

# Ellender Suggests Congress Could Free Impounded

By JOHN W. FINNEY

Special to The New York Times

WASHINGTON, April 13—

Senator Allen J. Ellender, chairman of the Senate Appropriations Committee, raised the threat today that Congress would withhold funds for Administration programs unless the White House frees some \$13-billion in impounded funds already appropriated by Congress.

The threat was the latest move in a constitutional as well as political confrontation developing between Congress and the Executive branch over the President's right to impound money appropriated by Congress.

The issue is not a new one, but it has been aggravated again by the Nixon Administration's stand in withholding \$12.8-billion in funds appropriated by Congress for some 40 domestic programs.

The Administration justification is that the President is under no constitutional mandate to spend moneys appropriated by Congress and that it is simply following past Presidential practice by withholding funds for economic and procedural reasons, as well as to comply with a Congressional limitation on over-all Government spending.

But to many in Congress, on

an issue that has brought together conservatives and liberals, the Executive branch is thwarting the will of Congress and in the process eroding Congress's constitutional control over the purse strings.

Senator Ellender suggested that perhaps the Congressional response to the Administration's stand should be a "get-tough policy" of refusing to appropriate funds for other domestic programs proposed by the Administration until the impounded funds are released.

"Although in the past I have tried to judge each issue on its merits," the Louisiana Democrat said, "I myself am being

brought around slowly to this point of view, particularly in areas where it seems the welfare of foreigners is being given priority over that of our own people."

He noted that the Administration, after impounding nearly \$13-billion for domestic programs, had come to Congress with a request for an additional \$733-million for foreign aid.

To Senator Ellender, the issue was one of whether Congress or the Executive branch would determine spending priorities.

"We are dealing here with the establishment of national priorities in matters of

WEDNESDAY, APRIL 14, 1971

## Funds by Halting Outlays for Nixon Programs

finance," he said. "Some faceless individual is saying this is what we should do and will do. Congress is being told to go jump in the Red River waterway, if it ever gets built."

Senator Ellender criticized the Administration's budgetary actions in a speech prepared for delivery in Shreveport, La., before the Red River Valley Association. Nearly \$3-million in funds for the Red River waterway has been impounded by the Administration.

To others in Congress, the issue, while related to determination of national priorities, goes deeper and relates to the preservation of the balance of

powers between Congress and the Executive branch and in particular to protection of Congress's basic control over the purse strings through the constitutional power to make appropriations.

To the delight of the liberals, who have been upset over the impounding of funds for domestic programs begun in Democratic administrations, the leadership in this Congressional cause has been assumed by Senator Sam J. Ervin Jr. of North Carolina, a Democratic conservative who is regarded as one of the Senate's leading constitutional authorities.

Before the Senate Judiciary

Subcommittee on Separation of Powers, which he heads, Senator Ervin recently complained that "the growing practice" of Executive impoundment "poses a threat to our system of government and patently violates the separation of powers doctrine."

By impounding funds, he said, "the President is able to modify, reshape or nullify completely laws passed by Congress, thus making policy through Executive power, an exercise of his office, which as any elementary student of government knows, flies directly in the face of constitutional principles."

In much the same manner that the Senate liberals and conservatives are trying to establish legislative restrictions on the President's war-making powers, Congress, on the domestic front, is beginning to grapple with the issue of how to give the Presidency flexibility to carry out economic and fiscal policies and still protect Congress's constitutional power of the purse.