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AUTHORIZATION AND APPROPRIATION:
AN IMPLEMENTATION OF CONGRESS' POWER
OF THE PURSE

1. PREFACE

According to the U.S. Department of the Treasury, in the 2022 fiscal year the U.S. federal government spent almost \$6.3 trillion. These funds were used for a variety of programs (including many classified ones), goods and services to support development, security, and the economy of the United States and—to a certain extent—also for countries like Ukraine or Israel. This amount included the salaries of nearly 2.8 million federal civil employees. In 2023, the situation is similar and the U.S. will spend nearly \$ 800 billion on defense alone.

Spending such a large amount of money involves special procedures to determine what and how much is to be spent. The U.S. Constitution grants Congress the sole power¹ to make expenditures “but in

¹ Today there are some exceptions e.g., the Federal Reserve (the U.S. central bank) has powers to create and manage its own budget. Those powers are fully independent of Congress and the President. See W. KWIATKOWSKI, *System Rezerwy Federalnej*, Warszawa 2014, pp. 119-148. In 2024, the Supreme Court defined the minimum requirements of federal legislation regulating budgetary expenditure and determined that it is permissible to fund a federal agency from Federal Reserve funds without specifying

Consequence of Appropriations made by Law.” In the professional literature and also in American politics, this power is often referred to as Congress’ “power of the purse.” Because the federal executive branch is not permitted to spend money for purposes other than those which have been specified and in amounts which have been settled, Congress not only has the power but also the duty to exercise legislative control over federal expenditure. Whenever Congress withholds funding, it’s not just a fiscal decision signaling financial constraints to prevent government expenditure on a specific activity. Such a decision made by Congress establishes that for the duration of denial of funding, that particular activity is no longer deemed an authorized government action in the context of the constitutional framework. Today the way Congress exercises its powers in this matter entails both authorization and appropriation. This two-step mechanism allows Congress to distinguish between legislation which addresses questions of policy, and that which addresses questions of funding.

The aim of this article is to elucidate the origins, founding principles, differences, and procedures utilized in the mechanisms of authorization and appropriation in both chambers of the federal Congress. The model whereby the federal legislative decides severally to allocate specific funds for specific purposes and release specific amounts at shorter intervals for the implementation of these purposes, while publicly analyzing progress in the achievement of these goals, appears to be an effective tool to control the spending of taxpayers’ money. On the other hand, despite the awareness of the necessity and validity of such solutions, members of Congress regularly, indirectly or even directly, violate these provisions. Additionally, the procedures currently in force give rise to chronic issues in passing the budget within the statutory timeframe, resulting in “temporary government shutdowns.” This not only makes the United States a target of ridicule, but, above all, threatens the credibility of the USA’s creditworthiness and the ability of the American political class to strive for compromise.

a time limit (*Consumer Financial Protection Bureau v. Community Financial Services Ass’n of America, Ltd.* (Docket 22–448; 2024)).

2. ORIGINS AND EVOLUTION

As Oleszek observes, the distinction between bills for authorization and those for appropriation dates as far back as to the colonial legislature.² Both mechanisms have come a long way and have adapted to the current conditions and federal government tasks. The issue is closely associated with the evolution of the approval process for the federal budget.

Already during the Philadelphia debate over the federal Constitution, the Founding Fathers were concerned about uncontrolled spending of public funds and unchecked state indebtedness, just as much as they were apprehensive of numerous private entities lobbying to obtain concessions or lucrative orders from the federal government. To curtail this, the Founding Fathers put certain special provisions in the Constitution. According to the Appropriations Clause, Art. I, Sec. 9, Cl. 7 of the U.S. Constitution,

No money shall be drawn from the treasury but in consequence of the appropriations made by law; and a regular statement of account of receipts and expenditures of all public money shall be published from time to time.

The Appropriation Clause stipulates that all expenditure from the Treasury (*de facto* all expenditure made by the federal government) must be made pursuant to statutory authorization. It describes how the federal government may spend money to achieve the various clauses in Art I. Sec. 8, under which

Congress shall have Power to lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States.

² W. OLESZEK, *Congressional Procedures and the Policy Process*, Washington 2000, pp. 40-70.

Such an approach to the control of federal budget expenditure was approved in the Federalist Papers, the first informal commentary on the federal Constitution. In *Federalist* 58, Madison argued that

This power over the purse may, in fact, be regarded as the most complete and effectual weapon with which any constitution can arm the immediate representatives of the people, for obtaining a redress of every grievance, and for carrying into effect every just and salutary measure.³

In fact, by phrasing the clause in the negative, the Founding Fathers turned appropriations into a tool that limits the power of the government: the expenditure of public funds was lawful not “unless prohibited by Congress,” but only when it was “authorized by Congress.” Many years later, this rule was recognized by the Supreme Court. In *Cincinnati Soap Co. v. United States*⁴ the Court clearly stated that the clause was “intended as a restriction upon the disbursing authority of the Executive department.”

As Stith has noted,⁵ the aforementioned constitutional provisions establish clear directives and limitations for both Congress and the President. Congress is obligated to allocate public funds for constitutionally mandated activities, encompassing obligations imposed on the government as a whole and the President’s distinct constitutional duties. For example, in matters concerning the military, Congress would violate the Constitution if it refused to allocate funds to equip the United States Army, despite holding the power of the purse. Congress must exercise this authority in a manner consistent with the Constitution’s direct mandates. Concurrently, the Appropriations Clause compels the President to disburse funds on behalf of the United States solely as authorized by Congress. Even in cases where the President believes that Congress has breached the Constitution by failing to allocate

³ See https://avalon.law.yale.edu/18th_century/fed58.asp [accessed August 20, 2023].

⁴ *Cincinnati Soap Co. v. United States* 301 U.S. 308 (1937).

⁵ K. STITH, *Congress’ Power of the Purse*, «The Yale Law Journal» 97/1988, pp. 1350-1352.

funds for a specific activity, spending funds from the Department of the Treasury for that purpose is beyond his legal authority and may even result in impeachment charges. Nevertheless, in emergency situations, the President may determine that principles more urgent than the Constitution's appropriations requirement warrant such spending.

In the First Congress, all of the appropriations for the support of the government were made in a single appropriations bill. Somewhat later, that single appropriations bill was split up into two bills – for Civil and Diplomatic expenses and for the Military and Naval Establishments.⁶ During the United States' first decades, Congress passed only a few additional appropriations (mostly after hearings in the Committee on Ways and Means in House), to finance federal programs for the military or for the creation of the Military Academy now known as West Point. The members of the First Congress soon realized that deciding on financial matters in a plenary session of the whole chamber was well beyond its capabilities and convened a Committee on Ways and Means with members from each state “to prepare an estimate of supplies requisite for the service of the United States for the current year, and to report thereupon.”⁷

Shortly thereafter, this Committee was dissolved and all financial matters were transferred to the Secretary of the Treasury, who planned federal expenditure on behalf of Congress. The Secretary regularly submitted reports to Congress, which justified the procedure, providing Alexander Hamilton, who was the Treasury Secretary at the time, with significant tools to create the federal financial system and the possibility of issuing a public debt statement. The idea of the Committee was revised during the Third Congress, and since the Fourth Congress it has worked as a Standing Committee. The significance and uniqueness of this Committee has been underscored by the efforts made to ensure

⁶ See *Appropriations Subcommittee Structure: History of Changes from 1920 to 2023*, CRS Report RL31572, p. 1.

⁷ 1 ANNALS OF CONG. 696-697 (July 24, 1789). Available at www.congress.gov/annals-of-congress/page-headings/1st-congress/rules-for-enrollment/19398 [accessed October 7, 2024].

that each state has its representative in it, and that both parties are represented in it.

From 1800 to 1820, appropriations were consolidated in both chambers in the respective Ways and Means Committees. In 1820-1830, they made independent drafts, not only of the wording but also of the appropriated amounts (the committee drafted the earliest appropriations without totals: the specific amounts were added by the chamber). Moreover, at this time, each committee employed a clerk and adopted the practice of dividing appropriations into separate bills. Cabinet departments submitted their requests for appropriations directly to Congress, but the process was managed centrally by the Committee on Ways and Means.

More changes were brought in during and after the Civil War, for a simple reason: federal budget expenditure rose from about \$66 million in 1861 to \$1.3 billion by the end of the war,⁸ so the amounts needed were unimaginable at the time and impossible to determine within the existing Committee on Ways and Means. Additionally, as the country needed swift decisions on financing economic recovery, some expenses had to be dealt with quickly. Keeping all that in mind, in March 1865 the House amended its own rules and established an Appropriations Committee of nine members with authority to handle all the expenses. The new House Rule separated the banking and money as well as appropriating duties and created two new committees, the Committee on Appropriations and the Committee on Banking and Currency. The former had seven seats for the Republicans and only two for the Democratic minority. The full Committee prepared all the appropriations bills, but soon it started to ask individual members to draft particular bills and submit a report to the committee.

In March 1867, a resolution was tabled in the Senate calling for modification to the Rules (more precisely—the Senate’s Rule 30) and the creation of a seven-member Committee on Appropriations. The aim was “to divide the onerous labors of the Finance Committee with another committee by separating the tax-writing and appropriating processes.”

⁸ After the war, federal spending fell to about \$360 million in just 2 years.

On March 6, 1867, this amendment was considered without further discussion and agreed to by unanimous consent, giving rise to the Senate Committee on Appropriations. The new Committee established thirteen subcommittees⁹ (with three members assigned to each) to handle all appropriations.¹⁰

In the late 1870s, a new Rule was introduced in the House, granting appropriations authority to most of the standing committees. For instance, the Commerce Committee was granted authority to oversee rivers and harbors, while the Committee on Agriculture and Forestry was empowered to handle agricultural appropriations. As a result, federal entities now submitted specific budget requests directly to particular congressional committees. All this was done without presidential coordination. A natural though unintended effect of this policy was more spending from the federal budget and an increase in the deficit. Later, the deficit rose even more owing to the Spanish-American War and the Great War. This prompted many politicians to call for a change in the federal fiscal structure.

Ultimately in 1921, Congress passed the Budget and Accounting Act.¹¹ The new legislation established the current model for the drafting of the federal budget, which recognized what seems obvious —that the executive branch (i.e. the President) knows best where federal spending is most needed. The 1921 Act authorized the President to coordinate his administration's budget requests. To perform this duty properly, it created the Bureau of the Budget¹² (located in the Treasury Department), which has authority "to assemble, correlate, revise, reduce, or increase

⁹ Agriculture, Army, Deficiencies, Diplomatic and Consular, District of Columbia, Fortification, Indian Legislative, Military Academy, Navy, Pensions, Post Office, and Sundry Civil.

¹⁰ There were some exceptions for political reasons, e.g., "rivers and harbors" could still be managed by the Commerce Committee.

¹¹ *Budget and Accounting Act of 1921* (Pub. L. 67-13). See P. KOWALIK, *Procedura budżetowa w Stanach Zjednoczonych Ameryki*, «Prace Naukowe Uniwersytetu Ekonomicznego we Wrocławiu» 48/2009, pp. 483-484.

¹² In the late 1930s, the Bureau was transferred from the Treasury Department to the Executive Office of the President and is now called the Office of Management and Budget.

the estimate of the several departments and establishments.” Since that time, the Bureau has been providing guidance to all federal entities on levels of funding. In fact, it takes the final decisions concerning the budgets entities propose. Also, shortly after its foundation, the Bureau put forward a recommendation that appropriations bills be reorganized along administrative lines, with appropriations for salaries and expenses included in the same bill as the funding for programs and activities administered by a given department.¹³ The Act of 1921 also established the General Accounting Office (GAO),¹⁴ to provide Congress with essential legal and economic expertise. Another result was a change in the regulations of both chambers. In anticipation of a more centralized executive budget, both the Senate and the House restored full jurisdiction to their appropriations committees.¹⁵

In 1946, the Legislative Reorganization Act was passed.¹⁶ It reduced the number of standing committees and allowed members of Congress and congressional committees to hire a professional staff. It also provided the grounds for the creation of a joint bicameral committee to address budgetary matters. Such a committee was formed, but due to numerous disagreements, it was disbanded after just a few years. It soon became apparent that the solutions adopted after the Second World War were ineffective and dissipated public funds. According to Gilmour, particularly legislation enacted in the 1960s significantly expanded mandatory spending (i.e., programs not subject to annual appropriations), so Congress had no formal means to adjust spending

¹³ *Appropriations Subcommittee Structure: History of Changes from 1920 to 2023*, CRS Report RL31572, p. 3.

¹⁴ See W. KWIATKOWSKI, *Rozpoznawanie protestów przez Kongresowe Biuro Ob-rachunkowe - postępowanie o udzielenie zamówienia publicznego w USA*, «Kontrola Państwowa» 58/2013, pp. 91-107.

¹⁵ The appropriations committees of both chambers developed different institutional environments. In fact, Senate appropriators routinely holding meetings behind closed doors tended to review federal entity submissions by looking not at the original request, but at the cuts made by the House. See <https://capitolhistory.org/explore/historical-articles/senate-appropriations-committee-history/> [accessed October 5, 2023]

¹⁶ *Legislative Reorganization Act of 1946* (Pub. L.79–601).

and revenue legislation to overall budgetary targets.¹⁷ There was also the problem of President Nixon's use of his executive power of impoundment to refuse to spend billions from the congressionally appropriated funds.

During the Nixon administration, as a result of quarrels over spending, many permanent authorizations were converted into temporary powers to give the congressional committees the right to oversee executive and presidential activities. In 1974, the Congressional Budget and Impoundment Control Act was adopted.¹⁸ This act of legislation, albeit not very successful in ensuring timely federal budgets,¹⁹ reasserted Congress' power of the purse and curtailed the President's power to withhold federal funds appropriated by Congress. It set the requirement for each of the chambers to adopt an annual budget resolution. It also established Budget Committees in the Senate and the House with primary responsibilities to monitor and enforce rules relating to government spending and revenue, as well as draft an annual budget resolution.²⁰ Additionally, it created the Congressional Budget Office (CBO) to produce independent analyses of budgetary and economic issues.

In new millennium, at the President's request delivered during a special address in the Capitol shortly after 9/11, Congress created a new Homeland Security Department. This new, thirteenth appropriations subcommittee was established in the House and somewhat later also in the Senate, consolidating appropriations jurisdiction from eight existing subcommittees in the various entities comprising this new department. In 2005, through another reorganization, the number of subcommittees

¹⁷ See J. GILMOUR, *Reconcilable Differences?: Congress, the Budget Process, and the Deficit*, Berkley 1990, pp. 30-32.

¹⁸ *Congressional Budget and Impoundment Control Act of 1974* (Pub. L. 93-344).

¹⁹ Since the adoption of this law, Congress has passed all the required appropriations measures on time only four times i.e., in FY 1977, 1989, 1995 and 1997. Its chronic inability to follow its own appropriations process leads to frequent situations carrying the threat of a "government shutdown."

²⁰ U.S. Senate Committee on the Budget, *Committee History: A Report* (2006), see: <https://www.budget.senate.gov/imo/media/doc/BudgetCommitteeHistory2.pdf>.

was reduced to 10 in the House and 12 in the Senate. Just 2 years later, the House returned to the system with 12 subcommittees, bringing the subcommittees of both chambers into better alignment than ever before.

3. AUTHORIZATION AND APPROPRIATION: DEFINITIONS

Neither the Constitution nor the general statutory rules mandate a prerequisite specific action authorizing an appropriation. As I have said, authorization is part of the process created by the House and Senate rules governing spending. In principle, the term “authorization” refers to two categories of legislation. The former occurs, both directly and indirectly, in many organic laws.²¹ In fact, most organic laws contain legal provisions that create a new federal entity,²² policy, project or program, and it is clear that they will require financing.²³ The same applies to laws which extend or renew existing projects, whose previous legal authorization would otherwise expire with time.²⁴ The latter applies

²¹ In the United States, “organic legislation/organic laws” means laws which establish the fundamental framework, powers, and functions of federal entities (mostly agencies, see the next footnote). These laws serve as the foundational legal basis for the operation, structure, and jurisdiction of these entities within the federal government.

²² Typically, this pertains to federal agencies like the Federal Emergency Management Agency, Drug Enforcement Administration or Federal Aviation Administration, though I use the term “federal entity” to emphasize that it does not refer only to federal “agencies” in the strictest sense.

²³ The law establishing a federal agency usually imposes specific legal duties and responsibilities on it. If the authorization for appropriations lapses, or if Congress does not allocate sufficient funds while not expressly disallowing their use for a specific intent, these legal obligations are not withdrawn but continue despite the potential lack of sufficient funds to fulfill them.

²⁴ As Fisher notes, there are instances in which an authorization act alone can establish a governmental liability which is legally enforceable in a federal court. He mentions a researcher providing an example, citing the Federal Aviation Act of 1958 (Pub. L. 85-726), which granted the Civil Aeronautics Board the authority to commit the United States to pay subsidies to helicopter companies, even in the absence of a congressional appropriation. See L. FISHER, *The Authorization-Appropriation Process in*

to specific legal provisions that sanction the allocation of funds for the implementation of the program or function established in an enabling statute. Such a provision serves as an instruction addressed to both chambers. Typically, an authorization uses wording which explicitly grants congressional authority for future appropriations (even through there is a possibility of it using general terminology like “such as will be necessary for the proper performance of the tasks”).

Since the First Congress, most authorizations have been designed for specific purposes for a single fiscal year and have necessitated annual reauthorization. Nevertheless, they may grant multiyear budget authority, extending availability beyond a single fiscal year, or “no-year” budget authority, which remains accessible until fully expended. Many other types of authorization derive their legal grounds from extended authorization bills or from permanent statutes which automatically grant spending authority to continuous federal entitlement programs. These authorization bills specify funding amounts for federal entities or programs, but the figures only serve as maximum limits and are intended as guidelines for the appropriations committee.

The term “appropriation” entails the earmarking of a precise sum of money for a federal entity or venture, with the authorized expenditure purposes detailed in separate legislation or in the explicit terms and provisions in specific appropriation bills. The determination of this sum rests with the Appropriations Committee (see below). Although those responsible for the allocation have the discretion to provide less funding than initially authorized, they are not permitted to allocate an amount exceeding the approved sum.

The structure and format of regular appropriations acts have a distinct characteristic. The rules of both chambers restrict the content of appropriation bills only to matters related to funding. The uniqueness of appropriation statutes is manifested in the fact that these acts are composed of a sequence of sections relating to funds for similar financial items. Larger federal entities commonly have their appropriations

Congress: Formal Rules and Informal Practices, «Catholic University Law Review» 29.1/1979, p. 61.

distributed across multiple allocations, while smaller ones may receive funding through a single allocation.

Each allocation usually receives an overall lump-sum appropriation, specifying a designated monetary sum from a budgetary authority for all the items within that allocation. This sum can be further divided for specific items within the allocation, with most sections containing additional clauses that delineate particular terms and conditions applying to the allocation or specific programs and activities within it. All this is binding on the executive branch of the government. Moreover, at the conclusion of each act, a distinct section lists numbered general provisions, which establish requirements applicable to multiple allocations or all the allocations within the act.

4. CURRENT HOUSE AND SENATE RULES

The House rules do not prescribe the form in which programs or activities are to be authorized. The current provision in Clause 2(a)(1) of House Rule XXI²⁵ stipulates that

An appropriation may not be reported in a general appropriation bill, and may not be in order as an amendment thereto, for an expenditure not previously authorized by law, except to continue appropriations for public works and objects that are already in progress.

This rule generally mandates that an authorization must be in place before the House can consider the relevant general appropriations bill. In general, it is not permissible to make the availability of an appropriation contingent on future legislation, or to restrict the availability of funds to the amount authorized in future legislation to meet the requirement of a previous authorization.²⁶ The House may authorize an appropriation for a project or activity if the relevant statute provides either broad or

²⁵ Full text available at: <https://budgetcounsel.com/laws-and-rules/%C2%A7371-house-rule-xxi-restrictions-on-certain-bills/> [accessed October 20, 2023].

²⁶ See §1045, Clause 2(a)(1) of House Rule XXI.

specific authority for it to do so. Broad authorizations may be adequate to support appropriations contingent on whether the overarching regulations governing the respective function or department necessitate additional specific endorsements. Permanent authority in an enabling or organic law is also considered sufficient to meet the requirement that appropriations be authorized by law unless a periodic authorization scheme has been enacted or has fully regulated the field at some point.

The enforcement of House regulations preventing unauthorized appropriations is accomplished through the initiation of points of order raised by any House member on the floor during the review of appropriation bills. These points of order are adjudicated by the chair. Importantly, the issue of unauthorized appropriations may be raised not only against the entire paragraph but also against sections or individual provisions contained within that paragraph. Should a point of order²⁷ be upheld against a provision, the said provision is removed from the bill, yet deliberations on the bill may continue. If a point of order is upheld against an amendment, any further consideration of that amendment is deemed inappropriate.

Within the House's legislative realm, Rule XXI, Clause 1 has a pivotal role, in that it mandates the automatic reservation of all points of order concerning provisions within a general appropriation bill when the bill is initially presented. If anyone wishes to raise a point of order against an amendment, it can only be done with the chair's permission. For a bill, the point of order must be asserted during the bill's reading for potential amendment, after the pertinent paragraph has been presented but before any amendments to that paragraph are proposed. In the context of an amendment, the point of order must be raised or reserved before any debate on the amendment commences. Failure to raise the point of order, or doing so too late, allows the House to deliberate and approve

²⁷ A "point of order" is an objection raised by a House or Senate member against some part of legislation or a procedure on the grounds that it violates the rules of his chamber. The Presiding Officer determines the validity of the point of order based on the specific rule and previous cases related to it. His decision may be challenged before the entire chamber (and eventually overruled) by a majority vote.

the appropriation, irrespective of whether it complies with established legal authorization.

The House rules also stipulate who must demonstrate the presence or absence of authorization. If a point of order is raised against a provision in an appropriations bill, contesting its legality, the onus falls upon the bill's manager (typically the chair or ranking member of the committee that reported the measure), to substantiate that the appropriation indeed adheres to legal authorization. When it comes to a point of order against a provision in an amendment, the responsibility for demonstrating authorization rests with the House member who introduced that amendment.²⁸

As Saturno and Yeh point out, there are procedures in place to allow for one-time waivers of unauthorized appropriation restrictions. These may be achieved through unanimous consent, rule suspension, or the enactment of a special rule. These special rules have the capability to waive points of order against the entire bill or specific provisions contained within the bill.²⁹

The Senate's regulations do not prescribe the form in which programs or activities are authorized. According to Senate Rule XVI

On a point of order made by any Senator, no amendments shall be received to any general appropriation bill the effect of which will be to increase an appropriation already contained in the bill, or to add a new item of appropriation, unless it be made to carry out the provisions of some existing law, or treaty stipulation, or act or resolution previously passed by the Senate during that session; or unless the same be moved by direction of the Committee on Appropriations or of a committee of the Senate having legislative jurisdiction of the subject matter, or proposed in pursuance of an estimate submitted in accordance with law.³⁰

²⁸ See House Manual §1044a.

²⁹ J.V. SATURNO, B.T. YEH, *Authorization of Appropriations: Procedural and Legal Issues*, CRS Report R42098, p. 6.

³⁰ See <https://www.govinfo.gov/content/pkg/SMAN-110/html/SMAN-110-pg14.htm>

In order to comply with this rule, an authorization must have been previously granted, or it must have been accepted by the Senate during the current session of Congress before the relevant general appropriations bill can be considered. Here, just as in the House, either “provisions or stipulations of treaties” or simple resolutions may serve as valid authorizations for Senate purposes.³¹ Within the Senate, authorizations for specific projects or activities can be broadly defined, and this is what usually happens. Regardless of that, authorization may also be narrowly defined, allowing for the authorization only of certain types of projects or activities. Additionally, these authorizations may set a specific cap on the level of budget authority that may be subsequently provided through general appropriations legislation. Just as in the House, in principle, appropriations that depend on the future passage of authorizing legislation are not permissible.

As Saturno and Yeh point out, the aforementioned Senate Rule also allows appropriations “proposed in pursuance of an estimate submitted in accordance with law.” These estimates may be included in the President’s annual budget request (see below). Alternatively, they may be presented through requests for supplemental appropriations after the President’s budget request has been delivered to Congress. In order to permit appropriations without pre-existing authorization, these estimates must be officially conveyed to Congress by the President. An amendment introduced by an individual Senator or reported by a committee under this exemption does not need to be publicly disclosed and forwarded to the Committee on Appropriations one day prior to its submission. In such instances, an amendment to the bill is deemed acceptable if the appropriation amount remains within the estimated limit. Nonetheless, in situations where a specific level of budget authority has been previously authorized, a floor amendment seeking to allocate funds exceeding that amount, even if it complies with the budget estimate, is deemed impermissible.³²

³¹ Importantly, the fact that an authorization was passed during a previous congressional session does not mean that it has met this requirement.

³² J.V. SATURNO, B.T. YEH, *op. cit.*, p. 7.

The Senate Rules regarding unauthorized appropriations have limited applicability. For example, they do not pertain to provisions in a general appropriations bill that originated in the House, nor to provisions in a general appropriations bill initiated by the Senate Committee on Appropriations. Neither do they pertain to an amendment to a bill passed by the House and reported by the committee. Similarly, unauthorized appropriations contained in amendments directed by the relevant authorizing committee are admissible if they have been reported and forwarded to the Committee on Appropriations with a minimum one-day notice. Essentially, the Senate's restriction on unauthorized appropriations primarily affects amendments put forth by individual Senators when reviewing a general appropriations bill. Though individual Senators have the latitude to propose amendments to increase the allocated funds if the project or activity is authorized, such an amendment must not exceed the authorized amount, particularly if a specific authorization level has been established.³³

The Senate regulations prohibiting unauthorized appropriations are upheld through the invocation of points of order during floor deliberations. Nevertheless, they are relatively rare, primarily owing to the limited situations in which the Senate's prohibition on unauthorized appropriations is applicable. When an unauthorized appropriation is introduced as an amendment by an individual Senator and does not fall within the exceptions mentioned earlier, a point of order may be raised at any time before the resolution of a pending matter. In such cases, the onus is typically on the Senator to substantiate that the appropriation has proper authorization.

5. ARE APPROPRIATIONS POSSIBLE WITHOUT AUTHORIZATION?

In point of fact, there is no strict constitutional or statutory mandate necessitating the prior authorization of an appropriation. Every unauthorized appropriation is still an appropriation. That means the proper

³³ *Ibidem*, p. 7.

executive authority (i.a. a federal department or agency) must spend a particular sum of money in line with the rules and within a specified timeframe outlined in that appropriation.

The mere presence of an organic act of legislation assigning significant duties to a federal entity which require funding for their execution is often considered sufficient legal authorization for essential appropriations, irrespective of whether the statute deals with subsequent appropriations. According to the 2004 GAO *Principles of Federal Appropriations Law* report, a general rule allocating funds for a program whose funding authorization has expired still provides sufficient legal grounds for the program's continuation during its available period, unless there is a clear indication of opposing congressional intent.³⁴ In fact, if the authorization of appropriations expires, Congress still maintains the authority to allot funds for a specific issue if there is legislative history showing Congress's intent for the program to continue or, at the very least, an absence of opposing legislative history. As noted on the CBO website and related data, in FY 2022 more than 1,100 authorizations of appropriations were identified as having expired before the beginning of the fiscal year, with over a hundred authorizations set to expire before the end of the fiscal year. More than 40 percent of the expired authorizations expired at least a decade ago (the earliest in 1980). The CBO also found that \$461 billion in appropriations for 2022 was associated with 422 expired authorizations of appropriations,³⁵ that is \$26 billion (6 percent) more than in the previous year.

Some statutes necessitate prior authorization for the allocation of funds to execute specific activities. For instance, this applies to the allocation of funds for the military (e.g., for a research and development project).³⁶ In such cases, Congress itself stipulates the statutory precondition for funding prior to authorization. Importantly, the law does not prescribe

³⁴ See *Principles of Federal Appropriations Law*, «Government Accountability Office, Office of the General Counsel» 1/2004, pp. 2-69.

³⁵ See *Expired and Expiring Authorizations of Appropriations for Fiscal Year 2022*, available at: <https://www.cbo.gov/system/files/2022-08/57760-EEAA.pdf> [accessed October 20, 2023].

³⁶ See 10 U.S.C. Section 114(a).

any sanctions for Congress' actions that do not comply with these statutory provisions, so even if Congress were to appropriate funds for defense skipping previously established provisions, the appropriation would still be valid and available for use.

On the other hand, Congress still retains the option to either refuse or reduce the scope of appropriation for programs listed in authorizations and may deliberately use this tool e.g., to avert the occurrence of a particular event. In such a scenario, the funded entities are unable to reallocate funds in their budgets designated for other specific purposes or tasks to initiatives for which appropriations have been denied or reduced. Furthermore, the lack of appropriations does not exempt such an entity from the obligation to execute tasks specified in the statute for which funding was refused.

6. APPROPRIATIONS AND THE BUDGET APPROVAL PROCESS

As Kowalik notes, budget-making procedures at the federal level are very complex.³⁷ They are not formulated within a single document, but in several bills which collectively constitute the national financial plan. This process involves the creation, review, and authorization of the overall financial plan for the government, which includes revenue, expenditure, and usually incorporates appropriations. This article will discuss only the elements of the entire procedure related to authorizations and appropriations.

The federal budget is divided into many spending categories ("budget functions"), and organizes spending into topics based on their purpose. We can divide all the expenditures into two main categories: mandatory and discretionary.³⁸ The former represents nearly two-thirds of the federal budget. It is inflexible and does not require an annual

³⁷ See: P. KOWALIK, *Procedura budżetowa w Stanach Zjednoczonych Ameryki*, «Prace Naukowe Uniwersytetu Ekonomicznego we Wrocławiu» 48/2009, pp.483-495.

³⁸ Apart from these two categories, there is also the expenditure on interest on the public debt, the costs generated for example by the issue of Treasury notes and bonds, savings bonds, or foreign and domestic series certificates of indebtedness.

vote in Congress. In this respect, legislation as such creates budget authority and expenditures are typically permanent although they may cover only specific fiscal years. The applicable eligibility rules or benefit formulas (e.g., federal military retirement, veterans' disability compensation or grants to states to support highway or state child care programs) are defined by law. As we learn from the Congressional Budget Office, in FY 2022 half of these expenditures were for Social Security and Medicare.³⁹ The latter category is discretionary—politicians apply authorization /appropriation to decide how the funds will be spent. Nearly half of these funds are allocated to defense, and the rest to many federal programs ranging from housing, natural resources, disaster relief, science, transportation, to education and space exploration.⁴⁰ The majority of standing committees in both houses of Congress have the powers to authorize the relevant bills. The subject matter, agencies, or programs addressed in such a bill determines which specific committee or committees will handle it.

The fiscal year begins on October 1 and ends on September 30 the following year. Congress works together with the President and has a year to establish the basic principles of spending the world's largest national budget. Procedures established in the 1970s assume that the President submits his budget proposal, which should be made by the first Monday of February.⁴¹ The President's budget request is compiled by the White House Office of Management and Budget on the grounds of budget requests received from federal entities (mostly federal agencies). The President's budget proposal must specify spending levels for all the discretionary programs, but may also include changes to mandatory programs. The proposed funding is later divided up and allocated to 12 subcommittees in both chambers, which then hold hearings. Each subcommittee is responsible for funding in a different field, e.g. defense, transportation, the environment, labor, etc.

³⁹ <https://www.cbo.gov/publication/58889> [accessed October 20, 2023].

⁴⁰ When a program which was originally funded through an annual appropriation bill, receives funding directly from an authorizing bill, it comes to be treated as mandatory.

⁴¹ The submission is usually delayed when a new administration takes office.

Almost simultaneously with the work of the President's administration, the House and Senate Budget Committees start their own work on the Concurrent Resolution in this matter. Once both Committees pass their budget resolutions, they are sent to the House and Senate floors. There they are usually amended and, after a uniform content has been established, they are voted on in both chambers. The Concurrent Resolution does not have the force of law;⁴² however, it is a framework for future spending and revenue bills on the House and Senate floors.⁴³ The Resolution shows the total revenue the government should collect in a multi-year period of time (usually 5–10 years).⁴⁴ Because allocations differ slightly for the House and Senate Committees, the Resolution must also say how federal spending is to be divided later by the Congressional Committee.⁴⁵ All the funds allocated for discretionary programs are pooled together and subsequently assigned to the Appropriations Committee in the House and Senate. Their respective appropriations committees are responsible for determining the distribution of these funds among their subcommittees, with each subcommittee receiving a designated budgetary allocation.⁴⁶

⁴² The Concurrent Resolution is never presented to the President for him to sign. That is why none of the concurrent resolutions have had the force of law. Additionally, the Senate's concurrent resolution cannot be filibustered.

⁴³ <https://budget.house.gov/about/budget-framework/> [accessed November 5, 2023]

⁴⁴ This resolution settles two other issues, the total amount of "budget authority," and the estimated level of expenditure. The former shows how much money each federal entity may spend, i.e. it sets a limit on the new financial obligations they may incur—for example by a contract with a private contractor selected through a federal tender process. The latter shows how much money is to be expended by the federal Treasury in a given year, which helps to determine the amount of the overall deficit or surplus.

⁴⁵ This committee-specific amount is referred as a "302(a) allocation."

⁴⁶ In practice, however, both chambers have a chronic problem with adopting this resolution by the deadline, so they tend to adopt a legislative substitute for the Concurrent Resolution, collectively referred to as "deeming resolutions." These are deemed to serve in place of an annual budget resolution for the purposes of establishing enforceable budget levels for the forthcoming fiscal year, but do not prevent Congress from subsequently agreeing to a budget resolution. See *Deeming Resolutions: Budget*

This Budget Resolution must be adopted by April 15. If the Budget Concurrent Resolution is adopted, Congress is expected to pass not later than by the day before the start of the new fiscal year, which begins on October 1. Congress has to pass a series of 12 separate bills (one for each pair of subcommittees in the House and Senate appropriations committees: see below). Before this can happen, the appropriations committees instruct their subcommittees to hold hearings to examine the budget requests and needs of federal spending programs. Once both of the appropriations committees issue their approval, the bills are sent to the House and Senate floors, where they are usually amended and subsequently passed.⁴⁷ If a bill is passed by both chambers of Congress, it is sent to the White House for the President's signature.

Alternatively, if no agreement is reached between the chambers or within one of the chambers (e.g., as a result of disputes between the parties), no new budget is adopted, so the previous year's budget, which includes provisions for the next five years, continues in use except for the non-mandatory purposes or programs. Pursuant to the Antideficiency Act,⁴⁸ if there are no appropriations, there is a "funding gap" which stops the expenditure of federal funds, and affected federal entities suspend the majority of their operations until additional appropriations are provided.

7. APPROPRIATION COMMITTEES AND SUBCOMMITTEES

As I have already said, both chambers delegate the task of drafting appropriations legislation to their appropriation committees. The unique characteristic of these committees is that despite consisting of representatives of two different parties, their members work together and

Enforcement in the Absence of a Budget Resolution, CRS Report to Congress, R44296, June 8, 2022.

⁴⁷ Congress has never passed all of its appropriations bills on time, so it relies on "Continuing Resolutions" which extend funding for existing programs on the levels applicable in the previous fiscal year.

⁴⁸ *Antideficiency Act of 1982*, (Pub. L. 97-258).

there are hardly ever any problems with cooperation. This is largely due to the fact that all committee members have a strong vested interest in securing funding for their respective districts in legislative matters. Their cooperation is invaluable when a congressman or senator wants to secure financial resources for specific, not necessarily indispensable or justified, projects in their electoral district or state, which is referred as “pork barrel” spending,⁴⁹ thereby gaining popularity with voters. Hundreds of pork barrels are put into budget appropriations every year. Furthermore, the potential to allocate funds is attractive for lobbyists and interest groups; therefore, service on an appropriations committee facilitates the collection of campaign contributions.

The committee’s work is also associated with “appropriation riders.” This issue represents one of the most hotly debated and commonly employed instruments in policy-making dependent on appropriations. As Devins notes, the term “riders” can be used to describe additional provisions attached as amendments to appropriation bills and manifest in two distinct forms. Legislative riders encompass unrelated amendments that modify existing laws, impose additional governmental duties, or mandate decisions not typically mandated by law. To secure the division between authorizations and appropriations, normally congressional regulations do not permit such riders to hold. In contrast, limitation riders assumed to be pertinent constitute amendments to appropriation bills which specifically limit the use of funds for designated activities.⁵⁰ In some ways, Congress’ application of limitation riders disrupts the balance of powers by exercising an excessive amount of control over executive agencies. Limitation riders hinder the funding of regulatory endeavors, proposed reassessments of agency policies, agency oversight of interactions between agency personnel and congressional members and committees along with their staff, and the White House’s scrutiny of agency directives.

⁴⁹ A.H. SIDMAN, *Pork Barrel Politics. How Government Spending Determines Elections in a Polarized Era*, New York 2019.

⁵⁰ N. DEVINS, *Appropriation Riders*, College of William & Mary Law School William & Mary Law School Scholarship Repository; Faculty Publications 1994, pp. 67-69.

The committee chairs of both chambers enjoy a distinct status and special powers resulting both from the rules of their chambers and many years of practice. For example, they may forward special projects, secured solely or primarily to direct spending to their or a selected district. They also have a crucial say in decisions on congressmen's/senators' requests for funds for specific projects in their districts/states. In my opinion, this does not make for a more transparent or rational procedure for the allocation of federal funds;⁵¹ nor does it accord with the principle that there should be a public (or at least a *pro forma*) debate in the chamber on budget expenditure. Owing to riders, funds are often allocated on the basis of political or even populist rather than objective criteria. In such situations, the primary goal is to demonstrate a senator's or congressman's political acumen, which may have an impact on voters in future elections.⁵²

Each committee has subcommittees for different matters, each with its own chair, designed to facilitate measures to provide appropriations, rescind previous appropriations, or transfer unobligated balances.⁵³ In 2023, the House and Senate Appropriations Committees had the following 12 subcommittees:

- Agriculture, Rural Development, Food and Drug Administration, and Related Agencies;

⁵¹ The best symbol of pork barrel spending was the Gravina Island Bridge in Alaska, worth \$400 million according to preliminary estimates. It was effectively dedicated to serve about 50 people. Its main proponents and sponsors were Representative Don Young and Senator Ted Stevens. Other examples, such as those championed by Senator Robert Byrd from West Virginia, not only resulted in numerous highways and buildings in the state bearing his name but also earned him the reputation of a “perennial” senator (Byrd held his seat in the Senate for nearly half a century). See J. CONRAD, *What You Should Know About Politics ... But Don't. A Non-Partisan Guide to the Issues That Matter*, New York 2012, pp. 312-314.

⁵² Despite the fact that pork barrel practices are not expressly illegal, they raise ethical concerns related to the use of public funds in a manner which may primarily serve the political interests of individuals rather than the welfare of society as a whole.

⁵³ See *The Appropriations Process: A Brief Overview*, Congressional Research Service Report, R47106, May 17, 2023, p. 2.

- Commerce, Justice, Science, and Related Agencies;⁵⁴
- Defense;
- Energy and Water Development, and Related Agencies;
- Financial Services and General Government;
- Homeland Security;
- Interior, Environment, and Related Agencies;
- Labor, Health and Human Services, Education, and Related Agencies;
- Legislative Branch;
- Military Construction, Veterans' Affairs, and Related Agencies;
- State, Foreign Operations, and Related Programs;
- Transportation and Housing and Urban Development, and Related Agencies.

The chairman of each subcommittee has the right to propose a draft bill called the “chair’s mark.” Subsequently, members of the subcommittees work on this allocation, usually proposing their amendments to the bill in what is called the “mark-up.” When the subcommittee passes the appropriation bill, its draft is sent to the Appropriations Committee for consideration. At this level, amendments to the draft may still be introduced. If no amendments are proposed, the draft bill is passed by the Appropriations Committee and is sent to the full House or Senate, where there may be more amendments.

The floor rulings serve as a gateway for members to introduce limitations and riders to appropriation bills.⁵⁵ The Appropriations Committees apply the wording of committee reports as a nonstatutory mechanism to fine-tune policy. Such maneuvers give rise to an unresolved

⁵⁴ With “Related Agencies” only in the House.

⁵⁵ Generally, the term “rider” means additional provisions not necessarily directly related to the main purpose of a particular budget bill, which quite often significantly impact on existing regulations or introduce new rules in a manner not directly related to finances but linked to the legislative process. See N. DEVINS, *Appropriation Riders*, College of William & Mary Law School William & Mary Law School Scholarship Repository; Faculty Publications 1994, pp. 67-68; J.A. MACDONALD, *Limitation Riders and Congressional Influence over Bureaucratic Policy Decisions*, «The American Political Science Review» 104(4)/2010, pp. 766-782.

problem, largely unaddressed in the legal system: are appropriation bills an effective tool for amendments to substantive policy? Subsequently, the work carried out by these committees is sent to the full House or Senate Appropriations Committee, which scrutinizes and may revise the bills before granting them approval for deliberation by the full chamber.⁵⁶

8. CONCLUSION

Deciding on how to allocate public funds is an extremely complex and responsible issue. The members of both houses must take into account the well-nigh unimaginable scale of revenue and expenses, as well as the fact that the federal budget provides funding for a wide variety of domestic and international ventures. The mechanisms currently in force not only allow for financing ongoing operations in the USA but also serve as a response to many challenges faced by the U.S. government.

The allocation and appropriation model in which Congress decides severally to allocate specific funds for specific purposes and release specific amounts at shorter intervals for the implementation of these purposes, while publicly analyzing progress in achieving these goals, seems to be the only feasible, rather than an exceptionally effective, way to control the spending of the taxpayer's money.

The transparency of the entire process tends to be disrupted particularly by certain mechanisms employed in the work of the appropriation committees and subcommittees. Serving on these committees is indeed prestigious for their members, but their work is perceived as one of the main culprits blamed for the squandering of public funds. Another problem is that some appropriations have inadequate or very questionable grounds in previous authorizations. However, it seems that these procedures will not be changed in the foreseeable future, as neither of the two major parties is interested in this: regardless of whether they

⁵⁶ See L. FISHER, *op. cit.*, pp. 59-70.

have a majority in the current Congress or are in the minority, these mechanisms provide them with the power to decide on the state finances.

AUTHORIZATION AND APPROPRIATION:
AN IMPLEMENTATION OF CONGRESS' POWER OF THE PURSE

Summary

This article discusses the origins, fundamental principles, and procedures used by the United States Congress in the mechanisms of budget authorization and appropriation. The model in which the federal legislature decides severally to allocate specific amounts for designated purposes and release specific amounts at shorter intervals for the implementation of those purposes, while publicly monitoring progress in their achievement, appears to be an effective tool for the control of expenditure. The article also addresses several issues concerned with the implementation of statutory provisions regarding authorization and appropriation. The current procedures give rise to chronic problems with passing the budget within the prescribed timeframe, which all too often may lead to a "temporary shutdown" of the federal government. Such notorious incidents not only ridicule the United States but primarily undermine its credibility and creditworthiness, challenging the generally acknowledged virtues of American parliamentary democracy and the ability of the American political class to strive for compromise.

AUTORYZACJE I APRIOPRIACJE BUDŻETOWE
JAKO REALIZACJA KONSTITUCYJNEJ KOMPETENCJI KONGRESU
W RAMACH „WŁADZY NAD SAKIEWKĄ”

Streszczenie

W artykule omówiono genezę, podstawowe zasady oraz procedury wykorzystywane przez Kongres w USA w mechanizmach autoryzacji i apriopriacji środków z federalnego budżetu. Model, w którym federalny ustawodawstwa odrębnie decyduje o zabezpieczeniu konkretnych kwot na określone cele i, w krótszych odstępach czasu, decyduje o uwalnianiu określonych kwot na realizację tych celów, przy jednoczesnym publicznym monitorowaniu postępu w ich osiągnięciu, wydaje się być efektywnym narzędziem kontroli nad wydatkami. W artykule poruszono także szereg problemów z realizacją postanowień ustawowych dotyczących autoryzacji i apriopriacji. Obecne procedury prowadzą do chronicznych problemów z uchwalaniem budżetu w przewidzianym przez prawo czasie, co

skutkuje notorycznym “tymczasowym zamykaniem rządu federalnego”. To nie tylko ośmiesza Stany Zjednoczone, ale przede wszystkim uderza w wiarygodność USA i zdolność kredytową państwa amerykańskiego. Podważa też, uznawaną za cechę amerykańskiego parlamentarizmu, zdolność amerykańskiej klasy politycznej do dążenia do kompromisu.

Keywords: appropriations; authorizations; Congress; the federal budget; the Congressional Budget Office.

Słowa kluczowe: apriopriacja; autoryzacja, Kongres USA; budżet federalny; Biuro Budżetowe Kongresu.

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