



April 1, 2009

Congresswoman Jackie Speier  
211 Cannon House Office Building  
Washington, D.C. 20515

Re: Citizens' Oversight Committee

Dear Congresswoman Speier:

First, on behalf of everyone on your Committee, let me thank you for the chance to participate in this extraordinary experiment to add transparency and accountability to the earmarking process. I know that everyone on the Committee found the experience to be rewarding, if difficult. And we all benefitted enormously from the diversity of experience in the members of the Committee.

As you know, many came to this project with skepticism about earmarks. In my own case, that skepticism was grounded in a concern about process. Too many reports suggest that irrelevant (or worse) factors drive earmarking decisions. I was therefore very eager to participate in an experiment to improve that process, and to make earmarking decisions more transparent.

Nonetheless, I know I speak for at least some on the Committee when I say that this transparency notwithstanding, I was left with significant doubts about the process. While the proposals we reviewed all had merit, it was often impossible to know how to weigh the claims made by those requesting funds against other federal funding priorities. Likewise, the mix of requests often seemed inherently arbitrary. No doubt, reward goes to those who ask. But I could not help but wonder whether a more regularized procedure for making these requests wouldn't just flood you (and any future committee you appointed) with an endless list of good ideas seeking federal funding. Finally, while we all tried to exercise prudence and good judgment, many wondered whether all districts across the nation would be so measured. Were we being foolish by trying to be reasonable? Would you be serving your District properly by serving your Nation sensibly?

We accepted the charge, however, to put those questions aside and evaluate the 59 proposals that were submitted as best we could. Everyone on the Committee read those proposals. Each proposal was given a hearing at which the idea was presented, and Committee members asked questions. Every single presenter took seriously the charge that they explain and justify their requests. And over the course of the twenty-some hours of those hearings, despite the differences in the background of members on the Committee, we developed a fairly consistent set of principles that began to guide us in our deliberations. As our recommendations are just that, we thought it appropriate to describe these principles, and why we came to a consensus about them.

1. *No earmarks for for-profit entities*

The earmark requests that raised the greatest skepticism on the panel came from for-profit companies seeking either appropriations for their work, or your support for a line-item to which they could bid.

Our skepticism did not arise from the projects themselves — some of these were extraordinarily important. Sylvan Source, for example, is a 12th District company that has apparently developed a very efficient water purification technology. As more than 900,000 people across the United States become sick each year because of impurities in our water, Sylvan’s project, in my own view at least, is no doubt extremely important. Likewise with AvidBiotics: this company has developed a protein-based technology for attacking bacteria in food, which avoids risking the generation of antibiotic-resistant strains. As food-borne disease is growing because of the misuse of antibiotics, AvidBiotics’ project, in my view, is also important. With these and many other for-profit requests, the Committee thought that if the claims made were true, no doubt someone should fund them. But as we had no peer-reviewed basis upon which to judge these claims, none of us felt it would be appropriate to recommend to you that you sponsor any of these programs through an earmark request.

Not everyone on the Committee opposed on principle earmarks for for-profit businesses. At least one would have supported such earmarks, if there were some peer-review process to evaluate the claims made. Most of us, however, even with complete peer-review, would be very skeptical about any direct or indirect appropriation to a private company by an earmark. At most, most of us believe that any such support should be through a loan or equity program administered by the government. But even under the loosest standard, none of these for-profit requests satisfied the Committee’s concerns. We therefore excluded them from any final ranking of proposals.

We were particularly troubled by earmark requests for funds that would be administered by, for example, the Defense Department. The question most of us asked was why we should be second-guessing the Defense Department’s judgment that a certain program should not be funded. The suggestion made by a number of presenters was that the Defense Department in fact supported their proposals, but preferred they be funded through the earmarking process, rather than directly by the Department. We were very uncomfortable assuming that was true, and would strongly discourage any practice that would reward such indirection.

2. *No earmarks for “regular” costs of local administration*

The Committee also grew skeptical of requests by public sector entities asking for funds to cover costs that are the ordinary costs of local administration — sewer repair, for example, or in one case, a request to cover the costs of replacing the LEDs in traffic lights. Almost all of us could see no good reason to shift these local costs to the federal government. And over the course of the three hearings, we were increasingly concerned about the inequality that such earmarks might incur. Often (though not always), the public sector representatives pushing for federal funds to cover local administration were representing some of the better-off districts within CA12. For example, more affluent neighborhoods were able to organize to stop rate increases to cover sewer repair than less

affluent neighborhoods. The Committee was not willing to recommend that such costs then be shifted to the federal government. We therefore excluded proposals from public sector entities for work that should be funded by local enterprise funds or other similar funds — in particular, funds from the City/County Association of Government, Metropolitan Transportation Committee, State Transportation Improvement Projects, Measure A, the redevelopment fund, or state gas tax.

3. *No earmarks for ordinary, ongoing expenses of a non-profit, unless those expenses covered the increased burden caused by the recent economic crisis*

It was the sense of many on the Committee that earmarks make most sense when responding to some kind of emergency. The 12th District has many extraordinarily innovative non-profits, all of which are of course suffering from the current economic downturn. The Committee was not eager to cushion that suffering generally, by simply funding the deficits of local non-profits. But where a non-profit was facing extra burdens because of the economic crisis, we were willing to weigh those proposals among those finally to be ranked. Thus, a homeless shelter that was facing a tripling of the demand for its services was considered by the Committee, while another non-profit simply asking for funds to help it deal with a continuing deficit was not.

We used these three principles as filters. Applying them to the 59 proposals we reviewed, we eliminated 32. The remaining 27 were then ranked by each member of the Committee individually, voting either “recommend,” “do not recommend,” or “uncertain.” (Some Committee members chose not to vote on proposals that they hadn’t reviewed at a hearing.) And of these 27, six received the support of 3/4ths of the Committee; 8 received the support of at least a majority. (The rankings for the all 27 are attached).

We all recognize that our work is merely advisory. You may well decide to reject our recommendations, or reject any of the principles we agreed upon. But I was surprised, and heartened, by the strong sense of consensus that developed on the Committee. And we are all hopeful we have helped you both with your objective to improve this process, and with the need to make difficult decisions about many worthy programs. Your innovation in establishing this Citizens’ Oversight Committee is an important improvement to an obviously flawed process. I know everyone on the Committee is grateful for the opportunity to have helped you in this important innovation, and all of us would very much enjoy the opportunity to work through how this process could be improved even more.

Again, on behalf of every member of the Committee, thank you for the opportunity to serve.

With kind regards,



Lawrence Lessig