

DEMOCRATS HAVE TO STOP MAKING POLITICAL DECISIONS WITH AN EYE TOWARDS 2026

I've been out of pocket as events moved towards today's cloture vote on the dogshit continuing resolution Republicans have written. It's not yet clear whether seven Democrats (in addition to John Fetterman) will join Chuck Schumer – who has said he'll vote for cloture – in helping Republicans pass it, or whether a Democrat will buy some time.

It's clear that Schumer's excuse only emphasizes that there are no good options. He says if there's a shutdown, Republicans will only reopen those parts of government they want. In the face of the shuttering of USAID and dismantlement of Department of Education, that seems like a futile worry.

Among the best arguments I've seen against a shutdown, laid out but dropped here by Josh Marshall, is that a shutdown would provide Trump a way to halt legal proceedings by deeming those lawyers non-essential.

I was told yesterday that a major driver for Dems was the fear that a shutdown would slow down or stop the various court cases against DOGE. Honestly, that sounded so stupid to me that I was skeptical. But this afternoon I heard it from other key directions. I don't know if it's the biggest driver but just on the basis of what I heard I get a sense that it's a major one. That seems so wrongheaded, so lawyer-brained, that when I got the final piece of the puzzle in front of me and realized this was a real thing, it was hard for me to even process.

Schumer described it this way in his speech yesterday:

Justice, and the courts, extremely troubling, I believe. A shutdown could stall Federal court cases, one of the best redoubts against Trump's lawlessness, and could require a furlough of critical staff at the courts, denying victims and defendants alike their day in court, dragging out appeals and clogging the justice system for months and even years.

I don't think this is lawyer-brained at all. Trump could simply call the lawyers engaged in these suits non-essential, stalling legal challenges in their current status, and then finding new test cases to establish a precedent while judges were stymied.

In both Phoenix, where a reduction in force affected all the people running the courthouse, and in the Perkins Coie lawsuit, where a hearing the other day reviewed all the Executive Branch personnel, from Marshals to GSA, who keep the courthouse running, the Executive's ability to limit the Judiciary via manipulation of facilities and staff has already become a live issue. Here's how Beryl Howell described the way in which Trump's attempt to exclude Perkins Coie from federal buildings could be enforced via Executive branch personnel.

THE COURT: I just want to make sure because we, in the judiciary – we're the third branch. We are not the executive branch. We are not subject to this guidance. But our landlord, and all of the federal courthouses around the country is GSA –

MR. BUTSWINKAS: GSA.

THE COURT: – General Services Administration. And the people who do the security at our front doors, all across the country in federal

courthouses, are DOJ-component employees from the U.S. Marshals Service or court security officers. So they are all executive branch employees.

Meanwhile the court cases are making progress. Just this week, we've had two judges order reinstatement of all the people fired, grant FOIA status to DOGE, and grant discovery to Democratic Attorneys General (plus in one of the two reinstatement cases, Judge Alsup ordered a deposition from an OPM person involved in the firing). As of this week, DOGE now has to answer for its actions in the courts.

Imagine, for example, if a shutdown made it easier for DHS to keep Mahmoud Khalil in Louisiana for the duration of a shutdown, even if they simply said moving him back to SDNY (or New Jersey) is not a priority. There are other cases where the government is being ordered to pay back payments; a shutdown would make such recourse unavailable to anyone who has not yet sued. In the financial clawback cases (where EPA and FEMA seized funds already awarded), a shutdown would give the FBI time to try to frame the case against plaintiffs they're pursuing, while the plaintiffs get no protection in the meantime. A key flaw was revealed in the lawsuit against Perkins Coie in the hearing the other day (which I'll return to); if given the time, I would expect Trump to try the same trick against another law firm, fixing that flaw, in an attempt to eliminate any anti-Trump legal teams in the country.

So the concern that a shutdown would eliminate one of two sources of power is real.

I'm agnostic about whether a shutdown brings more advantage than risks.

One thing I am absolutely certain of, however, is that Democrats *on both sides* of this debate are framing it in terms of 2026. Those justifiably furious at Chuck Schumer are thinking in terms of primaries against any

Senator who supports cloture. They're demanding a filibuster so that elected Democrats, as Democrats, *be seen* wielding some power, so the party doesn't look feckless to potential voters. Those afraid of a shutdown are discussing electoral consequences in 2026. Polls are measuring who would be blamed in the polls.

This mindset has plagued both sides of Democratic debates for two months, with disastrous consequences.

Democracy will be preserved or lost in the next three months. And democracy will be won or lost via a *nonpartisan* political fight over whether enough Americans want to preserve their way of life to fight back, in a coalition that includes far more than Democrats. You win this fight by treating Trump and Elon as the villain, not by making any one Democrat a hero (or worse still, squandering week after week targeting Democratic leaders while letting Elon go ignored).

And Democrats, on both sides of this fight, are not fighting that fight. I've seen none of the most powerful voices – not AOC, not Bernie, not Jasmine Crockett, not Tim Walz, not Pete Buttigieg – put out a video talking about the fight over impoundment, about the stakes of having elected representatives of both parties fight for funding for their own constituents.

Democrats who want a shutdown have done none of the messaging *to those already hurt* by Trump's power grab work to make it a short term political win, to explain the tie between right wing capitulation to Trump and services shutting down. Instead, they've been fighting among themselves, mobilizing politically active Democrats.

I get the anger with Schumer – though I do think his concerns about the courts need to be taken very seriously.

But until Democrats stop thinking in terms of their own leadership in Congress but instead think exclusively about winning the political fight with people being hurt, *not as Democrats*,

but as people opposed to fascism, they're going to be looking for power in the wrong places.

Update: Someone on Bluesky defending AOC, arguing that this appearance from her on CNN amounted to the explanation about impoundment I said is missing. It's a great appearance, and makes the anti-CR case superbly. But I don't think it gets through the jargon about how government is funded or why. Plus, it's not viral!