

Testimony

The Honorable Shalanda Young

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Thank you for having me at a hearing to discuss funding lapses and shutdown reform. I am Shalanda Young, currently in residence at NYU Law, where I think and teach about topics like these that touch on Congress and the executive branch. Prior to my time in academia, I was the Director of the Office of Management and Budget and before that, I was this Committee's Staff Director – serving two years in the minority and two years in the majority.

As I prepared this testimony, I opened my phone and saw a headline “What’s wrong with Congress” – which claimed that 9 in 10 Americans say they are unhappy with Congress. Shutdowns and the theater that come with them certainly play a part in that perception. I would however ask you to think of shutdowns as one of many symptoms of what is broken. My child once had pneumonia and while treating the fever made her more comfortable, she got worse until we worked on the underlying problem.

Long before this past year of newsworthy shutdowns, Congress had already relinquished significant elements of its authorizing responsibilities. Perhaps most prominently, Congress has repeatedly ceded its war-making authority by allowing the executive branch to rely on outdated Authorizations for Use of Military Force. Trade policy has similarly shifted toward presidential dominance through unilateral tariff actions. More recently, the Senate has undermined its

own advice-and-consent function by normalizing the bundling of nominations. This erosion of congressional authority did not originate with the Trump administration, but the current presidency has accelerated these trends. And without a reclaiming of power by this branch, that trend will absolutely continue, aided by the sign off of the judicial branch.

For too long, congressional dysfunction has been shrugged off as the norm, while congressional leadership uses workarounds as substitutes for the difficult work of legislating – for example, by using the House Rules Committee to overcome the will of rank-and-file members or the reconciliation process to bypass the Appropriations Committees. These tactics allow the institution to continue to limp along, deepening the dysfunction most Americans now expect. If the goal is institutional restoration, reclaiming Congress's spending authority is a logical starting point. Although this past year's government shutdowns might suggest that appropriations are an especially difficult area in which to rebuild institutional capacity, the opposite may be true. Because federal spending directly affects constituents, it offers one of the clearest opportunities for legislators to find common ground and demonstrate responsiveness to the needs of their districts. As we think through potential solutions, we also must refrain from making matters worse. After all, more cameras in congressional hearing rooms have resulted in mostly theatrics rather than substance – a reflection of good intentions, but leading to awful outcomes. I view legislation creating automatic CRs in that light.

Automatic CR legislation is likely to empower bad actors looking to frustrate, compromise or hijack appropriations for their own legislative priorities and will lead to worse, less responsive governing.

Because of the need to reach compromise each year, annual appropriations are a key way that Congress ensures spending meets the evolving needs of the country. It presents Congress with the opportunity to react to input from constituents, learn from what is or is not working, and set higher or lower program funding levels reflecting the nation's priorities. But automatic CR legislation will make it easier for Congress and the executive to avoid hard compromises, while the government keeps operating. A minority in the Senate, or a President wielding their veto, can more easily obstruct progress without risking blame or feeling the public pressure that such a choice would usually bring if it threatened a shutdown.

Automatic CR legislation could lead to frozen spending levels that fail to respond to needs that grow over time, due to inflation and population growth – but more broadly, they would create the risk of continually failing to tailor appropriations to the demands of the moment, whether that requires increasing funding for a program or cutting it. Moreover, even efforts by Congress to assert its power of the purse or rein in executive abuse through appropriations would require veto-proof majorities to overcome a resistant President. Ultimately, automatic CRs would risk making it easier for the President to hold annual appropriations legislation hostage, whether by insisting on the inclusion of all of his or her priorities, demanding the passage of unrelated legislation, or resisting the inclusion of bipartisan oversight in the bills.

The breakdown of the appropriations process reflects broader institutional atrophy, not unlike the decline of the authorization process before it, with the annual bill to authorize the Department of Defense standing as the noteworthy exception – so far. Although the

causes of congressional dysfunction extend beyond the scope of this hearing, political polarization and the consolidation of power by Congressional leadership are two major factors. These issues must be addressed, but reforms targeted specifically at restoring congressional capacity and authority remain essential.

One potential reform is to expand the size and representation of Congress's spending committees. These committees oversee virtually every area of federal policy, yet only 62 of the 435 House Members serve on the Appropriations Committee. The Senate Appropriations Committee includes only 29 of 100 Senators. In addition to reconsidering membership structure, congressional staff require significant expansion. Effective oversight depends on the willingness and ability of the Executive Branch to cooperate – not only in producing documents or complying with subpoenas, but also in implementing appropriations in ways consistent with congressional intent. As executive cooperation has declined, Congress has lacked the staff capacity and resources to counterbalance this shift.

There are also promising ideas on apportionment reform, changing the budget resolution schedule so that is not an impediment to appropriations, and frankly providing more specificity in appropriations law and less reliance on reports that do not have the weight of law.

I have not forgotten how I began my remarks. My recommendations are not a cure to preventing shutdowns. No process or structural change trumps political will.

When I was OMB Director there were no shutdowns. That was not because my boss was successful in getting all of his priorities funded. We chose and many of you chose to put the stability of the country over strongly held positions on both sides of the aisle. We have done it before and we can do it again.

I look forward to your questions.