

Senators Take Nixon to Court Over Power to Freeze Funds

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The Democratic chairmen of 14 of the Senate's 17 standing committees took President Nixon to court yesterday for a fast-approaching head-on constitutional collision over his power to impound funds Congress has appropriated.

Led by Sen. Sam J. Ervin Jr. (D-N.C.), and joined by Majority Leader Mike Mansfield (D-Mont.) and Majority Whip Robert C. Byrd (D-W.Va.), the senior Senate Democrats sought to intervene as friends of the court in a Missouri case challenging the President's power to hold back federal highway funds that Congress had told him to spend.

The President has said he intends to hold all federal spending in the current fiscal

year to \$250 billion, a goal his aides say may require impounding some \$7 billion to \$10 billion in outlays approved by Congress. Mr. Nixon says the cutbacks are the only way to avoid either an inflationary budget deficit or a tax increase.

Ervin replied yesterday that "this practice (of impoundment) is contemptuous of the role of Congress in our tripartite system . . . The power of the purse belongs exclusively to Congress under the Constitution. This effort by the committee chairmen and the majority leaders forcefully illustrates their belief that Congress must act to recapture the powers that have slipped from it."

The senators were joined by Ralph Nader, consumer advocate and frequent congressional critic, acting through

his organization, Public Citizen, Inc.

Other attacks also were mounted yesterday against the administration's planned fiscal retrenchment.

Sen. John J. Sparkman (D-Ala.), chairman of the Banking, Housing and Urban Affairs Committee, urged the President not to impose a widely reported impending freeze on federally subsidized housing programs. Sparkman hinted in a telegram that his committee might delay confirmation of the new Secretary of Housing and Urban Development, James T. Lynn, until the White House disclosed its "intentions with respect to the proposed freeze."

Rep. Carl D. Perkins (D-Ky.), chairman of the House Education and Labor Commit-

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tee, called attention to cutbacks reported coming in education and manpower programs. "The present disposition of the administration is to starve both" areas, he said. "I feel certain that the Democratic Congress will authorize adequate programs" in these fields, "and having authorized them . . . will see to it that the necessary funds are provided."

Perkins' remarks referred to reported cutbacks in the budget for next fiscal year as well as planned impoundments this year. The President has said next year's budget will also be quite tight, and has indicated some of the sharpest cutbacks may come in the government's social programs. Many of these are Great Society holdovers from the Lyndon Johnson Administration; President Nixon points to statistics indicating that they don't work.

Chairman Herman E. Talmadge (D-Ga.) of the Senate Agriculture Committee criticized the announced cutbacks on low-interest federal loans and conservation payments to farmers. "I don't think the President has the authority to withhold funds the Congress has appropriated," he said.

The President's power to impound appropriated funds has never been fully tested in the courts.

Late last year Mr. Nixon asked Congress to approve a \$250 billion spending ceiling for this fiscal year (which ends June 30), and to let him make whatever cutbacks he chose to hold overall outlays down to that level. The House voted to give him the power, but the Senate put some limits on it, and the proposal died in the rush to adjourn. The White House later declared that the President possessed the power anyway.

His planned use of it is certain to end up in the courts. The White House has not announced all the cuts it plans to make this year. It did, however, say that it would hold back about \$6 billion of the \$11 billion in water-cleanup funds that Congress approved over Mr. Nixon's veto late last year. New York City has already sued for release of that money.

Of the several cases now in the courts, the Missouri highway money case is the farthest along. A federal district judge ruled last year that the President did not have the power of impoundment, at least in the special case of highway trust funds. The government has now gone to the Eighth U.S. Circuit Court of Appeals. That is also where the senators went yesterday.

The highway case is special because, the anti-impounders say, the legislation setting up the highway program contains an express prohibition of impoundment. The senators want the Court of Appeals to rule that the President "acted unlawfully in withholding" highway funds in several past years.

Ervin said yesterday that, whatever the outcome of the highway case, congress ought to pass general anti-impoundment legislation this year, and promised that a judiciary subcommittee of which he is also the chairman will take up the issue. Ervin introduced a bill in the last Congress by which Congress could, in effect, override presidential impoundments.

In addition to Ervin, Mansfield and Byrd, those joining in yesterday's legal action were:

Chairmen James O. Eastland (D-Miss.) of the Judiciary Committee; Jennings Randolph (D-W.Va.), Public Works; John L. McClellan (D-Ark.), Appropriations; John C. Stennis (D-Miss.), Armed Services; Warren G. Magnuson (D-Wash.), Commerce; Thomas F. Eagleton (D-Mo.), District of Columbia; J. W. Fulbright (D-Ark.), Foreign Relations; Henry M. Jackson (D-Wash.), Interior; Harrison A. Williams (D-N.J.), Labor and Public Welfare; Gale W. McGee (D-Wyo.), Post Office and Civil Service; Vance Hartke (D-Ind.), Veterans' Affairs; Howard M. Cannon (D-Nev.), Rules, and Sparkman.

Also on the list were two other senators, Stuart Symington (D-Mo.) and Lee Metcalf (D-Mont.), and three congressmen, Reps. J. J. Pickle (D-Tex.), Benjamin Rosenthal (D-N.Y.) and Morris K. Udall (D-Ariz.).