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HOUSE LEADERSHIP INVOKES “MARTIAL LAW,” FORCING MEMBERS TO VOTE ON KEY BILLS WITHOUT FULL KNOWLEDGE OF WHAT THEY ARE VOTING ON

Move Represents Erosion of the Democratic Process

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The House Republican Leadership has announced its intention to have the House vote, before adjourning on Friday or Saturday, on several major pieces of legislation that are not yet available to House members in final form because behind-closed-door negotiations on the proposals are still going on. The Leadership apparently intends to use a process known as “martial law” to allow these bills to be brought to the floor very shortly after negotiations are completed, with the result that Members of the House are likely to have virtually no time to examine and consider the details of the legislation before they will be required to vote on it.

Among the matters the House may be asked to vote on under martial law are a major conference report on pension legislation, a costly bill that would permanently reduce the estate tax and extend certain expiring tax provisions, and a bill that could combine a controversial health insurance proposal with an increase in the minimum wage. (There also are reports that the estate tax, minimum wage, and expiring tax provisions may be combined into a single bill.) The House Rules Committee on Thursday afternoon reported a resolution that would provide martial law authority in relation to all of these bills.

Under the martial law procedure, longstanding House rules that require at least one day between the unveiling of significant legislation and the House floor vote on that legislation — so that Members can learn what they are being asked to vote on — are swept away. Instead, under “martial law,” the Leadership can file legislation with tens or hundreds of pages of fine print and move immediately to debate and votes on it, before Members of Congress, the media, or the public have an opportunity to understand fully what provisions have been altered or inserted into the legislation behind closed doors. This is the procedure that the Leadership intends to use to muscle through important bills in the next two days.

This procedure diminishes democracy. When major legislation is being considered that would add hundreds of billions of dollars to the debt or affect millions of Americans in other ways, Members of Congress should have an opportunity to study the legislation for more than a couple of hours and to know what they are voting on.

The Bills in Question

The pension bill, which contains important changes in the rules governing defined benefit pension plans and tax laws affecting retirement savings (and also may serve as a vehicle for tax changes unrelated to retirement), has been the subject of vigorous debate for months among members of the House-Senate conference committee. Although a final agreement on the conference report has reportedly been imminent for days, the conferees were still working out differences as of Thursday evening. The legislation that would provide for a permanent reduction in the estate tax and the extension of a number of popular expiring tax provisions (such as the research and development tax credit) has not been finalized because the pension bill conferees are still debating whether some or all of those provisions should be included in the conference report on the pension bill. Legislation that would promote so-called “association health plans” and increase the minimum wage (and likely contain other provisions intended to make the minimum wage increase more acceptable to House conservatives) also is still being negotiated behind closed doors by Republican leaders.

Some of these bills are very costly. The sharp reductions in the estate tax that are under consideration, and provisions making permanent the pension tax cuts enacted in 2001 (which are expected to be in the pension conference report), would cost approximately \$325 billion over the ten-year period from 2007 to 2016. And because most of these provisions would not take effect until after 2010, their long-term costs are much larger. During the first decade when these provisions would be fully in effect, 2012 to 2021, they would reduce revenues by about \$700 billion. When the increased interest payments on the debt are included, the total impact on the budget rises to nearly \$900 billion over that decade.

Despite these large costs, the plan of the House Republican Leadership appears to be to pass the martial-law rule the House Rules Committee reported last night, allowing any or all of the three bills to go directly to the House floor as soon as the private negotiations on them have been concluded — and before the public, the media, or even Members of the House themselves have an opportunity to examine the revised legislation carefully.

Among other things, this arouses suspicion that some of the changes that are being made in the proposals may be presented as easing certain controversial provisions of the bills, even if the reality is different. It also creates concern that some special-interest provisions may have been inserted into the bills, or some special interests may otherwise have been protected, in order to secure votes.

Use of the martial law procedure will enable the Leadership to seek to round up the votes needed to pass the bills before a full picture is available of what the bills actually do.

What is “Martial Law”?

The House leadership is using a parliamentary gambit to evade a longstanding House rule that is supposed to ensure that this kind of obfuscation does not occur. That House rule (Rule XIII(6)(a)) provides that a resolution (called a rule) reported by the Rules Committee *cannot* be considered by the House on the same legislative day that the rule is reported (except by a two-thirds vote of the House). This is supposed to ensure that Members of the House and the public have at least one day to examine and analyze what is in legislation before they have to debate and vote on it.

To maneuver around this House rule and rush the three proposals discussed above to a vote before they have been fully examined, the Rules Committee reported a rule late Thursday afternoon (H.Res.

958) that would *wave* the application of Rule XIII(6)(a). Instead, it would allow the Rules Committee to wait until the last minute and not to report the rules governing the consideration of these bills or to release the text of the bills themselves until immediately before debate and votes on the bills, and on the rules governing their consideration, commences.

This extraordinary procedure is known as a “martial law” rule because it suspends the normal procedures and safeguards and allows the House Leadership to operate in a more authoritarian fashion. It enables the Leadership to seek to ram a bill or conference report through before the Members have the opportunity to fully understand what they are voting on.

Legislation that has far-reaching implications for millions of Americans deserves to be considered under a more democratic process. Waiting until the last minute to reveal what is in these bills, and then “spinning” or potentially mischaracterizing changes in the bills without Members of the House or the public having an opportunity to obtain a more objective review of what the legislation does, is unfair to Members of the House. It also is unfair to the millions of Americans whose lives could be affected by this legislation. It represents a further step in reducing the degree of transparency and democracy in how this country is governed and how decisions are made. At a time when our leaders preach the goal of promoting democracy abroad, they should not be reducing it at home.