

December 25, 2009

MEMORANDUM

FROM: Michael Hammond

RE: Twenty Things McConnell Did Wrong

I have not been among those who felt that conservatives should continue to bash McConnell, just for the sake of bashing him, after events had moved beyond the point where they could be remedied by correcting his bad judgment. However, attacks by McConnell's staff on those who have had the audacity to question his bad strategy -- coupled with the doting worship of these staff members by some conservatives -- deserve a response.

When your car ends up in a ditch, it's probably because you did something wrong. Reid didn't start December with 60 votes, and the fact that he ran circles around hapless Republicans suggests that there was something wrong about the McConnell strategy. Further, it is possible to determine what went wrong, even though you weren't actually "in the car" when it swerved off the road.

Well, says McConnell, we kept the bill from passing until Christmas eve. But no one should deceive themselves. The bill remained in limbo until exactly the moment Reid secured his 60<sup>th</sup> vote -- not a minute before and not a minute after. No one should assume it would have passed on December 1<sup>st</sup>, no matter what Republicans did.

Well, says McConnell, we kept Republicans together. But there were at least 43 senators who could not have voted for cloture until the bill was cleaned up. This is not because they were grateful to McConnell for pursuing an ineffectual strategy, but, rather, because the bill was inconsistent with clearly defined positions which they were in no position to renounce.

Well, says McConnell, we caused the poll numbers for the bill to plummet. But no one should assume that the spectacle of Republican senators being humiliated by Durbin, Baucus, and do-nothing side-by-sides was what has driven polls. The bribes -- and the Republicans' focus on them -- has helped a lot. Similarly, the fact that the LIBERALS have begun to call attention to the mandates has woken up many people -- and many of Obama's core

supporters. And the pollsters have consistently told us that this is the bill's Achilles heel.

The battle has just begun. And I believe that putting withering pressure on "moderate" Democrats for this package of bribes, extortion, fraud, secrecy, and corruption will still shift the one or two senators or reps needed to prevail. We should also insist that not a single word or punctuation mark in Stupak should be changed. Moreover, let me make the following observations:

#### TWENTY THINGS THAT McCONNELL SHOULD HAVE BEEN DONE DIFFERENTLY

##### ERROR #1: HE PURSUED THE WRONG PARADIGM

McConnell's strategy was based on his unsuccessful strategy on the Motor Voter bill. After the bill hit the Senate floor, he sat back ineffectually as Dems played "let's make a deal." A bill which started with fewer than the 60 votes needed ended up with enough votes for cloture.

The better paradigm would have been the immigration amnesty bill. We kept amendments from being adopted to that bill, including Republican amendments. We stopped amendments which allowed senators to say "I tried" -- like Nelson and Dorgan -- from being offered. In the end, we forced a "gatekeeper" structure which precluded the adoption of the amendments necessary to buy votes.

It is hardly surprising that McConnell was unable to pursue the "amnesty paradigm," given that he was on the wrong side on that issue.

##### ERROR #2: HE PURSUED THE WRONG ISSUES

Okay, okay. It was worth reminding people that the bill cut Medicare by \$465 billion. But it would also have been useful to inform Americans that the bill would, for the first time in history, require Americans to purchase very expensive government-mandated insurance, under penalty of fine and imprisonment. And there was nothing to stop us from throwing our entire agenda at the bill.

Well, McConnell would say, Reid would simply tree the bill and filibuster his own bill for a month. But there are ways to deal with this. And it is far from clear that he could get cloture without giving Dorgan and Nelson an opportunity to offer their amendments. And you can't you a manager's amendment for propositions which need to lose in order for the bill to go forward.

ERROR #3: HE ALLOWED SIDE-BY-SIDES

You may not be able to stop a do-nothing amendment. But you can prevent it from being voted on a second after your substantive amendment fails -- without any amendments to it being in order.

Incidentally, the Democrats' "guaranteed benefits" amendments were like saying "I guarantee you a mansion in Beverly Hills; and here's \$200 to purchase it." But Republicans seemed curiously incapable of explaining this.

ERROR #4: HE DID NOT MAKE EFFORTS TO ENCOURAGE REPUBLICANS TO VOTE AGAINST THE SIDE-BY-SIDES AS THE MORALLY FRAUDULENT EXERCISES THAT THEY WERE.

ERROR #5: HE FAILED TO OFFER A GATEKEEPER

A "gatekeeper" amendment is an amendment which is so politically poison that Democrats are unable to kill it, but unwilling to adopt it. (For the argument that Reid would "tree" us out, see "Error #2.")

ERROR #6: HE FAILED TO ALLOW OTHER PEOPLE'S "GATEKEEPERS" TO CONTINUE TO SERVE AS GATEKEEPERS

Amendments which could have served as "gatekeepers," such as the Dorgan amendment, were allowed to be disposed of. Without side-by-sides, it is possible that even issues like the McCain motion could have served this function.

ERROR #7: IN THE UC ALLOWING, FOR INSTANCE, DORGAN AND HUTCHISON, HE NEEDED TO INSURE THAT THE "YEAS AND NAYS"

WERE ORDERED, IN ORDER TO PREVENT MODIFICATION OR WITHDRAWAL.

ERROR #8: HE MADE A HUGE MISTAKE IN ALLOWING ANY AMENDMENT TO BE AUTOMATICALLY WITHDRAWN IF IT DID NOT GET 60 VOTES.

Think Reid would have prohibited all amendments without this proviso? See Error #2.

ERROR #9: WHEN PARLIAMENTARIAN ALAN FRUMAN SOLD HIS SOUL BY ALLOWING THE WITHDRAWAL OF THE SANDERS AMENDMENT, McCONNELL SHOULD HAVE MADE A MUCH, MUCH, MUCH BIGGER DEAL OF IT.

Riddick (the book of precedents combined by the former parliamentarian) made it absolutely clear that the consistent rule was that you could not call off the reading of an amendment, except by unanimous consent. The precedent which Fruman eventually pulled out applied only to an agreement that the reading be suspended.

So McConnell gave a tepid speech. Okay.

But, for the parliamentarian to CLEARLY throw out the rule book because it was inconvenient, after initially opining to the contrary, is Armageddon. Every Republican should have assembled on the floor to loudly denounce that disgrace.

ERROR #10: REPUBLICANS SHOULD HAVE RAISED THE ROOF EVEN LOUDER ON THE DeMINT POINT OF ORDER.

The "grand compromise" in Rule XXII was that bills require 60 votes for cloture, but that rules changes require 67.

The "death panel" provisions of the Reid substitute (being on page 1017) overturn Senate rules with respect to referrals, discharge, amendability, floor time limits, conference, and disagreement between houses. It explicitly suspends Rule XV of the Standing Rules of the Senate. Furthermore, for the first time in American history that I

know of, it MAKES IT ILLEGAL FOR CONGRESS TO CHANGE ITS PROVISIONS.

Well, said Fruman, the 67 vote requirement only applies if you actually say you are amending a standing rule internally for all purposes. And he had been edging toward this ruling for some time -- although ObamaCare goes far beyond any previous ruling.

But, if this is true, you can amend the Senate rules in ANY WAY by 60 votes, just so long as you don't do so by reaching into current formulations.

GOA didn't oppose the "nuclear option" just to have it implemented by Reid by parliamentary fiat.

ERROR #11: HE SHOULD HAVE OBJECTED TO THIS NOTION THAT "EQUITY" REQUIRES A DEMOCRATIC AMENDMENT FOR EVERY REPUBLICAN AMENDMENT.

The Democrats had an amendment. It was 2,074 pages long. It was time Republicans be given an opportunity to have their say.

ERROR #12: HE SHOULD HAVE OBJECTED TO THE UNANIMOUS CONSENT AGREEMENTS ESTABLISHING EQUAL TIMES FOR DEBATE.

This only contributed to the "nicey-nice" sense that Republicans didn't view the passage of this legislation as any big deal.

ERROR #13: HE SHOULD HAVE FILIBUSTERED THE DEBT LIMIT.

Aside the fact that Dems shouldn't have been able to sneak through the \$280 billion increase of the debt limit within minutes of telling us that ObamaCare would "reduce the deficit," there is the little fact that the Nelson "compromise" would result in an estimated 300,000 babies per year being aborted with taxpayer funds (based on pre-Hyde experience). Whether senators can catch planes is a small consideration, compared to this -- and they should have said so.

As for the GOP votes McConnell supposedly bought in exchange for rolling over -- it was not enough votes to win. And they were hardly in a position to call the House back again over Christmas for the sake of increasing it to \$2 trillion.

ERROR #14: FOR THE SAME REASON, HE SHOULD NOT HAVE AGREED TO MOVE UP THE FINAL PASSAGE VOTE.

ERROR #15: HE SHOULD HAVE CALLED THE GAO OUT A LOT EARLIER.

When it was clear that the GAO --

- would assume that the delusional Medicare cuts were doable;

- would allow the "doc fix" to be ignored;

- would not call out Reid for his Madoff accounting concerning phase-ins;

- would engage in large numbers of sleazy assumptions (such as the nothing that "Cadillac plans" would continue to increase after being taxed at 40%) --

Republicans should have stopped calling it the "gold standard" and gone ballistic.

The revelation that -- shoot -- they double-counted the Medicare cuts -- AFTER THE DAMAGE HAD BEEN DONE -- was particularly disgusting.

ERROR #16: HE SHOULD HAVE MADE A BIGGER DEAL OF KIRK'S FRAUDULENT APPOINTMENT.

This aspect of the process was particularly corrupt, even by ObamaCare standards.

In 2004, the Massachusetts legislature changed its law to prohibit gubernatorial appointment of a caretaker senator -- for the clear purpose of prohibiting then-Governor Mitt Romney from appointing a GOP successor to "President" Kerry. At the time, Democrats denounced

gubernatorial appointment as characteristic of the Third World.

Now that Democratic Governor Deval Patrick was needed to appoint a Democrat to be the "60<sup>th</sup> vote," they changed the law back. And they would have added a provision prohibiting a Republican from being appointed as that caretaker -- and perhaps should have been allowed to -- had the GOP not threatened to sue.

Deval declared an "emergency" to allow the appointment to be made immediately, even though it had not been an "emergency" while the seat sat effectively vacant while Ted Kennedy died.

The state GOP lost a perfunctory case, and then withdraw from the battlefield. The national GOP considered it a "done deal" based on the Democratic dominance in the state.

Maybe it was a "done deal." Maybe not. But this should have been the opening salvo in the Republican case that ObamaCare is being passed with fraud and corruption -- rather than waiting for the Cornhuster Kickback in order to pursue the theme of moral decrepitude.

ERROR #17: A FORTIORI, HE SHOULD HAVE DEMANDED ETHICS INVESTIGATIONS, SUGGESTED CRIMINAL IMPROPRIETY, AND REQUESTED STATE AG INVESTIGATIONS OF THE "LOUISIANA PURCHASE" AND THE CALLS FOR LIEBERMAN TO LOSE HIS CHAIRMANSHIP.

As David Letterman found out, you can be charged with extortion even for threatening to do something you have a legal right to do -- if the threat is made in order to obtain money (or, presumably, to buy a vote).

ERROR #18: HE NEEDED TO CIRCULATE A HOLD LETTER PLACING HOLDS ON NOMINATIONS OF ALL CURRENT SENATORS AND REPRESENTATIVES WHO MIGHT BE PROMISED (OR GIVEN) EXECUTIVE POSTS IN EXCHANGE FOR THEIR SUICIDAL VOTES.

Reportedly, Lincoln knows this vote will cost her her seat, and is expecting an ambassadorship. We should have made it clear early that this is not going to happen.

ERROR #19: REPUBLICANS SHOULD HAVE DEMONSTRATED THE MORAL OUTRAGE THAT DURBIN HAS LEVELED TOWARD COBURN.

Reid has turned the U.S. Senate into a moral cesspool that would be an embarrassment to a Third World country. But the GOP has, all too often, responded with an intellectual coolness that implies that this is just business as usual. If Durbin can express moral outrage about Coburn's hope that someone's car breaks down, Republicans should express outrage about the fact that Democrats are engaging in conduct which, in any other context, would earn them long prison sentences.

ERROR #20: RATHER THAN TAKING TWO DAYS ATTACKING CONSERVATIVES FOR OBJECTING TO HIS FECKLESS STRATEGY, MAYBE McCONNELL AND HIS STAFF SHOULD HAVE KEPT THEIR EYE ON THE BALL.

It says something that McConnell's staff views conservatives as greater enemies than Reid.