

DIGITIZING THE FISC

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ABSTRACT

President Trump's repeated defiance of statutory spending directives has pushed the United States to the brink of a constitutional separation of powers crisis. Perhaps most shockingly, upon returning to office in January 2025, he immediately attempted to seize direct political control over the core payments software of the U.S. Department of the Treasury's Bureau of the Fiscal Service, which handles spending for most of the federal government, to block funds to politically disfavored agencies and programs. Opponents quickly launched a slew of lawsuits challenging the move, with some already reaching—and others seemingly destined for—the Supreme Court. Whatever the ultimate judicial outcome, Trump's choice of tactics has revealed the inherent constitutional fragility of the existing centralized public payments architecture. A nation in which a single government IT official can effectively commandeer all federal budget activity is a nation vulnerable to attack and compromise by an authoritarian president.

There is no good reason—technological, constitutional, or political—for this fragile design. Instead, this Article proposes a wholesale reimagining of the legal and technological infrastructure of the fiscal administrative state through a new digital dollar system: the “New Digital Fiscal Regime” or “NDFR”. In contrast to Trump's vision of a “unitary executive fisc,” in which the President channels all federal spending through a single administrative process under their direct control, the NDFR takes a two-tier “centralized legislature, decentralized executive” approach to fiscal infrastructural

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reform. Under this approach, the House and Senate maintain a central digital database and ledger of all public funds appropriated, drawn, held, spent, and collected, while agencies administer federal funds directly. To spend, executive agents first draw from an appropriated public credit line by using a congressionally issued "Public Credit Card" to virtually withdraw newly created digital dollar "eCoin" balances from Congress's "ATM," within legislatively determined limits. eCoins are loaded onto a digital "ePurse," hosted locally by the agent on a secure server. From there, agents can spend per statutory directives and oversight procedures without risk of obstruction by the President or broader executive branch. Congress, in turn, is responsible for defining, clarifying, and adjusting executive access to spending authority through administration of both the "ATM" and "Credit Card" software and data systems.

Restructuring the fisc along these lines reinforces the constitutional separation of powers in three ways. First, disintermediating the Treasury and Federal Reserve from the federal payments process reduces intra-executive-branch entanglement and increases the cost and complexity of operational takeover by the President. Second, unbundling fiscal policy from public debt management by allowing agencies to directly spend newly created digital dollars practically empowers them to honor constitutional and statutory spending commitments over conflicting presidential directives. Third, streamlining the legislative budget process to resolve longstanding interpretive tensions between statutory spending directives and statutory delegations of financing authority enhances Congress's fine-grained control over executive spending while reducing the risk of it unintentionally causing constitutional fiscal crises. Addressing these challenges will require massive levels of practical and political organizing effort. However, as recent events have demonstrated, the constitutional stakes could not be higher, and maintaining the status quo is no longer an option.

2026]

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INTRODUCTION

[The] 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.

—James Madison¹

Watch closely as Grandpa topples an empire by changing a one to a zero.

—Rick Sanchez, *Rick and Morty*²

In early 2025, the United States found itself on the brink of a constitutional fiscal crisis. As part of a broadside effort to consolidate federal power in the office of the President, President Trump attempted to seize direct control of the operational levers of the public purse, thereby defying congressional spending directives.³

In addition to enacting broad spending cuts via impoundment, Trump also unilaterally imposed the largest foreign tariffs in modern

1. THE FEDERALIST NO. 58, at 394 (James Madison) (Jacob E. Cooke ed., 1961).

2. RICK AND MORTY: *The Rickshank Redemption* (Adult Swim television broadcast, aired Apr. 1, 2017).

3. See, e.g., U.S. GOV'T ACCOUNTABILITY OFF., B337204.1, DEPARTMENT OF HOMELAND SECURITY—APPLICATION OF THE IMPOUNDMENT CONTROL ACT TO FEDERAL EMERGENCY MANAGEMENT AGENCY FISCAL YEAR 2025 FEDERAL ASSISTANCE APPROPRIATIONS 2 (2025) (“[C]urrently available evidence indicates that FEMA has violated the [Impoundment Control Act] by improperly withholding or delaying the obligation or expenditure of budget authority . . . with regard to the Emergency Food and Shelter Program (EFSP) and Shelter and Services Program (SSP).”); Grace Dille, *GAO Flags ICA Violations, Remains Undecided on Lawsuits*, MERITALK (July 29, 2025, at 16:04 ET), <https://www.meritalk.com/articles/gao-flags-ica-violations-remains-undecided-on-lawsuits> [<https://perma.cc/CHP6-HYU9>] (noting that the Government Accountability Office found “three instances this year in which the Trump administration has illegally impounded funds in trying to reconfigure the nation’s budget,” notably for “infrastructure . . . libraries and museums,” and “the Federal child care program known as Head Start”). For in-depth coverage of day-to-day developments, see generally SUBSTACK: NOTES ON THE CRISES, <https://www.crisisnotes.com> (on file with the Rutgers University Law Review) (last visited Oct. 16, 2025) (discussing day-to-day developments in Federal Reserve policy, constitutional crises, and economic affairs).

history,⁴ articulated an industry-friendly financial regulatory agenda,⁵ and took the first steps toward establishing a sovereign wealth fund and a strategic cryptocurrency reserve.⁶ In doing so, he asserted the constitutional prerogative not only to spend and freeze funds, but also to invest, reallocate, collect, and regulate public money in accordance with his own policy priorities, subject only to broadly defined legislative outer limits.

Trump's vision is unique not only in terms of its substance and scale,⁷ but also in the form, speed, breadth, and extremity of the actions undertaken to enact it.⁸ Judicial challenges emerged swiftly and have

4. Joseph Politano, *Trump's Blockade of America*, APRICITAS ECONS. (Mar. 4, 2025), <https://www.apricitas.io/p/trumps-blockade-of-america> [https://perma.cc/LZG2-DQEG]. Several acts of Congress throughout the twentieth century granted the executive branch greater authority over tariffs than domestic taxes, though the specifics vary. See Adam Looney & Elena Patel, *Why Does the Executive Branch Have So Much Power over Tariffs?*, BROOKINGS (Jan. 15, 2025), <https://www.brookings.edu/articles/why-does-the-executive-branch-have-so-much-power-over-tariffs> [https://perma.cc/98GN-9NPZ].

5. See Editorial Board, *Trump's Reckless Experiment with Financial Deregulation*, FIN. TIMES (Feb. 17, 2025), <https://www.ft.com/content/f2a27405-d177-4140-ad2c-e91d61c393fd> [https://perma.cc/9UAL-MSPM] (noting that Trump's financial regulatory agency leadership nominations "point[] to deregulation for its own sake").

6. See Trevor Hunnicutt & Pete Schroeder, *Trump Orders Creation of Sovereign Wealth Fund, Says It Could Buy TikTok*, REUTERS (Feb. 4, 2025, at 12:19 ET), <https://www.reuters.com/markets/wealth/trump-signs-executive-order-create-sovereign-wealth-fund-2025-02-03> (on file with the Rutgers University Law Review) ("Administration officials did not say how the [sovereign wealth] fund would operate or be financed, but Trump has previously said it could be funded by 'tariffs and other intelligent things'"); see also Winston Ma, *The US Is Pursuing An Unconventional Sovereign Wealth Fund*, OMFIF (Aug. 7, 2025), <https://www.omfif.org/2025/08/the-us-is-pursuing-an-unconventional-sovereign-wealth-fund> [https://perma.cc/7Y8F-YJXP] ("[U]nder Trump, America is carving an alternative SWF path – one that is distinctly bottom-up, ad hoc and industrial strategy-driven, using sovereign capital not for national savings but as an instrument for strategic investments.").

7. His treatment of monetary and fiscal institutions as direct extensions of his own political authority ironically resembles most closely that of a pre-parliamentary, absolute monarch or Roman emperor. See generally Jacob Soll, *Louis XIV's Accounting Shenanigans and the Threat They Pose Today*, PBS NEWS (June 27, 2014, at 16:08 EST), <https://www.pbs.org/newshour/nation/louis-xivs-accounting-shenanigans-and-the-threat-they-pose-today> [https://perma.cc/75CP-6F3M] ("Much as they tried to reform their administrations, monarchs, in the end, saw themselves as accountable to God, not bookkeepers.").

8. See Charlie Savage, *Trump Team Finds Loophole to Defy Spirit of Court Orders Blocking Spending Freezes*, N.Y. TIMES (Feb. 19, 2025), <https://www.nytimes.com/2025/02/19/us/politics/trump-foreign-aid-freeze.html> (on file with the Rutgers University Law Review) ("In short, critics say, administration officials are paying lip service to complying with the letter of the court orders while violating their spirit. The tactic shows how aggressively and nimbly the Trump administration is working to keep funds jammed up and, the complexity judges face . . .").

provided a somewhat temporary respite,⁹ even as their ultimate prospects with the Supreme Court remain uncertain at best. For example, separate coalitions of nonprofits and state Attorneys General challenged the administration's impoundment actions in court, citing, *inter alia*, violations of separation of powers and Article II's Take Care Clause.¹⁰

The Supreme Court has not yet ruled directly on the constitutionality of the Impoundment Control Act, which the Trump Administration has signaled it considers unconstitutional.¹¹ However, recent court decisions have narrowed the scope for review of Presidential impoundment by asserting the Court of Federal Claims as the ostensibly exclusive venue for disputes over 'contractual' claims for relief, without specifying exactly what kinds of claims meet that definition.¹²

9. *See, e.g.*, *Dep't of State v. AIDS Vaccine Advoc. Coal.*, 145 S. Ct. 753, 753 (2025) (denying application to vacate "a temporary restraining order enjoining the Government from enforcing directives pausing disbursements of foreign development assistance funds," and "directing the District Court [to] clarify what [spending] obligations the Government must fulfill to ensure compliance with the temporary restraining order"); *New York v. Trump*, 171 F.4th 1 (1st Cir. Mar. 16, 2026) (upholding the preliminary injunction against Trump's impoundment orders); *New Jersey v. U.S. Dep't of Transp.*, No. 1:26-CV-00939, slip op. at 1–2 (S.D.N.Y. June 29, 2026) (finding that federal courts have jurisdiction to enforce States' claims for relief for unlawful suspension of federal grants). *See also* Nat'l Pub. Radio, Inc., No. 25-1674 (D.D.C. Mar. 31, 2026) (holding that an Executive Order that denied statutorily allocated funding to NPR and other media entities based on their expressed views violated the First Amendment). For a more thorough overview of judicial challenges from 2025 through 2026 and their broader implications, see Chandler Rankin, *Challenging Politically Discriminatory Funding Cuts*, HARV. L. REV. BLOG (Feb. 1, 2026), <https://harvardlawreview.org/blog/2026/02/challenging-politically-discriminatory-funding-cuts/> [<https://perma.cc/KK7H-XQPQ>]; Zachary S. Price, *Making Sense of the Emergency Appropriations Decisions*, HARV. L. REV. BLOG (Nov. 11, 2025), <https://harvardlawreview.org/blog/2025/11/making-sense-of-the-emergency-appropriations-decisions/> [<https://perma.cc/4XV3-7TRM>].

10. *See, e.g.*, *New York v. Trump*, 769 F. Supp. 3d 119, 146–47 (D.R.I. 2025); *AIDS Vaccine Advoc. Coal. v. U.S. Dep't of State*, 766 F. Supp. 3d 74, 84–85 (D.D.C. 2025). Both lawsuits are ongoing, with various intermediate appeals to the First Circuit and Federal Circuit, respectively—as well as to the Supreme Court—with the underlying common issues appearing destined for eventual final adjudication by the Supreme Court. *See Litigation Tracker: Legal Challenges to Trump Administration Actions*, JUST SECURITY, <https://www.justsecurity.org/107087/tracker-litigation-legal-challenges-trump-administration/> [<https://perma.cc/LN22-GZA7>] (last visited Oct. 19, 2025) (providing a timeline and summary of these lawsuits and their ongoing developments).

11. Hannah Grabenstein, *How Trump's Rescission Request Draws on the Centuries-Old Concept of Impoundment*, PBS NEWS (Feb. 10, 2025, at 15:30 ET), <https://www.pbs.org/newshour/politics/what-you-need-to-know-about-impoundment-and-how-trump-vows-to-use-it> [<https://perma.cc/456X-SV28>].

12. *See* Price, *supra* note 9; *but see* *New Jersey v. U.S. Dep't of Transp.*, No. 1:26-CV-00939, slip op. (S.D.N.Y. June 29, 2026).

Separately, the Court has implied that the Comptroller General of the Governmental Accountability Office is the only actor authorized to bring claims to enforce certain spending obligations,¹³ while at the same time issuing a broad decision overruling *Humphrey's Executor*¹⁴ that potentially renders the removal protections afforded to the Comptroller General—and thus their political independence from the President—unconstitutional.¹⁵

Thus far, the Trump administration is officially adhering to the temporary injunction, even as it pursues workarounds for the various restrictions it imposes—while simultaneously accusing judges of political bias and threatening judicial impeachment—but it is unclear whether it will continue to do so given recent public comments.¹⁶

Even if one or more of them prove successful and enforceable, however, the question of how to defend against future similar attacks remains. By neglecting its duty to exercise leadership in modernizing the

13. Dep't of State v. AIDS Vaccine Advoc. Coal., 146 S. Ct. 19 (2025) (staying the district court's order to grant a preliminary injunction); see Price, *supra* note 9, for a discussion of this case.

14. Trump v. Slaughter, 146 S. Ct. 2283, 2309 (2026).

15. See generally Matthew Lawrence, *Is the GAO the Next Battlefield in the Fight for the Separation of Powers?*, LAWFARE (Jan. 22, 2026, at 14:30 ET), <https://www.lawfaremedia.org/article/is-the-gao-the-next-battlefield-in-the-fight-for-separation-of-powers> [<https://perma.cc/YR66-63E3>]; see also Michael Dorf, *Beyond Humphrey's Executor: Alternative Tests for Removal Restrictions*, 59 U.C. DAVIS L. REV. ONLINE 305 (2026) (identifying risk of systemic self-dealing by the executive as a potential basis for upholding removal restrictions in the event *Humphrey's Executor* is overruled).

16. See Jacob Knutson, *Musk, Trump Allies Use Impeachment Threats to Intimidate Federal Judges — What You Need to Know*, DEMOCRACY DKT. (Mar. 4, 2025), <https://www.democracymarket.com/analysis/elon-musk-house-republicans-impeaching-judges-intimidation> [<https://perma.cc/V64X-UDPN>] (discussing Trump's attacks on the judiciary, including his describing one federal judge as “evil” and demanding their resignation, and posting on social media that “[t]he only way to restore rule of the people in America is to impeach judges”). See also Elon Musk (@elonmusk), X, *This is an activist posing as a judge* (Feb. 8, 2025, at 14:55 ET), <https://x.com/elonmusk/status/1888315706598731904?s=42> [<https://perma.cc/966H-X6ZJ>] (posting about Judge Paul Engelmayer, who ruled against Musk and the Department of Government Efficiency in a prominent case); Justin Jouvenal, Leo Sands & Ann E. Marimow, *Trump Comes Close to the Red Line of Openly Defying Judges, Experts Say*, WASH. POST (Feb. 20, 2025), <https://www.washingtonpost.com/politics/2025/02/20/trump-judge-orders-comply-defy-usaid/> (on file with the Rutgers University Law Review) (quoting Georgetown University law professor David Super, describing the administration's strategy of “insist[ing] that injunctions relate only to one source of legal authority and then manufactur[ing] another to keep doing what they have been ordered not to do”); GOVERNING FOR IMPACT, SEEKING REMEDIES IN IMPOUNDMENT CASES WHEN FUNDING IS POISED TO EXPIRE 5–7 (A025), <https://governingforimpact.org/wp-content/uploads/2025/08/Impoundment-Remedies-final.pdf> [<https://perma.cc/LYT9-PKXD>] (discussing strategies and challenges in seeking enforcement of spending commitments following the expiration of underlying appropriations authority at the end of the fiscal year).

technological, financial, legislative, and administrative infrastructure of federal budgeting, spending, revenue collection, money creation, and debt management—that is, the public “fisc”—Congress has abdicated its power to check the executive branch and defend its own constitutional authority.¹⁷

Most notably, Trump took the unprecedented step of bypassing the traditional executive branch chain of command by assuming direct operational control of the centralized accounting and IT infrastructure relied upon by much of the federal government.¹⁸ Immediately upon re-entering office, Trump—in partnership with Elon Musk and the new Department of Government Efficiency (“DOGE”)—moved to take over the government’s centralized payments IT infrastructure to better exercise direct and absolute operational control over federal spending and revenue activity. Trump ordered the U.S. Treasury’s Bureau of the Fiscal Service (“BFS”) to grant DOGE staff “full access” to its core payments software, which processes spending for nearly the entire federal

17. See, e.g., *Glob. Health Council v. Trump*, No. 25-5097, 2025 WL 2326021, at *2 (D.C. Cir. Aug. 13, 2025) (Henderson, J., dissenting) (noting that under the Congressional Budget and Impoundment Control Act of 1974, the Comptroller General, who is the head of the legislative branch’s Government Accountability Office, is “expressly empowered” to sue the Executive” for failing to spend in accordance with legislative spending directives, and that upon successfully bringing such a “suit, the U.S. District Court for the District of Columbia is ‘expressly empowered’ to enter ‘any decree, judgment, or order which may be necessary or appropriate to make such budget authority available for obligation’” (citations omitted)), *amended and superseded by* *Glob. Health Council v. Trump*, 153 F.4th 1 (D.C. Cir. 2025).

18. From a technical and political perspective, the Treasury Department’s Bureau of the Fiscal Service (“BFS”) represents the single most politically vulnerable centralized bottleneck in the entire fiscal administrative process. See *infra* Part I. It thus comes closest to practically, politically, and symbolically embodying the Trumpian vision of the twenty-first century unitary executive fisc: all federal spending managed via a single spreadsheet, run from a single machine under the control of one person. In this sense, Presidential takeover of BFS payments infrastructure is not merely an operational means to the broader fiscal end goal of imposing budget cuts, but also a fiscal end goal in and of itself. The (politicized) medium is the (political) message, and Trump’s message is characteristically simple: the commander-in-chief is the person with the power to press the red button. He is the fiscal commander-in-chief, BFS is his red fiscal button, and he can press it whenever he feels like it. See Exec. Order No. 14222, 90 Fed. Reg. 11095 (Mar. 3, 2025) (directing each agency to build a “centralized technological system” to record every payment pursuant to “covered contracts and grants, along with a brief, written justification for each payment”); see also Bruce Schneier & Davi Ottenheimer, *DOGE Is Hacking America*, FOREIGN POL’Y (Feb. 11, 2025, at 18:49 ET), <https://foreignpolicy.com/2025/02/11/doge-cyberattack-united-states-treasury> (on file with the Rutgers University Law Review) (describing Trump’s operational assault on the BFS as possibly “the most consequential security breach in [American] history—not through a sophisticated cyberattack or an act of foreign espionage, but through official orders by a billionaire with a poorly defined government role,” and describing the situation as unprecedented in not “just the scope, but also the method of attack”).

government.¹⁹ In effect, they attempted to hack the constitution by bypassing the traditional executive chain of command through a single IT choke point.

This new muscular application of “unitary executive theory”²⁰ to fiscal administrative infrastructure—an operationally “unitary executive fisc,” controlled by the President as “unitary fiscal executive”—threatens the separation of powers between branches. The Constitution squarely entrusts Congress with the powers of the purse, i.e., creating, spending, borrowing, taxing, and regulating money.²¹ Presidential refusal to spend money appropriated by Congress, known as “impoundment,” is constitutionally prohibited outside of limited, statutorily defined, and presently inapplicable circumstances.²²

19. See Ed Pilkington, *Elon Musk's Doge Team Granted "Full Access" to Federal Payment System*, GUARDIAN (Feb. 2, 2025, at 12:13 ET), <https://www.theguardian.com/technology/2025/feb/02/elon-musk-doge-access-federal-payment-system> [https://perma.cc/CT34-8VL3].

20. The unitary executive theory is premised upon the “bracingly simple” idea that the Constitution grants the executive power in “a president of the United States,” and that consequently, “Congress lacks the power to carve up the executive [branch]” by insulating individual executive agents from presidential control or discretionary appointment. Cass R. Sunstein & Adrian Vermeule, *The Unitary Executive: Past, Present, Future*, 2020 SUP. CT. REV. 83, 83 (2021). Proponents originally claimed only that the President could fire at-will his subordinates in the executive branch, but Trump and his advisors have stretched the doctrine to its logical extremes by arguing that the executive power extends, for example, to permit the President to reject Congress’s power of the purse or even to dissolve an agency altogether. See John Kruzell, *‘Unitary Executive’ Theory May Reach Supreme Court as Trump Wields Sweeping Power*, REUTERS (Feb. 14, 2025), <https://www.reuters.com/legal/unitary-executive-theory-may-reach-supreme-court-trump-wields-sweeping-power-2025-02-14/> [https://perma.cc/9NMS-KRD5]; see also WASH. POST, *All the Times Trump Said the Constitution Let’s [sic] Him Do Whatever He Wants*, at 00:13 (YouTube, July 24, 2019), https://www.youtube.com/watch?v=sl_gO3uOds8 (on file with the Rutgers University Law Review) (“Article II allows me to do whatever I want.”).

21. See U.S. CONST. art. I, §§ 8–9; see also *Norman v. Baltimore & O.R. Co.*, 294 U.S. 240, 303 (1935) (describing Congress’s fiscal supremacy as “derived from the aggregate of” its powers to “lay and collect taxes, to borrow money, to regulate commerce . . . to coin money, regulate the value thereof . . . and the added express power ‘to make [additional] laws . . . necessary and proper’ to execute the other enumerated powers (citation omitted)).

22. See Mark Thomas, *The Overlooked Conundrums of Impoundment*, YALE J. REGUL.: NOTICE & COMMENT (Jan. 28, 2025), <https://www.yalejreg.com/nc/the-overlooked-conundrums-of-impoundment-by-mark-thomas> [https://perma.cc/J7PS-TVQW]. See generally Zachary S. Price, *Trumpian Impoundments in Historical Perspective*, 78 STAN. L. REV. ONLINE 19, 19 (2025) (arguing that Trump’s actions in early 2025 “appeared to reflect both a constitutional argument for a preclusive presidential impoundment prerogative and a practical argument that the executive branch is better suited than Congress to represent the common good in federal spending”); Philip Joyce, *High Noon for Separation of Powers? Trump and the Impoundment Control Act*, 45(4) PUB BUDG. & FIN. 3 (2025) (noting that “many of the practices that we have come to think of as based on laws are based to an even greater extent on adherence to norms,” and that while “the argument that the President should be given more power in the budget process . . . is not a new one,” such arguments

Trump's decision to cross the 'Fiscal Rubicon' by directly commandeering the Treasury's payments systems had, and will continue to have, profound legal, political, and social implications.²³ Almost overnight, he shook up the balance of power both among the three branches and within the executive branch and elevated the issue of overly centralized fiscal design to a first-order constitutional concern.

In doing so, President Trump underscored the basic insight that if political independence requires budgetary independence, and budgetary independence requires the ability to spend money, political independence is, in turn, at least partly a function of payment system design. A nation that allows one person to fully control the operational levers of the fisc is a nation vulnerable to destabilizing technological attacks and political coups. Trump's actions, while destabilizing, have the potential to catalyze positive change by encouraging a long-overdue reimagining and redesign of the federal payment system.

Presently, fiscal administration is both centralized and polycentric, reflecting the fragmented yet entangled public payments architecture of the executive branch and the federal government. The BFS serves as the central coordinating hub for federal monies,²⁴ with the Federal Reserve as its primary fiscal agent.²⁵

were typically "conducted at the margins" as long as the "separation of powers was a widely accepted norm," whereas by contrast, "the argument that the President is not legally required to spend money that has been appropriated . . . is a frontal attack on the separation of powers itself").

23. In addition to the lawsuits challenging Trump's impoundment efforts mentioned *supra* note 9, various consortia have also filed lawsuits challenging various aspects of DOGE's access and involvement with the BFS's payments infrastructure on privacy and data protection grounds. *See, e.g.*, *New York v. Trump*, 767 F. Supp. 3d 44, 55 (S.D.N.Y. 2025); *see also* Request for Emergency Temporary Restraining Order Under Federal Rule of Civil Procedure 65(b) at 3, 7–8, *New York v. Trump*, 767 F. Supp. 3d 44 (S.D.N.Y. 2025) (No. 25-CV-01144) (discussing how states have filed lawsuits seeking preliminary and injunctive relief to stop DOGE's access of the BFS payment system).

24. *See About Us*, BUREAU FISCAL SERV., <https://fiscal.treasury.gov/about.html> [<https://perma.cc/TD53-SP8X>] (last visited Nov. 21, 2025). Under the Miscellaneous Receipts Act, passed in 1849, government officials "receiving money for the Government from any source" are required to "deposit the money in the Treasury as soon as practicable" unless explicitly statutorily authorized. Act of Mar. 3, 1849 § 1, 9 Stat. 398 (1849) (codified at 31 U.S.C. § 3302(b)); *see also* Gillian E. Metzger, *Taking Appropriations Seriously*, 121 COLUM. L. REV. 1075, 1088–89 (2021) (describing Congress's creation of a framework to control spending built around both statutory and agency intervention).

25. *See* Paula V. Hillery & Stephen E. Thompson, *The Federal Reserve Banks as Fiscal Agents and Depositories of the United States*, 86 FED. RES. BULL. 251, 251 (2000) <https://www.federalreserve.gov/pubs/bulletin/2000/0400lead.pdf> [<https://perma.cc/PW6Q-YTBF>].

Simultaneously, however, many departments, agencies, and public entities operate with some degree of budgetary autonomy,²⁶ including by conducting transactions directly with private actors.²⁷ Moreover, public entities regularly engage in intragovernmental transfers and parallel recordkeeping, even while remaining part of the broader consolidated government.²⁸

This “interior” legal, institutional, and technological infrastructure of the fisc is often ignored or downplayed in budget policy discussions. Still, it is critical to ensuring future digital dollar reforms strengthen rather than weaken the integrity of the constitutional order.

To that end, this Article proposes a wholesale reimagining of the fiscal administrative state: a New Digital Fiscal Regime (“NDFR”). Under the NDFR, the House and Senate maintain accounting records of public funds appropriated, drawn, held, spent, and collected across the government. Federal spending is administered at the agency level, with local budget data shared continuously and directly with Congress.

To spend, executive agents obtain spending authority via a “Public Credit line,” recorded against the “Congressional Fiscal Record,” a bicameral digital database. Agents draw on this line, up to statutorily determined qualitative and quantitative limits, via a “Public Credit Card,” issued and administered by Congress. Funds are drawn from the “Congressional Treasury ATM”—a congressionally managed secure central server—and loaded onto local “ePurse” devices, which are connected to each other and the public via a peer-to-peer federated network.

From there, agencies spend directly in accordance with statutory directives and limits, without risk of obstruction by the President or the rest of the executive branch. Congress, in turn, maintains primary responsibility over central ledgers and databases, as well as the administration of the Congressional Treasury ATM server and its Public Credit Card-based permission and access system.

Restructuring the fisc along these lines reinforces the constitutional separation of powers in three ways. First, disintermediating the

26. See, e.g., Application of the Miscellaneous Receipts Act to the Settlement of False Claims Act Suits Concerning Contracts with the General Services Administration, 30 Op. O.L.C. 53, 57 (2006).

27. See *Treasury Disbursing Helps DoD Focus on Mission*, U.S. DEP’T OF THE TREASURY: TRANSFORMATION STORIES (Oct. 24, 2019), <https://fmvision.fiscal.treasury.gov/treasury-disbursing-helps-dod.html> [<https://perma.cc/MC23-RQVZ>].

28. See OFF. OF THE GEN. COUNS., U.S. GOV’T ACCOUNTABILITY OFF., GAO-16-464SP, PRINCIPLES OF FEDERAL APPROPRIATIONS LAW—CHAPTER 2: THE LEGAL FRAMEWORK, at 2-22 to -27 (4th ed. 2016) (describing discretionarily appropriated funds, revolving funds, and non-appropriated fund instrumentalities).

Treasury Department and the Federal Reserve from the public payments process reduces intra-executive branch entanglement. It increases the cost and complexity of direct takeover of the federal government by an authoritarian president. Second, unbundling fiscal policy from public debt management by allowing agencies to spend newly created digital dollars directly increases their budgetary independence. It also practically empowers them to honor constitutional and statutory spending commitments over conflicting presidential directives. Third, streamlining the legislative budget process to resolve longstanding interpretive tensions between statutory spending directives and statutory delegations of financing authority enhances Congress's fine-grained control over executive spending while reducing the risk of it unintentionally causing constitutional fiscal crises.

Recently, U.S. lawmakers and legal scholars have begun to explore the possibility of the federal government issuing retail digital money directly.²⁹ Thus far, these debates have largely focused on central bank digital currencies ("CBDCs"), while ignoring fiscal infrastructure.³⁰ But as the events of early 2025 underscored, digital public payments systems are "small-c" constitutional technologies that also have important ramifications as to the "large-C" Constitution.³¹ Moreover, they are central to Congress's struggle to regain its constitutional dominion over fiscal affairs.

Conceived properly, dollar digitization offers a bridge to a more stable fiscal regime in which the respective functions, responsibilities, and relationships of the legislative, executive, and judicial branches are clearly defined and harmonized. More generally, in our currently fraying constitutional order, digital public money can play a vital part in a larger

29. See, e.g., Lael Brainard, Member, Bd. of Governors of the Fed. Rsrv. Sys., Private Money and Central Bank Money as Payments Go Digital: An Update on CBDC's, Speech at the Consensus by CoinDesk 2021 Conference (May 24, 2021), <https://www.federalreserve.gov/newsevents/speech/brainard20210524a.htm> [<https://perma.cc/24PD-HBGP>] (noting that central banks had "sharpen[ed] the[ir] focus on [Central Bank Digital Currencies]" as a result of, *inter alia*, concerns about financial exclusion and the "growing role of digital private money").

30. Except for narrow discussion of preserving fiscal-monetary policy separation and proposals for new universal cash transfer programs. See, e.g., BANK FOR INT'L SETTLEMENTS, CENTRAL BANK DIGITAL CURRENCIES: FOUNDATIONAL PRINCIPLES AND CORE FEATURES 6–7 (2020), <https://www.bis.org/publ/othp33.htm> [<https://perma.cc/JC6S-XR4E>] (arguing that the use of CBDC to finance emergency relief payments would threaten central bank independence by "blurring the division between monetary and fiscal policy").

31. See CHRISTINE DESAN, MAKING MONEY: COIN, CURRENCY AND THE COMING OF CAPITALISM 1 (2014) (describing money as "a constitutional (small 'c') effort"); Metzger, *supra* note 24, at 1083–84 (arguing for the importance of appropriations law to separation of powers analysis).

political project to revitalize a collective sense of shared identity and common public purpose.³²

Lawmakers thus can and should look to digital dollarization for insights and opportunities to improve the separation of powers between Congress and the executive branch by architecturally embedding constitutional values and imperatives in ways not imaginable under previous technological conditions.

Addressing these challenges will require significant technical capacity and political organizing effort. However, as recent events have demonstrated, the constitutional stakes could not be higher, and maintaining the status quo is no longer an option.

The remainder of this Article proceeds as follows. Part II analyzes four fiscal institutions—the U.S. Department of the Treasury and the Federal Reserve (“the Fed”), the Office of Management and Budget (“OMB”), and the legislative budget process—that function as sources of major constitutional weakness with respect to preserving the separation of fiscal powers between the legislative and executive branches. In particular, this Article argues that these institutions share three characteristics that render them vulnerable to presidential compromise: high procedural entanglement, operational bottlenecks, and ambiguous and contradictory functions. Understanding these characteristics is essential to appreciate the urgent need to develop and implement a new digital dollar infrastructure that reflects and reinforces Congress’s constitutional authority over the creation, regulation, and spending of public money.

Part II offers an affirmative vision of the digital fisc—the NDFR—grounded in a “centralized legislature, decentralized executive” design. In contrast to Trump’s vision of a unitary executive fisc, in which all federal spending is conducted through a single administrative process under his direct control, the NDFR would reinforce the separation of powers and restabilize the constitutional order by reducing the possibility of unitary operational takeover through reducing entanglement and bottlenecks, streamlining operations, and reorienting core fiscal responsibilities back to the legislative branch.

32. See generally JAKOB FEINIG, MORAL ECONOMIES OF MONEY: POLITICS AND THE MONETARY CONSTITUTION OF SOCIETY (2022) (tracing the evolving and contested role of monetary design, issuance, and regulation debates in the American constitutional and democratic traditions).

I. CONSTITUTIONALLY FRAGILE FISCAL INFRASTRUCTURE

Admiral Motti: "This [Death Star] is now the ultimate power in the universe."

Stewie (Darth Vader): "Terrific work. So, no weaknesses at all?"

Motti: "Well, I, I mean, there's this little hole. It was kind of an aesthetic choice by the architect. And if you shoot a laser into this hole, the station blows up."

Stewie: "Whoa, whoa, whoa, whoa, whoa! That sounds like a pretty big design flaw."

Imperial Officer: "[W]e can get [the repair] done tomorrow if price is no object."

Stewie: "Ehhhh . . ."

Imperial Officer: "We'll get estimates."

Stewie: "Get estimates, yeah, yeah."

—Family Guy³³

Monetary regimes are often said to be ‘small-c’ constitutional, in that they constitute the obligations, relationships, and social practices of political communities.³⁴ Yet they also implicate the ‘big-C’ Constitution, in the sense that the institutional, technological, and operational design of money and payment systems both shape and are shaped by how constitutional texts are written, interpreted, and enforced.³⁵ A poorly designed regime can open the door to constitutional crises. At the same time, a well-designed one can safeguard constitutional order and

33. *Family Guy: Blue Harvest* (FOX television broadcast, aired Sep. 23, 2007).

34. See, e.g., DESAN, *supra* note 31, at 1 (describing money as “a constitutional (small ‘c’) effort” and a “mode of mobilizing resources” that “defines authority and distributes material as it operates”).

35. See *id.* at 7–8. See generally Christine Desan, *From Blood to Profit: Making Money in the Practice and Imagery of Early America*, 20 J. POL’Y HIST. 26 (2008) (discussing how politics transformed the American economy); Roy Kreitner, *The Jurisprudence of Global Money*, 11 THEORETICAL INQUIRIES L. 177 (2010) (comparing monetary regimes); WOODY HOLTON, UNRULY AMERICANS AND THE ORIGINS OF THE CONSTITUTION (2007) (highlighting the early struggles between Congress and the average American for how the new country’s payment systems would be formed within the framework of the Constitution).

reinforce the separation of powers between coequal branches of government.³⁶

The ongoing Treasury payment crisis has revealed the U.S. dollar system's vulnerability to constitutional "hacking" by the executive branch through seizure and operational manipulation of highly centralized technical bottlenecks in the public payments system.³⁷ The existing fiscal architecture exacerbates the risk of presidential encroachment into Congress's powers of the purse. To that end, the rest of this Part focuses on four budgetary institutions—the Treasury, the Fed, OMB, and the legislative budget process—that serve as major sources of constitutional weakness with respect to preserving the separation of fiscal powers between the legislative and executive branches.

This Part argues that they all share or embody three characteristics that render them vulnerable to presidential compromise: high procedural entanglement, operational bottlenecks, and ambiguous and contradictory functions. Together, they underscore the urgent need to develop and implement new digital dollar infrastructure to recover and reinforce Congress's constitutional authority over the creation, regulation, and spending of public money.

A. *The Treasury & the Fed*

Although now squarely part of the executive branch, the founders' original understanding of the Treasury Department was constitutionally more ambiguous, reflecting its special relationship with Congress as the

36. The Constitution both grants the federal government the tax power and restricts states from issuing their own monies in direct response to the failure of the earlier continental monetary regime, which experienced rampant inflation. *See generally* HOLTON, *supra* note 35, at 8 (explaining that many states early on printed their own paper, which led to rampant inflation and a disorganized economy); Farley Grubb, *The US Constitution and Monetary Powers: An Analysis of the 1787 Constitutional Convention and the Constitutional Transformation of the US Monetary System*, 13 FIN. HIST. REV. 43 (2006) (discussing the transfer to a federal monetary system where the federal government has the power to tax and coin money).

37. *See* Nathan Tankus, *Musk In Your Computers: Paul Krugman Interviews Nathan Tankus*, SUBSTACK: NOTES ON THE CRISES (Mar. 1, 2025), <https://www.crisisnotes.com/musk-in-your-computers-paul-krugman-interviews-nathan-tankus/> (on file with the Rutgers University Law Review); Shayna Jacobs, *Judge Orders Ban on DOGE from Access to Sensitive Treasury Data*, WASH. POST (Feb. 21, 2025), <https://www.washingtonpost.com/national-security/2025/02/21/doge-treasury-data-access> (on file with the Rutgers University Law Review).

primary institutional embodiment of its powers of the purse.³⁸ As Josh Chafetz recently noted:

[T]he earliest congresses made clear that they understood themselves to have special responsibility for matters of the purse. When it came time to set up the first three departments, two of them—Foreign Affairs and War—were expressly denominated “Executive department[s],” and their organic statutes specified that their heads were to carry out orders from the president.

By contrast, the organic act for the Treasury Department did *not* refer to it as an “executive” department. Moreover, the act says nothing about taking direction from the president, but it does create specific reporting requirements to Congress. In short, the Treasury was understood as being not simply a creation of Congress, but a continuing arm of Congress.³⁹

Today, the Treasury serves as a central coordinating and clearing hub for federal spending, revenue, and deficit-financing operations.⁴⁰ It does this primarily through receiving funds and making transfers to, from, and on behalf of other agencies through accounts administered by its fiscal agent: the Fed.⁴¹ In doing so, both the Treasury and the Fed function as critical procedural and infrastructural bottlenecks in the broader fiscal administrative process, while facing competing pressures from other agencies’ statutory obligations, their own institutional interests, and the President’s policy agenda and directives.

1. Spending, Borrowing, and “Printing”

The constitutional and political dynamics of government financing are fundamentally structured by, if not fully reducible to, the question of which government entities have the statutory authority and

38. See *Hearing on Protecting Congress’s Power of the Purse and the Rule of Law: Hearing Before the H. Comm. on the Budget*, 116th Cong. 18 (2020) (Prepared Statement of Josh Chafetz, Professor of Law, Cornell Law School). Cf. Christine Kexel Chabot, *Is the Federal Reserve Constitutional? An Originalist Argument for Independent Agencies*, 96 NOTRE DAME L. REV. 1, 32–47 (2020) (discussing the early congressional establishment of the budgetarily independent sinking fund and its accompanying Commission for the purpose of buying and selling government securities to stabilize the value of and maintain liquidity in the public debt).

39. Chafetz, *supra* note 38, at 18.

40. See *Role of the Treasury*, U.S. DEPT OF THE TREASURY (Oct. 21, 2025), <https://home.treasury.gov/about/general-information/role-of-the-treasury> [<https://perma.cc/S5SS-Z39J>].

41. See *supra* notes 24–25 and accompanying text.

constitutional responsibility to create and spend “fiscally significant” forms of public money in accordance with Congress’s statutory spending directives. The ability to create dollars in *some* form alone is not sufficient. What is needed is proximity or access to, if not direct control over, the core retail money used in the public payments system.

Treasury spending obligations are settled with end-recipients through a range of last-mile mechanisms—most commonly bank transfers.⁴² Separately, the BFS provides its own standardized yet customizable white-label public debit card product, which it makes available to other public sector entities, including state and local governments.⁴³ While the public entity listed as “issuing” the debit card varies,⁴⁴ the actual physical card itself—as well as the payments software and back-end account it connects to—are all centrally administered by the BFS’s partnering bank agent.⁴⁵

Federal debit card services offered by the BFS do not directly rely on publicly issued dollars. Instead, they are linked to FDIC-insured deposit account balances held at the BFS’s partnering commercial bank,⁴⁶ which in turn holds reserve balances at the Fed.⁴⁷ Typically, other agencies or government actors transfer funds to Treasury’s reserve account, and the BFS then transfers them onward to its partnering bank’s reserve account after accounting for clearing, hold-backs, or other charges.⁴⁸ At that point, they become available to the end recipient as commercial bank deposit balances, and both interbank transfer and back-end reserve

42. As early as 2002, electronic funds transfers accounted for seventy-six percent of total government payments. U.S. GEN. ACCT. OFF., GAO-02-913, ELECTRONIC TRANSFERS: USE BY FEDERAL PAYMENT RECIPIENTS HAS INCREASED BUT OBSTACLES TO GREATER PARTICIPATION REMAIN 9 (2002).

43. Bureau of the Fiscal Serv., *U.S. Debit Card*, U.S. DEP’T OF THE TREASURY (Dec. 22, 2023), <https://fiscal.treasury.gov/us-debit-card> [<https://perma.cc/DYV2-8LRW>].

44. See, e.g., Bureau of the Fiscal Serv., *Home*, U.S. DEBIT CARD, <https://www.usdebitcard.gov/> [<https://perma.cc/3RNQ-CJCN>] (last visited Nov. 23, 2025) (providing example image of a U.S. Debit Card with the issuing entity included).

45. See, e.g., *BNY to Manage U.S. Department of the Treasury’s Largest Prepaid Debit Card Program for Federal Benefits - Direct Express*, BNY (Nov. 21, 2024), <https://www.bny.com/corporate/global/en/about-us/newsroom/press-release/bny-to-manage-us-department-of-the-treasurypercent27s-largest-pr-130414.html> [<https://perma.cc/48M5-PB9T>].

46. See *id.*

47. See generally Gara Afonso et al., *Reserves and Where to Find Them*, FED. RSRV. BANK OF N.Y.: LIBERTY ST. ECON. (June 23, 2025), <https://libertystreeteconomics.newyorkfed.org/2025/06/reserves-and-where-to-find-them/> [<https://perma.cc/WRM4-WER9>] (outlining the general relationship between commercial banks and the Fed).

48. See Joan E. Lovett, *Treasury Tax and Loan Accounts and Federal Reserve Open Market Operations*, FED. RSRV. Q. REV., Summer 1978, at 41, 41–46.

settlement operations are subsequently processed identically to any other regular commercial bank transaction.⁴⁹

In effect, this allows the Treasury to indirectly issue its own form of retail bank money directly to end recipients and then rely on “generic” Fed commercial banking infrastructure for subsequent payments processing.⁵⁰ This process contrasts with those for sending checks and making direct bank transfers, both of which require the Fed to process reserve settlement requests directly from the Treasury’s own reserve account through a specialized intragovernmental process.⁵¹

Although each of these processes involves notably different front-end dynamics, the back-end settlement process is ultimately the same: transfer of digital balances from a government reserve account at the Fed to a private entity’s reserve account at the Fed.⁵²

Separately, the Treasury also issues digital debt securities.⁵³ In contrast to coins and notes, Treasury debt is typically sold at a positive interest rate and with a positive maturity.⁵⁴ In some contexts, the Treasury directly and indirectly sets or caps the interest rates it is willing to pay.⁵⁵ Normally, however, interest rates are superficially set by markets, and at a deeper level by the Federal Reserve through its monetary policy operations.⁵⁶

49. *Id.*

50. *Id.*

51. See generally *Treasury Financial Manual*, U.S. DEPT OF THE TREASURY: TREASURY FIN. EXPERIENCE, <https://tfx.treasury.gov/tfm> [<https://perma.cc/M7FB-Z5ZR>] (last visited Mar. 30, 2026) (providing an overview of the Fed’s process for processing checks and direct bank transfers).

52. See generally Adam Copeland & Sarah Yu Wang, *The Dueling Intraday Demands on Reserves*, FED. RSRV. BANK OF N.Y.: LIBERTY ST. ECON., (Oct. 21, 2024), <https://libertystreeteconomics.newyorkfed.org/2024/10/the-dueling-intraday-demands-on-reserves> [<https://perma.cc/WT5R-DBGE>] (discussing the Fed’s different interbank settlement and liquidity operations).

53. See generally Kenneth D. Garbade & Jeffrey F. Ingber, *The Treasury Auction Process: Objectives, Structure, and Recent Adaptations*, 11 CURRENT ISSUES ECON. & FIN. (2005) (describing the types of securities the Fed auctions as well as the process involved in these auctions).

54. See *id.* at 1–2.

55. For example, TreasuryDirect portal, available only to retail investors and administered directly by the Treasury, offers fixed-rate savings and inflation-protected bonds to individuals, within aggregate limits. See *About U.S. Savings Bonds*, TREASURYDIRECT, <https://www.treasurydirect.gov/savings-bonds> [<https://perma.cc/XA6Q-67NN>] (last visited Oct. 17, 2025).

56. See Ben S. Bernanke, *The New Tools of Monetary Policy*, 110 AM. ECON. REV. 943, 945–46 (2020) (noting that even when short-term rates reach their lower bound, it remains possible “to add stimulus by operating on longer-term interest rates and other asset prices and yields”).

Perhaps surprisingly, Treasury debt certificates were among the earliest forms of circulating paper money, in part due to the government's willingness to accept them back at face value prior to maturity.⁵⁷ As part of this system, the Treasury would literally *spend* the debt into existence, just as with coins and currency notes, rather than *sell* it to acquire other funds to then spend.

Today, Treasury debt primarily functions as 'wholesale' money—i.e., designed for institutional investors—by serving as the primary collateral asset underlying the U.S. money markets and global dollar-based financial system more broadly.⁵⁸

These two forms of digital public money issuance—"Fed reserves" and "Treasury debt"—are loosely connected through the Treasury's practice of avoiding running an inter-day overdraft on its primary reserve account at the Fed, which is used to process most end-payments on behalf of the entire federal government.⁵⁹ This practice ostensibly compels the

57. Between 1812 and 1815, for example, the Treasury authorized five issues of interest-bearing notes in denominations of between \$3 and \$1,000, totaling over \$36 million, which circulated widely and were generally accepted as money by banks and merchants. See Donald H. Kagin, *Monetary Aspects of the Treasury Notes of the War of 1812*, 44 J. ECON. HIST. 69, 69 (1984).

58. See generally ZOLTAN POZSAR ET AL., FED RSRV. BANK N.Y., STAFF REP. NO. 458, SHADOW BANKING (2012), https://www.newyorkfed.org/medialibrary/media/research/staff_reports/sr458.pdf [https://perma.cc/R469-BBH7] (laying out the different "layers" of public money that exist in the United States, with treasuries at the top). Ironically, it is wholesale Treasury debt infrastructure that today provides the greater degree of "fiscal moneyiness" from a consumer perspective. See generally JP Koning, *Why Moneyiness?*, MONEYNESS (Dec. 21, 2012), <https://www.moneyiness.ca/2012/12/why-moneyiness.html> [https://perma.cc/Q769-97Z4] (defining "moneyiness" as a framework for monetary analysis which refutes the traditional "money vs. non-money" dichotomy in asset classification and instead embraces ambiguity and "the idea of a liquidity premium that inheres in all assets."). This is due to its tight integration with the regular retail payments system via money market accounts, which provide deposit like account services backed by a large pool of commonly held Treasury securities. See Lorraine Roberte, *Money Market Account: How It Works and How It Differs from Other Bank Accounts*, INVESTOPEDIA (Nov. 13, 2025), <https://www.investopedia.com/terms/m/moneymarketaccount.asp> [https://perma.cc/ZD9A-B9CQ]; Adam Hayes, *Understanding Money Market Yield: Definition, Calculation, and Example*, INVESTOPEDIA (Aug. 30, 2025), <https://www.investopedia.com/terms/m/money-market-yield.asp> [https://perma.cc/Y7GU-FN95].

59. See generally *Daily Treasury Statement (DTS)*, U.S. DEP'T OF THE TREASURY, <https://fiscaldata.treasury.gov/datasets/daily-treasury-statement/operating-cash-balance> [https://perma.cc/5SU5-49TP] (showing the operating cash balance of the Treasury's primary reserve account at the Fed). Since explicit overdraft authority was removed in 1980, the Treasury has acted as if effectively prohibited to run an inter-day (but not intraday) overdraft. See generally KENNETH D. GARBADE, FED. RSRV. BANK OF N.Y., STAFF REP. NO. 684, DIRECT PURCHASES OF U.S. TREASURY SECURITIES BY FEDERAL RESERVE BANKS (2014), https://www.newyorkfed.org/medialibrary/media/research/staff_reports/sr684.pdf [https://perma.cc/3ATJ-AEGM] (explaining how the

Treasury to periodically sell additional securities to acquire additional reserve balances and keep honoring federal spending commitments administered through its account.⁶⁰

2. Payments, Not Money

An illustrative example of the practical importance of being able to create not just “money” but “fiscally significant money” is the U.S. Mint. The Mint has enjoyed exclusive, continuous jurisdiction over coinage since its inception in the 1790s,⁶¹ preceding the creation of the Fed by over a century.⁶² Today, it enjoys statutory budget independence equivalent to that of the Federal Reserve insofar as both are exempt from the congressional appropriations process.⁶³

Presently, the Mint issues circulating coins primarily by distributing them to Federal Reserve Banks, who in turn distribute them to

Treasury’s previously enjoyed ability to directly purchase securities from the Fed—rather than in the open market—effectively gave them the ability to overdraft if needed and functioned as a line of credit); JP Koning, *The Final Draft on Fed-Treasury Overdrafts*, MONEYNESS (Dec. 27, 2012), <http://jpkoning.blogspot.com/2012/12/the-final-draft-on-fed-treasury.html> [<https://perma.cc/GQF5-ETNT>] (discussing the impermissibility of Treasury overdraft capabilities).

60. The Treasury occasionally also sells securities for other purposes. *See, e.g., Statement Regarding Supplementary Financing Program*, FED. RSRV. BANK OF N.Y. (Sep. 17, 2008), https://www.newyorkfed.org/markets/statement_091708.html [<https://perma.cc/UE8Y-UC7K>] (announcing a supplementary Treasury auction facility, “separate from Treasury’s current borrowing program . . . [To] drain reserves from the banking system, and . . . therefore offset . . . recent Federal Reserve lending and liquidity initiatives”).

61. *See* DAVID W. LANGE & MARY JO MEAD, *HISTORY OF THE UNITED STATES MINT AND ITS COINAGE* 24 (2006).

62. *See Federal Reserve History*, BD. GOVERNORS FED. RSRV. SYS. (Apr. 21, 2017), <https://www.federalreserve.gov/aboutthefed/centennial/about.htm> [<https://perma.cc/M2XJ-D3T3>]. In this sense, the Fed has only ever at best *shared* responsibility over money creation with the Treasury.

63. *See* The Federal Reserve Act § 10(3), 12 U.S.C. § 243 (authorizing self-funding via assessments on Federal Reserve Banks); 31 U.S.C. § 5136 (creating the United States Mint Public Enterprise Fund). In 2024, the Mint transferred \$608.5 million in seigniorage income to the Treasury. *See* 2024 U.S. MINT ANN. REP. 8, <https://www.usmint.gov/content/dam/usmint/reports/2024-annual-report.pdf> [<https://perma.cc/J9UJ-A4FX>] [hereinafter U.S. MINT]. By contrast, the Bureau of Engraving and Printing sells printed notes at cost to the Federal Reserve, who then sells them at their nominal face value to banks, and pays the Bureau a negotiated fee to cover operating expenses and maintain its internal revolving operating fund. *See* U.S. GOV’T ACCOUNTABILITY OFF., GAO-18-338, *BUREAU OF ENGRAVING AND PRINTING: OPTIONS FOR AND COSTS OF A FUTURE CURRENCY PRODUCTION FACILITY* 4 (2018), <https://www.gao.gov/assets/gao-18-338.pdf> [<https://perma.cc/37CM-EL4S>].

commercial banks.⁶⁴ Additionally, like most other government entities, it also holds its operating funds—which it uses to pay employees and procure goods and services—as reserve balances in accounts managed by the Fed.⁶⁵ Together, this means that the Mint, despite enjoying the legal power to fund itself through the creation of widely accepted retail money, is still effectively dependent on the Fed for both internal and external day-to-day fiscal administration and payments processing.

3. Consolidating Debt Management

The Fed periodically purchases new coins from the Mint in order to make them available to its commercial bank affiliates.⁶⁶ Separately, the Treasury also deposits old coins collected through its agents with the Fed.⁶⁷ Although the legal treatment of coin sales and deposits differs, the Fed's balance sheet operation is identical: it acquires a safe monetary asset—U.S. legal tender—by issuing its own liability—digital settlement balance—which the Treasury then uses as *its* safe monetary asset.⁶⁸ In

64. Stephanie Meredith, *How Coins Are Made: Bringing Coins into Circulation*, U.S. MINT (Sep. 21, 2020), <https://www.usmint.gov/news/inside-the-mint/how-coins-are-made-bringing-coins-into-circulation> [<https://perma.cc/E448-9WEF>]. At the time of the Mint's founding, gold coins circulated as scarce "high value" money that accompanied more widely used "low value" money in the form of paper notes and bills. As the United States weaned itself off a metallic currency standard, the economic significance of coins—and thus the payments system centrality of the Mint—decreased. *See generally* Farley Grubb, *Is Paper Money Just Paper Money? Experimentation and Variation in the Paper Monies Issued by the American Colonies from 1690 to 1775*, NAT'L BUREAU ECON. RSCH. (Nat'l Bureau of Econ. Rsch., Working Paper No. 17997, 2012) (examining early American colonial experimentation in paper monies driven by scarcity of metallic coins).

65. *See* GEN. LEDGER & ADVISORY BRANCH, U.S. DEP'T OF THE TREASURY, GENERAL FUND RECEIPT ACCOUNT (GFR) GUIDE: SCENARIO 7: NON-CUSTODIAL STATEMENT COLLECTIONS: SEIGNORAGE 7 (2021), <https://web.archive.org/web/20250610185116/https://www.fiscal.treasury.gov/files/ussgl/general-fund-receipt-account-scenario-7.pdf> (describing that the Treasury holds its operating funds with the Fed).

66. *See* U.S. MINT, *supra* note 63, at 10.

67. *See* Heather Hennerich, *How Do Coins Get to Where They're Needed?*, FED. RSRV. BANK OF ST. LOUIS (Sep. 23, 2020), <https://www.stlouisfed.org/open-vault/2020/september/how-coins-get-where-needed> [<https://perma.cc/SAR7-KUG7>].

68. *See Factors Affecting Reserve Balances – H.4.1*, BD. OF GOVERNORS OF THE FED. RSRV. SYS. (Nov. 20, 2025), <https://www.federalreserve.gov/releases/h41/current/default.htm> [<https://perma.cc/933E-G53C>] (updating the status of the Fed's balance sheet weekly). The Federal Reserve elects to pay positive interest balances on the Treasury's reserve balances as part of general liquidity and interest rate management. *See generally* Scott T. Fullwiler, *Paying Interest on Reserve Balances: It's More Significant Than You Think*, 39 J. ECON. ISSUES 543 (2005) (discussing implications of paying interest on reserve balances for both the Federal Reserve and Treasury Department).

effect, the Fed is laundering the Treasury's coin into a more widely usable form of "digital fiscal money"—its own reserve balances.⁶⁹

Both of these processes are direct transactions between the Treasury and Fed, conducted under the Fed's responsibilities as a fiscal agent.⁷⁰ By contrast, the Fed is statutorily restricted from purchasing Treasury debt except on the open market.⁷¹ Nevertheless, the Treasury and the Fed have mostly worked around the latter constraint through the creation of a complex process involving private third-party dealer intermediaries, as well as indirect Fed backstopping of Treasury debt market liquidity and price conditions.⁷²

The secular trajectory of Congress-Treasury fiscal relations in the United States over the past century and a half has been towards less legislative micromanagement of aggregate spending and revenue levels.⁷³ At the same time, Congress has consolidated and delegated discretionary responsibility for public debt management in the Treasury.⁷⁴ Together, these trends have empowered the Treasury to more flexibly accommodate Congress's fundamental fiscal directives, while also promoting greater entanglement between the Treasury and other agencies seeking to meet their own statutory spending obligations.⁷⁵ This, in turn, has cemented the Treasury's role as the primary institutional gatekeeper of federal deficit financing capacity.

In addition to issuing publicly circulating debt to meet its own funding needs, the Treasury is separately responsible for centrally coordinating and intermediating intragovernmental debt issuance on behalf of other agencies and other public actors. In keeping with the

69. See generally Rohan Grey, *Administering Money: Coinage, Debt Crises, and the Future of Fiscal Policy*, 109 KY. L.J. 229 (2020) (arguing that this laundering extends to the ability to sidestep the debt ceiling by minting a trillion dollar coin and subsequently depositing it with the Fed, under a broad reading of existing coinage law, a proposal which serves as an "imaginative catalyst" to "invite and challenge us to collectively develop new monetary myths and budgetary practices better suited to our modern context and needs").

70. See generally Hillery & Thompson, *supra* note 25 (describing the Fed's responsibilities as a fiscal agent).

71. See GARBADE, *supra* note 59, at 20–21.

72. See Stephanie Kelton & Scott Fullwiler, *Guest Post: The Helicopter Can Drop Money, Gather Bonds or Just Fly Away*, FIN. TIMES (Dec. 12, 2013), <https://www.ft.com/content/227b3e08-c44e-3f35-8236-18a3c82c9f77> (on file with the Rutgers University Law Review) (explaining the operational mechanics of Treasury-Fed coordination).

73. Grey, *supra* note 69, at 235–38. This macro-trend is seen at the program level, where, as discussed in the next Section, responsibility over day-to-day infra-statutory funding oversight has been largely delegated—or ceded—to the Office of Management and Budget, under close direction of the President.

74. See *id.*

75. See *id.* at 238–41.

historical practice of routing all public funds and payments through the Treasury,⁷⁶ most public agencies directed by Congress to issue debt to finance spending in excess of revenue or budgetary allocations do so by selling non-marketable securities to the Federal Financing Bank (“FFB”), a sub-branch of the U.S. Treasury Department.⁷⁷ The FFB, in turn, finances the acquisition by relying upon its statutorily granted authority to borrow from the Treasury without limit.⁷⁸ Notably, the FFB’s lending authority is negotiated and established outside the regular debt ceiling re-suspension process, and is not counted against the debt ceiling limit, even as the securities themselves are functionally identical to those subject to the ceiling limit.⁷⁹

In its best light, the FFB process promotes consistency between deficit financing costs across different government agencies, as well as the uniformity and standardization of government debt markets.⁸⁰ Viewed critically, however, it increases the logistical complexity of agency fund procurement, promotes budgetary entanglement between the Treasury and the rest of the federal government, and establishes the

76. 31 U.S.C. § 3302(c). For detailed accounts of the history and operational significance of the Miscellaneous Receipts Act, see Kate Stith, *Congress’ Power of Purse*, 97 YALE L.J. 1343, 1364–66 (1988); Application of the Miscellaneous Receipts Act to the Settlement of False Claims Act Suits Concerning Contracts with the General Services Administration, 30 Op. O.L.C. 53, 55–58 (2006).

77. See generally OFF. OF THE INSPECTOR GEN., U.S. DEPT OF THE TREASURY, OIG-21-005, AUDIT OF THE FEDERAL FINANCING BANK’S FINANCIAL STATEMENTS FOR FISCAL YEARS 2020 AND 2019, at 1 (2020), <https://ffb.treasury.gov/assets/files/FY2020.pdf> [https://perma.cc/AM35-W879] (“The mission of the Bank is to reduce the costs of Federal and federally assisted borrowings, to coordinate such borrowings with the Government’s overall fiscal policy, and to ensure that such borrowings are done in ways that least disrupt private markets.”); Coleen C. Pantalone & Marjorie B. Platt, *The Federal Financing Bank: Harbinger of the Federal Deficit*, 21 BUS. ECON. 46 (1986) (arguing the FFB allows Congress to circumvent the ordinary appropriations process).

78. See 12 U.S.C. § 2288(b). The FFB could alternatively issue Treasury securities into private circulation, *id.* § 2288(a), though it generally does not do so. U.S. DEPT OF THE TREASURY, DESCRIPTION OF THE EXTRAORDINARY MEASURES 4 (2025), <https://home.treasury.gov/system/files/136/DescriptionofExtraordinaryMeasures20250117.pdf> [https://perma.cc/JD2K-FUZK]. However, as discussed, the Treasury ordinarily issues securities into private circulation on the back end.

79. See Pantalone & Platt, *supra* note 77, at 48 (noting that the FFB was structured as an “off-budget” entity to avoid the double-counting problem with the agency debt it purchased).

80. In rare cases, agencies and government-sponsored enterprises are granted authority to issue their own securities directly into circulation—independent of the Treasury—much as the Mint issues coins independently. Grey, *supra* note 69, at 242. Their legal and accounting treatment varies widely. See, e.g., Arnold R. Jones, *The Financing of TVA*, 26 L. & CONTEMP. PROBS. 725, 729–30 (1961); LAURENCE B. ROBBINS, U.S. DEPT OF THE TREASURY, FINAL REPORT ON THE RECONSTRUCTION FINANCE CORPORATION 40–43 (1959).

Treasury—via the FFB—as a primary institutional bottleneck in the federal financing process.⁸¹ In doing so, it promotes constitutional fragility by centralizing intragovernmental deficit-financing capacity in the hands of the Treasury Secretary, at the expense of the agencies statutorily required to use that capacity to honor their own spending obligations.⁸²

The FFB is legally obligated to make its “debt laundering” services available to other agencies in accordance with statutory budget directives.⁸³ Although, in practice, the process of negotiating and formalizing these financing arrangements remains discretionary and subject to political manipulation,⁸⁴ as evidenced by Treasury Secretary Mnuchin’s actions during the first Trump administration.

In 2019 and 2020, Secretary Mnuchin twice used the FFB as a tool in the Trump administration’s ongoing battle to weaken the U.S. Postal Service.⁸⁵ In August 2019, the Treasury failed to renew its longstanding note purchase agreement with the U.S. Postal Service, an agreement in place since 1999, which “provided a convenient and flexible mechanism for USPS to fund its operations.”⁸⁶ In negotiations, the FFB attempted to condition the continuation of this agreement on the USPS “potentially ced[ing] to FFB the decision-making authority” for important matters.⁸⁷ In 2020, Treasury Secretary Mnuchin again attempted to deny the Postal Service access to FFB financing—this time, a dedicated \$10 billion lending facility that had been established under the CARES Act—unless it agreed to “surrender its authority” and hand over “operating control”

81. See Pantalone & Platt, *supra* note 77, at 48–50.

82. But see Gillian Metzger, *Agencies, Polarization, and the States*, 115 COLUM. L. REV. 1739, 1742–72 (2015) (critiquing the view of agencies as passive, “acted-upon” agents in accounts of contemporary polarization and presidential unilateralism, and arguing instead that agencies use “broad grants of preexisting authority” to press Congress and reshape policy and law, “often at presidential instigation”).

83. 12 U.S.C. § 2285.

84. See *Developments in the Law—Presidential Authority*, 125 HARV. L. REV. 2057, 2073–74 (2012) (discussing President Reagan’s use of a signing statement on a 1986 supplemental appropriations bill to indicate his intent to establish FFB regulations to “ensure” relief under the act would be “extended only to the most financially troubled borrowers” and limited to ensure “no adverse [budgetary] affect”).

85. See generally Chris Shenton, *Timeline: The Trump Administration and the U.S. Postal Service*, JUST SEC. (Aug. 24, 2020), <https://www.justsecurity.org/72132/the-trump-administration-and-the-u-s-postal-service-a-timeline/> [https://perma.cc/DEL8-RGUN] (detailing the administration’s actions against the USPS in Trump’s first term).

86. USPS, Current Report (Form 8-K), at 2 (Aug. 31, 2019).

87. Letter from Thomas J. Marshall, Gen. Couns., USPS, to Steven D. Laughton, Assistant Gen. Couns., U.S. Dep’t of the Treasury (May 31, 2019), <https://www.americanoversight.org/wp-content/uploads/2020/09/AO-USPS-KeyWords.pdf> [https://perma.cc/4SCK-3QXR] (appearing on page 165 of pdf).

to the Treasury.⁸⁸ Mnuchin publicly stated that the loan would not be granted unless USPS agreed to his desired changes concerning shipping price increases.⁸⁹ Eventually, he conceded, providing the funding without any such agreement from the Postal Service, following mounting public pressure and criticism.⁹⁰

Since then, the incidents have been largely forgotten. With hindsight, however, they retroactively take on additional precursive weight as canaries in the coal mine for Trump 2.0's DOGE-led assault on the BFS. Back then, the infrastructural choke point was intragovernmental debt management; today it is intragovernmental payments processing. In both instances, agencies trying to uphold their independent constitutional and statutory spending obligations face obstruction from the President's weaponized control of centralized fiscal infrastructure that, until then, had historically been managed by the Treasury on behalf of the federal bureaucracy on an independent, apolitical, and technical basis.

4. Politicizing Debt Crises

One way that Congress exercises fiscal leverage over the executive—and itself—is through the establishment and periodic resuspension of the debt ceiling, which sets a total cap on the number of interest-bearing securities that the Treasury can issue.⁹¹

The debt ceiling was first introduced in 1917 to replace an earlier system, in which each agency—and sometimes even each spending program—had its own financing authority, and each public monetary instrument had its own individual issuance cap.⁹² Somewhat surprisingly, the ceiling's original function was not to constrain Treasury officials in their financing operations, but to provide them with greater flexibility over internal budgeting and public debt management in light

88. Alison Durkee, *Treasury Tried to Take Over Postal Service Control, Docs Show*, FORBES (Sep. 17, 2020, at 17:11 ET), <https://www.forbes.com/sites/alisondurkee/2020/09/17/treasury-tried-to-take-over-postal-service-control-mnuchin-trump-administration-american-oversight/?sh=7ce2d00159be> [https://perma.cc/LE8W-ZCS2].

89. Justine Coleman, *Postal Service Reaches Agreement for \$10B Loan from Treasury 'Should the Need Arise'*, HILL (July 29, 2020, at 15:02 ET), <https://thehill.com/policy/finance/509631-postal-service-reaches-agreement-for-10-billion-loan-from-treasury-should-the/> [https://perma.cc/7ZTN-H7Z3].

90. *See id.*

91. 31 U.S.C. § 3101(b) ("The face amount of obligations . . . whose principal and interest are guaranteed . . . may not be more than [x] outstanding . . .").

92. *See* Grey, *supra* note 69, at 235.

of the growing size and complexity of the twentieth-century administrative state, particularly during wartime.⁹³

For decades, the debt ceiling was raised routinely, reflecting a general bipartisan consensus that it was an operational rather than ideological matter.⁹⁴ By the 1980s, however, it had become a political football, with both members of Congress and the President attempting to leverage the threat of a federal financing crisis to secure particular budgetary and legislative concessions from their rivals.⁹⁵ Since 1982, partisan disputes over raising the debt ceiling have led to recurrent and increasingly severe government shutdowns, sequestrations, and concern that the United States will default on its financial obligations.⁹⁶

In response, Congress has taken the awkward half-step of rendering the ceiling functionally non-operational while simultaneously preserving its political salience in the budget process. In 2013, Congress ceased periodically increasing the debt ceiling based on prospective spending estimates for the upcoming budget period and began suspending the cap by default for fixed periods, then resuspending it almost immediately when the prior suspension expires.⁹⁷

This creates a biphasic dynamic, in which extended periods of tranquility are periodically ruptured by bursts of intensity and uncertainty. During calm periods, the Treasury Secretary effectively enjoys complete discretion in issuing Treasury securities in amounts deemed necessary to meet the needs of the United States. By contrast, during the temporary negotiation periods when the ceiling is “in effect,” the Treasury Secretary is often forced to undertake various “extraordinary measures”—including accounting gimmicks and drawing funds from other public accounts—to source additional funding and avoid the Treasury incurring a negative inter-day operating balance.⁹⁸

Thus far, no debt ceiling crisis has reached a so-called “fiscal cliff” where the Treasury Secretary is forced to announce that the government

93. *See id.* at 235–41.

94. *See id.* at 236–38.

95. *Id.* at 253–56.

96. *Id.*

97. *Id.* at 256. The debt ceiling has been resuspended eight times since 2013. D. ANDREW AUSTIN, CONG. RSCH. SERV., IN11829, DEBT LIMIT SUSPENSIONS 1 (2025). *See* D. ANDREW AUSTIN, CONG. RSCH. SERV., IN12045, FEDERAL DEBT AND THE DEBT LIMIT IN 2025, at 1 (2025) [hereinafter AUSTIN, FEDERAL DEBT]. *See generally* Fiscal Responsibility Act of 2023, Pub. L. No. 118-5, § 401, 137 Stat. 48 (2023) (suspending the debt limit through Jan. 1, 2025).

98. *See* Grey, *supra* note 69, at 253–55 (discussing the history of the Treasury Secretary’s use of extraordinary measures).

lacks the funds to continue honoring general spending commitments.⁹⁹ Nevertheless, multiple Treasury Secretaries have expressed concern about its imminent possibility in the event of future prolonged failure to reach legislative agreement over debt ceiling resuspension.¹⁰⁰

While facially reasonable, such assertions are constitutionally problematic for two reasons. First, the determination that the executive branch has exhausted its available measures and therefore cannot continue to finance its obligations under a given debt limit, while appearing objective, is ultimately a subjective value judgment made by the Treasury Secretary.¹⁰¹ By asserting the power to decide which plausibly legal “extraordinary” mechanisms are worth attempting and which are not, the executive branch effectively asserts the right to determine the extent to which Congress’s spending and debt ceiling directives should be seen as—and thus are—in direct conflict.¹⁰²

Second, even if federal budgetary and debt ceiling directives did come into direct, unavoidable conflict, that alone would not inherently justify or require the metaphorical driving over the fiscal cliff by prioritizing the debt ceiling over Congress’s expressly stated spending directives.¹⁰³ For

99. *Debt Limit*, U.S. DEPT OF THE TREASURY, <https://home.treasury.gov/policy-issues/financial-markets-financial-institutions-and-fiscal-service/debt-limit> [https://perma.cc/YLR2-GGCR] (last visited Oct. 29, 2025). Note that this Article—like Grey, *supra* note 69—presupposes that the Treasury Secretary not only would not have to take this action, but that they are likely constitutionally prohibited from doing so. But it remains the government’s official position that they would.

100. See AUSTIN, FEDERAL DEBT, *supra* note 97, at 2.

101. See generally Grey, *supra* note 69, at 255 (discussing warnings by past Treasury secretaries during debt ceiling negotiations that extraordinary measures would soon be exhausted).

102. Regardless of whether the Secretary would ultimately be proven correct in their prediction of the eventual judicial outcome of a legal challenge to the attempted use of a specific novel financing mechanism, the very fact that they are discretionarily empowered to determine when “enough is enough” means the final practical determination of whether or not a “fiscal cliff” occurs on any day is ultimately up to them—and by extension, the President—rather than Congress. See generally Nathan Tankus, *The Fed Will Have to Accept the \$1tn Platinum Coin: So Just MTFC Already*, FIN. TIMES: FT ALPHAVILLE (Jan. 18, 2023), <https://www.ft.com/content/3e9d6924-42af-4892-951e-dee36a020ea7> (on file with the Rutgers University Law Review) (discussing the Treasury’s hesitancy to engage in an extraordinary measure based on potential pushback from the Fed and an ensuing legal challenge); Nathan Tankus, *Three Questions for Fed Chair Jay Powell: About the Platinum Coin and the US Constitution*, FIN. TIMES: FT ALPHAVILLE (Jan. 31, 2023), <https://www.ft.com/content/afb6ef8f-be7c-45ac-8a7d-56550b64fd9e> (on file with the Rutgers University Law Review) (“[D]o Fed officials believe that their judgment on constitutional questions supersedes the executive branch?”).

103. See generally Neil H. Buchanan & Michael C. Dorf, *How to Choose the Least Unconstitutional Option: Lessons for the President (and Others) from the Debt Ceiling Standoff*, 112 COLUM. L. REV. 1175 (2012) (weighing the executive branch’s options in a debt crisis). To the contrary, the Secretary is arguably constitutionally obligated to continue

example, the Secretary could instead choose to ignore the debt ceiling itself, citing the superiority of other conflicting laws.¹⁰⁴ Alternatively, they could creatively repurpose existing forms of money-creation authority and justify doing so in terms of avoiding the relative constitutional calamity of failing to spend what Congress has mandated be spent, in addition to debt default.¹⁰⁵

5. Fiscal Fragmentation as Monetary Entanglement

As noted above, the two executive branch entities with the broadest budgetary powers are the Treasury and the Federal Reserve. Both issue their own monetary instruments, have effectively unlimited financial capacity—in normal times—and exert meaningful control over their own accounts and payments infrastructure.¹⁰⁶ At the same time, however, both also function as intra-executive fiscal coordination entities, using their own balance sheets and internal software systems to process payments on behalf of other agencies. In this respect, they are both arguably “exceptions that prove the rule” rather than appropriate architectural models for other agencies to attempt to emulate.

For an agency to be fully fiscally secure from external takeover or operational obstruction by the President, it needs both intra-executive-branch budgetary and payment independence. In other words, it must be able to internally source, hold, and externally distribute funds without relying on centralized fiscal infrastructure or budgetary procedures over

honor spending obligations, given they reflect a more fundamental—and thus protected—expression of Congress’s constitutional directives regarding the specific operational mechanics of financing such spending. *See* U.S. CONST. amend. XIV, § 4 (“The validity of the public debt of the United States . . . shall not be questioned.”).

104. This is consistent with the principle of choosing the least unconstitutional option, as proposed by Buchanan & Dorf. *See* Buchanan & Dorf, *supra* note 103, at 1213–14 (“If Congress passes a budget that implies a level of borrowing, yet it also leaves in place prior legislation that purports to forbid that new level of borrowing, a president who ignores the debt ceiling will honor the most recent—and, we would argue, most important—of Congress’s stated priorities, allowing the absolute and relative magnitudes of taxes and spending mandated by Congress to be carried out.”).

105. *See, e.g.,* Grey, *supra* note 69, at 260–82 (discussing the “Minting the Coin” proposal).

106. The Treasury—while responsible for managing payments—ultimately settles transfers through the Federal Reserve, which processes Treasury requests on an automatic, non-discretionary basis. *See* Viktoria Dendrinou, *Powell Says Fed Has No Role in Deciding on Payments by Treasury*, BLOOMBERG L. (Feb. 11, 2025, at 12:11 ET), <https://news.bloomberglaw.com/federal-contracting/powell-says-fed-plays-no-decisional-role-in-payments-system> (on file with the Rutgers University Law Review) (quoting Chair of the Federal Reserve Jerome Powell’s assertion that Treasury payment decisions are made “upstream from [the Fed],” and the Fed “make[s] no judgments [about them] whatsoever”).

which other executive actors—especially the President—have the power to gatekeep through controlling key bottlenecks.

The government agency whose fiscal design arguably comes closest to meeting these criteria today is the CFPB, which is an off-budget, independent sub-bureau of the Federal Reserve exempted from oversight and control by both OMB and Treasury.¹⁰⁷ The CFPB avoids unnecessary and complex debt financing arrangements through not only the collection of fines, but also its statutory discretion to request supplementary funds up to a generously capped amount directly from the Fed, which must comply on a non-discretionary basis.¹⁰⁸

At the same time, however, the CFPB remains dependent on the Fed for ongoing account management and payments processing, as well as funding support.¹⁰⁹ Thus far, the Fed has given no indication it believes it has any discretion over the processing of CFPB budget requests up to the limits set by Congress.¹¹⁰ Yet, as evidenced by Trump's recent assault on the BFS, it is at least conceivable that one day a more politically compromised Fed could attempt to leverage its "disbursement" of balance sheet access to the CFPB, rather than merely processing transfer requests on a technical basis as it does today.¹¹¹

107. See Joseph F. Yenouskas & Collin M. Grier, *CFPB Structure Returns to the Supreme Court*, 79 BUS. LAW. 505, 505–11 (2024).

108. See *id.* at 505–07. The CFPB is also authorized to retain and invest surplus funds for its own future purposes, rather than being required to return profits to the general Treasury fund, as is the case for the Fed, Mint, and others. *Id.*

109. *Id.*

110. Kyle Campbell, *Powell: CFPB Shutdown Creates Consumer Oversight Gaps*, AM. BANKER (Feb. 11, 2025, 14:35 EST), <https://www.americanbanker.com/news/powell-cfpb-shutdown-creates-consumer-oversight-gaps> (on file with the Rutgers University Law Review) (noting Powell's statement that the Fed "must" continue honoring funding of CFPB transfer requests despite running its own operating loss).

111. For an extended treatment of the debate over the constitutionality of the Federal Reserve System's independent governance structure, see Daniel K. Tarullo, *The Federal Reserve and the Constitution*, 97 S. CAL. L. REV. 1, 12–99 (2024); Aditya Bamzai & Aaron Nielson, *Article II and the Federal Reserve*, CORNELL L. REV. 843 (2024). On June 29, 2026, the Supreme Court issued its ruling in *Trump v. Cook*, upholding an injunction denying the President's firing of Federal Reserve governor Lisa Cook, on the grounds that Cook was entitled to some form of notice and hiring prior to her removal. *Trump v. Cook*, 146 S. Ct. 2234 (2026). On the same day, however, the Court also issued its ruling in *Trump v. Slaughter*, overruling the last remnants of *Humphrey's Executor*, which prevented the President from removing the independent heads of regulatory agencies appointed by Congress. *Trump v. Slaughter*, 146 S. Ct. 2283 (2026). While the *Slaughter* majority justified exceptionalising the Federal Reserve System on the basis of the ostensibly unique American tradition and constitutional treatment of central banks and the importance of preserving the political independence of monetary policy, others have questioned the coherence and limits of this singular exception, especially with regards to the Federal Reserve System's financial regulatory powers, distinct from its monetary and central banking authority. Compare *id.* (majority opinion), with Adam J. White, *After Slaughter*

In this respect, while enjoying perhaps the most fiscally autonomous design one might hope for under current arrangements, the CFPB nevertheless remains trapped by the more generally centralized architecture of the public payments system in which it is embedded.¹¹²

6. Balance Sheet Intermediation as Fiscal Control

The President, Federal Reserve Board, and Treasury Secretary—or some combination thereof—can limit the financing capacity of the agencies and effectively undermine Congress’s intent to bestow politically independent agencies with meaningful fiscal autonomy. Separately, they can also use their balance sheet control to exert pressure over how and when other entities access and spend their own funds. This budgetary obstructionism, in turn, threatens not only the smooth and stable administration of public policy but also the constitutional separation of powers between Congress and the executive branch.¹¹³

For the purposes of this Article, the key feature of the current setup is that it expands the President’s unilateral jurisdiction over fiscal matters at the expense of Congress and the rest of the executive branch. Specifically, it does so by rendering the entire federal government dependent on ongoing legal—and crucially, operational—cooperation from both the Treasury and Federal Reserve. This operational dependence is two-fold: agencies require one or both to a) monetize their own government obligations—“debt laundering”;¹¹⁴ and b) access the primary

and Cook: *Future Fed Fights, and Maybe Some Midnight Firings*, AM. ENTER. INST., <https://www.aei.org/commentary/after-slaughter-and-cook-future-fed-fights-and-maybe-some-midnight-firings/> [https://perma.cc/FEH8-3H9K] (arguing that “one of the next [constitutional] developments we should await” is a “constitutional challenge to the Federal Reserve System’s power to regulate banks and other private actors”). See generally Lev Menard, *The Federal Reserve Exception to the Slaughter Rule* (July 7, 2026), <https://ssrn.com/abstract=7072458> (on file with the Rutgers University Law Review).

112. Following *Seila Law LLC v. CFPB*, in which the Supreme Court ruled that the CFPB Director’s “for cause” removal protection was unconstitutional, 591 U.S. 197, 198 (2020), Trump has appointed his own director and occupied the CFPB from the inside, rendering its budgetary independence moot. See Jeff Kauflin, *How Trump’s Hatchet Man is Destroying Consumer Protections*, FORBES (Nov. 3, 2025, at 15:52 EST), <https://www.forbes.com/sites/jeffkauflin/2025/11/03/trumps-gutting-of-the-consumer-financial-protection-bureau-is-leaving-the-public-vulnerable-to-abuses/> [https://perma.cc/E5V8-GLUR]. Nevertheless, its funding structure serves as a potential model for Congress if it aims to provide an agency with maximal budgetary independence in the future.

113. See generally David L. Noll, *Administrative Sabotage*, 120 MICH. L. REV. 753 (2022) (arguing for designing administrative agencies in ways that reduce their susceptibility to internal sabotage by agency leadership under the President’s direction).

114. See *supra* notes 76–84 and accompanying text.

digital payments system bridging the public and private sectors: reserve accounts.

In both instances, the major practical tension is that the key resource that the Treasury and Fed have—which the other agencies ultimately want—is access to their own balance sheet.¹¹⁵ In effect, the Treasury and Fed both bear the exorbitant fiscal privilege of being expected to serve both their own narrow institutional interests and those of the entire federal administrative state through the same financial, legal, and technological mechanism.¹¹⁶

As with similar debates over the Fed's exorbitant monetary privilege in managing dollar liquidity within the global U.S.-centric financial regime, this tension cannot be easily resolved merely by demanding greater principled commitment to multilateralism on the part of the fiscal intermediaries themselves.¹¹⁷ The unavoidable institutional self-interest of central intermediaries should not be naively downplayed or dismissed. Rather, it should be acknowledged and properly *balanced* against the interests of the counterparties they serve through sound design. Failure to acknowledge and address structural conflicts of interest engenders the kind of budget obstructionism that Trump has exemplified since returning to office.

As the aforementioned FFB, BFS, and debt ceiling crises respectively demonstrate, both the Treasury and Fed can leverage their central payments system positions to exercise fiscal influence and control over other agencies operating under their own, independent statutory authority.¹¹⁸ Importantly, they do so not just by monopolizing the issuance of key forms of highly fiscal public money, but through politicizing and manipulating intragovernmental laundering processes intended to turn their institutional balance sheets into quasi-common resources for the entire federal government.

115. See generally Julie Andersen Hill, *Opening a Federal Reserve Account*, 40 YALE J. REGUL. 453 (2023) (examining various recent legal challenges to Federal Reserve determinations denying various special-purpose banks' requests to open master reserve accounts).

116. Typically, the concept of 'exorbitant privilege' refers to the United States' ostensible benefits from serving as the global reserve currency. See Adam Tooze, *Why the US Dollar Still Rules the World*, AUSTL. FIN. REV. (Oct. 21, 2022, 05:00 AET), <https://afr.com/markets/currencies/why-the-us-dollar-still-rules-the-world-20221017-p5bqhj> (on file with the Rutgers University Law Review).

117. But see *id.* (noting that the U.S. dollar is trapped between "two fundamentally incommensurate visions of the world economy: the one cosmopolitan, the other national or inter-national," and arguing that the dollar's true strength and resilience lies not in its "national" character, but the "global financial network . . . woven in dollars, and the willingness of the Fed to support [it]").

118. See, e.g., Durkee, *supra* note 88; Coleman, *supra* note 89.

By contrast, the demonstrated practical success of humbler—albeit anachronistic—forms of public money, such as coins and paper currency, underscores the possibility for other, less constitutionally fragile, equally non-utopian fiscal arrangements.¹¹⁹

B. *The OMB*

The OMB is uniquely situated between Congress, the President, and the rest of the executive branch.¹²⁰ It is an independent agency,¹²¹ established by Congress with Senate-confirmed leadership and statutorily defined responsibilities,¹²² that exists to assist the President in managing the federal government.¹²³

119. Both coins and notes are made by small, dedicated-purpose, budgetarily autonomous, and largely politically obscure agencies. See discussion *supra* Part II.A.2. Their issuance is clearly distinguished in legal and accounting terms from the issuing entity's own operating funds, and their responsibilities are tightly limited to the initial creation and injection of dollar balances into general circulation, after which point they become available for direct agency control and use as a bearer instrument. Indeed, it is difficult to imagine how the Mint even could exercise control over other agencies' use of coins already under their possession, underscoring the degree to which operational autonomy and decentralized control are baked into the very design of physical currency instruments.

120. See TAYLOR N. RICCARD, CLINTON T. BRASS & BARBARA L. SCHWEMLE, CONG. RSCH. SERV., RS21665, OFFICE OF MANAGEMENT AND BUDGET (OMB): AN OVERVIEW 15 (2023). The report states, "OMB is required to faithfully execute its statutory responsibilities as passed by Congress and, in addition, may act as an agent to pursue presidential policy preferences. From Congress's perspective, there may be tensions or contradictions between the two roles." *Id.* It later elaborates,

[I]t is clear that Congress faces potential trade-offs when considering issues that involve OMB. Congress may choose to authorize OMB to undertake certain activities in order to leverage its expertise and position to help implement Congress's institutional and policy objectives. However, granting such authorities may leave room for OMB to implement policies more in line with presidential agendas regardless of the intent of Congress. As a result, Congress may face difficult choices when considering how to legislate with respect to OMB's activities. Congress also may face related challenges in conducting oversight of OMB in situations when OMB's interactions with agencies are not publicly visible.

Id. at 27.

121. See Eloise Pasachoff, *The President's Budget as a Source of Agency Policy Control*, 125 YALE L.J. 2182, 2266 (2016) ("[T]he fact that OMB is considered an 'agency' under FOIA means that it is considered 'substantially independent' rather than meant 'solely to advise and assist' in a manner akin to 'the President's immediate personal staff.'").

122. *Id.* at 2195–96.

123. *Id.* at 2198. The OMB was first established in 1921 as the Bureau of the Budget. *Id.* at 2195. It was initially housed in the Treasury department but operated under the direct supervision of the President. *Id.* In 1939, it was transferred to the Executive Office of the President upon the latter's establishment. *Id.* In 1970, it was renamed the OMB. James Pfiffner, *OMB, The Presidency, and the Federal Budget*, in EXECUTIVE POLICYMAKING: THE ROLE OF THE OMB IN THE PRESIDENCY 11, 13–17 (Meena Bose &

In addition to preparing the President's annual budget submission to Congress,¹²⁴ the OMB oversees and regulates the spending of appropriated funds by executive agencies under the President's budgetary control through a process called apportionment.¹²⁵ Apportionment is administered through a series of Resource Management Offices ("RMOs"), which conduct the first level of review and coordinate with agencies to assess budgetary needs, while final apportionment decisions are made by OMB directors to ensure consistency with legislative directives and the President's policy agenda.¹²⁶

The apportionment process was originally established to prevent agencies from overspending too quickly and running out of funds before the new fiscal year.¹²⁷ Since then, however, it has warped into a mechanism for centralizing fiscal control in the unitary executive by allowing the OMB—and, by extension, the President—to exert last-mile

Andrew Rudalevige eds., 2020). At the same time, it created a partial congressional counterweight with the General Accounting Office (later renamed the Government Accountability Office (GAO)). Roughly contemporaneous cameral resolutions gave exclusive jurisdiction over appropriations legislation to the Appropriations Committees. Even with these counterweights, however, the 1921 Act has been understood as ushering in a period of "presidential dominance" of the budget process, a period that lasted for half a century. Chafetz, *supra* note 38, at 19 (footnotes omitted). In 1974, Congress passed legislation requiring the director and deputy director of the OMB be subject to Senate confirmation. Act of Mar. 2, 1974, Pub. L. No. 93-250, 1974 (88 Stat. 11) (codified as amended at 31 U.S.C. § 502). and Congress subsequently established within OMB four divisions, each with distinct functions and responsibilities ranging from federal procurement and agency financial management to "e-government" and regulatory policy. Pasachoff, *supra* note 121, at 2196; *see also* 31 U.S.C. §§ 504–07 (enumerating each division). *See generally* JUDITH H. PARRIS, CONG. RSCH. SERV., 78-158, THE OFFICE OF MANAGEMENT AND BUDGET: BACKGROUND, RESPONSIBILITIES, RECENT ISSUES 44–50 (1978) (discussing the confirmation of the OMB Director and Deputy Director).

124. *See generally* Pasachoff, *supra* note 121, at 2221 n.163 (listing executive entities that either submit budget requests directly to Congress at the same time, or submit requests to OMB, but which OMB must allow to pass through untouched); Kirti Datla & Richard L. Revesz, *Deconstructing Independent Agencies (and Executive Agencies)*, 98 CORNELL L. REV. 769, 806 (2013) (noting that OMB's ability to go directly to Congress "decrease[s] presidential control over the agencies' agendas by decreasing the information asymmetry between Congress and the President").

125. Pasachoff, *supra* note 121, at 2228–30; *see also id.* at 2222–23 (noting that most agencies not subject to apportionment are self-funding financial regulatory entities).

126. *See id.* at 2214–18; *see also id.* at 2195–99 (noting that RMOs represent the largest fraction of the OMB workforce, yet they are mostly separated from its other divisions and functions, such as regulatory policy and digital governance).

127. RICCARD, BRASS & SCHWEMLE, *supra* note 120, at 16 (noting that the purpose of apportionment is compliance with the Antideficiency Act, and that "[t]he statute's express purpose is to prevent federal officials from obligating or expending funds at a rate that would prematurely exhaust the funds, such as before the end of a fiscal year").

discretion over executive spending levels and the terms and conditions under which such spending occurs.¹²⁸

Specifically, it does so by allowing the OMB to leverage its *operational* control over the centralized funding allocation process in order to expand its *political* control over executive branch budget policy.¹²⁹ In the process, OMB undermines agencies' ability to independently uphold their constitutional duty to honor congressional spending commitments in the face of presidential resistance, as well as Congress's power to determine and delegate spending capacity across the executive branch in ways that best reflect its substantive and structural goals.

Over the decades, Congress has taken steps to formalize and exercise greater influence over OMB's leadership and governance structure.¹³⁰ In doing so, however, it has legitimized the agency's expanding fiscal entanglement with the rest of the executive branch, while hardening its outer organizational shell against deeper reform.¹³¹

128. See, e.g., Pasachoff, *supra* note 121, at 2233–34 (explaining that during shutdowns, OMB determines which agency functions may continue and reviews agency plans, thereby exercising substantial discretion over budget execution); AIDS Vaccine Advoc. Coal. v. U.S. Dep't of State, 766 F. Supp. 3d 74, 85 (2025) (temporarily enjoining the Trump administration from implementing a blanket freeze of grant disbursements and other foreign financial assistance, while preserving its discretion to conduct individualized review on an award-by-award basis).

129. Noll, *supra* note 109, at 794–96; see also Pasachoff, *supra* note 121, at 2231–32, 2231 n.225 (clarifying the important difference between permitted executive deferrals and prohibited policy-motivated impoundments).

130. See Pasachoff, *supra* note 121, at 2285–86 (“Congress turned [the director and deputy director] into Senate-confirmed positions as the scope of their policymaking authority grew and as the President started to use OMB more politically.”); see also Pfiffner, *supra* note 123, at 17 (noting that in 1974, a bipartisan committee report described OMB as a “super department with enormous authority over all of the activities of the Federal Government,” and elaborated, “[i]ts Director has become, in effect, a Deputy President who exercises vital Presidential powers”).

131. See Pasachoff, *supra* note 121, at 2180–81 (describing the Evidence and Evaluation Agenda's “substantial effect on domestic social policy” as well as Congress's role in responding to “OMB's ability to control policy through the budget process.”); RICCARD, BRASS & SCHWEMLE, *supra* note 120, at 16–18, 21–22 (describing functions of the OMB including digitizing government, legislative coordination and clearing, and establishing regulatory standards). This is regrettable because, as discussed below, certain administrative functions currently assigned to the OMB—particularly apportionment—have distinct constitutional and political dynamics that are arguably best addressed through being spun off and managed separately under different institutional arrangements, but under current arrangements enjoy the shared legitimacy and political clout of the larger organization.

1. Unbundling Apportionment

Executive branch actors enjoy the least constitutional discretion when effectuating Congress's fiscal directives, and the most when interpreting the exercise of traditional executive powers.¹³² In the context of apportionment, however, this distinction is tricky to define, as the OMB combines budgetary and executive policymaking functions within a single administrative process, in which mechanical funding allocations are made conditional on compliance with the OMB's subjective legal interpretations and the President's budgetary priorities.¹³³

RMOs exercise control over agency spending primarily by determining the amount, timing, and occasionally, conditions imposed on periodic allocations of appropriated funds.¹³⁴ They also manage the transfer and reprogramming of specifically earmarked allocations, deferral and rescission requests, and budget coordination and reallocation in the event of a government shutdown.¹³⁵

Despite often being presented as apolitical and neutral, in reality, RMOs are responsible for making "value-laden decisions about how to 'confront tradeoffs and project them into an uncertain future.'"¹³⁶ Even more subjectively, RMOs are authorized to attach "footnotes" to apportionment approvals, specifying changes, conditions, and other criteria that agencies must meet to receive funding disbursements.¹³⁷

The technocratic nature of the oversight process contributes to these misconceptions about RMOs.¹³⁸ As Professor Eloise Pasachoff argues, the "complexity [of the work] allows a technocratic appearance to obscure

132. *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 592 (1952) (Jackson, J., concurring) ("When the President takes measures incompatible with the expressed or implied will of Congress, his power is at its lowest ebb, for then he can rely only upon his own constitutional powers minus any constitutional powers of Congress over the matter. Courts can sustain exclusive presidential control in such a case only by disabling the Congress from acting upon the subject. Presidential claim to a power at once so conclusive and preclusive must be scrutinized with caution, for what is at stake is the equilibrium established by our constitutional system.").

133. Pasachoff, *supra* note 121, at 2233 (noting the OMB's use of separate managerial responsibilities to exert budgetary influence on agencies).

134. *Id.* at 2229; *see also* RICCARD, BRASS & SCHWEMLE, *supra* note 120, at 4.

135. Pasachoff, *supra* note 121, at 2230–35.

136. *Id.* at 2269 (quoting Eugene Bardach, *Report from the Trenches: The Life of the Apprentice Budget Analyst*, 24 J. POL'Y ANALYSIS & MGMT. 419, 419 (2005)).

137. *Id.* at 2229 (noting RMO footnotes are enforceable through the Antideficiency Act and can lead to employee "suspension without pay or removal from office").

138. *See, e.g.*, Pfiffner, *supra* note 123, at 15 ("Presidents needed [the Bureau of the Budget–OMB's precursor] because it had a monopoly on the technical information necessary to make informed budgetary decisions. The BOB's influence was based on the budget examiners' intimate familiarity with the programs and agencies they oversaw.").

underlying substantive choices, thereby reducing accountability.”¹³⁹ Yet, as the recent events have starkly highlighted, its political and constitutional significance could not be greater.¹⁴⁰

Today, apportionment serves three distinct administrative functions, each with separate legal and practical dynamics. First, as noted above, it promotes temporal harmonization between immediate agency funding needs and longer-term statutory funding limits by delegating to OMB the responsibility of transforming static statutory funding grants into dynamic, periodized budget flows. RMOs manage these flows through a standardized, technically sophisticated, and highly collaborative agency oversight process.¹⁴¹

Second, apportionment allows RMO staff and OMB leadership to impose procedural and substantive conditions, as well as other changes on specific disbursement requests, and to adjust total and program-specific discretionary funding levels in accordance with overall budget capacity.¹⁴² In contrast to rationing decisions made solely to achieve temporal harmonization, these actions are best understood as a form of discretionary executive budget policymaking. As such, they are appropriately subject to the president’s political input and direction.¹⁴³ At the same time, the OMB remains bound by statutory limits and cannot exercise its discretion to undermine or contravene Congress’s express budgetary directives.¹⁴⁴

Third, apportionment compels the OMB to coordinate and administer the operational disbursement of approved appropriated funding requests across the federal government in accordance with statutory directives

139. Pasachoff, *supra* note 121, at 2269. An RMO’s work is secretive and largely operationally autonomous. *See id.* at 2224, 64. However, as Professor Pasachoff has argued, given its high-level policy significance and the vast discretion involved—including exercising “power over activities taking place elsewhere in the government”—there is a “danger, more than theoretical, that their role will [increasingly] be co-opted in the service of partisan action.” *Id.* at 2264.

140. *See, e.g.*, THOMAS H. ARMSTRONG, U.S. GOV’T ACCOUNTABILITY OFF., B-331564, OFFICE OF MANAGEMENT AND BUDGET—WITHHOLDING OF UKRAINE SECURITY ASSISTANCE 1 (2020) (“In the summer of 2019, OMB withheld . . . approximately \$214 million appropriated . . . for security assistance [for the Ukraine/Russia war].”); Rachel Cleetus, *Russell Vought Is a Dangerous Choice to Head OMB. Congress Should Vote No on His Nomination*, EQUATION (Feb. 5, 2025, at 10:15 ET), <https://blog.ucs.org/rachel-cleetus/russell-vought-is-a-dangerous-choice-to-head-omb-congress-should-vote-no-on-his-nomination> [<https://perma.cc/5K78-CVY8>] (noting Trump’s OMB Director-appointee Vought testified to Congress during his nomination that he agreed with President Trump that the Anti-Impoundment Act was unconstitutional).

141. Pasachoff, *supra* note 121, at 2229–30.

142. *See id.* at 2228–29.

143. *Id.* at 2191.

144. *See id.* at 2194–2207.

and mandates.¹⁴⁵ In contrast to the other two functions, which involve exercising some degree of subjective judgment and policy discretion, the act of executing fund disbursement itself is—or at least should be—largely mechanical. In particular, it aims to process disbursements efficiently and securely through a single, standardized procedure, while minimizing unnecessary agency interaction with ‘back-of-house’ payments-processing intermediaries such as the Treasury or Federal Reserve.¹⁴⁶

2. Disintermediating Appropriations Authority

Currently, the OMB’s process is to determine *how much* spending is needed, *when* it is needed, and *what* it should be spent on, before finally *authorizing* the release of funds. Upon first glance, this sequence of operations appears sensible—how can the OMB know how much to ‘release’ if it doesn’t first know how much is needed? Moreover, under prevailing budget norms that presume the inherent scarcity of public funds, it is politically and economically rational to avoid allocating unnecessary funds that could have been saved or reallocated elsewhere.¹⁴⁷

At a deeper level, however, the design and sequencing of the disbursement process promote ongoing intra-executive entanglement and create a major procedural bottleneck by empowering the OMB to leverage its central control over both funding access and distribution

145. See *id.* at 2228.

146. Thus, the core intra-executive budgetary conflict has for many years been seen as between the Office of Management and Budget and the individual agencies. The payment process layer involving the Treasury’s Bureau of the Fiscal Service was seen as a back end issue with no budgetary conflict significance until the Department of Government Efficiency’s incursion into the BFS. See Nathan Tankus, *Elon Musk Wants to Get Operational Control of the Treasury’s Payment System. This Could Not Possibly Be More Dangerous*, SUBSTACK: NOTES ON THE CRISES (Feb. 3, 2025), <https://www.crisisnotes.com/elon-musk-wants-to-get-operational-control-of-the-treasurys-payment-system-this-could-not-possibly-be-more-dangerous> (on file with the Rutgers University Law Review). See generally Nathan Tankus, *I Asked Former Bureau of the Fiscal Service Employees to Interpret an Elon Musk Tweet. Here’s What They Told Me*, SUBSTACK: NOTES ON THE CRISES (Feb. 14, 2025), <https://www.crisisnotes.com/i-asked-former-bureau-of-the-fiscal-service-employees-to-interpret-an-elon-musk-tweet/> (on file with the Rutgers University Law Review) (featuring BFS employees responding to claims made about BFS by former DOGE head Elon Musk).

147. Commentators and academics have challenged this prevailing view. See, e.g., Grey, *supra* note 69, at 282–86; STEPHANIE KELTON, *THE DEFICIT MYTH: MODERN MONETARY THEORY AND THE BIRTH OF THE PEOPLE’S ECONOMY* 41–43 (2020); Raúl Carrillo, *Our Money Where Our Mouth Is*, CURRENT AFFS. (Aug. 14, 2020), <https://www.currentaffairs.org/news/2020/08/our-money-where-our-mouth-is> (on file with the Rutgers University Law Review).

procedure to advance its own institutional priorities, including expanding its bureaucratic autonomy and promoting the president's policy agenda. In doing so, OMB effectively repurposes a congressional delegation of fiscal administrative authority, over which its interpretative discretion is most constitutionally restricted, into a tool for expanding the limits of other executive powers that enjoy greater degrees of constitutional interpretative deference. Come for the disbursement, stay for the presidential budgetary micromanagement.¹⁴⁸

The OMB has long been criticized for obscuring the subjective and political nature of its management of the apportionment process.¹⁴⁹ But the inverse is also true: By downplaying and conflating aspects of the process that are (or should be) mechanical with those that are undeniably subjective and discretionary, the OMB has also effectively subsumed narrow questions of operational design within larger debates over the legal limits of executive discretion and the politicization of the bureaucracy.

Importantly, OMB apportionment is not a source of public money. Rather, it establishes an agency's authority to access funds that are operationally sourced and administered by the Treasury and the Fed, respectively.¹⁵⁰ Consequently, the OMB's role is better understood as adjudicative rather than executory. Its apportionment authorizations function as warrants to exercise specific 'draw' authority against the public fisc.

The redemption of these warrants into spendable retail money, in turn, remains contingent on a separate, underlying process of account transfers processed via digital ledgers maintained by the Treasury and the Fed. In this sense, they exist purely as a virtual intragovernmental accounting record between the legislative and executive branches—a form of 'proto' or 'interior' credit obligation—rather than as 'money' issued by the executive branch for circulation among the public.

148. Notably, disbursement doesn't *exist* anywhere. There are funds which may be disbursed, the capacity to create funds, and there are payment orders. But disbursement is not, in and of itself, a monetary or legal object; it represents the budgetary authority to enact the order. *See generally* JAMES V. SATURNO, CONG. RSCH. SERV., R46497, AUTHORIZATIONS AND THE APPROPRIATIONS PROCESS (2023) (describing how disbursements operate).

149. *See* RICCARD, BRASS & SCHWEMLE, *supra* note 120, at 26–27.

150. Technically, apportionment approvals take the form of an OMB-approved Treasury Appropriation Fund Symbol ("TAFS"), a standardized informational form for authorizing spending requests from the Treasury that specifies 1) an agency identifier; 2) a period of availability to incur new obligations; and 3) a Treasury fund group. *See Account Establishment, Section 1545–Expenditure Account Classification*, U.S. DEPT OF THE TREASURY, <https://tfx.treasury.gov/account-establishment> [<https://perma.cc/VTD8-WFAZ>] (last visited Oct. 12, 2025).

This arrangement is neither necessary nor inevitable. There is no inherent technical or substantive reason for agency spending restrictions or incremental release conditions to be enforced prior to and throughout the funding disbursement process, as opposed to ongoing oversight and periodic review, or even partial automation at the payments layer.¹⁵¹ To the contrary, there are many alternative mechanisms for conducting central budgetary oversight, management, and accountability that do not presuppose or require the power to unilaterally withhold initial agency access to funding itself.¹⁵²

More broadly, there is also no reason to presume agencies even require external administrative oversight to avoid overspending in the manner originally provoked prior to the formation of OMB. Indeed, some of the highest profile government agencies enjoy budgetary independence and unconstrained funding capacity and yet continue to exercise internal fiscal discipline, for example, the CFPB.¹⁵³ Prior to Trump's return, the CFPB had acquired a war chest of over \$600 million in surplus operating funds,¹⁵⁴ which it then invested in Treasury securities as part of a longer-term budget sustainability strategy.¹⁵⁵

Ultimately, it is up to Congress to determine the degree of fiscal autonomy to grant executive agencies on a case-by-case basis. While some degree of central budgetary oversight is often politically desirable and even occasionally unavoidable, there is no reason for it to be structurally enmeshed in the operational mechanics of disbursement as either an intrinsic or default arrangement. To the contrary, disbursement, in its most basic constitutional form, is best conceived—and thus should be approached—as a mechanical, non-discretionary process through which agencies access discrete amounts of funding directly from Congress, with oversight and regulation of spending

151. See generally James Grimmelmann, *All Smart Contracts Are Ambiguous*, 2 J.L. & INNOVATION 1, 21 (2019) ("Smart contracts cannot be perfectly unambiguous, but they do not need to be perfect to be useful Much of the time, legal contracts work adequately, despite the ambiguities of natural language. If smart contracts can perform as well or better in even a single domain, they will have a worthwhile role to play.").

152. See, e.g., *id.* Crucially, it is common to enforce agency action through executive directives and judicial orders without ever asserting direct physical control over an agency's internal operating infrastructure. This includes, for example, through authority to access accounts, query budget plans, make recommendations and requests, prepare independent audit reports, and even initiate administrative or legal proceedings to enjoin or compel agency action.

153. See discussion *supra* Part II.A.5.

154. CONSUMER FIN. PROT. BUREAU, FINANCIAL REPORT OF THE CONSUMER FINANCIAL PROTECTION BUREAU: FISCAL YEAR 2024, at 65 (2024), https://files.consumerfinance.gov/f/documents/cfpb_financial-report-fy-2024.pdf [<https://perma.cc/Q3F6-6BD5>].

155. See *id.* at 77.

activity maintained separately through agency self-regulation, automated enforcement, and central executive oversight from afar.

C. *The Legislative Budget Process*

The existing statutory framework governing the executive administration of fiscal policy is vague, fragmented, and anachronistic. These problems of legislative *substance*, in turn, reflect deeper, unaddressed problems in the legislative *process*.

Most notably, the congressional budget process conflates and entangles distinct concerns and goals regarding spending and revenue programs, macroeconomic aggregates, and public debt management into the singular process of reconciliation.¹⁵⁶ Reconciliation, in turn, is then wrapped around periodic debt ceiling suspension expiration and re-suspension negotiations, which have unintentionally come to function as a general fiscal ‘handbrake’ on the federal government, at the cost of recurrent and increasingly severe government shutdowns and constitutional crises.¹⁵⁷ Finally, parliamentary procedure effectively corrals the bulk of contentious legislative activity into the budget process to avoid the sixty-vote threshold of the filibuster, while simultaneously limiting its scope to issues deemed sufficiently budget-related and reinforcing a unidimensional approach to legislative negotiation based around macro-oriented budget impact analysis.¹⁵⁸

These legislative design problems are, in themselves, an ongoing source of constitutional fragility. More broadly, they generate, define, and exacerbate other downstream administrative and design issues at the executive branch level.

1. General Procedural Overview

The congressional budget process consists of multiple legislative components. In the stylized account, these are typically divided between authorizations and appropriations, with financing as a related but distinct process, with each undertaken by different committees within the House and Senate in coordination with the executive branch.¹⁵⁹

156. See discussion *infra* Part II.C.2.

157. See discussion *infra* Part II.C.3.

158. See discussion *infra* Part II.C.4.

159. See, e.g., Metzger, *supra* note 24, at 1089; CONG. BUDGET OFF., EXPIRED AND EXPIRING AUTHORIZATIONS OF APPROPRIATIONS: FISCAL YEAR 2020 2 (Kate Kelly ed., 2020); Louis Fisher, *The Authorization-Appropriation Process in Congress: Formal Rules and Informal Practices*, 29 CATH. U. L. REV. 51, 53 (1979).

Authorization involves granting specific agencies and entities the authority to spend on particular programs or for particular purposes up to a specified limit.¹⁶⁰ Appropriations determine the specific amount to be spent on authorized programs within a particular time frame, subject to the predetermined limits.¹⁶¹ Financing, which is often conceptually separated from the other two, establishes the government's general budget authority to run deficits by issuing monetary and other financial obligations.¹⁶²

Each of these processes is ostensibly distinct, creating a conceptually clean separation of fiscal powers between different committees and bills within the House and Senate.¹⁶³ In reality, however, the procedural sausage-making of the federal budget is far messier and less coherent than this idealized version. As Louis Fisher noted in 1979,

Authorization bills contain appropriations, appropriation bills contain authorizations, and the order of their enactment is sometimes reversed. The Appropriations Committees, acting through various kinds of limitations, riders, and nonstatutory controls, are able to establish policy and act in a substantive manner. Authorization committees have considerable power to force the hand of the Appropriations Committees and, in some cases, even to appropriate.¹⁶⁴

Today, for example, so-called “mandatory spending” programs—which are established via substantive authorizing legislation containing permanent appropriation authority—represent sixty-one percent of the

160. CONG. BUDGET OFF., *supra* note 159, at 2.

161. See SATURNO, *supra* note 148, at 1; see also CFPB v. Cmty. Fin. Servs. Ass'n of Am., Ltd., 601 U.S. 416, 426–27 (2024) (defining “appropriation”).

162. See OFF. OF THE GEN. COUNS., U.S. GOV'T ACCOUNTABILITY OFF., *supra* note 28, at 2-1 to -8. Financing legislation, in turn, is typically divided between statutory delegations of agency or program authority to spend “out of any money in the Treasury not otherwise appropriated”—which are treated as part of the appropriations process—and general financing restrictions placed on the Treasury to honor all such spending commitments on behalf of the broader federal government, which are treated as part of overall public debt management. See *id.* at 2-23.

163. See *Atchison, Topeka & Santa Fe Ry. Co. v. Callaway*, 382 F. Supp. 610, 620 (D.D.C. 1974) (“It is a general principle that Congress cannot and does not legislate through the appropriation process.”). Cf. Metzger, *supra* note 24, at 1089 (“Ever since appropriations committees were created after the Civil War, they have fought subject-area ‘authorizing committees’ for control over spending.”). But see Fisher, *supra* note 159, at 53 (arguing that “in actual operation, Congress can and does legislate through the appropriation process”); Matthew Lawrence, *Disappropriation*, 120 COLUM. L. REV. 1, 21–22 (2020).

164. Fisher, *supra* note 159, at 53. See also Metzger, *supra* note 24, at 1090 (explaining that appropriators “encroached on authorizing committees’ domains . . . with substantive riders and legislative provisions regularly appearing in annual appropriations bills”).

total federal budget.¹⁶⁵ This has effectively created a two-track system, in which such spending commitments persist independently from the annual discretionary appropriations process.¹⁶⁶

At the same time, appropriators have also developed new ways to exercise political influence beyond narrow questions of how much to spend on authorized discretionary programs.¹⁶⁷ As Gillian Metzger notes, “[r]ather than amending or repealing substantive authorizations, Congress [now] resorts to appropriations riders and funding denials as its tools of choice to control government policy.”¹⁶⁸ Moreover, appropriations are often committed even in the absence of an authorizing authority. In 2024, for example, nearly one-third of all discretionary spending—\$516 billion in total—had expired authorizations,¹⁶⁹ up from \$121 billion in 2000.¹⁷⁰ More generally, appropriations bills are now regularly included in omnibus packages with other legislation to improve passage, thereby subjecting an ever-widening range of legislative issues to the interests and demands of appropriators.¹⁷¹

165. Metzger, *supra* note 24, at 1089–90 (citing ALLEN SCHICK, *THE FEDERAL BUDGET: POLITICS, POLICY, PROCESS* 209–12 (3d ed. 2007); CONG. BUDGET OFF., *THE FEDERAL BUDGET IN 2019: AN INFOGRAPHIC* (2020), <https://www.cbo.gov/system/files/2020-04/56324-CBO-2019-budget-infographic.pdf> [<https://perma.cc/PY3P-PV3D>]).

166. Moreover, the principle that authorizing legislation can, under certain circumstances, serve as its own spending authority has also been extended beyond mandatory programs to federal contracts. The Supreme Court has repeatedly “refused to read an appropriations measure as limiting a payment promise contained in an authorization statute, in contexts where services were already provided in reliance on the payment promises.” Metzger, *supra* note 24, at 1129. According to Metzger, this is likely driven by the judicial “desire to protect expectations and enforce statutory obligations.” *Id.*

167. See Fisher, *supra* note 159, at 53.

168. Metzger, *supra* note 24, at 1077; see also Stith, *supra* note 76, at 1352–53 (explaining that the legislature also controls the size and content of the federal government through the appropriations process). See generally Edwin Meese III, *The Appropriations Power and the Necessary and Proper Clause*, 68 WASH. UNIV. L. Q. 623, 623–25 (1990) (discussing congressional use of the appropriations power and the Necessary and Proper Clause to influence governmental decisions of other branches); Kate Stith, *Federal Spending and the Deficit: Is a Constitutional Remedy Necessary?*, 11 GEO. MASON U. L. REV. 119 (1988) (explaining Congress’s failure to exercise its constitutionally prescribed appropriations powers); Kate Stith, *Rewriting the Fiscal Constitution: The Case of Gramm-Rudman-Hollings*, 76 CALIF. L. REV. 593 (1988) (describing the development of the federal government’s appropriations practice).

169. CONG. BUDGET OFF., *supra* note 159, at 2.

170. Metzger, *supra* note 24, at 1092 (citing CONG. BUDGET OFF., *UNAUTHORIZED APPROPRIATIONS AND EXPIRING AUTHORIZATIONS* 4 tbl. 1 (2000), <https://www.cbo.gov/system/files/2019-04/12063-UAEA.pdf> [<https://perma.cc/TU7X-ZVY4>]).

171. Metzger, *supra* note 24, at 1092.

2. Reconciliation

Perhaps the most significant budgetary development in recent memory has been the rise of reconciliation as a primary means of coordinating and determining overall fiscal activity.¹⁷² Reconciliation refers to the legislative process by which individual spending and revenue generation bills are together made commensurate with Congress's nonbinding joint budget resolution, which sets out its aggregate targets for total public spending and revenue as well as operational instructions on how to finance any resulting deficits.¹⁷³

The original intent behind reconciliation was for it to serve as a legislative means for the various committees in Congress to increase or decrease total amounts spent and/or collected by particular programs and agencies in accordance with the targets set forth in the budget resolution.¹⁷⁴ Over time, however, the reconciliation process, along with intermediary continuing resolutions, has become the primary means through which general budget policy is negotiated and implemented.¹⁷⁵

Reconciliation has been used to pass twenty-four omnibus bills as of July 2025—roughly one every other year since the procedures were first used in 1980—including both the Affordable Care Act and the American Rescue Plan.¹⁷⁶ In the process, it has become a central coordinating mechanism for a broad range of actors, from congressional committees to

172. See generally MEGAN S. LYNCH & JAMES V. SATURNO, CONG. RSCH. SERV., R44058, THE BUDGET RECONCILIATION PROCESS: STAGES OF CONSIDERATION (2021) (discussing and outlining the different stages of the reconciliation process); ROBERT KEITH & BILL HENIFF JR., CONG. RSCH. SERV., RL 33030, THE BUDGET RECONCILIATION PROCESS: HOUSE AND SENATE PROCEDURES (2005) (detailing the step-by-step procedures of the House and Senate throughout the reconciliation process).

173. See David Wessel, *What is Reconciliation in Congress?*, BROOKINGS (Jan. 13, 2025), <https://www.brookings.edu/blog/up-front/2021/02/05/what-is-reconciliation-in-congress> [<https://perma.cc/QUN6-XR7Q>]. The joint budget resolution must be passed before the reconciliation process must can begin. See *id*; Metzger, *supra* note 24, at 1090–91.

174. ALLEN SCHICK, THE FEDERAL BUDGET: POLITICS, POLICY, PROCESS 121–22 (3d ed. 2007) (“The resolution is advisory; the work of other committees is legislative. The resolution deals with aggregates and a small number of major spending categories; other committees get into the details and make specific program decisions.”); see also Wessel, *supra* note 173 (explaining that reduction of the budget deficit was an original intention of reconciliation).

175. See generally JAMES V. SATURNO ET AL., CONG. RSCH. SERV., R46595, CONTINUING RESOLUTIONS: OVERVIEW OF COMPONENTS AND PRACTICES (2023) (detailing the continuing resolution process).

176. MEGAN S. LYNCH, CONG. RSCH. SERV., R40480, BUDGET RECONCILIATION MEASURES ENACTED INTO LAW SINCE 1980, at 2, 10 (2025).

the executive branch, with interests ranging from particular programs and taxes to general macroeconomic stability.¹⁷⁷

The main reason for reconciliation's increased procedural significance is that, unlike regular appropriations and authorization legislation, it is not subject to the senatorial filibuster and thus can be passed with a bare congressional majority in both houses, rather than the sixty votes needed to end a filibuster via cloture.¹⁷⁸ Avoiding the filibuster, in turn, has become increasingly politically existential as electoral demographics and party polarization reduce the prospects of both bipartisan consensus and of either party securing lasting sixty-vote majorities in the Senate.¹⁷⁹

At the same time, a longstanding Senate parliamentary rule known as the Byrd Rule prohibits the attachment of nonbudgetary substantive provisions—i.e., provisions that are “merely incidental” to total spending, revenue, or debt levels—in addition to restricting amendments that would violate the aggregate spending, revenue, and deficit targets initially established by the Congressional budget resolution.¹⁸⁰ Consequently, a major feature of the reconciliation process is its highly technical emphasis on legal delineations between “budgetary” and “nonbudgetary” legal authority, budget impact projection calculations, and “back-of-the-envelope” line-item negotiations to keep within the macro-constraints of the budget resolution.¹⁸¹

In addition to setting aggregate targets for both spending and revenue, as well as specific sub-targets across different functional spending categories, the budget resolution also separately establishes

177. SCHICK, *supra* note 174, at 145–47. At the same time, the reconciliation process remains limited in jurisdiction to laws that have a “not incidental” effect on overall spending and revenue limits. *Id.* This, in turn, narrows the scope of legislative issues considered during the budget process to those capable of being passed through reconciliation, even as Congress’s general appropriations and authorization power faces no such limits. *Id.*

178. See Tonja Jacobi & Jeff VanDam, *The Filibuster and Reconciliation: The Future of Majoritarian Lawmaking in the U.S. Senate*, 47 U.C. DAVIS L. REV. 261, 264 (2013).

179. See GRETA BEDEKOVICS, HOW THE RACIST HISTORY OF THE FILIBUSTER LIVES ON TODAY 1 (2023), <https://www.americanprogress.org/wp-content/uploads/sites/2/2024/04/RacistHistoryFilibuster-brief.pdf> [https://perma.cc/9LD7-FNAM] (describing the filibuster as the “preeminent institutional tool used to deny rights and liberties to tens of millions of Black and brown Americans”).

180. BILL HENIFF JR., CONG. RSCH. SERV., RL30862, THE BUDGET RECONCILIATION PROCESS: THE SENATE’S “BYRD RULE” 3–5 (2022). For an extended discussion of the history and current procedural implications of the Byrd Rule, see *id.* at 1–5.

181. See, e.g., Ellen P. Aprill & Daniel J. Hemel, *The Tax Legislative Process: A Byrd’s Eye View*, 81 L. & CONTEMP. PROBS. 99 (2018) (using the example of the 2017 Internal Revenue Code revisions to illustrate how the Byrd Rule influences the reconciliation process).

aggregate targets for the issuance and growth trajectory of public debt.¹⁸² In doing so, it creates a constitutional crisis-inducing fiscal paradox, in which the executive branch's legislative spending and revenue directives can end up requiring deficit spending levels beyond the aggregate public debt issuance limits set by Congress.¹⁸³

As detailed in the next Subsection, Congress has thus far attempted to resolve this paradox by functionally repurposing the debt ceiling itself from an *ex ante* *limit on financing* into a periodic *handbrake on spending* in an otherwise continuously fluid, open-ended financing regime. While it does not completely remove the threat of crisis, this approach nevertheless has a stabilizing effect by compartmentalizing the risk of crisis into a localized, clearly defined, and regularly scheduled subcomponent of the broader legislative budget process.

3. Debt Ceiling "Re-Suspension"

The debt ceiling establishes a statutory cap on the total nominal value of interest-earning government securities that the Treasury and most other government agencies may issue to finance their spending commitments.¹⁸⁴ In practice, however, it is suspended by default, and only periodically and briefly reinstated to indirectly facilitate larger budget disagreements.

This relatively recent arrangement has effectively allowed the executive branch to issue securities as necessary on a day-to-day basis to meet Congress's spending directives, while simultaneously preserving Congress's ability to subject the overall amount and trajectory of public debt issuance to periodic review and potential legislative obstruction. In effect, Congress has replaced a quantitative constraint on the executive's deficit spending authority with a temporal one.¹⁸⁵ This allows Congress

182. TORI GORMAN, CONG. RSCH. SERV., R48284, THE CONGRESSIONAL BUDGET RESOLUTION: FREQUENTLY ASKED QUESTIONS 2 (2024).

183. See Buchanan & Dorf, *supra* note 103, at 1196–1215; Grey, *supra* note 69, at 257–58; Nathan Tankus, *I Got the Fed to Release Its 2011 "Treasury Default" Playbook. Here's What It Says and Why It Matters*, SUBSTACK: NOTES ON THE CRISES (Nov. 7, 2023), <https://www.crisisnotes.com/i-got-the-fed-to-release-its-2011-treasury-default-playbook-heres-what-it-says-and-why-it-matters/> (on file with the Rutgers University Law Review); Nathan Tankus, *Three Questions for Fed Chair Jay Powell: About the Platinum Coin and the US Constitution*, FIN. TIMES: FT ALPHAVILLE (Jan. 31, 2023), <https://www.ft.com/content/afb6ef8f-be7c-45ac-8a7d-56550b64fd9e> (on file with the Rutgers University Law Review).

184. See *supra* Part II.A.1 for a discussion about the means through which government agencies finance their spending commitments.

185. In this respect it functions as a stronger form of the original "Gephardt Rule," a House of Representatives parliamentary rule that provided that when the House adopted the budget resolution for a fiscal year, it would be treated as equivalent to passing

and the President to reliably predict exactly when the next debt ceiling suspension must be passed to prevent a financial crisis, and plan accordingly.

The fiscal implications of this shift, while subtle, are profound. For arguably the first time in the history of the United States, the Treasury faces no day-to-day operational restrictions on its financing activities beyond the general spending restrictions imposed by Congress through the regular budgetary process.¹⁸⁶ In effect, the default position of the U.S. government has been inverted from a presumption of budgetary scarcity to one of abundance, at least with respect to its so-called “borrowing” authority.

Rather than operating with a “maximum limit on its credit card,” the Treasury now enjoys a “blank check” to issue new government obligations in accordance with congressional spending directives, subject to periodic congressional review through the debt ceiling re-suspension process. Congress, in turn, has shifted from an *only when we say* to an *okay unless we say it is not* attitude toward the Treasury’s discretionary issuance of government securities.

Importantly, however, this shift has not resulted in a loss of congressional control over fiscal financing affairs. To the contrary, Congress counterintuitively enjoys greater regularity in the timing and structure of debt ceiling negotiations today than it ever did before.¹⁸⁷ In effect, the re-suspension process has turned the debt ceiling from a ticking time bomb into a *predictable* ticking fiscal time bomb.

legislation increasing the statutory debt limit up to the amount approved by the resolution, without the need for a separate vote. This Rule was in effect originally from 1979 to 2011, then repealed in 2011 at the beginning of the 112th Congress, then reinstated in modified form in 2019, before being fully repealed in 2023. *See generally* BILL HENIFF JR., CONG. RSCH. SERV., RL31913, DEBT LIMIT LEGISLATION: THE HOUSE “GEPHARDT RULE”, at 2–4 (2023) (explaining the features and legislative history of the rule).

186. *See supra* notes 97–98 and accompanying text. *See generally* Grey, *supra* note 69 (discussing the removal of the day-to-day spending cap and proposing it be replaced with a periodic resuspension process).

187. Some legal experts have argued that the prior arrangement—in which the debt ceiling established a fixed debt issuance cap for the President to navigate while simultaneously honoring statutory spending commitments—effectively undermined congressional authority by empowering the President to decide what approach to take when faced with a perceived statutory conflict. *E.g.*, Chad DeVeaux, *The Fourth Zone of Presidential Power: Analyzing the Debt-Ceiling Standoffs Through the Prism of Youngstown Steel*, 47 CONN. L. REV. 395, 395 (2014) (“Congress, by confronting the president with a no-win scenario, increased his power. Conflicting legislative commands necessarily invest the executive with a measure of discretion that resembles law making. By commanding the president to implement particular programs, while denying him the funds necessary to pay for those endeavors, Congress tacitly afforded the president the discretion to take any of [a range of possible corrective actions].”).

Notwithstanding the greater degree of regulatory control afforded to Congress by its newly revised structure, the continued existence of the debt ceiling—even in its current, mostly dormant form—represents a major source of constitutional fragility. Specifically, it creates a non-trivial risk that Congress and the President will one day fail to resuspend it in a timely manner or otherwise modify it in a way that gives the executive branch irreconcilably conflicting spending and financing directives.

Such an occurrence would likely precipitate a constitutional crisis, as the President and Treasury Secretary would be forced to choose between resolving the conflict by unilaterally cutting spending, raising revenue, ignoring the debt ceiling, or relying on even less conventional financing mechanisms.¹⁸⁸

Crucially, however, the constitutional and statutory tension between spending mandates and financing constraints does not arise solely in the context of *aggregate* debt limits imposed on the Treasury's total borrowing capacity within the consolidated budget process. Many agencies and mandatory programs face *individual* budgetary constraints—either borrowing limits or prohibitions on spending in excess of pre-accumulated receipts—that make it difficult, if not impossible, for them to honor their statutory spending commitments.¹⁸⁹ For example, there has been a longstanding concern that under current financing arrangements, the Social Security Trust Fund will eventually run out of operating funds. If such an eventuality were to occur, as the Government Accountability Office has noted, “Under the Social Security Act, beneficiaries would still be legally entitled to their full scheduled benefits. However, the Antideficiency Act prohibits government [entities from] spending in excess of available funds, so the Social Security Administration (SSA) would not have legal authority to pay full Social Security benefits on time.”¹⁹⁰

Such concerns have led some legal experts to argue for an implied constitutional duty for Congress to fund the executive branch to the degree necessary for it to carry out its substantive fiscal duties as

188. Buchanan & Dorf, *supra* note 103, at 1198. *But see* Grey, *supra* note 52, at 278–79 (arguing that the perceived constitutional conflict inherent in the statutory spending/tax/debt regimes can be avoided by the Treasury exercising alternative financing tools implicit in the plain meaning of the Coinage Act's seigniorage authority).

189. *See generally* Lawrence, *supra* note 163 (discussing Congress's duty to enact appropriations to honor its government spending commitments); Metzger, *supra* note 24 (discussing the exploitation of appropriations to advance policy agendas).

190. BARRY F. HUSTON, CONG. RSCH. SERV., RL33514, SOCIAL SECURITY: WHAT WOULD HAPPEN IF THE TRUST FUNDS RAN OUT? (2022) (quotation taken from the summary).

determined by the appropriations process.¹⁹¹ According to Gillian Metzger, such a “duty to fund” is entirely compatible with “a robust view of Congress’s appropriations power when both are understood as part of an overall obligation by Congress to supervise delegated [fiscal] authority.”¹⁹² In her view,

Whether providing adequate funding or refusing to fund on policy grounds, Congress is playing [a] supervisory role [over the executive branch]. The two are also aligned in both offering ways of targeting systemic legal inconsistency, albeit from opposite angles—one urging Congress to provide funding to meet statutory obligations and the other arguing that Congress’s failure to fund should be recognized as sometimes changing the underlying law.¹⁹³

Viewed from this angle, both the decision to resuspend and *not* resuspend the debt ceiling are arguably, at their core, legitimate expressions of Congress’s fundamental power of the purse—at least, to the extent such decisions are ultimately made by Congress and not by the President through their veto power.¹⁹⁴ As socially harmful and politically unwise as it may be for Congress to ‘go nuclear’ and suspend government-wide deficit spending authority, it is not inherently constitutionally prohibited from doing so.¹⁹⁵ Functionally speaking, the difference between Congress precipitating a general government shutdown by intentionally failing to renew the debt ceiling suspension and terminating a particular spending program by not renewing annual appropriation authority is largely a matter of degree and scale, not kind.

In this sense, recognizing a constitutional *duty to fund* does not undermine or eliminate Congress’s discretionary prerogative to revise or

191. See, e.g., Metzger, *supra* note 24, at 1149–50; Gillian E. Metzger, *The Constitutional Duty to Supervise*, 124 YALE L.J. 1836, 1931–32 (2015) [hereinafter Metzger, *Constitutional Duty*]; Daniel Martin, *The Duty to appropriate: Why Congress Has a Constitutional Obligation to Fund Criminal Law Enforcement*, 106 CALIF. L. REV. 511, 523–24 (2018); Stith, *supra* note 76, at 1350–52.

192. Metzger, *supra* note 24, at 1150.

193. *Id.*

194. In 2017, for example, President Trump threatened to veto any spending legislation that did not include funding for his proposed border wall. See Erik Wasson, *Trump Shutdown Threat Complicates Congress’s Debt Ceiling Plans*, BLOOMBERG (Aug. 23, 2017, at 18:07 ET), <https://www.bloomberg.com/news/articles/2017-08-23/trump-shutdown-threat-complicates-congress-s-debt-ceiling-plans> (on file with the Rutgers University Law Review).

195. See generally SEAN M. STIFF, CONG. RSCH. SERV., R46417, CONGRESS’S POWER OVER APPROPRIATIONS: CONSTITUTIONAL AND STATUTORY PROVISIONS (2020) (discussing the scope of Congress’s constitutional authority over federal spending).

repeal previously incurred fiscal commitments through new legislation or through exercising a general fiscal brake by periodic revocations of temporary grants of general spending authority. Rather, this duty merely enforces consistency between statutory spending commitments and the financing authority necessary to adequately meet them, *to the extent that the spending obligations remain good law*.¹⁹⁶ As Metzger argues, “Congress can alter the government’s substantive responsibilities, but it violates the duty [to fund] if it leaves these responsibilities in place but sabotages the government’s ability to meet them.”¹⁹⁷

On the other hand, in contrast to the legislative defunding of a specific program—seen widely as equivalent to terminating its existence—debt ceiling crises are typically viewed as temporary events that hinder, rather than invalidate, the federal government’s statutory spending directives.¹⁹⁸ While it is possible to treat Congress’s failure to extend the debt ceiling as an intentional repudiation of the executive branch’s general deficit-spending authority, and thus a legitimate expression of its constitutional fiscal powers, this interpretation is clearly at odds with the reality of how debt ceiling crises actually arise and unfold.

As an empirical matter, debt ceiling crises have generally not functioned as broad-scale referenda on the legitimacy of each and every one of the federal government’s spending commitments, or of the President’s interpretation of how to execute those commitments.¹⁹⁹

196. See generally Lawrence, *supra* note 159, at 24–26 (discussing Congress’s duty to enact appropriations to honor its government spending commitments); Zachary S. Price, *Funding Restrictions and Separation of Powers*, 71 VAND. L. REV. 357 (2018) (discussing the check on executive power exercised through Congress’s control over resource-dependent executive powers). Legal scholars explored the implicit tension between funding and spending directives in depth in the late 1980s during the Iran-Contra Affair, when the Reagan administration asserted that the President, as commander-in-chief, retained the constitutional right to provide non-appropriated funding to the Contras under his authority over military affairs. See, e.g., Louis Fisher, *How Tightly Can Congress Draw the Purse Strings?*, 83 AM. J. INT. L. 758, 758–61 (1989). See generally Christian I. Bale, Note, *Checking the Purse: The President’s Limited Impoundment Power*, 70 DUKE L.J. 607 (2020) (arguing that the President, as commander-in-chief, has limited authority to impound funds for a discrete number of military-related programs, notwithstanding general statutory prohibitions on unilateral impoundment).

197. Metzger, *Constitutional Duty*, *supra* note 191, at 1931–32; see also Metzger, *supra* note 24, at 1149 (arguing the same).

198. See, e.g., CLINTON T. BRASS ET AL., CONG. RSCH. SERV., RL34680, SHUTDOWN OF THE FEDERAL GOVERNMENT: CAUSES, PROCESSES, AND EFFECTS 8 (2018).

199. The latter typically arises in the context of disputes over the Antideficiency Act, which restricts the executive branch from spending funds that have not been appropriated, and the Impoundment Control Act, which restricts the executive branch from *not* spending funds that *have* been appropriated. See, e.g., Andrew Cohen, *The Odd Story of the Law That Dictates How Government Shutdowns Work*, ATLANTIC (Sep. 28, 2013),

Rather, commentary on these crises has generally centered on disagreements over aggregate deficit and borrowing levels, as well as concerns about fiscal prudence and macroeconomic stability.²⁰⁰ Although individual programs often end up losing funding in the end-negotiated compromise, in general, the federal government quickly resumes normal operating activities and payments while honoring previously incurred financial obligations and backdated payment orders.²⁰¹

Furthermore, one of the major reasons why debt ceiling disputes have become such constitutionally high-stakes, potentially catastrophic affairs is precisely because the responsibility and accountability for ensuring a successful outcome does not lie solely with Congress, as is normally the case with fiscal issues in parliamentary regimes. Instead, it is formally shared with the executive branch in two ways. First, through the President's legislative veto power,²⁰² which requires a two-thirds vote of both houses to overturn,²⁰³ in contrast to the bare majorities needed to pass reconciliation. Second, through the arguably constitutional discretion of the Treasury Secretary to decide to continue honoring pre-existing statutory spending commitments even when the debt ceiling suspension is not renewed.²⁰⁴

Together, these create a dynamic in which Congress can blame the President for causing any political logjam that emerges during the

<https://www.theatlantic.com/politics/archive/2013/09/the-odd-story-of-the-law-that-dictates-how-government-shutdowns-work/280047> (on file with the Rutgers University Law Review); Takeshi Fujitani & Jared Shirck, Executive Spending Powers: The Capacity to Respond, Reprogram, Rescind, and Impound 1 (May 4, 2005) (unpublished Harv. L. Sch. Fed. Budget Pol'y Seminar Briefing Paper No. 8) (on file with the Rutgers University Law Review). See generally Wm. Bradford Middlekauff, Note, *Twisting the President's Arm: The Impoundment Control Act as a Tool for Enforcing the Principle of Appropriation Expenditure*, 100 YALE L.J. 209 (1990) (arguing Congress should amend the Impoundment Control Act to grant the Comptroller General standing to force the release of impounded funds, expanding the act's power over the President).

200. See, e.g., Grey, *supra* note 69, at 253–60; KENNETH GARBADE, FED. RSRV. BANK OF N.Y., STAFF REP. NO. 783, THE FIRST DEBT CEILING CRISIS 2–3 (2016), https://www.newyorkfed.org/medialibrary/media/research/staff_reports/sr783.pdf?la=en [<https://perma.cc/UN59-GT2W>].

201. BRASS ET AL., CONG. RSCH. SERV., *supra* note 198, at 7, 15.

202. See Wasson, *supra* note 194.

203. See U.S. CONST. art. I, § 7, cl. 2.

204. See Buchanan & Dorf, *supra* note 103, at 1176–80 (discussing the 2011 debt crisis and Treasury Secretary Timothy Geithner's decision to not use the “nuclear option”). See generally Alan Feld, *The Shrunk Power of the Purse*, 89 B.U. L. Rev. 487, 488 (2009) (arguing that “[t]he difference in structure between the two political branches places Congress at an institutional disadvantage in its confrontations with the President” due to the difficulty in achieving necessary working congressional majorities, but that “[t]he burden of congressional inaction shifts [back] in Congress's favor . . . when a desired outcome requires enactment of new legislation”).

suspension re-negotiation process, as well as the Treasury Secretary for failing to adequately pursue alternative financing arrangements—of whatever legality—to prevent a government shutdown. Simultaneously, this dynamic allows the executive to effectively nullify duly established congressional spending commitments, both through the obstruction of new financing authority via the threat of a presidential veto and through the Treasury Secretary's ability to unilaterally determine that existing financing authority is no longer sufficient to meet the government's ongoing payment commitments.²⁰⁵

Consequently, despite being initially introduced to increase the executive branch's discretionary capacity to honor Congress's spending directives, today the debt ceiling serves the opposite function. First, it empowers the executive branch to discretionarily *ignore* legislative spending directives by pointing to ostensible contradictions with broader financing constraints.²⁰⁶ Second, it increases the President's control over overall spending levels by granting them the discretion to block Congress's efforts to reauthorize financing authority for previously approved spending. Third, it allows Congress to undermine and/or pick fights with former versions of itself, while deflecting political blame for any resulting social and economic disruption by blaming the President or partisan opposition for any intransigence.

4. Filibuster & the Byrd Rule

Finally, at the procedural level, the combination of the filibuster and Byrd Rule—which excludes from reconciliation any substantive amendment deemed by the parliamentarian to be merely incidental to the budget—creates a narrow, unidimensional legislative process. Under this process, all new legislative proposals are evaluated nominally on their aggregate deficit impact first, and practically on their social need and economic benefits last.²⁰⁷ In the increasingly partisan political landscape, legislators are consequently incentivized to cram provisions

205. For example, in the 1970s, President Nixon attempted to defend the impoundment of various program funds that Congress had specifically exempted from impoundment on the grounds that the executive lacked sufficient available funds to honor total spending commitments. Grey, *supra* note 69, at 241. However, Nixon had plenty of financing means that had not yet been fully exhausted, prompting legal experts to widely dismiss his claims of financial incapacity as a justification for violating his constitutional obligation to follow Congress's express spending directives. *Id.*

206. See Nathan Tankus, *Everything About the Trump Administration's Impoundment Putsch You Were Too Afraid to Ask*, SUBSTACK: NOTES ON THE CRISES (Jan. 31, 2025), <https://www.crisisnotes.com/everything-about-the-trump-administrations-impoundment-putsch-you-were-too-afraid-to-ask> (on file with the Rutgers University Law Review).

207. See Jacobi & VanDam, *supra* note 178, at 306.

into bills passed through the reconciliation process to take advantage of the bare-majority vote requirement and enable their policies to skirt the filibuster's sixty-vote requirement.²⁰⁸ This, in turn, feeds back into and further reinforces the political and procedural centrality of debt ceiling and financing authority disputes, increasing their value as targets for constitutional pressure and attack by an authoritarian presidency.

In particular, the filibuster and Byrd Rule together weaken Congress's constitutional powers of the purse in two key ways. First, they obscure and impede Congress's basic constitutional function as a bicameral parliamentary body empowered to "present[]" bills for the President's signature, and eventual passage into law, upon a majority vote of both houses.²⁰⁹ Instead, Congress's raw majoritarian power is restricted to only the most incontrovertible budgetary legislative proposals.²¹⁰ Everything else is subject to exclusion from the reconciliation process upon a negative determination of its adequate budgetary significance by the Senate Parliamentarian.²¹¹ After that, they are thrown to the mercy of the filibuster's sixty-vote threshold, which, under current electoral map conditions, means effectively no chance of down-the-line partisan passage.²¹²

208. See ROBERT VERBRUGGEN, MANHATTAN INST., A BETTER BYRD RULE: HOW TO FIX THE SENATE'S RECONCILIATION PROCESS 3 (2025), <https://media4.manhattan-institute.org/wp-content/uploads/a-better-byrd-rule-how-to-fix-the-senates-reconciliation-process.pdf> [<https://perma.cc/6ERX-RKKV>].

209. See generally U.S. CONST. art. I, § 7, cl. 2. ("Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approve he shall sign it . . .").

210. See Jacobi & VanDam, *supra* note 178, at 303–06.

211. In doing so, the reconciliation process effectively elevates the Parliamentarian's discretion into a near-metaphysical constraint on the majoritarian lawmaking process. See Michael Bopp, Amanda Neely & Alexandria Murphy, *Flying Right: Avoiding Byrd Rule Challenges in Budget Reconciliation*, GIBSON DUNN (Feb. 11, 2025), <https://www.gibsondunn.com/flying-right-avoiding-byrd-rule-challenges-in-budget-reconciliation> [<https://perma.cc/HM57-KBXU>] (noting that parliamentarian determinations leave "no public record of the arguments or outcomes," and that consequently, it can be "difficult to divine the standard" they use, "in particular, the 'merely incidental' test.") (internal quotations omitted).

212. See VERBRUGGEN, *supra* note 208, at 3. This is especially constitutionally problematic given the British parliamentary history of vesting fiscal powers not just with the legislative branch, but with the lower house specifically. See *CFPB v. Cmty. Fin. Servs. Ass'n of Am., Ltd.*, 601 U.S. 416, 427–31 (2024) ("By the time of the Constitutional Convention, the principle of legislative supremacy over fiscal matters engendered little debate and created no disagreement. It was uncontroversial that the powers to raise and disburse public money would reside in the Legislative Branch. The only disagreement was about whether the right to originate taxation and appropriations bills should rest in a legislative body with proportionate representation Ultimately, the Convention agreed to grant the House an exclusive power to originate revenue laws but not for appropriations laws.").

Second, they subordinate consideration of the standalone merits of specific policy proposals to a broader concern for both its fiscal impact and relative prioritization against other fiscal priorities. They do so by redirecting all politically contentious policy debates through the conceptual bottleneck of “budget-related law,” and then meta-structurally constraining the budget process around both aggregate deficit targets and periodic debt ceiling resuspension debates.²¹³ This, in turn, forces Congress to engage and negotiate with the President primarily through abstract, headline numbers compiled from hundreds of individual program estimates—whose budget impact projections are treated as neutral, scientifically rigorous “pay-for” price tags.²¹⁴

II. DOLLAR DIGITIZATION AS FISCAL TRANSFORMATION

[A]bolish the Federal Reserve and replace it with a computer.

—Milton Friedman²¹⁵

The previous Part examined the structure of the public fisc as a nested system of centralized entities and processes, each with distinct, and often contradicting, directives, interests, and priorities. It argued that this structure engenders constitutional fragility through excessive administrative entanglement that orients the entire spending process around a small number of key procedural and institutional bottlenecks. This, in turn, renders it vulnerable to presidential manipulation and compromise, undermining the separation of powers.

However, as underscored by Trump’s DOGE-led attempts to take over the BFS, the currently fragile state of the constitutional fisc is also in part a function of monetary technology and public payments infrastructure design. Notably, the same architectural flaws found at the legal and institutional level—excess entanglement, key bottlenecks, and contradicting directives and functions—are also observable at the technical level.

213. See KELTON, *supra* note 147, at 38–39.

214. But see Stephanie Kelton, *What Every American Needs to Know About the Congressional “Pay-For” Game (Part 3)*, SUBSTACK: THE LENS, (Aug. 29, 2021), <https://stephaniekelton.substack.com/p/what-every-american-needs-to-know-5b0> [https://perma.cc/U7BC-32RF] (arguing against the funding-constrained “pay-for” budgeting approach in favor of an inflation targeting approach that evaluates bills for their inflationary risk and not their impact on total deficit levels).

215. Kathleen O’Toole, *Greenspan Voices Concerns About Quality of Economic Statistics*, STAN. NEWS (Sep. 9, 1997), <https://web.archive.org/web/20090214014500/http://news-service.stanford.edu/pr/97/970910greenspan.html> [https://perma.cc/5QNE-UBTC].

Recently, policymakers have become increasingly interested in new forms of government-issued digital public money under the conceptual frame of Central Bank Digital Currencies (“CBDCs”).²¹⁶ Unsurprisingly, the idea has been highly contentious, inspiring various objections based on over government capacity, overreach, and balancing of interests between security and privacy.²¹⁷ Although these debates thus far have largely ignored fiscal considerations, they represent an initial political and practical opening for developing an even more fundamental reimagining of the Constitution’s various fiscal and monetary powers.

To that end, this Part makes the case for a wholesale reimagining of fiscal design, administration, and policymaking through the technological lens of digital public money. It proceeds by briefly tracing the rise of CBDCs, arguing that they represent an unseized opportunity for a broader digital reimagining of fiscal policy and public payments infrastructure. It then proposes and outlines a blueprint for a “New Digital Fiscal Regime” (“NDFR”) centered around a two-tier, ‘centralized legislature, decentralized executive’ approach to the division of fiscal administrative responsibilities. Finally, it argues that this framework clarifies and simplifies fiscal and monetary operations, resolves major constitutional weaknesses in the existing fiscal architecture, and serves as a progressive counter-vision to Trump’s constitutionally threatening unitary fiscal executive vision.

A. *Digital Currency Technology’s Untapped Fiscal Potential*

Money is both material and symbolic, driven by practicality yet imbued with perceptual meaning.²¹⁸ The public fisc’s design and how it

216. See *Central Bank Digital Currency Tracker*, ATL. COUNCIL (2025), <https://www.atlanticcouncil.org/cbdctracker> [https://perma.cc/VCP2-G3H8] (last visited (Oct. 24, 2025) (tracking current CBDC projects internationally). See generally *Central Bank Digital Currency—Frequently Asked Questions*, BD. OF GOVERNORS OF THE FED. RSRV. SYS., <https://www.federalreserve.gov/cbdc-faqs.htm> [https://perma.cc/ZWZ2-PL5H] (last visited Oct. 15, 2025) (“[A] CBDC would differ from existing digital money available to the general public because [it] would be a liability of the Federal Reserve, not of a commercial bank.”).

217. See, e.g., Siddharth Venkataramakrishnan, *How Digital Cash Got Caught Up in the Culture Wars*, FIN. TIMES (Sep. 5, 2023), <https://www.ft.com/content/ab8fbe73-34bf-4624-b394-97f995551f7a?syn-25a6b1a6=1> (on file with the Rutgers University Law Review). On January 23, 2025, President Trump issued an executive order prohibiting any further action to “establish, issue, or promote central bank digital currencies within . . . the United States or abroad.” Exec. Order No. 14178, 90 Fed. Reg. 8647 (Jan. 23, 2025).

218. See, e.g., Grey, *supra* note 69, at 296 (arguing that the proposal to sidestep the debt ceiling by minting a trillion-dollar platinum coin “confronts the public directly with the reality of the ‘big monetary infinity sign in the sky,’ and in doing so, forces us to collectively grapple with the economic and cultural implications of the state’s money creation power,”

functions shape the economic and political conditions under which broader social action and change occurs.²¹⁹ Disputes over the precise definition of ‘appropriation’ or interoperability standards for publicly issued debit cards are, in one sense, highly esoteric and abstract. Yet their impacts are felt concretely and acutely by millions: whether from financial crises, government shutdowns, austerity, or the re-balkanization of the payments system.

President Trump has tragically illustrated the risks of allowing public payments technologies to atrophy, as well as failing to keep up evolving best practices for resilient and secure system design. Neglecting fiscal infrastructure is a negative feedback loop. Reduced state administrative capacity increases the rate of fiscal operational failure, which, in turn, becomes a justification for further reductions in resources and operational responsibility.

Beyond the clear material and political harms, this dynamic also impoverishes our collective imagination of what is technically possible in fiscal and monetary governance and reform. In ceding the imaginative realm of digital monetary innovation, opponents of the right-wing vision of the unitary executive fisc have found themselves primarily defending the anachronistic, contradictory, and constitutionally fragile status quo.

By contrast, President Trump has paired his internal assault on the federal bureaucracy with an external embrace of the private crypto industry,²²⁰ as well as industry leaders from both Wall Street and Silicon Valley—including Elon Musk.²²¹ In doing so, he has aligned himself with

while simultaneously presenting an “opportunity to imaginatively reclaim the public fisc from the austere clutches of red ink, overburdened grandchildren, bond vigilantes, and empty coffers”). See generally SCOTT FERGUSON, *DECLARATIONS OF DEPENDENCE: MONEY, AESTHETICS, AND THE POLITICS OF CARE* (2018) (discussing how modern monetary theory views money as an abstract public system).

219. See Grey, *supra* note 69, at 294 (arguing that the rise of private digital currencies highlights the “urgent need to develop new social narratives and symbols to educate the public about the . . . future of public finance”). Even the Constitution, which vests Congress with the powers of the ‘purse’—including the powers to ‘coin’ money and ‘draw’ it from ‘the Treasury’—is impossible to conceptualize without some prior understanding of a ‘purse’ (and ‘coin’ and ‘Treasury’) from which to infer meaning and analogize between the physical and legal processes involved in creating money and making payments. See *id.* at 296–97.

220. See David Yaffe-Bellany, *At Crypto Summit, Trump Says U.S. Will Be ‘the Bitcoin Superpower’*, N.Y. TIMES (Mar. 7, 2025), <https://www.nytimes.com/2025/03/07/technology/trump-crypto-summit.html> [https://perma.cc/7D4R-2ZS8] (reporting Trump’s statement at a White House-organized “crypto summit” that his administration would make the United States “the Bitcoin superpower of the world and the crypto capital of the planet”).

221. Mike Isaac & Cecilia Kang, *If Elon Musk and President Trump Divorce, Who Gets Silicon Valley?*, N.Y. TIMES (June 6, 2025), <https://www.nytimes.com/2025/06/06/technology/elon-musk-trump-silicon-valley-tech.html> [https://perma.cc/Q9MB-

a vision of market-centric digital monetary innovation, in which the government's role is to embrace and support private, profit-driven ventures.²²² Meanwhile, the state's internal fiscal architecture is metaphorically—and, for all intents and purposes, practically—reduced to a single digital database managed by a single, austerity-obsessed systems administrator.

Immediate efforts to stop the wave of Trump's assault, while critical, leave unaddressed the deeper architectural problems he exploited to seize power in the first place, many of which long preceded his political ascendance. Instead, shifting the current political momentum requires articulating a compelling counternarrative for the future of digital money, public spending, budget policymaking, and the constitutional separation of powers. Put another way, it takes good vision to beat a bad vision.

1. CBDCs and the Bigger Fiscal Picture

Governments have long administered dematerialized accounts and payment services, particularly through their central banks.²²³ In most countries, however, these account payment services are predominantly limited to handling interactions between national governments, major banks, and systemically important financial institutions.²²⁴ In recent years, however, governments have faced growing pressure to take a more active role in retail money services.²²⁵

NP8C] (discussing how Elon Musk led a coalition of Silicon Valley support for President Trump, at least during his reelection campaign and shortly thereafter).

222. *But cf.* President Barack Obama, Remarks by the President at Signing of the Small Business Jobs Act (Sep. 27, 2010), <https://obamawhitehouse.archives.gov/the-press-office/2010/09/27/remarks-president-signing-small-business-jobs-act> [<https://perma.cc/KZB8-NQRR>] (“[W]hen I took office, I put in place a plan—an economic plan [G]uided by a simple idea: Government can’t guarantee success, but it can knock down barriers to success Government can’t replace—can’t create jobs . . . but it can create the conditions for small businesses to hire more people . . .”).

223. *See generally* MONEY IN THE WESTERN LEGAL TRADITION: MIDDLE AGES TO BRETTON WOODS (David Fox & Wolfgang Ernst eds., 2016) (discussing the evolution of central banking from the emergence of private banks in medieval Europe to the broad expansions of the mid-twentieth century).

224. *See, e.g.,* Richard J. Sullivan, *The Federal Reserve’s Reduced Role in Retail Payments: Implications for Efficiency and Risk*, ECON. REV., Third Quarter 2012, at 79, 79–80.

225. *See, e.g.,* Katharina Pistor & Co-Pierre Georg, *The Right Response to the Libra Threat*, PROJECT SYNDICATE (Aug. 5, 2019), <https://www.project-syndicate.org/commentary/regulating-private-money-facebook-libra-by-katharina-pistor-and-co-pierre-georg-2019-08> [<https://perma.cc/DR4B-RWVM>] (describing Facebook’s announcement of its proposed Libra digital currency in mid-2019 as a “bombshell” that catalyzed public policymakers into the “sudden realization of the threat posed by digital

Policy discussions around digital public money have thus far focused on CBDCs.²²⁶ In the process, the possibilities and implications of digital

currencies to the existing monetary system”); Rohan Grey, *Facebook Wants Its Own Currency. That Should Scare Us All*, NATION (July 22, 2019), <https://www.thenation.com/article/archive/facebook-libra-currency-digital>

[<https://perma.cc/F36C-MNQT>] (arguing that Libra’s announcement “reveal[ed] the stakes of the struggle for the future of digital money” by “[bringing] monetary reform to the forefront of our collective consciousness, . . . ma[king] it impossible to ignore”). See generally RAÚL CARRILLO, BANKING ON SURVEILLANCE: THE LIBRA BLACK PAPER (2020), <https://ourfinancialsecurity.org/wp-content/uploads/2020/06/Libra-Black-Paper-FINAL-2.pdf> (on file with the Rutgers University Law Review) (observing that the emergence of private digital currencies, such as Facebook’s Libra, calls for government actors to assume a more proactive role in providing regulation).

226. See, e.g., BD. OF GOVERNORS OF THE FED. RSRV. SYS., MONEY AND PAYMENTS: THE U.S. DOLLAR IN THE AGE OF DIGITAL TRANSFORMATION 13–20 (2022), <https://www.federalreserve.gov/publications/files/money-and-payments-20220120.pdf>

[<https://perma.cc/PJ6K-E9JT>] (noting that the Federal Reserve would continue to explore a “wide range of designs for a CBDC” to determine how it might “fit into the U.S. money and payments landscape”). In June 2026, the Senate voted 85-5 to pass an omnibus housing bill, the 21st Century ROAD to Housing Act, that included a provision banning the issuance of a CBDC until 2030. An earlier version of the bill already passed in the House of Representatives. The bill is expected to be signed by President Trump after the amended Senate version is approved by the House. Jesse Hamilton, *U.S. Senate Passes Housing Bill That Carries Four-Year Ban on a Fed CBDC*, COINDESK (June 22, 2026), <https://www.coindesk.com/policy/2026/06/22/u-s-senate-passes-housing-bill-that-carries-four-year-ban-on-a-fed-cbdc> [<https://perma.cc/BU3Y-M367>]. Such legislation is largely symbolic, however, given that even legislators and central bankers open to CBDCs have consistently maintained that any meaningful implementation would require new enabling legislation. See, e.g., Michelle Bowman, Member, Bd. of Governors of the Fed. Rsrv. Sys., Considerations for a Central Bank Digital Currency, Remarks at the Georgetown University McDonough School of Business Psaros Center for Financial Markets and Policy (Apr. 18, 2023), <https://www.federalreserve.gov/newsevents/speech/files/bowman20230418a.pdf>

[<https://perma.cc/HUL3-Z7QB>] (“While the Federal Reserve plays an important role in these ongoing discussions and technical research, the Fed would not implement a U.S. CBDC without the approval of Congress.”). See also Payments Access and Consumer Efficiency (“PACE”) Act of 2026, H.R. 8395, 119th Cong. (2026) (authorizing the creation of new Federal Reserve master accounts for retail payments-oriented fintech companies). For extended discussion of leading CBDC-oriented reform proposals, see generally Saule T. Omarova, *The People’s Ledger: How to Democratize Money and Finance the Economy*, 74 VAND. L. REV. 1231 (2021) (observing that the issuance of CBDCs has become an increasingly hot topic discussion as a result of the rise in popularity of cryptocurrencies); John Crawford, Lev Menand & Morgan Ricks, *FedAccounts: Digital Dollars*, 89 GEO. WASH. L. REV. 113 (2021) (proposing that CBDC infrastructure be structured using the Fed’s already existing accounts system in a democratized system); Mehrsa Baradaran, *It’s Time For a Public Option in Banking!*, HARV. L. REC. (Nov. 17, 2015), <https://hlrecord.org/its-time-for-a-public-option-in-banking/> [<https://perma.cc/E3YP-PTGQ>] (arguing that the federal government should develop a public banking option through the U.S. Post Office to protect poor borrowers); Robert Hockett, *Digital Greenbacks: A Sequenced ‘Treasury Direct’ and ‘Fed Wallet’ Plan for the Democratic Digital Dollar*, 25 J. TECH. L. & POL. 1, 3 (2021) (proposing establishing a CBDC using the existing TreasuryDirect platform).

currency innovation for constitutional reorganization of legislative budgetary procedure, as well as transforming the executive financing process, have been overlooked.

As recent national events have established, this fiscal neglect has been a grave oversight with profound practical and legal repercussions. By focusing almost exclusively on one institutionally narrow, hyper-technical conception of digital currency, central bankers and legislators have sidestepped more difficult but fundamental questions about the future of public money and the constitutional fiscal order.²²⁷ These include, among others, how to radically improve the mechanisms and procedures of public spending to preserve congressional fiscal authority against executive branch encroachment in a world defined by digitally native governance, increasingly extreme political volatility, and a hierarchically centralized administrative state. At one level, this oversight reflects a failure of imagination among policymakers to conceptualize the broader implications and possibilities of dollar digitization.²²⁸ More deeply, however, the problem is systemic: elected officials, the media, interest groups, and advocacy movements have all broadly failed to devote sufficient attention and resources to understanding and securing the most sensitive and mission-critical central subcomponents of the entire global dollar regime.²²⁹

227. See *Digitizing the Dollar: Investigating the Technological Infrastructure, Privacy, and Financial Inclusion Implications of Central Bank Digital Currencies*, Hearing Before the Task Force on Fin. Tech., H. Comm. on Fin. Serv., 117th Cong. 58 (2021) (statement of Rohan Grey, Assistant Professor of Law, Willamette University) (arguing that the Federal Reserve is “clearly not the only government agency with a legitimate interest in the future design and administration of a digital dollar”); Jacqueline Best, *Uncomfortable Knowledge in Central Banking: Expertise Confronts the Visibility Dilemma*, 51 *ECON. & SOC’Y* 559, 560 (2022) (arguing that the “knowledge that is often most uncomfortable for [central bankers] is the fact of their own ignorance,” and that “[e]ven when central bankers themselves are open to acknowledging what they don’t know, they face external pressure to demonstrate their expertise”).

228. But cf. Raúl Carrillo, *Seeing Through Money: Democracy, Data Governance, and the Digital Dollar*, 57 *GA. L. REV.* 1207, 1251–78 (2023) (considering the consumer privacy implications of dollar digitization); John Haskell & Nathan Tankus, *Virtual Currency (In the Shadows of the Money Markets)*, *JUST MONEY* (Apr. 9, 2020), <https://justmoney.org/j-haskell-n-tankus-virtual-currency-in-the-shadows-of-the-money-markets> [<https://perma.cc/2B2A-35JG>] (exploring the risks of telecommunications infrastructure providers as digital currency “shadow banks”).

229. See, e.g., Schneier & Ottenheimer, *supra* note 18; Nathan Tankus, *Elon Musk’s Attempt to Control the Treasury Payment System Is Incredibly Dangerous*, *ROLLING STONE* (Feb. 3, 2025), <https://www.rollingstone.com/politics/politics-features/trump-elon-musk-treasury-payment-system-dangerous-1235254831> [<https://perma.cc/YQ7G-UA3G>] (noting that COBOL, the programming language upon which the Treasury’s payments software relies, has “proved to be impossible and uneconomic to move away from for the most complex, oldest and most important legacy IT systems,” and arguing that “the number of

As explored in Part II, modern fiscal policy administration is complex and multidimensional. The OMB, Treasury, and Fed play central roles, while many other federal entities and agencies enjoy varying degrees of budgetary independence and payments autonomy. Moreover, agencies and other public entities regularly engage in intragovernmental transfers and parallel recordkeeping while maintaining separate jurisdictional authority over certain spending decisions, even as they remain part of the broader consolidated federal government.

Operationally, not all federal spending is currently administered by directly transferring public funds from the general Treasury fund to a specific recipient. Rather, spending is often locally ‘financed’—in the sense of locating or obtaining a specific source of funds—through mechanisms with distinct stakeholder interests and practical considerations. For example, some spending comes out of legally-segregated bank accounts that partially or entirely receive inflows from taxes, fees, fines, or seigniorage,²³⁰ with strict cash-flow restrictions placed on agency or program budgets. In other cases, public entities finance their expenditures through the issuance of tax credits or federally guaranteed securities, which are then held by private counterparties and traded in dedicated financial markets.²³¹

This interior architecture of the modern fiscal state is often ignored or downplayed in public discussions of fiscal policy centered around quantitative budget allocations and retail payments logistics. Nevertheless, intragovernmental payment systems and processes serve important constitutional and statutory functions that must be properly accounted for in any meaningful broader reimagining of the digital fisc.

2. Embracing Sensible, Radical Redesign

Protecting and reinforcing the constitutional and functional integrity of the dollar’s fiscal regime in both the immediate and long-term sense will require more than mere defense or incremental reforms. Instead, what is needed is nothing less than a radical, or ‘first principles,’

people who comprehensively understand these legacy IT systems can likely be counted on two hands—and that may be optimistic”).

230. See U.S. MINT, *supra* note 63, at 6 (“Since Fiscal Year (FY) 1996, the Mint has operated under the Public Enterprise Fund (PEF) (31 U.S.C. § 5136). The PEF enables the Mint to operate without an annual appropriation Revenue in excess of amounts required by the PEF is transferred to the United States Treasury (Treasury) General Fund.”).

231. See, e.g., Starling Marshall, Christine Lane & Carina Federico, *Tax Credit Transferability and Direct Pay Proposed Under the IRA: Potential for Interactions with Section 174 Complicate a Seemingly Simple Program*, TAX EXEC., Nov./Dec. 2023, at 32, 33–34.

reimagining of the legal, institutional, and technical architecture and operating procedures of the public fisc.

Addressing and navigating the associated practical complexities requires sensitivity to the nuanced and partly tense relationship between bureaucratically efficient and politically resilient approaches to infrastructural design. For example, there are clear practical benefits to promoting standardization, interoperability, and integration between identical or similar administrative processes and functions across different government organs.²³² Yet, as detailed above, greater centralization can also exacerbate political vulnerabilities, legal tensions, and the risk of operational failure.

At the macro level, concerns for systemic capacity, consistency, and harmonization²³³ support a ‘write once, run everywhere’ approach—that is, developing a single approach to problem solving and implementation wherever the problem appears, so that public actors can more easily coordinate and communicate across institutional and policy domains about shared concerns. Practically, this involves developing and promoting universal best practices through common standards, uniform—but not necessarily centralized—procedures, and interoperable and well-integrated technologies with broad, generic functionality.

At the micro level, concerns for autonomy, agency, and resiliency necessitate decentralizing power and responsibility over operational capacity to the greatest degree reasonably possible.²³⁴ This, in turn, encourages the prioritization of architectures built around open standards, peer-to-peer federation, modularity, customizability, simplicity, ease of general use by non-specialized audiences, low operating latency,²³⁵ and the broad, anti-hierarchical diffusion of

232. See, e.g., David Singh Grewal, *Network Power and Global Standardization: The Controversy Over the Multilateral Agreement on Investment*, 36 METAPHILOSOPHY 128, 131–34 (2005) (discussing the inherent “network power” of standards, as well as their potential risks).

233. See generally Misha Kaur et al., *Innovative Capacity of Governments: A Systemic Framework*, (Org. Econ. Coop. & Dev., Working Papers on Public Governance No. 51, 2022), https://www.oecd.org/content/dam/oecd/en/publications/reports/2022/04/innovative-capacity-of-governments_e3de34c4/52389006-en.pdf [https://perma.cc/6YTM-9STL] (discussing the structural factors influencing public sector innovation).

234. See, e.g., Eben Moglen, *Freedom in the Cloud: Software Freedom, Privacy, and Security for Web 2.0 and Cloud Computing*, Speech Given at a Meeting of the Internet Society’s New York Branch (Feb. 5, 2010), <https://softwarefreedom.org/events/2010/isocny/FreedomInTheCloud-transcript.html> [https://perma.cc/UMG2-VRXV].

235. Latency, also known as lag, refers to the delay between a system input and its corresponding output. See Joseph H. Sommer, *Where is the Economic Analysis of Payment Law?*, 83 CHI.-KENT L. REV. 751, 755 (2008) (noting that payments intermediaries “simplify credit topology” by reducing the required number of direct dyadic settlement transactions through offsetting clearing).

administrative and infrastructural capacity across the federal government.²³⁶

At both levels, concerns for quality control, precision, efficacy, and accountability support a ‘make each thing do one thing well’ approach to both technology and process.²³⁷ Critically, this involves identifying and disentangling—if not completely unbundling—the subcomponents of larger administrative systems responsible for *determining* public policy from those responsible for *implementing* it.²³⁸ This disentanglement, in turn, enables the development and use of objective performance criteria and clear accountability metrics for evaluating the government’s demonstrated actions against its official policy stance and stated goals.

3. Back to the Future (Sort Of)

It is easy to take the stability and legal predictability of the U.S. monetary regime for granted. Yet it is a relatively recent and fragile historical development—to the degree it exists at all—and given recent events, its longevity looks increasingly tenuous.²³⁹

Concurrently, the historical evolution of the U.S. budget process has undergone a turbulent history of centralization followed by repeated fragmentation. For most of the eighteenth and nineteenth centuries, individual agencies regularly submitted their budget requests directly to Congress without any presidential involvement or approval.²⁴⁰ Beginning in the late nineteenth century, however, the executive branch—through the Department of the Treasury—began to take a more active role by

236. Cf. Moglen, *supra* note 234 (“[The Internet was designed] as a network of peers without any intrinsic need for hierarchical or structural control and assuming that every switch in the net is an independent free standing entity . . .”).

237. See Sommer, *supra* note 235, at 761–62 (“Modularity is a key criterion of networks. Modularity allows complex networked systems to be assembled from simple subsystems. Modularity permits weak coupling among modules and a hierarchical system design.”).

238. Critically, this distinction also maps onto the constitutional separation of powers between the legislative and executive branch. See discussion *supra* notes 202–05 and the accompanying text about the pernicious effects of permitting too much crossover between the branches.

239. Prior to the Civil War, for example, the dominant means of day-to-day payments were not coins but rather banknotes, the actual value of which fluctuated daily depending on the health of the issuing entity. See Shane White, *Freedom’s First Con: African Americans and Changing Notes in Antebellum New York City*, 34 J. EARLY REPUBLIC 385, 389 (2014).

240. MICHELLE D. CHRISTENSEN, CONG. RSCH. SERV., R43163, THE PRESIDENT’S BUDGET: OVERVIEW OF STRUCTURE AND TIMING OF SUBMISSION TO CONGRESS 1 (2016); SCHICK, *supra* note 174, at 14.

consolidating most, but not all, of these requests into a single, periodic, annual submission to Congress, called the “Book of Estimates.”²⁴¹

Although the Book of Estimates represented a major step in consolidating executive budget authority, it remained comprised of “uncoordinated agency submissions” rather than a single, integrated budget vision.²⁴² In 1884, Congress passed a law requiring that all agency estimates be directed through the Treasury Secretary for inclusion in the Book of Estimates.²⁴³ In 1901, it passed another law requiring that such estimates be presented to the Treasury annually by October, in order for them to be consolidated and presented to Congress by November.²⁴⁴

In 1910, President Taft created the Commission on Economy and Efficiency, which in 1912 published a report titled “The Need for a National Budget,” recommending that the President take a more direct coordinating role over individual agency spending levels.²⁴⁵ This format would ultimately be adopted in 1921, when, following the unprecedented fiscal needs of World War I, Congress passed the Budget and Accounting Act, directing the President to prepare a single consolidated budget on behalf of the executive branch.²⁴⁶ Since then, the President and Treasury have prepared an annual federal budget proposal for consideration by Congress as part of the joint budget resolution process.²⁴⁷

In contrast to the pre-1920s regime, a budgetarily centralized and operationally decentralized regime would preserve both the President and Congress’s roles in determining and overseeing macroeconomic policy targets, while reducing the threat of consolidation by empowering individual agencies to both negotiate directly with Congress and directly manage their own funds and payment processes.

The remaining sections of this Part sketch out a blueprint for what the reimagined digital fisc should look like and consider its implications for the future of fiscal administration, legislative process, and the constitutional separation of powers.

241. CHRISTENSEN, CONG. RSCH. SERV., *supra* note 240, at 1–2.

242. *See* Fisher, *supra* note 159, at 58.

243. *See* CHRISTENSEN, CONG. RSCH. SERV., *supra* note 240, at 2.

244. *Id.*

245. *Id.*

246. *Id.* at 1.

247. *See id.* Even as the President has consolidated control over executive involvement in the legislative budget process, the rise of mandatory spending programs and other non-discretionary spending obligations have effectively refragmented the federal budget itself. *See supra* notes 163–66 and accompanying text.

B. Imagining the Digital Fisc

This section outlines the core powers, duties, operational functions, and infrastructural responsibilities for a reimagined digital fisc, henceforth the New Digital Fiscal Regime (“NDFR”). In keeping with the issues and concerns raised in Parts I and II, its design is centrally—but not exclusively—motivated by the constitutional need to clarify, reinforce, and reorganize the legal and practical delineation of fiscal powers and responsibilities between the legislature, President, and the rest of the executive branch.²⁴⁹

To do so, it reimagines fiscal administration as a suite of ‘small-c constitutional’ technologies and processes that figuratively and literally embody concepts relating to the ‘big-C’ Constitution.²⁵⁰ Specifically, the NDFR is designed around three main systems, each with multiple subcomponents, in accordance with the architectural principles outlined in the previous section.

The foundational level is the “Congressional Fiscal Record,” a digital database jointly managed by both houses of Congress that records, defines, and administers delegations of legislative lines of “Public

248. Elon Musk (@elonmusk), X (Feb. 2, 2025, at 16:25 ET), <https://x.com/elonmusk/status/1886164124981166241> [<https://perma.cc/XF6W-QMHY>].

249. The implications of dollar digitization on the judicial branch are also important, but beyond the scope of this Article and thus a subject for future follow-up projects.

250. Specifically, the NDFR reimagines the various fiscal powers articulated in Article I, Sections 8 and 9, of the Constitution—which together vest Congress with the powers to “coin money” and regulate its value, “draw[] [money] from the Treasury,” “borrow” it on the “credit of the United States,” and spend to promote general welfare—as discrete material processes based around particular technological systems. U.S. CONST. art. I, §§ 8–9.

Credit.” Crucially, these credit lines represent executive delegations not of sums of money, but of spending *power*.²⁵¹

Next, the ‘Congressional Treasury ATM,’ a secure, centrally housed digital terminal connected to locally managed agency ‘ePurse’ devices. Public agents withdraw and deposit spendable digital dollar balances from the virtual Treasury in the form of ‘eCoins’ by drawing from the ATM through pre-approved Public Credit lines, formalized and administered through congressionally issued ‘Public Credit Cards.’

Finally, the ‘Federated Federal Ledger,’ a semi-centralized, semi-decentralized distributed database that synchronizes microlevel agency budget data with Congress’s macrolevel consolidated public ‘Fiscal Statement and Account,’ while preserving local autonomy and appropriate data protections.²⁵²

Together, these three systems provide the core infrastructure for the five primary phases of fiscal administration under the NDFR, which in turn map directly onto processes:

- **Appropriating:** First, Congress passes a law authorizing or directing an agency to undertake action for which spending is or may be required—by adding a Public Credit line entry to the Congressional Fiscal Record through approving an edit request with the digital signatures of Congress and, in some instances, the President.
- **Drawing:** Next, the agency requests a Public Credit Card—digital ‘Purse Key’—from Congress to activate and draw on its new Public Credit line, which Congress grants after clarifying and negotiating restrictions and conditions through both formal and informal processes, incorporating third-party support from legislative and executive branch agencies.
- **Coining:** Third, the agency uses its newly activated Public Credit Card to automatically withdraw eCoins from the Congressional Treasury ATM, which are then held locally on a secure, network-connected hardware ePurse device.

251. See *Julliard v. Greenman*, 110 U.S. 421, 444 (1884) (“The power ‘to borrow money on the credit of the United States’ is the power to raise money for the public use on a pledge of the public credit, and may be exercised to meet either present or anticipated expenses and liabilities of the government. It includes the power to issue, in return for the money borrowed, the obligations of the United States in any appropriate form, of stock, bonds, bills or notes . . .”).

252. For example, agencies maintain budget accounts separate from records of individual consumer payments, which often contain personal identifying information of the recipient. See *Chapter 6000 Agency Reporting Requirements for USASpending.gov*, Section 6025.20—Awardee or Recipient Information, U.S. DEPT OF THE TREASURY, <https://tfx.treasury.gov/tfm/volume1/part2/chapter-6000-agency-reporting-requirements-usaspendinggov> [https://perma.cc/BR2K-LK47] (last visited Dec. 2, 2025).

- **Spending:** Once locally acquired, the agency can spend new eCoins directly into public circulation, in line with statutory and regulatory directives per the Congressional Fiscal Record and Public Credit Card.
- **Publishing:** Finally, the agency records its spending data locally on a self-hosted Federated Federal Ledger node, which is partially synced to the Congressionally managed federal Public Statement and Account.

1. The Congressional Fiscal Record

Under the NDFR, the fiscal capacity of the United States is most primitively expressed in its Public Credit, grounded in Congress's constitutional authority to both impose taxes and other legal debts, and to determine the specific means through which such obligations may be satisfied—that is, to make money.²⁵³ This dyadic tax-and-money authority is, in turn, backed by the political consent of the People,²⁵⁴ and the real productive capacity of the U.S. economy and global dollar regime.²⁵⁵

Importantly, Public *Credit*—though part of the larger money family—is categorically different from public *currency*—that is, debt. It

253. See generally DESAN, *supra* note 31 (discussing the evolution of the public credit that became a model for early American paper money); Pavlina R. Tcherneva, *Money, Power, and Monetary Regimes* 8–9 (Levy Econ. Inst. of Bard Coll. Working Paper No. 861, 2016), https://www.levyinstitute.org/pubs/wp_861.pdf [<https://perma.cc/8TLK-28HP>] (arguing that taxes “create demand for otherwise worthless paper currency” and “provision[] the government in *real*, not in *financial*, terms”); Pavlina R. Tcherneva, *Chartalism and the Tax-Driven Approach to Money*, in A HANDBOOK OF ALTERNATIVE MONETARY ECONOMICS (Philip Arestis & Malcolm Sawyer eds., 2007) (explaining that the Chartalist school of economics posits money “is a unit of account designated by a public authority for the codification of social debt obligations”). The United States’ imperial dollar regime, which ensures most of the world needs dollars and thus sells real assets to the United States, can be understood in a soft sense as the extension of the taxing function beyond narrow domestic borders. See Tooze, *supra* note 116. Put simply: everyone in the world today wants U.S. dollars, which makes the ability to *spend* U.S. dollars *ex nihilo* equivalent to walking around a global supermarket with a black American Express card.

254. See generally Charles M. Yablon, *Madison’s Full Faith and Credit Clause: A Historical Analysis*, 33 CARDOZO L. REV. 125 (2011) (discussing James Madison’s belief in political accountability as a means of chilling constitutional misconduct with respect to the inherent contradiction within the Full Faith and Credit Clause).

255. See generally L. Randall Wray, *From the State Theory of Money to Modern Monetary Theory: An Alternative to Economic Orthodoxy* 29 (Levy Econ. Inst. of Bard Coll., Working Paper, No. 792, 2014), <https://www.econstor.eu/bitstream/10419/110046/1/780086651.pdf> [<https://perma.cc/C7NG-R9BZ>] (“While it is commonplace to argue that our credit system relies on “trust,” Holders of money have a general claim against society’s productive capacity.”).

embodies the legal *authority* to spend and collect dollars within qualitative—and sometimes also quantitative—constraints, rather than mere ownership or access to a fixed quantity of dollar balances.²⁵⁶ In this respect, Public Credit is an exclusively intragovernmental resource for public agents, complementing public currency's role as an exclusively extra-governmental resource for private actors.²⁵⁷ It represents Congress bestowing its official blessing on the constitutional legitimacy of the executive branch's ongoing fiscal actions.

The technical requirements for the Public Credit system are simple: a single distributed database—the Congressional Fiscal Record—managed jointly and separately in the first instance by both houses of Congress. This database serves as the primary technological platform for recording, formalizing, and codifying all new fiscal legislation and revisions to existing legislation.

Edit approval votes are granted to each member of Congress and the President in the form of unique, secure digital “keys,” or signatures. In keeping with the Constitution, the Congressional Fiscal Record has a simple two-tier voting structure for making substantive changes. First, Congress can approve an edit unilaterally upon a two-thirds vote of both houses.²⁵⁸ Alternatively, Congress can make edits with a bare majority vote in both houses, plus either the President's signature or failure to propose an alternative edit proposal in ten days.²⁵⁹ Together, these

256. Currency, by contrast, is a transferable legal instrument, denominated quantitatively in a unit of account, and materially instantiated in a physical object (including a digital device) or recorded on an accounting ledger. L. Randall Wray, *Understanding Modern Money: How a Sovereign Currency Works* 4–5 (Jan. 2009) (unpublished conference paper), https://www.levyinstitute.org/pubs/Wray_Understanding_Modern.pdf [<https://perma.cc/GN7X-JAQS>] (distinguishing money as an abstract unit of account from “money-things,” which are “representations of ‘money’ with a physical existence”). It is spent into public circulation and retired upon redemption through taxes or other public dues. *See id.* at 8–9.

257. *See* Warren Mosler, *MMT to Washington: There Is No Long-Term Deficit Problem*, HUFF. POST (Dec. 6, 2017), https://www.huffpost.com/entry/mmt-to-washington-there_b_2822714 [<https://perma.cc/9CYU-8S4G>] (“Congress has appointed the Fed as scorekeeper for the dollar. And just like any other scorekeeper it neither has nor doesn't have any dollars. It just has a “scorecard”—a giant spreadsheet—with all of our bank accounts tied to it . . . [T]he federal government therefore doesn't actually “get” anything when it taxes or “uses up” anything when it spends.”).

258. Following the earlier presentment of the proposed edit to the President. *Cf.* U.S. CONST. art. I, § 7, cl. 2 (“If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law.”).

259. *Cf. id.* (“If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it . . .”).

signatures act as ‘Budget Keys,’ collectively establishing new sources of Public Credit by passing new laws, i.e., editing the database.

Legislation recorded in the Congressional Fiscal Record is natively digital, incorporating hypertext to link between sections²⁶⁰ and version control, among other features. It allows for the inclusion of bespoke and fine-grained access, conditionality, and third-party validation requirements into each statutory credit line at the code level, partially through the use of smart contracts software programmed to execute real-world functions based on pre-articulated conditions and inputs—similar to a vending machine—to (semi) automate the apportionment process.²⁶¹ These, in turn, accommodate self-expiring spending laws, as well as the integration of external ‘oracles’ that transform real-world data—including adjudicative determinations and public statistics—into functional legislative inputs via third-party intermediaries and trusted data feeds.²⁶²

The Congressional Fiscal Record is also designed to evolve dynamically, incorporating spending reauthorization laws by tracking unique statutory element identifiers over time.²⁶³ This contrasts with the

260. See generally Linux Info. Project, *Hypertext: A Brief Introduction*, LINFO, <https://www.linfo.org/hypertext.html> [<https://perma.cc/NPG4-DL79>] (last visited Dec. 2, 2025) (“[Hypertext] can allow one copy of a document to exist at a single location that can serve as a reference from a large number of other documents, rather than requiring each of the documents to maintain a separate copy of that document. It is also because it can eliminate the need for users to take the extra steps of looking for related information in indexes and glossaries and because it can often replace the use of search mechanisms.”).

261. See generally JOINT FIN. MGMT. IMPROVEMENT PROGRAM, JFMIP-24-01, *HARNESSING BLOCKCHAIN IN THE FEDERAL GOVERNMENT: KEY CONSIDERATIONS FOR FINANCIAL MANAGEMENT & INFORMATION SYSTEMS* (2023), <https://www.cfo.gov/assets/files/JFMIP-24-01.pdf> [<https://perma.cc/CBE9-3CVY>] (analyzing the opportunities and obstacles involved with potential future blockchain implementation efforts). But see Danielle D’Onfro, *Smart Contracts and the Illusion of Automated Enforcement*, 61 WASH. U. J.L. & POL’Y. 173 (2020) (noting that the “essential problem” with use of smart contract technologies is that “consumers and regulators expect the parties to be imperfect and then expect flexibility around those imperfections,” and consequently “no one actually wants perfect enforcement of contracts, especially not consumer financial contracts”).

262. See Grimmelmann, *supra* note 151, at 14–15. Such mechanisms might include disbursing funds based on predetermined parameters or the occurrence of specific external conditions, or an interpretative resolution by a delegated third-party entity, such as the GAO. They can also include multi-party verification, third-party auditors, backups, and fail-safes, thereby improving rather than reducing resilience and security.

263. See generally Jörn von Lucke, Fotios Fitsilis & Jan Etscheid, *Using Artificial Intelligence for Legislation - Thinking About and Selecting Realistic Topics*, in PROCEEDINGS OF ONGOING RESEARCH, PRACTITIONERS, POSTERS, WORKSHOPS, AND PROJECTS. INTERNATIONAL CONFERENCE EGOV-CEDEM-EPART 2022, at 32 (Marijn Janssen et al. eds., 2022), <https://asgp.co/wp-content/uploads/2023/10/Academic-article-on-using-AI-for-legislation.pdf> [<https://perma.cc/525W-RVPW>] (surveying government

existing U.S. Code, which includes only “general and permanent laws” and thus definitionally excludes appropriations.²⁶⁴ At the same time, it allows for “budget-remote” legislation to be flagged and ring-fenced, while remaining part of the general Congressional Fiscal Record database system. In doing so, it flips the classification of new legislation from being presumptively non-budgetary to presumptively budgetary by default, while leaving the determination of specific statutes and provisions to Congress on a case-by-case basis, as it is today.²⁶⁵

The Constitution does not require congressional appropriations to specify or restrict *ex ante* either the specific amount of money that the executive can or must spend, or the decision-making process they must employ.²⁶⁶ Rather, Congress is required merely to designate the “objects for which [the funds] may be used.”²⁶⁷ Consequently, under the NDFR, Public Credit is extended to the executive branch by default, not through discrete sum allocations but through the extension of qualitative ‘credit lines’—numbered accounts attached to discrete legislative units whose size, scope, and complexity can range from a single sub-clause to multiple acts. Public Credit lines can be both nested fractally—i.e., discrete sub-lines within a general parent line, all attached to the same legislative unit—and super-positionally—multiple separate credit lines attached to part or all of the same legislative unit. They are defined qualitatively but can also be “hardcoded” to include strict quantitative caps and automatic time-release access conditions.

This design flexibility affords Congress broad discretion in determining the substance and form of spending delegations. At one end of the spectrum is a one-time discrete sum earmarked for a specific

interest in new legislative technologies, including “machine understandable” statutory text and “Smart Law”).

264. *Frequently Asked Questions and Glossary*, U.S. CODE, <https://uscode.house.gov/faq.xhtml> [<https://perma.cc/259E-SZDL>] (last visited Nov. 16, 2025).

265. Laws deemed nonbudgetary would be recorded on the Congressional Fiscal Record as having no active credit lines—i.e., as “fiscal orphans”—like laws with expired funding authority.

266. *See* CFPB v. Cmty. Fin. Servs. Ass’n of Am., Ltd. 601 U.S. 416, 436 (2024) (noting that “at least in some circumstances, Congress can make standing appropriations”). The Court also found constitutional the CFPB’s funding structure, which authorizes the director to discretionarily draw funds it deems “reasonably necessary” to “pay the expenses of the Bureau in carrying out its duties and responsibilities.” *Id.* at 435.

267. *Id.*; *see also* United States v. Wells Fargo & Co., 943 F.3d 588, 602–03 (2d Cir. 2019) (holding funds used by the Fed to conduct emergency lending, which it “create[s] *ex nihilo*, at a keystroke” as its own balance sheet liabilities, are legally “provided by the United States” despite not coming directly from the Treasury).

purpose; at the other is an indefinite, uncapped, institutional ‘open line,’ available based on the agency’s self-determined programmatic need.²⁶⁸

2. The Congressional Treasury ATM

After the Congressional Fiscal Record, the next technological layer of the NDFR is the Congressional Treasury ATM.²⁶⁹ The Congressional Treasury ATM is a secure physical terminal hosted within the legislative branch that maintains a central ledger connected via a trusted network to a series of agency-level, locally hosted, offline-capable peer-to-peer ePurse devices. It processes digital dollar currency draw requests from the Congressional Treasury by executive branch actors and other public agents based on valid, unexpired Public Credit draw lines, formalized operationally as Public Credit Cards.

i. Public Credit Cards

Just as congressional e-signatures function as Budget Keys, allowing for the ‘editing’ of new laws, Public Credit Cards function as Purse Keys, defining precise access and use restrictions—the ‘Terms and Conditions’—that prefigure Public Credit’s ultimate spendable form as quantified digital dollar eCoin balances.²⁷⁰ In doing so, they effectuate

268. See *Cnty. Fin. Servs.*, 601 U.S. at 436. In reaffirming the constitutionality of the CFPB’s “open but capped” funding structure, the Supreme Court did not reach the bigger question of the constitutionality of delegations of indefinite, uncapped, discretionary budget authority, such as that of the Federal Reserve. See generally Peter Conti-Brown, *The Institutions of Federal Reserve Independence*, 32 YALE J. REGUL. 257 (2015) (arguing the Fed’s gradual accumulation of effectively unlimited budgetary independence and capacity is contrary to its original statutory design and intent). Justice Kagan’s concurrence instead relied upon the commonly repeated but anachronistic statutory description of the Fed’s funding structure as being based on assessing fees on member commercial banks. *Cnty. Fin. Servs.*, 601 U.S. at 444–45 (Kagan, J., concurring). Justice Alito’s dissent similarly incorrectly locates the source of Fed funding as “earnings of Federal Reserve Banks,” rather than the inherent monetary powers afforded by its balance sheet control. *Id.* at 467 n.16 (Alito, J., dissenting). He goes even further, however, arguing that the Fed’s funding structure, which emerged out of an “intensely-bargained compromise” between competing visions of public and private-centric monetary system governance, represented a “special arrangement sanctioned by history” and thus should “not be seen as a model for other Government bodies.” *Id.*

269. This server functions as the physical embodiment of the constitutional “Treasury” from which all appropriated funds must be drawn under the Appropriations Clause. See U.S. CONST. art. I, § 9, cl. 7 (“No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law . . .”).

270. For example, many extensions of Constitutional Credit will continue to specify hard quantitative constraints, including aggregate caps and timed usage restrictions. Importantly, they will be articulated as conditions imposed on drawing Constitutional Credit at the ATM access layer, rather than the rationing of a finite source

the legal and digital commodification—or more precisely, codification—not of spending itself, but of the spending *power*.²⁷¹

Public Credit Cards are issued virtually in the form of customized sets of legal and operational access rights, permissions, and conditions, which specify the limits under which specific executive branch actors can access the Congressional Treasury ATM server to withdraw new eCoin balances onto their local ePurse devices.

These limits, like credit lines themselves, can be designed broadly—i.e., a total government-wide spending cap—or narrowly at the individual program or agency level. Individual caps can also be embedded in larger budget contingency processes that specify alternative emergency funding sources and/or prescribe spending triage priorities in the event of a full or partial legislative financing freeze.

Public Credit Card issuance and oversight are practically administered by a combination of congressional committees and offices and independent organs of the legislative branch, including the GAO, CBO, and Library of Congress, as well as possible new institutions.²⁷² Together, these entities are responsible for determining the specific limits of delegations of spending authority associated with specific Public Credit Cards, as well as timing or prioritization considerations, upon negotiation with the executive branch through a formalized process.²⁷³ These negotiations are, in turn, ultimately governed and disciplined by the general terms of the ‘ATM Access Protocol’ encoded at the software layer into the Congressional Treasury ATM itself, which operationally

of end-dollars held by other executive actors, as happens today. Equally importantly, such limits and restrictions will be structured and approached as optional design features, superimposed over the default practice of granting funding requests on an as-needed basis at the agency’s discretion, within the defined outer limits of the statutory authority itself.

271. Cf. KARL MARX, 1 CAPITAL: A CRITIQUE OF POLITICAL ECONOMY 127 (Frederick Engels ed., Samuel Moore & Edward Aveling trans., Marxists Internet Archive 2015) (1887) (“The capitalist buys labour-power in order to use it; and labour-power in use is labour itself.”).

272. See generally Bridget C. E. Dooling, *Into the Void: The GAO’s Role in the Regulatory State*, 70 AM. U. L. REV. 387, 388–394, 416 (2020) (noting that administrative law has “largely overlooked” legislative—i.e., non-executive branch—agencies such as the GAO, which evolved from being the government’s “fiscal watchdog” and into its general purpose “congressional watchdog,” and is now responsible for budget audits, policy analysis, accounting investigations, bid protest adjudications, and most importantly, legal opinions concerning rules and regulations promulgated under the Administrative Procedure Act).

273. See generally Jarrod Shobe, *Agencies as Legislators: An Empirical Study of the Role of Agencies in the Legislative Process*, 85 GEO. WASH. L. REV. 451, 451, 504–06 (2017) (noting that agencies are “deeply involved in drafting and reviewing statutory text before enactment,” with Congress “often rel[ying] heavily on agencies’ significant legislative resources and expertise,” in addition to post-ratification dialogue with relevant committees and leadership).

governs when and how Public Credit Cards can be used to withdraw new spendable eCoins.²⁷⁴

The Access Protocol is edited by Congress through a bare majority vote of both chambers. It is thus not itself a law. Instead, it is a parliamentary financing process embedded within a larger interbranch legislative spending process. It gains legal force via a ‘super statute’ requiring all public fiscal activity to be conducted through the ATM server, in accordance with terms established by the ATM Access Protocol.²⁷⁵ This requirement is baked into the Congressional Fiscal Record at the firmware level, sitting atop and across all regular laws, and takes constitutional priority over conflicting executive branch interpretations of its appropriations authority.²⁷⁶

ii. eCoinage

Executive agencies draw requests made against the Congressional Treasury ATM using a valid Public Credit Card with unexpired financing authority, which is typically granted by default under the NDFR. Upon approval, the system transfers the requested amount of eCoins into the agency’s ePurses, providing digital dollar funding access to the executive

274. The specific conditions under which draw requests are made and considered, in turn, are specified upstream through the budget process.

275. One foreseeable criticism of this framework is that it constitutes a congressional veto of administrative action, and thus likely violates the Court’s holding in *INS v. Chadha* that a one-house veto is unconstitutional as it violated either Article II’s delegation of executive power to the executive branch, or the Presentment Clause requirement that bills be presented to the President prior to passage into law. See 462 U.S. 919, 957–59 (1983). As a preliminary matter, Congress should reverse, if not outright reject, *Chadha* as an impermissible impingement of its own constitutionally vested powers. More practically, *Chadha* has since been largely rendered irrelevant through creative workarounds and persistent executive acceptance of effective veto points at the legislative committee level. See Louis Fisher, *The Legislative Veto: Invalidated, It Survives*, 56 L. & CONTEMP. PROBS. 273, 273 (1993) (noting that more than 200 legislative vetoes had been enacted in the decade after *Chadha*, in part as a “practical accommodation” by the executive branch); see also Curtis Bradley, *Reassessing the Legislative Veto: The Statutory President, Foreign Affairs, and Congressional Workarounds*, 13 J. LEGAL ANALYSIS 439, 457–65 (2021) (arguing Congress has invented a litany of workarounds in the decades since *Chadha*).

276. This allows Congress to establish distinct mechanisms for overseeing its executive delegations of both spending authority and financing capacity, while resolving any ostensible tension between conflicting directives through clear hierarchical prioritization of financing restrictions over spending permissions. Congress’s clarifying the interpretation of its own delegated financing authority—i.e. Public Credit—is legally and operationally distinct from overriding the executive branch’s own policy determination of its substantive spending authority. The former remains a purely intra-legislative determination, while the latter pertains to executive action.

branch on an immediate, continuous basis.²⁷⁷ Once drawn onto the agency's hardware wallet—which functions as a locally self-hosted fiscal agent—these dollars can then, if necessary, be separately converted into other forms of digital public money, as well as retail bank money, on an at-par basis, much as coins and notes are today.²⁷⁸

eCoins are bearer instruments and general legal tender obligations of the United States, equivalent to physical coins, instead of accounting liabilities of the drawing entity.²⁷⁹ The act of drawing eCoins from the ATM server adds to the total amount of circulating digital dollars *de novo* and *ex nihilo*,²⁸⁰ while dollars redeemed or collected are deleted.²⁸¹ In this respect, it functions as a literal and physical, albeit computerized,

277. In 2023, the Fed launched FedNow, a 24/7 system intended to accommodate smaller, pass-through consumer payments. See Lynne Marek, *Fed Courts Nonbanks for FedNow Growth*, PAYMENTS DIVE (Apr. 22, 2024), <https://www.paymentsdive.com/news/fednow-courts-fednow-fintechs-nonbanks-instant-payments/713851> [<https://perma.cc/34GD-45QJ>]. Currently, it remains open only to licensed depository institutions, however the Fed has indicated its intent to eventually open it to non-bank financial technology companies as well as to involve bank-affiliated payments system experts, known as “core providers,” in the system development and maintenance process. See *id.*

278. There have been proposals relevant to the technological design of the executive branch-side of this wallet system. See, e.g., THE ECASH ACT, <https://ecashact.us> [<https://perma.cc/95NS-QDSG>] (last visited Oct. 25, 2025); Thomas Kudrycki, *Blockchain Is the Wrong Technology Choice for Delivering Central Bank Digital Currency (CBDC)*, E-CURRENCY MINT (Apr. 24, 2020), <https://www.ecurrency.net/post/blockchain-is-the-wrong-technology-choice-for-delivering-central-bank-digital-currency-cbdc> [<https://perma.cc/YB3M-FEP6>]; ROHAN GREY & JONATHAN DHARMAPALAN, THE CASE FOR DIGITAL LEGAL TENDER: THE MACROECONOMIC IMPLICATIONS OF DIGITAL FIAT CURRENCY 31–49 (2017), <https://rohangrey.net/files/dfc.pdf> [<https://perma.cc/DGA5-2T8G>].

279. Bearer instruments are spent and exchanged through transferring physical possession and ownership of legally recognized monetary data objects, such as coins, notes, and sticks. See generally David Fox, *Bona Fide Purchase and the Currency of Money*, 55 CAMBRIDGE L.J. 547 (1996) (detailing the legal rule by which a recipient who acquires currency in good faith and in return for valuable consideration is granted title to that currency, regardless of where it came from before). eCoins, in addition to their legal and nominal—i.e., quantitative—properties, are secured through cryptography, software, and hardware design.

280. This remains true operationally and legally even when spending authority is “linked” conceptually or practically to revenue through “pay-fors” or other funding arrangements. See generally Stephanie Kelton, *What Every American Needs to Know About the Congressional “Pay-For” Game (Part 1)*, SUBSTACK: THE LENS (Aug. 17, 2021), <https://stephaniekelton.substack.com/p/what-every-american-needs-to-know> [<https://perma.cc/X7M8-SBV4>] (explaining the tit-for-tat politics of pay-fors needed to pass major legislation).

281. Of course, it is possible to automate the granting of new Public Credit authority to an agency upon its return of digital dollars collected from taxes and other revenue sources. This would function as if the entity retained the collected funds locally, while ensuring all public money flows continued to pass through the singular data system nexus of Congress's Treasury.

embodiment of the Constitution's metaphorical Treasury. What is impossible to practically imagine in physical life—all public monies funneling in and out of One Giant Public Purse in the Sky—becomes technically trivial to achieve in the cloud.

The Congressional Treasury draw system, in turn, functions like a virtual intragovernmental ATM—an “Automated Treasury Machine,” or perhaps “Appropriations Transfer Mechanism”—by loading newly created digital public currency into locally held agency wallets sourced directly from Congress.²⁸² In doing so, it simultaneously replaces both the Fed's reserve-centric digital public payments processing regime and the Treasury's debt-centric deficit financing regime.

a.and Regulating the Value Thereof

Similar to how the Fed previously took over paper currency issuance by introducing its own functionally equivalent version of then-still circulating Treasury notes,²⁸³ the NDFR empowers the Fed to assume full responsibility for the issuance and management of public debt.²⁸⁴ Specifically, the Fed is authorized to buy and sell—and lend and borrow—its own interest-paying, positive-duration securities in such amounts and quantities, and at such maturities and interest rates, as it deems necessary to achieve its monetary policy objectives.²⁸⁵

These securities are designed as special-purpose, limited circulation digital dollars—*silver* eCoins, to complement the *gold* eCoins used in general circulation.²⁸⁶ The Fed, in turn, implements monetary policy by

282. This reduces the need for entities to hold excess digital dollar balances beyond day-to-day needs, while simultaneously allowing them to pre-negotiate their full appropriations allocation upfront in the form of a programmed Public Credit Card, attached to an open credit line.

283. See *The History of American Currency*, U.S. CURRENCY ED. PROGRAM, <https://www.uscurrency.gov/history/archived> [<https://perma.cc/7RLM-5JM4>] (last visited Oct. 23, 2025) (“Because United States notes no longer served any function not already adequately met by Federal Reserve notes, their issuance was discontinued and, beginning in 1971, no new United States notes were placed into circulation.”).

284. See generally Nathan Tankus, *We Should Authorize the Federal Reserve to Issue Its Own Securities and #MintTheCoin*, SUBSTACK: NOTES ON THE CRISES (Apr. 16, 2020), <https://www.crisisnotes.com/we-should-authorize-the-federal-reserve> [<https://perma.cc/4RSQ-QV3H>] (arguing for the Fed to take over the issuance of securities from the Treasury as part of its larger monetary policy framework).

285. See, e.g., 1930 ANN. REP. SEC. TREASURY 39 (arguing that proper coordination of budget financing and public debt management necessitated the Treasury be granted “complete freedom in determining the character of securities to be issued . . . [without being confronted by] any arbitrary limitation”).

286. See, e.g., KELTON, *supra* note 147, at 36–37 (“What we call government borrowing is nothing more than Uncle Sam allowing people to transform green dollars into interest-bearing yellow dollars.”).

regulating the supply, price, and convertibility conditions between these two systems, as well as access by private actors. This two-tier design preserves central bank independence and enhances the Fed's fine-grained control over monetary policy, without empowering it to interfere with or exert control over the core fiscal e-coin infrastructure.²⁸⁷

iii. The Federated Federal Ledger

The third and final primary layer of the NDFR is the Federated Federal Ledger ("Federal Ledger"). The Federal Ledger is a semi-centralized, semi-decentralized federated network of local "trusted" server nodes running common account management and recordkeeping software that, in turn, connect and (partially) sync with a central, congressionally managed "super node," the "Public Statement and Account."²⁸⁸ The Public Statement and Account tracks all digital dollar balances drawn, held, spent, received, obligated, and due across the federal government, while maintaining local autonomy and data protection by separating agency-level budget data from program-level recipient payment data.

Importantly, this budget management system, while stacked on top of the aforementioned Fiscal Record and Congressional Treasury ATM systems, plays no operational role in processing or settling digital dollar transactions. Thus, it is best understood as a complementary financial data management system, not an intrinsic part of the payments architecture.

Nevertheless, its role within the NDFR remains critical. This is because the ePurses, out of concern for systemic resiliency and data privacy, are designed as an offline, hardware-secured, peer-to-peer device-based network.²⁸⁹ Consequently, the only central transactional ledger data directly maintained by Congress is the aggregate number of digital dollars that have been withdrawn, redeemed, and are currently outstanding.²⁹⁰ The Federal Ledger thus provides a separate, distinct

287. See Nathan Tankus, *Federal Reserve Issued Securities: Not Such a Crazy Idea After All*, Substack: NOTES ON THE CRISES (Apr. 6, 2023), <https://www.crisisnotes.com/federal-reserve-issued-securities-not-such-a-crazy-idea-after-all/> [<https://perma.cc/VU4Q-JW7W>] (noting that many Federal Reserve officials have historically argued that central bank assumption of responsibility for all debt issuance and management would be "superior to the current monetary policy framework").

288. Notably, final syncing happens automatically at the server level. Consequently, in contrast obtaining a Public Credit Card and/or withdrawing eCoins from the Congressional ATM, this system does not require active day-to-day interbranch coordination.

289. See *supra* note 282.

290. These figures are central to proper accounting of total public spending, revenue, and deficits.

process for the collection and reporting of sub-federal budget data as deemed necessary for Congressional and the President's budget preparation processes.

C. Constitutional Implications

Adopting the NDFR would have far-reaching legal, political, and practical repercussions.²⁹¹ The remainder of this section (briefly) summarizes three major effects that together positively reinforce the constitutional separation of powers against attack and compromise by the authoritarian presidency and unitary executive fisc: 1) strengthening agency budget autonomy, 2) unbundling fiscal operations, and 3) modernizing the appropriations process.

1. Strengthening Local Budget Autonomy

The most immediate and direct way the NDFR hardens the legal and operational security of the fiscal administration against Presidential co-option is by affording agencies exclusive, decentralized control over their appropriated funds, payment technology, and digital affairs. It does so by establishing a new standardized network of locally maintained public agency hardware ePurses, into which dollars are directly created. This relieves agencies of the need to issue or intra-governmentally launder their own debt to finance statutorily authorized deficits.²⁹²

Instead, under the NDFR, Congress effectively digitally consolidates the entire executive branch's fiscal financing and fund disbursement apparatus, currently jointly administered by the Fed and Treasury, and runs it locally *within* the congressional legislative process as a virtual mirror—an automated Treasury Virtual Machine, if you will.²⁹³ In the process, it renders the metaphorical constitutional Treasury legally and practically equidistant to all public agents. This, in turn, harmonizes and

291. See generally Lawrence Rosenthal, *The Statement and Account Clause as a National Security Freedom of Information Act*, 47 LOY. U. CHI. L.J. 1 (2015) (discussing fiscal transparency as a means through which to effectuate accountable national security policy).

292. See generally *supra* notes 80–84 and accompanying text for a discussion about the constitutional fragility caused by the FFB's debt laundering services.

293. See generally *What is a Virtual Machine?*, MICROSOFT, <https://azure.microsoft.com/en-us/resources/cloud-computing-dictionary/what-is-a-virtual-machine> [<https://perma.cc/6SSV-2J7S>] (last visited Dec. 3, 2025) (“A virtual machine emulates a physical computer, running its own operating system and apps with virtualized resources. It's isolated from the host system, allowing users to perform secure tasks like testing apps or using different operating systems while optimizing physical hardware.”).

simplifies the disbursement process, reducing executive entanglement and increasing the legislative branch's fiscal administrative capacity.²⁹⁴

The NDFR solves the constitutional 'hardware' problem of presidential weaponization of intragovernmental fiscal infrastructure by dematerializing the entire process onto a digital platform under Congress's physical custody and control. This precludes the possibility of the President operationally taking over the entire federal administrative apparatus via the payments IT layer, as is currently being attempted with DOGE at the BFS.²⁹⁵

Separately, it strengthens the interdependence of executive and legislative branch agencies in the fiscal administrative process, thereby making presidential assertions of unitary executive control over agency budgetary activities more difficult to achieve and sustain. Simultaneously, it provides new opportunities to shrink, or at least counterbalance, the currently outsized and overly discretionary managerial powers of the OMB through unbundling and reabsorbing part of its apportionment responsibilities back into the legislative branch.²⁹⁶

2. Unbundling Fiscal Operations

The NDFR also hardens the fisc against unitary executive overreach by unbundling and reorganizing fiscal operations into discrete, harmonized, and clearly defined sub-systems, each corresponding clearly to specific fiscal processes in the "big-C" Constitution. These, in turn, are

294. Importantly, the NDFR structure is designed to unify the *front-end* of the fiscal administrative process, over which Congress is responsible (and which is unavoidably centralized by nature of the constitutional process), while remaining agnostic on the ultimate *back end* (or last-mile consumer level), over which the executive is ultimately responsible.

295. See *supra* Part II.

296. See *supra* Part II.B. This would be achieved through a combination of new adjudicative and oversight processes internal to the legislative branch, as well as partial digital automation via new legislative and digital currency technologies. Alternatively, to the extent Congress wished to grant OMB direct administrative—but not operational—control over agency budgets, it could just as easily do so at the agency-specific *spending* level through granting it operational override powers over the specific agency's ePurse device under certain policy-determined circumstances, rather than generally at the systemic *funds disbursement* level. Doing so would clarify and delineate the process through which Congress negotiates and processes disbursements of appropriations authority to agencies, from the distinct political process through which the OMB centrally manages agency spending activity.

administered through “small-c” constitutional technologies that are resistant to the President’s centralized operational attack.²⁹⁷

Under the NDFR, all government deficits are funded directly by Congress through the issuance of new eCoins. Fiscal policy administration is separated entirely from public debt management, eliminating the operational and constitutional contradictions that emerge from their conceptual and practical entanglement, most notably during debt ceiling negotiations.

Congress exercises tight control over executive fiscal activity through two key legislative-administrative processes: authenticating Public Credit Cards based on credit lines drawn on the Fiscal Record;²⁹⁸ and approving Congressional appropriations. Treasury ATM withdrawal requests.²⁹⁹ Importantly, Congress’s governance over the substantive design and technical hosting of the Fiscal Record and Treasury ATM are not in themselves executive fiscal functions. Rather, they are grounded in Congress’s lawmaking and recordkeeping powers, modernized and reformulated to meet the constitutional and intragovernmental needs and challenges of the modern era.³⁰⁰ In both cases, it is the executive that must initiate and ultimately conduct the acts of drawing, coining, borrowing, and spending public money in the form of digital legal tender eCoins, in accordance with the legislative and administrative procedures specified by Congress.

Separately, the Federated Federal Ledger, as a back-end legislative oversight system, actively tracks discrepancies between Congress’s statutory budget directives and the executive branch’s ultimate

297. Technology is no substitute for political organizing or public action and cannot alone prevent constitutional crises. Nevertheless, technological systems’ resilience affects their susceptibility to attack in the service of broader constitutionally subversive ends.

298. See *supra* Part II.B.1. Technical card authentication and oversight services could be delegated to an independent agency within Congress, tasked with harmonizing the card’s operational Terms and Conditions with Congress’s statutory directives, based on interpretative guidance and oversight by Congress itself. Given its primary technical focus on intra-legislative data management and system access, such an agency would be as sheltered from executive branch encroachment as possible.

299. See *supra* Part II.B.2. Public debt management, by contrast, is fully delegated to the independent Federal Reserve and absorbed into its monetary policy operations, mirroring the function and institutional independence of the Founders’ early Sinking Fund Commission. See generally Chabot, *supra* note 38, at 32–47 (discussing the fund and its purpose of buying and selling government securities to stabilize the value of and maintain liquidity in the public debt).

300. See *supra* Part II.B; see also Emily Berman, *Weaponizing the Office of Legal Counsel*, 62 B.C. L. REV. 515, 527–28, 531 (2021) (describing “inter-branch information disputes” as a “political tug-of-war” and noting that “when a dispute over the scope of Congress’s authority or the reach of executive privilege arises . . . it is the people, rather than the courts, that serve as principal referee”).

budgetary actions, improving public accountability. The automatic synchronization and consolidation of individual agency accounts into Congress's consolidated Public Statement and Account makes budgetary obfuscation and presidential secrecy harder to maintain. At the same time, by vesting Congress with the final power over the "One Big Ledger," it structurally favors the legislature in interpretive or deeper political disputes over the validity of conflicting sets of financial accounting data, as well as delegations of fiscal authority more broadly.

The arrangement—balancing legislative consolidation and executive disintermediation on one level, and technological standardization and operational decentralization on another—reduces the potential for intragovernmental obstruction and political gamesmanship. Both the Treasury and Fed are rendered incapable of weaponizing their balance sheets to second-guess the statutory spending commitments of other agencies under the pretext of public debt management or governmentwide financing constraints. Instead, Congress effectively delegates currency creation and payment management authority to individual agencies directly under its ongoing direct supervision, while limiting the substantive jurisdiction of any entity responsible for developing the underlying digital dollar technologies and standards to narrow, technical issues of systems maintenance and improvement.

3. Modernizing Appropriations

Procedurally, the NDFR neutralizes concerns over financing by making all public spending, by default, financed through the issuance of new eCoins. At the same time, it preserves Congress's power to impose aggregate-level budgetary targets and constraints as super-spending limits that take precedence over conflicting background appropriations authority.

This, in turn, makes explicit any contradictions between the two sets of directives by resolving them in Congress's favor, thereby making it ultimately politically responsible for any fallout, to its potential glory or shame. It also reorients Congress's macroeconomic focus away from temporally acute resuspension crises and towards a more consistent, stable process of harmonizing macro-level concerns with micro-level institutional and programmatic priorities.³⁰¹

Under the NFDR regime, laws not otherwise expressly excluded as non-budgetary are presumptively treated as containing their own

301. See generally KELTON, *supra* note 147 (arguing to reorient congressional budgeting away from a focus on numeral deficit estimates, to evaluating real economic and inflationary risk and potential on an empirical, case-by-case basis).

inherent duty to fund any spending obligations implied by their substantive mandates.³⁰² In turn, it is assumed that the source of those funds is, unless otherwise specified, the conventional mechanism by which all Public Credits are redeemed into spendable digital dollar eCoins by executive actors—that is, going to the Congressional Treasury ATM.

In doing so, the NDFR flips the aggregate number-centric logic of the existing filibuster- and Byrd Rule-centric parliamentary procedural regime on its head. Rather than treating budget-related legislation as the fifty-one-vote exception to the sixty-vote norm, the procedural default is that all legislative authority is budgetary unless formally indicated otherwise.³⁰³ Final determination of the limits of specific spending authority—including whether it can, by causal extension, be used in the furtherance of tangentially related or ancillary supporting legal duties—is returned by default to Congress, with the passage of a bill upon a simple majority being proof in itself of Congress's classification of its budgetary significance.³⁰⁴

Of course, Congress remains free to subject specific categories or pieces of legislation to a sixty-vote passage requirement or otherwise carve out categories of non-budgetary authority that are presumptively ineligible for reliance by the executive when attempting to draw on Public Credit. But as with the legislative imposition of caps and timed restrictions on executive spending authority discussed above, these restrictions would be understood as deliberate deviations from the norm, inviting public scrutiny and greater accountability.

302. See *supra* Part II.C for an extended discussion about the budgetary-nonbudgetary distinction and the duty to fund in the ordinary appropriations context.

303. See *supra* Part II.C.4. Beyond procedural clarity, this shift has potentially significant implications for how we legally understand the limits of discrete grants of spending authority vis-a-vis broader legal mandates. Initially situating all statutory authority within the realm of a budget, subject only to initial carveout, encourages a holistic understanding of the material resource uses and needs involved in judicial, legislative, and executive action. Put simply, if turning off the lights makes it impossible to enforce any law, then all laws are—in a sense—partially funded by the light budget, even if that connection is not made explicit in each authorizing statute. The NDFR presumes interconnectedness, removable only upon the assertion of a deliberate and special purpose legal fiction that can be at odds with general reality without reinforcing mistaken perceptions about general reality along the way.

304. The Parliamentarian is still able to remain in essentially its current role, but by clarifying the role as ultimately advisory, Congress would retain final responsibility for any decision to follow the Parliamentarian over its own independent determination on the merits.

i. Smart Appropriations, Dumb Disbursement

By setting the terms of Public Credit Card issuance and overseeing their ongoing use, Congress is positioned to exercise final authority over both *ex ante* permission and *ex post* discipline in public spending levels. Together, they function as intra-legislative counterparts to the OMB's intra-executive apportionment process. Specifically, Congress effectively assumes the OMB's current role of processing or compiling qualitative spending authority into a concrete, practically executable—but crucially not yet executed—quantitative form.³⁰⁵

Currently, Congress issues vague and contradictory directives about the law and spending and relies on the executive to interpret and resolve their meaning. By contrast, under the NDFR, the legislative branch is empowered to directly address frictions, ambiguities, and errors in the day-to-day operationalization of its general directives—that is, to debug the legislative source code upon which its fiscal digital IT infrastructure is constructed.

It could do so, for example, by authorizing congressional agents, such as the GAO, to issue interpretative and adjudicative declarations, published in machine-readable format. These declarations would then be automatically read by oracles—mini-programs embedded into the digital and legal code of the Fiscal Record that are designed to issue different outputs based on external, real-world trigger events and trusted data streams. The Record, in turn, remains the final authority governing the terms and conditions under which the executive may legally and operationally draw on the Public Credit and turn it into spendable public money.³⁰⁶

In this way, the NDFR would allow Congress to reabsorb dominion over infra-legislative clarification and harmonization through an expanded, two-level appropriations process. In doing so, it reframes interbranch budget disputes from debates over *how to pay* for government spending to the more meaningful underlying issue of *whether to spend* public money. This, in turn, shifts the locus of the budget debate away from executory process and toward the legislative process, practically and symbolically recentering Congress as the beating fiscal heart of the federal government.

305. See generally *supra* Part II.B (detailing the relationship between OMB and Congress). This is distinct from both purely executive policymaking functions, and the nondiscretionary mechanical disbursement functions, the latter of which would be virtualized into the Congressional Treasury ATM system.

306. See *supra* Part II.B.2.

Doing so minimizes the emergence of gaps, ambiguities, and contradictions between statutory spending and executive financing directives. It also reduces the risk of constitutionally catastrophic default and separation-of-powers crises that arise when the President or cabinet officials rely on personal interpretations of the government's financing constraints to justify unilaterally violating Congress's clear and unambiguous spending directives.

At the same time, the NDFR leverages a key feature of a reimagined digital dollar regime: law—understood materially as digitally encoded, smart legislative text—can serve as both a technological and substantive input in a larger, multilayered process of monetary creation and payments administration. Whether code is law in any general sense, payments technology certainly can, at least in part, operate this way.³⁰⁷ This, in turn, offers new possibilities for the practical and legal reintegration of various legislative fiscal processes that are presently delegated—or ceded—by the legislative branch to the President and a few key agencies.

Restructuring the congressional record and budget process in this way repurposes the medium of law itself as a practical payment mechanism. In doing so, it recenters Congress in the process of clarifying and harmonizing fiscal policy and resists the President's and OMB's centralizing fiscal encroachment.³⁰⁸

Strategically, it does so by clearly establishing Congress as legally and physically responsible for stewarding the core data and IT systems that define, record, track, and control executive delegations of public fiscal authority. To borrow a line, under the NDFR, Congress can have its *Marbury* moment and “emphatically” assert the exclusive “province and duty” of the legislative department to say what the fisc is.³⁰⁹

This, in turn, encourages greater investment in upgrading the parliamentary process and intra-legislative branch institutional capacity, notably through independent legislative fiscal agencies such as the GAO and the Congressional Budget Office.³¹⁰ In doing so, it promotes

307. See, e.g., *Brinton v. Haight*, 870 P.2d 677, 684 (Idaho Ct. App. 1994) (“tender[ing]” payment for a debt consists of being “willing and *able to deliver* payment”) (emphasis added).

308. As noted above, Congress retains the power to delegate responsibility over aspects of this process to other sub-entities or agents, including congressional committees and legislative branch agencies. See *supra* notes 120–23 and accompanying text.

309. See *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803).

310. See WILLIAM YEATMAN, CATO INST., THE CASE FOR CONGRESSIONAL REGULATORY REVIEW 7 (2020), https://www.cato.org/sites/cato.org/files/2020-04/PA888_edit.pdf [<https://perma.cc/EN26-6UBC>] (“Without such investment [in oversight capacity], Congress simply doesn’t have the means to compete with the presidency for managerial primacy over the administrative state. And without this competition, we [threaten to lose a critical]

legislative accountability, as Congress can be held directly responsible when agencies cannot access funding that it already ostensibly approved.

ii. The Parliamentary Finger on the Button

Finally, the NDFR empowers Congress to exert more fine-grained and dynamic control over its executive delegations of financing authority, by requiring all executive agencies to use both the Public Credit Card and Congressional Treasury ATM systems. Both systems are administered by legislative organs, with the ATM Access Protocol functioning as Congress's own intra-legislative process for defining, clarifying, and adjudicating disputes over its own prior spending directives.

Most significantly, Congress could increase its negotiating leverage against the President during budget disputes by replacing the debt ceiling with an intra-legislative parliamentary financing review process that the executive branch would have no authority to initiate. Specifically, Congress could embed financing handbrakes or kill-switches in spending laws that, if activated, would allow Congress to partially or fully freeze access to new digital dollar funding at the Public Credit Card Terms & Conditions, the Access Protocol, or even the ATM hardware layer itself.

These switches would be off by default but could be activated and resuspended unilaterally by Congress via joint resolution.³¹¹ If activated, the President could then veto, inviting Congress to override via supermajority.³¹²

Crucially, this process flips the procedural logic and political dynamics of the current debt-ceiling resuspension process. Instead of the Treasury Secretary running out of funds and threatening imminent

structural check on government overreach.”). See generally Dooling, *supra* note 272 (describing the internal operations of the GAO and how Congress has weaponized it to expand the scope of the Congressional Review Act).

311. See STIFF, CONG. RSCH. SERV., *supra* note 195, at 37–38 (“While the executive branch generally recognizes Congress’s power to withhold funds needed to implement legislation, [it] does not concede [a] similar power to withhold funds [necessary to] carry out . . . their separate constitutional duties.”).

312. This process is modelled on the Congressional Review Act. Under the act, Congress has the option—prior to a proposed agency regulation’s passage into enforceable law—to pass a motion of disapproval, which if not vetoed invalidates that rule. See Loren Adler & Shai Akabas, *Raising the Debt Ceiling—Let’s Do That Again Real Soon!*, BIPARTISAN POL’Y CTR. (Oct. 26, 2011), <https://bipartisanpolicy.org/blog/raising-debt-ceiling-lets-do-again-real-soon> [<https://perma.cc/D5YX-V8N5>] (discussing the 2011 debt ceiling deal, in which President Obama could request a statutorily pre-authorized funding extension, which could then be blocked by congressional resolution, only for that to be vetoed by the President, thereby allowing the President to take responsibility for the spending over Congress’s ostensible objection).

default—thereby potentially forcing congressional budgetary compromise on terms dictated by the executive branch—the discretion to revoke financing authority is granted solely to Congress, not the President. It thus constitutionally secures the budget process by eliminating the risk of executive-branch-led financing and a debt crisis. Specifically, it requires that all financing ‘freezes’ be initiated by Congress first, in keeping with its constitutional and historical parliamentary prerogative over the origination of spending and revenue bills.³¹³

In doing so, the NDFR situates Congress as both the first and, ultimately—through the supermajority veto override—the final arbiter of the legal and operational delegation of spending authority to the executive branch. Goodbye, unitary executive fisc; hello, parliamentary fiscal supremacy, courtesy of the magic of legislatively automated intragovernmental impoundment.³¹⁴

CONCLUSION

A rotten tree trunk appears strong until the storm breaks it in two.

—Hari Seldon³¹⁵

Technology will change, and so must we. Lest we remain the last leaf on a dead branch, the others having decided to fly with the wind.

—Christine Lagarde³¹⁶

313. See generally *supra* note 211 and accompanying text.

314. The NDFR places automated impoundment within the technical and administrative capacity of Congress to enact upon meeting the supermajority procedural criteria. See generally YEATMAN, *supra* note 310 (arguing for the creation of a general congressional regulatory review process); Note, *Oversight and Insight: Legislative Review of Agencies and Lessons from the States*, 121 HARV. L. REV. 613 (2007) (arguing that the federal government uniquely—contra states—lacks a procedural mechanism for legislative review of regulatory decisions); Robert Sarvis, *Legislative Delegation and Two Conceptions of the Legislative Power*, 4 PIERCE L. REV. 317 (2006) (arguing to preserve congressional control over the legislative power against its own attempts to delegate and criticizing judicial review as insufficient on its own to protect the separation of powers).

315. FOUNDATION: *The Emperor's Peace* (Apple+ television broadcast Sep. 24, 2021).

316. Christine Lagarde, IMF Managing Dir., Winds of Change: The Case for New Digital Currency, Speech at the Singapore Fintech Festival, (Nov. 14, 2018) (on file with the Rutgers University Law Review).

The United States is at the crux of another major historical juncture. President Trump's vision for the unitary executive fisc uniquely threatens the constitutional separation of powers by combining the assertion of total executive control with the even more extreme assertion of near-total fiscal supremacy. But the roots of the problem go well beyond the immediate crisis, or even Trump. Rather, they lay in Congress's chronic failure to adequately maintain and upgrade its fiscal systems and administrative infrastructure to meet the needs and pressures of the rapidly evolving legal, economic, social, and technological order. This neglect has, in turn, led to excessive intragovernmental entanglement, procedural bottlenecks, and conflicting goals and directives at multiple phases of the fiscal process.

In addition to their immediate practical and broader constitutional implications, Trump's actions have revealed a glaring fiscal blind spot at the heart of the contemporary debate over the digitization of the dollar. Public payment systems are the beating heart of the economy, and their smooth operation is of utmost constitutional and political importance. And yet, they remain persistently overlooked and largely ignored in discussions over digital dollar design.

The three main fiscal technologies this Article proposes as part of the NDFR—the Congressional Fiscal Record, the Congressional Treasury ATM, and the Federated Federal Ledger—together empower Congress to reclaim and defend its political and practical fiscal powers from accelerating encroachment by the authoritarian Presidency. By adopting a “centralized legislature, decentralized approach,” it pushes budgetary control down to local agencies, unbundles and streamlines fiscal operations, and modernizes the legislative budget process to allow Congress final oversight of day-to-day appropriations administration and financing.

This blueprint is still incomplete and, at this stage, primarily provocative. Further fine-grained legislative and institutional analysis will be required before practically commencing anything like such a comprehensive reform program. Nevertheless, as U.S. policymakers inch ever closer to the formal adoption of some form of digital public money, they can no longer afford to ignore fiscal administrative infrastructure or the constitutional dimension of digital dollar design.

Reconstructing the constitutional separation of fiscal powers and reinforcing it against future presidential attack requires more than mere incremental reforms and defensive resistance. Nothing less than a wholesale reimagining of the public spending process and underlying technological architecture is required. Put differently, we must digitize the fisc.