

Sec. 3—Legislative, Diplomatic, and Law Enforcement Duties of the President

the laws, i.e., his discretion in the manner of execution. The President, the argument went, is responsible for deciding when two conflicting goals of Congress can be harmonized and when one must give way, when, for example, congressional desire to spend certain moneys must yield to congressional wishes to see price and wage stability. In some respects, impoundment was said or implied to flow from certain inherent executive powers that repose in any President. Finally, statutory support was sought; certain laws were said to confer discretion to withhold spending, and it was argued that congressional spending programs are discretionary rather than mandatory.⁷⁰³

On the other hand, it was argued that Congress's powers under Article I, § 8, were fully adequate to support its decision to authorize certain programs, to determine the amount of funds to be spent on them, and to mandate the Executive to execute the laws. Permitting the President to impound appropriated funds allowed him the power of item veto, which he does not have, and denied Congress the opportunity to override his veto of bills enacted by Congress. In particular, the power of Congress to compel the President to spend appropriated moneys was said to derive from Congress's power "to make all Laws which shall be necessary and proper for carrying into Execution" the enumerated powers of Congress and "all other Powers vested by this Constitution in the Government of the United States, or in any Department or officer thereof."⁷⁰⁴

The President's decision to impound large amounts of appropriated funds led to two approaches to curtail the power. First, many persons and organizations, with a reasonable expectation of receipt of the impounded funds upon their release, brought large numbers of suits; with a few exceptions, these suits resulted in decisions denying the President either constitutional or statutory power to decline to spend or obligate funds, and the Supreme Court, presented with only statutory arguments by the Administration, held that no discretion existed under the particular statute to withhold allotments of funds to the states.⁷⁰⁵ Second, Congress in the course of revising its own manner of appropriating funds in accordance with

⁷⁰³ *Impoundment of Appropriated Funds by the President: Hearings Before the Senate Government Operations Ad Hoc Subcommittee on Impoundment of Funds*, 93d Congress, 1st Sess. (1973), 358 (then-Deputy Attorney General Sneed).

⁷⁰⁴ *Id.* at 1–6 (Senator Ervin). Of course, it was long ago established that Congress could direct the expenditure of at least some moneys from the Treasury, even over the opposition of the President. *Kendall v. United States ex rel. Stokes*, 37 U.S. (12 Pet.) 524 (1838).

⁷⁰⁵ *Train v. City of New York*, 420 U.S. 35 (1975); *Train v. Campaign Clean Water*, 420 U.S. 136 (1975). See also *State Highway Comm'n of Missouri v. Volpe*, 479 F.2d 1099 (8th Cir. 1973); *Pennsylvania v. Lynn*, 501 F.2d 848 (D.C. Cir. 1974) (the latter case finding statutory discretion not to spend).