

## The Constitution at Work

The Framers of the Constitution designed our government to be small. Not so small and weak as the one under the Articles of Confederation, which the Constitution replaced, but small nonetheless. So small that as of 1928, 150 years after the American Revolution and just before the Great Depression, federal spending was only 3% of GDP.

In time, the legal barriers to a much larger peacetime government were removed piece by piece. In 1883 the government created a civil service system for federal workers designed to limit patronage and corruption. At the time, it seemed like an innocent step, not intended to grow the government. After all, except during wartime, the government had stayed small, and civilian government workers had little incentive (or much leverage) to use it toward any particular political ends.

Then came FDR and the New Deal starting in 1933, which broke through limits on peacetime federal power. FDR set up permanent entitlements and regulatory agencies which were run by a sprawling administrative state. Slowly, but surely, rules (and penalties to enforce them) expanded to the point that unelected government workers were effectively “making law” outside the scope of the Constitution.

Then in 1974 Congress passed a law to strip the president of the power of “impoundment.” Prior to that, presidents dating back to Thomas Jefferson had often used the impoundment power, in which they recognized the legislative “power of the purse” as the right of Congress to hand the president a purse full of money, not the ability to force the president to spend every dollar in that purse.

Next, in the 1980s, the Supreme Court decided in the Chevron case that federal bureaucratic rule-makers could legally interpret for themselves how to enforce often lazily written laws passed by Congress. Put it all together and we had all the ingredients necessary for a massive central government that voters had little ability to limit...until recently.

Last year the Supreme Court decided the Loper Bright case, stripping regulators of the ability to decide on their own whether Congress had authorized new rules. Now, people can fight back in court more easily.

And now the Trump Administration is exercising presidential power to the max to both limit government spending

and re-assert the president’s power over the executive branch of government, including over civil service personnel.

This is important because in the 140+ years since the civil service system was created government workers have gone from largely disinterested observers of a very small government to an extremely well-funded, unionized bureaucracy that believed in the power and righteousness of big government. Apparently, as DOGE has found, this included doling out massive subsidies to their friends in the “non-profit” sector.

What many have forgotten is that the Executive Branch of the government exists because of Article II of the Constitution, which vests executive power in the president. Yes, some of the spending Trump is cutting has been authorized by Congress. But if the president is to have dominion over the executive branch, a dominion he can only fully exercise if he controls who works in the executive branch, can’t he eliminate the positions needed to spend that money? Or can Congress or unelected judges force him to spend it by essentially commandeering executive power?

Yes, we get it: if Congress passed a law last year saying money should be spent this year, then it sounds strange that a new president can just cancel that spending. But part of the reason it sounds weird is because we haven’t had a president in fifty-plus years willing to fully test the limits of his constitutional authority, including impoundment.

We are sure some legal “experts” will claim that if Trump wants to cut spending then he has to wait and negotiate with Congress on next year’s spending bills, otherwise, he’s “breaking the law.” But there’s a huge difference between a president trying to spend money not authorized by Congress and a president trying to exercise his full authority to not spend money. It takes two to tango, and it’s entirely plausible the Framers would have been OK without spending unless there’s a law passed to do so plus a willing president in the Oval Office at the time an actual expenditure is made.

Put it altogether and we may be at a watershed moment that rivals the New Deal as the most important since the Civil War in terms of the what the US government looks like over the next few generations. Investors should watch carefully and there is no telling exactly how it will turn out.

Date/Time (CST)	U.S. Economic Data	Consensus	First Trust	Actual	Previous
2-18 / 7:30 am	Empire State Mfg Survey – Feb	0.0	<b>0.6</b>	<b>5.7</b>	-12.6
2-19 / 7:30 am	Housing Starts – Jan	1.397 Mil	<b>1.365 Mil</b>		1.499 Mil
2-20 / 7:30 am	Initial Claims – Feb 15	215K	<b>215K</b>		213K
7:30 am	Philly Fed Survey – Feb	20.0	<b>5.4</b>		44.3
2-21 / 7:30 am	Existing Home Sales – Jan	4.130 Mil	<b>4.070 Mil</b>		4.240 Mil