EARMARKS: THE BAD WORD FOR MAKING GOOD THINGS HAPPEN

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ABSTRACT

The thesis focuses specifically on how earmarks have been affected or had effect on the many facets of the American system of government; from the media, to the process of earmarking within the budget and its implications, to the review of earmark case studies, to the relationship with earmarks and electoral politics, and the way in which earmarks play an important role in facilitating the legislative process.

For most of the span of federal budgeting history the United States, the trend of running deficits during wartime and balancing the budget during times of peace remained consistent. In fact, up until some point in the 1970s being in debt and running a deficit was looked upon with disgust by our political class. In fact our own society believed that being in debt was immoral. It was only as recently as the late 19th century that so called “debtors prisons” were finally closed in the United States. These changing values are a part of the backdrop for Congressional actions and federal budgeting and earmarks play a small but vital role in both the federal budget and in facilitating the democratic process.

This study has a primarily qualitative emphasis but also incorporates some statistical analysis and quantitative data when appropriate. In addition to
the use of data and theories presented in the literature that forms the backbone of this thesis, I have conducted numerous interviews with bipartisan Congressional office staff, Congressional committee staff, lobbyists, earmark requestors and other related stakeholders in order to provide current anecdotal evidence for how reforms have changed the budgeting process and commentary on the impact reform has had.

In the context of American government, earmarks represent an imperfect piece of legislative activity that can be prone to corruption and abuse, and yet provides one of the most critical tools available for Congressional leadership to use when attempting to pass national legislation to address the many problems facing the United States. The political cliché that people love sausage but don’t like to see how it gets made rings true for Congressional earmarking, because earmarking provides a currency upon which coalitions in favor of national policies can be built and yet has all of the appearances of fiscal profligacy and corruption to the uninformed. Without earmarks (as Congress is currently operating) the legislature is incapable of passing almost any kind of policy at all.
DEDICATION

To my dear friend Eric E. Fatla, October 21, 1984 – December 27, 2010
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This thesis was the result of hundreds of hours of research and writing but could not have been started let alone completed without the help of several people. First and foremost I must acknowledge the important role my mentor, Professor Tony McCann has played. Mr. McCann has been a mentor, editor, and friend to me throughout this process and I could not have done this without him. Though I very much doubt he agrees with my central thesis, he provided an anchor to my thoughts and a mirror of truth to my ideas.

I would also like to thank all the people who agreed to be interviewed including: Michael Stephens, Mick Nardelli, Bettilou Taylor, The Honorable John Porter, and numerous others who wish to remain anonymous.

Finally, though I have never met them, I would like to thank the Honorable Bob Livingston for his daring effort to speak the truth about earmarks in the face of political headwinds, and Sean Kelly and Scott Frisch who blazed a trail upon which this thesis follows.
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I contend that without the power to earmark, the state of existence in the 112th Congress, both Representatives and Senators forgo their rights and duties to directly aid their own constituents and flex their important check on the ability of the executive agency to set forth national budgeting priorities. Furthermore, I seek to prove that without earmarks, Congress loses a critically important tool for passing legislation, further limiting the ability of the legislature to address the many problems facing the nation.

As Bob Livingston, Chairman of the Appropriations Committee from 1995–99, enthusiastically said about what would happen if Congress did not use its ability to earmark, "we've abandoned the idea of judgment and responsibility, and we've got to do it all by remote! Why do we even show up?! Why does this city exist?! We'll just stay home and send postcards and let the president run the whole damned thing."\(^1\) The condition of no earmarks in Congress contributes to the ineffectiveness of the legislature and the inability of Congress to write and pass meaningful solutions to our national problems. Distasteful and imperfect though the system of earmarking or “pork barrel ing” may be, it is a critical

feature of our democratic system as it allows Members of Congress to better represent their constituents and provides a political lubrication to coerce or coax Members of Congress into supporting legislation that they might otherwise oppose.

Both the pork barrel politics and earmarks have come to represent the practice of government providing particularized benefits to constituencies. Defining earmarks more specifically, however, is no easy task.

Defining an earmark is not as simple as defining something tangible or material. A sedimentary rock and an igneous rock may have vastly different appearances and properties, but all geologists agree that both are rocks. Earmark definitions are much more subjective and their definition in large part depends on the biases of those who seek to define them.

Earmarks appear in many different portions of legislation and its accompanying documents. Some are in statute, some are incorporated by reference, but a large portion of earmarks appear in committee reports and not in the text of the appropriations bill itself. The committee reports, or report language, are written by the committee making the appropriation and include guidance on how funds are to be spent. Schick says that the purpose of this non-statutory earmarking technique is to, “give both the appropriations committees and spending agencies somewhat more flexibility than if the details were enacted into law.”\(^2\) The committee reports are used to earmark funds, but

\(^2\) Ibid., 271.
also to disagree with the president’s budget distribution among the various agencies, justify restrictions on the use of funds or restrict agency activities.

Since these reports are not legally binding they can technically be ignored by the agencies. However, Schick states that, “What gives appropriations reports special status is not law but the fact that the next appropriations cycle is less than a year away. An agency that willfully violates report language risks retribution.”\(^3\) The non-statutory nature of earmarks has led some executive agency officials to risk ignoring the instructions included in the committee reports. Former Reagan Budget Director James C. Miller once tried to implement a policy to encourage agencies to disregard earmarks in report language. Members of Congress were naturally outraged and promised severe punishment in the next appropriations cycle. The threat of retaliation forced Miller to back down. In 1988 Miller said, “I eventually capitulated declaring that this was an issue the next president would have to resolve.”\(^4\)

When discussing the practice of earmarking it is also important to note that some believe in a much more expansive definition of what constitutes an earmark. For example, former co-chair of President Obama’s Deficit Commission Erskine Bowles argue that earmarks go far beyond a traditional earmark where a Member of Congress directs federal spending to a specific project such as a museum or a public works project. Earmarks in the tax code,

\(^3\) Ibid., 271.

Bowles contends, are more nefarious and costly than traditional earmarks.

Earmarks in the tax code are called tax expenditures under federal law, and are composed of special exclusions, deductions, exemptions, credits, preferential rates and deferrals that allow people to reduce their taxes below the rate they are “supposed” to pay.5

These taxation earmarks or tax expenditures include all kinds of widely popular programs from which millions of Americans benefit. For example if one pays a mortgage, one may benefit from the mortgage-interest deduction. Bowles also referred to a group of narrowly tailored programs that benefit certain industries or companies — breaks for green technology makers such as solar panel producers, makers of archery equipment and oil companies, or any other industry specific subsidy through tax reduction.6 Depending on whom you ask, these tax expenditure earmarks account for hundreds of billions of additional dollars in “earmarks” beyond what most congressional experts traditionally view as a congressional earmark.

While there is no doubt that at the direction of certain specific Members of Congress specific individuals or companies are singled out for a reduced rate of taxation based on a certain activity or state of existence, this paper will not focus on earmarking within the tax code or what Bowles terms “tax expenditures.” The purpose of their exclusion in this study is because they do not play the same role


6 Ibid.
as traditional earmarks in several key ways. First and foremost tax expenditures are often written into the tax code and thus these tax expenditures occur each year without further Congressional action unlike traditional earmarks which receive different amounts of funding (or sometimes no funding at all) on a yearly basis. Tax expenditure earmarks are also not necessarily regional as they target various groups or industries within the entire tax base, and they are not subject to the reforms enacted in the last few Congresses such as an outright ban on earmarks or requirements for increased transparency such as posting earmark requests on each requesting Member of Congress’s website. Finally and most importantly, there is little evidence to suggest that these kinds of tax expenditure earmarks are used to facilitate legislative action in Congressional negotiations, which is an important aspect of traditional earmarking.

Despite the best efforts of watchdog groups, political scientists and politicians themselves, there is no agreed upon definition of earmarks. A good starting point is the current definition of earmarks used by House of Representative Republicans in their rules governing procedure in the 112th Congress:

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.7

The reason this definition is important is because it is the basis for a ban on earmarking in the 112th Congress. This legal definition is fairly broad but not all encompassing and possibly written in order to provide Members of Congress with some limited ability to direct funding to their districts. Since nearly all Members of Congress value the ability to bring federal expenditures to their districts to benefit their constituents and thus bolster their chances of re-election, there is a lot of pressure for congressional staff or the Member of Congress themselves to come up with a way to “earmark” without violating this rule.

Members themselves have often sought to define earmarks in one way or another. Again, their biases are apparent in their definitions, but some have posited well thought out definitions of earmarking. For example former House Science, Space, and Technology Committee Chairman George Brown narrowly defined earmarks in 1990s era committee report. He defines earmarks as follows:

Appropriations that are tied to specific locations or institutions and which have not been requested by an Executive Branch Department, approved by the president, and included in his budget, and/or in authorizing legislation approved by the House and Senate and signed by the President.8

Brown, a crusader against earmarking of funding for academic research and construction of academic facilities, was one of the few Members of Congress to find political success from outright opposition to earmarks. Therefore his definition reflects his anti-earmarking principles. A modern example of another

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Member of Congress who has success with this strategy would be Representative Jeff Flake of Arizona.

The executive agency most focused on federal budgeting is the Office of Management and Budget or OMB. As the budgeting arm of the executive branch their definition is extremely broad and also biased in favor of the executive agency budgeting procedure:

Earmarks are funds provided by the Congress for projects, programs, or grants where the purported congressional direction (whether in statutory text, report language, or other communication) circumvents otherwise applicable merit-based or competitive allocation processes, or specifies the location or recipient, or otherwise curtails the ability of the executive branch to manage its statutory and constitutional responsibilities pertaining to the funds allocation process.⁹

OMB’s definition of an earmark reflects the constant push and pull over funding priorities between Congress and the executive branch. The second part of the definition beginning with “otherwise applicable merit-based or competitive allocation process” demonstrates the executive agencies’ bias towards their own decision making process for disbursing federal funds. The term they use for their process of disbursing taxpayer funding is “merit-based” implying that decisions are made totally rationally and exclusively on the merits of the recipient of federal funds.

While OMB’s bias is understandable, in my studies of federal spending and experience working in government I have come to believe that both the executive and congressional spending infrastructures are susceptible to

corruption and misuse of taxpayer funds. That is to say, the executive agencies do not provide a necessarily better system for disbursing federal funds and they do not necessarily have better outcomes from spending decisions. I will explore this thought further in the discussion of federal expenditures under the current earmark ban in chapter four.

Political scientists also provide an important perspective in determining the definition of earmarks. Allen Schick defines an earmarked expenditure as, “appropriations dedicated by an appropriations act or the accompanying committee report to a particular project or activity.”¹⁰ This definition is broad enough to encompass all of traditional earmarking but it does not include the important acknowledgement that earmarking is done by individual members or small groups of Members of Congress. The specificity of funding direction by an individual to their own community is a critical element of earmarking that opponents of earmarking often find most arguable. The idea that a single individual or a group of Members of Congress somehow have “special” rights to direct federal spending to their own constituents seems somehow corrupt and un-democratic in the minds of earmark opponents even though it is a feature of nearly every democratic form of government. Therefore this specificity of requestor is a key component to the best definition of earmarks.

Lowi is the scholar typically credited with the development of the literature studying congressional behavior in the realm of particularized benefit spending, pork barreling or earmarking. He posits, “the most important opportunity for

direct patronage is in the legislation that has been described as the pork barrel.”
He goes on to say that pork barrel legislation is, “legislation that specifies both
the projects or other authorizations and the location within a particular district…
A common form of pork barreling is the ‘earmark’….”

Weingast provides four hallmarks of “distributive policy” which is political
science terminology for pork barrel political actions such as earmarks.
Weingast’s three essential components of distributive policy actions are
divisibility, omnibus, and expenditure. Divisibility, meaning the legislation
includes projects that are local and can be varied in size, scope and dollar
amount independently of one another. Omnibus, meaning the legislative action
is an omnibus of many divisible projects within a policy area. Expenditure,
meaning the legislation is an expenditure policy. The final hallmark, which
Weingast terms as “desirable” but not necessary is that a large majority of
districts are eligible for funds.

A key aspect of earmarking from a legislators perspective is for the
purposes of bolstering his or her chances of reelection. I will take a closer look at
this relationship in chapter two, however, a critical component of the definition of
earmarks must be the “traceability” of the legislative action from the expenditure
of an obligated earmark to the Member of Congress requesting the
appropriation.

11 Theodore J. Lowi and Benjamin Ginsburg, American Government:

12 Barry Weingast, “Reflections on Distributive Politics and Universalism,”
Arnold’s definition of traceability is the best framework to understand the importance of this part of earmarking. He believes that voters only hold representatives accountable for actions when there is a traceable effect, and he specifies three conditions that make an action traceable. First there must be a perceptible effect, secondly there must be an identifiable government action and finally there must be a visible contribution on the part of the legislator.\textsuperscript{13} As Frisch correctly states, “earmarks are traceable actions—there can be no disputing a legislator’s claim of credit for an earmarked local project as all three [of Arnold’s] conditions are met.”\textsuperscript{14}

Conversely, if a legislator votes for an appropriations bill that contains a large amount of money for an agency to administer a program designed to accomplish a broad goal, and that legislators district benefits from that program, the connection between that legislator’s action and the resulting district benefit is much more vague. This vagueness can be exacerbated when the legislator is a Republican and the president is a Democrat or vice versa. Clearly, Members of Congress like earmarks broadly because they wish to claim direct and specific credit for bringing federal largesse to their districts and they also wish to have that claim be validated in the eyes of their constituents.

For the purpose of this thesis I believe that the definition must be as broad as possible. Frisch and Kelly define earmarks as, “a sum of money that is

\textsuperscript{13}Douglas R. Arnold, \textit{The Logic of Congressional Actions} (New Haven: Yale University Press, 1990), 47.

directed to a specific project by a Member of Congress or a group of Members and is included in a bill or committee report.”\(^\text{15}\) It is important that the definition stress that a single ember or group of members is asking for federal funding to be disbursed in a specific region or to a specific entity. This feature of earmarking is what differentiates this kind of legislative activity from a member of group of members that create a grant program for which funding is disbursed based on a competitive process. While it is possible that a certain member’s favored entity could win the grant in a competitive process, only through earmarking can that member or group of members be assured of “bringing home the bacon.”

The debate over what exactly constitutes a traditional earmark is important because the specifics of the definition, if say adopted as part of a congressional ban on earmarks, can limit or enable certain congressional actions. For example, in February 2011 a bipartisan letter was sent by Senator Inhofe (R-OK) and Senator Boxer (D-CA) to their Senate colleagues requesting their participation in the writing of a bill known as the Water Resources Development Act (WRDA) that deals with various aspects of water resources including authorization of municipal sewer systems projects or flood protection projects and other related activities.

\(^{15}\) Frisch and Kelly, *Cheese Factories on the Moon: Why Earmarks are Good for American Democracy*, 11.
The letter requested that Senators, “provide the committee with specific project and programmatic requests you would like considered for inclusion in this bill,” but in no place do they mention the word earmark.16

When a specific Member of Congress is able to request a specific project be authorized in their district that has the appearance of being an earmark because it provides particularized benefits to a geographically specified constituency within the Member of Congress’s district. Yet there seems to be no better way to write a bill such as WRDA because individual members of Congress are relied upon to know which water resources projects are the most important for the communities they represent. In fact, in this case one might posit that creating an executive agency that would have the capability to measure the need for sewer and water projects in each and every community across the nation would be hugely expensive and inefficient. This idea could be the topic of another thesis entirely but there is certainly some room to argue that the system of congressional earmarking of sewer and water funds is a more efficient and cost effective manner for the government to operate than exclusive control by the executive branch.

Senator Inhofe and Boxer’s letter went on to say that it is likely that requests for projects would have to be disclosed under Senate Rule 44, the earmark rule, but Senator Inhofe did not believe that what he was requesting of his fellow Senators were earmarks. His spokesman said, “Sen. Inhofe has been

strong in saying that as long as something is authorized and appropriated, it’s not an earmark,” meaning that if projects go through regular order in both an authorizing and appropriations committee they should not be considered an earmark, and that only projects that are “dropped into” a bill should qualify as an earmark. Senator Inhofe is making his case for what constitutes an earmark based on procedure. If the Senate or House followed all of its rules governing the establishment of a funding activity by the federal government then even if it began as a request by a specific Member of Congress it would not constitute an earmark.

But numerous government watchdog group opposed to earmarks disagreed with Senator Inhofe’s interpretation. These groups, including Citizens Against Government Waste and others, believe that just because the legislature follows its own process and gets projects approved by authorizing committees does not make them and less of an earmark or more worthy than projects that are simply funded by the appropriations committees in report language, and then went on to accuse the Senate Environment and Public Works Committee, the committee responsible for the WRDA bill, of authorizing too many projects without adequate oversight.\(^\text{17}\)

It is clear that there is significant disagreement over what exactly constitutes an earmark, but for the purposes of this study I will use the definition: a sum of money that is directed to a specific project by a Member of Congress or

\(^{17}\) Ibid.
a group of members (and therefore has the 3 elements of Arnold’s traceability) and is included in a bill or committee report.

An earmark is an example of Congress simply exercising its legal right to determine how the federal government spends money. While some critics of earmarks often attempt to cast legal aspersions on Congressional earmarks, it is clear that earmarking is well within the rights of Congress. Article I, Section 9 of the Constitution of the United States of America clearly states, “No Money shall be drawn from the Treasury, but in consequence of Appropriations made by Law…."

This simple sentence provides the legal framework for Congress’s actions on the federal budget and the legal authority to set broad or specific instructions on how and where federal funds may be spent. The only limitations on Congressional spending power have been determined by the Supreme Court of the United States in a few specific cases where Congress may have decided to attach unconstitutional instructions to their funding streams. Generally speaking, Congress has almost limitless power to set forth spending requirements and totals. Congress’s only true limitation is in its inability to take more control over the federal budget due to the limited bureaucracy, data, and budgeting infrastructure available to it.

This power of the purse acts as an important check on the power of the executive agencies and the President of the United States. It also provides each Member of Congress with the ability to better represent his or her community and to defend the interests of that community as the Founders originally
intended. In *Federalist 58* James Madison argues that accountability to constituents would act as one of the most important means to ensure that representatives kept both national and local interests in mind:

This power over the purse may, in fact, be regarded as the most complete and effectual weapon with which any constitution can arm the immediate representatives of the people, for obtaining a redress of every grievance, and for carrying into effect every just and salutary measure.

That is to say, the Founders' notion was that accountability to local voters was the best safeguard against both executive and congressional profligacy. It is a critical component of being a good representative of a community in a legislature is to be able to provide for the specific needs of the community as well as the general welfare of the nation.

While the concept of earmarking and pork barrel politics are both uniquely American, the concept of members of a legislature in a democratic government providing particularized benefits to constituents is a facet of nearly every legislative body. In Great Britain they refer to earmarking and pork barrel politics as "patronage" and in Australia political parties regularly attack the opposition for providing marginal party members with more "pork" (the preferred American terminology) than safe members. In Poland they refer to earmarking as "election sausage" for the voters. Despite the fact that earmarking takes many different legislative and substantive forms it is present in nearly every industrialized democratic nation's legislature.

The term "earmarking" first appears in 16th century English as the procedure where farmers or herders would mark the ear of an animal in order to note ownership. The term pork barrel is derived from the pre-Civil War practice
of providing slaves with a large barrel of salt pork as a reward but doing so with 
the expectation that each individual would compete amongst themselves to get 
as much of the handout as they could. As Evans notes, the image of a frantic 
rush for the barrel carries the unflattering element of greed, anarchy and 
desperation as one imagines politicians hastily grabbing benefits for themselves 
“with the fervor of starving slaves.” Evans goes on to note that the act members 
of Congress legislating particularized benefits to their districts in the manner 
known as pork barreling carries a sense of “moral opprobrium.”18 That is to say, 
the public’s views on earmarking and pork barrel politics are consistently imbued 
with a sense of corruption, greed and immorality.

Historians believe that the first congressional earmark ever was for a 
lighthouse in a bill that was signed into law by President George Washington on 
August 7, 1789. The “Act for the Establishment and Support of Light-Houses, 
Beacons, Buoys, and Public Piers” or the Lighthouses Act allowed the federal 
government to take over ownership and operations for previously established 
state-operated lighthouses. The earmark was for the erection of a new 
lighthouse on the Chesapeake Bay at Cape Henry, Virginia. At the time of the 
writing of this bill, the American South only had two operating lighthouses as 
compared to the numerous operational lighthouses in New England. This early 
legislation was also at an impasse as Southern Representatives had major 
qualms with the expansion of federal power to govern lighthouses previously

18 Diana Evans, Greasing the Wheels: Using Pork Barrel Projects to Build 
Majority Coalitions in Congress (New York: Cambridge University Press, 2004), 
3.
controlled by the individual states. The inclusion of the Cape Henry lighthouse was the first legislative earmark and it was used just as hundreds of thousands of earmarks would be after this point, to coax an intransigent member or group of members of Congress into supporting legislation they initially opposed and to provide specific members of Congress with the ability to claim to have bettered the community that they represent. From the very beginning of the practice of earmarking in American government, it was used to facilitate legislative action, the central premise of this thesis.

The Congress authorized the Cape Henry lighthouse in the Lighthouses Act and then provided funding for it in the Appropriation Act of March 26, 1790. In the Appropriation Act, Congress wrote that the Cape Henry lighthouse would receive a sum not exceeding $147,169.54 to be spent on the project. This money would be taken from duties and imports on tonnage imported to the United States. This early earmark acted just as earmarks have throughout the history of American government. Up until the 112th Congress, earmarks designed to coax members to support legislation has been a critical feature of our legislative process.

It is critical when thinking about earmarks to understand their place in the federal budget. Congress has the constitutionally mandated “power of the purse” that provides them nearly limitless power when it comes to federal budgeting. In the 18th century for example, Congress would use its power of the purse to significantly constrain executive authority relative to the constraints placed on executive authority today. According to Schick, “line-item appropriating” was
commonplace during the early history of congressional appropriations. This specific kind of appropriations language would provide very specific purposes and amounts of appropriated dollars and would often read something like, “For the purchase of ironmongery, lead, wool, coals, stationary, office furniture, and for all other contingencies of the establishment of the mint, six thousand three hundred dollars.” This kind of direct earmarking is no longer a part of the typical kinds of legislation written by Congress.

In the modern era of legislating (since the early 20th century) Congress does not typically use line item budgeting in this manner so as not to get bogged down in the much more complex programming and budgeting details of modern federal expenditures. Instead, Congress appropriates money in large quantities with certain instructions or limitations and then the executive agency receiving that appropriation make most of the decisions regarding the specifics of how that money is spent and on whom.

For example, Congress may declare a certain funding stream to be spent in the form of competitive grants and to focus on a broad goal such as reducing the spread of HIV. Congress may also write instructions to exclude a particular organization or organizations based on limitations on the use of the funds, but then it is up to each agency to determine the specifically how they wish to accomplish the goal of reducing HIV with that funding.

The range and quantity of federal spending is astounding. In FY2008 alone just the Department of Health and Human Services (DHHS) distributed

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roughly $270 billion to about 12,000 different recipients. Additionally DHHS bought goods or services from about 9,000 contractors or vendors. With such large sums of money and broad mandates the vast majority of spending decisions are made by employees of the various agencies across the executive branch. A favorite condemnation used by members of Congress concerned with the erosion of their constitutionally guaranteed power of the purse is that a host of “unelected bureaucrats” are deciding what happens to taxpayer funds. This is essentially correct and also practically unavoidable.

Whether they say it publicly or not Congressmen and women understand that the legislature is simply unequipped and unable to make each and every spending decision for the thousands of different grant programs, funding streams, contracts and so forth undertaken each fiscal year by the federal government. Congress does, however, have the power under the laws set forth by the Constitution to direct certain items of spending to specific activities of particular importance to Congress (or in many cases to a specific Member of Congress). This is, in the broadest sense, an earmark.

The realm of projects that can be classified as earmarks has expanded synchronously with the expanding reach of the federal government, particularly after the Great Depression and World War Two. Before the 1930s the federal government’s earmarking was primarily maintenance funding and large-scale public works projects. This follows the pattern of the federal government earmarking for a small number of spending projects each year, a tradition that existed up until the New Deal. In fact, up until the New Deal era, many of the
large spending projects on things such as canals and harbors that Congress attempted to appropriate for resulted in vetoes by Presidents concerned with federal overreach or led to Supreme Court cases over what kinds of appropriations activities by Congress are constitutionally allowable.

Between the founding of the Republic and the New Deal era Congress slowly expanded its appropriations efforts under the “general welfare” clause of the Constitution and challenges to the powers of Congress to appropriate that ended in the Supreme Court resulted in broad interpretations of what constituted “general welfare.” Over time Congress continued to expand what projects qualified for congressional appropriations and continued to beat back challenges to its expansion by both over riding vetoes, such as the 1882 Rivers and Harbors Appropriations Act, and by winning rulings in Supreme Court cases that led to an expansion of what falls under the general welfare clause culminating in Helvering v. Davis in 1937 where the Supreme Court interpreted the clause to confer upon Congress the power to impose taxes and spend money subject almost entirely to its own discretion.

The process of earmarking has changed dramatically since the founding of the Republic. In the modern era (stretching from the 1980s until the present day) earmarking has trended towards increased usage as well as increased scrutiny. In the next several paragraphs I will lay out the basic process by which an earmark request becomes law.

Each earmark starts with a meeting, letter, email, fax or phone call from a municipal government, non-profit organization, or other entity to a member or
staffer at a Congressional office. Every office operates differently but all of them seek to pursue earmarks with dual competing incentives. First, staff tries to figure out which earmarks would make the most sense for the Member of Congress to support based on both political calculations and simple need. For example certain cities may have aging and decrepit sewer systems that require overhaul. These kinds of projects are usually easy to support even though the Member of Congress may not gain any tangible benefit from voters because the effects of the project are not immediately evident. Other entities may ask for funding to construct something like a park or a low-income housing project. These kind of tangible projects are usually very popular because they allow the Member of Congress to point to something he or she created for the community, usually as a reason to remain in office.

The second dual competing incentive is to avoid embarrassment. For most offices of the House and Senate, undertaking actions that cause negative news coverage is the deadliest sin a staffer can make. I believe these two competing interests work together to weed out most of the earmark requests that are poor uses of taxpayer funds and susceptible to corruption. Clearly they do not get all of the “bad” earmarks out of the system but the levels of review are much more robust than the general public believes. In fact, Frisch and Kelly argue that, “the level of public scrutiny given to earmarks far exceeds the scrutiny given to other forms of federal spending.”

Staffers know that only a few of their requests will be accepted, so

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20 Frisch and Kelly, *Cheese Factories on the Moon: Why Earmarks are Good for American Democracy*, 33.
generally speaking they try to think about earmark requests by asking themselves some of the following questions: Is this project ready to compete with other requests for limited funding? How many jobs might be created as a result of this earmark? Does this project fit what the member cares about in terms of policy, what the Congress is focused on in terms of policy and if the agency administering the funding has the capability to do so successfully? What will the broader impact of the earmark be on local communities and what political ramifications might result from the earmark?21

Not all offices operate in this manner. Some members of Congress simply forward all earmark requests to the subcommittee of jurisdiction. Under the last period where earmarking was allowed, members of Congress were required to post all earmark requests on their website. Certain members of Congress believed it better to simply forward all requests to the subcommittees and thereby allow themselves to have plausible deniability when certain requests went unfulfilled. For example, in FY 2006 Walter Jones (R-NC) and Bobby Jindall (R-LA) both requested more than 40 million dollars in earmarks from a single subcommittee. They did so knowing they would not receive anywhere close to that total but their rationale was motivated in sound political calculations. Since neither of them, at the time, feared that they would face electoral challenges on the basis of abuse of government largesse, by forwarding all requests they could tell the interest groups and non-federal requestors that it

21 Ibid., 35.
was the appropriations committee’s fault when their requests were not met.\textsuperscript{22}

Generally speaking most members of Congress do whittle down their requests based on the previously stated principles.

Once each office has vetted (or not) and submitted their requests, the appropriations committee staffers take over. Each earmark request is sent to the subcommittee that has jurisdiction over the type of program the request seeks money from. For example a municipal government asking for money to fix an aging sewer system would go to the Energy and Water subcommittee. There is no published method for subcommittee staff to determine which earmarks they will support, for how much of the request and which they will leave out. Generally speaking appropriations committee staff balance two things when deciding what requests to include in the final bill: the quality of the request and the attributes of the requesting Member of Congress. Depending on the political climate in any given fiscal year, the requester’s political party affiliation may trump all considerations.

In former Appropriations Subcommittee Chairman Ralph Regula’s (R-OH) documents, Frisch and Kelly discovered the closest public blueprint of how staff determines the allocation process for earmarks. This document does not necessarily mean all other formulations of the Appropriations Committee, under Democrats, with different staff directors and so forth, behaved the exact same way. But it does provide an outline of how House Republicans allocated earmarks for the FY2006 Labor, Health and Human Services bill. Frisch and

\textsuperscript{22} Ibid., 37.
Kelly say that this process is "consistent with what several of the insiders whom we interviewed told us about the prioritization process."\textsuperscript{23}

Mr. Regula’s document is a spreadsheet that divided members into the following categories: Appropriations Committee Chair (1); Appropriations Subcommittee chair (10); Appropriations Subcommittee member (7); Appropriations Committee member (19); committee chair (not Appropriations) (21); leadership (meaning whip, speaker and majority leader) (6); rank-and-file member (159); Rules Committee member (9).

Each category of member received different baselines for allocation of earmark dollars. For example, rank-and-file members were each allocated the lowest amount, a base level of $400,000. Certain members of the rank-and-file or other lower allocation groups might receive increases in the total amount of earmark allocations based on things like political vulnerability. Members considered to have the most difficult re-election prospects would receive up to three times as much as $400,000. This demonstrates the clear and important link between electoral politics and earmarked spending.\textsuperscript{24}

The highest base allocation for any member not part of the House Appropriations Committee was for the Speaker of the House (at that time Dennis Hastert) who received an allocation of $20,000,000. Mr. Regula and then House Appropriations Committee Chairman Jerry Lewis received $29,600,000 and

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{23} Ibid., 36.
\item \textsuperscript{24} Ralph S. Regula Papers, Ohio State University, RG:57/c-Series I: Appropriations Committee, Sub-series 9: Labor, Health & Human Services and Education Subcommittee, Box 66, Folder 6-Budget Appropriations for FY 2006, member requests 2005.
\end{itemize}
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$19,000,000 respectively according to Mr. Regula’s papers.  

Staffers on the appropriations committees and particularly the subcommittees spend a lot of time vetting earmarks. Nearly all members of Congress submit more requests than they are allocated funding, so sifting through the requests can be a time consuming process. When they are finished, they put everything together into a bill known as a “chairman’s mark” which must first pass out of the relevant subcommittee, then the full appropriations committee, then onto the floor of either the House or Senate depending on which arm of Congress produces the bill. Each movement of the bill requires debate and often times allows for significant amendment. In fact, each of the stages of the bill nearly always result in the stripping away of certain earmarks for political reasons or otherwise.

After both the House and Senate pass their bills, they go to “conference” so that they can make the bills identical. This provides yet another opportunity to winnow away at the earmarks within both bills. Once the conference report is established the House and Senate once again have to pass these bills and then the President must sign them in order that they become legally binding. Despite the outcry of earmark opponents, the process by which an earmark becomes law is lengthy and full of careful review and scrutiny. As Frisch and Kelly conclude, “between member’s offices and the legislative machinery, it is unlikely, though not impossible, that a completely unjustifiable or corrupt earmark involving an explicit quid pro quo will survive the process. As anticipated by

25 Ibid.
Madison, individual interests, political competition and the legislative machinery combine to act as sentinels of the public interest.  

Earmarking in the modern era, widespread and publicly scrutinized, actually began with several universities receiving earmarked funding for building projects back in the 1970s. Schools such as Georgetown University and Tufts began to have remarkable success getting taxpayer funding for campus construction projects. This expansion of earmarking reflected two key changes that were occurring at this time that led to the explosion of earmarks in the 90s, the transparency reform movement of the latter part of the decade starting in 2001, and ultimately the ban in place today. The first change was that the political culture around Washington, particularly relative to increasing spending and running up deficits, was beginning to thaw. As Schick notes, traditional spending patterns up until the post Vietnam-era in American politics followed the course of increased spending beyond revenue (leading to yearly deficits and long term debt) only during times of war. During times of peace the federal government would limit its spending significantly and try to achieve a balanced budget. For reasons beyond the scope of this paper, this pattern became undone in the 1970s as the federal budget expanded in scope of projects and types of funding, and cultural taboos against deficit spending completely

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The second key change during the 1970s that led to increased earmarking was the growing belief of non-federal entities that they would be competitive for earmarked federal funds. This resulted directly from an increase in earmarks as well as an expansion of what kinds of entities would qualify for earmarks. One of the early earmarks cited by Robert Kaiser in his book, “So Much Damn Money: The Triumph of Lobbying and the Corrosion of America Government” was for the construction of a new building on the campus of Tufts university. Upon hearing the proposal by a lobbying company for pursuing the earmark, then Dean of Tufts Fletcher School of International Affairs Edmund Gullion remarked, “It had never occurred to me that Congress could pass a law for the benefit of Tufts University!”

With these two key changes underway, the potential for opportunities and growth of earmarking was immense. At the outset of the 1980s, a new kind of relationship arose between lawmakers and staff on Capitol Hill and a rapidly expanding industry. “A growing number of lobbying firms, trade associations, labor unions, and corporations maintained Washington offices… it was a relationship of mutual dependency… the lobbying business was growing because of the benefits lobbyists could win for their clients from members who

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realized they needed ever-increasing amounts of money to run campaigns that kept them in office.29 So in effect, the growth of the lobbying industry and skyrocketing costs of successful campaigns worked in coordination with the Congressional power of the purse and the impetus each member has to seek reelection in order to create a scenario in which the practice of earmarking rapidly increased in both regularity and cost. While I firmly believe that earmarking is an important tool for legislatures to pass bills and be an effective form of government, such exponential growth periods as the 90s certainly opened the door for corruption.

It wasn't just the increasing costs of campaigns and the growth of lobbying firms that led to the explosion of earmarks. Within the appropriations committees, changing leadership and political culture also set the table for a rapid increase in earmarking. From 1953 until 1994 Representative Bill Natcher served the people of Kentucky in a manner that no longer exists on Capitol Hill in 2012. He cast over 18,000 consecutive votes, which is still far and away the longest streak in Congressional history. He spent very little money on his own campaign; he was a stickler for following Congressional rules in a manner known as ‘regular order’, which hardly exists in today’s Congress. And Rep. Natcher, as chairman of the Labor, Health and Human Services (Labor-H) subcommittee of the House Appropriations Committee, quite simply refused to earmark anything for anyone under any circumstances.

Former Representative John Porter described Natcher’s total opposition

29 Ibid., 113.
to the process of earmarking funds. “He just wouldn’t do it. I can remember one
year when we were in a Conference between the House and Senate, and Bob
Byrd…was pleading with Bill Natcher to put in funding for a project of his and
was basically on his knees pleading and saying, ‘we’re fellow Democrats!’ We
were all sitting and watching this and Natcher just wouldn’t do it.”³⁰ Natcher felt
that, as a member of the House of Representatives, it was his duty to stand
against the fiscal profligacy of the Senate and protect the treasury funds from
misuse.

Natcher represented a political culture that has eroded from our political
system and Congress. When Natcher died in office in 1994, earmarks had
already become standard procedure for all of the other subcommittees. With him
gone, the last remaining vestige of the old political culture washed away. The
Congressional Research Service lists only 5 earmarks in the FY 1994 Labor-H
bill accounting for only $2.4 million.³¹ By fiscal year 2005, the Labor-H bill
contained 3,014 earmarks totaling over 1 billion dollars.³² During the expansion
period in the 1990s much of the growth in the number and cost of earmarks
occurred in the Labor-H accounts, but other accounts experienced parallel

³⁰ Frisch and Kelly, Cheese Factories on the Moon: Why Earmarks are
Good for American Democracy, 130.

³¹ James D. Savage, “Saint and Cardinals in the Appropriations
Committees and the Fights Against Distributive Politics,” Legislative Studies

³² Congressional Research Service Memorandum. “Earmarks in
growth. A more specific look at types of earmarks within varying appropriations accounts is in chapter two.

Even members of Congress who supported earmarks became concerned with the explosion of earmarks beginning in 1994. Former Appropriations Chair Bob Livingston said, “There is no doubt that they lost control…Speaker of the House Hastert didn’t concern himself with the budget, George Bush signed virtually every appropriations bill regardless of earmarks, and the Appropriations Chairman and Appropriations Members didn’t want to be here, and as a result staff let in thousands of earmarks.”

The question of why precisely earmarks exploded during this period is an interesting one. The breakdown of political culture and the expansion of lobbying are certainly key factors. Allen Schick provides perhaps the most cohesive explanation for this paradigm shift in federal budgeting and earmarking.

This behavioral shift has multiple sources: the enlarged role of party leaders who see short-term advantage in accommodating spending demands; the proliferation and activism of interest groups (including state and local governments) that lobby for additional funds; the soaring cost of election campaigns (in which locally targeted appropriations can facilitate raising campaign funds); and the opening up of the appropriations process to outside pressures. President Bush’s unwillingness to use the veto power during the first years of his presidency and the use of baselines to score congressional budget actions also have diminished the zeal to cut federal spending.

I believe that earmarks are good for the democratic process in this country. They facilitate legislative action, they provide an important check on executive power,

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and they allow legislators to address real needs in their districts. Moreover, their characterization as a leading cause of deficit spending and debt accumulation is patently false. However, when earmarking explodes to the point that it did between 1994 and roughly 2006, it becomes impossible for staff to vet and truly consider the value of each earmark, which opens the door for corruption, fraud and waste of taxpayer funding. This in turn leads to negative media coverage of earmarks and further erosion of public trust in government.

The reforms enacted in January 2007 by the incoming Democratic majority were an effort to increase the transparency of the earmarking process and to reduce the total number of earmarks and their total overall cost. It was clear that reform was necessary and I believe that these reforms did work to rebalance the role of earmarking in the federal budget. The increased transparency may have led to the total ban of earmarks that we have in the new Republican majority Congress now, as it provided anti-earmarking watchdog groups with all the ammunition they needed to continually blast members making earmark requests, yet the transparency laws on earmarks were a much needed reform after the profligacy of the mid nineties and early part of the first decade of the 21st century.
CHAPTER TWO
THE CONTEXT OF EARMARKS

In this chapter I will establish the context for earmarks by distilling Stein and Bickers’ “policy subsystem” theory of pork barrel spending. By understanding the role of earmarks in the broader American political landscape one may more easily understand their importance as a critical tool for use by Congress. I will then establish the seven categories of spending that have been identified as the member favored sources of earmarked funding and compare them with the purpose of discovering what types of earmarks that are most attractive to legislators.

What is a “policy subsystem”? At it’s most basic level policy subsystems are, “networks of relationships among different actors, all of whom have a stake in a policy arena.”

Most often the center of these subsystems are a portfolio of government programs that are “bundled together in nonrandom ways that are intended to address the heterogeneous preferences of the diverse actors in the

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Policy subsystems essentially describe the interconnected relationship between three different types of actors and how they all try to control and influence a government program or portfolio of government programs. These relationships and efforts to control programs to achieve the actor's goals are important to the study of earmarks because two of the three actors directly or indirectly use earmarks to assert their will on the system. All policy subsystem actors seek to manipulate government program portfolios to achieve their goals, but pursue different strategies for doing so.

The first type of actor is “the legislator.” For Stein and Bickers’ this means any member of either House or Senate, “grouped into committees or subcommittees with jurisdictional responsibility for the programs in the portfolio.” For this thesis, understanding the role of the legislator in the policy subsystem is the most important aspect of the work of Stein and Bickers.

The second actor in the policy subsystem model is “the agency,” which is responsible for administering the program or program portfolio. Generally speaking, Congress sends large appropriations to agencies on a program-by-program basis with certain instructions attached. But Congress often leaves decisions about how to allocate that money while achieving the broad goals of the program to the agencies discretion. Typically, earmarks represent the only specific direction of appropriations dollars by Congress in program budgeting,

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2 Ibid.

3 Ibid., 5.
and therefore are a critical element of the relationship between legislators, agencies and program portfolios.

The third and final actor in the policy subsystem model is “the interest group.” The interest group represents the organized constituency that directly benefits from the program or program portfolio at the heart of the policy subsystem. This actor in the policy subsystem provides the impetus for legislators to earmark. Legislators wish to please interest groups within their districts in the hopes of securing their support for their reelection. Earmarking is an important aspect of the legislator-interest group relationship.

The underlying premise of the policy subsystem model is that each actor pursues its interests but cannot reach their goals without the assistance or cooperation of the other actors in the subsystem. As Stein and Bickers note, “the functional relationship between legislators, agencies and interest groups is symbiotic.”4 Agencies depend on legislators to provide authority and appropriations to carry out their program management, interest groups depend on agencies to provide the benefits of the program portfolios to their members and legislators depend on interest groups receiving benefits to organize their members to support the legislators re-election goals. Additionally program beneficiaries also interact with agencies as program benefits are awarded and exert some influence on each other over the direction and management of the program funding, however this particular aspect of policy subsystem relationships is not the primary focus of this thesis.

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4 Ibid., 6.
The first basic relationship of the policy subsystem model is the relationship between agencies and legislators. The goal of agencies is to secure stable and increasing budgets and other additional resources from Congress. Congress provides funding to agencies in order to implement programs that provide solutions to the problems of their constituents. These programs are administered by bureaucratic agencies. Even with the specific instructions to agencies provided by legislative earmarking, Congress is still dependent on these various agencies to implement the program that will benefit their constituents. And the agencies, keeping their goal in mind, do their best to meet the goals of the legislators in order to ensure that they curry good will with them so that their budgets will increase in the next fiscal year. Even when Congress provides agencies with specific guidance on the recipient, geographic location and purpose of obligated federal spending, it is still up to the agencies to carry out the action.

For the purpose of this thesis, the most important aspect of the relationships of actors in the policy subsystem model is the relationship between legislators and interest groups. Underlying this relationship is the legislator’s strong desire to win reelection and their belief that by providing organized interest groups with particularized benefits, the legislator believes he or she further ensures the likelihood of reelection. In the next chapter I will more closely examine this belief and whether or not there is a strong relationship between earmarks and elections, however it is a commonly accepted tenet of Congressional politics that by bringing federal dollars to the district’s constituents
one greatly bolster the chances of successful reelection. In Ferejohn’s study of Army Corps of Engineers policy, he sums up the relationship between interest groups, legislators and the operation of particularized benefits in policy subsystems:

Basically, the process can work in two ways. In the first place getting projects can be symbolically important in a reelection campaign, since it shows voters that their congressman can do things for them in Washington…Perhaps even more important is the fact that projects provide benefits for a few well-organized groups in the district. Construction workers, contractors and local businessmen receive economic rewards from nearly any sort of construction project; these groups frequently contain important potential contributors to, or worker in, a particular congressman’s campaign.5

Essentially, legislators earmark or otherwise provide direct assistance to their constituents (represented by organized interest groups) in the hopes of getting reelected. As Stein and Bickers say, “legislators seek programmatic benefits to secure their reelection through credit-taking opportunities with their constituents.”6

The “deal” being made here is that legislators procure particularized benefits for a constituency and then expect that constituency to work on behalf of their reelection. Even though this kind of deal making may seem self-serving or corrupt, it is actually the natural state of existence for representative democratic legislatures. That is to say, the legislator’s primary goal is to do his or


her best to help their constituents, even if they do so out of their own self-interested goal of seeking reelection. Stein and Bickers sum it up best when they say, "If a key reason for legislators to support a program is that [they believe] it brings them electoral benefits, then programs must actually be needed and desired by at least some of their constituents."7

Constituencies and associated interest groups come in all shapes and sizes. These groups can vary in size and degree of efficacy across a broad spectrum. For example, in districts that are urban and poor food stamp recipients can be a relatively large and often loosely organized group of constituents representing a group of people with collective interests (that being, preserving or expanding the food stamp program). Typically loosely affiliated groups of people with broadly defined homogenous goals like constituents receiving food stamps are less informed and involved in political action than others and often do not actively provide significant quantities of campaign funding or organized campaign activities to Members of Congress. Local natural resources extraction businesses are often at the other end of the spectrum and are typified by a small but highly organized group that can provide large amounts of campaign donations and associated campaign assistance. There are many different types of interest groups in between these two examples but all of them do two things with varying degrees of success, lobby for benefits and organize for electoral assistance.

7 Ibid., 33.
Stein and Bickers sum up the role interest groups play as a mediator between constituents and legislators and their relationship to the policy subsystem model in this way:

Interest groups are positioned to play a vital role in aggregating constituent preferences and linking these preferences to the policy-making activities of the legislature, in general and to the members of the relevant committees, in particular. With group members present in many districts, the organized interest group may have special clout in lobbying for program benefits. Interest groups can serve as the eyes and ears of individual voters.\(^8\)

Interest groups serve two roles in helping legislators retain office. First and most importantly, interest groups act as “the eyes and ears of individual voters.” This means that interest groups are purveyors of information across the political landscape. They provide legislators with policy information. For example, if a legislator is considering pursuing earmarked funding for an expansion to a well-traveled highway in his or her district, an interest group representing local construction contractors might be able to provide credible data on how many jobs the project would create. Another interest group might be able to provide an analysis of how much less time voters would spend in traffic after the completion of the proposed project. The legislator can then use this information to bolster his or her argument for the necessity and value of the earmark when he or she makes his or her case to the subcommittee of jurisdiction over funding streams for those types of projects. As Stein and Bickers note, “Interest groups…often

\(^8\) Ibid., 32.
point to positive externalities generated by programs which directly benefit a member’s district.”

Additionally interest groups are also purveyors of information to their membership. The belief among legislators is that if they help an interest group achieve its goal through earmarking, that the interest group will provide that legislator with strategic political advice, and will ensure that their organization’s membership is well aware of the important role that legislator played in helping to secure funding for their favored project. The expectation is that members of that interest group will reward that legislator with campaign contributions or votes at the ballot box, or both. This relationship between legislators and interest groups turns on the issue of interest group efficacy. That is to say that the more organized, well funded and effective an interest group is, the more likely they are to exert influence over the decision-making of the legislator. As Stein and Bickers note, “Legislators benefit from interest groups to the degree that the groups are able to mobilize to reward support for programs.”

Most voters have neither the time nor the desire to follow the political system’s operations and the legislative actions of their representatives particularly closely. In fact, despite being the foundation upon which representative democracy is built, the overwhelming majority of voters pay almost no attention to the daily activities of their own federal government. As

9 Ibid., 50.

10 Ibid.
Winston Churchill once famously said, “the best argument against democracy is a five-minute conversation with the average voter.”

Interest groups serve a key function to address this lack of knowledge. They inform members of their organizations about the goings on in Congress and they organize their members to support reelections candidacies for legislators who work on behalf of the constituencies represented by the interest group. As Stein and Bickers note, “In specific policy areas interest groups often can overcome the problems faced by individual voters in trying to monitor the activities of legislators and the flow of moneys to districts.”

Additionally, according to Stein and Bickers political subsystem model, well organized and funded interest groups can make campaign contributions or participate in campaign related activities that increase the likelihood of successful reelection campaigns. By supporting the reelection campaigns of legislators, “interest groups thereby… increase the probability that legislators will reciprocate with their energies and their votes on specific issues that concern their membership.”

Using the policy subsystem model it is clear that there is a symbiotic relationship between interest groups and legislators that cause a strong desire for legislators to pursue earmarks in the belief that this will provide them with direct assistance in their quest for reelection. The firm belief by legislators in the symbiotic nature of this relationship is the primary impetus for the pursuit of

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11 Ibid., 51.

12 Ibid., 90.
directing particularized federal benefits to local constituencies (earmarking in the broadest sense of the term).

Before examining the relationship between earmarks and elections in the next chapter I will review seven different kinds of the most popular earmarks as set forth by Frisch. By reviewing these seven funding areas, I will establish the attributes that make a spending program desirable for earmarking. Primarily, I will demonstrate that the ability to claim credit for legislative action directly resulting in particularized benefits for a congressional district is one of the most important part of earmarking from a legislators perspective.

The first of the seven programs in which earmarking is prevalent is in military construction funding. There are military installations in nearly every state in the Union and in Congressional districts where there are none, there is a high likelihood that there is one such facility located close enough so that constituents receive economic benefits from them or are otherwise employed there. According to an American Enterprise Institute analysis, military construction spending, “may provide greater benefits [to Members of Congress and their constituents] than do highly sought after projects for the construction of dams or the improvements of rivers and harbors.”

In a post-Soviet world, the American military has begun the process of reorganizing itself to meet the security challenges of the twenty-first century. The

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exuberance with which Members of Congress have defended the existence of military bases in their district with limited conceivable national security justification demonstrates how important military construction funding is to the legislators. Most of the earmarked funding for military construction accounts are for physical assets such as barracks, child care centers, training facilities, armories and other such brick and mortar type of projects. Contracts to build these facilities inevitably go to local companies and construction projects provide a tangible result of a legislators hard work on behalf of his or her district. Frisch notes that, “military construction in a district provides a representative/senator with a visible short and long-term avenue for credit claiming.”¹⁴ The long-term benefits result from increased military employment in the district that is typically associated with expanded military facilities.

These projects are popular but often controversial as it pits the legislators who are focused on bringing benefits to their constituents against the military hierarchy that determines the priorities of the military construction based on considerations of national security. The practice of earmarking in this arena has led to the funding of a large number of unauthorized projects that do not appear in the President’s budget. The legislators perceived positive impact of these projects also means that the geographic spread of these projects across varied and multi-faceted congressional districts is nearly universal.

The second funding stream where earmarking is prevalent is in transportation funding. Specifically, the funding for what are known as ‘highway

demonstration projects.’ Funding for these projects is administered by the Federal Highway Administration (FHWA), which is part of the United States Department of Transportation. The FHWA is primarily responsible for providing financial aid to states in order to repair, expand or construct roads that augment the interstate highway system began by President Eisenhower’s administration. Although there is a congressionally established needs-based formula that determines how much aid states will receive, earmarking in this account has been very popular.

Frisch notes that highway demonstration projects, “provide highly visible benefits to constituents in the form of increased mobility, reduced highway congestion, and concentrated construction employment.”15 Since every single congressional district has roads and highways, every single congressional district is ostensibly eligible for demonstration project funding. Additionally, the traceability connection between legislator action and results on these kinds of projects is strong, so legislators have a strong impetus to pursue these kinds of earmarked funds. Demonstration projects are thusly called because they are supposed to demonstrate a new concept or transportation technology. Evans provides a quote from a legislative staffer on what is actually “demonstrated” by the highway demonstration projects. The anonymous staffer said, “anyone would concede that what they’re demonstrating is how a Member of Congress can

15 Ibid., 41.
come to the Public Works Committee, get a project, and go home and put out a press release.”

One aspect of this type of earmarking that differentiates it from others is that this kind of earmarking is done only once every four or five years and is totally outside the control of the appropriations committees. Typically, earmarking is done in appropriations committee reports but highway demonstration projects are one of the few kinds of projects that qualify as “authorization earmarks.” However, this legislative difference does not change the use of authorization earmarks the same way that appropriations earmarks are used; to provide a currency where by legislators can make deals and work together to pass general interest legislation.

Although popular, highway demonstration projects are often one of the easiest type of earmarks to criticize because it bypasses traditional methods for funding road and highway construction and states are forced to put up matching funds for demonstration projects that may or may not be in line with their transportation funding priorities.

A third popular earmarked funding stream is for projects under the jurisdiction of the National Park Service (NPS). Continuing the trend of universal exposure to congressional districts, the United States National Park System consists of over 80 million acres of land and is present in 49 states. NPS earmarking has become a trendy pork barrel program only in the last twenty

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years. According to Frisch, this is a result of the legislative efforts of Representative Phil Burton (D-CA) who began the process of placing park authorization legislation into large omnibus bills. Burton used the NPS funding bills to provide funding for parks tantamount to an economic development project, or a project that may take place in a park but is designed to provide both short-term and long-term jobs for constituents. Even though other legislators had used the parks service for earmarking and leverage in the past, Burton was so successful that Bob Neuman, an aide to Arizona Congressman Morris Udall, termed Burton’s activities the “park barrel.”

As a result of the efforts of Burton and others, park projects are now viewed by many legislators as a tool for economic revitalization of local communities. As Frisch notes, “Park construction provides tangible benefits to an area through the employment of contractors to build the facilities, increased recreational opportunities for local residents as well as potential economic development through increased tourism.” The traceability relationship between the legislator and the project, the multi-faceted benefits of earmarked funding in the NPS and the universality of congressional districts with parks mean that these kinds of earmarks are extremely popular.

The fourth funding stream that is often earmarked is funding for construction of federal buildings. Construction of federal buildings is funded through and managed by the General Services Administration (GSA).

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18 Ibid., 44.
Constructing federal buildings in congressional districts provides the short-term and long-term benefits of construction jobs and government employment, similar to the military construction earmarks. A federal building is also a reminder of the presence of the federal government (and the ability for local representatives in the federal government to bring home the bacon for constituents). A particular recent favorite of Congress is the construction of new federal courthouses.

Critics most often attack earmarks in accounts for the constructions of new federal buildings by citing them as costly and inefficient economic development projects and not essential facilities required to meet the needs of the federal government. As Frisch notes that such criticism is, “often accompanied by claims that federal buildings are being ‘gold-plated,’ that is that they are more expensive than necessary due to costly add-ons and frills.”

Earmarked projects in the federal buildings accounts are much more difficult to come by than earmarks in highway funding, parks funding or military construction funding. However, these kinds of earmarks are highly desired by legislators because they tend to be large construction projects that take place over many years and receive comparably high dollar amounts in relation to other kinds of earmarks. Although not a widespread type of earmark, federal building construction represents one of the most desirable kind of earmark and thus would provide quite an inducement for a member or group of members if it were used as a sweetener to pass general interest legislation.

\[\text{19 Ibid., 47.}\]
A fifth kind of regularly earmarked funding stream is agricultural research. The Cooperative State Research, Education and Extension Services (CSREES) program is a part of the United States Department of Agriculture and is tasked with administering federal appropriations for agricultural research. Most of their funding goes to programs based on a competitive and merit-based evaluation, however, the appropriations committees often include “special research grants” which are allocated to regionally specific institutions (mostly universities) by individual Members of congress.

Earmark supporters often point to this kind of earmark as evidence for the social justice of earmarked funds. Typically, research grants to universities go to elite institutions concentrated in certain parts of the United States (such as New England). Since there are no restrictions placed on earmarks in this category of agricultural research, legislators often try to direct grant funding to a university in their district.

Earmarks of this nature are both extremely popular and extremely easy for anti-earmarking forces to criticize. As President Reagan said in his 1988 State of the Union address, “[Now] we’ve all learned what was tucked away behind a comma. For example, there’s millions for items such as… blueberry research, the study of crawfish and the commercialization of wildflowers.”

Without any context for the research grant on studying blueberries for example,

\[\text{Ibid., 49.}\]
it is easy to dismiss this kind of earmark as a waste of federal dollars. Benenson notes this dynamic in his review of these types of projects:

> For years, the Agriculture appropriations bill had funded hundreds of research projects on agricultural production, pest control, marketing, and rural economic issues. And for just as many years, deficit hawks, and presidents have derided a number of these programs conducted at government facilities, universities, and private sector laboratories as examples of wasteful federal spending.²¹

These projects are popular, particularly with rural legislators whose constituent universities and laboratories do not regularly receive legitimate consideration in the typical grant allocation process. While these earmarks do not bear the hallmarks of universality across congressional districts that many of the previous examples do, they are particularly attractive to a certain set of primarily rural legislators.

The sixth type of popular earmark is housing and urban development special purpose grants as part of the Community Development Block Grant (CDBG) program administered by the Department of Housing and Urban Development. The purpose of the CDBG program is to provide a suitable living environment, including housing, for lower income communities. Expanded economic opportunities also fall under the scope of this funding stream. As with other funding streams, awards are usually given out on the basis of a statutory formula that measures demographic factors such as income, age, quality of housing and other measures of eligible populations. CDBGs are legally mandated to serve broad purposes and thus are susceptible to congressional

funding guidance of an almost limitless nature. Frisch lists only a few of the past uses of CDBG funds that include sewer and water lines, health and educational facilities, restoration of rail stations, municipal community centers, science laboratories, social services, housing, and industrial developments.22

Because of the broad interpretation of what qualifies as community development, this is another example of a popular earmarked funding stream that is universal in terms of its availability across all congressional districts. As Frisch notes, the range of projects is what makes earmarks in this funding stream so prevalent and attractive to legislators. He provides some examples from fiscal year 1995 of the scope of funding available under the CDBG account:

Earmarked projects ranged from more traditional community development activities—$600,000 for the infrastructure improvement for a sewer system in St. Louis—to more original examples of community development funding—$2,000,000 to the Jewish Community Federation of Cleveland for a system of support services for the frail and elderly.23

The popularity of earmarking in these projects has led to a high degree of criticism by anti-earmark entities. In 1991, Secretary of Housing and Urban Development Jack Kemp strongly urged President Bush to issue a presidential veto as a result of the large amount of earmarks in the appropriations bill for CDBG funding. His complaining was so irksome to legislators that one appropriations subcommittee zeroed out his public affairs staff and his first class travel privileges. Although they were later restored in the conference committee,


23 Ibid., 51.
this demonstration of congressional power of the purse in action effectively shut Secretary Kemp up.\(^2\) This also shows legislators strong desire to retain earmarks for themselves and willingness to defend them from outside pressures to limit their use.

The final popular earmarked funding stream is Army Corps of Engineers Water Projects. The mandate for the United States Army Corps of Engineers (USACE) is to work on projects that enhance flood control, reduce storm damage, and to provide for environmental restoration. The USACE accounts have been traditionally one of the most popular and heavily earmarked accounts throughout the history of the USACE. In fact, state and local governments have a required cost sharing responsibility for USACE water projects as a means to ensure that only projects with the most merit receive funding. This mechanism has worked with dubious results.

Famously, President Jimmy Carter made an effort to reduce the earmarks in the USACE accounts. Most scholars agree that this ill-advised attack on Congress cost him valuable political capitol and was one important contributing factor to his weakness as a president and his inability to accomplish his legislative goals.

USACE projects receive funding from two separate accounts within their broader funding stream. Those accounts are construction projects and investigations. Investigation funding provides money to study the impact a potential project could have on water resource management, navigability or any

\(^2\) Ibid.
other of the USACE’s stated goals. Construction funding is provided for construction activities once the investigation portion of the USACE project is completed.

This is a very popular earmarked account because, as Frisch notes, “The sheer size and scope of the program, the tangible benefits that projects provide in terms of economic development provides Members of Congress with plentiful credit claiming opportunities.”

As the legislative process continues to evolve in Congress, many additional funding streams have and will see a rise or fall in earmarked funds. As legislative staff discover new ways to direct particularized benefits at their districts, and watchdog groups publicly scrutinize earmarking behavior, trends in earmarking will change. However, the commonalities between these seven categories broadly demonstrate some of the aspects of federal expenditures that lead legislators to earmark from those funding streams.

In general, earmark projects favored by legislators typically involve short-term and long-term economic stimulation and development. Short-term stimulus comes typically from increased employment as a result of construction contracts or other kinds of immediate economic activity associated with projects. Long-term economic development arises from the earmarked federal investment in improved infrastructure in local communities.

Additionally, legislators tend to favor highly visible earmarks in funding streams that provide them with the best ability to claim credit. That is, earmarked

25 Ibid., 52.
funds with the highest degree of traceability from legislator action to district receiving benefits of federal largesse.
In this chapter I will begin by reviewing the connection between earmarked spending and electoral politics using the framework set forth by Frisch. Then, I will distill several academic works on pork barrel spending in order to establish the three fundamental priorities of legislators. Finally, I will use the work of Evans to establish the academic framework to further prove my thesis that earmarks are often an important tool for passing what Evans terms, “general interest legislation” that demonstrates why Congress should have them at its disposal. I will also include interview material to provide further support for this theory.

There is no doubt that most Members of Congress believe that a critical element of their likelihood of reelection is their ability to bring federal expenditures to their home district, be it spent on construction of parks, buildings, roads, research or anything else. David Mayhew, a scholar of Congressional behavior, was one of the earliest writers on the motivation of Members of Congress to pursue earmarked funds. The reelection desire, Mayhew believes, prompts members to seek earmarked funds. He says, “it becomes necessary for each Congressman to try to peel off pieces of governmental accomplishment for which he can believably generate a sense of
responsibility. For the average congressman, the staple way of doing this is to traffic in what may be called ‘particularized benefits’."\(^1\)

This is the widely accepted view of congressional behavior. By securing federal spending in the districts they represent, Members of Congress can claim credit, typically with a ceremony, press release or other media focused action, in order sustain their reelection hopes. They believe that voters in their district value federal spending in the district, particular when some of the benefits of the local federal expenditure improves infrastructure, provides jobs or otherwise increases economic development in the area.

Members of Congress believe that voters and interest groups will provide political assistance in return for a legislator securing particularized benefits on behalf of constituents. As previously discussed in the section about interest groups in chapter two, legislators believe that interest groups can provide campaign assistance in several different ways. One way interest groups representing constituents can reward legislators is by organizing voters to participate in campaign activities, organizing voters to vote and “get out the vote” or increase the number of likely voters participating favorably in that year’s election. Additionally, interest groups can raise money on behalf of legislators and have a significant impact in refilling the campaign coffers of legislators. This last aspect has become particularly important in the last 20 years as the cost of running a successful election campaign has risen dramatically.

It is difficult to test the strength of the connection between legislators providing particularized benefits to their constituents and reelection successes, however, legislators accept the connection as dogma. Mayhew states:

How much particularized benefits count for at the polls is particularly difficult to say. But it would be hard to find a congressman who thinks he can afford to wait around until precise information is available. The lore is that they count—furthermore, given home expectations, that they must be supplied in regular quantities for a member to stay electorally even with the board.2

Arnold expresses the belief that Members of Congress have that earmarked funding and pork barrel spending affect their reelection chances in three ways. First, he claims that by directing federal largesse at constituents, the legislator is influencing the direct beneficiaries of funding to support his or her reelection. Secondly, earmarked funds provide favorable publicity. A typical manifestation of this kind of publicity would be a press release stating all of the benefits that the district would accrue from the legislators intervention to provide earmarked funding for a project, or at the project’s completion, a ribbon cutting at a new park or federal facility. The third way in which earmarked funds affect a legislators reelection prospects is the economic impact the funds have on the local economy. In regards to this third component, a particular emphasis for the legislator is on the short-term creation of jobs (typically in construction) and the long-term creation of jobs resulting from the establishment of infrastructure that requires people to operate it (such as a park or a federal office building).3

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2 Ibid., 57.

Frisch provides newsletter content analysis, as part of his evidence for the relationship that exists in the political calculations of incumbents between earmarking and reelection. I will sum up his findings here as further proof of the importance of earmarking in the minds of Members of Congress. Frisch requested sample newsletters from all 435 members of the House of Representatives in the 103rd Congress. Of those 435, 155 submitted newsletters for analysis. Frisch states that, “every reference to a grant, project, or other tangible asset that benefits the specific congressional district without imposing a distinguishable cost on the taxpayer was coded as a distributive benefit.” He also further states that, for the purposes of the analysis, “projects were considered to be earmarks if there was apparent congressional (legislative) action to produce the benefit; projects that were the result of bureaucratic action or formulas were considered to be grants.”

His analysis demonstrates the strong connection between earmarking and reelection in the minds of legislators. Of the 155 newsletters, 93 (59.2%) describe at least one distributive action spending federal funding in their home districts. Of the newsletters that claimed credit for distributive actions, nearly 95% referred to benefits that required legislative action, and nearly all of those were earmarks. Additionally, accrued distributive benefits as a result of

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5 Ibid.
bureaucratic action, grant winning or formula are mentioned only 87 times in the 155 newsletters. Earmarks are mentioned 294 times. This shows the importance to legislators of the traceability component of earmarked funds.\(^6\)

Although the relationship between earmarked funds or particularized benefits for a district and reelection is taken for granted, there is not a lot of empirical evidence to support this assertion. There are numerous barriers to a definitive analysis, but there is no doubt that Members of Congress, for the most part, seek earmarked benefits for their districts as part of an electoral strategy.

The two major studies of the connection between pork barrel spending and electoral success do not lead to a definitive conclusion that the relationship is direct and universal. In the first study, conducted in 1984, Feldman and Jondrow used data regarding the changes within a district in federal civilian employment and construction since the previous election. They found no evidence that legislators who direct federal contracts or otherwise use federal expenditures to increase employment are more likely to be reelected. They conclude that, “while other variables… are important determinants of the vote, changes in both local federal spending on construction and federal civilian employment in the incumbent's district are shown to have no effect on the share of votes going to the incumbents.”\(^7\)

\(^6\) Ibid., 26-27.

The second major study in the relationship between particularized benefits and electoral success was done by Stein and Bickers in 1994. They analyzed the awards of funding from discretionary programs given by either bureaucracies or Congress. They measured the change in new discretionary awards for congressional districts over two congresses to test the electoral connection hypothesis that more pork leads to higher election margins. Like Feldman and Jondrow, they found that there is not a universal relationship between greater amounts of particularized benefits and higher margins of victory for incumbents.8 They conclude by saying that they find, “a connection between distributive benefits and electoral support exists, but only in a mediated and conditional way.”9

It is important to note, when analyzing the relationship between earmarked spending and electoral successes that some Members of Congress campaign and actively work against pork barrel spending as a feature of their effort to win reelection. Frisch uses the example of Mark Neumann (R-WI) who is elected to Congress in 1994 running on a generally anti-spending platform with a particular focus on earmarked funding. Neumann was given a seat on the House Appropriations Committee where he refused to earmark for his own constituents and regularly offered hostile amendments to strip earmarks from


9 Stein and Bickers, Perpetuating the Pork Barrel: Policy Subsystems and American Democracy, 119.
nearly all of the appropriations bills reported out by the committee. Neumann said, “I find it morally and ethically unacceptable to suggest that I have to spend my children’s money to get elected.”¹⁰ His platform of no earmarking did not hamper his reelection totals. He won reelection to the 105th Congress in a marginal district (a district that is neither solidly Republican nor Democrat) with an increase of 2% from his first election.

Other contemporary politicians make the fight against earmarking one of their signature platforms. Examples would include Representative Jeff Flake (R-AZ) or Senator John McCain (R-AZ) who made earmarked funds a national issue in the presidential campaign of 2008. Clearly, not all Members of Congress stand to gain uniformly from the aggressive pursuit of earmarked funding for their districts.

Despite the barriers to in-depth empirical analysis of the relationship between particularized benefits and electoral success, it seems that the strong association many scholars and the voting public often find between earmarking and elections is overstated. As previously noted, certain Members of Congress make careers out of opposing the use of particularized benefits in any congressional district, including their own. As Stein and Bickers note in their study:

Not all legislators have the same incentives to utilize their positions within policy subsystems to enhance their electoral margins. We also argue that the extent to which voters are influenced by the provision of distributive benefits is likely to vary greatly…in short, both the predisposition to

engage in pork barrel strategies and their effects are likely to be conditional.\textsuperscript{11}

The fundamental reality that most Members of Congress accept is that pork barrel spending and earmarking, or the direction of particularized benefits to constituents and interest groups is an unavoidable component of the political system.

Certain scholars, such as Fiorina, subscribe to a segment of the “distributive theory” of congressional governance that believes that the single minded pursuit of reelection is the only priority for legislators and that they pursue pork barrel spending to achieve this goal at the expense of policy making and general interest legislation. Fiorina describes policy making as, “emerging from the system almost as an afterthought. The shape of policy is a by-product of the way the system operates, rather than a consciously direct effort to deal with social and economic problems.”\textsuperscript{12} Frisch describes this model of congressional behavior as “consciously cynical.”\textsuperscript{13} These theorists believe that the reelection impetus is what causes the slow procession of government growth and increasing inefficiency.

I disagree with scholars such as Fiorina. Although we would agree that all legislators in Congress behave as self-interested rational actors, Fiorina and

\textsuperscript{11} Stein and Bickers, \textit{Perpetuating the Pork Barrel: Policy Subsystems and American Democracy}, 118.


\textsuperscript{13} Frisch, \textit{The Politics of Pork: A Study of Congressional Appropriation Earmarks}, 11.
other subscribers to this branch of “distributive theory” would posit that self-interest only means the desire to get reelected and would not include other priorities. Frisch also disagrees with scholars such as Fiorina. He says that although the desire to acquire particularized benefits for constituents in the form of earmarks or pork barrel spending is a primary interest for some members, “the tendency is not nearly as strong as is claimed by advocates of distributive theory and is best considered as one of the competing motives of Members of Congress.”

I believe that Frisch is correct, particularly in the sense that earmarking is a primary, but not the exclusive goal of most legislators. I also do not agree with scholars such as Fiorina who hold the cynical belief that Congress produces policy only as a byproduct, and that it’s main creation is distributive benefits. Krehbiel agrees and argues, “Pork is not the do-all and end-all of legislative behavior…Pork may be the lubricant for the legislative machine, but it is not the machine’s main product.”

I believe that most legislators are driven by three distinct priorities. In order of importance they are: reelection, influence and power acquisition within Congress, and making good public policy.

Much of the public believes, like Fiorina, that legislator’s only goal is to get reelected. While I agree that staying in office is certainly the most important

\[\text{14 Ibid., 12.}\]

goal of all legislators, becoming more powerful within the legislature and passing good public policy are also priorities.

Acquiring power within Congress could be viewed as a subset of both the desire to be reelected and the desire to pass good public policy. Becoming powerful in the legislature often enables a Member of Congress to direct significantly more earmarks or particularized benefits to their districts. Increased visibility and stature in the legislature also has intangible benefits associated with it for local constituents. Power, access and the ability to make a larger impact on public policy creation than rank-and-file Members of Congress allow powerful members to bolster their reelection prospects.

The third goal of Members of Congress is to pass general interest legislation that establishes good public policy. In doing so, they do not gain particularly significant electoral benefits in the distributive model because often times policy making does not lead to increased federal expenditures in their districts, or if it does it tends to be a result of bureaucratic agency action and therefore not credibly traceable.

Evans defines general interest legislation as, “broad-based measures that affect the whole nation or a large segment of it.” Evans’ argument, which I believe is correct, is that earmarks or distributive benefits are used as a currency or a “sweetener” to buy off enough Members of Congress in order to create

\[\text{Evans, Greasing the Wheels: Using Pork Barrel Projects to Build Majority Coalitions in Congress, 3.}\]
majority coalitions to pass bills.\textsuperscript{17} General interest legislation, or national policy making, are often bills that Congress is most admired for. Former Representative George Brown (D-CA) describes one anecdotal example of the use of earmarks to pass general interest legislation:

Pork barrel was of course an age-old political practice, and one which may not be all that objectionable if practiced in moderation, or for the right reasons. For example, President Lyndon Johnson used a mixture of threats and pork in order to secure the votes he needed to pass the 1964 Civil Rights Bill. Today, throughout America, there are many worthwhile dams, roads and hospitals which owe their very existence to a single YEA vote on the Civil Rights bill. This is pork for the Greater Good.\textsuperscript{18}

This example is exactly the use of earmarks and pork barrel to establish good public policy that I believe demonstrates the importance of earmarks as a tool of an efficient legislature.

While we can all now agree that Civil Rights legislation from the 1960s is good public policy is, the ultimate determination of what constitutes good public policy is, of course, subjective. What a right wing conservative considers to be good public policy may differ wildly from what a liberal left-winger might view as good public policy. Nevertheless, most legislators do wish to pass legislation that sets national policy in a way in which they believe it should exist to the benefit of their constituents and the nation as a whole. And one important way to ensure that general interest legislation is passed is to allow for earmarks to be used as a currency to entice Members of Congress to join a winning coalition in support of legislation of national significance. Ultimately, the most important use of

\textsuperscript{17} Ibid.

\textsuperscript{18} Frisch, \textit{The Politics of Pork: A Study of Congressional Appropriation Earmarks}, 81.
earmarks and pork barrel politics is to buy votes to pass general interest legislation. As Cohn notes:

Even if every single pork barrel project really were a complete waste of federal money, pork still represents a very cheap way to keep our sputtering legislative process from grinding to a halt. In effect, pork is like putting oil in your car engine: it lubricates the parts and keeps friction to a minimum. This is particularly true when you are talking about controversial measures.¹⁹

What Cohn is essentially saying is that the substance of each earmark is, within reason, immaterial relative to the importance of earmarks as a tool of legislative efficiency.

The term, “vote buying” has an associated moral opprobrium to it similar to the American public's views on earmarks. It is important to note that there are significant differences between accepting offers that benefit the individual Member of Congress in return for voting a particular way, and accepting offers that benefit constituents of the Member of Congress in return for voting a particular way. The first is, of course, bribery and immoral as well as illegal. The second may be distasteful to some, but is a hallmark of legislative processes in democratic societies. As Evans notes vote buying with earmarks allows legislators to make important decisions on behalf of their constituents and the nation. She says, “legislators have an obligation to consider the trade-off between local interests of their constituents and more broad-based interests.

Tension between local and national interests is inherent in geographically based legislative bodies.\(^{20}\)

The reason that earmarks are used as an inducement to pass general interest legislation is because Congress faces what is known as a “collective action dilemma.” A collective action is simply the coordination between two or more individuals to carry out an act. In a legislative body such as Congress, it takes at least 50% plus one to make a decision. In some cases, such as in the Senate, it takes more than a simple majority to make decisions. Since collective actions do not necessarily produce collective benefits to each individual (or in this case, to the constituents of each legislator) and each individual legislator is rational and self-interested, getting majority coalitions can be extremely difficult. This is further complicated by the nature of the collective action in Congress. That is to say, the more individuals in the group that must act in coordination, the more likely it is that individuals will try to free-ride on the efforts of others.

Evans believes that the reelection impetus of legislators (and their associated desire to earmark or otherwise provide particularized benefits for their district) is a major source of the problem. She says, “Members of Congress have more incentive to pass pork barrel bills than general benefit legislation. The source of the problem, it is argued, is the reelection goal.”\(^{21}\)


\(^{21}\)Ibid., 15.
That is to say, individual legislators prefer to pass bills that provide them with the opportunity to bring federal spending to their district and to claim credit for that spending. Broad based policy making does not provide the same benefit to the reelection goal, because constituents often do not hold members personally responsible for broad based policy making. Evans breaks down the collective action dilemma for Congress in the following way:

In large legislative bodies, the impact of most members’ individual contributions to passing broad-based legislation is so dilute that there is no incentive for them to devote time to it, especially as that time could otherwise be spent servicing constituents and special interests with targeted benefits.\(^{22}\)

In other words, electoral benefits of championing general interest legislation are limited if they exist at all. Simply taking a position on general interest legislation can provide some electoral benefits (like when Republican candidates uniformly opposed President Obama’s health care reform bill) but the hard work of writing and passing good public policy provides almost no electoral benefits to Members of Congress.

How then, can legislators write and pass good public policy in the form of general interest legislation given the collective action dilemma? By using the reelection impetus and the desire to provide particularized benefits to constituents to build majority coalitions in support of general interest legislation.

There are several conditions that Evans lays out for the use of earmarks to buy votes for general interest legislation to work. The pretext to these conditions, however, is the assumption that legislators will stick to the time

\(^{22}\) Ibid., 16.
honored rule of earmarked funds: if you get an earmark in a piece of legislation, you are duty bound to support the rest of the bill.

Earmarks, as I have discovered in interviews with staff, lobbyists and others, operate both to provide an incentive to vote for a bill and to dissuade Members of Congress from attempting to alter bills significantly. Mick Nardelli, Senior Policy Advisor at Nelson Mullins, spoke candidly of this feature of Congressional politics. Mr. Nardelli is known to Washington insiders as an “eat-what-you-kill” lobbyist, meaning that he pursues federal funding for various clients (in his case mostly municipal entities from central Pennsylvania) and is only paid upon successfully directing federal money to his client’s projects. These kinds of lobbyists previously relied heavily on earmarking as a means to accomplish the goals their clients set out for them. I asked Mr. Nardelli if he believes that earmarks help legislators build majority coalitions and also helps legislators maintain the integrity of their policy language through the legislative process.

Oh absolutely, if I’m up for reelection I have no incentive to vote for a 600 billion dollar spending bill if I’m not guaranteed to get something out of it. Similarly, I’ll be much less likely to make hostile amendments to legislation that I might have some issues with if I’m getting something out of the bill. I think that without earmarks in legislation you can easily allow the perfect to be the enemy of the good. You can see that when you compare appropriations legislation today versus years passed. Today we have open rules on appropriations bills because no one liked the bills. In the past you would have defense appropriations bills pass with 300 vote majorities because everyone knew that they would be sending something to their constituents in that bill. Now, when there is no guarantee of federal dollars going to the district, it’s much easier and nearly always more politically savvy to oppose spending altogether. What’s the incentive?23

According to Mr. Nardelli, earmarked funds ensure that policy legislation is insulated from hostile attacks in the policy process and provides a means for legislators to build majority coalitions.

In an interview with Bettilou Taylor, the former Staff Director of the Senate Appropriations Subcommittee on Labor, Health, and Human Services, Education and Related Agencies from 1989 to 2011, she demonstrated the practice of using earmarks to build majority coalitions for appropriations and budget bills in the Senate.

When Senators felt that they did not get enough money in a bill they would tell me that they were planning to vote against a bill. This happened often enough that I would keep a few million in budget authority in my back pocket that I could add it on their behalf in order to ensure their support. Earmarks were a means to satisfy needs in their district and if those needs were satisfied they would support the bill. In years where there were no earmarks in bills I couldn’t pass a single one. Senators would say, ‘why should I vote for this?’ and the budget always had to be done through omnibus legislation.24

In an interview John Porter, a retired Republican Congressman from Illinois who served from 1980 until 2001 including 14 years on the House Appropriations Committee part of which was as Chairman of the Labor, Health and Human Services subcommittee, agreed that earmarks provide a crucial incentive for passing legislation.

Without earmarks, passing legislation is much more difficult. Packaging legislation, or putting the right bills with the right mix of incentives to attract enough votes, is an art form and a really important part of a

functioning Congress. Without as many incentives, packaging, and passing, legislation becomes almost impossible.\textsuperscript{25}

The concept of “packaging” is a critically important point for the concept that earmarks can provide a means to build coalitions for legislation. Often times, Congressional leadership packages policy legislation with budget or appropriations bills. A recent example of this would be the inclusion of the repeal of the “don’t ask, don’t tell” policy in national defense budget legislation. The reason for doing this is because budget legislation must be passed by certain deadlines to avoid government shut downs, but I would argue also because direct benefits to Members of Congress in the form of earmarks can be included in appropriations bills.

Clearly, earmarks have provided a means for coalition building. But what conditions are necessary in order for this tactic to work? The first condition that must exist for earmarks to be used as a tool of coalition building is that the coalition builders (in most cases, members of leadership or committee chairmen) must have access to enough distributive benefits to be able to use them as currency to garner support for their legislation. Certain jurisdictions afford committee chairman more leeway in providing earmarked funding. For example, the appropriations committees and the committees responsible for transportation policy are ones where there are typically a lot of distributive benefits to be doled out. Committees such as the House Oversight and Government Reform committee have less opportunity to earmark funds.

The second necessary condition is that coalition builders must be willing and able to use distributive benefits to build majority coalitions. As previously noted certain Members of Congress (Neumann, Flake, McCain) make a career on opposing the use of earmarked funds for any reason. Depending on the political climate at the time, party leadership can put a member ideologically opposed to earmarking as chairman of a committee or subcommittee known for earmarking, in effect, turning off the spigot. In the 112th Congress the Republican majority in the House of Representatives has outright banned the practice of earmarking entirely. The political climate in many ways can limit the use of earmarking altogether.

The third necessary condition is the assumption that legislators will be willing to participate in vote buying and selling and that they are interested in earmarked funding because they believe it will increase their prospects of reelection. As previously established, most but not all members believe this relationship exists and is important. In a sense, if the “currency” of earmarks do not have value in the eyes of the legislators, than they cannot be used to gain their support of general interest legislation. Additionally the project offered as the price for a vote must be valuable enough in the eyes of the legislator in order to get them to support general interest legislation that they would otherwise oppose.

The fourth and final condition necessary to allow the use of earmarks as a means to build majority coalitions is that the coalition builders who use earmarks to buy votes are not driven by their own reelection goals to pass the general
interest legislation. Presumably, coalition builders for general interest legislation are working to enhance their influence within the legislature and also to pass what they view as good public policy. As Evans notes, “there are simpler ways to gain constituency benefits than by doing the spade work needed to pass major legislation. Thus it is reasonable and even necessary to assume that goals other than reelection… motivate the extensive work needed to make national policy.”

In sum, earmarks can provide an efficient way for coalition builders (with distributive benefits available to give) to unify divided groups of rational, self-interested legislators whose primary goal is to be reelected, around general interest legislation.

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26 Evans, *Greasing the Wheels: Using Pork Barrel Projects to Build Majority Coalitions in Congress*, 34.
CHAPTER FOUR
THE CONSEQUENCES OF EARMARK REFORMS

In this chapter I will review the recent history of earmarks. I will discuss the reform efforts undertaken by Democrats in 2006 that attempted to address the problems of the earmark process while preserving the practice of earmarking. I will also use interviews with Congressional staff, lobbyists and former Members of Congress to give an insider perspective on how Congress dealt with reform and how it operates under the current earmark ban. Because the earmark ban was enacted during the current Congress, the kind of data I have used in this thesis up until now is unavailable. Instead I will use anecdotal evidence such as interviews, newspaper publications and other sources to demonstrate the negative consequences a ban on earmarks is having on the ability of the Congress to pass legislation. I will also provide opposing viewpoints on the utility of earmarks in forging coalitions and policy making and my critique of those views, as well as a brief conclusion.

When Democrats regained control of the House of Representatives beginning in the 110th Congress (2007-2009) they enacted robust earmark reform policies as part of the package of rules governing procedure for that Congress. Although many viewed the turnover of power in the House of Representatives from Republicans to Democrats as a repudiation of then
President Bush’s war policies, Democrats felt that their victory was also in part spurred by public outcry against the fiscal profligacy and lack of transparency of previous Republican majority congresses, particularly in earmarks. One famous example of the “misuse” of earmarks by the Republican majority was the so-called, “bridge to nowhere.”

The reform package included numerous provisions that altered the way in which earmarks were requested and reviewed with a particular emphasis on making individual legislators legally accountable and a major increase in transparency throughout the earmark process. The desired outcome was that increased transparency would lead to decreased abuse of earmarking and less corruption in the practice of earmarking. This effort to clean up the process while continuing to provide members with the ability to send money back to their districts reflected the Democrats view that earmarking was an important tool for the legislature to possess, despite being fraught with political peril.

The three most important elements of the earmark reform package focused on addressing the most corruptive elements of the process. First, all Members of Congress were required to post all earmark requests on their official websites. They must include the recipient, the address of the recipient, the amount of the request and a justification for that request. Secondly, Members of Congress must certify that they have no direct financial interest in the request. These forms provide the legal protection to ensure that Members do not make requests on behalf of entities where they stand to gain a direct benefit. Finally, Subcommittees must disclose early in the process which earmarks will be
included in the subcommittee’s bill, allowing for greater scrutiny of included earmarks by the public and other Members of Congress prior to passage of the bill. In the past, powerful legislators could drop earmarks into legislation very late in the process, circumventing the committee scrutiny of that funding request. This particular reform sought to address that particular abuse of earmarking power.¹

Additional reforms included a requirement that the executive agency responsible for carrying out the earmark be allowed to provide their own opinion as to whether or not the earmark request was allowable under existing law. Also, earmarks directed at for profit entities, a large number of which were defense contractors, would have to be open to a competitive selection. Limitations on the total amount of earmark expenditures were also put into place as a means to limit both the amount of money spent on requests and the total number of requests.

These reforms attempted to “disinfect” the earmark process by exposing it as much as possible to public scrutiny. This strategy shows that Members of Congress realized that earmarking was both an important part of the power of the purse but could be politically damaging and corruptive if allowed to continue in the fashion of the 1990s. Appropriations Committee staff provide a unique insight into the process of earmarking and the effectiveness of reforms. Their different views demonstrate both the effectiveness and limitation of reforms. Michael Stephens, who worked for the Appropriations Committee beginning in

¹ Frisch and Kelly, Cheese Factories on the Moon: Why Earmarks are Good for American Democracy, 148.
July of 1976 and retired in February of 2010 believed the reforms were not as strong as they appeared to be and were motivated purely by political concerns.

The reforms under Obey were an attempt to deal both substantively and politically with earmarks that were easy to degrade and the reforms did increase transparency substantially. But really, these measures were only a finger in the dyke rather than substantive reform. The effort was designed to effect plausible deniability by Congress as a whole by using the certification process and to reduce the laughing stocks like the tea pot museum.²

I also asked Bettilou Taylor, former Staff Director of the Senate Appropriations Subcommittee on Labor, Health, and Human Services, Education and Related Agencies from 1989-2011 and current co-owner and principal at Madison Associates, a government relations firm, about the effectiveness of the reform effort. “The reform efforts of 2006 were robust. I do not believe you can get much more transparent than that, and I hope that we can return to earmarking because the Congress is hamstrung in many ways under the ban.”³

Earmark opponents believed that the reforms would create such a cumbersome process that Members of Congress would not send as many earmark requests as in previous years. This ignores the reality that the Members of Congress themselves do very little of the paperwork and personal investigations of the request and its merits. Almost all of that work falls to personal office and committee staff. Bettilou Taylor discussed some of the unintended consequences of the dramatic increase in paperwork on the budget


The reform process, to be perfectly honest, was a pain in the ass. I mean it was a nightmare for the staff on the committee and in a way there was so much paperwork involved that earmarking became the entirety of the work the committee could do, all for funding representing less than 1% of discretionary funding in any one bill. That meant we had less time to actually deal with the bigger budget and work on programs and other very important issues.  

The amount of staff hours spent sifting through earmark requests was only further compounded by one of the transparency requirements in the reform package. Since Members of Congress were required to post all of the earmarks they requested on their websites, many of them decided to forward the entirety of the requests they received from constituent groups to the committee, so they would not risk offending any particular constituency by not at least offering their request. That way, even when the Member of Congress would not receive an earmark they requested, they could go back to the constituent group and blame the Appropriations Committee for denying their request. Many Members of Congress pursued this strategy as a means to preserve political capital in their districts. Many would submit hundreds of millions of dollars in requests far exceeding the amount they knew they would receive, forcing Appropriations Committee staff to spend hours going through requests that never had a chance to receive funding, and even then, the review process was not robust. Michael Stephens echoed this sentiment when I interviewed him.

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The capacity of the legislative branch to do quality assessment of earmark requests is very limited. Congress is not designed to be essentially a vast grant making operation. To that end staff are only trying to ensure that no earmark request is overtly fraudulent. Due diligence on each project request amounted to about 20-30 minutes tops.\(^5\)

Frisch and Kelly argue that the enormous increase in staff hours spent on earmarks is not the only unintended consequence of the reform effort. They argue that the dramatic increase in earmark transparency bred even more contempt for earmarks in the public and diluted the importance of earmarks to individual Members of Congress.

Transparency provides more information about the earmarks themselves but also the manner in which Congress makes those requests. Members of Congress request earmarks not only to help their constituents but to achieve a perceived electoral benefit. Often, big projects or projects of particular import to an entire state will lead several Members to make identical requests. Before the reforms, each Member would be able claim a bigger role in project funding, but with the advent of the website transparency rule, Members requesting the same projects believed the political impact of their role in the project was diluted. A House of Representatives staffer who wished to remain anonymous told me, “They just listed everything alphabetically or sometimes in no particular order so when constituents would look up the request they would see my boss’s name half way down the list and think that project wasn’t a big priority for us. It’s just

not the same to be the 43rd Member requesting funding for a project. The optics aren’t good even if our boss cared a lot about that particular earmark.”6

Frisch and Kelly argue that increased transparency did decrease the likelihood of corruption in earmarking, but by providing so much information it also made it easier for earmark foes to press charges of corruptions whether those charges were supported by evidence or not.7 While all of the staff that Frisch and Kelly interviewed agreed that transparency was a good thing, one staff member noted that the transparency reforms, “[gave] further ammunition to folks who oppose earmarks to continue their distorted process of focusing on things like a hippie museum or focusing on an even greater need for transparency, or when a project falls short.”8

Additionally the availability of information allowed earmark opponents to combine computer databases of campaign contributions and earmark requests in order to demonstrate who “bought” their earmarks. Many such databases are available on the internet, sponsored by the most well-funded earmark foes. Databases of every kind could be combined with earmark requests, for example the levels of education in a Congressional district and the amount of education earmarks the Representative of that district requested. Any kind of positive correlation or net positive impact earmark projects had on communities could be


7 Frisch and Kelly, Cheese Factories on the Moon: Why Earmarks are Good for American Democracy, 161.

8 Ibid.
developed with the increase in publicly available earmark information. Instead the information is almost always a combination of campaign contributions and earmark requests in an effort to “connect dots” or reinforce the negative connection between two independent actions. In this way increased transparency provided so much data for earmark opponents that a major unintended consequence of reform was to further damage the public opinion of earmarking by Congress as a general practice.

The real irony of the reforms package to increase transparency was that it did very little to increase the understanding in the public about how earmarks functioned and all of the positive impact that earmarks had on the recipient communities. In my interview with Bettilou Taylor she repeatedly stated her exasperation with public misinformation about earmarks.

The sad thing is that there is so much misinformation about earmarks out there, even among the direct beneficiaries of earmarked funds. I would be in a state, meeting with a hospital administrator and he would be telling me he wants more money to expand the emergency room in his hospital because some other hospitals nearby closed or expanded services were required for another reason. I would say, 'Great, I see you got some money for that in earmarked funding in 2008 and 2009 but if construction isn't complete or the needs have increased I'm sure we can help and your Senator or Member of Congress would be supportive.' And the hospital administrator would say, 'Oh no, I would never accept an earmark from the federal government! When we got our money in previous years I had to fill out a grant application and everything, that wasn't an earmark. ' Well of course you filled out a grant application, but you didn't compete for the money because Senator so-and-so put a line in an appropriations bill for your hospital.'

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In March 2010, after all of the reforms were enacted, David Obey, Chairman of the House Appropriations Committee hailed them as a landmark effort to preserve the practice of earmarking while ensuring that it was not abused.

This amended and reformed process will provide the most open and transparent processes for any legislative action in the history of the Congress. It will be far more open and transparent than during the ‘good old days’ when a committee chairman would simply pick up the phone and instruct government agencies to fund member requests behind the scenes with no transparency, no fingerprints, and no public accountability.

The way in which Mr. Obey frames the importance of the reforms, as open, transparent and accountable, is ironic given the way in which Members of Congress have attempted to secure federal funding for local projects under the current ban on earmarks. When Republicans took back the House of Representatives in 2010 they instituted a total ban on earmarks, as I discuss at length in chapter one. This was an effort spurred by the impact the “tea party” grassroots movement had on the election. The tea party represents a strongly conservative movement with a libertarian bent that ideologically opposes the entire concept of earmarking on a primarily anti-spending platform. President Obama also promised not to sign any bills that contained earmarks. This move by the president may have been a decision reached in an attempt to score political points in the debt and deficit argument, or it may have been a clever way to consolidate power in the executive branch.

By many accounts the ban was a serious mistake, not only because it failed to reduce spending but also limited the ability for Congress to function. In an interview with John Porter, a retired Republican Congressman from Illinois
and former Chairman of the Labor, Health and Human Services subcommittee of the Appropriations Committee, he stated that he thought that the ban only had negative effects.

I think the ban is a mistake. This issue is one of the most heavily demagogued and least understood issues in Congress. Republicans nowadays are starting to realize that all they have done is consolidate budget control in a Democratic administration without achieving any cost savings. Similarly I believe that President Obama cost himself political capital, especially in the Senate and within his own party. It seems to me that Democrats feel that President Obama should have stood up for earmarked funding and said 'not all but most of this is good' instead of jumping on the ban earmarks bandwagon.10

Bettilou Taylor also agreed the ban was a mistake and pointed out the intent of the ban, to reduce spending, was not successful.

Eliminating earmarks did not reduce the sum total of appropriations bills at all. The money was just reprogrammed for executive agencies to use for primarily political purposes. Rather than give the authority to members who knew their districts, the money was reabsorbed and repurposed by the Administration.11

The ban on earmarks did not decrease spending, and I believe limited the policy making capacity of Congress. But it did not stop Members of Congress from pursuing federal money for their districts. To give a more complete perspective on how earmarking, if you will, is done when traditional earmarks are not allowed I spoke with Mick Nardelli, Senior Policy Adviser at Nelson Mullins. Mr. Nardelli’s job is to pursue earmarked funding for his clients, who are predominantly central Pennsylvania municipal government entities such as county police forces and


sewer and waste disposal operators. Mr. Nardelli’s experiences demonstrate that under the ban there is much less transparency but not necessarily less spending than occurred under the old systems of Congressional earmarks, and the ability for Congressional leadership to use earmarks as a means to build majority coalitions in favor of legislation has completely disappeared, leading to increased gridlock and inability for Congress to function.

“Under the old system, everything was transparent. Chairman Obey’s rules meant that everyone had to put their name on everything right in the report language.”12 As a lobbyist who pursues federal money for his clients, Mr. Nardelli said that banning traditional earmarks has done nothing to radically alter the system. That is to say, lobbyists still engage Members of Congress to pursue federal funds for clients, they just do so in a much less transparent way than before.

Most often when my client needs something, I wait until a grant announcement occurs that my clients could qualify for. During this Congress agencies such as the Department of Education have made grant announcements even broader in order to ensure that the many grant seekers can apply for federal money. Once I see the announcement I assist my clients in preparing their application. Without me, many of my clients would never know that they could apply for this grant and even if they did know, nearly all of my clients would be unable to complete the grant application due to lack of resources and technical ability. Federal grant applications are time consuming and complex and most of my clients are municipal organizations such as a county police force or a sewer system operator who don’t have dedicated federal grant writing staff like a large corporation might. Aside from lacking transparency, the new system hasn’t done anything to reduce overall spending either. It just moves the spending they would otherwise have done via earmarking into broad accounts which limits the people who can compete due to the obstacles presented by the federal grant application process. Once the application is complete and submitted, I go to the Member of Congress

representing my client and inform them of the grant submission. Frequently I ask the member if he or she would submit a letter of support for the grant to the agency, which gets published. I also encourage the member to pick up the phone and make a call to someone at the agency where the grant was submitted. Since each agency is still dependent on Congress for authorizations and funding each year, the agencies take these phone calls very seriously. This kind of ‘phone call earmarking’ has absolutely no transparency but can be very effective due to the symbiotic relationship between the agencies and Congress.13

This common strategy among lobbyists operating under the current ban has less transparency in the public and less utility for national legislating than the old system. Mr. Nardelli also described another “end-around” on the earmark ban that also lacks transparency and coalition building utility. When his clients need money and no grant announcements suit them, he often asks their Representative to include directive language in report language or legislation to encourage an executive agency to simply create a grant that his client might then apply to. Members are frequently willing to do this type of action in order to benefit their constituents, but unlike with earmarks since 2006 there is almost no transparency at all in this strategy.

Two key features of the American system of government are the system of checks and balances that constrains executive power and the right of citizens to petition the government for redress of grievances. Both of these are key elements of constitutional law. Mr. Nardelli believes the earmark ban weakens both of these important legal protections.

Before the earmark ban, when the Chief of Police of a county had a problem (like a need for a new patrol car) he or she could always go to his or her elected official to explain the problem and ask for help. The representative is a self-interested rational actor and has an incentive to

help the Chief of Police not only out of a desire to ensure the community is safe but out of a desire to be responsive to the needs of constituents in order to help them get re-elected. The elected official used to be able to just earmark $80,000 for a new patrol car and that money would be available soon after the relevant appropriations bill was signed into law. Under the current system the Chief of Police of a small county would have to have a meeting with a career official at the Department of Justice to make his or her case. That official has absolutely no reason to help that Chief of Police which leaves him or her totally disenfranchised. The enormous obstacles presented by the federal grant process inhibit small county police forces from even competing for grant money, but even if they win the money somehow, they have to wait months or even years to finally receive the money to buy the new patrol car. This example shows how this system actually increases inefficiency in government, decreases equitable disbursement of federal dollars and does nothing to reduce spending.14

The earmark ban not only limits Congress’s ability to function properly, but it also is inequitable and doesn’t save any money.

In addition to presenting evidence to demonstrate that earmarks are both misunderstood and the recipient of far too much negative focus by the public and the media, I have also attempted to show that earmarks are an important tool for passing legislation. There is no end to the pundits and political scientists who make uninformed condemnations of earmarking, however, in my interviews with Congressional staff, some of them made well informed arguments against earmarking. I believe their arguments are flawed but also thought provoking.

I interviewed Michael Stephens, who worked for the Appropriations Committee beginning officially in July of 1976 and retired in February of 2010. He served generically as a staff assistant which is the general term for all committee professional staff but was Majority and Minority Clerk of 4 subcommittees including nine years as clerk of Labor, Health and Human


Earmarks expanded dramatically during his time on the Appropriations Committee, but unlike other congressional staff, he views them as something that prevents policy debates and legislation from being developed. He began our discussion by playing off the famous words of Karl Marx, “Earmarks are the opiate of the legislative classes. What I mean by that is when you make earmarks the business of lawmakers then you consolidate all of the policy decisions at the top.” He went on to describe how he believed earmarks actually limited policy work in his time on the Hill.

There has been a disappearance of the concept that federal dollars are ‘other people’s money.’ As a result, most Members of Congress have essentially become lobbyists for their own districts. It’s an intoxicating job to be a philanthropist for your community with other people’s money and people kiss up to you for it because you have money to give out. This takes the focus of the job entirely away from policy making. Before the explosion of earmarks Members of Congress could develop policy expertise in an area and become the voice for the shape of programs relating to that policy in Congress or on the Appropriations Committee. With the growth of earmarks members just took their earmarks and vote for whatever policy leadership put before them.15

In chapter one I discussed Rep. Natcher as the last remaining Member of Congress to represent the culture of spending that no longer exists in today’s Congress. More than just extreme caution with the use of taxpayer money, the United States Congress used to have a decentralized power structure that allowed full and subcommittee chairman, and even rank-and-file members, to truly participate in crafting policy. The past 20 years, however, have seen a

dramatic centralization of power in the hands of Congressional leadership. Even the appropriations committees have lost their autonomy and have become a choreographed political dance run by the majority party’s leadership offices. Former House Appropriations Chairman David Obey agrees and said, “The House has changed so much, and the committee has become much less able to respond to program realities. It’s become much more tied to political instruction from leadership.”\(^{16}\)

Reverence for that bygone era in American politics is exemplified by Mr. Stephen’s quote, and though I did not study or work in Congress during this time period, I can understand why staff and former legislators revere it.Legislators used to make numerous substantive inputs in policy debates and the decentralized nature of the policy development process very likely led to bills that reflected the best policy choices forged out of compromise positions. However, I do not believe that our political culture will revert to this type of environment. The modern legislator is subject to the 24 hour news cycle, the enormous influx of private money into the political system, and the rising influence of the extreme wings of both parties in influence over candidate selection and elections. Given the unlikeliness of a return to the Congressional culture of old, earmarks become one of the only tools available to leadership to build majority coalitions. In this new period of extreme partisanship, consolidated power in leadership offices and incivility, providing Members of Congress with

electoral incentives to vote for legislation is quite possibly the only way to build coalitions in favor of legislation.

As it stands now, Congress seems incapable of passing any kind of substantive bill. Congressional approval ratings are lower than they have ever been. Near government shutdowns and the debt ceiling fiasco have left many Americans wondering why Congress is so incapable of simply doing its most basic job. During bad weeks the generic public approval ratings for “communism” and “dental procedures” are higher than approval ratings for Congress. There are many reasons for Congress’s inability to address national issues or even pass bills that allow the government to continue to operate, not least of which is the hyper-partisanship of the era. But I contend that without earmarks, it is difficult to induce these partisan Members to consider voting for anything.

One major issue that Congress must confront is the ballooning U.S. debt and deficit spending primarily as a result of entitlements such as Medicare and Social Security. Both Democrats and Republicans have wildly different ideas about how to alter these programs so that the United States can remain financially solvent, but no matter what form the changes take millions of voters will have to accept a diminished level of service from these extremely popular programs. There simply isn’t enough money to continue providing the services at the current level. Addressing this issue is compounded by the fact that the spending on entitlements increases slowly over decades. Congress has an easier time making compromise solutions in the face of imminent threats or after
nationally unifying disasters. No such disaster in entitlement funding will occur, or by the time it does it will be far too late to fix the problem.

Any amateur politician can tell you that cutting money for senior citizens living expenses and medical bills is the equivalent of political suicide. That is true of any party. Making these reforms will be require very hard choices by legislators, and what better way to soften the blow than by providing them an earmark inducement for a yes vote on a compromise bill?

Are mistakes made in earmarking? Absolutely. Congress is simply not equipped to ensure that every project is worthy and that no corruption is occurring. That being said, earmarks at their highest represented less than 1% of the total federal budget. If you accept the central premise of my thesis, that earmarks are a useful tool for Congress to pass legislation, isn’t that a small price to pay to have a better functioning Congress capable of tackling America’s policy problems?


