

**Testimony of Steve Ellis
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**U.S. House of Representatives Committee on Rules
hearing “Article I: Effective Oversight and the Power of the Purse”**

January 18, 2018

Good morning Chairman Sessions, Ranking Member Slaughter, members of the Committee. Thank you for having me here today to testify and specifically discuss earmarks, oversight, and the power of the purse. I am Steve Ellis, vice president of Taxpayers for Common Sense, a national nonpartisan budget watchdog. We found, researched, and named the Bridge to Nowhere earmark – and awarded it the Golden Fleece, the wasteful spending award given to my organization by the late Senator William Proxmire.¹ We have researched, databased, and exposed tens of thousands of earmarks across spending, authorization, and tariff bills, and are concerned with attempts to return to a system of appropriations earmarks rather than simply improving the systems in place under the current moratorium. Of course not every project that received funding through an earmark is inherently wasteful, but earmarked projects receive little scrutiny or oversight from Congress. Earmarks served to increase public cynicism about government, smacked of pay-to-play and substituted political muscle for project merit in spending decisions.

Rise of Earmarks

While some have argued that earmarks are an enduring feature of our democracy the truth is they are a relatively modern phenomena. TCS reviewed the fiscal year 1970 defense appropriations and found a dozen earmarks. In the fiscal year 1980 bill there were 62. But by fiscal year 2006 defense spending measure had 2,879 earmarks.²

According to the Congressional Research Service there were roughly 3,000 earmarks in 1996. By 2005 that number exceeded 15,000.³ In the last year of earmarks, fiscal year 2010, there were more than 9,000 – treble the number from only 15 years prior.⁴

Transparency

Lawmakers from both sides of the aisle seem to think transparency will make everything better, but transparency alone does not address the many problems presented by earmarks. First off, the sheer volume of earmarks prior to the moratorium made disclosure inherently opaque. It is impossible for

¹ William Safire, “Bridge to Nowhere,” New York Times, October 8, 2006. Available at http://www.nytimes.com/2006/10/08/magazine/08wwln_safire.html

² Taxpayers for Common Sense, “Ending the Earmark ATM: Despite Reforms, Earmarks Continue to Thrive,” February 14, 2008. Available at <https://www.taxpayer.net/budget-appropriations-tax/database-of-congressional-earmarks-for-fy2008/>

³ Congressional Research Service, “Earmarks in Appropriations Acts,” January 26, 2006. Available at <https://fas.org/sgp/crs/misc/m012606.pdf>

⁴ Taxpayers for Common Sense, “FY2010 Earmark Analysis: Apples-to-Apples Increase in Earmark Totals: The Most Powerful Members of Congress Cash In,” February 18, 2010. Available at <https://www.taxpayer.net/budget-appropriations-tax/tcs-fy2010-earmark-analysis-apples-to-apples-increase-in-earmarks/>

lawmakers to fully understand all these provisions they are voting on and lending their credibility to. And it is equally hard for the public to understand.

The transparency measures that were in effect from 2007 until the moratorium are weak tea. For starters, they were paper tables in the back of bill reports that simply listed the members who requested the earmark, the name of the earmark, and the amount. Separately, the House posted letters from the requester that detailed the intended beneficiary of the earmark. The Senate did not have similar letters. We had to cross-reference the charts and the letters and put them into a database to understand the patterns. Furthermore, different lawmakers requesting the same earmark may have different beneficiaries or in other cases obfuscate the true beneficiary.

At least that was the case with appropriations. For the National Defense Authorization Act, seeing the request letters meant physically visiting the office and taking notes on paper, nothing could be copied or photographed.

Winners and Losers

Earmarks are about picking winners and losers, and the clear winners were the members of the Appropriations Committee. In FY2010, members of the Appropriations Committee comprised 30 percent of the Senate and 14 percent of the House. Yet they sponsored or co-sponsored 48 and 30 percent of the disclosed earmarks respectively. Members of the Senate Defense Appropriations subcommittee comprise 18 percent of the chamber but brought home 35 percent or \$3.5 billion worth of earmarks. Defense Appropriations Subcommittee members are 4 percent of the House but obtained 13 percent of all earmarks.⁵

The top ten earmarkers in both chambers (joint in Senate, solo in the House) were all appropriators or leadership.⁶

But that additional importance isn't tied to the needs of the district. For instance, Appropriations Subcommittee Chairmen Regula (R-OH) and Knollenberg (R-MI) got \$35.6 million and \$69.8 million in earmarks in fiscal year 2009. Their replacements only got \$7.6 million and \$12.3 million respectively in earmarks the following year, roughly a fifth of their predecessors' total.⁷

Sen. Ted Stevens (R-AK) status as a senior appropriator had Alaska at the top of the pile in per capita earmarks in fiscal year 2008 – doubling second place, Hawaii. In fiscal year 2010, when he was out of office, Alaska came in sixth in per capital earmarks, pulling in a third of what it had previously.⁸

The 2005 transportation bill, SAFETEA-LU, was perhaps the pinnacle of earmarks. Not only did it contain the Bridge to Nowhere, the dollar amount of earmarks each lawmaker received was almost purely a reflection of their relative position and proximity to decision-making power over the bill. So the Transportation and Infrastructure Committee Chairman got \$1 billion for Alaska, and Ways and Means

⁵ *Ibid*

⁶ *Ibid*

⁷ *Ibid*

⁸ *Ibid*

Committee Chairman got more than \$700 million for his Bakersfield district, while rank and file lawmakers got roughly \$13 million.⁹

Corrupting Influence and Cynicism

While people most often raise the Bridge to Nowhere, convicted superlobbyist Jack Abramoff, and former Congressman Randy “Duke” Cunningham’s (R-CA) bribes when they discuss the corrupting influence of earmarks – these were only the most notorious abuses. And while many, if not most, earmarks were not the result of a corrupt transaction, earmarking presents special opportunities for corruption. The FBI investigated the late Rep. Jack Murtha (D-PA)¹⁰, then Sen. Ted Stevens (R-AK)¹¹, and former Rep. Alan Mollohan (D-WV)¹² for their earmark practices. Working with the Wall Street Journal, TCS documented former Rep. Charlie Taylor’s (R-NC) penchant for directing earmarks near where he owned properties.¹³ Recently convicted former Rep. Corrine Brown (D-FL) got earmarks for a charity run by her daughter¹⁴, former Rep. Chaka Fattah (D-PA) is in prison because of earmarks¹⁵, former lobbyist Paul Magliocchetti used straw donor schemes to gain influence.¹⁶ I could go on. And these are just the potentially criminally related earmarks – not the merely wasteful. This all contributes to voter cynicism and anger about Washington.

Further Costs of Earmarks

It’s not just their direct costs and pay-to-play perception, earmarks can redirect resources away from more important government activities, invariably increasing costs and waste and delaying the delivery of justified government services. It’s not just TCS pointing this out. For instance the American Association for the Advancement of Science said of the fiscal year 2008 spending bills that, “earmarks once again crowd out hoped-for increases in competitively awarded research programs.” Roughly half of FEMA’s pre-disaster mitigation funds were earmarked. Besides moving ahead of other more worthy projects in

⁹ Steve Ellis, “Earmark Reform: Understanding the Obligation of Funds Transparency Act,” Testimony before Senate Homeland Security and Government Affairs Committee, March 16, 2006. Available at https://www.hsgac.senate.gov/subcommittees/federal-financial-management/hearings/earmark-reform_understanding-the-obligation-of-funds-transparency-act

¹⁰ Paul Singer, “FBI Saw Dark Side of Rep. John Murtha,” Roll Call, October 24, 2011. Available at <https://www.rollcall.com/news/FBI-Saw-Dark-Side-of-Rep-John-Murtha-209736-1.html>

¹¹ Paul Kane and Dan Eggen, “FBI Probes Stevens Earmark,” The Washington Post, August 1, 2007. Available at <http://www.washingtonpost.com/wp-dyn/content/article/2007/07/31/AR2007073101878.html>

¹² Susan Crabtree, “GOP Complains as Mollohan Earmarks Stripped from Bill,” The Hill August 3, 2007. Available at <http://thehill.com/homenews/news/12773-gop-complains-as-mollohan-earmarks-stripped-from-bill>

¹³ John R. Wilkie, “Seat in Congress Helps Mr. Taylor Help His Business,” Wall Street Journal, October 11, 2006. Available at <https://www.wsj.com/articles/SB116053185551188928%20>

¹⁴ Matt Dixon, “Corrine Brown Seeks Millions in Earmarks for Daughter’s Client,” Florida Times-Union. October 17, 2010. <http://jacksonville.com/news/metro/2010-10-17/story/keeping-it-family-brown-snags-millions-earmarks-daughters-client>

¹⁵ Jeremy Roenick, “Judge Denies Fattah’s Bid to Have Corruption Case Dismissed,” Philadelphia Inquirer, March 17, 2017. Available at http://www.philly.com/philly/news/politics/20160317_Judge_denies_Fattah_s_bid_to_have_corruption_case_dismissed.html

¹⁶ Federal Bureau of Investigation, “Lobbyist Indicted for Orchestrating Illegal Campaign Contribution Scheme,” August 5, 2010. <https://archives.fbi.gov/archives/washingtondc/press-releases/2010/wfo080510.htm>

this competitive award program, some earmarks went to projects expressly ineligible for funding under program rules.

The Department of Transportation Inspector General surveyed state transportation offices and found that “earmarks may not be the most effective or efficient use of funds on programs ... Many earmarked projects considered by the [state] agencies as low priority are being funded over higher priority, non-earmarked projects.” The same study found that nearly 99 percent of all earmarked projects “were not subject to the agencies’ review and selection processes.”

Also, it is important to note that the annual hunt for earmarks was resource-intensive, absorbing hundreds or even thousands of hours of congressional staff time to develop, obtain, review, and execute the earmarks, distracting lawmakers from other national priorities and pressing needs. Given the limited staff resources available to Congress, this time would be better spent writing better appropriations bills and providing ongoing oversight between appropriations bills. In my discussions with congressional staff after the moratorium, many expressed relief at no longer spending the time going through process and concentrating on other work. Furthermore the moratorium provided a rationale to say no to lobbyists pushing for various proposals.

Power of the Purse

Like anyone who has read the Constitution, I know that Congress has the power of the purse. But earmarks are not the embodiment of the power of the purse. The Constitution reads, “No money shall be drawn from the Treasury but by consequence of Appropriations made by Law.”¹⁷ Got it. No mention of earmarks, no mention of Congressionally Directed Spending. Congress controls the amount of funding any federal agency or program receives in a given year. Period.

Furthermore, the same people who push “the power of the purse” argument often point out that even at their peak, earmarks represented a very small percentage of the total discretionary budget. I agree that in the overall budget context tens of billions of dollars is not a lot of money. But to the public it is. And clearly to lawmakers spending a lot time chasing that cash, it is. But if earmarks represent the power of the purse, that’s a pretty puny power. We would like to see Congress fully exercise the power of the purse and conduct oversight and hold the Executive Branch accountable over the full federal budget, not some small sliver.

Not a solution to get Congress to work

History suggests that the return of earmarks would divert needed funds from priority projects to less critical ones and increase the number of lobbyists and campaign cash. But there is little evidence that earmarks break gridlock and reduce the very real ideological divisions we see in today’s Congress. In fact, bringing earmarks back may reduce the impetus to obtain more substantive and transformative reforms.

While the Appropriations Committee has been resistant to adapt to the new environment, other Committees have worked to figure it out. TCS worked with the Transportation and Infrastructure Committee as they created a new approach to the Water Resources Development Act, an omnibus water projects bill. They created a system to still have the Corps investigate, study, and recommend

¹⁷ Article I, Section 9.

water projects.¹⁸ While we opposed the bill on other grounds, TCS supported the new system. The result has been water project bills in 2014 and 2016. This is notable because while intended to be biennial legislation, the two previous WRDAs were in 2000 and 2007 – long delays when there were earmarks. The Committee has continued to adjust the system going forward. Similarly, the Ways and Means Committee developed a new system to do Miscellaneous Tariff Bills without resorting to earmarks. TCS also endorsed this system, which appears to be working.¹⁹

The appropriators and authorizers should develop transparent criteria and metrics to allocate program and project funding on a merit, competition, or formula basis. Then conduct oversight and hold the Executive Branch's feet to the fire on how dollars are allocated and adjust programs as necessary.

The reality is Congress didn't work that well when there were earmarks. The last time all of the spending bills were enacted individually and on time was in 1994. The bills have only been done on time four times in more than 40 years. In addition to two water projects bills, Congress adopted a five-year transportation reauthorization in moratorium era. This is the same type of bill that included the Bridge to Nowhere in 2005. Also claiming delayed appropriations as a result of earmarks ignores the challenges of – until recently – divided government and added complication of budget caps from the Budget Control Act.

Various Earmark Restoration Proposals

There is often a false choice posed by earmark proponents: spending decisions are either made by faceless bureaucrats in Washington or by lawmakers who know their districts better. In reality, appropriations bills offer many opportunities to direct agencies how to spend money by setting clear priorities, identifying funding eligibility standards, or increasing or decreasing funding to existing programs. And while a lawmaker may know their district better than some "bureaucrat" they don't know the other 434 districts better. Appropriations is a zero sum game, money directed by earmarks to one lawmaker's priority is not available for another lawmaker.

Limit by lawmaker

There have been proposals to provide lawmakers a set amount of funds they can earmark each year. Or to limit earmarks to certain amounts based on seniority or committee membership. This proposal codifies the idea that spending need not be reviewed by committees and Congress as a whole, and would do little to mitigate pay-to-play or corruption aspects of earmarks.

Only Earmarks for Federal or State Agencies

This shift would bring back a huge percentage of earmarks, including some that represent the greatest risk of pay-to-play. For instance, even if they are actually intended for a private contractor, all of the earmarks in the defense appropriations go to the military service or Department of Defense to buy the particular product or fund the project. The same is true for many other spending bills. I'm sure the

¹⁸ Taxpayers for Common Sense, "Like WR(r)DA for Chocolate," May 22, 2014. Available at <https://www.taxpayer.net/infrastructure/like-wrrda-for-chocolate/>

¹⁹ Taxpayers for Common Sense, "Shedding Light on Import Levies," April 15, 2016. Available at <https://www.taxpayer.net/budget-appropriations-tax/shedding-light-on-import-levies/>

others would find work arounds. This essentially represents a full repeal of the earmark moratorium by other means.

Only for Water Projects

There is a proposal to allow lawmakers to direct earmarks for water projects, specifically U.S. Army Corps of Engineers and Bureau of Reclamation projects.²⁰ This is absolutely the wrong place to have earmarks. Taking into account the enormous backlog of projects, even when there was earmarking, TCS argued for the creation of prioritization system for these projects that would ensure the most critical, and important projects were funded. As evidenced by flood and storm damage around the country, substituting political muscle over project merit is a dangerous path forward in this area. Prior to Katrina, Louisiana got more Corps of Engineers construction funding than any other state in the union – California was a distant second.²¹ But where did that funding go? Some of it went to dubious navigation projects like the Mississippi River Gulf Outlet or making the Red River navigable from Shreveport to the confluence of the Mississippi. The Red River is now dubbed the J. Bennett Johnston waterway after the former Senate Energy and Water Appropriations Subcommittee Chairman who helped make it happen. It is also a deadbeat waterway that has virtually no traffic.²²

The project by project nature of the Corps budget lends itself to the creation of prioritization system for allocating funding. Most of these projects have a cost-benefit analysis of some kind that makes it easier to determine priorities. There could also be formulas to ensure that the funds are not concentrated in one state or region. Congress already created 25 extra funding accounts to make sure funds go to projects and priorities not included in the budget request. TCS has argued that Congress should develop better, more stringent criteria and hold the administration accountable for allocating the funds properly.²³ Oversight was a victim of earmarks.

During the earmark era, we saw that Congress would add funding for the Corps, but not enough to cover all the additional earmarks. Certain projects were “cash cows” and their funding would be cut to cover other new projects. This increases costs by delaying benefits and extending construction timelines. The Herbert Hoover Dike project in Florida has been cited as one of the reasons behind the proposal to exempt Corps (and Bureau of Reclamation) projects from the moratorium. Besides the fact that this admittedly critical project has received \$500 million in the moratorium years, in the last year of earmarking it was a “cash cow” and got less than what was requested in the President’s budget.

I would also add that for every Corps of Engineers project requested in the President’s budget, there is an amplifying budget justification sheet that provides funding history, justification, and additional information about the project – none of this existed for congressionally earmarked projects. And by

²⁰ H. Res 313

²¹ Taxpayers for Common Sense, “Lessons from Katrina and Gustav,” September 5, 2008. Available at <https://www.taxpayer.net/infrastructure/lessons-from-katrina-and-gustav/>

²² Roughly half of the 6.5 million tons transported on the waterway in 2016 was waterway building material or sand and gravel. By comparison, the neighboring stretch of the Mississippi River between Baton Rouge and New Orleans LA carried 400 million tons. www.navigationdatacenter.us/wcsc/webpub/#/report-landing/year/2016/region/2/location/2079

²³ “Backdoor Earmarks? Slush-y Funds in the Corps of Engineers Budget,” February 8, 2012. Available at <https://www.taxpayer.net/budget-appropriations-tax/backdoor-earmarks-slush-y-funds-in-the-corps-of-engineers-budget/>

simply redefining these projects as not earmarks under Congressional Rules they would no longer be subject to existing transparency requirements.

Demonstrating the mischief and line-jumping a return to water project earmarks portend, you don't have to look further than the Senate draft of fiscal year 2018 appropriations. Chairman Thad Cochran (R-MS) has stuffed in an earmark-like provision that directs the Corps to "immediately and without delay or administrative review" construct the Yazoo Pumps project. This decades-old boondoggle was finally rejected by the Bush administration in 2008 and now a decade later is potentially being resurrected. With this provision not only will taxpayers be forced to waste more than \$200 million on this economic loser, but it will move ahead of other more worthy flood control projects that protect people rather than drain land for soybean production.

And if you don't think that Corps of Engineers projects offer an opportunity for self-dealing, how about then Energy and Water Appropriations Subcommittee Chairman Sonny Callahan (R-AL) earmarking funds to dredge the Dog River, which was literally in his backyard where he had a pier to access the channel?²⁴

This proposal would almost certainly be followed by arguments to expand to other infrastructure projects – which brings lawmakers back to the Bridge to Nowhere, Coconut Road, and the aforementioned Rep. Taylor earmarking near his properties. It would almost certainly be expanded and likely lead to elimination of the moratorium entirely.

Conclusion

Perhaps paradoxically, then Appropriations Committee Chairman David Obey summed up our concerns with earmarks. During floor debate he said, "The reason I hate earmarks is because they suck everybody in. They suck them into the idea that we have ATM machines for our districts, and so they focus on the tiny portion of most bills that are earmarks instead of focusing on the policy that is represented by the legislation that we produce."²⁵

On that note I conclude my testimony. Again, thank you for inviting me and I'm happy to answer any questions you might have.

²⁴ Sean Reilly, "Callahan Makes Waves with Dog River Project," *Mobile Register*, June 24, 2001.

²⁵"Earmark Reform?", *Bill Moyers Journal*, Transcripts, July 27, 2007.