

THE BROOKINGS INSTITUTION  
WEBINAR  
RECONCILIATION 101:  
AN EXPLAINER OF THE BUDGET PROCESS

Washington, D.C.  
Tuesday, July 6, 2021

PARTICIPANTS:

SARAH A. BINDER  
Senior Fellow, Governance Studies  
The Brookings Institution

MOLLY E. REYNOLDS  
Senior Fellow, Governance Studies  
The Brookings Institution

\* \* \* \* \*

## P R O C E E D I N G S

MS. BINDER: Excellent. Welcome. Good afternoon. Thank you for joining us for a conversation about budget reconciliation. I'm Sarah Binder. I'm here with my colleague, Molly Reynolds. We are both senior fellows with Governance Studies program at Brookings.

We have both written books about the Senate filibuster. Molly's book examines way to get around the filibuster including using reconciliation. Her book is "Exceptions to the Rule: The Politics of Filibuster Limitations in the U.S. Senate." My book is on the political history of the filibuster, coauthored with a colleague Steve Smith, and it is called "Politics for Principle? Filibustering in the U.S. Senate."

So, we're going to spend about 30 minutes today answering some common questions about reconciliation. For those of you have submitted questions in advance, thank you. And we'll cover, I think, a lot of the ground that you were curious about in our conversation.

And then we'll turn to more audience questions. If you're viewing live, you can submit questions for us by email [events@brookings.edu](mailto:events@brookings.edu) or via Twitter by using the hashtag #Reconciliation101. So, let's go.

Molly, why don't you start us off? What exactly is a reconciliation bill? And along the way, maybe help us to understand what isn't a reconciliation bill.

MS. REYNOLDS: Sure. And thanks, Sarah. So, budget reconciliation is an optional part of the budget process that makes changes to one type of federal spending known as mandatory spending to revenue or to the debt limit.

Mandatory spending is federal spending that's handled outside of the annual discretionary appropriations process. Often, those certainly not always, because the amount of spending is determined by something like a formula or eligibility criteria so things like Medicare.

Each budget resolution which is the overall blueprint that kicks off the

Congressional budget process, each one of those can produce up to three reconciliation bills. One that affects only revenue, one that affects only spending and one that affects the government.

In practice it's pretty hard to do major policy change without touching revenue and spending together. So really, we're talking about each budget resolution doing two reconciliation bills in practice.

As we learned recently, you can kind of unlock additional attempts at the reconciliation process by revising a budget resolution. This was the subject of some headlines about a month ago. But here, and this will, I think, be a pretty common theme for our conversation today. Timing is actually a really big factor that even if the rules of the process and the interpretation of the rules allow for you to do something, the constraints of the calendar and the schedule can actually be as restrictive on how the reconciliation process unfolds.

Well, talk about this in a little bit in more detail, but this sort of big, powerful thing about the reconciliation process is that it allows for these bills to move through the Senate without the possibility of a filibuster. So instead of needing 60 votes to invoke closure and debate, you can do that with a simple majority. That has to do with the fact that under the rules set forth in the Congressional Budget Act there's a limitation on how long a reconciliation bill can be debated.

So, once the time for debate is over that's it. The Senate moves to a vote and that has the effect again of preventing the possibility of a filibuster. Reconciliation bills can change existing programs. They can create new programs. They can eliminate programs, but overall the process again is limited by their issuance.

The third role which we'll talk about later is the most notable of these. There are also rules that restrict what kinds of particular amendments are permitted during Senate consideration. It sort of divides the rules that shape the process into ones that restrict the subject matter of a reconciliation bill. So, reconciliation bills have to be budgetary in nature

and the budgetary effects of things in reconciliation bills can't be what we call nearly incidental. I'll pass that in a little bit.

And then the size of a reconciliation bill is also restricted. For example, reconciliation bills must be fully paid for beyond a certain time period covered by the bill. Usually that's ten years and does not have the effect of things like in the case of the Bush tax cuts which were handled through reconciliation. The Trump tax cuts which are handled through reconciliation. Those contain provisions that expire so that's one of the constraints by the rules of the process.

So that's kind of a little bit of an overview of what reconciliation is. What reconciliation isn't.

Sarah, can you tell us a little bit about kind of why this exists? Like why do we have this kind of complicated but really important legislative process?

MS. BINDER: Sure. So why does reconciliation exist? I think first it's good to keep in mind. It's like a great example of a practice, a rule sort of an institution created for one purpose. At a particular moment in political time and then as conditions change, politicians and they're very strategic usually, party leaders like to find new uses for that established tools.

And often they're use is that probably might not have been envisioned when the particular lawmakers who wrote the rule or the law probably didn't envision how they might be used in the future.

And is that that unusual a thing in Congress, right? That the rules last longer typically than the politicians who created them. And so, it creates these opportunities for this seemingly very complicated procedures that probably didn't look so complicated when they wrote them.

So, in the case of reconciliation as you suggested. It comes from the 1974 Congressional Budget and Empowerment Act. I think keep in mind it was 1970s, a period of very large Democratic majorities, ideological diverse, Republican and Democratic parties.

Growing entitlement programs, Medicare, Medicaid, other mandatory programs created largely to upgrade society, 1960s Congresses.

Spending as you suggested that's outside of the annual appropriations process. And on top of sort of growing budgets and social spending, we have very tough institutional conflict between Congress and the Republican President Richard Nixon. Conflicts obviously over the war in Southeast Asia, but also about federal spending in Congress' power purse like Congress' power to determine where the executives should spend from the treasury.

Those conflicts add up to the Budget Act in 1974. So, you've kind of laid out just briefly the process. Reconciliation played a special role there as you suggested and we can kind of skip through, I guess some of the details of the original Budget Act, but the point was that there would actually be two budget resolutions.

One would lay out a budget blueprint, revenue's spending and debt limits for the coming fiscal year. They'd go through spending, the appropriations process sort of the annual spending. And then they were supposed to do a second budget resolution that would sort of set more, in theory, binding limits.

And then to get the two budget resolutions, spending revenues to match up as you said, it's a tight calendar, but you could make some last-minute changes in laws to bring revenues and spendings in line with the priorities of the budget resolution.

So, reconciliation was that sort of clean up, right? This is your opportunity at the end of the process to make the first and second budget resolutions line up.

Now, as it turns out, I think lawmakers pretty quickly figured out it's a little cumbersome. The second resolution, they passed a couple but when they first try reconciliation in, and this like 1979 or 1980, under the Carter administration, they put the instructions, right? As a resolution you need reconciliation instructions. They stick it to the first budget resolution.

And so, the second resolution, you know, that type of doctor. But I've

always thought of it sort of like a second resolution was like the appendix. Like it turns out you didn't need it. So, you have a resolution and now we have the option of doing reconciliation.

It gets used reasonably frequently, but not until really 1980. So late '70s, you're not doing it. We have I think almost two dozen signed into law since the first one in 1980. It's changed a little bit over time. Molly mentioned the 10-year budget window. Originally, I think it was a one-year budget window and then a five year. Like how would 10 years be covered?

Nothing stops them. I don't believe at 10, right? I wouldn't be surprised to see a future party make the window even larger to create more opportunities for spending more money and cutting more taxes. But the key part, of course, is what you alluded to Molly, but I haven't mentioned is you can't filibuster reconciliation bills.

So, Molly, why not? Like I thought people loved the filibuster especially senators. So, what's that all about?

MS. REYNOLDS: Yeah. I think here it's really important to come back to the process as you originally -- as you sort of laid it out, Sarah. As it was originally designed in the '74 act.

And so, you were talking about how under the '74 act, there would be a first budget resolution in the Spring. There would be a second budget resolution in the Fall. And then there would be this period just before the start of a new fiscal year where Congress might need to act pretty quickly to sort of bring the budget process kind of to a close before the federal government's new fiscal year started on October 1<sup>st</sup>.

And so, this possible need to be pretty speedy, to go pretty quickly is a big part of what motivated this desire to put a limitation on how long a reconciliation bill could be debated in the Senate. Again, the idea was that Congress might need to move fast and that limiting how long you could talk about the reconciliation bill would help make that possible.

Congress realized pretty quickly that even with the debate limitation that

very small window for action was actually probably too small. That's part of why, as you said, we eventually get the reconciliation process moving from the second budget resolution to the first budget resolution and then eventually the second budget resolution gets, you know, excised via arthroscopic surgery like an appendix.

But this reconciliation is not the -- I think it's worth noting -- not the only example of this kind of debate limitation in the Senate. We have other instances where particular Congress decides that particular piece of legislation should be protected from a filibuster.

Generally, that's either because Congress wants to sort of avoid blame. Kind of deflect responsibility to some other actor and then have that proposal that someone else comes up with moved through in a protective way or because Congress wants to enhance its ability to oversee the executive branch.

Reconciliation is probably the most consequential of these debate limitations in the Senate, but again it's not the only one. And I think that as we think about use of reconciliation in the very contemporary Congress. Mulling over the degree to which having reconciliation as this filibuster protected option for moving certain types of legislation has potentially helped keep the filibuster around because reconciliation exists as a consistent outlet for certain types of policy changes.

So, you sort of can say, okay, we'll do that through reconciliation. That can't be filibustered but that we'll keep the filibuster around for legislation more generally.

I sort of brought up the idea here that over time reconciliation has become this tool of the majority party in the Senate to pursue its goals. Has that always been the case here? Like was reconciliation ever bipartisan? How did that change? And do we think that reconciliation kind of benefits more one party more than the other?

MS. BINDER: So, I think it's very tempting to tell a story that reconciliation has become more partisan over the decades as the two parties have become more

ideologically polarized, more electorally competitive and also just that it is more partisan team playing in Congress, right? My team is for it, so your team is against it.

And there some truth to that, right? We certainly see a handful of bipartisan votes on reconciliation in the 1980s. In a period where the parties weren't so at odds with one another. And now, granted there we have a small end here. Not a lot of examples here, but we know see it exclusively it seems partisan votes, right?

The Trump tax cuts done in reconciliation, 2017. No democrats voted for it. Or Biden's pandemic relief bill done in reconciliation this year. No Republicans voting for it.

My sense is in part because I've read your book. So, my sense on this issue of partisan manipulation of reconciliation, my sense is that reconciliation from the get-go with the Reagan administration sort of kicking it up a big notch from the Carter administration use. But the Reagan's administration really in the early 1980s is already using it as an instrument to pursue Republican policy agendas, right?

They're using it as a tool really to payer back spending favored by Democrats. Spending on welfare programs. What we used to call food stamps. That is the rules of reconciliation enabled Republicans who for the first time in decades then got this control of the Senate plus the White House, right? To set the agenda for these cuts in entitlements that they couldn't get through the regular legislative process.

So, we want to be careful thinking that it was all bipartisan and now it's newly partisan. But I think the evolution here is that parties have found a way to exploit reconciliation for top priorities regardless of the impact on federal deficits, and they've both done it in their own favored ways, right? That Republicans favor tax cuts largely and can use a reconciliation easily to do that at the cost of deficit. And also, Democrats for their turn want to use it more for social welfare directed programs.

And so, the transformation here, it's no longer a budget cutting tool. So, reconciliation 2017 tax cuts, Republicans said it would pay for themselves, but by many estimates the cost of government perhaps \$2 trillion in revenues. And then, of course, vice

versa for the Democrats in pandemic aid.

Democrats were upfront about the cost. They justified it as necessary to get us out of the pandemic and back to work. But those aren't paid for -- well, narrowly you can get it in the Byrd rule. But the transformation here is that both parties have found a way to really fine tune it and hone it.

And as the parties have become more at odds with one another, it definitely looks more partisan because there are no cross-pressure members who are going to cross the aisle to use it for the other party.

Now, of course, as you intimated, there is a constraint on the majority party. Well, several constraints but certainly the one that looms large is the Byrd rule. So, Molly, do you want to tell us a little bit about the Byrd rule? What it is? Why we have it? And this last part, this might be like reconciliation 201. We might not want to get through to, but why is it so darn complicated? Why does it end up being so complicated, I guess is my question?

MS. REYNOLDS: Sure. So, the Byrd rule basically limits the content of reconciliation bills. Added to the process in 1985, modified somewhat in 1986 and 1987 and then made permanent in 1990. And it is named for Senator Robert Byrd of West Virginia.

And he basically in the mid-80s, had two reasons that he offered for leaving to place some limits on what could be in a reconciliation bill. So, the first was that Congress was trying -- sort of had caught onto the one neat trick that was reconciliation. It was trying to add things to reconciliation bill that didn't serve the goal of reducing the deficit. And adding these additional nondeficit reducing provisions to the bill kept adding drama and controversy to the process which was making it harder for Congress to make progress on this underlying goal of reducing the deficit.

As one of the ways that the process sort of was originally used to achieve deficit reduction was basically by telling lots of Congressional committees in those reconciliation instructions that you mentioned earlier, Sarah, that they had to report out

legislation that would reduce the deficit by some prescribed amount and then, you know, lots of committees would be set to work on this goal. They would all report back their proposals for achieving that amount of deficit reduction and then Congress would take one vote on the whole package.

And the idea was kind of everyone should have some role in achieving this goal. Everyone should be required to share some of the pain necessary to actually reduce the federal deficit. And so, if that was central goal of the process and not how it was designed to work. And adding more things that were not intended to reduce deficit to the process was making it harder to achieve that goal.

The other sort of justification that Byrd gave was that by making reconciliation bills bigger and bigger and including more things in them without the threat of a filibuster that was using that expedited process was undermining the deliberative nature of the Senate.

And so, Byrd offers this rule with these restrictions again on what can be in a reconciliation bill. Again, speaking both to the content, the most significant piece there is the part where provisions in a reconciliation bill have to be budgetary in nature. And their budgetary effects can't be just nearly incidental to the goal of the provision.

Why is it so complicated? I did a couple of reasons. One, is I think actually has to do with the fact the rule, like all Senate rules, is not self-enforcing. So, the only way that we sort of have footprints of a Byrd rule violation in the Senate's record comes from something actually being challenged on the floor as a potential Byrd rule violation. And then there being a vote either to waive the Byrd rule or on the ruling of the chair on whether or not something violates the Byrd rule.

And so, because there are lots of potential Byrd rule violations that we don't ever see and also there might be provisions in a reconciliation bill that violates the Byrd rule, but if more than 60 senators – which is what it would take to waive the Byrd rule and keep a provision that is in violation of it in a bill – if there is a super-majority of senators who

supports a particular provision, maybe we never know that that might have been a violation. So, it's that kind of uncertainty around it. The very light footprints that the Byrd can leave --

MS. BINDER: As it were.

MS. REYNOLDS: -- is one reason that it is complicated. Another is that we don't have say a statutory definition of what nearly incidental means.

There is a real sort of -- I think we're going to talk about the parliamentarian and her role in this process in a minute. But there's a real sort of, you know it when you see it element to the Byrd rule. And that there's a lot about the way it has been interpreted over time that doesn't come from underlying statutory language.

Another reason why I think it's gotten so complicated goes back to something you were talking about in your answer to the previous question, Sarah, which is that I think there's more pressure on the reconciliation process now than there was in the '80s. So, you're absolutely right that even in the '80s, beginning from the first major use of the reconciliation process.

The procedures were used to achieve goals that were important to the Senate's majority party. But they were not at that point the only way a majority party might be able to try and achieve some of goals particularly if those goals had some bipartisan support.

Now, I think for a lot of legislative items that I think we're seeing through this year, that reconciliation becomes the only way that a majority party in the Senate feels like it can accomplish some of the things that it wants to do. And as the process is asked to bear more and more of those policy agenda items, I think that increases the complexity of the process as well.

And then the last thing I'll say has to do with how the consequences of the Byrd rule for the structure of a reconciliation bill. And so, because the rule is applied to individual provisions in a bill, it can be the case that if one provision is deemed to be a violation of the Byrd rule that that can kind of if you sort of pull on that one string or sort of

pull on that feather if we're going to continue our Byrd metaphor here. That has a potential to unwind the rest of the bill either policy wise.

There are some, I think we look back at the Republican's failed attempts to repeal the ACA using reconciliation .17. There were some pieces of how they had sort of constructed a bill that was going to accomplish this goal of repealing the ACA that were deemed to be a violation of the rules. That once you sort of pulled that one brick out of the wall, it made it harder on sort of policy perspective to sustain the rest of the wall.

Or this can happen politically as well. And I think we saw this as a kind of potential issue in the Spring with the American Rescue Plan when we had the debate over whether or not that bill would include an increase to the federal minimum wage. And that ended up coming out of the bill because the parliamentarian advised that it was in violation of the Byrd rule, but that had sort of political consequences for or potential, quote, unquote political consequences for the coalition that was needed to support the legislation.

So, I've mentioned the -- in sort of describing the complexity of this process. I've mentioned the parliamentarian plays a really important role here. Could you talk a little bit that role, Sarah? Why has the job become particularly controversial? And what rule does the parliamentarian play beyond just policing the Byrd rule here? What other rules might come into play?

MS. BINDER: Sure. So just as a sort of framework here. On many bodies, decision making bodies have parliamentarians not just the Senate. The House has one. My congregation in Northwest D.C. has one. I, myself, am the parliamentarian for the back of the Senate.

But in any of these decision-making bodies, right, we typically have a governing document. It could be my temple bylaws. It could be the faculty code or in the Senate case, a set of formal standing rules of the chamber. A set of precedents or think of them as interpretations of the rules. How the rules have been applied in the past to particular circumstances. And then in more informal practices, norms and support.

But parliamentarians give advice and they provide information to senators or to leaders informally. They advise more formally the presiding officer on how the parliamentarian would interpret or apply the rules, say the Byrd rule or other provisions of the Budget Act to say what do the rules require or suggest or allow in one particular situation or the other.

Sometimes, the advice is black and white. In part perhaps we've seen this movie before, right? This is a situation we've encountered. I could be say can reconciliation be used to ban funding for Planned Parenthood? And a decision is made once in the '90s and every time it comes up, it's relatively easy for the parliamentarian to provide that device from past practice.

But other times, it's gray, right? And those are the situations I think that increasingly raise people outside the Senate, right, raise hackles, right? I've been sort of shocked how many people at least think they know what the parliamentarian's role is but kind of misunderstand it to think that the parliamentarian is telling senators what they can do and what they can't.

But she's not. She's advising. And it's always first the presiding officer, the chair. And I think by a well sort of I would call it like Anglo-American legislative parliamentary practice is the chair follows advice. In theory, we don't want the chair kind of freelancing on his or her own policy preferences to make rulings. But at the end of the day the Senate is the one that sets its precedence or its interpretations.

So, what is the parliamentarian doing here in the context of reconciliation off the floor before reconciliation as it's being crafted as you said. She can provide advice to competing, hear from competing teams as it were, parties or senators about why they think a provision fits in a reconciliation bill or not. She gives advice and by in large, my sense is because they probably don't for whatever reason the minimum wage one you raised. Don't want to leave the footprint for whatever reason it is. Probably in part because they may disagree within the party. But the parliamentarian device tends to kind of carry the day even

though it's just informal.

So, as things become more partisan and given that 50/50 divide in the senate meaning there was no wiggle room at all. There's sort of I think kind of conservative status quo bias here that the majority and senators and leaders seem not willing or don't have the votes to push the envelope to try stretch reconciliation.

I see we have questions coming in. Let's see. I'll start here because it's related and ask Molly a question from Ron Elving from NPR. Who really decides how many times reconciliation can be used? And what it may include?

MS. REYNOLDS: Yeah. So, I think, Sarah, your answer to the question of the parliamentarian like speaks to this really well. So, I'm just going to underline a couple of the things that you said, which is that there's sort of the difference between what the parliamentarian advises and what the Senate is actually kind of willing to do.

And so, you know, the parliamentarian could say that, you know, something is a potential violation of the Byrd rule. And the Senate, you know, the drafters of the bill could say, okay. We hear you, parliamentarian, but we are going to ignore your advice. Keep it in the bill. Something could be a challenge to that provision on the floor.

And if there's sort of that going through the extremely parliamentarian steps here. It is possible for a simple majority of senators to -- so in the current Senate, the 50 Democrats plus the tie breaking vote of the vice president to sort of disregard the advice of the parliamentarian.

But I think it's clear or in many situations it's clear that there's a difference between sort of what a majority of the senate wants to do policy wise and maybe what they're willing to do rules wise stretching the process to actually make that happen. And that it's kind of an interest that senators have in preserving the equilibrium that is the parliamentarian as a trusted sort of nonpartisan source of advice in the Senate because, you know, as you were saying at the start of your answer. This is not the only thing that the Senate parliamentarian does.

She does not exist only to advise the Senate on what is and is not a violation of the Byrd rule. And there are lots of other situations where it's in the shared interest of senators to have a kind of parliamentarian referee who they all are willing to listen to.

And so, I think that as we kind of think about these questions of like what could really happen? What are the parliamentary edge cases? It's important to remember that there is a difference between what some senators might support on policy grounds and what they're actually willing to do to make it happen.

MS. BINDER: With the warning that some of these questions coming in are excellent, but they could be reconciliation 301. And we're live so but we're going to do our best here.

John Sykes from U.S. Senate doesn't debt ceiling increase survive a Byrd bash in the Senate. I'll give that one to Molly.

MS. REYNOLDS: Sure. So, reconciliation can touch the debt limits. The exactly how it can make changes to the debt limit is a little bit more complicated. So, the process could definitely be used to raise the debt ceiling.

It probably could not be used to eliminate the debt ceiling entirely sort of like do away with the concept of the debt limit. And the question of suspending the debt limit to my understanding is a little more complicated. I don't know, Sarah, if you have any thoughts on sort of that middle ground.

What's important to note on this as well as many other hypotheticals about reconciliation is the difference between again what could happen and what seems likely to happen. It remains I think unclear to me so I don't know if you know or suspect differently whether Democrats will decide that reconciliation is the way that they want to deal with the debt limit.

It's clear that the debt limit needs to be dealt with. Exactly when is unclear. And so, how that fits into kind of the overall timing puzzle. I think again it's an open

question. I don't know if you have anything to add.

MS. BINDER: That's my sense. And now, there maybe -- I mean financial accounting reasons why a party's have laid preferred suspending with that limit versus increasing to a certain level. My sense has been that suspending is more politically palatable because you're not raising -- giving anybody a target number to be used against your party.

But then as you suggested if that doesn't score then perhaps that's taken off the table. But that could push Democrats to look for an alternative mechanism for something perhaps on the approximations which is also ultimate let's pass.

MS. BINDER: So, this may also be a good moment to just like give a little bit of a perspective on like where are we right now? What seems to be the plan of the Biden administration and Democrats in Congress for using reconciliation? How many bills are we talking about? You know, I just mentioned it's not clear whether the debt limit -- this is the legislative process that bill uses to deal with the debt or not. But kind of where are we?

MS. REYNOLDS: So again, with the caveat that there could well be people watching today who are working on these issues. From the outside, it appears to be there are -- not to mix metaphors -- there are a couple of balls that are attempting to be in the air at the same time.

And I am not a juggler. So here I am trying to use my hands to illustrate juggling. It seems the first one route could well be or at least what seems to be the current train track is for the bipartisan to the extent it remains bipartisan.

But it seems to have legs here, infrastructure bill, hard or physical infrastructure bill to continue through the usual -- well, unconventional usual, irregular, irregular or regular irregular order such as it was to produce plan to come through the Senate this summer first. And then to be, in theory, passed and sent to the House where it would seem that the speaker would hold it for a while as is the power of the speaker and the majority party to set the agenda there.

At the same time, already underway appears to be the parallel track as it were of a reconciliation bill that would tackle the Democrats, the Biden parts of the family plan and what else must be in the job's plan more social or soft infrastructure.

Under Plan One, it seems that we have dual, as they call them, tandem. That is bipartisan will go first and then reconciliation resolution would come up in the Senate that has been probably pre-negotiated with the House but letting the Senate go first. That includes reconciliation instructions so that once the House agrees to the resolution then work can get underway at the same time on the reconciliation bill perhaps to make it to the Senate floor in, I presume September-ish. Go to the House and then the Democrats would have both the bipartisan and the partisan as it were package to go to be passed and signed at once.

I think that seems to be the model that Democrats are working towards, but with the fall back. And then I think there actually some -- I don't know. Possibly an unanswerable question about reconciliation as the fall back folding in the bipartisan hard infrastructure into the social infrastructure. And I suppose then the question is how does the resolution get -- how do they write the reconciliation instructions to committees with the possibility that it would have to be large enough and directed to the right committees to add the bipartisan bill into one gigantic reconciliation bill?

I take it that's the fallback plan, but there's limits. There's political limits. There's limits of how much Joe Manchin and colleagues maybe willing to put into either form of a reconciliation either the soft or the soft plus hard. And as you pointed out at the outset, time is ticking. We have seen reconciliation bills in even numbered election years, but I don't think that's the hope, right?

I think the plan is to probably get it done were that possible before they start getting into the election year in more overt campaigning as it were.

MS. REYNOLDS: Sarah, you brought up the question that sort of instructions to many uses. We have a question from Paul Helmsman about that. So how

specific can the reconciliation instructions be to the committees of jurisdiction? So general the instructions do not sort of tell committees exactly which programs they should make changes in to achieve the prescribed amount of either substantive reductions, spending increases, revenue increases, revenue decreases, whatever.

They don't generally contain sort of pro-formatic directions. That said, there is sort of a kind of behind-the-scenes process that goes on where -- so in order to kind of decide how big the instructions should be, you develop some sense of what's likely to be achieved through those instructions before you kind of decide on the number in the case of some committees. You know, ones that don't actually have a lot of mandatory spending in their jurisdiction. There are only so many levers they can pull.

So, you have a sense of like what those levers might be. But again, generally it does not appear in the instructions themselves but there's often. And I think that's part of what's happening kind of behind the scenes right now in settling on those numbers is what are the changes that are likely to kind of -- what are the building blocks that are likely to make up those changes.

MS. BINDER: This is reconciliation 401, but I think we owe it to our viewers to rise to the challenge. I'm going to ask the one maybe. And I think you and I have kind of talked through this before. A question from Bill Singer of the Carmen Group.

On what statutory basis did the Senate parliamentarian rule that if you want more than one reconciliation bill in a year then it must be reported out of committee with at least one member from the minority party.

MS. REYNOLDS: Go ahead. You can start.

MS. BINDER: I was going to ask you. I'm going to give it to you for, what do these additional resolutions look like? And then we can piece together the parts about auto-discharge and so forth as it were.

MS. REYNOLDS: Yeah. So, in the Congressional Budget Act, but again sets up the possibility of using reconciliation that law provides for the opportunity to revise a

budget resolution.

And if you sort of read the debate over original Apoptrophe Act and some other sort of speeches and committee reports and all that sort of thing from early uses of the Budget Act. The kind of underlying idea was that again in this era of multiple budget resolutions that conditions might be fluid. Things might happen. An external crisis in the economy where Congress might need the ability to revise, to go back and make changes its budget blueprint.

That's why when writing the Budget Act, Congress provided for the possibility of revising a budget resolution. And so, we sort of, in part, again because reconciliation has become this kind of one neat trick, this key to unlock a filibuster proof process that's more important in the contemporary Congress than I think it used to be.

We've seen Congressional majorities try to figure out ways to use it in bigger ways or in this case more often. And so, we have this question about whether Congress could go back and having taken the budget resolution that they've passed in, I believe, February to unlock the reconciliation process that created the American Rescue Plan that Congress passed, that President Biden signed into law in March.

Could they go back to that February budget resolution? Revise it in a way that would unlock a second reconciliation process for the current fiscal year that we are currently in that runs through the end of September? And if they could under this part of the Budget Act that allowed for revisions, what could they do with it? And so, that was the sort of the question that the parliamentarian opined on I believe some time last month.

Sarah, we have just a couple of minutes left. If you want to sort of take on this part about discharge and then we'll wrap up.

MS. BINDER: So, I think the surplus version is that in the commercial Budget Act when applied to your first budget resolution in a normal circumstance there is in effect an auto-discharge because there's a date by which the resolution has to be adopted.

It sounds like from the reporting that the parliamentarian is saying there is

no auto-discharge on a revised or amended budget resolution. And so, the budget committee would have to vote it out. We are in a 50/50 Senate. The parliamentarian does police whether or not committees essentially conform with reporting rules and we can save that for another day.

But it sounds like given a 50/50 Senate, given that Republicans went against it. It sounds like given that Republicans could basically void a quorum to prevent the Democrats from voting to discharge it that it would not be possible then without Republican support to get it out of the committee.

Now, I think there's still some question marks at least in my head about why the leader can't discharge it and then vote on the floor and so forth. But that seems to be -- like a confluence of the law, an unused provision, a 50/50 Senate and then advice from high as it were from the parliamentarian.

So, it seems quite complicated, but I think it's because there's so many moving parts here in ways that haven't been seen before that gives rise to, hey, why do you have to require a Republican? So, I think it's a circumstance here of contingent interesting events.

MS. REYNOLDS: To say thing. We've laid all this out, but this is another case where the constraints aren't just kind of what the law says or what the parliamentarian's interpretation of the law says and where the Senate willing to push it. It's also the calendar.

And so, there are real questions about, you know, given both the amount of floor time that handling a reconciliation bill takes and to go back to Sarah's sort of two moving trains. Hitching the trains together. The degree to which politically it is challenging to say to some parts of your coalition, we're going to put things in one reconciliation bill and hold some things for a second reconciliation bill. And that may or may not come to pass.

So, sort of all of that which is again outside -- these are constraints outside of the ones that the rules place on the process. Those are also playing a role.

MS. BINDER: In the world of split majorities, it's a really tough battle I think all around for this particular majority, unified party control.

Okay. On that note about reconciliation. Thank you all so much for joining us and we look forward to seeing you again another time.

\* \* \* \* \*

CERTIFICATE OF NOTARY PUBLIC

I, Carleton J. Anderson, III do hereby certify that the forgoing electronic file when originally transmitted was reduced to text at my direction; that said transcript is a true record of the proceedings therein referenced; that I am neither counsel for, related to, nor employed by any of the parties to the action in which these proceedings were taken; and, furthermore, that I am neither a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

Carleton J. Anderson, III

(Signature and Seal on File)

Notary Public in and for the Commonwealth of Virginia

Commission No. 351998

Expires: November 30, 2024