

First, the language in H.J. Res. 20 say—on page 9—that hidden earmarks shall have no “legal effect,” but it does not clearly state that hidden earmarks shall have no guiding effect. These earmarks already have no legal effect. The point of this section was not to restate current law, but rather to make it clear that hidden earmarks have no effect, legal or otherwise.

As my colleagues know, over 95 percent of all earmarks are not even written into our appropriations bills. If we don't fix the language in this resolution we are debating today, all of these earmarks could continue. It is not certain that they will but they could and that is something we should fix to protect American taxpayers.

Our Federal agencies need to understand that hidden earmarks mean nothing and should be completely ignored in their decisionmaking. Our Federal agencies need to spend American tax dollars in ways that meet their core missions and serve true national priorities. Federal agencies should not feel pressure to fund special interest earmarks written by the powerful lawmakers who may cut their funding in retaliation.

Second, the language in H.J. Res. 20 applies to hidden earmarks in the fiscal year 2006 committee reports, but it does not turn off the hidden earmarks buried in committee reports prior to 2006 or those after it. In addition, the language does not turn off earmarks that may be requested through direct communications between lawmakers and our Federal agencies, either by phone or in private emails.

I understand that the Democratic leader is not going to allow any amendments. The Democratic leader scheduled this debate right before the Government's current funding expires so we will all be forced to accept it. This practice has been going on for years, and I am afraid it has become very destructive.

We are going to vote on whether to cut off debate on this measure today at 2:30 p.m. and I will be forced to oppose that motion. Since the Democratic leader has blocked me and other Senators from getting votes on our amendments, I cannot in good conscience vote to cut off debate. My amendment makes small changes to this resolution that would greatly improve its integrity, and there is still time to send this measure back to the House for its approval.

I also want to make it clear that while we have a responsibility in this body to address hidden earmarks in this resolution, the President also has a responsibility to do his part. In a letter that I sent last week, I called on him to instruct his agencies to ignore all earmark requests that do not have the force of law, and I believe he will. He said in the State of the Union Address this year that:

Over 90 percent of earmarks never make it to the floor of the House and Senate—they are dropped into committee reports that are

not even part of the bill that arrives on my desk. You didn't vote them into law. I didn't sign them into law. Yet, they're treated as if they have the force of law. The time has come to end this practice.

It appears as though our Federal agencies are beginning to follow through on the President's directive. Last week, a memo was circulated at the Department of Energy that said:

Because the funding provided by H.J. Res. 20 will not be subject to non-statutory earmarks and the President's policy on earmarks is clear, we must ensure that the Department only funds programs or activities that are meritorious; the Department itself is responsible for making those determinations.

This is a great sign of progress and I hope other agencies will circulate their own memos to this effect. Our agencies have been under the thumb of powerful appropriators for so long, it may be difficult for them to transition to a world without earmarks. But that is what they must do because that is what the American people expect. Americans want their Federal tax dollars to be spent in competitive ways that meet the highest standards. If a project is going to get Federal funding, they expect—just like with a Federal contract—that the money go to the project with the most merit regardless of whose State or district it is in.

We are making great progress on reforming our budget process and reducing earmarks, and I urge my colleagues to help us continue this progress and win back the trust of the American people.

Mr. President, I wish to make a few additional comments about my amendment No. 253 to the fiscal year 2007 omnibus spending bill. This is an amendment that would strengthen a provision in the bill that is under section 112. This gets back to the earmark discussion. The Senate can be proud of the debate and the votes we have taken to disclose earmarks and to eliminate the hidden earmarks that have been added in conference for years. Unfortunately, the language in this omnibus bill continues the status quo. It says that earmarks have no legal effect. It does not take the debate we have all agreed on and make it a prohibition that earmarks cannot be added in conference.

We know that 95 percent of earmarks are in report language. They do not have the force of law. Yet, through intimidation and other ways, Congress has been able to get the executive branch to follow through on these earmarks for years. My amendment would simply go back to what we have already agreed on as a Senate and prohibit these wasteful, hidden earmarks that waste billions of taxpayer dollars every year from being included in report language.

I am encouraged that the White House is responding. We have a memo that the Energy Department sent out last year to its managers telling them not to give preferential treatment to nonbinding, nonlegal congressional earmarks; that earmarks should be

meritorious, as they said in their memo, before they are considered. This would free up all the Federal agencies to focus their spending and their time on Federal priorities, not just specific special interest earmarks that a Member of Congress happens to attach to a bill.

I understand the majority leader is not going to allow any amendments. That is very regrettable, particularly since it leaves out something on which I think we all agree.

The cloture motion we have been asked to vote on at 2:30 is a motion to cut off debate. That means we can no longer talk about the provisions in ways that could improve this bill. For that reason, I am going to have to vote against cloture and hope the majority leader will reconsider, particularly amendments like this which are easy and which this Chamber has already voted unanimously to support.

Mr. President, with that, I yield back.

#### RECESS

The PRESIDING OFFICER. Under the previous order, the Senate will stand in recess until the hour of 2:15 p.m.

There being no objection, the Senate, at 12:30 p.m., recessed until 2:14 p.m. and reassembled when called to order by the Presiding Officer (Mr. CARPER).

#### MAKING FURTHER CONTINUING APPROPRIATIONS FOR THE FISCAL YEAR 2007

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of H.J. Res. 20, which the clerk will report by title.

The assistant legislative clerk read as follows:

A joint resolution (H.J. Res. 20) making further continuing appropriations for the fiscal year 2007, and for other purposes.

Pending:

Reid Amendment No. 237, to change an effective date.

Reid Amendment No. 238 (to Amendment No. 237), of a technical nature.

Motion to recommit the bill to the Committee on Appropriations, with instructions to report back forthwith, with Reid Amendment No. 239, to change an effective date.

Reid Amendment No. 240 (to the instructions of the motion to recommit), of a technical nature.

Reid Amendment No. 241 (to Amendment No. 240), of a technical nature.

The PRESIDING OFFICER. Under the previous order, the time until 2:30 will be equally divided between the two leaders or their designees.

Who yields time? The Senator from West Virginia.

Mr. BYRD. Mr. President, I can do this, I think in 5 or 6 minutes. I yield myself such time as I may consume. Am I recognized?

The PRESIDING OFFICER. The Senator is recognized.

Mr. BYRD. Mr. President, today is the 136th day of fiscal year 2007. It is