

**The Honorable Jeff Flake**  
**Hearing on H.R. 1642 – The Obligation of Funds**  
**Transparency Act**

**Senate Committee on Homeland Security and**  
**Governmental Affairs**

March 16, 2006

I appreciate this opportunity to testify on behalf of my and Senator McCain's legislation, the Obligation of Funds Transparency Act.

This legislation takes the following steps to rein in wasteful spending, and address what I believe is at the heart of the ethical and lobbying scandals we are faced with today: lack of transparency and accountability in the handling of taxpayer money:

- Our legislation requires that earmarks be included as part of the legislative text of a bill, rather than as part of a conference or committee report.
- H.R. 1642 does not prevent Members of the House and Senate from seeking earmarks. However, it brings much-needed accountability and transparency to the earmarking process.
- By requiring that earmarks be included in the legislative text, Members of Congress would have an opportunity to review the earmarks contained in an appropriations bill before having to vote on it.
- By including earmarks in the legislative text, this bill brings accountability to the earmarking process by allowing Members of Congress to challenge any earmark by offering an amendment to strike it.
- Members of Congress requesting earmarks would be faced with the prospect of having to defend their earmark request on the House and Senate floors. This would reduce the number of egregious earmarks.
- H.R. 1642 would also lessen the power of the House and Senate Leadership and the Appropriations Committee over the earmarking process. This would free up rank-and-file Members to vote their conscience without fear of having their earmarks stripped from appropriations bills.
- In addition, this legislation would curtail earmarks that originate in conference. This bill would require a three-fifths vote of the members of the House in order to consider a conference report that contains new earmarks that neither body has seen.

- It is no secret that earmarks are out of control. In fact, earmarks have skyrocketed under Republican leadership. Since 1994 to 2005, the number of earmarks has gone from just under 2,000 to 14,000.
- This is unprecedented in Congressional history, and a far cry from the goals and ideals of the Contract with America.
- Some have said earmarks are a Constitutional right. Joseph Story, a Supreme Court Justice in the 1800's and renowned Constitutional scholar wrote in *Commentaries on the Constitution* that:

"The true test is, whether the object be of a local character, and local use; or, whether it be of general benefit to the states.

If it be purely local, congress cannot constitutionally appropriate money for the object.

But, if the benefit be general, it matters not, whether in point of locality it be in one state, or several; whether it be of large, or of small extent."

- Congress has the authority, and the duty, to ensure that expenditures of the taxpayer's money promote the general welfare, not solely local welfare.
- Congress should take a look in the mirror and ask itself: does funding an indoor rainforest in Iowa, a cowgirl hall of fame in Texas, a teapot museum in North Carolina, a zoo exhibit in Illinois, or maple research in Vermont benefit the national interest?
- Lobbyists, members, earmarks, and campaign contributions have become inextricably linked. How many more news stories are we likely to see questioning a member of Congress because he or she requested money for a project, and received campaign contributions from the entity that requested the project?
- Congress needs transparency and accountability. Only when we have sunshine in the earmarking process, when the earmarks are in the bill text and cannot originate in conference, can we have transparency.
- Only when any member of the House or Senate can offer an amendment to strike an earmark they believe is wasteful, and the sponsor has to defend the project on its merits, can we have accountability.
- I thank the Chairman and would welcome any questions.