



**Testimony of Liz Hempowicz, Director of Public Policy  
Project On Government Oversight  
before the House Budget Committee  
on “Protecting Our Democracy: Reasserting Congress’s Power of the Purse”**

Chairman Yarmuth, Ranking Member Smith, and members of the Committee, thank you for inviting me to testify today about Congress’s power of the purse and efforts to reclaim and reassert that power. I am Liz Hempowicz, director of public policy at the Project On Government Oversight (POGO). POGO is a nonpartisan independent watchdog that investigates and exposes waste, corruption, abuse of power, and when the government fails to serve the public or silences those who report wrongdoing. We champion reforms to achieve a more effective, ethical, and accountable federal government that safeguards constitutional principles.

In my testimony I will begin by providing a brief overview of the power of the purse and apportionments—a key mechanism of this power—and will detail recommendations for how to fortify congressional control over the power of the purse. I will also delve briefly into the historical origins of this power; highlight the apportionments process and necessary reforms; and offer analysis on relevant statutes and legislation.

The power of the purse, or the authority over federal tax and spending decisions, is arguably Congress’s most essential and potent tool.<sup>1</sup> In conjunction with other constitutionally enumerated authorities, such as the power to declare war, the power of the purse gives Congress the strength and efficacy necessary to fulfill its role as the first branch of our federal government. Because this power is central to the legislative branch’s functionality, it is of great concern to observers from across the political spectrum that Congress has been losing its grip on the nation’s purse strings.<sup>2</sup>

Another key stakeholder in the management of the federal budget is the Office of Management and Budget (OMB), the entity in the Executive Office of the President tasked with creating the president’s budget proposal and implementing appropriations laws as set forth by Congress.<sup>3</sup>

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<sup>1</sup> House of Representatives History, Art & Archives, “Power of the Purse.” <https://history.house.gov/Institution/Origins-Development/Power-of-the-Purse/> (accessed April 12, 2021)

<sup>2</sup> Jonathan Bydlak, “Congress should reassert its ‘power of the purse,’” *The Hill*, June 9, 2020. <https://thehill.com/opinion/finance/501865-congress-should-reassert-its-power-of-the-purse>; Dylan Hedtler-Gaudette and Soren Dayton, “Congress is losing ground on the budget; it’s time it claws that power back,” *The Fulcrum*, June 30, 2020. <https://thefulcrum.us/balance-of-power/power-of-the-purse>; Andrew Lautz, “Asserting Congress’s power of the purse shouldn’t be a partisan problem,” *Washington Examiner*, July 3, 2020. <https://www.washingtonexaminer.com/opinion/asserting-congresss-power-of-the-purse-shouldnt-be-a-partisan-problem>

<sup>3</sup> Eloise Pasachoff, “The President’s Budget Powers in the Trump Era,” in *Executive Policymaking: The Role of OMB in the Presidency*, ed. Meena Bose and Andrew Rudalevige (Washington, DC: Brookings Institution Press, 2020). (accessed via SSRN: <https://ssrn.com/abstract=3664707>)

Apportionments are among OMB’s most important tools for administering and executing the federal budget.

An apportionment is “an OMB-approved plan to use budgetary resources” along set timelines and accompanied by certain other restrictions designed to facilitate efficient resource use and legal compliance.<sup>4</sup> In other words, OMB uses apportionments to give executive branch agencies the money Congress has appropriated for specific purposes, and it disburses that money in discrete parcels to avoid cost overruns and other mismanagement. Apportionments are legally binding on agencies. When used for their intended purpose and in accordance with the law, apportionments are an essential tool for effective fiscal management of finite public resources. However, as experts have noted, “these same tools of control can also lead to executive aggrandizement, obfuscation, and partisan politicization in a way that is harmful to the national interest.”<sup>5</sup>

The potential for abuse of apportionments is exacerbated by the near-total secrecy in which OMB issues them, as they are not easily subject to congressional oversight. Given how instrumental apportionments are to the execution of congressional appropriations and budgetary directives, the current system—which effectively transfers the power of the purse to OMB after Congress has appropriated funds—is untenable. Indeed, it demands congressional action to bring more sunlight to the apportionment process and, in doing so, reclaim some of Congress’s lost control over the power of the purse.

In view of both Congress’s diminished authority over this constitutional power and the problems with the apportionments process, we were extraordinarily pleased to see the House Budget Committee hold a productive hearing on these topics in March 2020.<sup>6</sup> Following that hearing, we were even more pleased to see Chairman Yarmuth and some of his colleagues introduce the Congressional Power of the Purse Act last May, which POGO enthusiastically supports.<sup>7</sup> We also applaud the inclusion of that bill in last September’s Protecting Our Democracy Act, a sweeping reform bill in the post-Watergate mold that aims to rein in the executive branch and strengthen Congress.<sup>8</sup>

Today’s hearing is yet another encouraging sign of Congress’s commitment to reasserting its prerogatives in critical areas. It is worth noting that the previous hearing and introduction of the Congressional Power of the Purse Act took place during the Trump administration, while this hearing and any subsequent legislative action (at least in the next four years) will happen during the Biden administration. These facts should underscore that reclaiming the power of the purse is

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<sup>4</sup> Office of Management and Budget, *OMB Circular A-11 – Section 120, Apportionment/Reapportionment Process*, 4 (2016). [https://obamawhitehouse.archives.gov/sites/default/files/omb/assets/a11\\_current\\_year/s120.pdf](https://obamawhitehouse.archives.gov/sites/default/files/omb/assets/a11_current_year/s120.pdf)

<sup>5</sup> Pasachoff, “The President’s Budget Powers in the Trump Era” [see note 3].

<sup>6</sup> *Hearing: Protecting Congress’ Power of the Purse and the Rule of Law: Hearing before the House Budget Committee*, 116<sup>th</sup> Cong., (March 11, 2020). <https://budget.house.gov/legislation/hearings/protecting-congress-power-purse-and-rule-law-0>

<sup>7</sup> Congressional Power of the Purse Act, H.R. 6628, 116<sup>th</sup> Cong. (2020). <https://www.congress.gov/bill/116th-congress/house-bill/6628>

<sup>8</sup> Protecting Our Democracy Act, H.R. 8363, 116<sup>th</sup> Cong. (2020). <https://www.congress.gov/bill/116th-congress/house-bill/8363>

not a Republican or Democratic issue. Rather, it is a matter of good government and of lawmakers' responsibility to the Constitution and to the rule of law that makes our system work.

Unfortunately, the U.S. public has very little faith in that system these days, with just 20% of those surveyed in 2020 indicating that they trust the federal government to do the right thing.<sup>9</sup> This pervasive distrust appears to stem in part from concern about corruption.<sup>10</sup>

This committee, and Congress as a whole, can take steps to address that lack of trust by enacting the Congressional Power of the Purse Act and the Protecting Our Democracy Act. Each would increase transparency and accountability around executive branch decision-making. That increased transparency—whether in the realm of budget execution or any other agency activity—would help reassure the public that if government actors are abusing their authorities, that abuse will be exposed and addressed, encouraging policymakers to act responsibly and ethically in pursuit of the public interest.

## Recommendations

Whether members are concerned about executive branch abuses of budget authority during the Trump administration or the Biden administration's freeze on funding allocated for construction of a wall on the southern border, it is clear that there is too much room for executive abuse around the power of the purse.<sup>11</sup> We at POGO are encouraged to see bipartisan engagement in the effort to reaffirm this essential congressional authority.

While we hope to see both the Congressional Power of the Purse Act and the Protecting Our Democracy Act enacted in their entirety, we would encourage Congress to place a special focus and priority on codifying reforms to the apportionment process. Requiring more proactive disclosure of apportionment schedules and transparency around their issuance would be an effective place to start the broader push to get Congress back in full control of the power of the purse. In doing so, Congress can demonstrate that it is a responsible steward of the public trust.

POGO recommends that Congress enact the following reforms:

1. Require the Office of Management and Budget to post in real-time any apportionment schedule that has been issued and has become operative for the purposes of executive agency operations. These schedules must be posted on a public-facing website that meets

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<sup>9</sup> Pew Research Center, "Americans' Views of Government: Low Trust, but Some Positive Performance Ratings," September 14, 2020. <https://www.pewresearch.org/politics/2020/09/14/americans-views-of-government-low-trust-but-some-positive-performance-ratings/>

<sup>10</sup> Gabriela Schulte, "Poll: Voters list a corrupt political establishment as a 'big problem' over healthcare, gun violence," *The Hill*, May 27, 2020. <https://thehill.com/hilltv/what-americas-thinking/499771-poll-voters-list-a-corrupt-political-establishment-as-a-bigger>

<sup>11</sup> House Budget Committee, "House Budget Committee Investigation Exposes Trump Administration's Systemic Abuse of Executive Spending Authority," Press Release, November 20, 2020. <https://budget.house.gov/OMB-Abuse>; House Budget Committee, "House Budget Committee Republicans Demand Hearing on President Biden's Unlawful Freeze on Border Wall Construction," Press Release, March 29, 2021. <https://republicans-budget.house.gov/press-release/house-budget-committee-republicans-demand-hearing-on-president-bidens-unlawful-freeze-on-border-wall-construction/>

current standards of website functionality and accessibility.<sup>12</sup> This basic transparency requirement would allow Congress and the public to better scrutinize how money is being allocated and spent by the executive branch.

2. Require additional information to accompany apportionment schedules. Along with the schedules themselves, Congress should require OMB to include written explanations for the decisions made within an apportionment. This requirement will help prevent arbitrary or politically motivated apportionment decisions.
3. Require OMB to issue apportionments along appropriate timelines. Congress should also make it mandatory for OMB to apportion funds to executive agencies in such a way as to ensure that agencies can use those funds for the purposes and within the timeframe set forth by Congress in appropriations bills.
4. Require congressional notification. Congress should codify a requirement for agencies to report to Congress if they have received an apportionment that would cause the agency to be unable to fulfill its directives from Congress. Notification would be triggered if the apportionment schedule would place conditionalities on funding that exceed executive authority; if the apportionment would cause delays or disruptions in programs, projects, or activities; or if an apportionment is not issued with sufficient time to allow the agency to do what Congress has instructed it to do.
5. Require public disclosure of apportionment authority. Congress should require that any delegations of the apportionment authority be recorded and posted in the federal register.

## Historical Context on the Power of the Purse

Congressional control over the power of the purse has been at the bedrock of our governmental system from the very beginning. The idea stemmed from the Revolutionary-era “no taxation without representation” rallying cry and the model of the British governmental system, within which the parliament had control over the treasury as a means of checking the monarchy.<sup>13</sup> This insistence on having representation for the public in matters of taxation and spending carried over into the framing of the Constitution and the debates surrounding its adoption.

In “Federalist 58,” James Madison made the case that vesting the power of the purse in Congress was the best way to ensure that the branch closest to the people would be effective and sufficiently empowered relative to the other branches.<sup>14</sup> Madison argued that because Congress is most accountable to the people, it is best positioned to act as a safeguard against abuses and excesses from the other branches.

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<sup>12</sup> U.S. General Services Administration, “IT Accessibility Laws and Policies.”

<https://www.section508.gov/manage/laws-and-policies> (accessed April 26, 2021)

<sup>13</sup> House of Representatives History, Art & Archives, “Power of the Purse” [see note 1].

<sup>14</sup> James Madison, “Objection That The Number of Members Will Not Be Augmented as the Progress of Population Demands Considered,” *The Federalist Papers*, No. 58, February 20, 1788.

[https://avalon.law.yale.edu/18th\\_century/fed58.asp](https://avalon.law.yale.edu/18th_century/fed58.asp) Madison wrote, “The House of Representatives cannot only refuse, but they alone can propose, the supplies requisite for the support of government. They, in a word, hold the purse that powerful instrument by which we behold, in the history of the British Constitution, an infant and humble representation of the people gradually enlarging the sphere of its activity and importance, and finally reducing, as far as it seems to have wished, all the overgrown prerogatives of the other branches of the government. This power over the purse may, in fact, be regarded as the most complete and effectual weapon with which any constitution can arm the immediate representatives of the people, for obtaining a redress of every grievance, and for carrying into effect every just and salutary measure.”

Relatedly, in “Federalist 78,” Alexander Hamilton made the case that Congress is intended to be the first among equals in terms of its powers and import to a nascent democratic republic.<sup>15</sup> Primary among the powers that were to make Congress a linchpin in the system is the power of the purse, arguably the most important duty across the breadth of the federal government. Hamilton wrote that the judiciary would, by definition and composition, be the weakest of the three branches since it controls neither the “sword” or the “purse,” powers granted to the executive branch and legislative branch, respectively.

In the Constitution, that is still the law of the land today, the two key provisions that solidify congressional prerogative over the power of the purse are:

- **Article I, Section 8, Clause 1:** “The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States”<sup>16</sup>
- **Article I, Section 9, Clause 7:** “No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.”<sup>17</sup>

Taken together, and in conjunction with the Federalist Papers, these provisions are the foundation of Congress’s explicit and exclusive authority to wield the power of the purse as it sees fit. And if the way it wields that power is unpopular enough, the voters can make their displeasure known through regular elections. This is how the system was designed, and it is how the system should work now.

Today, confronting low levels of trust among the public, as well as pervasive suspicion of corruption, it is essential that our government takes steps to regain that trust—whether or not it’s an election year. One concrete way to do so, and to ease the public’s concerns about government corruption, is to ensure that the federal government and the public servants who work within it are accountable to the public they are serving, especially regarding the ways in which the public’s hard-earned resources are spent and overseen.

### **Key Power of the Purse Statutes and the Congressional Power of the Purse Act**

Beyond the Constitution, two key laws refine and undergird Congress’s power of the purse: The Antideficiency Act and the Impoundment Control Act. Each serves a vital function.

The Antideficiency Act is designed to prevent budget deficiencies by executive agencies, or instances where an agency spends more money than Congress has appropriated for it.<sup>18</sup>

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<sup>15</sup> Alexander Hamilton, “The Judiciary Department,” *The Federalist Papers*, No. 78, May 28, 1788.

[https://avalon.law.yale.edu/18th\\_century/fed78.asp](https://avalon.law.yale.edu/18th_century/fed78.asp)

<sup>16</sup> U.S. Constitution art. I, § 8, cl. 1. <https://constitution.congress.gov/browse/article-1/section-8/>

<sup>17</sup> U.S. Constitution art. I, § 9, cl. 7. <https://constitution.congress.gov/browse/article-1/section-9/>

<sup>18</sup> The earliest iteration of the Antideficiency Act was enacted in 1870 and has since undergone several rounds of amendments, most recently in 1982.



Importantly, violations of this law can carry administrative and criminal penalties. Of equal import to our recommendations, the Antideficiency Act also sets forth the apportionment power and grants it to the executive branch.<sup>19</sup> The Congressional Power of the Purse Act and the Protecting Our Democracy Act would make a series of reforms designed to buttress the Antideficiency Act by improving disclosure and accountability around violations and by requiring more transparency and cooperation from the executive branch in such instances.<sup>20</sup>

The Congressional Budget and Impoundment Control Act, often referred to as the Impoundment Control Act, was enacted in 1974.<sup>21</sup> Congress passed the law in response to several budget impoundments, or refusals to spend congressionally appropriated funds, by the Nixon administration.<sup>22</sup> The law established legal processes and restrictions around when and how appropriated funds can be withheld, canceled, or delayed, and requires congressional authorization for any permanent impoundment or rescission of funds. Title 10 of the Impoundment Control Act explicitly prohibits the executive branch from making budgetary decisions on the basis of its own policy preferences when those preferences diverge from the directives in congressional appropriations bills.<sup>23</sup> However, there are no penalties for violating the Impoundment Control Act. The Congressional Power of the Purse Act and the Protecting Our Democracy Act would address that problem.<sup>24</sup> The Congressional Power of the Purse Act would also codify a range of commonsense enhancements to the Impoundment Control Act to strengthen Congress's insight into the executive branch's budget execution activities, and would strengthen requirements to prevent inappropriate behavior by executive branch officials.<sup>25</sup>

### **More on Apportionment**

While apportionments are a key budget execution tool for the executive branch, they are also an example of Congress having outsourced to the executive branch a degree of control over the power of the purse.<sup>26</sup> The fact that Congress assigned the apportionment authority to the executive branch means that Congress is squarely within its constitutional and legal rights to reclaim that authority or to add additional requirements and constraints to it.

Unsurprisingly, the executive branch has not always agreed that Congress has the authority to require more transparency or disclosure with regard to apportionments. The Trump administration opposed provisions that would have required real-time publication of apportionment schedules as well as more notification requirements for situations where apportionments would disrupt, delay, or otherwise alter expected funding processes for federal

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<sup>19</sup> 31 U.S.C. § 1512 (2021).

<sup>20</sup> Congressional Power of the Purse Act §§ 211-214 [see note 7]; Protecting Our Democracy Act §§ 521-524 [see note 8].

<sup>21</sup> 2 U.S.C. §§ 601-688 (2021).

<sup>22</sup> Andrew Glass, "Budget and Impoundment Control Act becomes law, July 12, 1974," *Politico*, July 12, 2017. <https://www.politico.com/story/2017/07/12/budget-and-impoundment-control-act-becomes-law-july-12-1974-240372>

<sup>23</sup> 2 U.S.C. § 684. <https://www.law.cornell.edu/uscode/text/2/684>

<sup>24</sup> Congressional Power of the Purse Act § 105 [see note 7]; Protecting Our Democracy Act § 505 [see note 8].

<sup>25</sup> Congressional Power of the Purse Act §§ 101-105 [see note 7]; Protecting Our Democracy Act Title V, Subtitle A, §§ 501-505 [see note 8].

<sup>26</sup> 31 U.S.C. § 1512. <https://www.law.cornell.edu/uscode/text/31/1512>

agencies.<sup>27</sup> This opposition appears to be rooted solely in claims that Congress is encroaching on a coequal branch of government and violating the separation of powers by doing so. The administration also claimed that an undue burden would be placed on OMB if such apportionment transparency requirements became law. We find these objections to be largely meritless and urge Congress not to take direction on its authorities from the White House.<sup>28</sup>

There is nothing coequal about the power of the purse. That power lies with Congress. To whatever extent Congress has decided to assign some technical aspects of that power to the executive branch, Congress clearly and unambiguously possesses the authority to take back that power or place parameters on that power. It is also specious to claim that it would be a burden, undue or otherwise, for OMB to post on a public-facing website documents that are already generated internally, especially given the ever-shrinking cost of digital content production and website hosting.

If Congress accepts these kinds of dubious claims from the executive branch, irrespective of which party controls Congress or the White House, it will have all the more trouble maintaining its grip on the power of the purse.

The potential for abuse of the apportionment power is not hypothetical. I'd like to highlight one recent example that shows how the apportionment process, while meant to be a technical tool that promotes more efficient and responsible federal budgeting practices, can be weaponized and abused toward political ends. This can happen under any administration, controlled by either party.

In 2019, as the House Budget Committee documented, the Trump administration used the apportionment process to engage in a suspicious delay in the release of security assistance funding for Ukraine.<sup>29</sup> As noted earlier, withholding appropriated funds on a temporary basis is permissible only when legitimate programmatic or technical reasons are operative, and not on the basis of policy disagreement. After the House Budget Committee and other congressional stakeholders raised the alarm, the Government Accountability Office (GAO)—the nonpartisan entity tasked with investigating possible violations of the Antideficiency Act and the Impoundment Control Act—looked into the matter. The GAO found that the Trump administration had violated the Impoundment Control Act.<sup>30</sup> This violation was facilitated through the use of a footnote attached to an apportionment schedule, which is one of the avenues through which the apportionment tool can be used in inappropriate and illegal ways. The incident would eventually form part of the argument in favor of the impeachment of then-President Donald Trump.

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<sup>27</sup> Office of Management and Budget, "Statement of Administration Policy on H.R. 7617," July 30, 2020. <https://trumpwhitehouse.archives.gov/wp-content/uploads/2020/07/SAP-H.R.-7617-1.pdf>

<sup>28</sup> Dylan Hedtler-Gaudette, "Executive Branch Fights to Keep Spending Decisions Secret with Flimsy Arguments," Project On Government Oversight, August 13, 2020. <https://www.pogo.org/analysis/2020/08/executive-branch-fights-to-keep-spending-decisions-secret-with-flimsy-arguments/>

<sup>29</sup> House Budget Committee, "House Budget Committee Outlines OMB's Abuse of Apportionment Process," December 2, 2019. <https://budget.house.gov/hbc-summary-omb-abuse>

<sup>30</sup> Government Accountability Office, *Office of Management and Budget—Withholding of Ukraine Security Assistance*, B-331564 (January 16, 2020). <https://www.gao.gov/assets/b-331564.pdf>

Whether one agrees or disagrees with the Trump administration's actions in the example I've highlighted, Congress must grapple with the reality that politicization of the apportionments process by any administration can set a dangerous precedent, and, if unchecked, could further erode Congress's power of the purse. This is why it is crucial to set clear and robust requirements around apportionment.

The risk that any administration will abuse the apportionment process for political ends is exacerbated when these directives are executed behind a veil of secrecy. Under the current system, apportionment schedules are entirely secret. As we note above, they are also legally binding on executive branch agencies, giving them something close to the force of law. It is unacceptable for the executive branch to promulgate law in the shadows, out of view of Congress and the public. Apportionments are no different. Indeed, there may have been abuses of the apportionment process during previous administrations from both parties that were just as egregious as the Ukraine funding Impoundment Control Act violation, but we will likely never know. This is because OMB is not required to be transparent with apportionment schedules, and the executive branch has fought to keep the apportionment process opaque.

As recently as November 2019, the idea of requiring apportionment transparency has received strong bipartisan support. At that time, the Senate Budget Committee voted to pass the Bipartisan Congressional Budget Reform Act, which included language around apportionment transparency that was similar to provisions contained in the Congressional Power of the Purse Act.<sup>31</sup>

## **Conclusion**

The power of the purse is the most necessary and potent tool in Congress's arsenal. For decades and across administrations and congresses controlled by both parties, Congress has slowly but surely relinquished that power to the executive branch.

If Congress is to reverse this trend and deliver on its promise to be accountable and responsive to the public, it must enact reforms that will realign this power imbalance. Doing so will not only bring our governmental system back to its appropriate separation of powers, but will also help mitigate the public's persistent concerns around government corruption and resource mismanagement. My colleagues at POGO and I stand ready and willing to work with the House Budget Committee to achieve these ends.

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<sup>31</sup> Bipartisan Congressional Budget Reform Act, S. 2765, 116<sup>th</sup> Cong., § 505 (2019).  
<https://www.congress.gov/bill/116th-congress/senate-bill/2765/text>