



HOUSE COMMITTEE ON THE BUDGET

Chairman John Yarmuth

Chairman Yarmuth Floor Remarks Outlining Administration's Systemic Lawbreaking

Washington, D.C.— *Kentucky Congressman John Yarmuth, Chairman of the House Budget Committee, delivered remarks on the House Floor today to call attention to this Administration's repeated abuse of federal budget laws, its attempts to circumvent Congress' constitutional authority, and his plan to introduce legislation to defend Congress' power of the purse, protect our separation of powers, and strengthen the Impoundment Control Act. Remarks as prepared are below:*

A week from today we will hear about the "state of our union" from an impeached President who has repeatedly shown a complete disregard for the principles on which that union was founded. President Trump has brazenly trampled the constitutional boundaries of executive power, damaging the foundation of our democracy. He shamelessly betrayed his oath of office by putting his own corrupt agenda before our national security. Impeachment and Ukraine are the focus of Congress right now, and rightly so, but the Administration's willingness to pervert our laws for President Trump's ego, personal vendettas, and political gains is far more expansive.

Earlier this month, the nonpartisan U.S. Government Accountability Office, or GAO, issued a legal opinion stating that Trump's Office of Management and Budget (OMB) violated federal law – specifically the Impoundment Control Act of 1974 – by withholding foreign aid. Which I will put in the record. As Chairman of the Budget Committee – the committee with jurisdiction over this law – it is my responsibility to provide the full story to the American people and to Members of Congress so that we can all fully understand what is happening to our government.

Let me start by saying that this violation of federal law was not an innocent mistake made by an administration ignorant of the law. Withholding Ukraine aid was an intentional and brazen abuse of power. This quid pro quo is the most egregious example (that we know of), but the Budget Committee has been concerned by OMB's questionable behavior and possible violations of the Impoundment Control Act for some time.

When you dig deeper you will clearly see the methodical and purposeful way the President and his Administration have been circumventing our laws to advance their authoritarian view of Executive power. To understand their scheme, we must understand the law they tried to secretly dodge and ultimately broke – the Impoundment Control Act.

The U.S. Constitution grants Congress the power to appropriate our tax dollars, while the President, through OMB and executive agencies, implement the spending of these funds. Congress makes the spending decisions, and the Administration puts them in place. It's a simple but incredibly important check on executive power. In 1974, Congress passed the Impoundment Control Act (ICA) in response to another lawbreaking president – President

Nixon. By refusing to spend Congressionally appropriated funds for programs he opposed, such as funding for clean drinking water, Nixon's Administration was impounding funds.

An impoundment is defined as any action – or inaction – by an officer or employee of the federal government that prevents federal funds from being obligated or spent, either temporarily or permanently. By passing the ICA, Congress reasserted its constitutional power of the purse by establishing procedures to block the President and other government officials from substituting their own funding decisions for those of the Congress. It created two pathways the executive branch can use to reduce, delay, or eliminate Congressionally appropriated funding. They can propose to cancel funding, which is known as a rescission – or delay funding, which is a deferral – but both must meet strict requirements.

Here's where it gets interesting: Let's say the President wants to eliminate funding for a specific program. The President would have to first secure Congressional approval to cancel that funding. The ICA requires that the President send a special message to Congress identifying the amount of the proposed rescission; the reasons for it; and the budgetary, economic, and programmatic effects of the rescission. After submitting this special message, the President can withhold those funds for up to 45 legislative session days while Congress considers the request. But, if Congress does not pass a law to cancel those funds within that 45-day period, those funds must be made available for obligation and spending. So even with this rescissions request process, the President cannot cancel funding without Congress' explicit approval. Also, the President cannot use the rescissions process to run out the fiscal year clock – in other words, to withhold funds for so long that they can no longer be used. We will come back to rescissions, so keep this in mind.

Now the ICA defines a deferral as withholding, delaying, or effectively preventing Congressionally approved funds from being obligated or spent, either through Executive action or inaction. But here's the catch – there are only three narrow circumstances in which the President can propose a deferral: to provide for contingencies; to achieve budgetary savings through improved operational efficiency; and as specifically provided by law. Notice that policy reasons is not one of the three. As with rescissions, the ICA requires that the President send a special message to Congress identifying how much they want to defer, why, and for how long – however, a proposed deferral may not extend beyond the end of that fiscal year. Once Congress receives this special message, then – and only then – can the President withhold those funds. Again, the President cannot withhold funds for so long that they can no longer be used.

I hope that didn't make anyone's eyes glaze over, but the details of the Impoundment Control Act are at the heart of this Administration's lack of respect for our nation's separation of powers and rule of law. Today, nearly 46 years after the ICA became law, Congress confronts a President and an Administration eager to blow past the boundaries of executive budgetary power and co-opt Congress' power of the purse for the President's personal gain. This brings us to 2018 and one of the first red flags.

My Committee's concerns about ICA violations under the Trump Administration actually started in 2018 when Republicans were still in control of the Committee and I was serving as its Ranking Member. Multiple reports warned that the Trump Administration was considering a late-in-the-year rescissions package that would have effectively started that 45-day clock close to the end of the fiscal year. As you'll recall, the ICA requires Congressional approval before funds can be canceled. But by withholding funds through their expiration date, President Trump and OMB aimed to game the system. They wanted to circumvent Congress to create a back-door rescission. This scheme was repudiated by both Congressional Democrats and Republicans, and the White House was forced to abandon it. But not before revealing their true intentions.

To send a clear message to the White House and to put an end to any future attempts at back door rescissions, then-Chairman Womack and I in October of 2018 requested GAO's legal opinion on whether an ill-timed rescissions package from the White House would violate the ICA. In December 2018, GAO issued a decision – which I will put in the record – concluding that, while the ICA does, under limited circumstances, allow the President to withhold money for up to 45 congressional session days, the President cannot freeze the money for so long that it can no longer be used. GAO confirmed Congress' constitutional role, saying: "A withholding of this nature would be an aversion both to the constitutional process for enacting federal law and to Congress' constitutional power of the purse, for the President would preclude the obligation of budget authority Congress has enacted and did not rescind."

Mr. Womack and I both welcomed this opinion from GAO, calling it an important confirmation of Congress' constitutional authority over funding decisions.

While GAO was deliberating, OMB submitted their views – as is customary. In a letter from OMB's General Counsel, OMB seems to assert the belief that the President can do whatever he wants. That he doesn't have to respect our separation of powers or the will of Congress to cancel funds he doesn't want to spend. That he is above the law. As GAO stated in their opinion: "The President has no unilateral authority to withhold funds for obligation...The President cannot rely on the authority in the ICA to withhold amounts from obligation, while simultaneously disregarding the ICA's limitations."

This deliberate disregard for our laws undermines our democracy. The executive branch is not a monarchy, but this attitude is a pernicious problem with this Administration.

Less than a year later, in August of 2019, a document – a letter apportionment from OMB – was leaked. An apportionment is a legally binding budget document used by OMB to set the budget schedule for the rate at which an agency spends its funds over the course of a fiscal year. For example – we wouldn't want an agency to come to Congress in March saying it has already spent its entire annual operating budget and must cease operations unless Congress provides more money. To prevent this from happening, OMB apportions agencies' money. However, this leaked letter from August 3, 2019 raised multiple red flags.

First, this letter apportionment – sent to officials at the State Department and the U.S. Agency for International Development – put an abrupt freeze on billions in foreign aid less than 60 days before the end of the fiscal year. OMB put a legally binding hold on 15 key accounts that

covered a spectrum of assistance: international narcotics control, peacekeeping operations, global health programs, foreign military financing programs, and more. Similar to 2018, [reports were circulating](#) that President Trump planned a late-in-the-year rescission request, despite GAO's decision just nine months earlier rebuking the tactic as an end-run around Congress. On August 19, Senate Budget Committee Ranking Member Sanders and I wrote a letter to President Trump's Acting-Chief of Staff and OMB Director, Mick Mulvaney, urging him to follow the law and respect Congress' constitutional authority.

Second red flag: this apportionment was signed by Michael Duffey – an Administration political appointee. Since OMB's inception, career officials with knowledge and expertise of the apportionment process and impoundment law – not political appointees – have signed these highly technical budget documents. This means that OMB took the unprecedented step of stripping career officials of their normal role in the apportionment process and instead, gave this responsibility to someone who had been appointed by the President. This was suspicious.

Third red flag: under current law, apportionments are not public documents. OMB sent no special message to Congress to flag this hold on foreign aid, as the law requires. They kept Congress in the dark. If the document had not been leaked, Congress might not have ever discovered this suspicious funding freeze. What else were they hiding?

While this leaked August 3 letter apportionment is what first alerted Congress to the President's willingness to break the law, at the time, we could not have guessed how nefarious it really was.

A few weeks later the Budget Committee would uncover a pattern of abuse of the apportionment process, our separation of powers, and current law. As part of our investigation, my Committee asked OMB for documents and answers detailing their involvement in the withholding of foreign aid. After review of the materials provided to us, it was clear that this was not an innocent mistake. It was an intentional and willful abuse of power. To lay this out as plainly as I can, I will outline the Budget Committee's findings chronologically, rather than in the order in which we learned the information.

It all starts on May 23, 2019 when the Pentagon sent a [letter](#) to Congress certifying that the Government of Ukraine had met Congress' anti-corruption requirements and was therefore eligible to receive the critical security assistance it needed. Most importantly, the Pentagon notified lawmakers of its plans to spend the money. Keep in mind that this is critical funding Ukraine needs to protect itself from Russia, our shared adversary.

The first sign of trouble came almost a month later on June 19, 2019. In response to our request for answers, OMB asserts that this is when they first reached out to the Department of Defense to ask about the Ukraine Security Assistance Initiative – or USAI – funds.

Mark Sandy – an Afghanistan veteran and top career OMB official who was responsible for managing the flow of Pentagon funds – testified that OMB officials were told the President wanted the Ukraine aid paused. But he didn't understand why. So while reaching out to the Pentagon to learn more about the aid package, he also repeatedly pressed Mr. Duffey about why President Trump imposed the hold. But Mr. Sandy didn't get a clear answer. He testified

that Mr. Duffey “didn’t provide an explicit response on the reason...He simply said we need to let the hold take place — and I’m paraphrasing here — and then revisit this issue with the president.”

Just about a week later, on June 27, Mick Mulvaney was flying on Air Force One with President Trump when he fired off a quick email to an aide back in Washington: “I’m just trying to tie up some loose ends...Did we ever find out about the money for Ukraine and whether we can hold it back?”

The aide, Robert Blair, [replied](#) that while they could carry out the President’s request, the move to withhold aid passed in a bipartisan spending deal would not go over well with Congress. “Expect Congress to become unhinged”, he wrote back. I don’t know about unhinged, but Congress was not going to let this abuse and executive overreach go unanswered.

These early conversations are critical to our timeline because they show that this Administration’s abuse of our laws and plans to blackmail a foreign nation into helping President Trump cheat our elections was premeditated. President Trump, Mulvaney and Duffey abused OMB’s authority to withhold Ukraine security assistance at the same time President Trump directed his personal lawyer, Rudy Giuliani, and his associates to solicit foreign interference in our elections.

In July, they set their plans in motion. OMB admits in our documents – and it has been reported – that an interagency meeting took place on July 18. During that meeting, an OMB staffer relayed President Trump’s order to freeze all Ukraine assistance to the State Department and the Pentagon. This stunned and infuriated our own top Ukrainian diplomats who understood the necessity of strong American support for Ukraine in their fight against Russia. Later that day, the House Foreign Affairs Committee was warned about the hold by Administration sources, urging them to investigate.

The bottom line was that there was no legal way for President Trump to withhold aid to Ukraine without Congress’s approval. Since it was a politically motivated hold, it would not even qualify for deferral under the ICA. The Pentagon had already notified Congress that Ukraine had passed its anti-corruption test and should receive the funding – so the White House would have never been able to slip a rescission request by Congress. And thanks to the GAO opinion Mr. Womack and I requested in 2018, Congress had the law on its side and would not allow the Administration to run out the clock on this funding by withholding it past the end of the fiscal year.

So if the President was going to hold this aid hostage, he had to find a way to go behind Congress’ back and secretly impound hundreds of millions of taxpayer dollars.

Mr. Sandy testified that on July 19, Mr. Duffey proposed using the apportionment process to implement the hold: that is, to use a legally binding budget document to stop DoD from providing security assistance to Ukraine. Mr. Sandy also testified that while approving apportionment schedules for agencies is routine, attaching a footnote to block spending in this manner was so unusual, that Mr. Sandy said he did not recall another event like it in his 12 years of service at OMB.

And there is a reason for that. It could be considered a violation of the Impoundment Control Act. As you'll recall, the ICA prohibits the President and his Administration from withholding aid unless it's done under the authorities of the Impoundment Control Act, which require notification to Congress. Which OMB did not want to do. Mr. Sandy grew concerned and sought advice from OMB lawyers.

A week later, on July 25, President Trump had his now infamous call with Ukrainian President Zelenskyy where he asked a foreign government to dig up dirt on a political rival. Just 90 minutes after the President hung up the phone, Mr. Duffey sent an email to the Pentagon putting a hold on the Ukraine aid. In his email – which was only obtained because of a public request under the Freedom of Information Act – Mr. Duffey shared OMB's plan to "formalize the pause with an apportionment footnote" that would come later that day. In another red flag, Mr. Duffy asked Pentagon officials to keep this hold decision as [secret](#) as possible.

According to documents obtained by the House Budget Committee, at 6:44 pm eastern time – just hours after President Trump tried to strong-arm Zelenskyy – OMB approved an apportionment, signed by Mr. Sandy, that officially imposed what OMB claimed at the time to be a "brief pause" in USAI funds. OMB inserted a footnote into the apportionment that froze all remaining USAI funding until August 5, formalizing the President's hold on Ukraine aid. The footnote states that the funds are being held "to allow for an interagency process to determine the best use of such funds," but also that "DOD may continue its planning and casework for the Initiative during this period." Why would OMB allow the Pentagon to continue working on current plans and casework if they were claiming they needed to freeze the funds to review those same plans and casework? Because this hold was never about a policy review.

This hold was this Administration's attempt to get around Congress and secretly undermine the law. To freeze foreign aid so they could use it as leverage as they tried to pressure Ukraine into helping President Trump cheat to win re-election in 2020 by damaging a potential Democratic opponent. It's the same hold that Mulvaney inquired about in that June email he sent Mr. Blair while flying on Air Force One with the President. And it's the same hold that would ultimately lead to grounds for impeachment.

The July 25 apportionment would be the last one Mr. Sandy would sign. He would soon be stripped of his authority to oversee the management of Ukraine aid. The White House needed to make sure the aid remained frozen while they kept up their pressure campaign on President Zelenskyy. But OMB career officials were becoming uneasy about the freeze and the illegality of using apportionments to create secret impoundments. In an unprecedented move, the apportionment authority was transferred to President Trump's political appointee, Mr. Duffey.

Remember that leaked letter apportionment that raised red flags? Here's where that fits in. When that apportionment withholding State Department and USAID foreign aid leaked in early August, Congress still didn't know about the plot to withhold the Pentagon's \$250 million in Ukraine aid. So here we have 15 foreign aid accounts on hold, one of which includes \$26.5 million in Foreign Military Financing (FMF) funds for – you guessed it, Ukraine. On top of that, this letter apportionment is the first one with Mr. Duffey's signature.

August was a busy time for Mr. Duffey. Someone who had never before signed apportionment documents started signing all the apportionments in both the National Security Division and the International Affairs Division – which had been previously been a job carved up among two top career officials. On August 6, Mr. Duffey signed the first extension of what was supposed to be the “brief” withholding of the Pentagon’s USAI funds, using another footnote to freeze the funds until August 12.

Separately, on August 9, our documents show Mr. Duffey signed another apportionment affecting the State Department and USAID foreign aid funds included in the leaked apportionment. This time, OMB said the agencies are only allowed to spend two percent of the funds each day, and it withholds the rest from the agencies. That’s not a programmatic, funds management, or even a policy decision. The State Department doesn’t send a couple thousand dollars to support international peace keeping missions one day and then a couple thousand dollars to support international narcotics control the next. That’s not how it works. Limiting agencies to such a minuscule amount effectively prevented these funds from being spent at all, while at the same time, the apportionment continued to withhold the majority of remaining funds even though they were nearing their expiration date. It was another backdoor attempt to freeze funding, and possibly rescind it completely by running out the clock.

On August 19, Senator Sanders and I sent our letter to OMB and the White House calling on the Administration to stop the impoundment of funding. To respect GAO’s legal opinion from the previous December stating that a late-in-the-year rescission request that prevents Congressional action and withholds funds until they can no longer be used would violate the ICA. At this time, we did not understand that the President and OMB actually had learned from their 2018 attempts to circumvent Congress. But they learned the wrong lesson. Now they were just trying to bypass Congress completely.

By the second week of August, Mr. Duffey was issuing new holds on USAI funds every couple of days to block the Pentagon from sending aid. OMB was doing what it could to keep the President’s hold on Ukraine aid active. But on August 28, a [senior Administration official](#) told POLITICO about the hold on USAI funds. The President’s scheme was unraveling.

On August 29, our documents show Mr. Duffey signed another letter apportionment releasing 25 percent of the remaining State Department and USAID funds each Sunday between September 1 and September 22. With this latest trick from the White House, it was clear there was no way these agencies were going to be able to spend all the funds Congress appropriated before they expired on September 30. – And, in fact, they didn’t, which was apparently OMB’s intention all along.

Meanwhile, Mr. Duffey was still signing apportionments to extend the freeze on the USAI funds until September 12. During this time, DoD warned that OMB’s ongoing hold on Ukraine assistance would prevent them from using all of the funds Congress appropriated before they expired on September 30. And, of course, DOD was right. It’s only because of timely action by Congress that the unused funds didn’t expire, thanks to a provision included in the 2019 Continuing Resolution.

On September 18, House Appropriations Chairwoman Lowey and I wrote to OMB expressing deep concerns about OMB's escalating abuses of its apportionment authority and its blatant attempts to undermine Congress's power of the purse. We specifically highlighted this "pattern of unprecedented and disturbing actions taken by OMB to disrupt the balance of powers between the branches of government by impeding agencies' abilities to use enacted appropriations before they expire." Basically, we told them to stop their pretty obvious attempts to evade, invalidate, and violate Congressional appropriations laws and the ICA.

But then – the whistleblower report was made public, blowing the entire scheme wide open. The Report outlined how President Trump instructed his Administration and OMB officials to put a hold on almost \$400 million in Ukraine security assistance ahead of his July 25 phone call with President Zelenskyy. The President abused his power and betrayed the oath he took before the American people to defend our national security and honor our Constitution. As the plan unraveled, the picture became clear: the Administration was abusing the apportionment process to secretly and illegally impound funding provided by Congress to protect our national security. To use as leverage against a foreign nation to help the President cheat our elections. And they couldn't hide it any longer.

On September 24, Speaker Pelosi announced a formal impeachment inquiry into the shady dealings of the Trump Administration. On September 27, Chairwoman Lowey and I sent another letter to OMB seeking answers and documents related to the withholding of Ukraine aid, State and USAID funds, and abuse of the apportionment process. While we received a partial production of documents from OMB, they left out large batches of requested materials. Meanwhile the House Committees involved in the impeachment inquiry were getting completely stonewalled by the Administration. If they did nothing wrong, why wouldn't they turn over documents? Or allow officials to testify? If the President could clear his name, don't you think he would have done it by now? Instead, the President and his Chief of Staff, Mick Mulvaney, have gone on national television and confessed to the very thing Congress caught them doing. Mulvaney's response? "Get over it" and "We do it all the time."

In December 2019, the House Budget Committee released a report – which I will put in the record – outlining three main takeaways we learned from the documents provided to us by OMB. 1) The timeline of actions taken by OMB, as seen in the provided apportionments, show suspicious activity and document a pattern of abuse of the apportionment process, OMB's authority, and current law. 2) OMB took the seemingly unprecedented step of stripping career officials of their normal role in the apportionment process and instead vested a political appointee with that authority. 3) OMB's actions hindered agencies' ability to prudently obligate funds by the end of the fiscal year, bypassing Congress and creating backdoor rescissions in violation of the ICA.

Weeks after our report was published, the House of Representatives impeached Donald J. Trump for abuse of power and obstruction of justice.

On January 16, 2020, GAO issued a legal opinion stating that the actions taken by OMB to withhold foreign aid to Ukraine violated the ICA. The non-partisan watchdog even went so far to say, "OMB's assertions have no basis in law." GAO found that the White House's action to

withhold security assistance funding constituted an illegal deferral of funding, in violation of the Impoundment Control Act. The Impoundment Control Act permits deferrals only for very limited purposes and requires advance Congressional notification. But this was not just a notification violation – GAO determined that this deferral was prohibited under the Impoundment Control Act, period. As GAO emphasized, “The ICA does not permit deferrals for policy reasons...OMB’s justification for the withholding falls squarely within the scope of an impermissible policy deferral.” So even if the President had notified Congress in advance of the deferral, it still would have been illegal.

The White House has taken a disturbing sense of pride in its obstruction of Congress, so it’s no surprise that they failed to fully cooperate with GAO as well. In its decision, GAO called out the Trump Administration, stating, “We consider a reluctance to provide a fulsome response to have constitutional significance.”

The House Budget Committee repeatedly warned the Trump Administration about the ICA. The Department of Defense warned them. The State Department warned them. Even people in the Executive Office of the President called out this flagrant abuse of federal law. But the President ignored the warnings. Instead, he used the powers of his office to subvert our laws, solicit foreign interference to help him cheat in his next election, and then try to cover it all up.

And while the House of Representatives has taken action to show that no one – including the President – is above the law, OMB is still scheming. President Trump’s Administration continues to abuse its authority and infringe on Congress’ power of the purse. For example, holding up disaster relief to Puerto Rico. I would wager that is because the President’s fragile ego couldn’t handle some criticism from one of their mayors. We shall see. Last March my colleagues and I wrote a letter to OMB – which I will put in the record – calling out this Administration for declaring bogus national emergencies to steal funds Congress appropriated for crucial military construction and counternarcotic initiatives to use for the President’s impractical and woefully ineffective border wall – another decision motivated by the President’s political campaign and not taxpayer interests. There’s more, I’m sure, that we just don’t know about... Yet. But we will find out.

In the face of such a clear and present threat to our democracy from this Administration, we must defend Congress’ constitutional authority, protect our separation of powers, and strengthen the Impoundment Control Act to prevent such unilateral actions. In March, I will introduce legislation that will protect Congress’ power of the purse. It will promote transparency of the executive branch to limit abuse and ensure no President can hide lawbreaking from the American people again. It will add teeth to budget law by creating significant deterrents, including administrative discipline, to create more accountability for Executive Branch officials so they won’t break the law. And it will ensure Congress remains front and center in determining whether emergency declarations made by the President —and the related shifts in funding – are justified.

Look, this is a lot of information, and I’m normally not one to give long statements. But in the face of such horrendous attacks on our constitution, our laws, and our democracy, I wanted it all on record. I’m also submitting every letter I referenced into the Congressional record as well.

As chairman of the House Budget Committee, I felt it was my responsibility. It is my hope that the information and facts I shared today help expose this Administration's systemic lawbreaking. Because if they get away with this, and Congress does not fight back, it will not stop. We all know that. He could attack specific communities by withholding funds that support their health care. He could retaliate against Senators for their votes by freezing federal investments in their state. He could punish states he views as unsupportive of his re-election by withholding infrastructure funds. If we don't stop him, President Trump will use the enormous power of the federal budget – taxpayer money – to punish political adversaries, to exact personal vendettas, and to benefit him personally. And that destructive precedent would be established for other Presidents that follow. This is not who we are. We are a democracy, where the separation of powers defines us. Congress must fight back. I implore our Republican colleagues to join us. To uphold the oath we all swore, and to make it unequivocally clear that in the United States of America, no one is above the law. Thank you for your time.