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“Article I: Effective Oversight and the Power of the Purse”

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Not long after the 2016 presidential election, House Republicans entertained a rule change¹ proposed by Reps. John Culberson (R-Texas), Mike Kelly (R-Pa.), Mike Rogers (R-Ala.), and Tom Rooney (R-Fla.) to bring back earmarks. The rule change, which likely would have passed if allowed to proceed, was quashed by Speaker Paul Ryan (R-Wis.),² who felt that reviving the practice sent the wrong message after a “drain the swamp” election.

Speaker Ryan did pledge, however, that the House Republican Conference would revisit the issue. At the time, he indicated that such a proposal would be considered in the spring.³ That time passed and the issue fell to the wayside as major legislative initiatives like health insurance reform and tax reform took center stage.

Unfortunately, under the direction of Speaker Ryan, the House Rules Committee will conduct hearings the week of January 15 on bringing back the practice of earmarks.⁴ During a meeting with congressional leaders, President Donald Trump appeared to endorse the idea.⁵ He believes that earmarks will make passing legislation easier, a sentiment shared by many members of Congress.

Earmarks Breed Corruption

What is an earmark? It is a specific line item in a spending bill, such as an appropriations or transportation bill, for a project or program. Earmarks may not necessarily always be pork-barrel spending, but they often meet the definition. Citizens Against Government Waste defines pork-barrel spending as meeting two of seven criteria,⁶ including not being competitively awarded, not being the subject of congressional hearings, and serving only a local interest or a special interest.

Perhaps the most famous example of an earmark is the Gravina Island Bridge, more popularly known as the “bridge to nowhere.” The proposed bridge would have connected Ketchikan, Alaska to Gravina Island, Alaska, a sparsely populated island in the southeastern part of the state.

The earmark for the Gravina Island Bridge was included in the Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and Independent Agencies Appropriations Act.⁷ Sen. Tom Coburn (R-Okla.) targeted the earmark by offering an

¹ Russell Berman, “Republicans Get Ready to Welcome Back Earmarks,” *The Atlantic*, November 25, 2016 <https://www.theatlantic.com/politics/archive/2016/11/republicans-earmarks-congress/508328/>

² Rachael 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>

³ Kristina Peterson, “Paul Ryan Halts GOP Push to Revive Earmarks,” *The Wall Street Journal*, November 16, 2016 <https://www.wsj.com/articles/paul-ryan-halts-gop-push-to-revive-earmarks-1479340610>

⁴ Sarah Ferris, “House GOP mulls lifting a ban on earmarks,” *Politico*, January 19, 2018 <https://www.politico.com/story/2018/01/09/republican-lifting-earmark-ban-271491>

⁵ Mike Debonis, “Trump praises spending earmarks, and Capitol Hill again erupts in debate,” *The Washington Post*, January 9, 2018 https://www.washingtonpost.com/powerpost/trump-praises-spending-earmarks-and-capitol-hill-again-erupts-in-debate/2018/01/09/f6e950ba-f57b-11e7-b34a-b85626af34ef_story.html

⁶ Citizens Against Government Waste, “FAQs,” Retrieved January 16, 2018 <https://www.cagw.org/about-us/faqs>

⁷ H.R. 3058, 109th Congress (2005) <https://www.congress.gov/bill/109th-congress/house-bill/3058>

amendment for its removal, which was easily defeated on the Senate floor.⁸ Although Sen. Ted Stevens (R-Alaska) and Rep. Don Young (R-Alaska) fought to keep the earmark for the bridge in the bill, Alaska canceled the project in 2015.⁹

The fight to end earmarks began before the Gravina Island Bridge. In 2005, conservative and libertarian bloggers began shining light on earmarks, calling the movement “Porkbusters.”¹⁰ Some see Porkbusters as the spark that eventually led to the Tea Party movement.

Congressional Earmarks: 1995 to 2010					
Year	Earmarks	Total Cost	Year	Earmarks	Total Cost
1995	1,439	\$10,778,029,500	2003	9,362	\$22,532,012,634
1996	958	\$12,507,959,625	2004	10,656	\$22,893,875,413
1997	1,596	\$14,514,412,000	2005	13,997	\$27,280,248,295
1998	2,143	\$13,200,165,000	2006	9,963	\$29,019,694,236
1999	2,838	\$12,063,535,000	2007	2,658	\$13,210,545,000
2000	4,326	\$17,724,430,500	2008	10,697	\$18,313,802,186
2001	6,333	\$18,490,692,490	2009	10,160	\$19,575,786,352
2002	8,341	\$20,118,503,777	2010	9,129	\$16,547,558,748

Source: Citizens Against Government Waste, Taxpayers for Common Sense

In 2006, the Jack Abramoff corruption scandal increased the scrutiny of earmarks. Abramoff, who was convicted, had dubbed the House Appropriations Committee the “favor factory.”¹¹ Nearly two-dozen people involved in the scandal, including Abramoff¹² and Rep. Bob Ney (R-Ohio)¹³ were convicted as a result of the corruption investigation.

Separately, Rep. Duke Cunningham (R-Calif.) resigned his seat after admitting to taking bribes from defense contractors in exchange for earmarks.¹⁴ He was later convicted.¹⁵ Rep. Jerry Lewis (R-Calif.) also came under scrutiny after securing earmarks near the Eastern Market Metro Station, which increased the value of his Washington, D.C. home four blocks from the station.¹⁶

Rep. Lewis was not the only lawmaker who managed to receive earmarks near property he or she owned. A 2012 report noted that “[t]hirty-three members of Congress have directed more

⁸ Roll Call Vote 262, 109th Congress (2005)

https://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=109&session=1&vote=00262

⁹ Stephen Dinan, “Alaska kills infamous ‘bridge to nowhere’ that helped put end to earmarks,” The Washington Times, November 8, 2015 <https://www.washingtontimes.com/news/2015/nov/8/alaska-kills-bridge-to-nowhere-that-helped-put-end/>

¹⁰ Glenn Reynolds, “So the earlier pork post,” Instapundit, September 18, 2005 <https://pjmedia.com/instapundit/55994/>

¹¹ The Washington Post, “The Favor Factory,” July 31, 2006 <http://www.washingtonpost.com/wp-dyn/content/article/2006/07/30/AR2006073000540.html>

¹² Neil A. Lewis, “Abramoff Gets 4 Years in Prison for Corruption,” The New York Times, September 4, 2008 <http://www.nytimes.com/2008/09/05/washington/05abramoff.html>

¹³ Susan Schmidt and James V. Grimaldi, “Ney Sentenced to 30 Months In Prison for Abramoff Deals,” The Washington Post, January 20, 2007 <http://www.washingtonpost.com/wp-dyn/content/article/2007/01/19/AR2007011900162.html>

¹⁴ Charles R. Babcock and Jonathan Weisman, “Congressman Admits to Taking Bribes, Resigns,” The Washington Post, November 29, 2005 <http://www.washingtonpost.com/wp-dyn/content/article/2005/11/28/AR2005112801827.html>

¹⁵ CNN, “Crooked congressman going to prison,” March 3, 2006 <http://www.cnn.com/2006/LAW/03/03/cunningham.sentenced/>

¹⁶ The Washington Post, “Earmark investigation: Jerry Lewis on Eastern Market improvement,” February 7, 2012

https://www.washingtonpost.com/politics/earmark-investigation-jerry-lewis-on-eastern-market-improvement/2012/02/06/gIQAux7MxQ_story.html

than \$300 million in earmarks and other spending provisions to dozens of public projects that are next to or within about two miles of the lawmakers' own property."¹⁷

Rep. Jeff Flake (R-Ariz.) spearheaded the effort in the House of Representatives to strike earmarks in spending bills through the amendment process.

Beginning in 2005 or 2006, Rep. Flake, who referred to earmarks as the "currency of corruption,"¹⁸ offered several amendments¹⁹ targeting specific line items in spending bills that were requested by his colleagues.

Of the 50 amendments with recorded votes in 2007 that were tracked by the Club for Growth,²⁰ only one passed. The approved amendment²¹ offered by Rep. Flake targeted the \$129,000 earmarked for the "Perfect Christmas Tree Project." The earmark was requested by Rep. Patrick McHenry (R-N.C.),²² who was put in the awkward position of defending pork after criticizing his Democratic colleagues' earmarks.

The amendment to strike the earmark sponsored by Rep. McHenry, who now serves as deputy whip of the House Republican Conference, was approved by a vote of 249 to 174.²³

Earmark "Reforms" and a Moratorium on Congressional Pork

Eventually, facing increased criticism over earmarks, Congress passed the Federal Funding Accountability and Transparency Act.²⁴ The bill heightened transparency of federal spending, including federal contracts and grants, requiring that any outlay of \$25,000 or more to any entity would be posted in a searchable, publicly available database that would include the name of the entity receiving the award, the amount, and the location of the recipient. In 2007, the website, USASpending.gov, went online.

After Democrats took control of the House in January 2007, new processes were adopted as part of the rules package²⁵ for the new Congress to make the earmarks more transparent. Members were required to disclose earmarks requests, including the recipient or location and the purpose. Members were also obligated to certify that they and their spouses had no financial interest in requested earmarks.

¹⁷ David S. Fallis, Scott Higham and Kimberly Kindy, "Congressional earmarks sometimes used to fund projects near lawmakers' properties," The Washington Post, February 6, 2012 https://www.washingtonpost.com/investigations/2012/01/12/gIQA97HGvQ_story.html

¹⁸ Jeff Flake, "Earmarked Men," The New York Times, February 9, 2006 <http://www.nytimes.com/2006/02/09/opinion/earmarked-men.html>

¹⁹ Daniel Schorn, "Rep. Flake on cutting congressional pork," CBS News, November 2, 2006 <https://www.cbsnews.com/news/rep-flake-on-cutting-congressional-pork/>

²⁰ Club for Growth, "2007 Club for Growth RePORK Card, Retrieved January 16, 2018 <https://www.clubforgrowth.org/scorecards/vote-studies/2007-club-growth-repork-card/>

²¹ H.Amdt. 472, 110th Congress (2007) <https://www.congress.gov/amendment/110th-congress/house-amendment/472>

²² John Bresnahan, "McHenry pushes \$129K earmark for X-mas tree foundation," Politico, June 22, 2007 <https://www.politico.com/blogs/politico-now/2007/06/mchenry-pushes-129k-earmark-for-x-mas-tree-foundation-001904>

²³ Roll Call Vote 593, 110th Congress (2007) <http://clerk.house.gov/evs/2007/roll593.xml>

²⁴ S. 2590, 109th Congress (2006) <https://www.congress.gov/bill/109th-congress/senate-bill/2590>

²⁵ H.R. 6, 110th Congress (2007) <https://www.congress.gov/bill/110th-congress/house-resolution/6>

The reforms were good for transparency, and there was a decline in the number and dollar amount of approved earmarks in 2007 not seen since 1999. But there was a concern that the reforms would not lead to a reduction in earmarks. Tax and budget expert Stephen Slivinski's observations were prescient.

"The impact is likely to be minimal," wrote Slivinski. "For starters, some supporters of the change hope the number of egregious earmarks will fall because members of Congress will be too ashamed to attach their names to them. But as anyone who's driven over Senator Robert Byrd Bridge can imagine, the problem isn't that members of Congress don't want their names affiliated with most earmarked projects. It's that so many of them do."²⁶

Indeed, after the decline in 2007, the number of earmarks dramatically increased to 2004 levels in 2008. Of course, the reforms were not enough. Over time, as public attention increased and outcry grew louder, many members of Congress swore off earmarks.²⁷ Other steps, including public disclosure of sponsored earmarks on each members' congressional website and a ban on earmarks for for-profit entities,²⁸ was approved by the House.

In 2010, the House Republicans Conference signed off on a ban of all earmarks.²⁹ Rep. Mike Pence (R-Ind.) hailed the moratorium. "Republicans did something very dramatic today that's going to make it very uncomfortable for business as usual," he said. "So now House Republicans are going to the American people and saying we want a clean break from the runaway spending in the past. And that's going to be quite a contrast from this Congress and the administration."

Senate Republicans eventually followed suit with a moratorium of their own.³⁰

The respective moratoriums have been continued since Republicans took control of the House in 2011 and the Senate in 2015, but not without criticism. As gridlock has increased, more members and pundits have urged Congress to restart the practice as a means to "grease the skids" on legislation. Previous attempts inside the House Republican Conference to end the moratorium failed.³¹ At least until now.

Arguments for Earmarks Are Not Compelling

Many Republican and Democratic members of Congress have argued that the Article I, Section 9 of the Constitution delegates the power of the purse to the legislative branch. The phrase

²⁶ Stephen Slivinski, "A Reality Check on Earmark Reform," Cato Institute, January 22, 2007
<https://www.cato.org/publications/commentary/reality-check-earmark-reform>

²⁷ Washington Examiner, "46 MOCs have sworn off earmarks," April 4, 2008 <http://www.washingtonexaminer.com/46-mocs-have-sworn-off-earmarks/article/10770>

²⁸ 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>

²⁹ Jordan Fabian and Molly K. Hooper, "House GOP votes to ban all earmarks," The Hill, March 11, 2010
<http://thehill.com/blogs/blog-briefing-room/news/86203-house-gop-approves-conference-wide-earmark-ban>

³⁰ Devin Dwyer and Matthew Jaffe, "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>

³¹ Alex Pappas, "Behind Closed Doors, Republicans Push To End Earmark Ban," The Daily Caller, November 14, 2014
<http://dailycaller.com/2014/11/14/behind-closed-doors-republicans-pushing-to-end-earmark-ban/>

“power of the purse” comes by way of James Madison, who wrote, that the “power over the purse may, in fact, be the most complete and effectual weapon with which any constitution can arm the immediate representatives of the people.”³²

But those who make this argument thinking that Madison, the “father of the Constitution,” is on his or her side are wrong and have misinterpreted his writing. Madison was referring to the constitutional requirement that revenue bills begin in the House, not the Senate, the members of which, as Jim Harper explained,³³ “was to be selected by state legislatures.”

Members who make such arguments also ignore Madison’s veto of the Bonus Bill of 1817.³⁴ Although no specific projects were named or earmarked, the bill used additional revenues from the Second Bank of the United States for internal improvements, such as roads and canals.

Madison’s primary reason for vetoing the bill was the “insuperable difficulty” he found “in reconciling the bill with the Constitution of the United States.” He dissected claims supporters of the Bonus Bill made about its constitutionality, argument by argument.

Another concern was the likelihood that the Bonus Bill would undermine the integrity of Congress. As author John Larson observed, “More than ever, outdoor partisan behavior looked to Madison like factious combination, and special-interest issues like internal improvements inexorably corrupted the legislative process.”³⁵

Separately, in his private correspondence, Madison’s predecessor, Thomas Jefferson, wrote that the Bonus Bill “would loosen all the bands of the constitution.”³⁶ Like Madison, Jefferson was concerned about the integrity of the legislative branch. “[O]ther revenues will soon be called into their aid,” he wrote to Madison, “and it will be the source of eternal scramble among the members, who can get the most money wasted in their State; and they will always get the most who are the meanest.”³⁷

Another common refrain from congressional supporters is that the practice makes the passage of appropriations bills easier to pass. On the surface, the argument may make sense, and some members who would have otherwise opposed a spending bill may be easily bought off with the inclusion of a sought after pork project. But those who are claiming that earmarking will be brought back on a limited basis have failed to learn the lessons of history and are making the same mistakes all over again.

³² James Madison, *The Federalist Papers: No. 58*, February 20, 1788 http://avalon.law.yale.edu/18th_century/fed58.asp

³³ Jim Harper, “Dueling Earmark Op-Eds,” Cato Institute, November 12, 2010 <https://www.cato.org/blog/dueling-earmark-op-eds>

³⁴ James Madison, “Veto of federal public works bill,” Constitution Society, March 3, 1817 http://www.constitution.org/jm/18170303_veto.htm

³⁵ John L. Larson, *Internal Improvement: National Public Works and the Promise of Popular Government in the Early United States*, Chapel Hill and London: University of North Carolina Press, 2001

³⁶ Thomas Jefferson, “To George Ticknor,” June 6, 1817 <https://founders.archives.gov/documents/Jefferson/03-11-02-0343>

³⁷ Tom Coburn, “Founders vs. Pork,” National Review, March 13, 2008 <http://www.nationalreview.com/article/223919/founders-vs-pork-tom-coburn>

“[O]nce members realize that their votes can be traded for earmarks, they will start to hold back their support — resulting in a dramatic increase in requests for earmarks. This is a major reason why earmark usage increased rapidly over the course of the 1990s and into the early 2000s: The word was out that votes could be sold,” wrote Jay Cost. “Relatedly, members expect that the subcommittee chairmen of the Appropriations Committee will deny at least some earmarks, so they compensate by making more requests than are actually needed.”³⁸

Especially in today’s toxic political atmosphere, the actual monetary cost of bringing back earmarks to trade for votes may indeed be high, as congressional campaigns have become increasingly nationalized. Even if successful at securing special funding for members’ districts, earmarks may not even serve the desired political purpose.

The belief that “all politics is local” is becoming an antiquated view.³⁹ A Democratic member may not be so inclined to vote for a conservative-leaning or potentially controversial appropriations bill only because he or she is getting an earmark funded because of the fear of backlash from the party’s base.

Conclusions

Some members have said that earmarks may come back in a limited fashion. One legislative proposal introduced by Rep. Tom Rooney (R-Fla.) would allow earmarks for projects under the jurisdiction of the Army Corps of Engineers and Bureau of Reclamation.⁴⁰ This represents a mission creep. These earmarks would return and, over time, more changes would be made, either in the House rules or by way of conference rule changes, to allow for more earmarks.

Moreover, Republicans must put the prospect of short-term gains aside and think about the long term ramifications of restoring even some earmarks. Even if earmarks return in only a limited capacity, the next Democratic majority may restore the practice entirely. Of course, a complete restoration of the practice is certainly the desired end of many Republicans. Although a limited restoration is currently being considered, the political expediency of a complete return under a Democratic majority would give Republicans a political talking point.

Finally, a talking point often used by Republican supporters of earmarks is that even at the peak of the practice, it represented a fraction of all federal spending. This is an argument that actually plays into the hands of those who oppose earmarks precisely because of concerns about government spending.

There is no denying that the United States faces serious long-term fiscal challenges. Over the next ten years, the budget deficit is projected to rise from \$563 billion in 2018 to \$1.463 trillion in

³⁸ Jay Cost, “The Return of Earmarks Won’t Solve Congressional Irresponsibility,” *National Review*, January 15, 2018 <http://www.nationalreview.com/article/455433/earmarks-congress-irresponsibility-stronger-party-structures-are-better-alternative>

³⁹ Morris P. Fiorina, *The (Re)Nationalization of Congressional Elections*, Hoover Institution, October 19, 2016 https://www.hoover.org/sites/default/files/research/docs/fiorina_renationalizationofcongressionalelections_7.pdf

⁴⁰ The Office of Rep. Tom Rooney, “The REPAIR Act,” Retrieved January 17, 2018 <https://rooney.house.gov/repair-act>

2027 – \$10.112 trillion over the budget window.⁴¹ The percentage of the debt held by the public will rise from 78 percent (\$15.537 trillion) to 91.2 percent (\$25.524 trillion). Past the ten-year budget window, the finances of the United States grow worse.

If Republicans lack the political will to keep their promises and prohibit earmarks, the cost of which is relatively small in the larger picture of federal spending, how will they find the political will to reform federal entitlement programs that are the drivers of federal spending? Bringing back earmarks sends a message to conservatives and libertarians that political expediency will almost always win, dimming the prospects for action to head off the fiscal crisis that faces the United States.

⁴¹ Congressional Budget Office, *An Update to the Budget and Economic Outlook: 2017 to 2027*, June 2017 <https://www.cbo.gov/system/files/115th-congress-2017-2018/reports/52801-june2017outlook.pdf>