

## Lessons Learned from Last Week's Health Care Bill Failure

Many factors contributed to the failure of the Republican attempt to repeal and replace the Affordable Care Act. These challenges not only impact the attempts to resuscitate health care reform, but also have implications for how the Republican Congress and administration will work together on other priorities like tax reform and infrastructure funding. As the party moves forward, the key to success will come from understanding the shifting political landscape.

### **This Was Their First Rodeo**

The House Republican leadership team and President Trump share the commonality of having never pushed through a complicated bill (destined to become law) on their own. Not only was the policy rejected but so was the process. The majority of Republicans in Congress are new to the concept of making law; the chairs of all three committees (Ways and Means, Energy and Commerce, and Budget) are new, the chair of the Freedom Caucus is new, the whip team is new, the speaker is relatively new, and the administration is new.

### **Ryan No Longer the Center of Policy**

Speaker Paul Ryan's (R-WI) endorsement is no longer an assumption of conservative support. For years, legislation that Paul Ryan touched was viewed as conservative gospel. As a backbencher and eventually Budget and then Ways and Means chairman, the then sitting leadership, outside groups and fellow members would consult Ryan in hopes he would bless their bill. A Ryan endorsement was the ultimate evidence of conservative buy-in and "good policy." We can debate whether several of the bills and proposals really were conservative or good policy, but we cannot debate that it was his policy chops more than political skill that got him the speakership to begin with. The fall of this health care bill is a sign that the shine has started to come off. Conservatives (and moderates) aren't taking his word for it, and are looking at the details and making their own conclusions. In addition, the willingness of Republican-aligned outside groups to publicly go against the speaker is something to note for future debates. Speaker Ryan got the full "establishment" treatment in his first at bat.

### **The Ryan Rule? vs. the Hastert Rule**

The "Hastert Rule" states that the leadership will not schedule a vote on the House floor without the backing of a majority of the majority. After Speaker Ryan pulled the health care bill from the floor, we could be operating under an even more rigorous threshold; that no bill be scheduled without the support of at least 216 (or 218 eventually) Republicans. This "Ryan Rule" impacts far more than just the health care bill. If it becomes the norm, it changes the timing and methods for when the whip team engages, and alters the power of a chairman to be the arbiter of the issues under their purview, as well as changes how and which lobbyists approach to influence bill text.

### **Negotiating Votes on Policy vs. Politics**

We are in an era where House Republicans can get elected regardless of (or despite) who is at the top of the ticket, where outside money is bigger and more effective than party or National Republican Congressional Committee (NRCC) money, and rank-and-file members are increasingly independent of their leadership and the president. The tensions and anger among the House Republican Conference members will only grow the more each side sees the other using the campaign apparatus to attack each other rather than working as a team. Making matters more difficult, the tools that leadership has at their disposal to build a vote are almost nonexistent.

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Earmarks are gone, the tax code is going to close loopholes not create them, the budget is destined to shrink, and committee assignments and fundraising visits aren't what they used to be. If it can be worse, the need for 216 Republican votes means leaders have only a limited number of "passes" to bargain away. To swing a vote from no to yes, the leaders have only a handful of tools they can use:

- Appeal to a member's loyalty (again, loyalty is near an all-time low);
- Exchange a vote on a current bill for something in a future bill (both dangerous and not very appealing to members);
- Rely on aligned outside groups to inflict pain—though from this exercise responding to evolving policy positions was a challenge for outside groups like Heritage, Club for Growth, and Americans for Prosperity; or
- Change the bill text (policy).

### **Taking a Conservative "Bath"**

In past Congresses, a committee's unanimous approval of a measure was a signal that the conference as a whole would also endorse it. That is no longer the case. The House Republican Steering Committee's practice of appointing committee membership based on a) loyalty and b) geographic diversity has skewed the system. In past decades, it made sense to balance a committee's membership by region so that interests from multiple industries and populations could be heard. But in the new era, Congress is divided on a progressive – moderate – conservative scale more than by region. Translation: "A" committees aren't representative of the divides in the Republican Party right now. As an example, Ways and Means and Appropriations have only one Freedom Caucus member, while Oversight and Government Reform, Foreign Affairs, and Science have as many as 10!

What it means for bills like the recent American Health Care Act (AHCA) is that after a bill passes out of committee, it will need to go through a Freedom Caucus "bath" before it goes to the floor. It mutes the power of committees and further empowers the Freedom Caucus.

### **Still learning from AHCA**

While AHCA died last week, the debate over the Affordable Care Act and its future is not over, and how Congress reacts to this failure will teach us how the future debates on appropriations, tax and infrastructure will take shape. Rumors continue to circulate that House Republicans are trying to resuscitate the health care legislation. However, at this point, all signals from committee leadership and staff are that any large-scale reform is dead as long as the Freedom Caucus and Tuesday Group blocks remain in their corners. Both groups feel remorse, but neither was punished and they have made no efforts to put forward positive changes, yet.

The only path forward for leaders in the health care debate is to make fundamental changes to the AHCA bill text, and they can't do that until the two factions back down.

### **Moving Forward – Math Is Hard**

These lessons learned demonstrate that a block of 30-plus House Republicans have veto power over almost all bills. Even if a bill passes the House initially but is altered in the Senate, there is no guarantee a block of conservatives in the House will vote for it when it comes back as a conference report. When I first started on the Hill 24 years ago, there was a regular pattern to legislation: the House passed a partisan bill—the Senate altered it—then the House got rolled in conference—finally, the bill that looked most like the Senate's version went to the

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president to get signed into law. Things have changed and the math is different. Unless and until the block of conservatives in the House are willing to negotiate and accept a bill that fails their litmus test of “ideal” legislation, then big bills (budget, tax, health care, appropriations) can’t be passed, regardless of what the Senate does.

Additionally, the path to passage through gaining the support of a few Democrats is equally or more difficult. If anything, Democrats’ ideological composition is even more intense than that of Republicans. Nancy Pelosi and Chuck Schumer are free to go hard left either because that’s what they believe (Pelosi) or fear the electoral consequences (Schumer). And with the Supreme Court and CR votes teed up next, with so much Republican blood in the water, there is seemingly no chance this path gets easier.

**Brian Wild**  
Policy Director  
[bwild@bhfs.com](mailto:bwild@bhfs.com)  
202.872.5295

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