

# NATIONAL LABOR UNION FILES FEDERAL LAWSUIT ALLEGING DEBT LIMIT STATUTE IS UNCONSTITUTIONAL



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**Lichten & Liss-Riordan, P.C.**  
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*The complaint, filed in U.S. District Court in Boston, argues the Debt Limit Statute violates the principle of separation of powers, asks the Court to prevent the President and Secretary of the Treasury from canceling or suspending operations of the federal government.*

BOSTON, May 8, 2023 /PRNewswire/ -- This morning, attorneys representing the National Association of Government Employees (NAGE), which represents nearly 75,000 employees working in agencies across the federal government, filed a complaint in the U.S. District Court in Boston challenging the constitutionality of the Debt Limit Statute as it exists and seeking an injunction that would prevent the Executive Branch from suspending operations of the federal government due to the debt limit being reached. The attorneys representing NAGE in this case are **Thomas H. Geoghegan**, of Despres, Schwartz & Geoghegan, Ltd. in Chicago; **Patrick V. Dahlstrom**, of Pomerantz LLP, in Chicago; **Sarah E. Suszczyk**, NAGE General Counsel, in Quincy; and **Shannon Liss-Riordan**, of Lichten & Liss-Riordan, P.C., in Boston.

"This litigation is both an effort to protect our members from illegal furloughs and to correct an unconstitutional statute that frequently creates uncertainty and anxiety for millions of Americans," said **NAGE National President David J. Holway**. "The Debt Ceiling has become a political football for certain members of Congress. If Congress will not raise the Debt Limit as it has nearly 80 times before without condition, it leaves no constitutional choice for the President."

NAGE is seeking an order declaring the Debt Limit Statute unconstitutional and unenforceable because it confers upon the President the sole and unchecked discretion to cancel or curtail government spending already approved by Congress, an authority which is not available to the President under the Constitution.

As described in the complaint, pursuant to the Fourteenth Amendment, the President must ensure the federal government does not default on its debt. Should the debt limit be reached, the President still must find the funds to meet its obligations to holders of the public debt, either through borrowing or by cutting spending enough to meet debt payments. However, cutting programs that have been authorized and funded by Congress is not an authority available to the President.

The complaint alleges that the Debt Limit Statute is unconstitutional because it puts the President in a quandary, as it would require him to exercise discretion in deciding which programs Congress has authorized should continue being funded and which programs should not. The Constitution requires that funding appropriations be determined by Congress, not the President.

The lawsuit seeks suspension of the operation of the Debt Limit Statute until Congress determines the priorities and order of payments that the President should take, in order to meet the limit set on total indebtedness. The complaint does not specifically deny that Congress may set a limit on indebtedness. However, the lawsuit contends that the President may not take the major actions necessary to comply with the Debt Limit Statute without a clear road map or direction that the President must follow. Until Congress revises the Debt Limit Statute to give such guidance, there is no constitutional means by which the President can comply with it.

This is not the first time the courts have been called upon to address the constitutionality of a statute that would provide the President unfettered discretion to curtail Congressional appropriations. The Supreme Court addressed this issue in *Clinton v. New York*, 524 U.S. 417 (1995), where it struck down a Presidential line item veto over spending. In that case, Justice

Kennedy wrote: "Failure of political will does not justify unconstitutional remedies."

"Congress's failure of will to act is not justification to violate the Constitution," continued **President Holway**. "But it is the reason this case had to be filed to protect the American public, federal employees, and our Constitution."

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SOURCE Lichten & Liss-Riordan, P.C.