

FUNDS RELEASE PUSHED IN SENATE

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Ervin Moves Toward Ban
on Any Impoundment
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WASHINGTON, Feb. 11—The Nixon Administration's claim to inherent authority to refuse to spend money appropriated by Congress has persuaded Senator Sam J. Ervin Jr. to move toward an outright ban on the impoundment of funds by the President.

Rufus L. Edmisten, the staff director of the Senate Judiciary subcommittee on separation of powers, said that Senator Ervin, the North Carolina Democrat who heads the subcommittee, had instructed him to "tighten up" a bill that would have limited, but not ruled out entirely, the President's authority to withhold appropriations.

Four Administration officials who testified against the proposal at hearings the subcommittee completed last Wednesday "presented a blueprint for Presidential rule of the Government," Mr. Edmisten said in an interview.

He said that Mr. Ervin and other subcommittee members had been "alarmed" by what they viewed as the intransigent attitude of Joseph T. Sneed, the Deputy Attorney General; Earl L. Butz, the Secretary of Agriculture; Roy L. Ash, the Director of Management and Budget, and William D. Ruckelshaus, the Administrator of the Environmental Protection Agency.

The officials all defended President Nixon's refusal to disburse \$8.7-billion that Congress had appropriated for a variety of domestic programs and contended that Mr. Nixon had an implied constitutional right to disregard Congressional directions on spending.

Senator Ervin's draft proposal, co-sponsored by a majority of the Senate, would have allowed the President to continue to withhold funds but would have required him to release the money in 60 days unless Congress consented to the impoundment of the funds.

Stiffer Bill Foreseen

Mr. Edmisten said that the Senator was now considering amending the bill to demand that the President obtain the advance approval of Congress before each specific effort to withhold appropriations.

The committee aide said that other alternatives were also being looked at, but that the end result in any case would be to stiffen the original legislation.

One possibility Mr. Edmisten mentioned would be to require the President to release funds in 30 days rather than 60 days and to stipulate that the Senate or the House of Representatives could vote immediately — the same day that the White House reported having impounded the funds — if Congress chose to order that the money be spent.

Mr. Sneed testified Tuesday that the Ervin bill, even in its more lenient original version, would be "wholly impractical, profoundly unwise and of very doubtful constitutionality." He said that the President had "substantial latitude to refuse to spend or to defer spending for general fiscal reasons, such as control of inflation."

Issue Termed 'Political'

The Deputy Attorney General also challenged whether Congress had a right to impose its interpretation of the Constitution on the President. He said that the issue was not "justiciable"—subject to determination by the Supreme Court — and that it could only be resolved in "the political realm."

Senator Lawton Chiles, Democrat of Florida, told Mr. Sneed that he appeared to be granting the President "the power of divine right" to decide, by withholding appropriations, which Congressional spending laws he would negate. Arthur S. Miller, a professor of law at Georgetown University and a subcommittee consultant, told Mr. Sneed that he was "impressed by your facility to rewrite the Constitution."

Mr. Ervin was said to be eager to act swiftly in reshaping his proposal, in part because of concern that Congress might cloud its constitutional challenge by getting involved in a series of skirmishes over specific programs that the White House has refused to fund.

Both Chambers Acted

The House voted Wednesday to insist, for example, that the Department of Agriculture release \$210-million for the Rural Environmental Assistance program. The Senate voted Monday to re-enact an airport development bill that Mr. Nixon had pocket-vetoed after Congress adjourned last year, and it added a rider to demand that the money be spent.

Neither bill received the two-thirds vote that would be necessary to override a Presidential veto, however, and some members of Congress said they feared that such a piecemeal approach to the issue would dilute support for a more basic challenge to the President.