CLAIRE McCASKILL
MISSOURI

717 HART SENATE OFFICE BUILDING
WASHINGTON, DC 20510
(202) 224-6154
FAX: (202) 228-6326
http://mccaskill.senate.gov

# United States Senate

WASHINGTON, DC 20510

COMMITTEES:
ARMED SERVICES
COMMERCE, SCIENCE AND TRANSPORTATION
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
SPECIAL COMMITTEE ON AGING
AD HOC SUBCOMMITTEE ON CONTRACTING OVERSIGHT, CHAIRMAN

May 26, 2011

Honorable Howard P. McKeon
Chairman
Committee on Armed Services
United States House of Representatives
2120 Rayburn House Office Building
Washington, D.C.

Honorable Adam Smith
Ranking Member
Committee on Armed Services
United States House of Representatives
2120 Rayburn House Office Building
Washington, D.C.

Dear Chairman McKeon and Ranking Member Smith:

I write today to express concerns about the process used in your committee's mark-up of the Fiscal Year 2012 National Defense Authorization Act (NDAA), which has obviously been structured to circumvent the earmark ban adopted by the House of Representatives. As someone who has worked tirelessly to end the non-competitive, arbitrary process of earmarking, I celebrated the decision, first made by House Republicans, to put a moratorium on earmarks. However, you have now instituted a process that allows members of your committee to circumvent the ban through the use of non-transparent amendments that effectively act as traditional earmarks. This is disappointing and disingenuous.

It is my understanding that the new process you instituted, as described by the Chairman's office and in recent press accounts, was designed to allow members of your committee to submit requests for increases in defense spending accounts ahead of this year's NDAA markup, much as they sought increases ahead of the consideration of bills in the traditional earmarking process. It is further my understanding that your staff subsequently provided some unknown level of vetting of these requests and turned some of them, also for reasons we do not know, into amendments that could be taken up during your markup of this year's NDAA. At the markup, these amendments were generally taken up in a large group and quickly approved by voice vote with no discussion, debate or justification. In fact, members of your own committee have stated publicly that they were voting on amendments without being fully apprised of their contents.

What is remarkable is that the new earmarking procedure you have instituted not only circumvents the current moratorium but is actually less transparent than the earmarking process that was in place prior to the moratorium. In the process used by your committee, neither exact dollar amounts nor intended recipients of the earmarks can be clearly discerned. Under pre-moratorium rules, earmark requests were publicly posted and funded earmarks were listed in reports accompanying bills with the sponsor, amount and intended recipient all clearly detailed. You may assert that amendments adopted to your bill do not require a specific dollar amount be directed to a specific entity. You may also argue that the amendments require competition in awarding additional funding. Unfortunately, such arguments appear insincere. It has been reported that the members of your committee have been assured that they will be able to direct the funds provided for in their amendments to their desired recipients using informal contacts with the Department of Defense and

555 INDEPENDENCE
ROOM 1600
CAPE GIRARDEAU, MO 63703
(573) 651-0964
FAX: (573) 334-4278

915 EAST ASH STREET
COLUMBIA, MO 65201
(573) 442-7130
FAX: (573) 442-7140

4141 PENNSYLVANIA AVENUE
SUITE 101
KANSAS CITY, MO 64111
(816) 421-1639
FAX: (816) 421-2562

5850 DELMAR BOULEVARD
SUITE A
ST. LOUIS, MO 63112
(314) 367-1364
FAX: (314) 361-8649

324 PARK CENTRAL WEST
SUITE 101
SPRINGFIELD, MO 65806
(417) 868-8745
FAX: (417) 831-1349

the leverage of the Armed Services Committee. The press releases of your members issued when the FY12 NDAA won passage in your committee bear this out, as illustrated in the example below.

The extent to which your committee went to facilitate this new earmarking process is also troubling. In order to provide your members with access to funds to offset the spending they would propose in earmark amendments, you established a slush fund – the "Mission Force Enhancement Transfer (MFET) Fund" – of one billion dollars. This slush fund, created by making cuts, virtually all unexplained and unjustified, to programs requested by the Department of Defense, appears to have been the source of funding for nearly all of the pet projects pursued in earmark amendments. Accordingly, your members were absolved of any responsibility to carry out meaningful analysis of whether the earmark funding they sought was more valuable to our national security than some other military program they would need to cut to pay for their new addition.

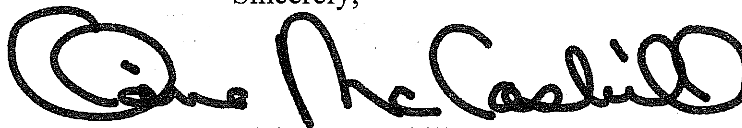
One amendment approved by your committee provides a clear example. During the markup of your bill, a Congressman with a nanotechnology-specific academic center in his district offered an amendment seeking a $7 million addition for "innovative nanomaterials and nanomanufacturing processes." The amendment was offset using funds in the MFET Fund. The amendment was later passed as part of a large block of similar amendments without debate. Subsequently, the Member who won inclusion of the amendment issued a press release celebrating the additional $7 million in funding. Curiously – or not – the press release also included a quote from a member of the leadership of the university with the nanotechnology center in the Congressman's district. It is apparent that both the member and the university have expectations that the funds will ultimately reach the university. This is tantamount to the classic earmarking process. Notably, the Member who sponsored this amendment, like his House colleagues, has publicly embraced an earmark ban for the 112th Congress.

On its face, the new process you have implemented in your committee to facilitate earmarking and circumvent the earmark moratorium in the House strikes me as a subversion of the trust of the American people who took your word about ending earmarks. Out of fidelity to your own commitment to ban earmarks, I urge you to seek to remove those amendments included in the FY12 NDAA that appear to be nothing more than earmarks in an alternate form.

As the debate on the FY12 NDAA continues and the Senate Armed Services Committee considers its own version of the bill, I will be working with my colleagues to ensure that no similar attempt to add earmarks is pursued in the Senate. If necessary, I will also seek language in a conference between the House and Senate that will ensure that any earmarks included in your bill, should they survive to become law, will undergo the most extensive scrutiny and transparency possible upon implementation.

Thank you for your time and consideration of my concerns.

Sincerely,



Claire McCaskill
United States Senator