

# President Contends He Has a Constitutional Right to

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WASHINGTON, Jan. 31 — President Nixon declared today that the Constitution gave him an "absolutely clear" right to withhold funds appropriated by Congress and that he was determined to use the right to prevent higher taxes or prices.

The President said at an impromptu White House news conference that Congress, pressured by "special interests," to spend more than it should, "has not been responsible on money." [Question 13, Page 20.]

As the sole representative of the entire national interest, Mr. Nixon said, "I will not spend money if the Congress overspends, and I will not be for programs that will raise the taxes and put a higher burden on the already overburdened American taxpayer."

The remarks represented Mr. Nixon's sharpest reply to members of the 93d Congress since they mounted a campaign to make a central issue of the President's refusal to spend several billions of dollars as the 92d Congress had directed.

Mr. Nixon's assertion of constitutional power clashed head on with the attitude of a stream of witnesses—most of them Senators and Representa-

tives—who urged a Senate panel today to approve legislation that would compel the President to comply with spending measures that he signs or those enacted over his veto.

Otherwise, said Representative J. J. Pickle, Democrat of Texas, "we might as well make paper airplanes out of the laws we pass."

Mr. Pickle and other witnesses who appeared before the Judiciary Subcommittee on Separation of Powers challenged both the President's authority to impound money and the argument that doing so would prevent tax increases.

Senator Edmund S. Muskie,

Democrat of Maine, cited a 1969 memorandum written by William H. Rehnquist, who was then an Assistant Attorney General but later was appointed to the Supreme Court by President Nixon.

"With respect to the suggestion that the President has a constitutional power to decline to spend appropriated funds, we must conclude that existence of such a broad power is supported neither by reason nor precedent," the memorandum stated.

The President said today that he was doing no more than had Presidents Jefferson, Jackson or Truman. Senator Muskie, who was then unaware

of Mr. Nixon's comments, countered the argument of historic precedent by saying that Congressional acquiescence in past impoundments did not make them proper.

"Repetition does not make rape any less a criminal act," the Senator said. "Only the failure to resist invites continuing assault."

Senator Muskie also recalled, with a wry note, the comment of Charles G. Dawes in 1921 when he became the first Director of the White House Budget Bureau:

"Much as we love the President," Mr. Dawes was quoted, "if Congress, in its omnipotence over appropriations and in ac-

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cordance with its authority over policy, passed a law that garbage should be put on the White House steps, it would be our regrettable duty as a bureau—in an impartial, non-political and nonpartisan way—to advise the Executive and Congress as to how the largest amount of garbage could be spread in the most expeditious and economical manner."

### City's Plight Noted

Senator Lawton Chiles, Democrat of Florida, said at the Senate hearing that Mr. Nixon's refusal to approve the outlay of the full \$11-billion that Congress earmarked over two years for sewage treatment facilities had forced the city of Jackson-

ville into a position where it might have to seek higher local taxes to meet a state deadline for improving its sewage treatment process.

Similarly, Mr. Muskie declared that Mr. Nixon "is not reducing the cost of government, just shifting it to other levels of government."

Several witnesses, including Senators William E. Brock 3d, Republican of Tennessee, warn that Congress would have to devise a method of keeping appropriations within a budget ceiling before its members could legitimately criticize the President for cutting the funds.

At one point, Senator Muskie appeared to suggest that Con-

gress might consider impeachment of the President if he continued to disregard the Congressional will on spending. He called impeachment "a blunt instrument," but said that Congress must either recapture its power of the purse through political pressure on the White House or "use he crude tools available."

Mr. Muskie said in an interview later, however, that he did not mean to call for Mr. Nixon's impeachment. He said that he was merely trying to illustrate the frustration faced by Congress if the President made unilateral judgments on spending.

Aside from appealing to the

courts, Mr. Muskie said, "if you take away our power of the purse, what's left?"

On another matter of contention between Congress and the White House—the President's occasional use of "executive privilege" to shield his Cabinet members or aides from Congressional inquiry—Mr. Nixon appeared to be conciliatory in his news conference. [Questions 10 and 11, Page 20.]

He said that he was repairing a "precise statement" on when the privilege would be invoked and that his general attitude was to be "as liberal as possible in terms of making people available to testify before the Congress."