TO: NAW Direct Members

FR: NAW Government Relations Team

RE: NAW Government Relations Update – October 8

TO: Member Association Executives

1. Latest on Raising the Debt Ceiling

The Senate spent this week working to find a compromise on the debt limit extension, finally reaching an agreement and passing the extension on Thursday evening, but not without a serious escalation in partisan rancor.

Minority Leader McConnell had for weeks declared that no Republican would vote to lift the debt limit and that the Democrats should pass the increase through the reconciliation process – a process we described in our update on Tuesday which would have allowed the Senate to pass the legislation with just the 50 Democratic votes. However, late Wednesday night, the two Senate leaders worked out a compromise to raise the debt ceiling by approximately $480 billion, which effectively kicks the can down the road and brings us up against the debt ceiling again in early December.

Under the agreement, Senator McConnell had to provide at least 10 Republican votes for a procedural measure to allow the debt limit extension to be debated and enacted. Despite his frequent statements that there would be no GOP votes to lift the debt limit, enough Republicans did join their Leader in that procedural vote, allowing the debt limit to reach the floor. On the final vote to actually lift the debt ceiling, no Republicans voted for it and it passed on a straight party-line vote of 50-48.

While the threat of fiscal default was averted, this is by no means the end of the story, and in fact the actions in the Senate created a new story of their own.

The new timeline will add a new debt ceiling deadline in early December to the October 31st deadline for passing the BIF and reaching agreement on the reconciliation bill, and the December 3rd deadline for Congress to act on funding the government and averting a government shutdown.

And the conclusion of the debt ceiling fight in the Senate does not bode well for cooperation in the months ahead.

Republicans generally viewed Senator McConnell's decision to offer Chuck Schumer a path – and the GOP votes necessary – to getting the debt limit ceiling raised as a collaborative olive branch. However, on the Senate floor on Thursday evening, Senator Schumer attacked Senator McConnell and the Republicans with harsh rhetoric rarely heard in the Senate. According to news reports this morning, several Republican senators complained to Senator Schumer after his speech, and Democratic Senator Manchin reportedly told the Democratic Leader that his speech was "[expletive-deleted] stupid." If you watch Senator Schumer's speech, you can see Senator Manchin, sitting behind Senator Schumer, react to the speech by putting his head in his hands then getting up and walking away.

Given the Democratic Leader's attack, it is very unlikely that Republicans will be inclined to cooperate with Senator Schumer when the debt limit has to be addressed again in December.

2. Latest on Infrastructure (BIF) and Reconciliation (BBB)

With the agreement on the debt limit reached today – even though it just kicks the can down the road – attention has turned back to the ongoing negotiations on the big spending and tax bills. With the BIF and BBB tied together so tightly by the President in his meeting with the House Democratic caucus last Friday, the pressure to get a deal on the reconciliation bill has intensified significantly, driven in no small part by the October 31st expiration of the Surface Transportation Act – the next deadline.

While there seems to be something of a consensus that the size of the BBB will come down, that's where the consensus ends. And the moving parts remain, well, moving…

While no agreements have been reached, we thought we'd share with you a sampling of the machinations that are evident today:

- The President says the $3.5 trillion price tag will come down to $1.7-2.2 trillion;

- Senator Manchin repeated that he will not support anything more than $1.5 trillion;

- Budget Committee Chairman Bernie Sanders and Senator Manchin engaged in a war of words on whether or not we should have "an entitlement society" and what exactly that means, spilling the internal Democratic tensions into the press;

- According to press reports, "That hostility exploded into the open on Wednesday night when Axios reported that Sen. Bernie Sanders (I-Vt.) refused to sign a joint statement condemning the actions of protesters against Sen. Kyrsten Sinema (D-AZ), which included following her into the restroom and filming her, because it wouldn't include a criticism of her stance in negotiations;"

- If the cost of the $3.5 trillion proposal is reduced significantly, the need for massive tax increases to pay for the spending should also be significantly lower, and a $1.5 trillion bill could easily be "paid for" without many of the most controversial tax proposals pushed by the Progressives, i.e., repealing step-up in basis, taxing unrealized gains at death . . . As *Politico* describes them, "proposals that would attack the accumulated wealth of the very rich, something that has been atop the to-do list for Senate Finance Chair Ron Wyden (D-Ore.);"

- Senator Manchin, increasingly a thorn in the side of Progressives, has said that if the eventual BBB raises more money in taxes than the bill has allocated to spending programs, the additional revenue would have to be used for debt reduction, not more spending;

- One of the most contentious issues on the spending side is mandated paid leave, a high priority of Progressives, with Senate leadership considering slashing the BBB leave program from the House-approved $500 billion to $300 billion;

- One of the House members supporting the larger mandated leave program said that it would be "dastardly" if the program is reduced, because it would then not be "transformational;"

- Senator Manchin – have we noted he's a thorn in the side of the Democratic Leadership? – has said that the Progressives will not get all three of their spending programs – the expanded Child Tax Credit, paid family leave and childcare subsidies – but will have to choose just one of those programs.

We fully expect these negotiations to continue for some weeks, but the fast-approaching end-of-October deadline creates a rising demand that the fractious Democratic caucus come to an agreement. Further driving the intense desire for a legislative victory is the President's falling approval ratings: According to a Quinnipiac poll released this week, the President's job approval has reached a new low of 38%, with 53% disapproving. Those are Trump-like numbers – worse than most of the Trump approval ratings – and the White House hopes that a big win on the spending bill would help stop the slide.

3. Latest on Vaccine Mandates – OSHA Emergency Temporary Standard ETS and Federal Contractors

OSHA ETS: Despite repeated attempts by the business community to get answers to multiple questions on the content of the ETS and to the timing of publication of the regulation, OSHA remains unresponsive on the content and has rebuffed every effort to get them to answer questions. In fact, at a coalition meeting of trade association executives and management-side labor lawyers on Tuesday, all the participating coalition members reported the same thing: no one has gotten any response from any of the agencies within the Department of Labor to multiple requests for information….on anything. In addition, the White House is similarly unresponsive on the timing.

National Review's Jim Geraghty posted an article late last week on the general confusion surrounding the ETS, noting that the White House Press Secretary had been asked about the timing of the publication of the rule, and replied that "*I can't give you a timeline. OSHA is working on them. But obviously — hopefully, we'll know more in the coming weeks."*

You can read the Geraghty article **HERE**.

Federal Contractor Mandate: In addition to – and separate from – the President's Executive Order (EO) instructing OSHA to write the vaccine mandate ETS, the President issued a separate EO imposing a vaccine mandate on Federal Contractors. That September 9th EO instructed the Safer Federal Workforce Task Force to issue guidance on this new contractor mandate. The Task Force released that **guidance** on September 24th.

We have heard from NAW members expressing concern about this federal contractor mandate and asking if any action can be taken to block it or at least slow it down. Unfortunately, there was no public comment period provided and no stakeholder input sought before the Task Force guidance was released. While the EO does provide for updates to the Guidance "based on future changes to Center for Disease Control and Prevention ("CDC") COVID-19 guidance and as warranted by the circumstances of the pandemic and public health conditions," it offers no opportunity for contractor stakeholders to impact the rule.

A legal challenge to the regulations may be the only option available to concerned businesses, so we have reached out to others in the DC business community and to the related coalitions in which we participate to see if anyone is considering filing a lawsuit, or aware of any lawsuit being considered by any associations, businesses or law firms or their clients. While we are continuing to pursue this option, we are candidly not optimistic that it will be successful. Legal challenges to rules and regulations on federal contractors are not very often successful – the regulations are often considered a cost of doing business with the government – and none of the allies and colleagues we have approached are optimistic that a challenge here would be successful.

We continue to look for methods and opportunities to challenge or modify this rule and will of course join any litigation if we find an opportunity to do so. And we will keep you informed of anything we learn in this process.

In the interim: NAW participates in the Coalition for Workplace Safety, which is led by an accomplished labor law attorney, Josh Ulman. Josh has prepared a **memorandum** for his clients on the Federal Contractor mandate, which he has given us permission to share with you.

Unrelated labor issue: While the business community cannot get any information on the OSHA ETS and mandate, we are informed that the White House task force on labor has been reaching out to labor unions and allied groups asking for their feedback and suggestions for pro-union labor initiatives the White House can take by executive action, not requiring a Congressional involvement. As far as we know, no business groups have been asked for similar input into the White House task force. Inquiries are being made on this issue and we will get you more information on it as we learn more.

4. Latest on Labor Provisions Included in the Reconciliation Legislation

Last week, the Coalition for a Democratic Workplace (CDW) (NAW helps manage the Coalition and NAW staff member Seth Waugh chairs the coalition's lobbying committee) sent a letter to Members of Congress urging them to remove the pro-labor provisions from the reconciliation bill. These provisions would create "new and egregious civil monetary penalties for violations of the NLRA [National Labor Relations Act], impose personal liability for such violations on directors and officers, mandate neutrality agreements in union organizing campaigns for entities seeking certain grants, and provide extensive funding for an electronic voting system that will not protect the privacy and voting rights of workers." As we have previously reported, the NLRA language in the reconciliation bill would enable the National Labor Relations Board (NLRB) to levy fines of $50,000 to $100,000 on companies that commit certain unfair labor practices.

NAW and other members of the Coalition have been actively lobbying members of the Senate to remove these punitive provisions from their version of the reconciliation bill. As the letter to Congress argues, "reconciliation bills are intended to focus on items with budgetary effect and are not intended to radically change policy through measures that merely produce an incidental budgetary effect." The Coalition hopes that this argument will be heard by the Senate parliamentarian, who can determine what portions of the bill must be removed because they are not budget-related. As always, we will continue to keep you informed as this issue progresses.

We also encourage you to reach out to your elected representatives, if you have not already done so, to ask them to oppose the reconciliation bill and the labor and tax provisions included within it by clicking **HERE**.

Additionally, you can read the full letter from the Coalition for a Democratic Workplace **HERE**.

Many thanks—

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