

Rebuilding Bridges: Senator David Martinez (D-NJ)

TO: Senator David Martinez

FROM: Michael Watkins, Chief of Staff and Lori Bath, Legislative Director

RE: Final Negotiation on The *BUILD Act*

We believe the *BUILD Act* presents a critical decision point for you to step up and firmly establish your leadership on issues of good governance in the Senate.

While we broadly recommend that you support this legislation, without a robust increase in the gas tax, the benefits of his bill becoming law are not entirely clear. We all admit that the River Cities bridge collapse was tragic and that our infrastructure needs repair, but the proposal that the Majority Leader has put on the table is utterly irresponsible. He wants to fund a \$3 trillion bill without raising the gas tax – meaning that in 30 years our children will find themselves facing the same problems that we face today. We know this is not your definition of responsible, good governance.

You have been vocal about your concern for insufficient long-term support for government operation – how can we expect our public servants to keep us safe, repair our roads, and mend our bridges if we do not give them the sustainable funding to do so?

Based on our conversations with their staffs, we know that Sen. Howell, Sen. Robinson, and the White House are all eager to get a bill to the President's desk. We believe this provides an opportunity for you to shore up the unsupported spending in the bill. Unsurprisingly, we anticipate the Republicans and the White House may oppose raising the gas tax – but we recommend that you push forward anyway.

There is a strong coalition of about 20 Democratic Senators that you have held a series of meetings with on this topic. As you will recall, at the last meeting there was unanimous agreement that the group would stick together in opposing any legislation that did not agree to provide DOT with a long-term, sustainable source of funding to prevent a tragedy like this from occurring again. Leader Robinson's staff knows you have been active on this issue, but we have not formally confirmed your control over this block of votes to her.

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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Scoring. In order to help with your negotiating strategy, we have constructed a 125 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 125 points during the negotiation, depending on how each of the five issues is resolved. Your most preferred version of the bill is scored at 125 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 – blocking any deficit spending, not raising taxes, and securing votes for critical amendments on the floor – 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 if you can secure an agreement worth **at least 70 points**. Any agreement worth fewer than 70 points would not be worth pursuing. You would be better off without any bill than one that pretends to solve the problem now, taking the pressure off and preventing Congress from developing a real, sustainable solution.

Your task is to ensure that the *BUILD Act* only gets through the Senate if your priorities are accounted for, 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 position going into future legislative negotiations.

Note: We believe you can negotiate an agreement that scores much better than 70 points. An agreement worth 85 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.

While you could technically refuse to agree to a Unanimous Consent (UC) Agreement reached here today, we know the Republican Leader would simply call a vote and fill the tree with amendments that do not account for your interests. Additionally, we fear you would be viewed as obstructionist and lacking empathy for those affected by the tragedy if you do so alone. And you would damage your relationship with the Minority Leader. Therefore, you should, under no circumstances unilaterally threaten to stop the *BUILD Act* by blocking the Majority Leader’s motion for UC. However, if you could find another coalition of 21 Senators, you could combine forces and withhold the requisite 40 votes to block a cloture or Motion to Proceed (MTP) vote while maintaining political cover.

Issue #1: Funding and Offsets

As you know, many experts estimate that a comprehensive investment to repair all infrastructure will cost \$4.6 trillion. CBO scored the current package of both committee bills at \$3 trillion. While this issue matters to the extent that it can give you leverage to raise the gas tax, we believe any level of spending in the *BUILD Act* will be helpful in repairing America’s infrastructure. As such, we have not built in any scoring on this issue.

It is worth noting that Leader Robinson may seek your support on this issue, based on our conversations with her staff.

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 generally support smart regulation in principle, you have a strong relationship with Silicon Valley that makes this particular fight tricky. Beyond that, we have bigger issues at hand in the *BUILD Act*. Given this, we have not built in any scoring 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. Robinson on this point as soon as possible.

- a) No changes = 0 points
- b) Index to inflation = 20 points
- c) Raise to \$0.45/gal = 40 points
- d) Raise to \$0.45/gal and index to inflation = 60 points

Issue #4: Implementation Timelines

We are not entirely sure why the Majority Leader has included this issue in the debate – at markup it seemed as though everyone was fine with a two year timeline. This was due largely to the White House's insistence that the statutory deadlines for the implementation of the *BUILD Act* be two years from date of enactment. While we believe two years to be the best policy choice to get funds flowing into communities, one year is not terrible.

- a) 180 days = 0 points
- b) 1 year = 25 points
- c) Phase in = 15 points
- d) 2 years = 35 points

Issue #5: Amendments and Time Agreement

We strongly recommend you push for a UC Agreement that includes three amendments for each side. Leader Robinson's staff knows that you will be pushing for these votes – we reminded them that they

were promised to other Democratic Senators in exchange for not pushing them hard during the Environment and Public Works Committee markup of the *BUILD Act*.

Securing this vote is critical for a few reasons. First, you and other Democrats have been receiving intense pressure from local union chapters under the AFL-CIO to ensure that the full Senate votes on an amendment to set quotas for union labor in construction projects funded by the *BUILD Act*. This position is both consistent with your previous voting record and will help you gain esteem amongst your colleagues if you can secure this win for them to take back to those chapters.

The other two amendments are less important, but given the number of concessions your fellow Senators agreed to during the Environment and Public Works Committee markup of this bill we believe it is perfectly acceptable that you be granted votes on the amendments to ensure environmental standards in the new construction and fund workforce training programs for those whose jobs will be replaced by AVs.

- a) No amendments = 0 points
- b) 1 amendment per side = 15 points
- c) 3 amendments per side = 30 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 DAVID MARTINEZ (D-NJ)
POINT SUMMARY AND WORKSHEET

Issue Option	Points	First Vote	Second Vote
<u>Funding</u>			
1. Under \$1 trillion, fully offset	--		
2. \$3 trillion mixed spending, fully offset	--		
3. \$1.5 trillion in mixed spending, partially offset	--		
4. \$2 trillion in budgetary spending, not offset	--		
5. \$3 trillion in mixed spending, partially offset	--		
<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	20		
3. Raise to \$0.45/gal	40		
4. Raise to \$0.45/gal and index to inflation	60		
<u>Implementation</u>			
1. 180 days	0		
2. 1 year	25		
3. Phase in	15		
4. 2 years	35		
<u>Time and Amendments</u>			
1. No amendments	0		
2. 1 amendment per side	15		
3. 3 amendments per side	30		

Minimum needed for an agreement = 70 points.

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