

Rise of the Zombies: The Unauthorized and Unaccountable Government You Pay For

Testimony on:  
“The Problem of Unauthorized Appropriations”

for a hearing before the

Subcommittee on the Federal Spending Oversight and Emergency Management  
of the  
United States Senate  
Committee of Homeland Security and Government Affairs

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*Mr. Chairman and distinguished Members of the U.S. Senate Subcommittee on Federal Spending Oversight and Emergency Management, thank you for the opportunity to speak with you today.*

### **Background**

I'd like to begin my remarks by discussing the year 1974 – the year of Watergate, gas shortages, and the winding down of Vietnam – but also the year in which an oft-forgotten law was passed, one that – though remembered today primarily by the wonkiest of budget wonks – continues to impact the discourse and actions of the federal government in 2019.

That legislation is the Congressional Budget and Impoundment Control Act of 1974, more commonly known as the 1974 Budget Act. Despite subsequent changes in 1985, the early 1990s, and more recently, 2011's Budget Control Act, the government still funds its myriad priorities according to the framework that this law laid out.

At least, it does in theory. Over time, Congress has found it easier and easier to ignore the instructions that lawmakers set for themselves. And the result has been increased dysfunction every year that this ad hoc process is carried out.

Recent research from the Institute for Spending Reform, for example, has found that while growth in federal spending and debt were lower in the wake of the Act's passage<sup>1</sup>, the budgetary process also became politicized, particularly with respect to the allocation of federal grants.<sup>2</sup>

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<sup>1</sup> Ferraresi, Massimiliano, Gucciardi. Gianluca, & Rizzo, Leonzio. *Social Science Research Network*, “[The 1974 Budget Act's Impact on U.S. Spending and Debt: A Synthetic Control Study](#),” 19 May 2018.

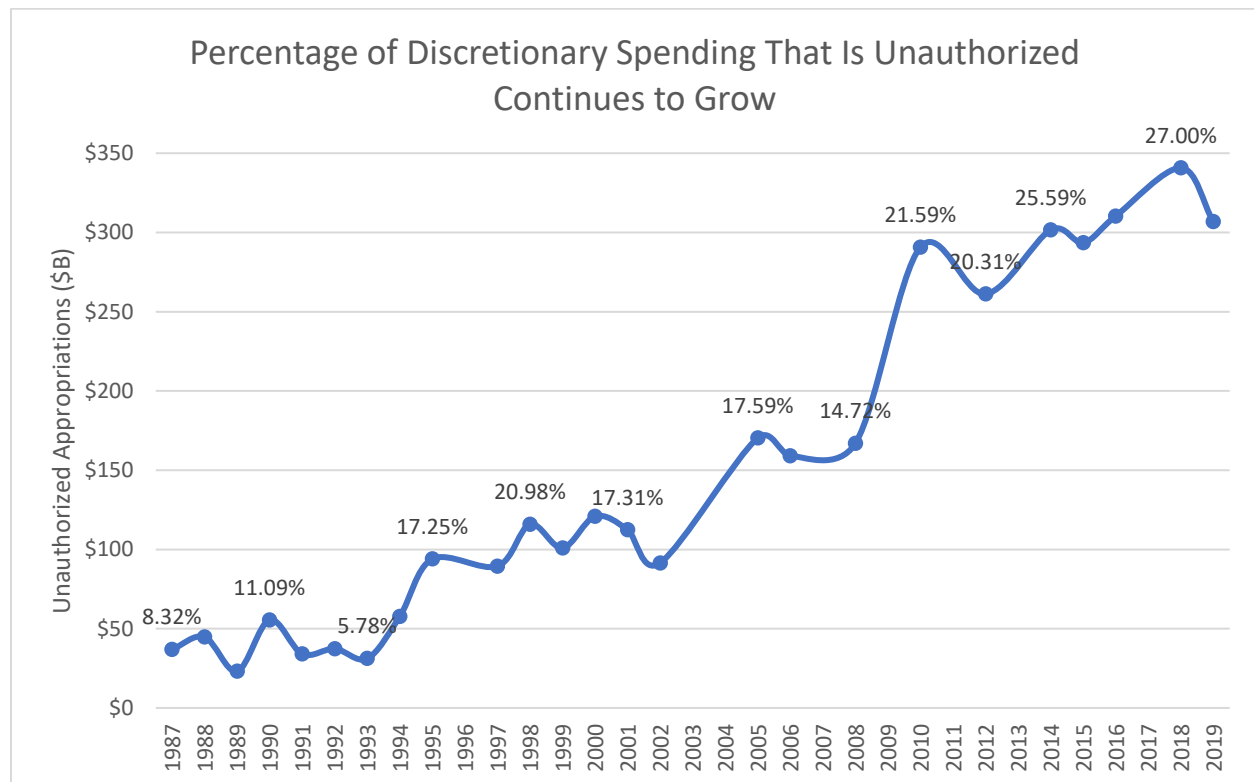
<sup>2</sup> Ferraresi, Massimiliano, Gucciardi. Gianluca, & Rizzo, Leonzio. *Social Science Research Network*, “[The 1974 Budget Act and Federal Grants: Exploring Unintended Consequences of the Status Quo](#),” 19 May 2018.

Of course, most Americans – and certainly this Subcommittee – are familiar with the devolution of the budgeting process into temporary stopgaps, onerous omnibus legislation, and even shutdowns that have become a fact of modern government.

But often lost in this noise over appropriations standoffs is the fact that the other side of the proverbial coin – budgetary authorization, the first step – has been increasingly ignored. What is supposed to be a two-step process in which programs are first authorized before funding is appropriated, now works – more often than not – by ignoring that first step entirely.

### The Numbers

In 2019, Congress spent about \$307 billion on nearly 1,000 agencies and programs that were no longer authorized<sup>3</sup>. This represents about 23% of the entire discretionary budget. And these numbers look even worse when you consider that the entire Pentagon budget, which represents about half of discretionary spending, is typically reauthorized in one bill each year. This means that of all other discretionary spending, more than *half* goes completely unauthorized.



As the above chart illustrates, despite some blips up and down, the trend has unmistakably been moving in the wrong direction. For comparison, unauthorized spending in the early 1990s hovered under 10% of the discretionary budget, while today, a quarter of all discretionary spending typically lacks authorization in any given year.

Many specific programs have not been authorized for years. It was known to many in this town, for example, that the Department of State operated completely unauthorized for close to a decade

<sup>3</sup> Congressional Budget Office. “[Expired and Expiring: Authorizations of Appropriations: Fiscal Year 2019](#),” Mar 2019.

and a half. Likewise, the Federal Election Commission still operates without authorization – since two years before I was born.

And as the Congressional Budget Office notes in its most recent report from March, even the slight dip downward in the last year is a sign of budget dysfunction. As CBO says, “That drop stems primarily from a reduction in funding for the Community Development Block Grant program, which received \$28 billion in emergency supplemental funding in fiscal year 2018 to respond to natural disasters, compared with \$2 billion in fiscal year 2019. Excluding supplemental appropriations, funding for that program was comparable (about \$3 billion) in 2018 and 2019.”

In other words, the drop this year has nothing to do with reform, but rather reflects another form of budget dysfunction – one perhaps better suited for discussion at another hearing. However, viewed over time, it is clear that Congress is abdicating major parts of its duty when it comes to the budget.

### **Clarifying the Problem**

Why does this matter? This idea behind separating authorizations and appropriations dates essentially to the founding of the Republic itself.<sup>4</sup> In 1837, in fact, “the House began the practice of authorizing expenditures and enacting appropriations in two separate processes. By resolving the issues likely to cause partisan gridlock first, the idea was, Congress could avoid a situation where funding for important programs is held hostage to the debate. Soon after, both the House and the Senate established committees for authorizing and appropriating funds.”<sup>5</sup>

At a basic level, separating authorizing and appropriating is meant to reflect that it is good practice to have a plan for spending money before funds are actually allocated. Unfortunately, in recent years, Congress appears not to agree.

Perhaps contemporary lawmakers have chosen to avoid authorization procedures out of a sincere desire to avoid messy debate that would halt critical priorities. But equally likely is an assumption that it is not worth lawmakers’ time to burden themselves with the reauthorization process when many agencies and departments are operating without authorization and there seem to be no adverse consequences. Why not just waive the rules that prevent appropriation of money to unauthorized programs?

Of course, that the consequences may not be easily seen does not mean that they don’t exist. As I noted in an editorial some years ago, “Skipping authorization can mean that programs intended to sunset continue past their expiration dates while no one is the wiser.”<sup>6</sup>

Whether government programs operate well is harder to know when Congress doesn’t take time to reevaluate the worthiness of their existence. Even if only one program were being allowed to exist beyond its usefulness, no proponent of good government would say it was acceptable to let the situation continue without oversight.

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<sup>4</sup> From Vinik, Danny. *Politico*, “[Meet Your Unauthorized Federal Government](#),” 3 Feb 2016: “[I]n 1789, [Congress] passed a law establishing the War Department and a separate law funding it. The goal was to separate the money and policy decisions, out of worries that disagreements over policy would delay the flow of money, and that pressure to appropriate would lead lawmakers to pass legislation without proper scrutiny—what we called “riders” today.”

<sup>5</sup> Institute for Spending Reform, “[Unauthorized Spending: When Zombies Infect Congress’ Purse](#).”

<sup>6</sup> Bydlak, Jonathan. *The Hill*. “[The sun never sets on temporary government programs. Until now](#),” 27 Apr 2017.

Unauthorized appropriations may not represent the entirety of the federal budget – or even of the discretionary budget – but that does not mean we should forgo the opportunity to reevaluate and reform this \$300 billion and counting. Theoretically, we can always turn our attention elsewhere to some seemingly more critical matter, but those who would do so miss the point.

Abdicating responsibility in one area of the budgeting process makes it easier to abdicate responsibility elsewhere. The issue of unauthorized appropriations cannot be easily separated from the other budgetary problems the nation is currently facing, as our experience since 1974 illustrates.

Consider also that resources are limited, and in an era of tight budgets and worsening debt, a billion – even a *million* – dollars misspent can represent dollars stripped away from critical national priorities or the taxpayers' wallets. Without a clear and codified reform procedure, funding for critical agencies is lumped in with that for outdated and wasteful programs.

### **Some Misconceptions**

It is worth noting that enforcing the authorization process does not mean a blank check to slash spending. I suspect that currently unauthorized agencies enjoying bipartisan support – such as the DEA, FBI, or ATF, for example – would ultimately continue to exist. Perhaps after a closer examination, lawmakers would choose to authorize *more* funding to such programs.

Certainly, many currently unauthorized programs may be ones we want to keep, and that deserve full funding regardless of whether they have been properly authorized. But the reason for forgoing oversight of even these programs should never be because lawmakers face few consequences for doing otherwise.

Critics may argue that regardless of whether appropriations are authorized, there is already plenty of accountability over where Congress, and subsequently agencies and departments, spend taxpayer funds. I believe this view is overly optimistic at best, but let us consider an analogy that may be appropriate:

In 2001, Congress passed the Authorization for the Use of Military Force in Afghanistan. In the years since, many including some on this subcommittee, have called for a new vote, arguing the 18-year-old AUMF should hardly provide a blank check for today's overseas engagements.

In such discussions, few accept the argument that because there may be other ways of ensuring wartime accountability – that we shouldn't bother following the rules or reassessing the original authorization.

It is my contention that the same should hold true in the case of fiscal rules as well. If Congress, at the time of originally authorizing a program or agency, does so for a specified period of time, we should respect those wishes in the name of ensuring the most efficient use of the societal resources we have at our disposal.

If the rules are arcane or no longer useful – and certainly one can argue there are plenty to which that description applies – the correct solution is to change them, to update them – not to ignore them indefinitely.

## **Finding a Solution**

Any solution that seriously tackles these problems must address the mountain of programs with expired authorizations that currently receive funding, and reform the process to ensure that kind of spending stops going forward.

Some general principles can guide this subcommittee and others in moving ahead.

First, there must be a meaningful enforcement mechanism so that unauthorized spending does not continue unchecked as it has for decades. Recent legislation, such as that introduced by Representative McMorris Rodgers, has proposed a combination of sunset provisions and a rolling sequester to gradually reduce the amount of unauthorized spending that would occur without changes to current law. These are good suggestions.

Second, there must be a broader and more holistic effort to return this body to being a deliberative budgeting entity. Great power is vested here in these halls, and reform must ensure that responsibility is seized back for legislators instead of abdicated to the de facto decisions arising from political chaos.

Every federal agency is supposed to operate under congressional authorization. It is the set of rules that define the priorities and activities of the government. When they expire, there comes a chance to reconsider an agency's mission, modernize, or end it if applicable, and impose some accountability onto the process instead of abdicating responsibility to open-ended spending.

Reforming unauthorized appropriations is a great place to start evaluating government spending more broadly. The problem should not be viewed as a cure-all to our budget woes, but rather as an untapped area of potential reform.

For these reasons and more, this subcommittee should work to take action to address this budgetary problem, and I applaud your willingness to explore solutions before the issue becomes even more unmanageable.