



April 7, 2008

Letter from Washington

Since the last Letter from Washington the presidential primary situation is largely unchanged.

On the Republican side, Sen. John McCain continues to solidify his standing with the conservative base of the Republican Party, although his fundraising has been anemic when compared to the Democrats. About the only drama left in the Republican race is McCain's choice for Vice-President, and he has acknowledged that his age makes that selection more significant than normally. McCain will be 71 when sworn in, if he is elected, which will make him the oldest US President in history.

On the Democrat side, the Clinton-Obama contest has been largely static awaiting the results of the Pennsylvania primary on April 22nd. The news has been uniformly bad for Sen. Clinton, and her main hope for salvaging the nomination lies with the "super delegates", or party elected and unelected officials, who hold the balance of power in the nomination process since the popular vote has yielded pretty much of a draw to this point. Clinton trails by 160 pledged delegates with only 330 of the 795 super delegates uncommitted. Since February 5th, Obama has picked up the support of 69 super delegates and Clinton has had a net loss of two previously committed to her support.

Sen. Clinton's remaining hope is that she scores a big win in Pennsylvania and North Carolina this month, which she can use to stem the flow of support trending toward Obama. That prospect does not look very promising since polls now show Clinton and Obama working toward an even split of the vote (which had previously favored her by 15 points or more).

If I were a betting man (and I am), I would bet that the Clinton organization does the math after the April primaries and opts for a graceful exit. The scorched earth option of fighting all the way to the convention seems to hold little promise for success but with an unlimited downside for Sen. Clinton. She has the opportunity to play a leadership role in the Democratic Party in the Senate, but would foreclose that future if she persists in what is increasingly seen as the spoiler role in a forlorn hope.

On the Congressional front, "earmarks" have been an ongoing item of controversy ever since the Democrats took control of the House and Senate in 2006. Given the importance of appropriations and funding to the programs which the readers of this letter hold dear, a short tutorial is in order:

An earmark in the defense context is Congressional direction that appropriated funds be spent on specific projects. Earmarks can be placed in both legislation (referred to "hard earmarks" since they have the force of law) and in the text of Congressional committee reports (referred to as "soft earmarks" which are theoretically optional for the Defense Department although they have been honored historically). Typically, legislators seek to insert earmarks which direct a specified amount of money to a particular organization or project in their district.

The Office of Management and Budget (in the Executive Branch) defines earmarks as an exercise in which the Congressional direction circumvents the competition process, or specifies the recipient, or otherwise curtails the ability of the President to manage the funds allocation process.

Attempts have been made to define earmarks in ethics and budget reform legislation. However, none of these have been widely accepted since the Congress would be functionally surrendering its ability to funnel money and projects into the home districts. Under Article I, Section 9 of the US Constitution, the Congress directs all appropriations of money drawn from the U.S. Treasury. This provides Congress with the power to direct the Executive branch very specifically on how those funds should be spent.

It should be noted that an earmark differs from the appropriations process defined in the Constitution, in which Congress grants a yearly lump sum of money to a Federal agency. These funds are then sub-allocated by the agency through its internal budgeting process. Congress has given itself the authority to direct a specified amount of money from an agency's budget to be spent on a particular project, sometimes without the other members of Congress having the ability to vote on the project.

Forgetting for the moment the cost to the taxpayer, opponents argue that the ability to earmark federal funds should not be part of the legislative appropriations process. Taxpayer dollars should be spent by departments and agencies according to objective standards rather than being earmarked arbitrarily. Supporters of earmarks however, believe that elected officials are better able to prioritize funding needs in their own districts.

The Department of Defense appropriations bill contains nearly 2,200 earmarks worth \$7.9 billion. The total Congressional earmarks for fiscal year 2008 in all departments numbered 11,780 worth \$18.3 billion.

House Republicans have been sharply divided over how to deal with earmarks this year, as their Senate brethren have accepted measures increasing the transparency of member projects.

Republicans largely support a proposal to establish a select committee to study while imposing a moratorium on earmarks, until the panel provides definitive guidance (in Washington, the surest way to avoid coming to grips with a difficult issue is to appoint a commission to study it).

Republican supporters of a unilateral moratorium argue that House Democrats and the Senate would be forced to follow suit. Others Republicans are opposed to surrendering their right to earmark without a similar commitment by Democrats, seeing the unilateral moratorium as a kamikaze mission.

Senate Republicans are also divided over earmarks, although there appears to be little enthusiasm for a moratorium but a focus on increased disclosure requirements.

From a DoD standpoint, earmarks can provide a jumpstart for programs that provide urgently needed equipment and services for forces in the field, rather than going through the two-year long planning and programming process. More often however, earmarks come to the department as unfunded mandates, requiring defense planners to shift funding and management resources to programs that are not wanted, not planned for, and have a long and costly logistics tail that is never considered or accounted for in the original earmark.

In the final analysis there is a certain amount of validity on both sides of the issue. The founders never intended for the members of Congress to rubber-stamp the President's budget and spending priorities. They also never envisioned the orgy of self-dealing that has taken place over the last 10 years, with many pet rock projects "appearing" mysteriously in conference reports --- projects that were never voted on by the committees or by the House and Senate.

Bottom Line: No matter how flagrant the abuse or how shameless the violation of the fiduciary responsibility that members of Congress have to the American public, the House or Senate will never give up the ability to direct funds to districts. That would amount to a unilateral surrender of influence and a loss of power that would be viewed as institutional suicide.