

FRANK PALLONE, JR., NEW JERSEY
CHAIRMAN

CATHY McMORRIS RODGERS, WASHINGTON
RANKING MEMBER

ONE HUNDRED SEVENTEENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

2125 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6115

Majority (202) 225-2927

Minority (202) 225-3641

August 30, 2021

The Honorable Frank Pallone
Chairman
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Pallone:

We write with grave concerns about the Democrats' plans to use the Budget Reconciliation process to pass an extremely reckless \$3.5 trillion tax and spending spree that will raise costs on Americans and vastly expand the control the Federal government has on their everyday lives. Given the enormous implications this plan has for our economy and the health and welfare of the American people, we request that you commit to regular order and a robust, open, and transparent process on any matters the Committee on Energy and Commerce considers to meet its reconciliation instructions.

This Democratic Reconciliation plan, outlined in the Budget Resolution, would be an unprecedented expansion of Federal control over American health care, energy production and use, and the economy writ large. It should not be rushed through on a party line vote without giving the American people a chance to learn about what it means for their jobs and ability to provide for their families. We therefore ask that you not rush legislation through the Committee in order to meet an arbitrary September 15th deadline and that you commit to following regular order to give the American people the time and information they need to understand the impact the dramatic expansion of federal government power will have on their lives. We have already witnessed a steady chipping away of previously bipartisan initiatives. The process and the product in play here would represent a moonshot for socialism and a "spike of the football" for the most extreme elements of your party. This will cause dire harm to our republic and the freedoms Americans have to make the best decisions for themselves and their families.

Many of the proposals in the Budget Resolution have never had any type of informational or legislative hearing, input from stakeholders, technical assistance from the relevant Federal

agencies, or Committee process whatsoever. As far as we know, legislative text has not even been finalized. Before you bring this massive bill to markup, the Committee needs to do its due diligence through regular order, including educational hearings, testimony and technical assistance from the administration, and legislative hearings.¹ It is also critical that the Committee receive a score from the Congressional Budget Office (CBO) to provide a full accounting of the budgetary and economic consequences these proposals may have on the American people.² With inflation at decades highs and costs on Americans continue to rise, this \$3.5 trillion reckless tax and spending spree is irresponsible to say the least. To rush this through Committee and to the floor without letting the CBO weigh in and give a non-partisan assessment of the effect these radical proposals would have on the ongoing inflation crisis and the economic wellbeing of the American people is unconscionable. Given the magnitude of these proposals, this should include a bipartisan briefing from CBO on their findings and impact they will have on the American people. Any Committee action on these massive proposals without a full accounting from CBO and an open and transparent regular order process would be legislative malpractice.

If this bill is eventually marked up by the Committee, we request you honor the Committee's rich tradition of bipartisan cooperation and commit to a transparent and honest amendment process. The last time the Committee marked up a Democratic Reconciliation package, just six months ago, every single Republican amendment was rejected. Many of these were bipartisan and offered in good faith. In fact, you and other Democratic Members even made

¹ During the Committee's March 2017 Reconciliation markup, then-Ranking Member Pallone commented on the importance of regular order, saying "[a]s members of Congress, we should have time to read and understand what this bill will do and won't do, what it will cost, who and how many people will be covered under the bill, and that is what hearings on this Republican repeal bill would have provided." [pp. 139-140] Then-Ranking Member Pallone continued, saying that "instead of hearings, the Republican majority wants to move right to a markup in the full committee. I think that is extremely unfortunate, to say the least. Scheduling this markup today, in my opinion, makes a mockery of an open and transparent process, not to mention the fact that, you know, so far, until now, members were only given 1 minute to talk about them." [p. 140] Then-Ranking Member Pallone also noted that "[t]he inconveniences that would result from delaying this markup, and actually going through the regular committee process, pale in comparison to the damage that hasty action invites. And so, Mr. Chairman, again, I don't understand the rush. My fear is that the Republicans don't want an open and transparent process because they don't want feedback from their constituents and the American people before marking it up. [p. 141]

² During the Committee's March 2017 Reconciliation markup, Representative Eshoo commented on the importance of having a CBO estimate of legislation being considered by the Committee, noting "I think that there is a huge deficiency here today around a very important topic, and that is that we don't have a CBO score. This is not something small or insignificant or some picky point just to be made. Health care is part -- a very important sector of our national economy. We need to know what this is going to cost. We need to know what kind of health insurance is going to be possible, let alone is it really going to be feasible? How much is the bill going to cost? Who is going to pay for it? Is it going to act as a deficit? Is it going to bring the deficit down? These are major, major issues. And why it is left out, I mean, it is up to the majority to explain that. You either don't care about it or you are worried what it is going to bring out. I don't know, but -- or I have a sense of it. But I want to reiterate for the record how essential it is to have the CBO score." [p. 147] Representative Schrader also commented on the importance of the CBO estimate, stating "think it is important to have the CBO report before we vote on this, Mr. Chairman. We have always done that historically. It seems very odd that we wouldn't have that, especially given the impact of this bill. It could increase our debt deficit dramatically. Millions of people are going to lose health insurance, and premiums are going to go up." [p. 130]

supportive statements for several of them. But the Majority rejected each of these good faith amendments under the pretense of violating the Byrd rule or because the Committee would exceed its instructed funding levels. For instance, Mr. Upton had an amendment to provide funding to the National Institutes of Health. You said to him:

“The problem that we have is ... the budget reconciliation gives us instructions and a certain amount of money. So, if we put in money for CDC research and then add NIH, as you are proposing, without cutting something else, **which I don't want to do, then, you know, we go above the amount that they have instructed us, or given us under the reconciliation.** ... We can't add money for NIH, because then we would go beyond the amount that we are allocated.

“We can't add anything, really, without getting rid of something else that is in the bill, which I don't support, because this is a very -- you know, **we put this together in a very, you know, tight way to make sure that we were within the instructions.**

I hope everyone understands that. And for that reason, I would ask members to oppose the Upton amendment.”

Mr. McKinley’s amendment specified more funding for substance use disorder treatment – something we should be addressing as more and more troubling data comes about the pandemic and lockdowns leading to record-high deaths of despair. Ms. Kuster said “While I appreciate my colleague's support for these substance abuse disorder services and his partnership to address this crisis, **this amendment would likely result in the committee exceeding its budget cap for this reconciliation process.**”

Mr. Scalise had an amendment to increase funding for vaccinations and get a plan to get to 2 million vaccinations a day. Ms. Eshoo spoke against the amendment, saying “**I rise in opposition to the amendment because it violates the Byrd Rule**, and it would derail this critically important bill...”

Despite the Democrats’ assertions that these commonsense amendments would upend their partisan reconciliation process, and that the bill being voted on in committee was “within instructions” and couldn’t be changed, the CBO score and further process indicates that was not the case. The CBO score, released after our markup adjourned, showed that the Committee had come in tens of billions under the Budget Committee’s instructions. E&C Members must have a CBO score before voting on any future reconciliation bill. Democrats also kept in provisions that violated the Senate’s Byrd Rule. There were multiple changes to the legislation to address Byrd rule concerns after our markup, as the bill that passed out of Committee was apparently not in compliance. This shows that the Democrats’ alleged concerns about Republican amendments derailing the Budget Reconciliation process were mere pretext to kill our amendments during this process.

Finally, any markup of legislation to meet the Committee’s Budget Reconciliation instructions must occur when Members are present in Washington, DC and can meet in person to conduct the markup. During the last Reconciliation markup, the Committee operated virtually and just before a holiday weekend. Given the arbitrary deadline of September 15th is fast approaching, we are concerned that Democrats plan to repeat this sham process. The only reason to rush this bill through a virtual markup, up against Federal and important religious holidays, is to continue trampling Minority rights and to hide from the American people the bill’s radical

implications. By adopting a hybrid model, the Committee has made great strides to repair its culture and productivity that was harmed by fully virtual operations. Any future markup of Budget Reconciliation instructions must be done during a voting session week and not in between Federal and religious holidays when Members are not in DC and the American people are not paying attention.

Regardless of our difference of opinion on the wisdom of pursuing these proposals, we hope you can agree that policies of this magnitude warrant serious and diligent consideration by the Committee. Rushing this process would be an abdication of our duty to the American people and an insult to the Committee's rich history of plowing the hard ground of legislating. Thank you for your consideration.

Sincerely,



Cathy McMorris Rodgers
Republican Leader
Committee on Energy and Commerce



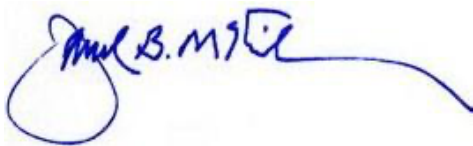
Fred Upton
Republican Leader
Subcommittee on Energy



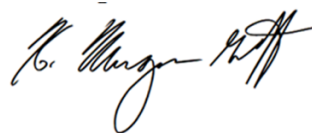
Robert E. Latta
Republican Leader
Subcommittee on Communications and
Technology



Brett Guthrie
Republican Leader
Subcommittee on Health



David B. McKinley
Republican Leader
Subcommittee on Environment and
Climate Change



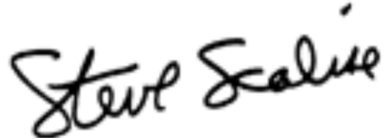
H. Morgan Griffith
Republican Leader
Subcommittee on Oversight and
Investigations



Gus M. Bilirakis
Republican Leader
Committee on Consumer Protection and
Commerce



Michael C. Burgess, M.D.
Member of Congress



Steve Scalise
Member of Congress



Bill Johnson
Member of Congress



Billy Long
Member of Congress



Larry Bucshon, M.D.
Member of Congress



Markwayne Mullin
Member of Congress



Richard Hudson
Member of Congress



Tim Walberg
Member of Congress



Earl L. "Buddy" Carter
Member of Congress



Jeff Duncan
Member of Congress



Neal P. Dunn, M.D.
Member of Congress



John Curtis
Member of Congress



Debbie Lesko
Member of Congress



Greg Pence
Member of Congress



Dan Crenshaw
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John Joyce, M.D.
Member of Congress



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Member of Congress