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FDA FOOD SAFETY MODERNIZATION ACT -- (Senate - November 30, 2010)

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The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of S. 510, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 510) to amend the Federal Food, Drug, and Cosmetic Act with respect to the safety of the food supply.

Pending:

Reid (for Harkin) amendment No. 4715, in the nature of a substitute.

Coburn motion to suspend rule XXII of the Standing Rules of the Senate, for the purposes of proposing and considering Coburn amendment No. 4696.

Coburn motion to suspend rule XXII of the Standing Rules of the Senate, for the purposes of proposing and considering Coburn amendment No. 4697.

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be 2 minutes of debate equally divided and controlled between the Senator from Oklahoma, Mr. *Coburn*, and the Senator from Hawaii, Mr. *Inouye*.

The Senator from Illinois.

Mr. DURBIN. Mr. President, in the absence of Senator *Inouye*, I ask unanimous consent to speak on his behalf for the 1 minute allocated.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

MOTIONS TO SUSPEND

Mr. DURBIN. Mr. President, I am going to vote today against the Coburn effort to change our rules relative to earmark legislation.

I wish to tell you, as a member of the Senate Appropriations Committee, we have put in place what I consider to be the most dramatic reform of this appropriations process since I have served in Congress. There is full disclosure, in my office, of every single request for an appropriation. We then ask those who have made the request for the appropriation to have a full disclaimer of their involvement in the appropriation so it is there for the public record.

This kind of transparency is virtually unprecedented, and I think it is an effort to overcome some of the embarrassing episodes which occurred primarily in the House of Representatives under the other party's leadership, where people literally went to jail because of abuse of the earmark process.

I believe I have an important responsibility to the State of Illinois and the people I represent to direct Federal dollars into projects critically important for our State and its future. What the Senator from Oklahoma is setting out to do is to eliminate that option.

The ACTING PRESIDENT pro tempore. The Senator's time has expired.

Mr. DURBIN. I hope my colleagues will join me in opposing the Coburn motion.

Mr. LEVIN. Mr. President, Senator *Coburn* has proposed an amendment to the badly needed food safety legislation now before the Senate that seeks to end congressionally directed spending, or earmarks. Senator *Coburn* described his amendment as an attempt to get spending under control, but it

fails the test of accomplishing that goal and fails to meet Congress's constitutional obligation to exercise the power of the purse.

Article I, section 9 of the Constitution of the United States places the power of Federal spending in the Congress, the branch of government most directly connected to the people. The power of the purse is great, and therefore accountability for the exercise of that power should be great as well.

Our greater responsiveness in Congress to immediate public needs is essential. If the Coburn amendment passes, we would be barred from bringing that judgment to bear on some of the most pressing issues of the day. Instead, the executive branch--which is, in practice, the most bureaucratic and least responsive branch--would control these decisions. For example, under Senator *Coburn's* proposal, only the executive branch would have the power to initiate funding for disaster relief. Measures to appropriate funds in response to disasters would be prohibited because they would dedicate funding to specific locations. So, had this measure been in place when Hurricane Katrina struck the Gulf Coast, Congress would have been powerless to react. Similarly, had this restriction been in place when a Mississippi River bridge collapsed in Minnesota in 2007, Congress could not have appropriated the \$195 million it set aside for repair and reconstruction.

This measure also would prevent Members from addressing the urgent needs of our communities. I and other Members from Great Lakes States have urged the Army Corps of Engineers and other agencies to address the growing threat that Asian carp will make their way from the Mississippi River watershed into the Great Lakes. These invasive species of fish would devastate the lakes, doing enormous harm to our States' economies. So long as the Army Corps continues to underfund this important work, only the action of Congress can prevent an economic disaster.

I would argue that each of these expenditures is important and necessary. But the wisdom or folly of these decisions lies in the merits of the projects themselves, not in the manner by which they were funded. Allowing the Congress to make these decisions allows the voters to judge them on their own merits, to reward their representatives when they make wise choices, and to render judgment in the voting booth when they do not.

Senator *Coburn* is rightly concerned about the long-term fiscal condition of the government. But it has been repeatedly pointed out, despite the fiction surrounding this issue, that this amendment would do nothing to improve our fiscal situation. Year after year, Congress works within the top line of budgets submitted by the President, readjusting priorities without increasing total spending. For this reason, the Coburn amendment would not reduce spending levels; it would simply shift greater authority for deciding how money is spent from the legislative branch to the executive.

There are two ways to close our fiscal gap. We can reduce spending or we can increase revenue. Banning congressionally directed spending does neither. It would create the impression that we have taken a step toward fiscal responsibility, without making any of the difficult choices that reducing the deficit will require. I applaud Senator *Coburn's* desire to address our debt. But this measure fails to do so and in the process abdicates our constitutional responsibilities. So I will oppose this amendment and urge our colleagues to do the same.

Mrs. FEINSTEIN. Mr. President, I rise today in opposition to the Coburn-McCaskill amendment, which would impose a 3-year moratorium on earmarks.

This amendment is a direct attack on the authority vested in the Congress to determine how Federal funds are spent, despite the fact that this power is clearly established in Article I of the U.S. Constitution.

I, for one, take great exception to this attack. It would set a dangerous precedent, in my view, to simply turn over a blank check to the executive branch and undermine the power that the Constitution grants Congress. What if an administration is not focused on the needs of a particular State, perhaps because that State didn't vote for that President?

For years I have fought for funding of flood control in Sacramento. Sacramento is one of the most

Republican administrations have requested sufficient funding for the flood control improvements that will protect lives and property in that community.

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As the Senator elected to represent the people behind those levees, shouldn't I be able to fight for the funding, whether or not the President agrees? I was elected by the people of California to represent the needs of California. And the people of Sacramento certainly believe they need flood control. This is my duty as a Senator. Isn't that why we have a Congress?

As a coequal branch of government, we shouldn't be forced to approach the administration with our hat in hand every time we believe something needs to be done.

Another flaw in this amendment is the well-trod idea that it will save this country money. Simply put, that is incorrect.

Discretionary spending is a popular target to attack. But the truth is that earmarks make up less than one-half of a percentage point of all Federal spending.

Earmarks are not the problem, so banning earmarks is not the solution.

The real problem is entitlement spending. But tackling entitlement reform is neither easy nor popular. So, instead, we attack earmarks. It sounds good, and it gets applause. But we all know that it doesn't solve the problem.

This amendment won't save this country one penny. It will merely shift the power of the purse from Congress to the White House and executive agencies.

If you want to reduce discretionary spending, it must be done through the budget process.

I am also concerned about the process the Coburn-McCaskill amendment sets forth for waiving this new rule.

Rather than putting into effect a traditional budgetary point of order, which requires a three-fifths vote to waive, this amendment calls for a two-thirds vote.

This means that if this amendment is approved, funding a public works project would require the same number of votes as constitutional amendments, impeachments, treaties, or the expulsion of Senators.

Why should the question of an earmark rise above the three-fifths requirement to invoke cloture on the very bill containing the earmark?

Finally, this amendment disregards the significant reforms that have already taken place to make the process transparent.

Since Democrats regained control of the Senate, the following reforms have been enacted: Members must publicly certify that they have no private interest in earmarks they request. Members must post their earmark requests on the internet. Every bill with earmarks includes a table listing the Senators who made the requests. This is the most transparent earmark process ever, and I believe the reforms have worked.

The earmark process has been abused in the past, but I firmly believe that eliminating the discretion of Congress to appropriate taxpayer dollars is folly. A knee-jerk reaction that tips the balance of power toward the executive branch is not the solution.

Let me say this: I am open to further reform if it will make the process even more transparent.

The House of Representatives already bans earmarks to most private firms, and I would support doing so in the Senate.

I believe the best use of earmarks is to provide funding for projects that are essential to the public good, such as water infrastructure improvements in a city such as East Palo Alto that cannot provide clean water to its residents without a funding share from the Federal Government, or interoperable communications equipment in Contra Costa and Alameda Counties, which can be used when an earthquake or other catastrophe strikes.

I believe this amendment is wrong for the Senate, it is wrong for our States, and it is wrong for the people we come here to serve.

Handing over a fundamental responsibility to the executive branch, at a savings of zero dollars to the taxpayer, is not the solution. Continued reform of a process that is important to so many of our communities is the better alternative.

Mr. DORGAN. Mr. President, I rise today to speak against the Coburn amendment that would impose a 3-year moratorium on Congress' constitutional responsibility to direct the spending of the Federal Government.

The amendment in question propounds a problem that doesn't exist, a solution that resolves nothing, and an argument that is factually baseless.

This amendment will not lead to deficit reduction. In fiscal year 2010, congressionally directed initiatives make up less than one-half of 1 percent of total Federal spending.

With total spending at \$3.5 trillion it is irresponsible to tell the American people that congressionally directed spending of one-half of 1 percent of this total amount is the cause of our country's deficit problem.

Mathematically it is incorrect and mechanically it is incorrect. Doing away with congressionally directed initiatives does not guarantee deficit reduction--it guarantees members of the administration will make all the funding decisions.

Inherent in the arguments of the amendment's supporters is the contention that projects and activities selected by the administration are superior. The argument seems to rely on the notion that there is some objective formula used by the administration to select the best and most worthy projects to fund. This is false.

The fact is even in programs where some formula may be used, such as a cost-benefit ratio formula, the formula is not necessarily perfect and can often fail to capture all the facts.

A small port dredging project may not look worthwhile when just the commercial traffic is calculated. However, when the sport fishery impact is included it makes the calculation different. Further, if the fish processing plant reliant on the commercial fishery is the largest employer in the county that makes a difference.

While the formula may not capture these facts and thus the project fails to make the President's budget request, the areas congressional members and senators will know the facts and seek to modify the budget.

There was a recent news article using a Missouri project as an illustration of this debate. The project was not requested in the budget and the senior Senator from Missouri rectified this fact by adding an earmark.

The junior Senator from Missouri is quoted in this article saying the project would have been funded without such an earmark if funding had not been diverted to less worthwhile earmarks. I am sorry, but there is no basis for the junior Senator's claim.

We have no idea what the administration will send up in the budget. A very worthwhile project may come forward and it may not. And the reverse may be true. The administration may send up a project that is not currently justified.

During the George W. Bush administration the budget request one year included construction funding for a Corps of Engineers project. The problem was the chief engineer's report was not completed yet because the studies were still on-going. Thus there was no way for the administration to know based upon any objective criteria whether the project should move into the construction phase.

While the project may have proved to be worthy there was no objective basis for the administration making that assessment at that time. The fact is the administration added the project out of some political calculation, not an objective calculation.

Let me provide some facts on earmarks using the civil side of the Corps of Engineers and the Bureau of Reclamation which have two of the most highly earmarked budgets of any Federal agency due to the way projects are authorized and appropriated.

For fiscal year 2010, the President proposed spending \$6.2 billion for these two agencies. In his request the President proposed 1,184 individual line items valued at \$4.8 billion based on criteria of his choosing. This criteria is not based in law nor was the criteria coordinated with anyone outside of the administration.

The criteria was developed to "get the biggest bang for the buck" but how do we know that? Just because that is what the administration says.

Upon my review of the budget request, I was convinced that the administration had left many priorities unfunded. That is why in preparing the fiscal year 2010 Energy and Water appropriations bill, the subcommittee of

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which I am the chair, we used the criteria established in law to determine what projects were eligible for funding.

Further, we gave particular credence to funding ongoing work. It is not prudent to fund a construction project in one year and not fund it in the next. Yet the administration did not propose funding for more than 175 ongoing construction projects that were funded in fiscal year 2009.

These termination costs were not accounted for in the budgets that the agencies provided to Congress. The Corps or the Bureau of Reclamation cannot walk away from a construction site because they are not funded for that project. They would have to reprogram funds from other projects to make the site safe for the public until it was funded again.

Funding projects in this manner delays completion of the projects, increases the costs and defers the benefits that these projects provide to the national economy.

For fiscal year 2010, Congress provided \$6.58 billion for the COE and the Bureau of Reclamation. Congress directed \$817 million of this total funding. All of this directed funding was disclosed in the required disclosure tables in the report that accompanied the bill.

Let me list just a few projects that would not be funded in fiscal year 2011 if we enacted the President's budget request as proposed:

FEEDBACK

Blue River Basin flood control project in Missouri; Swope Park Industrial Area flood control project in Kansas City, MO; the Puget Sound and Adjacent Waters Environmental Restoration project in Washington; the Charleston Harbor, SC, navigation deepening study; the Virginia Beach, VA, hurricane protection project; and the Western Sarpy and Clear Creek, NE, flood control project.

For that last project in Nebraska, the funds proposed in the fiscal year 2011 Senate report would complete the project, yet it did not make it into the President's budget. Imagine these objective criteria that the administration uses would leave the completion of a fully authorized and economically justified construction budget for another year.

public review. All Members must certify that they and their family have no pecuniary interest in these projects.

If there are legitimate proposals on further improving transparency then I am sure they will be given consideration, but as of today the public knows who is backing the projects we fund. There is accountability and there is sunlight.

I fear that if Congress cedes its authority to direct spending then we will go back to a time when Members, staff, and entities outside of the Federal Government will begin to pressure the administration and bureaucracy on getting specific projects funded.

There will be no disclosure of these phone calls and meetings. We will not know if any trades have been made in exchange for project support.

Why would we give up sunlight and accountability for darkness and unaccountability?

Let me close by reiterating the basic points.

First, this amendment will not reduce the deficit. At less than one-half of 1 percent of total spending congressionally directed spending is simply not going to make a difference, particularly when that funding will be left for the administration to direct its allocation.

Second, there is no objective formula that makes sure funding goes to the most worthwhile projects. It simply doesn't exist. The Constitution gives Congress the power of the purse. This ensures the President's power is checked and assures Federal elected officials closest to the people are making these decisions. It is absurd to give to an unelected bureaucracy that may never have been in your state the final decision on what projects to fund.

Third in project based accounts such as the Corps of Engineers the administration already earmarks the vast majority of projects funded. Congress is not abusing the power of the purse.

Lastly, we have greater transparency today on congressionally directed spending than ever before. If we do away with this transparent process we will be left with a dark, unknown process of congressional Members, constituent groups, and lobbyists seeking to influence the administration. We should not trade transparency for darkness.

Mrs. BOXER. Mr. President, I oppose the Coburn amendment to impose a 3-year moratorium on spending for local priorities, or "earmarks." Those who support this amendment claim that it will help reduce the deficit and put us on the path to fiscal responsibility. This is just incorrect.

Eliminating earmarks would not reduce spending and does nothing to decrease the deficit. This amendment would merely transfer spending authority away from elected members of Congress to the executive branch.

The Coburn amendment would strip elected leaders' ability to direct funding to their constituents' priorities. We should all agree that elected Members of Congress have a much better understanding of what is needed in our cities and towns, and across our States than those sitting in Washington, DC.

In addition, since 2006, Democrats have instituted a series of major reforms that have made earmarks more transparent than ever, and have reduced earmark levels by 50 percent. Members of Congress are now required to list their names next to requested projects and to post all requests on their official Web site. Through these initiatives Congress has taken significant steps to improve transparency and allow for greater scrutiny of these requests.

I am proud to say that I have helped fund hundreds of local priorities across my home State of California: priorities that have helped build safer roads, increased commerce, prevented homes from flooding, improved health care services, spurred job creation and helped veterans recover from combat injuries.

Mr. LEAHY. Mr. President, I rise today to express my opposition to the Coburn amendment. The legislative branch has a constitutional duty to make modifications and adjustments to the budget for the Federal Government. As a U.S. Senator and a member of the Appropriations Committee, I take very seriously the responsibility of the Senate to help craft the annual Federal budget. Members of Congress have a duty to their constituents to preserve their role in working with the executive branch, whether Democratic or Republican, about how, where, and in what manner Federal dollars are spent.

The U.S. Constitution gives the responsibility of spending and taxation to the Congress, not to unelected bureaucrats in the executive branch. The notion that individuals who are completely unaccountable to the American people will make spending decisions undermines the most basic principle of democracy. Instead, the Founding Fathers correctly put this burden on the shoulders of individuals who have to answer to voters at the ballot box.

Over the last few months, and particularly in the days since the election, some Members of Congress and Members-elect have been tripping over themselves to take a stronger position in opposition to so-called earmarks. Proponents of this amendment claim that it targets earmarks. I would argue otherwise. This amendment strikes at the heart of the balance that our Founding Fathers established between the executive and legislative branches of our government.

Every single State would be shortchanged by the proposed moratorium on earmarks. The Founders knew better. They knew that a Washington bureaucracy would not always make decisions that were best for country, including people working and living in small towns and big cities across America.

That also includes making better decisions for the men and women who serve in our military. There is no better example than the National Guard and Reserve Equipment Account. Republican and Democratic administrations alike have short-changed the Guard equipment budget for decades and have done so even as the Guard has been called to provide as much as half of the troops needed for operations in Iraq and Afghanistan. Without the National Guard and Reserve equipment account, our National Guard units would still be going into battle without

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equipment like body armor and blast-protected vehicles. Congress insisted on providing funding to our National Guard and that has saved countless lives and enabled them to carry out their missions more effectively.

Adopting this amendment is a vote for less transparency. It is a vote for backroom dealing and less sunlight on how decisions regarding Federal spending are made. One need only look back to when Congress has in the past failed to pass the appropriations bills and the government operated under a continuing resolution for the year. Federal spending did not go down by a single dime. Instead, unelected administration appointees made decisions on which projects they wanted to see funded.

It is my hope that before the next Congress a measure of sanity returns to discussion of the Federal budget. Everyone agrees that we must make serious changes to our Federal balance sheet and bring our fiscal house in order. But it was not earmarks that created our alarming Federal debt. Eliminating earmarks is not going to get our fiscal house in order. Instead it is going to expand the power of the executive branch and its employees. It also rolls back all of the transparency that Congress has embedded into its budget process.

Congress and the administration need to work together to address our Federal deficit. Adopting this amendment banning earmarks is a publicity stunt that has serious ramifications that actually moves our country in the wrong direction toward solving our problems in an open and constructive way.

Ms. KLOBUCHAR. Mr. President, I rise today to discuss the amendment offered by the senator from Oklahoma that would prohibit congressionally designated spending items from being included in any authorization, appropriations, or other bill for 3 years.

I firmly believe the appropriations process needs to be changed. I have supported strong reforms to increase transparency and accountability, and have pushed hard for these reforms.

ensuring that my State of Minnesota is not put at a competitive disadvantage.

In fact, before being sworn in as a U.S. Senator, I promised Minnesotans that I would fight to fund their priorities in an open manner and pledged to include these requests on my official Web site. At that point in time, the posting of requests online was not a rule of U.S. Senate.

Since arriving in the Senate, I have supported several important reforms to how Congress directs spending. I have voted for limitations on earmarks, including voting to ensure that American Recovery and Reinvestment Act funds would be competitively bid. I also voted to rescind funds directed to certain transportation projects that have not been spent.

Clearly, there is more we can do to improve this process and I will continue to push for necessary reforms.

However, I believe that congressional appropriations help provide much-needed resources for important programs and projects across my State. All of the projects I sponsor are based on Minnesota constituent requests and are available for the public to review.

Many of the requests I receive come from my visits to all 87 counties in Minnesota every year. A local mayor will show me a busy road that children in the community must cross many times a day to reach their school and baseball fields. And the mayor will ask me to request funds to help build an underpass that will allow these kids to safely get to school and their games.

Or a sheriff will show me how the local law enforcement's outdated communications equipment interferes with emergency response and endangers lives. And the sheriff will ask me to earmark funds to upgrade the department's radios.

In my State of Minnesota, we remember all too well how on August 1, 2007, the I-35W bridge across the Mississippi River in Minneapolis collapsed without warning. After we mourned the loss of 13 lives and the shock of the disaster had subsided, we got to work with enormous task of constructing a new bridge.

I worked hard with my colleagues in the Senate, especially Majority Whip *Dick Durbin*, Transportation Appropriations Chairman *Patty Murray* and Senator Norm Coleman, to provide up to \$195 million in funds to help with the cost of constructing a new bridge. Under Senator *Coburn's* amendment, this funding would be considered an earmark, and Minnesota would have been left looking for other ways to recover from this tragic event.

Earmarks have done more than build bridges in Minnesota. Earmarks have provided critical funding to the Minnesota National Guard's groundbreaking "Beyond the Yellow Ribbon Program," which is nationally recognized for the assistance it provides our service men and women who bravely served our nation and are now transitioning to civilian life.

Congressionally directed projects protect communities against annual flooding across my State from Roseau in the north to Moorhead in the west to Owatonna in the south. And congressionally initiated spending funds an innovative program in Stearns County, Minnesota to help protect women and children who have been the victims of domestic violence, provides much-needed resources to improve law enforcement communication and interoperability, and is building a new highway interchange in Blue Earth County, MN, that will improve safety and ease congestion while helping generate economic development.

Congressionally initiated spending cannot be discussed without also considering the grave financial situation we face as a nation. It is clear that we will need to make very tough decisions in the coming years to restore fiscal responsibility and get our nation on a path towards strong growth. Yet the Coburn amendment would not direct any savings from the elimination of earmarks to be used for deficit reduction.

We need a serious commitment to deficit reduction, and I believe we need real reforms. I look

others who are taking a comprehensive look at government spending. It is my hope that we can come together to consider these recommendations carefully and reduce our nation's debt.

I am committed to serious fiscal discipline, and will continue to support real reforms to increase transparency to the appropriations process.

Mr. VOINOVICH. Mr. President, I rise today to express my opposition to the moratorium on earmarks that has been proposed by many of my colleagues.

We have done a lot of crusading around here against these so-called earmarks, or congressionally directed spending items, in our appropriations bills. They are often criticized by Members of Congress when discussing the unsustainable fiscal path of the Federal Government or its irresponsible overspending of taxpayers' dollars.

But my colleagues who oppose the use of earmarks miss the point. Earmarks, whether good or bad, are not the problem with our government. According to data from the Congressional Research Service and the Congressional Budget Office, in fiscal year 2010 earmarks accounted for 0.009 percent of the Federal budget. That is nine one-thousandths of 1 percent. Total earmarks amounted to \$32 billion, while the entire Federal budget was over \$3.5 trillion. And by the way, I would like to point out that the President-himself requested \$22 billion in earmarks.

But the biggest threat we face as a nation is not a special request for this or that project. The biggest threat we face is an unsustainable fiscal course caused by explosive and unchecked growth in entitlement spending and no money to pay for it. We have got an outdated tax code that does not sufficiently encourage economic growth, and a skyrocketing national debt that puts our credit-rating in serious jeopardy. In fiscal year 2010, entitlement spending accounted for 55 percent of the budget, compared with the 0.009 percent for earmarks I just referred to.

Now, I will say that I do agree with much of the criticism expressed in this chamber over bad earmarks. I don't support wasteful use of any taxpayer money, especially for egregiously useless projects that my colleagues often highlight as examples of why we should eliminate earmarks altogether.

But why throw out the baby with the bathwater? Certainly there is both

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good and bad government spending. I support the kind of government spending that facilitates activity that is helpful to my State of Ohio and to our national economy: transportation and infrastructure, for example. And I am perfectly willing to defend that kind of spending and let the public decide whether my decision to help build roads and bridges in Ohio is an outrageous--or a proper--function of Federal Government. The Senate appropriations earmark process is transparent, and I welcome the public review of the projects I support, which I find constructive especially for hard-working, economically challenged families in Ohio.

The truth is Congress has a constitutional obligation to determine how the Nation spends its money. Banning earmarks cedes this power to unelected Federal bureaucrats in the administration. Congress should not be criticized for spending money, but only for spending it wastefully or irresponsibly, be it through earmarks or other spending. But the media loves to single out earmarks; they are hoodwinking people into thinking that by cracking down on earmarks, Congress is doing something responsible to solve this looming fiscal crisis staring us in the face. It's a disingenuous approach. And Congress is fooling the public by pretending that earmarks are the problem, when the real issues are spending and tax and entitlement reform.

It is interesting to note that many of my colleagues who are so strongly opposed to earmarks voted against the Conrad-Gregg fiscal commission that could very well have forced Congress to act upon tax and entitlement reform recommendations. How could one be so outspoken against earmarks in the name of fiscal responsibility and then oppose the commission that would propose reforms to the tax code and entitlements in order to put the country on a fiscally sustainable path?

So if my colleagues want to demonstrate true fiscal responsibility, if they admit that earmarks they have supported in the past are good use of tax dollars, and if they admit that banning earmarks would cede this control of spending from Congress to the administration, then why take such a blunt approach? Why don't we take more thoughtful and nuanced steps outlined by Senator *Inhofe*, who suggested we reform the already transparent earmark process and offered specific ideas on how to do it? Some of my colleagues practically admit that banning earmarks is not a very good idea per se, but that eliminating them is only politically expedient, as the public has come to see earmarks as a symbol of Washington's irresponsibility.

I don't want the public to be fooled by this. I don't support every earmark. There will always be examples of some wasteful projects somewhere. But earmarks are not the problem that gravely threatens our country's way of life, and the future of our children and grandchildren. This is why for over 5 years I have worked to create a commission to solve our Nation's real fiscal problems, and why I hope that the commission created by the President can produce a final legislative proposal that will effectively address our unchecked entitlement growth, our outdated and overly complex Tax Code, and return our Nation to a sustainable fiscal path.

The ACTING PRESIDENT pro tempore. Under the previous order, the question is on agreeing to the Coburn motion to suspend the rules with respect to amendment No. 4697.

Mr. GRASSLEY. I ask for the yeas and nays.

The ACTING PRESIDENT pro tempore. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays are ordered.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from California (Mrs. *Boxer*), the Senator from Maryland (Ms. *Mikulski*), and the Senator from New Hampshire (Mrs. *Shaheen*) are necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from Missouri (Mr. *Bond*) and the Senator from Kansas (Mr. *Brownback*).

The PRESIDING OFFICER (Mr. *Bennet*). Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted--yeas 39, nays 56, as follows:

[Rollcall Vote No. 255 Leg.]

YEAS--39

Alexander

Barrasso

Bayh

Bennet

Brown (MA)

Bunning

Burr

Chambliss

Coburn
Corker
Cornyn
Crapo
DeMint
Ensign
Enzi
Feingold
Graham
Grassley
Gregg
Hatch
Hutchison
Isakson
Johanns
Kirk
Kyl
LeMieux
McCain
McCaskill
McConnell
Nelson (FL)
Risch
Roberts
Sessions
Snowe
Thune
Udall (CO)
Vitter
Warner
Wicker

Akaka
Baucus
Begich
Bennett
Bingaman
Brown (OH)
Cantwell
Cardin
Carper
Casey
Cochran
Collins
Conrad
Coons
Dodd
Dorgan
Durbin
Feinstein
Franken
Gillibrand
Hagan
Harkin
Inhofe
Inouye
Johnson
Kerry
Klobuchar
Kohl
Landrieu
Lautenberg
Leahy

Lieberman
Lincoln
Lugar
Manchin
Menendez
Merkley
Murkowski
Murray
Nelson (NE)
Pryor
Reed
Reid
Rockefeller
Sanders
Schumer
Shelby
Specter
Stabenow
Tester
Udall (NM)
Voinovich
Webb
Whitehouse
Wyden

NOT VOTING--5

Bond
Boxer
Brownback
Mikulski
Shaheen

The PRESIDING OFFICER. On this vote, the yeas are 39, the nays are 56. Two-thirds of the Senators voting not having voted in the affirmative, the motion is rejected.

EARMARKS -- (Senate - November 29, 2010)

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Mr. INHOFE. Mr. President, first of all, I appreciate the fact no one objected to my unanimous consent request that I will be taking my 15 minutes from this side and 15 minutes from the other side and run them together. I appreciate that very much.

Let me say, before getting into this subject, something really great happened today in a bipartisan nature. We have a new Governor who will be coming in to Oklahoma, **MARY FALLIN**, who used to serve over in the House. In fact, I flew her around in my airplane and helped her campaign, and she won handily.

She made her first--she is still Governor-elect, but she made her first commitment today, and I was very excited about it. We have a guy in Oklahoma named Gary Ridley who has been the highway director and then the secretary of transportation in the State now for years and years and years. I was so proud that today she said she was going to reappoint him.

I can remember 8 years ago when Governor Brad Henry, who is a Democrat, was elected. I called him up and I said: I only have one request, and that is you keep Gary Ridley because he's the best there is in the Nation, and I really believe that. Now, 8 years later, she has done this.

I remember when I was critical of President Clinton in 1998 when he took \$8 billion out of the highway trust fund and put it into deficit reduction. It was something that was the wrong thing to do, and Gary Ridley stood by my side for 8 years before we were able to correct that. So we are going to have a great road program and hopefully we will be able to get into some of these things. After all, that is what we are supposed to be doing.

In a minute I am going to kind of identify myself as a different type of person than you have been hearing from on the floor. I happen to have the distinction of being the only Republican who objected in our conference a couple weeks ago to the ban on earmarks, as they define it. I just had no problem doing that at all. But it is something that is not a fun thing to do.

Something happened tonight that went completely by everybody. It was a total change in the Republican position, and it is a good change when Senator *McCain* and Senator *Coburn* both talked about authorization. I have often said that authorization is the only discipline on appropriations, and I believe that, and that is true. So we have a situation where I have been saying--not for months but for years--that if you will just define an earmark as an appropriations that has not been authorized, I am with you. I heard them tonight say that. Unfortunately, that is not what the bill that we are going to have before us says.

I would just like to do away with the whole word "earmarks" or else define it in such a way as I just described it. Now it seems as if everybody would be in agreement with it, and maybe that is going to be the road we will be taking.

Let me, first of all, before I surprise a lot of people, give my conservative credentials. I have always been ranked as one of the most conservative or the most conservative Member of the U.S. Senate, the National Journal's most conservative Senator for 2009. That is the last one they gave out: "The only Senator with a perfect score on 99 key votes." I have also been voted the "most outstanding U.S. Senator" by Human Events.

So I am a conservative. I am a conservative but a conservative who loves the Constitution. I have also been waiting for a long time. I love these guys. Certainly the author of this, Senator *Coburn*, is a brother and I love him. And brothers do fight sometimes. This fight is going to be over with and we are going to have a happy ending.

I have been waiting for years for this Tea Party thing to happen. for c. []

we have an administration with a majority in both Houses that we have had

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now for quite some time: spend, spend, spend. When they talk about George W. Bush, look, it is this administration with the increase in the debt to the amount it is now, which is a greater increase in debt than we have had collectively with every President, every administration from George Washington to George W. Bush.

All the time, they have been talking about earmarks that totally distract people from the real problem. That is not the problem. I have been listening on the floor now for the last 2 years. Every night we go through the same thing. They talk about earmarks, earmarks, earmarks. What they do not do is pay attention to the fact that during that discussion this President, with his majority in both Houses, was able to give my 20 kids and grandkids a \$3 trillion deficit in 1 year. It is mind-boggling that this could happen. But we hear the President say: Spend, spend, spend. And he has used the words quite often: We need to give the people what they desire. It reminds me of the story of the guy who went in the department store and there was a beautiful, young, voluptuous saleslady who came up and said: Sir, what is your desire? He said: Well, my desire is to pick you up after work and go to a fine restaurant, have dinner, and buy a bottle of champagne, go to my place, and make mad passionate love. But I need a pair of socks.

Now, what we are going to have to understand is, there is a difference between desire and need. That is what I am here to try to do. To think we could actually have said today--now, the bill does not do this, but it was said that authorizing is kind of a lost art. Senator *McCain* said that. Frankly, I do not quite agree with that because we have an authorization committee in Armed Services of which he is the ranking member, and I am the second ranking member, and it is something on which we have done a pretty good job. But in other areas we have not. Keep in mind, authorizing is the only discipline that there is to appropriating.

Now, I have a family picture I show you in the Chamber. These are my 20 kids and grandkids. I have to tell the occupier of the chair that I was so proud to have all of them at one table on Thanksgiving. How many people are blessed that way? Not many. But this little guy here--where is Jase Rapert. Here he is down there on the picture, the football guy.

He came up to me one time--this is some time ago--and he said: PopI--`I" is for ``Inhofe." So MomI and PopI. He said: PopI, why is it you do things no one else will? I said: That's the reason, because no one else will.

I am reminded of 9 years ago when everybody--I am talking about Democrats and Republicans--all said global warming is coming. The world is coming to an end. It is manmade gases that cause global warming. I looked into the science. At that time Republicans were in the majority. I was the chairman of the Environment and Public Works Committee that has that jurisdiction. I looked at that and I found out they were cooking the science, that it was not true.

Then we had the McCain-Lieberman bill and all these things that would pass a cap and trade which would constitute the largest tax increase in the history of this country. We beat them one at a time. The last one was Waxman-Markey. But, again, this has been something that has finally evolved, that that one, my voice in the wilderness 10 years ago, is now the prevailing thought. That is why I said to my little grandson, Jase Rapert, that I do it because no one else will.

So let me just say this. How much more fun it would be to come down here and do the politically correct thing and say: yes, earmarks are bad, earmarks are bad, earmarks are bad. We are going to do away with earmarks, and let everyone applaud before they realize what it really is.

I hear the staffers right now telling their Members: You know, you have the greatest opportunity. You can vote for this amendment to ban these earmarks and you can make people think you are conservative, No. 1. No. 2, you can make President Obama happy because he is publicly supporting this. This is what he wants because this means, as has been said by Senator *Lautenberg*, Senator

works in just a minute.

We could also be politically correct, so there would be a lot of them thinking: What an opportunity this is. People will think, if I vote for this amendment, I am a conservative. Obviously, I can make our President happy. That will do me no harm, and I can be politically correct.

Well, it has been demagoging now for so many years. Let me define what Webster's Third New International Dictionary says about demagoguery. The definition of demagoguery: "Political leaders who seek to gain personal or partisan advantage through specious, extravagant claims, promises and charges." That is what we have been listening to now for at least the last 2 years, on a regular basis.

The big problem I have with all the demagoging that has been going on every night for the last 2 years is that people are just not paying attention to the real problem. The real problem is not earmarks. The real problem is that during that 2-year period--when everyone is concerned about a few dollars--we found out we have increased the debt more than it has been increased in the history of this country, and we have given my 20 kids and grandkids a \$3 trillion deficit in just 2 years. I thought that was not possible. I never believed that could happen. But that is what has happened here. They have distracted people. Get this thing behind us so we can start working on this and not make people think we are doing something great for them when we really are not. It would be nothing short of criminal to go through all the trouble of electing great, new anti-establishment conservatives, only to be politically correct and have them cede to Obama their constitutional power of the purse. That is exactly what would happen.

I want these new people coming in to tackle the three issues to really save America, in my opinion the deficit, the debt, and Obamacare, and not be distracted by the bogus issue of earmarks. I say "bogus." It is kind of a strong word. Why is it bogus? It is bogus and unconstitutional, but the bogus part shows the definition of what we are saying. The House of Representatives Republicans--not the Democrats, the Republicans--took a moratorium, a 1-year moratorium banning earmarks in that period of time. How did they define it? They said:

Resolved, that it is the policy of the Republican Conference that no Member shall request a congressional earmark, limited tax benefit, or limited tariff benefit, as such terms are used in clause 9 of rule XXI of the Rules of the House.

What is clause 9 of rule XXI? It applies to every appropriation or authorization. In other words, they have said: we will neither appropriate nor authorize for a whole year. Now, the Democrats are going to do it. The President is going to do it. But they say they are not going to do it.

Of course, the authors of this amendment, they all agreed with and praised the House for doing this. But let's go ahead and see what the Constitution says, article I, section 9. Several people here have talked about the Constitution.

It is times like this that I miss Bob Byrd. Senator Byrd, talking about the Constitution right now, would be really outraged. It is so plain what we are supposed to be doing here. But article 1, section 9 says:

No money shall be drawn from the Treasury but in consequence of appropriations made by law.

Law, that is us. Article I, section 9 of the Constitution. That is not the President.

I would just say if you are looking at the Senate language, it says the term "congressionally directed spending" means a provision primarily at the request of a Senator providing expenditures, and so forth, to an entity targeted to a specific State or with any--everything is with or to an entity. In other words, they say--again, they are talking about all appropriations, all authorizations. We are not going to do that anymore. We are going to let the President do that. That is what this whole thing is about.

I was so excited when I heard for the first time them agreeing with me. By the way, it is not

Republican conference, I can say what I said, and I said to my colleagues when they were trying to get us, and they

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did, I went up in 2008 and I went ahead and voted for a ban because I was told they would define it as an appropriation that has not been authorized. Now, all of a sudden--they didn't do it then, and all of a sudden they are talking about doing it, and I think I know why and I will tell you in a minute why I think it is.

So we are having this situation now where we are saying we are not going to authorize, we are not going to appropriate. There are two reasons to ban Senate spending by either definition. It cedes constitutional authority to the President and also gives cover to big spenders.

Let's go back to that article I, section 9 chart. The Constitution restricts spending only to the legislative branch and specifically denies that honor to the President. We take an oath to uphold article 1, section 9 of the Constitution. Now, maybe there is some doubt about this. If you think there is some doubt, let's go back and see what the Founders of this country said. Let's see what the authors of the Constitution said. Let's look at James Madison. He said:

The power over the purse may, in fact, be regarded as the most complete and effectual weapon with which any Constitution can arm the immediate representatives of the people for obtaining redress of every grievance.

The two reasons he did, if you studied the Federalist Papers, they said they wanted Congress to do the spending because if they do it wrong--first of all, they know the needs of the people of their State or their--whatever the unit was at that time. If they do it wrong, they can fire them. Look what happened on November 2. That is exactly what happened. Alexander Hamilton said:

The legislature not only commands the purse but prescribes the rules by which the duties and rights of every citizen should be regulated.

That is what we are supposed to be doing.

Mr. President, I have talked about Alexander Hamilton and James Madison. Probably the guy who was most knowledgeable on the Constitution was Justice Joseph Story, back in the early 1800s, when he actually said in his commentary:

It is highly proper that Congress should possess the power to decide how and when any money should be applied. If it were otherwise, the executive would possess an unbounded power. Congress is made the guardian of the Treasury.

I say all this to impress upon any impartial patriot that the legislative branch--which is us--has the power to spend money. How does a ban on earmarks cede our authority to the President? This is something that is heavy lifting, but I think it is very important people understand why and how this happened. This is how it works. This is the way things work here and have for many years. The Constitution is very clear.

The President submits a budget to the House and Senate--us. There is an overall budget, but within the budget he says how much is going to be spent to defend America, for roads and highways, for water and infrastructure, all these things. We have these top lines under which we are operating. So let's take this as an example. I happen to be the second ranking member on the Armed Services Committee. In his budget last year, he had, I think, \$330 million set aside for a launching system called a box of rockets. It is a good program, something we need. But with limited funding, we on the Armed Services Committee--and Senator *McCain* talked about this--have experts who look at our missile defense system and say: How can we best defend America? The President doesn't know this. They can say that comes from the Pentagon, but that is not so. That is the reality. Instead of this launching system for \$330 million, we decide to spend that same amount of money and buy six new, shiny FA-18 fighters or things that we knew we needed at this time. It didn't cost any more money. We are taking

prerogative. If we substitute our appropriation for his budget item, it would be an earmark by any definition. If we pass this, that means we have to take whatever the President wants to spend on America, and we would not do anything we wanted to. So we said six new FA-18s were what we needed, and it didn't cost 1 cent more.

In other words, we would be letting the President do what James Madison wanted us to do. If you look at this in the Armed Services Committee, the unmanned aerial vehicles, right now we have 36 of them flying around Southwest Asia over areas where there is combat, feeding information to our kids in the field there. We would not have unmanned aerial vehicles if it weren't for earmarks. We took something the President wanted and put that same amount of money into these unmanned aerial vehicles. Also, we would not have our improved armored vehicles and add-on armor. Why do you think we on the committee spent so much time on Iraq, Afghanistan, and around the world on that? We do it to find out our needs. Then we know more than the President knows about the needs.

We are doing what Hamilton, Madison, and Story wanted us to do. That is what we are supposed to do. I don't know how many of our young men and women in uniform would be dead today if it hadn't been for that. We wouldn't have Mine Resistant Ambush Protected vehicles. That was a congressional earmark. We wouldn't have had \$14.2 million for the detection of landmines and suspected bombmakers and IEDs in Iraq and Afghanistan. That was my earmark on the Armed Services Committee. It didn't cost another cent. We merely canceled an equal amount of money that the President wanted to spend on something else and we exercised our Constitutional right. It didn't cost anything additional.

Eliminating earmarks wouldn't allow us to change anything in the Obama budget and would allow President Obama to perform our constitutional duties. As I said, constitutionally that is where we are and that money would be transferred, for all practical purposes, to President Obama. Second, it gives cover to big spenders. Under the current definition, let's look at two of the four largest earmarks in 2008. Using the Senate definition "expenditures with or to an entity," the following qualified as earmarks. But rather than arguing as to whether they are earmarks, I will put them up to get a perspective. These are two of them in 2008. The TARP is one that I think--I know people get upset when I say this, but 10, 15, 20 years from now, historians will say the most egregious vote ever cast by the Senate was on the \$700 billion bailout. You know where that went--AIG, Chrysler, and the General Motors bailout. That \$700 billion was given to an unelected bureaucrat to do what he preferred.

Next was the PEPFAR bill, \$50 billion. The author of this amendment, Senator *Coburn*, voted for both of these. I voted against them. This is something I wish all Members would do. This is called the Inhofe factor. I know I am not as smart as a lot of guys around here. When I see billions and trillions of dollars, I have to put it somehow into a perspective that I know what this costs my people in Oklahoma.

In 2009, \$2 trillion in taxes was paid by individuals across the country, and \$18 billion came from Oklahomans, which is about 1 percent of the Federal total. The average Oklahoma individual's tax return was \$11,100 that year. Therefore, the average Oklahoma taxpayer is responsible for providing the percentage shown here of the total Federal revenue. For every \$10 million in spending, Oklahomans pay about a nickel--not all the State but each taxpayer who files a tax return in Oklahoma. So that is what we have.

Put the next chart up. We see how that works in reality. If you take the amount and use the same factor to those two bills, the TARP bill, the \$700 billion bailout, and the \$50 billion PEPFAR bill, that is \$750 billion, and you apply that factor, each of my tax-paying families in Oklahoma would have to have an obligation of \$3,500 that year. That is what it would cost. Someone might argue that they didn't spend the whole \$700 billion, that some of that came back in. That is true. But they authorized it and said you can do it. They were willing to have each taxpayer in Oklahoma spend \$3,552 in taxes. The total amount of requests that I had--in other words, earmarks--were some \$80 million, and that was mostly in the area of defense. Using the same factor for each family in

cents. Those are earmarks--40 cents versus \$3,552 that the author of this amendment we are talking about would have to spend. You know, I think at some point you have to look and see what this cost is.

If you go back to the chart No. 4 there, several things have been said today that were not true. I am not saying they intentionally misrepresented the truth, but they did it inadvertently while being caught up in this thing. The statement was made by a Senator--it might have been the occupant of the chair. The statement was made that, as earmarks are going up, this is causing spending to go up. That is not what is happening. If you take the total amount of earmarks in 2010, according to OMB, that would have been \$11 billion. If you look and see what happened each year, it goes down in the amount. It started at \$18 billion 5 years ago and went down to \$15 billion and then to \$12 billion and now to \$11 billion. So it is coming down. That is why we have to look at this in reality.

I notice my good friend, Senator *DeMint*, from South Carolina, has been active in this, and the last time I spoke on the floor I pointed out that Senator *DeMint* had all these different earmarks that he has been able to get for his State, and I don't know how you can talk about eliminating earmarks and yet do that.

The platitudes that are used--it is interesting when you don't have the facts on your side, you don't have logic on your side, but you have a population who has been led to believe earmarks are bad--that means appropriations are bad, authorizations are bad unless they are done by the President; those individuals say earmarks are a gateway drug that needs to be eliminated in order to demonstrate that we are serious about fiscal restraint. There is only one problem with that. It is not true.

According to the Office of Management and Budget, again, and the Federal spending watchdog groups such as Citizens Against Government Waste, earmarks have dramatically decreased over the last several years. I mentioned 2005, \$19 billion; 2008, \$16 billion; 2009, \$15 billion; 2010, \$11 billion. So while the total number of earmarks and all dollars of earmarks have declined, the Obama deficit has ballooned to \$3 trillion in 2 years. So obviously they are not a gateway drug, but it sounds good. But these are the platitudes.

When they say it is symptomatic of all this garbage, we are talking about real dollars here. And we can't get down to doing something about real spending until we quit demagoguing this issue.

I am going to give an easy way to correct this problem in just a minute, but if you need further proof, in 2009 the Senate performed a rare action of considering many appropriations bills individually rather than doing the irresponsible thing we are talking about doing now and lumping them all into one bill to consider at the end of the year. The value of considering these bills individually is that it gives Senators the opportunity to exercise some oversight in government.

In 2009, Senators could offer amendments to both cut spending and strike particular earmarks if they desired, and they did desire. Between the months of July and November of 2009, there were 18 votes specifically targeting earmarks. Now, they failed, but if they had passed, it wouldn't have saved one penny. Instead of putting the money back into the pockets of the American people by reducing spending or shrinking the deficit, these efforts to eliminate earmarks would have put the money into the hands of President Obama by allowing his administration to spend the money as it saw fit. At the end of the day, none of the money would have been saved. President Obama wins, the American people lose.

In another case, Members offered an amendment to strike funding out of a program called Save America's Treasures, for specific art centers throughout the United States, but the money was simply shifted to allow the Obama administration to do it. The same thing happened with the transportation projects. Several Members offered amendments to strike a variety of transportation projects in many States, and they were unsuccessful. So what happened? That money went back to the bureaucracy controlled by President Obama. Not one of these actions saved a dime, but it made President Obama happy because it went back to his coffers.

We have clearly demonstrated two points. First of all, spending is the exclusive obligation of the Senate and, secondly, killing an earmark doesn't save a dime; it merely gives money to President

It reminds me of what I went through 10 years ago when I couldn't get anyone to understand how they were cooking the science and why we should not pass a cap and trade. Everybody thought the world was coming to an end, and I was that one person. Granted, that was 10 years ago, but now it is the prevailing thought here in Congress. In fact, the United Nations, which started the whole concept of global warming, is having their big annual party next week and not even one--none--of the media is going to show up. Hardly anyone is going to show up to the thing because people realize it was a phony issue. It was, in fact, the greatest hoax ever perpetrated on the American people. I said it, and everyone got mad at me and even hated me. So I do not mind being the only one, and I am the only one on this.

A couple of good things have happened, though. It has been mentioned by several of those who were the most adamant in opposition to earmarks. In the case of Rand Paul, from Kentucky, our new Senator--whom I am so happy to have with us--has said he would argue for things for the State of Kentucky. And Senator Mike Lee said:

I wouldn't say there's a mandate to stop spending for roads or any other general purpose like that.

Another House Member, **MICHELE BACHMANN**, said--and I think this has already been stated by one of the other Senators:

I don't believe that building roads and bridges and interchanges should be considered an earmark.

Great. I agree. That is my whole point. So we are seeing these people now coming around and saying: Well, we do have a job to do.

Senator *Chambliss* said:

There are times when crises arise or issues come forth of such importance to Georgia, such as the Port of Savannah, that I reserve the right to ask Congress and the President to approve funding.

Well, there it is. So I would say those individuals who are on the other side realize that is the wrong side. But let me say something else. I am very proud of some of the talk shows. I am on quite a few talk shows. And when you get a chance to talk, the way I am now, and explain to people what the situation is--I am looking now at I think 12 major talk show hosts in America who now pretty much agree with what I am saying tonight: Mike Gallagher, Mark Levin, Dennis Prager, Scott Hennen, Janet Parshall, Hugh Hewitt, Michael Savage, Crane Durham, Lars Larson, Jason Lewis, Rusty Humphries, Jerry Doyle, and quite a few others. And it was not easy for them to say: Maybe **INHOFE** has a point, so let's look at this a little closer.

So let me just say there is a solution. And I have to give credit where credit is due. These are not my thoughts. This is what I did. We have eight great Americans and the conservative groups they head up, and I am talking about Tom Schatz, president of Citizens Against Government Waste; Melanie Sloan, director of Citizens for Responsibility and Ethics in Washington; Steve Ellis, Taxpayers for Common Sense; Craig Holman, Public Citizen; Jim Walsh, Rich Gold, Manny Rouvelas, and Dave Wenhold. Thanks to them, we can put this whole earmark issue to rest because they authored ``The 5 Principles of Earmark Reform." There they are, the five principles of earmark reform. These are all the conservatives who said we really need to do something about this and at the same time preserve our constitution. So I introduced, a couple of weeks ago, S. 3939, and what I did is I took everything they had and I put that into a bill. And there it is. So take it a section at a time.

No. 1 of the five principles: To cut the cord between earmarks and campaign contributions, Congress should limit earmarks directed to campaign contributors--exactly what S. 3939 does.

Section 2:

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No earmark beneficiary shall make contributions aggregating more than \$5,000.

That is the second. The third principle: To increase transparency, Congress should create a new database of all congressional earmarks. And it goes on, and they elaborate and say this is all something you can find, but you can't get your hands on it. It is too complicated. So consequently we put in our bill, in section 4, the following:

The Secretary of the Senate and the Clerk of the House shall post on a public Web site of their respective houses, a link to the earmark database maintained by the Office of Management and Budget.

Every one of these things--and I could go through each and every one--is answered in S. 3939. So if you really want to do something about it, pass that bill and you will have solved the problem and you will have kept our constitutional duties intact.

We did one more thing because it goes one more step. This is very important. There was an oversight, but they all agree with this now. This goes a step further. It says that the administration--President Obama, the bureaucracies--will have the same transparency as senatorial earmarks. So Senator *McCain* talked about

lobbying these bureaucracies. Sure, they are doing it, because if we don't do the spending or the appropriating and authorizing, then the President does it. So the bureaucracy is doing that. So we have a section in this bill that subjects them to the same thing.

Do you remember when Sean Hannity came up with the 102 most egregious earmarks? This is just some of them. There were 102, and I read them all on the floor from this podium, and I did it to make sure people understood what he had found out. I said at the end of reading all of these earmarks--look at some of these: \$300,000 for helicopter equipment to detect radioactive rabbit droppings--that all 102 have something in common: not one of them was a congressional earmark. They were all bureaucratic Obama earmarks. So that is the reason for that. And if you want reform, that is how to get it.

I know there will be some Members who will not be able to resist the fact that they can have a great opportunity with one vote. They can make people think they are conservative and give President Obama what he wants, and they can be politically correct. But, again, we have a solution to the problem. That solution will come.

Mr. President, in that conference I mentioned about 30 minutes ago, I said that if you want to do something to do away with the earmark and all this, all you have to do is define an earmark as an appropriation that has not been authorized. Authorizing committees are the discipline for appropriations. A lot of our appropriating friends won't like this idea, but that would do it. We heard several of the Senators, including my junior Senator, the author of this amendment, and Senator *McCain*, saying this is good, we have done away with authorizing. We need to authorize these things.

In the Armed Services Committee, we have experts in every field. One of the experts is a group of people who look at our missile defense system. Right now, we are in very serious problems in this country by taking down the site in Poland that would stop the ground-based interceptor site. That is something we should be doing. We need to have redundancy. We know we can hit a bullet with a bullet, and we should do that. We have the experts who know how to do that.

So I would say we have an opportunity. We can reform this. We can subject the bureaucracy to the same transparency to which we are subjected. We should do away completely with terms such as "earmarks" as people are thinking of them in their minds and go to having them redefined as appropriations that have not been authorized. I know it is a hard concept and one that not many people want to believe, but it is much easier to oversimplify it and say that all earmarks are bad. Well, if you define them properly, I agree they would all be bad. Anything that is appropriated that is not authorized, in my opinion, is bad and should be done away with.

So with that, this one voice in the wilderness, one conservative is saying this is the true story. If you really do want to cede our constitutional authority to President Obama, you can do it by passing

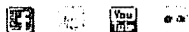
thing to do, after looking at the Constitution and what Justice Joseph Story and Hamilton and Madison all said we are supposed to be doing here, let's seriously consider that and resolve this problem, put it behind us so we can quit distracting from the big spending going on today that has given us a \$3 trillion deficit in 2 years.

With that, Mr. President, I yield the floor.

END

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