



# CONGRESSMAN'S REPORT

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## Hold Up At The White House, Showdown With The Congress

Humorist Art Buchwald wrote a column recently in which he as head of his household decides to run the family budget the same way President Nixon runs the federal budget.

Buchwald simply announces that he is going to "impound" the funds his wife needed to buy a juniper bush for the front lawn. He informs his children that henceforth there will be no money available for tickets to rock concerts or repairs for the tape recorder or bicycle.

Naturally, howls of anguish arise from around the dinner table at these pronouncements. But Buchwald is adamant. He insists that he must have final authority for the family budget regardless of what had been agreed upon in earlier family discussions.

There are certain items, of course, which Buchwald decides cannot be touched. He lists "My dues at my tennis club. And my lunches at San Souci ... Those are absolute necessities. But when it comes to giveaway programs at home, I intend to be ruthless."

Despite warnings from his wife on the possible dire consequences, he remains unintimidated because he knows "The President of the United States of America is on my side."

Well, impoundment may not hit every home as directly as it did the Buchwald household, but its effect on the nation as a whole is certainly no laughing matter.

Impoundment, as it is used here, simply means the President's refusal to spend money previously appropriated by Congress.

At first glance, this may not seem like such a bad idea. President Nixon's avowed purpose, after all, in reducing federal spending is to fight inflation, hold down taxes

and rid the budget of outmoded, unnecessary and ineffective programs. Who can argue with that?

But there is a trap here that endangers the very heart of our unique American form of government with its delicately balanced system of checks and balances between the executive, legislative and judicial branches. The trap is this: When our nation does not have enough money to spend for all the things its different citizens want, who decides which programs will get money to survive and prosper, and which will be starved or killed?

If we can't have both the programs urged by the President and those passed by Congress, whose priorities should prevail? Those of the President or those of Congress?

I had always thought that this question was settled quite clearly by the founding fathers. After careful debate the vital power of the purse -- the power to levy taxes and appropriate money -- was placed in Congress.

### **Checks and Balances**

As a partial check on that power, the President was given a weapon, the veto, to reject legislation put forth by Congress. But as a further balance, a two-thirds vote by both Houses could override the veto -- which means that ultimately the Congressional decision should be the law of the land.

But by impoundment, the President circumvents this system. In a sense he goes outside the law to get his own way.

Let's take an actual example to see just how this impoundment process works: At the end of the last session of Congress, some \$11 billion was appropriated for the next two fiscal years to fight water pollution. The President vetoed the measure but Congress promptly voted overwhelmingly to override. The vote was 272-23 in the House and 52-12 in the Senate.

There was little room to doubt that the Congress meant what it said and said what it meant. The country is on the verge of a water pollution disaster and action is needed immediately.

But the President had other ideas. In December, as a so-called "anti-inflation" measure, he ordered the Environmental Protection Agency to withhold \$3 billion from the \$5 billion authorized by Congress for FY 1973 and another \$3 billion from the \$6 billion for FY 1974.

This is a total of \$6 billion arbitrarily lopped from a crucial program vitally needed by the nation and plainly called for by Congress.

### **Limits to Power**

Even William Ruckelshaus, director of the EPA, acknowledged that there is "a legal question as to his (the President's) authority to limit the funds."

At any rate, that's where the matter now rests. The President was so determined to gut the purpose of the legislation that in effect he vetoed it twice. The first time Congress overrode it. The second time, by impounding the \$6 billion, Congress and the Constitution were simply ignored. There is no recourse at present from presidential impoundments.

No one quarrels with the President's right, within certain narrow limits, to hold up expenditures. In his managerial capacity, for example, the President can refuse to spend money if the purpose for which the money was appropriated no longer exists.

If I cosponsor a bill to construct an \$8 million new federal building in Tucson and Congress has appropriated \$2 million for furniture, but the building burns down before completion, no one in his right mind would demand that the \$2 million be spent on furniture. The President should impound the money.

Or if Congress appropriates money to buy meat for the Army and the price of meat later drops, no one would insist that the full amount should be spent anyway. Again, the proper action would be for the President to impound the excess funds.

So it is one thing for a President to act prudently to cut unwise spending. But it is quite another to use impoundment as an aggressive weapon to change the whole direction of government and to nullify acts of Congress -- even those passed over a veto.

The administration's view is that the President has virtually unlimited power to do as he sees fit with the budget. When Casper Weinberger, secretary of Health, Education and Welfare, and former head of the Office of Management and Budget, appeared as a pro-administration witness on the Public Broadcasting television show, "The Advocates," I asked him if he thought George McGovern, had he been elected, would have the right to go against the will of Congress and impound funds for anti-ballistic missiles, the Trident submarines, and our NATO forces in Europe, purely on the basis of his personal priorities.

Weinberger's response was quite revealing. He said that while he would certainly disagree with the wisdom of such moves, there was no doubt in his mind that a President would have such power.

Think about that for a moment. In other words, the President can do pretty much what he wants with public money. He can act not only as a manager holding up unwise or unneeded spending but he can alter national policy, allowing programs he personally favors to survive while killing those he opposes. Under this view, the will of the people as expressed by Congress is almost irrelevant.

### **Without Reason or Precedent**

This is even more shocking when the legal justification used to prop up such a sweeping claim of power is examined. At best, the Constitution is somewhat vague on this point. Article II, section 3, states that the President must "take care that the laws be faithfully executed." This is apparently interpreted that if there are conflicts between different laws the President can choose which to apply. Thus, the administration cites wording in such relatively obscure legislation as the Anti-Deficiency Act of 1905 and the Full Employment Act of 1946. I will not bore you with a technical analysis of either other than to point out that the former was designed primarily to force federal agencies to remain within their budgets and the latter authorized the President to take needed steps to prevent unemployment. In neither is there solid ground for broad impoundment powers now claimed.

Probably one of the most cogent arguments made against the presidential impoundment authority came from an Arizonan not usually known as a "liberal". I'm referring to U.S. Supreme Court Justice William Rehnquist. A memo written when he was an assistant attorney general in the Justice Department -- before Nixon appointed him as another "strict constructionist" to the high court -- stated:

**"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 or precedent . . .**

**"It is our view that it is extremely difficult to formulate a constitutional theory to justify a refusal by the president to comply with a congressional directive to spend . .**

**"It seems an anomalous proposition that because the executive branch is bound to execute the laws it is free to decline to execute them."**

But the administration's key argument boils down not to legalities but to what they perceive as practicalities. It is a question of expediency, this line goes, because

Congress simply has not and can not do the job in overseeing government spending. Only the President has the "big picture" and only he must take responsibility for protecting the national interests.

The executive chooses to depict the struggle as between the administration's "non-political" managers and the "petty, self-serving" politicians on Capitol Hill -- who as everyone knows always have at least one eye fixed on the next election.

### **Presidential Politics**

But this is nonsense. The fact is that the executive budget managers are becoming increasingly political and tied to their own petty concerns. Some of us even had the crazy idea last fall that the incumbent administration was funneling money into states which were only marginally in the GOP column.

One could say a lot of things about President Lyndon Johnson and Richard Nixon -- but no one could ever say either was non-political in the way he used the power of the Presidency. Both knew when elections were scheduled and what budget decision would please farmers, educators, minority groups and other segments of the population. It is incredibly naive to pretend that congressmen are politicians while presidents are pure statesmen.

Obviously, as power moves from Congress to the White House so does political maneuvering. The President does not personally sit down with a green eyeshade and accountant's pencil looking for excess appropriations for paper clips in the annual budget. That job is performed by the Office of Management and Budget, created by Nixon to replace the old Bureau of the Budget.

This reorganization had the effect of placing even more control over spending in the White House. Top civil servants were eased out and replaced by presidential appointees and the OMB today has been rightly characterized as nothing less than the "President's Arm."

When Congress considers appropriation bills, extensive hearings are held to determine the usefulness and financial need of the various requests. Governors, mayors, academicians, public officials, community and interest groups are all asked to testify. After carefully weighing the often conflicting viewpoints, Congress through its committees, comes up with a bill which it feels is adequate to get the job done.

When the OMB makes its recommendations to the President on cuts in the budget, there is no public participation at all. No witnesses are called and no hearings held.

Presumably the bureaucrats refer to the printed hearing for guidance but the decisions are still made essentially on the basis of White House preferences and priorities.

### **Mrs. Douglas Loses Money**

The reality of what happens to flesh and blood people affected by arbitrary slashes in government spending must be lost in the process.

In Tucson, Mrs. Quincy Douglas, a black woman, started a transportation system for the elderly known as LIFTS for Low Income Free Transportation. Under this program the elderly are picked up at their homes and transported to places around the city such as hospitals, nursing homes, etc., and then returned home in the evening.

LIFTS now receives funds from the Department of Housing and Urban Development under the Model Cities Program. It is scheduled to be cut off entirely from future funding.

There are also programs centering around medical care for the aged which are also slated for the chopping block.

### **The Cuts Hurt**

Further evidence of the arbitrariness of OMB was shown in the recent flap over the proposed \$160 million cuts in veteran's benefits to amputees and other Vietnam GI's. The cuts were apparently ordered by OMB last fall as part of the economy drive and President Nixon, according to some news accounts, may not have even known about it. Whether he did or not, it was only the resulting uproar which quickly forced the administration to back down and reinstate the benefits.

Here are some more examples:

**Housing.** Former HUD Secretary George Romney announced Jan. 8 that virtually all subsidized housing applications not already approved would be suspended and a "temporary holding action" had been placed on applications for funds for water and sewer facilities, open space projects, and urban renewal and model cities. Sen. Charles Percy (R.Ill.) deplored the lack of consultation with Congress before the decision was made and called it a "negative step, a backward step in a situation which requires bold and affirmative action."

**Farm Programs.** These cuts were announced quietly during the Christmas holiday lull. They include:

-- An end to the 30-year old Rural Environmental Assistance Program. The government decided that it was "no longer necessary" to share the costs of conservation practices.

-- An end to the 2% government loans for rural electric and telephone development, replacing them with 5% government-backed private loans. Yet 2% loans to foreign countries are continued.

-- A phasing out of emergency loans to 49 counties designated as disaster areas.

Sen. Herman Talmadge (D.-Ga.), chairman of the Senate Agriculture Committee, commented: "If the people wanted their government policy set by a lot of faceless bureaucrats, I assume they would not then go to the polls to elect Members of Congress."

**Civil Rights.** Social welfare programs in general will suffer. One notable example is the Community Relations Service, created in 1964 to mediate racial relations and act as a trouble-shooter in urban neighborhoods which will get "zero funding," i.e. killed completely. It is apparently no longer considered worthwhile.

**Depressed Areas.** The Economic Development Administration which aids economically troubled areas, such as our Indian reservations, and the regional commissions, (among them Four Corners, which includes Arizona) will also disappear although their problems will remain.

Other substantial cutbacks are expected in highways, the space program, education, health and science programs.

### **Efficiency vs. Democracy**

The point is that in a free government the procedure by which you do things can be as important as what is actually done. So while I agree with President Nixon that there are old federal programs which ought to end because they have become outmoded and unnecessary, the solution is not for the President to repeal them but to call upon Congress to repeal them. The Constitution clearly gives this function to Congress -- otherwise we would have government by executive fiat.

I also agree that Congress needs to become more responsive and more efficient in making spending and taxing decisions. No one has worked harder for congressional reform than I have. But nothing in the Constitution says that any one of our three branches of government can take over the powers of a second simply because that branch is "inefficient."

No doubt a President -- one man -- is better equipped to make complex spending decisions for the nation than a brawling, inefficient many-voiced "committee" of 535 diverse strong-minded men and women. If efficiency is the only value then we should let the President go on impounding funds. But much as we need efficiency in government, sometimes there are things more important. One of these higher values, in my opinion, is the restraint of unbridled centralized government. If there was one thing which haunted the authors of the Constitution, it was the danger of too much unchecked raw power in the hands of one man, however selected and well-motivated.

They had seen what kings, emperors and barons had done in Europe to men's lives and property so they decided to divide and fragment power among the three branches of government. And somehow the tradeoff of some efficiency for more liberty has worked.

In the long run, the specific appropriations and impoundments discussed here will probably be forgotten by history. But the issue transcends the partisan bickering between a Republican President and a Democratic Congress. It is a crisis of major proportions threatening to corrode the inner workings of our constitutional system.

The President is now claiming that his power to "faithfully execute the laws" entitles him to faithfully execute some of the laws -- those which he personally supports -- while ignoring those which he opposes. This is an unprecedented grab for power and if it sticks we will have drastically altered the nature of our government.

Even those who support the Nixon administration must ask themselves if they would also want his successor, whoever he may be, to wield such unbridled power.

No citizen, no President should be above the law. President Nixon should set an example of restraint for himself and for those who will follow him. The rules which have governed our nation for almost 200 years must be obeyed.

A handwritten signature in black ink, appearing to read "Merritt L. Ladd". The signature is written in a cursive style with a long, sweeping tail on the final letter.