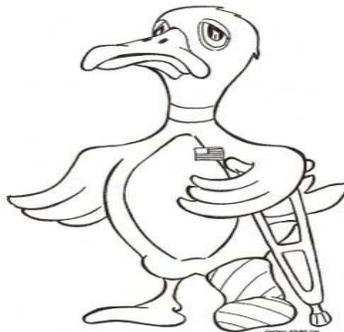


## *The Looming Lame Duck Laundry List*

“We’re not finished after this work period, we’re not finished before Congress goes out. We’re gonna have to have a lame duck session, so we’re not giving up.”

Senate Majority Leader Harry Reid



*September 23, 2010*

Today, a vote was held on a privileged resolution offered by RSC Chairman Price that would prohibit Congress from meeting between Nov. 2 and Jan. 3, except in the case of an unforeseen, sudden emergency, requiring immediate action from Congress and barring the consideration of certain controversial pieces of legislation. Unfortunately, the measure failed. Apparently, since the resolution failed, the Democrat caucus is in lock step with the Pelosi-Reid agenda and remains committed to the consideration after the election of unpopular legislation like a national energy tax, enormous deficit spending bills, and kickbacks to labor unions.

The big government agenda of Congressional Democrats has shown the majority to be out-of-touch with the needs and concerns of hardworking Americans, and their policies have created a cloud of uncertainty that has kept job creators on the sidelines. A lame duck session is the only way the Democrat majority can succeed in advancing their unpopular agenda because they know they do not have the support of the American people. The RSC has compiled a *just a few examples* of what the Democrat majority says it intends to bring to the House floor after the elections:

- ***A Lame Duck Session Would Be a Taxing Burden:*** On January 1, 2011, many of the initiatives to reduce the income tax burden on all Americans enacted during the Bush administration expire. While the estate tax expired in 2010, it will return to its 2001 level next year of a 55% top rate with a \$1 million exemption. In addition, tax decreases on businesses are scheduled to expire, and renewal remains unclear. This [creates uncertainty](#) for families and the economy.

Most observers agree that it is politically undesirable for many members to vote any measure that could be viewed as raising taxes weeks before an election. It is widely believed that if the House considers any permanent changes to the tax code during the 110<sup>th</sup> Congress, those changes will be done during the lame duck.

- **National Energy Tax:** Recently, White House “Climate Czar” Carol Browner [indicated](#) that it was well within the potential for Congress to consider a national energy tax during lame duck. Most conservatives would argue it is against the will of the majority of Americans to artificially increase utility and energy prices and force greater economic hardship directly on American families and businesses with unemployment near 10%.

This is a tax that will affect constituents in *every* aspect of their lives. From transportation, to food, to electricity, to income - this is the ultimate regressive consumption tax to the tune of nearly *\$3,000 per year* according to the [Heritage Foundation](#). The costs per family for the whole energy tax aggregated from 2012 to 2035 are estimated to be *\$71,493*. [Click here](#) for a complete analysis of the national energy tax proposal.

- **EPA’s Overreaching Authority:** Even if the overwhelming opposition of the American people gives some pause to the consideration of national energy tax, the EPA could easily impose many mandates and rules that will be just as devastating to the economy. Next year, the EPA will begin requiring new power plants and oil refineries to include greenhouse gas emissions in the Clean Air Act permits they submit. This is anticipated as a preliminary move to impose arbitrary limits on those emissions and expand the mandates to many other sectors of the economy.

Earlier this year, *Senator Rockefeller (D-WV)* introduced a resolution that would delay EPA’s regulatory power over carbon emissions for two years. He was promised by Senator Reid floor time to debate the measure. However, knowing this could pass because it would place many vulnerable Democrats in a difficult position, reports indicated Senator Reid may use a lame duck session to consider it. If a vote were to occur during lame duck, some would argue that a number of senators will lack the political motivation to vote for the measure after the elections have occurred.

- **Card Check:** Also known as “card check,” the Employee Free Choice Act (EFCA) has failed to gain traction because of [overwhelming opposition](#) to it. However, President Obama has [stated](#) he will keep fighting to pass card check, and the lame duck session would be the only possibility to make it law. The bill cannot currently pass the Senate because a number of Democrats have failed to publically commit their support for it.

The EFCA would significantly change the way unions organize workplaces by removing secret ballot protections currently provided and replacing them with a public certification process. Just as concerning, the bill includes mandatory binding arbitration, which will force employers and unions into “agreements” with which they might not agree. Some conservatives have expressed concern the proposal will allow government bureaucrats to determine wages, benefits, and other detailed day-to-day work policies for companies which arbitrators may know nothing about.

- **Immigration Reform:** This is a distinct possibility to come during lame duck, as it has failed to become politically obtainable even when Democrats enjoyed a filibuster-proof margin in the Senate. The Obama administration has expressed its desire to deal with this

issue – even by [circumventing Congress](#) if it fails to pass comprehensive legislation. This would be the only opportunity for Congress to produce legislation that would be satisfactory to the administration.

Even if an agreement cannot be reached to provide “comprehensive reform”, several Democrats, including Senator Reid, have stated that they would like to consider the DREAM Act because it has Republican support in the Senate. This legislation would grant amnesty to illegal aliens who entered the U.S. under the age of 15, have been in the country for five years, and graduate from a U.S. high school. Some conservatives have expressed concern this will encourage more illegal immigration by families hoping to give their children an education provided by U.S. taxpayers. In addition, the DREAM Act allows public universities to grant illegal immigrants in-state tuition rates. However, the bill does not grant in-state-tuition to any public university for U.S. citizens.

- **Watch What We Eat:** In July of 2009, the House passed the Food Safety Enhancement Act (H.R. 2749). The bill would require the FDA to inspect all food facilities, impose mandatory recalls of all compromised foods, and establish a quarantine of geographic regions that have tainted food supplies, while imposing a \$500 annual registration fee on facilities to carry out these mandates imposed by the FDA. The bill goes so far as to allow the Secretary of Agriculture to issue a recall order if he or she has *any reason to believe* a product has been adulterated or misbranded. H.R. 2749 strikes the current requirement that the FDA must have “credible evidence or information indicating that such article presents a threat of serious adverse health consequences” and allows the agency to act upon merely a “reasonable belief”.

In the Senate, conservatives have objected to considering similar legislation in part because of the \$1.4 billion in new authorized spending in the bill and concerns that the legislation will lead to burdensome regulations on the industry. Senator Reid has indicated he will use the lame duck session to consider the matter.

- **Tell Children What To Eat:** Congress last authorized the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) in 2004, and a number of provisions are set to expire soon. The Senate passed a reauthorization in August, and the full House has yet to consider the measure. The bills are different in that the House version is expected to cost approximately twice as much as the Senate version, without any offsets to cover the costs, and the House version includes the creation of thirty-three new programs and program expansions. It should come as no surprise, House Democrats are likely to push their version of the “Child Nutrition” bill that is lock-in-step with the overspending, big government priorities of Speaker Pelosi.

Additionally, the House bill increases the federal reimbursement rate by 6 cents for school lunch and breakfast programs, increases access to free meals by expanding automatic certification for those who are eligible, establishes new national nutrition standards on all foods sold in a school, increases the funding for WIC breastfeeding programs, creates a new Green Cafeteria Pilot Program to promote energy efficient cafeterias, and requires local educational agencies to report to the USDA on school nutrition programs and the amount of time students are required to spend in physical education in each grade. The bill also includes new vegan, low-fat cheese, and organic meals pilot programs, and creates an after school supper program.

- **Fly Me to the Moon:** Congress has been attempting to reach an agreement on the NASA reauthorization bill, and Senate Democrats hoped to insert the language into the continuing resolution before adjourning for the elections. Congress must pass a C.R. to keep the government running after the end of the current fiscal year on September 30, 2010. While the House has yet to consider a bill, the Senate-passed NASA authorization favors President Obama's proposal to eliminate NASA's Constellation program, in favor of directing funding towards commercial carriers for both astronauts and cargo. Some conservatives have expressed concern that the House bill forces the United States to rely solely on Russian rockets to get to the international space station for several years and that the moon/mars mission of NASA should be eliminated because it is a wasteful priority.

However, other conservatives believe NASA must continue to operate the Constellation program in order to ensure a robust human space exploration program and NASA has failed to provide adequate evidence that providing taxpayer funding for commercial crew initiatives would succeed or provide enough consideration regarding concerns over safety, marketability, liability, indemnification and intellectual property. Both the House and Senate authorization bills provide \$19 billion to NASA for fiscal year 2011, up from \$18.7 billion in the current fiscal year.

- **Deficit Spending:** To date, the Democrat Congress has completed none of the twelve FY 2011 appropriations bills. The Democrat spending plan will lead to \$1.121 trillion of spending through the regular appropriations process (this does not count mandatory spending, interest payments, or "emergency" spending through supplemental appropriations bills). This is the highest level in U.S. history and a \$31.2 billion increase compared to last year's skyrocketing spending levels. Since the Democrat Congress is likely to fail to pass these bills prior to leaving town in October, the Lame Duck Congress could consider legislation finalizing the FY 2011 appropriations process.
- **On the Way Out? Why Not Another Bailout:** Earlier this month, it was reported that Fannie Mae and Freddie Mac will require an additional \$3.3 billion to stay afloat. That is on top of the nearly \$150 billion provided by the taxpayers since 2008. The Congressional Budget Office [believes](#) the final bill to taxpayers could reach as high as \$389 billion. In lieu of these revelations, there is a lot of discussion between the administration and House Democrats of how to handle these Government Sponsored Enterprises. It remains to be seen what may happen, however, if it requires another taxpayer bailout, it is reasonable that this would occur after the election.
- **Don't Ask, Don't Tell:** Just last week, it was reported that some Democrats hope to achieve passage in the lame duck of repealing the "Don't Ask, Don't Tell" policy regarding treatment of gays in the military. The House, as well as the Senate Armed Services Committee, has passed legislation to repeal the ban. However, the full Senate has not yet considered legislation because a [recent poll](#) revealed the majority of likely voters in the upcoming election do not support a full repeal of DADT. As the election approaches, it is evident that Senate Democrats are avoiding being held accountable for this issue, unwilling to hold a vote to be on record before November.

Some conservatives have expressed concern the proposed amendment to overturn DADT would allow the President to prematurely enact a major cultural change in the military during the operation of two wars. Secretary Gates had requested for Congress to take no action on this issue until the Pentagon could review the implications of repealing DADT,

by Dec. 1, 2010, to allow members of the armed services to express their concerns or support for such a measure. Congress should not use a lame duck for social experimentation before the military has had enough time to review the measure.

- ***Embryonic Stem Cell Research:*** On August 23, 2010, U.S. District Judge Royce C. Lamberth determined that there was sufficient evidence to halt federal funding for embryonic stem cell research during a pending case against President Obama's 2009 executive order which allowed federal funding for embryonic stem cell research. Judge Lamberth issued the injunction to stop the research until the case is decided because he found there was significant evidence that the executive order violates the Dickey-Wicker Amendment, which bans federal funding for embryo-destructive research. Since then, the U.S. Court of Appeals granted an administrative stay on the Lamberth injunction while the court considers the merits of the request for an emergency stay. If an emergency stay is granted, the administration will continue to pay for embryo destructive research until the case is decided by Judge Lamberth. While we wait for the legal process to proceed, Congresswoman Diana DeGette (D-CO) is pushing a bill to circumvent the legal proceedings by directing NIH to fund embryo-destructive research.

Congresswoman DeGette has intensified efforts to get cosponsors for H.R. 4808, a bill which would provide broad authority for embryonic stem cell research. The bill goes further than a bill the House passed in 2007 by providing a basis for taxpayer funding for research on human cloned embryos. H.R. 4808 also allows for research on embryos that are created solely for the purpose of being destroyed. The push for this bill comes despite a recent Rasmussen poll that found that 57% of Americans do not support federal funding for embryonic stem cell research.

### ***Key Take Away Points***

***Out of Step:*** The fact that House Democrats want to pursue their top goals after the election reiterates the widely viewed fact that their priorities are out of step with mainstream America. A [recent poll](#) suggests nearly 70% of Americans oppose a lame duck session.

***Over Stepping Your Boundaries:*** Adhering to the will of the people is imperative to upholding public trust that exists between the American people and their elected officials. The American people deserve to know where their current elected officials stand on key legislative issues before Election Day. Delaying controversial, unpopular votes until after the election gives false impressions to voters and deliberately hides the true intentions of the majority, while denying voters the ability to effectively select their representation.

***Grab a Box and Go Home:*** When most individuals are fired from their job, they are not usually allowed to remain around with the company for two months to make instrumental changes to the structure of the organization. Members voted out of office should follow the same format and not be permitted to make monumental changes to the fundamental structure of the nation after many of them are not re-elected.

**RSC Staff Contact:** Bruce F Miller, [bruce.miller@mail.house.gov](mailto:bruce.miller@mail.house.gov) (202)-226-9720.