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on

“Protecting Congress' Power of the Purse and the Rule of Law”

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Chairman Yarmuth, Ranking Member Womack, and members of the Budget Committee, thank you for inviting me to share my views on the role of the Congress in the budget process. I applaud the committee for focusing on this topic, as I believe that a strong Congressional budget presence is crucial to the health of our democracy. In my own view, the failure of the Congress to make effective use of its budgeting power, in addition to some institutional limitations that have been present since the passage of the Budget Act 45 years ago, have compromised the ability of the Congress to act as an effective check on the executive and as an alternate voice to the President in budgetary matters.

Recent Congressional budgeting failures have had the practical yet unintended effect of shifting power to the President, and that it is a good time to think about reclaiming some of that power. It might be particularly fruitful to talk about this now, since we don't know which party will occupy the White House in January of 2021. Regardless of who the President might be, it is appropriate for the Congress to consider whether it wants to reassert Congressional prerogatives, particularly with respect to the budget.

In my testimony, I will discuss some of the historical developments that have brought us to this place, in addition to articulating some of the steps that might be taken to shift the balance of power to a place where the Congress can be on consistently equal footing with the executive.

### **What Did the 1974 Budget Act Do?**

I will spare you a long budgeting history lesson, although I would direct those who want more history to the best book ever written on Congressional budgeting, Allen Schick's 1980 classic Congress and Money.<sup>1</sup> In that book, Professor Schick outlines the events and debates that led up to the enactment of the Congressional Budget and Impoundment Control Act, and discusses its early implementation. I will not, and could not, repeat that analysis, but I would like to remind

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<sup>1</sup> Allen Schick, *Congress and Money* (Washington: Urban Institute Press, 1980).

you of why the Congress decided to pass the 1974 Act, and suggest both its successes and limitations with respect to the relative budgetary power of Congress and the executive branch.

The 1974 Budget Act was born entirely out of a concern that too much budgetary power had accrued to the executive branch, particularly in the wake of the use of impoundment power by Presidents (particularly President Nixon), leading to their failure to faithfully execute the laws. Rather than consider legislation that focused only on constraining impoundments, the committees that drafted the 1974 Budget Act focused more comprehensively on reasserting Congressional budgetary prerogatives, through the following additional actions:

- The creation of a budget resolution, as an opportunity—indeed, the ONLY opportunity—for the Congress to focus comprehensively on the budget, and therefore come up with an alternative fiscal policy—and fiscal path—to that laid out by the President in his proposed budget. The reconciliation procedure, which would promote legislative changes in response to the constraints of the budget resolution, was a specific element of the budget resolution. The budget resolution augmented the wholly decentralized approach that had existed prior to that point, in which individual committees considered pieces of the budget, but the Congress never considered the budget as a unified whole.
- The establishment of Budget Committees in both the House and Senate to provide the Congress with an institutional capacity to compose and enforce the budget resolution.
- Setting up the Congressional Budget Office (CBO) as an explicit source of nonpartisan economic and budgetary information for the Congress as a counter to the budget and economic information coming from the executive branch.

These reforms have had a somewhat checkered history. CBO is generally viewed as a highly credible source of information that has promoted the independence of the Congress, not only in budgeting, but in other policymaking as well.<sup>2</sup> The budget resolution has sometimes been highly successful, especially in years in which reconciliation has been used, in assisting the Congress in

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<sup>2</sup> As someone who has written an entire book on CBO, I will resist the urge to go further, but refer you to the book—*The Congressional Budget Office: Honest Numbers, Power and Policymaking* (Georgetown University Press, 2011). One of its main themes has to do with how CBO has enhanced the capacity of the Congress to challenge Presidential policy initiatives.

making changes in budget policy. In the 1990s, it was reconciliation that promoted the legislative changes that moved the budget from deficit to surplus. Even in years where reconciliation was not used, the budget resolution afforded the Congress an opportunity to articulate a different fiscal path than that pursued by the President. This certainly was true in the early years of the Obama administration, when attention was focused on the contrasts between the President's budget and (in particular) the House budget resolution.

On the other hand, recently the budget resolution has become a somewhat "hit and miss" proposition, mostly because of the failure of the House and Senate to agree on a fiscal blueprint. In fact, while the Congress agreed on a budget resolution for every fiscal year from fiscal year 1976 through fiscal year 1998, for 11 of the 22 fiscal years between 1999 and 2020 there was no budget resolution, including five consecutive years between fiscal year 2011 and fiscal year 2015. I would note, as an additional historical footnote, that while House budget resolutions have sometimes been late, the House has typically passed a budget resolution, while the Senate often (at least recently) has not.

It is this kind of episodic budget-making that led former House Budget Committee Chair Jim Nussle, when testifying before this committee in 2011, to make the following statement, responding to the general notion that the budget process is "broken". Chairman Nussle believed that most of the necessary tools that the Congress needed already existed:<sup>3</sup>

Before you search for new budget procedures to "fix" the current process, actually give the current process a try. Prove that Congress and the president can follow the current process and rules before you decide that a new process or rule will somehow do the trick. Most of you have yet to see the current process work because most have not even seen it fully attempted or implemented!

I fundamentally agree with Chairman Nussle's main point. I believe that the Congress had it basically right in 1974 when it created these committees, CBO and the budget resolution. These institutions and devices, when used effectively, can enable the Congress to articulate a credible

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<sup>3</sup> Statement of the Honorable Jim Nussle before the House Committee on the Budget, September 22, 2011.

alternative path for the budget. I do not think we need to blow up the process and start from scratch. There are, as I will suggest below, some changes in either law or practice that could assist the Congress in reasserting its constitutional role in budgeting—some of these are more fundamental and some are smaller. But all take as a given that the Congress must have an ability to consider and articulate an overall fiscal plan, and that the kind of piecemeal approach to budgeting that characterized the process prior to 1974 is inconsistent with an appropriate constitutional role for the Congress.

### **What Kinds of Changes Might Assist in Reaffirming the Congressional Role?**

So if I would not build a new budget process from the ground up, what are changes that the Congress should consider in order to make sure that its role is as strong as was anticipated when the new budget process was created in 1974?

#### **1. Rename the Budget Committees and Strengthen These New Committees**

The Budget Committees, in a sense, were made institutionally weak in the 1974 Act. The committees that wrote the law had substantial representation from the other House and Senate “money” committees (in particular the tax writing and appropriations committees). These existing committees were concerned that the Budget Committees not become too strong, lest they upset the prior power structure. The fact that the budget resolution did not have the force of law, for example, made it a lesser form of Congressional action than the bills that were passed by authorizing and appropriations committees. Further, the budget “functions” that were at the center of the budget resolution neither related to the committee structure of the Congress nor the organization of the executive branch. More recently, since the budget resolution is important only episodically, members of Congress have also over time had less interest in serving on the Budget Committees. These committees are now more likely to be populated by more junior members.

In 1987, and again in 1993, Senator Nancy Landon Kassebaum (R-KS) introduced a resolution that would have created leadership committees in the Senate to replace the budget committees. The Kassebaum proposal would have created a Senate Committee on National Priorities, with responsibility for drafting the annual budget resolution, which would then still need to be passed

by the whole Senate. Kassebaum proposed that this committee consist of the chairs and ranking members of all Senate committees, except that the majority leader of the Senate would have had the authority to appoint up to five additional senators to serve on this committee in order to make its membership mirror the relative balance between the majority and minority parties in the Senate.

I think that Senator Kassebaum's idea has a lot of merit, and I would argue for the creation (in each house) of Committees on National Priorities, that would have responsibility for the development and enforcement of the annual budget resolution. These committees would include the chairs and ranking members of the appropriations and tax-writing committees in each respective house, in addition to representatives of the congressional leadership from each party, and the chairs and ranking members of other major authorizing committees (meaning those with jurisdiction over major areas of spending, such as defense, banking or health). There would be some accommodation, as in the Kassebaum proposal, for the balance of power in each House, so that the majority party would have more members than the minority party.

The notion here is that the function served currently by the Budget Committees would be taken more seriously if the committees responsible for the budget resolution were an explicit reflection of the Congressional leadership. This would both make it more likely that a budget resolution would be enacted and that its precepts would be taken seriously by other committees. Overall fiscal policy would then be made from a position of institutional strength, rather than institutional weakness. I do think that the move of the House to allow for longer service on the Budget Committees is a positive step in this direction, even though I might go further. I also would note that while I am explicitly not focusing on broader Congressional reform in this testimony, I believe that a comprehensive reform of the Congressional committee structure is also probably long overdue.

## 2. Strengthen the Budget Resolution

Beyond creating a higher profile for the committees themselves, I would recommend two actions to make the budget resolution itself stronger and more meaningful. First, I would use the budget resolution as an opportunity to think about how all resources intended to affect a particular policy area are deployed, and what the expected results of those activities are. This is consistent with

what Steve Redburn and Paul Posner have referred to as “portfolio budgeting”.<sup>4</sup> Too often our budget process focuses on “programs” on a piecemeal basis rather than thinking about how those resources fit together to help achieve society goals. Instead, for example, of thinking about a comprehensive approach to health, or housing, or education, we are constrained by the distinction between discretionary spending, mandatory spending, and provisions of tax law. Under the portfolio approach, mandatory spending, discretionary appropriations, and tax expenditures would all be explicitly captured in the budget resolution. In addition, the focus should be on the expected performance of all policies within a given policy arena, not just on the resources that are consumed by them. This reform is included as part of the Enzi-Whitehouse budget reform proposal that was reported out of the Senate Budget Committee last year.

In addition, it would be useful if the budget resolution focused explicitly on allocations to Congressional committees, and scrapped the attention to budget functions, which do not map to anything meaningful. If the committee allocations were included in the budget resolution itself, it would be more transparent how the budget resolution related to later Congressional action. This change would also be consistent with the idea of having chairs and ranking members of major committees on the committees producing the budget resolution.

### 3. Pass a Budget Resolution Routinely

Right now, the episodic adoption of budget resolutions reinforces the notion that they are unimportant, or optional. The budget resolution is intended to be the place where the Congress articulates its vision for overall budget policy. In an annual budget process, if the President presents his vision annually, but the Congress only responds sometimes, this suggests that it is the President who should be focusing on the totals, and the Congress should simply be hammering out the details. I think the Congress has unintentionally encouraged this notion by behaving, in some years, as if the purpose of the budget resolution is simply to provide a 302(a) allocation for the appropriators.

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<sup>4</sup> F. Stevens Redburn and Paul Posner, “Budgeting for National Goals,” Working Paper #2 for the National Budgeting Roundtable (Centers on the Public Service, School of Policy, Government and International Affairs, George Mason University, August 2015).

Right now, as you know, the budget is now on an unsustainable path. The debt held by the public sits at almost 80 percent of GDP, and is projected by CBO to rise to more than 90 percent of GDP by 2030. This increases the urgency of the Congress to consider not leaving the budget on automatic pilot, but rather consciously focusing on what stance it wants to take in terms of overall fiscal policy. I am sympathetic to those, including advocates of biennial budgeting, who want a budget resolution every other year at the beginning of the Congress rather than annually. Regardless of whether it is adopted annually or biennially, a budget resolution is an important statement of congressional priorities, and routine adoption sends important signals. Routine passage of the budget resolution forces the Congress to confront the future path of the budget, and decide whether to use the tools available to it—especially reconciliation—to change that path.

#### 4. Make the Budget Process More Predictable and Timely

The credibility of the Congress has been substantially damaged through its failure to follow deadlines. Part of this has to do with the hit-and-miss nature of the budget resolution, but the abysmal record of the Congress on appropriation bills is far more important, and damaging. As this committee knows, the appropriations process has been completed prior to the start of the fiscal year only 3 times in 44 years since the Budget Act became law. While this has only infrequently resulted in government shutdowns (including the longest ever shutdown of 35 days a little more than a year ago), there are insidious negative effects from late appropriations, which compromise both the efficiency of the federal government, and the effectiveness of programs.<sup>5</sup>

Further, the general loss of public regard for the Congress, reflected in low public approval ratings for the institution, put you in a weakened position relative to the President. This is a completely self-inflicted wound. I have no specific evidence concerning precisely how government shutdowns, “fiscal cliffs”, and late budgets has translated into a specific loss of public faith in the Congress. But it can’t have helped. If the Congress is viewed only as a source of gridlock, it not only invites unilateral executive action, but reinforces the notion that the President can get things done and the Congress cannot. I would therefore conclude that timely adherence to the budget

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<sup>5</sup> For more detail on the specific effects of late appropriations, see Philip Joyce, *The Costs of Budget Uncertainty: Analyzing the Impact of Late Appropriations* (Washington: IBM Center for the Business of Government, 2012).

timetable not only makes the government work better and cost less, it also strengthens the Congress as an institution.

#### 5. Better Congressional Oversight

Budgeting, of course, is a process that occurs fundamentally before programs are being carried out, in an effort to determine the most appropriate allocation of scarce resources. After they receive funds, however, agencies have a great deal of discretion in terms of carrying out programs, making regulations, providing grants, and for generally executing programs and policies. Congressional oversight is important in terms of making sure that this discretion is being exercised in a way that is consistent with legislative intent. Therefore, Congressional committees need to make sure that they are devoting appropriate attention to oversight. Not all oversight is created equal. Simply hauling executive branch employees before Congressional committees to score political points may be good theater, but does not necessarily lead to more effective government. Instead, Congress should focus on the more difficult, but important, kind of oversight that attempts to figure out how will programs and policies are working, and how they might be changed in order to be more effective.

#### 6. Respect and Support the Tools That You Have

The support agencies that the Congress has established—CBO, GAO, and CRS—are important tools that the Congress needs to exercise its constitutional power. CBO and GAO, in particular, have important roles to play in the budget process.

It is perfectly legitimate—and expected—that individual members of Congress and congressional committees will disagree periodically with these agencies. They will question the conclusions that GAO reaches as a result of its audits, studies, and decisions. They will disagree with CBO's cost estimates. They will call for more transparency concerning the way in which the work of these agencies is done, or how conclusions are reached. It is important, however, that the Congress understand that the credibility of these agencies is critical to the ability of the Congress to challenge the executive branch. There have been times, in the past few years, when individuals in the executive branch have questioned the need for—and the legitimacy of—one or more of these agencies. There have also been times when members of Congress have joined in these attacks. In

my view, the Congress should support these agencies, regardless of which party controls the legislative or executive branch. Failing to do so is a form of unilateral disarmament that damages Congress as an institution, and compromises its ability to exercise its appropriate constitutional role.

#### 7. Standing up for itself in the Appropriations Process

Presidents frequently, in their budget proposals, suggest changes to which the Congress must respond. This is true without regard to the party of the President or the Congress. It is not surprising that there tends to be more agreement between the branches on the overall levels of spending for particular agencies when there is unified government. Even in those cases, however, the Congress frequently wants to assert control over the details of spending.

The Trump administration, in its first three budgets, proposed large reductions in many appropriated agencies and programs, for agencies such as the EPA, HUD, and the State Department. They have also proposed some substantial changes in some mandatory spending programs. The Congress, for the most part, has opposed large cuts in appropriated budgets, and has not enacted most of the changes in mandatory spending requested by the Administration.

It is important, however, that the Congress also defend its prerogatives to enforce the details. There are cases, of course, such as transfers and reprogrammings, where the executive branch has some leeway to make changes in how appropriated funds are used. In cases where the President wants to move money from one appropriated account to another, however, there are established procedures established under the Impoundment Control Act. First, the President was to request a “rescission” of budget authority from the account containing the funds that he wished not to spend. Second, he would request a new appropriation for the new account (or addition to an existing account) that he wanted to spend from. The Congress should protect its prerogatives by holding the chief executive accountable for following such a process.

## **Conclusion**

Article I of the Constitution comes first for a reason, and Congress is called the “first branch” because of the desire of the founders that policies and laws be initiated by the representatives of the people. Nowhere is the focus on Congress more appropriate than in the budget process, which is THE central means of deciding who will pay for government, and what it will do. The 1974 Budget Act was fundamentally correct in asserting that the Congress must have the capacity both to set a path for fiscal policy, and to effectively challenge the President. The tools are there, at present, to do both of these things. There are tweaks, however, that would make the tools more potent, and the Congress must have a renewed commitment to fulfilling its constitutional role in an appropriate and timely way. Power abhors a vacuum, and if the Congress does not reassert this authority through law and action, it will inevitably lead to the further transfer of power to the executive branch.