Memo to: New Congressional Leadership

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How to Improve Proposals for Congressional Earmark and Lobbying Reform

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Speaker Pelosi and Majority Leader Reid,

Recognizing voters' anger over the ethical lapses linked to earmarks and lobbyists, you and your colleagues announced in mid-December that all earmarks would be stripped from the ten fiscal year 2007 appropriations bills that had not yet been passed. You also announced that earmarks would be forbidden until new lobbying and earmark reform rules are in place, and you promised that these reforms would be the first order of business in the new year. These promises garnered considerable bipartisan praise, but it would be premature to predict an end to earmark-fueled corruption. If it is to make the earmarking process more honest, any serious attempt at earmark reform must require extensive reporting and transparency sufficient to expose the link between earmarks and campaign contributions. Anything less would not enhance the integrity of the legislative process.

The main issues at stake today are the extent to which existing proposals and those being introduced will make the earmarking process more honest and the extent to which these proposals may also deter earmarking. Merely changing Congress's rules will not end egregious earmarking. Further, such reform will have only a marginal impact on the volume of earmarks. As this author concluded in an April 2006 review of lobbying and earmark reform proposals, "While these provisions are unlikely to slow down the growth of earmarks, they should make the process more honest."[1]

The Impetus for Reform

Over the past two years Congress has been confronted by a series of notable ethics lapses by several of its Members, most involving allegations that Members used the legislative process to direct a federal agency to provide some type of *financial benefit* to an influential constituent or client of a lobbyist in exchange for some type of *financial consideration*. These financial benefits are generally described as "earmarks" or "pork barrel spending." Evidence suggests that most of the financial consideration proffered for earmarks came in the form of campaign contributions. However, at least two former Members received financial consideration for their private benefit, and both are now serving time in a federal penitentiary. Many more Members are under investigation by the Department of Justice for similar transgressions.

Some now contend that scandals stemming from earmark corruption influenced the outcome of the

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last election. Many successful challengers rode to victory on the issue of earmarks, and dozens of incumbents were voted out of office by an electorate troubled by the scandals that dogged the majority party during much of the past year.

In response to this groundswell among citizens, you and your colleagues promised to strip about 10,000 earmarks from pending legislation and ban earmarking until new lobbying and earmark reform rules were in place. You promised that this reform would be Congress's first order of business in the new year. If Congress opts for new reform rules rather than new reform legislation, the implementation of these rules could occur within the first few days of the session. Is so, that swift action clears the way for a resumption of earmarking, which could include earmarks attached to spending bills related to the remaining eight months of FY 2007. Thus earmark and lobbying reform undertaken in early 2007 could have just a marginal impact on the volume of earmarks. You must not allow this to happen.

Key Reform Proposals

While no specific proposal has been introduced, reports suggest that you will consider the key elements of a few of the many proposals put forth last year. Speaker Nancy Pelosi's (D–CA) Honest Leadership and Open Government Act of 2006 (H.R. 4682), introduced last February, will likely be a basis for the new reform proposals. Among its provisions, this bill would:

- Ban certain types of gifts from lobbyists;
- Ban lobbyist-provided travel, exempting one-day trips and site visits;
- Ban the use of company/corporate planes, though not chartered planes;
- Require more frequent reporting and more extensive disclosure by lobbyists, including disclosure of their campaign contributions and sponsorship of fundraisers; and
- Mandate that Members disclose earmarks and certify that their earmarks would not financially benefit themselves or their spouses—a standard that might not preclude earmarks traded for campaign contributions.

While these provisions are a good start, you could—and should—do more to improve the earmarking process, deter wasteful earmarks, and establish higher standards of ethical conduct. Provisions that would address some of the gaps in Speaker Pelosi's original legislation can be found in some of the better reform proposals among the 50 or more introduced during the previous session.

Among the best proposals were two introduced by Senator John McCain (R–AZ)—the Lobbying Transparency and Accounting Act of 2005 (S. 2128) and the Pork Barrel Reduction Act (S. 2265)—that would require extensive reporting and transparency of the entire lobbying/earmark process and provide a remedy against some of the more wasteful earmarks included in appropriations bills. Also of value are a few elements of Senator Trent Lott's (R-MS) Transparency and Accountability Act of 2006 (S.2349), a version of which passed the Senate in late 2006. Key elements of the two McCain bills would deter some of the more questionable lobbying and legislative practices related to earmarks. Among their many provisions, these bills would:

- Require the disclosure of earmarks, including the identity of the lawmaker seeking the earmark and a description of the earmark's "essential government purpose";
- Require recipients of earmarked funding to disclose the amount of money that they spent on registered lobbyists to obtain the earmark and to identify their lobbyists;
- Mandate disclosure of fundraisers hosted, cohosted, or otherwise sponsored by earmark beneficiaries and their lobbyists and require disclosure of their contributions for other events involving legislative and executive branch officials;
- Allow Members to oppose earmarks by raising a point of order, which, if sustained, would delete the earmark from the bill;

1. Ronald D. Utt, Ph.D., "A Primer on Lobbyists, Earmarks, and Congressional Reform," Heritage Foundation *Backgrounder* No. 1924, April 27, 2006, p. 21, at *www.heritage.org/Research/Budget/bg1924.cfm*.

- Require lobbying firms, lobbyists, and their political action committees to disclose their campaign contributions to federal candidates and officeholders, their political action committees, and political party committees;
- Lengthen the period after their public service during which senior members of the executive branch, Members of Congress, and senior congressional staff are restricted from lobbying;
- Require registrants under the Lobbying Disclosure Act to report gifts worth $20 or more;
- Require Members of Congress and congressional staff to pay fair market value for travel on private planes and the cost of the most expensive ticket in the arena for donated sports and entertainment tickets in luxury boxes;
- Require that conference reports be filed and available to the public for at least 48 hours before consideration on the floor;
- Prohibit federal agencies from spending money on items and earmarks that are included only in conference reports; and
- Strengthen rules against the inclusion in conference reports of matters not considered by either the House or the Senate.

Additional provisions in the Lott bill would prohibit Members from having "official" contact with a spouse or family member who is registered as a lobbyist and define more expansively (and usefully) what constitutes an earmark. You should adopt stronger versions of these provisions as part of any new reform rules package or legislation:

- With so many close family (and family-like) connections among Members of Congress, staff, and the registered lobbyists, reform proposals should require registered lobbyists to disclose blood and marital relationships (including in-laws) with Members of Congress, senior congressional staff, and senior executive branch officials. Likewise, Members of Congress should disclose any and all blood relations who are registered lobbyists.
- Any successful effort to limit Members' propensity to earmark spending and other federal privileges requires a reasonably precise definition of what is and what is not an earmark. Section 3 of Senator Lott's bill reasonably defined an earmark to include "budget authority, contract authority, loan authority, and other expenditures, and tax expenditures or other revenue items."[2]

Finally, you should include in any new reform rules package or legislation two measures that would have a considerable impact on the integrity of the legislative process:

- Require the disclosure of any campaign contributions made by an earmark beneficiary or its staff members to a Member of Congress and any contributions made by an earmark beneficiary or its lobbyists to charities affiliated with a Member. Combined with the other provisions described above, these changes would make it somewhat easier to connect earmarks to campaign contributions.
- Revise the House and Senate ethics codes. The existing congressional guidelines are too lax, permitting many types of gifts from lobbyists, such as meals, travel, and entertainment. At the same time, they exempt many congressional employees from key prohibitions. Speaker Pelosi's bill and recent recommendations take several important steps to address this deficiency. The House and Senate should revise their ethics codes to more closely conform to the *Standards and Ethical Conduct for Executive Branch Employees.* There is no compelling reason why employees of one branch of government should be exempt from the strict ethical standards that govern the other two branches. By eliminating these unnecessary privileges, Congress and its staff will take an important step to free themselves from the taint and suspicion that now cloud the reputation of this distinguished body.

More Than Just Earmarks

As you work to raise ethical standards, you should ensure that the burden of reform is shared

2. See *Ibid.*, p. 11–16.

by all parties in the process, not just lobbyists. The vast majority of lobbyists earn their living in an honest and open fashion by assisting Americans of all walks of life to exercise their constitutional rights to petition Congress and engage in free speech. Indeed, under current law, the ethical standards applicable to the executive and judicial branches of government largely serve to constrain the *members* of those branches, not those who come to petition them. As a consequence, the incidence of ethical lapses in the judiciary and executive branches appears to be less than in Congress.

You should also recognize that earmarks comprise only a fraction of the benefits that individuals hire lobbyists to seek from Congress. Other benefits of potential value include changes in entitlement rules, federal regulations, and tax law. In many cases, the value of these benefits can vastly exceed the value of the typical earmark. Any lobbying reform should recognize that the potential for corruption includes all legislative activities and that earmarks comprise only a fraction of the quarry available to lobbyists and their clients.

Aim for Honesty

The worthy proposals discussed above would deter some of the corrupt practices that are associated with some earmarking. If you adopt these policies of extensive reporting and transparency and make the link between earmarks and campaign contributions more apparent, you will enhance the integrity of the legislative process. While these provisions are not likely to eliminate Congress's propensity to earmark, their enactment into law or the rules of the House and Senate should make the process more honest.

Sincerely,

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