The Destruction of the Climate Spending State

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The Biden Administration bet big on spending laws to forward its climate policies, creating a novel "climate spending state" in a field previously approached primarily through regulation. But the second Trump Administration, building on an aggressive theory of Presidential power, with support from bicameral Congressional majorities and a sympathetic Supreme Court, has dismantled the climate spending state with startling ease and speed. Although degradation of the federal workforce and legislative alterations to the tax code have played their part, it is the Trump Administration's refusal to administer the spending laws enacted by prior Congresses that has had the most disruptive and immediate impact, and which has suddenly brought the obscure law of federal appropriations to the forefront of national legal consciousness. A detailed analysis of the ongoing destruction of the climate spending state reveals a sophisticated strategy of Presidential impoundment, administrative unilateralism, aggressive litigation, and Executive influence over Congress's spending power, in a manner never before seen in the United States. The radical transformation of legal norms in budgetary processes has implications far beyond climate law, to the very fabric of the U.S. constitutional order.

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With respect to the suggestion that the President has a constitutional power to decline to spend appropriated funds, we must conclude that existence of such a broad power is supported by neither reason nor precedent.[1]

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The American people elected Donald J. Trump to be President of the United States … Career and political appointees in the Executive Branch have a duty to align Federal spending and action with the will of the American people as expressed through Presidential priorities.[2]

1. Memorandum from William H. Rehnquist, Assistant Att'y Gen., Office of Legal Counsel, to Edward L. Morgan, Deputy Couns. to the President (Dec. 1, 1969), quoted in *In re Aiken County*, 725 F.3d 255, 261 n.1 (D.C. Cir. 2013) (Kavanaugh, J.) [https://perma.cc/GU5Z-VZRX].

2. Memorandum from Matthew J. Vaeth, Acting Dir., Office of Mgmt. and Budget (OMB) to Heads of Exec. Dep'ts & Agencies *re: Temporary Pause of Agency Grant, Loan, and Other Financial Assistance Programs* [hereinafter OMB Memo] (Jan. 27, 2025), https://www.whitehouse.gov/wp-content/uploads/2025/03/M-25-13-Temporary-Pause-to-Review-Agency-Grant-Loan-and-Other-Financial-Assistance-Programs.pdf [https://perma.cc/39AF-CU39].

I. INTRODUCTION

In 2021 and 2022, the Biden Administration, working with narrow Congressional majorities, worked to pass new laws directing hundreds of billions of dollars toward federal climate change programs.[3] With the high-profile passage of the Bipartisan Infrastructure Law (BIL) and Inflation Reduction Act (IRA), climate law, suddenly, *was* "spending law."[4] But climate law is also one of the nation's most deeply partisan and polarized legal battlegrounds.[5]

President Trump's second presidential campaign platform included strong opposition to the Biden Administration's climate programs.[6] The second Trump Administration consequently has overseen an unprecedented attack on federal climate spending.[7] In an all-of-government push, financial disbursements have been paused, contracts have been suspended and terminated, and programs have been gutted.[8] As examined in detail in this Article, none of this has occurred via normal

3. Infrastructure Investment and Jobs Act (IIJA), Pub. L. No. 117–58, 135 Stat. 429 (2021); Consolidated Appropriations Act, Pub. L. No. 117–103, 136 Stat. 49 (2022); CHIPS and Science Act, Pub. L. No. 117–167, 136 Stat. 1366 (2022); Inflation Reduction Act (IRA), Pub. L. No. 117–169, 136 Stat. 1818 (2022); Consolidated Appropriations Act, 2023, Pub. L. No. 117–328, 136 Stat. 4459 (2022). For a summary of these laws' climate provisions, *see* WILLIAM J. MALLETT, CONG. RSCH. SERV. (CRS). IF11921, SURFACE TRANSPORTATION AND CLIMATE CHANGE: PROVISIONS IN THE INFRASTRUCTURE INVESTMENT AND JOBS ACT (P.L. 117-58) (2022) https://www.congress.gov/crs-product/IF11921 [https://perma.cc/PP7K-K8KN]; JONATHAN L. RAMSEUR, CONG. RSCH. SERV., R47262, INFLATION REDUCTION ACT OF 2022 (IRA): PROVISIONS RELATED TO CLIMATE CHANGE (2023) [https://perma.cc/PP7K-K8KN].

4. In this Article, "spending law" refers to any legislation passed by Congress exercising its spending powers under U.S. CONST. art. I, § 8, cls. 1 & 18 (Spending and Necessary and Proper clauses, defining powers of Congress); *see also* Sabri v. U.S., 541 U.S. 600, 605 (2004). "Appropriations law," meanwhile, refers to legislation passed by Congress in compliance with its appropriations responsibilities under U.S. CONST. art. I, § 9, cl. 7 (Appropriations clause, defining how Congress must go about exercising its spending power). Appropriations law is a subset of spending law, which might also encompass taxation and tax expenditures. Of course, climate change law was not *entirely* spending law even after the passage of BIL and IRA. Rather, climate law now included spending law as never before. *See generally*, DAN LASHOFF, TRACKING PROGRESS: CLIMATE ACTION UNDER THE BIDEN ADMINISTRATION, World Resources Institute (Jul. 30, 2025) [https://perma.cc/JYE4-4Y2D].

5. *See generally* Hari M. Osofsky & Jacqueline Peele, *"The Grass Is Not Always Greener" Revisited: Climate Change Regulation amid Political Polarization*, 39 YALE J. ON REG. 815 (2022).

6. Samantha Gross & Louison Sall, *Trump Has Big Plans for Climate and Energy Policy, But Can He Implement Them?*, BROOKINGS INST. (Jul. 30, 2024), https://www.brookings.edu/articles/trump-has-big-plans-for-climate-and-energy-policy-but-can-he-implement-them/ [https://perma.cc/3EQ4-QZNG].

7. *See generally*, *White House Watch: Tracking Attacks on Our Environment & Health*, NAT. RES. DEF. COUNCIL (July. 1, 2025) https://www.nrdc.org/resources/white-house-watch-tracking-attacks-our-environment-health [https://perma.cc/PD4T-PRFJ].

8. *See generally* Zachary Price et al, *Appropriations Presidentialism*, 114 GEO. L. J. ONLINE (2025).

administrative and contractual processes. These actions, cumulatively, constitute the unprecedented ongoing destruction of an entire segment of the federal administrative state, with concomitant impacts on entire sectors of the U.S. industrial economy, not by legislation, not by regulation, but by the simple expedient of refusing to pay anyone.

Of course, this effort has targeted much more than just the climate spending state. It has been brought to bear against longstanding federal institutions supporting foreign aid, public education, arts and libraries, scientific research, social justice, environmental protection, and more.[9] But the second Trump Administration's climate activities have impacted so many different types of federal funding programs, have involved such uniquely aggressive tactics, and have been focused in areas where in theory presidential power is considered to be at its lowest ebb, that a detailed review of the ongoing attack against climate spending offers lessons far beyond the realm of climate law. Appropriations are at the heart of the constitutional order and the rule of law in the United States—both of which are challenged by the second Trump Administration's actions.

Certainly, spending actions are not the only tools by which the Trump Administration has attacked the nation's climate programs. Withdrawal from relevant treaty obligations,[10] legislative amendments,[11] deregulatory efforts,[12] and widespread staffing cuts and office closures[13] have each had consequences for U.S. climate law. But there is a relatively broad academic literature on these approaches, as they have been undertaken before.[14] Appropriations law, on the other hand, although extremely important to wide swaths of the administrative state, is understudied by

9. Jennifer Scholtes, *Trump Administration Targets Thousands of Programs in Funding Freeze*, POLITICO (Jan. 28, 2025), https://www.politico.com/news/2025/01/28/omb-funding-freeze-trump-00200943 [https://perma.cc/9HT2-63JN].

10. Exec. Order No. 14,162, *Putting America First in International Environmental Agreements*, 90 Fed. Reg. 8455 (Jan. 20, 2025).

11. One Big Beautiful Bill Act, Pub. L. No. 119–21 (2025) (discussed further below).

12. *E.g.,* PRESS RELEASE: EPA PROPOSES REPEAL OF BIDEN-HARRIS EPA REGULATIONS FOR POWER PLANTS (Jun. 11, 2025), https://www.epa.gov/newsreleases/epa-proposes-repeal-biden-harris-epa-regulations-power-plants-which-if-finalized-would [https://perma.cc/9DQS-CWP3].

13. Annette Choi, *Tracking Trump's Overhaul of the Federal Workforce*, CNN (Jun. 26, 2025) (tracking almost 130,000 firings and layoffs to date), https://www.cnn.com/politics/tracking-federal-workforce-firings-dg [https://perma.cc/25SK-N9RD].

14. *E.g.,* Harold Koh, *Presidential Power to Terminate International Agreements*, 128 YALE L.J. FORUM 432 (2018); Franz Jotko et al., *US and International Climate Policy under President Trump*, 18 CLIMATE POL'Y 813 (2018); Felix Mormann, *Beyond Tax Credits: Smarter Tax Policy for A Cleaner, More Democratic Energy Future*, 31 YALE J. ON REG. 303 (2014); David M. Driesen and Michael A. Mehling, *Pricing, Decarbonization, and Green New Deals*, 48 WM. & MARY ENV'T L. & POL'Y REV. 211 (2024); Hannah Perls, *Deconstructing Environmental Deregulation Under the Trump Administration*, 45 VT. L. REV. 591 (2021); Jody Freeman and Sharon Jacobs, *Structural Deregulation*, 135 HARV. L. REV. 585 (2021).

public law scholars,[15] and almost never examined as a matter of climate, energy, or environmental law.[16]

This Article therefore seeks to initiate a broader engagement with appropriations law as an essential mechanism for protecting—or undermining—Congressionally mandated federal activities related to climate, energy, and the environment. Part I, continued below, discusses this Article's concept of a "climate spending state," the history of the debate over the Presidential power to refuse to spend Congressionally appropriated funds, and the second Trump Administration's "playbook" to destroy the climate spending state. Part II examines how this strategy has played out in practice across the climate spending state, with particular attention on the transformation of the Department of Energy's Loan Programs Office and the attack on the Environmental Protection Agency's Greenhouse Gas Reduction Fund. Parts III and IV then consider the second Trump Administration's efforts to secure post hoc ratification of its actions through the other branches of government. Part III examines the Trump Administration's defense against the blizzard of lawsuits arising from its actions, the lower federal courts' almost universal conclusion that the actions undertaken were illegal, and the strategic jurisdictional litigation that has proven to be the winning play so far against federal judicial oversight. Part IV then examines efforts to seek legislative approval of the same actions, and the new power dynamics between the President and Congress that are emerging as a consequence. Part V concludes by considering the long-term implications of these actions.

The U.S. Constitution places the spending power exclusively in the hands of Congress and requires the President to execute Congress's laws.[17]

15. Gillian E. Metzger, *Taking Appropriations Seriously*, 121 COLUM. L. REV. 1075 (2021). Eloise Pasachoff is the leading scholar on federal appropriations law but is unique in her focus. *E.g.*, *Executive Branch Control of Federal Grants: Policy, Pork and Punishment*, 83 OHIO ST. L.J. 1113 (2022); *Modernizing the Power of the Purse Statutes*, 92 GEO. WASH. L. REV. 359 (2024).

16. *See, e.g.,* Todd S. Aagaard*, Environmental Law Outside the Canon*, 89 IND. L.J. 1239, 1277-78 (2014) (briefly discussing appropriations riders – not direct appropriations in environmental law); Metzger, *supra* note 15, at 1093 (same); Erin Ryan, *The Spending Power and Environmental Law after Sibelius*, 85 COLO. L. REV. 1003 (2014) (examining limits of Congressional power to coerce state action with spending); Gould, *infra* note 32, at 227 (discussing climate spending).

17. U.S. CONST. art. I, § 9, cl. 7 (the "spending clause": "No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law"); art. II, § 3, cl. 5 (the "take care clause": "[the President] … shall take Care that the Laws be faithfully executed"). *See generally* Kate Stith, *Congress' Power of the Purse*, 97 YALE L. J. 1343 (1988) (presenting the basic argument for absolute Congressional control over spending), Gregory Sidak*, The President's Power of the Purse*, 1989 DUKE L. J. 1162 (1989) (arguing for some presidential authority to spend absent Congressional authorization); William Bradford Middlecoff*, Twisting the President's Arm: The Impoundment Control Act as a Tool for Enforcing the Principle of Appropriation Expenditu*re, 100 YALE L. J. 209 (1990) (exploring the tensions inherent in Congress empowering the president to withhold spending for budget control purposes).

But that constitutional balance is built as much on two centuries of governance norms as on any clear or authoritative statements of law. In a norm-shattering presidency, the destruction of the climate spending state serves as a window into the ongoing transformation of the American democratic experiment.

A. The Climate Spending State—BIL and IRA's System

BIL and IRA were climate spending laws, meaning that they used federal spending to promote activities that tend to reduce the United States' annual greenhouse gas emissions and thus its contribution to climate change.[18] This spending fell into two categories: tax expenditures, ilemeaning forgone tax revenue from subsidies and incentives in the tax code,[19] and direct spending, meaning federal appropriations for programs that spend federal funds on goods, services, and entitlements.[20] The theory was that these incentives would promote low-carbon industrial manufacturing and consumer purchasing behaviors that would, in aggregate, reduce U.S. greenhouse gas emissions.[21]

Taken together, spending under BIL and IRA expanded and solidified what this Article calls the "climate spending state." The term encompasses, first, Congress itself, and the programs Congress created and expanded by directing hundreds of billions of dollars toward climate change response. It also includes the dozens of federal agencies and offices tasked with spending these funds, including particularly offices within the

18. The U.S. is the largest historical emitter of climate-warming greenhouse gases, and currently the second-highest annual emitter after China. *See Greenhouse Gas Emissions,* OUR WORLD IN DATA, *https://ourworldindata.org/greenhouse-gas-emissions* [https://perma.cc/PQ2X-6F8M]; *Who Has Contributed Most to Global CO_2 Emissions?*, OUR WORLD IN DATA, https://ourworldindata.org/contributed-most-global-co2 [https://perma.cc/V7W2-MEWK]. *See also Inflation Reduction Act (IRA) Summary: Energy and Climate Provisions,* BIPARTISAN POL'Y CTR. (Aug. 4, 2022), https://bipartisanpolicy.org/article/inflation-reduction-act-summary-energy-climate-provisions/ [https://perma.cc/Y3CB-AQGV].

19. *See* IRA §§ 13101, 13102, 13104, 13201, 13202, 13203, 13204, 13205, 13301, 13302, 13401, 13402, 13403, 13501, 13502, 13701, 13702, 13704, amending or enacting 26 U.S.C. §§ 45, 48, 40, 45Q, 40A, 40B, 45V, 45U, 25D, 25C, 30D, 25E, 30C, 48C, 45X, 45Y, 48E, 45Z. Estimates of these tax expenditures are highly uncertain and have ranged from $369 billion to $1.2 trillion over ten years. *Editorial: The Real Cost of the Inflation Reduction Act Subsidies: $1.2 Trillion*, WALL ST. J. (Mar. 24, 2023) [https://perma.cc/2A9L-ZQ58]. The true cost will depend on actual usage of the tax credit programs.

20. According to the Climate Program Portal, BIL and IRA "appropriated $251.3 billion and $143.8 billion in direct spending and loans, respectively." CLIMATE PORTAL, *https://climateprogramportal.org/* [https://perma.cc/E9DF-AYGJ]. There are hundreds of separate spending authorizations and appropriations in the two laws.

21. For a discussion and critical review of the likely effectiveness of these programs to achieve those goals, see Adam D. Orford, *Overselling BIL and IRA*, 51 ECOLOGY L. Q. 633 (2025).

Department of Energy and the Environmental Protection Agency;[22] and the people employed in these offices, including thousands hired specifically to administer these new programs.[23] However, the "climate spending state" is not limited to government actors. It also includes the businesses, public interest organizations, and communities that interfaced with and could benefit from the programs Congress created. BIL and IRA promoted emissions reduction through industrial growth,[24] but also sought to promote environmental justice.[25] In doing so, this new spending framework created new classes of federal spending beneficiaries—not only business sectors engaged in climate response, but also historically underserved and underrepresented segments of U.S. society, requiring additional programs to assist these parties in accessing these funds.[26]

The term "spending state" is rarely used in academic literature,[27] and yet seems to capture what BIL and IRA did more neutrally and more clearly than other, more common terminology. The programs involved expansions of what might be called the "regulatory state"[28] or

22. The Inflation Reduction Act Database identifies programs in sixteen departments and independent agencies. *Inflation Reduction Act Database,* INFLATION REDUCTION ACT TRACKER, https://iratracker.org/ira-database/ [https://perma.cc/3ENZ-5EVR]. This does not include programs funded by only in BIL.

23. *E.g.*, Drew Friedman, *EPA Targeting Higher Recruitment Numbers for 2024*, FED. NEWS NETWORK (Feb. 13, 2024) (discussing BIL and IRA hiring), https://federalnewsnetwork.com/hiring-retention/2024/02/epa-targeting-higher-recruitment-numbers-for-2024/ [https://perma.cc/P2HX-AWED]; Justin Worland*, How the U.S. Energy Department Reorganized to Champion Clean Energy*, TIME (Oct. 25, 2024) [https://perma.cc/XCS5-DEH3] (reporting over 1,000 hired).

24. *See* PIA KAUER, A NEW DEAL FOR THE CLIMATE? LESSONS FROM THE INFLATION REDUCTION ACT (2025), https://www.ipe-berlin.org/fileadmin/institut-ipe/Dokumente/Kauer_WP_248_Final.pdf [https://perma.cc/AA9U-8F4L] (discussing design logic and history of BIL and IRA's industrial growth policies); Robert Pollin et al., *Employment Impacts of New U.S. Clean Energy, Manufacturing, and Infrastructure Laws*, POL. ECON. RSCH. INST. (2023), https://peri.umass.edu/wp-content/uploads/2025/01/BIL_IRA_CHIPS_9-18-23-1.pdf [https://perma.cc/W2EY-2PA8].

25. For a critical discussion of the effectiveness of these programs, see Babu Gounder & C. Taylor Brown, *The (Un)Just Transition in Ecomodernist Climate Policy: Critical Analysis of Social Inequities in the US Inflation Reduction Act*, 45 CRIT. SOC. POL'Y 165 (2024) (reviewing intentions and realities of environmental justice in BIL and IRA).

26. For example, the Environmental Justice Thriving Communities Technical Assistance Centers program, which provided assistance for low-income communities to write grant proposals, and budget and manage qualifying projects. *See* TCTAC NETWORK*,* https://www.ejtctac.org/ [https://perma.cc/QNQ3-V7MP] (last visited Jan. 16, 2026). Although this program was not mandated by statute, other BIL and IRA programs focused specifically on low-income communities. *See, e.g*., the GGRF program discussed below.

27. *E.g.*, LUDGER SCHUKNEKT, *PUBLIC SPENDING AND THE ROLE OF THE STATE: HISTORY, PERFORMANCE, RISK AND REMEDIES*, xvi (Oxford Univ. Press 2021); *id*. at 235 (referring to the "spending state" to capture the institutions and processes of state spending).

28. Discussions of the regulatory state focus on the use of legal rules and mandates to influence society, often criticizing that approach. E.g., Cass Sunstein, *Paradoxes of the Regulatory State*, 57

"administrative state,"[29] but these terms traditionally focus on regulatory control and agency decision making and do not capture the distinct distributional goals that BIL and IRA sought to achieve. There is also a large literature on the "tax state" or "fiscal state," which has tended to examine the role of taxation in support of state spending from a social-historical perspective,[30] but which has less to say about the purposes to which state funds are directed.[31] Meanwhile studies of public spending for public welfare, such as discussions of the "welfare state," "social state," or "redistributive state," do not capture BIL and IRA's heavy focus on promoting industrial development for the purposes of environmental protection.

Professor Jonathan Gould has observed that, with federal lawmaking often deadlocked by the Senate filibuster, the U.S. Congress has increasingly turned to its spending power to exert its will and craft national policy.[32] His term, "republic of spending," focuses on Congress's power of the purse to provide services, influence behaviors, and facilitate preferred activities, particularly in circumstances where Congress is unable to pass laws containing more direct regulatory controls. Where new regulatory requirements are impossible to put into law, new financial incentives may still serve as a powerful force for governance.[33] U.S. climate law has certainly followed this trajectory—after years of failure to enact nationwide regulatory legislation to limit greenhouse gas

U. CHI. L. REV. 407 (1990) (criticizing governance based on regulatory control); CASS SUNSTEIN, *THE COST-BENEFIT STATE: THE FUTURE OF REGULATORY PROTECTION* (Am. Bar Ass'n 2002) (advocating for incorporation of cost-benefit analysis into the regulatory state).

29. *See* Alasdair Roberts, *Should We Defend the Administrative State?,* 80 PUB. ADMIN. REV. 391 (2020) (discussing origins and meanings of terminology).

30. Growing from Joseph A. Schumpeter's seminal work The Crisis of the Tax State (1918), the concept has been influential in economic history. *E.g.,* JOHN BREWER, THE SINEWS OF POWER: WAR, MONEY AND THE ENGLISH STATE, 1688–1783, 137 (1989); PETER H. LINDERT, GROWING PUBLIC: SOCIAL SPENDING AND ECONOMIC GROWTH SINCE THE EIGHTEENTH CENTURY (2004). It has also been influential in studies of tax law. *E.g.,* AJAY MEHROTRA, MAKING THE MODERN AMERICAN FISCAL STATE: LAW, POLITICS, AND THE RISE OF PROGRESSIVE TAXATION, 1877–1929 (2013).

31. Heather Whiteside, *Beyond Death and Taxes: Fiscal Studies and the Fiscal State*, 55 ENV'T & PLANNING A: ECON. & SPACE 1744, 1746 (2023) ("Expanding the remit of fiscal studies to include a fuller range of revenue and expenditures beyond taxes more accurately captures how states govern").

32. Jonathan Gould, *A Republic of Spending*, 201 MICH. L. REV. 209 (2024).

33. *See generally* RICHARD THALER & CASS R. SUNSTEIN, NUDGE: IMPROVING DECISIONS ABOUT HEALTH, WEALTH, AND HAPPINESS (2009) (exploring the design of "choice architecture" in law and government); Stanley S. Surrey, *Tax Incentives as a Device for Implementing Government Policy: A Comparison with Direct Government Expenditures*, 83 HARV. L. REV. 705 (1970).

emissions,[34] BIL and IRA did represent a "transformational" shift toward a spending paradigm,[35] and this shift in legislative emphasis is paradigmatic of the shift toward a "republic of spending." However, even "republic of spending" seems underinclusive for what the Biden-era climate laws attempted to accomplish. BIL and IRA's programs involved numerous administrative actors and private parties, not just Congress.

Those much more critical of BIL and IRA's spending programs have, on the other hand, sometimes accused climate spending of constituting or supporting a "climate industrial complex."[36] Stripped of its derogatory connotations, this term gestures toward the same concerns first raised by President Eisenhower in his famous warning regarding the "military industrial complex,"[37] and invoked by others who have described government-industrial systems in similar terms: from the prison-industrial complex, to the medical-industrial complex, to the agro-industrial complex, and so on.[38] Buried within this reductive critique is a legitimate concern that special interests will seek to profit from these laws without concomitant public benefit. This is always a risk when laws send money to industry, and was a risk for BIL and IRA.[39] But BIL and IRA's programs were distinct in their efforts to ensure that spending program benefits passed not only to industries, but to traditionally underserved

34. Climate Stewardship Act, S. 139, 108th Cong. (2003) (defeated in Senate 43-55); Climate Stewardship and Innovation Act of 2005, S. 342, 109th Cong. (2005), introduced as S. Amdt. 826 to H.R. 6 (defeated in Senate 38-60); American Clean Energy and Security Act, H.R. 2454, 111th Cong. (2009) (creating a national cap and trade system for greenhouse gases; passed House 219-212, received no vote in Senate). Later, legislative momentum consolidated behind carbon tax bills, none of which became law. *See* C2ES, CARBON PRICING PROPOSALS IN THE 116TH CONGRESS (Sep. 2020) [https://perma.cc/WV8E-KKHY]; C2ES, CARBON PRICING PROPOSALS IN THE 117TH CONGRESS (Dec. 2022), https://www.c2es.org/wp-content/uploads/2021/12/carbon-pricing-proposals-in-the-117th-congress.pdf [https://perma.cc/BW9Y-9UDC]. Regulatory climate legislation was considered an extremely difficult political challenge in the United States. *E.g.,* Richard Lazarus, *Super Wicked Problems and Climate Change: Restraining the Present to Liberate the Future*, 94 CORN. L. REV. 1153 (2009).

35. Fatima Maria Ahmad, *The Road Ahead after Transformational Climate Legislation*, 47 FLETCHER F. WORLD AFF. 129 (2023).

36. *E.g.,* RUPERT DARWALL, GREEN TYRANNY: EXPOSING THE TOTALITARIAN ROOTS OF THE CLIMATE INDUSTRIAL COMPLEX (2017).

37. Dwight D. Eisenhower, *Farewell Address to the Nation*, 1 Pub. Papers 1035 (Jan. 17, 1961), https://www.fordlibrarymuseum.gov/sites/default/files/pdf_documents/library/document/0011/1683358.pdf [https://perma.cc/K9EH-5BTT].

38. STEPHEN J. HARTNETT, CHALLENGING THE PRISON INDUSTRIAL COMPLEX (2011); MIKE MAGEE, CODE BLUE: INSIDE AMERICA'S MEDICAL INDUSTRIAL COMPLEX (2019); ANTHONY WINSON, THE INTIMATE COMMODITY: FOOD AND THE DEVELOPMENT OF THE AGRO-INDUSTRIAL COMPLEX IN CANADA (1993).

39. For a scholarly investigation of this issue and how to deal with it, *see* Hubert Schmitz et al., *Rent Management – The Heart of Green Industrial Policy*, 20 NEW POL. ECON. 812 (2015).

communities.[40] Calling such a system an "industrial complex" again misses a great deal of what it sought to do, simultaneously ignoring the bureaucratic controls put in place to prevent rent-seeking, and the laws' shifts in distributional emphasis.

BIL and IRA functioned by spending public money to promote climate change response, incorporating both domestic industrial development and social justice goals. While that spending involved elements of what has been called the administrative state, regulatory state, fiscal state, or even welfare state, and while political realities constrained Congress to rely on its spending powers, and while BIL and IRA did create possibilities for rent-seeking and new political coalitions—albeit with substantial bureaucratic protections—it is the leveraged expenditure of federal funds to transform government, business, and society, in manners consistent with climate change response sensitive to equity, that were the laws' hallmarks. The term "climate spending state" captures this completely.

Whatever it is called, BIL and IRA's system created numerous federal spending obligations that in the normal course would require the executive branch to administer federal funding consistent with Congressional mandates. Efforts to attack this system, therefore, necessarily raise questions of whether and to what extent the executive branch can simply refuse to undertake these administrative duties.

B. Impoundment—The Presidential Power to Refuse to Spend

Federal spending, particularly when accomplished through budget reconciliation legislation requiring only a majority vote in the Senate,[41] will always be vulnerable to changes in Congressional priorities and majorities. As will be discussed further below, this has proven true for the climate spending state. However, the Congressional power to change the law is so non-controversial that it is not necessary to belabor further here: Congress can pass laws, and Congress can change the laws it passes. Budget laws are no exception.

But the codification of the climate spending state in 2021–2022, its subsequent administration during the Biden Administration, and the wholesale reversal of this approach in the second Trump Administration, has implicated another, much more controversial power: the presidential

40. *See Justice40: A Whole-of-Government Initiative*, WHITE HOUSE (2020), https://bidenwhitehouse.archives.gov/environmentaljustice/justice40/ [https://perma.cc/TBS2-EC6E].

41. TORI GORMAN, CONG. RSCH. SERV., THE RECONCILIATION PROCESS: FREQUENTLY ASKED QUESTIONS (2025), https://www.congress.gov/crs-product/R48444 [https://perma.cc/6FK8-D26Z].

power to refuse to spend. The U.S. Constitution requires Congress to authorize all federal spending, and to appropriate funds from the federal treasury for each authorized spending program, through legislation.[42] However, Congress cannot "obligate," or actually spend, the funds it appropriates.[43] Rather, the Constitution requires the President to faithfully execute the law, and the President directs spending programs through executive agencies. As the President is therefore inserted between Congress and its spending, and the President's policy preferences may conflict with Congress's (or with former Congresses' whose laws are still in effect), the President may wish to override legislative priorities by refusing to obligate lawfully appropriated funds. And, perhaps surprisingly, there is very little binding legal precedent defining the Constitutional boundaries of the President's power to do so.

The term for this practice is "impoundment," meaning "a refusal by the President, or by agency officials within the executive branch of government, for whatever reason, to spend funds made available by Congress."[44] The practice has a long history, dating back to Thomas Jefferson's refusal to spend funding appropriated for naval construction in 1803.[45] The history of Congressional objection to impoundment, however, began much later,[46] and in its twentieth century form is based on the

42. *See generally* Matthew H. Solomson, Chad E. Miller, and Wesley A. Demory, *Fiscal Matters: An Introduction to Federal Fiscal Law & Principles*, 10-7 BRIEFING PAPERS 1, 3-5 (2010), https://www.sidley.com/-/media/files/publications/2010/07/fiscal-matters-an-introduction-to-federal-fiscal__/files/view-article/fileattachment/bp-107-wbox.pdf [https://perma.cc/X444-NDPT]. The specific appropriations-authorization process is a product of House and Senate rules. Bill Heniff, Jr., *Overview of the Authorization-Appropriations Process*, CRS (2012), https://www.congress.gov/crs-product/RS20371 [https://perma.cc/8PBN-MEXN].

43. Modern federal budget law requires the President, through OMB, to "apportion" appropriated funding amounts to various agencies and programs, effectively parceling out budgeted spending along a timeline to avoid overspending. It then falls to the responsible federal agency to "allot" and "obligate" the apportioned funding, meaning to internally budget, and then to spend, the funds. *See generally* U.S. GOV'T ACCOUNTABILITY OFF. Glossary of Terms Used in the Federal Budget Process 10, 70 (2005) [https://perma.cc/MW3B-U74A] (defining "allotment" as an "authorization … to incur obligations within a specified amount," and "obligation" as a "definite commitment that creates a legal liability of the government for the payment of goods and services ordered or received," including through orders, loans, contracts, and grants).

44. Jane C. Avery, *Executive Impoundment of Funds Appropriated by Congress*, 27 A.L.R. FED. 214 (1976).

45. Nile Stanton, *The Presidency and the Purse: Impoundment 1803–1973*, 45 U. COLO. L. REV. 25, 26 (1973). Jefferson's impoundment was resolved amicably, as the funding related to a war that had ended, and Congress ultimately did not disagree with the decision.

46. The earliest impoundment objections appear to have been to President Jackson's veto of the Maysville Road bill, which, as a veto, was not technically impoundment, but gave rise to debates over presidential power over Congress. *See* Daniel Mark Jansen*, Andrew Jackson's Maysville Road Veto: A Reappraisal* 19-21, 40, 47-53, 64-65, 78-79 (1992) (Master's thesis, University of Tennessee), https://trace.tennessee.edu/utk_gradthes/12146/ [https://perma.cc/ZZP7-FY39] (discussing contemporary constitutional concerns over appropriations for internal improvements,

argument that impoundment violates the separation of powers set out in the U.S. Constitution.[47]

The first modern effort to define the presidential impoundment power arose from President Nixon's unprecedented effort to impound almost twenty percent of the federal budget, including several significant environmental programs, in the 1970s.[48] The federal courts had not, at the time, created a clear constitutional jurisprudence to resolve whether this was legal.[49] Prior to 1970, the most authoritative statement on the law of impoundment came from the Office of Legal Counsel (OLC), which provides legal advice to the President.[50] Future Supreme Court Chief Justice William H. Rehnquist, in a memorandum to the Bureau of the Budget (the predecessor to today's Office of Management and Budget (OMB)), wrote that "[w]ith respect to the suggestion that the President has a constitutional power to decline to spend appropriated funds, we must conclude that existence of such a broad power is supported by neither reason nor precedent. . . . It is in our view extremely difficult to formulate a constitutional theory to justify a refusal by the President to comply with a congressional directive to spend."[51] OLC identified only a few limited exceptions to this rule: where an appropriation explicitly grants discretion to the executive over whether to spend the funds, in very limited cases where the spending would impinge upon the President's inherent constitutional powers, or where the spending would place the government

Jackson's constitutional rationale for vetoing it, and subsequent claims of presidential abuse of the veto power). Again, however, these debates were generally resolved politically without long term conflict.

47. U.S. CONST. Art. I, § 7, Art. II, § 1. *See generally* STATEMENT OF ELMER B. STAATS, COMPTROLLER GENERAL OF THE UNITED STATES, BEFORE THE SUBCOMMITTEE ON SEPARATION OF POWERS, Committee on the Judiciary, United States Senate (1973), https://www.gao.gov/assets/094562.pdf [https://perma.cc/VMQ6-EXCR].

48. *See* Stanton, *supra* note 45, at 34–38.

49. Louis Fisher, *Funds Impounded by the President: The Constitutional Issue*, 38 GEO. WASH. L. REV. 124 (1969) (arguing that impoundment debates were irresolvable under the constitution and required a political solution between Congress and the executive). Although Kendall v. United States ex rel. Stokes, 37 U.S. 524 (1838), has sometimes been suggested as stating a general constitutional proposition that the President cannot refuse to spend Congressionally mandated funds, in fact the court resolved the case on statutory interpretation grounds rather than reaching constitutional issues. Its sole constitutional statement was that the President could not refuse to obligate funds where such spending was purely ministerial, i.e., completely non-discretionary, leaving open a wide range of situations where Congress had delegated some amount of discretion to the executive.

50. *See Office of Legal Counsel*, DEP'T OF JUST., https://www.justice.gov/olc [https://perma.cc/E3GG-K9KT].

51. William H. Rehnquist, *Presidential Authority to Impound Funds Appropriated for Assistance to Federally Impacted Schools*, 1 SUPP. OP. O.L.C. 303 (Dec. 1, 1969), https://www.justice.gov/file/147706/dl?inline= [https://perma.cc/7SNB-HK4E].

in default or otherwise violate the law.[52] Although one Nixon-era impoundment case did arrive at the Supreme Court, the court resolved the matter through statutory interpretation rather than through an examination of the separation of powers over spending.[53]

It was ultimately Congress, not the courts, who solved the problem at the time. With the passage of the Congressional Budget and Impoundment Control Act of 1974 (ICA),[54] Congress expressly defined and limited the President's impoundment powers.[55] Where the President wishes to refuse to spend appropriated funds (to "rescind" budgetary authority), the President must submit a special message to Congress proposing a budget rescission, and the funds "shall be made available for obligation unless, within the prescribed 45-day period, the Congress has completed action on a rescission bill rescinding all or part of the amount proposed to be rescinded or that is to be reserved."[56] Where the President "proposes to defer" spending appropriated funds, the President is only authorized to do so "(1) to provide for contingencies; (2) to achieve savings made possible by or through changes in requirements or greater efficiency of operations; or (3) as specifically provided by law."[57] According to Congress, all impoundments outside of this framework are illegal.

While this may seem to resolve the question, in fact it does not, because it leaves unresolved the question of whether Congress holds the power to bind the President in this way. Notably, the ICA includes a statement that it should not be taken as "asserting or conceding the constitutional powers or limitations of either the Congress or the President."[58] Nor does the ICA provide a strong mechanism for enforcing its violation. The law purports to empower the Government Accountability Office (GAO) to bring a civil suit to enforce Congressionally mandated spending.[59] However, the GAO has only ever attempted to use this power once, upon which it was confronted with persuasive arguments that its civil suit authority constituted an unconstitutional delegation of executive authority to a legislative agency.[60] It has never again sought to bring a civil suit under the ICA.

52. *Id*.

53. Train v. City of New York, 420 U.S. 35 (1975).

54. Pub. L. No. 93–344, §§ 1001–1017, codified 2 U.S.C § 681 et seq. The law was passed by overwhelming congressional majorities and signed by Nixon, who opposed it, four weeks before his resignation. 120 Cong. Rec. 19698 (1974).

55. 2 U.S.C. §§ 683, 684.

56. 2 U.S.C. § 683. The 45-day period is included only in the ICA's definitions. 2 U.S.C. § 682(3).

57. 2 U.S.C. § 684.

58. 2 U.S.C. § 681(a).

59. 2 U.S.C. § 687.

60. *See* Mark Thomas, *The Overlooked Conundrums of Impoundment*, YALE J. REG. NOTICE & COMMENT (Jan. 28, 2025) (noting that the one time the GAO attempted to use its power, the DOJ

Since 1974, then, ICA compliance has largely relied on voluntary Presidential compliance with governance norms, and political resolution in cases of conflict. Courts have never determined whether the ICA's restrictions on the President are constitutional, or what, precisely, the Presidential power to impound might look like outside of this statute.

Subsequent litigation over the ICA did, however, develop a constitutional relationship between the ICA and Congress's *legislative*, rather than spending, power. In 1983, the Supreme Court invalidated the "one-house legislative veto," by which a vote of one house of Congress could operate as legislation invalidating prior legislative delegation of executive discretion.[61] The original ICA's "delay" process operated by this mechanism, and so the D.C. Circuit invalidated the entire delay impoundment mechanism until Congress amended the defect.[62] Later, the Supreme Court also examined the Line Item Veto Act (enacted as a new title to the ICA), ruling that it was unconstitutional not because it encroached upon the spending power, but rather because it allowed the president to unilaterally amend statutes of Congress, an encroachment on the legislative power.[63] Thus, these cases also did not resolve the constitutional question of whether executive refusal to spend appropriated funds encroached upon the Congress's exclusive power of the purse. This was the situation at the beginning of President Trump's first term.

As a President not known for voluntarily complying with longstanding governance norms, President Trump has seemed to have had little interest in following the ICA when it did not suit him. After a single attempt to adhere to the ICA's requirements,[64] the first Trump Administration sought

moved to dismiss on the basis that the ICA's authority was unconstitutional – although the suit was later dismissed voluntarily without resolution). *See also* JAMES SATURNO, CONG. RSCH. SERV., R48432, The Impoundment Control Act of 1974: Background and Congressional Consideration of Rescissions, n.17 (2025) ("in *Walker v. Cheney*, 230 F. Supp. 2d 51 (D.D.C. 2002), a suit filed by the Comptroller General pursuant to a different law was dismissed for lack of standing. Additionally, in a signing statement … President Reagan argued that the ICA provision authorizing the Comptroller General to bring suit violated the separation of powers, based on the Supreme Court's decision in *Bowsher v. Synar*, 478 U.S. 714 (1986), holding that, more generally, Congress cannot assign executive authority to the Comptroller General"). *See generally* 31 U.S.C. § 702 (GAO defined as "an instrumentality of the United States Government independent of the executive departments").

61. INS v. Chadha, 462 U.S. 919 (1983).

62. City of New Haven, Conn. v. United States, 809 F.2d 900 (D.C. Cir. 1987); and see Pub. L. No. 100–119 § 206 (changing the delay provision to allow budget deferral only under specific circumstances, with no provision for subsequent Congressional approval).

63. Clinton v. City of New York, 524 U.S. 417 (1998).

64. OFF. OF MGMT. & BUDGET, *Rescissions Proposals Pursuant to the Congressional Budget and Impoundment Control Act of 1974*, 83 Fed. Reg. 22525 (May 15, 2018); U.S. GOV'T ACCOUNTABILITY OFF., Report B-330045 (May 22, 2018). For two items that GAO had concluded could not be rescinded, OMB immediately complied with the law and released the funds. GAO,

out ways to short-circuit ICA compliance,[65] and then simply began to ignore it. Among other strategies, the administration attempted to withhold federal funding from so-called "sanctuary cities" on the theory that they were breaking federal law; withheld foreign aid funding earmarked for several Central American countries in order to protest, punish, and create bargaining power around the high number of U.S. asylum seekers originating in those countries; [66] suspended payments of Congressionally appropriated foreign aid payments to Ukraine;[67] and declared a national emergency at the southern border[68] to justify diverting Department of Defense funding from a variety of other purposes to build a border wall.[69]

Although each of these examples represented a significant departure from past spending norms, efforts to challenge them were largely unsuccessful. In the Central American aid case, Congress responded by creating much more specific requirements for its appropriations toward these countries going forward,[70] but by this time the withholding had already ended.[71] For Ukraine aid, the GAO issued a strongly worded opinion that the action had violated the ICA, but did not file a civil action to enjoin it, while Congress cited the episode as the basis for the first Articles of Impeachment filed against President Trump, which effort was ultimately unsuccessful.[72] In the case of border wall funding, both the

Report B-330045.1 (May 24, 2018). When Congress did not agree with the rescissions, the funds were released. GAO, Report B-330045.3 (July 3, 2018).

65. In late 2018, OMB had begun suggesting that it would be legal for the President to submit an ICA rescission statement within 45 days of the expiration of those funds, effectively to allow funds to be unspent for the duration of a fiscal year, but then to "comply" with the ICA by submitting a rescission notice without giving Congress a chance to respond. *See* OFFICE OF MGMT. & BUDGET LETTER TO U.S. GOV'T ACCOUNTABILITY OFFICE (Nov. 18, 2018). GAO concluded that this would be illegal. U.S. GOV'T ACCOUNTABILITY OFF., Report B-330330 (Dec. 10, 2018).

66. Ben Gilbert, *US Reportedly Cutting Off Aid to El Salvador, Guatemala, and Honduras after Trump Claims Countries 'Set Up' Migrant Caravans*, BUSINESS INSIDER (Mar. 30, 2019), https://www.businessinsider.com/us-cutting-aid-to-el-salvador-guatemala-honduras-trump-migrant-caravans-2019-3 [https://perma.cc/EK3C-CR28]; Stef W. Kight, *U.S. to Permanently End Foreign Aid for Guatemala, Honduras, El Salvador*, AXIOS (Jun. 17, 2019), https://www.axios.com/2019/06/17/us-end-foreign-aid-central-america [https://perma.cc/UJF2-FD7Y]; U.S. GOV'T ACCOUNTABILITY OFF., Report 21–104366 (Sept. 24, 2021).

67. *See* U.S. GOV'T ACCOUNTABILITY OFF., Decision B-331564 (Jan. 16, 2020).

68. Proclamation No. 9844, Declaring a National Emergency Concerning the Southern Border of the United States, 84 Fed. Reg. 4949 (Feb. 20, 2019).

69. *See* Order, Sierra Club v. Trump, No. 1:19-cv-00892 (N.D. Cal. May 24, 2019), ECF 144 at 8–12 (explaining that the emergency order was issued the day after Congress refused to appropriate funds).

70. *See* Further Consolidated Appropriations Act, 2020, Pub. L. No. 116–94, 133 Stat. 2534, 2903 (Dec. 20, 2019).

71. U.S. GOV'T ACCOUNTABILITY OFF., Report 21–104366 (Sept. 24, 2021).

72. *See generally* R. Jeffrey Smith, *Timeline: How Trump Withheld Ukraine Aid*, CTR. FOR PUB. INTEGRITY (Dec. 13, 2019), https://publicintegrity.org/politics/timeline-trump-withheld-ukraine-

Northern District of California and the Ninth Circuit were satisfied that the action should be enjoined,[73] but this injunction was stayed without explanation in an emergency ruling by the Supreme Court,[74] and the funding reallocation was ended after President Biden took office, mooting the litigation. Thus, the legality of these impoundments was never fully tested in court.

Only one significant statement of constitutional principle emerged during this time, as the Ninth Circuit struck down the sanctuary cities impoundment on squarely constitutional grounds.[75] Reasoning that the "United States Constitution exclusively grants the power of the purse to Congress, not the President," and that "Congress's power to spend is directly linked to its power to legislate," while there is "no provision in the Constitution that authorizes the President to enact, to amend, or to repeal statutes," the court opined that, "[s]imply put, the President does not have unilateral authority to refuse to spend the funds. And, the President may not decline to follow a statutory mandate or prohibition simply because of policy objections."[76] Evaluating presidential power under the Supreme Court's guidance in *Youngstown Sheet and Tube*, the Court continued that:

> because Congress has the exclusive power to spend and has not delegated authority to the Executive to condition new grants on compliance with [immigration law], the President's "power is at its lowest ebb." And when it comes to spending, the President has none of "his own constitutional powers" to "rely" upon.
>
> Rather, the President has a corresponding obligation—to "take Care that the Laws be faithfully executed." Because Congress's legislative power is inextricable from its spending power, the President's duty to enforce the laws necessarily extends to appropriations. Moreover, the obligation is an affirmative one, meaning that failure to act may be an abdication of the President's constitutional role. … And, even if the President's duty to execute appropriations laws was once unclear, Congress has affirmatively and authoritatively spoken.[77]

But it is important to point out that the Ninth Circuit was developing new ground here. It could cite to no Supreme Court precedent on these general propositions because none existed, and it rather had to piece together the argument from slightly off-point Supreme Court statements

aid [https://perma.cc/BXD2-75U5]; H. Res. 755 (Dec. 18, 2019) (articles of impeachment); 166 Cong. Rec. S871-939 (Feb. 5, 2020) (Senate acquittal).

73. Sierra Club v. Trump, 2019 WL 2715422 (N.D. Cal. Jun. 28, 2019), Sierra Club v. Trump, 929 F.3d 670 (9th Cir. 2019).

74. Trump v. Sierra Club, 140 S. Ct. 1 (2019) (5–3–1), and Trump v. Sierra Club, 140 S. Ct. 2620 (2020) (declining to lift stay of injunction after contracts had been entered, 5–4).

75. City & Cnty. of San Francisco v. Trump, 897 F.3d 1225 (9th Cir. 2018).

76. *Id.* at 1232 (citation modified).

77. *Id*. (citation modified).

and lower court rulings. The presidential power to destroy an entire sector of government spending and all the businesses and livelihoods that came with it had been threatened, but, in the end, had survived.

In early 2020, Democratic lawmakers began crafting a proposal to reform the ICA to address some of what had happened.[78] The bill that ultimately emerged, titled the Congressional Power of the Purse Act, H. R. 6628, sought to limit impoundment near the expiration of appropriations timelines, expand GAO's ability to file suit against impoundments, create penalties for federal employees involved in impoundment, require various reporting and transparency measures, and rein in national emergency powers. For their part, pro-impoundment interests also submitted a bill proposing to repeal the ICA. But neither of these ever had a chance of becoming law. Instead, the Biden Administration turned back to norm-compliance and simply sought to follow the ICA as it existed.

The Republican Party, meanwhile, spent its time out of power developing a more robust theory of government through strong presidential budgetary control. This is most clearly represented in the contribution of President Trump's once and future OMB Director, Russ Vought, to the report titled Mandate for Leadership: The Conservative Promise, more commonly known as Project 2025.[79] In his contribution, Vought, who was re-appointed as OMB Director in 2025, called for using OMB's powers for "[d]eveloping and enforcing the President's budget and executing the appropriations laws that fund the government."[80] In particular, he called for OMB's aggressive use of its allotment authority to "direct on behalf of a President the amount, duration, and purpose of any apportioned funding to ensure against waste, fraud, and abuse *and* ensure consistency with the President's agenda and applicable laws."[81] The document does not address the fact that the "President's budget" is not the budget passed into law by Congress, and that the entire purpose of the ICA was to prevent a President from withholding federal spending in this manner.

However, the second Trump Administration's rationale is discernible from its subsequent public statements, which have repeatedly posited that impoundment actions are justified by the simple fact that Donald Trump

78. David Lerman, *Democrats Seek to Put Teeth into 'Impoundment' Law*, ROLL CALL (Jan. 24, 2020), https://rollcall.com/2020/01/24/democrats-seek-to-put-teeth-into-impoundment-law [https://perma.cc/FBJ6-CC9U]

79. *See* HERITAGE FOUND., MANDATE FOR LEADERSHIP: THE CONSERVATIVE PROMISE (2023) https://static.heritage.org/project2025/2025_MandateForLeadership_FULL.pdf [https://perma.cc/F96R-883R].

80. *Id.* at 45.

81. *Id.* (emphasis in original).

won the 2024 presidential election. That is, the second Trump Administration has sought to promote the idea of the U.S. President not only as the chief *executive*, but as the chief *representative*, of the nation.[82] While the U.S. Constitutional framework imagines popular representation embodied in a Congress recalibrated by election from across the nation every two years, enacting laws representing the will of the people, and served by a president responsible for executing the law, the second Trump Administration imagines a reversal of these roles, claiming ultimate representational authority in the President through a single quadrennial national election, with total power to direct the executive branch, and demanding legislative obedience from a Congress incapable of acting without the President's permission. This role reversal is evident in every claim made by the second Trump Administration to be carrying out the will of the American people through their elected president notwithstanding the laws passed by Congress. The second Trump Administration thus believes, or at least claims to believe, that it has been granted a mandate to destroy all federal government activity that is not consistent with the President's own personal or policy preferences.

C. The Second Trump Administration's Impoundment Playbook

Since its first day, the second Trump Administration has carried out its claimed mandate to dismantle federal climate spending consistent with its larger theory of executive authority. While its actions have been numerous, various, and interrelated, and have developed over time, it is possible to imagine the overall strategy as a layered playbook involving each of the three branches of the federal government, as follows:

i. First, exert presidential power to control disfavored spending to the maximum extent possible. As discussed in Part II, in disfavored policy areas like climate change this has involved withholding Congressionally appropriated federal funds indefinitely; moving disbursement decisions from administrative to political decisionmakers; releasing funding only according to opaque and apparently politically-driven criteria; suspending preparations for award of future funds according to the same criteria; and firing or forcing out as many federal employees working in disfavored program areas as possible. In at least one case, it has also involved

82. This distinction is explored in JOHN A. DEARBORN, POWER SHIFTS: CONGRESS AND PRESIDENTIAL REPRESENTATION (Univ. of Chi. Press 2021) (examining the modern tensions in Congressional creation and limitation of presidential powers).

initiating a spurious criminal investigation as a pretext for these actions.

ii. Second, seek post hoc ratification of these actions from the other two branches of government. As discussed in Part III, this has involved aggressive litigation to promote novel assertions of executive power, minimal compliance with lower court injunctions, and, above all else, movement of important legal questions as quickly as possible to a sympathetic Supreme Court. As discussed in Part IV, it has also involved assertion of presidential authority over Congressional budgetary powers, and pushing for legislation to reduce and eliminate federal appropriations that have already been impounded.

iii. Third, in the long term, degrade the legal, social, and economic strata necessary for disfavored policies to thrive in the future. As discussed in Part V, this has included increasing costs in disfavored industries through tariffs and trade, eliminating information-generating programs upon which industries rely, and, above all else, fighting for long-term ratification of theories of presidential power to control spending that fundamentally undermines Congress's spending power as a reliable tool for long-term policymaking.

The above simple framework renders legible the majority of the second Trump Administration's efforts to destroy the climate spending state. These are examined, with examples, in more detail below.

II. ENDING CLIMATE SPENDING THROUGH EXECUTIVE ACTION

Consistent with the above framework, the second Trump Administration's attacks on the climate spending state began with what has come to be called "the funding freeze," a series of actions initiated through Executive Orders[83] and developed through a variety of more

83. Executive Orders implementing parts of the funding freeze include Exec. Order No. 14,159, *Protecting the American People Against Invasion* §§ 17, 19 (Jan. 20, 2025) (ordering review and suspension of funding for "sanctuary cities" and nonprofits supporting "removable or illegal aliens"); Exec. Order No. 14,162, *Putting America First in International Environmental Agreements* §§ 3(c), (e) (Jan. 20, 2025) (ending funding under United Nations climate agreements); Exec. Order No. 14,168, *Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government* §§ 3(e), (g) (Jan. 20, 2025) (ordering agencies to "end the Federal funding of gender ideology" and to "ensure grant funds do not promote gender ideology"); Exec. Order No. 14,151, *Ending Radical and Wasteful Government DEI Programs and Preferencing* § 2(b)(ii)(C) (Jan. 20, 2025) (ordering review of DEI funding); Exec. Order No. 14,163, *Realigning the U.S. Refugee Admissions Program* (Jan. 20, 2025) (suspending the refugee

opaque agency processes typically styled as indefinite reviews of program spending. Within days, federal agencies halted their disbursements from federal accounts, took down formerly posted solicitations for access to unobligated program funding, and halted the development of all such solicitations going forward. Together, these activities have functioned as an indefinite impoundment of Congressionally mandated federal spending for a variety of program areas, including climate change.

As relevant here, Executive Order 14,154, titled Unleashing American Energy, ordered all federal agencies to "immediately pause the disbursement of funds appropriated through [BIL and IRA] … and … to review their processes, policies, and programs for issuing grants, loans, contracts, or any other financial disbursements of such appropriated funds" for consistency with the Trump Administration's energy policies.[84] The order required agencies to provide their reviews and recommendations within ninety days, but also ordered that no funds "shall be disbursed by a given agency until the Director of OMB and Assistant to the President for Economic Policy have determined that such disbursements are consistent with any review recommendations they have chosen to adopt."[85] In other words, the funding freeze would apply to all accounts and authorized disbursements related to climate change unless and until the Office of the President decided otherwise, which it had not committed to do along any timeline, or with any public oversight.

To implement these Executive Orders, OMB, an office within the Executive Office of the President, issued a memorandum to all federal agencies ordering them to freeze "all federal financial assistance programs," meaning all programs disbursing federal funds through grants, cooperative agreements, property donations, direct appropriations, loans, loan guarantees, interest subsidies, or insurance obligations, and to begin reporting on such programs to OMB for further review.[86] Although this memorandum was formally withdrawn shortly afterwards, the underlying Executive Orders were not withdrawn, and the OMB memorandum remained an important roadmap for federal agencies seeking to implement the instructions in the funding freeze orders going forward.

program); Exec. Order No. 14,169, *Reevaluating and Realigning U.S. Foreign Aid* § 2 (Jan. 20, 2025) (ordering pause on foreign development assistance); Exec. Order No. 14,182, *Enforcing the Hyde Amendment* (Jan. 24, 2025) (ordering actions to prevent "Federal funding of elective abortion").

84. Exec. Order No. 14,154 *Unleashing American Energy* § 7 (Jan. 20, 2025) (ordering pause on disbursement of funds appropriated by BIL & IRA).

85. *Id.*

86. OFFICE OF MGMT. & BUDGET, *supra* note 2 (adopting first two paragraphs of definition of "federal financial assistance" at 2 C.F.R. § 200.1).

It quickly became apparent that the new leadership of the federal government, including the heads of the Department of Energy (DOE), the Department of Transportation (DOT), and the Environmental Protection Agency (EPA), had ordered a halt to the release of any funds within their power related to climate change, whether or not those funds had already been obligated, whether or not they were required to be obligated by statutory deadlines, and whether or not they would normally have been scheduled to be obligated by an executive branch seeking to faithfully execute the law.

A. Overview of Impacted Climate Spending Programs

While it is not possible to review every climate spending program that was impacted by the funding freeze, it is possible at least to make three broad observations about federal climate spending programs: first, federal spending programs fall into a predictable set of categories; second, climate spending programs exist in most or all of such program types; and third, the second Trump Administration sought to freeze programs in each program type.

Take, for example, "formula grant" programs, which encompass federal funding made available to state and local governments according to Congressionally set formulas, for example according to population or in-state road miles, for use for Congressionally authorized purposes.[87] Congress funds major health care, public education, basic needs, highway construction, and homeland security programs through formula grants.[88] Prior to 2021, Congress had developed several formula grant programs that funded climate-relevant programs to a limited degree.[89] Although

87. U.S. GOV'T ACCOUNTABILITY OFF., *A Glossary of Terms Used in the Federal Budget Process*, GAO-05-734SP, at 60 (Sept. 2005), https://www.gao.gov/assets/gao-05-734sp.pdf [https://perma.cc/Z3S3-3GYH] ("Formula grants allocate federal funds to states or their subdivisions in accordance with a distribution formula prescribed by law or administrative regulation.")

88. Elizabeth G. Williams, *Formula Grants*, CTR. FOR THE STUDY OF FEDERALISM (2009), https://federalism.org/encyclopedia/no-topic/formula-grants/ [https://perma.cc/HU8P-5HZT]

89. The Department of Energy's Energy Efficiency and Conservation Block Grant (EECBG) program, enacted Energy Independence and Security Act of 2007, Pub. L. No. 110–140 § 548 (codified at 26 U.S.C. §§ 17151-17158) (creating program, setting allocation formula, providing initial appropriation of $2 billion annually 2008-2012); ARRA, Pub. L. No. 111–5, 123 Stat. 138 (2009) (appropriating an additional $2.8 billion); DNV GL, *National Evaluation of the EECBG Program* (Jun. 2015), https://weatherization.ornl.gov/eecbg/ [https://perma.cc/GV8K-7RXD] (funded over 7000 programs). DOE's State Energy Plan program, which dates to the 1990s, has also driven state development of statewide energy efficiency policies. 42 U.S.C. § 6321 and 10 C.F.R. pt. 420 subpt. B. DNV GL, *National Evaluation of the SEP* (Apr. 2015), https://weatherization.ornl.gov/sep/ [https://perma.cc/H2EU-TYAT]. The Department of Transportation's Congestion Mitigation and Air Quality Improvement (CMAQ) program, which

these programs were not initially intended as "climate spending," they did support greenhouse gas emissions reductions. The creation of the climate spending state involved expanding on these existing models and adding several more specifically directed at climate change.[90] Many of these programs were targeted for review and halted via internal administrative processes in early 2025.[91] The GAO has even issued an opinion that the freeze of one of these programs was a violation of the ICA.[92] It appears, however, that some existing grants were released following a court injunction in *New York v . Trump* (see below), although these programs also have not begun soliciting new applications.

Another program type, "competitive grant" programs, are programs for which funding is appropriated to agencies, but then must be awarded following administrative review for the best eligible projects. At the outset of the funding freeze, almost all such grant programs related to climate change were frozen, after which some were unfrozen and some were not,

has operated since 1992, has funded thousands of projects intended to reduce vehicle air pollution in polluted areas. ISTEA, Pub. L. No. 102–240 §§ 1001, 1008 (codified 23 U.S.C. §§ 149, 102(b)(2)) (appropriating approximately $1 billion per year 1992-1997). Continuing annual appropriations appeared in TEA-21, Pub. L. 105–178 § 1101(a)(5) (1997), SAFETEA-LU, Pub. L. No. 109–59 § 1101(a) (5) (2005), MAP-21, Pub. L. No. 112–141 § 1101(a)(1) (2012). Later appropriations were made annually under consolidated appropriations acts. Project types discussed in FHWA, CMAQ 2020 Cost-Effectiveness Update Tables (2020), https://www.fhwa.dot.gov/ENVIRonment/air_quality/cmaq/reference/cost_effectiveness_tables/fhwahep20039.pdf [https://perma.cc/8R3F-TW8K]

90. *E.g.*, BIL expanded the EECBG, SEP, and CMAQ programs, and amended their authorizing provisions to more directly focus on climate change outcomes. BIL §§ 40552, 11114, 11115. BIL also added the NEVI, CRP, and PROTECT climate formula grant programs. BIL at 135 Stat. 1421 (not codified) (adding the NEVI program); BIL § 11403(c), 135 Stat. 555 (codified at 23 U.S.C. § 175) (adding the CRP program and setting apportionment according to formula at BIL § 11104, 135 Stat. 456 (codified at 23 U.S.C. § 104(b)(7))); BIL § 11405(c), 135 Stat. 561 (codified at 23 U.S.C. § 176) (enacting the PROTECT program and setting apportionment according to formula at BIL § 11104, 135 Stat. 456 (codified at 23 U.S.C. § 104(b)(8))). IRA created the Climate Pollution Reduction Grant (CPRG) program. IRA § 60114 (codified at 42 U.S.C. § 7437(b)). Through the CPRG program, EPA allocated grants to states and tribes. EPA, *About CPRG Planning Grant Information*, https://www.epa.gov/inflation-reduction-act/about-cprg-planning-grant-information [https://perma.cc/QK2G-KBK8].

91. *See* Upshot Staff, *Which Federal Programs Are Under Scrutiny? The Budget Office Named 2,600 of Them*, N.Y. TIMES (Jan. 28, 2025), https://www.nytimes.com/interactive/2025/01/28/upshot/federal-programs-funding-trump-omb.html [https://perma.cc/W8AD-UW37] (listing EECBG, SEP, CPRG for review); Monica Samayoa, *With Oregon's 2 largest federal climate grants on hold – for now – state agencies are left at a standstill*, OPB (Feb. 13, 2025), https://www.opb.org/article/2025/02/13/oregon-federal-climate-grants-frozen/ [https://perma.cc/23LP-QFE7] (indicating CPRG is paused); Monica Samoyoa, *Oregon once again has access to more than $450 million in federal climate funds*, OPB (Mar. 5, 2025), https://www.opb.org/article/2025/03/05/oregon-access-again-federal-climate-funds/ [https://perma.cc/E8Z8-KK3Q].

92. U.S. GOV'T ACCOUNTABILITY OFF., Decision re: NEVI Formula Program, B-337137 at 4 (May 22, 2025), https://www.gao.gov/assets/880/877916.pdf [https://perma.cc/HQU4-6YQT].

and later some were re-frozen. For example, IRA § 60103 appropriated $7 billion to EPA for grants to cities, states, and tribes, to provide financial and technical assistance for solar energy development. This was used to create the Solar for All competitive grant program.[93] Sixty grants were made, and about $6 million of those funds were disbursed before the second Trump Administration began.[94] Disbursement of this program grant funding was frozen, but was quickly released after the injunction in *National Council of Nonprofits*, discussed below.[95] Then, a few months later, EPA moved to re-cancel the program on the basis of new provisions in the One Big Beautiful Bill Act, also discussed below.[96] Other competitive grant programs, like DOE's $3 billion Industrial Demonstration Program, have been completely frozen.[97]

Hub competitions, which are another type of competitive grant program, fund large regional demonstration "hubs" to demonstrate new clean energy technologies, which are often sought competitively by groups of states. In these programs, funding freezes appear to be highly partisan, with DOE considering cutting funding primarily in states with Democratic Party governments.[98] But even Republican-led states are not safe, with carbon capture hubs in Texas and Louisiana also threatening cuts, although

93. *Solar for All*, EPA, https://www.epa.gov/aboutepa/greenhouse-gas-reduction-fund#solar-for-all [https://perma.cc/UCM6-G7WX] (last visited October 19, 2024); U.S. GOV'T ACCOUNTABILITY OFF., GAO-25-108135, TESTIMONY BEFORE THE SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS, COMMITTEE ON ENERGY AND COMMERCE, HOUSE OF REPRESENTATIVES 9 (Feb. 26, 2025), https://www.gao.gov/assets/880/876090.pdf [https://perma.cc/HQU4-6YQT].

94. U.S. GOV'T ACCOUNTABILITY OFF., GAO-25-108135, TESTIMONY BEFORE THE SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS, COMMITTEE ON ENERGY AND COMMERCE, HOUSE OF REPRESENTATIVES 9 (Feb. 26, 2025), https://www.gao.gov/assets/880/876090.pdf [https://perma.cc/WB28-G9AE].

95. Climate Action Campaign, *EPA's New Management Halts $7 Billion in Solar for All Contracts* (Jan. 30, 2025), https://www.actonclimate.com/post/epas-new-management-halts-7-billion-in-solar-for-all-contracts-that-deliver-clean-energy-and-lower-bills-in-vulnerable-communities/ [https://perma.cc/35CZ-KPRJ]; Mario Alejandro Ariza & Terry L. Jones, *EPA Says it Has Unfrozen Billions in Funds for Climate-Related Projects*, ARKANSAS ADVOCATE (Feb. 27, 2025) https://arkansasadvocate.com/2025/02/27/epa-says-it-has-unfrozen-billions-in-funds-for-climate-related-projects/ [https://perma.cc/S8YR-RQTR] (noting timing).

96. Diana DiGangi, *EPA considers terminating $7B Solar for All program*, UTIL. DIVE (Aug. 6, 2025), https://www.utilitydive.com/news/epa-terminating-solar-for-all-grant-funding-ira-trump-zeldin/756928/ [https://perma.cc/H8MG-R43Y]; Alexa St. John & Matthew Daly, *EPA Cancels $7 Billion Biden-Era Grant Program to Boost Solar Energy*, ASSOCIATED PRESS (Aug. 7, 2025), https://apnews.com/article/trump-solar-clean-energy-epa-zeldin-19c838ee2d9be3e80aadb5dfe0526891 [https://perma.cc/7U2J-XPS7].

97. Ari Natter, *Trump Is Canceling $3.7 Billion in Clean Energy Projects*, BLOOMBERG NEWS (May 30, 2025), https://www.bloomberg.com/news/articles/2025-05-30/trump-canceling-3-7-billion-in-clean-energy-projects [https://perma.cc/TVZ5-C9YZ].

98. *US Weighs Funding Cuts to Four of Seven Hydrogen Hubs*, REUTERS (Mar. 26, 2025), https://www.reuters.com/business/energy/us-weighs-funding-cuts-four-seven-hydrogen-hubs-2025-03-26/ [https://perma.cc/2RKD-EXCG].

their state governments are lobbying to prevent this.[99] Although the Trump Administration does not appear to support carbon capture research, it is at least possible that political influences will prevail in these cases.

Clearly, however, there are parts of the climate spending state that are being completely gutted. The elements of BIL and IRA that promoted community engagement and participation in grant programs have been especially hard-hit. For example, the Trump Administration has canceled or is preparing to cancel the DHS Building Resilient Infrastructure and Communities Program, and EPA's Environmental Justice Block Grant programs, Thriving Communities Grantmakers program, and Thriving Communities Technical Assistance Center program, all of which are core elements of the social justice aspects of BIL and IRA. EPA meanwhile has closed the environmental justice offices working on these types of projects,[100] while all staff at the Energy Department's Office of Energy Equity were put on leave, and the office has ceased operations.[101]

Similarly, all federal support for offshore wind energy development is being gutted. Following the industry's specific targeting by the Office of the President,[102] which froze dozens of offshore wind developments,[103] the Trump Administration issued a stop-work order to the 80%-complete Revolution Wind project,[104] and the Department of Transportation announced that it was revoking $679 million in previously announced grant awards for offshore wind projects.[105]

99. Valeri Volcovici, *US Carbon Removal Hub Funding May Face Energy Department Cuts, Sources Say*, REUTERS (Mar. 28, 2025), https://www.reuters.com/sustainability/climate-energy/us-carbon-removal-hub-funding-may-face-energy-department-cuts-sources-say-2025-03-28/ [https://perma.cc/97SD-7MEK].

100. Lisa Friedman, *EPA Plans to Close All Environmental Justice Offices*, N.Y. TIMES (Mar. 11, 2025), https://www.nytimes.com/2025/03/11/climate/epa-closure-environmental-justice-offices.html [https://perma.cc/5NYG-2ALR].

101. Hannah Northey, *DOE Halts Diversity, Equity Work and Funding*, E&E NEWS (Jan. 24, 2025), https://www.eenews.net/articles/doe-halts-diversity-equity-work-and-funding/ [https://perma.cc/9SDV-GABF].

102. Temporary Withdrawal of All Areas on the Outer Continental Shelf from Offshore Wind Leasing and Review of the Federal Government's Leasing and Permitting Practices for Wind Projects, 90 Fed. Reg. 8363 (Jan. 20, 2025).

103. LAURA B. COMAY, CONG. RSCH. SERV., IN12509, STATUS OF U.S. OFFSHORE WIND LEASING AND PERMITTING: PRESIDENT TRUMP'S JANUARY 2025 WIND LEASING MEMORANDUM (Mar. 11, 2025), https://www.congress.gov/crs_external_products/IN/PDF/IN12509/IN12509.2.pdf [https://perma.cc/RH2Q-2R9X].

104. *Revolution Wind Receives Offshore Stop-Work Order from US Department of the Interior's Bureau of Ocean Energy Management, ØRSTED* (Aug. 22, 2025), https://orsted.com/en/company-announcement-list/2025/08/revolution-wind-receives-offshore-stop-work-order--145387701 [https://perma.cc/2UCW-N5A9].

105. *Trump's Transportation Secretary Sean P. Duffy Terminates and Withdraws $679 Million from Doomed Offshore Wind Projects, U.S. DEP'T OF TRANSP.* (Aug. 29, 2025),

The upshot of the above is that in the short term, all federal climate change spending programs are under review, many have paused release of funds, some have cancelled release of funds outright, few if any are issuing new calls for applications, and many program offices are being gutted or shuttered. The impact on the larger ecosystem of climate change project finance and community development is not yet measurable but appears likely to be substantial.[106]

Simultaneous with the above activities, the second Trump Administration initiated a major reduction in the federal workforce, and again elements of this particularly targeted the federal employees responsible for administering the climate spending state. By Executive Order, the Trump Administration created the so-called Department of Government Efficiency, which sought access to federal financial systems and employee databases in part to facilitate these layoffs. DOGE and its allies sought to fire all probationary federal employees, which particularly impacted many of the newer climate programs based on BIL and IRA funding. They also offered all federal employees the chance to depart quickly and voluntarily, an offer that many accepted. Thus, the climate programs that did theoretically survive remained understaffed or unstaffed. Finally, internal administrative reorganization closed offices responsible for implementing social justice elements of the climate spending state.

The primary indications that this was happening, however, were generally not public statements from the agencies, but rather reporting by journalists with interest in the impacted programs, and eventually the record developed in lawsuits by plaintiffs impacted by the freeze and driven to bring suit. What, exactly, was going on within the agencies, what specific criteria they were using to determine whether to release funds or develop programs for doing so, and whether such criteria were legal, were not immediately clear as this occurred.

To better understand how these processes have played out in practice, the following two sections examine the treatment of two federal climate spending programs in detail: the Department of Energy's Loan Programs Office programs, and EPA's Greenhouse Gas Reduction Fund program. In each case, a close examination demonstrates the degree to which the

https://www.transportation.gov/briefing-room/trumps-transportation-secretary-sean-p-duffy-terminates-and-withdraws-679-million [https://perma.cc/LWR6-7KBH].

106. An August 2025 estimate tallied $19 billion in utility-scale renewable energy investment that had been cancelled as a result of the freeze, which does not account for smaller-scale projects developed in vulnerable communities. *See* Martha Muir, Eva Xiao & Amelia Pollard, *Donald Trump's Attacks on Renewables Sector Quash Nearly $19bn Worth of Projects*, FIN. TIMES (Aug. 22, 2025), https://www.ft.com/content/8fc81250-33ef-486e-9322-15548ee897a7 [https://perma.cc/V4P4-PGPM].

destruction of the climate spending state involves troubling departures from prior administrative practice.

B. A Model Example: Freezing DOE's Climate Loan Programs

The U.S. Department of Energy's (DOE) Loan Programs Office (LPO) is responsible for administering the DOE's "loan programs." It manages five loan guarantee programs, which provide financial backing to lenders financing certain preferred categories of energy infrastructure construction, and one direct loan program supporting companies building clean car manufacturing facilities.[107] LPO describes its mission as to serve as "a bridge to bankability for breakthrough projects and technologies, derisking them at early stages of commercialization so they can reach full market acceptance."[108] In other words, it operates a bit like a project finance bank, loaning money and insuring loans on construction projects that will, in the long term, generate enough income to pay back the government's outlays.

When the second Trump Administration began, LPO held over $300 billion in Congressional authorizations to issue loans and loan guarantees to support the financing of clean energy generation and cleantech manufacturing facilities, and was actively reviewing applications to finance enough projects to spend all those funds and more. To understand how LPO works and how it has been dismantled, it is necessary to review how the programs it implements are structured.

1. The Energy Infrastructure Reinvestment Loan Guarantee Program

Congress first established the "Title XVII" loan guarantee programs in the Energy Policy Act of 2005.[109] The first of these was called the "Section 1703" program,[110] through which Congress directed DOE to guarantee loans provided to developers of energy projects that 1) mitigate greenhouse gas emissions and 2) "employ new or significantly improved

107. *See generally* U.S. GOV'T ACCOUNTABILITY OFF., GAO-25-106631, DOE LOAN PROGRAMS: ACTIONS NEEDED TO ADDRESS AUTHORITY AND IMPROVE APPLICATION REVIEWS (May 2025), https://files.gao.gov/reports/GAO-25-106631/index.html [https://perma.cc/FFV4-P4EH] (discussing history and current status of LPO's various programs).

108. LOAN PROGRAMS OFF., BUILDING A BRIDGE TO BANKABILITY 3 (2023), https://www.energy.gov/sites/default/files/2023-05/DOE-LPO22-PPTv03_LPO-Overview_May2023.pdf [https://perma.cc/EN4J-W2MT]; and *see generally Loan Programs Office*, DOE, https://www.energy.gov/lpo/loan-programs-office [https://perma.cc/T3PP-N2VQ].

109. The LPO loan guarantee program was created by EPAct 2005, Pub. L. No. 109–58, Title XVII, §§ 1701–1704 (codified as amended at 42 U.S.C. §§ 16511–16514).

110. EPAct 2005 § 1703 (codified at 42 U.S.C. § 16513).

technologies as compared to commercial technologies in service in the United States at the time the guarantee is issued."[111] To implement the program, DOE would 1) issue a solicitation for applications for loan guarantees for eligible projects seeking financing, 2) receive applications from project sponsors hoping to secure a federal loan guarantee, 3) review each application in dialogue with the sponsor to assess its financial viability and to determine whether to issue a loan guarantee, 4) issue a "term sheet" which, if signed by the prospective borrower, becomes a "conditional commitment" for a federal loan guarantee, and 5) upon completion of the term sheet's conditions, enter into a final loan guarantee commitment.[112] The project sponsor would then enter into a separate finance agreement with the lender, and scheduled advances on the project loan account would be subject to an additional layer of review by DOE, which would approve funding releases according to the terms of the executed federal loan guarantee commitment.[113]

The Section 1703 program was not immediately successful, however, because it was not financially attractive to developers. Congress initially authorized LPO to back billions of dollars in loans, but did not appropriate any funding to cover the "credit subsidy costs" of these loan guarantees, requiring it to be paid by project developers instead.[114] The program thus required high up-front payments from developers to secure loan

111. 42 U.S.C. § 16513(a). The eligible project types included renewable energy, coal gasification, hydrogen fuel cell, carbon capture, and energy efficiency, among others. 42 U.S.C. § 16513(b).

112. *See, e.g.*, DOE, LOAN GUARANTEE SOLICITATION ANNOUNCEMENT: FEDERAL LOAN GUARANTEES FOR FRONT END NUCLEAR FACILITIES (2008) at 5–6, https://www.energy.gov/lpo/articles/front-end-nuclear-facilities-2008 [https://perma.cc/9MCB-8UYC]; SEC, LOAN GUARANTEE COMMITMENT BETWEEN DOE AND GEORGIA POWER (Feb. 20, 2014), https://www.sec.gov/Archives/edgar/data/41091/000004109114000002/gadoeloan8-kexhibit4x1.htm [https://perma.cc/FG45-SA4F]; 10 C.F.R. 609.

113. *E.g.,* SEC, LOAN GUARANTEE COMMITMENT BETWEEN DOE AND GEORGIA POWER, Art. 2 (Feb. 20, 2014), https://www.sec.gov/Archives/edgar/data/41091/000004109114000002/gadoeloan8-kexhibit4x1.htm [https://perma.cc/FG45-SA4F].

114. Revised Continuing Appropriations Resolution, 2007, Pub. L. No. 110–5 §§ 20315, 20320 (codified in part at 42 U.S.C. § 16515) (appropriating $7 million for administrative costs, authorizing loan guarantees up to $4 billion, and requiring regulations); Omnibus Appropriations Act, 2009, Pub. L. No. 111–8 (appropriating additional administrative funding and raising guarantee cap to $47 billion). By statute, however, the government is required to account for, and be paid for, the "credit subsidy cost" of—the net present value of the government's costs to provide—any loan guarantee it issues. 2 U.S.C. § 661c(d); 2 U.S.C. § 661a(5)(C); 42 U.S.C. § 16511(2). These costs can total a substantial percentage of the total project cost. DOE, *Credit Subsidy*, https://www.energy.gov/lpo/credit-subsidy [https://perma.cc/Z69V-YGW2] (last visited Oct. 20, 2025); 10 C.F.R. § 609.8(b)(11). These laws did not include appropriations for the government to cover credits subsidy costs for the Section 1703 program.

guarantees, and so only a handful of project developers engaged with the program during its first few years.[115]

The Title XVII landscape changed dramatically when Congress created the "Section 1705" loan guarantee program as part of its larger effort to support the U.S. economy during the global financial crisis in 2009.[116] This temporary program not only allowed for loan guarantees, but also appropriated billions of dollars to cover the program's credit subsidy costs, eliminating the need for high up-front payments for developers hoping to use the program.[117] This led to a substantial increase in energy project loan guarantee activity through 2011, when the program was set to sunset. Unfortunately, one of the Section 1705 loan guarantees was made to Solyndra, a solar technology company that failed spectacularly and defaulted on its loans, leaving the government on the hook for the money that the company had already received and could not pay back. Although the Obama Administration always maintained that the Section 1705 program was a net-positive financial investment given that all other projects paid back their loans, generating more government revenue than the program had cost even accounting for the Solyndra losses, the political damage had been done.[118] Although the Section 1705 program backed twenty-eight successful projects and demonstrated the viability of public backing for clean energy financing, it also demonstrated the potential political risks of such programs and raised the salience of energy lending as a polarized political issue going forward.

After the Section 1705 program sunset in 2011, the Section 1703 program was left on the books but lay dormant for the next decade, as its

115. *Id*.; Press Release, Office of the Press Secretary, *Obama Administration Announces Loan Guarantees to Construct New Nuclear Power Reactors in Georgia,* WHITE HOUSE (Feb. 2010), https://obamawhitehouse.archives.gov/the-press-office/obama-administration-announces-loan-guarantees-construct-new-nuclear-power-reactors [https://perma.cc/3ARQ-49FG] (naming other projects that had received offers).

116. American Recovery and Reinvestment Act of 2009, Pub. L. No. 111–5, 123 Stat. 145 (codified at 42 U.S.C. 16516) (enacting EPAct 2005 § 1705).

117. *Id*.

118. *See* Herbert Allison, *Report of the Independent Consultant's Review with Respect to the Department of Energy Loan and Loan Guarantee Portfolio* (2012), https://obamawhitehouse.archives.gov/sites/default/files/docs/report_on_doe_loan_and_guarantee_portfolio.pdf [https://perma.cc/P7Y5-9FKC]; Executive Office of the President, *A Retrospective Assessment of the Clean Energy Investments in the Recovery Act* (Feb. 2016), https://obamawhitehouse.archives.gov/sites/default/files/page/files/20160225_cea_final_clean_energy_report.pdf [https://perma.cc/2VFV-WXYT]; *also see* U.S. House of Representatives Committee on Oversight and Government Reform, *Staff Report: The Department of Energy's Disastrous Management of Loan Guarantee Programs* (2012), https://oversight.house.gov/wp-content/uploads/2012/03/FINAL-DOE-Loan-Guarantees-Report.pdf [https://perma.cc/W5D4-3MWN] (offering a highly partisan critique of the program). The Solyndra affair remains important today as a milestone in the politicization—and therefore polarization—of clean energy subsidy laws, and remains a *bete noir* in the partisan examination of the Obama Administration.

costs were still generally unattractive to developers.[119] However, in 2022, Congress appropriated $3.6 billion in credit subsidy cost funding for DOE's § 1703 program,[120] and – in the same law – also created a gigantic new program on the same model, called the Energy Infrastructure Reinvestment (EIR) loan guarantee program, that was not limited to "innovative" technology, but rather could be used to finance a large variety of renewable electricity generating facilities and associated transmission lines using well established technologies.[121] Thus, by the end of 2022, DOE LPO had new authority to provide loan guarantees to over $300 billion worth of energy projects, with direct appropriations sufficient to cover the associated subsidy costs for about $50 billion of these loans.[122] These funds, furthermore, were available not only to "innovative" projects through Section 1703, but to a much wider variety of projects through the Section 1706 EIR program.

2. The ATVM Loan Program

Congress established the Advanced Technology Vehicles Manufacturing (ATVM) loan program in the Energy Independence and Security Act of 2007, which directed DOE to "carry out a program to provide . . . loans" to "reequip[], expand[], or establish[] a manufacturing facility in the United States to produce" low-emissions vehicles and

119. PHILLIP BROWN ET AL., CONG. RSCH. SERV., IN11432, DEPARTMENT OF ENERGY LOAN PROGRAMS: TITLE XVII INNOVATIVE TECHNOLOGY LOAN GUARANTEES (June 23, 2020), https://www.congress.gov/crs_external_products/IN/PDF/IN11432/IN11432.2.pdf [https://perma.cc/843G-YKTX]; Kenneth Hansen, *Reawakening the DOE Loan Guarantee Program*, NORTON ROSE FULBRIGHT (2021), https://www.projectfinance.law/publications/2021/june/reawakening-the-doe-loan-guarantee-program/ [https://perma.cc/H5K2-LRMF]. The one exception was the Plant Vogtle Units 3 and 4 nuclear power plant development in Georgia, which eventually became the one and only project to finalize a Section 1703 loan guarantee agreement prior to 2021. Brown et al., *supra* note 119; LOAN PROGRAMS OFF., *Vogtle*, https://www.energy.gov/lpo/vogtle [https://perma.cc/623K-7WKL] (last visited Oct. 20, 2025) (reporting $12 billion in loan guarantees to Plant Vogtle).

120. IRA § 50141(a, b); Consolidated Appropriations Act, 2023, Pub. L. No. 117–328, 136 Stat. 4459, 4636-38 (2022) (Title 17 administrative expenses; rescission).

121. IRA § 50144 (c) (adding EPAct 2005 § 1706 (codified at 42 U.S.C. § 16517) and authorizing up to $250 billion in guarantees and appropriating $5 billion in credit-subsidy). Eligible projects included replacement of fossil-fired generators with clean energy resources; upgrading of power lines; adding carbon capture to fossil plants; repurposing fossil fuel infrastructure to handle hydrogen or CO_2, and more. DOE, *Title 17 Energy Infrastructure Reinvestment (EIR) Financing*, https://www.energy.gov/lpo/title-17-energy-infrastructure-reinvestment-eir-financing [https://perma.cc/3DCL-JVJ7] (program overview).

122. *See* U.S. GOV'T ACCOUNTABILITY OFF., GAO-25-106631, DOE LOAN PROGRAMS: ACTIONS NEEDED TO ADDRESS AUTHORITY AND IMPROVE APPLICATION REVIEWS, fig. 10 note a (May 2025), https://files.gao.gov/reports/GAO-25-106631/index.html [https://perma.cc/FFV4-P4EH] (the exact total of loan amounts able to be funded by appropriated credit subsidy costs depends on the terms of financing).

qualifying components.[123] The initial purpose of the program was to assist the struggling U.S. auto industry following the adoption of more stringent fuel economy standards at a time when their sales were declining.[124] Congress set aside $25 billion for these loans.

Like with federal loan guarantees, direct loan programs involve credit subsidy costs.[125] Also like federal loan guarantee programs, the credit subsidy costs of direct loans must be paid to the government when the loan is issued,[126] and again, having to pay these costs up front would be prohibitive to borrowers. Thus, to set up the ATVM program, Congress initially appropriated funds to cover associated loan subsidy costs in an emergency budget bill in late 2008.[127] DOE implemented the program on an emergency timeline thereafter, soliciting and finalizing its first loan as part of the response to the 2008–2009 financial crisis only a few months after the funding was authorized.[128] While eventually the government turned to more direct bailouts for several auto companies, the ATVM program was initially seen as a less drastic and financially risky government support program.[129]

Applications for the ATVM program came in from most major U.S. auto manufacturers, as well as a number of startups.[130] Ultimately, however,

123. EISA 2007, Pub. L. No. 110–140 § 136(d), 121 Stat. 1492, 1515-16 (2007) (codified 42 U.S.C. § 17013(d)).

124. BILL CANIS & BRENT D. YACOBUCCI, CONG. RSCH. SERV., R42064, THE ADVANCED TECHNOLOGY VEHICLES MANUFACTURING (ATVM) LOAN PROGRAM: STATUS AND ISSUES at i, 1-2 (2015) [hereinafter CRS Report R42064] (The program "was established in 2007, when the Detroit 3 automakers—General Motors, Ford, and Chrysler—faced declining sales in a weakening economy at the same time that U.S. fuel economy standards were raised. It provides direct loans to automakers and parts suppliers to construct new U.S. factories or retrofit existing factories to produce vehicles that achieve at least 25% higher fuel economy than model year 2005 vehicles of similar size and performance.").

125. Under the Federal Credit Reform Act of 1990, a "direct loan" is "a disbursement of funds by the Government to a non-Federal borrower under a contract that requires the repayment of such funds with or without interest." 2 U.S.C. § 661a(1). The "cost" of such a loan is defined as "the net present value… of the… (i) loan disbursements, (ii) repayments of principal; and (iii) payments of interest and other payments by or to the Government over the life of the loan after adjusting for estimated defaults, prepayments, fees, penalties, and other recoveries, including the effects of changes in loan terms resulting from the exercise by the borrower of an option included in the loan contract." *Id*.; § 661a(5)(B).

126. 2 U.S.C. § 661c(b), (d)(2).

127. Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009, Pub. L. No. 110–329, § 129, 122 Stat. 3578-79 (2008) (appropriating $7.5 billion).

128. 10 C.F.R. pt. 611 (2025) (promulgated by Advanced Technology Vehicles Manufacturing Incentive Program, Interim Final Rule, 73 Fed. Reg. 66,721 (Nov. 12, 2008)).

129. CRS Report R42064, *supra* note 124 at 1–3.

130. Patrick George, *56% of Carmakers Who Asked for Government 'Green' Loans Are Dead,* JALOPNIK (Jun. 3, 2013) https://www.jalopnik.com/56-of-the-carmakers-who-asked-for-government-green-l-510296228/ [https://perma.cc/8T4S-WLQ7] (discussing results of a FOIA request into who submitted applications).

two of the major U.S. automakers received federal bailouts through the Troubled Asset Relief Program, while Ford, Nissan North America, Fisker Automotive, and Tesla Motors received about $8.5 billion in loans under ATVM, with most of that going to Ford.[131] Ford's $5.9 billion loan was used to upgrade thirteen of its facilities to create more fuel-efficient vehicles.[132] Fisker's was intended for a plug-in hybrid vehicles plant; Tesla used its loan to build its Fremont, California manufacturing plant for all-electric vehicles; and Nissan built its Smyrna, Tennessee battery and manufacturing facilities for the all-electric LEAF.[133] Thus, while initially conceived as a market support mechanism for legacy auto manufacturers, the ATVM program emerged as a key support program for the creation of the first large-scale electric vehicle (EV) manufacturing facilities in the United States.

However, like the Title XVII program, the ATVM program became a target of partisan criticism for its one high-profile failure. Fisker Automotive went bankrupt, after DOE had disbursed about $192 million under its ATVM loan; net taxpayer loss was approximately $139 million after recoveries.[134] In the wake of the controversy over Solyndra, the Fisker affair also became deeply politicized.[135] Like the Title XVII program, this placed the ATVM program in limbo for some time. Starting in 2010, a variety of proposals to reallocate the unspent subsidy cost appropriations were made but not passed into law.[136] Congress did, however, alter the program to be used for manufacture of "ultra efficient

131. CRS Report R42064, *supra* note 124 at 11.

132. *See Ford*, LOAN PROGRAMS OFF., https://www.energy.gov/lpo/ford [https://perma.cc/Y97N-PE9U] (last visited Nov. 26, 2025).

133. *Nissan*, LOAN PROGRAMS OFF., https://www.energy.gov/lpo/nissan [https://perma.cc/RC82-W6CB] (last visited Nov. 26, 2025); *Tesla,* LOAN PROGRAMS OFF., https://www.energy.gov/lpo/tesla [https://perma.cc/7ZEG-Z5QJ] (last visited Nov 26, 2025); Ben Geman, *Energy Dept. Loses $139M in Fisker Auto Loan Default,* THE HILL (Nov. 22, 2013), https://thehill.com/policy/energy-environment/191258-energy-dept-loses-139-million-in-auto-loan-gone-bad/ [https://perma.cc/2M7D-XCPY].

134. CRS Report R42064, *supra* note 124 at 11. The loan was later purchased at a steep discount, in a transaction that was ultimately found to have involved auction fraud. Press Release, U.S. Dep't of Just., *Purchaser of Department of Energy Loan to Pay 29 Million to Settle Alleged Bidding Fraud* (Jan. 31, 2020), https://www.justice.gov/archives/opa/pr/purchaser-department-energy-loan-pay-29-million-settle-alleged-bidding-fraud [https://perma.cc/535J-3YPQ].

135. Patrick George, *How You Should Feel About Fisker Depending on Your Political Views*, JALOPNIK (Apr. 24, 2013), https://www.jalopnik.com/how-you-should-feel-about-fisker-depending-on-your-poli-479924650/ [https://perma.cc/4L7V-YVCA]; *Green Energy Oversight: Examining the Department of Energy's Bad Bet on Fisker Automotive: Hearing before the Subcomm. on Econ. Growth, Job Creation and Regul. Affs. before the H. Comm. on Oversight and Gov't Reform*, 113th Cong. (Apr. 24, 2013), https://www.congress.gov/113/chrg/CHRG-113hhrg80920/CHRG-113hhrg80920.pdf [https://perma.cc/J5G8-BM3F].

136. CRS Report R42064, *supra* note 124 at 5–7.

vehicles,"[137] and one final loan of $50 million was made for a compressed natural gas shuttle van project in 2011.[138]

During the remainder of the Obama Administration and the entirety of the first Trump Administration, the ATVM program did not issue any further loans. LPO did, however, issue two policy notices regarding its interpretation of the program, reflecting an awareness that the program could still potentially be useful. At the tail end of the Obama Administration, LPO announced that it would consider issuing loans for facilities manufacturing fueling infrastructure like EV charging stations.[139] And later in the first Trump Administration LPO encouraged applications for projects related to critical minerals.[140] But these were not immediately successful.

After President Biden's election in 2020, EV manufacturing lobbyists began advocating for expansion of the ATVM program to suit their needs.[141] In response, the Biden Administration's supply chain resilience plan, published as part of its 100-day review process, included DOE recommendations to leverage the ATVM program to promote EV battery supply chain manufacturing.[142] Shortly after this report, text regarding an ATVM expansion appeared in the Senate version of the then-under development infrastructure investment bill.[143] The Senate's version, which would become BIL, was passed by the House later that year.[144]

137. Energy and Water Development and Related Agencies Appropriations Act, 2010, Pub. L. No. 111–85, § 312, 123 Stat. 2845, 2875-76 (2009) (defining UEVs as enclosed vehicles capable of carrying at least two people and capable of achieving 75 mpg or 75 mpge (hybrid or electric)).

138. John Voelcker, *AM General Buys VPG, Defunct Natural-Gas Handicapped Van Maker*, GREEN CAR REPS. (Sep. 11, 2013), https://www.greencarreports.com/news/1086882_am-general-buys-vpg-defunct-natural-gas-handicapped-van-maker [https://perma.cc/LEP2-Z9YF].

139. LOAN PROGRAMS OFF., FACT SHEET: ELIGIBILITY FOR THE DEPLOYMENT AND MANUFACTURE OF INFRASTRUCTURE FOR ALTERNATIVE FUEL VEHICLES AND ELECTRIC VEHICLES (Jan. 9, 2017), https://www.energy.gov/sites/prod/files/2017/01/f34/FactSheet_Vehicle_Announcements_01_9_17.pdf [https://perma.cc/PBV9-EK2S].

140. *DOE Issues Notice of Guidance for Potential Loan Applicants Involving Critical Minerals,* U.S. DEP'T OF ENERGY (Dec. 1, 2020), https://www.energy.gov/articles/doe-issues-notice-guidance-potential-loan-applicants-involving-critical-minerals [https://perma.cc/PL8K-26QU]*;* 85 Fed. Reg. 77202 (Dec. 1, 2020).

141. Timothy Cama & Maxine Joselow, *EV Startups Bid for Biden Support,* E&E NEWS (Nov. 19, 2020), https://www.eenews.net/articles/ev-startups-bid-for-biden-support/[https://perma.cc/VU88-DEKG].

142. WHITE HOUSE, BUILDING RESILIENT SUPPLY CHAINS, REVITALIZING AMERICAN MANUFACTURING, AND FOSTERING BROAD-BASED GROWTH 88, 145 (2021), https://bidenwhitehouse.archives.gov/wp-content/uploads/2021/06/100-day-supply-chain-review-report.pdf [https://perma.cc/DC6T-WDSX].

143. *Compare* H.R. 3684, 117th Cong (as passed by the House July 1, 2021); H. Rep. No. 117–70 (Jun. 22, 2021) *with* H.R. 3684, 117th Cong. (Engrossed Amendment Senate Aug. 10, 2021) (including ATVM reforms).

144. Pub. L. No. 117–58 (Nov. 15, 2021).

BIL's ATVM revisions were extensive. Program eligibility was re-targeted toward facilities producing vehicles with low greenhouse-gas emissions rather than fuel economy baselines, and was expanded to include medium and heavy duty transport including trains, vessels, airplanes, and "hyperloop technology" as well as passenger cars.[145] In IRA the following year, Congress appropriated an additional $3 billion for ATVM and specified that, for projects in the added categories (trains/locomotives, vessels, aircraft, hyperloop), funds may be used only if the vehicles "emit, under any possible operational mode or condition, low or zero exhaust emissions of greenhouse gases." IRA also eliminated the statutory loan-program cap.[146] Thus, BIL and IRA expanded the dormant ATVM program by widening loan eligibility and increasing LPO's subsidy cost budget, and transformed it into a catalyst for zero-emissions vehicle manufacturing specifically intended to reduce greenhouse gas emissions from the U.S. auto sector. Some unspent funds remained from the original appropriation for the program's original purposes, new funds had been earmarked for new climate-oriented lending, and the loan amount cap had been removed. While the program reorganization enacted in BIL had found bipartisan support, the funding for the program passed only on the partisan budget reconciliation vote in the Senate that resulted in IRA.

3. The Biden Administration Funding Push

It took until November 2023—and a quadrupling of LPO's staff—for LPO to declare that these programs were "open for business."[147] Although applications skyrocketed, by mid-2024 LPO had a great deal of work to do to review and approve them. Immediately after BIL was passed into law, LPO began issuing Monthly Application Activity Reports (MAARs).[148] As of November 2021, DOE reported 66 active applications, totaling $53.6 billion in "loans requested," including both ATVM loans, and EIR/1703 loan guarantee applications. The number of active applications under review grew steadily through the Biden

145. BIL § 40401(b).

146. IRA § 50142(a), (c).

147. Jigar Shah, *LPO's Energy Infrastructure Reinvestment (1706) Program,* LOAN PROGRAMS OFF. (Nov. 28, 2023), https://www.energy.gov/lpo/articles/lpos-energy-infrastructure-reinvestment-1706-program [https://perma.cc/DG4G-G976] ("LPO's EIR program is open for business.").

148. Jigar Shah, *LPO Launches Monthly Application Activity Report,* LOAN PROGRAMS OFF. (Dec. 13, 2021), https://www.energy.gov/lpo/articles/lpo-launches-monthly-application-activity-report [https://perma.cc/9ZYN-GED8] (reporting 66 active applications totaling $53.6B as of Nov. 30, 2021).

Administration, capping out at 214 totaling over $280 billion in "loans requested" in June 2024.[149] At the end of the Biden Administration, the last published MAAR reported 191 applications still under review.[150]

Although these numbers seem high, the implications are actually rather mixed. Over this period, LPO issued several dozen loans and loan guarantees, but the number of applications under review steadily increased.[151] This tells the story not so much of an agency operating well, but of one becoming increasingly overwhelmed by workload. GAO shared these concerns, as it reported that LPO failed to meet its application review targets during this period.[152] "At this rate, LPO would not be on track to issue loans in the amounts Congress authorized before nearly $350 billion of that loan authority expires in 2026 and 2028."[153] The pace is also substantially below the estimates provided by DOE to Congress pursuant to a mandated biannual report.[154]

Nonetheless, as LPO attempted to ramp up its work, it also became apparent that it may not have much of an opportunity to continue for long. At the urging of both applicants and President Biden, LPO began ramping up its output in the final few months of 2024, including in the months following President Trump's election victory.

The numbers tell the story. In September and October 2024, LPO finalized three loan guarantee commitments, four conditional loan guarantee commitments, and three ATVM loans totaling about $8.5 billion in lending.[155] Between November 2024 and January 2025, however, LPO

149. Jigar Shah, *June 2024 Monthly Application Activity Report,* LOAN PROGRAMS OFF. (Jun. 30, 2024), https://www.energy.gov/lpo/articles/june-2024-monthly-application-activity-report [https://perma.cc/86CB-UJQG].

150. *Monthly Application Activity Report,* LOAN PROGRAMS OFF. (Jan. 17, 2025), https://www.energy.gov/lpo/monthly-application-activity-report [https://perma.cc/WC7T-L9D2].

151. *Id.*

152. U.S. GOV'T ACCOUNTABILITY OFF., GAO-25-106631, DOE Loan Programs: Actions Needed to Address Authority and Improve Application Reviews (May 8, 2025), https://files.gao.gov/reports/GAO-25-106631/index.html#_Toc197333163 [https://perma.cc/FFV4-P4EH].

153. *Id.*

154. U.S. DEP'T OF ENERGY, REPORT ON THE STATUS OF PROJECTS SUPPORTED BY A LOAN UNDER THE ADVANCED TECHNOLOGY VEHICLES MANUFACTURING PROGRAM 4 (2023), https://www.energy.gov/sites/default/files/2023-11/DOELPO-Congressional-Report-IIJA-LPO-ATVM%20Portfolio-Final.pdf [https://perma.cc/8833-4C9X] (projecting 11 ATVM loan approvals in 2024 and 17 in 2025), submitted as required by Infrastructure Investment and Jobs Act of 2021, § 40401(b)(3)(E), Inflation Reduction Act (IRA) of 2022, § 60103, 42 U.S.C. § 7434(a)(2-3) (repealed 2025). 42 U.S.C. § 17013.

155. *Holtec Palisades,* LOAN PROGRAMS OFF. (Sep. 2024), https://www.energy.gov/lpo/holtec-palisades [https://perma.cc/GU9K-A9QN] (nuclear repowering); LOAN PROGRAMS OFF., *AES Marahu*, https://www.energy.gov/lpo/aes-marahu_[https://perma.cc/TR6J-JL5S] (last visited Oct. 19, 2025) (solar in Puerto Rico); *LongPath,* LOAN PROGRAMS OFF. (Mar. 17, 2025), https://www.energy.gov/lpo/longpath [https://perma.cc/QWV8-2X4Z] (national methane

monitoring network). Conditional commitments for loan guarantees: *LPO Announces Conditional Commitment to Wabash Valley Resources to Repurpose Fossil Fuel Infrastructure to Produce Low-Carbon Ammonia for Midwest Farmers*, WABASH VALLEY RES. (Sept. 16, 2024) https://www.wvresc.com/lpo-announces-conditional-commitment-to-wabash-valley-resources-to-repurpose-fossil-fuel-infrastructure-to-produce-low-carbon-ammonia-for-midwest-farmers/ [http://perma.cc/VQ9M-RDBP] ($1.559 billion for "a commercial-scale waste-to-ammonia production facility using carbon capture and sequestration (CCS) technology in West Terre Haute, Indiana"); *EVgo Receives Conditional Commitment for DOE Loan Guarantee of up to $1.05 Billion to Accelerate Buildout of Public Fast Charging Across the U.S.*, EVGO (Oct. 3, 2024), https://www.evgo.com/press-release/evgo-receives-conditional-commitment-doe/ [https://perma.cc/CJ56-SSCL] ($1.05 billion for the EVgo EV charging network); LOAN PROGRAMS OFF., *DOE Announces $1.67 Billion to Montana Renewables to Significantly Expand US Sustainable Aviation Fuel Production* (Jan. 10, 2025), https://www.energy.gov/lpo/articles/doe-announces-167-billion-montana-renewables-significantly-expand-us-sustainable [https://perma.cc/WER3-WEBA] ($1.67 billion for a sustainable aviation fuel manufacturing facility in Montana); *DOE LPO Announces Conditional Loan Commitment of up to $671M to Aspen Aerogels to Produce Aerogel Blankets and Improve Electric Vehicle Battery Safety*, GREEN CAR CONG. (Oct. 17, 2024), https://web.archive.org/web/20250423014542/https://www.greencarcongress.com/2024/10/20241017-aspen.html [https://perma.cc/XN85-BBFM]. ATVM loans: LOAN PROGRAMS OFF., *SK Siltron* (Mar. 17, 2025), https://www.energy.gov/lpo/sk-siltron [https://perma.cc/8SHQ-5KKS] (EV power electronics components manufacturing); LOAN PROGRAMS OFF., *Entek*, https://www.energy.gov/lpo/entek [https://perma.cc/3DG2-GQCP] (last visited Oct. 19, 2025) (EV battery components manufacturing); and *Lithium Americas Closes $2.26 Billion U.S. DOE ATVM Loan*, LITHIUM AMERICAS (Oct. 28, 2024), https://www.lithiumamericas.com/news/news-details/2024/Lithium-Americas-Closes-2.26-Billion-U.S.-DOE-ATVM-Loan/default.aspx [https://perma.cc/J6D2-YSQ4]. During this time LPO also closed (finalized) two previously announced ATVM loans totaling an additional $10 billion: $9.633 billion to BlueOval for components manufacturing in Kentucky and Tennessee, and $0.445 billion to LI Cycle for components manufacturing in New York. U.S. GOV'T ACCOUNTABILITY OFF., GAO-25-106631, DOE Loan Programs: Actions Needed to Address Authority and Improve Application Review (2025), https://files.gao.gov/reports/GAO-25-106631/index.html#_Toc197333173 [https://perma.cc/T57M-WXLH].

issued twenty conditional loan guarantee commitments totaling over $60 billion,[156] and four ATVM loans totaling over $16 billion.[157] It was clear

156. November 2024 (2): LOAN PROGRAMS OFF., *LPO Announces Conditional Commitment to Grain Belt Express to Construct High-Voltage Direct Current Transmission Project* (Nov. 25, 2024) https://www.energy.gov/lpanto/articles/lpo-announces-conditional-commitment-grain-belt-express-construct-high-voltage-direct [https://perma.cc/MES5-P5NK] ($4.9 billion for the GrainBelt express high voltage DC transmission project in Kansas and Missouri); LOAN PROGRAMS OFF., *LPO Announces $7.54 Billion Loan to StarPlus Energy to Construct Lithium-Ion Battery Factories in Indiana* (Dec. 17, 2024), https://www.energy.gov/lpo/articles/lpo-announces-754-billion-loan-starplus-energy-construct-lithium-ion-battery-factories [https://perma.cc/L67B-XSVK] ($7.54 billion for two lithium-ion battery manufacturing facilities in Indiana). December 2024 (4): *LPO Announces Conditional Commitment to Pacific Gas & Electric Company to Expand Hydropower Generation, Battery Energy Storage, and Transmission,* LOAN PROGRAMS OFF. (Dec. 17, 2024), https://www.energy.gov/lpo/articles/lpo-announces-conditional-commitment-pacific-gas-electric-company-expand-hydropower [https://perma.cc/56F7-SY38] ($15 billion for massive upgrades to the Pacific Gas & Electric California system); LOAN PROGRAMS OFF., *LPO Announces Conditional Commitment to Wisconsin Electric Power Company to Help Maintain Reliability and Affordability Through Hydropower Rehabilitation and New Utility-Scale Renewable Generation* (Dec. 13, 2024), https://www.energy.gov/lpo/articles/lpo-announces-conditional-commitment-wisconsin-electric-power-company-help-maintain [https://perma.cc/PB64-CUG7] ($2.5 billion to Wisconsin Electric Power Company for a portfolio of renewable and storage projects); LOAN PROGRAMS OFF., *LPO Announces Conditional Commitment to Nostromo Energy to Enhance Grid Reliability and Cut Air Conditioning Energy Waste for Large Buildings in California* (Dec. 9, 2024), https://www.energy.gov/lpo/articles/lpo-announces-conditional-commitment-nostromo-energy-enhance-grid-reliability-and-cut [https://perma.cc/GG9K-HWX6] ($0.30554 billion for a portfolio of building thermal energy storage systems functioning as a virtual power plant in California); *LPO Announces Conditional Commitment to Subsidiary of Infinigen to Build Solar PV and Energy Storage Facilities in Puerto Rico, Providing Necessary Grid Stability and Reliability,* LOAN PROGRAMS OFF. (Jan. 17, 2025), https://www.energy.gov/lpo/articles/lpo-announces-conditional-commitment-subsidiary-infinigen-build-solar-pv-and-energy [https://perma.cc/NH8D-9DC3] ($0.1336 billion for a PV-storage facility in Puerto Rico). January 2024 (12): *LPO Announces Conditional Commitment to Zum Services, Inc. to Deploy Battery-Electric School Buses with V2G Capability, Creating Virtual Power Plants Nationwide,* LOAN PROGRAMS OFF. (Jan. 17, 2025), https://www.energy.gov/lpo/articles/lpo-announces-conditional-commitment-zum-services-inc-deploy-battery-electric-school [https://perma.cc/P8N5-HWCH] ($0.7051 billion for battery-electric school buses with vehicle-to-grid capabilities to be deployed in eight states); *LPO Announces Conditional Commitment to a Subsidiary of Pattern Energy to Build Solar PV and Energy Storage Facilities in Puerto Rico, Providing Necessary Grid Stability and Reliability,* LOAN PROGRAMS OFF. (Jan. 17, 2025), https://www.energy.gov/lpo/articles/lpo-announces-conditional-commitment-subsidiary-pattern-energy-build-solar-pv-and [https://perma.cc/7LDE-WDT3] ($0.4894 billion for battery energy storage and PV systems in Puerto Rico; *LPO Announces Conditional Commitment to Michigan Potash to Produce Fertilizer for U.S. Farmers,* LOAN PROGRAMS OFF. (Jan. 17, 2025), https://www.energy.gov/lpo/articles/lpo-announces-conditional-commitment-michigan-potash-produce-fertilizer-us-farmers [https://perma.cc/J3C7-EX9W] ($1.26 billion for a potash mine and fertilizer manufacturing facility in Michigan); *LPO Announces Conditional Commitment to PacifiCorp to Expand Transmission in Several Western States,* LOAN PROGRAMS OFF. (Jan. 16, 2025), https://www.energy.gov/lpo/articles/lpo-announces-conditional-commitment-pacificorp-expand-transmission-several-western [https://perma.cc/YE9T-G8ZA] ($3.52 billion for new transmission lines in PacifiCorp service territories in the Western U.S); *LPO Announces Conditional Commitment to Jersey Central Power & Light to Upgrade Transmission, Saving Ratepayers Millions of Dollars,* LOAN PROGRAMS OFF. (Jan. 16, 2025), https://www.energy.gov/lpo/articles/lpo-announces-conditional-commitment-jersey-central-power-light-upgrade-transmission [https://perma.cc/S5CC-R5QS] ($0.716 billion for transmission

from context that this frenzy of activity was due, in large part, to the concern that the Trump Administration would work to undermine these programs going forward.[158] These commitments, however, came nowhere close to exhausting the appropriated cost subsidy spending authority for LPO programs.

upgrades in New Jersey); *LPO Announces Conditional Commitment to Consumers Energy to Help Lower Customer Costs for Investments in Reliable Energy Infrastructure in Michigan,* LOAN PROGRAMS OFF. (Jan. 16, 2025)**,** https://www.energy.gov/lpo/articles/lpo-announces-conditional-commitment-consumers-energy-help-lower-customer-costs [https://perma.cc/5B8Y-BX5U] ($5.23 billion for major upgrades to the Consumers Energy grid in Michigan); *LPO Announces Conditional Commitment to Alliant Energy to Improve Grid Resilience in Iowa and Wisconsin,* LOAN PROGRAMS OFF. (Jan. 16, 2025), https://www.energy.gov/lpo/articles/lpo-announces-conditional-commitment-alliant-energy-improve-grid-resilience-iowa-and [https://perma.cc/32LT-VT3T] ($3 billion for major upgrades to the Alliant Energy grid in Iowa and Wisconsin);); *LPO Announces Conditional Commitment to AEP to Upgrade Nearly 5,000 Miles of Transmission Lines,* LOAN PROGRAMS OFF. (Jan. 16, 2025) https://www.energy.gov/lpo/articles/lpo-announces-conditional-commitment-aep-upgrade-nearly-5000-miles-transmission-lines [https://perma.cc/5ZU2-ZQBW] ($1.6 billion to upgrade the AEP transmission system in multiple states); *LPO Announces Conditional Commitments to DTE Gas and DTE Electric to Fund Infrastructure Improvements while Maintaining Affordability for Customers,* LOAN PROGRAMS OFF. (Jan 16, 2025), https://www.energy.gov/lpo/articles/lpo-announces-conditional-commitments-dte-gas-and-dte-electric-fund-infrastructure [https://perma.cc/E9Q3-49ZM] ($8.83 billion for major upgrades to the DTE electric and gas networks in Michigan); *LPO Announces Conditional Commitment for Long Duration Compressed Air Energy Storage to Enable a Diverse and Reliable Generation Mix,* LOAN PROGRAMS OFF. (Jan. 8, 2025), https://www.energy.gov/lpo/articles/lpo-announces-conditional-commitment-long-duration-compressed-air-energy-storage [https://perma.cc/75MF-RSUD] ($1.76 billion for a compressed air energy storage facility in California); *LPO Announces Conditional Commitment to Arizona Public Service Company to Help Meet Local Demand Growth, Lower Customers Electricity Bills,* LOAN PROGRAMS OFF. (Jan. 7, 2025), https://www.energy.gov/lpo/articles/lpo-announces-conditional-commitment-arizona-public-service-company-help-meet-local [https://perma.cc/J69M-5NM6] ($1.81 billion to upgrade the APS grid in Arizona).

157. *LPO Announces Conditional Commitment to Rivian to Support the Construction of EV Manufacturing Facility in Georgia,* LOAN PROGRAMS OFF. (Nov. 25, 2024), https://www.energy.gov/lpo/articles/lpo-announces-conditional-commitment-rivian-support-construction-ev-manufacturing [https://perma.cc/C9M3-EWCM] ($6.57 billion for EV manufacturing in Georgia); *LPO Announces Conditional Commitment to StarPlus Energy to Construct Lithium-Ion Battery Factories in Indiana,* LOAN PROGRAMS OFF. (Dec. 2, 2024), https://www.energy.gov/lpo/articles/lpo-announces-conditional-commitment-starplus-energy-construct-lithium-ion-battery [https://perma.cc/2G74-APZG] ($7.54 billion for EV battery manufacturing in Indiana); *LPO Announces Conditional Commitment to NOVONIX to Boost Synthetic Graphite Manufacturing in Tennessee,* LOAN PROGRAMS OFF. (Dec. 16, 2024), https://www.energy.gov/lpo/articles/lpo-announces-conditional-commitment-novonix-boost-synthetic-graphite-manufacturing [https://perma.cc/5CSQ-4JAD] ($0.7548 billion for EV battery component manufacturing in Tennessee); and *LPO Announces Conditional Commitment for Project ATLiS for Lithium Hydroxide Production in California,* LOAN PROGRAMS OFF. (Jan. 15, 2025), https://www.energy.gov/lpo/articles/lpo-announces-conditional-commitment-project-atlis-lithium-hydroxide-production [https://perma.cc/TQA8-CAKH] ($1.36 billion for EV critical minerals extraction in California).

158. Benjamin Storrow et al., *Biden Inks Billion-Dollar Climate Deals to Foil Trump Rollbacks*, POLITICO (Nov. 20, 2024), https://www.politico.com/news/2024/11/20/biden-climate-trump-rollbacks-00190719 [https://perma.cc/9TBL-CY9T].

Thus, the second Trump Administration inherited the Title XVII and ATVM programs with several recently-issued high profile large loans in the EV manufacturing space, a large number of conditional commitments for loan guarantees related to renewable energy, a substantial unallocated spending authority, a huge backlog of pending applications, and Congressional authorizations particularly focused on building up the EV supply chain.

4. The Trump Administration LPO Program Freeze

Although politicians associated with the Trump campaign had indicated a response was coming,[159] the first "official" shot against LPO programs was actually fired prior to President Trump taking office, with the issuance of an interim DOE Inspector General (DOE IG) report in December 2024.[160] The report, which was rushed to publication on the basis of the LPO's late-2024 spending push, accused LPO of operating without sufficient protections for conflicts of interest, and recommended that LPO "[p]ut into abeyance all loan and loan guarantee packages until the LPO can ensure that contracting officers and the contracting officers' representatives are complying with conflicts of interest regulations and enforcing conflict of interest contractual obligations."[161] It should be noted that conflicts of interests concerns were not raised in multiple reviews of LPO programs conducted by GAO prior to the IG's interim report, but that the IG had included this and other concerns in a 2022 report on prospective issues in managing these programs issued in 2022.[162] As discussed below, unsupported and speculative accusations of conflicts of interest have become a key line of attack in the larger climate impoundments fight.

159. Vivek Ramaswamy (@VivekGRamaswamy), X (Dec. 2, 2024, 8:59 PM), https://x.com/VivekGRamaswamy/status/1863764934514938118?mx=2 [https://perma.cc/8CPX-5SBQ] (calling for review of the Biden Administration's LPO "spending spree," focusing primarily on loans under the ATVM program).

160. Memorandum from Teri L. Donaldson, Inspector General, to the Under Secretary of Energy for Infrastructure (Dec. 17, 2024), https://www.energy.gov/sites/default/files/2024-12/Interim%20Findings%20Department%20of%20Energy%20Loan%20Programs%20Office%20Conflicts%20of%20Interest.pdf [https://perma.cc/3X2H-HB3E] (including DOE response and IG reply comments).

161. *Id.* at 7.

162. Inspector Gen., U.S. DEP'T OF ENERGY, DOE-OIG-22-34, Prospective Considerations for the Loan Authority Supported Under the Loan Programs Office to Improve Internal Controls and Prevent Fraud, Waste, and Abuse (June 2022), https://www.energy.gov/sites/default/files/2022-06/DOE-OIG-22-34.pdf [https://perma.cc/UY6R-WMQ5]; *see also* U.S. GOV'T ACCOUNTABILITY OFF., GAO-25-106631, DOE LOAN PROGRAMS: ACTIONS NEEDED TO ADDRESS AUTHORITY AND IMPROVE APPLICATION REVIEWS n.4 (May 8, 2025), https://files.gao.gov/reports/GAO-25-106631/index.html#_Toc197333163 [https://perma.cc/FFV4-P4EH]. (linking prior reports).

Once President Trump took office, and after the issuance of the executive orders and OMB guidance discussed above, matters moved to internal agency activities that have not yet been made fully public. In January 2025, LPO ceased publishing its monthly updates on its loan programs, and no further applications have been approved since President Trump took office. From reporting on various previously approved projects, however, a clearer story has emerged.

The ATVM program appears to have been largely paused, although matters remain uncertain. In the case of a loan made to a company called Entek, the company reported that its EV component manufacturing project was "slowing" after its loan was "put on pause" by DOE, with Entek stating that its project was "in line to have its loan reviewed," but was slotted behind energy projects.[163] In May 2025, the loan was reported to not yet have been released, with a DOE spokesman quoted in what appears to be one of the few public statements regarding the impact of the funding freeze on the ATVM program:

> The Department [of Energy] is conducting a department-wide review to ensure all activities follow the law, comply with applicable court orders and align with the Trump administration's priorities. The American people provided President Trump with a mandate to govern and to unleash 'American Energy Dominance.' The Department of Energy is hard at work to deliver on President Trump's promise to restore affordable, reliable, and secure energy to the American people.

Another ATVM loan project experiencing delays has been cancelled, with the company reporting it is exploring production in China instead.[164] LiCycle, another company with a paused loan, stated only that it "expect[ed] the Energy Department will meet its legal obligations" under a binding loan contract, assuming other conditions were met.[165] In the case of Rivian, an EV manufacturing loan particularly targeted for review by Trump Administration officials, it has been unclear whether the administration would honor the loan.[166] Although the matter remains

163. Annie Johnston, *ENTEK Project 'Slowing' as Loan is Reviewed Under New Trump Administration*, WTHI TV10 NEWS (Feb. 14, 2025), https://www.wthitv.com/news/entek-project-slowing-as-loan-is-reviewed-under-new-trump-administration/article_2e9ee99e-eaf1-11ef-bd34-6f6e10480cfb.html [https://perma.cc/3QGJ-D83V].

164. Maeve Allsup, *Why Aspen Aerogels Canceled its LPO loan—and its Georgia Factory*, LATITUDE MEDIA (Mar. 10, 2025), https://www.latitudemedia.com/news/why-aspen-aerogels-cancelled-its-lpo-loan-and-its-georgia-factory/ [https://perma.cc/C8RV-2E82].

165. Justin O'Connor, *A New Cloud Over Li-Cycle*, ROCHESTER BEACON (Feb. 6, 2025), https://rochesterbeacon.com/2025/02/06/a-new-cloud-over-li-cycle/ [https://perma.cc/J5AD-PQPY].

166. Christiaan Hetzner, *Fate of Rivian's $6.6 billion Federal Loan—Secured in the Dying Hours of the Biden Administration—Now Hangs in the Balance*, FORTUNE (Feb. 19, 2025), https://fortune.com/2025/02/19/rivian-federal-loan-biden-trump-administration-georgia-factory-brian-kemp/ [https://perma.cc/PU3A-XM7X].

unresolved, Rivian has taken the position that the loan is final and has included it on its books in reports to shareholders.[167]

With respect to loan guarantee commitments, the record is much less clear. There have been no reports of any termination actions by LPO under conditional or final loan guarantee commitments. The outlook, however, is not encouraging. In February 2025, Bloomberg reported that the new LPO director, John Sneed, was investigating both how to "retool[] [LPO] to focus on technologies favored by the new administration such as nuclear power and liquefied natural gas," and how to "cancel[] existing financing deals, although it remains to be seen if that would be legally viable and no decisions have been made."[168]

The remaining information comes from projects where funding has been released. In March 2025, LPO began releasing funding for one—and only one—of the projects that had entered into a final loan guarantee commitment in September 2024: the Holtec Palisades nuclear project.[169] In other words, although three projects had received commitments, only one—the one that happened to align with the Trump Administration energy policy priorities—has been publicly announced as receiving funds. There has not been any further public comment on the other two projects, and it is not clear whether they have requested releases of funds at this time. Another project, ATLiS, appears to be taking this pattern as the new normal. LPO issued a conditional commitment just a few days before President Trump's inauguration, and there is some indication that the Trump Administration is also supportive of it as it involves mining of lithium, a critical mineral.[170] In other words, initial data indicate that

167. RIVIAN, Q1 2025 RIVIAN SHAREHOLDER LETTER 10 (2025), https://downloads.ctfassets.net/2md5qhoeajym/CgJi4zWSk36Q5qX4pYfVH/26a5b919c4b5c8563312c87d8e6bb21e/EX_-_99.2_1Q25_Shareholder_Letter.pdf [https://perma.cc/N7SX-5LHQ]; RIVIAN, FORM 8-K (Jan. 16, 2025), https://www.sec.gov/Archives/edgar/data/1874178/000119312525007793/d908843d8k.htm [https://perma.cc/RNM9-DUA8].

168. Ari Natter, *Trump Mulls Canceling Loans From $400 Billion Green Bank*, BLOOMBERG NEWS (Feb. 5, 2025), https://www.bloomberg.com/news/articles/2025-02-05/trump-mulls-revoking-loans-from-400-billion-clean-energy-office.

169. DOE Approves Loan Disbursement for Palisades Nuclear Plant, U.S. DEP'T OF ENERGY (Mar. 17, 2025), https://www.energy.gov/articles/doe-approves-loan-disbursement-palisades-nuclear-plant [https://perma.cc/PUN4-FKGK] (announcing "release" of about $57 million). In April, DOE released further funds for the Palisades project. David Dalton, *DOE Releases More Funding to Restart Palisades Nuclear Power Plant*, NUCNET (Apr. 24, 2025), https://www.nucnet.org/news/doe-releases-more-funding-to-restart-palisades-nuclear-power-plant-4-4-2025 [https://perma.cc/Y75N-V7J5].

170. Philip Salata, *Trump's War on Spending Comes as Lithium Valley Waits for $1B Federal Loan to Launch Extraction*, KPBS (Jan. 31, 2025), https://www.kpbs.org/news/environment/2025/01/31/trumps-war-on-spending-comes-as-lithium-valley-waits-for-1b-federal-loan-to-launch-extraction [https://perma.cc/9VNP-V3JX]; Janet Wilson, *Will Trump Support California's 'Lithium Valley'? Local Officials See Signs of Hope*,

funding is only being released on a project-by-project basis, and only in line with President Trump's—not Congress's—policy preferences.

The above review paints a picture of programs under immense uncertainty. Loan disbursements do appear to have been delayed by an internal DOE review, and significant lobbying is being undertaken to promote projects, while companies are taking a generally optimistic public stance and, however quietly, also likely assessing their litigation options should the government default on its loan commitments. There is no public data, however, about what criteria DOE is considering in making these decisions, whether they are within the scope of Congressional authorizations, or whether the Administration is denying requests for disbursements or to move loans forward. It does appear that the Trump Administration is adhering to legally binding contractual commitments under the loan guarantee program where it must, although the scope and pace of that compliance is largely unknown, as are the Administration's criteria for that compliance.

Finally, all of the above is complicated by the fact that LPO fired some 45 staff in February 2025,[171] and over 120 LPO employees accepted the government's "deferred resignation program" buyout offers after that, leaving the agency significantly understaffed.[172] Thus, the office can also excuse delay through staffing problems that the Administration itself created. Because there has not yet been any litigation related to LPO loan guarantees, it is difficult to say with certainty what would happen if DOE withheld funding authorization for a project that has entered into a loan guarantee agreement, or refused to move forward with such an agreement with a party that had received a conditional loan guarantee commitment. In the short term, however, the playbook appears to be working at LPO.

DESERT SUN (Mar. 6, 2025), https://www.desertsun.com/story/news/environment/2025/03/06/will-trump-support-california-lithium-valley-locals-are-hopeful/81174000007/ [https://perma.cc/L4X9-J6RZ].

171. Timothy Gardner & Valerie Volcovici, *Sweeping US Energy Department layoffs hit offices of loans, nuclear security, sources say*, REUTERS (Feb. 14, 2025), https://www.reuters.com/world/us/sweeping-us-energy-department-layoffs-hit-nuclear-security-loans-office-sources-2025-02-14/ [https://perma.cc/33ZM-VHSM].

172. Callie Patteson, *DOE Loan Programs Office Poised to Lose Nearly 60% of Staff Amid DOGE Cuts*, WASH. EXAM'R (Apr. 17, 2025), https://www.washingtonexaminer.com/policy/energy-and-environment/3384111/energy-loan-programs-office-poised-lose-staff-doge-cuts/ [https://perma.cc/G99Y-7S2F]; Stephen Lacey, *Fear and Loathing at the Department of Energy*, LATITUDE MEDIA (May 9, 2025), https://www.latitudemedia.com/news/open-circuit-fear-and-loathing-at-the-department-of-energy/ [https://perma.cc/5QSZ-CD8D].

C. The Special Case of the Greenhouse Gas Reduction Fund

The above actions are built, in part, on the internalization of decision-making within the Office of the President and the federal agencies, with very little communication or information shared outside. In one important example, however, this silence was replaced with something different: widespread public misrepresentation of the program at issue, up to and including what might accurately be termed contract fraud by the federal government.

In 2022, Congress appropriated $20 billion to capitalize the "Greenhouse Gas Reduction Fund" (GGRF), intended as a new national "green bank" system for financing the construction of zero-emissions energy technology infrastructure projects across the country.[173] Congress modeled the GGRF on similar successful programs in New York, Connecticut, England, and elsewhere.[174] Such programs typically provide public funding to third-party expert financing organizations, which then use those funds to generate sub-awards for eligible projects meeting legislative eligibility criteria.[175]

Congress assigned EPA the responsibility of managing the GGRF program, and EPA split Congress's appropriations across two programs: the National Clean Investment Fund (NCIF) program, and the Clean Communities Investment Accelerator (CCIA) program.[176] EPA awarded NCIF funds to three entities,[177] and CCIA funding to five entities.[178] Given

173. Inflation Reduction Act (IRA) of 2022, § 60103, 42 U.S.C. § 7434(a)(2-3) (repealed 2025).

174. Jack Kochansky, *The IRA's Greenhouse Gas Reduction Fund: A Discussion of Impacts & Recommendations for Implementation*, FINREG BLOG (May 19, 2023), https://sites.duke.edu/thefinregblog/2023/05/19/the-iras-greenhouse-gas-reduction-fund-a-discussion-of-impacts-recommendations-for-implementation [https://perma.cc/K9WP-HY85]; Press Release, Coal. for Green Capital, Congress Passes Historic Climate Bill Funding a National Green Bank, Coalition for Green Capital (Aug. 12, 2022), https://coalitionforgreencapital.com/congress-passes-historic-climate-bill-funding-a-national-green-bank/ [https://perma.cc/2VCZ-ZWMW].

175. *See generally* Brian Farnen & Max Mirus, *Navigating the Green Path: The Greenhouse Gas Reduction Fund and the Hurdles to Deploying Federal Funds*, 26 VT. J. ENV'T L. 94 (2025).

176. Mathew Daly, *EPA Outlines $27B 'Green Bank' for Clean Energy Projects*, ASSOCIATED PRESS (Feb. 14, 2023), https://apnews.com/article/climate-and-environment-financial-services-us-environmental-protection-agency-business-664750a30b238523bc025663f4a1f002 [https://perma.cc/8WSQ-LLSK]. The two programs were similar but targeted toward different communities and funding entities. U.S. ENV'T PROT. AGENCY, *Greenhouse Gas Reduction Fund: National Clean Investment Fund Notice of Funding Opportunity Webinar* 4 (July 26, 2023), https://www.epa.gov/system/files/documents/2023-11/20230726_national-clean-investment-fund-nofo-webinar_website.pdf [https://perma.cc/2D7D-CKE5].

177. *National Clean Investment Fund*, U.S. ENV'T PROT. AGENCY (Nov. 13, 2024), https://www.epa.gov/greenhouse-gas-reduction-fund/national-clean-investment-fund [https://perma.cc/2D7D-CKE5].

178. *Clean Communities Investment Accelerator*, U.S. ENV'T PROT. AGENCY (Aug. 21, 2025), https://www.epa.gov/greenhouse-gas-reduction-fund/clean-communities-investment-accelerator

the allegations made against these programs later, it is useful to review the nature of the recipients. The three NCIF awardees were the Climate United Fund (CUF), the Coalition for Green Capital (CGC), and Power Forward Communities (PFC). Although each of these awardees was technically a recently established entity, it is easy to verify that each was in fact a purpose-built nonprofit organization managed by sophisticated lending entities with years of experience providing financing to low-income communities and energy projects.[179] The CCIA awardees were also all

[https://perma.cc/CX4D-EXE6]; *see also* Press Release, U.S. ENV'T PROT. AGENCY, Biden-Harris Administration Announces $20 Billion in Grants to Mobilize Private Capital and Deliver Clean Energy and Climate Solutions to Communities Across America (Apr. 4, 2024), https://www.epa.gov/newsreleases/biden-harris-administration-announces-20-billion-grants-mobilize-private-capital-and [https://perma.cc/8Z3E-95XQ].

179. CUF was created by Calvert Impact, Inc (CII), in collaboration with two other organizations, the Community Preservation Corporation ("CPC"), and the Self-Help Ventures Fund ("SHVF"). CLIMATE UNITED FUND, CUF NCIF WORKPLAN (2024), https://www.epa.gov/system/files/documents/2024-08/ncif-workplan-cuf.pdf [https://perma.cc/Q2XM-98M4]. CII was formerly called the Calvert Social Investment Foundation (CSIF), created by the Calvert Investment firm in 1988. *About Us*, CALVERT IMPACT CAP., https://calvertimpact.secure.nonprofitsoapbox.com/about [https://perma.cc/ETS7-T5R3] (last visited Oct. 20, 2025); Anne Field, *What's In Calvert's New Name? For Impact Entrepreneurs And Investors, A Lot*, FORBES (Oct. 31, 2017), https://www.forbes.com/sites/annefield/2017/10/31/whats-in-calverts-new-name-for-impact-entrepreneurs-and-investors-a-lot/ [https://perma.cc/G9RK-PE9P]. In 2022, CIC was folded into a holding organization, CII, with the purpose of expanding the company's financial offerings through separate, coordinated entities. *Calvert Impact Capital Announces Expansion Strategy, Creation of Calvert Impact,* CALVERT IMPACT CAP. (Oct. 17, 2022), https://calvertimpact.org/about/press/calvert-impact-capital-announces-expansion-strategy-creation-of-calvert? [https://perma.cc/8D35-89XL]. CPC joined the CUF project to contribute its expertise in multifamily housing finance, while SHVF functions as an experienced Community Development Financial Institution (CDFI), providing finance opportunities to otherwise underserved communities. Press Release, CALVERT IMPACT INC., Leading Sustainable Energy and Community Finance Organizations Join Forces to Pursue National Clean Investment Fund Mandate (Jun. 21, 2023), https://calvertimpact.org/about/press/leading-sustainable-energy-and-community-finance-organizations-join-forces [https://perma.cc/89SP-VK9W]. CGC is a longstanding leader in green bank development worldwide and major advocate for a U.S. national green bank. U.S. ENV'T PROT. AGENCY, *National Clean Investment Fund* (Nov. 13, 2024), https://www.epa.gov/greenhouse-gas-reduction-fund/national-clean-investment-fund [https://perma.cc/2D7D-CKE5]; *Coalition for Green Capital (CGC)*, INFLUENCEWATCH, https://www.influencewatch.org/non-profit/coalition-for-green-capital-cgc/ [https://perma.cc/J7LZ-MZK5] (last visited Oct. 20, 2025). The coalition members involved in the NCIF project include a number of state-level green development banks. COAL. FOR GREEN CAP., NATIONAL CLEAN INVESTMENT FUND PROGRAM WORK PLAN OF COALITION FOR GREEN CAPITAL 2 (Aug. 14, 2024), https://www.epa.gov/system/files/documents/2024-08/ncif-workplan-cgc.pdf [https://perma.cc/22ZS-9NKB]. PFC was a coalition comprised of Rewiring America (focusing on building electrification), Enterprise and the Local Initiatives Support Corporation (nonprofit lenders in multifamily housing), Habitat for Humanity (a worldwide housing construction nonprofit), and United Way Worldwide (a leading community develop network and outreach nonprofit). POWER FORWARD CMT'YS. NCIF WORK PLAN 5 (Aug. 2024), https://www.epa.gov/system/files/documents/2024-08/ncif-workplan-pfc.pdf [https://perma.cc/HWK6-TFSK].

well-established entities, including primarily community development funding institutions (CDFIs) with existing cross-country lender networks.[180]

It is also important to understand exactly how Congress and EPA organized the funding for this program. GGRF's authorizing legislation required EPA to obligate all funding for the GGRF programs prior to September 2024.[181] EPA did so through awards to the NCIF and CCIA grant recipients, which in each case required the execution of a Grant Agreement between EPA and the awardee. However, since the law required that the funds be firmly, irrevocably committed by September 2024, but the programs themselves involved the further commitment and disbursement of funds from the green bank entities to project loan recipients after September 2024, the program required a post-obligation oversight model. To accomplish this, the U.S. Department of Treasury executed a Financial Agent Agreement (FAA) with Citibank, N.A., to hold and disburse GGRF funding to the awardees.[182] FAAs, authorized at 12 U.S.C. § 90 and 31 CFR Part 202, set out the terms by which financial institutions like Citibank may hold and disburse public funds as an agent of the United States, including terms and conditions by which the Treasury Department and award agencies like EPA can ensure that obligated funding is being used for legal purposes. There is no evidence that this arrangement is unusual, or legally problematic. Note also that the funds were required by law to be appropriated prior to the November 2024 election.

Nonetheless, on February 14, 2025, citing a conversation that had been secretly recorded by a conservative advocacy organization in which a Biden Administration employee likened spending climate funds near the end of the Biden Administration's term to "throwing gold bars off the Titanic,"[183] EPA Administrator Zeldin leveled a number of accusations against the GGRF programs and announced the agency's intention to claw back funding to the maximum extent possible.[184] Zeldin also called for

180. *Clean Communities Investment Accelerator*, *supra* note 178.

181. *Id.*

182. *See* Letter from S. Comm. on Env't & Pub. Works to EPA Adm'r Zeldin (Feb. 24, 2025), https://www.epw.senate.gov/public/_cache/files/c/0/c08cee01-522d-422e-aeee-7a33932a92c5/A190170AA663AFD77AF1AC6B3C8658E9773DA22017F8FD5412A882268FAA1095.2.24.25-letter-to-epa-ggrf.pdf [https://perma.cc/79G6-EEG9].

183. Lisa Friedman, *An Offhand Remark About Gold Bars, Secretly Recorded, Upended His Life*, N.Y. TIMES (Jul. 10, 2025), https://www.nytimes.com/2025/07/01/climate/gold-bars-titanic-epa-date.html [https://perma.cc/4XDZ-78UJ].

184. Ryan Kennedy, *EPA Seeks to "Instantly Terminate" $20 Billion in Clean Energy Grants,* PV MAG. (Feb. 14, 2025), https://pv-magazine-usa.com/2025/02/14/epa-seeks-to-instantly-terminate-20-billion-in-clean-energy-grants/ [https://perma.cc/3SGF-HWHV].

termination of the Citibank FAA.[185] Several days later, NCIF and CCIA grant recipients began reporting that they were unable to draw on funds held at Citibank.[186] Democrats on the Senate Environment and Public Works (EPW) Committee criticized the EPA's characterization of the program in a letter several days later, and demanded to know the legal authority upon which the ongoing terminations were based.[187] Over the next several months, EPW Democrats would send another eleven letters to Administrator Zeldin, which largely went unanswered.[188]

As revealed in subsequent litigation,[189] the legal battle developed around the terms of the executed Citibank FAA, which includes a "Form Notice of Exclusive Control" stating that the federal government is able to exercise control over the Citibank accounts only after issuing "a written determination and finding that [a GGRF grant recipient] has failed to comply with the terms and conditions of the Grant Agreement, and that noncompliance is substantial such that effective performance of the Grant Agreement is materially impaired or there is adequate evidence of waste, fraud, material misrepresentation of eligibility status, or abuse, and that the Secured Party has initiated action under 2 CFR 200.339 to wholly or partly suspend or terminate the Grant Agreement, as authorized in the terms of the Grant Agreement."[190] In other words, freezing the funds required notice, a finding of compliance failure, evidence of material impairment of performance or of waste, fraud, misrepresentation, or abuse, and initiation of termination processes.

185. Press Release, U.S. ENV'T PROT. AGENCY, *Administrator Zeldin Announces Billions of Dollars' Worth of Gold Bars Have Been Located* (Feb. 13, 2025), https://www.epa.gov/newsreleases/administrator-zeldin-announces-billions-dollars-worth-gold-bars-have-been-located [https://perma.cc/6Q7Y-D43A].

186. Jean Chemnick, *EPA 'Green Bank' Recipients Lose Access to Citibank Accounts,* E&E NEWS (Feb. 20, 2025), https://www.eenews.net/articles/epa-green-bank-recipients-lose-access-to-citibank-accounts/ [https://perma.cc/344Q-JYXZ].

187. *See* Letter from S. Comm. on Env't & Pub. Works to EPA Adm'r Zeldin (Feb. 24, 2025), https://www.epw.senate.gov/public/_cache/files/c/0/c08cee01-522d-422e-aeee-7a33932a92c5/A190170AA663AFD77AF1AC6B3C8658E9773DA22017F8FD5412A882268FAA1095.2.24.25-letter-to-epa-ggrf.pdf [https://perma.cc/79G6-EEG9].

188. *See Hearing on the U.S. Environmental Protection Agency's Proposed Fiscal Year 2026 Budget*, *Before the S. Comm. on Env't & Pub. Works* (May 21, 2025), https://www.epw.senate.gov/public/_cache/files/8/a/8ac28d40-3516-40da-9841-7bed754d8477/ABF1DE876272A8F90A9CB12F30E3905B3F066DA73E55D022EAE799FE36B1FDB1.spw-05212025-usepa-s-proposed-2026-budget-.pdf [https://perma.cc/4QUE-CCKT].

189. Most of the NCIF and CCIA grant recipients subsequently sued Citibank and the EPA in the D.C. District Court, with the first case filed in mid-February. The leading case is *Climate United Fund v. Citibank*, Case 25-CV-698 (D.D.C. Mar. 8, 2025). This has been consolidated with lawsuits filed later by most other NCIF and CCIA grant recipients.

190. Joint Appendix at 79, Climate United Fund v. Citibank, N.A., No. 1:25-cv-00698 (D.D.C. May 5, 2025).

It is clear in the record available to date that the Trump Administration did not comply with the FAA's termination requirements. Rather, on February 17, 2025, the Department of Justice (DOJ) emailed Citibank recommending a 30 day administrative freeze on all NCIF and CCIA accounts "following credible information received by the Federal Bureau of Investigation that the above account(s) has been involved in possible criminal violations, including 18 § U.S.C. 371 (Conspiracy to defraud the United States) and 18 § U.S.C. 1343 (Wire fraud)," and providing no additional information.[191] The next week, EPA emailed DOJ with a list of allegations to justify these claims, including "financial mismanagement, conflicts of interest, and oversight failures;" "misconduct, waste, conflicts of interest, and potential fraud;" "reckless financial management, blatant conflicts of interest, astonishing sums of tax dollars awarded to unqualified recipients, and severe deficiencies in regulatory oversight."[192] However, the "documented evidence" was quite slim: regarding allegations of lack of EPA oversight, EPA simply noted the existence of the Citibank FAA (untruthfully alleged to be "an unprecedented arrangement for EPA"), the pass-through structure of the grantmaking (notwithstanding EPA's and Treasury's oversight powers, "raising serious concerns about transparency and accountability"), the timing of the transfers near the end of the Biden Administration (failing to mention they were required by law); and the exclusion of EPA as party to the Account Control Agreements.[193] Regarding alleged conflicts of interest, EPA alleged that a GGRF director oversaw a grant to his former employer without recusing himself, that another grant was being made despite that entity "reporting only $100 in total revenue in 2023," and that a $20 million subaward had been made to a firm although its "CEO applied for funding while serving on the White House Environmental Justice Advisory Council,"[194] none of which seem to qualify as material conflicts of interest or to justify freezing the entire fund. Regarding alleged "lack of financial competency," EPA argued that the recipients had been allowed to draw funds before attending a mandatory training on "how to develop a budget," and that EPA allegedly determined "that recipients lacked basic financial competency,"[195] without mentioning their longstanding status as lending organizations nor EPA's prior work reviewing their applications. Finally, EPA alleged that contractual financial controls were weakened leading up to the beginning

191. *Id.* at 100.
192. *Id*. at 106.
193. *Id.*
194. *Id.* at 108.
195. *Id.*

of the Trump Administration.[196] It is important to point out that no documentation of these allegations appears to have been provided, and for the most part EPA did not inform DOJ that any *actual* fraud, waste, or abuse had occurred.

Nonetheless, on March 4, DOJ emailed Citibank demanding a short-term hold on the accounts under the FAA, while demanding disclosure of a range of information (much of which was already included in the application files) from the GGRF grant recipients.[197] Later that week, EPA informed the GGRF grant recipients that it was "working to review and develop additional account controls to address concerns regarding potential fraud and/or conflicts of interest related to the" GGRF. It also, at this point, first claimed that the "GGRF is also the subject of an ongoing criminal investigation by the U.S. Department of Justice and an investigation by the EPA Office of Inspector General (OIG). Until those additional account controls are developed and implemented," EPA stated that the funding would be stopped. On the same day, the Department of Treasury emailed Citibank ordering an extension of the account freeze indefinitely.[198]

The day after that, EPA issued termination notices to all GGRF grant recipients.[199] These notices cited EPA's authority "under 2 C.F.R. §§ 200.339–40, the General Terms and Conditions of EPA assistance award agreements, the terms and conditions of the Grant Agreement, and the Agency's inherent authority to reconsider prior determinations in light of new information," and terminated the grants "based on substantial concerns regarding program integrity, the award process, programmatic fraud, waste, and abuse, and misalignment with the Agency's priorities, which collectively undermine the fundamental goals and statutory objectives of the award." The "material deficiencies" EPA alleged included "the absence of adequate oversight and account controls to prevent financial mismanagement; 2) the improper or speculative allocation of funds inconsistent with EPA's oversight and fiscal responsibilities; and 3) the circumvention and defeat of key oversight mechanisms in the disbursement of federal funds." Of note, the termination notices also stated that EPA had also concluded that "its existing process for awarding and overseeing execution of the Grant Agreement lacks sufficient protections to guard against potential

196. *Id.*
197. *Id.* at 394.
198. *Id.* at 68.
199. *Id*. at 390.

violations of the Constitution, particularly the Appointments Clause and private nondelegation doctrine."[200]

Regarding references to a criminal investigation, it was later reported in the press that the criminal investigation associated with the GGRF that EPA and DOJ used as a justification for its orders provoked deep disagreement from career attorneys within DOJ and EPA. Reportedly, DOJ leadership wanted to pursue an asset seizure warrant to reclaim the funds held at Citibank, but two U.S. Attorneys' offices refused to seek one; one career U.S. attorney ordered to do so resigned; and, when the request was finally issued, it was denied by a magistrate judge for lack of probable cause.[201] Later reporting also revealed that EPA attorneys voiced concerns over taking unwarranted action against the funds that "could expose the Trump administration to billions of dollars in damages if a court later finds its actions to be unlawful."[202] These revelations raise significant questions about the politicized use of the Department of Justice and the FBI in this case, and the creation of a spurious criminal investigation as a pretextual justification for federal grant terminations. It bears repeating that EPA offered no evidence at any time of actual fraud, waste, or abuse, nor of actual conflicts of interest. Nor did it materially engage with the many protections against such abuse that EPA does have in place.

Remarkably, therefore, it appears at least possible that the United States government, in sending an account hold directive to Citibank on false pretenses in the GGRF case, committed fraud in furtherance of breaching its agreements under the GGRF. Under current law, however, there is little recourse available to the parties involved. The Tucker Act prevents tort claims (which would include fraud) in federal contract disputes, while the Federal Tort Claims Act excludes claims based on alleged "misrepresentation" or "deceit."[203]

In any event, while these actions have not yet succeeded in totally killing off the GGRF, they have entirely ended its development and operation, which for the time being amounts to the same thing. The thousands of

200. *Id.*, citing U.S. CONST. art. II, § 2, cl. 2; *e.g.*, Alpine Sec. Corp. v. FINRA, 121 F.4th 1314, 1341 (D.C. Cir. 2024).

201. Spencer Hsu et al., *FBI Takes up EPA Probe Amid Pushback from Judge, Prosecutors,* WASH. POST (Feb. 28, 2025), https://www.washingtonpost.com/dc-md-va/2025/02/27/trump-fbi-epa-grant-investigation/ [https://perma.cc/Y7GH-NXS8]; Katelyn Pomeranz et al., *Senior DOJ Prosecutor Quit after Being Told to Investigate Biden Climate Spending*, *CNN* (Feb. 18, 2025), https://www.cnn.com/2025/02/18/politics/justice-department-dc-criminal-division [https://perma.cc/YH6U-WBFP].

202. Alex Guillen, *Quest to Retake $20B in Climate Money Puts Trump Agencies at 'Significant' Risk, Attorney Warned*, POLITICO (Apr. 23, 2025), https://www.politico.com/news/2025/04/23/trump-admin-epa-climate-aid-freeze-internal-emails-00305563 [https://perma.cc/W7UW-J2T9].

203. 28 U.S.C. § 2680(h).

potential construction projects that could have been funded through these programs beginning in 2025 have, instead, been unable to move forward. Grant recipients staffed in reliance on receipt of federally obligated funds to execute long-developed plans to build these programs have been denied the funding they were granted for many months, with no end in sight, while being accused of significant wrongdoing without evidence. And even if, in the end, the GGRF funds are released, the delay has allowed the Trump Administration to take other actions that may result in this program never operating as intended.

III. SEEKING POST HOC RATIFICATION FROM THE COURTS

The first wave of lawsuits against the destruction of the climate spending state was initiated by federal funding recipients who had been denied funding. [204] Interestingly, however, litigants universally sought relief under non-contract legal theories, claiming, among other things, that grant freezes and funding terminations violated the Administrative Procedure Act, various statutory schemes creating the funding programs, the ICA, and the U.S. Constitution, and were beyond federal executive authority. As discussed in this section, plaintiffs argued that the administration's stated reasons for canceling grant programs were arbitrary and capricious, that various statutes required the executive to obligate funds, that cancelation outside the processes of the ICA violated that statute, that the U.S. Constitutional division of spending powers required obligations, and that related actions were *ultra vires* exercises of executive authority. To date, there has been no public explanation of this litigation strategy, although as discussed below it is likely that both jurisdictional and remedial limits of contract claims played a part in the plaintiffs' choices.

In all cases, the plaintiffs sought remedies that would have included the reinitiation of payments to them—in essence the specific performance of their previously awarded grants—and other declaratory and injunctive relief, rather than damages in contract. With few exceptions, the U.S.

204. As noted above, GAO is statutorily responsible for reviewing potentially unlawful impoundment actions, and is empowered by statute to bring civil suits to rectify violations of the Impoundment Control Act. 2 U.S.C. § 687. GAO is currently undertaking an unprecedented thirty-nine such investigations. Eloise Pasachoff et al., *New Data on GAO's Role in Appropriations Oversight*, BROOKINGS INST. (June 18, 2025), https://www.brookings.edu/articles/new-data-on-gaos-role-in-appropriations-oversight/ [https://perma.cc/WG6E-TMMV]. But, as noted *supra* note 60, GAO has only attempted to use its civil suit authority once in the fifty years since the ICA was enacted, and appears to have concluded that this power is unconstitutional.

federal district courts accepted these claims,[205] and initially granted a broad range of requests for preliminary injunctive relief. These lawsuits, however, then began to face an increasingly serious set of challenges on jurisdictional grounds. While lower courts attempted to resolve these issues under existing precedent, the Supreme Court became deeply involved by way of the so-called "shadow docket," issuing emergency orders that fundamentally shifted the longstanding landscape for this type of litigation. The D.C. Circuit also became involved, issuing a sweeping opinion barring almost all claims related to impoundment and creating a circuit split with the Ninth Circuit on relevant doctrines.[206]

Thus, a legal defense strategy for the general playbook has emerged: the sweeping rollback of federal spending has pushed the courts to confront complex jurisdictional questions on extremely tight timelines, and the highest courts, rather than preserving the status quo and seeking well developed briefing, have responded in equal haste to place procedural roadblocks and jurisdictional landmines in litigants' paths. Although many of these cases have involved non-climate issues, the sweeping rulings cover climate funding administration as well.

A. Early Administration Losses—Funding to States and "Open Awards"

In two early cases, the Trump Administration suffered major defeats in its defense of the funding freeze, which seemed to presage extensive federal court oversight and preservation of the status quo as ongoing obligation of grant awards consistent with prior policies while challenges worked through the courts.

In the first suit, the Trump Administration lost its ability to deny non-discretionary grant funding to the states. In *New York v. Trump*,[207] Chief Judge John McConnell, Jr. of the District of Rhode Island issued a preliminary injunction against essentially the entire federal government with respect to non-discretionary disbursement of federal funding to states.[208] As climate-related federal funding may issue to the states through, among other agencies, EPA and DOE, this ruling in theory blocked the Trump Administration from withholding state funding related to state climate initiatives.

205. To date, every court reviewing plaintiffs' claims related to the funding freeze in the context of requests for preliminary injunctive relief has found that plaintiffs are likely to succeed on the merits of their claims to some degree. Many of these cases are discussed below. No district court has yet concluded that the government's actions likely to be legal on the merits.

206. *See* discussion *infra* Section III.c.

207. *See* New York v. Trump, No. 1:25-cv-00039 (D.R.I. Jan. 28, 2025).

208. *Id.*, New York v. Trump, 769 F. Supp. 3d 119 (D.R.I. Mar. 6, 2025).

Although the *New York* injunction ruling made broad statements on the separation of powers,[209] and determined that the grants at issue included "categorical or formula grants where money is allocated on the basis of enumerated statutory factors such as population or the expenditure of qualifying state funds," leaving very little executive discretion,[210] and was sympathetic to arguments that the government may have violated the ICA and various other statutes,[211] the court ultimately based its injunction on its determination that the states were likely to succeed on the merits of their claim that the decision to "abruptly [freeze] billions of dollars of federal funding for an indefinite period" was arbitrary and capricious under the Administrative Procedure Act, given that the reason provided was simply to safeguard taxpayer funds, without further explanation.[212] The court therefore enjoined withholding appropriated funds "to the States," under "awarded grants, executed contracts, or other executed financial obligations." This order was appealed but the First Circuit declined to issue a stay pending appeal.[213] Noting that the government opposition did not "meaningfully engage" with the majority of the actual PI ruling, and rejecting claims that lawful actions were enjoined, the Circuit Court also clarified that the injunction did not "apply to a pause or freeze based on an individualized determination under an agency's actual authority to pause such funds," for example where there was discretion given to the executive.[214]

The second case applied to federal grants already awarded to private parties. In *National Council of Nonprofits v. Office of Management and Budget*,[215] D.C. District Court Judge Loren L. AliKhan issued a preliminary injunction barring federal agencies from freezing "the disbursement of Federal Funds under all open awards," including contracts and grants to private parties, and to "instruct those agencies to continue releasing any disbursements on open awards that were paused due" to instructions from OMB.[216] Later, however, it was revealed that the government had interpreted the court's order to apply only to "open

209. *E.g., id.* at 127 ("The Executive's categorical freeze of appropriated and obligated funds fundamentally undermines the distinct constitutional roles of each branch of our government. … Here, the Executive … imposed a categorical mandate on the spending of congressionally appropriated and obligated funds without regard to Congress's authority to control spending.").

210. *Id.* at 129.

211. *Id*. at 137-40.

212. *Id*. at 140-42.

213. New York v. Trump, 133 F.4th 51 (1st Cir. Mar 26, 2025).

214. *Id*. at 70 and n. 16.

215. Nat'l Council of Nonprofits v. Off. of Mgmt. & Budget, No. 1:25-cv-00239 (D.D.C. Jan. 28, 2025).

216. Nat'l Council of Nonprofits v. Off. of Mgmt. & Budget, 763 F. Supp. 3d 100, 130, 131 (D.D.C. Feb. 25, 2025).

awards" that "have already been approved and partially disbursed," meaning that the government could withhold grants for awards that had been awarded but not yet partially disbursed, which the court declined to rectify given the plaintiffs' delay in objecting.[217] Thus, the ruling captured grants for projects and initiatives that had already begun to be paid before the funding freeze went into effect, and did not affect grants that had not begun to be disbursed before the funding freeze or future grantmaking decisions.

The primary rationale for the *National Council of Nonprofits* injunction was the Court's determination that the funding freeze, as it had been carried out, was arbitrary and capricious under the APA.[218] Fundamentally, the Court ruled, the government could not seem to "provide a reasonable explanation for why they needed to freeze all federal financial assistance in less than a day to 'safeguard valuable taxpayer resources.'"[219] The Court's language also indicated real concern for the drastic impacts of the freeze, stating: "In the simplest terms, the freeze was ill-conceived from the beginning. Defendants either wanted to pause up to $3 trillion in federal spending practically overnight, or they expected each federal agency to review every single one of its grants, loans, and funds for compliance in less than twenty-four hours. The breadth of that command is almost unfathomable."[220] The court also found that the plaintiffs were likely to succeed on their claim that the government had acted outside its statutory authority, and, although it was harder to determine at this stage, that the funding freeze as applied to them may have been based on viewpoint discrimination in violation of the First Amendment.[221]

As discussed in the prior Part, the *New York* and *National Council of Nonprofits* rulings temporarily moved the Trump Administration to begin to release climate funding that had been held under review, including for state formula grant programs, and for at least some (though by no means all) previously awarded federal grants. Numerous further developments would, however, impact future appellate review of these injunctions.[222]

217. Nat'l Council of Nonprofits v. Off. of Mgmt. & Budget, 2025 WL 829677 (D.D.C. Mar. 14, 2025).

218. 763 F. Supp. 3d at 124-25.

219. *Id*. at 124.

220. *Id*. at 125.

221. *Id*. at 125-28.

222. *See* Nat'l Council of Nonprofits v. Off. of Mgmt. & Budget, No. 25-5418 (D.C. Cir. Apr 25, 2025) (appealing injunction); New York v. Trump, No. 25-1413 (1st Cir. Apr. 28, 2025) (appealing injunction). In addition to the subsequent rulings discussed below, district courts will need to contend with the Supreme Court's June 2025 ruling in *Trump v. CASA, Inc.*, 606 U.S. 831 (2025), which limited the permissible scope of district court injunctions to the parties to the litigation in most cases.

B. Growing Administration Success—The Tucker Act/APA Jurisdictional Gambit

As the many lawsuits against the spending freeze played out, the Trump Administration largely declined to defend the legality of its actions on the merits. Instead, the government took the position that most of the claims against it were barred on jurisdictional grounds. This argument was by no means guaranteed to work, as it seemed to contradict decades of well-established precedent. It was given an enormous boost, however, when a majority of the Supreme Court adopted the government's reasoning on emergency application, and in subsequent emergency orders appeared to indicate that it was, indeed, significantly constraining the jurisdictional playing field for challenges to grant terminations.[223]

The issue before the courts involved their jurisdiction in the face of several potentially conflicting waivers of sovereign immunity. All federal courts are required to determine whether they are legally able to hear the cases brought before them, and claims against the United States government are barred unless Congress has waived the government's sovereign immunity. But this becomes complicated where a lawsuit involves underlying contracts or agreements with the federal government, such as grants or grant-funded activities, because two different federal laws—the APA and the Tucker Act— provide seemingly conflicting jurisdictional instructions.

The two relevant provisions of the APA are found at APA § 702,[224] which limits federal court review of federal agency actions to claims "seeking relief . . . other than money damages," and APA § 704,[225] which further limits review to any "final agency action for which there is no other adequate remedy in a court." The relevant provision of the Tucker Act, meanwhile, provides that the U.S. Court of Federal Claims shall have sole jurisdiction over contract claims against the federal government.[226] It should also be noted that the Tucker Act forbids filing of claims in the Court of Federal Claims when a claim arising from the same operative facts is pending in another federal court.[227]

The complexity arises when a plaintiff challenges a grant termination or funding withholding but also raises claims outside of contract and seeks remedies other than simply payment of amounts owed. In this situation,

223. *See* discussion *infra* Sections III(b)(i) & ii.

224. 5 U.S.C. § 702.

225. 5 U.S.C. § 704.

226. 28 U.S.C. § 1491 (applying to claims over $10,000). For claims under $10,000, district courts have concurrent jurisdiction. 28 U.S.C. § 1346.

227. 28 U.S.C. § 1500, as interpreted in U.S. v. Tohono O'odham Nation, 563 U.S. 307, 318 (2011).

the question becomes whether the suit should be brought in district court as would normally occur under the APA, or in the Court of Federal Claims pursuant to the Tucker Act. This issue, however, was resolved comprehensively in 1988 by the Supreme Court in *Bowen v. Massachusetts*.[228] There, the Supreme Court drew a distinction between claims against the government for money damages, for example compensatory damages for breach of contract, which would go to the Court of Federal Claims, as compared to claims for enforcement of statutory mandates that involve the payment of money, which can be brought in the federal district courts.[229] In other words, under *Bowen*, litigants facing nonpayment or termination of a government contract issued under a statutory program are often able to formulate claims under the APA and file suit in the district court of their choosing, seeking relief similar to specific performance of the government's obligations under relevant agreements, while reserving a claim for any compensatory damages for breach of contract for the Court of Federal Claims later. Although there has been some jurisprudence seeking to determine when such efforts are "in essence" contract claims that must go to the Court of Federal Claims, courts have developed longstanding multipart tests to assess jurisdiction in these types of cases, and the district courts typically are required to follow that binding precedent.[230]

Nonetheless, and largely without engaging with this precedent, the government began raising a jurisdictional defense in its funding freeze cases, claiming that the district courts were entirely barred by the Tucker Act from hearing the suits before them. While this appeared directly contradicted by *Bowen*, and the lower courts certainly concluded that this was true, the Supreme Court majority had a different view.

1. *AIDS Vaccine Advocacy Coalition v. U.S. Department of State*

In *AIDS Vaccine Advocacy Coalition* (*AVAC*) *v. U.S. Department of State*, a majority of the Supreme Court initially appeared ready to allow district courts to enjoin sweeping presidential impoundments during litigation. The *AVAC* lawsuit arose from the nonpayment, suspension, and

228. 487 U.S. 879, 909-12 (1988).

229. *See generally* CHARLES H. KOCH, JR & RICHARD MURPHY 4 ADMIN. L. & PRAC. § 12:33 (3d ed. 2025) (calling the Bowen decision an "extremely expansive" reading of the 702 waiver).

230. *See* Megapulse, Inc. v. Lewis, 672 F.2d 959, 968 (D.C. Cir. 1982) (holding that Tucker Act jurisdiction requires courts to determine whether "a particular action … is or is not 'at its essence' a contract action," which "depends both on the source of the rights upon which the plaintiff bases its claims, and upon the type of relief sought (or appropriate).").

termination of agreements for foreign aid funding.[231] On motion for a temporary restraining order (TRO), D.C. District Judge Ali, echoing other district court judges before him, ruled that the government had "not offered any explanation for why a blanket suspension of all congressionally appropriated foreign aid, which set off a shockwave and upended reliance interests for thousands of agreements with businesses, nonprofits, and organizations around the country, was a rational precursor to reviewing programs," and therefore that the plaintiffs appeared likely to succeed on the merits of their claims that the suspensions were arbitrary and capricious in violation of the APA.[232] Judge Ali therefore issued a TRO enjoining the Trump Administration from stopping payment or otherwise terminating or suspending all foreign aid "contracts, grants, cooperative agreements, loans, or other federal foreign assistance" in existence as of January 19, 2025.[233]

Interestingly, this TRO was not appealed. Rather, the Trump Administration simply declined to follow the order, and Judge Ali subsequently issued an order to enforce it, mandating specific payments by the government by a specific time.[234] The government appealed this TRO enforcement order to the D.C. Circuit, which immediately declined to stay it, on the grounds that it was not appealable.[235] The government then immediately filed a request for emergency relief at the Supreme Court.[236] Thus, spending freeze litigation arrived before the Supreme Court for the first time.

A week later, the Supreme Court *declined* the government's application for emergency relief in a 5–4 ruling by the Chief Justice, joined by the court's liberal wing and Justice Barrett.[237] However, in a written dissent to the order, Justice Alito adopted the government's argument, explaining that he would have found that the government was likely to succeed on its defense that the district court lacked jurisdiction.[238] The dissent was also particularly swayed by the government's argument that it "would probably be unable to recover much of the money after it is paid because it would

231. *See* AIDS Vaccine Advoc. Coal. (AVAC) v. U.S. Dept. of State, No. 1:25-cv-00400 (D.D.C. Feb. 10, 2025).

232. AVAC v. U.S. Dep't of State, 766 F. Supp. 3d 74, 82 (D.D.C. Feb. 13, 2025).

233. *Id*. at 85.

234. AVAC v. U.S. Dep't of State, 768 F. Supp. 3d 1 (D.D.C. Feb. 20, 2025).

235. AVAC v. U.S. Dep't of State, 2025 WL 621396 (D.C. Cir. Feb 26, 2025).

236. Dep't of State v. AVAC, No. 24A831 (U.S. Feb. 26, 2025).

237. Dep't of State v. AVAC ("AVAC I"), 145 S. Ct. 753, 604 U.S. _ (Mar. 5, 2025).

238. *Id*. at 753-57. Justice Alito distinguished the instant case from *Bowen* by reference to *Great-West Life & Annuity Ins. Co. v. Knudson*, 534 U.S. 204, 210–211 (2002) ("[A]n injunction to compel the payment of money past due under a contract, or specific performance of a past due monetary obligation, was not typically available in equity"). *Id*. at 755.

be quickly spent by the recipients or disbursed to third parties," which, the government had argued, balanced the equities against injunction.[239]

A few days later, however, Judge Ali extended his preliminary injunction.[240] That ruling emphasized the separation of powers and shared powers over foreign policy between Congress and the Executive. "Congress, exercising its exclusive Article I power of the purse, appropriates funds to be spent toward specific foreign policy aims. The President, exercising a more general Article II power, decides how to spend those funds in faithful execution of the law."[241] Concluding that the executive was seeking to "usurp[]" Congress's spending power in this field, and discussing executive overreach" and "an unbridled view of Executive power that the Supreme Court has consistently rejected,"[242] he found the funding freeze to have violated the APA because the government had "yet to offer any explanation, let alone one supported by the record, for why a blanket suspension setting off a shockwave and upending reliance interests for thousands of businesses and organizations around the country was a rational precursor to reviewing programs."[243] In failing to connect the action to its justification, to consider important consequences of the action, and to explain a massive change to a longstanding pattern of activity, the court determined the plaintiffs were likely to succeed on the merits of their claim that the government's actions had been arbitrary and capricious under the APA.[244] Finally, the court found that the plaintiffs were likely to succeed on the merits of their claims that the shutdown of USAID violated the constitutional separation of powers and the Impoundment Control Act.[245] In considering executive discretion in federal foreign aid spending, Judge Ali applied the framework in *Youngstown Sheet and Tube*, finding that this was an area of law at which executive discretion is at its "lowest ebb."[246]

Interestingly, however, in crafting injunctive relief, the Court declined to "become entangled" in specific oversight of executive discretion about

239. *Id*. at 757.

240. AVAC v. Dep't of State, 770 F. Supp. 3d 121 (D.D.C. Mar. 10, 2025).

241. *Id.* at 126.

242. *Id*.

243. *Id.* at 138.

244. *Id.* at 138-140. Notably, however, the court made an important distinction between actions taken immediately upon the issuance of the funding freeze, and actions taken after what the government claimed to be a grant-by-grant review undertaken after the TRO issued, that had resulted in the termination of thousands of grants. *Id*. at 140-43. Noting that the matter had not been fully briefed, Judge Ali concluded that the plaintiffs had not met the high bar of demonstrating bad faith or improper behavior, although he allowed such arguments would be further developed later. *Id*. at 144.

245. *Id.* at 143-48.

246. *Id*. at 144.

how to spend appropriated funds. Rather, it enjoined the government broadly from "unlawfully impounding congressionally appropriated foreign aid funds and shall make available for obligation the full amount of funds that Congress appropriated for foreign assistance programs in the Further Consolidated Appropriations Act of 2024."[247] How, exactly, the plaintiffs were expected to seek relief under this order was not made clear. Meanwhile, following the dissent's line of thinking at the Supreme Court, the government moved to dismiss the suit on various jurisdictional grounds,[248] has continued to attempt to evade complying with the injunction in various ways,[249] and appealed the injunction directly to the D.C. Circuit (about which appeal, see below).

This litigation, in sum, represented a typical handling of claims by parties injured by the funding freeze, and the Supreme Court's initial confrontation with the Tucker Act jurisdictional argument, resolving the issue in favor of the plaintiffs and, initially, rejecting the government's APA/Tucker Act jurisdictional gambit. But the Supreme Court was not finished with this issue.

2. *California v. U.S. Department of Education*

In *California v. U.S. Department of Education*, the Supreme Court departed from its ruling in *AVAC*, and appeared to indicate that it was considering overruling *Bowen* and directing all funding freeze litigation away from the federal district courts. The *California* lawsuit arose out of the termination of previously awarded teacher training grants to several states.[250] As in *AVAC*, District of Massachusetts Judge Myong J. Joun issued a TRO, finding no reasoned explanation for that action and thus a violation of the APA.[251] Typical for a TRO order, the brief ruling did not go into much detail, and did not delve deeply into jurisdictional issues, which had not yet been raised. The TRO, nonetheless, formed the basis for the Supreme Court's next look at the jurisdictional issue being raised by the government in all of these cases.

The government appealed the TRO, and the First Circuit denied an emergency motion to stay it.[252] In examining the jurisdictional issue raised by the government, the First Circuit's reasoning was consistent with *Bowen* and the Supreme Court's emergency order in *AVAC*:

247. *Id*. at 154-55 (citing New Haven v. U.S., 634 F. Supp. 1449, 1460 (D.D.C. 1986)).

248. Defendants' Mots. to Dismiss Am. Compls, AVAC v. Dep't of State, No. 1:25-cv-00400 (D.D.C. Jun. 12, 2025), ECF No. 101.

249. Order, AVAC v. Dep't of State, No. 1:25-cv-00400 (D.D.C. Jul. 21, 2025), ECF No. 118.

250. California v. U.S. Dep't of Educ., No. 25-cv-10548 (D. Mass. Mar. 6, 2025).

251. California v. U.S. Dep't of Educ., 769 F. Supp. 3d 72 (D. Mass. Mar. 10, 2025).

252. California v. U.S. Dep't of Educ., 132 F.4th 92 (1st Cir. Mar. 21, 2025).

> The [government] points to the fact that each grant award takes the form of a contract between the recipient and the government. But the mere fact that a court may have to rule on a contract issue does not, by triggering some mystical metamorphosis, automatically transform an action… into one on the contract and deprive the court of jurisdiction it might otherwise have. Here, although the terms and conditions of each individual grant award are at issue, the essence of the claims is not contractual. Rather, the States challenge the Department of Education's actions as insufficiently explained, insufficiently reasoned, and otherwise contrary to law—arguments derived from the Administrative Procedure Act. …
>
> And as the Supreme Court has made clear, "[t]he fact that a judicial remedy may require one party to pay money to another is not a sufficient reason to characterize the relief as 'money damages.'" Bowen v. Massachusetts, 487 U.S. 879, 893 (1988). As a result, we see no jurisdictional bar to the district court's TRO on this basis.[253]

This analysis appears to be wholly consistent with decades of precedent on these issues. Nonetheless, the government sought emergency relief from the Supreme Court a week later, primarily on jurisdictional grounds.[254] A week after that, the Supreme Court stayed the *California* TRO in a 5–4 ruling, with Justice Barrett now joining the majority and seemingly reversing her vote in *AVAC*. Adopting Justice Alito's logic from his prior dissent, the majority again reasoned that the government faced risk of being unable to recover its disbursed funds if the TRO remained in effect, and cast significant doubt on the district court's jurisdiction. The complete text of the *California* majority's reasoning on jurisdiction was:

> True, a district court's jurisdiction "is not barred by the possibility" that an order setting aside an agency's action may result in the disbursement of funds. Bowen v. Massachusetts, 487 U. S. 879, 910 (1988). But, as we have recognized, the APA's limited waiver of immunity does not extend to orders "to enforce a contractual obligation to pay money" along the lines of what the District Court ordered here. Great-West Life & Annuity Ins. Co. v. Knudson, 534 U. S. 204, 212 (2002).[255] Instead, the Tucker Act grants the Court of Federal Claims jurisdiction over suits based on "any express or implied contract with the United States." 28 U. S. C. §1491(a)(1).[256]

253. *Id*. at 96-97 (citation modified).

254. U.S. Dep't of Educ. v. California, No. 24A910 (U.S. Mar. 26, 2025).

255. The complete quote from *Great-West Life* is "*Bowen*, unlike petitioners' claim, did not deal with specific performance of a contractual obligation to pay past due sums. Rather, Massachusetts claimed not only that the Federal Government failed to reimburse it for past expenses pursuant to a statutory obligation, but that the method the Federal Government used to calculate reimbursements would lead to underpayments in the future. Thus, the suit was not merely for past due sums, but for an injunction to correct the method of calculating payments going forward. *Bowen*, *supra*, at 889. *Bowen* has no bearing on the unavailability of an injunction to enforce a contractual obligation to pay money past due." 534 U.S. at 212.

256. U.S. Dep't of Educ. v. California, 604 U.S. 650, 651 (Apr. 4, 2025).

In other words, and notwithstanding the analysis by the First Circuit, the *California* majority concluded that the plaintiffs were in essence seeking an order "to enforce a contractual obligation to pay money," and therefore that their claims fell within an exception to the *Bowen* doctrine that had not previously been extended to APA claims.

This reasoning drew two dissents from the liberal justices (Chief Justice Roberts would have denied the application but did not join the dissents). Justice Kagan pointed out that the court's order had issued on "barebones briefing, no argument, and scarce time for reflection," and described the majority's reasoning as "at the least under-developed, and very possibly wrong," in part because the *Great-West* case on which the majority relied "was not brought under the APA, as the Court took care to note."[257] Justice Jackson's much lengthier dissent argued that the emergency application should have been denied because the TRO was not reviewable,[258] and because there was no real emergency justifying such an unusual intervention.[259] In a footnote, Justice Jackson also expressed her disagreement with the majority's jurisdictional logic:

> Without oral argument and with less than one week's worth of deliberation, the Court now has determined that, at least in this context, restoring the grants at issue might qualify as an order to " 'enforce a contractual obligation to pay money' " such that it is the Court of Federal Claims, rather than the District Court, that has jurisdiction over the Plaintiff States' challenge. … [T]he majority's characterization of the relief granted by the District Court is dubious given what the Plaintiff States actually say in their complaint about the legal problem and the relief they are requesting. See … Bowen v. Massachusetts, 487 U. S. 879, 893 (1988) ("The fact that a judicial remedy may require one party to pay money to another is not a sufficient reason to characterize the relief as 'money damages'"). And the majority does not dispute the "basic reality" that some APA challenges to grant-related administrative action may proceed in district court, even if they have as their "natural consequence . . . the release of funds to the plaintiff down the road." Department of State v. AIDS Vaccine Advocacy Coalition, 604 U. S. ___, ___ (2025) (ALITO, J., dissenting from denial of application) (slip op., at 6). In any event, the District Court in this case is now hard at work evaluating this and other arguments in the context of the pending preliminary injunction motion. The majority's attempt to inject itself into the ongoing litigation by suggesting new, substantive principles for the District Court to consider in this case is unorthodox and, in my view, inappropriate.[260]

257. *Id*. at 653 (Kagan, J., dissenting).
258. *Id*. at 658-59 (Jackson, J., dissenting).
259. *Id*. at 659-662.
260. *Id*. at 669 n. 7 (citation modified).

Nonetheless, the majority had spoken, and the *California* TRO was stayed pending ongoing appeals. The Supreme Court had, in an emergency order providing only a scant few sentences of explanation, potentially just overturned almost thirty years of consistent precedent under *Bowen*, and thrown federal grant termination litigation into complete disarray. As the case in the district court proceeded, this ruling would immediately begin to influence other lawsuits, as the government pointed to the Supreme Court's *California* order as dispositive of jurisdictional issues nationwide.

3. Post-*California* Developments

Courts in all other funding freeze lawsuits now had to contend with the impact of the Supreme Court's *California* stay. They initially reached a wide variety of different conclusions, with the majority treating the *California* stay as non-precedential, but the Supreme Court subsequently made it clear that the intent of the *California* majority was, indeed, to create new binding law.

a. Resistance and Confusion in the District Courts

In a thorough review of initial rulings, District of Massachusetts Judge William G. Young concluded that the Supreme Court's *California* stay order was not a final decision with precedential value, and therefore that it should not be followed as such to invalidate claims arising from grant terminations brought outside the Court of Federal Claims.[261] He explained:

> Because the Supreme Court, on a 5–4 vote, has seen fit to enter an emergency interlocutory order in a somewhat similar case, its language provides guidance in other cases but without full precedential force. So it is that this Court, after careful reflection, finds itself in the somewhat awkward position of agreeing with the Supreme Court dissenters and considering itself bound by the still authoritative decision of the Court of Appeals of the First Circuit (which decision the Supreme Court modified but did not vacate).[262]

In analyzing the question further, Judge Young drew the distinction drawn by almost every other district court to examine the question, between claims seeking only money damages in contract, and claims seeking equitable relief under other theories, and concluding that the plaintiffs' claims were the latter, and thus reviewable by federal district courts.[263] Judge Young also identified other district courts who had

261. Massachusetts v. Kennedy, 783 F. Supp. 3d 487 (D. Mass. May 12, 2025).
262. *Id*. at 493.
263. *Id*. at 493-500.

examined the *California* emergency stay order and found it inapplicable.[264]

Some courts, however, reached a different conclusion. Another judge in the District of Massachusetts, for example, found the case before it indistinguishable from that in *California*, and therefore applied the *California* order as binding precedent.[265] The Fourth Circuit, similarly, overturned a District Court conclusion that the case before it was distinguishable from *California*.[266] Treating the *California* ruling as dispositive, it reasoned that "the Supreme Court distinguished *Bowen* in *California*, highlighting the meaningful difference between the relief in that case and an order 'to enforce a contractual obligation to pay money' along the lines of what the district court entered here."[267] This order drew a dissent, but that dissent only would have distinguished the case before the court from *California*, not treat *California* as non-precedential.[268] In other words, even the Fourth Circuit was not ready to conclude that the Supreme Court had overturned longstanding precedent on a complex jurisdictional question via an order on an emergency application. Nonetheless, federal district courts in other circuits subsequently followed the Fourth Circuit's reasoning, and applied *California* as binding, effectively doing just that.[269]

b. The Supreme Court Responds—*NIH v. American Public Health Association*

Faced with this confusion from the lower courts, the *California* majority found it necessary to clarify that they had, indeed, intended their reasoning to apply broadly.[270] In a fragmented emergency order controlled by a concurrence from Justice Barret, the Court explained that litigants facing grant terminations who wished to challenge those terminations were to be

264. *Id*. at 496, citing Rhode Island v. Trump, 81 F. Supp. 3d 25, 40 (D.R.I. May 6, 2025) (regarding termination of grant programs as part of reduction in federal workforce, issuing a preliminary injunction, the court commented that *California* "does not displace governing law… To reiterate: the [Supreme] Court's stay order is not a decision on the merits."; and New York v. Trump, 2025 WL 1098966 (D.R.I. Apr. 14, 2025); Maine v. U.S. Dep't of Agric., 778 F.Supp.3d 200, 225 n.8 (D. Me. Apr. 11, 2025.

265. Mass. Fair Housing Ctr. v. Dep't of Housing & Urban Dev., 2025 WL 1225481 (D. Mass. Apr. 14, 2025).

266. Sustainability Inst. v. Trump, 2025 WL 1486978 (4th Cir. Jun. 5, 2025); *see also* Am. Assoc. of Colleges for Teacher Educ. v. McMahon, 2025 WL 1232337 (4th Cir. Apr. 10, 2025).

267. 2025 WL 1486978 at *2.

268. *Id*. at *2-3.

269. *E.g*., Nat'l Assoc. for the Advancement of Colored People v. United States, 2025 WL 2402191 at *15-18 (D. Md. Aug. 19, 2025).

270. Nat'l Insts. of Health v. Am. Pub. Health Ass'n, 145 S. Ct. 2658, 606 U.S. __ (Aug. 21, 2025).

considered bound by the Tucker Act to seek relief in the Court of Federal Claims, while plaintiffs who wished to challenge related final agency actions such as rulemaking may bring those claims in the district courts under the APA, effectively requiring a "dual track" litigation strategy for plaintiffs facing grant terminations.[271] Acknowledging that this dual track was subject to Tucker Act § 1500, which forces plaintiffs to choose between these claims, Justice Barrett stated that in her view these were simply the conditions that Congress had set on its waivers of sovereign immunity, as was its right.[272] Justice Barrett's opinion made no attempt to distinguish the majority's ruling from *Bowen*, or even to acknowledge that the ruling was inconsistent with *Bowen*.

Justices Gorsuch and Kavanaugh, in a separate opinion, criticized the lower courts for attempting to "defy" the *California* order, noting that "this is now the third time in a matter of weeks this Court has had to intercede in a case 'squarely controlled' by one of its precedents."[273] Again, they did not acknowledge that their own inconsistent application of longstanding precedent was at the basis of this confusion. In a separate opinion, Justices Kavanaugh, Alito, Gorsuch, and Thomas justified their hasty treatment of the issues by stating simply that emergency applications required resolution, although they did not explain why that resolution needed to involve departing from longstanding precedent, particularly in an emergency posture with very little briefing.[274] In any event, all five members of the majority found it particularly important that the grant recipients had not indicated that they would be able to repay the government if they received grant funding, pushing the equities in favor of the government.[275]

c. *California* Applied to the GGRF—*Climate United Fund v.*

271. *Id.* at 2660-2662 (Barret, J., concurring) (majority holding).

272. *Id.*

273. *Id.* at 2663, 2665 (Gorsuch, J., concurring). For criticism of this language, see Chris Geidner, *Trump's SCOTUS Appointees Each Shared Alarming Views in Allowing NIH Grant Cuts*, LAWDORK (Aug. 26, 2025), https://www.lawdork.com/p/trump-scotus-appointees-nih-shadow-docket-order; Steve Vladek, *174. Justice Gorsuch's Attack on Lower Courts,* ONE FIRST (Aug. 25, 2025), https://www.stevevladeck.com/p/174-justice-gorsuchs-attack-on-lower [https://perma.cc/N38A-FQXB]

274. 145 S. Ct. at 2666 (Kavanaugh, J., concurring in part and dissenting in part) ("We have to decide the application.").

275. *Id.* at 2659 (per curium), 2666 (Kavanaugh, J.). The Chief Justice, on the other hand, would have applied *Bowen*, and found that since an APA claim was properly before the district court, the grant termination claims could be heard at the same time. *Id*. at 2663 (Roberts, C.J., concurring in part). The liberal bloc continued to point out the many concerns raised by the majority's irregular handling of these applications. *Id.* at 2666-2677 (Jackson, J. dissenting).

Citibank

The *California* stay was first considered in a climate case in the leading GGRF lawsuit, *Climate United Fund v. Citibank*.[276] In that case, D.C. District Judge Tanya S. Chutkin had issued a preliminary injunction barring the government from taking actions to terminate the NCIF and CCIA grants and rejecting jurisdictional defenses. The D.C. Circuit, however, immediately stayed all elements of the order that required payments of the grants, while also continuing to bar the government from terminating the contracts, in order to hear the appeal of the case on the merits on an expedited schedule.[277]

In a 2–1 decision, a D.C. Circuit panel ruled that "the district court lacked jurisdiction over these claims, which are essentially contractual and therefore must be heard in the Court of Federal Claims."[278] In attempting to assess "whether the grantees' claims are essentially contractual,"[279] the court indicated that the reasoning in *California* and *NIH v. APHA* "requires respect,"[280] and found that "[t]he APA's substantive bar on arbitrary and capricious action does not give the grantees an independent right to specific performance of their grant agreements. To the extent the grantees argue the government acted arbitrarily by failing to follow the terms of the grant agreements, that argument can be evaluated only by 'reference to and incorporation of' the agreements."[281] This subtle shift effectively swept all claims that could be interpreted as specific performance of a government contract into the Tucker Act's domain.

With respect to the substantial evidence of government bad faith, the Court effectively declined to credit any of that evidence, concluding that "EPA repeatedly stated that it planned to recommit the grant money with greater oversight and accountability, contradicting the district court's shutdown finding. Absent any clear evidence to the contrary, EPA's representations were entitled to a presumption of regularity."[282] Like the *California* majority, the panel found the grantee's inability to repay the grant money to also be persuasive, and reasoned that if grants were later determined to have been improperly withheld by the Court of Federal

276. Climate United Fund v. Citibank, N.A., No. 1:25-cv-00698 (D.D.C. Mar. 8, 2025) (and consolidated cases).

277. *See* Order, Climate United Fund v. Citibank, N.A., No. 25-5122 (D.C. Cir. Apr. 28, 2025) ("FURTHER ORDERED that the administrative stay entered by the court on April 16, 2025, remain in effect pending further order of the court.").

278. Climate United Fund v. Citibank, N.A., 154 F.4th 809, 819 (D.C. Cir. Sep. 2, 2025),

279. *Id.* at 820.

280. *Id*. at 824.

281. *Id.* at 823.

282. *Id.* at 828.

Claims, then money damages "would substantially, if not entirely, redress the grantees' interim injuries."[283]

A lengthy dissent argued that the majority had failed "to contend with the government's actual behavior," which included "spurious criminal and civil investigations" and a "hunt for reasons" to shut down the GGRF grant program.[284] Most interestingly, the dissent argued that the plaintiffs were not even seeking specific performance of a contract, since the funding had already been obligated and placed into accounts:

> Plaintiffs are not seeking reinstatement of their grant awards or any other form of specific performance of contracts. Nor are they seeking payment of funds from the Treasury. Their suit challenges the government's decision to illegally seize their property—money in bank accounts opened in their names, in which the government has only a security interest (which it has not exercised).
>
> Reframing the plaintiffs' claims in this way, Judge Pillard distinguished this case from *California* and *NIH* (where the issue was payment of money from the treasury, rather than freezing of already obligated funds), and argued that the plaintiffs' claims were not "essentially contractual" under other precedent.[285]

The Court, however, had spoken. With a single one-paragraph order on an emergency application, a 5–4 majority of the Supreme Court had caused several months of confusion before clarifying that it had, indeed, intended an outcome that appears to silently overrule longstanding precedent and force litigants to bifurcate claims related to federal grant terminations between the Court of Federal Claims and the District Courts.[286] Not even the government's behavior in the GGRF case would require a different result. The Trump Administration's APA/Tucker Act jurisdictional gambit had succeeded.

C. Expanding Administration Success—The ICA Claim Preclusion Gambit

As explained above, bifurcating lawsuits between the district courts and the Court of Federal Claims does still preserve a number of avenues for grant recipients to challenge presidential impoundments. If they wish to forgo their efforts to reverse specific terminations, litigants may in theory immediately pursue their non-contract claims, including APA claims, and potentially claims of statutory and even constitutional violations, in the district courts. In addition to its Tucker Act arguments, therefore, the

283. *Id.* at 830.
284. *Id*. at 831-32 (Pillard, J., dissenting).
285. *Id.* at 857.
286. Dep't of Educ. v. California, 604 U.S. 650 (2025).

Trump Administration also began arguing that the existence of the ICA, and the GAO's authority to enforce the ICA through litigation, entirely foreclosed private assertion of these other types of claims.

This resulted in a separate D.C. Circuit decision in the *AVAC* case, although the litigation was now titled *Global Health Council v. Trump*.[287] As discussed above, the plaintiffs in the *AVAC* litigation had raised APA, ICA, constitutional, and *ultra vires* claims related to their terminated grants, and the D.C. District Court had enjoined the government from "unlawfully impounding congressionally appropriated foreign aid funds" and required it to "make available for obligation the full amount of funds that Congress appropriated for foreign assistance programs in the Further Consolidated Appropriations Act of 2024."[288] The government had appealed this injunction to the D.C. Circuit, and simultaneously moved to dismiss the case on jurisdictional grounds at the district court.[289]

In May and June 2025, the government began arguing that the ICA's "reticulated scheme" for impoundment control implicitly precluded private parties from enforcing the ICA's provisions. [290] In short, because the ICA provides a detailed statutory scheme for GAO to contest and eventually bring suit for impoundment, the government argued that Congress must also have intended to bar private parties from seeking the same remedy. This argument, however, covered only the plaintiffs' claims related to the ICA. Thus, in late June 2025, for the first time in their reply brief on appeal, the Trump Administration added a new, much broader argument: that the plaintiffs' constitutional and *ultra vires* claims were also barred, this time by the doctrine in *Dalton v. Specter*, which held that plaintiffs could not seek judicial review of presidential discretionary action by claiming abuse of discretion in the form of *ultra vires* or constitutional separation of powers theories.[291] Confronted with this novel argument on reply, the plaintiffs sought leave to file a surreply brief in which it both argued that the *Dalton* argument had been waived, and that *Dalton* did not apply because the grantmaking was non-discretionary, and

287. Glob. Health Council v. Trump, No. 1:25-cv-00402 (D.D.C. Feb. 10, 2025) (consolidated with AVAC v. Dept. of State).

288. 770 F. Supp. 3d 121, *supra* note 240.

289. AVAC v. Dep't of State, *supra* note 249.

290. *See* Brief for Appellants, Glob. Health Council v. Trump, No. 25-05097 (D.C. Cir. May 9, 2025) (citing Block v. Cmty. Nutrition Inst., 467 U.S. 340, 345 (1984), Air Courier Conf. of Am. v. Am. Postal Workers Union, 498 U.S. 517, 523-24 (1991), Thompson v. N. Am. Stainless, LP, 562 U.S. 170, 178 (2011), Clarke v. Sec. Indus. Ass'n, 479 U.S. 388, 399 (1987), Trump v. Mazars USA, LLP, 591 U.S. 848, 859 (2020), Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians v. Patchak, 567 U.S. 209, 215 (2012); Motion to Dismiss, Glob. Health Council v. Trump, No. 1:25-cv-00402 (D.D.C. Jun. 12, 2025), ECF No. 101.

291. Reply Brief for Appellants, Glob. Health Council v. Trump, No. 25-5097 (D.C. Cir. Jun. 18, 2025), citing 511 U.S. 462, 472 (1994).

because the government had specifically relied on claimed constitutional powers in withholding funding.[292] The briefing on the issue totaled three paragraphs by the government, and five double-spaced pages by the plaintiffs.

In a 2–1 decision, the D.C. Circuit adopted the government's arguments wholesale, and expanded on them. The court ruled that in addition to being barred from asserting claims under the ICA, the plaintiffs had asserted "a non-statutory right to vindicate separation-of-powers principles but they are foreclosed from doing so by Dalton v. Specter."[293] A lengthy dissent argued both that the issue was not properly before the court, and that:

> According to the majority, the President's refusal to execute a law for policy reasons is merely a violation of the statute that he declines to follow and does not present a constitutional cause of action. That re-framing of the case reduces the grantees' separation-of-powers argument — which targets an executive order that rescinds tens of billions of dollars of funding — to a mere violation of certain procedures in the Impoundment Control Act. The majority rules that the only recourse for the President's wholesale withholding of foreign aid lies in the provisions of the Impoundment Control Act that allow the Comptroller General to address discrete rescissions or deferrals that affect specific line-items of budget authority. My colleagues thus avoid reviewing the President's actions by denying that any constitutional issues are even in play. And yet, both the Supreme Court and our court have held that the Executive has no authority — as a constitutional matter — to decline to execute a statute (like the Appropriations Act) due to policy differences. It is our responsibility to check the President when he violates the law and exceeds his constitutional authority. We fail to do that here.[294]

Of particular interest, the court's entire analysis was predicated on the idea that the GAO enforcement authority existed, although the GAO, as explained above, itself appears to have concluded that this authority is unconstitutional.[295] The plaintiffs moved for rehearing en banc, but this was denied following amendment of the opinion to address the majority's treatment of APA claims.[296] Among its clarifications, the majority ruled that the APA could not be used to enforce the ICA, but that "we need not and do not decide whether the ICA precludes suits under the APA to enforce appropriations acts."[297]

292. Surreply Brief for Appellees, Glob. Health Council v. Trump, Case 25-5097 (D.C. Cir. Jun. 24, 2025).

293. Glob. Health Council v. Trump, 2025 WL 2326021 at *6 (D.C. Cir. Aug. 13, 2025).

294. *Id.* at n. 22 (Pan, J., dissenting).

295. *See id.* at 2.

296. Glob. Health Council v. Trump, 153 F.4th 1 (D.C. Cir. Aug. 28, 2025) (amending and superseding prior order).

297. *Id*. at 20 n. 17.

Immediately following this ruling, the Trump Administration issued a "pocket rescission" of the remaining unobligated funds, submitting an ICA-compliant special message to Congress proposing rescission, but within 45 days of the end of the fiscal year, signaling that the Administration did not expect Congress to respond, and had no intention of spending the funds prior to their expiration.[298] The District Court then issued a new preliminary injunction, ruling that the ICA did not preclude the use of the APA to enforce appropriations acts, rejecting the government's claim that the pocket rescission somehow eliminated the obligation to spend appropriated funds.[299] The D.C. Circuit declined to stay this order,[300] and the Trump Administration immediately sought review for a third time from the Supreme Court.

A few weeks later, the Supreme Court stayed the District Court's injunction via the shadow docket, ruling only that:

> The Government, at this early stage, has made a sufficient showing that the Impoundment Control Act precludes respondents' suit, brought pursuant to the Administrative Procedure Act, to enforce the appropriations at issue here. The Government has also made a sufficient showing that mandamus relief is unavailable to respondents. And, on the record before the Court, the asserted harms to the Executive's conduct of foreign affairs appear to outweigh the potential harm faced by respondents. This order should not be read as a final determination on the merits. The relief granted by the Court today reflects our preliminary view, consistent with the standards for interim relief.[301]

Thus, although it did decline to rule authoritatively on the matter, the Supreme Court's majority adopted as its "preliminary view" the government's novel position that the existence of the ICA precluded injured plaintiffs from seeking to challenge rescissions of their grant funding by means of the APA. In dissent, Justice Kagan pointed out that the government had, only a few weeks earlier, declined to argue against pursuing APA relief for violations of appropriations acts, and pointed out once again that emergency relief in this novel situation was occurring outside the court's normal deliberative process.[302] The issue is not likely

298. Notice of Transmittal of Special Message, AVAC v. Dep't of State, No. 1:25-cv-00400 (D.D.C. Aug. 29, 2025), ECF No. 140; Josh Boak, *Trump Blocks $4.9B in Foreign Aid Congress OK'd, Using Maneuver Last Seen Nearly 50 Years Ago*, ASSOCIATED PRESS (Aug. 29, 2025), https://apnews.com/article/trump-foreign-aid-pocket-rescission-374c63e6b4004e819a657e33b76f502e [https://perma.cc/77LW-XB6A].

299. AVAC v. Dep't of State, 2025 WL 2537200 (D.D.C. Sep. 3. 2025).

300. AVAC v. Dep't of State, 2025 WL 2600116 (D.C. Cir. Sep. 5, 2025).

301. Dep't of State v. AVAC, __ S. Ct. __, __ U.S. __, 2025 WL 2740571 (Sep. 26, 2025).

302. *Id*. at n. 2-4.

to be resolved further unless and until the Supreme Court takes up the case on the merits in the coming term.

Thus, as of October 2025, litigants seeking to challenge the termination of their grants faced much more limited litigation options than they may have imagined in January 2025. Rather than filing a single lawsuit in district court seeking to invalidate grant termination on APA, statutory, and constitutional grounds, and seeking reinstatement of payments on those bases, they must bifurcate their suits into claims seeking reinstatement of their grants before the Court of Federal Claims (where they cannot raise their non-contract claims) and suits raising non-contract challenges in the federal district courts (where they cannot seek reinstatement of their grants), and furthermore cannot pursue those suits simultaneously due to Tucker Act § 1500, and could be barred, under the D.C. Circuit's reading of *Dalton* and the Supreme Court's second stay in *AVAC*, from raising ICA, constitutional, ultra vires, and some (or potentially all) APA challenges.

What is most remarkable about both the Supreme Court's actions in and following *California,* the D.C. Circuit's majority opinion in *Global Health Council*, and the Supreme Court's second stay in *AVAC*, is how rushed they were. Working on extremely compressed timelines, built on minimal briefing, both courts issued poorly reasoned explanations for imposing significant new hurdles on litigants' efforts to challenge sweeping grant termination activities the legality of which the government has never attempted to defend on the merits. In both cases the rush appears to have been justified as arising from the need to respond to district court injunctions, but in that case other more prudent approaches were available. As the *California* majority appears to have heavily weighted the equities of the government's inability to recoup released funds, it could have simply stayed the injunction on that basis. And as the *Global Health Council* court appears to have wished to resolve novel arguments first raised on reply, it could have ordered fuller briefing and further argument, or even remanded the issue for initial review in the district court, before ruling. Instead, both opinions left plaintiffs with deep uncertainties regarding how they should have pleaded their cases, practically a return to the rigid formalism of common law pleading—except by way of a complex thicket of shifting preclusion doctrines rather than pleading standards.

These decisions, together, appear to herald a federal court system unable or unwilling to review the sweeping presidential impoundment of hundreds of billions of dollars of Congressionally mandated spending, and to concede the Administration's position that such actions are legally, or

at least functionally, unreviewable by the federal courts. It appears at this point that the only pathway forward for litigants will be to attempt to seek damages under contract theories in the Court of Federal Claims via the Tucker Act. In such litigation, however, there will be no opportunity for injunctive relief. The grants will remain frozen, probably indefinitely, while that litigation proceeds, and whatever future damages awards are won will be tied up in litigation for years to come. The climate programs that these grants were intended to promote will not be implemented. At this moment, therefore, it appears that the second Trump Administration's litigation strategy has succeeded, and the destruction of the climate spending state will not be overturned in court.

IV. SEEKING POST HOC RATIFICATION FROM CONGRESS

Although the general playbook has so far been successful, the Trump Administration seems also to be aware that it may not be sustainable forever. Notwithstanding the jurisdictional delays, federal district courts across the country have found again and again that most of the actions taken by the Trump Administration to terminate grants and withhold federally appropriated spending are illegal in some way. To counter this, and to inoculate itself from future claims that it has broken the law, the second Trump Administration has also sought post hoc ratification of its efforts by pushing Congress to amend the law, especially through budgetary legislation. Here, while the Administration has had some success, it has also continued to push the boundaries of what it can accomplish in the face of Congressional disagreement.

These post hoc ratification efforts began with the presentation of the Trump Administration's Fiscal Year 2026 proposed federal budget, which operates as a sort of "wish list" budget, components of which Congress may accept or reject in passing its own budget.[303] In typical hyperbolic language, the Trump Administration announced that it proposed "Ending the Green New Scam" and asking Congress to rescind "unplanned and unobligated balances" for various climate-related programs.[304] Diving into

303. *See* U.S. Off. of Mgmt. & Budget, *Fiscal Year 2026 Discretionary Budget Request* (May 2, 2025), https://www.whitehouse.gov/omb/information-resources/budget/the-presidents-fy-2026-discretionary-budget-request/ [https://perma.cc/MBU2-4YKG]; Thomas Kahn, *What Is Trump Hiding in His Secret Budget?,* N.Y. TIMES (Aug. 23, 2025) [https://perma.cc/VRW3-XJHU].

304. White House, *Fact Sheet: Ending the Green New Scam* (May 2025), https://www.whitehouse.gov/wp-content/uploads/2025/05/Ending-the-Green-New-Scam-Fact-Sheet.pdf [https://perma.cc/6E6H-J9M7]; U.S. Off. of Mgmt. & Budget, *Fiscal Year 2026 Discretionary Budget Request* (May 2, 2025), https://www.whitehouse.gov/omb/information-resources/budget/the-presidents-fy-2026-discretionary-budget-request/ [https://perma.cc/MBU2-4YKG].

the details, however, the proposed budget is not simply a zeroing out of all accounts, but rather a reorientation of programs toward presidential priorities. For example, for the Title XVII program, the proposed budget requested $750 million in appropriated credit subsidy for the cost of loan guarantees to support the construction of small modular reactors or advanced nuclear reactors, and canceling all loan limitation and credit subsidy appropriations made available in prior appropriations acts, while proposing "$30 billion in new loan limitation for projects elegible [sic] under a subset of specific categories" available under Section 1703.[305] Taken together, these budget proposal documents seem to indicate the intention to retool the Section 1703 program to focus primarily on nuclear and, possibly, experimental fossil energy projects, but, somewhat surprisingly, to reduce but not entirely eliminate the Section 1706 EIR program authorization. With respect to ATVM, the proposed budget "provides funding to monitor the existing portfolio of closed loans and proposes to cancel the remaining $2.29 billion in unobligated balances originally appropriated in FY 2009."[306] This would leave approximately $287 million in cost subsidy funding available, to support perhaps another $5 billion in loan authority—down from $26 billion this year.[307] Although this would not be the end of the ATVM program, if approved by Congress it would substantially curtail its use for the remainder of the Trump Administration.

The next effort came by way of budget reconciliation legislation negotiated between the Trump Administration and Congress's Republican Party majorities. The One Big Beautiful Bill Act rescinded unobligated balances from over twenty IRA climate programs, from clean aviation fuel, to climate data, to housing retrofits, to forestry programs,[308] and repealed numerous IRA climate provisions, particularly related to increasing costs on fossil fuel production.[309] Overall, the OBBBA eliminated as much as $4.7 billion in as-yet unspent funding for clean transportation competitive grant programs, including the Neighborhood

305. U.S. Dep't of Energy, *Technical Appendix* 304 (2025) (Title 17 Innovative Technology Loan Guarantee Program), https://www.govinfo.gov/content/pkg/BUDGET-2026-APP/pdf/BUDGET-2026-APP-2-9.pdf [https://perma.cc/G7K4-8MWM]. The proposal indicates an *increase* from $11 billion to $16 billion for Section 1703 loan guarantees, and a *decrease* from $45 to $24 billion for Section 1706 loan guarantees. *Id.* at 304.

306. *Id.* at 404.

307. *Id.* at 302, 304 (lines 0701, 115001).

308. One Big Beautiful Bill Act [hereinafter "OBBBA"], Pub. L. No. 119–21, 139 Stat. 72 (2025), § 10201, 30002, 40008, 40010, 50304, 50402. 60003-60022, rescinding unobligated balances for IRA §§ 23001(a)(3-4), 30002(a), 40001-40004, 40007(a), 50221-50223, 60104-60116, 60301, 60401, 60502-60504.

309. OBBBA §§ 50101, 50102, 50103, 50142, repealing IRA § 50262(a-b), 50261, 50263, 50123, 50141, 50144, 50145, 50151, 50152, 50153, 50161.

Access and Equity program, the Low-Carbon Transportation Materials Program, the Clean Heavy Duty Vehicles Program, and the Diesel Emissions Reduction program,[310] as well as an as-yet unquantified amount of funding for renewable energy development. It also rolled back numerous tax credits to promote electric vehicle purchase.

Notably, the OBBBA also repealed Section 134 of the Clean Air Act, which created the Greenhouse Gas Reduction Fund (discussed above), and rescinded all unobligated balances for that program.[311] This has created an interesting situation, however, because the $20 billion fund was "obligated" on the day that the money was sent to Citibank, and therefore it is not at all clear that the rescission has any effect. On the other hand, the repeal of CAA § 134 itself does eliminate the current Congressional authorization for this program, making it very unclear what the ultimate outcome will be. This matter will continue to be litigated, as discussed below.

The OBBBA, however, did not include all the program rescissions that the Trump Administration wanted. Thus, the Administration's next step was to seek Congressional ratification through a surprising mechanism: by following the rules of the Impoundment Control Act. In a special message on June 3, 2025, President Trump proposed an ICA rescission package for foreign aid programs that was passed by Congress with amendment within the ICA's 45-day requirement.[312] Because ICA rescission bills require only a majority vote, the Senate was able to pass the bill on a 51–48 vote.[313] Going forward, therefore, it is possible that further climate programs will be cut by ad hoc rescission actions, at least until a new annual budget is passed. However, this leaves unaddressed the Trump Administration's withholding of funds that the Congress has declined to rescind.

Regarding the next annual budget, the Trump Administration's OMB director has indicated that a major shift is coming in approach. As budget bills typically require 60 votes in the Senate to pass, it would normally require budget negotiation with Democrats to pass a bill. Thus, typically, annual budgets require bipartisan support. However, with the rescission mechanism and budget reconciliation processes providing the ability to selectively modify passed budget bills, the Trump Administration

310. Corrigan Salerno, *Congress's New Budget Reconciliation Bill Takes Back Billions From Locally-Led Projects across the Country*, TRANSP. FOR AM. (Jul. 8, 2025), https://t4america.org/2025/07/08/congresss-new-budget-reconciliation-bill-takes-back-billions-from-locally-led-projects-across-the-country/[https://perma.cc/C6EB-VB8K].

311. OBBBA § 60002.

312. Rescissions Act of 2025, Pub. L. No. 119–28, 139 Stat. 467 (2025).

313. U.S. Senate, *Roll Call Vote No. 411*, 119th Cong., 1st Sess. (July 17, 2025), https://www.senate.gov/legislative/LIS/roll_call_votes/vote1191/vote_119_1_00411.htm [https://perma.cc/6DCC-FEZ2].

effectively enjoys a line-item veto over any passed budget. Meanwhile, the OMB director has called for the budget-making process to be "less bipartisan," and has indicated that if Congress begins to challenge the Administration's rescission requests, the administration will challenge the constitutionality of the ICA itself.[314] OMB Director Vought has also expressed his opinion that the GAO "shouldn't exist," which may influence who President Trump appoints as the next GAO head in late 2025.[315]

Therefore, at least while the Trump Administration enjoys majorities in both houses of Congress, it appears to have developed a strong middle-term playbook for destroying the climate spending state piece by piece, regardless of the Senate filibuster. What impact this will have on the budget process going forward is yet unknown.[316] But in July 2025 it was reported that DOE did not intend to spend further appropriated funds on renewable energy and electric vehicle programs that were included in the FY25 federal budget that President Trump himself had previously signed, and which had not been rescinded.[317]

It appears evident at this time that OMB will use whatever time it can to propose further rescissions from Congress, and that if Congress refuses, federal agencies will unilaterally decline to obligate congressionally appropriated funding. The destruction of the climate spending state, therefore, represents not simply an attack on a controversial subset of policy priorities, but rather an unprecedented assertion of presidential power over Congress, a straining of the constitutional separation of powers to their breaking point, a court system incapable of or unwilling to intervene, and a nation doing nothing to respond to the most pressing worldwide environmental problem of its time.

314. Katherine Tully-McManus, *Russ Vought: Appropriations Process "Has to Be Less Bipartisan,"* POLITICO (Jul. 17, 2025), https://www.politico.com/live-updates/2025/07/17/congress/russ-vought-appropriations-process-has-to-be-less-bipartisan-00459479 [https://perma.cc/238G-BFQN]

315. April Rubin, *OMB Director Says Government Accountability Office "Shouldn't Exist,"* AXIOS (Sep. 3, 2025), https://www.axios.com/2025/09/03/russell-vought-government-accountability-office [https://perma.cc/L9Z4-JGFV].

316. NB: This Article was finalized prior to the October-November 2025 government shutdown.

317. Zack Coleman, *DOE Defies Congress by Shifting Funds from Wind, Solar, EVs,* POLITICO (Jul. 8, 2025), https://www.politico.com/live-updates/2025/07/08/congress/doe-defies-congress-by-shifting-funds-from-wind-solar-evs-00443190 [https://perma.cc/6RYF-XCXL].

V. CONCLUSION: THE SALTED EARTH

To "salt the earth" is the English idiom for destroying an enemy so thoroughly that it cannot ever thrive again.[318] The second Trump Administration's indefinite delay of climate spending programs, ad hoc release of funds according to opaque criteria, gutting of administrative capacity, aggressive litigation foreclosing judicial review of these actions, and efforts to exert increased control over Congressional budget power, have salted the earth for Congressional climate change response under the spending power.

With its actions, the Trump Administration has revealed enormous weaknesses in the spending power as a method for accomplishing long-term policy change. The Biden Administration devoted years to the construction of a climate spending state, but it was effectively ended in the first few days of President Trump's second term. Although this author has never believed that spending law was the answer to the climate problem,[319] the system was the best that could be achieved under the political circumstances of 2021-2022. Sadly, any similar spending programs that may be enacted in the future will now have to be created with the knowledge that there is currently very little protection for such programs in the law beyond the next presidential election.

Future efforts to shore up such protections could, at minimum, focus on easing the jurisdictional bars faced by affected funding recipients, whether through amendment to the Tucker Act, or by adding a citizen suit provision to the ICA. Further protections against the use of potentially spurious criminal investigations as a pretext for contract termination would also be warranted. Lacking such protections, the most long-term impact of the destruction of the climate spending state may simply be the demonstration that it is so easy to accomplish.

Meanwhile, although there is some reason to believe that the development of renewable energy, zero-emissions transportation, and other low-carbon technologies necessary to respond to climate change will develop regardless of what the United States does, and that by reversing the development of these industries in the United States, the Trump Administration is simply setting itself up to cede a historic economic opportunity to other industrialized world powers, the loss of U.S. climate response capacity as a consequence of the destruction of the climate

318. Abimelech, after sacking Shechem, is said to have "razed the city and sowed it with salt." Judges 9:45. *See* R.T. Ridley, *To Be Taken with a Pinch of Salt: The Destruction of Carthage*, 81 CLASSICAL PHILOLOGY 140, 140–146 (1986) (it is commonly believed that the Roman army did the same thing to Carthage at the end of the third Punic war, although this is a modern invention).

319. *See* Orford, *supra* note 21.

spending state is likely to be significant for years to come. As the U.S. withdraws from international climate change negotiations, initiates trade wars over resources critical to clean technology development, and actively isolates itself from clean technology industries, it is also taking steps to further undermine its capacity to thrive in these industries in the future.

The workforce reductions and closures undertaken to date, furthermore, are devastating the federal government's information-generating functions. Soon after the second Trump Administration took office, government climate websites and data repositories began to go dark.[320] In the first few months, large portions of the nation's climate monitoring apparatus were targeted for closure, understaffing, and defunding.[321] Scientific advisory committees have been disbanded,[322] and, now, deeper cuts to the scientific capacities of federal agencies are underway.[323] Together, these actions demonstrate a willingness not simply to remove federal government support for this topic, but to deprive the public of information necessary to develop solutions in the future, and to deprive an entire generation of federal service and career development opportunities in a field fundamental to their future quality of life.

Global temperatures continue to rise, with 2024 the hottest year on record to date.[324] Anthropogenic greenhouse gas emissions from fossil fuel combustion continue to rise, with 2024 setting that record as well.[325] The devastating impacts of climate change also continue to rise to record

320. Warren Cornwall, *U.S. Climate Data Websites Go Dark*, SCIENCE (18 Apr. 2025), https://www.science.org/content/article/us-climate-data-websites-go-dark [https://perma.cc/44VE-N89P].

321. *Mauna Loa Observatory Faces Closure under Trump Budget Proposal*, DAILY CLIMATE (Jul. 21, 2025), https://www.dailyclimate.org/mauna-loa-climate-lab-faces-closure-under-trump-budget-proposal-2673534443.html [https://perma.cc/WGA3-LCQD]; Marc Alessi, *5 Reasons NOAA and NASA Cuts Will Be Disastrous for Everyone in the U.S.*, EQUATION (UNION OF CONCERNED SCIENTISTS) (Apr. 16, 2025), https://blog.ucs.org/marc-alessi/5-reasons-noaa-and-nasa-cuts-will-be-disastrous-for-everyone-in-the-us/[https://perma.cc/V5GM-2NVD];

322. Melissa L. Finucane, *Federal Science Advisory Committees Are Being Defunded and Dismantled. Here's a Toolkit to Help Independent Scientists Step Up*, THE EQUATION (UNION OF CONCERNED SCIENTISTS) (May 19, 2025), https://blog.ucs.org/melissa-finucane/federal-science-advisory-committees-are-being-defunded-and-dismantled-heres-a-toolkit-to-help-independent-scientists-step-up/ [https://perma.cc/2QBU-YNY2].

323. Rob Stein, *Trump Administration Shuts Down EPA's Scientific Research Arm*, NPR (Jul. 20, 2025), https://www.npr.org/2025/07/20/nx-s1-5474320/trump-epa-scientific-research-zeldin [https://perma.cc/SJ7Q-QL2X].

324. Roxana Barden, *Temperatures Rising: NASA Confirms 2024 Warmest Year on Record,* NASA (Jan. 10, 2025), https://www.nasa.gov/news-release/temperatures-rising-nasa-confirms-2024-warmest-year-on-record/ [https://perma.cc/JST7-8X6W].

325. *Record Carbon Emissions Highlight Urgency of Global Greenhouse Gas Watch*, WMO (Nov. 19, 2024), https://wmo.int/media/news/record-carbon-emissions-highlight-urgency-of-global-greenhouse-gas-watch [https://perma.cc/W8NM-RRAP].

heights.[326] These impacts are increasingly impossible to ignore or deny, as large areas of the United States become uninsurable[327] and American cities and agricultural regions face unprecedented heat storms and extreme weather damage,[328] and—above all—the most marginalized segments of U.S. society remain most vulnerable to these harms.[329] The destruction of the climate spending state will ensure that the United States federal government will not meaningfully contribute to the development of solutions in the near future, but in the longer term, the impact of these actions on the U.S. constitutional system may be as significant. If the President can selectively refuse to implement even Congress's spending laws, this would be a shift in the balance of powers as significant as those wrought by judicial interventions from *Lochner* to *Loper Bright*.

For the benefit of future generations, it is important to develop a detailed history of how and why this shift has happened. In several years, it may be that many of the details of the above review will be overshadowed by the eventual resolution of the accompanying legal conflicts. Perhaps more robust presidential impoundment power, more limited funding beneficiary recourse, and less certain federal funding programs will become accepted as the new normal, and the current dislocations accompanying this new reality will fade from memory. But it would be a mistake to forget the disrupted expectations of entire industries built in reliance on Congressional funding commitments, the alarm of the district courts first

326. Jeff Masters, *U.S. Socked with 15 Billion-Dollar Weather Disasters during the 1st Half of 2025*, YALE CLIMATE CONNECTIONS (Jul. 16, 2025), https://yaleclimateconnections.org/2025/07/u-s-socked-with-15-billion-dollar-weather-disasters-during-the-1st-half-of-2025/[https://perma.cc/2KBR-N6TP].

327. Josh Recamara, *Insurer Insolvencies and California Withdrawals Could Follow Wildfires – Report*, INS. BUS. (Jan. 15, 2025), https://www.insurancebusinessmag.com/us/news/catastrophe/insurer-insolvencies-and-california-withdrawals-could-follow-wildfires--report-520637.aspx [https://perma.cc/CM6W-XKLC]; Giulia Carbonaro, *Texas Home Insurance Problem Worsens As Insurer Halts New Policies*, NEWSWEEK (Sep. 6, 2024), https://www.newsweek.com/texas-home-insurance-worsens-insurer-halts-new-policies-1949731 [https://perma.cc/ZQG8-AM2E]; Matt Keeley, *When Fragile Insurers Meet Climate Change, Taxpayers End Up on the Hook*, COLUM. BUS. SCHOOL (Feb. 18, 2025), https://business.columbia.edu/research-brief/florida-homeowners-insurance-crisis-climate-change-taxpayer-burden [https://perma.cc/N374-VUV2].

328. Umair Irfan, *It's Not Just the Cities. Extreme Heat Is a Growing Threat to Rural America*, VOX (Jun. 24, 2025), https://www.vox.com/climate/417624/heat-wave-urban-island-rural-health-temperature [https://perma.cc/AZ3Y-37KG]; Ayurella Horn-Muller, *The $20B Question Hanging over America's Struggling Farmers*, GRIST (Mar. 28, 2025), https://grist.org/food-and-agriculture/the-20-billion-question-hanging-over-americas-struggling-farmers/ [https://perma.cc/HG75-YLED].

329. *EPA Report Shows Disproportionate Impacts of Climate Change on Socially Vulnerable Populations in the United States*, U.S. ENV'T PROT. AGENCY (Sep. 2, 2021), https://www.epa.gov/newsreleases/epa-report-shows-disproportionate-impacts-climate-change-socially-vulnerable [https://perma.cc/UR6D-KZW8].

confronted with the funding freeze, the dissents of the Justices questioning abrupt and unexplained emergency orders from the Supreme Court, and the protests from Congressional minorities suddenly excluded from budget-making processes that have always included them. Ultimately, the second Trump Administration, the current Congress, and a current majority of the Supreme Court seem more willing to weaken the separation of powers than to allow the federal government to respond in any way to climate change. Among the many costs of climate change, therefore, the U.S. constitutional order itself must be accounted.