

Federal Courts Have Repeatedly Rejected Claims of an Inherent Constitutional Impoundment Power

Russ Vought recently testified that as Director of the Office of Management and Budget, he intends to pursue a policy of impounding funds already lawfully appropriated by Congress. Vought claims that for 200 years, presidents used their constitutional authority to impound funds. That is wrong on the history and wrong on the law.

As early as 1838, the Supreme Court held that an executive branch official does not have the power to withhold money Congress requires him to spend. When the then-attorney general asserted that the Constitution gave the president that power, the Supreme Court roundly rejected the argument: "To contend that the obligation imposed on the President to see the laws faithfully executed, implies a power to forbid their execution, is a **novel construction of the constitution, and entirely inadmissible.**" *Kendall v. United States ex rel. Stokes*, 37 U.S. 524, 612-13 (1838).

Since then, numerous lower courts have held that there is no inherent presidential power to unilaterally impound funds appropriated by Congress. Here are six examples from the Nixon administration:

1. A federal court in Virginia held that Nixon's impoundment of \$6 billion out of a total \$11 billion appropriated by Congress for constructing waste treatment plants was in conflict with the "letter and spirit" of the law, and recognized that "**[m]ore than a century ago the United States Supreme Court laid to rest any contention that the President has the power suggested.**" *Campaign Clean Water, Inc. v. Ruckelshaus*, 361 F. Supp. 689, 696, 700-01 (E.D. Va. 1973).
2. A federal court in D.C. held that the head of the Office of Economic Opportunity could not defund and dismantle the agency just because the president's budget proposed eliminating funding for it. The court called this attempt at impoundment by the Nixon Administration tantamount to a claim "that the Constitution confers the discretionary power upon the President to refuse to execute laws passed by Congress with which he disagrees." *Loc. 2677, Am. Fed'n of Gov't Emp. v. Phillips*, 358 F. Supp. 60, 77 (D.D.C. 1973).
3. Another court ruled in favor of Louisiana and 29 other states that brought a class action demanding that the Nixon administration disburse millions in education funds that it had impounded unlawfully. In *Louisiana v. Weinberger*, the U.S. District Court for the Eastern District of Louisiana stated: "[T]his Court is decidedly unable to accept defendants' position that, regardless of the clear intent of Congress as expressed in the wording of a statute, the executive may exercise his broad powers pursuant to Article II of the Constitution. . . even where this means refusal to comply with the terms of a statute." 369 F. Supp. 856, 864 (E.D. La. 1973).

4. Community Mental Health Centers won a court order requiring the Nixon administration to spend about \$50 million in grants to health centers that Nixon's health department impounded. The court held that "there is no basis for defendants' assertion of inherent constitutional power in the Executive to decline to spend [those funds] in the face of a clear statutory intent and directive to do so. . . . **The defendants have no residual constitutional authority to refuse to spend the money.**" *Nat'l Council of Cmty. Mental Health Ctrs. v. Weinberger*, 361 F. Supp. 897, 901, 903 (D.D.C. 1973).
5. After Congress denied President Nixon's request to rescind funds for a summer work training program in New York City, the administration impounded the funds. Participants and agencies that ran the summer program successfully challenged the impoundment. The court held that the "**Executive Branch has no authority, even for motives such as the control of inflation, to decide for itself whether to obey a law after the President has signed a bill into law, or after Congress has overridden a Presidential veto.**" *Cmty. Action Programs Exec. Dirs. Ass'n of N.J. v. Ash*, 365 F. Supp. 1355, 1360 (D.N.J. 1973).
6. A D.C. federal court ruled that the Nixon administration had no power to withhold federal highway funding from states seeking their share of grants. It held that "the President's veto power under Article I, section 7 of the Constitution certainly could have been utilized to prohibit" the spending, but rejected the "argument. . . that the President's express or implied constitutional powers justify holding back authorized funds." *State of Louisiana ex rel. Guste v. Brinegar*, 388 F. Supp. 1319, 1324-25 (D.D.C. 1975).