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(Original Signature of Member)

119TH CONGRESS
1ST SESSION

H. R. _____

To amend the Congressional Budget and Impoundment Control Act of 1974 to provide a private right of action with respect to violations of such Act, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. LICCARDO introduced the following bill; which was referred to the Committee on _____

A BILL

To amend the Congressional Budget and Impoundment Control Act of 1974 to provide a private right of action with respect to violations of such Act, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Protecting Our Constitution and Communities Act''.

SEC. 2. FINDINGS AND INTENT OF CONGRESS WITH RESPECT TO CONGRESSIONAL BUDGET AND IMPOUNDMENT CONTROL ACT OF 1974.

Section 1001 of the Congressional Budget and Impoundment Control Act of 1974 (2 U.S.C. 681) is amended to read as follows:

"SEC. 1001. FINDINGS AND INTENT OF CONGRESS.

''(a) FINDINGS.—Congress finds the following:

''(1) Article I of the Constitution of the United States vests the legislative power, and particularly the exclusive power of the purse, in Congress.

''(2) Article II, Section 3 of the Constitution of the United States vests the executive power in the President subject to the express obligation that the President take care that the laws be faithfully executed, including those laws by which Congress exercises its Article I power of the purse.

''(3) Congress alone has the constitutional power to appropriate funds, and the President has the obligation to faithfully execute those laws and to obligate as well as expend funds that have been lawfully appropriated.

''(4) Constitutional scholars and practitioners agree that appropriations place both a 'ceiling' and a 'floor' on executive spending. As later Chief Justice, then-Assistant Attorney General of the Office of

Legal Counsel, William H. Rehnquist affirmed, there is 'neither reason nor precedent' for the President to have 'a constitutional power to decline to spend appropriated funds.' W.H. Rehnquist, Presidential Authority to Impound Funds Appropriated for Assistance to Federally Impacted Schools, 1 Op. O.L.C. 303309 (1969). While serving as Associate White House Counsel, current Chief Justice John Roberts, Jr. acknowledged that 'no area seems more clearly the province of Congress than the power of the purse.' Memorandum from John G. Roberts, Jr., for Fred F. Fielding on Impoundment Authority, (August 15, 1985).

''(5) This understanding was demonstrated by the Congressional Budget and Impoundment Control Act of 1974, which was enacted as soon as claims of constitutional authority for impoundment threatened to upset historical practice.

''(6) This Act thereby codifies the longstanding separation-of-powers principle that the President has no constitutional authority to impound funds that Congress has already appropriated for a particular policy purpose. After the President signed the Act into law, subsequent practice has continued to con-

firm this separation-of-powers understanding among the branches.

''(7) The U.S. Supreme Court has stated, '[t]o contend that the obligation imposed on the President to see the laws faithfully executed implies a powerto forbid their execution is a novel construction of the Constitution, and entirely inadmissible.' *Kendall v. United States ex Rel. Stokes*, 37 U.S. 524, 525 (1838). More recently, the U.S. Supreme Court confirmed that where 'legislation was intended to provide a firm commitment of substantial sums . . . . [w]e cannot believe that Congress . . . scuttled the entire effort by providing the Executive with the seemingly limitless power to withhold funds from allotment and obligation.' *Train v. City of New York*, 420 U.S. 35, 45 (1975). As later Justice, then-Judge Brett Kavanaugh wrote in *In re Aiken County*, 725 F.3d 255, 261 n.1 (D.C. Cir. 2013), '[e]ven the president does not have unilateral authority to refuse to spend the funds.'.

''(8) When taking measures that are incompatible with the will of Congress, the President's power is at its lowest ebb in an area where the President has no plenary constitutional powers, and Congress' powers are plenary. *Youngstown Sheet & Tube Co. v.*

Sawyer, 343 U.S. 579, 673 (1952) (Jackson, J. concurring). The President therefore has no constitutional authority to impound appropriated funds contrary to the express will of Congress.

''(9) Interpretation of this Act and compliance with its provisions is a legal question within the purview of Article III courts and not a political question.

''(10) When the Executive fails to release funds following a lawful withholding under the Impoundment Control Act of 1974 or fails to obligate or expend funds that have been appropriated by Congress, private parties experience a particularized and immediate injury.

''(b) DISCLAIMER.—Nothing contained in this Act, or in any amendments made by this Act, shall be construed as—

''(1) asserting or conceding the constitutional powers or limitations of either the Congress or the President;

''(2) ratifying or approving any impoundment heretofore or hereafter executed or approved by the President or any other Federal officer or employee, except insofar as pursuant to statutory authorization then in effect;

''(3) superseding any provision of law which requires the obligation of budget authority or the making of outlays thereunder; or

''(4) to prevent adjudication on the merits by Article III courts of claims related to failures to obligate or expend budget authority.

''(c) SENSE OF CONGRESS.—It is the sense of Congress that the only mechanisms by which the President is allowed to fail to obligate or expend funds provided by law are those provided under sections 1012 and 1013 of this Act.''.

SEC. 3. CLARIFICATION WITH RESPECT TO DEFINITION OF CONTINGENCIES.

Section 1011 of the Congressional Budget and Impoundment Control Act of 1974 (2 U.S.C. 682) is amended—

(1) in paragraph (4), by striking ''and'' at the end;

(2) in paragraph (5), by striking the period at the end and inserting ''; and''; and

(3) by adding at the end the following new paragraph:

''(6) 'contingencies' means unforeseen events or circumstances that could not have been reasonably anticipated, which necessitate immediate and tem-

porary adjustments due to urgent and demonstrable needs, where such action is consistent with statutory and constitutional limitations on executive budgetary authority.''.

SEC. 4. AUTHORITY OF COMPTROLLER GENERAL.

Section 1015 of the Congressional Budget and Impoundment Control Act of 1974 (2 U.S.C. 686) is amended by adding at the end the following new subsections:

''(c) LEGAL INTERPRETATION OF COMPTROLLER GENERAL.—In any determination regarding applicability or enforcement of sections 1001 through 1015, the legal interpretation of the Comptroller General of the United States, acting through the Government Accountability Office, shall be accorded substantial deference.

''(d) EXECUTIVE BRANCH ASSISTANCE.—The Executive Branch shall provide timely access to all necessary and appropriate records and information to facilitate the Comptroller General's review of potential violations of the Act.

''(e) REPORTS TO CONGRESS.—Any failure to comply with the Comptroller General's determination regarding an impoundment shall be reported to Congress for appropriate legislative or judicial action.''.

SEC. 5. REMEDY IN THE CASE OF VIOLATIONS OF CONGRESSIONAL BUDGET AND IMPOUNDMENT CONTROL ACT OF 1974.

(a) IN GENERAL.—The Congressional Budget and Impoundment Control Act of 1974 (2 U.S.C. 621 et seq.) is amended by adding at the end the following new title:

"TITLE XI—RIGHT OF ACTION FOR VIOLATIONS

"SEC. 1101. PRIVATE RIGHT OF ACTION.

''(a) IN GENERAL.—Any person aggrieved by a violation of title X with respect to the withholding of budget authority that is required to be made available under such title may institute a civil action in a United States district court against the United States and any Federal employee for preventive relief, including an application in a United States district court for a permanent or temporary injunction, restraining order, or other order.

''(b) DAMAGES.—

''(1) IN GENERAL.—Any person aggrieved by a violation under subsection (a) may recover equitable and legal relief (including compensatory and punitive damages), reasonable attorney's fees (including expert fees), and costs. Damages shall amount to the sum of compensatory and punitive damages or $1,000 per harmed person per violation, whichever is greater.

''(2) TREBLE DAMAGES.—If a court finds that a violation under subsection (a) occurred in bad faith, the court shall award damages in an amount equal to 3 times the amount otherwise to be awarded under paragraph (1).

''(3) PERSONAL LIABILITY.—A Federal employee shall be personally liable for the payment of any damages awarded in an action under this section in the case of a knowing violation of this Act.

''(4) WAIVER OF IMMUNITY.—A Federal employee who violates this Act shall not be immune under the Tenth Amendment to the Constitution of the United States, the Eleventh Amendment to the Constitution of the United States, the doctrine of sovereign immunity, the doctrine of qualified immunity, or any other source of law from an action in a United States district court of competent jurisdiction challenging such violation.

''SEC. 1102. RIGHT OF ACTION OF STATES AND LOCAL AGENCIES.

''(a) IN GENERAL.—Any State, county, city, district, special district, Tribal government, or unit of local government (or any department or agency of any State, county, city, district, special district, Tribal government, or unit of local government) aggrieved by a violation of title X

with respect to the withholding of budget authority that is required to be made available under such title may institute a civil action in a United States district court against the United States and any Federal employee for preventive relief, including an application in a United States district court for a permanent or temporary injunction, restraining order, or other order.

''(b) DAMAGES.—

''(1) IN GENERAL.—Any State, county, city, district, special district, Tribal government, or unit of local government (or any department or agency of any State, county, city, district, special district, Tribal government, or unit of local government) aggrieved by a violation under subsection (a) may recover equitable and legal relief (including compensatory and punitive damages), reasonable attorney's fees (including expert fees), and costs.

''(2) TREBLE DAMAGES.—If a court finds that a violation under subsection (a) occurred in bad faith, the court shall award damages in an amount equal to 3 times the amount otherwise to be awarded under paragraph (1).

''(3) PERSONAL LIABILITY.—A Federal employee shall be personally liable for the payment of

any damages awarded in an action under this section in the case of a knowing violation of this Act.

''(4) WAIVER OF IMMUNITY.—A Federal employee who violates this Act shall not be immune under the Tenth Amendment to the Constitution of the United States, the Eleventh Amendment to the Constitution of the United States, the doctrine of sovereign immunity, the doctrine of qualified immunity, or any other source of law from an action in a United States district court of competent jurisdiction challenging such violation.

''(c) STATE DEFINED.—In this section, the term 'State' includes the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

''SEC. 1103. DEFINITIONS.

''For purposes of this title, the following definitions apply:

''(1) FEDERAL EMPLOYEE.—The term 'Federal employee' means—

''(A) a political appointee; or

''(B) a special Government employee as defined by section 202 of title 18, United States Code.

''(2) POLITICAL APPOINTEE.—The term 'political appointee' means an individual who is—

''(A) employed in a position described under sections 5312 through 5316 of title 5 (relating to the Executive Schedule); or

''(B) a limited term appointee, limited emergency appointee, or noncareer appointee in the Senior Executive Service, as defined under paragraphs (5), (6), and (7), respectively, of section 3132(a) of title 5.''.

(b) CLERICAL AMENDMENT.—The table of contents in section 1(b) of the Congressional Budget and Impoundment Control Act of 1974 (2 U.S.C. 621 note) is amended by adding at the end the following new items:

''TITLE XI—RIGHT OF ACTION FOR VIOLATIONS

''Sec. 1101. Private right of action.
''Sec. 1102. Right of action of States and local agencies.
''Sec. 1103. Definitions.''.

SEC. 6. JUSTICIABILITY AND SEVERABILITY.

(a) IN GENERAL.—Title X of the Congressional Budget and Impoundment Control Act of 1974 (2 U.S.C. 686) is amended by inserting after section 1017 the following new section:

''SEC. 1018. JUSTICIABILITY.

''(a) IN GENERAL.—If, under this part, budget authority is required to be made available for obligation or expenditure and such budget authority is not made avail-

able for obligation or expenditure, such action or failure to take action shall constitute final agency action within the meaning of section 704 of title 5, United States Code. Such action or failure to act is not committed to agency discretion by law within the meaning of section 701 of title 5, United States Code.

''(b) RULE OF CONSTRUCTION.—This section shall not be construed to prevent the President from proposing budget authority for deferral or rescission under section 1012 or 1013.

''SEC. 1019. SEVERABILITY.

''If any provision of this Act, or the application thereof, is held invalid, the validity of the remainder of this Act and its application to other circumstances shall not be affected thereby.''.

(b) CLERICAL AMENDMENT.—The table of contents in section 1(b) of the Congressional Budget and Impoundment Control Act of 1974 (2 U.S.C. 621 note) is amended by inserting after the item relating to section 1017 the following new items:

''Sec. 1018. Justiciability.
''Sec. 1019. Severability.''.