

November 22, 2009

MEMORANDUM

FROM: Michael Hammond

1:30 a.m.; Dunbarton

At the beginning of this process, I laid out a fourstep strategy for victory: (1) Back Grassley and Enzi away from the negotiating table. (2) Take reconciliation off the table. (3) Get 41 votes against cloture on the bill. (4) Keep the bill from being cleaned up.

Currently, we have achieved the first three of these goals. There are currently 41 votes against cloture on the bill. The only thing we have to do to win is to stop the "let's make a deal" process on the floor that slipped the bill through the House, through the Finance Committee, and through the motion to proceed.

But we are no longer at the point where we can pursue a stupid strategy and expect to win.

I suggest the following:

STEP #1: Don't clean the bill up.

STEP #2: Don't clean the bill up.

STEP #3: Don't clean the bill up. There will be at least a couple of amendments which are very attractive, which we know are intended to make it acceptable for 60 senators. The first is the "trigger." The second is the Stupak amendment. WE NEED A CADRE OF CONSERVATIVE SENATORS WHO ARE WILLING, IF NECESSARY, TO THROW A VOTE IN ORDER TO AVOID GIVING THE OTHER SIDE THE 60 VOTES.

STEP #4: SHOW THE LEVEL OF OUTRAGE COMMENSURATE WITH THE LEVEL OF FRAUD. I like the fact that Judd Gregg compares to multiple instances of accounting fraud to Bernie Madoff.

STEP #5: THE "HAM SANDWICH" STRATEGY: We need to find out what Nelson, Lincoln, Bayh, Landrieu, and Lieberman have said is their absolute "bottom line" for supporting cloture on final passage -- and shore up this "bottom line." One possibility is to have large numbers of constituents write them with something like this: "You claim to be a "moderate" Democrat. But, when Harry Reid jerked your chain, you danced at the end of your strings, just like a puppet. Now, we are being told that you would "vote for a ham sandwich" on cloture on the bill if Harry Reid stared at you crooked. After wiggling a little at the end of your strings, everyone says you will cave like a coward. I'm not so sure. Would you, as they say, "vote for a ham sandwich"? What in this bill would have to be changed for you to support it?" Take the responses and advertise them to the high heavens. Freeze them in. It may also help to run cartoons with Landrieu with a price tag attached to her. (I would welcome alternative suggestions for how this can be

accomplished.)

STEP #6: AVOID THE "DEATH BY A THOUSAND CUTS": Republican senators are going to be tempted to offer attractive little amendments which could pass. THIS SHOULD BE AVOIDED AT ALL COSTS. The last thing we need is for Ben Nelson to be able to say: "I initially opposed the bill. But, with the adoption of the Coburn amendment, the DeMint amendment, the Hatch amendment, and the McConnell amendment, it is now good enough for me to support."

STEP #7: STUPAK: Maybe we should get a vote at the outset. It would lose then. We might "win" later. So, after the initial vote, we need to fight tooth and nail any incremental improvement of Capps. Right-to-life forces need to nail down Ben Nelson's commitment to vote against cloture on any final bill that is not satisfactory on life.

STEP #8: SNOWE: Someone -- preferably McConnell -- needs to pull a "Reid" on Snowe. That conversation would go something like this: "Olympia, I'm sorry Reid and Baucus used you and then threw you under the bus. I foresee that they will try to do exactly the same thing on the floor -- throwing you under the bus in conference. I need to know you are not going to allow yourself to be used in this way. Or, if you are, I need to know the cost which Reid would need to buy you."

STEP #9: GATEKEEPERS: A gatekeeper that would burn up time is essential. We have done a guns amendment which, I believe, would, at least, burn up time. An amendment to eliminate all of the Medicare cuts would probably take time -- without having a real chance of passage.

STEP #10: THE CHRISTMAS STRATEGY: The central point is to reach December 18 without having debated the central contentious points of the bill. At some point, Reid will try to play "the Grinch" and keep the Senate in until it passes the legislation. At that point, we should lay down a substitute amendment which restates everything in the bill and makes a change -- and demand that it be read. If we haven't even voted on abortion and the public option by that time, it will be more difficult for Nelson, Snowe, and Lieberman to vote for cloture.

STEP #11: EXIT STRATEGY: We need to give Reid (and Nelson, Lincoln, and Landrieu) an exit strategy, other than simply to throw up his hands and walk away. I suggest we continue, insistently, to offer a motion to recommit with instructions that "the bill be recommitted to the HELP and Finance Committees for further negotiations intended to produce a genuine bipartisan bill." Perhaps we designate a "Gang of 14" consisting of the "Gang of 6," plus Nelson, Lincoln, Landrieu, and some hard-nosed conservatives in the motion.

STEP #12: THE MANAGER'S AMENDMENT: At some point, Reid may want to do back-door negotiations producing a manager's amendment to try to buy off the remaining votes. Several

observations: First, we need to pound in the theme that we're not lying down and letting Reid make another \$100 million bribe. Second, any successful manager's amendment would have to seriously water down or drop the public option; Republicans should not vote for this, as (A) there will probably be enough Democratic "no"'s so that, together with our votes, it would not be cloturable, and (B) it will only be caved in in conference. Third, we can probably make it very difficult for him to put the manager's amendment in place.

STEP #13: PING-PONG: Prior to going to conference, the Senate must approve three separate filibusterable motions:

-- The motion to disagree with the House;

-- The motion to request a conference; and

-- The motion to authorize the chair to appoint conferences.

A single senator can stall this bill for a long time; and that senator, with 41 votes, can keep it from being conferenced. If that happens, every time the bill bounces back to the Senate or the House, it will be fully amendable, as though the chamber had never considered it before.

STEP #14: THE DEBT LIMIT. At some point, Reid is going to need to set this bill aside to move to the debt limit and/or the continuing resolution. Under no circumstances should we give him unanimous consent to do this. Without unanimous consent, invoking cloture on the motion to proceed to the debt limit displaces the health care bill. The only way it can be jerked back without a new motion to proceed is by filing cloture before Reid goes to something else. Cloture will automatically jerk the health bill back after two days. But Reid probably won't have the votes for cloture at that point -- thereby locking in votes against the bill.