

TESTIMONY OF REPRESENTATIVE TOM COLE  
SUBCOMMITTEE HEARING: PROPOSED REFORMS TO RULE XXI AND THE MODERN  
AUTHORIZATION AND APPROPRIATIONS PROCESS  
APRIL 14, 2016

Thank you Chairman Stivers and Ranking Member Slaughter for the opportunity to testify today regarding proposed reforms to Rule XXI and the modern authorization and appropriations process. As a member of the Appropriations Committee, the Rules Committee, and the Budget Committee, I look forward to discussing whether changes are needed in the current House Rules to make the appropriations process better.

As many of you are aware, the appropriations process is vested in Congress by Section 9, Article I of the Constitution, which states that “No money shall be drawn from the Treasury, but in consequence of appropriations made by law.” Enacting annual appropriations is something the Congress must do under the Constitution. It only follows that House Rules providing for consideration of these bills should help, not hinder, the enactment of appropriations bills. Without question, the appropriations process is not problem-free. This hearing provides an opportunity to discuss some of the current issues we face.

One of the largest challenges the Appropriations Committee faces is the decline of the reauthorization process. As we all know, CBO reports to us that \$310 billion in funding was provided for FY 16 for programs whose authorization had lapsed. In response to these challenges, there have been thoughtful suggestions, some by my colleagues testifying here today. One suggestion is amending Rule XXI to create an additional point of order on appropriations bills that would require unauthorized programs to be left unfunded or frozen, as a way to incentivize authorization committees to enact authorizations. In my opinion, these proposals have serious down-sides. First of all, I do not see how additional points of order on appropriations bills will serve as an incentive to authorization chairmen to move their authorization bills. The target is being put on the wrong back. It is also unrealistic to expect that Congress will not fund our national security while awaiting a defense authorization bill, or that Congress will shut down funding for the National Institutes of Health for lack of an

authorization, or that no increase will be provided for veterans' health when an authorization isn't moving, for whatever reason. The net result would be more pressure on the Rules Committee to provide additional waivers to these new rules, something I imagine the Rules Committee would not welcome.

In addition, these changes would create obstacles to rapidly responding to emergencies, and would disadvantage the House in relation to the Senate, which does not have similar rules. If the intent is to incentivize the authorization process, then proposals should address the authorization committees, not the appropriations committee. However, if the intent of the proposed amendments to Rule XXI is to ensure that no objectionable unauthorized programs are funded, as you know, there already is a process to prevent this: the Arney protocol. Currently every appropriations bill is sent to the authorizing committees before being considered in the Rules Committee. If the authorizing committee objects to funding for an unauthorized program, it can already be exposed to a point of order. Rather than expanding additional points of order that are not likely to achieve their intended purpose and likely to make the appropriations process more arduous, we should focus on making sure the Arney protocol functions as intended.

Another set of proposals recommends changing Rule XXI to make it easier to amend mandatory programs on appropriations bills, including a proposal to reinstate the "Holman rule", which was removed in 1983. This rule would allow changes in existing law as part of an amendment to reduce spending in an appropriations bill. These proposals would significantly expand what amendments could be offered on appropriations bills. They would allow appropriations amendments that are legislative in nature, including how agencies and programs are staffed, structured and compensated – things that are directly under the jurisdiction of the authorization committees and involve permanent changes in law. It would diminish the roles of the authorizing committees, and make them less central to the legislative process and, at the same time, would make it harder to pass appropriations bills. It would involve appropriations bills in more controversies and increase the number of amendments on appropriations bills, which has already exploded in recent years. In 1982, the last year the Holman rule was in effect, there were 59 floor amendments offered to the ten appropriations bills brought to the floor. Last year, there were 456 amendments proposed on the seven bills that came to the floor, an 800% increase. I shudder

to think how long it would take to consider an appropriations bill with a whole new category of made in order amendments, not necessarily related to discretionary funding.

In conclusion, I believe that any changes to Rule XXI must be carefully considered. We should consider proposals to change Rule XXI to determine if they will help us achieve our shared goal of the enactment of the annual appropriations bills. From my perspective on the Appropriations Committee, I am concerned that these proposed changes will not necessarily address the real challenges that their sponsors seek to change. At the same time, I am willing to work with my colleagues to identify changes that will make the process work more smoothly, and will ensure that authorizing committees do their jobs. Thank you, and I look forward to answering any questions you may have.