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EXIT EARMARKS, ENTER LETTERMARKS

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EXECUTIVE SUMMARY

Before convening the 115th Congress, Republicans and some Democrats considered reinstating earmarks, also known as congressionally directed spending. By January 2017, however, this idea was off the table. Congress did not wish to be seen as engaging in self-enrichment amid the chants to “drain the swamp.”

Like any policy, the ban on earmarks comes with a cost — in this case, to the separation of powers and to the legislature’s productivity. Our recent research on lettermarking found executive agencies and the president now have wide discretion in the allocation of projects.¹ Additionally, a recent study by John Hudak of the Brookings Institution concluded former President Barack Obama used this new authority to shift federal spending to swing states during the 2012 election and to vulnerable democratic Senate candidates during the 2014 midterm elections.

1. This research was funded by grants from the Dirksen Congressional Research Center and the Social Science Research Council (SSRC) Negotiating Agreement in Congress program.

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Thus, the ban on earmarking and the emergence of lettermarking has shifted decision-making authority to spend funds from the legislative to the executive branch, while also giving the president increased control over the electoral future of members of Congress.

BACKGROUND

House Speaker Paul Ryan, R-Wis., recently put the brakes on a proposal by House Republicans to bring back “earmarks.” or congressionally directed spending for specific projects in members’ states and districts. The plan, led by Rep. Mike Rogers, R-Ala., enjoyed significant support among the GOP caucus and came on the heels of a proposal by Rep. Tom Rooney, R-Fla., that would have allowed lawmakers to request funding for U.S. Army Corps of Engineers Bureau of Reclamation projects. Speaker Ryan agreed to establish a task force to look into the issue further.

Congress passed the ban on earmarks in early 2011 after members of the Tea Party Caucus—along with progressives—gained seats in the midterms by running against excessive government spending on “pork” projects, such as Alaska’s infamous Bridge to Nowhere and the oft-cited \$3 million bear DNA study in Montana. Although earmarks represented only \$16.5 billion of the total \$3.8 trillion in federal spending in 2010, lawmakers felt compelled to respond to the will of the voters.

But while earmarks are often an easy target of those looking to reduce government spending, they may be critical not only to effective governance but also to transparency and democratic accountability.

WHY EARMARKS?

First and foremost, earmarks provide a solution to a critical collective action problem: how to persuade lawmakers to compromise on general interest legislation that does not directly benefit their state or district.² The long-standing practice of earmarking allowed members of Congress to

2. Diana Evans, “Greasing the Wheels,” New York: Cambridge University Press, 2004.

FIGURE I: A LETTERMARK BY SEN. MARIA CANTWELL

The Honorable Anthony Foxx
Secretary
U.S. Department of Transportation
1200 New Jersey Avenue SE
Washington, D.C. 20590

Re: City of Yakima Application under the U.S. Department of Transportation Small
Community Air Service Development Program DOCKET DOT-OST-2014-0013

Dear Secretary Foxx:

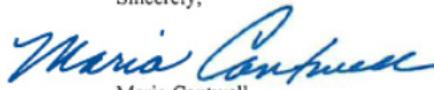
I strongly support the City of Yakima, Washington's application for funding under the Small
Community Air Service Development Program. The City is requesting funding in the amount of
\$290,000 for its air service program and is matching it in an equal amount of \$290,000 from the
City's budget, to be expended over two years.

If awarded, the City proposes to use these funds to increase flight frequencies, expand non-stop
service, and reduce fares through a comprehensive marketing program and revenue guarantees.
Continued marketing for a 4th daily flight on Alaska Airlines to Seattle will receive \$200,000 in
funding, and the remaining funds will support revenue guarantees for a new flight from Yakima
to Portland. In the first year, \$80,000 will be spent for planning and research and \$200,000 will
be spent to strengthen the Seattle route. In the second year, \$300,000 will be spent to
development the Portland route to begin in the winter of 2015.

The enhancement of air service to and from Yakima is critical for continued economic
development and sustainability. It will improve travel connections for Yakima's business and
residential community as well as enhance the attraction of Yakima as a tourist destination in the
region.

I recommend the City of Yakima for a Small Community Air Service Development Program
grant in fiscal 2014 and encourage careful review of its application.

Sincerely,



Maria Cantwell
U.S. Senator

insert provisions into bills that provided targeted federal funds for projects in their states or districts. Despite a largely negative perception by the American public, earmarks and distributive policies are a way for members of Congress to bring tax dollars in the form of infrastructure projects, technical grants and other benefits back to their constituents to create jobs and improve the local economy.

Without earmarks, the executive branch alone decides where the money goes. Additionally, these projects provide legislators with opportunities for credit claiming and self-promotion during trips to their home states or districts.³ Critically, earmarks and other “pork” projects provide powerful incentives for legislative leaders to engage in coalition-building for general purpose legislation, while overcoming partisan gridlock in the chambers.⁴

3. David R. Mayhew, “Congress: The Electoral Connection,” New Haven: Yale University Press, 1974.

4. Ibid; R. Douglas Arnold, “The Logic of Collective Action,” New Haven, CT: Yale University Press, 1990; and Scott A. Frisch and Sean Q. Kelly, “Cheese Factories on the Moon: Why Earmarks are Good for American Democracy,” Paradigm Publishers, 2011.

The ban on earmarks removes one of the critical incentives (committee assignments being the other) congressional leaders can offer lawmakers to buy votes on legislation and to encourage loyalty to the party. Former Senate Majority Leader Trent Lott, R-Miss., lamented the earmark ban by saying:

Trying to be a leader where you have no sticks and very few carrots is dang near impossible. Members don't get anything from you and leaders don't give you anything. They don't feel like you can reward them.⁵

While there is no doubt that factors such as polarization and gerrymandering have also eroded the ability of Congress to function, the loss of the “carrot” of earmarks makes compromise even more difficult.

Despite the ban on earmarks, political scientists would argue that lawmakers still face electoral pressure to secure

5. Jonathan Rauch, “How American Politics Went Insane,” The Atlantic, July/August 2016. <http://www.theatlantic.com/magazine/archive/2016/07/how-american-politics-went-insane/485570/>

FIGURE 2: FEDERAL AIR-TRAFFIC-CONTROL TOWERS SLATED FOR CLOSURE



Note: Green dots represent 24 towers given national interest exemptions, including Kissimmee Gateway Airport.

federal funding for their districts.⁶ One of the great ironies of earmarks is that voters support specific projects contained in earmarks for their districts, but oppose them generally. (Similarly, voters re-elected their member of Congress in 96 percent of the 2016 congressional races, while the institution as a whole enjoys an approval rating of around 20 percent). Therefore, earmarks and pork-barrel projects present members of Congress with an interesting dilemma: how to engage in an electorally beneficial behavior that constituents perceive both as a negative and positive depending upon the context, and to do so in the most subtle and least transparent way possible.

For decades, members of Congress were able to obscure and obfuscate their direct linkage to project requests through earmarks as part of the complex appropriations process. Members of Congress routinely wrote letters to appropriations subcommittee chairs (known as cardinals) for earmarks to be included in appropriations legislation.^{7,8} These letters contained the name of the project and the requester, the rationale and a requested dollar amount. To gain support for their earmarks from other members—and more importantly, from congressional leaders—members often would agree to vote for or against general interest legislation.⁹ The final appropriations bill often contained several hundred specific project requests, with only a brief description and dollar amount appearing in the bill and report language. This made

it difficult to know exactly which member requested each project.

In 2007, following the high-profile corruption scandals of lobbyist Jack Abramoff and Rep. Randy “Duke” Cunningham, R-Calif., Democratic members of Congress enacted earmark reforms. To remove the taint of furtive quid pro quo corruption, lawmakers were required to attribute their names to each earmark request and sign conflict-of-interest disclosures.

The increased transparency proved insufficient to quell criticism, even as the internet and watchdog groups such as Citizens Against Government Waste, Taxpayers for Common Sense and the Center for Public Integrity allowed citizens easy access to see projects requested by their congressional representative. Congress banned earmarks altogether in 2011.

EXIT EARMARKS, ENTER LETTERMARKS

In the absence of earmarks, members of Congress have been able to continue to secure funds for their districts—and claim credit for doing so—through an obscure practice called “lettermarking” in which members write to the head of an administrative agency to request the funding.¹⁰

The process for directing funds to a member’s district begins with calls by House and Senate appropriations subcommittees for programmatic requests from members or language

6. Mayhew, 1974.

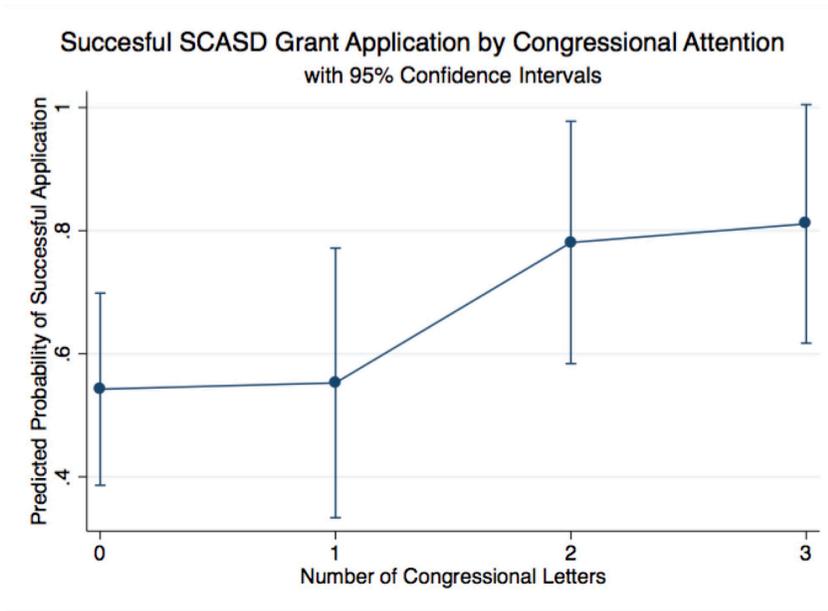
7. Scott A. Frisch, “The Politics of Pork: A Study of Congressional Appropriation Earmarks,” New York: Garland Press, 1998.

8. Evans, 2004.

9. Evans, 2004.

10. As members of Congress are exempt from the Freedom of Information Act (FOIA), we collect letters written by members of Congress to agencies through FOIA requests for congressional correspondence logs from federal agencies. We then analyze the logs to identify specific letters to request via the FOIA process.

FIGURE 3: PERSISTENCE IN LETTERMARKING PAYS OFF



requests on behalf of a member’s constituents. Programmatic requests allow members to propose total funding amounts for programs, but not to identify specific projects to be funded.

Language requests do not direct funding to a particular entity, but encourage, urge or direct some type of action by an agency. Constituents (and presumably organized interests) identify projects and areas of need within the member’s district that they want funded by the federal government. The member then writes to appropriations cardinals to have their programmatic or language requests inserted into the bill or report language. Once the programmatic request is enacted as part of the appropriations bill, members of Congress write letters to the head of an administrative agency asking that the agency retain or allocate distributive benefits to their districts.

Our recent research on lettermarking found executive agencies and the president now have wide discretion in the allocation of projects.¹¹ Additionally, a recent study by John Hudak of the Brookings Institution concluded President Barack Obama used this authority to shift federal spending to swing states during the 2012 election and to vulnerable democratic Senate candidates during the 2014 midterm

elections.¹² Thus, the ban on earmarking and the emergence of lettermarking has shifted decision-making authority to spend funds from the legislative to executive branch, while also giving the president increased control over the electoral future of members of Congress.

Lettermarking provides members of Congress with an opportunity to attempt to persuade federal agencies to allocate projects to their districts. Consider the example of former Rep. Alan Grayson, D-Fla., who sought to save an air-traffic-control tower in his district from being closed as a result of sequestration cuts proposed by the Federal Aviation Administration. As illustrated in Figure 2, the tower in Grayson’s district was one of just 24 granted nationwide granted a “national interest” exemption.

Grayson’s letter is not an isolated phenomenon. An examination of lettermarking related to stimulus spending found that three agencies—the departments of Commerce, Transportation and Energy—received more than 1,500 letters from a bipartisan cross-section of Congress ranging from then-Senate Minority Leader Mitch McConnell, R-Ky., to then-House Speaker Nancy Pelosi, D-Calif., to tea party heroes such as former Rep. Michele Bachmann, R-Minn.¹³ The letters for stimulus funding ranged from a request for upgrades at Phoenix Sky Harbor Airport from Sen. John McCain,

11. Russell W. Mills and Nicole Kalaf-Hughes, “The Evolution of Distributive Benefits: The Rise of Letter-Marking in the United States Congress,” *The Journal of Economics and Politics*, 2015, vol. 22, no. 1, pp. 35-58; and Russell W. Mills, Nicole Kalaf-Hughes, and Jason A. MacDonald, “Agency Policy Preferences, Congressional Letter-Marking and the Allocation of Distributive Policy Benefits,” *Journal of Public Policy*, vol. 36, no. 4, 2016, pp. 547-571.

12. John Hudak, “Presidential Pork,” Washington DC: Brookings Institution Press, 2014.

13. John Solomon and Aaron Mehta, “Stimulating hypocrisy: Scores of recovery act opponents sought money out of public view,” *Center for Public Integrity*, Oct. 19, 2010. <https://www.publicintegrity.org/2010/10/19/2421/stimulating-hypocrisy-scores-recovery-act-opponents-sought-money-out-public-view>

R-Ariz.; to a request for Commerce Department funding to support the Massachusetts Broadband Initiative by Sen. Scott Brown, R-Mass.; to a request to improve New Orleans' streetcar system from Rep. Joseph Cao, R-La.

Often, members of Congress coordinate their lettermarking efforts to enhance the chance of success to bring a project to their district. Figure 3 illustrates the marginal effect of each letter written by a member of Congress in support of a community's application for Small Community Air Service Development (SCASD) program grants, which are allocated by the U.S. Department of Transportation. SCASD grants are used by communities to attract new air service to a region by providing subsidies, marketing assistance or cost offsets to air carriers as incentives for new flights. As members of Congress, particularly those in more rural districts, routinely use this air service to travel between Washington and their districts, it is a highly salient discretionary grant program. As Figure 3 illustrates, if one member of Congress from the district or state where the airport is located writes a letter, it has very little impact on whether a community is awarded a SCASD grant. However, if multiple members or senators write a letter, the chances of being awarded a grant rise by almost 25 percent.

Today, lettermarking is a common practice among members of Congress that spans several agencies for a wide range of projects, including harbor dredging from the Army Corps of Engineers; new hospitals from the Department of Veterans Affairs; health research facilities operated by the Department of Defense; and requests for runway improvements from the Federal Aviation Administration.¹⁴

The emergence of lettermarking in Washington suggests that members of Congress have found an effective solution to the challenge of requesting projects for their district, while publicly advocating for reduced government spending. By funneling requests for projects through federal agencies, members are able to work behind the scenes through lettermarking, the related practice of "phonemarking" (making calls to federal officials) and through personal connections to secure distributive benefits, while arguing publicly that these benefits were awarded through a competitive process and determined by the agency, not Congress.

The obscured nature of lettermarking allows members to achieve two goals simultaneously: working to secure projects for their districts behind the scenes while publicly advocating for deficit reduction and reduced spending. Rep. Bachmann was one of the most outspoken critics of the size of the

federal deficit. But in 2011, months after the earmark ban was enacted, she penned a letter to Transportation Secretary Ray LaHood asking him to allocate a \$750,000 grant to St. Cloud, Minnesota, to enhance air service in the region.

CONCLUSION

If lettermarking provides political cover for lawmakers—particularly conservatives—to work behind the scenes to secure projects for their districts while publicly opposing increased spending, why did some Republicans advocate for a return to earmarks, even as President Donald J. Trump has pledged to "drain the swamp"?

We have two hypotheses. First, we suspect members of Congress fear the unknown of requesting projects from a new administration, particularly from a president who remains an outsider to the Washington system of bargaining. Second, given the rising power of the executive branch, Speaker Ryan and Majority Leader McConnell know the only way to restore the power of the legislative branch and maintain their majority in the 2018 midterm elections is to increase the productivity of Congress by passing legislation, including appropriations bills. Earmarks would provide the "grease to skid the wheels" to bring members along on bills, while internalizing control over allocation of federal projects and funds. Regardless, it is clear the ban on earmarks did not stop the flow of federal funds and projects to states and districts. Instead, lawmakers have relied on the less transparent, "vegan pork" substitute of lettermarking to secure projects. The ban on earmarks also has contributed to historical gridlock within Congress and eroded its power *vis-à-vis* the executive branch.

Reformers need to pick their poison. We can continue the earmark ban and live with lettermarking, or we can restore a transparent and accountable system of earmarking.

ABOUT THE AUTHORS

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14. Ron Nixon, "Lawmakers Finance Pet Projects Without Earmarks," New York Times, Dec. 27, 2010, <http://www.nytimes.com/2010/12/28/us/politics/28earmarks.html>; and Ron Nixon, "Congress Appears to Be Trying to Get Around Earmark Ban," New York Times, Feb. 5, 2012, <http://www.nytimes.com/2012/02/06/us/politics/congress-appears-to-be-trying-to-get-around-earmark-ban.html>