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Taking Spending Power From Congress

The power of the legislative branch to control spending in the Anglo-American tradition predates the founding of the American colonies. It was at the core of the dispute between the Crown and Parliament during the reign of James II of England back in the 1680s. James II abolished Parliament for not paying for his military appointments, and the King paid for the transgression with exile.

In the United States, legislative control over spending was seen by the Founding Fathers as the most essential safeguard against tyranny. James Madison wrote in *Federalist*, No. 58, "This power over the purse may, in fact, be regarded as the most complete and effectual weapon with which any constitution can arm the immediate representatives of the people, for obtaining a redress of every grievance, and for carrying into effect every just and salutary measure." Madison explained that the U.S. Constitution mandates that "the House of Representatives cannot only refuse, but they alone can propose, the supplies requisite for the support of government." This power alone, Madison argued, can overcome "all the overgrown prerogatives of the other branches of the government."

No longer.

President Obama announced with a signing statement on the fiscal 2011 budget law he signed April 15 that he would boldly usurp Congress' spending power under the U.S. Constitution by ignoring the part of the law that demands defunding four "czar" positions. The law the President plans to ignore is the same budget deal he helped to broker between House Republicans and Senate Democrats, a decision that not only puts the President squarely at odds with the U.S. Constitution but also his own explicit position as a candidate for President.

The signing statement refers to the section of the bill that prohibits funds to pay for four "czar" positions advising the White House:

Sec. 2262. None of the funds made available by this division may be used to pay the salaries



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and expenses for the following positions:

- (1) Director, White House Office of Health Reform.
- (2) Assistant to the President for Energy and Climate Change.
- (3) Senior Advisor to the Secretary of the Treasury assigned to the Presidential Task Force on the Auto Industry and Senior Counselor for Manufacturing Policy.
- (4) White House Director of Urban Affairs.

Nothing could be more clear. The President is prohibited from spending money in the bill on salaries for those four positions. But in his signing statement, Obama wrote:

Section 2262 of the Act would prohibit the use of funds for several positions that involve providing advice directly to the President. The President has well-established authority to supervise and oversee the executive branch, and to obtain advice in furtherance of this supervisory authority. The President also has the prerogative to obtain advice that will assist him in carrying out his constitutional responsibilities, and do so not only from executive branch officials and employees outside the White House, but also from advisers within it.

Legislative efforts that significantly impede the President's ability to exercise his supervisory and coordinating authorities or to obtain the views of the appropriate senior advisers violate the separation of powers by undermining the President's ability to exercise his constitutional responsibilities and take care that the laws be faithfully executed.

Therefore, the executive branch will construe section 2262 not to abrogate these Presidential prerogatives.

Of course, the legislation did not prohibit the President from obtaining advice from anyone, let alone salaried officials funded by the bill. The dispute is over funding, not about advice. And it is never the President's prerogative to spend funds without the explicit approval of the Congress. Article I, Section 9 of the U.S. Constitution flatly stipulates, "No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law," and Section 8 stipulates that all laws must be passed by Congress.

President Obama explicitly recognized this constitutional limitation on the executive branch as a Senator and candidate for the presidency. Candidate Obama told the *Boston Globe* in a December 20, 2007 interview that "it is a clear abuse of power to use such statements as a license to evade laws that the president does not like or as an end-run around provisions designed to foster accountability. I will not use signing statements to nullify or undermine congressional instructions as enacted into law."

With his most recent signing statement, President Obama now does the opposite of his campaign promises and abrogates the same budget deals he himself brokers. The basic principle is this: If Obama can abrogate the U.S. Constitution and take the spending power of Congress for himself on a small issue such as funding four positions, what's to stop him from increasing spending on his own for his own pet projects in the billions or even trillions of dollars? What's to stop him from redesignating federal funds for healthcare toward performing abortions? Once Congress concedes the principle that the President can appropriate funds without the authorization of Congress, there's no practical barrier



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or limitation on it.

Obama claimed he asked of Republican officials during the budget negotiations: “You think we’re stupid?” But he apparently thinks Republican negotiators are the stupid ones. He may be right on that point. From all appearances, the GOP-led House will do nothing about Obama’s blatant attack on the U.S. Constitution. They may have even known Obama’s bold usurpation of power was coming, and signed the deal anyway. “It’s not surprising that the White House, having bypassed Congress to empower these ‘Czars,’ is objecting to eliminating them,” Michael Steel, spokesman for Speaker John Boehner (R-Ohio) told the Washington, D.C.-based tabloid *The Hill* after Obama released his signing statement.

Of course, if it’s not surprising and the Republican leadership suspected this would happen from the start, it’s a wonder why the GOP leadership signed the deal with Obama in the first place unless they knew it was coming beforehand.

The power to appropriate money was the last constitutional power of Congress that the imperial presidency had yet to destroy. If Congress doesn’t stand up for this last exclusive power it holds under the Constitution, then it will become a mere stage-prop under an all-powerful presidency that surpasses that of pre-reformation English Kings. Obama has already usurped Congress’ constitutional power to start a war with his Libya operation, despite explicitly pledging not to do so as a candidate for President.

Congress has only one remedy for this final and complete affront to the U.S. Constitution: impeachment. But there’s no indication that many members of Congress have the courage to fulfill their oath of office to “support and defend the Constitution of the United States against all enemies, foreign and domestic.”



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