

H.R. 1 Limitation on Enforcement of Contempt Orders: Selected Legal Considerations

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Section 70302 of the One Big Beautiful Bill Act (H.R. 1), as passed by the House of Representatives on May 22, 2025, would limit the authority of federal courts to enforce contempt citations for failure to comply with orders of injunctive relief for which no security was provided. This Legal Sidebar provides background information on injunctions and the enforcement of court orders, briefly notes a difference between Section 70302 as introduced and passed by the House, then discusses selected legal considerations related to Section 70302.

Background on Injunctions and Enforcement of Court Orders

An [injunction](#) is a court order that requires a person or entity to take or not take some specific action. Injunctions can take several forms depending on the stage of litigation at which they are issued. Temporary restraining orders (TROs) and preliminary injunctions usually take effect early in litigation and serve to maintain the status quo while a case proceeds through the courts. A court may issue a permanent injunction after ruling on the substantive legal question presented in a case, and it generally applies indefinitely unless modified or overturned on appeal. As discussed in more detail in another [Legal Sidebar](#), a person or entity that fails to comply with an injunction may be [held in contempt](#) and may face fines or jail time. When a federal court imposes contempt sanctions, the [U.S. Marshals Service](#), a [bureau](#) within the Department of Justice, [enforces](#) the order.

[Federal Rule of Civil Procedure 65](#) (Rule 65) governs injunctive relief in the federal district courts. Rule 65(c) provides that a court “may issue a preliminary injunction or a [TRO] only if the [party seeking injunctive relief] gives security 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.” Rule 65(c) exempts the United States and federal officers and agencies from the requirement to provide monetary security. A March 2025 [presidential memorandum](#) declared it “the policy of the United States 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” and directed federal agencies to request security under Rule 65(c) when litigants seek to enjoin federal actions.

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In recent years, there has been significant discussion among lawmakers, executive officials, courts, and commentators about injunctions against the federal executive branch. (Much of the discussion of injunctions against the executive branch focuses on nationwide injunctions, which are the subject of [several CRS Reports](#).) Some contend that courts are issuing too many injunctions against the federal government or that injunctions against the government are often overbroad. Some raise concerns about the [enforcement of court orders](#) against the executive branch, including what happens if an executive agency or official violates a court order. Some observers [view](#) Section 70302 as an [effort](#) to address the former concern by making it more difficult for courts to enforce injunctions against the executive branch. The Speaker of the House has [argued](#) that the reforms in Section 70302 are needed to prevent courts from exceeding their authority.

Section 70302 as Introduced and Passed by the House

As originally [reported in the House](#), Section 70302 would have provided, “No court of the United States may *use appropriated funds* to enforce a contempt citation” under specified circumstances (emphasis added). The italicized language related to appropriated funds was removed in an amendment to the bill and does not appear in the engrossed version.

The version of Section 70302 passed by the House on May 22, 2025, [provides](#):

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.

Some have [raised](#) the [possibility](#) that Section 70302 as passed by the House may violate the [Byrd rule](#), which limits the matters that may be included in a reconciliation bill. Analysis of that issue is outside the scope of this Legal Sidebar.

Legal Considerations Related to Section 70302

CRS has identified several legal considerations related to Section 70302. First, the provision would limit the authority of any “court of the United States” to enforce certain contempt citations, but a federal [statute](#) assigns the responsibility to “obey, execute, and enforce all orders of the United States District Courts, the United States Courts of Appeals,” and other lower federal courts to the U.S. Marshals Service, an executive branch agency. Section 70302 does not expressly limit the authority of the U.S. Marshals Service to enforce contempt orders. It is possible that a limitation on the authority of the courts, but not the U.S. Marshals Service, to “enforce a contempt citation” would operate by, for example, prohibiting a court from directing the Marshals to enforce a covered court order.

Second, by its terms, Section 70302 does not apply to every type of contempt citation but only to those issued “for failure to comply with an injunction or [TRO] if no security was given ... pursuant to Federal Rule of Civil Procedure 65(c).” With respect to that class of contempt citations, the relationship between Section 70302 and Rule 65(c) is not entirely clear. The security requirement in [Rule 65\(c\)](#) is intended to [prevent harm](#) to defendants if they are enjoined early in litigation and the injunction is later found to have been in error. As such, the security requirement applies only to TROs and preliminary injunctions. By contrast, Section 70302 is not expressly limited to TROs and preliminary injunctions, and its scope is ambiguous. The provision might be read broadly to apply to any injunction, including permanent injunctions, for which security was not provided, *regardless of whether security was required* under Rule 65(c). Because security is not generally required for permanent injunctions, if enacted and interpreted broadly, Section 70302 could render many existing permanent injunctions unenforceable through contempt proceedings. On the other hand, if the provision were read more narrowly to apply only to

injunctions for which security was not provided *when such security was required* under Rule 65(c), permanent injunctions would be unaffected.

Third, on its face, Section 70302 is not limited to injunctions against the federal government. Rather, the provision would apparently apply to any covered injunction or TRO for which security has not been provided, including injunctions that bind private parties and states. That scope would include injunctions issued in litigation to which the federal government is not a party and, if the provision were read broadly, could also include injunctions awarded against private parties or states in suits brought by the federal government.

Fourth, Section 70302 would apply to all covered injunctions, “whether issued prior to, on, or subsequent to the date of enactment.” That retroactive application would mean the section would apply to a large number of past court orders. One commentator has [asserted](#) that the bill would apply to “hundreds and hundreds of court orders—in cases ranging from antitrust to protection of private tax information, to safeguarding the social security administration, to school desegregation to police reform.”

Fifth, courts could limit the practical effect of Section 70302 by requiring nominal security for injunctions. Under current practice, courts often [decline to require security](#) under Rule 65(c) when they find that the defendant will not be harmed if it later turns out that an injunction was not warranted. In the alternative, courts sometimes require nominal security. Because Section 70302 would apply only to injunctions for which “no security was given,” it appears that requiring nominal security would allow an injunction to be enforced via contempt proceedings to the extent possible under current law. Thus, for new injunctions issued after enactment of Section 70302, courts that would have otherwise required no security might avoid application of the provision by ordering security in amounts [as low as one dollar](#).

With respect to pre-enactment injunctions, Section 70302’s application would depend on whether security was provided “when the injunction or order was issued,” so the provision would appear to render some past injunctions unenforceable via contempt. Courts have the authority to [modify their past orders](#), however, so a litigant seeking to enforce an injunction previously issued without security could potentially return to court to first seek a modified injunction with security provided and then move for enforcement of the new injunction through contempt. Thus, Section 70302 would likely not fully prevent enforcement of past orders issued without security but could lead to additional litigation and delay before such orders could be enforced through contempt proceedings.

Sixth, some [commentators](#) have [suggested](#) that Section 70302 may unconstitutionally interfere with the inherent power of the courts to enforce their orders through contempt. These critics rely primarily on the 1924 case *Michaelson v. United States ex rel. Chicago, Saint Paul, Minneapolis & Omaha Railway Co.* In *Michaelson*, the Supreme Court considered a separation of powers challenge to a statute that provided for a jury trial in cases involving criminal contempt of court. The Court upheld the jury trial provision but [distinguished](#) the case at bar from legislation that would “interfere with the power to deal summarily with contempts committed in the presence of the court or so near thereto as to obstruct the administration of justice” or “purport[] to reach cases of failure or refusal to comply affirmatively with a decree—that is to do something which a decree commands,” which the Court said would pose a “more serious question.”

Congress possesses significant legal authority to regulate the [jurisdiction](#) and [procedures](#) of the federal courts, but that power is subject to some [constitutional restrictions](#). Members of Congress considering legislation that would regulate the federal courts may wish to consult CRS to ensure that proposals are appropriately targeted to achieve legislative goals and consistent with constitutional separation of powers limits.

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