



All About Earmarks: A Brief History

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About Citizens Against Government Waste

Citizens Against Government Waste (CAGW) is a private, nonprofit, nonpartisan organization dedicated to educating the American public about waste, mismanagement, and inefficiency in government.

CAGW was founded in 1984 by J. Peter Grace and nationally syndicated columnist Jack Anderson to build public support for implementation of the Grace Commission recommendations and other waste-cutting proposals. Since its inception, CAGW has been at the forefront of the fight for efficiency, economy, and accountability in government.

CAGW has more than 1 million members and supporters nationwide. Since 1984, CAGW and its members have helped save taxpayers more than \$2.3 trillion. CAGW publishes special reports, including the *Congressional Pig Book* and *Prime Cuts*, as well as its official newsletter *Government WasteWatch* and blog *The WasteWatcher*, to expose government waste and educate the American people on what they can do to stop the abuse of their hard-earned money. Internet, print, radio, and television news outlets regularly feature CAGW's publications and experts.

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History

Raiding the federal treasury to bring home the bacon has been a long-practiced Washington tradition. Year after year, lawmakers debase the political process by directing chunks of the federal budget back to their home districts and states in order to promote their re-election and reward special interests.

The 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.”

Washington insiders have espoused this power of the purse to validate Congress’s appetite for earmarks. Over the years, numerous members of Congress have argued that ending the practice equated to an unconstitutional delegation of spending discretion to the executive branch. On May 6, 2014, the late Senator Harry Reid (D-Nev.) even went as far as to say that the country has been using earmarks “for more than 200 years.”¹

This statement rings hollow when compared to the evidence at hand. 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.

For much of the nation’s history, constitutional objections from members of Congress, the president, and state legislatures were effective in limiting parochial spending. 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:

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

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/>.

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 the enslaved would crowd around barrels of salted pork at mealtimes) 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 on the basis of 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 21st century. Following his ascension to Speaker of the House in January 1995, Newt Gingrich (R-Ga.) began using earmarks as political currency in an effort to help get Republicans re-elected. A 1996 memo by the speaker directed the chair of each House Appropriations subcommittee to open up earmarks 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

As a result of this shift in policy that turned earmarks into political currency, the cost of earmarks under Speaker Gingrich’s leadership jumped from \$7.8 billion in fiscal year (FY) 1994 to \$13.2 billion in FY 1998, with the peak under his leadership coming in FY 1997 at \$14.5 billion.

After the “granddaddy of earmarks” left Congress in 1999, legislators took earmarks to new heights. Between FYs 2000 and 2006, members of Congress on average added 8,997 earmarks costing \$22.6 billion, including a record \$29 billion in FY 2006. In FY 2007, Congress only passed two appropriations bills (funding the Departments of Defense and Homeland Security), but still managed to include 2,658 earmarks costing \$13.2 billion.

FYs 2008-2010 saw the introduction of reforms that were intended to provide a semblance of transparency to the process. For the first time, legislators were required to add their names to the earmarks they received in the bills, and more detailed information regarding recipients of the funding was also included. Predictably, this newfound accountability led to a reduction in the overall cost of earmarks. These three years saw on average 10,299 earmarks costing \$17.8 billion.

As has always been the case, earmarks between FYs 2008 and 2010 provided the most benefit to those with spots on prime congressional committees. In the 111th Congress, the 81 House and Senate appropriators, making up only 15 percent of Congress, were responsible for 51 percent of the earmarks and 61 percent of the money. Senate Appropriations Committee Ranking Member Thad Cochran (R-Miss.) received 716 earmarks costing taxpayers more than \$2 billion, by far the most earmarks and money during this timeframe.

Definitions of an Earmark

An earmark is a line item in an appropriations bill that designates funds for a specific purpose in circumvention of normal budget procedures. In order to identify earmarks,

⁹ Mitt Romney, “Press Release – Newt Gingrich: ‘Granddaddy of Earmarks,’” January 20, 2012, The American Presidency Project, University of California Santa Barbara, <https://www.presidency.ucsb.edu/documents/press-release-newt-gingrich-granddaddy-earmarks>.

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>.

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 of the following, but must 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 congressional and CAGW definitions of earmarks. The Senate identifies earmarks as a "congressionally directed spending item" and defines it as follows:

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.¹¹

The House calls them earmarks and has a nearly identical 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.¹²

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.

Earmarks are typically slipped into large spending bills without debate, competition, or

¹¹ Senate Committee on Rules and Administration, "Rules of the Senate," <https://www.rules.senate.gov/rules-of-the-senate>.

¹² House Committee on Rules, "Rules of the House of Representatives," <https://rules.house.gov/sites/democrats.rules.house.gov/files/117-House-Rules-Clerk.pdf>.

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, the projects are not subject to performance standards or the normal competitive process which occurs at the agency level. Other than FYs 2008-2010 and FY 2022, members of Congress were not required to attach their names to the earmarks they were requesting or receiving.

Since 1991, CAGW's *Congressional Pig Book* has provided the authoritative list of earmarks in congressional appropriations bills. The *2022 Pig Book* highlighted 5,138 earmarks costing taxpayers \$18.9 billion. In the course of publishing 30 *Congressional Pig Books*, CAGW has identified 116,816 earmarks, costing taxpayers \$411.4 billion. This equates to an average of \$12.9 billion and 3,651 earmarks per year.

Regular readers of the *Pig Book* might recall the many outrageous items it has contained, like \$50 million for an indoor rainforest in Coralville, Iowa in 2004;¹³ \$500,000 for the Sparta Teapot Museum in Sparta, North Carolina in 2006;¹⁴ and \$273,000 to combat goth culture in Blue Springs, Missouri in 2002.¹⁵ These three projects, for various reasons, were never completed.

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. Short of a ban, Congress must make spending bills more transparent.

Earmark Moratorium

The earmark reform movement gained traction because of a number of factors, including the tireless work of members of Congress such as then-Sens. Jeff Flake (R-Ariz.) and John McCain (R-Ariz.), high-profile boondoggles like the Bridge to Nowhere, 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.¹⁶ The next day House Republicans went a step further, banning earmarks altogether for their caucus for one year,¹⁷ and Senate Republicans followed suit on November 16, 2010, announcing a two-year ban.¹⁸ In his State of the Union address on

¹³ Citizens Against Government Waste (CAGW), *2004 Congressional Pig Book*, <https://www.cagw.org/reporting/2004-pig-book>.

¹⁴ CAGW, *2006 Congressional Pig Book*, <https://www.cagw.org/reporting/2006-pig-book>.

¹⁵ CAGW, *2002 Congressional Pig Book*, <https://www.cagw.org/reporting/2002-pig-book>.

¹⁶ 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>.

¹⁷ 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>.

¹⁸ 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>.

January 25, 2011, former President Obama got in on the act, threatening to veto any legislation that contained earmarks.¹⁹ Senate Democrats were the last to act, matching their Republican colleagues' two-year ban in the upper chamber on February 1, 2011.²⁰

Despite the imposition of a moratorium, CAGW continued to identify thousands of earmarks. Between FYs 2011 and 2021, legislators successfully passed the 12 appropriations bills that fund the federal government nine times. Funding was supplied in full year continuing resolutions (CR), which matches the prior year's spending, in FYs 2011 and 2013. In these nine years, members of Congress on average received 192 earmarks costing \$9.4 billion.

Unfortunately, the measures incorporated between FYs 2008 and 2010 to increase transparency were jettisoned. All earmarks added thereafter, through FY 2021, were anonymous, and the projects contained minimal information regarding recipients.

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

Although there were fewer earmarks after Congress adopted the earmark moratorium, far more money was spent on average for each earmark, with no detailed information provided. Prior to the moratorium, individual locations (e.g., a bike path in a certain city) would appear next to the funding amount, which would provide at least a lead that could be followed to determine the culprit among the members of Congress. The trend during the earmark moratorium was to earmark a large amount of funding for an account responsible for that category of spending, with the funding distributed at a later date, without transparency or accountability.

In FY 2021, the last year of the moratorium, there were fewer earmarks than in the peak

¹⁹ 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>.

²⁰ Corey Boles, "Senate Democrats Announce Earmark Moratorium," *The Wall Street Journal*, February 1, 2011, <http://www.wsj.com/news/articles/SB10001424052748704124504576118633989795702?cb=logged0.7939253577496856>.

years prior to the moratorium, but far more money was spent on average for each earmark and no detailed description was provided. For instance, legislators added 19 earmarks costing \$1,107,177,000 for the Army Corps of Engineers in the FY 2021 Energy and Water Development and Related Agencies Appropriations Act. These earmarks correspond to 482 earmarks costing \$541,653,000 in FY 2010.

In other words, the average dollar amount earmarked for the Corps of Engineers in FY 2021 was \$58.3 million, while in FY 2010 the average was \$1.1 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 transparency rules at the time. In stark contrast, the \$1.1 billion in FY 2021 earmarks, which is more than twice as much as the \$541.6 million in FY 2010, contained no such data and simply created a pool of money to be distributed later without any specific information about the eventual recipients or the member of Congress in whose district of state the money would be spent.

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. The resolution 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. The prevailing law governing the budget process is currently the Congressional Budget and Impoundment Act of 1974.²¹

Authorizing committees, like 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 multi-year authorization bills for programs and projects within their jurisdiction. The importance of authorizing committees lies in their role as screeners and evaluators of

²¹ Congressional Budget and Impoundment Act of 1974, Pub. L. No. 93-344, <https://www.congress.gov/bill/93rd-congress/house-bill/7130>.

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 allocate spending.

Not all federal spending filters through this two-step process. Direct spending, also referred to as mandatory or entitlement spending, does not go through the appropriations process. For programs like Medicare, spending is mandated by authorization legislation and can only be changed by subsequent authorization measures. Some direct spending, like 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, which is further divided into defense and non-defense categories.

Under the “regular” budget process, members of Congress 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 a 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 neither reviewed nor voted on by members of Congress.

In May of each year, the House and Senate appropriations committees divide the budget resolution into sub-allocations (called Section 302b from where it appears in the 1974 Budget Act) 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 earmarks can be added in either the subcommittee or full committee when they mark up the bills. The bills then go to the floor of their respective chambers for a full vote.

Appropriations bills are the most attractive vehicle for earmarks 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 earmarks 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 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 of the appropriations bills before the start of the fiscal year. Omnibus packages are sometimes cobbled 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 become increasingly reliant on stopgap funding bills to buy time to complete the budget process, passing a CR in every year since FY 1997.²² There have been 122 CRs beginning with FY 1998, averaging 5.1 such bills each year. While intended to be short-term, the bills have lasted on average nearly five months.

In addition to FY 1997, legislators passed the appropriations bills on time in only three instances in the 48 years since the 1974 Budget and Impoundment Control Act was signed into law with the intent of improving the budget process: FYs 1977, 1989, and 1995.²³ The failure to approve these bills on time has occurred whether there is one party or divided control of Congress and the White House.

CRs exemplify the lack of sound governance in Congress. They reduce the government's buying power by forcing agencies to buy smaller quantities rather than bulk purchases that save money. They also increase the cost of long-term projects and make it more difficult to update management and personnel practices.

The budget process not only needs more accountability but also greater transparency. On January 5, 2011, the House of Representatives attempted to provide more information about legislation by adopting rule stipulating that the full text of all bills should be made available to the public for three days prior to a vote.²⁴ However, this

²² Sean Kennedy, "A quarter century of budget futility," *The Hill*, October 5, 2021, <https://thehill.com/blogs/congress-blog/economy-budget/575459-a-quarter-century-of-budget-futility/>.

²³ Ibid.

²⁴ Terence P. Jeffrey, "Republican 'Pledge' Depends on What the Meaning of '3 Days' Is," CNSNews.com,

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 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. For more than 100 years after the first Congress met in 1789, members of Congress worked part-time without any personal staff and few if any staff on committees. 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 up opportunities 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 police officer 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

Corruption and Conflicts of Interest

Throughout the years, members of Congress have been plagued by multiple scandals relating to earmarks, as well as numerous examples of directing earmarks to locations remarkably close to real estate they or their family members own. They include the following:

- 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.²⁷

December 12, 2013, <http://cnsnews.com/mrctv-blog/terence-p-jeffrey/republican-pledge-depends-what-meaning-3-days>.

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.

²⁷ 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/>.

- Between FYs 2002 and 2010, House Appropriations Committee member Harold Rogers (R-Ky.) (who was chairman of the committee from 2011-2016), 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.²⁸
- Between FYs 2008-2010, House Appropriations Committee Ranking Member 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.²⁹
- 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.³⁰
- Between FYs 2008-2010, then-Rep. Frank LoBiondo (R-N.J.) earmarked \$4.7 million for “beach monitoring and nourishment” in Ventnor City, where the legislator owns a home 850 feet from the shore.³¹
- Between FYs 2008-2010, Senate Appropriations Committee Ranking Member 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.”³²
- 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.³³
- In FY 2009, then-Rep. Lamar Smith (R-Texas) requested a \$950,000 earmark to improve three local intersections, including one a few blocks from his house.³⁴

²⁸ Ibid.

²⁹ Ibid.

³⁰ Ibid.

³¹ Ibid.

³² 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>.

³³ Fallis, Higham, Kindy, and Pratt, “Mapping the Earmarks.”

³⁴ Ibid.

- 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.³⁵
- For more than a decade, House Speaker Nancy Pelosi (D-Calif.) earmarked a total of \$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.³⁶

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 reduced corruption, the lack of transparency made ethically dubious projects 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 was virtually impossible.

The Return of Official Earmarks

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

After years of threatening to bring back official earmarks, legislators finally did so in 2021. On February 26, 2021, House Democrats revived the practice,³⁷ House Republicans agreed to restore them on March 17, 2021,³⁸ and Senate Democrats followed suit on April 26, 2021.³⁹ Senate Republicans voted to uphold the moratorium on April 21, 2021, but the agreement was nonbinding, and many of them received earmarks.⁴⁰

The new earmarks, despite a futile attempt to cover them up by designating them as "Community Project Funding," are similar to the old earmarks that were included in the appropriations bills passed by Congress during FYs 2008-2010, which required that the names of the members who received earmarks be listed in each bill. The new rules are as follows: each Representative is allowed to request up to 10 projects (Senators face

³⁵ Ibid.

³⁶ Ibid.

³⁷ Jennifer Shutt, "House appropriations officially bring back earmarks, ending ban," *Roll Call*, February 26, 2021, <https://rollcall.com/2021/02/26/house-appropriators-to-cap-earmarks-at-1-percent-of-topline/>.

³⁸ Melanie Zanona and Caitlin Emma, "House GOP votes to embrace the return of earmarks," *Politico*, March 17, 2021, <https://www.politico.com/news/2021/03/17/house-gop-ends-earmark-ban-476696>.

³⁹ Lindsay Wise, "Senate Earmarks are Back: Democrats Make It Official," *The Wall Street Journal*, April 26, 2021, <https://www.wsj.com/articles/senate-earmarks-are-back-democrats-make-it-official-11619478322>.

⁴⁰ Emily Cochrane, "Senate Republicans agree to keep a symbolic ban on earmarks, but may use them anyway," *The New York Times*, April 21, 2021, <https://www.nytimes.com/2021/04/21/us/senate-republicans-earmarks.html>.

no such limitation); requests are posted online; a list of projects funded is published when the subcommittee or committee marked up a bill; for-profit entities are not eligible; and members certify that they, their spouse, and their family have no financial interest in the project.⁴¹ Democrats also capped earmark spending at one percent of total discretionary spending.⁴²

In order to receive funding, there must be “evidence of community support that were compelling factors” in deciding which projects to request. This limitation is prima facie absurd, since it includes every expenditure from building a weapons system to programs and projects funded by hundreds of agencies and programs that include community, development, economic, or similar words in their title.⁴³ It also describes the normal system of requesting money from competitive grant programs. The projects that would be requested as earmarks were by their very nature not funded because the agencies rejected them based on statutory criteria established by Congress. As a result, the end product looked awfully similar to the old system used by members of Congress prior to the establishment of the earmark moratorium.

As CAGW President Tom Schatz and Sen. Joni Ernst noted in their March 1, 2021, op-ed, “But putting lipstick on earmarks does not prevent them from being good old-fashioned pork-barrel spending and the most corrupt, costly, and inequitable practice in the history of Congress.” They added, “Earmarking — by design — will never be transparent. Unlike the federal grant-making process, there is no standard for competition for the grants, and taxpayers have no ability to examine how the money was doled out. Earmarking is quite literally decided in secret. More insidiously, decisions about who gets earmarks and who doesn’t are usually treated as a form of political reward for the well-connected or as punishment for those who don’t follow the party line. ... There’s good reason why earmarks are referred to as pork: They stink, and they’re messy.”⁴⁴

On July 20, 2022, CAGW released the *2022 Congressional Pig Book*, which exposed 5,138 earmarks, an increase of 1,702.8 percent from the 285 in FY 2021, at a cost of \$18.9 billion, an increase of 18.9 percent from the \$15.9 billion in earmarks in FY 2021. The cost of the FY 2022 earmarks was 14.5 percent higher than the \$16.5 billion in FY 2010, the last year prior to the moratorium, and the number of earmarks declined by 43.7 percent from the 9,129 projects in FY 2010.⁴⁵

⁴¹ “DeLauro Announces Community Project Funding in Fiscal Year 2022,” House Appropriations Committee, accessed on June 14, 2022, <https://appropriations.house.gov/news/press-releases/delauro-announces-community-project-funding-in-fiscal-year-2022>.

⁴² Shutt, “House appropriations officially bring back earmarks, ending ban.”

⁴³ Tom Schatz, “Earmarks are inequitable, corrupt, and costly – they should not be brought back,” *The Hill*, January 4, 2021, <https://thehill.com/blogs/congress-blog/politics/532473-earmarks-are-inequitable-corrupt-and-costly-they-should-not-be/>.

⁴⁴ Joni Ernst and Tom Schatz, “Earmarks Are Corrupt, Costly, and Inequitable,” *National Review*, March 6, 2021, <https://www.nationalreview.com/2021/03/earmarks-are-corrupt-costly-and-inequitable/>.

⁴⁵ CAGW, *2022 Congressional Pig Book*.

Even though members of Congress certified that there were no earmarks in the bills subsequent to the moratorium, CAGW found on average 192 earmarks costing \$9.4 billion in the 12 appropriations bills that were passed in the nine years they were enacted. Nonetheless, the moratorium reduced earmarks under CAGW's criteria. In the nine years prior to the earmark moratorium, there were on average added 9,542 earmarks costing \$20.9 billion.⁴⁶

The *2022 Congressional Pig Book* also found that,

"The new system of earmarking continued to benefit senators far more than representatives, as the top 50 earmark recipients by dollar featured only two legislators from the lower chamber, and Democrats far more than Republicans. There were 273 Democrats, or 99.3 percent of the 275, who received 5,435 earmarks totaling \$8,510,474,770, while 120 Republicans, or 45.8 percent of the 262, received 1,320 earmarks costing \$4,952,024,395. Because multiple legislators often requested the same earmark, the combined individual totals exceed the total number and dollar value of earmarks attributed to members of Congress in the bills.

"Like the earmarks prior to the moratorium, states with smaller populations got a disproportionate amount, especially if they had members on powerful committees. Alaska (\$337.07 per resident) received the most pork per capita, calculated as dollars in earmarks relative to population, followed by Vermont (\$312.51 per resident), Hawaii (\$182.12 per resident), West Virginia (\$164.28 per resident) and Maine (\$142.38 per resident). Alaska, Hawaii, and West Virginia were in the top three every year between 2008 and 2010.

"While the inclusion of the names of members of Congress is helpful, nearly half of the cost of the earmarks was added without any attribution. There were 163 such earmarks costing \$9.2 billion, or 48.7 percent of the \$18.9 billion total. The Department of Defense (DOD) received by far the most of these earmarks, with 128 costing \$8 billion.

"Members of Congress will argue that their standards differ from the earmark criteria used in the *Pig Book*, and that these projects do not count as earmarks according to their definition. However, the difference in the definition of earmarks between CAGW and Congress has existed since the first *Pig Book* in 1991.

"Beyond the high percentage of anonymous earmarks, larger problems with transparency exist. The FY 2022 earmarks were again contained in omnibus bills containing thousands of pages, which present their own challenges to determine how money is being spent. Voting on blocks of

⁴⁶ Ibid.

spending bills bundled together with minimal time for review is a strong indicator of a poorly functioning legislative process.

Moreover, the earmarks were located in disparate sections of the 12 appropriations bills with varying degrees of legibility. To undertake this analysis, CAGW staff painstakingly created a searchable database, oftentimes entering by hand information that failed to accurately scan because of blurry, barely discernable text in the legislation. The state of the data released to the public makes a mockery of the clearly searchable database delineated by the earmark guidelines. And the earmark requests were also not in a single database. They can only be found on an individual members' website."⁴⁷

Negative Consequences of Earmarks

Beyond the additional cost stacked on already pricy appropriations bills, earmarks undermine the effectiveness of the federal government in a variety of ways.

Earmarks benefit the most powerful legislators

Earmarks fundamentally advantage the most influential legislators. As the late 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."⁴⁸

The FY 2022 appropriations bills demonstrated this truth yet again. In FY 2022, the 89 members of the House and Senate appropriations committees, accounting for just 17 percent of Congress, claimed 41.1 percent of the earmarks and 29.1 percent of the funding.⁴⁹

The *2022 Congressional Pig Book* found the following:

"Senate Appropriations Committee Ranking Member Richard Shelby (R-Ala.) received by far the highest dollar amount of earmarks. His 16 earmarks cost \$647,936,000, which is \$270,437,000 (71.6 percent) more than the legislator in second place, Rep. Brian Mast (R-Fla.), who received six earmarks costing \$377,499,000.

"Three more senators were in the top five: Senate Appropriations Committee member Lindsey Graham (R-S.C.), who received 31 earmarks costing \$361,193,000; Senate Majority Leader Chuck Schumer (D-N.Y.), who received 205 earmarks costing \$316,024,824; and Senate

⁴⁷ Ibid., pp. 3-4.

⁴⁸ Burgess Everett, "Earmarks divide Republicans," *Politico*, May 7, 2014, <http://www.politico.com/story/2014/05/earmark-debate-congress-106470#ixzz3p2skvKf2>.

⁴⁹ CAGW, *2022 Congressional Pig Book*, p. 2.

Appropriations Committee member Roy Blunt (R-Mo.), who received 48 earmarks costing \$313,265,000. These five members of Congress together received \$2,015,917,824, or 10.7 percent of the FY 2022 earmarks.”⁵⁰

Earmarks Adversely Affect Agency Priorities

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 on agency priorities and funding.

A September 7, 2007, Department of Transportation Office of Inspector General (IG) report analyzed the cost, oversight, and impact of earmarks for FY 2006.⁵¹ The report disclosed that 7,724 of the 7,760 earmarks for the Federal Highway Administration (FHWA), Federal Transit Administration, and Federal Aviation Administration (FAA), or 99.5 percent, were “either were not subject to the agencies’ review and selection processes or bypassed the states’ normal planning and programming processes.”⁵²

The IG found that low priority projects were “being funded over higher priority, non-earmarked projects.” The FAA determined that 9 of the 10 new earmarked projects for tower and terminal air traffic control replacement, worth \$31.5 million, would not have been funded without earmarks. These projects added three years to the higher priority replacement projects that were subject to a substantial backlog. Other earmarks were funded because the appropriations bill waived the statutory criteria that prevented them from getting any money. There were 16 projects worth more than \$14 million out of 65 in FHWA’s Interstate Maintenance Discretionary Program that were funded in this manner.⁵³

The IG report also noted that “16 of 65 earmarked projects, totaling more than \$14 million, in FHWA’s Interstate Maintenance Discretionary Program did not meet statutory program criteria and would not have received funding were it not for a section in DOT’s appropriations law that allows funding for earmarks that do not meet the statutory requirements of the program.”⁵⁴

In addition to usurping higher priority projects and violating statutory authority, earmarks also cut funding for core state transportation projects, differ from Department of Transportation strategic objectives, and “can disrupt the agency’s ability to fund programs as designated when authorized funding amounts are exceeded by over-

⁵⁰ Ibid., pp. 2-3.

⁵¹ Department of Transportation Office of Inspector General, “Review of Congressional Earmarks Within Department of Transportation Programs,” September 7, 2007, https://www.oig.dot.gov/sites/default/files/Congressional_Earmarks- AV-2007-66----508_Compliant.pdf.

⁵² Ibid., p. 4.

⁵³ Ibid., p. 5.

⁵⁴ Ibid.

earmarking.”⁵⁵

A 2009 study by University of Virginia professor Dr. James Savage on earmarks directed to the Office of Naval Research (ONR) found substantial hidden costs associated with the projects.⁵⁶ 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.⁵⁷

Dr. Savage interviewed a senior ONR officer on the burden created by earmarks who said, “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.”⁵⁸

The report also pointed out an additional cost of earmarks: the projects 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.

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, earmarks-for-donations and earmarks-for-votes trading become more appealing and less risky. The jail terms for members of Congress, staff, and lobbyists exemplify these consequences of earmarks.

Serving local needs 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.

Most earmarks have no real benefit for the vast majority of Americans. Many projects serve only local interests and should be paid for at that level of government.

⁵⁵ Ibid., pp. 11-13.

⁵⁶ 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.

⁵⁷ Ibid.

⁵⁸ Ibid.

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 on the basis of 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.⁵⁹

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."⁶⁰

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.⁶¹

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 earmarks often depict peer review as an inherently biased process that concentrates funding in a small number of elite institutions. However, evaluations by congressional committees, federal agencies, the Government Accountability Office, and the Congressional Research Service have found peer review to

⁵⁹ 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.

⁶⁰ Ibid., pp. 5-6.

⁶¹ Silverstein, "The great American pork barrel."

be generally fair and procedurally sound.⁶² Furthermore, if Congress is dissatisfied with federal programs, it can pass legislation to revise the rules and formulas by which they operate.

Furthermore, if peer review critics are correct, one would expect the institutions that benefit from earmarks to become more competitive with established institutions over time. Dr. Savage's examination of states and institutions' federal research ranking shows mixed results.⁶³

While the peer review model is not perfect, it is the best possible means for distributing federal research dollars. The alternative is to allow members of Congress to earmark everything. Not only would members have to become experts in every field, but they would have to spend countless hours sifting through hundreds or thousands of grant applications.

The whole purpose of government involvement in science is to advance policy goals, not to equalize wealth 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 (and appropriators take to review the thousands of submissions from their colleagues), the less time they have to spend on issues of national importance. Earmarks condition lawmakers to believe projects are essential to getting re-elected.

Earmarks disperse costs and concentrate benefits

Earmarks exaggerate 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 all of the nation's taxpayers. Federal money, therefore, is spent on projects that would not be otherwise defensible to local constituents.

⁶² Savage, *Funding Science in America: Congress Universities, and the Politics of the Academic Pork Barrel*, p. 38.

⁶³ Ibid., p. 158.

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 spending 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 in narcissism

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 33 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. Byrd Hardwood Technologies Center.⁶⁴ 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 earmarks have been at the root of this paradox. There are many reasons for widespread frustration with Congress. Members' securing funding for local projects can have the effect of pulling the wool over the eyes of taxpayers.

The Future of Earmarks

Earmarks returned with a bang in FY 2022. In their first opportunity in 12 years to request the projects, 393 legislators, or 73.5 percent of Congress, took part. With nearly three-quarters of the members now being involved, it is easy to imagine the scope and cost of earmarks expanding in future years, unless a new majority in the House or Senate restores the moratorium. Earmarks are currently capped at one percent of discretionary spending, representatives can get no more than 10, and they are non-governmental earmarks are limited to nonprofit entities. However, there is nothing stopping future Congresses from changing the rules if earmarks are continued.

Between FYs 1991 and 2021, excluding FYs 2011 and 2013 when the government ran on full-year CRs, members of Congress on average added 3,851 earmarks costing \$13.5 billion. The 5,138 earmarks costing \$18.9 billion added in FY 2022 are \$5.4 billion

⁶⁴ CAGW, "CAGW Names Sen. Robert Byrd Porker of the Month," press release, June 12, 2006, <https://www.cagw.org/media/press-releases/cagw-names-sen-robert-byrd-porker-month>.

greater than the average earmarks in those years. If that amount of increase in cost continues, it will take only two more years to exceed the record \$29 billion in earmarks set in FY 2006.

The most effective way to limit the cost and impact of earmarks is to ban them entirely, as proposed by members of Congress like Sen. Steve Daines (R-Mont.) and Rep. Ralph Norman (R-S.C.), who introduced, respectively, S. 501 and H.R. 1086, the Earmark Elimination Act.⁶⁵ Ending the earmark moratorium has opened a can of worms. Without increased resistance, the most probable outcome will be a proliferation in number and cost of earmarks over time.

Conclusion

Despite the justifications espoused by members of Congress, earmarks are a modern extravagance, not an ancient tradition. The Constitution does not give Congress a blank check to spend tax dollars on any particular 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.

As Sen. Mike Lee (R-Utah) and former Rep. Jeb Hensarling (R-Texas) wrote in their February 27, 2017, op-ed, "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 disfunction. In fact, it would only worsen it." They suggested that the best way to strengthen Congress's Article 1 legislative powers would be to "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."⁶⁶

Earmarks create a few winners (appropriators, special interests, and lobbyists) and a great many losers (taxpayers). They contribute to the deficit directly, by tacking on extra funding, and indirectly, by attracting votes to costly legislation that might not otherwise pass. Earmarks corrupt democracy by eclipsing more important matters in the minds of legislators and voters.

The congressional tug-of-war over agencies' budgets dilutes the effectiveness of federal programs and impedes progress toward national policy goals. In the modern era, earmarks were not the last resort for many members of Congress, but rather the primary means to ensure re-election. These problems might very well become worse in

⁶⁵ Earmark Elimination Act, S. 501, 117th Congress, (2021), <https://www.congress.gov/bill/117th-congress/senate-bill/501> and H.R. 1086, 117th Congress, (2021), <https://www.congress.gov/bill/117th-congress/house-bill/1086?r=81>.

⁶⁶ Sen. Mike Lee and Rep. Jeb Hensarling, "Bringing Back Earmarks Won't Fix Congress," The Washington Examiner, February 9, 2017, <https://www.washingtonexaminer.com/tag/donald-trump?source=%2FEarmarks-weaken-congress-wont-drain-the-swamp%2Farticle%2F2614332>.

the near future as the open, organized method of earmarking has returned.

While the earmark moratorium succeeded in significantly diminishing the number and cost of earmarks, transparency and accountability were also reduced. The new system adds a measure of transparency, but vast improvements are needed to allow the public to meaningfully track earmark requests and recipients.

Since earmarks are a corrupting influence in even their most transparent form, Congress should work to permanently ban them. CAGW, which “pioneered anti-earmarking” according to a November 8, 2015, *Washington Times* article, will be on the lookout for the next evolution in earmarks.⁶⁷

⁶⁷ Stephen Dinan, “Alaska kills infamous ‘bridge to nowhere’ that helped put end to earmarks,” *The Washington Times*, November 8, 2015, <http://www.washingtontimes.com/news/2015/nov/8/alaska-kills-bridge-to-nowhere-that-helped-put-end/>.