

RESOLUTION OF INQUIRY REQUESTING THE PRESIDENT OF THE UNITED STATES AND DIRECTING THE SECRETARY OF HEALTH AND HUMAN SERVICES TO TRANSMIT CERTAIN INFORMATION TO THE HOUSE OF REPRESENTATIVES RELATING TO PLANS TO REPEAL OR REPLACE THE PATIENT PROTECTION AND AFFORDABLE CARE ACT AND THE HEALTH-RELATED MEASURES OF THE HEALTH CARE AND EDUCATION RECONCILIATION ACT OF 2010

MARCH 21, 2017.—Referred to the House Calendar and ordered to be printed

Mr. WALDEN, from the Committee on Energy and Commerce, submitted the following

ADVERSE REPORT

[To accompany H. Res. 154]

The Committee on Energy and Commerce, to whom was referred the resolution (H. Res. 154) of inquiry requesting the President of the United States and directing the Secretary of Health and Human Services to transmit certain information to the House of Representatives relating to plans to repeal or replace the Patient Protection and Affordable Care Act and the health-related measures of the Health Care and Education Reconciliation Act of 2010, having considered the same, report unfavorably thereon without amendment and recommend that the resolution not be agreed to.

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PURPOSE AND SUMMARY

H. Res. 154 requests the President, and directs the Secretary of Health and Human Services, to transmit to the House of Representatives, not later than 14 days after the date of the adoption

of the resolution, records relating to plans to repeal or replace the Patient Protection and Affordable Care Act (Public Law 111–148) and the health-related measures of the Health Care and Education Reconciliation Act of 2010 (Public Law 111–152).

BACKGROUND AND NEED FOR LEGISLATION

The minority seeks to obtain “correspondence between the White House transition officials and this Committee . . . about the rollback of . . . the Affordable Care Act.”¹ H. Res. 154 is a vehicle in this effort. However, broadly drafted and drafted less than two weeks after Inauguration Day, H. Res. 154 falls short of the standard for resolutions of inquiry set by the Committee in prior Congresses. In addition, an investigation into the communications of members regarding exclusively legislative or policy matters is highly unusual and would be detrimental to both the legislative process and relations among members and between parties. For these reasons, the Committee ordered H. Res. 154 reported to the House unfavorably.

The Minority’s efforts to obtain “correspondence between the White House transition officials and this Committee . . . about the rollback of . . . the Affordable Care Act.”

On January 20, 2017, Donald J. Trump became the 45th President of the United States of America. The same day, President Trump nominated then-Rep. Tom Price (GA–06) to serve as the Secretary of Health and Human Services. Secretary Price became the Secretary of Health and Human Services on February 10, 2017, and continued to serve in the House until that time.

On February 2, 2017, eight days before then-Rep. Price became Secretary, the Subcommittee on Health held a hearing entitled “Patient Relief from Collapsing Health Markets.” The subject of that hearing was to review several bills, including H.R. 706, Plan Verification and Fairness Act of 2017; H.R. 710, Health Coverage State Flexibility Act of 2017; H.R. 708, State Age Rating Flexibility Act of 2017; and a draft bill entitled “Pre-Existing Condition Protection and Continuous Coverage Incentive Act of 2017.”

At the conclusion of opening statements, a minority member of the Subcommittee on Health raised the matter of “various House staffers and the Administration and transition team and the signing of nondisclosure agreements.”²

On February 3, 2017, members of the minority wrote Rep. Greg Walden, Chairman, Committee on Energy and Commerce, regarding “whether any Committee staff assisted the Trump Administration or the transition team in drafting any executive orders within this Committee’s jurisdiction, and in the course of doing so, wheth-

¹Committee Print, Budget Reconciliation Legislative Recommendations Relating to Repeal and Replace of the Patient Protection and Affordable Care Act; and H. Res. 154, Of Requesting the President of the United States and directing the Secretary of Health and Human Services to transmit certain information to the House of Representatives relating to plans to repeal or replace the Patient Protection and Affordable Care Act and the health-related measures of the Health Care and Education Reconciliation Act of 2010; Markup Before the H. Comm. on Energy & Commerce, 115th Cong. 1138 (2017) [hereinafter H. Res. 154 Markup] (statement of Rep. Kennedy, Member, H. Comm. on Energy & Commerce).

²Patient Relief from Collapsing Health Markets: Hearing Before the Subcomm. on Health of the H. Comm. on Energy and Commerce, 115th Cong. 28 (2017). (statement of Rep. Kennedy, Member, H. Comm. on Energy & Commerce).

er they entered into any nondisclosure agreements with the Administration.”³

On February 9, 2017, at 11:02 a.m., a draft resolution of inquiry was prepared by the Office of Legislative Counsel for introduction in the House. The introduced resolution of inquiry was almost identical to the February 9 draft.

H. Res. 154 was introduced on February 27, 2017, and referred to the Committee. The text of the resolution provides:

That the President of the United States is requested and the Secretary of the Department of Health and Human Services is directed to transmit to the House of Representatives, not later than 14 days after the date of the adoption of this resolution, all documents, memoranda, and advisory legal opinions, including notes from meetings, memos, and telephone and electronic mail records, relating to plans to repeal or replace the Patient Protection and Affordable Care Act (Public Law 111–148) and the health-related measures of the Health Care and Education Reconciliation Act of 2010 (Public Law 111–152).

Under clause 7 of rule XIII of the Rules of the House of Representatives, if a resolution of inquiry is not reported to the House within 14 legislative days after its introduction, a motion to discharge the Committee from its consideration shall be privileged.

On March 8 and 9, 2017, the Committee met in open markup session to consider a Committee Print, Budget Reconciliation Legislative Recommendations Relating to Repeal and Replace of the Patient Protection and Affordable Care Act; and H. Res. 154.

During debate on H. Res. 154, a member of the minority stated:

Mr. Chairman, after notice of nondisclosure agreements between Committee staff and judiciary, and White House personnel, we had requested information as to whether documents, or notes, emails, correspondence between the White House transition officials and this Committee, if they exist, about the rollback of—potential rollback of the Affordable Care Act so that we could have an idea as to what this process would entail. We obviously have not gotten that yet and we talked about it, I think you recall, several weeks ago, in the Committee process.

* * *

So, I would respectfully request that the Committee be able to divulge whatever correspondence exists between the White House and this Committee so that we, as members of this Committee can have an accurate reflection, an accurate representation as to what is coming next and what is the true ambition of the healthcare policy rollout for this caucus.

* * *

And just to be clear, I did ask about correspondence informally between Committee and Committee staff and the White House before filing this resolution, hoping that we wouldn't have to get there.

³Letter from Rep. Pallone, Ranking Member, H. Comm. on Energy & Commerce et al. to Rep. Walden, Chairman, H. Comm. on Energy & Commerce (Mar. 3, 2017).

* * *

Again, just so that the Committee is clear, this was done in a Committee hearing. It was then followed up in writing. There was no response given. So this was as you outline. I would love to work with you and your Committee staff to try to advance this process, if we could get a commitment from you or a clear idea as to what steps are necessary so that we can get this.

But we tried once verbally. We tried again on paper. No response. No response. My nuclear option isn't so nuclear, but I understand your position on that.

This is something, obviously, I think is important to members and I would like to figure out what we can do.⁴

Following the markup and the Committee's vote to report H. Res. 154 to the House unfavorably, members of the minority wrote Chairman Walden on March 15, 2017, requesting the Chairman:

[O]btain from the President of the United States and the Secretary of Health and Human Services: All documents, notes, emails, memos, and legal opinions, including notes from meetings, relating to plans to repeal or replace the Patient Protection and Affordable Care Act (Public Law 111-148) and the health-related measures of the Health Care and Education Reconciliation Act of 2010 (Public Law 111-152).⁵

H. Res. 154 is overbroad in scope and was premature

It is important to compare H. Res. 154 to H. Res. 983 introduced during the 111th Congress, the last resolution of inquiry considered by the Committee and also not favorably reported to the House.

Unlike H. Res. 154, the introduction of H. Res. 983 followed several attempts by Rep. Michael C. Burgess, member, Committee on Energy and Commerce, to obtain the requested information from the executive branch.

Rep. Burgess introduced H. Res. 983 (111th Cong.) in December 2009. That resolution of inquiry sought:

[C]opies of each portion of any document, record, or communication (including telephone and electronic mail records, logs and calendars, and records of internal discussions) in the possession of the President or Secretary, respectively, referring or relating to (1) any written or verbal agreement that (A) relates to any of the following bills in the 111th Congress (or any proposed change thereto): H.R. 3200, H.R. 3590, H.R. 3961, H.R. 3962, S. 1679, or S. 1796; and (B) is entered into on or after January 20, 2009, between an individual serving in an office or position in the White House or the Department of Health and Human Services and any other person; (2) negotiations relating to an agreement described in paragraph (1), the name or title of any individual described in paragraph (1)(B) who participated in decisionmaking during such negotiations, the date of any meeting held as part of such negotiations, or

⁴H. Res. 154 Markup, supra, note 1, at 1138-44 (statement of Rep. Kennedy).

⁵Letter from Rep. Pallone, Ranking Member, H. Comm. on Energy & Commerce et al. to Rep. Walden, Chairman, H. Comm. on Energy & Commerce (Mar. 15, 2017).

the identity of any participant in any such meeting; (3) any such negotiations with the Advanced Medical Technology Association, the American Medical Association, America's Health Insurance Plans, the Pharmaceutical Research and Manufacturers of America, the American Hospital Association, or the Service Employees International Union regarding decreasing by 1.5 percentage points the annual health care spending growth rate or policy proposals to accomplish this goal; or (4) implementation of an agreement described in paragraph (1).

During the Committee's January 27, 2010 markup of H. Res. 983, Rep. Burgess outlined the steps he had taken to gather this information:

I wrote to the White House in September on this issue . . . My staff reached out to the White House. Mr. Chairman, you reached out to the White House on my behalf, and we got nothing. Finally, I was compelled to introduce the resolution of inquiry. Then yesterday at 2:20 p.m., 119 days after my letter, we did hear from the White House. What did we get? We got logs that the press had had a month ago, we got a series of public statements and press releases, all printed off the White House website; not one document that was not available to everyone.⁶

Even after efforts to narrow the scope and to obtain the information through other means, Rep. Henry Waxman, then-Chairman, Committee on Energy and Commerce, found H. Res. 983 to be overbroad and premature:

First, the resolution is over-broad. It encompasses any document, e-mail, or records of internal discussions that relate to written or verbal agreements on healthcare reform. This could include notes of conversations between the President and his Chief of Staff and other top advisors, presidential e-mails, and other records of deliberations at the highest levels of the White House that raises core privilege concerns. There has been no showing or even an allegation of wrongdoing that would justify this kind of request.

Second, it is premature to move forward with a resolution of inquiry. The White House has provided Representative Burgess with records showing the identities of hundreds of participants in White House healthcare meetings among other documents. It has also offered to assist Representative Burgess with any questions about individuals allegedly denied meetings at the White House.

There is a significant contrast between how the Obama Administration has responded to Representative Burgess's request for information and how the Bush Administration handled efforts by Chairman Emeritus Dingell and myself

⁶H. Res. 983, Requesting the President, and directing the Secretary of Health and Human Services, to transmit to the House of Representatives copies of documents, records, and communications in their possession relating to certain agreements regarding health care reform: Markup Before the H. Comm. on Energy & Commerce, 111th Cong. 16-17 (2010) (hereinafter H. Res. 983 Markup) (statement of Rep. Burgess, Member, H. Comm. on Energy & Commerce).

to seek information regarding Vice-President Cheney's energy task force.

In 2001, Vice-President Cheney led a task force that worked behind closed doors to develop the Administration's comprehensive energy policy. Press accounts identified a number of energy industry campaign contributors that met with the task force and reported that major contributors had private sessions with the Vice-President. The energy plan that emerged from the task force's work contained dozens of specific recommendations from top energy campaign contributors such as Enron.

For 3 years Mr. Dingell and I pressed the White House to disclose basic information such as the identities of participants in the task force meetings. The White House consistently rebuffed these requests.⁷

Similarly, H. Res. 154 encompasses any document, e-mail, or records of internal discussions that relate to written or verbal agreements on the repeal or replacement of the Patient Protection and Affordable Care Act and the health-related measures of the Health Care and Education Reconciliation Act of 2010, which could include notes of conversations between the President and his Chief of Staff and other top advisors, presidential e-mails, and other records of deliberations at the highest levels of the White House that raise core privilege concerns.

With respect to timeliness, H. Res. 154 was drafted within two weeks of Inauguration Day and just one week after this matter was first raised, which was done publicly during a hearing. As the minority notes, "we tried once verbally. We tried again on paper. No response. No response."⁸ The time and effort to obtain the requested information before H. Res. 154 was drafted and introduced are far different from the time and effort that preceded the introduction of H. Res. 983.

An investigation into the communications of members regarding exclusively legislative or policy matters is highly unusual and would be detrimental to both the legislative process and relations among members and between parties

The resolution of inquiry is a seldom used investigative tool of the House to obtain information from the executive branch. H. Res. 154 is unusual because, as comments from the minority make clear, its purpose is to obtain the communications of House members (and their employees). With respect to exclusively legislative and policy matters, there is no obvious precedent for such an investigation.

The Committee believes the circumstances of H. Res. 154 do not warrant establishing such a precedent. To the contrary, adopting a resolution of inquiry such as H. Res. 154, whose purpose is to obtain the communications of members, would undermine the legislative process and fray the relationships among members, particularly members of opposing parties.

⁷H. Res. 983 Markup, supra note 6, at 5-7 (statement of Rep. Waxman, Chairman, H. Comm. on Energy & Commerce).

⁸H. Res. 154 Markup, supra, note 1, at 1143-44 (statement of Rep. Kennedy).

With respect to the legislative process, members would be discouraged from contacting the executive branch for technical assistance on legislation or for information related to oversight matters. This could result in missed opportunities to improve legislation or to improve existing programs.

In addition, collegiality among members is essential to the conduct of the House's business. However, investigations into member communications over mere legislative or policy disagreements would unduly damage the operations of this Committee.

The minority's effort to investigate the communications of members is unwise. The vehicle for this investigation, H. Res. 154, is both overly broad and premature, and, more troubling, such an investigation would chill member relations and mark an end to collegiality on the Committee. A majority of the members on the Committee on Energy and Commerce decline to take such a step.

COMMITTEE ACTION

The Committee on Energy and Commerce has not held hearings on the legislation.

On March 8 and 9, 2017, the Committee met in open markup session and ordered H. Res. 154, without amendment, unfavorably reported to the House by a record vote of 31 yeas and 22 nays.

COMMITTEE VOTES

Clause 3(b) of rule XIII requires the Committee to list the record votes on the motion to report legislation and amendments thereto. The following reflects the record votes taken during the Committee consideration:

**COMMITTEE ON ENERGY AND COMMERCE -- 115TH CONGRESS
ROLL CALL VOTE # 32**

BILL: H. Res. 154, requesting the President of the United States and directing the Secretary of Health and Human Services to transmit certain information to the House of Representatives relating to plans to repeal or replace the Patient Protection and Affordable Care Act and the health-related measures of the Health Care and Education Reconciliation Act of 2010.

AMENDMENT: A motion by Mr. Walden to order H.Res. 154 reported to the House unfavorably. (Final Passage)

DISPOSITION: **AGREED TO**, by a roll call vote of 31 yeas and 22 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Walden		X		Mr. Pallone	X		
Mr. Barton		X		Mr. Rush			
Mr. Upton		X		Ms. Eshoo	X		
Mr. Shimkus		X		Mr. Engel	X		
Mr. Murphy		X		Mr. Green			
Mr. Burgess		X		Ms. DeGette	X		
Mrs. Blackburn		X		Mr. Doyle	X		
Mr. Scalise		X		Ms. Schakowsky	X		
Mr. Latta		X		Mr. Butterfield	X		
Mrs. McMorris Rodgers		X		Ms. Matsui	X		
Mr. Harper		X		Ms. Castor	X		
Mr. Lance		X		Mr. Sarbanes	X		
Mr. Guthrie		X		Mr. McNerney	X		
Mr. Olson		X		Mr. Welch	X		
Mr. McKinley		X		Mr. Lujan	X		
Mr. Kinzinger		X		Mr. Tonko	X		
Mr. Griffith		X		Ms. Clarke	X		
Mr. Bilirakis		X		Mr. Loeb sack	X		
Mr. Johnson		X		Mr. Schrader	X		
Mr. Long		X		Mr. Kennedy	X		
Mr. Bucshon		X		Mr. Cardenas	X		
Mr. Flores		X		Mr. Ruiz	X		
Mrs. Brooks		X		Mr. Peters	X		
Mr. Mullin		X		Ms. Dingell	X		
Mr. Hudson		X					
Mr. Collins		X					
Mr. Cramer		X					
Mr. Walberg		X					
Mrs. Walters		X					
Mr. Costello		X					
Mr. Carter		X					

03/09/2017

OVERSIGHT FINDINGS AND RECOMMENDATIONS

Pursuant to clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII, the findings and recommendations of the Committee are reflected in this report.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

Pursuant to clause 3(c)(2) of rule XIII, the Committee finds that H. Res. 154 would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII, at the time this report was filed, the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974 was not available.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII, the general performance goal or objective of this legislation is to request the President and direct the Secretary of Health and Human Services to furnish certain documents relating to plans to repeal or replace the Patient Protection and Affordable Care Act and the health-related measures of the Health Care and Education Reconciliation Act of 2010.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

H. Res. 154 requests the President, and directs the Secretary of Health and Human Services, to transmit to the House of Representatives, not later than 14 days after the date of the adoption of the resolution, records relating to plans to repeal or replace the Patient Protection and Affordable Care Act and the health-related measures of the Health Care and Education Reconciliation Act of 2010.