

SENATOR SAM ERVIN SAYS



A major struggle appears underway in the 93rd Congress to reassert a balance of power between the legislative and

executive branches of the government.

There is much concern on Capitol Hill about the steady erosion of Congressional powers, and particularly those relating to the "Power of the purse." The major issue is not over the level of appropriations, but whether the President ought to have arbitrary power to determine what programs shall be funded. A case in point is that of highway funds which the President has deemed a fit subject for impoundment. It is noteworthy that taxes collected for the construction of highways go into a special fund to be used only for that purpose. A few days ago a Federal District Court in Missouri ruled that the Secretary of Transportation does not have the power to impound Federal highway funds indiscriminately. Along with 14 other chairmen of major Senate committees, I have joined in a friend-of-the-court brief which challenges the President's power to impound these monies.

The impoundment practice is contemptuous of the role of Congress in our Federal system. The "power of the purse" belongs exclusively to the Congress under an express provision of the Constitution. It should be recognized that certain procedures govern the appropriation of monies. When Congress passes a money bill, the President can veto it, and unless two-thirds of those voting in both the House and Senate agree to override his veto, the appropriation is dead. Equally important, however, is the fact that if he approves a bill, there is no provision in the constitution for an "item veto." The President must decide whether he wants the whole bill or none of it. This is precisely what the President is ignoring when he impounds monies appropriated by the Congress. He is saying in effect that I will sign the bill and then do what I please about executing the law.

There is no question but that some of the erosion of Congressional power stems directly from the Congress itself. The Administration speaks with one voice while the 535 Members of Congress often find it difficult to find a unifying position on many issues. It is also true that many elected representatives find it politically satisfying to abdicate their authority. This Administration has been eager to grab the ball and run with it on many occasions. There is a tendency, too, for Members of the House and Senate to go along with the President when he happens to head their

political party.

All this may be changed to a great extent at this session. There is a growing worry about the unbridled flow of power away from the legislative chambers on Capitol Hill. First, an activist Supreme Court assumed many legislative prerogatives, and now the President seems ready to take away more Congressional power.

So although the principal issues confronting the country have not changed much since Mr. Nixon became President the structure of power has changed a great deal. It is this, rather than Congressional nitpicking, that has set the stage for Congress to reassert its prerogatives.

The issues go far beyond the "power of the purse" and executive impoundment of appropriated monies. They stretch out into areas of executive privilege, the pocket veto, and the use of executive agreements in lieu of treaties to govern foreign relations. They touch the "newsmen's privilege" of keeping news sources confidential, governmental surveillance over individuals guilty of no crimes, and a host of invasions of personal privacy that require our attention.

I predict that this will be an exceedingly busy Congress, and that much attention will be given to the strengthening of the legislative branch of the government.

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