By Mr. McIntyre:
S. 2569. A bill to extend daylight savings time during the period from the last Sunday in October 1973, through the last Sunday in April 1974. Referred to the Committee on Commerce.

By Mr. Mondale:
S. 2569. A bill establishing an Office of Congressional Legal Counsel. Referred to the Committee on Government Operations.

By Mr. Mondale, Mr. President, over the past few years we have become acutely aware of the dangers of arbitrary and illegal executive branch actions which have threatened the integrity of the laws of the United States. We have witnessed a tremendous upsurge in the use of the courts—both by private citizens and by Members of the Congress—in attempts to force the executive branch to act in accordance with its powers as defined by the Constitution and laws of the United States.

The types of illegal executive branch actions which have been tested have varied, but all have been important. They have ranged from challenges to the continuation of the longest and most divisive war in our history, to the massive impoundment of funds appropriated by the Congress, to the withholding of information under the Freedom of Information Act, to the submitting of nominations for the advice and consent of the Senate.

The bond linking these cases has been the inability to obtain redress of grievances through any means other than the courts. Their common achievement has been a greater awareness of the part Members of the Congress—and the American people—of the dangers of illegal executive branch actions, and the potential of court challenges as a means of correcting such illegality.

A number of lawsuits stand out in this regard, and are a particular mention for their accomplishments. In some instances, these accomplishments came about through the successful conclusion of the legal action; in others, while the legal action itself was not successful, the awareness of the American people has been heightened.

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LAWSUITS AGAINST THE EXECUTIVE BRANCH

IMPOUNDMENT

Early this year, 22 Senators and 5 Representatives filed a brief amici curiae in the case of State Highway Commission of Missouri against Volpe, challenging the legality of the Department of Transportation's withholding of funds for road construction in the State of Missouri. Both the U.S. district court and the U.S. court of appeals have held that the action of the Secretary of Transportation in withholding such funds to control inflation is contrary to law.

This is only one of over two cases which have been decided on various questions dealing with impoundment of congressionally appropriated funds. These cases have dealt with housing funds, with OEO funds, with funds appropriated under the Water Pollution Control Act amendments, with Agriculture Department emergency loan funds, with veterans cost-of-instruction funds, with Indian education funds, with mental health and educational funds, with Youth Corps and Library Services funds.

And in virtually every instance the outcome of this litigation has been the same—ruling after ruling that the impoundment of funds appropriated by the Congress was contrary to law.
illegal and unwarranted executive branch actions.

ASSNCE OE IN-HOUSE COUNCIL

One crucial element has been missing from this effort, however. For although congressional involvement in these types of historic lawsuits has increased dramatically in recent years, we still find ourselves without an inhouse capability in this area. The lawsuits which Members of Congress have brought, or in which they have filed briefs amicus curiae, have all been handled by lawyers not in the employ of Congress. These attorneys have performed magnificently, and deserve our gratitude. But we in Congress, if we are to truly reassert the prerogatives of the legislative branch, must not be eternally reliant on the goodwill of resources in the private sector.

NEED FOR CONGRESSIONAL COUNSEL

This year, we have enacted significant legislative measures designed to stop illegality in the executive branch. A war powers bill has been passed by both Houses which, if enacted into law, would bring about a genuine sense of equality of branches within American Government in this vital area. Anti-impoundment bills have been passed by both Houses. Again, if enacted into law, this legislation would make clear Congress power in control of moneys appropriated by Congress.

In addition, important proposals have been introduced to broaden the Freedom of Information Act. And legislation now in conference would provide senatorial approval for executive agreements, which the executive branch has been using to bypass the constitutional requirement for Senate ratification of all treaties.

All of these acts, however, if and when they become law, will need enforcement power. Hopefully, this power need never be utilized. But we must be ready to seek enforcement of these new legislative measures which have been enacted, the older legislation already in place, and Congress inherent powers under the Constitution of the United States.

Mr. President, I firmly believe that only by creating an Office of Congressional Legal Counsel within the Congress will we be able to fully use the potential of the judicial branch in reestablishing an equality of power between the Congress and the Executive.

PROVISIONS OF LEGISLATION

I am therefore introducing legislation today which would help achieve this end by creating an Office of Congressional Legal Counsel.

The major features of this legislation are as follows:

An Office of Congressional Legal Counsel would be established, with the head of the office appointed by the Speaker of the House and President pro tempore of the Senate, from among names submitted by the majority and minority leaders of the House and Senate.

The duties of the Congressional Legal Counsel would include a variety of informational and representational activities.

First, he would be required, upon request of either House of Congress, a joint committee, a committee, at least 3 Senators or 12 Representatives, to render a legal opinion on questions arising under the Constitution and laws of the United States. These questions would include whether:

A request for information or inspection of records under the Freedom of Information Act was properly denied by an agency of the U.S. Government;

A request for information agreement with a foreign country or regional or international organization, should have been submitted to the Senate for its advice and consent;

An activity has been undertaken or continued, or not undertaken or continued, by the executive branch of the U.S. Government in violation of the law or the Constitution or without any required authorization of law;

Executive privilege exists, and, if so, whether it has been properly asserted; and

Funds appropriated by Congress have been impounded in accordance with law.

Second, he would be required, upon requests from any of the same types of parties above, to advise and cooperate with other private parties bringing civil actions against officers and employees of the executive branch, or any agency or department thereof, regarding their execution of the laws and Constitution.

Third, he would be required, upon a similar request, to intervene or appear as amicus curiae in pending actions in Federal or State courts in which the issue is the constitutionality or interpretation of a law of the United States, or the validity of any official proceeding of or official action taken by either House of Congress, joint committees, committees or members, or any officer or employee of the Congress.

Fourth, upon request, he would be required to represent either House, a joint committee, committee, member of congressional delegation to which such House, committee or employee is a party, and in which there is placed in issue the validity of any official proceeding of, or official action taken by, such House, committee, member of employee.

Fifth, and most importantly, if the Congressional Legal Counsel has rendered a legal opinion, and if requested by either House, a joint committee, a committee, at least 6 Senators or at least 24 Representatives, he would be required to represent anyone who claims to be harmed to the sum or value of the matter in controversy, in a court of the United States to require an officer or employee of the executive branch of the U.S. Government, or any agency or department thereof, to act in accordance with the Constitution and laws of the United States as interpreted in such opinion."

The Congressional Legal Counsel, therefore, would be empowered to undertake a wide variety of activity, including representing the Congress and individual members both as plaintiffs and defendants.

Most importantly, the bill would provide the Congress with an effective legal voice in combating illegal executive branch actions such as impoundment, overly broad claims of Executive privilege, failure to submit nominations to the Senate for confirmation and other similar abuses.

The statute would confer broad standing on the Office of Congressional Counsel in its representational activity, so as to afford the Congress with wide-ranging authority in challenging executive branch actions on the basis.

Just as the Office of Legislative Counsel has, over the years, aided Members of the House and Senate in developing important legislation, so should an Office of Congressional Legal Counsel aid us in reasserting the power which we need to ensure that this legislative function is carried out by an often beleaguered executive branch.

Mr. President, I ask unanimous consent that the text of this legislation I am introducing be printed at this point in the Record.

There being no objection, the bill was ordered to be printed in the Record, as follows:

S. 2569

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, for purposes of this Act—

(1) "Member of Congress" means a Senator, Representative, Delegate, or Resident Commissioner;

(2) "Member of the House of Representa­tives" includes a Representative, Delegate, or Resident Commissioner;

(3) "State" includes any territory or possession of the United States; and

(4) "Impounding of budget authority" includes

(A) withholding, delaying, deferring, freezing, or otherwise refusing to expend any part of budget authority made available (whether by establishing reserves or otherwise) and the termination or cancellation of authorized projects or activities to the extent that budget authority has been made available;

(B) withholding, delaying, deferring freezing or otherwise refusing to make any allocation of any part of budget authority (where such allocation is in the order to permit the budget authority to be expended or obligated);

(C) withholding, delaying, deferring freezing or otherwise refusing to permit a grantee to obligate any part of budget authority (whether by establishing contract controls, reserves or otherwise); and

(D) any type of Executive action or inaction which effectively precludes or delays the obligation or expenditure of any part of authorized budget authority.

Sec. 2. (a) There is established within the Congress the Office of Congressional Legal Counsel, which shall be under the direction and control of the Congressional Legal Counsel. The Congressional Legal Counsel shall be appointed by the Speaker of the House of Representatives and the President pro tempore of the Senate from among recommendations submitted by the majority and minority leaders of the House of Representatives and the Senate. Such appointments shall be made without regard to political affiliation and solely on the basis of his fitness to perform the duties of his office. The Congressional Legal Counsel shall fulfill the duties provided for in level III of the Executive Schedule under section 5314 of title 5, United States Code.

(b) The Congressional Legal Counsel may appoint and fix the compensation of such Assistant Legal Counsels and other personnel as may be necessary to carry on the work
of his office. All such appointments shall be made without regard to political affiliation and solely on the basis of fitness to perform the duties of the office.

(c) The Congressional Legal Counsel shall promulgate for his office such rules and regulations as may be necessary for the performance of the duties of the office, and such rules and regulations shall be reviewed by the Senate and House of Representatives, of which the duties of either House of Congress, a Member of Congress, or any officer, employee, office, or agency of the Congress in the management of any official action pending in any court of the United States or of a State or political subdivision thereof in which there is placed in issue the validity of any official proceeding or official action taken by, such House, joint committee, committee, Member, officer, employee, office, or agency thereof, in accordance with subparagraph (1) of this section, and upon request of either House of Congress, a joint committee of either House of Congress at least 6 Senators, or at least 24 Members of the House of Representatives, or any agency or department thereof, to act in accordance with the Constitution and laws of the United States as interpreted in such opinion.

(d) The Congressional Legal Counsel shall cause a seal of office to be made for his office, of such design as the Speaker of the House of Representatives, of which the duties of the senior Senator of the United States, and, as far as practicable, such number of lesser Senators, or Members of the House of Representatives, as may be necessary to carry out the purposes of this section. All such appointments shall be approved by the Senate and House of Representatives, and judicial notice shall be taken thereof.