

## Rebuilding Bridges: Senator Yvette Robinson, Senate Minority Leader (D-OR)

**TO:** Senator Yvette Robinson

**FROM:** Shaniqua Wilkins, Chief of Staff and Jared Livingston, Legislative Director

**RE:** Final Negotiation on The *BUILD Act*

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As you know, the *BUILD Act* presents a critical opportunity for you to deliver a significant reform to America's transportation infrastructure, prove your ability to deliver bipartisan policy victories as the Senate Minority Leader, and bolster the Democratic party heading into the midterm elections this fall.

The benefits of getting this bill signed into law are obvious. The River Cities bridge collapse was tragic. We know that Americans expect their leaders to step up and respond and you have stated publicly again and again that you intend to do just that. Given your strong public commitments to achieving this, we believe it is essential that you are able to demonstrate that Democrats can be more than a party of "no" with a Republican Senate and White House.

You know voters are sick of a "do nothing" Congress. But recent internal Democratic polling data shows that voters will likely blame a lack of progress on Republicans in November. While we all believe it is our responsibility to enact a broad, bipartisan bill that comprehensively updates the nation's infrastructure policy and responds to this tragedy, supporting a bad bill would be worse than not passing one at all. We have already received significant pressure from Speaker Norris' office – he cannot promise to get the bill through the Democratic House of Representatives if you negotiate a Senate bill that is too far right.

*Scoring.* In order to help with your negotiating strategy, we have constructed a 110 point scoring scheme to illustrate which negotiable issues are of greatest and least importance to you. We have weighted these based on political considerations, your previous voting record, and constituent interests. Under this scheme, you can score up to 110 points during the negotiation, depending on how each of the five issues is resolved. Your most preferred version of the bill is scored at 110 points.

Dealing with these issues in terms of "points" may seem artificial and abstract but for the purposes of this negotiation, it will enable you to combine your interests – sufficient funding, raising the gas tax, securing

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*This Confidential Instruction was written by Brian Mandell, Senior Lecturer in Negotiation and Public Policy, Monica Giannone, Director of the Harvard Kennedy School Negotiation Project, and Emily Schlichting at the John F. Kennedy School of Government, Harvard University (HKS) as part of the Harvard Kennedy School's "Teaching Legislative Negotiation Project." Funding for this simulation was provided by The William and Flora Hewlett Foundation. HKS simulations are developed solely as the basis for class discussion. They are not intended to serve as endorsements, sources of primary data, or illustrations of effective or ineffective management.*

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a vote on the union labor amendment, and making sure the money moves quickly – into a single index. You will be able to compare the gains and losses of different options under each issue more easily.

In addition, the point system allows you to compare the value of the negotiated agreements to your alternatives. We believe you should only agree to support this bill in a Unanimous Consent (UC) Agreement if you can secure an agreement worth **at least 75 points**. Any agreement worth fewer than 75 points would not be worth pursuing. You would be better off working through an emergency supplemental appropriation to provide targeted disaster response to the River Cities and waiting for voters to hold the current leadership responsible.

Your task is to build enough support for the *BUILD Act* to get the deal through the Senate, while minimizing political compromises required to do so. Try to earn as many points as possible in this negotiation. A better bill only strengthens your political position going into future legislative negotiations with both Senator Howell and the White House.

**Note:** We believe you can negotiate an agreement that scores much better than 75 points. An agreement worth 90 points would set you up nicely for the tax extenders negotiation that will happen after the midterm elections and further contribute to your reputation as a strong negotiator.

Fortunately, you have excellent leverage as the Minority Leader. Given the composition of the Senate, Sen. Howell cannot advance a bill to the floor without Democratic agreement – either through a negotiated Unanimous Consent (UC) Agreement or by providing the votes needed to gain cloture on the Motion to Proceed (MTP) to the legislation. As the leader of the caucus, we are certain that other Democratic Senators will vote as you need them to and not peel off to support a bad deal for Democrats. **This means you can effectively veto any agreement that does not meet your threshold.**

### **Issue #1: Funding and Offsets**

Given that experts estimate that a comprehensive investment to repair all infrastructure will cost \$4.6 trillion we feel strongly that a \$3 trillion package is the least we can consider. The strongest of these options is a fully offset bill, as this gives a stronger justification for raising the gas tax, which we also recommend you support (see more on this below). While we would strongly prefer a bill with higher funding, failing to pay for the policy increases the likelihood that the gains we make in the *BUILD Act* are not long-lasting – future Congress could simply repeal them to avoid paying for them later.

Beyond the policy details, the higher spending rate is necessary to line up the votes you need. The Chairmen and Ranking Members of the Finance Committee and Environment and Public Works Committee included policies in the *BUILD Act* for specific Senators to ensure that it was voted out of committee. If the level of funding is reduced at all, some of those policies will have to be cut from the bill – angering those Senators and making it harder for you to get the votes you’ll need for final passage. We have conferred with Sen. Howell’s staff and know that he is also going to push for higher funding levels for this reason.

If the funding is cut to under \$1 trillion, you know the *BUILD Act* will not effectively repair America’s infrastructure – kicking the can down the road and failing to truly respond to the tragedy in River Cities.

- a) Under \$1 trillion, fully offset = 5 points

- b) \$3 trillion mixed spending, fully offset = 15 points
- c) \$1.5 trillion in mixed spending, partially offset = 10 points
- d) \$2 trillion in budgetary spending, not offset = 5 points
- e) \$3 trillion in mixed spending, partially offset = 0 points

## Issue #2: Regulation of Automated Vehicles

For years, technology and motor companies have been working on developing driverless cars. You know these AVs have the potential to remake the economy. You suspect the recent AV collision that killed a pedestrian in Des Moines has put Sen. Howell in a very difficult position.

Initial backlash called on the White House to regulate AVs from the National Highway Traffic Safety Administration (NHTSA). The White House claims it does not have the legislative authority, which has shifted the pressure to Congress. While you support regulation of AVs in principle, you do not want to risk the success of the *BUILD Act* on policy arguments in this space. Given the indifference to this regulation being built into the bill, no points are gained or lost on this issue.

## Issue #3: Gas Tax

Raising taxes is never popular, but we know that raising the gas tax is the only way to permanently ensure that America does not find itself with such decaying infrastructure in the future. As the past decade has proved, finding moments of consensus in Congress to pay for this type of maintenance is hard.

This is a unique moment – the Republican Leader is in strong support of an infrastructure bill and the press around the River Cities bridge collapse gives you strong momentum to argue for a long-term fix that prevents future senseless deaths as a result of crumbling roads and bridges. Beyond this, we believe that the gas tax is a logical, policy-relevant way to pay for a large portion of the spending in the *BUILD Act*.

As you know, the two parties are quite split on this issue. We expect that the White House will support your position, but it is worth noting they have been inconsistent on the issue of tax increases in the past. We recommend that you confer with Sen. Martinez on this point as soon as possible – given his outspoken support for raising the gas tax and leadership of more fiscally responsible Democrats in Senate, we believe he will be a good ally as you negotiate this with Republicans.

- a) No changes = 0 points
- b) Index to inflation = 15 points
- c) Raise to \$0.45/gal = 20 points
- d) Raise to \$0.45/gal and index to inflation = 25 points

## Issue #4: Implementation Timelines

At your direction, we have been pushing for phased in implementation for the *BUILD Act*. We believe the phased in approach is best because this sets all funding distribution deadlines for 180 days after enactment so we can get money flowing into communities, while the Administration has 18-24 months to issue regulations and stand up policy programs. Meanwhile, the White House insists that the statutory deadlines for the implementation of the *BUILD Act*, including all funding, be two years from the date of

enactment. We believe that both this option and an implementation timeline of 180 days are equally irresponsible and will be unsatisfactory to voters.

- a) 180 days = 0 points
- b) 1 year = 25 points
- c) Phase in = 45 points
- d) 2 years = 0 points

#### **Issue #5: Amendments and Time Agreement**

We strongly recommend a Unanimous Consent (UC) Agreement that includes just one amendment, which reduces the likelihood that political floor fights on amendments will harm the bill's chance of passage. Fewer amendments also means we will spend less floor time on the *BUILD Act*.

Ideally, we would prefer to entertain no amendments. However, you recently spoke with the President of the AFL-CIO, a major labor organization. Based on this conversation, we believe you must secure a UC Agreement that allows for a Senate floor vote on the requirement that some union labor be used in the construction projects funded by the bill.

Sen. Martinez's staff has approached us about a series of amendments he believes deserve at least a vote. The Senator would prefer that these policies were incorporated into the legislation, but we have informed him that these elements are mostly baked into the Manager's Amendment.

- a) No amendments = 5 points
- b) 1 amendment per side = 25 points
- c) 3 amendments per side = 10 points

A one-page scoring sheet has been attached which summarizes the points we have assigned to each one of the five issues. This information is CONFIDENTIAL! You should not show your scoring sheet to anyone! You may convey some or all of the scoring information verbally to a mediator, or to any other party, but you should not let anyone see your scoring sheet. Good luck.

**CONFIDENTIAL TO Senator Yvette Robinson (D-OR)**  
**POINT SUMMARY AND WORKSHEET**

<b>Issue Option</b>	<b>Points</b>	<b>First Vote</b>	<b>Second Vote</b>
<u>Funding</u>			
1. Under \$1 trillion, fully offset	5		
2. \$3 trillion mixed spending, fully offset	15		
3. \$1.5 trillion in mixed spending, partially offset	10		
4. \$2 trillion in budgetary spending, not offset	5		
5. \$3 trillion in mixed spending, partially offset	0		
<u>AV regulation</u>			
1. Pre-market regulatory approval	--		
2. Hybrid certification and pre-market approval	--		
3. Certification only	--		
4. No language on AVs	--		
<u>Gas Tax</u>			
1. No changes	0		
2. Index to inflation	15		
3. Raise to \$0.45/gal	20		
4. Raise to \$0.45/gal and index to inflation	25		
<u>Implementation</u>			
1. 180 days	0		
2. 1 year	25		
3. Phase in	45		
4. 2 years	0		
<u>Time and Amendments</u>			
1. No amendments	5		
2. 1 amendment per side	25		
3. 3 amendments per side	10		

**Minimum needed for an agreement = 75 points.**

This is your score if the negotiations fail and no agreement is reached.