

earmark in the bill was related and being spent on transportation. He actually stated that every dollar in the bill was for transportation.

I am holding here some 200 pages of earmarks, over 3,300, about 30 per page here. Let me just give you an example of some of them, and you can decide for yourself whether or not they are related to transportation.

You the taxpayer are spending \$3 million in the bill to renovate and expand the National Packard Museum and adjacent Packard facilities in Warren, Ohio.

You the taxpayer are spending \$7,268,486 for the Vermont Association of Snow Travelers to build a snowmobile trail in Vermont.

You the taxpayer are spending \$750,000 to construct horse riding trails in the Jefferson National Forest.

This is in the transportation bill, mind you, all dollars that are supposed to be spent exclusively on transportation.

You the taxpayer are spending \$540,000 to establish a transportation museum on Navy Pier.

How about \$3.2 million to acquire site, design and construction of an interpretive center, whatever that is, and enhancement of trail corridor for the Daniel Boone Trail Wilderness Corridor?

How about \$1.7 million for reconstruction and conversion of Union Station to establish a transportation museum?

On and on and on it goes. Here is the last one, not the last, but another one: \$1 million you are spending to fund reconstruction of the home of James Madison in Orange, Virginia. Now, one might argue that, when a visitor is visiting the home of James Madison, he is not on the road, and therefore, he is freeing up available space for the other motorists. Perhaps that relates to transportation. I am stretching here, but they must be stretching for spending our taxpayer dollars that way. But certainly, I think the taxpayer is owed a better explanation than that.

The problem with the transportation bill, to add insult to injury, is that, too often, these earmarks in other States come out of your State's formula. Arizona is a donor State; we give far more than we get back from the Federal Government, and too frequently, these earmarks traditionally have been taken out of our formula. An earmark for \$7 million for a snowmobile trail in Vermont comes out of Arizona's formula, because Arizona is a donor State. It is simply not right.

In this bill, the amendment I offered, I withdrew it, because my amendment was largely included in the manager's amendment, meaning that earmarks will now be under the line, meaning they will be counted against a State's formula. So, theoretically, an earmark in Vermont will not come out of Arizona's formula.

I worry about that, however. I worry if that will hold in the end when this

bill gets through conference, because if we have that kind of criteria for earmarks in the bill itself, then the criteria which identifies programs of regional and national significance, programs and earmarks that are above the line that will not come out of a State's formula, if they are as loosey goosey as these criteria by which we claim these earmarks are related to transportation, the regular high priority earmarks, then we are going to see our formula dollars taken once again and spent on earmarks where they should not be.

Obviously, Mr. Speaker, what we need is a turn-back bill. It is estimated that it would cost about 3 cents, rather than the 18.4 cents we are currently spending per gallon to maintain the interstate highway system. Instead, we are sending all 18.4 cents to Washington. Some of it makes it back. What does come back, comes back with mandates and stipulations that decrease the value of those dollars that we actually do receive back. It is no wonder that the roads and the infrastructure in this country are suffering so badly.

We need that turn-back bill. I have introduced it; it is awaiting action. In the meantime, certainly, we need to instruct and plead with the conferees on this bill to ensure that earmarks stay below the line, meaning, you can take all the earmarks you want, but they come out of your State's formula, not everyone else's. I urge the conferees to do this.

#### THE PIRATES OF EMINENT DOMAIN

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Tennessee (Mr. DUNCAN) is recognized for 5 minutes.

Mr. DUNCAN. Mr. Speaker, a couple of weeks ago, the U.S. Supreme Court heard oral arguments in the case of *Kelo v. City of New London*, a Connecticut eminent domain case which I think is one of the most important cases it will hear certainly during this term of court and for the future of this Nation.

Nationally syndicated columnist Jeff Jacoby wrote a column about this on February 28, and he quoted Scott Bullock of the Institute for Justice. Listen to what Scott Bullock said, "Every home, church or corner store would produce more jobs and tax revenue if it were a Costco or a shopping mall. If State and local governments can force a property owner to surrender his land so it can be given to a new owner who will put it to a more lucrative use, no home or shop in America will ever be safe again."

Jeff Jacoby asks, "But can government kick people out of their homes or businesses simply to make way for new development?"

No one gets concerned about the taking of property unless it is their property being taken. But this is getting to a very dangerous point in this country

today. The whole history of eminent domain has been in large part taking land from the poor for the use and benefit of the rich and our government bureaucrats.

Government at all levels in this country now owns or controls half the land and continuously wants more. You can never satisfy government's appetite for money or land. On top of this, government at all levels is continually putting more and more restrictions on the land that remains in private ownership. If this trend continues, Mr. Speaker, housing prices will continue to skyrocket. New homes will be built on much smaller pieces of land, and more young families will be crowded into high-rise apartments or townhouses. A very important part of the American dream, home ownership, will slowly fade away for many young people.

Huge parts of East Tennessee, my home area, have been taken over the years from poor or lower-income families who would be rich today if they still had their land.

Columnist Thomas Sowell recently wrote about what he called the "misuse of the power of eminent domain" and how government was taking property from working class people. Columnist Sowell said this, "Those who are constantly denouncing greed almost never apply that term to what the government does, no matter how unconscionable it may be, as the routine misuse of eminent domain has become with its Robin-Hood-in-reverse redistribution of wealth."

Many people do not realize how important private property is to our freedom and our prosperity. As I said a few minutes ago, the Federal Government now owns or controls over 30 percent of the land and State, and local governments and quasi-governmental entities now own another 20 percent. Half the land is in some type of public ownership, and government at all levels keeps taking more and more and putting more and more restrictions on the land that is still private.

Richard W. Rahn, a senior fellow at the Discovery Institute, wrote recently, "Government-owned land is removed from the tax base, so it not only costs everyone to maintain it, but the government also loses tax revenue. When land is removed from private use by government ownership or unreasonable use restrictions, it reduces the supply of land, thus driving up housing prices."

Because of government taking or restricting use of land, more and more people are being forced on to smaller and smaller areas or developments. You can never satisfy government's appetite for land or money, and we desperately need to elect more people at all levels who will pledge to stop taking private property.

As I have said, it is just impossible to satisfy government's appetite for land, and over the last 40 years or so, governments at all levels have been taking

private property at a very alarming rate.

Private property is an extremely important element for both our freedom and our prosperity. It used to be that eminent domain was used mainly to take private property for public use. Now, according to a column in the non-partisan National Journal, condemning private property for private use is a booming national business. The magazine gave several examples, including the taking of Randy Bailey's 27-year-old brake shop in Mesa, Arizona, for a new chain store.

This is happening in thousands of places all over the Nation. Jonathan Rauch wrote in the National Journal, "In the last decade, it has become common for city leaders to define blighted as not developed as nicely as we would prefer or not developed by the people we would prefer. But property is held sacrosanct in America not to protect the rich and powerful, who always make out all right, but to protect the poor from the predations of the rich and powerful."

He quoted in his column an official of the Institute for Justice, a law firm trying to protect private property owners, as saying "this is now a major nationwide problem."

Once again, I will say, I hope we elect more people to Federal, State and local offices who will stop taking so much private property. It sounds good for a politician to create a park, but then when that land is taken off the tax rolls, the taxes for everybody else have to keep going up. We are doing this at a very, very alarming rate, and we need to at least cut back on this.

We cannot take care of all the national parks and State parks and local parks that we have in this country today, and we need to stop taking more, or we are going to ruin our economy, and we are going to take away an important part of the freedom that we have in this Nation.

#### SUPREME COURT NOT FOLLOWING PRECEDENT

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Texas (Mr. GOHMERT) is recognized for 5 minutes.

Mr. GOHMERT. Mr. Speaker, there have been times in this Nation's history when the United States Supreme Court was composed of distinguished jurists who were extremely cautious to avoid inserting the justices' will or desires in place of legitimate decisions and legitimate legislation. That, sadly, is no longer the case.

One of the cornerstones of an effective judicial system is fair and impartial judges and juries. At the top of that system, we have come to the point in our history when a majority of the court has come to think of themselves as error free. However, even considering oneself faultless is an inexcusable fault for a court, any court, but most especially the U.S. Supreme Court.

One does not have to be a judge or a chief justice, as I was, to know that a fundamental principle of the United States common law has been that prior court decisions have priority and control the same situation. It is called following precedent. A huge problem for all of us is that this Supreme Court cannot follow precedent.

For example, this very court ruled only 15 years ago that the sentencing guidelines were constitutional and must be followed. Now they have completely disregarded their very own precedent, even though it was their own.

Additionally, these judges, who consider themselves jurists, act in some ways like the worst form of renegades. They have disregarded the Constitution and its precedents and instead follow the fleeting whims of a day-dreaming child. They cite changing opinions and evolving opinions; not about law that they have researched, oh, no; about various feelings of the general public in America that they have somehow vicariously perceived.

But even that is not all. No. Certain judges of this highest human court in the land have been reciting opinion polls, not based on legally or factually based or scientifically recognized computer protocols or data or scientifically derived information. No, these are based on their feelings of what is going on.

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Here the U.S. Supreme Court sets itself up as the final arbiter of what is or is not accurate polling. The trouble with this is, no court, especially an appellate court, is ever supposed to have been a witness in the case it is trying. Apparently, however, the Supreme Court is the expert pollster for all who come near. Every other expert is required to be cross-examined. It is called being allowed to confront the witnesses against a party. This Court, however, places itself above such fundamental notions, even when the polling the Supreme Court has done consists figuratively of wetting its finger and sticking it into the air to try to discern which way the wind is blowing.

Though the Court has become a witness, an investigator, a pollster, a wind gauge, the Supreme Court denies the fundamental right of the parties to have due process and question the witnesses against it. The Supreme Court allows itself to go out and poll and investigate or report behind the scenes without anyone knowing. It hides behind the Constitution at the very time it is depriving the parties of their rights under the same document.

As Congressmen, we are out in our districts constantly talking, questioning, never forgetting that a constant campaign is ongoing. A good Congressman knows what his district thinks. So how dare you, Supreme Court, try to sit in Washington and lecture us on what is or is not the will of the American people. We listen to the

people. We go home, and we live with the people. We get e-mails and calls and letters and visits from the people, and we do not hide in an ivory tower.

How dare you tell us about the changing will of the people. You are the last to have any idea of what the real people's attitudes are. You go try running to get elected back to the Supreme Court, and then you can come talk to us about the changing opinions in America. If you ever had to run for office, you would find out ever so quickly just what the opinion and will of the American people are.

At a recent session of the Supreme Court in which the parties argued their respective positions, one Justice, in a bit of high-brow effort to sound both intellectual and computer literate said, as I understood him, that he had been on the Internet looking for more facts about the case or about the 17 monuments involved in that case. He is so far removed from the legal profession that he does not even realize how morally wrong he is acting, or he has such great contempt for the need of a fair and partial judiciary that he is killing it and its former credibility.

Such a judge should remove himself and allow only those who are not self-made witnesses to rule. If any juror in a local case or a judge in a local case were to go out and investigate the facts of the case, the case would be thrown out. There would be a mistrial. It is one thing for a judge to investigate the law of precedent or legislative history; it is quite another for him to be a fact witness. Shame on you.

In the Supreme Court's decision regarding juvenile eligibility for the death penalty, the Court showed not only that it could not follow precedent, it could not even follow its own precedent of the same Court. The majority of judges have caused the system to be so out of whack that it flips its own rulings to and fro in a whimsical sort of destruction of civilized and constitutional jurisprudence. People must have stability through court decisions, yet we are forced to have one whose constant reversals of itself remind one more of the policy shifts of a nation that has a coup every year or so than a nation of laws. This particular Nation deserves much better for its educated people.

It should also be noted by any jurist worth his or her salt that when a court continuously cites changing opinions of the populous or a national consensus, or an evolving national standard, it is saying that the issue at hand is clearly one for the legislature. It is the legislature that has to decide issues that are based on the will or the consensus of the people, and not the judiciary.

So here is a rule of thumb: if you find yourself as a court sometime trying to discern the will of the people internationally or nationally, then leave it alone. It is not your business. It is the business of the legislature.