates
- **C. Congressional reporting requirements and limitations?**
 - No Legislative Vetoes: The Supreme Court held in *INS v. Chadha*, 462 U.S. 919 (1983), that “legislative veto” provisions are unconstitutional.
 - Reporting Requirements Leading to Oversight
 - Notice and Wait Provisions
 - Guantanamo Bay Restrictions
 - The Impoundment Control Act—imposes consequences on government official decisions not to spend money (i.e., to withhold expenditures on obligated government funds)
 - Foreign Affairs/National Security/Ukraine

II. Government Shutdowns

- **A. Anti-Deficiency Act**
 - Cannot conduct government operations without appropriations
 - 31 U.S.C. § 1341 (limitations related to expenditures, obligation of funds, government contracts, sequestered funds)
 - 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**
 - Continuing resolutions to avoid shutdowns
 - Based on advice of the Office of Legal Counsel (“OLC”), OMB has developed extensive guidance to carry out statutory requirements
 - 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
 - *National Emergencies Act*—broad statutory authority, 50 U.S.C. §§ 1601-1651 (was initially enacted to rein in and streamline uses of emergency authority)
 - *Framework*—statutory authority tends to follow a two-part framework:
 - (i) Trigger provisions & emergency declarations
 - (ii) Scope of the emergency power
 - Recent examples of uses of emergency authority: pandemic, border wall construction, Title 42 border authority, Defense Production Act, Stafford Act