

House Oversight and Reform Committee
Thursday, March 28 Members Day Hearing
Testimony for the Record
Rep. Paul Mitchell (R-MI)

Verbal Testimony

Chairman Cummings, Ranking Member Jordan, and all Members of the House Oversight and Reform Committee, I appreciate this Members Day opportunity to testify and submit full written testimony to your committee as you craft your policy initiatives for the 116th Congress. Also, it is good to see you all again – Members and staff – after I had the chance to serve on this Committee in the 115th Congress.

I am here to speak in support of three pieces of legislation I introduced that have been referred to your committee:

H.R. 1203, the Anti-Deficiency Reform and Enforcement Act;
H.R. 1204, the OIRA Insight, Reform, and Accountability Act; and
H.R. 1536, the Protecting Our Children's Future Act.

I'll briefly speak on the first two, since I sponsored both of these bills in the 115th Congress, and both of them were reported by this Committee. In fact, the OIRA Insight, Reform, and Accountability Act passed the entire House, but did not see action in the Senate – an experience all of us know far too well.

The Anti-Deficiency Reform and Enforcement Act (H.R. 1203) makes changes to increase reporting and accountability for violations of the Anti-Deficiency Act. The goal of this bill is to strengthen the Anti-Deficiency Act to prevent illegal spending by executive branch agencies. There currently is no incentive for agencies to disclose violations and reported numbers of violations vary significantly between agencies. For the agencies that do report violations, they take no real disciplinary action against employees found to have violated the law. H.R. 1203 aims to fix that.

The OIRA Insight, Reform, and Accountability Act (H.R. 1204) codifies the Office of Information and Regulatory Affairs – known as OIRA. OIRA serves as the regulatory gatekeeper, providing a second opinion for other agencies. It holds back the floodgates of unnecessarily burdensome regulations, but also makes sure that the regulations that are necessary are properly crafted and not duplicative or conflicting with the work of other agencies. This bill would ensure OIRA's continued existence to do the important work of overseeing federal agencies by placing its responsibilities in statute; it currently only exists via an Executive Order from the Clinton Administration. H.R. 1204 also enhances transparency by extending the requirement for regulatory review to independent agencies and requires that OIRA issue reports on its reviews of legal requirements. This is a step toward making sure our regulatory system works for families and businesses across the country.

I want to spend the rest of my time speaking about the Protecting Our Children's Future Act, H.R. 1536. This is a joint effort between myself and Congressman Bradley Byrne, and it aims to fix something we all know is broken: The budgeting and appropriations process.

House Oversight and Reform Committee
Thursday, March 28 Members Day Hearing
Testimony for the Record
Rep. Paul Mitchell (R-MI)

It is obvious something needs to change with how Congress budgets and appropriates taxpayer funds. The track record of failures makes that plain as day. Historically we have had one continuing resolution after another, have resorted to omnibus funding measures instead of individual appropriations bills, and have had multiple government shutdowns. Earlier this year, we saw the longest partial shutdown in our nation's history, which is merely the most recent example of the broken process. With our current budget and appropriations cycle we have seen these failures play out repeatedly.

History shows the budget tools we have do not work, and they never have worked. If anything, matters have gotten worse. This not only is bad procedure; it also creates a climate where we govern from one crisis to the next, and prevents us from other vital authorization, oversight, and spending reform initiatives. It prevents Congress from having the time or will to have any other substantial policy, spending, or debt debates. It's also terrible politics - we rush out products just to keep the lights on, and in election years we hardly budget or appropriate at all.

That is why Congressman Byrne and I introduced the Protecting Our Children's Future Act. We first did so in the 115th Congress, and earlier this year we reintroduced the bill. The Protecting Our Children's Future Act has six main points:

- Biennial Budgeting and Appropriations
- Fiscal Year Matches Calendar Year
- Applies No Budget, No Pay
- Reconciliation Procedures for Appropriations Bills in the Senate (Majority Vote)
- Turns Nearly All Mandatory Spending into Discretionary Spending (while leaving Social Security Old Age and Survivors benefits, Medicare, TRICARE, and Veterans Programs as Mandatory Spending)
- Requires Zero-Based Budgeting for President's Budget

I believe these reforms would fundamentally reform the way the budget and appropriations process works, reassert congressional authority, and set our country on a more stable fiscal path.

Thankfully, many Members of Congress, past Budget Committee Chairs, and other Congressional leaders have supported process reform. Last Congress we even had the Joint Select Committee on Budget and Appropriations Process Reform, expressly created to find solutions to our budget and appropriation process problems.

The Protecting Our Children's Future Act is my attempt to be a constructive part of this ongoing conversation, and I urge the Committee to consider it. I will submit for the record more information and explanations of this bill.

I am happy to answer any questions the Committees may have.

House Oversight and Reform Committee
Thursday, March 28 Members Day Hearing
Testimony for the Record
Rep. Paul Mitchell (R-MI)

Current Broken Process

As you all know, in 1974, Congress enacted the Congressional Budget and Impoundment Act. Unfortunately, its reforms have never worked as intended. Forty years later, the government is considerably larger, our debt problems significantly worse, and filibusters are now the norm for appropriations bills.

According to the Congressional Research Service, during the 25-year period covering FY1952-FY1976, when the fiscal year began on July 1, at least one regular appropriations bill was enacted after the fiscal year began. Since FY1977 – when the Congressional Budget Act of 1974 was fully implemented and all the appropriations bills were enacted on time – all of the regular appropriations bills were enacted before the beginning of the fiscal year in only three instances (FY1989, FY1995, and FY1997).

Between FY1977 and FY2019 (excluding the four fiscal years in which all appropriations were enacted on time), over half of the regular appropriations bills for a fiscal year were enacted on time in only one instance (FY1978). In all other fiscal years, fewer than six regular appropriations acts were enacted on or before October 1. In addition, in 15 out of the 41 years during this period, none of these regular appropriations bills were enacted prior to the start of the fiscal year. Ten of these fiscal years have occurred in the interval since FY2001.

In the interval since FY1997 – the most recent fiscal year that all regular appropriations bills were completed on time – CRs have been enacted on average almost six times per fiscal year. During this period, CRs provided funding for an average of almost five months each fiscal year.

Even when Congress doesn't resort to CRs, we all too often use Omnibus spending bills as opposed to individual appropriations bills. During the 32-fiscal year period covering FY1986-FY2017, 23 different omnibus measures were enacted for 20 different fiscal years. (Two separate omnibus appropriations acts were enacted for FY2001, FY2009, and FY2012.) As we all know, there have been more since.

Some years even the last-resorts of CRs and Omnibuses have failed, leading to funding lapses and government shutdowns. Since FY1977, there have been 20 funding gaps, including the partial shutdown earlier this year, which was the longest ever. This does not even count the enactment of a CR on the day after the budget authority in the previous CR expired, which has occurred often, including once this fiscal year.

This history confirms what we all know: The time for a new process is now.

The Protecting Our Children's Future Act (H.R. 1536) Summary

To meet this charge, I worked together with Rep. Bradley Byrne on crafting the Protecting Our Children's Future Act (H.R. 1536). Our bill has six main points:

House Oversight and Reform Committee
Thursday, March 28 Members Day Hearing
Testimony for the Record
Rep. Paul Mitchell (R-MI)

1. Biennial Budgeting and Appropriations
2. Fiscal Year Matches Calendar Year
3. Applies No Budget, No Pay
4. Reconciliation Procedures for Appropriations Bills in the Senate (Majority Vote)
5. Turns Nearly All Mandatory Spending into Discretionary Spending
6. Requires Zero-Based Budgeting for President's Budget

None of these ideals are new, and in fact, some of them have previously passed the House of Representatives. Our bill represents a culmination of these vital reforms, and is structured in a way that makes adoption easier and comprehensive.

The Protecting Our Children's Future Act (H.R. 5214) Details

What follows is a detailed explanation of what problems our bill fixes, and what solutions we have identified.

Broken Budgeting Process – In 1974, Congress enacted the Congressional Budget and Impoundment Act. Forty-five years later, the government is considerably larger, appropriation bills are rarely finished on time, and filibusters are now the norm for appropriations bills. This legislation makes the following reforms:

- Biennial Budgeting - The bill moves the budgeting and appropriations process to a two-year cycle. A more realistic timeframe for the budgeting and appropriations process will make it easier for Congress to make real and significant changes in spending and exercise more effective control. Congressional committees will spend more time overseeing how effectively money is spent, and a two-year process will also help us get out of the cycle of constant CRs.
- More realistic and appropriate budget time frame, based on the calendar year. – Under current law, a new president is expected to submit a budget for the next fiscal year mere weeks after being inaugurated, and Congress is expected to pass appropriations bills by October 1, just over a month before an election. This timeframe is unhelpful, has led to an increase in CRs, and has further eroded the budget process. For that reason, our legislation adopts a modern timeframe that Congress can stick to:
 - First Session of Congress
 - First Monday in April – President submits a biennial budget, giving additional time for a new administration to get a budget proposal together.
 - June 1 – Both Chambers report a Budget Resolution.
 - June 30 – Both Chambers agree to a Budget Resolution.
 - July, September, October, first half of November - Congress passes biennial Appropriations bills and conferences those bills (and passes a biennial NDAA).
 - November 15 – Congress completes action on appropriations.

House Oversight and Reform Committee
Thursday, March 28 Members Day Hearing
Testimony for the Record
Rep. Paul Mitchell (R-MI)

- January 1 – Appropriations from last biennium end and new biennium begins.
- Second Session of Congress
 - Session focuses on authorizing committees reporting authorizations and oversight.
 - First Monday in April – President submits review of the biennial budget.
 - July 31 – Congress completes action on reconciliation legislation (if not sooner).

Unenforceable Budget Process – Even though passing a budget is required by federal law, in recent years the House and Senate have often been unable to fulfill this fundamental requirement of governing. Often budget chairs and appropriators have put together their products only to have the membership of the body refuse to cast a tough vote or refuse to come to a consensus with the other chamber. Furthermore, the budget only requires a majority in the Senate but 60 votes to pass appropriations bills. Thus, translating the budget into appropriations can be difficult. This legislation seeks to address these issues in two primary ways:

- No Budget, No Pay – If the House and Senate have not conferenced a budget resolution by June 30 of the first session of Congress, the clerk of each chamber is directed to hold the salary of members in escrow until a budget resolution passes both chambers.
- Reconciliation Procedures for Appropriations Bills that stick to the Budget – The bill extends the reconciliation procedures of the Budget Act that both chambers have previously agreed upon to appropriations bills if those bills meet their budget allocations. As with reconciliation bills, appropriations bills would be limited to 20 hours of debate in the Senate (or 20 hours per section in an omnibus) with an unlimited amendment process. Once all amendments are exhausted, appropriations bills would pass with a simple majority in the Senate. Authorizing legislation and authorizing language attached to appropriations bills would still require 60 votes in the Senate if a point of order is raised.

Broken Appropriations Process – The last time all twelve appropriations bills were passed individually prior to the start of the fiscal year was in 1994, and the last time we started the fiscal year without at least a partial CR was 1996. In recent history, the House of Representatives has more frequently finished its work, passing full appropriations bills out of our chamber. Unfortunately, the Senate has not gotten our work to the President’s desk. More often than not, they haven’t even begun to consider appropriations bills on the Senate floor. As a result, the federal government has been forced to rely on one short-term spending bill after another. The bill seeks to address these issues by creating a better way:

- Workable Procedural System – As discussed above, the legislation extends the reconciliation procedures already used by the Senate and agreed to by the House to appropriations bills. As with reconciliation, the minority would have an unlimited right to amendments to appropriations bills in the Senate; however, if those bills were in compliance with the budget resolution, the bills could pass with a simple majority support in the Senate.

House Oversight and Reform Committee
Thursday, March 28 Members Day Hearing
Testimony for the Record
Rep. Paul Mitchell (R-MI)

Out of Control Growth in Spending – Under our Constitution, no money is to be drawn from the treasury except as a consequence of an appropriation of law. Despite this important check on the executive, successive Congresses have written blank checks to the executive to spend future money at ever increasing levels. The CBO baseline includes over 560 mandatory spending accounts. Of course, these accounts represent funds coming out of the federal treasury outside of the appropriations process. Congress should control every federal dollar that leaves the Treasury. However, we rarely take a vote on 2/3 of spending every year. This bill seeks to address out of control spending in two ways:

- **Moving Most Mandatory Spending to Discretionary Side** - The bill moves all mandatory spending other than Social Security Old Age and Survivors benefits, Medicare, TRICARE, and Veterans Programs to the biennial appropriations process. This would represent a move of \$1.2 trillion in FY 2018 to the discretionary side, increasing to \$1.7 trillion by 2027. The bill retains the reconciliation process for controlling the remaining mandatory spending (other than Social Security).
- **Zero Based Budgeting** – Unfortunately, under our current system, ever increasing federal spending is built into the federal budget baseline. Under this legislation, the President’s biennial budget would have to be zero based. Under zero-based budgeting, all programs and expenditures are reviewed at the beginning of each budget cycle and must be justified in order to receive funding. No federal spending is taken for granted.

The reforms in this landmark legislation would fundamentally reform the way the budget and appropriations process works, reassert congressional authority, and set our country on a more stable fiscal path.

How Does a Biennial Budget Look in Practice?

Any substantial changes to the budgeting and appropriations process would have to be carefully thought through to ensure it is functional. Below is a real-world example of how the new timetable would work.

The numbered subheadings would be language put in statute. The subset letters would not be in statute; they are notes how this would look in practice.

The years listed are just exemplary; the Protecting Our Children’s Future Act calls for a delayed implementation date so Congress and all government agencies can prepare for the new budget process.

The below all assumes the Calendar Year and Fiscal Year start at the same time, are the same length, and end at the same time – Jan. 1 to Dec. 31, as called for in the Protecting Our Children’s Future Act.

Key Dates

House Oversight and Reform Committee
Thursday, March 28 Members Day Hearing
Testimony for the Record
Rep. Paul Mitchell (R-MI)

November 2018 – Midterm Elections for 116th Congress
January 2019 – 116th Congress Begins
November 2020 – Elections for 117th Congress and Next POTUS
January 2021 – 117th Congress Begins
January 2021 – Trump First Term Ends
January 2021 – Next POTUS Term Begins

Trump Administration Years: 2017, 2018, 2019, 2020
115th Congress Years: 2017, 2018
116th Congress Years: 2019, 2020
117th Congress Years: 2021, 2022
Election Years: 2018 (Midterms), 2020 (POTUS), 2022 (Midterms)

Revised Timetable

Revises timeline for the Budget Process

1. First Monday in April of the First Session of a Congress – President submits his budget
 - a. This occurs in April 2019, early on in the First Session of the 116th Congress, and in Year 3 of 4 of the Trump Administration. The Budget covers 2020 (Second Session of 116th, 4 of 4 Trump) and 2021 (First Session of 117th, 1 of 4 Next Administration). The next time this step occurs is April 2021 during the First Session of the 117th Congress and First Year of the Next Administration, covering 2022 (Second Session of 117th, 2 of 4 Next Administration) and 2023 (First Session of 118th, 3 of 4 Next Administration). This means each budget plans for 2-and-a-half years out, at its longest point. A result of this is it will occur where a budget covers the first part of a new Congress, and every other Budget the first part of a new Administration. If the current law timeline was actually followed, a similar situation would occur, but the length of time for overlap would differ. The President’s Budget will never be submitted during an election year. Having this occur in April gives any new Administrations time to compile a substantial budget as opposed to a Skinny Budget.
2. April 15 – CBO submits report to the Budget Committee
 - a. Same timeline and practical execution as above.
3. Not later than 6 weeks after budget submission – Committees submit views and estimates to the Budget Committees
 - a. Same as above. We are now into mid-May of 2019. Authorizing Committees have had 6 weeks to complete their work, same as current law.
4. June 1 – Budget Committees report concurrent resolution on the biennial budget
 - a. Same as above. It is now mid-year 2019, and we are a quarter of the way through the 116th Congress. We are about to start doing appropriations bills for 2020 (Second Session of 116th, 4 of 4 Trump) and 2021 (First Session of 117th, 1 of 4 Next Administration). Budget Committees have had April and May to complete their work.

House Oversight and Reform Committee
Thursday, March 28 Members Day Hearing
Testimony for the Record
Rep. Paul Mitchell (R-MI)

5. June 30 – Congress completes action on concurrent resolution on the biennial budget & House may begin consideration of appropriations bills
 - a. Same as above. Congress has had 1 month to review the Budget Committee products.
6. September 15 – House Appropriations Committee reports last biennial appropriation bill
 - a. Same as above. Appropriators have had June, July, August, and half of September to complete their work. Congress has the remainder of the year – up to 6 months – to finish 12 2-year appropriations bills.
7. January 1 - Biennium Begins
 - a. We are now into the Second Session of the 116th Congress, calendar year 2020. By this timeline and schedule, Congress has now finished the 12 Appropriation Bills that fund 2020 and 2021. Aside from Reconciliation, there are no Budget or Appropriations Activities in an election year. If POTUS and Congress stick to this timeframe, there will never be Budget or Appropriations bills in Congress in Election Years. In the 2nd Session of any Congress, there will be oversight and authorization activities, as well as potentially any reconciliation bill.
8. July 31 (of second session) – Congress completes action on reconciliation legislation
 - a. This happens in July of 2020. Reconciliation always must be done by mid-way through an election year, but there is nothing precluding them from doing it earlier. This structure means each budget has one shot at reconciliation, but given that other parts of the overall bill make many more mandatory programs discretionary, that is a trade-off that makes sense.

Conclusion

We again would like to thank Chairman Cummings, Ranking Member Jordan, all Members of the House Oversight and Reform Committee, as well as all the staff that are involved in this effort for taking our testimony.

We firmly believe solving this problem is a prerequisite to solve our deficit and debt issues. Failure is not an option. It is a policy, societal, and moral imperative to come up with a workable and lasting solution. We believe our bill – the Protecting Our Children’s Future Act – is one answer to this charge, and encourage the House Oversight and Reform Committee to give it serious consideration.