



— SOCIETY FOR —
THE RULE OF LAW

June 4, 2025

The Honorable John Thune
Majority Leader
United States Senate
Washington, DC 20515

The Honorable Chuck Schumer
Minority Leader
United States Senate
Washington, DC 20515

CC: All Members of the United States Senate

Dear Majority Leader Thune, Minority Leader Schumer, and all Senators:

We write to express strong opposition to Sec. 70302 of H.R. 1, the budget reconciliation package recently passed by the House of Representatives.¹ Although we may have different opinions on the array of policies contained in the “One Big Beautiful Bill,” we are united in our deep concerns regarding this one specific provision that would dangerously undermine the rule of law in the United States.

For the reasons detailed below, we firmly urge the Senate to remove Sec. 70302 as it considers the House’s legislation. If this provision remains in place, we believe every Senator must vote NO on H.R. 1 to protect our Constitution.

Sec. 70302 - An Attack on the Judicial Branch

Buried more than 500 pages into this 1,000-plus page legislation is Sec. 70302, titled “Restriction on Enforcement.”² It reads:

“No court of the United States may enforce a contempt citation for failure to comply with an injunction or temporary restraining order if no security was given when the injunction or order was issued pursuant to Federal Rule of Civil Procedure 65(c), whether issued prior to, on, or subsequent to the date of enactment of this section.”

¹ One Big Beautiful Bill Act, H.R. 1, 119th Cong. § 70302 (2025).

² *Id.*

This change may sound technical, but it is actually an outrageous proposal to severely restrict federal courts' authority to hold government officials in contempt if they violate judicial orders. If enacted, it would significantly undermine the judicial branch's power to enforce its rulings, threatening both the rule of law and the constitutional balance of powers that underlie our system of government. We would oppose this change in any form, but it is especially egregious that Congress would bury such a consequential, but unrelated, provision in a massive budget reconciliation bill benefiting from an expedited process.

A court's ability to hold violators in contempt is a vital tool to compel compliance with judicial rulings. If someone disobeys a court order, the judge who issued the ruling can impose sanctions, fines, or even jail time until the order is followed. This authority has long been central to our judicial system's independence and effectiveness.³

Concerningly, Sec. 70302 would restrict this power by requiring anyone seeking to halt illegal actions to pay a bond before a court can use contempt proceedings to enforce its injunctions or temporary restraining orders. Although this provision does not explicitly reference lawsuits against the government, the legal and political context clearly indicate that it is designed to let government officials more easily disregard judicial rulings they dislike.

Sec. 70302 invokes Rule 65(c) of the Federal Rules of Civil Procedure, which allows judges to require a party seeking to halt some other party's action to pay a bond "in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained."⁴ In other words, Rule 65(c) is an insurance policy that judges can apply to protect a defendant who might suffer financial losses if they are stopped from doing something the court ultimately finds they had a right to do.

In the context of litigation between private parties – for example, one business suing another company over a trademark dispute – this bond may make sense as a security measure. However, lawsuits against the government are an entirely different matter, and courts have long recognized that Rule 65(c) gives them the discretion to waive any bond requirement when the public interest demands it.⁵ In fact, there is a robust precedent of courts rejecting bonds, or at least setting a bond at some nominal amount, when individuals, nonprofits, or other groups sue the government to vindicate their constitutional rights or stop unlawful policies.⁶

Sec. 70302 would upend this longstanding practice and create new, burdensome barriers for those seeking to sue government officials in response to illegal actions. Given the history of Rule 65(c) and its application to cases involving the government, it is difficult to see any other intent.

³ Federal Judicial Center, *The Contempt Power of the Federal Courts*, <https://www.fjc.gov/history/work-courts/contempt-power-federal-courts> (last visited May 29, 2025).

⁴ Fed. R. Civ. P. 65(c).

⁵ Erwin Chemerinsky, *A Terrible Idea*, Just Security (May 19, 2025), <https://www.justsecurity.org/113529/terrible-idea-contempt-court>.

⁶ See, e.g., *Natural Resources Defense Council, Inc. v. Morton*, 337 F. Supp. 167, 168 (D.D.C. 1971) (collecting cases that show courts have wide discretion to waive and set securities in lawsuits against the government); *National Council of Nonprofits v. Office of Management and Budget*, No. 1:25-cv-00239, 2025 WL 597959 (D.D.C. Feb. 25, 2025), https://storage.courtlistener.com/recap/gov.uscourts.dcd.276842/gov.uscourts.dcd.276842.51.0_2.pdf (providing a more recent example of a court declining to impose a bond in the public interest).

To make matters worse, Sec. 70302 was drafted so broadly that it would cover court orders and injunctions issued *before* the law takes effect. The provision specifically says its new restriction on enforcement would apply to all judicial rulings “whether issued prior to, on, or subsequent to the date of enactment of” the proposed law.

Because judges have long had discretion to waive bond requirements under Rule 65(c), countless judicial orders in cases against the government have been issued without any bond associated. Alarming, all of these rulings would become *immediately* unenforceable through contempt proceedings if Sec. 70302 becomes law.⁷ This could severely affect and undermine cases involving every imaginable area, including taxes, religion, the environment, civil rights, and more. It would occur no matter how the public has already relied on any given court order.

Unfortunately, this harmful change also appears politically motivated and possibly driven by the Trump administration to help the current executive branch escape the litany of lawsuits and court orders challenging its actions.

On March 11, 2025, President Trump issued a memorandum on “Ensuring the Enforcement of Federal Rule of Civil Procedure 65(c),” in which he directed government lawyers “to demand that parties seeking injunctions against the Federal Government must cover the costs and damages incurred if the Government is ultimately found to have been wrongfully enjoined or restrained.”⁸ By its own words, the administration’s policy is meant to deter what the president deems “frivolous litigation” and “wrongly issued preliminary relief by activist judges.”⁹

Because the president cannot control the courts, let alone through an executive memorandum, this pronouncement had no meaningful effect. Nevertheless, it reflects President Trump’s search for new ways to insulate the executive branch from the judiciary, which has already halted his administration’s activities at least 186 times.¹⁰ In response to many of these rulings, the president has resisted compliance and waged intimidation campaigns targeting the judges responsible.¹¹ When viewed in this broader context, the connections seem clear between Sec. 70302 and the Trump administration’s ongoing battles in our judicial system.

Ultimately, Sec. 70302 represents a congressional assault on the independence and authority of the judiciary which, if allowed to pass, would do critical damage to our system of checks and balances. No government official, including the president, should be able to simply ignore court rulings that find their actions illegal or unconstitutional. This is the very definition of a country governed by the rule of law.

⁷ Chemerinsky, *supra* note 5.

⁸ The White House, *Ensuring the Enforcement of Federal Rule of Civil Procedure 65(c)* (Mar. 11, 2025), <https://www.whitehouse.gov/presidential-actions/2025/03/ensuring-the-enforcement-of-federal-rule-of-civil-procedure-65c>.

⁹ *Id.*

¹⁰ Alex Lemonides et al., *Tracking the Lawsuits Against Trump’s Agenda*, New York Times, <https://www.nytimes.com/interactive/2025/us/trump-administration-lawsuits.html> (last visited June 4, 2025).

¹¹ Peter Stone, *US judges who rule against Trump are being barraged with abuse and threats, experts warn*, The Guardian (May 17, 2025), <https://www.theguardian.com/us-news/2025/may/17/trump-judges-courts-threats>.

For these reasons, we strongly urge every Senator to oppose Sec. 70302 of H.R. 1. As the Senate considers this legislation in the days ahead, this provision must be removed, or the entire package must be defeated.

Sincerely,

/s/ Trevor Potter
Trevor Potter
President
Campaign Legal Center

/s/ Gregg Nunziata
Gregg Nunziata
Executive Director
Society for the Rule of Law Institute