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Restoring the Jurisdictional Boundaries Between Authorizations and Appropriations

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Restoring the Jurisdictional Boundaries
Between Authorizations and Appropriations

By
Franklin Logan
Introduction

Article I, Section 9 of the Constitution expressly grants Congress the power of the purse: “No money shall be drawn from the Treasury, but in consequence of Appropriations made by law.”¹ The Constitution requires no more, and Congress under its discretion has formalized, to some degree, the modern appropriations process by establishing internal rules in the House and Senate and, in some cases, by statute.² These congressional rules have evolved since the first Congress to reflect power struggles between various congressional committees and Members and between the Legislative Branch and the Executive Branch. Today, Congress fulfills its Article I, Section 9 obligation through a yearly appropriations cycle shepherded by the House and Senate Appropriations Committees. In theory at least, the role of the appropriators is limited to providing annual funding allocations for all discretionary programs through the enactment of twelve yearly appropriations bills.

Before yearly spending bills can be enacted, House and Senate rules provide for an elaborate and complex budgetary process that contemplates submittal by the President of a yearly budget proposal, congressional approval of a budget resolution, as well as a bifurcated

authorization-appropriation process.3 These rules recognize that power struggles in Congress often encumber legislative action and the rules are thus sufficiently flexible that they may be circumvented with relative ease. Most of the budgetary rules are not self-enforcing requiring Members of Congress to actively invoke them through a point of order.4 In addition, they may easily be waived at any point during the budgetary process.5 Within this malleable budgetary framework, the distinction between authorizing legislation and appropriations has become blurred in recent years with appropriations legislation and appropriations committees encroaching on, and in some cases, dominating the policymaking and legislative spheres once occupied by authorizing committees.6 The shift in power from authorizing legislation to appropriations legislation has serious procedural and substantive implications for the kind of deliberative democracy the Constitution contemplates.

This paper takes a closer look at the theoretical distinction between authorizations and appropriations in the context of recent Congresses. Part I describes current rules that govern or, at least, should govern the authorization-appropriations process. In addition, Part I reviews the historical underpinnings for the distinction with particular emphasis on the conflicts within Congress that have shaped the evolution of authorizing and appropriations committees. Part II identifies the repercussions of the increasing influence of appropriators in the arena of legislative

4 As an example, Rule XVI(1) of the Standing Rules of the Senate makes enforcement of Senate rules contingent on the formal raising of an objection by a Member, “On a point of order made by any Senator, no amendments shall be received to any general appropriation bill the effect of which will be to increase an appropriation already contained in the bill, or to add a new item of appropriation…” Senate Rule XVI(1).
5 Most notably, in the House of Representatives, the Committee on Rules can by majority vote adopt a special rule that waives all points of order. A special rule supersedes the standing rules of the House in the application of the measure named in the rule. See Committee On Rules, House of Representatives. Legislative Process Program, available at: http://www.rules.house.gov/POP/specialrule_func.htm (last accessed on April 19, 2009).
and policy making decisions at the expensive of authorizing committees. Part III describes and evaluates a few recent proposals to reform the authorizing-appropriations process. This paper concludes with a discussion of possible recommendations for reform.

I. The Authorization-Appropriation Distinction

A. Definitions and Congressional Rules

Authorization measures are perhaps best understood for what they do not accomplish. Authorizations, by definition, do not obligate federal funds. They can however establish the parameters of particular spending programs by creating, continuing, or modifying agencies or programs. Authorities also can authorize appropriations for specific programs and federal agencies by setting non-binding spending targets for appropriators on a permanent, annual, or multi-year timetable. Generally when authorizations expire, they should be renewed.

Authorization measures fall under the jurisdiction of most congressional committees including the House Committees on the Judiciary and Homeland Security, or the Senate Committees on Armed Services. Some of these authorizing committees may also provide budget resources through direct spending legislation, most notably in the area of entitlements. For example, the House Ways and Means Committee and the House Energy and Commerce Committee share joint

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8 Id. at 24.
9 Id. The United States Senate has 17 standing committees of which, in general terms, 15 have jurisdiction over authorizing legislation. The House has 20 standing committees of which 17 have jurisdiction over authorizations. The appropriations and budget committees in both chambers generally do not consider authorizing legislation. In addition, the House Rules Committee serves as the gatekeeper for House floor proceedings.
10 Id.
jurisdiction over the Medicare program. These committees, by making programmatic changes to the Medicare program, control Medicare obligations incurred by federal agencies.

The congressional rules enforcing the authorization-appropriation distinction are designed to bifurcate these functions by separating committee jurisdiction over authorization and appropriations bills. Through House and Senate internal rules, Congress generally prohibits language in appropriations bills providing unauthorized appropriations or legislation on an appropriations bill. The Congressional Research Service defines “unauthorized appropriation” as “new budget authority in an appropriations measure…for agencies or programs whose authorization has expired or was never authorized, or whose budget authority exceeds the ceiling authorized.” “Legislation” is broadly interpreted to include “language in appropriations measures that change existing law, such as establishing new law, or amending or repealing current law. Legislation is under the jurisdiction of the authorizing committees.”

In the House of Representatives, Rule XXI governs the distinction between authorizations and appropriations. It prohibits unauthorized appropriations and legislation in regular appropriations bills and supplemental appropriations measures. However, the full scope of the rule is narrowed by many exceptions. Rule XXI only applies to general appropriations bills – bills that provide funds for more than one purpose or agency – but do not apply to continuing resolutions. Moreover, the House prohibition only applies to bills once

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11 Id. at 17.
12 Id.
13 See House Rule XXI, Senate Rule XVI.
14 Congressional Research Service, supra note 6, at 24.
15 Id. at 24-25
17 Id.
they are reported by the House Appropriations Committee, amendments to those bills, and conference reports.\textsuperscript{18} In practice, Rule XXI is frequently waived by the House Rules Committee which may adopt a special rule waiving the Rule prior to floor consideration of the appropriations bill or the appropriations conference report.\textsuperscript{19} The point of order does not apply to the committee report or the joint explanatory statement that accompanies the appropriations bill text.\textsuperscript{20}

The Senate rules on unauthorized appropriations and legislation operate differently than their House counterparts.\textsuperscript{21} Rule XVI has greater applicability covering general appropriations bills defined in the Senate to include regular appropriations bills, supplemental appropriations, and continuing resolutions.\textsuperscript{22} However, the Senate rule applies only to amendments to general appropriations bills, bills reported by the Senate Appropriations Committee or to the House passed measure.\textsuperscript{23} The rule does not apply to provisions in Senate bills or conference reports.\textsuperscript{24} With respect to unauthorized appropriations, Senate appropriations may only be provided for authorizations previously passed by the Senate in the same legislative session.\textsuperscript{25} The House rules require that the authorization be in law.\textsuperscript{26} Although the Senate rule generally prohibits unauthorized appropriations in non-committee amendments, Senators rarely raise this point of order because there are a myriad of exceptions to the rule.\textsuperscript{27} The Senate rules also prohibit

\textsuperscript{18} Congressional Research Service, \textit{supra} note 6 at 25.\textsuperscript{19} \textit{Id.}\textsuperscript{20} \textit{Id.}\textsuperscript{21} \textit{See} Standing Rules of the Senate, Rule XVI (2009).\textsuperscript{22} \textit{Id.} at Rule XVI, clause 1.\textsuperscript{23} \textit{Id.}\textsuperscript{24} \textit{Id.}\textsuperscript{25} \textit{Id.}\textsuperscript{26} \textit{Id.}\textsuperscript{27} Rules of the House of Representatives, 111\textsuperscript{th} Congress, Rule XXI Clause 2(a)(1), Rule XXI Clause 5 (2009).
legislative amendments and non-germane amendments during consideration by the Senate Appropriations Committee or on the Senate floor.  

Although as a formal matter, these rules create a jurisdictional barrier between appropriations and authorization committees, the distinction is largely illusory. In both the Senate and House, the rules are not self-enforcing. Unless a Member raises a point of order, the provision is likely to become law. In addition, the House of Representatives, through its Rules Committee can and frequently does report a rule which waives all points of order. As a practical matter, unauthorized appropriations and legislative riders are frequently included in appropriations bills and generally available for obligation or expenditure.

B. Historical Roots of Authorizations

While the Constitution grants Congress the power of the purse, it is left to Congress to decide through internal procedures how federal funding will be appropriated. Today’s authorization and appropriations process represents the evolution of over two centuries of congressional procedure and practice established as a result of turf battles between Members of Congress and between congressional committees. During early congressional sessions, the House Ways and Means Committee was generally responsible for reporting both appropriations and tax measures while the Senate Finance Committee performed the same functions in the Senate.  

During these early years, the rules and traditions governing the Congressional

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28 Senate Rule XVI, clause 1.
appropriations process were shaped in large measure as a response to emerging conflicts between the Executive Branch and the Legislative Branch.

The first appropriations bill providing all funding for the national government was enacted in 1789. The legislation totaled a mere thirteen lines and included four lump sums specifically requested by the Executive branch for federal government operations: “$216,000 for the civil list, $137,000 for the War Department, $190,000 to discharge warrants issued by the previous Board of Treasury, and $96,000 for pensions to disabled veterans.” No authorization for the appropriations was provided or even contemplated. The House passed the bill without Committee consideration or referral. The Senate approved the measure with little fanfare a few hours after it was reported out of a committee temporarily established to review the legislation.

Beginning in 1791 and in response to increasingly strained relationship between Congress and Treasury Secretary Hamilton, legislators successfully narrowed Executive discretion using a “that is to say” clause in its appropriations bills – “that is to say, $102,686 for pay of troops, $48,000 for clothing, etc…” By 1794, the House began using the Ways and Means Committee in conjunction with other committees for appropriations until 1802 when the Committee was given permanent status as a standing committee charged with annual

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31 Id.
32 Id.
33 Id. at 207
34 In fact, the House of Representatives considered a House resolution in 1793 accusing Hamilton of violating appropriations law, ignoring Presidential instructions, failing to discharge essential duties, and committing an indecorum against the House of Representatives. The charges were eventually dismissed. History of the United States House of Representatives, 1789-1994, p. 207
appropriations. The Senate continued its practice of assigning spending measures to select committees until 1816 when the Senate Finance Committee was established as a standing committee with jurisdiction over spending and revenue measures. Spurred by Republicans, the party of Thomas Jefferson, the early Congresses tended to mistrust the committee system, particularly in the appropriations process. It was thought that spending levels should be decided by the entire House of Representatives rather than by a select group of committee members. During the first Congresses, the budget process was far simpler than it is today with no formal distinction made between authorization and appropriation. In fact, given the limited size of the federal government and the relative size of the federal budget, there seemed to be little need or appetite for such distinctions.

In 1837, the House adopted a rule prohibiting appropriations in a general appropriation bill not previously authorized by law. Congress sought to prevent the possibility of delays in enacting appropriation bills because of legislative proposals contained in the bill. In 1865 and 1867, under pressure to finance the Civil War, the House Appropriations Committee was established with jurisdiction over general appropriation bills transferred from the Ways and Means Committee. Two years after, the Senate adopted the same reform. Proponents of the change cited the increasing workload of the House Ways and Means Committee and the Senate

37 Id.
38 Id.
39 Id. at 210.
40 Id.
41 Id. at 211.
42 Id.
Finance Committee in handling both appropriations and revenue legislation.\textsuperscript{43} In fact, before the Civil War, yearly federal appropriations increased from approximately $70 million annually to $800 million during the Civil War.\textsuperscript{44}

With the establishment of the appropriations committees, certain Members became critical of the increasing power of appropriators and sought to limit the inclusion of riders or authorizing language in appropriations bills. Debate over the Holman Rule exemplified the power struggle between appropriators and non-appropriators by defining the precise contours of the appropriations committee jurisdictional boundaries.\textsuperscript{45} Allen Schick identifies two more reasons for the post-Civil War emphasis on separating appropriations from authorization.\textsuperscript{46} One was concern that disputes over policy and legislation would impede the flow of funds to federal agencies.\textsuperscript{47} The other was “that the urgency of funding ongoing agencies would impel Congress to enact ill-considered legislation in appropriations bills.”\textsuperscript{48}

As the conflict between appropriators and authorizers escalated, the House and Senate adopted in the late 19\textsuperscript{th} century a plan to consolidate the appropriation and authorization functions of specified programs by transferring jurisdiction over several general appropriations

\textsuperscript{43} Id.
\textsuperscript{44} Id.
\textsuperscript{45} “In 1838 that Congress added the exception to permit unauthorized appropriations for continuation of works in progress and for contingencies for carrying on departments of the Government. The rule remained in that form until the 44th Congress in 1876, when William S. Holman of Indiana persuaded the House to amend the rule to permit germane legislative retrenchments. In 1880, the 46th Congress dropped the exception which permitted unauthorized appropriations for contingencies of Government departments, and modified the "Holman Rule" to define retrenchments as the reduction of the number and salary of officers of the United States, the reduction of compensation of any person paid out of the Treasury of the United States, or the reduction of the amounts of money covered by the bill. That form of the retrenchment exception...[i]t was [ ] dropped in the 54th Congress from 1895 until reinserted in the 62d Congress in 1911 (IV, 3578; VII, 1125).” Government Printing Office, \textit{106th Congress House Rules Manual}, House Document No. 106-320 (1999).
\textsuperscript{46} ALLEN SCHICK, THE FEDERAL BUDGET, THIRD EDITION: POLITICS, POLICY, PROCESS (2007).
\textsuperscript{47} Id.
\textsuperscript{48} Id.
bills from the Senate and House Appropriations Committees to various authorization committees.\(^{49}\) By consolidating jurisdiction over appropriations bills among several authorization committees, control over overall Federal spending was decentralized and appropriators were left with only a portion of yearly appropriations bills. The House fragmentation lasted approximately 35 years, until all general appropriations bills were re-centralized in the House Appropriations Committee in 1920, while in the Senate jurisdiction over all general appropriations was returned to the jurisdiction of the Senate Appropriations Committee in 1922.\(^{50}\)

Congress again sought to reform the appropriations process in response to the dramatic increase in expenditures and the national debt as a result of World War I. Federal expenditures rose from about $700 million before World War I to $12.7 billion and $18.5 billion during 1918 and 1919.\(^{51}\) Congress passed the Budget and Accounting Act of 1921, which established the Bureau of the Budget (later reorganized as the Office of Management and Budget) and gave the President the responsibility for preparing and submitting the annual budget to Congress.\(^{52}\) The decentralized appropriations process, with certain committees vested with authorization as well as appropriations functions, was partly blamed for the significant increase in federal expenditures.\(^{53}\) The balance of power had shifted back to appropriators and would never significantly swing back to the authorizers.


\(^{50}\) Id.


\(^{52}\) Id.

\(^{53}\) Id.
Fragmentation of committee jurisdiction over spending exists today. Currently, most spending is controlled by the Senate Finance and House Ways and Means Committees in the form of entitlement programs. Examples of entitlement programs include Social Security, Medicare, unemployment compensation, and various veterans benefit programs. For Federal Fiscal Year (“FFY”) 2008, approximately 57% of all FY2009 spending took the form of entitlements and nearly 40% fell under the jurisdiction of the appropriations committees.54

II. Unbalanced Power – Authorizing on Appropriations Legislation

Congress ostensibly recognizes the benefits of a bifurcated authorization-appropriations framework declaring that, “all programs that are taxpayer-financed should be subject to periodic review through the authorization process” which serves as “an effective vehicle for systematically reviewing agency goals, assessing performance, eliminating or duplicative function, and making such changes in program design as are necessary.”55 The rules of the House and Senate as well as the committee system and its division of responsibilities formalize this distinction. In practice, however, appropriators have increasingly consolidated appropriations and authorization functions encroaching on jurisdictional territory that should, at least as a formal matter, be reserved to the authorizing committees.

As a result, appropriations bills are usually laden with funding for programs that have not been authorized and with language that does much more than provide for or explicate funding

54 Congressional Budget Office, *The Budget and Economic Outlook: Fiscal Years 2009 to 2019* (January, 2009) p. 16 (Table 5 estimates that mandatory spending for FY 2008 totaled nearly $1.6 trillion while discretionary spending accounted for slightly more than $1.3 trillion of the overall federal budget).
allocations. By using appropriations bills as vehicles to enact legislation or unauthorized appropriations, sound thorough deliberative policy making suffers. Unlike their authorizing counterparts, appropriators often bypass the hearing and open debate procedures when considering non-appropriations matters. Legislative riders and unauthorized appropriations are inserted into the legislative text behind closed doors without formal debate. In addition, appropriators frequently use Committee Reports to make substantive policy and legislative changes. These reports are largely not open to amendment or even debatable during committee consideration. One commentator has accurately noted that the appropriations process is used to “accomplish substantive objectives that have not been considered previously or that contravene established statutory objectives …[preventing] the appropriate authorizing committee from applying its expertise. Exacerbating this problem, appropriations are often acted on quickly, providing little opportunity for thoughtful deliberation of the issues raised by such deliberations.”56 The encroachment by appropriators in areas reserved under congressional rules to authorizers takes different forms, each with its own consequences for the deliberative process.

A. Unauthorized Appropriations

The practice of using appropriations to fund unauthorized appropriations encroaches on jurisdictional territory reserved to authorizers, renders the work of authorizers duplicative or superfluous, and aggrandizes the power of Appropriations Subcommittee Chairmen. The Prescription Drug Monitoring Program provides a good, albeit small, example. Every year since FY 2002, Congress has appropriated funds for a Prescription Drug Monitoring Program that

provides grants to states “to assist States in building or enhancing prescription drug monitoring systems, facilitating the exchange of information among States, and providing technical assistance and training on establishing and operating effective prescription drug monitoring programs.”

In Fiscal Year 2009, the program received an appropriation of $7 million codified through brief legislative language: “$7,000,000 for a prescription drug monitoring program.” The Judiciary Committee failed to authorize the program when it considered a Department of Justice reauthorization bill in 2005 which covered similar law enforcement programs. Only the Appropriations bill’s report language appears to serve as an informal authorization: “The bill includes $7,000,000 for the Prescription Drug Monitoring Program…the OJP [Office of Justice Programs] is expected to work with the DEA [Drug Enforcement Agency] to implement this program.”

It should be noted that the program’s formal title is the Harold Rogers Prescription Monitoring Program named after the Chairman of the House Appropriations Subcommittee with jurisdiction over Department of Justice funding in 2002 when the program was created.

The Appropriations Committees typically fund numerous other programs that either have never previously been authorized or whose authorization has expired. The Congressional Budget Office (“CBO”), pursuant to statute, issues an annual report to Congress listing all programs and activities for the most recent fiscal year for which authorizations of appropriations have expired.

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59 Violence Against Women and Department of Justice Reauthorization Act of 2005, Pub. L. 109-162 (2006) (The bill included reauthorization for a large number of state and local government law enforcement activities including the Edward Byrne Memorial Justice Assistance Grant program and the State Criminal Alien Assistance Program. Of note, funding under these programs can be used by states to establish prescription drug monitoring programs).
or will expire during the current fiscal year.\textsuperscript{61} A CBO report concluded that in Fiscal Year 2008, Congress had appropriated approximately $160 billion in unauthorized grants.\textsuperscript{62} The majority of these unauthorized appropriations were for programs that fall under the jurisdiction of the Committees on Armed Services, Transportation and Infrastructure, and Judiciary.\textsuperscript{63} While total funding for unauthorized programs represents only a small share of total yearly discretionary spending, the practice of including appropriations for activities that have never been fully vetted or have been rejected by authorizers raises a number of troubling questions. The result is a process that leaves authorizers with little substantive and meaningful input in the overall appropriations process. Whether an authorizing committee decides to establish or abolish a federal program becomes meaningless, since their decisions can and are often overridden as appropriations bills move through the Federal budget process.

**B. Legislating in Appropriations Bills**

Purely legislative topics, that have little bearing on the appropriations process, can become the focal point of intense debate over annual spending measures. These policy riders, tucked into the legislative text of an appropriations bill, often have only a tangential relationship to the programs or appropriations under the jurisdiction of the Appropriations Committee. They are, in essence, policy matters better suited for debate within the sphere of the authorizing committees. Not only do these policy riders encroach on the jurisdiction of authorizing

\textsuperscript{61} Congressional Budget Office, *Unauthorized Appropriations and Expiring Authorizations* (2009). The Congressional Budget Office is required by section 202(e)(3) of the Congressional Budget and Impoundment Control Act of 1974 to submit a report to Congress annually outlining programs that need to be authorized or reauthorized before the appropriations process begins.

\textsuperscript{62} Id. at 2.

\textsuperscript{63} Id. at 4, Table 1.
committees, they can have serious consequences for the proper and timely enactment of appropriations legislation.

The Hyde Amendment, named after its sponsor, an appropriator at the time, is perhaps the best known legislative rider.64 The Hyde Amendment barred the use of federal funds to pay for abortions and represented the first major legislative victory by opponents of the Supreme Court’s abortion decisions.65 On its face, the Hyde Amendment appeared to fall within the purview of annual appropriations bills. Rather than authorizing a new program or changing existing multi-year laws, the amendment sought to narrow the use of spending allocations by prohibiting the obligation of funds for certain specific purposes. While designed as purely a “limitation rider,” the Hyde Amendment was more than just a limitation. Enacted in 1976, as an anti-abortion response to Roe v. Wade, the amendment sought to alter the abortion debate landscape and counter decisions made by the Judiciary branch.66

The first two attempts to insert the Hyde Amendment into the 1977 Labor, Health, Education and Welfare appropriations bill were struck down as improper legislating on an appropriations bill.67 Responding to a point of order under Rule XXI, the House chair ruled that the amendment either interfered with executive branch discretion in carrying out authorized functions or that it required officials to make judgments not at the time required by law.68 On

65 Id.
68 Id.
the third attempt, Hyde Amendment supporters succeeded by submitting simple language that omitted any reference to current law or to agency discretion, “[n]one of the funds appropriated under this Act shall be used to pay for abortions or to promote or encourage abortions.”

Since 1977, the Hyde Amendment and similar abortion-related appropriations have increased and rendered the Labor, Health and Education appropriations measure the most contentious and difficult appropriations bill to enact, even though the bill should be largely non-controversial with respect to pure funding matters. In 1995, the Hyde amendment and similar policy riders contributed to the government shut-down. Under Republican leadership, the House of Representatives decided to use the appropriations process to enact its agenda. Numerous riders were attached to spending bills. In addition to a modified stepped-up version of the Hyde Amendment, the FY 1996 Labor HHS appropriations bill included language limiting the enforcement powers of the Occupational Safety and Health Administration and a proposal to overturn an executive order issued by President Clinton that barred federal contractors from permanently replacing striking workers. These policy riders, in addition to proposed overall cuts in discretionary spending levels, became the focal point of conflict between President Clinton and the Republican Congress and eventually resulted in the government shutdowns of 1995 and early 1996.

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69 Id.
71 Id.
72 Id.
73 Id.
In addition to bogging down the annual appropriations process, debates over policy riders are not well served in the context of the appropriations process. Appropriators do not have the expertise in substance policy subject matters that their authorizing counterparts have. Moreover, policy riders are usually inserted into appropriations bills by senior members of the committee with little opportunity for hearings and thorough analysis. Authorizing committees, given their special expertise in legislative and statutory policy matters are better equipped to take on a thorough examination of subject matters that deserve more thoughtful consideration than thirty minutes on the House floor.

C. Authorizations Disguised as Appropriations Report Language

Appropriations legislation is almost always accompanied by report language designed to explain the appropriations bill.74 Report language is non-binding and does not carry the force of law. However, Executive Branch agencies treat report language as the equivalent of law for fear of the consequences of disobeying directives issued by the appropriators.75 Report language accompanying appropriations bills has grown exponentially in recent decades as Members of the appropriations committee have sought to accomplish their policy objectives without running afoul of House and Senate Rules which govern appropriations bills but generally do not apply to report language.

75 Id. at 2 (finding that with respect to appropriations report language “executive branch agencies take them seriously because they must justify their budget requests annually to the Appropriations Committees.”)
While report language should be limited to clarifying or explicating the legislative text, reports accompanying appropriations bills do much more. The recently enacted FY 2009 Omnibus Appropriations bill provides numerous examples of legislative or authorizing mandates effectively disguised as report language.\textsuperscript{76} For example, the Joint Explanatory Report for the FY 2009 Omnibus Appropriations bill directs FEMA to issue regulations requiring states to include Emergency Medical Service in their homeland security grant applications.\textsuperscript{77} Report language is included urging the Office of Personnel Management to “consider” federal health benefits for same-sex domestic partners of federal employees.\textsuperscript{78} Another provision requires the National Marine Fisheries Service to participate in the restoration of the San Joaquin River Restoration Settlement pursuant to a Federal court order.\textsuperscript{79} While none of these provisions have the force of law, federal agency officials are compelled to comply with recommendations imposed by those in Congress who control their annual budgets.

At its worst, report language can effectively preempt thoughtful and comprehensive consideration of entire subject areas. Professor Richard Lazarus of Georgetown Law recently studied the increasing use of appropriations report language in the context of environmental policy since the 1980s concluding that “when Congress does exercise its lawmaking authorities to influence environmental protection policy, it does so primarily through the appropriations process: the sphere of its responsibility that, ironically, has proven to be the least conducive to the kind of deliberative democracy that justifies legislative supremacy in environmental

\textsuperscript{77} Id.
\textsuperscript{78} Id.
\textsuperscript{79} Id.
In fact, report language is rarely debated in open committee meetings and does not garner the public scrutiny that authorizing legislation is subject to. Committee reports are usually drafted behind closed doors by the Chairman of the appropriations subcommittee with jurisdiction. It is not subject to amendment either at the Committee level or on the House or Senate floor. Professor Lazarus is left to conclude that: “[p]aralysis of the congressional authorization committees has created opportunities, often fueled by perverse political incentives, for those hoping to effectuate legal change through nondeliberative, back-door, private deal-making in appropriations legislation.”

D. Earmarks – Public Perception

The importance of report language in the appropriations process is perhaps best understood, at least in the public eye, in the context of earmarks. According to one Member of Congress, it is estimated that in one recent year 96 percent of earmarks were contained in conference reports or committee reports rather than in the appropriations text itself. Although there is no formal agreed upon definition of “earmarks,” OMB defines earmarks as “funds provided by the Congress for projects or programs where the congressional direction (in bill or report language) circumvents Executive Branch merit-based or competitive allocation processes, or specifies the location or recipient, or otherwise curtails the ability of the Executive Branch to manage critical aspects of the funds allocation process.” Citizens Against Government Waste takes a broader view defining an earmark as, “any expenditure for a specific purpose that is

81 Id. at 622.
tucked into a larger bill."84 As a practical matter, earmarks have little impact on the overall Federal budget. In Fiscal Year 2008, there were over 11 thousand earmarks accounting for $16.5 billion according to OMB, representing a fairly small share of the approximate total of $3 trillion budget for that year.85

The proliferation of earmarks, however, has become a lightning rod for critics of the appropriations process. One Senator recently noted that between 1994 and 2005 earmarks increased from under 2,000 to 14,000.86 Fueling the criticism, most earmarks are not authorized or publicly debated. They are usually inserted into non-binding reports accompanying the text of appropriations bills and therefore cannot be amended. Historically, they are not available for public viewing until after one chamber of Congress or the other has passed its version of the appropriations measure. Once they do become public, critics relish the opportunity to find particularly offensive earmarks. Senator Tom Coburn (R-OK), a fervent opponent of earmarks recently highlighted some questionable earmarks: “$1.9 million for the Pleasure Beach water taxi service in Connecticut, $300,000 to commemorate the 150th anniversary of John Brown's raid on the arsenal at Harpers Ferry National Historical Park in West Virginia and $238,000 for the

84 Tom Finnegan, All About Pork: The Abuse of Earmarks and the Needed Reform (2007) (available at: http://www.cagw.org/site/PageServer?pagename=reports_earmarks#Definition). Mr. Finnegan also noted the importance of authorizers in the congressional budget process “in their role as screeners of federal priorities. Authorizing committees are charged with exercising oversight, holding hearings, and measuring results for every aspect of the federal government.” Id.
Polynesian Voyaging Society of Honolulu, which runs sea voyages in ancient-style sailing canoes.”

The public perception is that earmarks, lobbyists, appropriators and campaign contributions are inextricably linked. The high-profile indictments and convictions of Senator Ted Stevens (R-AK) and Representative Randall “Duke” Cunningham (R-CA) have led to greater scrutiny of not just earmarks but of the entire appropriations process, including reinvigorating the role of authorizers. As a result, modest reforms to the appropriations process and the earmark process appear on the rise.

E. The Role of Cardinals – Power in the Hands of a Select Few

In both the Senate and the House of Representatives, the Chairmen of the Appropriations Committees and the Committees’ various subcommittees hold particular sway over the appropriations process. The appropriations process begins with them, and it often ends with them. An appropriations subcommittee chairman, also known as a “cardinal”, provides the first draft of the appropriations bill under his or her jurisdiction. It is usually circulated to other committee members a day or two before subcommittee consideration. By the time it reaches the

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88 See id.
floor of the House and Senate, a week perhaps two weeks later, few Members have had the opportunity to parse through and fully digest both the bill and the important report that accompanies it.

The subcommittee chairs are charged with shepherding the bill through the appropriations process before it leaves the chamber bound for a Senate-House Conference. At each stage, the “cardinal” exerts his or her influence, using political savvy and direct or indirect threats of funding reductions, to ensure that the underlying bill passes the chamber relatively unscathed. Each of the eleven appropriations bills contain programs, directives and earmarks that provide targeted financial assistance to every congressional district and state. Because appropriations bills have grown so large in scope, appropriators can easily resist serious challenges to the bill by implicit threats to withhold funding from congressional districts whose representatives might dare to challenge the cardinal.

Cardinals also flex their muscle in the face of Executive Branch challenges. House Appropriations Subcommittee Chairman Jamie Whitten headed the Agriculture Appropriations Subcommittee for nearly forty years and held particular sway over the activities of the Agriculture Department. During the late 1980s, he and the Department disagreed over funding levels for soil conservation programs. Congressman Whitten sought higher appropriations for soil conservation, but the Department favored curtailing the program. To show his displeasure

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92 Id.

93 Id.
with the Department, Whitten successfully, through the appropriations process, abolished the job of his chief rival in the Department who at the time was Assistant Secretary for conservation programs.94

III. Proposals to Reform the Authorization/Appropriation Process

In the past twenty years, numerous reform proposals have been introduced to combat the growing influence of appropriators, slow the growth of discretionary spending and establish a clear distinction between the appropriations and authorization process. These reforms, often taking the form of bold changes to statute or internal congressional rules, have floundered in the face of strong resistance from appropriators unwilling to cede power in the budget process. A few noteworthy reforms are described below.

Since the late 1980s, attempts have been made to fundamentally change the appropriations process with the introduction of legislation establishing a biennial budget cycle.95 Biennial budgeting would change the cycle under which Congress acts on budget resolutions and appropriations acts to from one year to two years.96 Supporters contend that a biennial budget would limit the amount of time Congress spends on appropriations and budgetary matters and facilitate more thorough oversight of federal agencies and programs and lead to a more

94 Id.
95 See e.g. The Biennial Budget and Appropriations Act of 1997 (S. 261) (introduced by Senator Domenici the bill was favorably reported by the Senate Committee on Government Affairs on September 4, 1997, but was never called up on the Senate floor); The Biennial Budget and Appropriations Act of 2008 (S. 2627) (introduced on February 13, 2008, the bill was referred to the Senate Committee on the Budget where it languished).
96 Id.
In practice, however, it is unlikely that biennial budgeting would accomplish these substantive objectives, particularly in light of Congress’ recent appetite for enacting Supplemental Appropriations bills. Congress and appropriators are more likely to use non-appropriations years to debate and eventually enact a myriad of supplemental appropriations.

In the 1980s, Senators Nancy Kassebaum (R-KS) and Daniel Inouye (D-HA) introduced a bold concept to rectify the imbalance of power between appropriators and authorizers – combine the authorizing and appropriators into single committees established by subject matter. Under this proposal, committees that currently only perform authorizing functions would handle both appropriations and authorizing legislation falling under their jurisdiction. The Judiciary Committee, for example, would handle programmatic and oversight functions as well as annual appropriations for programs administered by the Department of Justice. The House and Senate Homeland Security Committee would serve dual functions for homeland security. In essence, the appropriations committees would be abolished, replaced by a system that diffuses power over spending within the committee system to nearly every Member of Congress.

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100 Id.
Proposals to eradicate the jurisdictional distinction between appropriations and authorizations have been raised in other contexts. Most recently, the 9/11 Commission adopted a recommendations proposing to merge the authorization and appropriations functions for intelligence programs into a single committee. Critics have argued that such proposals would increase discretionary spending noting the sharp increase in appropriations funding that occurred during the period between 1880 and 1920 when many committees performed both functions. The idea, however, merits greater scrutiny, because the congressional budget process has changed significantly in the last 40 years. Following enactment of the Congressional Budget and Impoundment Control Act of 1974, a budgetary framework is in place that caps, to a certain extent, allocations to committees and subcommittees charged with discretionary spending. Today, it is more likely that discretionary spending would be restrained under a committee regime that combines the authorization/appropriation functions, particularly if the Budget Committees are given more power.

Rather than bold statutory changes, other critics of the appropriations process favor amending House and Senate rules by closing procedural loopholes or instituting self-enforcement mechanisms. These efforts have been met with limited success, although modest changes to the rules have been adopted with respect to earmarks. For example, in 2006, Senator John McCain, a long time critic of the appropriations process, introduced S. 2265 which would have strengthened Rule XVI to further discourage authorization riders in appropriations bills or

The McCain proposal would allow a 60-vote point of order to be raised against specific provisions that contain unauthorized appropriations, including but not limited to earmarks, as well as unauthorized policy changes in appropriations bills and conference reports. S. 2265 would also require that conference reports be available at least 48 hours prior to floor consideration. Although the McCain bill languished in Committee during the 110th Congress, the limited scope of the proposal should form the basis for incremental reform that is less likely to directly challenge the current political imbalance between appropriators and authorizers.

IV. Recommendations for Incremental Reform

Recent attempts to reform the appropriations process, and indirectly the authorization process, have failed in large measure because of institutional inertia. Appropriators control the purse strings and can leverage funding for federal programs and individual Member earmark requests. In return, Members of the Appropriations Committees are assured that serious attempts to reform the system will falter. Because of these political dynamics, current attempts to bring meaningful reform are doomed to fail. No where is this more apparent that in the area of earmarks. Representative Floyd Flake and Senator John McCain have repeatedly sought enactment of reforms that would, by all accounts, wrest control over earmarks from the Appropriations Committees. Each attempt has been met by resistance from not only appropriators but also other Members who rely on the generosity of appropriators for pet

103 The Pork-Barrel Reduction Act, S. 2265 (introduced by Senator McCain on February 9, 2006)
104 Id.
105 Id.
106 See H.R. 1996, 111th Congress (introduced on April 21, 2009, the bill, sponsored by Congressman Flake would prohibit the inclusion of earmarks in the Intelligence Authorization Act of 2010); H. Res. 85, 111th Congress (introduced on January 26, 2009, the resolution would impose additional reporting requirements for members requesting earmarks; S. 254, The Congressional Accountability and Line-Item Veto Act of 2009 (introduced by Senators McCain and Feingold, the bill would provide for line-item removal of earmarks)
projects. It is clear that bold initiatives to reform the authorization process will suffer a similar fate.

Serious recommendations to reform the authorization/appropriations framework need to recognize the institutional and political dynamics of the current system. Reform must begin with term limits for appropriators that include a mechanism for grandfathering in current members of the appropriations committees. In addition, the appropriations process must be rendered more transparent subjecting appropriations bills and report language to public scrutiny. A grandfathering provision in connection with term limits would sufficiently safeguard the interests of current Members of the Appropriations Committees. Efforts to create a more transparent and accountable appropriations process would be difficult to oppose. Transparency is a fundamental tenet in a modern democracy and has generally been met with little resistance in the area of earmarks.

Should a time come when more substantive reform is politically necessary or even palatable, proposals should strengthen House and Senate procedural rules and provide the House and Senate Budget Committee with greater responsibilities over the budget process. Although such reforms seem unlikely today, there may come a time when public perception of the appropriations process compels Members of Congress, perhaps even appropriators, to take affirmative action to fix the process. The time for bold reform may come sooner rather than later. Several Members of the Appropriations Committee have recently been the subject of
Federal investigations for allegedly taking advantage of their positions. One is in jail for abusing his appropriations committee responsibilities. Another was convicted in December, 2008, although the charges were later dropped under allegations of prosecutorial misconduct. These very public investigations and criminal cases may lead to substantive and long-term changes to the appropriations process. These reforms would also ensure that the distinction between authorizations and appropriations is substantive rather than a mere procedural formality.

A. Challenging the Power of Appropriators - Term Limits for Appropriators

As a first step to reform, critics must recognize that appropriators have little incentive to change the current process. Once a Member of Congress is selected to serve on the Appropriations Committee, tenure is only limited by a loss in the general election, retirement or death. Senator Robert Byrd (D-WV) has served on the committee for a remarkable 50 years. Before leaving the Senate, former Chairman Ted Stevens (R-AK) had served for nearly 30 years. The numbers are similar in the House as evidenced by Congressman Jamie Whitten’s 40 year reign as an appropriations subcommittee chair. Ideally, in a democratic institution, membership on a particularly powerful committee should be available to a wide array of Members and constituencies. Unfortunately, only a select few are chosen to serve on the Appropriations Committees and their tenure is secured until they leave Congress.

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107 See e.g. Charles R. Babcock, House Appropriations Chairman is Facing Federal Investigation, The Washington Post, May 12, 2006; Brian Faler and Michael Forsythe, Mollohan under FBI Probe is Poised to Control Bureau’s Budget, Bloomberg.com, December 5, 2006.
Term limits for appropriators would downgrade the importance of seniority on the committee and limit the effective control held by the cardinals in favor of a more meritocratic system of choosing short-term committee leaders. It would encourage members to vote on principle rather than in line with long-term committee interests. With the knowledge that a stint on the appropriations committee would be followed by tenure on an authorizing committee, appropriators might be more likely to defer legislative matters to the appropriate authorizing committee. In addition, term limits would introduce a periodic influx of new ideas in the appropriations process and likely reduce the entrenched power of the committee staff and bureaucracy. It may, in the long-term, even lead to reduced discretionary spending as Members begin to view Committee service as a temporary stop in a congressional career.

Most importantly, under a regime of term limits, appropriators would no longer have the institutional incentive to oppose more drastic reforms to the appropriations process. Of course, current members of the Appropriations Committees are not likely to support term limits unless the rules do not apply to their service. For this reason, any proposal to limit the terms of appropriators should grandfather in current members. It should align the length of committee service with the constitutional terms of Senate and House Members. In the House, service on the Appropriations Committee should be limited to three terms to allow Members to gain some expertise in the appropriations process, affecting only two election cycles. Senate terms should be limited to eight years reflecting the six year election cycle. While a grandfathering provision will not solve the near-term problems in the appropriations process, it is the most acceptable method for introducing long-term comprehensive reform. *(Specific language amending House and Senate rules to incorporate terms limits for appropriators is included as Attachment A)*
B. Increased Accountability and Transparency

Efforts to bring accountability and sunlight to the appropriations process have been met with some success in recent years, most notably in the area of earmarks. During the 110th Congress, the House adopted rules requiring the identification of earmarks and their sponsors before legislation can be considered and imposing other restrictions.110 The Senate recently followed suit adopting, as part of an ethics reform package, earmark reform provisions including the requirement that earmarks be identified prior to consideration and that their sponsors be publicly identified.111 These reforms, while modest, have resulted in greater scrutiny of not just earmarks but of the appropriations process in general.

However, more reform is needed. Successful attempts to bring sunlight to the earmarking process should be broadened to include other aspects of the appropriations process. In the Senate, Rule XVI should be amended to require that appropriations bills including accompanying reports be available on-line at least 48 hours before the Senate votes on a motion to proceed with the appropriations bill. A similar amendment to House Rule XXI should be adopted to ensure that House appropriations bills are subject to the same public scrutiny. These reforms should be relatively non-controversial, yet effective in calling attention to legislative riders, earmarks, and unauthorized appropriations. As Justice Louis Brandeis once stated,

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111 See Rule XLIV of the Standing Rules of the Senate for the 111th Congress (2009)
“sunlight is the best disinfectant; electric light the best policeman.”\textsuperscript{112} (Specific language amending House and Senate rules to ensure public access to the text of appropriations bills is included as Attachment B)

C. Strengthening Senate and House Points of Order

More substantive reforms could be implemented at the Committee level through modifications to Appropriations Committee rules of procedure including making appropriations bills and reports available to committee members and the public at least 48 hours prior to subcommittee consideration, prohibiting policy riders or unauthorized appropriations in the appropriations bill or report, and permitting, as a right, the consideration of amendments to the non-binding report. However, even with term limits, it is unlikely a committee or subcommittee chair would support changes to committee rules that limit his or her discretion.

Reform should therefore take the form of amendments to House and Senate procedures that are subject to a vote of the full House or Senate rather than the whim of an Appropriations Committee Chair. Specific reforms to House and Senate rules should be modeled on a proposal introduced by Senator McCain in 2006.\textsuperscript{113} Any member should be permitted to raise a point of order against specific provisions in either the appropriations text or the accompanying report that either include unauthorized appropriations or encompass purely policy matters. Current loopholes in House and Senate rules should be closed.

\textsuperscript{112} Louis D. Brandeis, Other People's Money and How the Bankers Use It, p. 92 (1914).
\textsuperscript{113} The Pork-Barrel Reduction Act, S. 2265 (introduced by Senator McCain on February 9, 2006)
Senate Rule XVI broadly covers unauthorized appropriations and policy riders. In its scope, the Rule has greater applicability than its House counterpart which does not cover continuing resolutions. However, Rule XVI contains some notable exceptions which should be addressed. Rule XVI’s scope should be broadened to cover Senate appropriations measures in general. It should apply to conference reports as well as to all provisions contained in appropriations bills whether adopted in the Chairman’s draft, included as a Committee amendment or as a floor amendment. With respect to unauthorized appropriations, the Rule should prohibit appropriations unless there is an authorization in law. Current rules permit appropriations for authorizations previously passed by the Senate in the same legislative session. Recognizing that there may sometimes be a need to include unauthorized appropriations or legislative riders in an appropriations bill, the proposed amendment provides for a waiver of the Rule with the affirmative vote of three fifths of Senators.

Similar language should be adopted in the House to prohibit unauthorized appropriations and legislation in all appropriations bills and supplemental appropriations measures including continuing resolutions. Prospects for further reform in the House are more problematic. Rule XXI may be bypassed through adoption by the Rules Committee of a rule waiving all points of order to appropriations bills or the appropriations conference reports. Without the ability to waive or limit objections on the House floor, the appropriations process would likely become bogged down in a myriad of procedural disputes. However, if Senate rules are enforced, particularly if they apply to conference agreements, and the concerns regarding report language

114 See Rule XVI of the Standing Rules of the Senate.
116 Id.
are addressed, there is little need to further modify House rules. *(Proposed changes to House and Senate Rules based on legislation introduced by Senator McCain are included in Attachment C)*

**D. Limiting the Scope of Report Language**

On the statutory front, legislation should be introduced which prohibits agency obligation of funds for earmarks and programs not included in the appropriations text. Given that most earmarks are contained in non-binding reports, this proposal would require agencies to disregard earmarks that have not been fully vetted through the legislative process. As an alternative, the President could direct, through the issuance of an Executive Order, agencies to disregard earmarks or unauthorized appropriations contained solely in report language. Because Presidents have declined to exercise such authority, a statutory amendment is necessary to require that unauthorized appropriations, particularly earmarks, are included in the text of appropriations bills. *(Proposed legislative text, based on proposals by Senator McCain, is included as Attachment D)*

**C. Granting Budget Committees Greater Appropriations Oversight Functions**

Our Founding Fathers recognized the importance of the separation and devolution of power in government.\(^{117}\) For this reason, the Constitution spreads authority over governmental functions across three branches of government. In Congress, the Senate and the House share power, often uncomfortably, over legislative activities. The same theory of government should

\[^{117}\text{See The Federalist No. 47 (James Madison)} (“The several departments of power are distributed and blended in such a manner, as at once to destroy all symmetry and beauty of form; and to expose some of the essential parts of the edifice to the danger of being crushed by the disproportionate weight of other parts.”). *Id.*\]
apply to the appropriations process. As an alternative to increased transparency and accountability, policy makers should consider giving another committee added statutory responsibilities to counterbalance the modern consolidation of power in the hands of appropriators. The Budget Committees could effectively serve this role.

Two budget reforms should be considered. First, a joint budget resolution that has the force of law should be adopted. Under the Congressional Budget Act, the concurrent budget resolution does not carry the force of law. Although appropriators typically abide by the budget resolution, they are free to disregard its spending allocations. A statutory budget resolution would require appropriations and budget committee members to negotiate spending levels. In addition, under current law and rules, the budget resolution is broken down by function which can easily be manipulated and modified by the Appropriations Committees. The Budget Committee should have authority to divide spending allocations by appropriations subcommittee rather than by functional categories.

Although neither of these reforms directly address unauthorized appropriations, report language or policy riders, they provide the Budget Committee with just enough power relative to appropriators to foster meaningful discussion of topics not necessarily related to spending caps. Power over the appropriations process would truly be shared by two committees with the Budget Committee in a better position to protect the jurisdictional boundaries of authorizing committees. It is likely, for instance, that negotiations on spending levels for a particular appropriations subcommittee would engender a discussion of earmarks and unauthorized appropriations. While the Budget Committee would have the responsibility for setting overall mandatory funding levels
for subcommittees, final decisions on specific programs and report language would still fall within the sole purview of the Appropriations Committee. *(Proposed amendments to the Congressional Budget Act are listed in Attachment E. Complicated language providing the Budget Resolution with the force of law is deemed beyond the scope of this paper).*

V. Conclusion

Over the last forty years, the distinction between authorizing legislation and appropriations has become blurred as the Senate and House Appropriations Committees have increasingly encroached on territory traditionally reserved to the authorizing committees. The encroachment has been most notable in the area of unauthorized appropriations, policy riders, earmarks and report language. Reforms are needed to ensure that legislative topics are debated and decided by committees with jurisdictional expertise, to lessen the dangers commensurate with the accumulation of power in a select few, and to regain the public trust. The recommendations contained in this paper may, at first, appear rather modest. However, reforms should not obliterate the important role of the appropriations committee in the performance its constitutional duties, but must reassert the distinction between appropriations and authorizations.
Term Limits for Appropriators
(Attachment A)

Amend Rule X of the Rules of the House with a new clause 5(c)(2):

A Member of the Appropriations Committee may not serve on the Appropriations Committee or any of its subcommittees during more than three consecutive Congresses (disregarding for this purpose any service for less than a full session of Congress). Members serving on the Appropriations Committee as of the date this resolution is adopted shall not be subject to the requirements of this subsection.

Amend Rule XXV of the Standing Rules of the Senate with a new subsection 3(h):

No Senator who is a member the Appropriations Committee may serve on the Appropriations Committee or any of its subcommittees during more than four consecutive Congresses (disregarding for this purpose any service for less than a full session of Congress). Members serving on the Appropriations Committee as of the date this resolution is adopted shall not be subject to the requirements of this subsection.
Increasing Transparency and Accountability  
(Attachment B)

Amend Rule XXI of the House with a new clause 11:

(11) It shall not be in order to consider on the House floor any general appropriations bill or conference report unless the bill and the accompanying committee or conference report has been available on a publicly accessible website in searchable format at least 48 hours before consideration on the House floor.

Amend Rule XVI of the Standing Rules of the Senate a new Clause 12:

(12) It shall not be in order to vote on a motion to proceed to consider a general appropriations bill or conference report, unless the bill and the accompanying committee or conference report has been available on a publicly accessible website in searchable format at least 48 hours before such vote.
Amend Rule XXI of the House with a new clause 12:

(12) For purposes of this section, the term “general appropriations” shall include but not be limited to annual appropriations acts, continuing resolutions and supplemental appropriations acts.

Amend Rule XXVI of the Senate with a new clause 9, clause 10 and clause 11:

(9) No new or general legislation nor any unauthorized appropriation may be included in any appropriations bill. No new or general legislation nor any unauthorized appropriation, new matter, or nongermane matter may be included in any conference report on a general appropriation bill.

(10) A point of order under clause (9) may be waived only by a motion agreed to by the affirmative vote of three-fifths of the Senators duly chosen and sworn. If an appeal is taken from the ruling of the Presiding Officer with respect to such a point of order, the ruling of the Presiding Officer shall be sustained absent an affirmative vote of three-fifths of the Senators duly chosen and sworn.

(11) If a point of order under clause (9) against a Senate bill is sustained, then--
(A) the affected provision shall be struck from the bill; and
(B) any modification of total amounts appropriated necessary to reflect the deletion of the matter struck from the bill shall be made and the allocation of discretionary budgetary resources allocated under section 302(a)(2) of the Congressional Budget Act of 1974 shall be reduced accordingly.
Proposed Legislation

(a) No federal agency may obligate any funds made in an appropriation act to implement an earmark or unauthorized appropriation that is included in a congressional report accompanying the appropriation Act, unless the earmark or unauthorized appropriation, is also included in the appropriation Act.

(b) Definitions – For purposes of this section:

(1) The term ‘earmark’ means a provision that specifies the identity of an entity, not including a Federal agency, to receive assistance and the amount of the assistance.

(2) The term ‘unauthorized appropriations’ means an appropriation--
(i) not specifically authorized by law; or
(ii) the amount of which exceeds the amount specifically authorized by law to be appropriated.

(3) The term ‘congressional report’ means a report of the Committee on Appropriations of the House of Representatives or the Senate, or a joint explanatory statement of a committee of conference.

(4) The term ‘appropriation act’ includes annual appropriations acts, continuing resolutions and supplemental appropriations acts.

(c) Effective Date: This section shall apply to all appropriations acts enacted after enactment of this bill.
Amendments to the Congressional Budget Act of 1974  
(Attachment E)

Amend Section 302(a) with the following:

(1) Strike in section 302(a)(3)(A) “In the Senate, the amount allocated to the Committee on Appropriations shall be further divided among the categories specified in section 250(c)(4) of the Balanced Budget and Emergency Deficit Control Act of 1985” and insert “In the Senate, the amount allocated to the Committee on Appropriations shall be further divided among the Subcommittees of the Appropriations Committee”

(2) Strike in section 302(a)(3)(B)(ii) “consistent with the categories specified in section 250(c)(4) of the Balanced Budget and Emergency Deficit Control Act of 1985” and insert “among the Subcommittees of the Appropriations Committee.”

(3) Strike section 302(b) and redesignate ensuing sections as necessary.