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Continuing Resolutions

Neal Devins

William & Mary Law School, nedeви@wm.edu

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CONTINUING RESOLUTIONS. Funding devices enacted whenever Congress is unable to pass one or more of the thirteen regular appropriations bills by the start of a fiscal year are known as continuing resolutions. Continuing resolutions—when first passed in 1876 and up to 1981—were noncontroversial interim spending measures designed to keep the government afloat until the enactment of the regular appropriations. Since 1981, however, the use, scope, and size of these measures have dramatically expanded. Today, continuing resolutions typically provide full-year funding for many (and sometimes all) federal operations and serve as a vehicle for unrelated legislation.

Continuing resolutions are extraordinarily controversial. Critics claim that this funding device disrupts the balance of power both within Congress and between Congress and the White House. Specifically, since continuing resolutions are not subject to the House of Representatives rule prohibiting the attachment of substantive legislation to an appropriations bill, appropriations committees gain power at the expense of authorizing committees. House and Senate appropriations committee members who negotiate the final terms of the continuing resolution wield enormous power. In fiscal year 1988, for example, these members negotiated a ban on smoking on domestic flights of two hours or less, a plan to allow states to raise the speed limit on rural highways to sixty-five miles per hour, an extension of the Clean Air Act, and a limitation rider prohibiting the Federal Communications Commission from modifying its regulations limiting the co-ownership of a television station and a newspaper in the same market.

Continuing resolutions also affect the President's veto power and, with it, the executive's role in shaping BUDGET POLICY. Critics of continuing resolutions argue that this funding device substantially undermines the veto power [*see* VETO, REGULAR]. By lumping together several (if not all) of the thirteen appropriations bills as well as unrelated substantive legislation, critics perceive that Presidents will be reluctant to disrupt so many programs (most of which they endorse) through a single veto. Moreover, since a continuing resolution prevents the shutdown of the federal government by providing necessary funding, critics view the costs of a presidential veto as extraordinarily high. Defenders of continuing resolutions, in contrast, argue that a President who is willing to use the veto power can help define the content of a continuing resolution. For example, in fiscal year 1988, President Ronald Reagan used his veto threat to preserve funds for antiabortion counseling [*see* ABORTION] as well as aid to the contra "freedom fighters" in Nicaragua.

Continuing resolutions, although maligned far more often than they are defended, are likely to remain a permanent fixture on the budget landscape. Only once in the 1980s did Congress enact all thirteen appropriations bills by the end of the fiscal year. Indeed, more than one hundred continuing resolutions were enacted from 1965 to 1990. The prevalence of continuing resolutions is a by-product of many interrelated phenomena, including the 1974 CONGRESSIONAL BUDGET AND IMPOUNDMENT CONTROL ACT, the GRAMM-RUDMAN-HOLLINGS ACTS, and policy conflicts between the White House and Congress. Whatever their cause, continuing resolutions dramatically affect both the shape and content of federal budget decision-making.

[See also PRESIDENTIAL-CONGRESSIONAL RELATIONS.]

BIBLIOGRAPHY

- Fisher, Louis. "The Authorization-Appropriation Process in Congress: Formal Rules and Informal Practices." *Catholic University Law Review* 29 (1979): 51-105.
- Devins, Neal. "Regulation of Government Agencies through Limitation Riders." *Duke Law Journal* (1987): 456-500.

NEAL DEVINS