

Statement of James V. Saturno
Congressional Research Service
Before
Senate Committee on Intelligence
November 13, 2007
The Separation of Authorizations and Appropriations:
A Review of the Historical Record

Mr. Chairman and members of the Committee, thank you for your invitation to appear today to offer testimony regarding committee jurisdiction and responsibilities related to the separation of authorizations and appropriations. I am James V. Saturno, a Specialist on the Congress and Legislative Process with the Congressional Research Service of the Library of Congress.

Authorizations and Appropriations Defined. The U.S. Constitution does not establish a specific budget process. The power of the purse is assigned to Congress in Article I, Section 9 which states that “No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law.” How this authority is put into practice, however, has naturally been the subject of periodic congressional debate. Historically, Congress has implemented this power through a two-step process: first establishing agencies and programs, and then funding them in separate legislation. This separation is a construct of congressional rules and practices, and is neither mandated nor suggested in the Constitution. Instead, it has been developed and formalized over time pursuant to the constitutional authority in Article I, Section 5, for each chamber to “determine the Rules of its Proceedings.” This power permits Congress to enforce, modify, waive, repeal, or ignore its rules as it sees fit. The result has been an evolving relationship.

Legislation that establishes, continues, or modifies a government entity (such as a department or agency), activity, or program is termed an authorization. While authorizations form an essential part of the federal budgeting process, by themselves they do not permit funds to be obligated, although they are typically enacted with the idea that subsequent legislation will provide funds.

Instead, they give direction, both to congressional appropriators and to the agency. Some agencies or programs may be affected by more than one authorizing statute. One law may set up an agency and establish its underlying mission, while another may establish a specific program to be administered by the agency, another may provide specific guidelines for agency organization, and yet another may provide explicit authorization for appropriations or limits on what activities may be funded through the appropriations process.

The web of authorizing statutes can be complicated because there are no underlying requirements concerning their duration or specificity. As substantive law, authorizations are generally permanent unless otherwise specified, but they can have any duration. This can be further complicated when authority for an agency's activities are permanent, and the authorization for appropriations actions is limited to specific fiscal years. For example, authorization of appropriations for defense and intelligence activities have typically been on an annual cycle, while those for other agencies or programs are often on two- to five-year cycles. Authorizations also may be differentiated as definite or indefinite. That is, they may authorize specific amounts for specific activities, or they may provide that "such sums as are necessary" are authorized. Both the duration and specificity of limitations can have an impact on the appropriations process.

Appropriations, in contrast, specifically refers to legislation which provides budget authority, that is, authority for government agencies or programs to obligate funds. Appropriations are typically provided for a single fiscal year, although the availability of appropriated funds can be specified as multiyear or "no year" (i.e., to remain available until spent without regard to year). Although there is no constitutional requirement that an appropriation follow an authorization, historically that has been the case.

Longstanding Tradition. Authorizations have been separated from appropriations by congressional rules and practices reaching back to the colonial era. The distinction between what are today termed authorization and appropriations appears to have been understood and practiced

long before it was formally recognized in the rules, being derived from earlier British and colonial practices.

The distinction between authorization and appropriations was reflected in the practice of early Congresses to designate appropriations legislation as “supply bills,” whose purpose was simply to supply funds for government operations already defined in law. The inclusion of new legislation, it was feared, might delay the provision of funds, or lead to the enactment of matters that might not otherwise become law. The idea of authorizing appropriations was understood to be implicit in legislation defining or prescribing duties or activities of an agency, rather than explicit as it is in modern practice.

By the 1820s and 1830s, the inclusion of legislative “riders” in appropriations bills had become frequent enough that some Members began to fear that they could no longer rely on unwritten understandings to keep appropriations separate from general legislation, and thus prevent spending legislation from being subject to prolonged consideration as a result. The failure of the fortifications appropriations bill to be enacted in the 24th Congress, due to a legislative provision, apparently inspired the next Congress to take action. Language was added to the Rules of the House in the 25th Congress (September 14, 1837) which emphasized the two-step nature of the process by providing:

No appropriation shall be reported in such general appropriation bills, or be in order as an amendment thereto, for any expenditure not previously authorized by law.¹

Although the rule did not explicitly prohibit language changing existing law until 1876, as early as 1838, the House established by precedent that legislative language was not in order in appropriations bills.² The Senate adopted a similar rule in 1850, when it prohibited amendments proposing

¹As adopted in the 25th Congress. *Congressional Globe*, 25th Cong., 2nd sess., Mar. 13, 1838, p. 235.

²As described in Asher C. Hinds, *Precedents of the House of Representatives of the United States, including references to the Constitution, the laws and decisions of the United States Senate*, vol. IV, §3578 (Washington: GPO, 1907).

additional appropriations unless they were for the purpose of carrying out the provisions of an existing law.³

The Late 19th Century. The history of Congress in the 19th century shows that it has sometimes recast the procedural division between legislation and funding questions, without revisiting the fundamental issue of their distinctiveness. Throughout the 19th century, the concept of what would today be called authorizations continued to mean primarily permanent legislation, involving general questions of the authority and activities of agencies, while the appropriations legislation of the era was generally precise, even including provisions detailing such things as the number and positions of post office clerks at each specific rate of pay.

In 1876, the House's rule separating legislation and appropriations was amended by what is known as the Holman Rule after one of its chief advocates, Representative William Holman of Indiana. This new provision allowed for appropriations bills to include changes in existing law if it were germane to the subject matter of the bill and retrenched expenditures. At least one scholar has suggested that initial enthusiasm for the new rule stemmed from its use as a device to allow the House to gain leverage against the Senate and President for repeal of several Reconstruction-era laws, including changes in jury qualifications and federal election supervisors for the South, as well as a reorganization of the Army.⁴

A second major change in the relationship between authorizations and appropriations in the late 19th century was the dispersal of appropriations jurisdiction among several legislative committees.

The expansion of the workload of the Committee on Ways and Means during and after the Civil War (especially due to banking, currency, and debt questions) led to the 1865 creation of two new committees in the House (Banking and Currency, and Appropriations) and a division of the

³*Congressional Globe*, 31st Cong., 2nd sess., Dec. 19, 1850, p. 94.

⁴Stewart, Charles H., *Budget Reform Politics: The Design of the Appropriations Process in the House of Representatives, 1865-1921*, (New York: Cambridge Univ. Press, 1989), p. 89.

workload. The jurisdiction of the new Appropriations Committee was defined as the “appropriation of the revenue for the support of the Government.” This jurisdiction, however, was extensive, but not all-inclusive, and the Committee had to deal with its erosion at an early stage. Sometime after the creation of the Appropriations Committee, the Commerce Committee was able to establish a unique joint jurisdiction over the rivers and harbors bill, reporting the bill which would then be referred to the Appropriations Committee before it could be considered on the House floor. Beginning in 1878, however, the Commerce Committee began to use suspension of the rules as a method of circumventing the jurisdiction of the Appropriations Committee. This challenge to Appropriations jurisdiction became accepted practice, and was codified in the House rule revision of 1880, which gave the Commerce Committee “. . . the same privileges in reporting bills making appropriations for the improvement of rivers and harbors as is accorded to the Committee on Appropriations in reporting general appropriations bills.”

The rule revision of 1880 also extended the power to report appropriations to the Agriculture Committee (for the Department of Agriculture). The jurisdiction of the House Appropriations Committee was further eroded when the rule revision of 1885 took away its control over the Military Academy, Army, Navy, Post Office, consular and diplomatic, and Indian appropriation bills, and distributed these bills to various authorizing committees. The Senate likewise created a separate Appropriations Committee in 1867, and, in January of 1899, effected a similar dispersal of jurisdiction.

The distinction between legislation and appropriations was preserved in House and Senate rules, however, and the exercise of jurisdiction over both aspects of the funding process by these authorizing committees does not seem to have caused any major changes in the form of measures enacted. It is important to note that, even after they gained appropriations jurisdiction, legislative committees did not attempt to merge it with their legislative jurisdiction, and continued to address broad policy and organizational questions separate from the details of funding agency activities.

Reconsolidated Appropriations. By the end of World War I, the idea of a more centralized budgetary process, including reconsolidated appropriations jurisdiction, gained prominence. The Bureau of the Budget, newly established under the Budget and Accounting Act of 1921, also recommended that appropriations bills be reorganized along administrative lines, with appropriations for salaries and expenses of the various departments being carried in the same bill as funding for the programs and activities they administered (this grouping had previously existed only in the Department of Agriculture appropriations bill). The House Appropriations Committee, with its newly reconsolidated jurisdiction, adopted the Bureau's concept and reorganized the structure of appropriations bills and its subcommittees so extensively that only the Agriculture bill remained essentially unchanged.

Prior to this reorganization, appropriations bills tended to be organized along topical lines. For example, the military activities of the War Department were considered in appropriations bills reported by the Military Affairs Committee, the activities of the Corps of Engineers were considered in the Rivers and Harbors appropriations bill reported by the Commerce Committee, and the salaries and contingent expenses of the civilian administration of the Department was carried in the Executive, Legislative, and Judicial bill, which was in the jurisdiction of the Appropriations Committee. A similar division existed for most departments, and was true even for those agencies whose appropriations were wholly within the jurisdiction of the Appropriations Committee. Funding for the activities of agencies as disparate as the Interstate Commerce Commission, the Coast Guard, and the Bureau of Mines were carried in the Sundry Civil bill, while their salaries and expenses were generally funded in the Executive, Legislative, and Judicial bill.

The House's reorganization created jurisdictional difficulties for the Senate, which attempted to retain a structure based on the topical organization of appropriations bills, as well as multiple committees sharing jurisdiction over appropriations bills. Confronted with the difficulty of

considering the House's reorganized appropriations bills, the Senate reorganized its own appropriations jurisdiction and subcommittee structure in 1922.⁵

The Modern Congress. In modern practice, legislative committees have attempted to play a more direct role in the oversight of federal agencies, and in the process, revamped the concept of how authorizations should be constructed. Committees have frequently taken an approach with authorizing legislation that now means both a periodic, and a more detailed, review of agency organization and activities. The refocusing of authorizations on programmatic details, enumerating how funds ought to be spent, sometimes leads to the criticism that they seem to be duplicative of appropriations. Unlike appropriations, however, authorizations are not always in the form of a single, annual measure. Despite their more detailed, modern approach, authorizing committees have not uniformly adopted a single approach to their legislation. Authorizing legislation can be framed in terms of administrative divisions, whether that means a whole department or individual agencies; they can be framed in terms of reauthorizing a single, specific piece of legislation; or they can be framed in terms of an issue or topic. The result is that the authorizations relating to any one department, and the programs it administers, can be a complex web of varying specificity and duration. One law might set up an agency and establish its underlying mission, while a second might establish a program to be administered by the agency, and a third might provide specific guidelines for agency activities, including limits on what activities may be funded through the appropriations process. These laws might also be subject to differing sunset provisions.

At the same time, the appropriations committees have also changed the focus of their legislation, and have generally moved away from the level of detail that was once common. In modern practice, appropriations legislation often provides funding for specific agencies or programs

⁵S.Res. 213, 67th Congress. For its consideration see "Consideration of Appropriations Bills," *Congressional Record*, vol. 62, Mar. 1-Mar 4, Mar. 6, 1922, pp. 3199-3207, 3279-3291, 3331-3344, 3375-3392, 3400, 3418-3432.

in only one or a handful of lump-sum paragraphs. The few details in the legislative language are typically supplemented by other, non-statutory guidelines, such as report language.

Although the evolution of the form of authorizations and appropriations has sometimes brought them into conflict, nevertheless, they remain conceptually distinct. Authorizing committees and their legislation remain the primary venue for assessing whether a program constitutes a “good idea,” while appropriations remain the primary venue deciding amongst competing demands for federal resources, and for assessing questions of how well federal funds are spent.

Thank you for your attention. I welcome your questions.

Biographical Profile

James V. Saturno is a Specialist on the Congress and Legislative Process at the Congressional Research Service (CRS). A member of the CRS staff since 1986, he has served in both research and managerial positions. His principal areas of research have been congressional history and procedure, especially the federal budget process and budget process reform. In 1993, he served as a consultant on the budget process to the Joint Committee on the Organization of Congress. Mr. Saturno's work has appeared in *The Encyclopedia of Congress*, *Legislative Studies Quarterly*, and *Public Budgeting and Finance*. He holds an M.A. in history from the University of Rochester and a B.A. in history from the University at Albany (SUNY).