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Mr. Chairman, Senator Carper, Members of the Committee, I want to thank you for holding this hearing and inviting me to appear as a witness. This is an important topic and we are in a period in which public awareness of the problem we are here to discuss offers a potential for significant reform. Almost everyone is aware that the practice of earmarking has grown exponentially over the course of the past decade. While the practice continues to have its defenders even some harden veterans in the art of winning federal funds for the folks back home admit privately that the practice has grown out of control.

But meaningful reform in usually dependent upon understanding the processes that we are concerned about, understanding exactly why those processes have become problems and finally, understanding the potential side affects of proposed solutions. Many of the harshest critics of earmarks have spent too little time considering each of these issues.

The first impediment reformers face in dealing with earmarks is the ability to define them. The General Accountability Office has spent years attempting to develop a standardized and useable definition. The Congressional Research Service has produced a different definition with respect to each separate appropriation bill and their definition(s) continues to change with each rewrite they produce on the subject.

One of the most prominent critics of the subject defines earmark on his website as an item "not properly authorized by the Senate" and "not requested by the Administration."

I don't think either of these criteria pass the laugh test.

The distinction between authorization and appropriation are obscure to most Americans. The Congress creates the legal authority for the executive branch to engage in specific activities through one set of laws called authorizations while providing the actual year to year funding necessary to engage in those activities in another set of laws called appropriations. This definition seems to argue that decisions made in the authorization process do not constitute earmarks while decisions made in the appropriation process are considered suspect. One needs to look no farther than the famous "bridge to nowhere" to find the utility of this definition. That symbol of how far off base the Congress has

drifted with respect to earmarking was the product of the Safe Accountable Flexible Efficient Transportation Equity Act—an authorization. The fact that the funds in question could be used by the Alaska Department of Transportation is the result of an action taken on an Appropriation Bill.

Earmarking occurs regularly on a wide range of authorization bills and on tax legislation as well. Just last year we saw large sums of money earmarked to a Utah Cancer Hospital in amendments to the Medicare Act and special tax breaks to the manufacturers of fishing tackle boxes added to the energy bill.

What about the second criteria: "not requested by the Administration."

That seems to me to argue that the only politicians in Washington are on Capitol Hill. But we know that each Administration has thousands of political appointees who are placed in positions to make budget policy from the Office of Management and Budget straight down to the staff of cabinet secretaries, agency heads. Their number one job is to protect the president and that often means directing federal resources to states of political importance.

Career bureaucrats play with earmarks as well. When there is too little room in the budget to accommodate all programs that the bureaucracy sees as essential to accomplishing their assigned mission, it is not infrequent that items that are needed the most will be the ones that will be left out. That is simply because those are the items that the executive branch can most comfortably rely on the Congress to restore.

For years the Pentagon under both Democratic and Republican Administrations has cut funds for military family housing in the President's budget request. That was not because of a policy difference between the White House and the Congress over whether our troops were living in too much luxury, but rather because clever executive branch budget officers knew that the Congress fully concurred in Defense Department estimates that a large portion of military family housing was far below acceptable minimums, that failure to provide decent housing was adversely affecting reenlistments and forcing the services to pay higher bonuses to keep the most skilled and valued officers and non commissioned officers. Therefore, family housing could safely be cut to allow Pentagon planners to place money in weapon systems and other priorities where the job of selling Congress would be more difficult.

When the Pentagon begins circulating its list of "unmet requirements" and the Armed Services and Appropriations Committees feel compelled to respond it is often for good reason.

So if those are not good criteria for defining earmarks what is a good definition?

I think if you ask ordinary citizens what the term earmark means to them you might get an answer something like this: When the government grants of something of value that

belongs to the entire country to a specific community, company, organization or individual based on parochial political interests rather than broader national priorities.

While I think that definition gets at the heart of what we are talking about, it leaves us in a very sticky situation with respect to determining whether a particular item is or is not an earmark.

Let me give you an example. A member of the House who has a great deal of influence over military spending had a long term, ongoing argument with the U.S. Army over the question of whether or not enough of our Humvee fleet had the steel plating needed to protect soldiers from independent explosive devices. There were those in the Pentagon who argued that they needed priorities such as the Crusader artillery piece much more than they needed more heavily armored Humvees. They also pointed out that while the plant that did the "up-armor" work for the Army was not in this member's district, it was in the same state and not to far outside the district.

The only person who knows for sure what motivated this particular Member of Congress to fight for more "up-armor" Humvees is the Member himself. What everybody knows now in retrospect is that he was right.

If earmarking is putting politics ahead of sensible policy and I think that is what it can be reduced to, then we are in a large number of instances stuck with the very squishy issue whether the arguments made in behalf of good policy were really about politics which means we have to guess about motives. Sometimes that seems relatively easy to do as it does with the "bridge to nowhere" but in a large number of instances we have reasonably good substantive arguments in behalf of a particular action which happen to coincide with the political priorities of powerful people.

That leads us to a second important question: "What is wrong with earmarking in the first place?"

Some of the most frequently repeated arguments against earmarks are not well supported by fact. Earmarks are not substantially increasing federal outlays or adding in a significant way to the growth of the public debt. If we limit the definition of earmarks to include only district oriented increases above the amounts requested by the President we probably have less than $14 billion worth in all 11 appropriation bills. That is less than 2% of discretionary spending—and discretionary spending accounts for only about a third of federal outlays.

Furthermore, that 2% is not money that in most instances was added to either the President's budget or above the amounts permitted by Congressional Budget Resolutions. It is money that has been carved out of other priorities within the budget.

Finally, I think it is important to point out that a large majority of earmarks are not for blatantly wasteful purposes. Most Senators and House Members work reasonably hard to identify needs in their states and districts that are considered a significant priority by their

constituents and which would provide real value to the communities in which they are directed.

Despite these facts there are strong reasons to be concerned about the explosion that has taken place in Congressional earmarking.

One reason is that the geographic distribution of earmarks is anything but fair. Look at last years highway bill. The state of Alaska with slightly more population than the average Congressional District got more than $1 billion of the $23 billion in earmarks in the entire bill. It got about twenty times the amount of the average Congressional District. Bakersfield, California, a city that does not have the nation's most pressing traffic problems got more than $700 million—probably more than all of the earmarks going to the city of Los Angeles a city internationally known for its transportation problems. Despite the fact that the average Congressional District will pay $50 million in gas taxes to cover the cost of the $23 billion in earmarks contained in the legislation, most districts will get only a fraction of that amount.

Earmarks are directing a substantial amount of money intended to help disadvantage populations into middle and upper middle income portions of the country.

A second reason for concern is that although many and arguably most earmarks are of reasonable quality and provide reasonable value, many of the ones that are bad are really bad. The have a corrosive effect on government generally and they lower the standards and expectations of both the recipients of government services and those whose job it is to make the services available.

Equally disturbing is the growing prospect that earmarks are being used illicitly. The Cunningham bribery scandal opens the question of whether there are other cases in which unscrupulous contractors have persuaded members to support earmarks not based on what it might do for their Congressional Districts but what it could do for them personally. There is no question that a nexus has developed between campaign fund raising and the community that advocates in behalf of earmarks. The more earmarks a Senator or Congressman is able to win for a local university, hospital or city government or art museum, the more lobbyists he may expect to find in attendance at his fundraisers.

There is also a corruption that is occurring in the legislative process itself. Earmarks are increasingly used to persuade members to support legislation that they might otherwise oppose in the absence of such earmarks. In the House this practice is now being extended to the granting of earmarks in one piece of legislation in return for members vote for or against a separate and unrelated legislation. Chairman Thomas joked openly about the delay in consideration of the Highway bill last summer so that the leadership could gain more support for the Central America Free Trade Agreement. Whether or not you support CAFTA, this means of writing our nation's laws must be troubling to anyone who believes deeply in the role of an elected representatives should play in insuring that the voice of the people should be heard in the chambers of power.

The dramatic growth in earmarks affects our democracy in another way. While we perhaps too often think of American politics as the contest between the two political parties there is another contest which in each election determines how reflective our representative system will be of the voters who are supposed to control it. That is the battle between incumbents and challengers. If incumbents never lose the whole system begins to be meaningless. But if incumbents are able to handout growing amounts of money once controlled by the executive branch to specific charities, schools, foundations and so forth they become significantly harder to defeat regardless of how they have voted on the issues of the day or how unreflective their lifestyles, public demeanor or policy positions become relative to the people they supposedly represent.

But there is another consequence of earmarks that is perhaps even more corrosive to Constitutional Democracy—one that I do not believe was intended but one which is none the less real. The value of earmarks is perceived to be so great by such a large share of the membership of both parties in both houses that it has come to dominate their daily agenda.

Congress no longer spends much time in Washington and when they are here the dominant question is all to often earmarks The more earmarks that are granted the more city, county and local government learn of the new source of funds and decide to journey to Washington and attempt to see their Senators and their Congressman about how to get their name on the list. The more they come, the more time legislators spend in meetings focused on earmarks.

This affects not only members but also staff. Staff that might have once been allocated to preparing a Senator for hearings now must be devoted to processing earmark requests. And this affects not only the staff in the personal offices of Senators but the core staff of key committees who are at the cutting edge of the institutions capacity to oversee the government for which they are responsible.

Last year the Appropriations Subcommittee that funds the Departments of Labor, Health and Human Services and Education received more than 15,000 separate requests for earmarks. If each had been written on a single sheet of paper the requests would have created a stack of paper more than ten feet high. All of these must at a minimum be logged into computer data bases, matched against other projects and reviewed to determine if there is legal authority to appropriate funds for the activity requested. There are often numerous conversations that must take place between a member and his staff, the member requesting the project and the chairman or ranking member of the committee of jurisdiction, the member requesting the project and the staff of the committee and between committee staff on the legality and propriety of the earmark. In short the explosion in earmarking has greatly changed the work that Congress does, the way time is used and ability of key committees to play any effective role in oversight.

The burden that this process places on a conscientious member of the House or Senate should not be understated. If you divide the number of earmarks in the bill by the

number of Congressional Districts in the country, you have about 15 earmarks per district. If one were to determine the 15 most critical traffic problems within a Congressional District one would need to do a lot of research. One would need to compare dozens of intersections, entrance and exit ramps, planned bypasses and streets which have been proposed for widening or additional lanes. One would need traffic flow data, site specific accident data, as well as rush hour congestion data.

No matter how hard a Senate or House office tried to do that job, it would absorb virtually all resources and result in a product of limited value in establishing effective priorites. It is precisely this kind of research that we employ the large bureaucracies in state highway departments and local planning agencies to conduct.

What has happened is an implicit deal between the executive branch and those in the Congress desiring more and more earmarks. We will allow you to make a fool of yourself on the 2% of the federal budget that you earmark if you will give us free reign over the other 98% of federal spending.

That means that the Congress is not performing its Constitutional responsibility to hold the federal bureaucracy accountable, to ask hard questions and force public debate—particularly when those in charge of writing the checks don't have a clear plan on how to spend it and how to insure that we get a product that is worthwhile to the taxpayer.

It is the 98% of federal discretionary spending that is not earmarked makes a real difference in what life will be like for our citizens. Do our diplomats, military leaders and intelligence experts understand the real threats that we face? Are we being smart in terms of what portion of the spectrum we sell and how we sell it? Do those blocking illegal immigration have the resources and leadership they need to succeed? These are question that the clamor for earmarks has drowned out. But it is how effectively Congress asks those questions that will determine whether it is viewed by historians as having met its Constitutional role or failed as a supposedly coequal branch of government.

Reforming the current system of earmarking will not come about easily. The Constitution gives the Congress the power of the purse and it can not be and I would emphasize it should not be taken away by statute.

If anything, the current state of our government provides arguments for strengthening rather than weakening the innate powers granted to the legislative branch. True reform is dependent on the nation recognizing the pitfalls of earmarking and electing Members who will use the powers of the purse more judiciously. This is not a mere pipe dream. The temptation to earmark has always been present. But in our life time we have had leaders who followed a moderate and frugal course with respect to this practice.

Edward Boland of Massachusetts chaired the Veterans, Housing and Urban Development and Independent Agencies Subcommittee of the House Appropriations Committee for nearly two decades and during that period rarely if ever allow earmarks to be inserted

into that bill. During much the same period Bill Natcher of Kentucky chaired the Labor Health and Human Services and Education Committee. Natcher kept that huge bill Earmark free until the time of his death in 1994 and it was not until three years later that the first major earmarking occurred in the Labor-HHS-Education bill.

These were powerful men who had to standup repeatedly to their Senate counterparts and their House colleagues over their reluctance to insert earmarks. But they were also supported or at least tolerated by leaders who knew that as enjoyable as the use earmarks can be, they are also dangerous can eventually become a huge embarrassment to the institution that they as leaders had a unique responsibility to protect.

The so-called, “line item veto” proposal put forward by the President last week is neither a line item veto nor effective medicine against the current excess of earmarking. The president already has the power to propose rescissions. Requiring a vote within a certain period of time after the rescission is proposed only establishes a time frame in which the Congress must decide whether or not to reverse decisions that it has already made.

The Constitution also gives the President a great deal of power which he can use to force the Congress to behave responsibly. That power is the veto and in the midst of this explosion in earmarks we have a President who refused to use his veto pen once in a four year term for the first time since John Quincy Adams left the White House in 1829.

If the President is serious in his opposition to earmarks he should establish limits on earmarking in each bill and threaten to veto any bill that exceeds those limits. The same strategy could be adopted by those in Congress who want to see the practice curtailed. They could negotiate new tighter limits on a bill by bill basis and build a coalition of those who would vote down any bill that they felt exceeded those limits.