

Changing the Way We Do Business Addressing the Earmark Dilemma – Now

By Congressman Jason Chaffetz (R-UT)

“All big things in this world are done by people who are naive and have an idea that is obviously impossible.”

- Frank Richards (1876-1961)

Faced with a choice between doing the right thing and doing the easy thing, voters want Congress to do what is right. Unfortunately, too many lawmakers believe cutting federal spending, particularly within their own districts, is an impossible task. The dilemma for Members of Congress is the false choice between shortchanging constituents and shortchanging America.

Running for office in 2008, I told the people of Utah I would seek to change the way we do business in Washington, D.C. Nowhere has that promise ruffled more feathers than in the fight over federal earmarking. On this crucial issue, most lawmakers have taken an all-or-nothing approach to the problem.

Earmarks—lawmaker-requested spending provisions that bypass the merit-based funding process—are a beloved institution in the United States Congress. They enable lawmakers to bring home federal dollars, take credit for generating jobs in their districts, pick winners and losers, and elicit campaign contributions. Local elected officials also love earmarks. Mayors and county commissioners get the credit for bringing a new project to their community without the responsibility of having to pay for it.

Despite a record \$12-trillion debt, Taxpayers for Common Sense reports that total spending on earmarks remained unchanged in 2010 (Alarkon, 2010). Renovations of historic buildings, theaters, and music halls will run taxpayers millions of dollars this year—even as the unemployment rate hovers around 10%. Although we are projected to soon be spending more than \$1 billion a day in interest on our debt, Congress still found \$250,000 for a farmers market in Monroe County, Kentucky. They found \$750,000 for the World Food Prize in Des Moines, Iowa (FY10 Earmarks Database, 2010). These are just two of the more than 10,000 earmarks that I voted against in the 2010 federal budget.

Lawmakers who wish to reform the process have traditionally been left with two untenable choices: shortchange America by participating in a corrupt system, or shortchange constituents by refusing to bring back any of the dollars paid

by taxpayers. This dilemma makes earmark reform seem impossible.

That's why I opted to chart an alternative path. The House is charged with a constitutional duty, role, and responsibility to appropriate funds. But how we do it is paramount because people have lost confidence in Congress. Not every earmark is abusive. For example, nearly 70% of my state's lands are under federal ownership. There are legitimate reasons to seek federal dollars to handle costs associated with those lands. Yet the people of Utah didn't send me here to fire up the favor factory. I promised voters I would not ask for an earmark until there was greater openness, transparency, and reform. I promised not to ask for an appropriations earmark in 2009 or 2010. I am doing the same for the FY 2011 budget. I promised I would work to raise the bar and forge a new path.

In August 2009, after months of public input and discussions, I introduced guidelines (Chaffetz, 2009) that seek to distinguish between the legitimate federal projects the Constitution empowers us to support and those projects which fall outside of our scope. With little political will in Congress to address earmark abuses in a meaningful way, I felt the best way forward was to start with a single office—mine.

Four simple changes to the earmark process would eliminate billions of dollars in potentially wasteful spending without compromising the Constitutional obligation of Congress to authorize legitimate federal projects. First, we must eliminate earmarks awarded to for-profit companies. Second, we should require a federal nexus be shown before projects can be funded. Third, we must commit to provide greater transparency. Finally, in the 112th Congress, I have called for a policy that would exclude those serving on the Appropriations Committee from requesting earmarks.

While some argue that earmarks represent a small fraction of the federal budget, this fraction is perhaps the easiest 1% to address. When Congress is finally brave enough to deal with entitlement reform, the American people will want to know that Congress cut its own entitlements before we sought to cut theirs.

PICKING WINNERS & LOSERS: FOR-PROFIT COMPANIES SEEK A COMPETITIVE ADVANTAGE

Since 1990, American troops have been equipped with decontaminant powder to protect them from exposure to nerve agents. But in 2003, the Pentagon learned that tests showed a decontaminant lotion was seven times more effective than the powder. Although the Pentagon told Congress in 2005 of its plans to switch to the lotion, lawmakers who represent the powder producer used earmarks to force the Department of Defense to keep buying the less effective powder (Willimsen & Heath, 2008). That year, after a powder company spent \$830,000 on lobbyists, the Department of Defense stockpiled enough powder to last until 2012.

Daniel Kohn, President of a New York company involved in the powder production, told *The Seattle Times*, “In self defense, we’ve gone to our representative in Congress and we’ve said, ‘You know, let’s lay our cards on the table. We’re in business to provide a living and jobs in your district.’” Despite the large stockpiles already purchased, New York Senators Charles Schumer and Hillary Clinton added a \$2-million earmark for more powder in the 2007 defense bill. In 2008, another \$5.6 million was added. The military now has 2.2 million powder kits in stock. Meanwhile, the manufacturer of the lotion did some defensive lobbying of its own, hiring lobbyists who got a \$3.2-million earmark for the lotion in the 2009 defense bill.

Unfortunately, companies are increasingly turning to home state representatives to tilt the playing field in their favor. In the 2010 Department of Defense appropriations bill, 532 of the 1,083 House earmarks were requested on behalf of private companies within the requesting Member’s home district (Utt R. D., 2010). Even worse, earmark beneficiaries and their lobbyists donate heavily to the campaigns of those who request the earmarks (Open Secrets Center for Responsive Politics, 2010).

A *BusinessWeek* investigation in 2007 determined that companies can expect to generate roughly \$28 in earmark revenue for every dollar they spend lobbying Congress, although in some cases, that return is much higher. In 1998, only 1,447 entities had a lobbyist helping with appropriation issues, according to Taxpayers for Common Sense. By 2006, there were 4,516 such entities (Javers, 2007).

The federal government should not be in the business of picking winners and losers. Competitive bidding would both save the government money and end the perverse incentives for lawmakers to practice corporate favoritism. One Heritage Foundation study showed that Department of Defense savings averaged between 25 and 35% of total project cost when competitive bidding was used (Utt R. D., 2001). If accurate, this savings would yield a \$1.3-billion benefit to taxpayers from the 2010 DOD bill alone (Utt R. D., 2010).

Taxpayers for Common Sense Spokesman Steve Ellis said, “This Congress is picking the winner that happens to be in the lawmakers’ district, rather than unleashing America’s promise and saying, ‘Here’s the problem, here’s what we are

trying to fund, and let companies across America see if they can actually meet the need” (Herzenhorn & Nixon, 2009).

Reigning in abuses of corporate for-profit earmarks is an important first step. However, we can’t stop there.

FEDERAL NEXUS: IDENTIFYING THE PROPER ROLE OF THE FEDERAL GOVERNMENT

Limiting projects for which the federal government has no Constitutional responsibility could save billions of dollars. The United States Constitution establishes a separation of powers that is both horizontal and vertical. Within the federal government, power is divided into separate branches with various horizontal checks and balances across branches. The Tenth Amendment references a vertical separation of powers. It reserves the powers not delegated to the United States by the Constitution to the States. State and local governments have a stewardship that is separate and apart from that of the federal government.

Nowhere in the Constitution is power granted to the federal government to manage local projects such as parks, cultural arts facilities, parking areas, or water infrastructure. No doubt local officials would vigorously defend their right to manage and control such projects, but few object to asking the federal government to fund those projects.

It’s time to redraw the line between federal and local government. Only requests for projects for which there is an established federal nexus should be considered. For example, the Constitution empowers Congress to regulate interstate commerce, but the federal government has no business funding a local farmers market. Interstate freeways may qualify, but a local parking garage would not. Other projects within the federal scope might include military applications, public infrastructure projects, activities on federal lands, disaster mitigation, or aid for compliance with federal mandates.

With the proliferation of earmarks for purely local projects, expectations have grown. Each time one community gets federal funding for a local priority, other communities perceive that they are not getting their “fair share” of federal dollars. This problem hit a climax last winter when it seemed nearly every city in America sent their lobbyist to Capitol Hill with a wish list of “shovel-ready” local projects they hoped would qualify for stimulus money.

We cannot afford to meet the expectations of every community in America. Stoking these expectations by continuing to fund local projects in politically-connected districts is a mistake. There is no better time to put an end to this practice than now.

TRANSPARENCY: TAKING RESPONSIBILITY

Since new transparency rules went into effect in 2007, the public’s ability to scrutinize the budget process has improved dramatically. We can now see for ourselves the disproportionate distribution of federal funds. Unfortunately, instead of cutting back on abusive earmarks, some Members of Congress have simply found other ways to hide them.

The practice of “air dropping” earmarks allows lawmakers to insert their spending requests during the conference process, after both bodies have debated and passed the bill. These earmarks are seldom scrutinized by committees. The 2009 Omnibus spending bill contained 9,000 earmarks, many of them air dropped.

I have proposed improving transparency by making four steps mandatory before a request will be made. First, requests for Congressionally-directed spending must be submitted to the Appropriations Committee prior to the committee deadline. No requests will be airdropped after that deadline has passed.

Second, the appropriate Executive Branch agency must be given a reasonable period in which to review the project. This process ensures the project is eligible to receive funds and meet the goals established in law and official policies.

Third, each request must receive proper vetting and debate by the appropriate committee.

Finally, the committee will compare the request with others and fund only the highest priority items. This process would ensure that each request receives careful review. If widely adopted, it will eliminate last minute undisclosed appropriations or the use of nebulous project descriptions to obscure the real purpose of a funding request.

REIGNING IN APPROPRIATORS: POWERFUL LAWMAKERS HOARD CASH WHILE EVERYONE ELSE FIGHTS FOR TABLE SCRAPS

Earmark defenders often argue that lawmakers can best judge the needs of their individual districts, thus the earmarking process is a necessary one. Unfortunately, year after year the same districts seem to be cashing in while others go without.

Members of the House Appropriations Committee comprise 13% of the body. But for fiscal 2008, that 13% received 45% of the \$4.2 billion of earmarks for which individual lawmakers took credit (Riedl, 2009). In addition to Appropriators, other House leaders also receive favorable treatment when it comes to earmarking. House leadership, committee chairmen, and ranking members in the minority party all do very well in the race for federal funds. Those groups, in addition to vulnerable members combine to receive three quarters of the money spent on individual member-sponsored projects.

If we are serious about addressing the abuses in the earmarking processes, we must crack down on the political favoritism that drives many funding decisions. By excluding Appropriators from asking for earmarks, we can take some of the politics out of the process. Those slicing the pie should not take a piece. It concerns me that many lawmakers would rather waste tax dollars in their own districts than spend those dollars on legitimate projects in someone else’s district.

The benefits of excluding Appropriators from requesting earmarks extend beyond simply cutting wasteful spending. We also end the powerful incentive for lawmakers to trade

earmarks for campaign contributions. Although lawmakers swear their contributions are not tied to their funding requests, the numbers tell a different story. A 2008 *Washington Post* analysis found that 60% of the members of the House Armed Services Committee who arranged earmarks also received campaign contributions from the companies that received the funding. Almost all the members of the committee received campaign contributions from companies that got earmarks this year (O’Harrow, 2008).

“Powerful lawmakers are hoarding cash for their districts while the rest of the Congress fights for table scraps,” explained Taxpayers for Common Sense President Ryan Alexander (Alarkon, 2010).

CONCLUSION

If we are to restore the trust of the American people in their government, we must address the corrupting influences in the United States Congress that work to undermine that trust. Until we can demonstrate that we are willing to cut waste and abuse within our own ranks, we cannot begin the arduous process of reigning in the unsustainable entitlement programs upon which many Americans have come to rely. By adopting a four-step process to approving earmarks, we can better utilize our limited federal resources and demonstrate competence to American voters.

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