

TESTIMONY OF REPRESENTATIVE TOM COLE
SUBCOMMITTEE HEARING: H.R. 1610—BIENNIAL BUDGETING AND ENHANCED
OVERSIGHT ACT OF 2015
JANUARY 6, 2015

Thank you Chairman Woodall and Ranking Member Hastings for the opportunity to testify today regarding H.R. 1610, the Biennial Budgeting and Enhanced Oversight Act of 2015. While the supporters of H.R. 1610 claim it takes steps to fix our broken budget process, movement to a biennial budget and appropriations process causes significantly more problems than those it purports to solve.

There are three main points I would like to make today, focusing mainly on the negative impact a change to a biennial process for appropriations would have. First, while the budget process itself is indeed dysfunctional; the cause of dysfunction does not lie with the annual appropriations process; second, that biennial budgeting shifts enormous institutional power away from Congress to the Executive Branch, and finally, there are a number of practical problems that arise from moving to a biennial budget process.

First, it is clear that our federal budget process is dysfunctional. Every year Congress seems beset by the same problems -- missed budget deadlines, delays, late appropriations bills, an inability to pass authorization bills, and runaway mandatory spending. The frustration of Members and our constituents is understandable. However, these problems are the result of deep political and policy differences over the appropriate level of spending, deficits, debt and the size and role of the federal government—there is no evidence that shifting to biennial budgeting and appropriations would help avoid those same problems. Let's look at the facts. President Obama has failed to submit a budget on time four out of the last five years. In the last 5 fiscal years (FY2012-FY2016), Congress has failed to agree to a budget resolution conference report or has failed to do so on time every single year. Even in Fiscal Year 2016, when a conference report was agreed to, Congress missed the April 15 statutory deadline. In the last 10 fiscal years (FY2007-FY2016), Congress has failed to agree to a budget resolution conference report on time 100 percent of the time. In fact, according to the Congressional Research Service, Congress has

met the budget resolution deadline only six times since 1974, the last time being in FY2003. To the extent Congress wants to change the existing budget framework, changes should be made to consideration of the budget resolution which is where the problems start, not to appropriations measures. Take, for example, the impact of The No Budget, No Pay Act of 2013 (Public Law 113-3). Each House passed a budget resolution, something the Senate had not done since FY2010. While this did not result in a conference report, it forced action by the other body. I believe that further changes to this process, like possibly passing a No Budget, No Pay Act that would condition members' pay on actual passage of a budget conference report or a change to Senate rules that would allow appropriations bills to come to the Senate floor more readily, are likely to yield significantly more benefits than most other options. Changes must be made at the beginning of the budget process to ensure the President submits his budget and that Congress completes action on the budget resolution in compliance with statutory deadlines.

Secondly, while claiming to enhance time for oversight, biennial budgeting and appropriations actually reduces the opportunity for Congressional oversight. The current annual process requiring agency administrators to justify and defend their programs and budgets is a critical tool to evaluate how Federal programs are working and how taxpayer dollars are being expended. Under the existing, annual structure, if agency spending is inconsistent with Congressional intent, Congress can address the situation that year in the next appropriation. Under biennial budgeting, the legislative response to activities occurring in the first year of the budget would always be a year behind. Curtailing the amount and frequency of oversight by appropriators directly contradicts one of the declared objectives of biennial budgeting—to increase opportunity for agency oversight. For example, in the Labor-HHS Appropriations Subcommittee, which I have the privilege to chair, one of our small related agencies has had an ongoing problem with one of their contractors. They did not have an IG and lacked specific authority to conduct proper oversight of the contractor. In the final bill, we were able to give them their own IG and put in place requirements to help the agency enforce good government oversight standards to protect \$3 billion in annual government acquisition funds. With biennial appropriations we would have had to wait another year to do this and perhaps the political timing then would not have allowed it. The annual appropriations process serves as one of the most valuable oversight mechanisms

available to Congress. Yet, under biennial appropriations this oversight would either not occur, or would lack teeth – it would be lost.

In addition, most authorizing committees already perform effective oversight of the programs under their jurisdiction. In fact, in 2015 authorizing committees held over 760 oversight hearings. Clearly, the problem authorizers face is not a lack of time, it is getting their legislative bills through the political process, through the Congress and to the President. These are mainly political and policy challenges, not procedural ones or ones due to lack of oversight. Last year, authorizers were able to generate the annual National Defense Authorization Act, the Medicare Access and CHIP Reauthorization Act of 2015, a long-term Highway reauthorization, and an ESEA reauthorization, all which demonstrate that authorizers have time for oversight. It is unclear whether H.R. 1610 does anything to actually strengthen the authorization process and therefore the current problems will continue or be exacerbated. In fact, as currently drafted, Section 106 would preclude annual authorization bills like the NDAA, and further diminish its oversight authority. Given the pace of military operations and the need to be responsive to the needs of the force and current events, an annual defense authorization is an essential oversight tool for Congress, which H.R. 1610 would eliminate.

In addition to relaxing oversight, biennial appropriations in particular would transfers significant powers away from Congress to both the president and the bureaucracy. By requiring budget justifications by agencies only once every two years the president, agency heads, and bureaucrats would become less responsive to Congress. In Federalist No. 58, James Madison stated “This power over the purse may, in fact, be regarded as the most complete and effectual weapon, with which any Constitution can arm the immediate Representatives of the People, for obtaining a redress of every grievance, and for carrying into effect every just and salutary measure”. The Constitution vests the power of the purse in that chamber closest (and most accountable) to the people, the House of Representatives. It is the House which must hold the president and bureaucracy accountable and biennial budgeting is an abdication of that responsibility.

Beyond the philosophical concerns, there are practical considerations which would make biennial appropriations unworkable. Under an annual appropriations system, making precise

projections about agency needs is already difficult, starting with the fact that the formulation of the President's budget begins 15 to 18 months prior to the beginning of the fiscal year for which funding decisions will be made. Even on an annual basis, estimates of discretionary outlays and fee collections will miss the mark. Since the time lag between initial forecasts and actual budget execution creates difficulties even in an annual environment, it is difficult to conceive how extending the budget lead time to 27 or 30 months would enhance the reliability or quality of the appropriations estimates, improve the capacity of the executive branch to foresee future needs, or eliminate unanticipated funding requirements.

Supporters of biennial budgeting and appropriations often cite that many states use a two-year budget process and therefore that model would work at the federal level. But this is, at best, a poor analogy. The federal government is not a state government. It fulfills numerous functions no state can or should: It serves a population of well over 300 million people, provides for the national defense on a global basis, conducts international relations, supports an economic system that helps drive the global economy, and provides transfer payments to individuals for retirement, among other activities. Also, the number of states using a biennial budgeting system has been steadily declining since the 1940s, with the majority of states now using an annual process. According to the National Conference on State Legislatures, in 1940 forty-four states enacted a biennial budget. Only 19 do so now.

In fact, the GAO did a case study on biennial budgeting, issuing a report in October 2000 (GAO-01-132) on the experience of three states with a shift to biennial budgeting, Arizona, Connecticut, and Ohio. The key findings of this report demonstrate that "agreement between the legislative and executive branches on how the off-year budget process will operate...are key". Sadly, H.R. 1610 is silent on this issue. Conceivably, supplemental appropriations bills would be used to meet emergency needs; however, if supplementals are used, we would ultimately be engaged in appropriations decisions annually, limiting many of the purported oversight benefits. Additionally, the GAO report discovered it was "difficult to use a biennial budget process to increase legislative oversight." Of the three states examined, two did not lead to increased oversight and the third designed a new oversight process which was incorporated into its biennial

budget process. H.R. 1610 does nothing to ensure that more oversight will actually occur, while upending the current process.

Unfortunately, I am skeptical that a shift to biennial appropriations will solve any of the problems that now plague the larger budget process and believe in particular the impact on the appropriations process would be disastrous. I believe a change to biennial appropriations would undermine Congresses' constitutional power of the purse and strengthen unelected agency bureaucrats; would weaken oversight across the board; would make decisions based on even more error-prone estimates; and would likely lead to increased spending – a view of biennial budgeting, it is worth noting, shared by previous Chairmen of the House Budget Committee when they served in this body, Chairmen Nussle and Spratt. Thank you and I look forward to answering any questions you may have.