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Dear Republican Colleague:

As we embark on Senate debate of Majority Leader Reid's massive \$2.5 trillion health care reform legislation, it is critical that Republican senators have a solid understanding of the minority's rights in the Senate.

I think that we can all agree that the Democrats' bill is the wrong choice for our nation. It will impact one-sixth of our economy, vastly grow the government, and pile tremendous debt on future generations. We are at an important crossroads both for the economy and for the health care system. Therefore, it is imperative that our voices are heard during this debate.

We, the minority party, must use the tools we have under Senate rules to insist on a full, complete and fully informed debate on the health care legislation – as well as all legislation – coming before the Senate. As laid out in the attached document, we have certain rights before measures are considered on the floor as well as certain rights during the actual consideration of measures. Every Republican senator should be familiar with the scope of these rights, which serve to protect our ability to speak on behalf of the millions of Americans who depend on us to be their voice during this historic debate.

I hope you find the attached information helpful. If you have any questions, please contact my communications office at 202-224-6011.

Sincerely,



Judd Gregg

FOUNDATION FOR THE MINORITY PARTY'S RIGHTS IN THE SENATE (Fall 2009)

The Senate rules are designed to give a minority of Senators the right to insist on a full, complete, and fully informed debate on all measures and issues coming before the Senate. This cornerstone of protection can only be abrogated if 60 or more Senators vote to take these rights away from the minority.

I. RIGHTS AVAILABLE TO MINORITY BEFORE MEASURES ARE CONSIDERED ON FLOOR (These rights are normally waived by Unanimous Consent (UC) when time is short, but any Senator can object to the waiver.)

- **New Legislative Day** – An adjournment of the Senate, as opposed to a recess, is required to trigger a new legislative day. A new legislative day starts with the morning hour, a 2-hour period with a number of required procedures. During part of the “morning hour” any Senator may make non-debatable motions to proceed to items on the Senate calendar.
- **One Day and Two Day Rules**– The 1-day rule requires that measures must lie over one “legislative day” before they can be considered. All bills have to lie over one day, whether they were introduced by an individual Senator (Rule XIV) or reported by a committee (Rule XVII). The 2-day rule requires that IF a committee chooses to file a written report, that committee report MUST contain a CBO cost estimate, a regulatory impact statement, and detail what changes the measure makes to current law (or provide a statement why any of these cannot be done), and that report must be available at least 2 calendar days before a bill can be considered on the Senate floor. Senators may block a measure’s consideration by raising a point of order if it does not meet one of these requirements.
- **“Hard” Quorum Calls** –Senate operates on a presumptive quorum of 51 senators and quorum calls are routinely dispensed with by unanimous consent. If UC is not granted to dispose of a routine quorum call, then the roll must continue to be called. If a quorum is not present, the only motions the leadership may make are to adjourn, to recess under a previous order, or time-consuming motions to establish a quorum that include requesting, requiring, and then arresting Senators to compel their presence in the Senate chamber.

II. RIGHTS AVAILABLE TO MINORITY DURING CONSIDERATION OF MEASURES IN SENATE (Many of these rights are regularly waived by Unanimous Consent.)

- **Motions to Proceed to Measures** – with the exception of Conference Reports and Budget Resolutions, most such motions are fully debatable and 60 votes for cloture is needed to cut off extended debate.
- **Reading of Amendments and Conference Reports in Entirety** – In most circumstances, the reading of the full text of amendments may only be dispensed with by unanimous consent. Any Senator may object to dispensing with the reading. **If, as is often the case when the Senate begins consideration of a House-passed vehicle, the Majority Leader offers a full-text substitute amendment, the reading of that full-text substitute amendment can only be waived by unanimous consent.** A member may only request the reading of a conference report if it is not available in printed form (100 copies available in the Senate chamber).
- **Senate Points of Order** – A Senator may make a point of order at any point he or she believes that a Senate procedure is being violated, with or without cause. After the presiding officer rules, any Senator who disagrees with such ruling may appeal the ruling of the chair—that appeal is fully debatable. Some points of order, **such as those raised on Constitutional grounds**, are not ruled on by the presiding officer and the question is put to the Senate, then the point of order itself is fully debatable. The Senate may dispose of a point of order or an appeal by tabling it; however, delay is created by the two roll call votes in connection with each tabling motion (motion to table and motion to reconsider that vote).

- **Budget Points of Order** – Many legislative proposals (bills, amendments, and conference reports) are subject to a point of order under the Budget Act or budget resolution, most of which can only be waived by 60 votes. If budget points of order lie against a measure, any Senator may raise them, and a measure cannot be passed or disposed of unless the points of order that are raised are waived. (See <http://budget.senate.gov/republican/pressarchive/PointsofOrder.pdf>)

- **Amendment Process**

Amendment Tree Process and/or Filibuster by Amendment – until cloture is invoked, Senators may offer an unlimited number of amendments -- germane or non-germane -- on any subject. This is the fullest expression of a “full, complete, and informed” debate on a measure. It has been necessary under past Democrat majorities to use the rules governing the amendment process aggressively to ensure that minority Senators get votes on their amendment as originally written (unchanged by the Majority Democrats.)

Substitute Amendments – UC is routinely requested to treat substitute amendments as original text for purposes of further amendment, which makes it easier for the majority to offer 2nd degree amendments to gut 1st degree amendments by the minority. The minority could protect their amendments by objecting to such UC’s.

Divisible Amendments – amendments are divisible upon demand by any Senator if they contain two or more parts that can stand independently of one another. This can be used to fight efforts to block the minority from offering all of their amendments, because a single amendment could be drafted, offered at a point when such an amendment is in order, and then divided into multiple component parts for separate consideration and votes. Demanding division of amendments can also be used to extend consideration of a measure. Amendments to strike and insert text cannot be divided.

- **Motions to Recommit Bills to Committee With or Without Instructions** – A Senator may make a motion to recommit a bill to the committee with or without instructions to the Committee to report it back to the Senate with certain changes or additions. Such instructions are amendable.

- **AFTER PASSAGE Going to Conference, Motions to Instruct Conferees, Matters Out of Scope of Conference**

Going to Conference – The Senate must pass 3 separate motions to go to conference: (1) a motion to insist on its amendments or disagree with the House amendments; (2) a motion to request/agree to a conference; and (3) a motion to authorize the Chair to appoint conferees. The Senate routinely does this by UC, but if a Senator objects the Senate must debate each step and all 3 motions may be filibustered (requiring a cloture vote to end debate).

Motion to Instruct Conferees – Once the Senate adopts the first two motions, Senators may offer an unlimited number of motions to instruct the Senate’s conferees. The motions to instruct are amendable – and divisible upon demand -- by Senators if they contain more than one separate and distinct instruction.

Conference Reports, Out of Scope Motions – In addition to demanding a copy of the conference report to be on every Senator’s desk and raising Budget points of order against it, Senators may also raise a point of order that it contains matter not related to the matters originally submitted to the conference by either chamber. If the Chair sustains the point or order, the provision(s) is stricken from the conference agreement, and the House would then have to approve the measure absent the stricken provision (even if the House had already acted on the conference report). The scope point of order can be waived by 60 Senators.

Availability of Conference Report Language. The conference report must be publicly available on a website 48 hours in advance prior to the vote on passage.