

TESTIMONY OF THOMAS ANDREW SCHATZ
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BEFORE THE HOUSE RULES COMMITTEE
“ARTICLE I: EFFECTIVE OVERSIGHT AND THE POWER OF THE PURSE”
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The U.S. Constitution grants to Congress the power to spend. Article I, Section 9, Clause 7 reads, “No money shall be drawn from the Treasury but by consequence of Appropriations made by Law.”

The Founding Fathers deemed that Congress could only spend money pursuant to those powers specifically enumerated in the Constitution. The 10th Amendment leaves all other responsibilities to the states.

Nonetheless, there were lengthy publications, discussions, and arguments over the scope of the federal government’s authority to spend money, particularly when it was being considered in conjunction with the general welfare clause under Article I, Section 8.

For much of the nation’s history, constitutional objections from members of Congress, the president, and state legislatures were effective in limiting federal spending to matters of national, rather than local or parochial purposes.

But, members of Congress and special interests have espoused the power of the purse for many purposes, particularly for pork-barrel spending, or earmarks. Prior to the moratorium on earmarks that began in fiscal year (FY) 2011, numerous members of Congress argued that ending the practice would equate to an unconstitutional delegation of spending discretion to the executive branch. On May 6, 2014, then-Senate Minority Leader Harry Reid (D-Nev.) even went so far as to say that the country has been using earmarks “...for more than 200 years.”¹

Nothing could be further from the truth. The First Congress rejected a bill to loan money to a glass manufacturer after several members challenged the constitutionality of the proposal. In a debate during the Second Congress over a bill to pay a bounty to New England cod fishermen, Rep. Hugh Williamson (S.C.) argued that it was unconstitutional “to gratify one part of the Union by oppressing the other ... destroy this barrier; and it is not a few fishermen that will enter, but all manner of persons; people of every trade and occupation may enter in at the breach, until they have eaten up the bread of our children.”²

Thomas Jefferson made a similar prediction in a March 6, 1796, letter to James Madison, challenging Madison’s proposition for improvements to roads used in a system of national mail delivery. Jefferson wrote:

1 Tim Ryan, “Harry Reid says Congress used earmarks for 200 years,” *PolitiFact*, May 13, 2014, <http://www.politifact.com/truth-o-meter/statements/2014/may/13/harry-reid/harry-reid-says-congress-used-earmarks-200-years/>.

2 John C. Eastman, “Eating Up the Bread of Our Children,” *Ashbrook*, Ashbrook Center at Ashland University, February 2006, <http://ashbrook.org/publications/oped-eastman-06-bread/>.

Have you considered all the consequences of your proposition respecting post roads? I view it as a source of boundless patronage to the executive, jobbing to members of Congress & their friends, and a bottomless abyss of public money. You will begin by only appropriating the surplus of the post office revenues; but the other revenues will soon be called into their aid, and it will be a scene of eternal scramble among the members, who can get the most money wasted in their State; and they will always get most who are meanest.³

In 1817, President Madison vetoed a public works bill that would have paid for the construction of roads and canals. To Madison, the “father of the Constitution,” the clause “to provide for common defense and general welfare” did not grant Congress additional powers not enumerated in Article I, Section 8.⁴

Alexander Hamilton interpreted the general welfare clause more broadly as a separate grant of power. Yet even he believed that it was limited to matters of national importance and did not cover spending of a local or regional benefit.⁵

In 1822, President James Monroe argued that federal money should be limited “to great national works only, since if it were unlimited it would be liable to abuse and might be productive of evil.”⁶

In 1825, the South Carolina legislature passed a resolution which condemned “the taxing of the citizens in one state ‘to make roads and canals for the citizens of another state.’” Virginia and Georgia adopted similar resolutions in 1827.⁷

In the late 1800s, Grover Cleveland became known as the “king of the veto” for rejecting hundreds of congressional spending bills during his two terms as President. He often wrote: “I can find no warrant for such an appropriation in the Constitution.”⁸

Even as federal power vastly expanded during the twentieth century, Congress did not engage in pork-barrel spending (a phrase coined in the late 19th century to compare the rush toward a pile of tax dollars to the way slaves would crowd around barrels of salted pork at meal times) extensively until the 1980s. Instead, Congress would fund general grant programs and let federal and state agencies select individual recipients through a competitive process or formula. The House and Senate Appropriations Committees named specific projects only when they had been vetted and approved by authorizing committees. Members of Congress with local concerns would lobby the president and federal agencies for consideration. The process was aimed at preventing abuse and allocating resources based on merit and need.

3 “Thomas Jefferson to James Madison, March 6, 1796,” *The Works of Thomas Jefferson*, the University of Chicago, 2000, http://press-pubs.uchicago.edu/founders/documents/a1_8_7s4.html.

4 “Veto of federal public works bill,” Constitution Society, http://www.constitution.org/jm/18170303_veto.htm.

5 Eastman, “Eating Up the Bread of Our Children.”

6 Ken Silverstein, “The Great American Pork Barrel,” *Harper’s Magazine*, July 1, 2005.

7 Forrest McDonald, *States’ Rights and the Union: Imperium in Imperio, 1776-1876*, November 2002, University Press of Kansas, Lawrence, Kansas, p. 93.

8 Lawrence W. Reed, “Government Should Not Support the People,” Mackinac Center for Public Policy, April 8, 2005, <https://www.mackinac.org/7440>.

Unfortunately, the system devolved into a free-for-all of earmarking in the 1990s and first decade of the twenty-first century. Following his ascension to Speaker of the House in January 1995, Newt Gingrich (R-Ga.) began using earmarks as political currency to help get Republicans re-elected. A 1996 memo by the Speaker directed the chair of each House Appropriations subcommittee to open earmarks up to all members of Congress (not just appropriators), and especially to freshman Republicans who might face tough re-election fights.⁹ The memo included the following question: “Are there any Republican members who could be severely hurt by the bill or need a specific district item in the bill?”¹⁰

Due to this shift in policy, the cost of earmarks under Speaker Gingrich jumped from \$7.8 billion in FY 1994 to \$13.2 billion in FY 1998, with the peak coming in FY 1997 at \$14.5 billion.¹¹

Speaker Gingrich’s actions caught the ire of many longtime anti-earmark activists, including then-Rep. Jeff Flake (R-Ariz.), who labeled him “the father of contemporary earmarking,” and Sen. John McCain (R-Ariz.), who stated the Speaker’s distribution of earmarks “led directly to the Abramoff scandal, Congressman Bob Ney going to jail and the corruption that I saw with my own eyes.”¹²

In the decades leading up to the earmark moratorium, members of the appropriations committees arbitrarily and disproportionately picked winners and losers by earmarking funds for specific recipients, oftentimes in their own states or districts. For instance, Senate Appropriations Committee Ranking Member Thad Cochran (R-Miss.) received by far the most earmarks during FYs 2008-2010, the three years in which members of Congress were required to add their names to their requests. Sen. Cochran’s 716 earmarks cost taxpayers more than \$2 billion.

Due to the power of appropriations committee members, rank and file members, backed by an army of lobbyists, would bypass authorizing committees and lobby appropriators directly for pet projects. In exchange for a few million dollars in earmarks, they would promise to vote for massive appropriations bills.

Earmark Definitions

A pork-barrel project is a line item in an appropriations bill that designates funds for a specific purpose in circumvention of normal budget procedures. To identify earmarks, Citizens Against Government Waste (CAGW) adopted seven criteria in conjunction with the bipartisan Congressional Porkbusters Coalition, and used them for the first time in its *1991 Congressional Pig Book*. To qualify as an earmark, a project must meet at least one

9 Alex Seitz-Wald, “How Newt Gingrich Crippled Congress,” *The Nation*, January 30, 2012, <http://www.thenation.com/article/how-newt-gingrich-crippled-congress/>.

10 Jonathan Karl and Gregory Simmons, “Newt Gingrich: Big Spender,” ABC News, December 15, 2011, <http://abcnews.go.com/Politics/newt-gingrich-big-spender/story?id=15163688>.

11 Citizens Against Government Waste, *Congressional Pig Book* (“Pig Book”), <https://www.cagw.org/reporting/pig-book>.

12 Seitz-Wald, “How Newt Gingrich Crippled Congress.”

of the following, but most satisfy at least two:

- Requested by only one chamber of Congress;
- Not specifically authorized;
- Not competitively awarded;
- Not requested by the President;
- Greatly exceeds the President's budget request or the previous year's funding;
- Not the subject of congressional hearings; or
- Serves only a local or special interest.

Discrepancies exist among the House, Senate, and CAGW definitions of earmarks. The Senate defines an earmark (or "congressionally directed spending item," as they label it) as the following:

The term 'congressionally directed spending item' means a provision or report language included primarily at the request of a Senator providing, authorizing, or recommending a specific amount of discretionary budget authority, credit authority, or other spending authority for a contract, loan, loan guarantee, grant, loan authority, or other expenditure with or to an entity, or targeted to a specific State, locality or Congressional district, other than through a statutory or administrative formula-driven or competitive award process.¹³

The House has a similar definition:

For the purpose of this clause, the term 'congressional earmark' means a provision or report language included primarily at the request of a Member, Delegate, Resident Commissioner, or Senator providing, authorizing or recommending a specific amount of discretionary budget authority, credit authority, or other spending authority for a contract, loan, loan guarantee, grant, loan authority, or other expenditure with or to an entity, or targeted to a specific State, locality or Congressional district, other than through a statutory or administrative formula driven or competitive award process.¹⁴

Identifying a project as an earmark (many times referred to as "pork") is not a subjective judgment of its merit. Rather, it refers to lapses in long-standing congressional procedures designed to review and consider the expenditure of taxpayer dollars based upon merit.

Pork projects are usually slipped into large spending bills without debate, competition, or input from the relevant federal agencies. The provisions are often not subject to a separate vote in the House or the Senate and frequently appear in legislation only hours before Congress votes on appropriations bills. Furthermore, pork projects are not subject to performance standards or the normal competitive process which occurs at the agency

13 "Congressionally Directed Spending and Related Items," Senate Committee on Rules and Administration, accessed on September 30, 2015, <http://www.rules.senate.gov/public/index.cfm?p=RuleXLIV>.

14 "Rules of the House of Representatives," House Committee on Rules," accessed on September 30, 2015, <http://clerk.house.gov/legislative/house-rules.pdf>.

level. For most of the time that CAGW has been publishing its annual *Pig Book*, members of Congress were not required to attach their names to the earmarks they were requesting. The exception occurred between FYs 2008 and 2010.

Since 1991, CAGW's *Congressional Pig Book* has provided the authoritative list of earmarks in the federal budget. The *2017 Pig Book* highlighted 163 earmarks costing taxpayers \$6.8 billion. These totals are, respectively, 32.5 percent more than the 123 earmarks and 33.3 percent more than the \$5.1 billion in earmarks in FY 2016. The \$6.8 billion is a 106.1 percent increase over the \$3.3 billion in FY 2012, which was the first fiscal year following the establishment of the earmark moratorium.

During publishing 25 *Congressional Pig Books*, CAGW has identified 110,605 earmarks, costing taxpayers \$329.8 billion. This equates to an average of \$13.2 billion and 4,424 earmarks per year. Members of Congress packed the most earmarks into the appropriations bills FY 2005, when CAGW found 13,997; and the \$29 billion in earmarks in FY 2006 was the highest amount appropriated thus far.

Regular readers of the *Pig Book* might recall the many outrageous items it has contained, such as \$50 million for an indoor rainforest in Coralville, Iowa in 2004;¹⁵ \$500,000 for the Sparta Teapot Museum in Sparta, North Carolina in 2006;¹⁶ and \$273,000 to combat goth culture in Blue Springs, Missouri in 2002.¹⁷ Political scandals have been connected to the practice of earmarking, with both legislators and lobbyists having served jail terms.

To reduce overall spending, curtail corruption, and hold elected officials accountable for wasteful spending, the practice of earmarking must be eliminated, not just subject to a moratorium.

Earmark Moratorium

The earmark reform movement gained traction because of many factors, including the tireless work of members of Congress such as Sens. Flake and McCain; high-profile boondoggles such as the Bridge to Nowhere; the Democratic takeover of the House and Senate in 2006 that was based in part on a pledge to clean up the Republican's "culture of corruption" and "drain the swamp;" and a decade of scandals that resulted in jail terms for Reps. Randy "Duke" Cunningham (R-Calif.) and Bob Ney (R-Ohio), and lobbyist Jack Abramoff.

On March 10, 2010, House Democrats banned earmarks directed to for-profit companies.¹⁸ The next day House Republicans went a step further, banning earmarks altogether for their caucus for one year,¹⁹ and Senate Republicans followed suit on

15 "2004 Congressional Pig Book Summary," *Citizens Against Government Waste*, 2004, <http://cagw.org/content/pig-book-2004>.

16 "2006 Congressional Pig Book Summary," *Citizens Against Government Waste*, 2006, <http://cagw.org/content/Pig-Book-2006>.

17 "2002 Congressional Pig Book Summary," *Citizens Against Government Waste*, 2002, <http://cagw.org/Content/Pig-Book-2002>.

18 Paul Kane, "House bans earmarks to for-profit companies," *The Washington Post*, March 11, 2010, <http://www.washingtonpost.com/wp-dyn/content/article/2010/03/10/AR2010031002084.html>.

19 Jordan Fabian and Molly K. Hooper, "House GOP votes to ban all earmarks," *The Hill*, March 11, 2010,

November 16, 2010, announcing a two-year ban.²⁰ In his State of the Union address on January 25, 2011, President Obama got in on the act, threatening to veto any legislation that contained earmarks.²¹ Senate Democrats were the last to act, matching their Republican colleagues' two-year ban in the upper chamber on February 1, 2011.²²

This uneasy truce among all these players was revisited and renewed each year, until the House of Representatives failed to extend the moratorium following the November 8, 2016 elections. Speaker Paul Ryan (R-Wis.) had to head off an effort to modify the definition of an earmark being pushed by Reps. John Culberson (R-Texas), Mike Kelly (R-Pa.), Mike Rogers (R-Ala.), and Tom Rooney (R-Fla.).²³ It was the Speaker's promise to allow the House to consider changes to the earmark moratorium that has led to the hearings being held by the Rules Committee.

On January 17, 2017, Senate Republicans unanimously agreed to extend the moratorium as written. This should make any change that might be agreed upon the House moot, although that is one of many reasons why restoring earmarks in any fashion is extremely unwise and fraught with political peril.

Taxpayers are already frustrated with the budget process; earmarks would add to their disdain. In the eight years since FY 2010, the last year before the moratorium was adopted, legislators have passed the federal budget three times. Congress funded the government via continuing resolutions (CR) in FYs 2011, 2013, and so far in FY 2016. CRs implement funding levels from the prior year and do not allow members of Congress to insert funding for new programs; hence, no earmarks.

In the three years that Congress successfully passed the twelve appropriations bills – FYs 2012, 2014, and 2015 – there were no earmarks by the definitions adopted by the House and Senate.

However, by applying the definition it has used since 1991, CAGW has identified 366 earmarks costing taxpayers \$10.2 billion over this timeframe. These include \$465 million for three earmarks to upgrade the M1 Abrams tank, which is opposed by the Pentagon, and \$17.7 million for three earmarks for the East-West Center, championed by Senate appropriator Brian Schatz (D-Hawaii) and his predecessor, the late Sen. Daniel Inouye (D-Hawaii).

<http://thehill.com/blogs/blog-briefing-room/news/86203-house-gop-approves-conference-wide-earmark-ban>.

20 Devin Dwyer and Matthew Jaffee, "Senate Republicans Ban Earmarks; Will Democrats Follow?", ABC News, November 16, 2010, <http://abcnews.go.com/Politics/earmark-moratorium-republicans-poised-ban-pork-barrel-spending/story?id=12155964>.

21 Sam Youngman, "President vows in State of the Union to veto any bill 'larded' with earmarks," *The Hill*, January 26, 2011, <http://thehill.com/homenews/administration/140189-obama-to-issue-earmark-veto-threat-in-state-of-the-union-address>.

22 Corey Boles, "Senate Democrats Announce Earmark Moratorium," *The Wall Street Journal*, February 1, 2011, <http://www.wsj.com/news/articles/SB10001424052748704124504576118633989795702?cb=logged0.7939253577496856>.

23 Rachel Bade and Ben Weyl, "Ryan halts GOP push to restore earmarks," *Politico*, November 16, 2016, <https://www.politico.com/story/2016/11/gop-lift-earmark-ban-231500>.

The Budget Process

On the first Monday in February, the president is supposed to submit to Congress the administration's budget request, a detailed outline of funding and policy priorities for the coming fiscal year. While Congress is not bound to adhere to the president's budget, the request reflects the agencies' priorities and the President's signature is ultimately required to enact all spending bills into law.

Congress is supposed to pass a budget resolution by April 15, to set spending and borrowing levels for the following five fiscal years. It allocates aggregate totals to the appropriations committees, which are meant to act as internal controls on discretionary spending. Although the budget resolution is enforceable through points of order and other rules, they are frequently waived, making the spending limits nonbinding. The budget resolution is not signed by the president and does not have the force of law.

The Constitution does not dictate a specific budget process for Congress to follow. Over the years, an amalgamation of laws and rules has established a twofold budget process that divides power between authorizing and appropriations committees.

Authorizing committees, such as the House Committee on Armed Services and the Senate Committee on Commerce, Science, and Transportation, are responsible for passing legislation that sanctions spending in specific areas. The committees can pass one year or multiyear authorization bills for programs and projects in their jurisdiction. The importance of authorizing committees lies in their role as screeners and evaluators of federal priorities. Such committees are charged with exercising oversight, holding hearings, and measuring results for programs within their purview.

Following the enactment (if any) of authorizing legislation, the ball moves to the appropriations committees, which are responsible for writing the spending bills that fund federal agencies and programs. Appropriations bills give federal agencies the legal authority to spend money from the Treasury for specified purposes. In short, authorizing committees approve spending and appropriations committees enact spending.

Not all federal spending filters through this two-step process. So-called direct spending bypasses the appropriations process. For entitlement programs like Medicare, spending is mandated by authorization legislation and remains on autopilot unless changed by subsequent authorization measures. Some direct spending, such as Medicaid, is funded in appropriations bills, but the amount appropriated is controlled by authorizing legislation. Consequently, appropriations committees control only about one-third of the federal budget, broadly referred to as discretionary spending.

In theory, members of Congress would have two avenues for acquiring funding for a favored project: encourage the beneficiary to submit a grant request to the relevant agency, or go on the record and argue for funding before an authorizing committee. In the first scenario, the agency would determine if the request should receive funding by applying a competitive formula, while the latter would involve congressional hearings that would add transparency and accountability to the budget process.

Earmarks bypass these screening methods entirely. Because they are inserted at the discretion of appropriators, they are not subject to the competitive process that exists in the agencies and are frequently not reviewed or specifically voted on by members of Congress.

In May of each year, the House and Senate appropriations committees divide the budget resolution into sub-allocations for the appropriations subcommittees. Each subcommittee writes the spending bill for the areas of government that it covers. The full appropriations committees may amend and must ultimately approve each of the bills. The subcommittees and the full committees “mark up” the bills with pork projects. The bills then go to the floor of their respective chambers for a full vote.

Appropriations bills are the most attractive vehicle for pork because they are annually scheduled and are seen as must-pass legislation, particularly because Congress tends to tackle them so late in the session. In addition, their vast size (especially in omnibus form) effectively screens individual projects from close scrutiny.

Upon passage of an appropriations bill, the House and Senate appoint conferees to write a compromise version that can pass both the House and the Senate by majority vote. Every appropriations bill requires its own conference. After the conference report is passed, the bills go to the president to sign.

Adding pork to conference reports is an especially abusive practice because negotiations involving a small number of legislators occur behind closed doors after each chamber has already passed its version of the bill. Conference reports, sometimes more than a foot thick, can include thousands of pork-barrel projects that have not been seen or voted on by either the House or the Senate. Members are often faced with passing a bloated conference report or beginning the process anew.

The potential for abuse is magnified by omnibus bills, which are multiple appropriations bills wrapped together in a single package. Congress often resorts to omnibus legislation after it fails to pass all the appropriations bills before the start of the fiscal year. Omnibus packages are sometimes slapped together in the wee hours of the morning by congressional staffers. It is not uncommon for the resulting behemoth to contain varied fonts and hundreds of handwritten deletions and changes. Members of Congress barely have time to scratch the bill’s surface before it comes to the floor for a vote. Although members can raise points of order against projects added in conference, this rule is also frequently waived. Congress has resorted to utilizing omnibus legislation virtually every year for the past 15 years.

In an effort to increase transparency, the House of Representatives on January 5, 2011, adopted a rule stipulating that legislation be made available to the public for three days prior to a vote.²⁴ However, this rule has become colloquially known as the “24-hours-and-two-seconds rule,” as members have taken to posting a bill just before midnight (e.g., on a Tuesday) and voting just after midnight three calendar days later (Thursday

24 Terence P. Jeffrey, “Republican ‘Pledge’ Depends on What the Meaning of ‘3 Days’ Is,” CNSNews.com, December 12, 2013, <http://cnsnews.com/mrctv-blog/terence-p-jeffrey/republican-pledge-depends-what-meaning-3-days>.

morning), thus satisfying the letter, if not the intent, of the rule.

The mangled and secretive appropriations process bestows on congressional staffers an enormous amount of discretion and leverage in the crafting of legislation. The first members of Congress worked without staffs, researching and drafting legislation on their own. Since the Senate first authorized members to hire clerks with public funds in 1884, congressional staffs have ballooned in size and expense. Most of the grunt work of writing appropriations bills is delegated to staffers, who operate behind the same veil of secrecy as appropriations committee members but are not held accountable in elections.

Heavy reliance on staffers allows members of Congress to abdicate their responsibility to read and write the legislation they vote on, opening new avenues for corruption and abuse. In one infamous example, in 1997 Jason Alderman, a staffer for the late Rep. Sidney Yates (D-Ill.), had an altercation with a policeman after being stopped for walking his dog without a leash in Meridian Hill Park in Washington, D.C. Alderman later had language added to a House appropriations bill ordering the National Park Service to build a dog run at the park “as expeditiously as possible.”²⁵ Rep. Yates was unaware of the earmark until it appeared in a column by the late journalist (and CAGW co-founder) Jack Anderson.²⁶

In addition to secrecy, there is a stark lack of accountability in the appropriations process. Every appropriations bill has been declared earmark-free since the imposition of the moratorium, so the requirement that members who request earmarks be identified no longer exists. It is now extremely difficult to establish a firm connection between a member of Congress and a specific earmark, unless the member openly takes credit for the project. Circumstantial evidence can sometimes point to the likely sponsor of a specific project. The most telling clue is the district or state where the project’s recipient is located, if this information is made available. If a project is added to the House version but not the Senate version of a bill, and the recipient is based in the district of a House Appropriations Committee member, that member is most likely the culprit. However, more often than not, the recipient and location of the funded project is not listed. CAGW also looks for evidence that the member has requested funding for that project in the past to identify the legislator most likely responsible.

Although there are fewer earmarks since Congress adopted the earmark moratorium, far more money has been spent on average for each earmark, with no detailed information provided. In years past, individual locations (e.g., a bike path in a certain city) would appear next to the funding amount. The current trend sees members earmarking funding for an account that is responsible for that sort of spending (in this case, the Heritage Partnership Program), with the funding distributed later, without transparency or accountability.

In a perfect demonstration of the new era of earmarking, the \$25 million earmark for the

25 Linda Wheeler, “Mutts Ado About Nothing,” *The Washington Post*, January 30, 1997, <http://www.washingtonpost.com/archive/politics/1997/01/30/mutts-ado-about-nothing/e92ed8f1-499f-4ab2-81b2-e102ed2a60ae/>.

26 James Bovard, *Freedom in Chains: The Rise of the State and the Demise of the Citizen*, St. Martin’s Press, New York, New York, 2000, p. 113.

National Predisaster Mitigation Fund appearing in the FY 2015 Department of Homeland Security bill corresponds to 58 earmarks totaling \$24.6 million for the same program in FY 2010. In other words, the average dollar amount for the 58 earmarks in FY 2010 was \$424,138, while the cost for a single earmark for the same purpose in FY 2015 was \$25 million. The “Congressionally Directed Spending” section at the end of the FY 2010 bill contained the names of the members of Congress requesting each project and its location, as required by the pertinent transparency rules. In stark contrast, the single FY 2015 earmark, which is \$400,000 greater than the combined total of the 58 FY 2010 earmarks, contained no such information and simply created a pool of money to be distributed later without any specific information about the eventual recipients or the member of Congress who requested the earmark.²⁷

Corruption and Conflicts of Interest

Throughout the years, members of Congress have been plagued by multiple scandals relating to earmarks. In addition, numerous examples exist of legislators directing earmarks to locations very close to real estate they or their family members own. The following is a brief rundown:

- In 2010, a \$900,000 earmark requested by Rep. Bennie Thompson (D-Miss.) was used to repave approximately two dozen roads in Hinds County, including roads servicing three homes owned by Rep. Thompson, and one owned by his daughter.²⁸
- Between FYs 2002 and 2010, former House Appropriations Committee Chairman Harold Rogers (R-Ky.) earmarked \$7.1 million to a revitalization project covering a half-mile strip of College Street, where Rep. Rogers lives. The project narrowed the street, buried utility lines, rebuilt streets and sidewalks, and developed new curbs and decorative lamps.²⁹
- Between FYs 2008-2010, House appropriator Kay Granger (R-Texas) requested \$51.9 million in earmarks to reroute the Trinity River in downtown Fort Worth. Rep. Granger and her son co-owned a condominium building approximately a half mile south of the project, and her son directed the group overseeing the project.³⁰
- Between FYs 2008-2010, Sen. James Inhofe (R-Okla.) earmarked \$1.8 million for a road-widening study in Owasso, including a portion of a road that passes in close proximity to property owned by his wife.³¹
- Between FYs 2008-2010, Rep. Frank LoBiondo (R-N.J.) earmarked \$4.7 million

²⁷ <https://www.cagw.org/reporting/pig-book>.

²⁸ David S. Fallis, Scott Higham, Kimberly Kindy, and Bobbye Pratt, “Mapping the Earmarks,” *The Washington Post*, February 6, 2012, <http://www.washingtonpost.com/wp-srv/special/capitol-assets/mapping-the-earmarks/>.

²⁹ Ibid.

³⁰ Ibid.

³¹ Ibid.

for “beach monitoring and nourishment” in Ventnor City, where the legislator owns a home 850 feet from the shore.³²

- Between FYs 2008-2010, Sen. Richard Shelby (R-Ala.) earmarked more than \$250 million to projects lobbied for by his former staffers, including \$175 million for the University of Alabama System. According to a July 29, 2010, *Politico* article, “Shelby’s influence is hard to miss at Alabama campuses. There’s Shelby Hall at The University of Alabama at Tuscaloosa. In 2008, the Huntsville campus opened the Shelby Center for Science and Technology at a cost of \$60 million — two-thirds of it built with federal dollars. The University of Alabama at Birmingham is home to the Richard C. and Annette N. Shelby Interdisciplinary Biomedical Research Building.”³³
- In FY 2009, Rep. Linda Sanchez (D-Calif.) earmarked \$475,000 for traffic signal modernization, including one traffic light that was located a mile from her home.³⁴
- In FY 2009, Rep. Lamar Smith (R-Texas) requested a \$950,000 earmark to improve three local intersections, including one a few blocks from his house.³⁵
- Between FYs 2008 and 2009, Rep. Darrell Issa (R-Calif.) requested two earmarks to widen a road less than a mile from a medical building that he owned.³⁶
- For more than a decade, House Minority Leader Nancy Pelosi (D-Calif.) earmarked \$50 million for a light-rail project linking the San Francisco neighborhoods of Union Square and Chinatown with neighborhoods south of Market Street. Rep. Pelosi’s husband owns a commercial building adjacent to Union Square.³⁷

Each of the previous examples occurred prior to the institution of the earmark moratorium beginning in FY 2011. While optimists might conclude that the moratorium has reduced corruption, the reduced transparency has made corruption more difficult to spot. Without the names of members of Congress responsible and the identification of specific locations for funding, linking earmarks to self-serving legislators has become virtually impossible.

A Return to the Bad Old Days

Almost as soon as the earmark moratorium began, numerous legislators from both sides of the aisle began publicly pining for the halcyon days of uncontrolled earmarking. A variety of justifications have been used, from the age-old excuse of congressional

32 Ibid.

33 Manu Raju and John Breshnahan, “Shelby steers cash to ex-aides,” *Politico*, July 29, 2010, <http://www.politico.com/story/2010/07/shelby-steers-cash-to-ex-aides-040388?paginate=false>.

34 Fallis, Higham, Kindy, and Pratt, “Mapping the Earmarks.”

35 Ibid.

36 Ibid.

37 Ibid.

authority ceded to the executive branch to complaints that earmarks are a necessary contrivance to avoid gridlock and get legislation moving again.

A return to the pork-barrel track will inevitably mean an increased risk of corruption, the potential for an explosion in earmarks compared to current levels, and the enactment of more costly legislation. There are also concerns regarding which legislators benefit most in a system with openly-incorporated earmarks. As Sen. John McCain (R-Ariz.) explained on May 7, 2014, regarding those making the case for a return to earmarks, “The problem with all their arguments is: the more powerful you are, the more likely it is you get the earmark in. Therefore, it is a corrupt system.”³⁸

Some of the more noteworthy examples of members of Congress advocating for a return to a systematic earmark process follow, along with information on the earmarks that can be linked to that legislator during FYs 2008-2010:

- On November 15, 2016, Reps. John Culberson (R-Texas), Mike Rogers (R-Ala.), Tom Rooney (R-Fla.), and Mike Kelly (R-Pa.) [offered](#) an amendment to the House rules that would have violated the 2011 earmark moratorium by allowing earmarks to be added to a limited group of federal agencies, including the Army Corps of Engineers and the Departments of Defense and Homeland Security. Earmarks for recreation facilities, parks, and other such projects would have been disallowed under the plan. House Speaker Paul Ryan (R-Wis.) said that he would delay any vote on earmarks until the first quarter of 2017. The effort took place only eight days after a “drain the swamp” election in which voters made it abundantly clear that they wanted an end to wasteful spending in Washington, and gave Republicans control of both chambers of Congress and the executive branch. A vote to resurrect earmarks would have been (and might be still) a shocking repudiation of these results. Between FYs 2008-2010, Rep. Culberson received 63 earmarks costing \$113.4 million for an average rank of 129th in the House; Rep. Rogers received 96 earmarks costing \$92.1 million for an average rank of 169th in the House; and Rep. Rooney, who entered Congress in 2009, received two earmarks costing \$1.2 million, for an average rank of 396th in the House. Rep. Kelly was elected in 2010.³⁹
- On October 21, 2015, Rep. Emanuel Cleaver (D-Mo.) sent a letter to House Transportation and Infrastructure Committee Chairman Bill Shuster (R-Pa.) calling for a return of earmarks to ease gridlock. According to Rep. Cleaver, “Congress is suffering from a despicable disease of gridlock ... Congress used the practice of congressionally-directed spending for negotiating purposes ... and [to] keep the legislative process moving.”⁴⁰ Between FYs 2008 and 2010, Rep. Cleaver received 54 earmarks costing \$107.6 million for an average rank of 190th in the House.

38 Burgess Everett, “Earmarks divide Republicans,” *Politico*, May 7, 2014,

<http://www.politico.com/story/2014/05/earmark-debate-congress-106470#ixzz3p2skvKf2>.

39 Rachel Bade and Ben Weyl, “Ryan halts GOP push to restore earmarks,” *Politico*, November 16, 2016,

<https://www.politico.com/story/2016/11/gop-lift-earmark-ban-231500>.

40 Lauren French, “Cleaver revives push to bring back earmarks,” *Politico*, October 22, 2015,

<http://www.politico.com/story/2015/10/emanuel-cleaver-revives-earmark-push-215049>.

- During a closed-door meeting on November 14, 2014, Rep. Mike Rogers attempted to convince his fellow Republican lawmakers to restore earmarks. He stated, “I do not believe most people trust how President Obama spends our tax dollars. ... This proposal would allow a conservative, Republican-controlled House to reassert its Constitutional authority over the Obama Administration and the spending decisions it is currently making.”⁴¹ In 2012, during a similar Republican conference meeting, Rep. Rogers reportedly complained that Congress couldn’t get anything done without earmarks and urged his Republican colleagues to lift the ban. For his efforts, Rep. Rogers was named CAGW’s “Porker of the Month” in November 2014 and April 2012.
- On October 1, 2014, Senate appropriator Dick Durbin (D-Ill.) asserted that the earmark moratorium has “created a situation where you can’t get transportation bills passed.”⁴² Sen. Durbin has also referenced the bipartisan nature of earmarks, claiming in April 2014 that they were the “glue that held everybody together, Democrats and Republicans, working for a common goal.”⁴³ Between FYs 2008 and 2010, Sen. Durbin received 352 earmarks costing \$664.2 million for an average rank of 25th in the Senate.
- Rep. Don Young (R-Alaska) has long been a preeminent congressional porker, and remains unapologetic. In a May 15, 2014, *Alaska Public Media* article, Rep. Young chided Republicans, “I don’t know what’s wrong with my party ... I frankly think they had their head in the sand, when they said ‘We can’t have earmarks. We have to balance the budget.’ We transferred that power to the president.”⁴⁴ In a July 24, 2013, *National Journal* article, Rep. Young stated, “I’m fed up with this idea that we’re ceding power. Why the hell are we congressmen?”⁴⁵ Between FYs 2008 and 2010, Rep. Young received 76 earmarks costing \$210.4 million for an average rank of 124th in the House. He was also the purveyor of the \$223 Bridge to Nowhere in the 2005 highway bill.
- On May 14, 2013, Rep. Shuster stated that “There are some in Washington who say we shouldn’t have that role. I just say they are wrong,” and “at some point we have to bring [earmarks] back.”⁴⁶ Between FYs 2008 and 2010, Rep. Shuster

41 Matt Fuller, “New House GOP Rules Impact Medals, Gavel – and Paul Ryan?” *Roll Call*, November 14, 2014, <http://blogs.rollcall.com/218/new-house-gop-rules-impact-medals-gavel-and-paul-ryan/>.

42 Keith Laing, “Durbin: Earmark ban preventing federal transportation bills,” *The Hill*, October 2, 2014, <http://thehill.com/policy/transportation/219545-durbin-earmark-ban-created-a-situation-where-you-cant-get>.

43 “Editorial: Bribery (aka the earmark) attempts a comeback in Congress,” *The Washington Times*, April 24, 2014, <http://www.washingtontimes.com/news/2014/apr/24/editorial-bribery-makes-a-comeback/>.

44 Liz Ruskin, “Earmarks: Congress Mulls Return of Practice that Enriched Alaska,” *Alaska Public Media*, May 15, 2014, <http://www.alaskapublic.org/2014/05/15/earmarks-congress-mulls-return-of-practice-that-enriched-alaska/>.

45 Amy Harder, “Shhhh. Republicans Are Defending Earmarks,” *The National Journal*, July 24, 2013, <http://news.yahoo.com/shhhh-republicans-defending-earmarks-113831295.html>.

46 Sam Kennedy, “Transportation chief says infrastructure is at risk,” *The Morning Call*, May 14, 2013,

received 70 earmarks costing \$68.4 million for an average rank of 213th in the House.

- As the member of Congress who received the most earmarks during FYs 2008-2010, it is no surprise that Senate Appropriations Committee Chairman Thad Cochran is in favor of a return to an open earmark system. On May 13, 2014, he claimed, “I think earmarks have gotten a bad name.”⁴⁷
- In a May 7, 2014, *Politico* article, Senate appropriator Lisa Murkowski (R-Alaska) opined, “It was wrongheaded. . . . When you basically say: ‘Agencies, you set the priorities,’ I’m not down with that. And I don’t think that a lot of my colleagues are, but I think they’ve trapped themselves into a box and they can’t figure out how to get out. Because they have convinced their constituents that we are totally out of control.”⁴⁸ Between FYs 2008 and 2010, Sen. Murkowski received 170 earmarks costing \$410.4 million for an average rank of 59th in the Senate.
- The same *Politico* article included a quote by another earmark apologist, Senate appropriator Roy Blunt (R-Mo.). Sen. Blunt complained about the centralization of federal funding in the federal agencies, stating “It’s a legitimate constitutional question as to who is supposed to direct the way the money is spent; is it the Congress or the president? We need to figure out some way that the Congress can direct the way the money is spent in the country without the people we work for feeling concerned about the way the process works.”⁴⁹ As a member of the House between FYs 2008 and 2010, Sen. Blunt received 67 earmarks costing \$106.3 million for an average of 142nd in the House.
- Sen. Inhofe also expressed support for the return of earmarks in the article, claiming, “People have demagogued the issue to death; they’ve stood on the floor of the Senate. The Constitution’s on our side. . . . They’re afraid of the issue because there’s so many people out there who will beat them up about it.”⁵⁰ Between FYs 2008 and 2010, Sen. Inhofe received 224 earmarks costing \$331 million for an average rank of 65th in the Senate.
- Senate Minority Leader Harry Reid has long championed a return to earmarks. On May 6, 2014, Sen. Reid proclaimed, “I have been a fan of earmarks since I got here the first day.”⁵¹ Using the Orwellian phrase “congressionally directed

http://articles.mcall.com/2013-05-15/business/mc-shuster-talks-transportation-20130515_1_transportation-chief-senior-shuster-congressional-district.

47 Jaime Fuller, “Is Thad Cochran’s win a win for earmarks?” *The Washington Post*, June 25, 2014, <https://www.washingtonpost.com/blogs/the-fix/wp/2014/06/25/earmarks-were-either-going-to-be-the-end-of-thad-cochran-or-his-saving-grace-this-time-they-tk-him/>.

48 Everett, “Earmarks divide Republicans.”

49 Ibid.

50 Ibid.

51 David Lightman, “Reid: ‘I have been a fan of earmarks,’” *Miami Herald*, May 6, 2014, <http://www.miamiherald.com/latest-news/article1963999.html>.

spending” that many members of Congress prefer over “earmark,” Sen. Reid stated on June 26, 2014, “I have never backed down from my support of congressionally directed spending. . . . That’s our constitutional obligation and duty. I do not believe that the White House should make all these decisions. I am proud of all the earmarks I have gotten for the state of Nevada. They’ll come back – it’s only a question of time because that’s our constitutional obligation.”⁵² Sen. Reid’s comments in 2014 were preceded by his early disdain for the earmark moratorium. On March 8, 2011, he described the termination of an earmark for the Cowboy Poetry Festival in Elko, Nevada as “mean-spirited,” and that without federal funds, the festival and “the tens of thousands of people who come there every year would not exist.”⁵³ His overly dramatic description of these dire consequences was dismissed a day later by a spokesman for the festival, who said that the federal government contributed only 7 percent of the funds for the event, and that he and his fellow cowboys “could certainly continue if we lose that funding. . . .”⁵⁴ For his absurd claim that the funds for the festival constituted essential federal spending, CAGW named Sen. Reid the March 2011 “Porker of the Month.” Between FYs 2008 and 2010, Sen. Reid received 462 earmarks costing \$712.8 million for an average of 18th in the Senate.

- Given the power and responsibility that she would inherit if Democrats retake the House, House Appropriations Committee Ranking Member Nita Lowey (D-N.Y.) would love to see the return of a normal earmarking system. On January 20, 2013, Rep. Lowey stated, “Earmarks, in a responsible way, where it’s all public, you know what you want and you know what you’re going to get, I think it’s very, very helpful, because who knows the district better than a member?”⁵⁵ Between FYs 2008 and 2010, Rep. Lowey received 129 earmarks costing \$64.7 million for an average of 215th in the House.
- Despite already having his name plastered all over the University of Alabama System, Senate appropriator Richard Shelby wants more. On January 7, 2013, he stated that “I think the term ‘earmarks’ is pejorative, but if anybody had something authorized and then appropriated, both, with balance, that might come back in some form.”⁵⁶ Between FYs 2008 and 2010, Sen. Shelby received 424

52 Sam Stein and Ryan Grim, “Harry Reid Wants To Revive Earmarks And Says A Top House Republican Does Too,” *Huffington Post*, June 26, 2014, http://www.huffingtonpost.com/2014/06/26/harry-reid-earmarks_n_5531388.html.

53 Josiah Ryan, “Reid attacks GOP budget for trying to cut money for Nevada’s cowboy poetry festival,” *The Hill*, March 8, 2011, <http://thehill.com/blogs/floor-action/senate/148065-reid-attacks-gop-budget-for-trying-to-cut-money-for-nevadas-cowboy-poetry-festival>.

54 “All hat and no cattle? Cowboy poetry event boss talks funding,” NBC News, March 9, 2011, <http://firstread.nbcnews.com/news/2011/03/09/6229485-all-hat-and-no-cattle-cowboy-poetry-event-boss-talks-funding>.

55 Katie Glueck, “Rep. Lowey: Bring back earmarks,” *Politico*, January 20, 2013, <http://www.politico.com/story/2013/01/nita-lowey-bring-back-earmarks-086466>.

56 Mary Orndorff Troyan, “Shelby takes top GOP seat on Appropriations,” *USA Today*, January 7, 2013, <http://www.usatoday.com/story/news/politics/2013/01/07/richard-shelby-appropriations-committee/1815081/>.

earmarks costing \$905 million for an average of 13th in the Senate.

- On the other hand, some members of Congress have undergone a shift akin to a religious conversion when it comes to earmarks. Between FYs 2008 and 2010, Senate Majority Leader Mitch McConnell (R-Ky.) received 195 earmarks costing \$451.7 million for an average of 47th in the Senate. He reconsidered his support for earmarks in November 2010, when he said, “Make no mistake. I know the good that has come from the projects I have helped support throughout my state. I don’t apologize for them. But there is simply no doubt that the abuse of this practice has caused Americans to view it as a symbol of the waste and the out-of-control spending. ... Nearly every day that the Senate’s been in session for the past two years, I have come down to this spot and said that Democrats are ignoring the wishes of the American people. When it comes to earmarks, I won’t be guilty of the same thing.”⁵⁷d

Negative Consequences of Earmarks

Thankfully, cases of out-and-out bribery are rare. But pork-barrel spending has often been called “legalized bribery.” Earmarks are doled out based on political favoritism and to advance the careers of Washington insiders rather than on the merit of individual projects. Waste and abuse have proliferated in the absence of earmark accountability and a competitive process.

Earmarks bypass agency and state review and planning processes and usurp higher priority expenditures

A commonly-held notion regarding earmarks is that agencies are appreciative of the increase in funding. However, multiple studies have highlighted the profoundly negative consequences the projects can have at the agency level.

A September 7, 2007, Department of Transportation (DOT) Office of Inspector General (IG) report analyzed the cost, oversight, and impact of earmarks for FY 2006.⁵⁸ The report disclosed that 7,724, of 99.5 percent, of the 7,760 earmarks for the Federal Highway Administration (FHWA), Federal Transit Administration (FTA), and Federal Aviation Administration (FAA) “either were not subject to the agencies’ review and selection processes or bypassed the states’ normal planning and programming processes.”⁵⁹

Some of the earmarks the IG found went to high-priority projects and would have been fully funded even without earmarks. However, the IG found that many low priority

57 “McConnell on Earmarks: The People Have Spoken—I’m Listening,” Press Release, November 15, 2010, http://www.mcconnell.senate.gov/public/index.cfm?p=PressReleases&ContentRecord_id=27fae162-21bd-4e6e-a985-b474921ca80f.

58 “Review of Congressional Earmarks Within Department of Transportation Programs,” Department of Transportation Office of Inspector General (“DOT IG”), September 7, 2007, https://www.oig.dot.gov/sites/default/files/Congressional_Earmarks- AV-2007-66---508_Compliant.pdf.

59 Ibid., p. 4.

projects “are being funded over higher priority, non-earmarked projects. ... Some earmarks are providing funds for projects that would otherwise be ineligible.”⁶⁰

For example, the FAA “considered 9 of the 10 new earmarked projects, totaling \$31.5 million, in its Tower/Terminal Air Traffic Control Facility Replacement Program within the Facilities and Equipment account to be low priority projects that would not have received funding without the earmark. These new projects have added to the already substantial backlog of replacement projects from earmarks in prior fiscal years and have caused FAA to delay the planning of its higher priority replacement projects by at least 3 years.”⁶¹

In the FAA’s Airport Improvement Program, there were 125 earmarks, 53 of which, or 42 percent, at a cost of \$68.5 million, were not on the FAA’s list for “critical airport planning.” They would not have been funded but for the earmarks.⁶²

The FAA’s Instrument Landing Systems (ILS) Program was also forced to fund lower priority projects. There were 15 ILS projects costing \$11.5 million; eight were for new projects and seven for prior earmarked projects. FAA officials told the DOT IG that “the Agency would not have selected any of the 15 earmarks to receive funds because none of the earmarked projects would have met FAA’s requirement for selecting a project, such as the requirement that a project’s benefits are equal to or greater than its costs.”⁶³

Earmarks fund statutorily ineligible projects

In FY 2006, 16 of 65, or 24.6 percent of the projects worth more than \$14 million that were earmarked in FHWA’s Interstate Maintenance Discretionary Program failed to “meet statutory criteria and would not have received funding if not for Section 113 of DOT’s appropriations law that allows funding for earmarks that do not meet the statutory requirements of a program.”⁶⁴

To make that point more clearly, the Appropriations Committee unilaterally decided to violate and overturn a provision of the highway bill that Congress had overwhelmingly approved one year earlier.

There were two projects in the FTA’s Bus and Bus Facilities Program that had nothing to do with buses or a transit connection. One was for a “general purpose container dock ... providing for the operation of a fully integrated container handling facility.” The second earmark was for the restoration of a “former rail depot to its original configuration and to house a historical museum and other facilities,” which did not contain anything that remotely looked like a bus.⁶⁵

60 *Ibid.*, p. 5.

61 *Ibid.*

62 *Ibid.*, p. 9.

63 *Ibid.*, p. 12.

64 *Ibid.*

65 *Ibid.*, p. 13.

In 2005, the FTA refused to fund an earmark for a parking garage at a hospital since it was not a permissible use of federal transit funds. Refusing to take no for an answer, in the FY 2006 DOT appropriations bill, there was a specific provision forcing the FTA to fund the park-and-ride facility. There was no transit connection or bus, yet the project had to be funded.⁶⁶

Earmarks create unexpected and substantial costs for states and federal agencies

The DOT IG found that all 33 earmarked projects, costing \$389.6 million, in the FHWA's National Corridor Infrastructure Improvement Program "bypassed the Agency's review, approval, or merit-based selection processes. While projects were not selected based on merit, the states were still required to submit an application to FHWA identifying the project's purpose, eligibility, scope of work, proposed schedule, cost estimates, and all funding sources in order to receive the earmarked funds."⁶⁷

The same held true for FHWA's Public Lands Highways Discretionary Program. All 77 earmarked programs, costing \$95.2 million, were not subject to the agency's approval, review, or selection process. Nonetheless, the states had to "submit an application to FHWA identifying the project's proposed work, purpose and benefits, schedule, and amount of Federal funds requested in order to use these earmarked funds."⁶⁸

In addition to the burden on states to determine how to comply with an unrequested and unexpected earmark, there is a substantial burden on federal agencies. A 2009 study on earmarks directed to the Office of Naval Research (ONR) by University of Virginia professor Dr. James Savage cited these hidden costs associated with the projects.⁶⁹ According to Dr. Savage, earmarks create transaction and opportunity costs, including "time, energy and resources devoted to searching for and obtaining information, the costs of bargaining and coordinating agreements among actors, and the costs of monitoring and achieving contractual compliance between principal and agent." Agencies are forced to manage the additional workload of administering earmarks without a corresponding increase in funding.⁷⁰

A senior ONR officer told Dr. Savage, "We cannot budget to perform congressional work, congressional earmarks. We can only budget our internal services to match what is in our presidential budget submission. So when congressional work comes in, it's loaded on top of what everyone else in this building has to do: whether it's our comptrollers who process the financial part, our program people, or our contract shop. We do not budget to do that work."⁷¹

The earmark study pointed out an additional cost of earmarks. They are frequently not added to the baseline budget for that agency. As a result, earmarks crowd out funding that the agency had anticipated using in a different area.

66 Ibid.

67 Ibid., p. 8.

68 Ibid., pp. 8-9.

69 James D. Savage, "The Administrative Costs of Congressional Earmarking: The Case of the Office of Naval Research," *Public Administration Review*, May-June 2009, pp. 448-457.

70 Ibid., p. 456.

71 Ibid., p. 450.

Earmarks cause states to lose funding for core programs

FHWA officials told the DOT IG that funding for the three earmarked programs (High Priority Projects, Highway Priority Projects, and Surface Transportation Projects) “reduced apportionments to the states for core transportation programs. For FY 2006, Congress earmarked over 5,600 projects valued at over \$3.5 billion in these 3 programs—almost 10 percent of FHWA’s annual budget. Based on discussions with state officials, FHWA officials believed many of these projects would not have been high priority candidates for funding under the states’ formula programs. However, FHWA was required to fund the projects because they were earmarked thereby reducing states’ apportionments by \$3.5 billion.”⁷²

Earmarks are a currency of corruption

The budget process is willfully rigged so that lawmakers and lobbyists can conceal their actions from taxpayers. In the absence of accountability, pork-for-donations and pork-for-votes trades become more appealing and less risky.

Earmarks award special interests at the expense of taxpayers

Pork-barrel spending transfers wealth from everyday taxpayers to special interests which can afford access to power. Most of the projects have no real benefit for most Americans.

Earmarks result in a biased redistribution of taxpayer dollars

The mad dash for earmarks pits states and congressional districts against each other at the expense of taxpayers nationwide. A disproportionate amount of the booty always goes to the states and districts of appropriations committee members. These politicians make off with more than their fair share simply because they are well-placed to do so, not because the people they represent are more deserving.

Serving the needs and wants of states and communities is not a core responsibility of the federal government

The Founding Fathers understood that government is most accountable and effective when it is close to the people. The Constitution authorizes the federal government to exercise only a few specific powers of national importance and reserves the rest to the states. A city council or state government is much better suited to match spending priorities with local needs than a member of Congress or a federal bureaucrat. Local politicians have fewer constituents and are more accessible. With the sphere of government restricted, voters can keep a closer eye on how tax dollars are spent.

Furthermore, it is wasteful for taxpayers to send their money on a round trip to Washington to fund local projects. The federal government is like an expensive middleman, subtracting a hefty administrative cost from whatever it sends back to the

72 DOT IG, p. 11.

states. It would make more sense for Congress to lower the federal tax burden and let states and local communities meet more of their own needs.

Earmarks corrupt academia and impede scientific research

Earmarking funds for facilities and research at academic institutions has always been a controversial practice. According to Dr. Savage, since the 1950s the federal government has relied primarily on the peer or merit review process for distributing research dollars. Peer review was mandated by legislation that created the research and facilities programs. Research agencies select panels of experts to evaluate applications and award grants based on scientific and other criteria. Formal competition helps to insulate the process from politics and political favoritism.

Dr. Savage traced the beginning of academic earmarking to 1983, when the presidents of Columbia University and The Catholic University of America decided to use their institutions' political influence in Congress to win direct appropriations. The practice met with intense opposition from higher education lobbies, prestigious scientific societies, science journals, university presidents, and some elements of the mainstream media.⁷³

Members of Congress often decry the agency bureaucrats who would make decisions in the absence of their wise intervention. But, as Dr. Savage explained, peer review is "rooted in history, doctrine, law, as well as its practical effectiveness in promoting academic science." It "came to be regarded as a central factor in the American research university's almost astonishing ability to produce on a regular basis first-class, cutting-edge basic science."⁷⁴

Dr. Savage was quoted in a July 2005 issue of *Harper's Magazine* as follows:

Academic research is supposed to be peer-reviewed, with the idea being that the best science wins out. But with earmarks, quality has nothing to do with it. Schools get research funds simply because they are in a powerful member's district or have the money to hire a lobbyist.⁷⁵

In addition to the lack of quality, the earmark's purpose may have little to do with an agency's mission. The *Harper's* article noted that some universities have received earmarks for advanced research, even though they do not have graduate programs in the relevant fields.

Defenders of academic pork often depict peer review as an inherently biased process that concentrates funding in a small number of elite institutions. However, many evaluations from congressional committees, federal agencies, the Government Accountability Office, and the Congressional Research Service have found peer review to be generally fair and

73 James D. Savage, *Funding Science in America: Congress Universities, and the Politics of the Academic Pork Barrel*, Cambridge Press, New York, New York, 2000, p. 1.

74 *Ibid.*, pp. 5-6.

75 Silverstein, "The great American pork barrel."

procedurally sound.⁷⁶ Furthermore, if Congress is dissatisfied with federal programs, it can pass legislation to revise the rules and formulas by which they operate.

While the peer review model is not perfect, it remains the most widely accepted and fairest method of distributing federal research dollars. Earmarking requires members and staff to act like experts in every field of science, spending countless hours sifting through hundreds or thousands of earmark requests, without comparing them on the merits to the applications being considered by the various grant-making agencies. This lends itself to the earmarks being approved based on politics, not science.

An October 2007 National Bureau of Economic Research working paper on academic earmarks found that “a university’s political representation is a significant predictor of whether that university receives academic earmarks. Indeed, members of the House and Senate Appropriations committees send a disproportionate amount of academic earmarks to their home districts.”⁷⁷ The average earmark for universities in the states and districts of committee members was three times higher than that of non-committee members.⁷⁸

The authors also found that “earmarked funding leads to research with lower impact than does competitive funding, and that universities that receive earmarked funding at one point in time do not subsequently improve their research standing.”⁷⁹ They cited two studies by Abigail Paine during 2002-2003 that found more research papers were generated from earmark-related research, but they were cited less frequently and therefore had less impact on the advance of science.⁸⁰

The objective of government involvement in science is to advance national goals, not to inequitably distribute earmarks across the nation’s thousands of institutions of higher learning. Federal research programs should support the best possible science at the lowest possible cost. Earmarking causes an inefficient allocation of resources, resulting in a net loss to science and taxpayers.

Earmarks lead lawmakers to neglect more important duties

Pork is often described as a lubricant for the legislative process. Congressional leaders get bills passed by offering or withholding funds for pet projects.

The more time legislators spend wheeling and dealing for pet projects, the less time they have to spend on issues of national importance. Earmarks condition lawmakers to believe projects are essential to getting re-elected. However, the 2006 elections proved that premise is not accurate.

76 Savage, *Funding Science in America: Congress Universities, and the Politics of the Academic Pork Barrel*, p. 38.

77 John M. De Figueiredo and Brian D. Silverman, “HOW DOES THE GOVERNMENT (WANT TO) FUND SCIENCE? POLITICS, LOBBYING, AND ACADEMIC EARMARKS,” National Bureau of Economic Research Working Paper No. 13459, p. 4, October 2007, <https://www.nber.org/papers/w13459.pdf>.

78 Ibid., p. 6.

79 Ibid., p. 4.

80 Ibid., p. 13.

Dr. Savage pointed out that in fiscal year 2006, which as CAGW has noted was a record year for the cost of earmarks, members of Congress submitted 33,000 earmark requests to the House Appropriations Committee.⁸¹ That is the equivalent of 541 earmarks for each of the 61 members of the committee and their staff. It would be impossible to give every request the same scrutiny, peer review, and merit-based analysis they would receive if they first went through the federal agencies which have the necessary expertise and statutory authority to determine which would receive the highest priority, and even if that did occur, the time spent on these requests interferes with the review and consideration of other expenditures.

As a result, the decision-making process is instead based on whether the member of Congress sits on the House Appropriations Committee, particularly for the earmarks added in closed-door conference meetings where the final bills are written. This gives members and staff the opportunity to substitute their projects, which were never voted on in the House or Senate, for those that were approved by either the House or Senate.

Earmarks disperse costs and concentrate benefits

Pork exaggerates a problem inherent to all government spending. The recipient of government funding benefits, while the cost is added to the national debt or spread across millions of taxpayers. The benefit is immediate and the cost is abstract, removing the incentive for fiscal restraint.

For example, taxpayers in an individual community may oppose spending millions of dollars on a museum. However, if federal money can be appropriated for that same purpose, the project seems more justifiable and certainly far less costly as the burden is shared by the nation's taxpayers. Federal money, therefore, is spent on projects that would not be otherwise defensible to local constituents.

Earmarks contribute to the meltdown of spending restraint in Washington

Earmarks have a cultural effect that is greater than the projects' dollar cost. If members of Congress get accustomed to spending money to impress constituents, the resulting mentality will spill over into other areas. Furthermore, local pork crowds out consideration of larger issues in the minds of voters, conditioning them to judge elected officials based only on their ability to attain funding for local projects. Earmarks are a gateway drug to the government spending addiction.

Earmarks allow members of Congress to indulge their narcissistic vices

Members of Congress have long been attracted to creating "Monuments to Me." Traditionally, government structures were named only for members of Congress upon their departure from office or postmortem. That is no longer the case. CAGW's "Byrd Droppings" chronicled more than 30 roads and facilities in West Virginia named after the late Senator Robert C. Byrd (D-W.Va.) before he passed away in 2010, including the Robert C. Byrd Green Bank Telescope, the Robert C. Byrd Highway, and the Robert C.

⁸¹ Savage, "The Administrative Costs of Congressional Earmarking: The Case of the Office of Naval Research," p. 448.

Byrd Hardwood Technologies Center. Former senators Tom Harkin (D-Iowa), Daniel Inouye (D-Hawaii), and Arlen Specter (D-Pa.) were also guilty of this behavior during their time in office.

Earmarks help to fortify an entrenched political class

Voters consistently re-elect their own representatives while giving negative marks to Congress as an institution. It is not a stretch to speculate that pork has been at the root of this paradox. There are many reasons for widespread frustration with Congress: an inability to pass necessary legislation such as a budget on time; the national debt; and, the impending collapse of entitlement programs. Members' securing funding for local projects can have the effect of pulling the wool over the eyes of taxpayers.

Earmarks always grow over time

The 2007 DOT IG report cited a January 2006 Congressional Research Service report on earmarks within DOT appropriations bills between FYs 1996-2005. The number of earmarks “increased by more than 1,150 percent—from 167 earmarks in FY 1996 to 2,094 earmarks in FY 2005. The amount of dollars earmarked also increased by more than 314 percent—from \$789 million in FY 1996 to about \$3.27 billion in FY 2005. In the FY 2006 appropriations bill 1,516, or 95.8 percent, were added in conference.”⁸²

Earmarks have severe political consequences

In their February 9, 2017 *Washington Examiner* op-ed, Sen. Mike Lee (R-Utah and Rep. Jeb Hensarling (R-Texas), noted that Republicans should remember the history of earmarks. They said, “The shortest route from new majority to defeated minority is to campaign as good-government reformers and then govern as beltway-insiders.”⁸³

Former Sen. Tom Coburn (R-Okla.), one of the most outspoken opponents of earmarks, made similar arguments in his January 11 op-ed in *The Federalist*. Coburn wrote that he had “witnessed earmarking up close and know it is inherently corrupt. Earmarks were abused as a form of currency to buy and sell the votes of politicians and to reward political supporters. Convicted super-lobbyist Jack Abramoff affectionately called the earmark system ‘the favor factory.’” He stated what should be obvious to current members of Congress: “Taxpayers are not nostalgic for a return to the days of bridges to nowhere and pork barrel politics.” He added that restoring earmarks was one of the issues that cost Republicans the majority in 2006.⁸⁴

In a statement following the January 9, 2018, White House meeting during which President Trump discussed the potential of bringing back earmarks, the Club for Growth released the following statement: “If Republicans bring back earmarks, then it virtually

82 DOTIG, p. 1.

83 Sen. Mike Lee and Rep. Jeb Hensarling, “Earmarks weaken Congress, won’t drain the swamp,” *Washington Examiner*, February 9, 2017, <http://www.washingtonexaminer.com/earmarks-weaken-congress-wont-drain-the-swamp/article/2614332>.

84 Tom Coburn, M.D., “Earmarks Are Inherently Corrupt. Congress Has no Business Resurrecting Pork Barrel Politics,” *The Federalist*, January 11, 2018, <https://thefederalist.com/2018/01/11/earmarks-are-inherently-corrupt-congress-shouldnt-resurrect-them/>.

guarantees that they will lose the House, stated Club for Growth President David McIntosh. Bringing back earmarks is the antithesis of draining the swamp.”⁸⁵

Democrats are likely watching the potential return of earmarks and thinking, “Go ahead. Make our majority.” This will not result from their lack of interest in earmarks; they certainly would welcome them back. It will be caused by the same anger and lack of enthusiasm that Republican voters had in 2006; they will see little difference between the parties regarding wasteful spending. Indeed, then-incoming House Speaker Nancy Pelosi (D-Calif.) talked about getting rid of the Republican “culture of corruption” and that Democrats would “drain the swamp” upon regaining the majority.⁸⁶

Earmarks are not always matched by the states or serve no purpose

Many earmarks require states to use matching funds. The list of notorious earmarked projects that failed to get such funding include the \$223 million Bridge to Nowhere in Alaska; the \$50 million indoor rainforest in Iowa, and the \$500,000 teapot museum in North Carolina. In each case, the state and/or local governments decided that it was not worthwhile to spend the taxpayers’ money on these projects.

Other earmarks turn out to serve no purpose whatsoever. A prime example of how the lack of peer review or merit-based analysis can lead to a complete waste of money is the \$273,000 earmark to study Goth culture in Blue Springs, Mo. added by Rep. Sam Graves (R-Mo.) in the FY 2002 Labor, Health and Human Services Appropriations bill. The director of the Blue Springs Youth Outreach Unit, P.J. Petrillo, and her staffers claimed in their proposal for the money that “Blue Springs and surrounding communities have recently been bombarded by the gothic culture, which is a youth movement in the United States that can cause youth to engage in self-harmful and destructive behaviors. You have probably seen youth involved in this movement and were unaware of how organized and dangerous it can be for them.”⁸⁷

A spokesman for Rep. Graves claimed the Goth kids were “doing self-mutilation, animal sacrifices, the sort of violent behavior and drug use that possibly could lead up to what happened at Columbine in 1999 with Dylan Klebold and Eric Harris.” The money was supposed to be used for therapy, training, psychological testing, and town hall meetings.⁸⁸

But a funny thing happened on the way to the alleged Goth apocalypse: “... after spending more than a year and \$132,000 in taxpayer money on salaries and ‘fringe benefits,’ Blue Springs Youth Outreach Unit staffers admit that many of the claims they made in their grant proposal are simply untrue, and they have failed to complete two of their three original goals. (The remaining money has been returned to the federal government.)”⁸⁹

85 Club for Growth, “Club for Growth in Bringing Back Earmarks,” January 9, 2018,

<https://www.clubforgrowth.org/uncategorized/club-for-growth-on-bringing-back-earmarks/>.

86 Bill Press, “Pelosi Drains the Swamp, as Promised,” *The Hill*, August 2, 2010,

<http://thehill.com/blogs/pundits-blog/national-party-news/112103-pelosi-drains-the-swamp-as-promised>.

87 Allie Johnson, “Black Hole,” *The Pitch*, June 3, 2004,

<https://www.pitch.com/news/article/20609344/black-hole>.

88 Ibid.

89 Ibid.

Earmarks cannot be limited in scope

The initial effort to violate the earmark moratorium in the Republican Conference following the 2016 election included the Army Corps of Engineers and the Departments of Defense and Homeland Security. Earmarks for recreation facilities, parks, and other such projects would have been disallowed under the plan. Rep. Rooney's proposal in H. Res. 313 limits earmarks to the Army Corps of Engineers and the Bureau of Reclamation.

It is quite rare for Congress to limit the scope of spending for an agency, program or project. Far more often, eligibility for funds is rapidly expanded and accountability for the expenditures is non-existent or weak. Duplication and overlap, as evidenced by the GAO annual reports on such spending, also proliferates.

For example, every member of Congress does not have an Army Corps or Bureau of Reclamation project in his or her district. However, it would be difficult to find one that does not have a defense facility or some defense-related expenditures. This explains in part why defense earmarks usually annually accounted for more than half of the expenditures in CAGW's *Congressional Pig Books*. Defense and homeland security were both included in the first attempt to violate the earmark moratorium. It is hard to believe they will be excluded from any subsequent vote in the Republican Conference.

The return of earmarks for the Save America's Treasures (SAT) grants program in the FY 2017 Interior Appropriations bill is a clear indication that members will not agree to limit earmarks to a particular set of expenditures.

The SAT program helps preserve historic locations around the U.S. The \$5 million earmark in FY 2017 is the first since 2010. There have been 265 SAT earmarks costing taxpayers \$55.5 million since FY 2006.⁹⁰

The 2017 *Pig Book* cited the extensive use and abuse of the SAT program between FYs 2008-10, when transparency rules required each earmark to contain the name of the legislator who requested it and the recipient's name, city, and state: "In FY 2008, 78 members of Congress added 70 earmarks costing \$13.6 million. In FY 2009, 58 members of Congress added 55 earmarks costing \$10 million. And in FY 2010, 72 members of Congress added 52 earmarks costing \$10.2 million."⁹¹

The three years also included "21 earmarks for theaters costing \$4.5 million; 10 earmarks for museums costing \$2.4 million; and seven earmarks for opera houses costing \$1.5 million. One of those earmarks, worth \$150,000, was obtained by Rep. Rosa DeLauro (D-Conn.) in FY 2010 for the Sterling Opera House in Derby, Connecticut; \$110,000 of that amount had to be returned to the federal government after it was improperly used by the city."⁹²

90 Citizens Against Government Waste, "2017 Congressional Pig Book," <https://www.cagw.org/reporting/pig-book>.

91 Ibid.

92 Jean Falbo-Sosnovich, "Derby to pay back \$110,000 federal grant from opera house project," *New Haven Register*, January 30, 2017, <http://www.nhregister.com/business/article/Derby-to-pay-back-110-000->

The *Pig Book* also noted the impact of SAT earmarks on the downfall of former House Appropriations Committee member Alan Mollohan (D-W.Va.). His FY 2010 earmark of \$150,000 for restoration of the Cottrill Opera House through the Vandalia Heritage Foundation, which was operated by a former aide, Laura Kurtz Kuhn, was one of several earmarks that led to his being accused of potential ethics violations, a key issue in his primary election loss in May 2010.⁹³

In his FY 2011 “Terminations, Reductions, and Savings” for FY 2011, former President Obama called for the elimination of the SAT program to allow the NPS to “... focus resources on managing national parks and other activities that most closely align with its core mission,” since the grants have “not demonstrated how they contribute to nationwide historic preservation goals.”⁹⁴

Many of the facilities that received SAT earmarks could have charged more money or found other ways to eliminate the need for the earmarks. For example, in FY 2008, Rep. Peter King (R-N.Y.) earmarked \$147,660 for the lavish de Seversky Center Mansion in Old Westbury, New York. The facility’s website notes that it “brings together Gatsby-era opulence, modern convenience, and highly personalized service” for corporate events and weddings.⁹⁵ A popular wedding website called the facility “one of the premier event and wedding venues in the New York area” and cited the average wedding cost “at between \$73,015 and \$86,737 for a ceremony & reception for 150 guests.”⁹⁶ In other words, two weddings could have replaced the earmark.

Another such facility is the Roberson Center in Binghamton, N.Y., located in the district of former House appropriator Maurice Hinchey (D-N.Y.), which received a \$100,000 earmark in FY 2006. The center raised \$50,000 for its 12th annual Wine and Food Fest in 2017, and charges \$215 per week for summer camp, which means just 23 more attendees per week for the 10 weeks of camp would equal the remaining \$50,000 of the earmark.⁹⁷

Finally, there is a significant question about how earmarks within each program and how would be determined, either by limited the amount of money or the percentage of funding for that been. The DOT IG noted that 28 percent of total FTA appropriations in FY 2006 were earmarked. However, all 33 of the FWHA’s National Corridor Infrastructure Improvement Program and all 77 of its Public Lands Highways Discretionary Program were earmarked. In other programs, the amount varied from 58 percent (FAA’s Airport Improvement Program) to 96 percent (FTA’s Bus and Bus Facilities Program).⁹⁸

[federal-grant-from-11311155.php](#).

93 Ken Rudin, “Alan Mollohan, 14-Term West Virginia Democrat, Ousted in Primary,” National Public Radio, May 11, 2010, <https://www.npr.org/sections/politicaljunkie/2010/05/11/126766266/alan-mollohan-14-term-west-virginia-democrat-ousted-in-primary>.

94 President Barack Obama, “Terminations, Reductions, and Savings,” Budget of the United States Government Fiscal Year 2011, <https://www.gpo.gov/fdsys/pkg/BUDGET-2011-TRS/pdf/BUDGET-2011-TRS.pdf>, p. 48.

95 <https://www.nyit.edu/deseversky>.

96 Weddingspot.com, “NYIT de Seversky Mansion,” <https://www.wedding-spot.com/venue/281/NYIT-de-Seversky-Mansion/>.

97 <https://www.roberson.org/>.

98 DOT IG, p. 3.

How Congress should use its Article 1 powers

The subject matter of the Rules Committee hearings, “Article 1: Oversight and the Power of the Purse,” lends itself to many of the arguments that occurred among the Founding Fathers regarding the extent to which the federal government should be involved in matters that are not enumerated in the Constitution.

It also brings up the way Congress conducts its oversight authority. For example, there is no comprehensive list of oversight hearings or their outcome, or any comparison from one Congress to the next. Oversight hearings often devolve into partisan bickering, and even more often, tend to repeat the same subject matter. Joint hearings within the House are rare, and joint hearings between the House and Senate are extremely rare.

Cabinet officials get called to testify before numerous committees and repeat the same statements.

If Congress spent more time following through on the oversight it does conduct, better and more effective legislation would result. In turn, there would be less reason to believe that the executive branch is not carrying out the will of Congress, and that earmarks are needed to fund certain projects, because there would be a broad consensus on how to spend federal funds.

The Government Accountability Office has issued seven annual reports since 2011 on “opportunities to reduce fragmentation, overlap and duplication and achieve financial benefits.” According to the 2017 report, the government has implemented 51 percent of the recommendations, saving \$136 billion.⁹⁹ Whether twice that amount could be saved or some amount close thereto is an open question since the remaining 49 percent of the recommendations have not been addressed.

Congress should be holding daily oversight hearings on these recommendations, and to the extent they overlap among committees and subcommittees, they should hold joint hearings. This is the type of oversight that can benefit the taxpayers and improve the effectiveness and efficiency of the federal government.

The House should also focus on the \$310 billion in unauthorized programs that have been identified by the Congressional Budget Office (CBO) by moving quickly to consider H.R. 2714, the Unauthorized Spending Accountability Act, introduced by Rep. Cathy McMorris Rodgers (R-Wash.).¹⁰⁰ The legislation has been referred to the Budget, Rules and Oversight and Government Reform Committees, making it a prime candidate for a joint hearing.

H.R. 2174 creates a three-year schedule for the review and reauthorization of the programs listed by CBO whose authorizations have expired or will expire during the

⁹⁹ Government Accountability Office, “2017 Annual Report: Additional Opportunities to Reduce Fragmentation, Overlap, and Duplication and Achieve Other Financial Benefits” GAO-17-491SP, April 26, 2017, “<https://www.gao.gov/products/GAO-17-491SP>.”

¹⁰⁰ <https://www.congress.gov/bill/115th-congress/house-bill/2174>.

upcoming year. In the first year after the expiration of an authorization, the program's budget would be reduced by 10 percent, followed by reductions of 15 percent in each of the following two years, after which the program would be terminated.¹⁰¹

The bill creates a Spending and Accountability Commission, which would review mandatory spending programs and propose an authorization cycle for discretionary spending programs. Budget reductions could be accompanied with reductions in mandatory spending. Reauthorizations are limited to three years. Expedited procedures are established to consider the commission's recommendations.¹⁰²

One of the more recent examples of a reauthorization that addressed concerns over how federal funds were being allocated by the executive branch is the Water Resources Reform and Development Act of 2014 (WRRDA), P.L. 113-121. The conference report passed the House by a vote of 412-4 and the Senate by a vote of 91-7.¹⁰³

The legislation "creates expedited mechanisms for the House and Senate to authorize Corps projects and establishes a new, transparent process to review and prioritize future water development activities with improved Congressional oversight." The bill also "establishes a process to deauthorize \$18 billion in old, inactive projects previously authorized ..."¹⁰⁴

The House Transportation and Infrastructure Committee included the following in its "highlights" of the bill: "NO earmarks." That was the only "all caps" description of the 20 provisions included in the highlights; the committee is quite aware of the long and expensive history of earmarks for Army Corps projects and was making it clear that the practice should not be restored.¹⁰⁵

It is therefore both ironic and unfortunate that legislation has been introduced to supersede and usurp the responsible process that was almost unanimously agreed to by the House and Senate. H. Res. 313, the Responsible Environmental Preservation and American Infrastructure Repair Act, was described by its sponsor, Rep. Tom Rooney (R-Fla.), as making "a limited change to the House rules to allow Congress to direct necessary funding to vetted water resources development projects of the Army Corps of Engineers and the Bureau of Reclamation."¹⁰⁶

In other words, substitute the judgment of a small group of members of Congress and staff for the judgment and review process that was agreed upon only three years earlier in WRRDA.

101 Ibid.

102 Ibid.

103 <https://www.congress.gov/bill/113th-congress/house-bill/3080>.

104 House Republican Conference, "Conference Report to Accompany H.R. 3080, Water Resources Reform and Development Act (WRRDA) of 2014, <https://www.gop.gov/bill/conference-report-to-accompany-h-r-3080-water-resources-reform-and-development-act-wrrda-of-2014/>.

105 The Water Resources Reform and Development Act of 2014, House Transportation and Infrastructure Committee, p. 7, <https://transportation.house.gov/uploadedfiles/wrrdabookletpostconflowres.pdf>.

106 Rep. Tom Rooney (R-Fla.), "Rooney Rule to Restore Everglades Gains Grassroots Support," press release, May 4, 2017, <https://rooney.house.gov/media-center/press-releases/rooney-rule-to-restore-everglades-gains-grassroots-support>.

Rep. Rooney admitted in his May 4, 2017 press release that, “The Consolidated Appropriations bill of 2017 that passed the House yesterday provides the former Administration’s request of \$49 million for the Dike and \$106 million for South Florida ecosystem restoration activities.”¹⁰⁷ In other words, the precise outcome contemplated under WRRDA: NO earmarks.

The press release also identified “grassroots support” for the legislation, which did not include a single taxpayer organization; instead, it listed local water authorities, counties, and trade associations that would benefit from the construction.

Other members who support “exceptions” to the earmark moratorium have their own list of projects that they would like to fund, including Rep. Culberson, who is chairman of the House Appropriations Subcommittee on Commerce, Justice and Science, and a member of the Subcommittee on Transportation, Housing, and Urban Development. He is also a co-sponsor of H. Res. 313.

During his January 11, 2018 interview on KTRH in Houston, Rep. Culberson called the legislation “narrow, common sense, transparent, and focused on solving a problem that’s urgent in West Houston, throughout Harris County and Southeast Texas.” In his description of how it would work, he said he would “get a recommendation from Governor Abbott, make that submission to the Appropriations Committee, and out in the full sunshine, with my name on it, through subcommittee ... finish all of the flood control projects in Houston.”¹⁰⁸

In other words, circumvent the process that would be followed by all other flood control projects in the United States.

Rep. Culberson also claimed during the interview that his funding of local projects “does not increase spending.”¹⁰⁹ This argument has been addressed and debunked in this testimony. What Rep. Culberson really means is that he will attempt to keep the overall spending for flood control projects within the 302(b) allocations by spending more on his own district at the expense of the rest of the country. And by bringing the proposal directly to the subcommittee, he is circumventing the very process that he discussed in the interview, which is to fund projects that have been requested by local and state authorities through federal agencies and then to Congress.

Transparency and accountability by simply putting the members’ name on the project is irrelevant. Earmarks are still an abuse of the budget process and the merit/peer review system that Congress has established for federal agencies to spend 99 percent of appropriated tax dollars.

Sen. Coburn addressed the issue of accountability as follows: “It is the responsibility of Congress to ensure the federal government spends every dollar wisely, and that is accomplished by conducting oversight. This requires taking the time to ask questions, and

107 Ibid.

108 Rep. John Culberson, KTRH interview, January 11, 2018, https://culberson.house.gov/uploadedfiles/culberson_hmn.mp3.

109 Ibid.

to review exactly how taxpayer money is being spent, and if the intended goals are being met. Because there is less political payoff from such work, oversight wanes as earmarking increases. With less accountability, there is more waste, fraud and abuse.”¹¹⁰

Conclusion

Despite the justifications espoused by members of Congress, earmarks are a modern extravagance, not an ancient tradition. Article 1 of the Constitution does not give Congress a blank check to spend tax dollars on any local project legislators might favor; the Founding Fathers never intended for Congress to behave in this manner. Spending money on a teapot museum is not an appropriate exercise of Congress’s power of the purse.

Sen. Lee and Rep. Hensarling are the co-leaders of the Article 1 Project, which is intended to “make Congress once again responsible, both in discharging its constitutional duties and making itself accountable for the consequences.” Those who believe that earmarks fall within that purpose are hijacking the appropriate and proper objectives of their initiative.¹¹¹

They wrote, “Letting members of Congress take credit for federal money steered to their constituents does not fix the incentive problem at the core of today’s congressional dysfunction. In fact, it would only worsen it. As anyone who worked in Washington before 2010 will remember, earmarking was not the innocuous exercise of Congress’ constitutional spending power; it was the tool lobbyists and leadership used to compel members to vote for bills that their constituents — and sometimes their conscience — opposed. ... bringing back earmarks ... would make our job harder, make Congress weaker and make federal power more centralized, less accountable and more corrupt.”¹¹²

Instead, “Congress can use the authorization process to reform how federal agencies spend taxpayer dollars to ensure the process for selecting funding priorities and recipients is transparent, merit-based and consistent with congressional intent. We can also rewrite our outdated budget process rules in a way that puts Congress back into the driver’s seat instead of the current role of junior partner to the executive branch.”¹¹³

Earmarks benefit the few (appropriators, special interests, and lobbyists) at the expense of the many (taxpayers). They contribute to the deficit directly, by tacking on extra funding beyond authorized limits, and indirectly, by being used to buy votes for costly legislation that might not otherwise pass. Earmarks corrupt democracy by superseding more important legislative duties. They are corrupt, inequitable, and wasteful.

Members of Congress know the right way to exercise their Article 1 authority: spend more time on oversight and authorization, through which effective and longstanding changes in how the executive branch spends money can be made.

110 Coburn, “Earmarks Are Inherently Corrupt. Congress Has no Business Resurrecting Pork Barrel Politics.”

111 Lee and Hensarling, “Earmarks weaken Congress, won’t drain the swamp.”

112 Ibid.

113 Ibid.