109TH CONGRESS 2d Session | HOUSE OF REPRESENTATIVES | REPORT 109–655

PROVIDING FOR EARMARKING REFORM IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 13, 2006.—Referred to the House Calendar and ordered to be printed

Mr. DREIER, from the Committee on Rules, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H. Res. 1000]

The Committee on Rules, to whom was referred the resolution (H. Res. 1000) providing for earmarking reform in the House of Representatives, report favorably thereon and recommend that the resolution be agreed to, with an amendment.

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AMENDMENT

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. EARMARKING REFORM IN THE HOUSE OF REPRESENTATIVES.

(a) In the House of Representatives, it shall not be in order to consider—

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(1) a bill reported by a committee unless the report includes a list of earmarks in the bill or in the report (and the names of Members who submitted requests to the committee for earmarks included in such list); or

(2) a conference report to accompany a bill unless the joint explanatory statement prepared by the managers on the part of the House and the managers on the part of the Senate includes a list of earmarks in the conference report or joint statement (and the names of Members who submitted requests to the committee for earmarks included in such list) that were not committed to the conference committee by either House, not in a report specified in paragraph (1), and not in a report of a committee of the Senate on a companion measure.

(3) In order to be cognizable by the Chair, a point of order raised under paragraph (1) may be based only on the failure of a report of a committee to include a list required by paragraph (1).

(b) In the House of Representatives, it shall not be in order to consider—

(1) a bill carrying a tax measure reported by the Committee on Ways and Means as to which the Joint Committee on Taxation has—

(A) identified a tax earmark pursuant to subsection (e), unless the report on the bill includes a list of tax earmarks in the bill or report (and the names of Members who submitted requests to the committee for tax earmarks included in such list); or

(B) failed to provide an analysis under subsection (e); or

(2) a conference report to accompany a bill carrying a tax measure as to which the Joint Committee on Taxation has—

(A) identified a tax earmark pursuant to subsection (e), unless the joint explanatory statement prepared by the managers on the part of the House and the managers on the part of the Senate includes a list of tax earmarks in the conference report or joint statement (and the names of Members who submitted requests to the committee for tax earmarks included in such list) that were not committed to the conference committee by either House, not in a report specified in paragraph (1), and not in a report of a committee of the Senate on a companion measure; or

(B) failed to provide an analysis under subsection (e).

(3) A point of order under paragraph (1) or (2) may not be cognizable by the Chair if the Joint Committee on Taxation has provided an analysis under subsection (e) and has not identified a tax earmark.

(c)(1) In the House of Representatives, it shall not be in order to consider a rule or order that waives the application of subsection (a)(2) or (b)(2).

(2) A point of order that a rule or order waives the application of subsection (b)(2)(A) may not be cognizable by the Chair if the Joint Committee on Taxation has provided an analysis under subsection (e) and has not identified a tax earmark.

(3) In order to be cognizable by the Chair, a point of order that a rule or order waives the application of subsection (b)(2)(A) must specify the precise language of the rule or order and any pertinent analysis by the Joint Committee on Taxation contained in the joint statement of managers.

(d)(1) As disposition of a point of order under subsection (a) or (b), the Chair shall put the question of consideration with respect to the proposition that is the subject of the point of order.

(2) As disposition of a point of order under subsection (c) with respect to a rule or order relating to a conference report, the Chair shall put the question of consideration as follows: "Shall the House now consider the resolution notwithstanding the assertion of [the maker of the point of order] that the object of the resolution introduces a new earmark or new earmarks?".

(3) The question of consideration under this subsection (other than one disposing of a point of order under subsection (b)) shall be debatable for 15 minutes by the Member initiating the point of order and for 15 minutes by an opponent, but shall otherwise be decided without intervening motion except one that the House adjourn.

(e) The Joint Committee on Taxation shall review any bill containing a tax measure that is being reported by the Committee on Ways and Means or prepared for filing by a committee of conference of the two Houses, and shall identify whether such bill contains any tax earmarks. The Joint Committee on Taxation shall provide to the Committee on Ways and Means or the committee of conference a statement identifying any such tax earmarks or declaring that the bill or joint resolution does not contain any tax earmarks, and such statement shall be included in the report on the bill or joint statement of managers, as applicable. Any such statement shall also be made available to any Member of Congress by the Joint Committee on Taxation immediately upon request.

SEC. 2. DEFINITIONS.

(a) For the purpose of this resolution, the term earmark means a provision in a bill or conference report, or language in an accompanying committee report or joint statement of managers—

(1) with respect to a general appropriation bill, or conference report thereon, providing or recommending an amount of budget authority for a contract, loan, loan guarantee, grant, or other expenditure with or to a non-Federal entity, if—

(A) such entity is specifically identified in the report or bill; or

(B) if the discretionary budget authority is allocated outside of the statutory or administrative formula-driven or competitive bidding process and is targeted or directed to an identifiable entity, specific State, or Congressional district; or,

(2) with respect to a measure other than that specified in paragraph (1), or conference report thereon, providing authority, including budget authority, or recommending the exercise of authority, including budget authority, for a contract, loan, loan guarantee, grant, loan authority, or other expenditure with or to a non-Federal entity, if—

(A) such entity is specifically identified in the report or bill;

(B) if the authorization for, or provision of, budget authority, contract authority, loan authority or other expenditure is allocated outside of the statutory or administrative formula-driven or competitive bidding process and is targeted or directed to an identifiable entity, specific State, or Congressional district; or

(C) if such authorization for, or provision of, budget authority, contract authority, loan authority or other expenditure preempts statutory or administrative State allocation authority.

(b)(1) For the purpose of this resolution, the term tax earmark means any revenue-losing provision that provides a Federal tax deduction, credit, exclusion, or preference to only one beneficiary (determined with respect to either present law or any provision of which the provision is a part) under the Internal Revenue Code of 1986 in any year for which the provision is in effect;

(2) for purposes of paragraph (1)—

(A) all businesses and associations that are members of the same controlled group of corporations (as defined in section 1563(a) of the Internal Revenue Code of 1986) shall be treated as a single beneficiary;

(B) all shareholders, partners, members, or beneficiaries of a corporation, partnership, association, or trust or estate, respectively, shall be treated as a single beneficiary;

(C) all employees of an employer shall be treated as a single beneficiary;

(D) all qualified plans of an employer shall be treated as a single beneficiary;

(E) all beneficiaries of a qualified plan shall be treated as a single beneficiary;

(F) all contributors to a charitable organization shall be treated as a single beneficiary;

(G) all holders of the same bond issue shall be treated as a single beneficiary; and

(H) if a corporation, partnership, association, trust or estate is the beneficiary of a provision, the shareholders of the corporation, the partners of the partnership, the members of the association, or the beneficiaries of the trust or estate shall not also be treated as beneficiaries of such provision;

(3) for the purpose of this subsection, the term revenue-losing provision means any provision that is estimated to result in a reduction in Federal tax revenues (determined with respect to either present law or any provision of which the provision is a part) for any one of the two following periods—

(A) the first fiscal year for which the provision is effective; or

(B) the period of the 5 fiscal years beginning with the first fiscal year for which the provision is effective; and

(4) the terms used in this subsection shall have the same meaning as those terms have generally in the Internal Revenue Code of 1986, unless otherwise expressly provided.

(c) For the purpose of this resolution—

(1) government-sponsored enterprises, Federal facilities, and Federal lands shall be considered Federal entities;

(2) to the extent that the non-Federal entity is a State, unit of local government, territory, an Indian tribe, a foreign government or an intergovernmental international organization, the provision or language shall not be considered an earmark unless the provision or language also specifies the specific purpose for which the designated budget authority is to be expended;

(3) the term budget authority shall have the same meaning as such term is defined in section 3 of the Congressional Budget Act of 1974 (2 U.S.C. 622); and,

(4) an obligation limitation shall be treated as though it is budget authority.

PURPOSE AND SUMMARY

H. Res. 1000 will provide for earmarking reform and transparency in the House of Representatives. The resolution provides a new standing order of the House with regard to earmarks in authorization, appropriations, and tax measures.

H. Res. 1000 provides that, in order for the House to consider a bill, the Committee of jurisdiction must list all earmarks included in the bill and committee report along with the names of Members requesting the earmark. In the case of a conference report, the list must include any earmarks (with Member names) that were "airdropped" into the conference report or joint statement. If an authorizing committee or the Appropriations Committee fails to include a list of earmarks, a Member can raise a point of order against consideration of the bill or conference report. Such a point of order against a bill may be based only on the failure to include a list. A point of order is disposed of by the question of consideration debatable for 30 minutes, equally divided. This new provision applies to all Committees.

In the case of tax bills, the Joint Committee on Taxation (JCT) is specifically charged with compiling the list because of intricacies involved in scoring the impact of a tax provision. If the Ways and Means Committee fails to include a JCT list of earmarks or a JCT statement indicating that there are no earmarks, a Member can raise a point of order against consideration of the bill or conference report. The question of consideration is not debatable.

The resolution provides that if a rule providing for the consideration of a conference report waives the requirement for a list of new earmarks, then the point of order would lie against the rule. If the question of consideration is rejected, the House is not allowed to consider the legislation or the rule providing for its consideration of the legislation until a list of earmarks is included.

H. Res. 1000 defines an authorizing earmark as a provision that permits funds to be allocated outside of the normal formula-driven or competitive bidding process and to be targeted to a specific entity, State, or Congressional district. The resolution also defines an appropriations earmark as a provision that allocates funds outside of the normal formula-driven or competitive bidding process and targets those funds to a specific entity, State, or Congressional district. Finally, H. Res. 1000 defines a tax earmark as any revenue-losing provision that provides a Federal tax deduction, credit, exclusion, or preference to only one beneficiary, as determined by the Joint Committee on Taxation.

BACKGROUND AND NEED FOR LEGISLATION

Over the past several years, there has been a growing concern over the proliferation of legislative provisions directing spending and other benefits to individual entities, commonly referred to as "earmarking." Earmarks are not currently defined in law or congressional rule, nor is there a single common understanding of the term "earmark" accepted by all practitioners and observers of the legislative process.

While there are differences in the analyses of earmarking among the groups studying the topic, the majority of those studies confirm

an increase in the use of the earmarking process through fiscal year 2005. A recent Congressional Research Service (CRS) analysis found that the number of earmarks authorized by Congress in appropriations bills alone increased from 4,155 in 1994 to 15,887 in 2005—an increase of 282 percent. Using a slightly different methodology, Citizens Against Government Waste (CAGW) concluded that there were 1,439 earmarks in 1995, which grew to 13,997 in 2005, for an increase of 872 percent. For fiscal year 2006, CAGW identified 9,963 projects in the 11 appropriation bills, with an estimated total cost of $29 billion. CAGW estimates the total cost of earmarks has increased by 29 percent since fiscal year 2003.

With both internal and external pressure mounting, the 109th Congress has been marked by a renewed effort to eliminate wasteful spending and to enhance transparency and accountability within the earmarking process. Congress, led by efforts of the Appropriations Committee, has taken positive steps to reduce the number of, and dollars spent, on Member projects while increasing the transparency and accountability for these spending decisions. This fiscal year, Member requests for projects declined by 37 percent and dollars spent on projects declined significantly in every spending bill. Overall, spending on Member projects was reduced by $7.5 billion below last year. Over the last two years, Member project spending has decreased by over $10 billion. In addition, the Appropriations Committee took strong steps to prevent new projects from being included in conference reports which were not included in either the House or Senate bill (a practice commonly referred to as "airdropping") by including all Member projects during House consideration of spending bills.

Notwithstanding the efforts of the Appropriations Committee to address concerns internally, the Rules Committee acknowledges that earmarks have been included in bills outside of the appropriations process. The Committee also acknowledges that what one Member might define as an earmark may be defined by another Member as an important policy objective. Prior to H. Res. 1000, there has been no common definition of an earmark, however, it has been commonly accepted that an earmark typically benefits a specific entity outside of an accepted or regular Federal funding process.

Definitional disagreements aside, there has been near unanimity among Members in support of more transparency and accountability in the earmarking process. While the current system for Members to direct Federal funds to specific legislative priorities is not perfect, most Members can agree that requiring full disclosure of all earmarks, including the names of those Members who requested them, will require Members to fully explain and defend their legislative priorities to their colleagues.

Two prior measures considered and passed by the House, H.R. 4975, the Lobbying Accountability and Transparency Act of 2006, as well as H.R. 4890, the Legislative Line Item Veto Act of 2006, addressed similar issues. H.R. 4975 addressed a broad range of concerns with not only the earmark process, but also critical lobby reform and disclosure requirements as well as Congressional ethics process reform. The Lobbying Accountability and Transparency Act contained in it a similar special order involving earmarks; however, unlike the current special order, the bill as passed in the House

only applied the earmark disclosure requirements to the appropriations process and there was widespread agreement that similar disclosures should be made for authorizing and revenue bills as well.

The Legislative Line Item Veto Act of 2006 also seeks to address concerns with the earmark process by granting the President special authority to temporarily defer spending on earmarked projects until Congress either approves or disapproves the President's proposed rescission of those projects. Unfortunately, a conference agreement on H.R. 4975 has yet to be reached and the Senate has yet to consider H.R. 4890 or its companion measure.

The Committee believes that H. Res. 1000 provides for strict disclosure requirements for all committees, and it allows ample opportunity for Members to address concerns regarding potential earmarks. The special order requires disclosure and accountability without dramatically impeding the current legislative process. This reform respects Congress' Constitutional right to direct monies flowing from the Federal treasury and is an important and appropriate reform.

HEARINGS

The Committee on Rules did not hold a hearing on this measure.

COMMITTEE CONSIDERATION

The Committee on Rules met on H. Res. 1000 in open session and ordered the resolution favorably reported to the House as amended by a voice vote.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. No record votes were taken in conjunction with the consideration of this measure. A motion by Mr. Lincoln Diaz-Balart of Florida to report the bill to the House with a favorable recommendation, as amended by the Dreier amendment in the nature of a substitute, was agreed to by a voice vote.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee made findings that are reflected in this report.

PERFORMANCE GOALS AND OBJECTIVES

The Committee finds that this measure does not authorize funding within the meaning of clause 3(c)(4) of rule XIII of the Rules of the House of Representatives and therefore does not apply.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that this legislation would result in no new budget authority, entitlement authority, or tax expenditures or revenues.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional authority of Congress to enact this legislation is provided by article 1, section 5, clause 2 of the Constitution of the United States (relating to each House of Congress determining the rules of its proceedings).

APPLICABILITY TO THE LEGISLATIVE BRANCH

The Committee finds that the legislation does not address the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Earmarking reform in the House of Representatives

Section 1 provides a special order of the House providing that it will not be in order to consider: (1) a bill, unless the report to accompany the bill includes a list of earmarks in the bill or its report, including the name of any Member who submitted a request to the committee for an earmark included in the list; or (2) the conference report accompanying a bill, unless the joint explanatory statement of managers accompanying that conference report includes a list of earmarks, including the name of any Member who submitted a request to the committee for an earmark included in the list, which were not committed to conference by either House or were not in the report accompanying the House or Senate bills. If a rule waives the application of this order with respect to a conference report, a point of order lies against the rule.

With respect to a tax measure, it will not be in order to consider such a bill (or a conference report to accompany such a bill) where the Joint Committee on Taxation has: (1) identified a tax earmark; or (2) failed to provide an analysis regarding tax earmarks as required under this section, unless the joint explanatory statement of managers accompanying that conference report includes a list of earmarks, including the name of any Member who submitted a request to the committee for an earmark included in the list, which were not committed to conference by either House or were not in the report accompanying the House or Senate bills.

Disposition of the point of order against the bill (or against the rule in the case of a conference report) will be as the question of consideration put by the Chair, and will be debatable for 30 minutes, equally divided between the Member raising the point of order and an opponent. However, if the point of order is made on the basis that the committee report or joint statement of managers fails to contain the applicable analysis of the Joint Committee on Taxation or accompanying list, the point of order is not debatable. With regard to a conference report to accompany a bill containing a tax measure which contains an analysis from the Joint Com-

mittee on Taxation, the maker of the point of order must specify the precise language of the rule or order and any pertinent analysis by the Joint Committee on Taxation contained in the joint statement of managers.

With regard to how committee chairs determine which Member or Members request an earmark, the Committee believes that there will usually be sufficient indicators in the committee process to allow the chairman to make that determination, including letters requesting the earmark, sponsorship of an amendment, or other similar standards.

The Committee further intends that the requirement to provide a list of such earmarks should not in any way affect the status of an earmark which may be of a classified nature. The Committee believes that inclusion of the list of any classified earmarks (and Members requesting such earmarks) in the classifed portion of the committee report, or classified annex to a committee report, is sufficient for purposes of this resolution. However, the Committee believes that the unclassified committee report should indicate that such a list is included in the classified report or annex.

Sec. 2. Definitions

This section provides the definitions used in this special order. Subsection (a) defines an "earmark" as a provision in either legislative or report language providing or recommending an amount of budget authority (or in the case of a measure other than a general appropriation bill, providing any authority or recommending the exercise of authority for a contract, loan, loan guarantee, grant, loan authority, or other expenditure) with or to a non-Federal entity, if that entity is specifically identified in the bill or report, or if the budget authority is allocated outside of the normal formula-driven or competitive bidding process, is targeted or directed to an identifiable person, State, or Congressional district, or preempts statutory or administrative State allocation authority.

A "tax earmark" is defined as a revenue-losing provision which provides a Federal tax deduction, credit, exclusion, or preference to a single beneficiary determined with respect to current law or any provision of which the provision is a part from a change to the Internal Revenue Code of 1986. The definition also contains a number of exceptions to clarify that a provision is not a tax earmark when all similarly situated entities are treated similarly, even when there may be a small number of entities affected by a particular provision.

This section also further defines certain terms that are used in the resolution for the purposes of the special order. It describes the treatment of government sponsored enterprises, Federal facilities, Federal lands, Indian tribes, foreign governments, and intergovernmental international organizations. It also clarifies that an obligation limitation shall be treated as though it is budget authority for purposes of this section. Nothing in subsection (c)(4) shall be construed to define a term for any purpose other than the purpose of this resolution, and no precedent of a term's meaning beyond the purpose of this special order is implied or established.

Finally, while the Committee recognizes that no definition can ever capture all of every concievable formulation of an earmark, the Committee believes that committee chairs will make a good

faith effort to comply both with the letter and spirit of this rule, and list those provisions which they know to be earmarks.

MINORITY VIEWS

We oppose this resolution because it is not the comprehensive Congressional reform House leaders promised they would deliver to the American people at the beginning of this year. We also oppose it because it does not even adequately fix the narrow problem it purports to address—the explosion of special-interest earmarking under the Republican House leadership. While we support the Majority's goal of increased transparency and accountability in the way the House conduct its business, we do not see how this resolution advances this objective in any significant way.

1. Too little, too late

In January of this year, Speaker Hastert and Chairman Dreier promised the American people the Republican Congress was ready to take strong, decisive steps to clean up the House of Representatives and restore Americans' badly shaken confidence in their legislative branch. Coming off a year in which the Jack Abramoff and Duke Cunningham scandals dominated the news, Republican leaders promised a "bold and strong" response to the toxic culture of cronyism and corruption that had developed under the Republican majority. On February 1st of this year, Chairman Dreier told the House, "We are committed to bold, strong, dynamic reform for this institution. The Republican Party, Mr. Speaker, has stood for reform ever since I can remember." (Congressional Record (daily ed.), Feb. 1, 2006, p. 29.)

Nine months later, it is clear that the "bold and strong" promises Republican House leaders made at the beginning of 2006 will not be kept this year and that their leadership of the 109th Congress will not be remembered for its commitment to reform. As USA Today put in a recent editorial: "Congress' answer to this ethics catastrophe has been a pair of competing measures in the House and Senate, which fall far short of what was promised in January but allow incumbents campaigning for re-election to claim they 'voted for lobbying reform.'" (USA Today editorial, "Scandal? What scandal? Congress ducks ethics reform," 9/5/2006.) It has now become clear that, after the House and Senate passed their watered-down reform proposals in the spring, Republican leaders decided to allow Congressional reform to die a slow death in legislative limbo. They appear to have adopted a run-out-the-clock strategy in the 109th Congress, in which they periodically talk about going to conference, but do not actually name conferees or begin working on a final reform proposal. As a result, the "bold and strong" Republican reform agenda will have only resulted in two very modest accomplishments: a change to House rules that prohibits former House Members now working as lobbyists from using the Members' gym and the loophole-ridden "earmark reform" proposed in this resolution.

We are very disappointed that the entire result of Congress' work on the reform issue this year will be only two modest rules changes, because we believe that the majority of House Members—and the millions of Americans who sent them to Washington to work on their behalf—want broader reforms. As we have argued again and again this year, the House of Representatives has lost the trust of the American people. Over the past few years, Republican leaders have refused to enforce the House ethics rules and have allowed the deliberative process to be captured by special interests. The result is a Congress in which corrupt lobbyists write the bills, 15-minute votes are held open for three hours, and entirely new legislation is crammed into signed conference reports in the dead of night. (For a longer discussion of this problem, see our Minority Views on H.R. 4975, H. Rept. 109–439, pt. 3, the "Lobbying Accountability and Transparency Act of 2006.")

To restore the good will the Congress has squandered over the past decade, the House has to do more than kick lobbyists out of its locker rooms. To use Chairman Dreier's words, the House must take "bold, strong, dynamic" steps to show a skeptical American public that we are finally serious about raising the ethical bar in Congress. During the debate on the Republican "lobbying reform" bill (H.R. 4975) in May 2006, Ranking Member Slaughter offered just such a plan to the House as a motion to recommit. Among many other things, the Slaughter proposal banned travel on corporate jets, prohibited lobbyist gifts, slowed down the revolving door between Capitol Hill and K Street, and addressed some of the procedural abuses that have flourished in the Republican-controlled House. It was very gratifying to us that the Slaughter motion to recommit (vote #118) received 16 Republican votes and came within two votes of passing and replacing the weaker Republican bill. We believe this vote demonstrates a strong desire in the House, on both sides of the aisle, to take a more comprehensive and "bold" approach to Congressional reform. We are very disappointed that the Republican leadership has chosen to ignore this strong sentiment among rank-and-file Members and instead run out the clock on reform. As we noted earlier this year, we believe that restoring ethical standards and a truly deliberative lawmaking process to the House would be good for both parties, the House, and the country.

2. "Stop Us Before We Earmark Again"

The fig-leaf reform idea offered in this resolution is to require the disclosure of certain earmarks in appropriations bills, as well as authorization and revenue bills. Before reviewing the very modest effects the rule change proposed in this resolution will have on the actual conduct of House business, it is worth reviewing the Republican record on earmarking. In spite of the loud and frequent condemnation of earmarks in the Republican Conference, the practice of earmarking has exploded since Republicans took the majority in 1994. According to statistics collected by Brian Riedl of the Heritage Foundation, earmarks on appropriations bill increased tenfold between 1995 and 2005, from 1,439 earmarks in 1995 to 13,997 in 2005. While in the mid-1990s earmarks accounted for about $10 billion in annual federal spending, they now total more than $27 billion. (Brian Riedl, the Heritage Foundation, "Federal Spending—

By the Numbers," 2/6/06, p. 10; available at: http://www.heritage.org/Research/Budget/upload/93690_1.pdf.)

As many observers have pointed out, however, the explosion of earmarks has not been restricted to the appropriations process. Last year's transportation re-authorization contained a record-shattering 6,371 earmarks with a total cost of $25 billion. (Id.) On the tax side, in spite of their harsh rhetoric condemning the complexity of the federal tax system, Congressional Republicans have made an average of 427 changes a year to the Federal Tax Code over the past 12 years, which has added 500 new pages and hundreds of thousands of new words to our already complex tax code. (Ways and Means Committee Democrats Report, "Consequences of Republican Tax Policy," 4/12/2005; available at: http://www.house.gov/waysandmeans_democrats/ tax/42_wm_tax_report_pt_1.pdf.) Many of these changes were narrow, rifle-shot provisions intended to benefit narrow corporate interests, such as oil producers, archery and tackle box manufacturers, and Home Depot's importation of ceiling fans from China.

Observers both inside and outside of the Capitol have linked this "earmark fever" to the breakdown of the deliberative process in the Republican Congress. Instead of leaving the allocation of government resources to government professionals, Congressional scholars Thomas Mann and Norman Ornstein recently commented, Republicans have used earmarks as "chits to use to reward the compliant and punish the stubborn among them, while losing control over the federal pursestrings for a large share of discretionary spending." (Thomas E. Mann and Norman J. Ornstein, The Broken Branch: How Congress is Failing America and How to Get it Back on Track (2006), p. 214.) "Earmarking," our colleague Jeff Flake wrote in a New York Times column earlier this year, "has become the currency of corruption in Congress." It not only drives up federal spending, but also discourages Members from scrutinizing spending legislation and then overseeing the federal agencies entrusted with taxpayers' funds. (Jeff Flake, "Earmarked Men," New York Times, 2/9/06.)

It seems almost too obvious to mention, but we must remind our Republican colleagues that they are the majority, and furthermore, that for the past six years their party has also controlled the White House. Having the majority means controlling the legislative process, which includes deciding how many earmarks and other narrowly-tailored special interest favors their laws will contain. In other words, Republicans don't need any additional authority to reform the earmarking process. They have all the legislative power they need to reform the earmarking process any way they see fit.

What is obvious from the debate we have conducted on this resolution and the one we conducted several months ago on H.R. 4890, the "Legislative Line-Item Veto Act," is that Republicans lack the political will to truly reform the way Congress authorizes and spends taxpayers' dollars. Instead, they turn to outside forces (in the case of the H.R. 4890, the executive branch) or new procedural devices (additional earmarking disclosure rules like the ones proposed in this resolution) in the hope of changing their behavior. As we observed in our views on the line-item veto legislation, House Republicans seem to be pleading, "Stop us before we earmark

again." (Dissenting Views to H.R. 4890, H. Rept. 109–505, pt. 2, the "Legislative Line-Item Veto Act of 2006.") We can't help but respond to these pleas that the best way to bring earmarking under control is to recommit yourselves to balanced budgets and fiscal discipline. The only thing Congressional Republicans need to reverse the proliferation of earmarks and special interest giveaways is a little fiscal self-control.

H. Res. 1000 purports to take on the explosion of earmarking by blocking House consideration of bills and conference reports that do not disclose the earmarks they contain. Sections 1(a) and (b) prohibit the House from considering reported bills and conference reports for which the responsible committees do not list their earmarks and the names of the Members who requested them. In the case of reported bills, the point of order would only be available if committees failed to submit earmark lists or, in the case of revenue bills, the Ways & Means Committee failed to submit an earmark analysis prepared by the Joint Committee on Taxation. As long as the committees submit such lists (whether they are truly comprehensive or not), the Chair in the House must find that the point of order is not available. In addition, H. Res. 1000 would allow the Rules Committee to waive this point of order against reported appropriation and authorization bills. Section 1(c)(1) of the resolution, however, establishes a non-waivable point of order against any rule allowing the consideration of conference reports containing earmarks that did not previously appear in the House or Senate versions of the legislation. This point of order against the consideration of conference reports would allow 30 minutes of debate and give the House an opportunity to stop a conference report containing new earmarks.

While this new point of order appears to give standing committees and conference committees a new incentive to disclose the earmarks in their bills, it also leaves available a number of avenues to get around the new disclosure requirements. For example, this point of order would not lie against a manager's amendment to a reported bill made in order under a special rule. Such an amendment could contain any number of undisclosed earmarks. This strategy was employed during consideration of last year's transportation re-authorization bill, during which the Transportation Committee submitted a lengthy manager's amendment that contained, among other things, language authorizing $50 million for the notorious "Bridge to Nowhere" connecting the small island community of Ketchikan, Alaska to Gravina Island.

Nor would the point of order created in H. Res. 1000 cover legislation that comes to the House floor without going through the committee reporting process. In other words, an introduced bill taken straight to the House floor or legislation introduced after being marked up in a committee as an un-introduced print would not have to disclose earmarks. We make this point in light of the recent trend in the House to grant special rules to unreported bills. So far in the 109th Congress, the Rules Committee has granted 25 special rules for unreported bills. An egregious example of the abuse this practice can engender is the closed rule (H. Res. 966) granted to consider two major unreported revenue bills on July 28th of this year. The two bills the rule made in order by that rule

(H.R. 4 and H.R. 5970) had been introduced just several hours earlier and contained a number of tax breaks targeted to special interests such as the timber, candle, pasta, wire rod, music box and cashmere industries at a cost of hundreds of millions of dollars to the American taxpayers.

The 5-page section of the bill defining the term "earmark" also affords standing and conference committees a number of opportunities to include special interest earmarks in their legislation but escape the reach of this resolution. For example, the term "earmark" as it is defined in Section 2 of this resolution applies only to expenditures made or authorized for "non-Federal entities." This definition would appear to exclude from the definition of earmarks a number of spending categories that most observers of the legislative process define as "pork" or "earmarks." Since the 2005 "Bridge to Nowhere" Gravina Island Project earmark, for example, was a grant of authority to a Federal entity (the Secretary of Transportation), it would appear to fall outside of this resolution's definition of earmark. On the revenue side, the resolution does not include tariff or duty changes that result in lost federal revenues, which means that the infamous Home Depot ceiling fan provision would not be considered an earmark. It is hard not to question the seriousness of this proposal when it simply defines away some of the most notorious earmarking episodes of the past few years. Also on the revenue side, we would note that the resolution entrusts the job of ferreting out earmarks in revenue bills to the Joint Committee on Taxation, half of whose members are also Ways & Means Committee members. While we do not question the professionalism of anybody involved in the two committees, we find it hard to believe that the process of analyzing revenue bills for earmarks would be an adversarial one.

Finally, it is worth noting that the Slaughter proposal the House came within two votes of passing last May contained an earmark reform proposal that is more comprehensive than the one proposed in this resolution. Section 502 of the Slaughter reform package requires Members to publicly disclose all district-specific earmark requests they make on bills or conference reports. In the case of revenue bills, it requires the Joint Committee on Taxation to analyze bills and conference reports and publicly disclose provisions that would grant tax benefits to small groups. Finally, the bill makes it a violation of the House Code of Conduct to trade votes on a bill or conference report for district-oriented earmarks.

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