OPEN EXECUTIVE SESSION TO ORGANIZE FOR THE 117TH
CONGRESS
THURSDAY, FEBRUARY 25, 2021
U.S. Senate,
Committee on Finance,
Washington, DC.

The meeting was convened, pursuant to notice, at
9:49 a.m., in Room SD-215, Dirksen Senate Office
Building, Hon. Ron Wyden (chairman of the committee)
presiding.
Present: Senators Stabenow, Cantwell, Menendez,
Carper, Cardin, Bennet, Casey, Warner, Whitehouse,
Hassan, Warren, Crapo, Grassley, Cornyn, Thune, Portman,
Cassidy, Lankford, Daines, Young, Sasse, and Barrasso.
Also present: Democratic staff: Michael Evans,
Deputy Staff Director and Chief Counsel; Ian Nicholson,
Investigator and Nominations Advisor; Joshua Sheinkman,
Staff Director; and Jayme White, Chief Advisor for
International Competitiveness and Innovation.
Republican staff: Gregg Richard, Staff Director;
Mayur Patel, Chief International Trade Counsel; and
John O'Hara, Trade Policy Director and Counsel.
The Chairman. This is how we are going to proceed, having consulted with our friend, Senator Crapo, the ranking member. I believe we have a quorum, so what we are going to do is address these routine matters. And then after we have completed them, we are going to break for 5 minutes, just 5 minutes, in order to have our guest come for the hearing.

So turning to the routine matters, members received materials on Tuesday. They are a designation of subcommittee, members, a designation of members to serve on Joint Tax, a designation of members to serve as Congressional Trade Advisors on Trade Policy in negotiations, and an authorization of the committee's rules, which would remain unchanged from our longstanding rules.

Senator Cornyn has filed an amendment to the committee rules. It is my understanding that Senator Cornyn is going to discuss the amendment, but he will not ask for a vote.

After Senator Cornyn has discussed his amendment, and any other Senators who wish to discuss the amendment have done so, I will ask for the various committee members -- committee matters to be approved en block by voice vote. Then, as I indicated, we will adjourn the business meeting and convene our hearing on the
nomination of Ms. Tai.

So I will now recognize Senator Crapo for any remarks he would make about how we will proceed today, and when Senator Crapo is done we will recognize Senator Cornyn to discuss his amendment to the committee rules.

Senator Crapo?

Senator Crapo. Thank you very much, Mr. Chairman.

And once again, I appreciate our friendship and our working relationship and the consultation we have had on this rule package and these designations.

I know we will move to Senator Cornyn to discuss his amendment immediately, and following that I encourage all of my colleagues to support this rule package and to also support the designations and other actions that we are going to take today. Thank you very much, Mr. Chairman.

The Chairman. Very good. Senator Cornyn?

Senator Cornyn. Thank you, Mr. Chairman. I would like to call up my amendment to Rule 2, which I believe members have a copy of. Simply stated, I think it is a good time to revisit the committee's practice of conceptual markups. In other words, I think we ought to know what we are voting on before we vote, as opposed to a concept. And I understand that this has been a longstanding tradition. I have tried to explain to some
of my friends and constituents back home, particularly lawyers, that we do not actually have plain English legislative text that we are voting on. And obviously this committee is unique in that regard.

So the amendment I am offering would require that members be provided a copy of actually the plain English text prior to a markup of legislation, and require texts to be provided 48 hours in advance, and an amendment's text 24 hours in advance.

Due to the complexities and the special nature of tax legislation, the amendment excludes the requirement from tax legislation. But I know we have voted -- we have debated the concept of conceptual markups before, as recently as 2009, when we considered health care legislation. But I think this is a conversation worth having again.

And it is not just that members of the Senate and the Finance Committee know what we are voting on before we actually vote, it is so that the public can know what it is we are voting on and so we can hear from them. Conceptual markups just strike me as a way to kind of hide the ball from the public in terms of accountability and transparency. So I know that this has been a longstanding tradition in the Finance Committee, but I think it is a tradition that we should look to change,
where it is feasible to do so.

And so that is my amendment.

The Chairman. Very good. Let me just make three quick points. One of course is traditionally -- and this has been the case in the 2017 tax bill, for example. It was done on the basis of conceptual kind of work. And that is so that people can understand in plain English, rather than having a discussion of, well, let's strike subparagraph D at paragraph 5 of section D of section 1253B, 2B, or something like that.

That is what we would be dealing with, colleagues, if we accept this amendment. And so I would just add, also because we have members who feel very strongly about policy on both sides of the aisle, it is going to be easier for members to actually draft amendments in their ideas if we use the system we have today, rather than get us into this kind of La La Land of arcane language where nobody is going to have any idea how to proceed.

So it is my understanding that my friend from Texas would withdraw his amendment at this time?

Senator Cornyn. Mr. Chairman, if I could just respond briefly, I do not want to minimize the importance of this amendment, but I do not intend to ask for a vote on it today. But I would point out that in
my previous life, I was a judge for 13 years. And we
essentially are delegating our authority to judges and
lawsuits on how to interpret the language that is voted
on conceptually here, written up by the staff, and then
ruled on by judges when there is litigation.

And then of course judges have a whole litany of
canons of interpretation of what in the world was
Congress talking about when it passed this law? And I
just think that we are contributing to not only
litigation where our authority is essentially delegated
to the judiciary to figure out what it is we meant when
we marked up a bill, and when we passed legislation.
And I just think more clarity and more precision and
more accountability for Congress, along with maintaining
our authority to actually make laws ourselves and not
delegate that to the judiciary, would be a worthy goal.

So I understand what the chairman's position is. I
am not going to ask for a vote at this time. But I do
think this is an important issue, and I would just ask
my colleagues here on the committee to think about this
some more. Maybe we can have some further discussion.
And, Mr. Chairman, I would hope that, to the extent
feasible, that we could aspire to plain English text.

I understand the challenge that you just -- the
example you gave, but I do think, to the extent
feasible, it is a worthwhile goal.

The Chairman. Well, I want to tell my colleague I appreciate his withdrawing this. And I am glad to keep thinking about this issue. It obviously has implications on a variety of fronts, and we will keep talking about it. And I thank my colleague.

Senator Young. Mr. Chairman, would it be possible for me to be recognized for 60 seconds?

The Chairman. Sure. Of course.

Senator Young. Thank you.

The Chairman. And then we will move to complete our business and get to the hearing. Senator Young?

Senator Young. So in July of 2019, I had an opportunity to speak briefly on this issue. And I spoke with some measure of passion. I will keep this dispassionate. But nonetheless, the Ways and Means Committee in the U.S. House of Representatives, same jurisdiction as the Senate Finance Committee, I know it would be very odd institutionally for the Senate ever to learn from the example of the U.S. House of Representatives, but I am not aware there has ever -- ever -- been any challenges with respect to the arcana of language confusion as to legislative text.

It is our jobs to vocalize in plain English what provisions -- and to the extent there is disagreement
about what provisions mean, those are healthy debates that we need to have.

So this should be empowering to the American people. The gentleman's proposed amendment, which he has since withdrawn, and I just think we are trying to prove that what works in practice actually works in theory. And let's not go down that road.

So thank you, Chairman, for your continued thought about this. It is my fervent hope that we do not continue thinking about it for years and years into the future.

Thank you.

The Chairman. This discussion will continue, and I thank both of my colleagues for allowing us to move forward.

We now have a quorum. I move that we approve the subcommittee assignments, the committee rules, the designation of the members of the Joint Tax Committee, and the designation of the Congressional Trade Advisors.

Senator Crapo. Second.

The Chairman. All in favor, say “aye.”

[A chorus of ayes.]

The Chairman. All opposed, say “nay.”

[No response.]

The Chairman. The “ayes” have it, and the business
matters are agreed to. The business meeting is adjourned. We will be back in 5 minutes so that our guests can have a chance to get comfortable, and we will actually begin the hearing on Ms. Tai's nomination. Thank you.

[Whereupon, at 9:59 a.m., the meeting was concluded.]