

1 OPEN EXECUTIVE SESSION TO CONSIDER S. 1542, THE CHILD AND
2 FAMILY SERVICES IMPROVEMENT AND INNOVATION ACT; AND TO
3 CONSIDER FAVORABLY REPORTING THE NOMINATIONS OF JUAN F.
4 VASQUEZ, OF TEXAS, TO BE A JUDGE OF THE UNITED STATES TAX
5 COURT FOR A TERM OF FIFTEEN YEARS; MAURICE B. FOLEY, OF
6 MARYLAND, TO BE A JUDGE OF THE UNITED STATES TAX COURT
7 FOR A TERM OF FIFTEEN YEARS; JOSEPH H. GALE, OF VIRGINIA,
8 TO BE A JUDGE OF THE UNITED STATES TAX COURT FOR A TERM
9 OF FIFTEEN YEARS; AND JANICE EBERLY, OF ILLINOIS, TO BE
10 ASSISTANT SECRETARY OF TREASURY, UNITED STATES DEPARTMENT
11 OF TREASURY

12 TUESDAY, SEPTEMBER 20, 2011

13 U.S. Senate,

14 Committee on Finance,

15 Washington, DC.

16 The hearing was convened, pursuant to notice, at
17 10:18 a.m., in room SD-215, Dirksen Senate Office
18 Building, Hon. Max Baucus (chairman of the committee)
19 presiding.

20 Present: Senators Bingaman, Kerry, Wyden, Schumer,
21 Cantwell, Nelson, Carper, Cardin, Hatch, Grassley, Snowe,
22 Kyl, and Crapo.

23 Also present: Democratic Staff: Russ Sullivan, Staff
24 Director; Diedra Henry-Spires, Professional Staff; Amber

1 Roberts, Tax Exempt Organization Policy Staff Member;
2 Lily Batchelder, Chief Tax Counsel; and Holly Porter, Tax
3 Counsel. Republican Staff: Chris Campbell, Staff
4 Director; and Nick Wyatt, Tax and Nomination Professional
5 Staff Member.

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1 OPENING STATEMENT OF HON. MAX BAUCUS, A U.S. SENATOR FROM
2 MONTANA, CHAIRMAN, COMMITTEE ON FINANCE

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4 The Chairman. For the information of my
5 colleagues, I believe we can vote sometime between 10:30
6 and 10:35, at least that is my hope.

7 The committee meets today to consider S. 1542, the
8 Child and Family Services Improvement and Innovation Act,
9 and to consider four nominations pending in the
10 committee.

11 The Nobel Prize-winning poet Gabriela Mistral wrote,
12 "Many things can wait. The child cannot. To him, we
13 cannot say tomorrow. His name is today."

14 Today we consider legislation for children that
15 cannot wait. The Promoting Safe and Stable Families
16 Program expires in 10 days. This committee must act now.

17 Fortunately, child welfare programs have had a long
18 tradition of our committee working together as a team.
19 Today, we continue that proud tradition.

20 At a time when many have lost faith in Congress'
21 ability to work together and find solutions for the
22 greater good, it is heartening to see that this committee
23 has led an effort to not only reach across the aisle,
24 but, also, reach across chambers to find solutions.

1 This legislation will help change the lives of
2 America's most vulnerable children, children who have
3 suffered or who are at risk of abuse and neglect. One
4 such child, Skyler Canfield, would have benefitted from
5 many of the improvements in the legislation before us
6 today. Skyler entered foster care when he was 6 years
7 old. During his time in the system, he lived in 14
8 different homes.

9 Skyler was finally adopted at the age of 26, showing
10 that a permanent family is always possible. Now a grown
11 man, he holds a master's degree from the University of
12 Montana.

13 Skyler's resilience and courage is admirable, but
14 typical of the kind of struggle our kids in the foster
15 care system face every day.

16 The legislation we consider today reauthorizes the
17 Promoting Safe and Stable Families Program through 2016
18 at current funding levels.

19 It also reauthorizes the Court Improvement Program
20 through 2016. This will help judges better understand
21 and handle child welfare proceedings, making them better
22 able to help families and kids in need.

23 The legislation continues our commitment to support
24 caseworkers, and it ensures that children and families

1 receive attention through caseworker visits.

2 The legislation also asks that States better serve
3 children by requiring improvements in several areas,
4 including addressing the developmental needs of young
5 children, minimizing emotional trauma, and targeting
6 services to those most at risk of maltreatment.

7 We also ensure that foster youth remain in the same
8 school whenever possible, and this legislation calls for
9 the better use of data to improve program integrity.

10 It also continues the regional grant program to
11 improve outcomes for children whose parents suffer from
12 substance abuse addiction.

13 In addition, the legislation reauthorizes HHS'
14 authority to issue up to 30 child welfare waivers. These
15 waivers present States with the opportunity to innovate,
16 and they do so while laying a strong foundation for
17 comprehensive reform of the child welfare system.

18 As we aspire to comprehensive reform, I will need to
19 call on my colleagues here to continue your good work on
20 this issue. The Finance Committee has several leaders on
21 child welfare issues, including Senator Hatch, who has
22 spent a lot of time on child welfare issues and I deeply
23 appreciate that, Senator Rockefeller and Senator
24 Grassley, who have been partners as we work together in

1 this efforts. And several members have also introduced
2 legislation on these issues, including Senators Kerry,
3 Enzi and Wyden. I look forward to working with all of
4 you.

5 Today, we also consider four nominees pending before
6 this committee. Juan Vasquez, Maurice Foley, and Joseph
7 Gale have been nominated to serve second 15-year terms on
8 the U.S. Tax Court. In this capacity, they will help
9 ensure the fair administration of our tax laws.

10 Janice Eberly has been nominated to be the Assistant
11 Secretary of Treasury for Economic Policy. She will help
12 determine the economic effects of policies considered and
13 implemented by the Treasury Department.

14 These nominees will fulfill important positions that
15 affect the daily lives of millions of Americans. So let
16 us act quickly to confirm the nominees. Let us act to
17 improve the lives of some of our most vulnerable
18 children, and let us not wait until tomorrow, but act
19 today.

20 Senator Hatch?

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1 OPENING STATEMENT OF HON. ORRIN HATCH, A U.S. SENATOR
2 FROM UTAH

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4 Senator Hatch. Well, thank you, Mr. Chairman.

5 I am pleased today that the Senate Finance Committee
6 will move forward on legislation that you and I
7 introduced reauthorizing and improving the Child and
8 Family Services Act and to expand and extend child
9 welfare waivers.

10 The bill before us is based largely on S.1013, which
11 the Chairman and I introduced earlier this year, and it
12 is cosponsored by Senators Rockefeller, Enzi, Brown,
13 Casey, Chambliss, Cochran, Roberts, Snowe, and Wicker.

14 Today's legislation, S. 1542, has bipartisan and
15 bicameral support and gives States the tools they need to
16 provide support services to vulnerable families and to
17 help children stay safely with their biological families
18 or find a safe, permanent home with a relative or an
19 adoptive family.

20 In preparation for this markup, the Senate Finance
21 Committee hosted several briefings on the important work
22 done by the courts in bringing together all the different
23 individuals and agencies that oversee a State's child
24 welfare system. I am pleased that support for the Court

1 Improvement programs will be continued.

2 This legislation has the support of adoption and
3 child welfare agency groups, as well as the Conference of
4 Chief Justices, and the Conference of State Court
5 Administrators.

6 It addresses a number of concerns raised by the
7 Senate Finance Committee members. In particular, issues
8 raised by Senator Grassley, who was chairman when the
9 committee last addressed the Child and Family Services
10 Act, relative to regional grants to address substance
11 abuse, have been accommodated in this bill.

12 This legislation also extends and expands the
13 ability of States to get waivers from Federal child
14 welfare restrictions, a policy based on S.1013, the bill
15 that the Chairman and I introduced earlier this year. My
16 State of Utah is very eager to continue its work in
17 improving its child welfare system. Policymakers in my
18 state believe that an expanded waiver opportunity will be
19 extremely helpful in allowing Utah to make critical
20 decisions about options for vulnerable families.

21 Mr. Chairman, as you know, the authority for States
22 to apply for a waiver from the Federal Foster Care
23 program was not extended as part of the Deficit Reduction
24 Act of 2005. In the intervening years, States have

1 communicated to Congress that if waivers were permitted,
2 they could use that flexibility to improve the child
3 welfare system.

4 In making their case, States point to the success
5 achieved by the seven States which had waivers when the
6 DRA was enacted. For example, in the State of Florida,
7 title IV-E waivers allowed the State to provide pre-
8 placement services to at risk families. This resulted in
9 the family preservation of over 40,000 children between
10 2006 and 2009. Prior to 2006, the State of Florida was
11 only able to preserve the families of 2,500 children.
12 Additionally, in California during the decade following
13 the title IV-E waiver, the County of Los Angeles alone
14 witnessed the number of children in foster care decline
15 from over 50,000 children to 25,000. Furthermore, in Los
16 Angeles County the number of children placed into
17 institutionalized settings such as group homes also
18 declined by more than one-third during this period.

19 Mr. Chairman, I am a strong believer that when
20 contemplating national reform efforts -- and I think most
21 would agree that our child welfare systems need a
22 dramatic overhaul -- Congress should look to the States
23 for guidance and direction. Every State has different
24 needs, and a cookie-cutter approach, which is the

1 approach currently used by many States across the
2 country, is less likely to secure the kinds of changes
3 that will provide permanency, safety, and wellbeing for
4 children within or at risk of entering the child welfare
5 system.

6 While States struggle with similar challenges in
7 child welfare reform, each State also has its unique
8 challenges that are particular to its context and
9 population. Reform can only take place by acknowledging
10 the unique needs of the families within each State. For
11 example, the State of California currently serves over
12 60,000 foster youth. By comparison, the State of Utah
13 serves a population of less than 3,000 youth. These two
14 States obviously have different needs based on the amount
15 of foster youth alone. In addition to the vast
16 difference in the number of children who need services in
17 these two States, the State of Utah is also one of 10
18 States that has a significant Native American population
19 of foster youth who need to be served.

20 Each State should be given the opportunity to create
21 system reform that better addresses the needs of its
22 child welfare population. My hope is that giving States
23 flexibility in administering their title IV-E funding
24 will not merely serve as experiments, but rather will

1 become the blueprints of overall reform. If each State
2 is given the resources to develop innovative ways to
3 address the unique needs of the individuals served in the
4 child welfare system, overall system reform can be
5 achieved.

6 Given the ongoing challenges presented by Federal
7 deficits and debt and the frequent disagreement about how
8 to address them, I am grateful that this committee is
9 able to come together today on bipartisan legislation
10 that encourages the States to develop policies to help
11 vulnerable children and youth.

12 On another note, today the committee will also
13 consider four nominees. The three judges of the U.S. Tax
14 Court and the Assistant Secretary of the Treasury we are
15 considering have appeared before the committee and
16 answered all questions that have been asked of them.

17 Judges Vasquez, Foley, and Gale have each completed
18 a 15-year term on the Tax Court, and have graciously
19 agreed to let us benefit from their expertise for an
20 additional term. In answering my written questions, Dr.
21 Janice Eberly promised that as Treasury Assistant
22 Secretary for Economic Policy, she would continue to
23 uphold the professional integrity that requires her to,
24 quote, "present research based on economic fundamentals

1 and sound analysis of the available data," unquote.

2 I intend to support all four of the individuals we
3 will consider today.

4 And, Mr. Chairman, once again, I thank you for your
5 leadership on this committee.

6 The Chairman. Thank you, Senator, very much.

7 I do not know if any Senators have any statements
8 they wish to make at this time.

9 Seeing no Senator that wishes to make a statement --
10 I see one. I would like to vote.

11 Senator Wyden. Mr. Chairman, I would like to have
12 a colloquy, but I certainly do not want to hold up the
13 vote. Why do we not go ahead and vote and then if we can
14 take -- what is your pleasure, Mr. Chairman?

15 The Chairman. We can do the call, but we do not
16 have enough present to vote. We need 13. We are going
17 to have 13. So pending the arrival of those Senators,
18 why do we not --

19 Senator Wyden. All right. As soon as they arrive,
20 I am ready to vote.

21 The Chairman. Senator Wyden, why do you not just
22 tell us about your idea?

23 Senator Wyden. Mr. Chairman, thank you. And first
24 of all, I think you and Senator Hatch have done excellent

1 work and I think this is a good bill, and I think you are
2 absolutely right to note the bipartisan history.

3 My seatmate here, Senator Kerry, Senator
4 Rockefeller, colleagues on the other side, Senator Enzi,
5 have done lots of good work.

6 My interest in this stems from the 1996 welfare
7 reform bill, where, for the first time, we were able to
8 include kinship care so that family members, particularly
9 grandparents, would have a chance at the outset to be
10 able to care for youngsters who were otherwise going to
11 get into foster care.

12 And my hope is that out of the good work that you
13 and Senator Hatch have done on this bill -- and we are
14 getting to the points where we have enough votes to cast.

15 The Chairman. We are getting close.

16 Senator Wyden. So I would only, for purposes of
17 colloquy, like to say I would like to work with you in
18 two additional areas. One, to try to drive the system to
19 promoting positive outcomes, because we still do not know
20 enough about what really works out there, what keeps kids
21 from getting ensnarled in the juvenile justice system,
22 keeps them from going to the classroom.

23 I would like to work with you in that area, and one
24 other area, Mr. Chairman, is the Federal foster care

1 financing system really is outdated.

2 Under current law, eligibility for Federal foster
3 care assistance remains tied to essentially the obsolete
4 AFDC welfare program measures, meaning each year fewer
5 children in foster care are eligible for Federal funding.
6 And as a result, States are required to take on an ever-
7 increasing share of foster care financing, and I think
8 this AFDC link is not just outdated, but it is a real
9 burden to the caseworkers and the States. And I think
10 working together, knowing the history you talked about,
11 we can come up with a better way to determine eligibility
12 than tying funding to whether a child's birth parents
13 meet these income requirements.

14 But I support the work you are doing. I am for the
15 bill and ready to vote when you indicate the Senators are
16 here.

17 The Chairman. Senator, we are not quite, but
18 almost there.

19 How do we better understand the solutions to the
20 problems you are discussing? That is, delinkage, how to
21 delink. Some suggest a GAO report, others, kind of a
22 roundtable discussion. I am just curious how you think
23 we could most efficiently and effectively get at that.

24 Senator Wyden. Mr. Chairman, I think both of those

1 ideas make a lot of sense. We have talked about them
2 with your staff. If we could proceed with the GAO
3 effort, and then I think this idea of some roundtables,
4 and, as you note, a number of Senators have an interest
5 in this area, would make a lot of sense.

6 We could start a national conversation about child
7 wellbeing here in the Senate Finance Committee, and if
8 you would like to proceed in that kind of way, I would be
9 very supportive.

10 The Chairman. And, also, I understand that you are
11 looking for some kind of metrics to measure success.
12 Your thoughts on that?

13 Senator Wyden. What my hope is, is that Federal
14 spending can drive positive outcomes and at this point,
15 we just measure success in terms of reducing the number
16 of days a child spends in foster care.

17 Well, that is a useful effort and we have done that
18 in the Finance Committee. But I think there are other
19 measures, whether the child attends class regularly,
20 whether the child has access to health care.

21 There probably are a variety of other measures and
22 my sense is the States, the caseworkers, and the
23 committee could work very constructively through both of
24 the ideas that you suggest, the GAO approach and, say, a

1 Senate Finance Committee roundtable.

2 The Chairman. What kind of a roundtable? You mean
3 as we did in health care or something similar? What do
4 you have in mind?

5 Senator Wyden. I think we can talk about the
6 details, but a roundtable discussion could have
7 representatives from HHS, the States, the advocates for
8 the kids, to ask specifically how do we improve the
9 wellbeing of children and families both inside and
10 outside the foster care system.

11 And as we talked about it with your staff, they
12 would essentially be discussions that could be sponsored
13 by the Finance Committee.

14 Senator Grassley. Mr. Chairman, I would like to
15 put a statement in the record.

16 The Chairman. Senator Grassley, absolutely.
17 Without objection.

18 I see a quorum is present. Senator Hatch, do you
19 want to make a motion?

20 Senator Hatch. I move that the committee report S.
21 1542.

22 The Chairman. The motion has been made to adopt
23 the measure. And without objection, it is adopted and
24 passed.

1 Next, I guess we have some nominees. All right.

2 The next item of business is the nominations. The
3 committee has to report three nominees for 15-year terms
4 on the Tax Court, Juan Vasquez, Maurice Foley, and Joe
5 Gale. In addition, the nomination of Janice Eberly to be
6 Assistant Secretary of Treasury is before the committee.

7 I will entertain a motion that the nominations be
8 favorably reported en bloc.

9 Senator Hatch. I so move.

10 The Chairman. Does any Senator wish a recorded
11 vote?

12 [No response.]

13 The Chairman. Seeing none. All those in favor,
14 say aye?

15 [A chorus of Ayes.]

16 The Chairman. Those opposed, no?

17 [No response.]

18 The Chairman. The ayes have it. The nominations
19 are ordered reported.

20 I thank all Senators for their cooperation. I know
21 you are very, very, very busy. It means a lot to the
22 Chairman that you are here, those of you who are here.
23 There are some who are not here, and I would advise the
24 staffs to tell their principals that it would be

1 advisable in the future that they try to be here when we
2 have markups.

3 Does anyone have any other business?

4 Senator Cantwell?

5 Senator Cantwell. If I could just put a statement
6 in the record on 1542, and thank you for your help and
7 innovation in the legislation.

8 The Chairman. Without objection, the statement
9 will be included.

10 We are out of Executive Session now and will go back
11 to the hearing.

12 [Whereupon, at 10:34 a.m., the Open Executive
13 Session was concluded.]