

(1) In 1956, when the Congress decided to adopt the Highway Trust Fund, it stated, "It is hereby declared to be essential to the national interest to provide for the early completion of the Interstate Highways as authorized and designated in accordance with Section 7 of the Federal Aid-Highway Act of 1944. It is the *intent* of Congress that the interstate system be completed as nearly as practicable over a 13-year period, and that the entire system in all states be brought to a simultaneous completion".

(2) Furthermore, the Congress stated through Sec. 108(b) of the Federal Aid Highway Act of 1956 that "any sums apportioned to any state under the provisions of this section should be available for expenditures in that state for two years after the close of the fiscal year for which such sums are authorized".

(3) I would like to point out that the taxes raised to fund the construction are raised from taxes imposed upon those who use the highways. The Congress intended those funds to be held in "trust" for the benefit of those who pay for the highways. I feel that the trust has been violated by the action of yourself.

(4) My last point is one concerning the practicality of cutting back the funds when we see that the cost of highway construction has been steadily rising for the past 10 years and will probably continue to do so in the future.

I would like to discuss these arguments further with this committee. First, I would like to discuss the legality of impounding funds appropriated for the Highway Trust Fund. The basic problem facing Congress in this matter is whether the President, notwithstanding Congressional expression of dissatisfaction with this practice of impounding funds, is constitutionally authorized to act in defiance of the will of the Legislative Branch, and to persist in impounding appropriations. Furthermore, are any remedies available to Congress which, when employed by it, will prove effective in terminating this practice.

Before going any further, I would like to state that I am in complete accord with the objectives stated in the Anti-Deficiency Acts of 1905-1906. These acts encourage the President to try to effect savings and provide for contingencies. However, the Bureau of the Budget has stated many times that these acts do not embrace impounding, but do sanction apportionment as proper Presidential authority. It is definitely desirable to encourage the Executive establishment to effectuate savings in government as well as be prepared to meet every contingency.

The President cannot exercise any power unless it is first granted to him by the Constitution or the Congress.

President William H. Taft stated, "The true view of the Executive function is that the President can exercise no power which cannot be fairly and reasonably traced to some specific grant of power as proper and necessary to its exercise". The President is directly dependent upon Congress for the authority to raise revenue and then to spend these funds. Even in times of national emergency, the power to appropriate lies exclusively with the Congress. It would be direct contradiction of our basic constitutional principles to contend that the President has the power to finance or direct any activities in utter disregard of the legislative and fiscal powers vested in the Congress by Article I of the Constitution. Article II of the Constitution instructs the President to "take care that the Laws be faithfully executed".

When the President decides to impound funds which have been appropriated by the Congress, there is very little recourse for the Congress.

For the interest of my colleagues, I would like to insert the following material:

If Congress were unable to compel adherence to its demands for increased spending, no restraints, prior or otherwise, would exist upon executive concentration upon one specific arm or service. In the absence of such authority, Congress might be able to criticize the Executive and arouse public opinion, but it would be unable to apply the ultimate sanction. Consequently, the constitutional issue as to whether Congress can compel the Executive to spend money which it appropriates assumes considerable significance . . . Few people, and certainly no one in Congress, would challenge the power of the President to refrain from spending money if he found that programs could be implemented with less funds than previously thought necessary. Congress is all in favor of administrative savings and reductions. But, it draws a sharp distinction between these and a refusal to carry out a congressional policy decision.

The merits of this argument are definitely with Congress. If the President has the power to sign an appropriations statute into law and then nullify a major policy embodied in that statute by refusing to spend a substantial portion of the funds appropriated, he has in effect an Item Veto. More than that, he has an Absolute Veto exercised without danger of being overridden by a two-thirds