



Investigation of House FY 2012 National Defense Authorization Act Earmarks

A thorough analysis of the House Armed Services Committee's attempt
to circumvent the earmark ban

Report Prepared by the Office of U.S. Senator Claire McCaskill • mccaskill.senate.gov/ndaa

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Executive Summary

One of the first policy actions taken by the new Republican majority in the House of Representatives at the start of the 112th Congress was putting in place a moratorium on earmarking – the practice of Members of Congress politically directing millions of dollars to favored entities in their districts. Earmarks had won the ire of the American people, fed up with the wasteful – sometimes corrupt – spending in Washington and the arrogance of lawmakers.

Boldly flaunting this new moratorium, the Republican Chairman of the House Armed Services Committee (Committee) instituted a system during the Committee’s consideration of H.R.1540, the Fiscal Year 2012 National Defense Authorization Act, designed specifically to enable the Committee’s members to earmark in contravention of the Republican earmark moratorium.

This report details the system the Committee Chairman instituted to enable Committee members to circumvent the earmark ban. Pursuant to a full review of each of the 225 amendments considered and passed by the Committee during its markup of H.R. 1540, the report uncovers that an astonishing 115 – more than half – were earmarks. These 115 earmarks amounted to \$834 million in federal spending. Thirty-one additional amendments were found to have the appearance of being earmarks, but sufficient evidence could not be identified to make a conclusive determination. Four of the amendments were determined to be programmatic increases and not considered to be earmarks.

A total of 40 earmarks were added by Republican members of the Committee. Of those 40 earmarks, 20 were added by *freshman* House Republican lawmakers, many of whom had campaigned on the promise to change Washington, including bringing an end to earmarking. House Democrats on the Committee, who were subject to the Republican earmark ban but had not instituted a ban of their own, were found to have added 75 earmarks to the bill.

Under the system put in place by the Committee Chairman, members of the Committee were directed to submit requests for increased authorizations in defense spending accounts ahead of the Committee’s consideration of H.R.1540, much as members had done in the past when requesting traditional earmarks. However, instead of the Committee adding funds for the earmark projects to the base text of the bill, as would customarily take place, the Committee prepared amendments for each earmark that the members then offered during the mark-up of H.R. 1540. A special fund was created by the Chairman to allow the Committee members to easily offset their earmark spending, as required by Committee rules. These amendments were subsequently adopted in large groups with little or no debate. Members were not required to disclose their requests or disclose the entity they were seeking to direct funding to, as required by House rules on earmarks in past years.

A review of the amendments offered by Republican lawmakers on the Committee was significantly handicapped because most Republican lawmakers had removed public records of their past earmark requests from their websites. Public disclosure of earmark requests had been required by the House Appropriations Committee in the last Congress when earmarking was permissible. In contrast, Democratic lawmakers had generally not acted to limit the transparency of their past earmark requests. The information that remains on their websites significantly advanced the ability to tie their amendments to H.R. 1540 to past earmark requests.

This analysis is based on publically available information including the text of the amendments, the name of the defense account for which the members sought to increase funds, previous earmark requests made by the member or a member of their delegation, and press releases issued by the member offering the amendment.

General Background on Congressional Earmarking

Earmarks began to appear regularly in the 1980s. According to Taxpayers for Common Sense, a fiscal group which maintains a database of earmarks included in legislation passed by the Congress, the 1980 defense appropriations bill included 62 earmarks. By 2006, the number of earmarks in the defense appropriations bill had increased to 2,837. The year prior set the record for total earmarking. In 2005, Congress included 13,997 earmarks in legislation valued at a staggering \$27.3 billion.

With this rapid increase in earmarking in Congress and mounting concerns that the earmarking process had become a vehicle for cronyism, corruption and fraud, waste and abuse, in 2007, both the House and the Senate, under new Democratic leadership, established new rules to increase the transparency of earmarking.¹ Generally, the new rules provided for the public disclosure of approved earmarks and the identification of their congressional sponsors.² The rules also established a formal definition of an earmark.³

Specifically, Senate Rule XLIV and House Rule XXI, clause 9, newly defined a congressionally directed spending item as “a provision or report language primarily included at the request of a Representative, Delegate, the Resident Commissioner or Senator [or just Senator under Senate rule] 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.” The rule does not apply to spending through a statutory or administrative, formula-driven or competitive award process.

In addition to the changes to Congressional rules, the House and Senate Appropriations Committees also worked to increase the transparency of the earmarking process. In 2009, the two committees jointly announced that they would require members requesting earmarks to post information regarding their earmark requests on their official websites. The new Appropriations Committee rules required Members and Senators to post the information at the time they made a request for an earmark and to include among the information the purpose of the earmark and why it would be a valuable use of taxpayer funds.⁴

¹ In 2005, the Senate targeted the “Bridge to Nowhere,” a \$223 million project sponsored by former Alaska Senator Ted Stevens to connect the Alaskan city of Ketchikan to an island inhabited by fifty people. In 2006, former California Congressman Randy “Duke” Cunningham was sentenced to eight years in prison for bribery after using his position as a member of the House Appropriations Committee to steer over \$70 million in earmarks to defense contractors.

² H.Res. 6, *Adopting the Rules of the House of Representatives for the One Hundred Tenth Congress*, (Jan. 5, 2007); H.Res. 491, *Providing for Earmark Reform* (June 18, 2007). H.Res. 491 was incorporated into House Rule XXI, clause 9, in 2009, after the House adopted the rules package for the 111th Congress in 2009; Pub. L. 110-81, *Honest Leadership and Open Government Act of 2007* (Sept. 14, 2007). Senate Rule XLIV was adopted through the *Honest Leadership and Open Government Act of 2007* (P.L. 110-81).

³ Under the rules, an earmark is officially termed a “congressionally directed spending item.”

⁴ *House and Senate Appropriations Committees Announce Additional Reforms in Committee Earmark Policy* (January 6, 2009) (online at www.democrats.appropriations.house.gov/images/stories/pdf/Obey-InouyeRelease01-06-09.pdf) (accessed November 17, 2001)

Despite these changes, political pressure mounted on members of Congress to end the practice of earmarking. On November 16, 2010, the Senate Republican conference voted to put in place an earmark ban for its members.⁵ On November 18, 2010, House Republicans also adopted an earmark ban.⁶ This ban effectively blocked all earmarks in the House because Republican's controlled the House.⁷ In his January 25, 2011, State of the Union Address, President Obama stated that he would veto any bills that included earmarks. Finally, on February 1, 2011, the Democratic-controlled Senate Appropriations Committee adopted a two-year earmark ban which would apply to all Senators.⁸ Accordingly, both the House and Senate have in place earmark bans for the 112th Congress.

House Armed Services Committee Effort to Circumvent the Earmark Ban

This report exposes a bold effort by Republican leaders on the Committee to circumvent the new earmarking ban. In May 2011, during the Committee's consideration of H.R. 1540 for Fiscal Year 2012, Chairman Howard "Buck" McKeon (R-CA) implemented a new process to provide the members of his committee the ability to earmark and to thereby overcome the earmark ban in place in the House.

As described by Chairman McKeon, the new process was designed to allow its members to submit requests for increased authorizations in defense spending accounts ahead of the Committee's consideration of H.R. 1540, much as committee members had done in the past when submitting traditional earmark requests.⁹ Unlike past practice, however, the Committee did not add earmarked authorizations to the original text of the legislation, but rather prepared amendments for members to offer during the Committee markup of H.R. 1540 to increase the funding for their desired earmark projects. Further, under this new process members did not have to publicly disclose the requests they made to the committee for earmarks, making it decidedly less transparent than earmarking under the rules instituted in the previous Congress.

To ensure that committee members would have easy access to funds to offset the earmarks they sought,¹⁰ the committee created a special fund, which it named the Mission Force Enhancement Transfer Fund (MFET Fund), by making cuts to other defense programs or

⁵ *Senate Republicans Adopt Voluntary Earmark Ban*, Reuters (Nov. 16, 2010) (online at <http://www.reuters.com/article/2010/11/16/us-usa-congress-earmarks-idUSTRE6AE4BQ20101116>) (accessed November 17, 2011).

⁶ *House GOP Unanimously Adopts Earmark Ban*, The Hill (Nov. 18, 2010) (online at <http://thehill.com/blogs/blog-briefing-room/news/129919-house-gop-unanimously-adopts-earmark-ban>) (accessed November 17, 2011).

⁷ No such ban was adopted by House Democrats.

⁸ *Senate Dems Give In On Earmark Ban*, Politico (Feb. 1, 2011) (online at <http://www.politico.com/news/stories/0211/48623.html>) (accessed November 17, 2011).

⁹ *Guidelines for HASC Legislative Proposals for FY12 NDAA*. (online at http://armedservices.house.gov/index.cfm/files/serve?File_id=565ff97f-05c1-41bc-9d33-d2be4e56df49) (accessed November 17, 2011).

¹⁰ Committee rules require that any member who seeks to increase funding in an account offset that funding with a decrease in funding in another account. This requirement has traditionally represented the most difficult hurdle to overcome when members seek to increase funds for projects they favor.

accounts.¹¹ This account, which was not dedicated to any clear defense spending priorities as are other accounts in the NDAA, was then available to offset the increases in spending sought in the amendments offered by members of the Committee. To complete the process, those amendments the Committee notified its members would be acceptable were offered, generally in large blocks, during the Committee markup, considered with limited or no debate and quickly passed, generally by voice vote. In effect, the Committee carried out the traditional process of earmarking, changing only the timing and process to add earmarks to the legislation, but little else.

Following the Committee's markup of H.R. 1540 on May 11, 2011, Senator McCaskill raised concerns about the apparent earmarking, alleging in a letter to Chairman McKeon sent on May 26, 2011, that the Committee had acted to purposefully circumvent the ban on earmarks in place in the House and Senate.¹² McCaskill announced that she would initiate a thorough analysis of the amendments added in the Committee markup of H.R. 1540.¹³

Upon initiating her review of the Committee's activities, Senator McCaskill discovered that the Committee had used a similar mechanism to facilitate earmarking of military construction (MilCon) projects. During the Committee's markup of H.R. 1540, Congressman Forbes (R-VA) offered an amendment that struck over \$322 million from various MilCon accounts in the underlying bill and put the money into a "General Reduction Pool" within the MilCon account. This account was then used to offset those amendments which increased funding for other military construction projects sought by individual Committee members.

Methodology

To demonstrate how the amendments offered during the Committee's May 2011 markup of H.R. 1540 operated as traditional earmarks, Senator McCaskill's office reviewed the text of each amendment offered during the markup, the accounts each amendment impacted, and publically available information about past earmark requests made by Members of Congress and Senators.

Two-hundred twenty-five (225) amendments were adopted by the Committee during the Committee's mark-up of H.R. 1540. McCaskill's office narrowed its focus to only those amendments that increased the amount of spending in a program or account, since earmarks involve directed spending.¹⁴ This left 150 amendments for review.

In order to establish whether or not these 150 amendments adopted by the Committee functioned as an earmark, McCaskill's office reviewed a broad array of sources, including:

1. Previous earmark requests made by the offering member and posted on the member's website as required by the House Appropriations Committee.

¹¹ *Add-on to One Is an Earmark to Another*, National Journal (May 18, 2011) (online at http://www.nationaljournal.com/member/daily/add-on-to-one-is-an-earmark-to-another-20110518?mrefid=site_search) (accessed November 17, 2011)

¹² Letter from Senator Claire McCaskill to Chairman McKeon and Ranking Member Smith (May 26, 2011) (online at http://mccaskill.senate.gov/files/documents/pdf/2011-05-26_McCaskill_letter_McKeon_Smith.pdf) (accessed November 17, 2011).

¹³ *McCaskill Restarts Earmark Debate*, Roll Call (May 31, 2011) (online at http://www.rollcall.com/issues/56_130/McCaskill-Restarts-Debate-Earmarks-206053-1.html) (accessed November 17, 2011)

¹⁴ 76 amendments did not involve funding.

2. Previous earmarks requests made by the offering member and identified in past defense authorization and appropriations bills considered by both the House of Representatives and/or the Senate.
3. Previous earmark requests included in publically available earmark databases including those maintained by the non-profit organizations Taxpayers for Common Sense¹⁵, OpenSecrets¹⁶, LegiStorm¹⁷, and Washington Watch¹⁸.
4. Previous congressional budget additions, as identified in Department of Defense (DoD) budget materials, made to the same DoD program elements for which the amendment increased funding.¹⁹
5. Press releases issued by the offering member after the Committee's approval of the bill.
6. Reports issued by mainstream media outlets.

Using the information acquired from the sources listed above, McCaskill's office obtained adequate information to determine a likely recipient of the funds provided for by each of the 150 amendments. Several scenarios arose repeatedly and led McCaskill's office to generally conclude an amendment operated as an earmark, although rarely did one factor alone lead to the conclusion that an amendment represented earmarking. The factors included:

- When an amendment was similar to a previous earmark request made by a Member of Congress or Senator for which there was a public record.
- When an amendment could be clearly linked to an entity near or within the offering member's district.
- When the offering member's press communications indicated his or her amendment would benefit a local interest.
- When a strong connection could be made between an entity within or near the offering member's district and either the purpose of the amendment or the program element receiving additional funds.

¹⁵ Online at <http://www.taxpayer.net>

¹⁶ Online at <http://www.opensecrets.org>

¹⁷ Online at <http://www.legistorm.com>

¹⁸ Online at <http://www.washingtonwatch.com>

¹⁹ Online at <http://comptroller.defense.gov/Budget2012.html>. A program element consists of a series of numbers and letters that DoD uses to identify specific programs. They serve as a shortcut and are used in place of program names. Each amendment offered by a member of the Committee refers to a specific line item in the "Funding Tables" of the underlying bill. These line items are associated with specific program elements; the same program element the DoD uses to refer to specific program accounts. By identifying the program element the amendment is associated with, one can locate the same program account within the DoD budget documents to get more information about the program and to determine if similar congressional additions had been added to the account in previous years.

Analysis and Findings:

In the McCaskill office's review of the 150 amendments adopted during the committee's mark-up that carried the appearance of being an earmark, 115 of those amendments were determined to be an earmark, amounting to 76 percent of the amendments reviewed. The funding requested in these 115 amendments could be linked to an entity within or near the offering member's district. In the case of 85 of these amendments, the funding requested could also be linked to a previous publically disclosed earmark request by the offering member or a member of the same delegation.

For 31 of the 150 amendments, the McCaskill office was unable to determine, after carrying out its research, that the amendments were clearly an earmark. The McCaskill office makes no conclusion, however, as to whether these amendments may, in fact, have been earmarks. Instead, based on the publically available information, the office was unable to reach a strong conclusion. Four of the amendments were determined to be programmatic increases and not considered to be earmarks.

Accordingly, of the 225 total amendments to H.R. 1540 adopted by the Committee, the McCaskill office found just over half (115) were dedicated to adding earmarks to the bill.

Of the 115 amendments that were determined to have a likelihood of being an earmark, 75 were submitted by Democratic members of the Committee and 40 were submitted by Republican members of the Committee.

The disproportion between the number of Democratic amendments that were determined to be an earmark and the number of Republican amendments that were determined to be an earmark may reflect a disparity in how members of the two parties have handled maintenance of past earmark requests. Of the 25 Democratic members who offered at least one of the 150 amendments reviewed, all but two have kept past earmark funding requests posted on their websites. In contrast, of the 23 Republican members who offered at least one of the 150 amendments reviewed, only six have continued to post past earmark funding requests on their websites.²⁰ Republican members appear to have more systematically acted to remove records of their past earmark requests from public access, significantly reducing the ability to link new earmark requests to past practice.

The disproportion may also reflect Republican control of the Committee. Given that the majority is charged with writing and submitting the base bill for consideration by the full Committee, the base bill likely addressed many of the Republican committee members' priorities prior to the mark-up; leaving many of the Democratic changes to come through the amendment process.

Of significant note, 24 of the amendments adopted and reviewed in this report were offered by Republican members who were elected in 2010. Of those 24 amendments, 20 were determined to be an earmark. Many of these freshman Republican lawmakers were elected to Congress after

²⁰ In some cases, this may be due to the fact that several of the members who offered amendments were recently elected to Congress in 2010 and therefore did not have any prior funding requests. However, this was not the case in all instances.

making a pledge to stop wasteful spending, including earmarks. In fact, the House Republican ban on earmarks was passed in the Republican caucus immediately following the election.

The 115 amendments that were determined to be an earmark amounted to nearly \$834.3 million in spending. \$425.5 million of this amount is attributable to amendments offered by Republican members of the Committee. Just over \$408 million of this amount is attributable to amendments offered by Democratic members of the Committee. On average, Republican amendments were valued at \$10.6 million, while Democratic amendments averaged \$5.4 million in value.

Case Studies:

To illustrate the methodology utilized in this study and the findings, eight individual case studies are detailed below. These case studies represent a broad sampling of the amendments reviewed in carrying out this study. The case studies look at four amendments offered by Democratic members of the Committee and four amendments offered by Republican members of the Committee. The eight amendments are diverse in dollar figure, geographical location and program account.

Case Study One:

Congressman Duncan Hunter, Jr., a Republican who represents the 52nd Congressional District of California, offered an amendment during the Committee markup that added \$5 million to the Army's account for Research, Development, Test and Evaluation for Night Vision Advanced Technology.²¹ According to the amendment description, the funding was specifically "for the development and fielding of a solution for helicopter 'brownout' situational awareness."²² This amendment directs funds to Army Program Element (PE) 0603719A that were offset from funds included in the MFET Fund.

In FY 2009, former Congressman Duncan Hunter, Sr., who represented the 52nd district of California prior to his son, secured a \$1.6 million earmark in the FY2009 defense appropriations bill for the development of a "brownout situational awareness sensor" for TREX Enterprises, an aerospace company located in San Diego, CA.²³ That same year, he also won inclusion of a \$4.5 million earmark for the same entity for "brownout situational awareness sensor" in the House-passed version of the FY09 defense authorization bill.²⁴

According to the list of earmark requests posted on Congressman Hunter, Jr.'s, website, he requested and secured an identical earmark in the FY 2010 defense authorization bill for a "brownout situational awareness sensor," this time in the amount of \$3 million, also for TREX

²¹ Online at <http://mccaskill.senate.gov/ndaa/hasc-amendment-texts/EmergingThreatsandCapabilitiesAmendments.pdf>.

²² Id.

²³ Complete List of Earmarks in Final FY2009 Appropriations Bills, Taxpayers for Common Sense (online at <http://www.taxpayers.net>) (accessed November 20, 2011).

²⁴ Report of the Committee on Armed Services House of Representatives on H.R.5658 at p.608.

Enterprises.²⁵ He also secured a \$2.4 million earmark for TREX in the FY 2010 defense appropriations bill, directed to Army PE 0603710A, the same PE as the amendment in question.²⁶

Given the language included in Congressman Hunter's amendment to H.R. 1540 specifying the purpose of the funds sought along with the common Program Element between his amendment and past earmark requests, the amendment to H.R. 1540 clearly operates to renew the same earmark for TREX Enterprises as sought in past years and therefore operates in contravention of the current earmark ban.

Case Study Two:

Congressman Rob Andrews, a Democrat who represents the 1st Congressional District of New Jersey, offered an amendment during the Committee markup that added \$3 million to the Army's account for Research, Development, Test and Evaluation for communications advanced technology.²⁷ According to the description of this amendment, it added \$3 million to Program Element (PE) 0603006A for Command, Control, Communications Advanced Technology. The DoD budget description for this PE states that it "provides applications for enhanced intelligence, reconnaissance, surveillance, target acquisition, position/navigation, missile warning, ground-to-space surveillance and command and control capabilities."²⁸ The funding increase in this amendment was offset from funds included in the MFET Fund.

In fiscal years 2008, 2009, and 2010, Congressman Andrews, along with several other members of the New Jersey delegation, requested an earmark for the Applied Communications and Information Networking (ACIN) Technology Center located in Camden, NJ, at Drexel University.²⁹ Camden, NJ, and Drexel University are located in Congressman Andrews' district. All three of these previous requests ranged between \$3 million and \$4 million. Congressman Andrews also listed on his website an FY2011 earmark request to provide \$4 million to ACIN.³⁰ According to the description that accompanied the FY2011 request, "ACIN focuses on high value military systems which employ rapidly advancing Command, Control, Communications, Computers, Intelligence, Surveillance and Reconnaissance technologies and provides innovative

²⁵ Hunter FY10 Funding Initiatives (online at http://hunter.house.gov/index.php?option=com_content&view=article&id=124:fy10-approps&catid=35:constituent-services)(accessed November 20, 2011); Conference Report, National Defense Authorization Act for Fiscal Year 2010 at p.1186 (October 7, 2009).

²⁶ Complete List of Earmarks in Final FY2010 Appropriations Bills, Taxpayers for Common Sense (online at <http://www.taxpayers.net>). Department of Defense Fiscal Year (FY) 2012 Budget Estimates, Research, Development, Test & Evaluation, Army. Vol.3. at pp.241-242. (online at <http://asafm.army.mil/Documents/OfficeDocuments/Budget/BudgetMaterials/FY12/rforms//vol3.pdf>) (accessed November 20, 2011).

²⁷ Online at <http://mccaskill.senate.gov/ndaa/hasc-amendment-texts/EmergingThreatsandCapabilitiesAmendments.pdf>

²⁸ Department of Defense Fiscal Year (FY) 2012 Budget Estimates, Research, Development, Test & Evaluation, Army. Vol.3. pp.137-142. (online at <http://asafm.army.mil/Documents/OfficeDocuments/Budget/BudgetMaterials/FY12/rforms//vol3.pdf>) (accessed November 20, 2011)

²⁹ Online at http://www.legistorm.com/earmarks/details/member/107/Rep_Rob_Andrews_NJ.html (accessed November 20, 2011).

³⁰ Congressman Rob Andrews FY2011 Appropriations Requests. (online at <http://www.house.gov/andrews/appropriations.shtml>) (accessed November 20, 2011).

application of these technologies.”³¹ This description is nearly identical to the Army’s description for PE 0603006A, which is where Congressman Andrews’ amendment to H.R. 1540 directed its funding.

In addition, according to previous NDAA committee reports and DoD budget documents, Congressman Andrews’ previous earmark requests for ACIN in FY2009 and FY2010 were directed to Army PE 0603008A.³² This PE, according to DoD budget documents, is coordinated directly with PE 0603006A, the PE for which funds are directed under Congressman Andrews’ amendment to H.R. 1540.³³

Lastly, in 2007, the Drexel University Office of Government and Community Relations’ monthly newsletter featured a small piece on ACIN discussing the merits of the project and the need to ensure the continuation of Congressional earmarks for ACIN.³⁴

Given the similarities between the descriptions of Congressman Andrews’ previous earmark requests for ACIN and the program element receiving the directed funds in H.R. 1540, along with the expressed desire by Drexel University to continue earmarks for the ACIN program, the funding provided by Congressman Andrews’ amendment appears to be directed to ACIN and therefore operates as a traditional earmark in violation of the current earmark ban.

Case Study Three:

Congressman Morris “Mo” Brooks, a Republican who represents the 5th Congressional District of Alabama, offered an amendment to H.R. 1540 to add \$2.5 million to the Army’s Research, Development, Test and Evaluation account for aviation advanced technology.³⁵ The purpose of the amendment was for the development and demonstration of autonomous cargo for rotorcraft unmanned aerial vehicles.³⁶ The amendment directs the funds to Army PE 0606003A that were offset from funds included in the MFET Fund.

In FY2010, Congressman Robert Aderholt, who represents the 4th Congressional district of Alabama, and Senator Richard Shelby, also of Alabama, secured an identical earmark for \$1.28 million for Advanced Optical Systems – a Huntsville, AL, company – for "autonomous cargo acquisition for rotorcraft unmanned aerial vehicles."³⁷ The funds for this earmark were directed to

³¹ Id.

³² Report of the Committee on Armed Services House of Representatives on H.R.5658, the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009, at p.607 (online at <http://www.gpo.gov/fdsys/pkg/CRPT-110hrpt652/pdf/CRPT-110hrpt652.pdf>); Department of Defense Fiscal Year 2012 Budget Estimates, Research, Development, Test & Evaluation, Army. Vol.3. at p.159. (online at <http://asafm.army.mil/Documents/OfficeDocuments/Budget/BudgetMaterials/FY12/rforms/vol3.pdf>) (accessed November 20, 2011).

³³ Department of Defense Fiscal Year (FY) 2012 Budget Estimates, Research, Development, Test & Evaluation, Army. Vol.3. p.137.

³⁴ Drexel, U.S. Army Team Up on Research Projects, Drexel-At-Large (April 2007).

³⁵ Online at <http://mccaskill.senate.gov/ndaa/hasc-amendment-texts/TacticalAirandLandForcesAmendments.pdf>.

³⁶ Id.

³⁷ Complete List of Earmark in Final FY2010 Appropriations Bills, Taxpayers for Common Sense (online at <http://www.taxpayers.net>); Fiscal Year 2010 Department of Defense Appropriations Act, Conference Report (online at <http://thomas.loc.gov/cgi-bin/query/Z?r111:H16DE9-0030>:) (accessed November 21, 2011).

PE 0603003A.³⁸ Huntsville, AL, where Advanced Optical Systems is located, is within Congressman Brooks' district.

In addition, according to the Advanced Optical Systems website, the company recently demonstrated "the first autonomous sling-load cargo pick-up and delivery using a customer's unmanned aerial system."³⁹

Given the language included in Congressman Brooks' amendment regarding the purpose of the funds and the common program element between this request and the past earmark request for identical purposes, this request appears intended to benefit the same recipient of the past earmark, Advanced Optical Systems and therefore operates as a traditional earmark in contravention of the current earmark ban.

Case Study Four:

Congresswoman Kathy Castor, a Democrat who represents the 11th Congressional District of Florida, offered an amendment to add \$2 million to the Army's account for Research, Development, Test and Evaluation for University Research Initiatives.⁴⁰ The text of the amendment states that the additional funding is intended for the "development of informatics tools to support clinical care and research." The funding is directed to PE 0601103A and was offset from funds included in the MFET Fund.

In the FY2010 defense appropriations and authorizations requests listed on her website, Congresswoman Castor requested \$2.5 million for the University of South Florida's College of Medicine to "develop an electronic medical records system."⁴¹ Additionally, in the FY2011 defense appropriations requests also listed on her website, Congresswoman Castor made a nearly identical request to "continue funding for the expansion of a Health Informatics Initiative."⁴² The University of South Florida is located in Tampa, Florida, which is within Congresswoman Castor's district.

Also listed on Congresswoman Castor's website is her May 12, 2011, press release which lauds her efforts to amend H.R.1540. Specifically, the release states that her amendment for healthcare informatics tools will likely benefit the University of South Florida's College of Medicine.⁴³

³⁸ Department of Defense Fiscal Year (FY) 2012 Budget Estimates, Research, Development, Test & Evaluation, Army. Vol.3. at p.81. (online at <http://asafm.army.mil/Documents/OfficeDocuments/Budget/BudgetMaterials/FY12/rforms//vol3.pdf>) (accessed November 23, 2011).

³⁹ Online at <http://www.aos-in.com/index.php/capabilities/auto-slingload> (accessed November 21, 2011).

⁴⁰ Online at <http://mccaskill.senate.gov/ndaa/hasc-amendment-texts/EmergingThreatsandCapabilitiesAmendments.pdf>.

⁴¹ Online at <http://castor.house.gov/ConstituentServices/defensefundingrequests.htm>; and <http://castor.house.gov/ConstituentServices/defenseauthfundingrequests.htm> (accessed November 29, 2011).

⁴² Online at <http://castor.house.gov/communityrequests/approps/2011defense.htm> (accessed November 29, 2011).

⁴³ Online at <http://castor.house.gov/News/DocumentSingle.aspx?DocumentID=241031> (accessed November 29, 2011).

Given the language included in Congresswoman Castor’s amendment regarding the purpose of the funds and the remarkable similarities between this request and the past earmark requests for identical purposes, this request appears intended to benefit the same recipient of the past earmark, the University of South Florida’s College of Medicine, and therefore operates as a traditional earmark in violation of the current earmark ban.

Case Study Five:

Congressman Bobby Schilling, a Republican who represents the 17th Congressional District of Illinois offered an amendment to add \$2.5 million to the Army’s Research, Development, Test and Evaluation account for Weapons and Munitions Advanced Technology.⁴⁴ The text of the amendment states that the purpose of the increased funding is for “the development of innovative manufacturing techniques and process for munitions and weapons systems.”⁴⁵ These funds are directed to PE 0603004A and were offset from funds included in the MFET Fund.

In FY2010, Senator Charles Grassley (R-IA)⁴⁶ and former Congressman Phil Hare (D-IL), who previously held the seat now held by Congressman Schilling, joined in an earmark request to add over \$5 million to the Quad City Manufacturing Laboratory at the Rock Island Arsenal in Rock Island, IL.⁴⁷ This earmark request sought to direct funds to PE 0603004A, the same PE identified in Congressman Schilling’s amendment.⁴⁸

The same earmark request for the Quad Cities Manufacturing Laboratory appears again on Senator Grassley’s website as a request made in FY2011. It was funded in the Senate-passed version of S. 3800, the Department of Defense Appropriations Bill for Fiscal Year 2011, where the earmark was attributed to Senators Grassley, Durbin and Harkin.⁴⁹

⁴⁴ Online at <http://mccaskill.senate.gov/ndaa/hasc-amendment-texts/EmergingThreatsandCapabilitiesAmendments.pdf>

⁴⁵ Id.

⁴⁶ The Rock Island Arsenal is just across the Iowa border in Illinois and employs a substantial number of Iowans.

⁴⁷ Quad City Manufacturing Laboratory, Earmarks Received, Fiscal Years 2008-2010, LegiStorm (online at http://www.legistorm.com/earmarks/details/organization/5909/Quad_City_Manufacturing_Laboratory/page/1/sort/amount/type/desc/year/all.htmlhttp://www.legistorm.com/earmarks/details/organization/5909/Quad_City_Manufacturing_Laboratory/page/1/sort/amount/type/desc/year/all.html) (accessed November 21, 2011).

⁴⁸ Department of Defense Fiscal Year (FY) 2012 Budget Estimates, Research, Development, Test & Evaluation, Army. Vol.3. at p.96. (online at <http://asafm.army.mil/Documents/OfficeDocuments/Budget/BudgetMaterials/FY12/rforms//vol3.pdf>) (accessed November 21, 2011).

⁴⁹ Senator Charles Grassley, Fiscal Year 2011 Department of Defense Appropriations Requests (April 9,2010)(online at <http://www.grassley.senate.gov/about/upload/Appropriations-09-20-10-Defense-projects-after-committee-markup.pdf>); S.3800, Department of Defense Appropriations Bill, 2011, Committee on Appropriations Report, at p.252 (<http://www.gpo.gov/fdsys/pkg/CRPT-111srpt295/pdf/CRPT-111srpt295.pdf>) (accessed November 21, 2011).

In addition, after the Committee's consideration of H.R. 1540, the *Columbus Dispatch* featured an article stating that Congressman Schilling's amendment was intended to provide funding to the Quad Cities Manufacturing Lab.⁵⁰

Given the language included in Congressman Schilling's amendment regarding the purpose of the funds and the common program element between this request and past earmark requests for nearly identical purposes, it would appear that Congressman Schilling's amendment to H.R. 1540 operated as a traditional earmark to direct funding to the Quad City Manufacturing Lab in violation of the current earmark ban.

Case Study Six:

Congresswoman Colleen Hanabusa, a Democrat who represents the 1st Congressional District of Hawaii, offered an amendment to H.R. 1540 to add \$2.5 million to the Navy's Research, Development, Test and Evaluation account for Warfighter Sustainment Applied Research.⁵¹ The amendment text states it is intended to "support research into corrosion control and anti-biofouling coatings."⁵² The funds are directed to PE 0602236N and were offset from funds included in the MFET Fund.

According to DoD budget documents, a previous congressional earmark request for "Managing and Extending DoD Asset Lifecycles" was added to this same PE in FY2010 for approximately \$1.6 million.⁵³ The budget description for this FY2010 earmark states that it was intended to "contribute to DoD's knowledge base to improve mission capability rates while decreasing life cycle costs by providing an examination and evaluation of corrosion-resistant hybrid coatings for facilities and aircraft."⁵⁴ The language in this description for the FY2010 earmark is very similar to the description of the amendment Congresswoman Hanabusa offered to H.R. 1540. Both reflect that the amendments seek to fund research into corrosion control through corrosion resistant coatings.

The FY2010 congressional earmark request, referenced above, is traceable back to Senator Daniel Akaka (D-HI) and former Congressman Neil Abercrombie (D-HI), who previously held the seat now occupied by Congresswoman Hanabusa.⁵⁵ The earmark request can be found in both the defense authorization and appropriations requests posted on Senator Akaka's website. The earmark was included in H.R. 2647, the National Defense Authorization Act for Fiscal Year 2010

⁵⁰ *Earmark Foes Spend on Defense*, Columbus Post Dispatch (May 24, 2011) (online at http://www.dispatch.com/content/stories/national_world/2011/05/24/earmark-foes-spend-on-defense.html) (accessed November 21, 2011).

⁵¹ Online at <http://mccaskill.senate.gov/ndaa/hasc-amendment-texts/EmergingThreatsandCapabilitiesAmendments.pdf>.

⁵² Id.

⁵³ Department of Defense Fiscal Year (FY) 2012 Budget Estimates, Research, Development, Test & Evaluation, Navy. Vol.1. at p.196. (online at <http://www.finance.hq.navy.mil/fmb/12pres/books.htm>) (accessed November 21, 2011).

⁵⁴ Id.

⁵⁵ National Defense Authorization Act for Fiscal Year 2010, Conference Report (October 7, 2009) at p.1188 (online at <http://www.gpo.gov/fdsys/pkg/CRPT-111hrpt288/pdf/CRPT-111hrpt288.pdf>); FY10 Defense Authorizations and Appropriations Requests (Non-Milcon), Sen. Daniel Akaka (May 15, 2009) (online at <http://akaka.senate.gov/issue-appropriations-requests.cfm>) (accessed November 21, 2011).

(P.L.111-84) and in H.R. 3326, the Department of Defense Appropriations Act for Fiscal Year 2010 (P.L. 111-118).⁵⁶ According to the earmark request documents posted on Senator Akaka's website, the earmark was directed to Referentia Systems Incorporated (Referentia) of Honolulu, HI, for the purpose of developing a long-term corrosion strategy with an emphasis on corrosion prevention. Referentia is located in Congresswoman Hanabusa's district.

A request identical to the FY2010 request also appears in Senator Akaka's publically posted appropriations and authorizations earmark requests for FY2011. Subsequently, an earmark was included in S. 3454, the Senate-passed version of the National Defense Authorization Act for Fiscal Year 2011.⁵⁷ This earmark was also directed to Referentia.

Given the specific language included in Congresswoman Hanabusa's amendment to H.R. 1540 regarding the purpose of the funds along with the common program element between her request and the past earmark requests for FY2010 and FY2011 funding, it appears that Congresswoman Hanabusa's amendment to H.R. 1540 is intended to operate as a traditional earmark to direct funds to Referentia in violation of the current earmark ban.

Case Study Seven:

Congressman Steven Palazzo, a Republican who represents the 4th Congressional District of Mississippi offered an amendment to add \$10 million to Defense Agencies construction and land acquisition projects for Special Operations Forces land acquisition.⁵⁸ The increase in funding provided by this amendment was offset from the "General Reduction Pool" included in the table for MilCon projects.

According to Congressman Palazzo's press release issued after Committee passage of H.R. 1540, he requested this funding to expand Special Warfare training capabilities of entities such as the Navy SEALs and Special Boat 22, both of which are based at Stennis Space Center within his district.⁵⁹ Additionally, when the FY2011 NDAA was considered by the Senate Armed Services Committee, Senators Wicker and Cochran, both from Mississippi, included two earmarks, totaling over \$16 million, in the Defense-Wide MilCon account for building Phases II and III of the Western Maneuver Area at the Stennis Space Center.⁶⁰ These earmarks were not, however, included in the final FY2011 NDAA signed into law.

Given the press release issued by Congressman Palazzo stating that the funding sought in his amendment to H.R. 1540 was intended for entities within his district and the previous earmark

⁵⁶ P.L. 111-84 (online at <http://www.gpo.gov/fdsys/pkg/CRPT-111hrpt288/pdf/CRPT-111hrpt288.pdf>) and P.L. 111-118 (online at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_house_committee_prints&docid=f:53800p3.pdf) (accessed November 21, 2011).

⁵⁷ FY10 Defense Authorizations Requests (Non-MilCon), Sen. Daniel Akaka; Report of S.3454, National Defense Authorization Act for Fiscal Year 2011 (June 4, 2010) at p.319 (online at <http://www.gpo.gov/fdsys/pkg/CRPT-111srpt201/pdf/CRPT-111srpt201.pdf>) (accessed November 23, 2011).

⁵⁸ Online at <http://mccaskill.senate.gov/ndaa/hasc-amendment-texts/ReadinessAmendments.pdf>.

⁵⁹ Palazzo Secures \$189 Million in National Defense Priorities, Congressman Steven Palazzo (May 12, 2011)(online at <http://palazzo.house.gov/press-release/palazzo-secures-189-million-national-defense-priorities>) (accessed November 21, 2011).

⁶⁰ Report of the Committee on Armed Services, Senate, on S.3800 (June 4,2010) at p.339 (online at <http://www.gpo.gov/fdsys/pkg/CRPT-111srpt201/pdf/CRPT-111srpt201.pdf>) (accessed November 21, 2011).

requests made by other members of the Mississippi delegation, also intended for the same entities, it is clear that the funds provided by Congressman Palazzo's amendment are directed to the Stennis Space Center and thereby the amendment operates as a traditional earmark in violation of the House earmark ban.

Case Study Eight:

Congressman Jim Langevin, a Democrat who represents the 2nd Congressional District of Rhode Island, offered an amendment to increase funding by \$10 million in the Air Force's construction and land acquisition account for community facilities.⁶¹ The increase in funding provided by this amendment was offset from the "General Reduction Pool" included in the table for MilCon projects.

In the FY2011 military construction appropriations requests listed on Congressman Langevin's website is an identical request \$10 million, for the support of a fire and crash rescue station for the Rhode Island National Guard located at the Quonset State Airport, North Kingstown, RI.⁶² Kingstown, RI, is within Congressman Langevin's district.

Given the similarities, in both dollar amount and project purpose, between Congressman Langevin's amendment to H.R.1540 and his previous request for a fire and rescue station for the Rhode Island National Guard, it seems clear the funding provided by this amendment is intended for the Rhode Island National Guard in Kingstown, RI, and thereby operates as a traditional earmark in violation of the House earmark ban.

Conclusion

After the House Armed Services Committee's consideration of H.R. 1540, Senator Claire McCaskill raised concerns that the Committee had created a process to circumvent the ban on earmarks installed by the Republican majority in the House of Representatives. A thorough review undertaken by McCaskill's office of the process put in place by the Republican Chairman of the Committee uncovered a clear effort to circumvent the earmark ban. The review found that, of the 150 amendments adopted during the Committee's mark-up that increased authorizations for defense spending, 115 operated as an earmark.

⁶¹ Online at <http://mccaskill.senate.gov/ndaa/hasc-amendment-texts/ReadinessAmendments.pdf>.

⁶² Online at <http://langevin.house.gov/appropriation-requests/military-construction-veterans-affairs-and-related-agencies/2010/03/appfire032210.shtml> (accessed November 29, 2011).