



The History of Impoundments Before the Impoundment Control Act of 1974

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Introduction

Since the Founding, Congress’s power of the purse has been understood to establish a ceiling on Executive spending, not a floor, and certainly not an authority for Congress to compel the President to expend the full amount of an appropriation. This understanding stems from the nature of the appropriations power and the Executive’s independent authority. It dates to the struggles between the English King and Parliament and is reflected in the Appropriations Clause of the U.S. Constitution. Until the Presidency of Richard Nixon, it was overwhelmingly understood that the power of the purse restricted only the President’s ability to spend more than an appropriation—it was not understood to prohibit the President from spending less than an appropriation. And the President’s ability to spend less than an appropriation has been met with approbation, not censure, by congresses throughout the Nation’s history.

The first serious intimation that the Executive must spend the entire amount of an appropriation seems to be in a 1969 memorandum authored by then-Assistant Attorney General William Rehnquist.¹ This memorandum asserted that “the suggestion that the President has a constitutional power to decline to spend appropriated funds ... is supported by neither reason nor precedent.”² As the below history demonstrates, however, this conclusion does not account for the original understanding of Congress’s power of the purse and the Executive’s acknowledged impoundment authority, overreads Supreme Court precedent, and fails to address unbroken Executive impoundment practice and congressional acquiescence. The Impoundment Control Act, based largely upon the understanding contained in the Rehnquist Memorandum, cannot be reconciled with the text and structure of the Constitution, the original understanding of the Executive’s impoundment power and Congress’s power of the purse, and the Nation’s history and traditions.

I. English History

The “power of the purse” is a concept that dates to at least Stuart England. Throughout English history, the King had two sources of revenue. The “ordinary” revenue consisted of the King’s income from rents and licenses from Crown lands.³ The “extraordinary” revenue consisted

¹ Presidential Auth. to Impound Funds Appropriated for Assistance to Federally Impacted Schs., 1 Op. Off. Legal Counsel 303 (1969).

² Id. at 309.

³ 1 William Blackstone, Commentaries *281.

of funds granted “by the commons of Great Britain, in parliament assembled.”⁴ Over the course of the 17th Century, the “extraordinary” revenue became the King’s ordinary source of revenue for the operations of government, and Parliament began to take measures to ensure that this revenue was not misspent.⁵ Indeed, it was largely Charles I’s attempt to govern without parliamentary appropriations that precipitated the English Civil War.⁶ After the Stuart Restoration, the power of the purse began to take the form with which the Framers were familiar. Parliament began taking the initiative in providing regular funding for the Crown. For example, in the Second Anglo-Dutch War, Parliament enacted an “Act for granting a Royall Ayd,” which authorized the King to raise almost two and a half million pounds over three years.⁷ As the war dragged on, Parliament granted considerably more funding and specified that the grant was “for the service of Your Majestie in the said Warr respectively.”⁸

After the Glorious Revolution of 1688, Parliament began regularizing the appropriations process. It was clear that Parliament understood its power of the purse to consist of the ability to restrain the King from spending funds not appropriated by Parliament. In other words, as Parliament grew more assertive with its ability to grant revenue to the Crown, its primary concern was avoiding a repeat of Charles I’s attempt to govern without Parliament by using funds not appropriated by Parliament. Most notably, in the English Bill of Rights, Parliament asserted (in language mirrored in the Constitution) its authority to prohibit the King from spending moneys not granted by Parliament.⁹ To this end, Parliament enacted legislation placing warrant requirements and forfeiture penalties on officials who misused funds.¹⁰ And Parliament also ensured that the King could not rely on the Crown’s historical ordinary revenue to govern without

⁴ Id. at *307.

⁵ F. Maitland, *The Constitutional History of England: A Course of Lectures Delivered* 309 (1908) (noting when the “chapter of England history” during which kings had spent funds “without grant from parliament ... closed”).

⁶ See Mark A. Graber, *Ship-Money: The Case That Time and Whittington Forgot*, 35 *Const. Comment.* 47, 52–53 (2020); *The Ship Money Case*, in 1 *A Complete Collection of State-Trials and Proceedings for High-Treason, and Other Crimes and Misdemeanors; From the Reign of King Richard II to the Reign of King George II* 509–10 (S. Emyln ed. 1742) (opining that in times of peril the King had unreviewable authority to levy ship-money taxes, including in inland counties where no prior monarch had sought ship-money, to finance the building and manning of ships of war).

⁷ 16 & 17 Car. 2, ch. 1 (1664–65).

⁸ An Act for Raising Moneys, 18 & 19 Car. 2, c. 1 § 33 (1666).

⁹ 1 W. 3 & M. 2, c. 2 (1688) (declaring that “levying Money for or to the Use of the Crowne by ptence of Prerogative without Grant of Parlyament for longer time or in other manner then the same is or shall be granted is Illegal”).

¹⁰ An Act for a Grant, 1 W. & M. 2, c. 1, § 47 (1688); see also An Act for Granting an Ayd to Their Majesties of the Summe of Sixteen Hundred Fifty One Thousand Seaven Hundred and Two Pounds Eighteene Shillings, 2 W. & M., c. 1, §§35–36 (1690) (penalizing collector for pocketing taxed funds); An Act for Granting an Ayd to Their Majesties of the Summe of Sixteen Hundred Fifty One Thousand Seaven Hundred and Two Pounds Eighteene Shillings, 3 W. & M., c. 5, § 43 (1691) (same).

Parliament.¹¹ Rather, the Bill of Rights and implementing legislation ensured that the Crown would have to depend on Parliament for all its funding.¹² Parliament's tightening of the purse strings ensured that the King could not govern without Parliament's annual appropriations, and that the King could not spend more than Parliament appropriated. Parliament's concern was always with the King spending funds not appropriated and thereby ruling without Parliament; there does not appear to be recorded instances of Parliamentary dissatisfaction with the King not spending enough of a Parliamentary grant.

II. The Colonial Experience

This was the meaning of the “power of the purse” that was recognized in British North America, and that was transmitted to the Founding generation. Colonial legislatures tightly controlled the funding of the colonial executive establishment.¹³ They set the salaries of the Royal governors and judges, and other governmental expenses.¹⁴ Money could only be disbursed under the Governor's warrant.¹⁵ This executive power “to disburse money extended to refusing to disburse if he chose.”¹⁶ Where the governors' powers were restricted, the colonial legislatures limited spending funds to what they expressly permitted.¹⁷

After 1776, State Constitutions adhered to the colonial understanding of the power of the purse inherited from England. For example, the Pennsylvania Constitution of 1776 allowed the Executive to “draw upon the treasury for such sums as shall be appropriated by the house.”¹⁸ And the South Carolina Constitution, in language closely echoing the English Bill of Rights, provided that “no money [shall] be drawn out of the public treasury but by the legislative authority of the State.”¹⁹ Other State constitutions employed the English warrant requirement to ensure that Executive officers did not spend unless authorized by the legislature.²⁰ Early State appropriations statutes followed this pattern, with legislatures appropriating with varying levels of specificity.²¹

Reflecting that both the Executive and Legislature drew their power and legitimacy from the ultimate sovereignty of the people, the new States formulated a new justification—economy—

¹¹ G.M. Trevelyan, *The English Revolution, 1688–1689* 95–96 (1965).

¹² 1 W. & M. 2, c. 2 (1688).

¹³ *Consumer Fin. Prot. Bureau v. Cmty. Fin. Servs. Ass'n of Am., LTD*, 601 U.S. 416, 431–32 (2024).

¹⁴ See E. Perkins, *The Economy of Colonial America* 190 (2d ed. 1988).

¹⁵ F. McDonald, *The American Presidency: An Intellectual History* 106 (1994).

¹⁶ *Id.*; accord *id.* (“The governor had, in modern terminology, the power to impound appropriations.”).

¹⁷ D. Dewey, *Financial History of the United States* 17–18 (1924).

¹⁸ Penn. Const. of 1776 § 20.

¹⁹ S.C. Const. of 1778 art. XVI; accord S.C. Const. of 1790 § 17 (“No money shall be drawn out of the public treasury, but by the legislative authority of the State.”).

²⁰ G. Casper, *Appropriations of Power*, 13 Ark. L.J. 1, 7 (1990).

²¹ *Cmty. Fin. Servs. Ass'n of Am., LTD*, 601 U.S. at 430–31.

for the prohibition on executive appropriation that went beyond the English justification of preventing the King from ruling without Parliament. Whereas the English Parliament justified its control of the purse on its representation of the people, under the State Constitutions both the Executive and Legislature equally represented the sovereign people. Thus, legislative power over the purse was justified by the legislature's tendency to promote "moderation, temperance, and frugality" in expenditures.²² The legislature was seen as the branch most likely to further these ends because increased appropriations would mean increased taxes and decreased chances of reelection. For example, the New Hampshire Bill of Rights of 1784 justified limiting the appropriations power and vesting it in the legislature as supporting "[e]conomy," which is "a most essential virtue in all states."²³ And James McHenry found a receptive audience in the Maryland House of Delegates when he explained that the Appropriations Clause of the proposed federal Constitution was based on this understanding: "When the Public Money is lodged in its Treasury there can be no regulation more consistent with the Spirit of Economy and free Government than it shall only be drawn forth under appropriation by Law and this part of the proposed Constitution could meet with no opposition as the People who give their Money ought to know in what manner it is expended."²⁴ As Justice Joseph Story would later observe, the power of the purse was meant to prevent "profusion and extravagance" in Executive expenditure.²⁵

Reflecting the understanding that the purpose of the power of the purse was to ensure economy and prevent the Executive from overspending, there appears to have been no concern raised at the Constitutional Convention or in the Ratification debates about the possibility of a President refusing to spend appropriated funds. This is not for lack of debate about the fiscal provisions of the Constitution, which were among the most discussed parts of the new framework for government. Rather it reflects a universal understanding, later seen in practice, that the power of the purse is the power to place a ceiling, not a floor, on spending.

III. The Federalist Period

The understanding of the power of the purse as a ceiling on Executive spending was universally shared during the Washington Administration. Fiscal matters were among the most contentious, if not the most contentious, political issues of the Washington and Adams Administrations. Yet it was taken as a given that the President was not required to spend all funds appropriated. And this is not for lack of impounding appropriated funds.

Alexander Hamilton explained the generally understood meaning of the Appropriations Clause as reflecting the English and Colonial understanding of the power of the purse: "The public security is complete in this particular, if no money can be expended but for *an object*, to an *extent*, and *out of a fund*, which the laws have prescribed."²⁶ This reflects the original understanding that

²² Casper, *supra* note 20, at 8.

²³ N.H. Const. of 1784 art. XXXVI.

²⁴ 3 Records of the Federal Convention of 1787 149–50 (M. Farrand ed. 1966).

²⁵ J. Story, Commentaries of the Constitution of the United States § 681.

²⁶ A. Hamilton, Explanation (Nov. 11, 1795), in 7 A. Hamilton Works 86–87 (H. C. Lodge ed. 1885).

an appropriation is an *authorization* to spend, required by the Appropriations Clause, rather than a *requirement* to spend a particular sum.²⁷ This is also reflected by the language used by the first Congresses to appropriate. Whether Federalists or Jeffersonians controlled Congress, appropriations were made with similar language, indicating a ceiling rather than a floor.²⁸ It was not contended that either formula obligated the Executive to spend the entire sum.

Indeed, it does not appear that it was once contended in the Federalist Era that the Executive had a duty to expend every cent of an appropriation. Such impoundments almost certainly occurred due to the fact that “appropriations bills ‘were quite general in their terms’” and left to the President the discretion in whether to spend the entire appropriation.²⁹ Moreover, the Washington Administration consistently failed to expend the full amount of appropriations. This was openly reported to Congress by Hamilton, who often provided them with detailed accountings of unexpended appropriations.³⁰ Congress responded by creating a surplus fund for unexpended appropriations. Under the terms of the surplus law of 1795, unexpended appropriations would revert to the Treasury after two years.³¹ Moreover, it was well known that the Executive underspent tens of thousands on hospital department appropriations.³² Congress’s response was not to demand the Executive spend the entire sum, but to reduce the appropriation in future years.³³ Jeffersonians did not object to the unexpended funds of the Washington Administration. Instead, they sought to

²⁷ For example, Johnson defined “appropriate” as “[t]o consign to some particular use or person.” Johnson’s Dictionary of the English Language (1773 ed.); see also C. Bale, *Checking the Purse: The President’s Limited Impoundment Power*, 70 Duke L.J. 607, 613 (2020) (noting “Founding Era consensus that the Appropriations Clause was a ‘powerful instrument,’ allowing Congress to set a ceiling on government spending”).

²⁸ See, e.g., *An Act Making Appropriations for the Service of the Present Year*, 1 Stat. 95, 95 § 1 (1789) (authorizing expenditure of “a sum not exceeding” \$639,000); *An Act: Making Appropriations for the Support of Government for the Year One Thousand Seven Hundred and Ninety-Seven*, 1 Stat. 498, 498 § 1 (1797) (“the following sums be respectively appropriated”).

²⁹ N. Stanton, *History and Practice of Executive Impoundment of Appropriated Funds*, 53 Neb. L. Rev. 1, 5 (1974); accord *id.* (“Every President from George Washington to Richard Nixon has almost certainly impounded appropriated funds.”); see also E. Corwin, *The President: Office and Powers, 1787–1957* 128, 127–128 (4th ed. 1957) (“[E]arly practice” confirms that the constitution “assumes that expenditure is primarily an executive function, and conversely that the participation of the legislative branch is essentially for the purpose simply of setting bounds to executive discretion.”); L. Fisher, *Presidential Spending Power* 148 (1975) (“It has long been the practice of the executive branch to regard appropriations as permissive rather than mandatory. From the days of George Washington, then, impoundments occurred whenever expenditures fell short of appropriations.”).

³⁰ See, e.g., A. Hamilton, *Report on a Plan for the Further Support of Public Credit* (Jan. 16, 1795) (directing “the surpluses of all current revenues of the United States ... to the fund aforeseaid”), in 2 A. Hamilton, *Works* 514 (H.C. Lodge ed. 1885).

³¹ *An Act Making Further Provision for the Support of Public Credit and for the Redemption of the Public Debt*, 1 Stat. 433, 437–38 § 16 (1795); see also L. Wilmerding, *The Spending Power: A History of the Efforts of Congress to Control Expenditures* 34, 83 (1943).

³² *Id.* at 41.

³³ *Id.*

control the future use of surplus funds through legislation.³⁴ The practice of not expending the entire extent of an appropriation was never questioned, and indeed acknowledged by the surplus law.

There was no lack of debate over appropriations during the Washington Administration. Few items were debated more.³⁵ The terms of these voluminous debates and their underlying premises shed much light on the nature of the President's inherent impoundment power. Three primary items were the subject of debate.

First, the Federalists and Jeffersonians debated whether appropriations ought to be made with specific line items or general lump sums. Federalists argued that line-item spending unduly constrained the President's inherent power to spend for objects as he sees fit and made for bad policy.³⁶ Jeffersonians argued that line items were necessary to constrain Executive largess and assert Congress's power of the purse.³⁷ This debate was largely unresolved by the Jefferson Administration. And by the time he became president, even Jefferson recognized the need for occasional executive flexibility.³⁸

Second, the Federalists and Jeffersonians debated whether the Executive could transfer funds between different heads of appropriation. The Federalists vehemently argued for and implemented the idea that moneys appropriated for one purpose could be transferred for use for another purpose in the Executive's discretion. Jeffersonians vehemently denied this power. Throughout the Washington Administration, the Executive moved funds between heads of appropriation. And the House, including many Jeffersonians, overwhelmingly rejected resolutions condemning Hamilton's flexible transfer of funds to meet pressing national needs.³⁹ In 1809, Congress attempted to regulate transfers by enacting a law declaring that "the sums appropriated by law for each branch of expenditure in the several departments shall be solely applied to the objects for which they are respectively appropriated, and to no other."⁴⁰ The law also, however, expressly authorized the President to make recess transfers "if in his opinion necessary for the public service."⁴¹ This law quickly proved impractical and was uniformly evaded by successive

³⁴ Id. at 44.

³⁵ See generally Casper, *supra* note 20.

³⁶ Id.; see also L. White, *The Federalists* 326–34 (1948).

³⁷ Id. at 328–29.

³⁸ Casper, *supra* note 20, at 21–22.

³⁹ Id. at 15.

⁴⁰ An Act Further to Amend the Several Acts for the Establishment and Regulation of the Treasury, War, and Navy Departments, 2 Stat. 535, 535 § 1 (Mar. 3, 1809); see also L. White, *The Jeffersonians* 114 (1951).

⁴¹ Id.

administrations, including Jefferson's, mainly through incurring deficiencies and seeking reimbursement from Congress.⁴²

Third, the Federalists and Jeffersonians debated whether the Executive could obligate the government to spend moneys not authorized by law. Federalists accepted that appropriations created a ceiling on spending in theory. Yet, they argued that sometimes the national interest demanded that funds in excess of appropriations be expended or obligated in order to achieve the national interest.⁴³ At this point, it becomes Congress's duty to cover this deficiency. This was hotly contested by certain elements of the Jeffersonian party (primarily John Randolph and William Giles), but notably, not categorically rejected by Jefferson himself or Madison.⁴⁴ As Secretary of State, Jefferson directed the U.S. minister plenipotentiary to the Court of St. James to expend funds to protect and free U.S. seamen impressed by the British.⁴⁵ Jefferson recognized that such funds were not authorized by law, but thought "it fairer to take the risk of it on the Executive" and communicate vouchers to Congress for reimbursement of the deficiency.⁴⁶ Madison, too, recognized a role for deficiency spending, but only in the event of "emergencies, in the course of human affairs, of so extraordinary and pressing a nature, as to absolve the Executive from an inflexible conformity to the injunctions of the law."⁴⁷

It is possible to find common ground between both sides. The Jeffersonian policies of itemization, no transfers, and no deficiencies all shared the goal of ensuring the President spent equal to or less than an appropriation. The purpose of each Jeffersonian doctrine was to keep the President from spending more than was appropriated for each item and from circumventing this rule by transferring funds from one item to another. For the Federalists, lump sum appropriation, inherent transfer authority, and authority to create deficiencies all shared the goal of maximizing Executive discretion to expend funds flexibly in a manner calculated to meet unforeseen contingencies and support the national interest.

The common ground between the two positions was that Congress cannot and should not require the President to spend the entire amount of an appropriation. Rather, for Jeffersonians, appropriations reflected specific sums that the President could not exceed for the achievement of

⁴² See McDonald, *supra* note 15, at 256 ("[T]he Jeffersonians resumed the Hamiltonian practice of taking money that had been appropriated for one purpose and using it for another."). White, *Jeffersonians*, *supra* note 40, at 115–116; L. White, *The Jacksonians* 135–136 (1954); L. White, *The Republican Era* 59–60 (1958).

⁴³ White, *The Federalists*, *supra* note 36, at 331–34.

⁴⁴ Casper, *supra* note 20, at 15, 22–23.

⁴⁵ White, *The Federalists*, at 332 n.33.

⁴⁶ *Id.* Jefferson also personally authorized deficiency spending as President to buy Louisiana and to prepare for war with Britain. McDonald, *supra* note 15, at 256 ("In 1803, for example, Jefferson bound the government to spend \$15 million for the purchase of Louisiana (only \$2 million had been appropriated, and that secretly)."); Casper, *supra* note 20, at 22 & n.93 (citing 1 *Messages and Papers of the Presidents* 425–430 (J.D. Richardson ed. 1895) [hereinafter *Messages and Papers*]).

⁴⁷ 3 *Annals of Cong.* 941 (1793).

specific objects; and for Federalists, appropriations reflected lump sums that the President could expend as he saw fit and create deficiencies if the national interest demanded. These debates demonstrate an underlying assumption that the President had the power, and potentially the duty in certain circumstances, to not spend down entire appropriations. And both sides presumed that appropriations were a ceiling, not a floor. In these extensive debates it does not appear that it was ever suggested that the Executive lacked authority to refuse to spend the entire amount of an appropriation. Indeed, based on the rhetoric of the debates, it seems certain that such a move would be met with approbation rather than hostility.

In sum, even under the Jeffersonians' much more restrained view of the President's inherent authority over appropriated funds, they never argued that Congress could obligate the President to spend the entire amount of an appropriation. Rather, an appropriation was understood merely as an *authorization* to spend up to a certain amount, not a *requirement*. This is confirmed by Jeffersonian practice when they took the reins of power.

IV. The Jeffersonians

In 1801, President Jefferson's first annual message to Congress repeated the approach to appropriation that characterized his party through its fights with the Federalists: "[I]t would be prudent to multiply barriers against [public funds'] dissipation by appropriating specific sums to every specific purposes susceptible of definition; by disallowing all applications of money varying from the appropriation in object *or transcending it in amount*; by reducing the undefined field of contingencies and thereby circumscribing discretionary powers over money."⁴⁸ Jefferson thus continued to adhere to the view that appropriations were a ceiling not a floor.

The consequence of this understanding is clearly demonstrated by the first known publicly announced impoundment, which came in this same message to Congress. Just a few paragraphs after the statement quoted above, President Jefferson announced that his administration was impounding funds for the construction of shipyards to allow the Republican Congress to reassess these Federalist Era appropriations.⁴⁹ Jefferson apparently had no qualms about asserting, almost in passing, the President's impoundment authority on the basis of policy disagreements with previous congressional appropriations. On Jefferson's understanding, then, apparently shared by Congress, Congress's power of the purse carried with it the power to set a ceiling on expenditures but did not encroach upon the President's discretion to decline to spend the full appropriation. In other words, Jefferson shared the longstanding understanding that the power of the purse was a restriction on overspending, not underspending. The President retained his inherent authority to decline to spend the full amount appropriated, even on policy grounds. There is no recorded dissent to this impoundment or the doctrine that it represents from Congress.

This was not an isolated incident. "Jefferson found it unnecessary on repeated occasions to use all of the money provided in a contingency fund" and "regularly returned the unexpended

⁴⁸ Thomas Jefferson, First Annual Message to Congress (Dec. 8, 1801), in Messages and Papers, *supra* note 46, at 330 (emphasis added).

⁴⁹ *Id.*

balance to the Treasury.”⁵⁰ The most famous early impoundment precedent came in 1803, when Jefferson refused to spend a congressional appropriation of \$50,000 for 15 gunboats for use on the Mississippi.⁵¹ The impoundment was on pure policy grounds: Jefferson did not want to provoke France during secret negotiations over access to New Orleans and the purchase of the Louisiana territory.⁵² In his annual message, Jefferson told Congress that the appropriated funds remained unexpended because a “favorable and peaceable turn of affairs on the Mississippi rendered an immediate execution of that law unnecessary.”⁵³ Upon completion of the Louisiana Purchase, Jefferson then expended the money to construct the gun boats to patrol the Mississippi, including its newly acquired American west bank.⁵⁴

Madison too impounded funds, despite his Jeffersonian instinct to defer to Congress on appropriations. In 1809, Madison announced to Congress that he was reducing the crews of gunboats in New Orleans in order to save money that Congress had appropriated.⁵⁵ Madison did so citing his policy judgment that crews and ship maintenance could be reduced to further both economy and “just precaution.”⁵⁶ Madison evidently felt no compunction about communicating this impoundment to Congress, and Congress made no recorded objection to it.

The Jeffersonians recognized that Congress’s power of the purse was a power to set a ceiling on appropriations. The power of the purse did nothing to encroach the Executive’s inherent discretion to spend less than the amount appropriated. In both theory and practice, the understanding of appropriations as a ceiling rather than a floor was liquidated.

V. The Jacksonians

Presidents and Congresses from the Monroe to the Lincoln Administrations continued to understand that Congress’s power of the purse included a power to place a ceiling on appropriations, while the Executive retained authority to not spend the entire sum. For example, Congress passed several acts that sought to restrain Executive spending discretion by limiting transfers between heads of appropriations and limiting the power to incur deficiencies.⁵⁷ But no

⁵⁰ Fisher, *supra* note 29, at 150.

⁵¹ *Id.*

⁵² Bale, *supra* note 27, at 615.

⁵³ Thomas Jefferson, Third Annual Message to Congress (Oct. 17, 1803), in *First Messages and Papers*, *supra* note 46, at 360.

⁵⁴ Fisher, *supra* note 29, at 150.

⁵⁵ From James Madison to Congress (May 23, 1809), in *First Messages and Papers*, *supra* note 46, at 470.

⁵⁶ *Id.* at 469, 470.

⁵⁷ See An Act in Addition to the Several Acts for the Establishment and Regulation of the Treasury, War, and Navy Departments, 3 Stat. 567, 567 § 1 (1920); An Act Legalizing and Making Appropriations, 5 Stat. 523, 533 § 23 (1842) (authority granted to the Executive to transfer surpluses among departments); An Act Making Appropriations for the Civil and Diplomatic Expenses of the Government, 10 Stat. 76, 98–99 § 10 (1852) (unexpended funds revert to treasury after 2 years). The

Congress attempted to compel the Executive to spend the entire sum. Indeed, like the Act of 1795, these measures presumed that the Executive would not spend the entire amount of an appropriation and created rules for what was to be done with such surpluses. In other words, Congress presumed that the Executive was impounding funds and ratified this understanding of Executive power by seeking to regulate what happened to impounded funds.

The practice of not fully spending appropriations is demonstrated by the existence of the unexpended fund surpluses noted above. And the lack of very public impoundment statements from presidents likely reflects that neither the President nor Congress would have viewed such actions as particularly noteworthy. Congress was well aware of Executive spending practices in this area, and that appropriations often went unexpended.

The case of *Kendall v. United States ex rel. Stokes*⁵⁸ is often the (sole) citation of authority against executive impoundment authority.⁵⁹ But that case did not involve an impoundment, and its principles are not applicable to impoundment. *Kendall* involved the Postmaster General's refusal to pay a federal contractor who rendered services to the United States by carrying mail. The contractor brought his claim before Congress, which passed private legislation directing the Executive to satisfy his contract claim. The Court held that the Executive was bound to pay out this claim because doing so was "purely ministerial" and involved no judgment or discretion.⁶⁰

It has been long understood that *Kendall* had nothing whatsoever to do with impoundment. For one, that case involved a contract claim against the government that was adjudicated by Congress. "In contrast, impoundment generally does not entail a claim for services performed."⁶¹ Moreover, the Court went to pains to explain that the basis of its holding was that the payment of this already adjudicated claim against the government involved no discretion.⁶² For this reason, no contemporaneous observer understood *Kendall* to involve the Executive's authority to withhold funds. Indeed, "an examination of the *Congressional Globe* for the year following the *Kendall* decision reveals that no senator or representative suggested the Supreme Court had rendered an opinion treating of [sic] congressional or presidential authority vis-à-vis the power of the purse."⁶³

constitutionality of the restraints contained in these measures was often denied by both presidents and subsequent congresses.

⁵⁸ 37 U.S. (12 Pet.) 524 (1838).

⁵⁹ See, e.g., 1 Op. Off. Legal Counsel at 309.

⁶⁰ *Kendall*, 37 U.S. at 618; see also M. Rappaport, The Selective Nondelegation Doctrine and the Line Item Veto: A New Approach to the Nondelegation Doctrine and Its Implications for *Clinton v. City of New York*, 76 Tulane L. Rev. 265, 327 & n.211 (2001) (noting that instances of mandatory spending in Great Britain "generally involved funds to be provided to various types of creditors") (citing 12 Geo. 3, c. 70, §19 (1772)).

⁶¹ Fisher, *supra* note 29, at 159.

⁶² *Kendall*, 37 U.S. at 613–14.

⁶³ Stanton, *supra* note 29, at 4–5.

Dispelling any doubt about the scope of *Kendall*, just two years later the Court upheld the Executive's impoundment authority in *Decatur v. Paulding*.⁶⁴ There, the Court "supported a decision by the Secretary of the Navy, who had withheld payment from a widow although her claim was based on a resolution passed by Congress."⁶⁵ The Court rejected a broad understanding of ministerial duties under *Kendall* and held that the determination of how much of a fund appropriated by Congress ought to be paid out is a matter for executive discretion, unreviewable by the courts, absent a specific adjudication of the discrete claim at issue by Congress. *Kendall*, thus, has no bearing on the Executive's long-recognized impoundment authority.⁶⁶

Impoundments continued, unchallenged on constitutional grounds, until the eve of the Civil War. President Buchanan withheld funds that had been appropriated to construct public buildings in Illinois in order to punish the State's congressional delegation for opposing the administration's objectives.⁶⁷ Although the action was politically unpopular, there does not appear to have been any constitutional objection raised to this impoundment.

VI. Reconstruction to the New Deal

"The Civil War had brought about a de facto suspension of earlier statutory limitations on executive discretion in spending funds."⁶⁸ For example, "[a]ppropriations for various objects were freely mingled; funds were transferred without much regard to the purposes for which they had been intended; unexpended balances (if any) were put to use rather than covered into the Treasury."⁶⁹ After the Civil War, Congress attempted to reassert its authority by imposing draconian limits on Executive spending discretion. Notably absent from these measures, however, was any attempt to limit the longstanding and well-known practice of impoundment. This was not for the absence of high-profile impoundments.

After signing the Rivers and Harbors Bill of 1876, President Grant sent a special message to Congress in which he stated that he did not intend to spend the total amount appropriated because certain appropriations were for "works of purely private or local interest," and that "[u]nder no circumstances will I allow expenditures upon works not clearly national."⁷⁰ He forthrightly told Congress, "during my term of office no public money shall be expended upon them."⁷¹ Although Grant's message "drew some heated remarks in the House [f]ew Congressman said anything about the planned impoundment, but most who did ... sided with the

⁶⁴ 39 U.S. (14 Pet.) 497 (1840).

⁶⁵ Fisher, *supra* note 29, at 151.

⁶⁶ Bale, *supra* note 27, at 619 n.73 ("Scholars, however, read this decision narrowly as only applying to the payment of claims for services pursuant to a ministerial duty.").

⁶⁷ McDonald, *supra* note 15, 310.

⁶⁸ White, *The Republican Era*, *supra* note 42, at 58.

⁶⁹ *Id.*

⁷⁰ 4 Cong. Rec. 5628 (1876).

⁷¹ *Id.*

President.”⁷² Pursuant to the President’s order, the Secretary of War refused to spend over half of the \$5 million appropriated for internal improvements.⁷³ The House then passed a resolution asking the President to indicate the legal authority under which he was impounding the funds.⁷⁴ The Secretary of War responded by relying on the understanding that appropriations are “in no way mandatory,” and that it would not be constitutionally appropriate for Congress to limit the President’s discretion to impound funds in “the interests of the public service” and the “condition of the Treasury.”⁷⁵ Congress quickly dropped the matter “and no efforts were made to restrict presidential discretion over the appropriated money,”⁷⁶ even in this time when Congress was otherwise tying down Executive discretion over appropriations as much as possible.⁷⁷

Several Attorney General and Claims Court opinions from this time also demonstrate the continued understanding that appropriations establish only a ceiling, not a floor, for executive spending. In 1896, in response to a question about how to handle an appropriation that contained the command that the funds appropriated “shall be expended” on a specific river banks program, Attorney General Harman advised: “The direction to expend the sums mentioned in the proviso is, in my opinion, not mandatory to the extent that you are bound to expend the full amount if the work can be done for less.”⁷⁸

Reflecting this longstanding understanding, Senator John Sherman protested President Cleveland’s decision to veto a rivers and harbors appropriations bill on the ground that the President could mitigate the overspending in the bill through his impoundment power: “If the President ... should see proper to say, ‘That object of appropriation is not a wise one; I do not concur that the money ought to be expended,’ that is the end of it. There is no occasion for the veto power in a case of that kind.”⁷⁹ The Claims Court also understood that appropriations were merely a ceiling, not a floor: “An appropriation by Congress of a given sum of money, for a named purpose, is not a designation of any particular pile of coin or roll of notes to be set aside and held for that purpose, and to be used for no other; but simply a legal authority to apply so much of any money in the Treasury to the indicated object.”⁸⁰

⁷² Stanton, *supra* note 29, at 6.

⁷³ *Id.*

⁷⁴ *Id.* at 6–7.

⁷⁵ *Id.* (quoting H. Exec. Doc. No. 44-2-23 at 2 (1877)).

⁷⁶ *Id.* at 7.

⁷⁷ Wilmerding, *supra* at 118–136.

⁷⁸ Appropriation—Contracts, 21 Ops. Att’y Gen. 414, 414, 415 (1896)).

⁷⁹ *Id.* at 166. Attorney Generals issued several other opinions that dealt only with statutory construction in this period. Stanton, *supra* note 29, at 8–9; see also I. Kramer, The Impoundment Control Act of 1974: An Unconstitutional Solution to a Constitutional Problem, 58 UMKC L. Rev. 157, 160 n.26 (1990).

⁸⁰ *Hukill v. United States*, 16 Ct. Cl. 562, 565 (1880); accord *Campagna v. United States*, 26 Ct. Cl. 316, 317 (1891). The Supreme Court continued to apply the rule of *Kendall*, that claims Congress

Presidential impoundments continued through the turn of the century. President Wilson declined to expend funds appropriated by Congress for holding a peace conference with the great powers aiming to end the First World War.⁸¹ In 1921, the first Director of the Budget Bureau (later the Office of Management & Budget), Charles G. Dawes, issued a circular to the Executive Branch expressly reaffirming that appropriations are to be treated as a ceiling on expenditures and not a directive to spend the full amount.⁸² Executive officers were to abide by the President's determination of the maximum amount of an appropriation to be expended during the fiscal year, with the rest being placed in a general reserve.⁸³ Dawes made clear that "where Congress has directed the expenditure of certain sums for specific purposes, an Executive pressure will now be exerted for more efficient and economical administration in order to produce greater results from the given expenditure, and also whenever possible, to complete the given project for a less amount than the total appropriated for the purpose."⁸⁴

This understanding was repeated by President Harding himself, who instructed his officers that "you should not only carefully guard against any of your activities being carried on at a rate which would require additional appropriations for the fiscal year, but should arrange to conduct your business with a minimum of expense consistent with efficient administration."⁸⁵ Indeed, the President expressly instructed his officers to impound funds "to effect some savings from your appropriations for the coming fiscal year."⁸⁶ Harding also publicly threatened to impound wasteful river and harbor spending.⁸⁷

President Hoover vigorously employed the impoundment power to decrease government spending in the midst of the Great Depression. To this end, he ordered administrations to slow down domestic program implementation, which achieved a ten percent cut in government

determined are payable to specific persons must be paid. See generally *United States v. Comm'rs of Sinking Fund*, 169 U.S. 249 (1898); *United States v. Price*, 116 U.S. 43 (1885); *United States v. Jordan*, 113 U.S. 418 (1885).

⁸¹ Bale, *supra* note 27, at 654 (citing *An Act Making Appropriations for the Naval Service*, 39 Stat. 556, 618 (1916)).

⁸² Fisher, *supra* note 29, at 37 (citing U.S. Bureau of the Budget, *First Budget Regulations* at 1, Circular No. 4 (July 1, 1921) (on file with author)).

⁸³ *Id.*

⁸⁴ Letter to the President from Director of the Bureau of the Budget 2–3 (July 19, 1921) (on file with author).

⁸⁵ Fisher, *supra* note 29, at 37 (quoting Henry P. Seidemann, *The Preparation of the National Budget*, in 113 *Annals of the American Academy of Political and Social Science* 43 (1924)).

⁸⁶ *Id.*

⁸⁷ *Id.* at 166.

expenditures.⁸⁸ Under President Hoover, Dawes also directed each executive department to cut their proposed expenditures to create a budget reserve.⁸⁹

In sum, with very little dissent, the understanding that appropriations constituted only a ceiling and that the President retained inherent power to impound, remained and was implemented from Lincoln's time up to the eve of the New Deal.

VII. FDR to LBJ

Public presidential impoundments continued from the administrations of President Franklin Roosevelt to President Johnson, often with little congressional protestation (with notable exceptions) and actually with congressional recognition and approval of the constitutional impoundment power.

President Roosevelt engaged in widespread and much-publicized impoundments in the Great Depression and World War II. Throughout the 1930s, President Roosevelt impounded appropriated funds for various programs, citing economic emergency.⁹⁰ As the prospect of entering the war increased, so did FDR's impoundments. In 1938, FDR's administration impounded funding for ROTC units.⁹¹ In the early 1940s, the administration "ordered impoundment of amounts ranging from \$1.6 million to \$95 million which had been appropriated for the Civilian Conservation Corps' surplus labor force, civilian pilot training projects, the Surplus Marketing Corporation and various civil and military efforts."⁹² In 1941, President Roosevelt deferred construction projects⁹³ and also impounded funds appropriated for a flood control reservoir in Markham Ferry and a levee in Tulsa.⁹⁴ In what appears to be the first recorded instance of legislative pushback on impoundments, in 1943, Congress enacted a measure to prohibit the impoundment of highway funds by the Director of the Budget Bureau, and allow only the Commissioner of Public roads to impound such funds.⁹⁵

Between 1940 and 1943, President Roosevelt refused to spend more than \$500 million in public works funds on policy grounds.⁹⁶ These impoundments were justified based on the longstanding understanding that appropriations could only set a ceiling on executive spending. As

⁸⁸ Note, Impoundment of Funds, 86 Harv. L. Rev. 1505, 1510–11 (1973) [hereinafter Harvard Note].

⁸⁹ Louis Fisher, The Politics of Impounded Funds, 15 Admin. Sci. Q. 361, 363 (1970).

⁹⁰ Stanton, *supra* note 29, at 10 ("President Roosevelt impounded funds in the 1930s in order to cope with the emergencies of economic depression and war.").

⁹¹ Bale, *supra* note 27, at 637 (citing E. Huzar, *The Purse and the Sword: Control of the Army by Congress Through Military Appropriations, 1933–1950* 368 (1950)).

⁹² Stanton, *supra* note 29, at 10.

⁹³ Fisher, *supra* note 90, at 364–65.

⁹⁴ Stanton, *supra* note 29, at 10.

⁹⁵ *Id.*

⁹⁶ Harvard Note, *supra* note 89, at 1509.

President Roosevelt explained, mandating the full expenditure of appropriated funds “would take from the Chief Executive every incentive for good management and the practice of commonsense economy.”⁹⁷ Then-Senator Harry Truman concurred: “What looks like a good program one day may be completely unnecessary 6 months later Certainly none of us hold that we give a mandate to expend the funds appropriated. We expect the funds to be used only where needed, and not in excess of the amount appropriated.”⁹⁸

President Truman continued to make high profile impoundments. After World War II, he temporarily impounded funds from a program to build veterans’ hospitals, reasoning that it “would be better to wait until the returning servicemen had settled, and in that way achieve the most effective placement of medical facilities.”⁹⁹ In 1946, he temporarily impounded funds appropriated to develop water resources as part of the Kings River Project in order to study the prospective costs of the project.¹⁰⁰ In 1946 and 1947, he impounded half of the National Guard’s appropriation.¹⁰¹ In 1949, he impounded funds appropriated by Congress for two supercarriers.¹⁰² In 1950, he deferred various domestic programs in order to focus on the Korean War effort.¹⁰³ That same year, Congress directed the President to loan \$62.5 million to Spain.¹⁰⁴ President Truman stated that he would treat this provision as an authorization because a directive “would be unconstitutional.”¹⁰⁵ The House Appropriations Committee approved of President Truman’s understanding of executive impoundment authority, noting that economy “neither begins nor ends in the Halls of Congress,” and an appropriation constitutes “only a ceiling upon the amount which should be expended for that activity. The administrative officials responsible for administration of an activity for which appropriation is made bear the final burden for rendering all necessary service with the smallest amount possible within the ceiling figure fixed by the Congress.”¹⁰⁶

The most notable examination of the constitutional issue came in President Truman’s 1949 Air Force impoundment. The House ignored President Truman’s request for an appropriation for 48 Air Force groups, and instead appropriated for 58 groups. The Senate acquiesced to 58 groups, on the express understanding that the President retained inherent impoundment power and that

⁹⁷ Fisher, *supra* note 29, at 149.

⁹⁸ 89 Cong. Rec. 10362 (1943); see also Fisher, *supra* note 29, at 149.

⁹⁹ Fisher, *supra* note 29, at 151.

¹⁰⁰ *Id.* at 166.

¹⁰¹ Bale, *supra* note 27, at 655.

¹⁰² Stanton, *supra* note 29, at 12.

¹⁰³ Bale, *supra* note 27, at 655 (citing National Military Establishment Bill for 1950: Hearing Before the H. Comm. on Appropriations, 81st Cong. 328 (1949)).

¹⁰⁴ Fisher, *supra* note 29, at 305 n.34.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.* at 149.

appropriations established only a ceiling.¹⁰⁷ The President signed the bill, but only after announcing that he directed the Secretary of Defense to place the extra \$735 million for the 10 excess groups into reserve.¹⁰⁸ He justified this “impoundment on the need to maintain a balance between national security and a sound economy, the importance of preserving the elements of a unified strategic concept among the military services, and the President’s authority as Commander-in-Chief.”¹⁰⁹ The President made clear that impoundment is “the discretionary power of the President. If he doesn’t feel like the money should be spent, I don’t think he can be forced to spend it.”¹¹⁰

Significantly, “[n]either Senator McKellar nor Representative Cannon—chairmen of the Appropriations Committees—questioned Truman’s authority to withhold the money.”¹¹¹ Indeed, the House even held a hearing on the matter in which it acquiesced to the President’s view. At this hearing, Secretary of Defense Louis Johnson stated that the President’s impoundment was based on the “inherent authority vested in the Commander in Chief and the President.”¹¹² The Chairman of the committee expressly agreed, noting: “[O]ver the long span of time ... weight of experience and practice bears out the general proposition that an appropriation does not constitute a mandate to spend every dollar appropriated I believe it is fundamentally desirable that the Executive have limited powers of impoundment in the interests of good management and constructive economy in public expenditures.”¹¹³ Other legislators agreed. Chairman Thomas of the Senate Subcommittee on Military Appropriations: “I do not think the money should be used. I think it should be impounded, and leave the impression that if the money is appropriated it may not be used.” Senator Taft: “The Appropriations Committee can reduce funds to what it considers a point of safety, but it cannot feel sure about going further. It might be destroying a department’s effective work. Only the department itself can make the additional saving necessary over what Congress has done.”¹¹⁴

President Eisenhower kept up the pace of impoundments. He publicly impounded funds for dozens of defense projects. In 1956, he impounded \$46.4 million appropriated by Congress to increase Marine Corps personnel. In 1957, he “issued a series of orders and announcements for

¹⁰⁷ Id. at 162.

¹⁰⁸ Id. at 163.

¹⁰⁹ Id.

¹¹⁰ Harry S. Truman, The President’s News Conference of September 20, 1950, in *Public Papers of the Presidents of the United States: Harry S. Truman*, 1950, at 657, 661 (1979).

¹¹¹ Fisher, *supra* note 29, at 163.

¹¹² Bale, *supra* note 27, at 638 (citing Department of Defense Appropriations for 1951: Hearings Before the H. Comm. On Appropriations, 81st Cong. 42, 50–55 (1950) (statement of Louis Johnson, Secretary of Defense)).

¹¹³ Id. (quoting Executive Impoundment of Appropriated Funds: Hearing Before the Subcomm. On Separation of Powers of the S. Subcomm. on the Judiciary, 92d Cong. 501–02 (1971) [hereinafter 1971 Hearings] (letter from Rep. George H. Mahon, Chairman, H. Comm. on Appropriations)).

¹¹⁴ Id. at 638–39 (alteration omitted).

cutbacks and stretchouts in defense programs.”¹¹⁵ In 1958, he “asked agency heads to delay and reduce expenditures to avoid the possibility of having to borrow money.”¹¹⁶ In 1959, he impounded \$48 million in Hound-dog missile funds, \$90 million in Minuteman funds, \$55.6 million for KC-135 tankers, and \$140 million for strategic airlift aircraft. In 1960, he withheld \$35 million for nuclear-powered carrier procurement and \$137 million for Nike-Zeus anti-missile program funds.¹¹⁷ These examples only scratch the surface of President Eisenhower’s impoundments.¹¹⁸

President Kennedy similarly impounded significant military funds. In 1961, Congress appropriated \$380 million for the B-70 strategic bomber—\$180 million more than the White House requested in its budget. Kennedy impounded the additional \$180 million because he judged that ICBM technology eliminated the need for the additional bombers. Congressman Vinson, Chairman of the House Armed Services Committee, was furious and drafted language for the next year’s appropriation stating “that the Secretary of the Air Force, as an official of the executive branch, is directed, ordered, mandated, and required to utilize the full amount of the \$491 million authority granted” for the B-70 bomber.¹¹⁹ The Committee recognized that this represented an unprecedented challenge to the Executive’s impoundment authority: “If this language constitutes a test as to whether Congress has the power to so mandate, let the test be made.”¹²⁰

President Kennedy forcefully rebuffed Vinson’s attempt to encroach upon his executive power. He argued that the language should be modified from “directed” to “authorized” because such language is “more clearly in line with the spirit of the Constitution.” Vinson’s mandatory language would be inconsistent with “the full powers and discretions essential to the faithful execution of my responsibilities as President and Commander in Chief.”¹²¹ The rest of Congress emphatically backed the President’s understanding of the Constitution. The full House rejected Vinson’s committee report and language. As then-Congressman Gerald Ford explained, Vinson’s language “invaded the responsibilities and the jurisdiction ... of the President ... [and] created inflexibility in the management of the RS-70 program.”¹²² And Chairman Mahon found the

¹¹⁵ Fisher, *supra* note 29, at 153.

¹¹⁶ Stanton, *supra* note 29, at 13 n.79.

¹¹⁷ *Id.* at 12 n.74.

¹¹⁸ See Bale, *supra* note 27, at 655–56 (collecting several other examples).

¹¹⁹ H.R. Rep. No. 87-2-1406 at 9 (1962).

¹²⁰ *Id.*

¹²¹ Fisher, *supra* note 29, at 164.

¹²² Bale, *supra* note 27, at 640 (quoting 108 Cong. Rec. 4687, 4714 (1962)).

mandate “improper and impractical.”¹²³ Vinson’s language was thus rejected, and President Kennedy never expended the B-70 funds aside from conducting a study to assuage Vinson.¹²⁴

The trend continued with President Lyndon Johnson, who impounded funds for policy reasons in both the domestic and military contexts. In 1965, Johnson impounded funds for watershed projects in order to voice his opposition to the legislative procedures used to appropriate the funds.¹²⁵ Congress refused to change its procedures and the funds remained impounded for the remainder of the Johnson Administration.¹²⁶ In 1966, Johnson impounded funds for the construction of a national aquarium.¹²⁷ Also in 1966, Johnson objected to an agricultural appropriation bill that exceeded his budget request and “proceeded to reduce expenditures for certain items ‘in an attempt to avert expending more in the coming year than provided in the budget.’”¹²⁸ Indeed, it became Johnson’s policy to withhold appropriations that exceeded the President’s budget, including a \$5.3 billion reduction in federal programs, though he did subsequently release significant portions of these funds.¹²⁹ Johnson also impounded funding for low-cost housing; a nuclear-powered guided missile ship; the Department of Health, Education, and Welfare; and elementary and secondary education.¹³⁰

Perhaps most notably, President Johnson impounded billions of dollars in funds appropriated for federal highways. Attorney General Ramsay Clark justified the President’s constitutional impoundment authority on the longstanding history of executive impoundment and the nature of Congress’s appropriation power. The Attorney General explained that “[a]n appropriation act [] places an upper and not a lower limit on expenditures.” And the “duty of the President to see that the laws are faithfully executed ... does not require that funds made available must be fully expended.”¹³¹ Clark went on to explain that “[m]any factors must be weighed by the Executive in determining the extent to which funds should be expended. Consideration must be given not only to legislative authorizations and appropriations but also to such factors as the effect of the authorized expenditures on the national economy and their relation to other programs important to the national welfare.”¹³² President Johnson’s Budget Director concurred, maintaining

¹²³ Fisher, *supra* note 29, at 164. (“Opposition to the mandatory language also came from Charles Halleck, House Minority Leader, John McCormack, Speaker of the House, and Carl Albert, House Majority Leader.”).

¹²⁴ *Id.*

¹²⁵ *Id.* at 166.

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ Fisher, *supra* note 29, at 167.

¹²⁹ *Id.*

¹³⁰ Bale, *supra* note 27, at 656.

¹³¹ R. Clark, Federal-Aid Highway Act of 1956—Power of the President to Impound Funds, 42 U.S. Op. Atty. Gen. 347, 351 (1967).

¹³² *Id.*

that it was the “general power of the President to operate for the welfare of the economy and the Nation in terms of combating inflationary pressures.”¹³³ Even the Comptroller General agreed with the President’s power to impound the highway funds.¹³⁴

Conclusion

Viewed in historical context, President Nixon’s aggressive use of the Executive’s impoundment authority was well within constitutional understanding and practice going back to the Founding. Congress’s use of its power of the purse to make it illegal for the President to intentionally spend less than the full amount of what appropriated was norm-breaking, unprecedented, and unconstitutional. Deputy Attorney General Sneed was exactly right when he stated that the Impoundment Control Act would “reverse 170 years of Presidential practice.”¹³⁵ As explained above, for much of the Nation’s history, such a congressional power was so beyond the realm of constitutional permissibility that it was almost never even asserted. And in the isolated instances in which legislators did argue for such a power, it was roundly condemned by not only Presidents, but Congress itself. The Impoundment Control Act represented an unprecedented break with the Nation’s constitutional history and traditions.

¹³³ Stanton, *supra* note 29, at 14.

¹³⁴ *Id.* (citing Decision B-160891, Feb. 24, 1967 (unreported), in 1971 Hearings, *supra* note 114, at 65 n.6).

¹³⁵ Impoundment of Appropriated Funds by the President: J. Hearing on S. 373 Before the Ad Hoc Subcomm. on Impoundment of Funds of the S. Comm. on Gov’t Operations & the Subcomm. on Separation of Powers of the S. Comm. on the Judiciary, 93d Cong. 369 (1973) (statement of Joseph T. Sneed, Deputy Att’y Gen. of the United States).