

vote of Congress. Neither the Commander-in-Chief clause nor any other clause in the Constitution gives him an Item Veto or an Absolute Veto. Congress, not the President has the final authority to determine the size and composition of the armed forces. The powers of Congress to raise and support armies and to "provide and maintain a Navy" are positive powers not limited to establishing a ceiling on the services. The constitutional authority of Congress to provide funds for the military and other executive departments necessarily implies the constitutional power to compel the funds to be expended.

The Hoover Commission was of the opinion that the authority should be vested in the President: "We recommend . . . that the President should have authority to reduce expenditures under appropriations, if the purposes intended by the Congress are still carried out". [Emphasis supplied.] There seems little doubt that the Commission presumed that the Budget Bureau would make most of the decisions for the President.¹

Since the appropriation was made by act of law, it may be that only Congress should decide whether any part of it should revert to the Treasury. We want Congress to keep its hands on the money. The President has no time to decide any issues in dispute except those of very high political significance, but he has close working relations with and direction over the administrative force that will do the work of detailed review. *Congress has no staff of its own for such an inquiry and has shown little inclination to use the Budget Bureau for its purposes.*

But, the members of a congressional committee can spare far more time for determination of the hard cases than the President can. . . . If final authority is to rest in Congress, the Bureau or some other agency will study and recommend, but any of its recommendations that are opposed will get a pretty thorough examination at the hands of one or more committee members. . . .² [Emphasis supplied.]

I would now like to delve into the legality of the present cut impounding or freeze of Highway Trust Funds by the Secretary of Transportation. The five percent cut-back ordered by the President froze approximately 600 million dollars in Highway Trust Funds.

My main contention in this matter is that funds appropriated by Congress cannot be impounded or frozen by Administrative action. The Congress has the sole power to decide whether the funds should be spent. First, I feel that the legislative intent of Congress has been violated by the recent actions of the Secretary of Transportation.

When reviewing the legislative intent of the Federal Aid to Highways Act of 1956, one finds that Congress was very explicit in stating its intent on this matter:

*"It is the intent of the Congress that the Interstate System be completed as nearly as practicable over a thirteen-year period (now fifteen-years as a result of an amendment effected by Pub. L. 88-4237) and that the entire system in all the states be brought to simultaneous completion: [Emphasis supplied.]"*³

The Congress was very clear in setting forth its intention that the Interstate System be completed by 1971. There are no provisions in this Act that can be construed to mean anything else.

There are two additional sections of the Act which express that Congressional desire that the Interstate system be completed with maximum speed. Specifically, Section 108(b) authorizes the appropriations of funds for fiscal years 1956 through 1969, indicating that the early authorization is "for the purpose of expediting the construction, reconstruction, or improvement inclusive of necessary bridges and tunnels of the Interstate System, including extension thereof through urban areas designated in accordance with the provisions of Section 7 of the Federal Aid to Highways Act of 1944". Furthermore, the Act allows states to construct certain portions of the Interstate System before they receive the funds. The Congress has allowed advance acquisition of right-of-ways in the interest of completion in the "most expeditious and economical manner." In short, Congress has granted broad authority to the Administration and the States to implement its desire for speedy action.

¹ *Budgeting and Accounting: A Report to the Congress by the Commission on Organization of the Executive Branch of the Government (1949)*, p. 17.

² Charles S. Hyneman, *Bureaucracy in a Democracy (1950)*, pp. 224-250.

³ 23 U.S.C., Sec. 101 CA.