

STATE OF TENNESSEE

Office of the Attorney General



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May 24, 2023

The Honorable Joseph R. Biden, Jr.  
President of the United States  
The White House  
1600 Pennsylvania Avenue, NW  
Washington, D.C. 20500

Dear Mr. President,

We, the undersigned chief legal officers of 19 states, write in response to your recent assertion that you have the authority to ignore federal law and raise the debt ceiling without congressional approval.<sup>1</sup> You do not. Our constitutional system may be frustrating at times, but it is the fundamental guarantor of American liberty, and we must all abide by the oaths we swore to defend it.

The Constitution very deliberately invests the power of the purse in Congress. That power includes the authority to tax, the authority to spend, and, explicitly, the authority to borrow money on the credit of the United States.

As an expression of this enumerated power, Congress has, by statute, allowed the executive branch to issue bonds and authorize debt up to a specified ceiling. Far from an intrusion on executive authority, this function has always been, and remains, an exercise of legislative power.

The Fourteenth Amendment, meanwhile, confers no new authority with respect to those powers but instead states that “the validity of the public debt of the United States, authorized by law, . . . shall not be questioned.” The phrase “authorized by law” clearly refers back to Congress’s authority to borrow. No plausible reading of this passage infringes on the exclusive authority to borrow conferred to Congress by Article I.

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<sup>1</sup> Remarks by President Biden on Meeting with Congressional Leaders, White House Briefing Room, May 9, 2023, <https://www.whitehouse.gov/briefing-room/speeches-remarks/2023/05/09/remarks-by-president-biden-on-debt-ceiling-negotiations/>.

The power of the purse constitutes Congress's strongest defense against a lawless executive. By giving credence to the idea that a President can unilaterally authorize new debt for the United States, you undermine the checks and balances that have defined the rule of law for over 200 years.

None of this is to dismiss the importance of sound management of the finances of the United States. The imminent debt ceiling poses a thorny challenge that needs to be solved. But it can only be solved through the old-fashioned American processes of deliberation and persuasion and compromise. Nobody, not even the President of the United States, has a magic wand that can make the problem disappear.

The idea of a previously hidden authority to ignore Congress's power to borrow is, alongside the even more dubious idea of a trillion-dollar coin to avoid the debt ceiling, a type of magical thinking about the Constitution that undermines the legitimacy of our democratic processes. These ideas deserve ridicule, not credibility. The more we as a people lend credence to the notion that the President can do whatever he wants without regard to the legislature, the more we risk an authoritarian plunge that will shatter our constitutional system and leave us with no legal defense against an arbitrary executive.

We have been blessed with a great system of separation of powers, checks and balances, and federalism that ensures power is not concentrated in too few hands. Our Constitution ensures that every part of government is accountable to every other part of government and, ultimately, to the people.

You have noted in the past that "politics is the art of the possible." What is possible in our system is limited, by design, to what can secure support from both houses of Congress as well as the president. At the end of the day, every elected official has to face the voters and we as a people ultimately govern ourselves. But in the meantime, there are no shortcuts. There is no magic wand. The only real solution to the debt ceiling issue is one that secures a majority of both houses of Congress.

We have faith that you and our federal legislators will find a solution and resolve the immediate problem. But should your administration attempt an authoritarian end-run around the separation of powers, we will not hesitate to use the legal tools at our disposal to defend the integrity of our constitutional system.

Sincerely,

A handwritten signature in black ink that reads "Jonathan Skrmetti". The signature is written in a cursive style with a long, sweeping underline that extends to the right.

Jonathan Skrmetti  
Tennessee Attorney General and Reporter



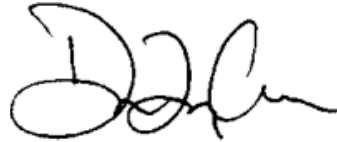
Alan Marshall  
Alabama Attorney General



Kris W. Kobach  
Kansas Attorney General



Tim Griffin  
Arkansas Attorney General



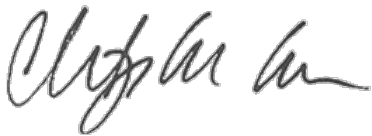
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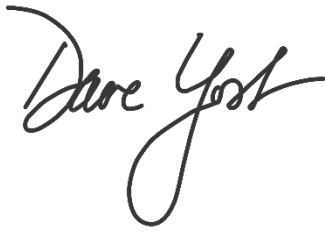
Todd Rokita  
Indiana Attorney General



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Montana Attorney General



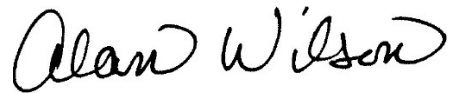
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Gentner F. Drummond  
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c.c.

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