

***CONGRESSIONAL TESTIMONY***

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**Congress,  
Budget Control  
and  
Constitutional Self-Government**

**Testimony before the  
Committee on the Budget  
United States House of Representatives**

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Chairman Price and members of the Budget Committee, thank you for inviting me to testify before you. I commend you for beginning these hearings on the congressional budget process with a consideration of reclaiming congressional authority through the power of the purse, as the power of the purse is in my opinion the key to reclaiming congressional authority in our political system.

The budget today is at the center of American politics. Just as governing must increasingly focus on the budget, so the budget has become the primary means of governing. Politics is less about the age old question “who governs?” and more about who controls the budget. This is not a coincidence and points toward what has changed in American politics.

The budget has become the battleground between the two political branches – the legislative and the executive – as they fight over control of an ever-growing and increasingly centralized administrative powers of the federal government. As Congress has delegated much of its lawmaking powers to agencies and administrators under the modern executive, it has also ceded many of its responsibilities over the government’s purse strings. By abandoning its responsibility to legislate and budget, Congress has allowed the rise of the modern bureaucratic state and an unprecedented fiscal situation of endless spending and debt that threatens the long-term economic and political health of our nation.

My testimony makes three points:

That Congress and lawmaking, and in particular the legislative power of purse, are central to the rule of law and constitutional self-government;

How the rise of the modern state and bureaucratic rule undermines popular consent and fiscal responsibility; and

Why Congress needs to recover its lawmaking authority and budget control, for the sake of fiscal responsibility, the separation of powers, limited government, and the cause of popular self-government.

## **The Rule of Law**

To understand why the Constitution gives the power of the purse to Congress and why Congress must not cede it to the executive branch, it is necessary to review the Founders' understanding of the rule of law.

A principle that is quite old and long predates the United States, the rule of law is the general concept that government as well as the governed are subject to the law as promulgated and that all are to be equally protected by the law. One need only to read the popular plays of Shakespeare to see that Anglo-American history of a thousand years is replete with the often violent back and forth between despotic rule and the slowly developing concept of the rule of law.

But the full implications of the constitutional development of the rule of law first appear in the principles and institutions of the American Founding. Although virtually every government at the time was based on a claim to rule without popular consent, the objective of the American Founders was to break free of the old despotisms and to establish the rule of law based on consent.

The key turn in constitutional thinking came with the formal recognition, previously in theory but first expressed in practice in the Declaration of Independence, of inalienable rights that belong to each person by "the Laws of Nature and Nature's God" as the moral ground of government. For well over a century, Americans had developed and become accustomed to the idea of government as having been created through fundamental agreement authorized by popular consent. The concept can be seen most clearly in the words of the Declaration of Independence, which posits as a self-evident truth "that to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed."

In addition to the formation of government in the first place, consent also gives guidance concerning the processes by which legitimate government operates. Among the charges lodged against the king in the Declaration of Independence is that he assented to Parliament's "imposing Taxes on us without our Consent" and "has kept among us, in times of peace, Standing Armies without the Consent of our legislatures." Indeed, the first six charges against the king address interference with local legislation and legislatures, violating "the right of

Representation in the Legislature, a right inestimable to them and formidable to tyrants only.” Consent does not necessarily mean pure democratic rule, but it does require a process of popular agreement to lawmaking and governance. In America, this was understood to mean a popular form of representative government. Only a government that derived its power from “the great body of the people,” according to Federalist 39, was compatible with the “genius of the American people,” “the fundamental principles of the revolution,” and a determination to “rest all our political experiments on the capacity of mankind for self-government.”

The rule of law as an expression of popular consent culminates in the United States Constitution. The very form of the Constitution separates the branches in accordance with distinct powers, duties, and responsibilities stemming from the primary functions of governing: to make laws, to execute and enforce the laws, and to uphold (judge or adjudicate) the rule of those laws by applying them to particular individuals or cases. The Constitution creates three branches of government of equal rank in relation to each other. Each is vested with independent authority and unique powers that cannot be given away or delegated to others.

The order of the branches – legislature, executive, judiciary – is important, moving from the most to the least “democratic” and from the most to the least directly chosen by the people. The Constitution lodges the basic power of government in the legislature not only because it is the branch most directly representative of popular consent but also because the very essence of governing according to the rule of law is centered on the legitimate authority to make laws. Because controlling government expenditures is so central to the act of lawmaking, it was similarly necessary for the Constitution to place the power of the purse in Congress, the branch most directly tied to the consent of the people.

### **The Power of the Purse**

Article I begins: “All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.” The legislative power extends to seventeen topics listed in Article I, Section 8: taxing and borrowing, interstate and foreign commerce, naturalization and bankruptcy, currency and counterfeiting, post offices

and post roads, patents and copyrights, federal courts, piracy, the military, and the governance of the national capitol and certain federal enclaves.

The power of the purse, apparent throughout the Constitution, can be seen most clearly in four clauses. Article 1 Section 8 provides that “[t]he Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts” to the exclusion of any other branches exercise of those powers, and gives Congress the power to borrow money on the credit of the United States. Even more clearly, the Appropriations Clause of Article 1 Section 9 says that “No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.” To those provisions can be added the particular reservation to the popular chamber of Congress: Article 1 Section 7 says that “All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other Bills.”

According to Joseph Story’s *Commentaries on the Constitution*, the object of the Appropriations Clause is to “secure regularity, punctuality, and fidelity, and the disbursements of the public money.” Because taxes are raised from the people and are to be used for public purposes, it is proper that the most popular branch of government should decide how money should be used for public purposes. Otherwise the executive would have “an unbounded power over the public purse of the nation” and be able to levy money and dispose of it beyond responsibility or reproof. In a republic, it is wise to provide restraints by which “the public treasure, the common fund of all” is applied honestly to the common defense and the general welfare. “Congress is made the guardian of this treasure; and to make their responsibility complete and perfect, a regular account of the receipts and expenditures is required to be published, that the people may know what money is expended, for what purposes, and by what authority.”

The reservation of this power of the purse to Congress, in both principle and in practice, was intended to constrain the other branches’ ability to take unilateral action. Consequently, beyond the general legislative power with which it is alone vested, Congress’ most important power is control of the government’s pocketbook. It is not only a day-to-day check on the

executive but also the long-term authority by which the legislature maintains its role in national affairs. Unlike absolute rulers who control their national treasury, American presidents cannot withdraw a dime of funds without an appropriation from Congress. The executive “holds the sword of the community,” Alexander Hamilton reminds us in the *Federalist*, but even the most energetic president cannot forget that the legislature “commands the purse.”

As a result, James Madison concludes in *Federalist* 58 that this power over the government’s purse “may, in fact, be regarded as the most complete and effectual weapon with which the Constitution can arm the immediate representatives of the people, for obtaining a redress of every grievance, and for carrying and effect every just and salutary measure.”

### **Separation of Powers**

The reservation of the power of the purse to Congress is one of the most significant aspects of the separation of powers, and defending Congress’s power of the purse is essential for preserving the separation of powers arrangement. Keeping the powers of government divided in distinct branches is “admitted on all hands to be essential to the preservation of liberty,” Madison notes in *Federalist* 47. “The accumulation of all powers,” Madison continues, “legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny.”

It is with this proclivity in mind that the Constitution grants powers to three separate and distinct branches of government. Each branch has only those powers granted to it, and can do only what its particular grant of power authorizes it to do. But it was not enough to divide power and hope that it remained nicely confined within the written barriers of the Constitution.

The solution is found in structuring government such that “its several constituent parts may, by their mutual relations, be the means of keeping each other in their proper places,” as Madison explained in *Federalist* 51. In other words, government is structured so that each branch has an interest in keeping an eye on the others, checking powers while jealously protecting its own. By giving each department an incentive to check the other—with overlapping functions and

contending ambitions—the Founders devised a system that recognized and took advantage of man’s natural political motivations to both use power for the common good and to keep power within constitutional boundaries. Or as Madison put it, the “interest of the man [becomes] connected with the constitutional rights of the place.”

The separation of powers and the introduction of legislative balances and checks, according to Hamilton in *Federalist 9*, are “means, and powerful means, by which the excellencies of republican government may be retained and its imperfections lessened or avoided.” They discourage the concentration of power and frustrate tyranny. At the same time, they require the branches of government to collaborate and cooperate in doing their work, limiting conflict and strengthening consensus. But these means also have the powerful effect of focusing individual actors on protecting their constitutional powers and carrying out their constitutional duties and functions—and that fact transforms the separation of powers from a mere negative concept to a positive and important contributor to limited government and constitutional fidelity.

The Founders well understood the need for the good administration of government — an important aspect of their “improved science of politics.” But the administration of things (like god budgeting) was subordinate to the laws of Congress, and thus responsible to the people through election. As Alexander Hamilton points out in *Federalist 68*, it is a “heresy” to suggest that of all forms of government “that which is best administered is best.” In the end, liberty is assured not by the anarchy of no government, on the one hand, or the technocratic rule of administrative government, on the other, but through a carefully designed and maintained structure of government to secure rights and prevent tyranny through the rule of law.

### **Early Budgeting**

During the Founding era, without a formal budget process, Congress maintained robust control of spending, generally appropriating specified funds for specified expenditures through the appropriate committees of Congress.

In “An Act for finishing the Lighthouse on Baldhead at the mouth of Cape Fear river in the State of North Carolina” (April 2, 1792), Congress appropriated up to \$4,000 from previously appropriated monies not expended for finishing a lighthouse in North Carolina. Of course, Congress did not always specify every expenditure. In “An Act making appropriations for the support of government for the year one thousand seven hundred and ninety” (March 26, 1790), for example, Congress appropriated up to \$10,000 to defray contingent expenses of government. But, while Congress was willing to allow the administration access to a lump sum of funding, it required the Secretary of the Treasury to make regular reports about how such funds were expended. Such reporting requirements were not mere formalities. Congress did, on some occasions, reduce funding for programs. For example, “An Act providing the means of intercourse between the United States and foreign nations” (July 1, 1790) appropriated up to \$1,500 to compensate the expenses incurred by secretaries of diplomats working abroad to support American commerce. Congress allowed the executive wide latitude in deciding how these funds would be expended, but required it to report regularly on how funds were expended. Congress evidently decided that it had appropriated too much funding for secretaries, because “An Act providing the means of intercourse between the United States and foreign nations” (March 19, 1798) lowered the amount of funding to compensate the expenses of secretaries to \$1,350. Thus, while Congress gave the executive branch some discretion in spending appropriated funds, it also jealously guarded its power of the purse and made sure to maintain strict oversight of executive expenditures.

The consequence of Congress’s muscular budgetary power is easy to see. From 1790 until the 1950s, the United States government maintained a surplus budget twice as often as it allowed deficit spending. Congress generally allowed deficit spending only during times of war and financial panics. Frequent surpluses resulted in Congress being able to pay down the debt incurred during wars and recessions. Moreover, the prosperity that came with fiscal responsibility meant that debt as a percentage of GDP declined dramatically with even modest surpluses or balanced budgets.

### **Rise of the Administrative State**



Congress's abdication of its budgetary powers and subsequent exclusion from important governing decisions can be traced back to the rise of the Progressive movement and advent of the modern administrative state.

This administrative state and its “new science of politics” – as opposed to the improved science of politics of the Founders – began with the French philosophes and continental utopians of the 18<sup>th</sup> century, who were deeply enamored with the possibility that reason and modern science could solve all aspects of the human condition. Just as science brought technological changes and new methods of study to the physical world, so it would bring great change and continuous improvement to society and man.

The late-19th-century Progressives took this argument, combined it with ideas from German idealism and historicism, and Americanized it to reshape the old constitutional rule of law model—which was seen as obsolete, inefficient, and designed to stifle change—into a new, more efficient form of egalitarian government. This view of scientific rationalism questioned the very idea of self-governing citizenship: Liberty is no longer a condition consistent with human nature and the exercise of God-given natural rights, but an evolving, socially constructed concept.

Given its new goal, government by definition must itself be unlimited. How could there be any limit? Denying that “any limit can be set to governmental activity,” the prominent progressive reformer Charles Merriam wrote:

The exigencies of modern industrial and urban life have forced the state to intervene at so many points where an immediate individual interest is difficult to show, that the old doctrine has been given up for the theory that the state acts for the general welfare. It is not admitted that there are no limits to the action of the state, but on the other hand it is fully conceded that there are no natural rights which bar the way. The question is now one of expediency rather than of principle.

There was no longer any principle—whether natural rights or constitutional government derived from those rights—that limited the action of the state. There was consequently less

need for government institutions (such as Congress) to limit the scope of those actions. While ostensibly advocating more democracy, the first progressives — under a Republican president, Theodore Roosevelt, and then a Democratic one, Woodrow Wilson — pursued the opposite in practice. To encourage democratic change while directing and controlling it, progressives posited a sharp distinction between politics and what they called “administration.” Politics would remain the realm of expressing opinions — hence the continued relevance of Congress to provide rough guidelines of policies — but the real decisions and details of governing would be handled by trained administrators, supposedly separate and immune from the influence of politics.

These administrators would be in charge of running a new form of government, designed to keep up with the expanding ends of government, called “the administrative state.” Where the Founders went to great lengths to preserve consent (and check human nature) through republican institutions and the separation of powers — as in entrusting Congress rather than the executive with the power of the purse — the progressives held that the barriers erected by the Founders had to be removed or circumvented and government unified and expanded.

The particulars of accomplishing the broad objectives of reform—the details of regulation and many rule-making functions previously left to legislatures—were to be given over to a new class of professionals who would reside in the recesses of agencies like the FCC (Federal Communications Commission), the SEC (Securities and Exchange Commission), the CPSC (Consumer Product Safety Commission), or OSHA (Occupational Safety and Health Administration). They would often create rules without the prompting or input of Congress, shielded from the standard checks and balances of lawmaking.

As “objective” and “neutral” experts not susceptible to human nature, so the theory went, these administrators would act above petty partisanship and faction, making decisions mostly unseen and beyond public scrutiny to accomplish the broad objectives of policy. Although the term “bureaucracy” was originally satirical (from the French for desk, and the Greek for rule), progressives held the rule of clerks to be a noble endeavor — they are the true “agents of democracy,” as Herbert Croly liked to say. Though they could still be reined in by Congress,

these new institutions were specifically designed to be as independent as possible – and as Congress's ability to oversee the budget process has waned, so has its ability to oversee these agencies.

An important reform promoted by progressives to overcome the separation of powers was an executive dominated budget system, such that progressive presidents could represent the national will and lead a nonpartisan bureaucracy to carry out that will. This proposal was straightforwardly presented as a parliamentization of budgeting, moving to a British-style system in which the Prime Minister's cabinet would initiate fiscal plans. The effort came to partial fruition with the 1921 Budget Act, which allowed the President to put forth a budget of his own.

In the 1930s, progressives made even more advances in centralizing spending authority and moving it into the hands of the president. As Louis Fisher has recounted, the creation of emergency spending programs and the authority to raise or lower tariffs to reach trade agreements were both important steps toward allowing the executive to spend money without explicit authorization or appropriation by Congress. The experience of World War II further centralized power in the executive and diminished the power of Congress.

Nevertheless, even under the Budget and Accounting Act of 1921 most operated on the assumption that the legislature remained preeminent regarding budget matters. Federal spending during peacetime remained at or near total revenues, meaning surpluses or small deficits. Even after massive spending during the Second World War, the budget quickly returned to close to fiscal balance. In general, there existed a consensus about the size and purposes of the federal government: Administration at the national level was limited, consistent with a decentralized constitutional system and self-governing civil society.

But the seeds of a new form of governing had been sown. The initial change can be seen in the New Deal, which brought significant new interventions in the national economy and the creation of the entitlements programs that threaten our fiscal stability today. FDR recognized the constitutional significance of this shift when he moved the Bureau of the Budget (established under the 1921 Budget and Accounting Act) from the Treasury to the new

Executive Office of the President, establishing that henceforth presidential control of the budget would be key to controlling and directing the new forms of American government.

The balance of budget power began to shift rapidly in the executive's favor with the arrival of the so-called Great Society programs of the 1960s. Indeed, centralization of administration was a chief objective of the Great Society. Whereas initial regulations dealt with targeted commercial activity – such things as railroads, trucking, aviation, banking – when the federal government assumed responsibility for the total well-being of every American, it set out creating programs (and reforming old ones) to manage the whole range of socioeconomic policy, from employment, civil rights, welfare, and healthcare to the environment and elections. The expansion of regulatory activities on a society-wide scale in the 1960s and 1970s led to vast new centralizing authority in the federal government and a vast expansion of federal regulatory authority. This centralization of power brought with it what we conventionally mean by big government: huge workforces, massive expenditures, and insurmountable debt.

When administration is nationalized, though, it does not easily or naturally fall under the authority of the legislative or the executive branch. As four decades of political history show, control over the bureaucracy created a new source of conflict between the executive and legislative branches. During the first part of our bureaucratic history, Congress had the better of the fight, with presidents (at least since Richard Nixon) trying as they could to control the Fourth Branch. Congress, after all, had been creating these bureaucracies and now independent regulatory agencies to carry out its expansive wishes, delegating legislative powers to them in the form of broad regulatory authority. Congress was the first to adapt to the administrative state, continuously reorganizing itself since 1970 by committees and subcommittees to oversee and interact with the day-to-day operations of the bureaucratic apparatus. As the bureaucracy expanded, Congress sought to maintain its power over the administration not through the authorization and appropriation process but through back-end checks, such as the legislative veto (which was held unconstitutional by the US Supreme Court in 1983). Over time, Congress has come to focus its power of the purse largely on post-budgetary oversight of and after-the-fact “regulatory relief” from the bureaucracy.

As Great Society programs grew, and new and hard to control entitlement spending absorbed ever more resources, there was less flexibility in the budget to set national priorities. In his second term, President Nixon sought to assert executive power over the bureaucracy not only by controlling department personnel and the regulatory process but also through impoundment (reduction of appropriated funds) not merely as a fiscal management tool but in order to challenge congressional policy. This led to the Congressional Budget and Impoundment Control Act of 1974, which President Nixon signed just before he resigned from office. While that law restored significant legislative authority over the budget process, allowing Congress to budget independently and comprehensively, it has not served to control spending and deficits as intended. Indeed, although there have been numerous amendments to its complex process, it seems to this observer that the Congressional Budget Act has been unraveling from the beginning and its model of congressional budgeting has all but totally collapsed. (The best indicator that Congress has lost control of the budget is its temporary but unsustainable attempts to turn to automatic budget cuts, such as Gramm-Rudman-Hollings and the recent sequester agreement.) Today lawmakers regularly, and often deliberately, miss budget deadlines, the government often runs on temporary spending measures, and separate appropriations under regular order have been replaced by massive omnibus legislation.

While I would not suggest that I am an expert of the intricacies of the budget process, I would suggest that its failure is determined by the larger institutional shifts of modern government away from limited, constitutional government toward centralization and bureaucratization, along with the rise of the modern bureaucratic executive and the self-diminishment of Congress. There is no consensus as to limits on spending because there is no consensus on the limits of government action. Once politics is overcome by administration, the political debate over the common good and the public interest loses out to the partisan control of constituent benefits and special interests.

And so the size and especially the scope of government grow unabated. In its current phase everything — from financial restructuring to environmental regulation to immigration reform — must be dealt with comprehensively, meaning centrally, uniformly, and systemically by an

administrative apparatus that is more complicated and expansive than ever. Take the Dodd-Frank Wall Street Reform and Consumer Protection Act: Its 2,300 pages require administrative rule-makings reaching not only to every financial institution but well in to every corner of the American economy. Its new bureaucracies, like the Consumer Financial Protection Bureau and the Financial Stability Oversight Council, operate outside of the public eye and are subject to virtually none of the traditional checks. The CFPB exists outside the rule of law, uncontrolled by the power of the purse: it has an independent source of revenue, insulation from legislative or executive oversight, and the broad latitude and discretion to determine and enforce its own rulings—and so define the limits of its own authority—based on vague terms left undefined.

The primary function of modern government is to regulate. When Congress writes legislation, it uses very broad language that turns extensive power over to agencies, which are also given the authority of executing and usually adjudicating violations of their regulations in particular cases. The result is that most of the actual decisions of lawmaking and public policy—decisions previously the constitutional responsibility of elected legislators—are delegated to bureaucrats whose “rules” there is no doubt have the full force and effect of laws passed by Congress. In the 114<sup>th</sup> Congress, the legislature enacted 156 laws and passed 517 resolutions, while federal departments and agencies issued 3,378 final rules and proposed an additional 2,334 rules, amounting to over 80,000 pages in the Federal Register. Today, the modern Congress is almost exclusively a supervisory body exercising limited oversight over administrative policymakers.

The problem with the bureaucracy’s arbitrary, comprehensive, unchecked power is that it is not administration at all but rule outside of the law, outside of the Constitution and its checks and balances, and outside of and thus not responsive to our democratic institutions of government.

The rise of the new imperial presidency—acting by discretion, creative interpretation, and executive orders more than legislative direction—should not be that surprising given the overwhelming and tempting amount of authority that has been delegated to decision-making actors and bodies largely under executive control. As Congress expanded the bureaucracy—creating innumerable agencies, delegating its lawmaking authority, losing control of the details of budgeting, and focusing on post hoc checks—the executive has grown to new levels of

authority. Like never before, the executive can lead the bureaucracy—through a combination of executive discretion, poorly written laws, and willful neglect and disregard—to its policy ends with or without the cooperation of Congress.

### **Budget Control**

The rise of the administrative state has not only undermined the rule of law—it has also undermined the ability of Congress to maintain fiscal responsibility. A central axiom of the new theory of administration was that the experts who manage the administrative agencies ought to be free of the “meddlesome” interference of Congress. Consequently, advocates of the administrative state sought to make their programs and agencies as isolated from Congress’s budget power as possible. One innovation was so-called “mandatory spending,” in which the funding for programs like Social Security and Medicare is automatic and is not subject to periodic review by Congress. In 1962, mandatory spending constituted slightly less than 30% of all federal spending. Today, over 64% of federal spending is mandatory.

Meanwhile, proponents of the administrative state have found new ways to make other functions, including various federal agencies, independent of congressional oversight and largely unconstrained by budgeting. Many agencies are effectively self-funded by collection of fees. 18F, a technology agency recently created by the Obama administration, has hundreds of employees and yet receives no funding whatsoever from Congress – it acts as an external contractor for other agencies, receiving all of its funding from their budgets. The Dodd-Frank Act took this effort to diminish Congress’s budgetary power to the extreme and made the Consumer Financial Protection Bureau automatically funded by a designated fund managed by the Federal Reserve System and thus entirely independent from the congressional appropriations process. The result is that the CFPB is able to impose regulations on almost every sector of the economy with almost no congressional oversight.

Reversing the trend of a diminishing legislature and the continued expansion of the executive falls largely to Congress, which must rebuild itself to control the operations of government, break the administrative state, and provide a robust check on the modern executive. A cooperative executive will be crucial to this task, but much of the hard work will depend on the

legislative branch. This will be a battle that must be fought on many fronts, but a crucial piece of that effort will be reviving the power of the purse as a tool to help return lawmaking powers to Congress and restore fiscal responsibility.

Not all of these battles have to be fought legislatively: There is certainly a role for litigation in this process, and at the very least, a successful lawsuit could prevent things from getting worse. The recent ruling in *House v. Burwell* that the Administration violated the Constitution by funding the Affordable Care Act's cost sharing program without appropriations from Congress is an excellent result that will hopefully help reign in executive overreach. But Congress cannot constantly turn to litigation to assert its constitutional prerogative — in part because that is often a post-hoc effort and would have the perverse (and unintended) effect of further weakening its own institutional powers by relying on another branch to assert them.

The more reliable path is for Congress to strengthen its constitutional muscles as a coequal branch -- and the one constitutionally tasked with budgeting -- by reforming how it goes about budgeting and appropriating. The legislature reasserting its own powers is the solution envisioned by our Founders, and is consistent with popular consent. Returning control of spending and budgets to Congress, and restoring the norms under which Congress can use that power to make policy the executive is bound to carry out, would help make crucial policy questions proper political disputes, as they should be, subject to popular debate among elected officials rather than executive fiat or judicial decree.

Congress's reassertion of its own legislative authority and the restoration of these debates to the political realm, partly via spending decisions, will be a crucial part of restoring the structural integrity of our Constitution. Congress must, as much as possible, cease delegating its powers to bureaucrats and administrative agencies, but it also must not flinch from using its spending powers to rein them in or cancel their decrees.

It is important to note that all is not lost: Congress may have delegated much of the regulation and rule-making power it once had to unelected bureaucrats, but it retains the power of the purse. It remains, albeit in a broad and occasional sense, the only source of new spending, taxing, and borrowing authorization. There is no reason Congress cannot once again begin using



these powers as a way to guide the executive branch, and replace its current practice of offering very general spending authority to the president each year with much more direct and detailed lawmaking and budgeting.

Congress needs to relearn these arts, of lawmaking and, subsequently, budgeting. Regular legislative order, but especially the day-to-day back-and-forth of authorizing, funding and overseeing the operations of government, will do more than anything to restore the Article I powers of Congress and get control of our unlimited government. Done well, it will also prevent Congress from continually getting cornered in large, messy, and unacceptable omnibus budgets at the end of the year, the settlement of which works to the advantage of the executive and the administrative bureaucracy. Strategically controlling and using the budget process will turn the advantage back to Congress, forcing the executive to engage with the legislative branch and get back into the habit of executing the laws enacted by Congress.

So what would Congress's reassertion of its budget powers, and the right use thereof, look like? Budget reforms should aim at fulfilling the intent of the Appropriations Clause of the Constitution: "No Money shall be drawn from the Treasury, but in consequence of Appropriations made by Law."

Reforms could be thought of as addressing all three elements of this clause:

1. "No money...from the Treasury": In general, funding should come from government revenue. Congress should not allow agencies, like 18F and the CFPB, to self-fund from outside sources. And where self-funding is appropriate – e.g., in the case of immigration agencies being funded largely by fees – Congress must still go through the process of appropriations and budgeting, bearing in mind that its constitutional powers over such agencies are no less substantial.
2. "But in consequence of Appropriations": Funding must be the result of a deliberate statutory authorization by Congress, which means reducing to the minimum possible the use of permanent or mandatory appropriations and continuing resolutions. Congress should endeavor to revive the appropriations process and make it a major

focus of the budget process once again. More specific and clear instructions in appropriations bills will curtail the ability of the executive to circumvent Congress and fund their own priorities. Moreover, debating discrete appropriations bills and the conditions thereof allows Congress to consider these questions and enforce its priorities without the pressure of funding the entire government in one resolution. The stakes involved in adding riders to the full budget resolution has often short-circuited debate and let important, popular challenges to presidential overreach, such as various EPA regulations, fall by the wayside.

3. “By Law”: Congress must relearn the art of writing appropriations bills that can be understood by the public and that are written clearly and rationally enough to prevent bureaucrats and courts from deciding how funds should be used. Some instances of executive overreach are malevolent attempts to subvert the will of Congress, but not all: Many are attempts to resolve ambiguity or contradictions left by congressional statute. To reduce this problem, Congress must do its best to write clear, specific laws and offer detailed budget priorities.

Reviving the appropriations process does not mean returning to the exact same process Congress used for decades. There is no reason in law or by rule, for instance, that there must be 12 appropriations bills; there could be more, and the more the better. And there is no reason why appropriations should have to pass according to a particular schedule and not be spread out strategically over the course of the year. The current system – in which the federal government is funded by continuing resolutions, omnibus appropriations bills, and relatively vague budget resolutions – offers extremely limited opportunities for Congress to determine what activities of government should be funded and at what levels.

Not all reforms of the budget process have been clear steps in the right direction: Congressional earmarks were often a source of corruption, but the moratorium on them has merely given bureaucrats more power to dole out pork. The centralization of the congressional budget process in 1974 seemed like it might empower Congress, by creating a budget resolution to

compete with the President's, but instead the broadness of the budget resolution and the increasing complexity of the process that produces it have made it an ineffective check.

Many budget reforms focus on how to promote more strategic long-term budgeting, fiscal restraint, and other goals. Those are certainly worthy priorities, and a more detailed approach to budgeting would help promote them, given that Congress's abdication of its budgeting and appropriations powers has coincided with an explosion of fiscal irresponsibility. But Congress must think about what reforms will actually shift substantive control of the actions of government back to the legislature, by returning the people's purse to the people's representatives.

The fundamental goal of budget *reform* should be budget *control*. Congress must hold the power of the purse not because it is necessarily better at exercising it than the president is – though it may well be – but because it has been given this particular power as a check on the executive. Even more important, Congress has an obligation to jealously maintain control of the nation's purse because it is the guardian of the public treasure, and so the public good.

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Founded in 1844, Hillsdale College is an independent, coeducational, residential, liberal arts college with a student body of about 1,400. Its four-year curriculum leads to the bachelor of arts or bachelor of science degree, and it is accredited by the Higher Learning Commission. Its doors are open to all, regardless of race or religion. It was the first college in Michigan, and the second in the United States, to admit women on par with men. Its student body is assembled from homes in 47 states and 8 foreign countries.

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