

**Testimony of Sen. John McCain on S. 1495, the Obligation of Funds Transparency Act,
before the Subcommittee on Federal Financial Management, Government Information,
and International Security**

March 16, 2006

Mr. Chairman, I want to begin by thanking you, not only for holding this hearing today, but for your tireless work on behalf of the American taxpayer. Your fight to eliminate waste and abuse in the federal government is an honorable one, and I am happy to join you in those efforts. I'm pleased that both you and Sen. Kyl joined me in offering S. 1495, the Obligation of Funds Transparency Act last July. This is a very important piece of legislation, and it is imperative that we work to move it to the Senate floor for a vote. I would also like to acknowledge the hard work of my fellow Arizonan, Rep. Flake, for introducing the companion bill in the House of Representatives - H.R. 1642.

As all of my colleagues know, the process of earmarking funds in the annual appropriations bills has lurched out of control. According to data compiled by the Congressional Research Service (CRS), in 1994, there were 4,126 Congressional earmarks added to the annual appropriations bills. In 2006, there were 12,852 earmarks. The level of funding associated with those earmarks has risen from \$23.2 billion in FY 1994 to over \$64 billion in FY 2006.

To address this growing problem, I was recently joined by my colleagues Senators Feingold, Coburn, Bayh, Sununu, Graham, Ensign, DeMint, Kyl, and Cornyn in introducing S. 2265, the Pork Barrel Reduction Act. This bipartisan bill would establish a new procedure under Rule XVI, modeled in part after the Byrd Rule, which would allow a 60-vote point of order to be raised against specific provisions that contain unauthorized appropriations, including earmarks, as well as unauthorized policy changes in appropriations bills and conference reports. Of importance is that successful points of order would not kill a conference report, but the targeted provisions would be deemed removed from the conference report, and the measure would be sent back for concurrence by the House.

Additionally, to ensure that Members are given enough time to review appropriations bills, our proposal would also require that conference reports be available at least 48 hours prior to floor consideration. It also prohibits the consideration of a conference report if it includes matter outside the scope of conference.

As you well know, Mr. Chairman, our bill also includes the provisions of S. 1495, which would prohibit Federal agencies from obligating funds for appropriations earmarks included only in congressional reports, which are not amendable. While many may not see it as an important distinction, where an earmark is placed is of great importance. What we have found, is that the overwhelming majority of earmarks are found in report language - and, if I may remind my colleagues, report language DOES NOT have the force of law. Reports and the Statements of Managers which accompany bills and conference reports are to serve merely as explanations for the actions of the committee and the time has come to make it clear to all federal agencies that they should not be interpreting report language as law.

In a recent report on earmarks, CRS said "Most of these earmarks, however, are included

in the Senate and House Appropriations Committees' reports explaining a measure as reported. These earmarks are also frequently included in the managers' joint explanatory statement (or managers' statement) that accompanies the conference report. **Committee reports and managers' statements do not have statutory force; departments and agencies are not legally bound by their declarations.**" In an attempt to draw attention to this often overlooked fact, last week I joined Chairman Coburn as well as Senators DeMint, Feingold, and Bayh in writing to President Bush to urge him to instruct his cabinet to ignore wasteful earmarks that are contained in any statement of managers' that accompanies a bill he signs into law.

In our letter to the President we wrote "As you know, the executive branch has the authority to exercise discretion in funding these projects. The agency can either fund the projects as prescribed in the committee reports or subject them to an open and competitive review. CRS recently found that over 95 percent of the earmarks in the Fiscal Year 2006 budget were not written into law. If your Administration would reject even some of the most wasteful earmarks, it would ensure that scarce federal funds are spent on national priorities and it would make it substantially more difficult for Congress to load up annual spending bills with earmarks."

Mr. Chairman, or bill, S. 1495, is only one of several measures that have been introduced to address the growing problem of Congressional earmarks. As I have said, the time has come to tighten our belts around here. We have an obligation to future generations of American taxpayers. We must remember that everything we do today will impact them and it is grossly unfair of us to saddle them with a deficit of hundreds of billions of dollars just so we can issue a press release to curry favor with the folks back home.

Again, Mr. Chairman, thank you for holding this hearing today on this important issue and for inviting me to share my views. I am pleased to be working with you. S. 1495 is a good bill and will go a long way in helping to protect the taxpayer's dollars - I am proud to be sponsoring it with you.