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Revisiting Biennial Budgeting

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Introduction

Biennial budgeting has been a perennial suggestion of budget reformers. The most recent thorough consideration of biennial budgeting in Congress occurred in connection with the Biennial Budgeting and Appropriations Act of 2011 (which died in committee after a hearing).[1] Biennial budgeting proposals have been introduced in subsequent Congresses, though none have advanced as far as hearing.[2] The Committee for a Responsible Federal Budget remains enthusiastic about biennial budgeting, featuring it in its June 2018 list of recommendations to the Joint Select Committee on Budget and Appropriations Process Reform.[3] Despite the fact that there is currently little congressional momentum to move to biennial budgeting, the propriety of the approach remains worthy of consideration because of the parallels between the current budget status quo and a biennial regime. Since the beginning of the Obama administration a biennial rhythm to the federal budget process has emerged, largely due the imposition of top-line spending caps by the Budget Control Act of 2011 and their periodic revision by subsequent congresses. Budgeting experiences under Presidents Obama and Trump provide useful data points to evaluate the claims of supporters and opponents of biennial budgeting. The experience with de facto biennial budgeting provides some signs that biennial budgeting can serve as a useful tool for imposing budget discipline, though it raises questions about the distribution of governmental power in a biennial system.

Part I of this paper will catalogue arguments for and against biennial budgeting. Part II will analyze budget cycles since the beginning of the Obama administration (FY2010–FY2019)

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[1] Biennial Budgeting and Appropriations Act of 2011, H.R. 114, 112th Cong. (2011).
[2] *See, e.g.*, Biennial Budgeting and Appropriations Act of 2013, H.R. 1762, 113th Cong. (2013).
[3] COMM. FOR A RESPONSIBLE FED. BUDGET, THE BETTER BUDGET PROCESS INITIATIVE: RECOMMENDATIONS FOR THE JSC 2 (June 27, 2018), http://www.crfb.org/sites/default/files/BBPI%20Recommendations%20for%20the%20JSC.pdf [https://perma.cc/CMA5-7QWV] (hereinafter CRFB RECOMMENDATIONS).

to determine how closely the status quo tracks with biennial budgeting system. Part III will evaluate the arguments for and against biennial budgeting in light of recent experience under a de facto biennial system.

I. Arguments For and Against Biennial Budgeting

Biennial budgeting would move the discretionary budget from annual to two-year appropriations. Proposals generally align the two-year budget cycles with the congressional election cycle. Under biennial budgeting, a newly elected Congress would create a budget in its first year that would also fund the government for the next fiscal year. Many biennial budgeting proposals also allow for some process to make small adjustments to the two-year budget during its second year.[4] This section will catalogue the arguments typically made for and against biennial budgeting proposals in the United States.[5]

a. Suggested Benefits of Biennial Budgeting

i. Freeing up legislative time for other priorities

The annual budget process is an intense source of legislative conflict, demanding much of Congress' attention to produce even an inferior work product.[6] In recent years Congress has regularly failed to pass appropriations bills before the beginning of the fiscal year and has occasionally funded the government entirely with continuing resolutions rather than a proper

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[4] *See id.* ("A 'mini resolution' could make adjustments in the second year if necessary.").

[5] For extended discussion on the mechanics and merits of biennial budgeting, see generally Stuart Young & Drew McLelland, *Implementing Biennial Budgeting for the U.S. Congress* (Harvard Law School Budget Briefing Paper No. 20, Updated May 6, 2006), http://www.law.harvard.edu/faculty/hjackson/BiennialBudget_20.pdf.

[6] Speaking in support of the Biennial Budgeting and Appropriations Act of 2011, then-Senator Jeff Sessions commented that "the myth persists in Washington that we can manage this mammoth budget through last-minute deals, struck in closed-door meetings, rushed to a vote under threat of panic." *Sessions Calls For a Two-Year Budget Plan*, NEWSMAX.COM (Oct. 4, 2011), https://www.newsmax.com/TheWire/Sessions-two-year-budget-plan/2011/10/04/id/413235/ [https://perma.cc/8GUT-XQ2F].

budget. The most popular argument in favor of biennial budgeting is that decreasing the frequency of budget fights will free up legislative time and allow Congress to perform more effectively. The Committee for a Responsible Federal Budget put this argument succinctly when it suggested that biennial budgeting enables "[e]ach new Congress [to] create a budget without having the same fiscal battles twice."[7] Biennial budgeting advocates claim that when Congress has time for things other than annual budget crisis management it will conduct stronger oversight and engage in more detailed fiscal planning.[8] Of course, Congress would also be free to spend the time freed up by biennial budgeting on less productive activities, like election-year grandstanding.[9] And that assumes that time will actually be freed up—it is possible that reducing the frequency of budgeting will increase the stakes of each budget in a way that actually worsens gridlock and partisan battles.[10]

ii. Efficient administration of government

Biennial budgeting advocates suggest that biennial budgeting will result in fewer shutdowns and less government by continuing resolution, saving money and providing stability that will enable agencies to operate more efficiently. Government shutdowns are costly. The widespread economic disruption caused by shutdowns is obviously expensive (if difficult to quantify), but more easily calculated numbers also serve to show the surprising cost of shutdowns. For example, the sixteen-day government shutdown in the fall of 2013 resulted in the

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[7] CRFB RECOMMENDATIONS, *supra* note 3.

[8] *Biennial Budgeting and Appropriations Act of 2011: Hearing on H.R. 114 Before the H. Rules Comm.*, 112th Cong. (Jan. 24, 2012) (testimony of Maya MacGuineas, President, Committee for a Responsible Federal Budget), http://www.crfb.org/sites/default/files/documents/Maya_MacGuineas_testimony_on_H_R__114.pdf [https://perma.cc/Q8U8-FHBS] ("Moving to a biennial system would give members an entire year to better conduct program evaluation and better set spending and tax levels.") (hereinafter MacGuineas Testimony).

[9] *Cf.* Dan Rostenkowski, *Government folly: Two-year budgets*, USA TODAY, Mar. 28, 2000, at 17A.

[10] Young & McLelland, *supra* note 5, at 10 (citing Rostenkowski, *supra* note 9).

federal government paying employees roughly $2 billion for work that was not be performed.[11] If biennial budgeting results in fewer shutdowns, it can prevent billions of dollars in government waste. And the additional predictability and stability that biennial budgeting can potentially provide has administrative efficiency benefits beyond simply avoiding the costs of shutdowns. Proponents note that biennial budgeting "would give the executive branch and its agencies more time to craft their budgets. Adding an additional year would allow these agencies to operate on a more stable funding ground, preventing un-needed payments for fear of reductions in the following year's budget, and by allowing better longer-term planning."[12]

iii. Fiscal restraint

Proponents of biennial budgeting suggest that the system will promote greater fiscal restraint and a more thoughtful approach to managing the long-term deficit. The Committee for a Responsible Federal Budget endorses biennial budgeting largely as a step towards multi-year budgeting, which it views as a useful tool to allow Congress to gradually reduce the debt-to-GDP ratio back to long-term historical levels.[13] While budget goals often take a backseat in the annual scramble to keep the government open, proponents argue that biennial and multi-year budgeting systems provide a mechanism by which congressional leadership can credibly commit to a deficit-reduction plan and make progress on currently elusive debt targets.[14]

b. Possible Drawbacks of Biennial Budgeting

i. Prediction difficulty

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[11] OFFICE OF MANAGEMENT AND BUDGET, IMPACTS AND COSTS OF THE OCTOBER 2013 FEDERAL GOVERNMENT SHUTDOWN 4 (2013), https://obamawhitehouse.archives.gov/sites/default/files/omb/reports/impacts-and-costs-of-october-2013-federal-government-shutdown-report.pdf [https://perma.cc/NF33-ZLUV].
[12] MacGuineas Testimony, *supra* note 8, at 2.
[13] *Id.* at 4.
[14] *Id.*

Biennial budgeting is criticized on the grounds that it is difficult to project economic conditions with sufficient accuracy to enable the extreme timelines necessary to implement a biennial budgeting regime. Critics note that under the current annual process there is already a thirty-three month lag between the start of the budgeting process and much of the spending that it will eventually authorize—adding an additional twelve months, they suggest, makes an already difficult predictive task impossible.[15]

ii. Loss of fiscal discipline in the face of off-year budgetary challenges

Critics suggest that any fiscal responsibility benefits of biennial budgeting are likely to evaporate during chaotic off-years. They suggest that the inevitable consequence of increasing uncertainty by budgeting for two years instead of one is reliance on large supplemental appropriations during the second year of a biennium. They warn that unavoidable exigencies during off-years will encourage bloated supplemental appropriations not subject to the normal budget process.[16]

iii. Loss of institutional budgeting knowledge

Critics point out that leaders will have less budgeting experience as the process becomes half as frequent, robbing the government of valuable institutional knowledge that could be brought to bear on difficult budget problems that will occasionally arise.[17]

iv. Reduced ability to adjust budget priorities

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[15] *See, e.g.*, *Biennial Budgeting and Appropriations Act of 2011: Hearing on H.R. 114 Before the H. Rules Comm.*, 112th Cong. (Jan. 24, 2012) (testimony of Scott Lilly, Senior Fellow, Center for American Progress), https://cdn.americanprogress.org/wp-content/uploads/issues/2012/01/pdf/lilly_testimony.pdf [https://perma.cc/GV9V-FQJ4].

[16] Richard Kogan, Robert Greenstein & James Horney, *Biennial Budgeting: Do the Drawbacks Outweigh the Advantages?*, CTR. ON BUDGET & POL'Y PRIORITIES 2–3 (Jan. 20, 2012), https://www.cbpp.org/sites/default/files/atoms/files/1-20-12bud.pdf [https://perma.cc/93ZE-HRFG].

[17] *See* Young & McLelland, *supra* note 5, at 10–11.

The political realities of the budget process often dictate that changed budget priorities can only be reflected in incremental adjustments to discretionary spending programs. Critics of biennial budgeting suggest that a biennial budget will reduce the speed with which new budget priorities can be implemented because there will be half as many opportunities to make these incremental changes. Biennial budgeting may protect the status quo by exaggerating the inertia of discretionary spending levels.[18] A similar concern is that biennial budgeting may make it difficult to effectively respond to emergencies that arise during the second year of a two-year budget.

v. Interference with presidential priorities

Generally, biennial budgeting proponents suggest creating two-year budgets immediately following elections, not during election years.[19] But problems arise if the new President is unable to effectively control the budget process in their hectic first months in office. If the President cannot create an overhauled two-year budget by the beginning of a fiscal year that begins less than nine months after inauguration, administrations will be chained to their predecessors' policies for several years, raising concerns about democratic legitimacy. Biennial budgeting advocates counter that "[n]o President and no Congress would wait more than a year after they were elected to make adjustments to budgets, spending and tax policies to reflect their priorities."[20] But it is hardly unheard of for political ambition to give way to practical possibility.

vi. Diminished agency accountability

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[18] Kogan et al., *supra* note 16, at 3.
[19] *See* Young & McLelland, *supra* note 5, at 11.
[20] *Biennial Budgeting: A Tool For Improving Government Fiscal Management and Oversight: Hearing Before the H. Rules Comm.*, 106th Cong. (Mar. 16, 2000) (statement of Bill Frenzell, Committee for a Responsible Federal Budget), https://archives-democrats-rules.house.gov/archives/rules_tran09c.htm [https://perma.cc/3YKB-KEHC].

Under biennial budgeting, agency heads will have to justify their appropriations to Congress half as frequently. Agency accountability to Congress could be diminished as a result, frustrating any theorized oversight benefits to biennial budgeting.[21] However, this effect might be counteracted if biennial budgeting frees up legislative time in a way that allows Congress to exercise more effective oversight between the passage of budgets.

II. Recent Budget Cycles: FY2010–FY2019

In the last two presidential administrations, the budget process has taken on something of a biennial rhythm, with major budgeting activity occurring in Congress immediately after election years and little more than maintenance taking place the following year. This section describes the budget cycles beginning with the first Obama administration budget to illustrate this pattern, with the hope that lessons learned under the current biennial-like budgeting process can provide data points to test the claims of biennial budgeting advocates and critics.[22]

a. FY2010–FY2011: The First Obama Cycle

FY2010 came as close as any modern budget cycle to the budgeting process imagined by the Congressional Budget Act of 1974, and President Obama received most of what he requested. President Obama announced his budget priorities in an address to a joint session of Congress on February 24, 2009.[23] He submitted a detailed overview document two days later,[24] which was supplemented in May. Congress passed a $1.086 trillion budget resolution on April

[21] *See* MacGuineas Testimony, *supra* note 8, at 2.
[22] For detailed analysis of the budgeting process for FY2010–2014, see Katie B. Johnson & David W. Casazza, *The Obama Budget Cycles: FY2011 – FY2014* (Harvard Law School Budget Briefing Paper No. 44, May 12, 2014), https://wiki.harvard.edu/confluence/download/attachments/204380235/JOHNSON%20-%20Briefing%20Paper%20No.%2044.pdf?api=v2.
[23] MICHELLE D. CHRISTENSEN, CONG. RESEARCH SERV., RS20752, SUBMISSION OF THE PRESIDENT'S BUDGET IN TRANSITION YEARS (2012).
[24] OFFICE OF MANAGEMENT AND BUDGET, A NEW ERA OF RESPONSIBILITY: RENEWING AMERICA'S PROMISE (2009), https://www.govinfo.gov/content/pkg/BUDGET-2010-BUD/pdf/BUDGET-2010-BUD.pdf [https://perma.cc/9ERN-DMYK].

29,[25] and work on individual appropriations bills began. A pair of brief interim continuing resolutions in the fall funded the government through December 18 to allow time to complete the final appropriations bills,[26] and a final consolidated bill (including the final five appropriations bills) was passed on December 16, 2009.[27] In the end, Congress approved only $10 billion less in discretionary spending than requested by the President.[28]

FY2011, however, relied on a series of continuing resolutions to fund the government. Congress was unable to pass a budget resolution, let alone a full set of appropriations bills—on June 22, 2010 House Majority Leader Steny Hoyer announced that the House would be unable to pass a budget resolution.[29] The budget dysfunction stemmed largely from political factors typical of the first midterm elections in a new presidential administration. The Democrats lost their filibuster-proof majority in the Senate in a special election in January of 2010, largely thanks to mounting controversy surrounding the ongoing Affordable Care Act drafting process.[30] With this, the relatively breezy FY2010 pattern became impossible to replicate. Congress also seemed unwilling to tackle a budget during the election season, and the commission set up by President Obama in February and charged with releasing a report in December provided cover to justify waiting.[31] When the Republicans re-took the House of Representatives in the 2010 midterms,

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[25] S. Con. Res. 13, 111th Cong. (2009).
[26] Pub. L. No. 111-68; Pub. L. No. 111-88.
[27] Pub. L. No. 111-117.
[28] Johnson & Casazza, *supra* note 22, at 13.
[29] Jared Allen, *Dems won't pass budget in 2010*, THE HILL (June 22, 2010), http://thehill.com/homenews/house/104635-dems-wont-pass-budget [https://perma.cc/U3XN-ESMY].
[30] Michael Cooper, *G.O.P. Senate Victory Stuns Democrats*, N.Y. TIMES (Jan 19, 2010), https://www.nytimes.com/2010/01/20/us/politics/20election.html. The Affordable Care Act was eventually passed on March 23, 2010. Patient Protection and Affordable Care Act, Pub. L. No. 111-148.
[31] House Majority Leader Steny Hoyer listed as a reason for the House's inability to pass a budget resolution in calendar year 2010 the fact that "[i]t isn't possible to debate and pass a realistic, long-term budget until we've considered the bipartisan commission's deficit-reduction

any hope for progress on the budget during the lame-duck session dissipated. In the end, the government was funded at or near FY2010 levels by seven interim continuing resolutions[32] and a full year continuing resolution on April 14.[33] Despite demands for steep budget cuts from House Republicans, the final FY2011 continuing resolution only reduced spending by $40 billion for FY2010 levels.[34]

FY2010–FY2011 reflects a biennial pattern that largely repeats to the present. President Obama's election enabled a conscious shift in budget priorities that was reflected in a relatively normal FY2010 budgeting process which more or less gave the President what he asked for. But the process for FY2011 collapsed in the face of less stable political conditions, and the eventual budget deal was little more than a continuation of the FY2010 budget with slight adjustments.

b. FY2012–FY2013: The Budget Control Act of 2011

FY2012–FY2013 is the most biennially inflected pair of budget cycles in this period. It was defined by the sequestration regime created in the Budget Control Act of 2011, a system that continues to provide a biennial flavor to the federal budget through the necessity of periodically updating its top-line spending caps.

Before the budgeting process for FY2012 could begin in earnest, Congress was faced with a debt ceiling crisis.[35] On January 6, 2011, Treasury Secretary Timothy Geithner sent a

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plan, which is expected in December." Allen, *supra* note 29. The National Commission on Fiscal Responsibility and Reform was created by executive order on February 18, 2010. Exec. Order No. 13,531, 75 Fed. Reg. 7,927 (Feb. 18, 2010).

[32] Pub. L. No. 111-242; Pub. L. No. 111–290; Pub. L. No. 111–317; Pub. L. No. 111–322; Pub. L. No. 112-4; Pub. L. No. 112-6; Pub. L. No. 112-8.

[33] Pub. L. No. 112-10.

[34] Press Release from House Appropriations Committee Chairman Hal Rogers, (Apr. 12, 2011), https://www.cdfa.net/cdfa/cdfaweb.nsf/fbaad5956b2928b086256efa005c5f78/213a7205906dd1fe8825787200506f77/$FILE/41211SummaryFinalFY2011CR.pdf [https://perma.cc/T7WL-GLZH].

[35] For a detailed technical overview of the 2011 debt ceiling crisis, see Jeremy Kreisberg & Kelley O'Mara, *The 2011 Debt Limit Impasse: Treasury's Actions & The Counterfactual—What*

letter to Senate Majority Leader Harry Reid warning that the borrowing authorized by the statutory debt ceiling would be exhausted by May 16,[36] though Treasury was later able to take extraordinary measures that extended the deadline to August 2.[37] Republicans insisted that any increase to the debt ceiling be accompanied by corresponding spending cuts and refused to consider any tax increases as part of a debt ceiling deal, a negotiating position that led to protracted negotiations throughout the summer and a dramatic deal finalized just before the August 2 deadline.[38] That deal was the Budget Control Act of 2011 (BCA).[39]

The BCA solved the immediate debt-ceiling crisis by authorizing a series of increases to the debt limit, some of which Congress could theoretically prevent with a joint resolution and veto override.[40] As the political price for approving the debt ceiling increases, the BCA established topline caps on discretionary spending for each year through FY2021.[41] In addition, it created the Joint Select Committee on Deficit Reduction and tasked it with developing legislation to reduce the federal deficit by an additional $1.5 trillion by the end of FY2021, to be

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Might Have Happened if the National Debt Hit the Statutory Limit (Harvard Law School Federal Budget Policy Seminar Briefing Paper No. 41, Sept. 4, 2012), http://www.law.harvard.edu/faculty/hjackson/BriefingPaper41%20-%202011DebtLimitImpasse.pdf.

[36] Letter from Secretary of the Treasury Timothy Geithner to Senate Majority Leader Harry Reid (Jan. 6, 2011), https://www.treasury.gov/connect/blog/Documents/Letter.pdf [https://perma.cc/67MA-X4TT].

[37] Letter from Secretary of the Treasury Timothy Geithner to Senate Majority Leader Harry Reid (May 16, 2011), https://www.treasury.gov/connect/blog/Documents/20110516Letter%20to%20Congress.pdf [https://perma.cc/JZM4-SD2N].

[38] *See* Johnson & Casazza, *supra* note 22, at 23–26.

[39] For a detailed overview of the Budget Control Act of 2011, see Justin Dews & Dan McConnell, *Sequestration and the 2011 Budget Control Act* (Harvard Law School Federal Budget Policy Seminar Briefing Paper No. 43, May 12, 2014), https://wiki.harvard.edu/confluence/download/attachments/204380235/DEWS%20-%20Briefing%20Paper%20No.%2043.pdf?api=v2.

[40] BILL HENIFF JR. ET AL., CONG. RESEARCH SERV., R41965, BUDGET CONTROL ACT OF 2011 1–2 (2011).

[41] *Id.* at 2.

passed by January 15, 2012.[42] The requirement of a long-term deficit reduction package from the Joint Select Committee was enforced by an automatic sequestration mechanism requiring largely across-the-board spending cuts.[43]

With the BCA framework in hand, Congress was able to pass an omnibus appropriations bill by the end of calendar year 2011. The BCA essentially served as a budget resolution for FY2012. It established a $1.043 trillion discretionary spending cap for FY2012 that provided a useful target for congressional appropriators.[44] Congress had to work quickly to make up for the time lost during the summer's debt-ceiling negotiations, and it became apparent that the appropriations bills could not be completed by the beginning of FY2012. On September 29, 2011, the House passed a continuing resolution funding the government at 1.503% below FY2011 levels through October 4.[45] On October 4, it passed another continuing resolution funding the government at the same level through November 18.[46] On November 18, three of the twelve appropriations bills were passed in a consolidated bill that also included a continuing resolution funding the rest of the government through December 16.[47] Finally, on December 15, the remaining appropriations bills for FY2012 were passed in the Consolidated Appropriations Act of 2012.[48] The bill closely tracked the $1.043 trillion target set by the BCA.[49] Despite an extremely rocky start, the BCA compromise meant that Congress was able to go through

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[42] *Id.* at 2–3.
[43] *Id.* at 3–4.
[44] HOUSE COMM. ON THE BUDGET, SUMMARY OF THE BUDGET CONTROL ACT OF 2011, 3 (Aug. 3, 2011), https://budget.house.gov/sites/democrats.budget.house.gov/files/08.03.11%20Budget%20Control%20Act%20summary.pdf [https://perma.cc/U7HE-7D78].
[45] Pub. L. No. 112-33.
[46] Pub. L. No. 112-36.
[47] Pub. L. No. 112-55.
[48] Pub. L. No. 112-74.
[49] Press Release from House Appropriations Committee Chairman Hal Rogers (Dec. 15, 2011), [https://web.archive.org/web/20181222105029/https://appropriations.house.gov/uploadedfiles/12_14_11_fy_12_final_bill_detailed_summary.pdf].

something approximating the normal budgeting process for FY2012. Moving forward, the BCA's discretionary spending caps effectively moved Congress towards a two-year budgeting cycle—biennial compromises repeatedly relieved the pressure of sequestration by making two-year revisions to the caps.

FY2013 was funded entirely through continuing resolutions that reflected the targets set the year before in the BCA, repeating the on-year/off-year pattern observable in FY2010—FY2011. The BCA set a discretionary spending limit of $1.047 trillion for FY2013.[50] But budgeting began under the shadow of BCA sequestration. Because the Joint Select Committee on Deficit Reduction created by the BCA admitted defeat and disbanded in the fall of 2011 without producing a long-term deficit reduction proposal,[51] automatic sequestration under the BCA was scheduled to occur on January 2, 2013.[52] In a repeat of 2010, Congress seemed unwilling to expend significant energy on the budget during the election year and lame duck session, and a six-month continuing resolution passed in September funded the government at the level set by the BCA caps through March 27, 2013 and punted sequester and budget talks until after the election.[53] After the election, Congress and President Obama turned their attention to the fast-approaching sequester, the expiration of the Bush tax cuts, and the approach of the previously negotiated debt ceiling. On January 1, 2013 the American Taxpayer Relief Act of 2012[54]

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[50] HOUSE COMM. ON THE BUDGET, *supra* note 44.
[51] Press Release from the Co-Chairs of the Joint Select Committee on Deficit Reduction (Nov. 21, 2011), http://www.murray.senate.gov/public/index.cfm/newsreleases?ID=3ee7a9e6-a66e-4703-b8f9-2b4169b9328e [https://perma.cc/HZ6W-DR49] ("After months of hard work and intense deliberations, we have come to the conclusion today that it will not be possible to make any bipartisan agreement available to the public before the committee's deadline.").
[52] Heniff Jr., *supra* note 40, at 3.
[53] Pub. L. No. 112-175.
[54] Pub. L. No. 112-240.

resolved the conflict over the Bush tax cuts and delayed sequestration until March 1,[55] and on February 4 a three-month resolution of the debt ceiling issue finally cleared the stage for budget negotiations.[56] Congress was unable to complete a budget before March 1, and the BCA sequestration that had been temporarily delayed in January kicked in, mandating $85 billion in cuts.[57] On March 21, Congress passed a continuing resolution that left the sequester in place and funded the remainder of FY2013.[58] Though the bill did realign appropriations to an extent greater than typical continuing resolutions, the overall spending level of $984 billion was almost entirely dictated by the interplay between the discretionary spending caps and sequestration procedures agreed upon the year before in the BCA.[59]

c. FY2014–FY2015: The Murray-Ryan Cycle

FY2014 inaugurated a new two-year budget cycle, as budgetary crisis once again forced a durable two-year compromise deal. As it was in the lead up to FY2012, the debt ceiling was a flash point in the budget negotiations for FY2014. On May 17, 2013 the government reached the statutory debt limit, and on August 26 Treasury Secretary Jack Lew estimated that cash on hand would be exhausted by mid-October without an increase to the debt ceiling.[60] Around the same time, members of the House Republican delegation wrote a letter to the leadership insisting that

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[55] MINDY R. LEVIT ET AL., CONG. RESEARCH SERV., R42884, THE "FISCAL CLIFF" AND THE AMERICAN TAXPAYER RELIEF ACT OF 2012 (2013).
[56] Pub. L. No. 113-3.
[57] Letter from Deputy Director of the Office of Management and Budget Jeffrey D. Zients to Speaker of the House John A. Boehner (Mar. 1, 2013), https://fire.pppl.gov/fy13ombjcsequestrationreport.pdf [https://perma.cc/FEG7-VKUS].
[58] Pub. L. No. 113-6.
[59] *See* David Rogers, *Congress avoids government shutdown*, POLITICO (Mar. 21, 2013), http://www.politico.com/story/2013/03/congress-avoids-government-shutdown-89180.html [https://perma.cc/M3KQ-KQRW].
[60] Letter from Secretary of the Treasury Jacob Lew to Speaker of the House John A. Boehner (Aug. 26, 2013), https://www.treasury.gov/initiatives/Documents/082613%20Debt%20Limit%20Letter%20to%20Congress.pdf [https://perma.cc/QF2H-KFTV].

the appropriations process be used “to affirmatively de-fund the implementation and enforcement of ObamaCare.”[61] House Republicans stuck to this negotiating position, and a government shutdown began on October 1, the first day of FY2014.[62] The looming debt ceiling provided a strong impetus to end the shutdown quickly, and Congress was able to pass a continuing resolution on October 17 that funded the government through January 15, 2014, a resolved the debt ceiling crisis, and a created a framework for budget negotiations to be concluded by December 15.[63]

Negotiations began as soon as the continuing resolution was passed. The House and Senate had adopted the Paul Ryan and Patty Murray budget resolutions, respectively, in March.[64] Ryan and Murray (the budget committee heads in their respective chambers) attempted to close the gap between these two positions, and they reached a two-year compromise agreement on December 10.[65] That deal became the Bipartisan Budget Act of 2013, which effectively served as a budget resolution for FY2014. The Act replaced the upcoming sequestration cuts and revised the discretionary spending caps for FY2014 and FY2015. It also put in place caps for FY2022 and FY2023 (the original BCA caps only extended through FY2021).[66] President

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[61] Letter from Members of Congress to Speaker of the House John A. Boehner (Aug. 21, 2013), https://palazzo.house.gov/uploadedfiles/meadows_defundletter.pdf [https://perma.cc/G2LK-LPU3].
[62] Burgess Everett et al., *Shutdown: Congress sputters on CR*, POLITICO (Oct. 1, 2013) https://www.politico.com/story/2013/09/house-senate-government-shutdown-097557 [https://perma.cc/N8ZR-DKXC].
[63] Pub. L. No. 113–46.
[64] H. Con. Res. 25, 113th Cong. (2013); S. Con. Res. 8, 113th Cong. (2013).
[65] Lisa Desjardins & Deirdre Walsh, *Budget deal aims to avert another shutdown*, CNN (Dec. 10, 2013), https://www.cnn.com/2013/12/10/politics/budget-negotiations/ [https://perma.cc/6F3Q-NV3B].
[66] Press Release from the House Committee on the Budget (Dec. 10, 2013), [https://web.archive.org/web/20131228072315/https://budget.house.gov/uploadedfiles/bba2013summary.pdf].

Obama signed the Bipartisan Budget Act on December 26,[67] followed by a brief interim continuing resolution on January 15[68] and a final omnibus appropriations bill on January 17.[69]

FY2015 simply followed the plan set out the year before by Senator Murray and Congressman Ryan, continuing the trend of budget inactivity in election years. Congress did not pass a budget resolution for FY2015. With the beginning of the fiscal year approaching, Congress continued its developing tradition of punting serious consideration of the budget until after the midterm elections.[70] A continuing resolution passed on September 18 funded the government through December 11.[71] After the elections and two brief interim continuing resolutions,[72] the lame duck Congress then passed all but one appropriations bill in the December 11 "Cromnibus bill," which included a continuing resolution to fund the Department of Homeland Security through February.[73] An appropriation for DHS was not included in the package because of congressional Republicans' resistance to President Obama's executive actions on immigration.[74] Congress avoided a partial government shutdown by passing a one-week interim continuing resolution to fund DHS on February 27, 2015,[75] and a full-year continuing resolution on March 3.[76] While some individual appropriations for FY2015 were

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[67] Pub. L. No. 113-67.
[68] Pub. L. No. 113-73.
[69] Pub. L. No. 113-76.
[70] "[T]he Senate took care of Congress' last must-pass piece of business before the November elections — keeping the government funded . . . ." Niels Lesniewski, *Senate Votes to Fund Syrian Rebels Against ISIS, Avert Government Shutdown* (Sept. 18, 2014), https://www.rollcall.com/news/senate-passes-bill-funding-syrian-rebels-against-isis-averting-government-shutdown [https://perma.cc/3YEQ-X647].
[71] Pub. L. No. 113–164.
[72] Pub. L. No. 113–202; Pub. L. No. 113–203.
[73] Pub. L. No. 113–235.
[74] Bill Chappell, *'Cromnibus' Spending Bill Passes, Just Hours Before Deadline*, NPR: THE TWO-WAY (Dec. 11, 2014), https://www.npr.org/sections/thetwo-way/2014/12/11/370132039/house-poised-to-vote-on-controversial-cromnibus-spending-bill [https://perma.cc/SX28-MLPW].
[75] Pub. L. No. 114–3.
[76] Pub. L. No. 114–4.

controversial, it ultimately followed the $1.014 trillion budget top-line set by the Bipartisan Budget Act of 2013.[77]

d. FY2016–FY2017: The Bipartisan Budget Act of 2015

FY2016 featured another debt ceiling crisis, and again this pressure created a compromise bill that governed the budget process for two years. After a lengthy suspension, the debt ceiling was scheduled to become effective again on March 15, 2015, and on March 13 Treasury Secretary Jack Lew announced that Treasury would employ extraordinary measures to finance the government.[78] By October 15, Treasury estimated that the extraordinary measures would be exhausted on November 3.[79] Fortunately, Congress was able to avoid crisis with relatively fewer fireworks than in 2013. Largely due to the disarray within the House Republican delegation stemming from Speaker John Boehner's resignation the week before, Congress passed a continuing resolution on September 30 that avoided a government shutdown and funded the government through December 11.[80] Then, in a contentious overnight vote on October 30,[81] the Senate passed the Bipartisan Budget Act of 2015[82] to resolve the debt ceiling issue and effectively serve as a budget resolution for FY2016. The Act suspended the borrowing limit

[77] Chappell, *supra* note 74.
[78] Letter from Secretary of the Treasury Jacob Lew to Speaker of the House John A. Boehner (Mar. 13, 2015), https://www.treasury.gov/initiatives/Documents/Debt%20Limit%20Letter%2020150313.pdf [https://perma.cc/YP75-TMRF].
[79] Letter from Secretary of the Treasury Jacob Lew to Speaker of the House John A. Boehner (Oct. 15, 2015), https://www.treasury.gov/Documents/Treasury%20Letter%20to%20Congress%20101515.pdf [https://perma.cc/9ZZL-CTVW].
[80] David M. Herszenhorn, *Spending Bill Passes, Averting a Shutdown*, N.Y. TIMES (Oct. 1, 2015), https://www.nytimes.com/2015/10/01/us/politics/government-shutdown-congress.html.
[81] David M. Herszenhorn, *Senate Passes Budget Bill and Sends It to Obama*, N.Y. TIMES (Oct. 31, 2015), https://www.nytimes.com/2015/10/31/us/politics/senate-clears-way-for-final-passage-of-budget-bill.html.
[82] Pub L. No. 114–74.

through March 15, 2017.[83] And, like the Bipartisan Budget Act of 2013, it adjusted the caps created under the BCA for the two upcoming fiscal years—increasing them by $25 billion for FY2016 and $15 billion for FY2017.[84] Congress was able to use the Bipartisan Budget Act of 2015 framework to pass a consolidated appropriations act on December 18,[85] using two brief interim continuing resolutions to keep the government open in the interim.[86]

In the FY2017 budget cycle, the election year once again distracted Congress from attempting any substantial budgeting activity. On September 28, Congress passed a continuing resolution funding the government at FY2016 levels until December 9.[87] The resolution included a full year appropriation for Military Construction and Veterans Affairs, as well as emergency Zika funding.[88] President Trump used a number of strategies to attempt to control the ongoing FY2017 budgeting process, but he was unable to do much to change the course set by the Bipartisan Budget Act of 2015. After the election, the incoming Trump administration requested that Congress pass another continuing resolution to fund the government through March in order to allow the new administration a chance to influence the final appropriations bills.[89] The Republican Congress obliged the President-elect and passed another continuing resolution on December 8 that funded the government through April 28, 2017.[90] On January 12, the Senate approved a budget resolution bearing very little resemblance to the kind of budget resolution

[83] GRANT A. DRIESSEN, CONG. RESEARCH SERV., IN10389, BIPARTISAN BUDGET ACT OF 2015: ADJUSTMENTS TO THE BUDGET CONTROL ACT OF 2011 (2015).
[84] *Id.*
[85] Pub. L. No. 114-113.
[86] Pub. L. No. 114-96; Pub L. No. 114-100.
[87] Pub. L. No. 114-223.
[88] *Id.*
[89] Kelsey Snell & Mike DeBonis, *Trump camp calls for short-term spending bill despite Senate concerns*, WASH. POST (Nov. 17, 2016), https://www.washingtonpost.com/news/powerpost/wp/2016/11/17/trump-administration-calls-for-short-term-spending-bill-despite-senate-concerns/.
[90] Pub L. No. 114-254.

imagined by the Congressional Budget Act of 1974—its nearly exclusive purpose was to enable the repeal of the Affordable Care Act through the budget reconciliation process, an important priority for the incoming President.[91] This strategy was ultimately unsuccessful. On March 16, the Trump administration released its preliminary FY2018 budget request, which included further revisions to the BCA spending caps for FY2017 on top of those made by the Bipartisan Budget Act of 2015. The administration requested a $25 billion increase to the defense spending cap and a partially offsetting $15 billion decrease to the non-defense cap.[92] This attempt to influence the FY2017 budget was similarly unsuccessful. On May 5, President Trump signed the Consolidated Appropriations Act of 2017,[93] an omnibus spending bill that ultimately complied with the BCA spending caps as modified by the Bipartisan Budget Act of 2015.[94]

The FY2016–2017 budget cycle was unusual because of the extent to which the budgeting process for FY2017 bled over into the new Trump administration. But even with a change of political leadership halfway through it was characterized by the familiar biennial rhythm that persisted through the Obama administration. The BCA cap adjustments of the Bipartisan Budget Act of 2015 effectively created a two-year budget topline even in the face of resistance from the Trump administration.

e. FY2018–FY2019: The Bipartisan Budget Act of 2018

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[91] Kelsey Snell & Mike DeBonis, *Obamacare is one step closer to repeal after Senate advances budget resolution*, WASH. POST (Jan. 12, 2017), https://www.washingtonpost.com/powerpost/democrats-to-force-tough-votes-in-obamacare-vote-a-rama/2017/01/11/99e3c854-d7fa-11e6-b8b2-cb5164beba6b_story.html.

[92] OFFICE OF MANAGEMENT AND BUDGET, AMERICA FIRST: A BUDGET BLUEPRINT TO MAKE AMERICA GREAT AGAIN 53 (Mar. 16, 2017), https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/budget/fy2018/2018_blueprint.pdf [https://perma.cc/9AZW-9L6T].

[93] Pub. L. No. 115-31.

[94] COMM. FOR A RESPONSIBLE FED. BUDGET, *CRFB Explainer: Gimmicks in the FY 17 Omnibus Bill* (May 3, 2017), http://www.crfb.org/blogs/crfb-explainer-gimmicks-fy-17-omnibus-bill [https://perma.cc/9M7C-G85Y].

FY2018 and FY2019 do not follow a two-year cycle as closely as the other pairs of budget cycles discussed above. The budgeting process for FY2018 was more similar to President Obama's FY2011 than FY2010, when focus on the President Obama's other legislative priorities reduced the budget to a secondary priority. Nonetheless, FY2018 did feature yet another post-election budget compromise plan that heavily influenced the following election year budget process.

Congress' immediate focus in fall 2017 was on tax reform, not the budget. On September 8, Congress passed a continuing resolution that funded the government through December 8.[95] When the Senate voted to begin debate on the FY2018 budget on October 17 it was understood primarily as a procedural step on the road to tax reform.[96] The Tax Cuts and Jobs Act was eventually signed into law on December 22.[97] While that work continued, Congress funded the government with a two-week interim continuing resolution December 7 and another on December 21 funding the government through January 19, 2018.[98] With the tax reform battle behind it, Congress began serious work on the FY2018 budget. The process got off to a rocky start. Disagreements over immigration policy between the White House and congressional Democrats led to a brief government shutdown when the previous continuing resolution expired on January 19.[99] With assurances by congressional Republicans that immigration issues would receive a full debate later in the year,[100] Congress was able to reopen the government on January

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[95] Pub. L. No. 115-56.
[96] Ted Barrett, *Senate votes to start budget debate, key step in tax reform fight*, CNN (Oct. 17, 2017), https://www.cnn.com/2017/10/17/politics/senate-budget-state-debate-tax/index.html [https://perma.cc/WYA2-VMRN].
[97] Pub. L. No. 115–97.
[98] Pub. L. No. 115–90; Pub. L. No. 115–96.
[99] *Government Shuts Down as Bill to Extend Funding Is Blocked; Senate Adjourns for the Night*, N.Y. TIMES (Jan. 19, 2018), https://www.nytimes.com/2018/01/19/us/politics/government-shutdown.html.
[100] Ted Barrett et al., *Congress approves plan to end shutdown, reopen government*, CNN (Jan.

23 with a continuing resolution that provided funding through February 8.[101] Finally, as it had every other year since the FY2014 budget cycle, Congress paved the way for a final budget by passing a compromise plan that adjusted the BCA spending caps for the two upcoming fiscal years. The Bipartisan Budget Act of 2018 was signed on February 9, 2018,[102] after a nine-hour appropriations lapse caused by procedural snags that delayed the late-night Senate vote.[103] The Act included a continuing resolution to fund the government through March 23.[104] And it substantially raised the BCA spending caps for FY2018 and FY2019. For FY2018 the defense cap was raised by $80 billion and the non-defense by $63 billion, and for FY2019 the defense cap was raised by $85 billion and the non-defense by $68 billion.[105] Consistent with the Bipartisan Budget Act framework, Congress passed an omnibus spending bill for the remainder of the fiscal year on March 23.[106]

The budgeting process for FY2019 began with promise but turned out to be extremely dysfunctional, as has often been the case with election year budgets. Congress was able to pass several appropriations bills before the beginning of the fiscal year for the first time in years. Three of the twelve appropriations bills were passed in a package enacted on September 21,[107] and two more were enacted on September 28 in a package alongside a continuing resolution

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19, 2018), https://edition.cnn.com/2018/01/22/politics/senate-shutdown-vote-congress/index.html [https://perma.cc/W3RR-3LYU].

[101] Pub. L. No. 115-120.

[102] Pub. L. No. 115-123.

[103] Michael Collins & Deirdre Shesgreen, *Government shuts down for second time in three weeks as spending plan stalls in Senate*, USA TODAY (Feb. 9, 2018), https://www.usatoday.com/story/news/politics/2018/02/08/trump-administration-advises-federal-agencies-prepare-limited-government-shutdown/321883002/ [https://perma.cc/M2KN-NFRJ].

[104] Pub. L. No. 115-123.

[105] GRANT A. DRIESSEN & MARC LABONTE, CONG. RESEARCH SERV., IN10861, DISCRETIONARY SPENDING LEVELS UNDER THE BIPARTISAN BUDGET ACT OF 2018 (2018).

[106] Pub L. No. 115-141.

[107] Pub L. No. 115-244.

funding the government through December 6.[108] But the political turmoil of the midterms derailed the rest of the budget process. Following the Democrats' recapture of the House of Representatives, President Trump's insistence that the Homeland Security Appropriation include border wall funding created intractable tension with Democratic congressional leadership.[109] Congress was able to pass a continuing resolution on December 6 to keep the government open through December 21 while the border security debate continued.[110] But President Trump's indication that he would veto any spending bill that did not including funding for a border wall scuttled a potential continuing resolution to fund the government through February 8, and a government shutdown began on December 22.[111] The shutdown lasted until Republicans relented on the border wall demand and Congress passed another continuing resolution on January 25, 2019 that funded the government through February 15.[112] On February 15, President Trump signed an omnibus spending bill including the remaining appropriations bills (with no border wall funding) that set spending at the levels set the year before by the Bipartisan Budget Act of 2018.[113]

f. Summary Table: The Biennial Budgeting Cycle at a Glance

The table below is intended to summarize the preceding historical summary and provide an at-a-glance overview of the biennially inflected budget pairs from FY2010–FY2019. For each

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[108] Pub L. No. 115-245.
[109] *See* Rachael Bade & Burgess Everett, *Congress averts shutdown, postponing fight over Trump's wall*, POLITICO (Dec. 6, 2018) https://www.politico.com/story/2018/12/06/pelosi-schumer-trump-wall-funding-1046443 [https://perma.cc/X55Q-PZLD].
[110] Pub. L. No. 115-298.
[111] Erica Werner et al., *Partial government shutdown assured after lawmakers leave Capitol without budget deal*, WASH. POST (Dec. 21, 2018), https://www.washingtonpost.com/politics/trump-leans-on-mcconnell-to-pass-spending-bill-with-border-funding-in-senate/2018/12/21/31bb453a-0517-11e9-b5df-5d3874f1ac36_story.html
[112] Pub. L. No. 116-5.
[113] Pub. L. No. 116-6.

fiscal year, it evaluates the budget process across four attributes typical of a healthy budget cycle: the passage of a budget resolution or functional equivalent, the passage of appropriations bills, the absence of any appropriations lapses, and for post-BCA cycles the avoidance of mandatory sequestration. The table aims to make the political context of each cycle clear by providing color-coded indicators of which political party controlled the House, Senate, and Presidency during that cycle. The table uses the conventional blue for Democrat and red for Republican, and it indicates that control of a chamber or office changed hands before the budget cycle was completed with blue and red stripes. The table attempts to provide additional political context by noting which election cycle occurred in the second year of each biennium to the right of the table. A brief scan of the table illustrates that the first year of each biennium is invariably closer to a conventional budget process than the second year.

	On Year		Off Year		
FY2010–FY2011	FY2010		FY2011		2010 Midterm Elections
	House · Senate · President		House · Senate · President		
	Budget Resolution:	✓	Budget Resolution:	✗	
	Appropriations Bills:	✓	Appropriations Bills:	✗	
	Shutdown Avoidance:	✓	Shutdown Avoidance:	✓	
	Sequestration Avoidance:	n/a	Sequestration Avoidance:	n/a	
FY2012–FY2013	FY2012		FY2013		2012 General Election
	House · Senate · President		House · Senate · President		
	Budget Resolution: (BCA)	✓	Budget Resolution:	✗	
	Appropriations Bills:	✓	Appropriations Bills:	✗	
	Shutdown Avoidance:	✓	Shutdown Avoidance:	✓	
	Sequestration Avoidance:	n/a	Sequestration Avoidance:	✗	
FY2014–FY2015	FY2014		FY2015		2014 Midterm Elections
	House · Senate · President		House · Senate · President		
	Budget Resolution: (BBA 13)	✓	Budget Resolution:	✗	
	Appropriations Bills:	✓	Appropriations Bills:	✗	
	Shutdown Avoidance:	✗	Shutdown Avoidance:	✓	
	Sequestration Avoidance:	✓	Sequestration Avoidance:	✓	
FY2016–FY2017	FY2016		FY2017		2016 General Election
	House · Senate · President		House · Senate · President		
	Budget Resolution: (BBA 15)	✓	Budget Resolution:	✗*	
	Appropriations Bills:	✓	Appropriations Bills:	✓	
	Shutdown Avoidance:	✓	Shutdown Avoidance:	✓	
	Sequestration Avoidance:	✓	Sequestration Avoidance:	✓	
FY2018–FY2019	FY2018		FY2019		2018 Midterm Elections
	House · Senate · President		House · Senate · President		
	Budget Resolution: (BBA 18)	✓	Budget Resolution:	✗	
	Appropriations Bills:	✓	Appropriations Bills:	✓	
	Shutdown Avoidance:	✗	Shutdown Avoidance:	✗	
	Sequestration Avoidance:	✓	Sequestration Avoidance:	✓	

* Congress did technically pass a budget resolution for FY2017 on January 12, but its primary purpose was to facilitate Affordable Care Act Repeal, not to provide a budgeting framework. *See supra* at text accompanying note 91.

III. What Can Recent Budget Cycles Tell Us About Biennial Budgeting?

Biennial budgeting has been debated for years, and the arguments of its supporters and detractors have been largely unchanged in that time. The strong biennial inflection budget cycles from FY2010 to FY2019, detailed above, provides a useful data set to analyze claims on both side of the biennial budgeting debate. This section of the paper will revisit the arguments presented in Section I in light of the lessons learned from the events of FY2010–2019 recounted in Section II. Though the FY2010–FY2019 data set provides useful insights into the merits of these arguments, it does not provide clear answers. We do not have a true biennial budgeting regime with two-year budget resolutions. The budget status quo is characterized by a ten-year topline that is adjusted every two years, which is very different from pure biennial budgeting. Nonetheless, recent history provides some valuable lessons.

g. Evaluating Suggested Benefits of Biennial Budgeting

i. Freeing up legislative time for other priorities

Given that the two-year cycles typical of our current budgeting system are not intentional, any benefit from freeing up legislative time have not been fully realized. Though most of the heavy budget work has occurred for even-numbered fiscal years, exemplified by the Budget Control Act of 2011 and the three Bipartisan Budget Acts, Congress still spends a lot of time attempting to pass a budget during off-years. The budgeting process for FY2011, FY2013, FY2017, and FY2019 all stretched well into the new calendar year, the latter three doing so despite strong compromise frameworks set up in the previous year's budget fights.

ii. Efficient administration of government

For the reasons just discussed, any administrative efficiencies related to the increased stability of biennial budgeting cannot be realized under our biennially-influenced annual budgeting system. However, recent experience does provide some evidence to evaluate the suggestion that biennial budgeting will reduce the frequency of government shutdowns. Two of the three government shutdowns between FY2010 and FY2019 occurred during the contentious "on year" at the start of a biennium. That fact does provide some support to the idea that halving the frequency with which Congress can be faced with contentious budget battles will insulate government from the risk of appropriations lapses. But the 2018–2019 shutdown is a stark counterexample. The fact that all three shutdowns since the beginning of the Obama administration have been caused by intense partisan policy divisions suggests that shutdowns are more a symptom of our current politics than any particular budgeting regime.

iii. Fiscal restraint

The evidence available from FY2010–FY2019 is mixed as to whether biennial budgeting is capable of imposing additional fiscal restraint on Congress. On one hand, the two-year top-line spending caps established in the first year of each biennium have been surprisingly durable in the second year. Most surprisingly, the continuing resolutions that kept the government open in early 2013 actually left the sequestration cuts set up by the BCA of 2011 in place. And though the spending caps established by the BCA have been modified every other year, Congress has generally complied with the modifications in the off years (subject to the typical budget gimmickry that inevitably accompanies spending targets).[114] But it is difficult to explain why Congress will feel more constrained by a biennial budgeting system over the long term than it did by the ten-year top-lines established by the BCA. The existence of a de facto biennial budgeting regime is defined largely by biennial departures from the BCA's targets, departures

[114] COMM. FOR A RESPONSIBLE FED. BUDGET, *Omnibus Bill Falls Back on the Usual Budget Gimmicks* (Dec.17, 2015), https://www.crfb.org/blogs/omnibus-bill-falls-back-usual-budget-gimmicks [https://perma.cc/SC89-A6WC].

that have grown more substantial over time. Though observers would suggest that the current budget process has been characterized by restraint, it does provide at least some evidence that two-year budgets could be a useful tool to impose fiscal discipline on Congress.

a. Evaluating Possible Drawbacks of Biennial Budgeting

i. Prediction difficulty

Because we do not have a formal biennial budgeting system, it is difficult to use FY2010–FY2019 evidence to evaluate the claim by critics of biennial budgeting that two-year budgets stretch the predictive abilities of government agencies to the breaking point. It is interesting to note, however, that recent attempts at the classical approach to budgeting have hardly made it easy on agency predictions either. During the first year of most recent two-year cycles, agencies and appropriators have had to operate with very little idea of what the ultimate budget top-line (and their probable share of that number) will be until December or later, a far cry from the April budget resolutions imagined by the Congressional Budget Act of 1974. The current biennially inflected system does have the benefit of at least providing what has proven to be a reliable topline for the second year of every biennium. Biennial budgeting is criticized for forcing agencies to budget too far in advance of spending, but that might not be worse than a system that conceals the topline spending number from agencies and appropriators until very late in the process.

ii. Loss of fiscal discipline in the face of off-year budgetary challenges

Critics of biennial budgeting suggest that it will be ineffective at imposing fiscal discipline because it will require uncontrollable supplemental appropriations to be made outside of the normal budget process during off years. The FY2010–FY2019 experience suggests that this concern is somewhat overblown. If Congress were to move to biennial budgeting, it would almost certainly include some formal mechanisms to facilitate off-year budget adjustments.[115] Though it is not unreasonable to imagine Congress abusing the availability of such a mechanism, the fact that Congress has consistently bound itself to adjusted spending caps established every other year since the BCA is cause for optimism. Were Congress to adopt a biennial budgeting plan, it seems unlikely that the system would fail as the result of unconstrained off-year spending.

iii. Loss of institutional budgeting knowledge

Because we do not have a de jure biennial budgeting regime, the experience from FY2010 to FY2019 does not provide useful evidence to evaluate the claim that biennial budgeting will sap Congress of important institutional budgeting knowledge by reducing the frequency of budgeting. However, it does provide some indication of the importance of Congress' institutional knowledge under a biennial budgeting regime. If our current biennially-influenced budgeting process is any indication, biennial budgeting will concentrate power in the hands of congressional leadership. In the dramatic two-year compromises that have defined the FY2010–FY2019 experience, news coverage generally focuses on congressional negotiators during crises, and the President does not seem to figure much into these deals.[116] All of these two-year compromises have ultimately been brokered by small leadership groups in Congress—the small negotiating team behind the BCA of 2011 (and the elite committee that it tasked with devising a plan to avoid sequestration), Paul Ryan and Patty Murray's work following the

[115] *See, e.g.*, CRFB RECOMMENDATIONS, *supra* note 3 ("A 'mini resolution' could make adjustments in the second year if necessary.").
[116] *See, e.g.*, Burgess Everett et al., *Congress strikes budget deal that shortchanges Trump*, POLITICO (Apr. 30, 2017), https://www.politico.com/story/2017/04/30/budget-deal-congress-shutdown-237822 [https://perma.cc/KQD4-97GR]; John T. Bennett, *Sources: White House Not Heavily Involved in CR Endgame*, ROLL CALL (Sept. 29, 2016), https://www.rollcall.com/news/sources-white-house-not-heavily-involved-in-stopgap-endgame [https://perma.cc/FAY4-PEZG].

Bipartisan Budget Act of 2015, and the negotiations behind the Bipartisan Budget Act of 2018 all represent high concentrations of power in the hands of senior congressional leadership. These repeat players drew on knowledge derived from years of hands-on experience to finish budget deals under extreme pressure. When it comes to institutional knowledge, the stakes of moving to biennial budgeting are high. If biennial budgeting does ask congressional leadership to handle double the pressure with half the experience it will not be a successful reform.

iv. Reduced ability to adjust budget priorities

Biennial budgeting critics make related claims that biennial budgeting will slow down the incremental process of adjusting budgeting priorities over time and that it will hamper Congress' ability to respond to off-year crises with spending. The FY2010–FY2019 experience provides mixed evidence for this first claim. Many of the continuing resolution-dominated off-years do seem to freeze the status quo in the way critics suggest biennial budgeting will—FY2011 is a strong example. But other off-years, like FY2013, do feature a substantial realignment of priorities within the budget top-line established by the previous year's compromises.[117] The claim that biennial budgeting will make it more difficult for Congress to respond to off-year emergencies, is strongly rebutted by the last ten budget cycles. Congress has consistently been able to provide disaster funding (subject to typical legislative inefficiency) regardless of timing with the budget cycle. FY2017 provides a strong example. The initial continuing resolution for FY2017 included emergency funding for Zika research,[118] and the initial continuing resolution for FY2018 passed at the end of FY2017 included additional hurricane relief funding for

[117] *See* David Rogers, *Congress avoids government shutdown*, POLITICO (Mar. 21, 2013), http://www.politico.com/story/2013/03/congress-avoids-government-shutdown-89180.html [https://perma.cc/DQ6F-52GD].
[118] Pub. L. No. 114-223.

FY2017.[119] Of course, the ability of a biennial budget system to respond to major off-year economic shocks remains untested.

v. Interference with presidential priorities

One potential drawback to biennial budgeting is that incoming Presidents may be hamstrung by the priorities of their predecessors if they are unable to quickly take control of the budgeting process in their first term. If a President's first two-year budget is largely dictated by the previous two-year budget, he will not be able to pursue his policy priorities until well into his first four-year term. The FY2010–FY2019 suggests this concern should be taken seriously. One notable theme of the period is that the previous year's budgeting process has increasingly spilled deep enough into the fiscal year to overlap with the process for the next year.[120] The inability of the Trump administration to exert influence over the FY2017 budget may not prove to be generalizable across future administrations. But if this pattern is repeated, the concern that biennial budgeting will interfere with the democratically elected President's ability to pursue his agenda merits serious consideration.

vi. Diminished agency accountability

Biennial budgeting critics suggest that agencies will be less accountable under a two-year budget because they will be forced to appear before Congress to justify their budgets half as frequently. This concern mostly applies to formal biennial budgeting, so the FY2010–FY2019 experience has limited usefulness for evaluating it. Recent budget cycles do suggest that at least some high-level oversight will be exercised regardless of the budget process. Members of Congress have used the budget process to express their displeasure with particular agencies in numerous ways outside of the normal appropriations process. The Republican delegation that

[119] Pub. L. No. 115-56.
[120] *See* Johnson & Casazza, *supra* note 22, at 20.

insisted on Affordable Care Act repeal in 2013 cited the IRS political targeting scandal in its letter to congressional leadership, and numerous budget conflicts over the Homeland Security budget since 2015 can be read as an exercise of oversight of President Obama and President Trump's immigration policies.

Conclusion

Reformers have discussed biennial budgeting as an option for the United States for years, and the conversation will almost certainly continue for the foreseeable future. Budgeting experiences from FY2010–FY2019 are helpful for evaluating this debate because the budgeting process during this period has taken on a distinctly biennial rhythm. Recent history suggests that biennial budgeting does present a real opportunity for Congress to impose some additional fiscal discipline on itself. But biennial budgeting, like all reform, comes with potential downsides that should be seriously considered. The debate over biennial budgeting will likely continue for some time. While the idea has merit, it is not a silver budget for America's budget woes.