

SENATE BYRD RULE
TAX CUTS AND JOBS ACT [RECONCILIATION]
H.R. 1 (115TH CONGRESS)

Byrd Rule
313(b)(1)(A)
313(b)(1)(D)

Synopsis: Senator Wyden, ranking Member of Senate Finance, makes the point that prior to consideration, 20 Byrd Violations were removed.

Specific removal: Apparently a Ted Cruz Provision related to the *Johnson Amendment* regarding political activities of Churches.

[Emphases added]

The Senator and I have been working to try to weed out of this legislation violations of what is called the Byrd rule, which, in English, basically means you can't stuff provisions into a bill that really don't deal with tax and spending. By my count, the Senator and I have already pushed that there are more than 20 Byrd rule violations that had to be corrected.

Before I ask my question, I just want to give people a little bit of the idea of the work the Senator and I have been doing over the last few days. Late Friday night, we were able to remove a *particularly offensive provision that would have turned some churches in America into partisan, political organizations. Specifically, there was an effort here to overturn what is called the Johnson amendment, named after Lyndon Johnson, that barred churches from endorsing partisan political activity with political candidates. The way that the bill was written – and the Senator and I fought to get it struck and were successful – it would have turned churches and sham charities into political machines where they could be conduits for billions and billions of dollars in dark money.*

Mr. SANDERS. Let me translate that into English. In other words, as I understand what the Senator is saying, billionaire campaign contributors could then legally put money into churches, which would then do the political work that they otherwise would have been doing.

Mr. WYDEN. Absolutely. I think we need to tell America about this because we have won this round, but the Senator and I are going to be back at this fight with our colleagues again. In effect, this would have been Citizens United 2.0. This would have been another version of the push to have

unaccountable, dark money – billions of dollars poured into elections through churches and sham charities.

Turning to the question now of this evening, it looks to me as though *we have now found several other Byrd rule violations* that would seem to me to be further indications of rash and reckless legislating that does not serve the American people well.

So I would wrap up by asking my colleague from Vermont – and I want to tell him it has been a pleasure to work in partnership with him on this – aren't these Byrd rule violations that we have been going after and that you are going to discuss again tonight, aren't these just a textbook case of what happens when you legislate with reckless haste?

Mr. SANDERS. Absolutely. It is not only that mistakes are made; it is that when you don't open the doors to the American people, to economists, to mayors, to Governors, to businesspeople, and to leaders in the labor movement to see what do you want in tax reform – when you don't do that – and when you conduct your business behind closed doors, you end up with legislation that represents the needs of the billionaire class, which also makes a number of mistakes.

In that regard, I would tell my friend that this afternoon, *the Senate Parliamentarian advised that certain provisions of the Republican tax legislation violate the Byrd rule, including a provision allowing for the use of 529 savings accounts for home schooling expenses; the short title – the Tax Cut and Jobs Act – and part of the criteria used to determine whether the endowments of private universities are subject to the legislation's new excise tax. These provisions may be struck from the conference report absent 60 votes.*

With that, I raise the following points of order against the pending conference report:

That subsection 11000(a) violates section 313(b)(1)(A) of the Congressional Budget Act of 1974; that subparagraph (B) of section 11032, starting on page 75, line 17 and all through page 76, line 9, violates section 313(b)(1)(D) of the Congressional Budget Act of 1974; and that the phrase "tuition-paying" as it appears on page 309, line 12, and page 309, lines 14 through 15, violates section 313(b)(1)(D) of the Congressional Budget Act of 1974.

The PRESIDING OFFICER (Mr. Rubio). The Senator from Wyoming.

ENZI MAKES MOTION TO WAIVE

[\[\[Page S8101\]\]](#)

Mr. ENZI. Mr. President, pursuant to section 904 of the Congressional Budget Act of 1974 and the waiver provisions of applicable budget resolutions, I move to waive all applicable sections of that act and applicable budget resolutions for purposes of the conference report to accompany [H.R. 1](#), and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The waiver is debatable for 1 hour, equally divided.

[\[\[Page S8139\]\]](#)

CRUZ AMENDMENT

It is even sadder than that. One of the most important elements of this tax reform bill that we are getting ready to pass is an expansion of educational opportunities for parents. It is an amendment I introduced and this body passed. It was divided 50-50, and the Vice President cast a tie-breaking vote. It expanded 529 college savings plans.

Right now, 529 plans are immensely popular. Parents and grandparents can save for college education for their kids and grandkids in a tax-advantaged way. The amendment I introduced that this body adopted expands 529 college savings plans to also include K-12 education, to also include letting parents spend up to \$10,000 per child per year from a 529 plan on public school, on private school, on parochial school, or on religious school, and as the amendment was passed, on homeschools. It puts the parents in charge; it puts the grandparents in charge, saving their own money – not taxpayer money – their own money.

It is the most significant Federal school choice legislation that has ever passed the U.S. Congress.

You know what we are in the middle of, right? The Democrats have raised an objection. They raised an objection to

all of it. They were horrified that a benefit could go to 50 million schoolkids, that parents would be able to save for those schoolkids. They raised an objection under the Byrd rule, which is an obscure procedure rule that nobody at home knows what it is, but they objected to it. They said:

You can't benefit 50 million schoolkids.

Indeed, as we argued in front of the Senate Parliamentarian, one of the arguments the Democrats said is: This is really popular with the American people. We don't want to do something that is really popular with the American people. This is a big policy change. They love 529 plans, and now the parents of 50 million schoolkids – schoolkids in Texas and every other State – will be able to save for the education of their kids, and that has the Democrats horrified because every single Democrat voted against the parents in their State saving in a 529 system for K-12 education.

Well, the Senate Parliamentarian issued a ruling earlier tonight rejecting most of the Democratic claims but, sadly, adopted one small portion of it. I think that claim was an error. I think the Parliamentarian's ruling is contrary to Federal rule.

Let me tell you what the Democrats are objecting to because there was a moment for conscience to strike them. The Democrats' position – they have raised a point of order. The Senator from Vermont stood up and raised a point of order and said they want to exclude homeschoolers from 529 plans. There are 1.8 million kids who are homeschooled right now.

To every kid who is being homeschooled right now, to every parent, to every mom who puts in the time – some dads but a lot of moms who put in the time day after day after day homeschooling their kids, what every Democrat is standing up to do right now is saying: We are going to discriminate against homeschoolers. We are going to cut you out. Why? Because the Democratic Party can't stand the audacity of a parent who would take it upon himself or herself to educate their child free of centralized control. So their point of order is to carve homeschoolers out of this.

Now, one of the provisions they want to carve out is a provision that says homeschooled students can pay from a 529 college savings account for tutoring. Every Senate Democrat is getting ready to vote against tutors for children at home.

Another provision they are objecting to that is going to be carved out says that parents can pay for 529 plans for books,

for additional materials, can pay for a student in high school who is duly enrolled in community college, can pay for that out of their own money in a tax advantage plan. Do you know what the Democrats are saying? If you are a student signed up in a community college, we, the Democratic Party, object to you paying for that out of the tax advantage plan.

Let me tell you what is most striking, a provision the Democrats are arguing to strike provides that parents with a child with disabilities can pay for educational therapy from a 529 plan that is their own savings that they put together, and the Democrats are saying to the parents with kids with disabilities, no, you can't.

Let me ask my friends on the Democratic side of the aisle, are you prepared to look into the eyes of a kid with disability and explain why you said you are cut out? Every other child in America has the ability to have their tuition paid for from these 529 plans, but children with disabilities being homeschooled, the Democrats – and not one, not two, every single Democrat – stand united. Why? Because they can't stand the President. They are angry at the President.

That is fine. If they are angry at the President, stand up and yell at the President, but don't take it out on kids who are homeschooled. Don't take it out on kids with disabilities. The Democrats have an opportunity to demonstrate they are not going to punish children with disabilities because of their partisan anger. We have right now a motion to waive this mean-spirited, vindictive point of order that discriminates against homeschoolers and carves out kids with disabilities.

I would ask my friends on the Democratic side of the aisle – there are going to be issues we disagree on, but the vote to allow parents of children with disabilities to spend their own funds in a tax-advantaged fund to provide for educational therapy for those kids with disabilities – that ought to be 100 to nothing. All of us should agree on that. We might disagree on other things, fine. The death tax, or as Democrats like to call it, the estate tax – we can disagree on that. But educating kids with disabilities – you are really standing up raising that objection?

I would ask my friends on the Democratic side of the aisle: Don't do that. Don't discriminate against the homeschoolers.

I yield the floor.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. ENZI. Mr. President, I yield back all remaining time for the majority.

The PRESIDING OFFICER. The Republican time is yielded back.

The Senator from Oregon.

Mr. WYDEN. Mr. President, the issue with the Cruz amendment is straightforward. *The Byrd rule states that the primary purpose of a budget bill is to address spending and taxes. If, on the other hand, you are debating a major policy change and the budget impact is merely incidental, the provision just doesn't comply with the Byrd rule.* That is the case here.

The Cruz amendment has a modest budget impact, but the impact is vastly outweighed by the profound impact, as a matter of social and education policy, of providing Federal support for homeschooling for the first time. In fact, last week, the Senator from Texas called his section 529 homeschooling provision “the most far-reaching Federal school choice legislation bill ever passed.” I agree with the Senator’s assessment of his amendment. The issue of Federal support for homeschooling is, in fact, major policy. There is no question that there are parents who want to homeschool their kids. I am certain that many of them are very conscientious. *Yet this is the first time the Federal Government would provide Federal support for homeschooling. That is why the Parliamentarian ruled against Senator Cruz.*

I urge my colleagues to vote against the Enzi motion to waive the Byrd rule point of order, which we will vote on shortly.

I also want to close for the Finance Democrats on this tax issue with some brief remarks. My colleague from Texas once again has been saying, as many Republicans have done tonight: Middle-class folks, wait until February. Your paychecks are going to be bulging.

Here are the facts. We just got them from the Joint Committee on Taxation – a specific table that shows that 60 million taxpayers with an annual income of \$200,000 or less will get \$100 a year in tax relief or a tax increase. That looks to me like a third of all taxpayers are not exactly going to have bulging paychecks the way we have heard from our colleagues on the other side of the aisle.

The fact is that some of the rhetoric we have heard from Republican colleagues tonight didn't sound half bad, so it is a real shame that the rhetoric doesn't resemble the plan on paper.

[[[Page S8141](#)]]

VOTE ON MOTION TO WAIVE

The PRESIDING OFFICER (Mrs. Capito). The question is on agreeing to the motion to waive the points of order.

The yeas and nays have been previously ordered.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. CORNYN. The following Senator is necessarily absent: the Senator from Arizona (Mr. McCain).

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted – yeas 51, nays 48, as follows:

[Rollcall Vote No. 322 Leg.]

Yeas – 51
Nays – 48