Restoring the Power of the Purse

EARMARKS AND RE-EMPOWERING LEGISLATORS TO DELIVER LOCAL BENEFITS

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Executive Summary

In recent years, various senators and representatives have discussed lifting Congress' earmark moratorium. The practice of earmarking—or allowing legislators to direct federal benefits in the forms of spending, tax, or tariffs to their home districts and states—is as old as the republic. Congress officially, but not actually, swore off earmarks in 2011.

The moratorium was enacted in reaction to well-publicized incidents of scandal and abuse related to earmarking and at a moment of fiscal crisis that focused national attention on deficit spending and debt. The purpose was an attempt to end a practice that was popularly understood to occasion corruption and wasteful spending.

However well-intentioned, the earmark moratorium has had real shortcomings. As various observers have noted, forbidding earmarks has shifted spending authority to the executive branch agencies, which are not directly accountable to the public. The moratorium also has not reduced federal spending, as some advocates anticipated. Troublingly, the earmark moratorium encouraged legislators to attempt to direct spending through the less-transparent practice of lettermarking. Perhaps most critically, this report's analysis shows how the earmark moratorium weakened the House of Representatives' capacity to coalesce majorities to enact legislation, a constitutional duty of the chamber.

This report's analysis indicates that the House of Representatives should revisit the earmark moratorium and craft a means to allow legislators to request appropriated spending for particular projects in their districts. The process for requesting this directed spending should be transparent from initiation to conclusion and be subsequently audited to ensure funds were not wasted or misused. Access to directed spending should be made more equitable to legislators; senior members of the chamber too often have received a disproportionate share of earmarks. Finally, a new system of earmarks should contain prohibitions—such as forbidding earmarks to flow to a particular private corporation—that prevent quid pro quos between legislators and campaign donors.

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Article I of the US Constitution gives Congress the primary authority to raise and spend money.[1] Since the beginning, legislators have used earmarks to bring federal resources to their districts. A statute passed in the first Congress directed federal dollars for a pier in Philadelphia at the urging of Pennsylvania legislators.[2] The founders placed this power in Congress' hands precisely because its members are the most knowledgeable about their constituents' needs and the most accountable to them. Elbridge Gerry, delegate from Massachusetts, stated at the Constitution Convention in 1787 that the House of Representatives "was more immediately the representatives of the people, and it was a maxim that the people ought to hold the purse-strings."[3] James Madison wrote in *Federalist* 58 that Congress'

> power of 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.[4]

The executive does not have the local understanding of funding priorities that individual congresspersons possess, nor can it be accountable for the myriad spending decisions of the federal government. "You just can't expect somebody over there at OMB [Office of Management and Budget], who knows nothing about the areas we represent, to have all the knowledge," notes Rep. Marcy Kaptur (D-OH).[5]

By ending earmarking, Congress has given up a key authority for directing spending to member priorities and has opened itself to executive dominance over these decisions. While the Constitution entrusts Congress with the "power of the purse," the executive branch often acts as a rival over budgeting and spending. Presidents issue lengthy, detailed budget requests; wield their veto power; and instruct their administrations to jealously guard their spending authority. Congress and the executive branch often squabble over who gets to direct funds.[6] For example, the Richard Nixon administration attempted to thwart congressional spending directives through impoundment, until Congress forbid the practice in 1974.

Despite this, presidents still attempt to ignore or subvert congressional authority over spending. The George W. Bush administration, for example, took the view that agencies should not follow any directive language from Congress in reports that accompany spending bills.[7] Most recently, Congress explicitly refused the Donald Trump administration's request for funding devoted to spending on a border wall between the United States and Mexico. The president took funds appropriated for another purpose and redirected them to build the wall.[8]

Earmark Controversies and the 2011 Moratorium

Although legislators and constituents tend to like congressionally directed spending, earmarks have long drawn criticism from the public.[9] Legislator discretion over how federal money is spent on local projects has elicited outrage both inside and outside Congress for projects thought unnecessary or too expensive.[10] At their best, earmarks are a means for legislators to direct federal resources toward solving a local challenge, such as studying effective ways to extinguish fires in coal mines and helping economically depressed areas upgrade their infrastructure or expand youth educational opportunities. Earmarks also can advance national purposes. For example, an earmark was instrumental in scientists' effort to map the human genome.[11]

At their worst, however, earmarks have been used for secretive self-dealing by legislators. Members of Congress have received campaign donations, cash, and luxurious junkets from lobbyists in exchange for delivering earmarks to their clients.[12] The abuse of earmarks was one—but not the only—factor behind the 2011 earmark moratorium. Other factors were anxiety about budget deficits and anger at special interests, brought on by a proliferation of earmarking from the mid-1990s until 2005. During this period, the amount of appropriated earmarks doubled, and the number of earmarks nearly tripled.[13] However, even at their peak, earmarks accounted for only 3 percent of total discretionary spending—and discretionary spending is only about a third of all federal outlays.[14]

Unsurprisingly, with Congress issuing thousands of earmarks, there were some abuses. A few legislators and their aides were convicted of abusing earmarks and their authority to direct spending during this period. In 2005, Rep. Randy Duke Cunningham (R-CA) resigned from the House after he was convicted of accepting $2.4 million in bribes from companies to which he directed federal dollars.[15]

That same year the Jack Abramoff lobbying and earmarks scandal was exposed and led to embarrassing major media exposés for a year. Legislators were caught exchanging official acts, including votes, for lavish trips and campaign donations. Rep. Bob Ney (R-OH) went to prison, as did former congressional aides including then–House Majority Leader Tom DeLay (R-TX).[16]

Republicans lost control of the House and Senate in 2007, and Democrats saw political advantage in cleaning up Congress while protecting the practice of earmarking.[17] Both chambers instituted new rules regarding earmarks that aimed to better police the process, make it more transparent, and curb opportunities for legislators to dispense earmarks in self-enriching quid pro quo schemes.[18] The media and public disgust was so intense at the time that the George W. Bush administration followed the Democrats' lead. Congress had often specified earmarks for executive agencies to follow in committee reports and statements, not in legislation. In January 2008, the Bush administration issued an executive order that required agencies not to use funds for any earmarks unless they were detailed in a statute so the "number and cost of earmarks should be reduced, that their origin and purposes should be transparent."[19]

At the outset of these earmark reforms, America's fiscal fortunes changed dramatically, and the public began to be increasingly concerned about deficit spending. Taxpayers blanched at the $700 billion the Troubled Asset Relief Program authorized the federal government to spend to protect the economy during the 2008 financial crisis. The $831 billion price tag of the "shock and awe" economic stimulus package Democrats passed in early 2009 added to these deficit concerns.

During this period, Republicans were under severe political pressure to control deficit spending from the growing tea party movement. In response, after retaking the House in the 2010 midterm elections, Republicans immediately instituted a moratorium on earmarks. Surprisingly, they quickly found an ally in President Barack Obama, who decried "special interests . . . larding up legislation with pet projects" in his January 2011 State of the Union address. In that address, he stated he would veto any bill that contained earmarks.[20] Senate Democrats followed suit shortly thereafter, ensuring that Congress would eliminate directed spending indefinitely.[21]

The moratorium was not included in either chamber's formal rules. Rather, both chambers established it through party rules and committee protocols. Thus, for example, the House Republican's rule states: "It is the policy of the House Republican Conference that no Member shall request a congressional earmark, limited tax benefit, or limited tariff benefit, as such terms have been described in the Rules of the House."[22] This moratorium enabled Congress to claim it had done something about deficit spending and special interests, but as will be demonstrated, it accomplished neither.

Recent Congressional Discussion of Reviving and Reforming Earmarks

In recent years, various legislators have called to reinstate earmarks, and House Majority Leader Rep. Steny Hoyer (D-MD) has announced he intends to bring the practice back.[23] He and Majority Whip Rep. Jim Clyburn (D-SC) argue that the moratorium has unintentionally delegated spending power to the executive branch.[24] Hoyer says the "constitutional responsibility of the Congress is to raise and spend money" and that members of Congress understand funding issues "better than somebody in Washington or somebody in the White House."[25]

Legislators also contend that their constituents want them to deliver local benefits, a claim with empirical support.[26] With constituents often viewing Congress as racked by partisanship and doing nothing, congressionally directed spending gives "lawmakers something to bring home," says House Transportation Committee Chairman Rep. Peter DeFazio (D-OR). The evidence suggests that constituents often do reward legislators pursuing reelection when legislators can claim credit for having delivered benefits to their constituents.[27]

Members of Congress also report that the moratorium has exacerbated gridlock and polarization by removing a rationale legislators may give for breaking with their party and voting yea to deliver benefits to their constituents.[28] Notably, only one of the 84 annual spending bills has been enacted as stand-alone legislation since the moratorium was enacted.[29] The rest have been rolled into minibuses, omnibuses, and continuing resolutions.

Supporters of earmarks argue that they exist as a tool for leadership—both at the chamber and committee levels—to incentivize cooperation by members and believe their absence has created legislative logjams.[30] Apart from their direct benefit to the districts receiving earmark-based funding, earmarks are seen to have also served as a leadership tool. Congressional leadership relied on earmarks to whip votes and incentivize members to support leadership priorities.

In late 2019, the bipartisan House's Select Committee on the Modernization of Congress issued a report that addressed Congress' loss of control over the purse.[31] It advocated various reform, including biennial budgeting, and recommended revisiting the earmark moratorium. The report noted that the moratorium had frustrated legislators' ability to help their districts. It also pointed out that support for revising the moratorium was bipartisan.

> Despite best intentions, the decision to end congressionally-directed spending has faced widespread backlash across the political spectrum. Scholars from the Heritage Foundation to the Congressional Institute to the Brookings Institution have called for the reinstatement of some form of Member-directed spending.[32]

The committee recommended that a grant-making process, called the Community Focused Grant Program (CFGP), be established to replace earmarking that would permit legislators to request, via an open and transparent system, grants for projects in their districts. Beneficiaries would be limited to nonprofit organizations and state and local governments.

Some congressional conservatives are also backing their return, including former Senate Appropriations Chairman Sen. Richard Shelby (R-AL).[33] So, too, have others on the political right, including George Will and former President Donald Trump.[34] Nonetheless, studies indicate GOP legislators tend to be more wary of explicitly supporting earmarks, as their constituents are not quite as enthusiastic about them as Democrats' constituents are.[35]

These points made, the policy discussion of earmarks is muddied without an agreed-on definition. The differing definitions also can be fraught with political bias. Those who oppose tend to cast their definitions in overly broad terms that help inflate their fiscal impact and the perception of waste and abuse. They also tend to diminish Congress' spending authority in favor of the executive branch. There are three definitions to consider.

First, the term "earmark" is associated in the public imagination with excessive spending or waste in Congress. While the executive branch continues to exercise the same earmark-like discretion on spending, it is not met with the same critical public response as Congress is.

Second, the Office of Management and Budget previously declared that an earmark was funding

> provided by the Congress for projects or programs where the congressional direction (in bill or report language) circumvents the merit-based or competitive allocation process, or specifies the location or recipient, or otherwise curtails the ability of the Administration to control critical aspects of the funds allocation process.[36]

Whatever its merits, this definition biases spending toward the executive branch by privileging its spending decision-making over Congress'.

Third, Citizens Against Government Waste, a longtime vocal opponent of earmarking, adopted seven criteria to identify earmarks. Any spending, limited tax benefit, or limited tariff benefit that meets one of these criteria qualifies as an earmark if it was (1) requested by only one chamber of Congress, (2) not specifically authorized, (3) not competitively awarded, (4) not requested by the president, (5) not the subject of congressional hearings, (6) greatly exceeding the president's budget request or the previous year's funding, or (7) serving only a local or special interest.[37] This definition also contains bias toward executive branch decision-making and leads to inflated estimates of the quantity and cost of earmarks.

For its part, Congress' two chambers have agreed to define an earmark as

> a provision or report language included primarily at the request of a [legislator] 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. [38]

Both chambers define tariffs as earmarks if they benefit 10 or fewer entities. Making matters more complex, the House and Senate differ slightly in their definitions of an earmark as a "limited tax benefit."[39]

By its nature, the term "earmark" focuses attention on a particular form of federal benefits distribution. The term helps rhetorically shift the focus from the many other particularized means legislators use to distribute federal benefits. For example, if a senator amends a bill to increase the Social Security Cost-of-Living Adjustment benefits for senior citizens, who comprise a large portion of his or her home state constituents, this would not be considered an earmark despite delivering a particular benefit to a subset of the population.

All of which is to say no policy is perfectly neutral or equitable in its distribution of resources. Legislation almost inevitably benefits some localities more than others and often intentionally.

Did the Earmark Moratorium Work?

Now that the earmark moratorium could be lifted in the House of Representatives, it is important to take stock of both the effects of the moratorium and the utility of earmarking.

By definition, the earmark moratorium did increase executive power over Congress' spending decisions. The executive branch long has had various authorities that enable it to decide how and where funds are spent.[40] Presidents frequently deploy this authority to direct spending to particular localities to seek reelection, a practice referred to as "presidential pork."[41]

The enactment of the 2007 earmark reforms did reduce the frequency of earmarking. One scholar calculates that at their peak, in 2005, earmarks accounted for 3 percent of discretionary spending. By 2009, that number had shrunk to 1.3 percent.[42] The 2011 moratorium did not reduce the amount to zero. Legislators, particularly the most senior and powerful in the Senate, still can get directed spending requests placed in omnibus spending legislation, which frequently are passed rapidly by both chambers. For example, the Coronavirus Aid, Relief, and Economic Security Act, which was enacted in March 2020 to deliver COVID-19 relief, included a host of special deals that benefited key senators politically.[43] Some earmarks continue to deliver benefits to corporations in sole source contracts. These come as legislative language written so specifically that only one company qualifies to bid on it.[44]

A perhaps unforeseen result of the moratorium was the rise of the executive branch's practice of lettermarking.[45] Whereas an earmark has a legislator inserting directive text in a statute or its accompanying report, a lettermark is a letter, email, or phone call from a representative to an executive agency that requests the agency deliver a localized benefit. Lettermarks have included things such as Department of Transportation grants for local airports and exemptions from proposed facility closures.[46]

Due to the lack of transparency in lettermarking, tracking the scale and frequency of lettermarks is nearly impossible. This diminishes accountability and allows members of Congress to privately negotiate directed spending deals with executive agencies while decrying excessive government spending.[47]

Executive departments and the president also have sole discretion to approve lettermarks, which has introduced partisan bias into directed spending decisions. A 2017 study found that bureaucrats from federal agencies responsible for making funding decisions were more partial to members of the president's party. Being a Democratic member of Congress "had a positive and statistically significant . . . effect" on receiving funding through lettermarking from the Department of Labor during the Obama administration.[48]

The earmark moratorium also failed to reduce federal spending as some proponents imagined. This may strike some readers as surprising, as critics of earmarks tend to argue that earmarks are wasteful and contribute to rising deficits. As noted earlier, earmarks never have been more than a tiny percentage of the overall federal budget.

Figure 1 shows that federal discretionary spending actually increased in some categories in the three fiscal years after the moratorium. If earmarks had played a significant role in discretionary spending, we should expect to see more of an impact from their elimination.

Figure 2 shows that in each annual appropriations bill, the fiscal impact of earmarks was negligible between 2008 and 2010. Despite the historically prevailing narrative that earmarks helped drive ballooning deficits and amounted to a significant portion of discretionary spending, the reality is they had little effect. Earmarks, barely visible in the figure, account for roughly 1 percent of discretionary spending in most appropriation bills.

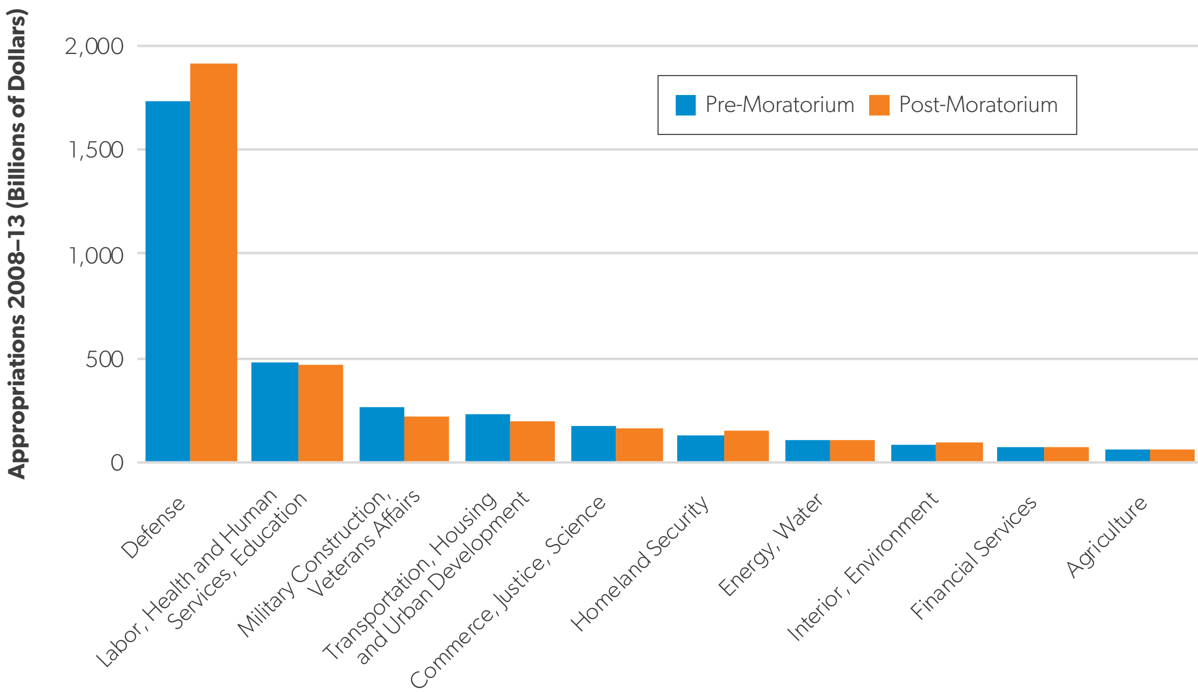
The Earmark Moratorium and Legislative Capacity

To better assess the earmark moratorium's effect on legislating and how earmarking actually operated, we interviewed a sample of former House members on their experience with and opinions of earmarking. We also analyzed Congress' legislative capacity (i.e., whether it could get things done). The survey and its results are reviewed first, followed by the legislative capacity analysis.

Working with the nonpartisan, nonprofit Association of Former Members of Congress, we identified five former members from each party who experienced the pre-reform, reform, and post-moratorium periods while in Congress. (See Figure 3.)[49]

Our sample members averaged 11 terms in the House and were from eight different states spread across the country. Our group had various committee

Figure 1. Comparison of Discretionary Spending Pre- (FY2008–FY2010) and Post- (FY2011–FY2013) Moratorium



Source: Congressional Budget Office, Congressional Research Service.

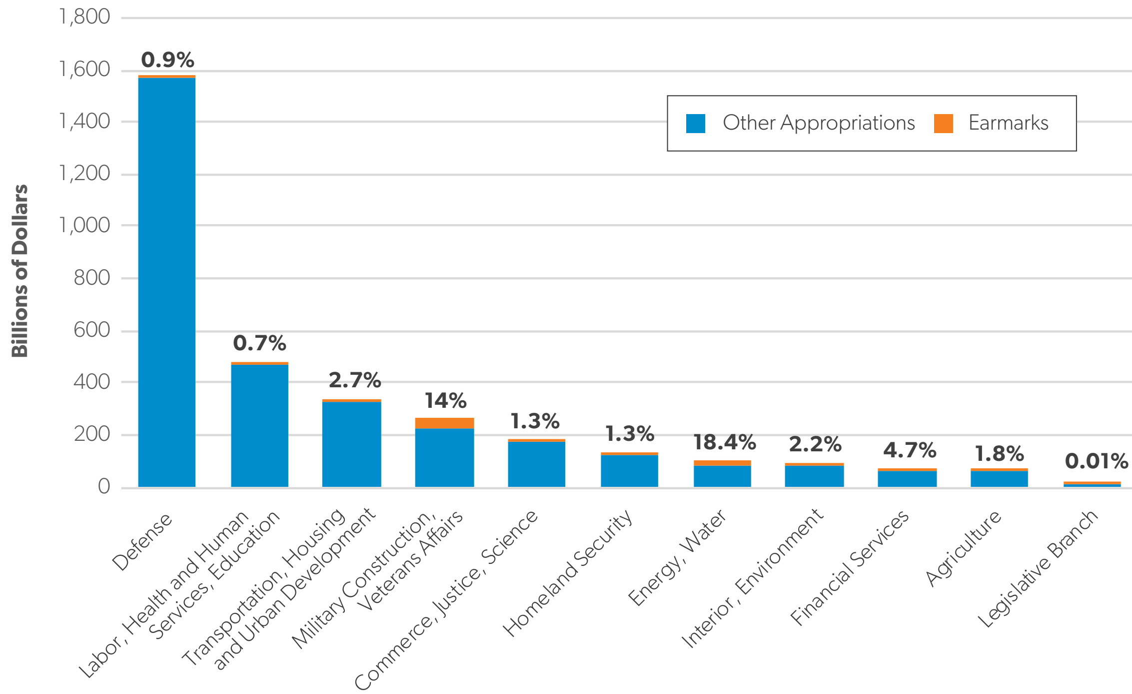
assignments and leadership positions related to earmarking, including a former committee chair, three Appropriations Committee members, and two Transportation Committee members. This sample of former congresspersons provided us with a broad perspective on the earmarking process.

We asked each a series of survey questions and invited them to expand on their responses. Our questions chiefly dealt with how and why earmarks were distributed, who received earmarks, opinions of the brief period of earmark reform, and opinions about ending the earmark moratorium. Selected questions and survey responses are summarized in Table 1.

How Earmarks Were Used. Members observed that earmarks played two primary roles in the legislative process. Mostly they were a resource for both majority and minority members to allocate federal funding to local and regional projects that would likely not have gained attention in the regular budget process. For an institution ruled so completely by the majority, there was a surprising level of bipartisan cooperation and agreement on the earmarking process. Members commented that the Appropriations Committee chair and ranking member divvyed up earmarking funds in about a 60–40 split and that ranking members had the discretion to allocate their share without interference from the chair. Members agreed that this process was fair, and some commented it was a vital exercise of Congress' Article I spending power.

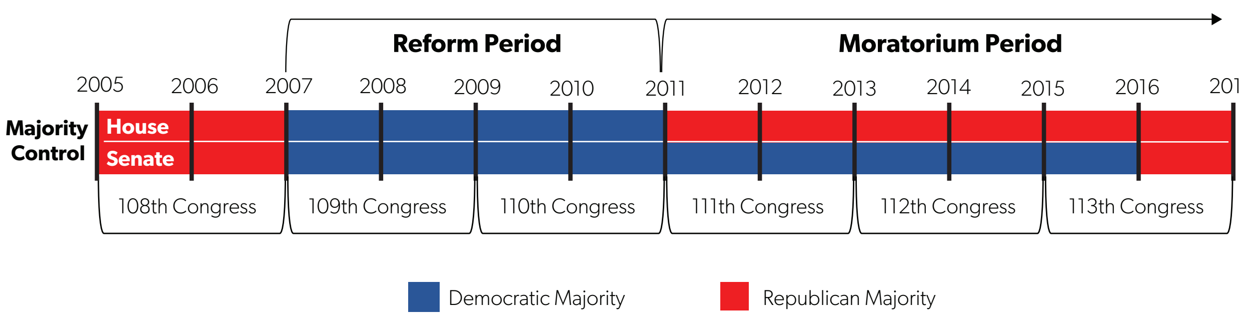
Most members agreed that both parties used earmarks to the same extent. The funding available for earmarks varied annually depending on the 302(a) and (b) allocations from the Budget Committee, which sets limits for discretionary spending and the Appropriations Committee's priorities. This limit led some members to comment that there was always a ceiling to how much could be spent on earmarks and that the idea that they contributed to deficit spending was a misperception. In fact, no member in our

Figure 2. Earmark Spending in Relation to Total Discretionary Spending (FY2008–FY2010)



Source: Congressional Research Service.

Figure 3. Timeline of Congressional Earmarking Reform, 2005–17



Source: Authors.

survey reported that earmarks affected the deficit. Some members observed that this bipartisan consensus approach to earmarking had helped ensure that spending bills passed easily and with often lopsided majorities. In fact, some members believe that the loss of earmarking has increased polarization and taken away one of the few tools Congress has for building bipartisan consensus.

Earmarks were also sometimes employed as a tool by House leadership to achieve legislative goals. Members commented this was not a consistent or common leadership tool, but some had been offered—or had seen other members offered an earmark—to vote for the leadership's priorities. Particularly at crucial moments when passage was uncertain, leadership had offered an earmark or threatened to withhold one

Table 1. Earmarking Survey of Former House Members

How Earmarks Were Used	Yes	No	Don't Know/ No Answer
The majority leadership used earmarks as a tool for obtaining votes.	7	2	1
The promise of an earmark persuaded the member to vote for a bill.	2	8	0
Minority members joined with the majority vote in exchange for an earmark.	3	6	1
One party relied on earmarks more than another.	2	8	0
Member observed a vote where earmarks were critical to passage.	7	2	1
Majority leadership fund earmarks for minority members.	7	1	2
The majority leadership's distribution of earmarks was fair.	6	3	1

Who Received Earmarks	Very Important	Important	Moderately Important	Some Importance	No Importance	Don't Know/ No Answer
How important was a member's committee membership in successfully obtaining an earmark?	4	5	0	1	0	0
How important was a member's seniority in successfully obtaining an earmark?	5	3	1	0	1	0
How important was a member's having an upcoming competitive election to successfully obtaining an earmark?	1	6	3	0	0	0
How important was a member's leadership position in successfully obtaining an earmark?	6	4	0	0	0	0

(continued on the next page)

Table 1. Earmarking Survey of Former House Members (continued)

Effects of Earmark Reforms, 2007–11			
	Yes	No	Don't Know/ No Answer
Did reforms improve the earmarking process?			
	9	0	1
Did reforms change the perception of earmarking within Congress?			
	2	8	0

Opinions of Future Reforms of Earmarking					
Very Favorable	Somewhat Favorable	Neutral	Somewhat Unfavorable	Very Unfavorable	Don't Know/ No Answer
Establish an annual earmark budget as part of the budget process.					
3	2	1	1	2	1
Limit the amount individual members may receive annually in earmarks.					
1	3	3	1	2	0
Making earmark requests publicly available on the internet.					
7	3	0	0	0	0
Prohibiting corporations and individuals from receiving earmarked benefits.					
3	1	0	2	1	3
			Yes	No	Don't Know/ No Answer
Should Congress consider ending the earmark moratorium?					
			9	0	1

Source: Former members of the House of Representatives, interview with the authors, July 2020.

in exchange for a key vote. Most members had seen leadership earmarks as key to passing a bill. While these offers were more commonly made to majority members, three of the former members in our sample had also observed earmarks being offered to minority members in exchange for a vote.

Interestingly, one crucial advantage of earmarking that half the members in our sample noted was that it brought resources to rural areas and helped mitigate distributional effects in those areas. One Democratic member described earmarks as "first aid money for real America" and complained that funding formulas and competitive grants failed to meet the needs of rural regions. Other members commented that large cities and populous states could receive federal funds but that rural areas were disadvantaged in the appropriations process without earmarking.

Some members also lamented how losing earmarking shifted spending power away from Congress toward the executive branch, which amplified how populous areas were advantaged over rural ones in obtaining federal spending. A related advantage of earmarks was that federal funding had a multiplier effect on projects. A project that secured partial federal funding tended to attract state, local, and sometimes private funding to round out the cost.

Who Received Earmarks. Despite the overall positive bipartisan nature of earmarks that was described to us, members responded that key attributes tended to favor some members over others. The most important attribute was proximity to the Appropriations Committee, through being either a member or familiar with the staff, process, and committee members. The same was true of the Transportation Committee for earmarks related to transportation. While appropriators were quick to claim their selection of funded earmarks was based on merit, it was clear to others that members who lacked certain committee assignments or personal relationships with appropriators fared worse.

Unsurprisingly, seniority and a leadership position was also observed to increase a member's chances of receiving an earmark. Interestingly, most members agreed that earmark requests from those in highly competitive districts were prioritized among both majority and minority members. Recognizing these members faced difficult reelections, appropriators and leadership directed funding toward these districts to increase their chances.

Legislators' Overall Assessment of the Moratorium. As mentioned earlier, the House instituted a series of reforms to earmarking starting in 2007 that lasted four years before the moratorium was imposed. These reforms required earmark requests to be submitted in writing and made publicly available by the responsible committees. In the interest of transparency, earmark requests had to identify who was making the request, who would benefit, and what the cost would be. Most members agreed that these reforms improved the transparency of the earmarking process, and some posted their earmark requests on their websites even though House rules only required that committees make requests "open for public inspection."[50] Some members believe the reforms were not given enough time to change the negative public perception of earmarking.

In our sample, nine of 10 members agreed that Congress should pursue ending the earmark moratorium, with only one member stating she was unsure but not opposed to it. Members made various suggestions about their own ideas for reform. Two members suggested requiring an audit of earmarked projects to ensure moneys were spent according to the request. Two other members suggested that earmarks be offered exclusively on a matching basis, where other sources of funds would be required if federal dollars were allocated. Few members were interested in setting an annual earmarking budget or in limiting how much individual members could secure in funding.

However, there was unanimity that if earmarks were brought back, then requests should be made available via the internet for public inspection. Four members supported banning corporations from receiving earmarks and believed that conflict-of-interest rules should prevent individuals from unfairly profiting. Under the previous House reform, a member had to only certify their spouse would have no financial interest in the earmark.[51]

In conclusion, our survey of former House members found strong support for earmarking. Members were nearly unanimous that the benefits of earmarking outweigh the disadvantages. Earmarks were central to building consensus, giving all members access to federal funding and in maintaining Congress' Article I spending power. While there were flaws and inequalities to earmarking, the process of reform was cut short in 2011. Former members are in strong agreement that earmarking should be reinstituted with reforms.

Legislative Capacity Analysis

Former members' experience is important evidence of the use and value of earmarking to the legislative process and Congress. Members indicated that earmarking helped create bipartisanship in the appropriations process and that leadership used earmarks as a tool for building majorities to pass their legislative priorities.

Given these insights, we tested the effect of ending earmarking on these two criteria through an analysis of roll call votes on leadership priorities four years before and four years after the moratorium. (See Table A3 for a detailed list of leadership priorities.) To define leadership priorities for each Congress, we relied on "Non-Party Government: Bipartisan Lawmaking and Party Power in Congress" by James M. Curry and Frances E. Lee. This article analyzed how successful the majority party in Congress has been in reaching its policy goals from 1973 to 2016. Specifically, the authors analyzed past data and categorized legislative priorities to understand to what extent the majority party has achieved its goals and agenda items in Congress.

To define legislative priorities of each Congress, they looked at policy items or issues that were mentioned in the opening speeches by the majority party leader in each chamber at the start of each Congress. They also identified bills that were "inserted into the slots reserved for the Speaker of the House and the Senate Majority Leader." Lastly, they examined policy priorities in *CQ Magazine* articles during the weeks before and after congressional sessions. The authors coded the progress that the majority party reached for each priority into three main categories:

> (1) the majority got most of what it wanted with a new law(s) enacted achieving most of what the majority set out to achieve; (2) the majority got some of what it wanted, passing a new law(s) falling short of the party's goals or requiring substantial compromise; or (3) the majority got none of what it wanted, failing to enact any new law on its policy priority.[52]

To do this, they used sources such as *CQ Magazine* and *CQ Almanac* and periodicals such as *Roll Call*, the *Hill*, and the *Washington Post*. The authors identified 254 priority agenda items. Majority party priorities ranged in size from 11 to 24 items and averaged 13 per session.

Curry and Lee's main findings, though not about earmarks, are of interest to our study: The majority party in Congress often struggled to enact its partisan agendas and needed bipartisan support to reach its goals. In fact, Curry and Lee observed a rapid decline in passing leadership priorities that started immediately following the earmark moratorium. There was about a 20 percent increase in the majority getting none of its priorities passed starting in 2011, and about 70 percent of majority priorities failed to pass.[53] Although there was no mention of earmarks, Curry and Lee's findings are relevant to our research on how earmarks affect enacting leadership priorities. Following Congress' earmark moratorium, the majority party's ability to achieve its priority goals appeared immediately compromised.

To measure whether eliminating earmarking had some effect on leadership's capacity to govern, we examined predictors of voting for leadership priorities during the two congressional sessions before and after the earmark reform period.

The factors we compared belonged to the majority party, the competitiveness of a member's district, and the prohibition of earmarks. Member districts' competitiveness was calculated using the historical Cook Partisan Voter Index (PVI) measures for each Congress. Districts were considered competitive within two points of a zero PVI score, where zero indicates an electorate perfectly divided between parties. We recorded who belonged to the majority party during the congressional session that a leadership priority bill was voted on and whether the vote was taken in the pre- or post-moratorium period. (See Table A1.)

We found that the probability of a member voting for a legislative priority bill decreased after the moratorium by 10 percent. The competitiveness of a members' district increased the likelihood of voting for leadership priorities by 8 percent. This may indicate the moderating effects of marginal districts on voting. It could also mean that leadership was more likely to approve earmarks for members that had marginal reelection prospects, as former members had indicated.

Unsurprisingly, belonging to the majority party increased the likelihood of voting for leadership priorities by 61 percent over the entire period. The effect of partisanship on voting for leadership priorities increased by 13 percent in the two sessions after the moratorium (Table A2).

The collapse of the House leadership's ability to successfully implement its agenda after the moratorium suggests the loss of earmarking may have had consequences beyond altering the appropriations process. The correlation between ending earmarking and the incapacity of the majority leadership possibly indicates that the practice was a vital tool for governance in Congress, as our former member survey indicates.

This period also saw many consequential events that could have contributed to leadership's difficulties, such as the growing influence of the tea party movement on the Republican Party after the 2010 midterm election. The conflict that developed between the Republican leadership and the Tea Party Caucus (later the Freedom Caucus) over spending issues in the 112th Congress may have also increased the difficulty of passing appropriations bills.

While we cannot fully distinguish how much the moratorium contributed to the reduction of leadership's capacity to pass its priorities, it is clear that eliminating earmarks made creating consensus even harder after 2011. We found clear evidence that congressional leadership's ability to pass its priorities decreased in the period just after the earmark moratorium, while polarization increased. Our findings suggest that increasing Congress' Article I powers over spending by bringing back earmarking could contribute to increasing leadership's capacity to legislate and to decreasing polarization.

Conclusion

This report indicates legislators should revisit the earmarking moratorium, which has decreased the House's institutional capacities and undermined Congress' spending authority. If the incoming House leadership is prepared to do so, it ought to strike a balance between empowering legislators to direct spending and setting guardrails to prevent corruption and abuse.

As noted earlier, there has already been a bipartisan recommendation for replacing earmarks with a grant program. The final report of the Select Committee on the Modernization of Congress recommended replacing earmarks with the CFGP. The grants would be made by a "competitive award process, with an emphasis on supporting projects that have the broad support of local communities."[54] The approach would focus more on the priorities of local agencies and organizations and would perhaps help diminish the distributional effects that have kept rural communities from receiving adequate federal funding. However, in preferring a grant program to earmarking, the House should be careful not to overcorrect and undermine the utility of earmarking for building legislative majorities.

Based on our research, we recommend the House of Representatives immediately revisit and revise the earmark moratorium given its negative effects of polarization and on building consensus for leadership priorities. Procedurally, it will be relatively easy to lift it, given it was an agreement made by party caucuses and committees, not a change to House rules.

That said, the reforms instituted before the moratorium had begun to bring more transparency to the earmarking process but should be improved along these lines:

Transparency. Committees were responsible for earmark recordkeeping, and access to legible information about earmarks was not easy for the public to access. To correct this, many members—but not all—took their own initiative to post their request on their websites. Instead of this diffuse regime, the Clerk of the House should maintain a central database of requests for local spending and other benefits that are searchable and publicly accessible via the internet. Transparency is a paramount feature of earmark reform, and the more the public understands about it, the more likely the process will gain acceptance.

Reforms to Prevent Abuse and Corruption. Legislators' requests for local benefits that are granted should be audited post hoc and the results publicly released by the Government Accountability Office. Legislators also should be prevented from delivering local benefits directly to corporations. Additionally, the 2007 conflict-of-interest policy needs strengthening. It required that members only certify their spouse had no financial interest in the request. This should be expanded to a more comprehensive conflict-of-interest policy that ensures there is no financial conflict of interest in a member's request.

Increasing Equity. Historically, legislators' ability to dispense local benefits has been inequitable. Understandably, some legislators, by virtue of their position (e.g., chamber leaders or appropriators), can use or dispense earmarks with a free hand. This is unobjectionable insofar as this authority enables them to build majorities for legislating. However, other legislators had disproportionate opportunities to dispense local benefits due to their personal friendships with chamber power brokers. Additionally, about half the legislators we interviewed were particularly concerned with how earmarking had deprived smaller communities of access to federal funding. In addition to setting up a process that helps ensure a more equitable distribution among members, the House ought to be aware of the distributional effects of the appropriations process and how earmarking can help even out disparities between rural and urban America.

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Appendix

Table A1. Predictors of Voting for House Leadership Priorities (2007–15)

	Voted Yes on Leadership Priority
Earmark Moratorium	–0.099*** (0.000)
Member Has a Competitive Race	0.082*** (0.000)
Member of the Majority	0.611*** (0.000)
Constant	0.365*** (0.000)
Observations	6,061
Adjusted R^2	0.377

Note: *p < 0.10; **p < 0.05; ***p < 0.01
Source: Authors.

Table A2. Comparison of Majority Membership's Effect on Voting for Leadership Priorities, Pre- and Post-Earmarking Moratorium (2007–15)

	Voted Yes on Leadership Priority
Majority Party Membership in the 110th and 111th Congresses (Democratic Control)	0.511*** (0.000)
Constant	0.421 (0.000)
Observations	3,033
Majority Party Membership in the 112th and 113th Congresses (Republican Control)	0.683*** (0.000)
Constant	0.247 (0.000)
Observations	3,027

Note: *p < 0.10; **p < 0.05; ***p < 0.01
Source: Authors.

Table A3. House Roll Call Votes Identified as Leadership Priorities, 2007–15

Congress	Bill	House Bill Title and Leadership Priority	Yea	Nay	Total
110th	H.R. 5	Title: College Student Relief Act	356	71	427
		Leadership Priority: Student Loan Interest Rate Reduction College Costs	83.4%	16.6%	
110th	H.R. 5658	Title: Duncan Hunter National Defense Authorization Act for Fiscal Year 2009	384	23	407
		Leadership Priority: Rebuild/Modernize Military	94.3%	5.7%	
111th	H.R. 1	Title: Making Supplemental Appropriations for Fiscal Year Ending 2009	246	183	429
		Leadership Priority: Economic Stimulus Package	57.3%	42.7%	
111th	H.R. 2	Title: Children's Health Insurance Program Reauthorization Act of 2009	289	139	428
		Leadership Priority: Reauthorize and Expand Children's Health Insurance Program	67.5%	32.5%	
111th	H.R. 3854	Title: Small Business Financing and Investment Act of 2009	389	32	421
		Leadership Priority: Economic Stimulus Package	92.4%	7.6%	
111th	H.R. 4872	Title: Reconciliation Act of 2010	220	211	431
		Leadership Priority: College Cost and Affordability	51.0%	49.0%	
111th	H.R. 5297	Title: Small Business Lending Fund Act of 2010	237	187	424
		Leadership Priority: Economic Stimulus Package	55.9%	44.1%	
112th	H.R. 2	Title: Repealing the Job-Killing Health Care Law Act	245	189	434
		Leadership Priority: Affordable Care Act Repeal	56.5%	43.5%	
112th	H.R. 3	Title: No Taxpayer Funding for Abortion Act	251	175	426
		Leadership Priority: Restrict Taxpayer Funds for Abortions	58.9%	41.1%	
112th	H.R. 9	Title: Small Business Tax Cut Act	235	173	408
		Leadership Priority: Small Business Support	57.6%	42.4%	
112th	H.R. 10	Title: To Amend Chapter 8 of Title 5, United States Code, to Provide That Major Rules of the Executive Branch Shall Have No Force or Effect Unless a Joint Resolution of Approval Is Enacted Into Law	241	184	425
		Leadership Priority: Regulatory Reform	56.7%	43.3%	
113th	H.R. 7	Title: To Prohibit Taxpayer Funded Abortions	227	188	415
		Leadership Priority: Restrict Taxpayer Funds for Abortions	54.7%	45.3%	
113th	H.R. 4923	Title: Making Appropriations for Energy and Water Development and Related Agencies for the Fiscal Year Ending September 30, 2015, and for Other Purposes	253	170	423
		Leadership Priority: Address Climate Change and Renewable Energy	59.8%	40.2%	
113th	S. 47*	Title: Violence Against Women Reauthorization Act of 2013	286	138	424
		Leadership Priority: Violence Against Women Act	67.5%	32.5%	

Note: *The House counterpart bill never made it out of committee, so the Senate's version was voted on by the House.
Source: James M. Curry and Frances E. Lee, "Replication Data for: Non-Party Government: Bipartisan Lawmaking and Party Power in Congress," *Harvard Dataverse* 17, no. 1, https://dataverse.harvard.edu/dataset.xhtml?persistentId=doi:10.7910/DVN/QTWGXI. House roll call votes were gathered from ProPublica, "Represent," https://projects.propublica.org/represent/.

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