

**NOMINATIONS OF GILBERT B. KAPLAN,  
MATTHEW BASSETT, AND ROBERT CHARROW**

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**HEARING**

BEFORE THE

**COMMITTEE ON FINANCE**

**UNITED STATES SENATE**

**ONE HUNDRED FIFTEENTH CONGRESS**

**FIRST SESSION**

**ON THE**

**NOMINATIONS OF**

**GILBERT B. KAPLAN, TO BE UNDER SECRETARY FOR INTERNATIONAL  
TRADE, DEPARTMENT OF COMMERCE; MATTHEW BASSETT, TO BE AS-  
SISTANT SECRETARY FOR LEGISLATION, DEPARTMENT OF HEALTH  
AND HUMAN SERVICES; AND ROBERT CHARROW, TO BE GENERAL  
COUNSEL, DEPARTMENT OF HEALTH AND HUMAN SERVICES**

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**AUGUST 3, 2017**  
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# CONTENTS

## OPENING STATEMENTS

	Page
Hatch, Hon. Orrin G., a U.S. Senator from Utah, chairman, Committee on Finance .....	1
Wyden, Hon. Ron, a U.S. Senator from Oregon .....	3

## CONGRESSIONAL WITNESS

Boozman, Hon. John, a U.S. Senator from Arkansas .....	6
--	---

## ADMINISTRATION NOMINEES

Kaplan, Gilbert B., nominated to be Under Secretary for International Trade, Department of Commerce, Washington, DC .....	8
Bassett, Matthew, nominated to be Assistant Secretary for Legislation, Department of Health and Human Services, Washington, DC .....	9
Charrow, Robert, nominated to be General Counsel, Department of Health and Human Services, Washington, DC .....	11

## ALPHABETICAL LISTING AND APPENDIX MATERIAL

Bassett, Matthew:	
Testimony .....	9
Prepared statement .....	29
Biographical information .....	30
Responses to questions from committee members .....	33
Boozman, Hon. John:	
Testimony .....	6
Brown, Hon. Sherrod:	
“Trump Can Kill Ohio Plan to Save Health Exchanges,” by Marty Schladen, <i>The Columbus Dispatch</i> , August 1, 2017 .....	35
Charrow, Robert:	
Testimony .....	11
Prepared statement .....	36
Biographical information .....	37
Responses to questions from committee members .....	49
Hatch, Hon. Orrin G.:	
Opening statement .....	1
Prepared statement .....	51
Kaplan, Gilbert B.:	
Testimony .....	8
Prepared statement .....	52
Biographical information .....	53
Responses to questions from committee members .....	60
Wyden, Hon. Ron:	
Opening statement .....	3
Prepared statement .....	77



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DEPARTMENT OF HEALTH  
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**THURSDAY, AUGUST 3, 2017**

U.S. SENATE,  
COMMITTEE ON FINANCE,  
*Washington, DC.*

The hearing was convened, pursuant to notice, at 10:05 a.m., in room SD-215, Dirksen Senate Office Building, Hon. Orrin G. Hatch (chairman of the committee) presiding.

Present: Senators Grassley, Crapo, Thune, Cassidy, Wyden, Stabenow, Cantwell, Menendez, Carper, Brown, Bennet, Casey, Warner, and McCaskill.

Also present: Republican Staff: Mark Prater, Deputy Staff Director and Chief Tax Counsel; Kimberly Brandt, Chief Health-care Investigative Counsel; Nicholas Wyatt, Tax and Nominations Professional Staff Member; Rory Heslington, Professional Staff Member; Shane Warren, Chief International Trade Counsel; and Jeff Wrase, Chief Economist. Democratic Staff: Michael Evans, General Counsel; Ian Nicholson, Investigator; Elissa Alben, International Trade Counsel; Elizabeth Jurinka, Chief Health Advisor; Greta Peisch, International Trade Counsel; Tiffany Smith, Chief Tax Counsel; and Jayme White, Chief Advisor for International Competiveness and Innovation.

**OPENING STATEMENT OF HON. ORRIN G. HATCH, A U.S.  
SENATOR FROM UTAH, CHAIRMAN, COMMITTEE ON FINANCE**

The CHAIRMAN. Welcome to all of you folks to this morning's hearing.

Today we will consider the nominations of Gilbert Kaplan to be Under Secretary of Commerce for International Trade, Matthew Bassett to be Assistant Secretary for Legislation at Health and

Human Services, and Robert Charrow to serve as General Counsel of Health and Human Services.

I would like to extend a warm welcome to each of these nominees here today, and I want to extend congratulations to each of you for your nominations and thank you for your willingness to serve in these important positions.

In today's hearing I want to stress two major themes: integrity and responsiveness. These are both important elements for any position in government, particularly for a Senate-confirmed position. They are absolutely essential for the positions under review today.

The Under Secretary of Commerce for International Trade is responsible for promoting American trade around the globe and enforcing U.S. trade laws. If confirmed, Mr. Kaplan will need to be a strong advocate for American exporters while holding our trading partners accountable for improper trade practices.

There is a good deal of work that needs to be done to improve compliance with our Nation's anti-dumping and countervailing duty laws, but that mission should not come at the expense of seeking to expand opportunities for U.S. goods and services providers. It will be critical that the Department of Commerce work with Congress and consult closely with members of the committee.

Frankly, there is room for improvement here, but I am confident Mr. Kaplan understands the importance of the Department's responsibilities to Congress and will work with Secretary Ross to ensure those responsibilities are met.

As for the nominees to the Department of Health and Human Services, these are very, very important nominees as well. Your responsibilities are similarly connected to themes of integrity and responsiveness.

Mr. Bassett has been nominated to serve as an Assistant Secretary with the specific function of performing legislative affairs. This means that both the agency as well as Congress will rely on you to ensure that we are kept well informed of the goings-on at HHS.

This will be critical over the next few months. Obviously, the effort to fix our Nation's health-care system suffered a setback recently. The recent series of events intensifies the importance of this position, as cooperation between Congress and HHS will likely be more essential than ever.

Members of the Finance Committee expect to be in constant contact with HHS and need timely and responsive answers to questions and submitted inquiries. We hope that Mr. Bassett will commit today to providing answers.

Finally, I would like to highlight the critical importance of integrity for the position of General Counsel at HHS, for which Mr. Charrow has been nominated. Now, Mr. Charrow certainly has a considerable amount of experience as a practicing lawyer, but the position of General Counsel at HHS brings with it challenges that are sure to be new.

There are likely to be times where the officials in the Department and the White House may disagree on how to proceed on a specific course of action. If confirmed, your responsibility will be to ensure that the laws on the books, as written, are followed and implemented.

We have seen some thorny issues at both Commerce and at HHS as the administration has, in some ways, gotten off to a rocky start. That is all the more reason for the committee to move as quickly as possible to consider and report these nominations.

Before I conclude, I want to take a moment to talk about the committee's agenda after the August recess and the next few months thereafter.

In the fall, the main priority of the committee will surely be tax reform. I intend to work with my colleagues to draft and report tax reform legislation in regular order.

That will mean that we are going to have to work very assiduously and closely together to get things done. That means hearings and a markup here in the committee.

While tax reform will be the major focus, there are other priorities as well. In September, I plan to hold a hearing on the CHIP reauthorization, which I know is a big priority for members on both sides of the aisle.

We have also heard a lot of demands from members of the committee for a health-care hearing. I intend to do that as well at some point shortly after the recess.

Long story short, it is going to be a busy fall for the Finance Committee, but it is always busy. So I do not see what changes.

I think I speak for all of the members of the committee when I say that we would not have it any other way. So with that, I am very grateful to have as my co-leader on this committee Senator Wyden, and we will turn to you now.

[The prepared statement of Chairman Hatch appears in the appendix.]

**OPENING STATEMENT OF HON. RON WYDEN,  
A U.S. SENATOR FROM OREGON**

Senator WYDEN. Thank you very much, Mr. Chairman. Mr. Chairman, thank you for our work together and the very constructive statement that you have made this morning.

I am going to talk about health care first and then go to taxes and the nominees, if I might.

This committee works best, of course, on a bipartisan basis. There are certainly going to be some very good opportunities in the months ahead. I am particularly pleased that the chairman, with respect to health, focused on the Children's Health Insurance Program, because that is a program that has a time stamp on it.

It expires on September 30th. It serves more than 8 million kids. These are kids who are falling between the cracks. They are kids who are not eligible for Medicaid, but they are still coming from families who are on an economic tightrope.

Mr. Chairman, one of the things that I enjoy the most about our working relationship is talking about 20 years ago when you and Ted Kennedy teamed up to create CHIP. Colleagues, very often when you visit with Chairman Hatch in his office, he always says, "Stick with me, kid. I will make you a legislator. That is what I did with Kennedy."

But the fact is, CHIP was a bipartisan effort by Chairman Hatch and Senator Kennedy, and they demonstrated against all the odds

that bipartisan health-care policy is not just possible, it is the right thing to do.

So let me mention one other matter. Mr. Chairman, as you touched on, in addition to the children's health program, in light of the events of the last few weeks, we know that members on both sides are eager to bring up additional health-care ideas in an additional upcoming hearing. I am glad, Mr. Chairman, that you made it clear that it would be on our calendar as well.

Now, with respect to tax reform, as we have heard our colleagues say on both sides, the tax system is just broken. I have spent a significant amount of my time over the last few years writing the only two actual bipartisan Federal comprehensive tax reform plans, first with our colleague Judd Gregg, and most recently with Dan Coats, who sat where Senator Cassidy is sitting today.

So I know what this challenge is all about. Some people who are smart on this subject like to say tax reform is hard, and that is why it ought to be handled on a bipartisan basis. I told the chairman of my concern that the Majority Leader has dismissed our outreach and just said here in the last couple of days that he was going to use the same partisan "my-way-or-the-highway" approach on tax reform that did not work out that well on health care.

My hope is that it changes. I would just say to colleagues, if you go the partisan route on taxes, you are trampling on the history of successful tax reform, because the history of successful tax reform is, you only get it by working in a bipartisan way. There are too many tough decisions and too many challenges with respect to this tax break or that tax break if one side tries to do it by themselves.

So I think Senator Hatch is very sincere in wanting to work with us, and I hope some of his history with respect to bipartisanship on this issue finds its way to Leader McConnell's office.

Now, today we are going to talk about three nominations. The first is Bob Charrow's nomination to serve as General Counsel of the Department of Health and Human Services. This is a tough job under normal circumstances, but as I told him in our private meeting, I do not think he has seen tough until he tries to tackle it at this point in time. That is because HHS's General Counsel's role is to enforce the law, and right now it seems that this administration is spending a fair amount of time trying to undermine the law.

A few examples: the law on the books tells the administration to make cost-sharing payments to help hold down the cost of health insurance for millions of Americans. But the President keeps threatening to cut those payments to score what I think is a misguided political win.

And the fact is all of us—all of us who worked so hard on Medicare Advantage and a role for the private sector—we know that these kinds of statements are like pouring gasoline on the fires of uncertainty in the private health insurance marketplace. So my hope is that we do not see the health-care marketplace go into a tailspin and we do not see Americans getting hit in the pocketbooks with premium hikes on January 1st. But this idea of constantly threatening, this rollercoaster approach with respect to making cost-sharing payments, I think, is causing a lot of uncertainty in the marketplace.



Additionally, the administration is taking taxpayer dollars that are intended to help individuals and families sign up for health coverage, and it is using those funds to actually stifle enrollment. That means more people are living without access to the care they need.

I recall sitting right here during Secretary Price's nomination hearing, when he said, "My role will be one of carrying out the law you all in Congress pass. It is not the role of the legislator." But the fact is—and I have just given two specific examples—the administration has spent a lot of time undermining the law, and it certainly is a different story than we heard from the Secretary.

The bottom line for Mr. Charrow, should he be confirmed, is he needs to ensure the Department faithfully executes the law, meets the highest standard of ethics, and cooperates fully with congressional oversight. He has been told in advance he is going to get some tough questions today with respect to whether he is prepared for that task.

Next is Mr. Matthew Basset, nominated to serve as Assistant Secretary for Legislation at the Department of Health and Human Services. It is my hope that the Senate moves in a bipartisan respect on health care and the many issues under the HHS umbrella.

We will hear his views with respect to how he would be the liaison between the Department and the Congress in order to ensure that there are bipartisan efforts in the days ahead. And we are expecting his commitment to respond to requests from all members of this committee, from Democrats and Republicans.

Finally, turning to the trade area, Mr. Gil Kaplan is nominated to serve as the Under Secretary for International Trade at the Department of Commerce. That, in effect, puts him at the top of the International Trade Administration.

So far in this administration, we have heard a lot of tough talk on trade enforcement, but there has not been a lot of follow-through. And there is a real cost to all of the over-hyped rhetoric when you see it as just that: talking and not action. For example, in response to all of the tough talk on steel, countries have shipped even more steel to the United States in a rush to get ahead of any hike in tariffs.

Just think about that—all kinds of tough talk. What has happened? Countries are shipping even more steel to our country just because they are trying to game the system. My friend, Leo Gerard, president of the Steelworkers, recently told me that imports have surged 18 percent since the President launched his section 232 investigation. Meanwhile, the administration appears to be backing off. This episode demonstrates how tough talk without a real strategy hurts our workers.

Mr. Kaplan's background suggests that he is going to be a tough trade enforcer. That is exactly what we need at the International Trade Administration. My guess is, he is going to refrain from making promises on trade enforcement unless and until the administration (1) does its homework, and (2) is actually prepared to follow through.

Beyond enforcement, they also have a key role in growing exports, and people ask about the export issue. For us on this committee, it is key that we grow things in America and make things

in America, add value to them in America, and ship them all over the world. There are going to be a billion middle-class consumers in Asia in a few years. We want them buying American products.

So we look forward to hearing how Mr. Kaplan is going to ensure that our workers and manufacturers do not lose out on opportunities to sell to consumers around the world. That also means the administration backing away from self-defeating budget cuts.

So with respect to this morning's agenda, Chairman Hatch is absolutely right. This committee is going to have its hands full. We are going to be working on key health issues, and we talked about the two areas, specifically, that we are going to be zeroing in on coming right out of the gate.

Then we both have talked about tax reform. And the chairman knows my desire and the desire of many on our side who want to work in a bipartisan way. I hope the Majority Leader will change his mind and make that possible.

Finally, Mr. Chairman, I share your interest in getting the kind of nominees we have today confirmed, and confirmed quickly. So we will be working with you in a bipartisan way on that.

The CHAIRMAN. Thank you, Senator.

[The prepared statement of Senator Wyden appears in the appendix.]

The CHAIRMAN. We are really happy to have Senator Boozman here, and we will call on him in just a minute—a very fine Senator.

But I would like to extend first a warm welcome to our three nominees today. I want to thank you all for being here.

First we will hear from Mr. Gil Kaplan, a partner in the international trade practice at King and Spalding. Mr. Kaplan has decades of practice in trade law, including notably the first successful prosecution of a countervailing duty case against China in 2007.

Mr. Kaplan has extensive experience serving in senior U.S. governmental positions, including as Deputy Assistant Secretary and Acting Assistant Secretary for Import Administration at the Department of Commerce. He received both his undergraduate and law degrees from Harvard University.

Next will be Mr. Matthew D. Bassett. Fortunately for Mr. Bassett, my colleague Senator Boozman will be providing his introduction.

Senator Boozman, I thank you for attending today. We will just have you proceed with your statement at this point.

**STATEMENT OF HON. JOHN BOOZMAN,  
A U.S. SENATOR FROM ARKANSAS**

Senator BOOZMAN. Well, thank you, Chairman Hatch and Ranking Member Wyden, for the opportunity to do this, and just to take a second to talk about a good friend, Matt Bassett.

We certainly appreciate his willingness to serve, along with his family. I think all of us as members understand how difficult these jobs are and the time commitment, so we do appreciate, again, their willingness to go forward with such an important position.

Matt is a health-care policy expert with a career spanning over 20 years in both the public and private sectors. I first met Matt towards the beginning of his career in January 2002, when he was

working for Congressman Pete Sessions as a health-care legislative aid.

During my tenure in the House, I was an active participant in the Doctors' Caucus, where medical providers in Congress were able to utilize their medical expertise in the development of patient-centered health-care policy. It was my pleasure to continue to work with Matt on these issues when he served as Deputy Chief of Staff to Representative Ernie Fletcher.

Matt continued to work to advance patient-centered policies with a goal of improved quality and delivery of care. Matt continued his leadership in health care as the Chief of Staff to the Kentucky Cabinet for Health and Family Services, where he gained an invaluable experience in navigating Kentucky's Medicaid and insurance markets.

He continued this work in the private sector, where he tackled legislative and regulatory routes to improve availability of treatment services for Medicaid participants. His involvement in the private sector, along with his experience at both the Federal and State level, are a testimony to his dedication to the advancement of a better standard of health care.

Matt has the deep breadth of understanding of the complexity of our health-care system that is so crucial as we continue to debate health care.

Additionally, given his time serving in the House, he is keenly aware of the importance of the relationship between the legislative and the executive branches. I am more than confident he will be responsive to member questions and concerns when confirmed, which is so, so very important.

Matt has been nominated to fulfill an important role during an exceptionally critical time. I know that his experiences and expertise will provide invaluable insight in meeting these challenges as we work to strengthen our health-care system and, as the chairman and ranking member pointed out, provide integrity and responsiveness.

I know as a member, that is what I want in a person fulfilling that position. I cannot think of anybody who will do a better job.

Thank you. I yield the floor.

The CHAIRMAN. Well, thank you, Senator. That is a very good introduction.

You have to feel pretty good about that, Mr. Bassett. I feel pretty good about it myself. [Laughter.]

We appreciate you taking time today—we know you have a busy schedule—to be with us. It means a lot.

Finally, we will hear from Mr. Robert B. Charrow, a principle shareholder at Greenberg Traurig, LLP, since 2002. Prior to his current work, Mr. Charrow was a partner at Crowell and Moring from June 1989 through June 2002.

While in private practice, he has represented numerous clients on matters involving CMS, FDA, PHS, OCR, and OIG. I do not know how you keep all of those straight.

He also has former public service experience as the Principle Deputy General Counsel at the Department of Health and Human Services in the Reagan administration, serving from July 1985 to

April 1989. Mr. Charrow also worked with President Reagan as the Deputy Chief Counselor for the President's reelection committee.

I really like you. [Laughter.] I just want you to know.

Mr. Charrow has also worked for nearly 8 years as an associate professor of law at the University of Cincinnati's College of Law and the Howard University School of Law. He received his undergraduate degree from Harvey Mudd College and his law degree from Stanford University School of Law.

So we are very happy to welcome you here today.

Mr. Kaplan, you can begin now with your opening remarks.

**STATEMENT OF GILBERT B. KAPLAN, NOMINATED TO BE UNDER SECRETARY FOR INTERNATIONAL TRADE, DEPARTMENT OF COMMERCE, WASHINGTON, DC**

Mr. KAPLAN. Thank you very much, Mr. Chairman. I would just like to take a second to introduce my wife, Betty Ann, and thank her for her love and support. I would like to introduce two people who have worked with me for over 30 years: Lisa Harris and Bonnie Byers. And I would like to introduce my partner, Tom Spulak, who has helped me throughout this confirmation process.

The CHAIRMAN. Great. We welcome all of you here and are very proud of you. I have to say, you are willing to sacrifice your husband for a number of years. I give you a lot of credit for that. [Laughter.]

Go ahead. I am sorry.

Mr. KAPLAN. Thank you.

Mr. Chairman, Ranking Member Wyden, members of the committee, it is a great honor to be here today as the President's nominee to serve as Under Secretary of Commerce for International Trade.

I first testified before this committee in 1986, when I was the Deputy Assistant Secretary of Commerce for Import Administration, and I continue to be deeply impressed by the rigorous and careful attention this committee gives to international trade.

In some ways, I feel I have been preparing to hold this position during my entire career. When I was fortunate enough to run Import Administration in the 1980s under President Reagan and Commerce Secretary Malcolm Baldrige, we conducted over 500 antidumping and countervailing duty cases, including cases on agricultural products, steel products, and semiconductors. That unit, now called Enforcement and Compliance, will be one of my areas of responsibility at the International Trade Administration, if I am confirmed.

After leaving Import Administration, I devoted myself to representing American companies and workers in a wide range of trade cases and trade policy issues. As the chairman noted, I filed and prosecuted the first successful countervailing duty case ever against China.

Another area of my responsibility, if I am confirmed, will be developing programs to build up the international competitiveness of the manufacturing base in the United States, within the Industry and Analysis unit of ITA. In that regard, I was the cofounder of the Manufacturing Policy Initiative at Indiana University School of Public and Environmental Affairs, the first and only university pro-

gram in the country focusing on what public policy steps should be taken to revitalize U.S. manufacturing.

I will also be working extensively to promote and increase American exports and break down trade barriers through the Global Markets and U.S. and Foreign Commercial Service unit at Commerce. In that regard, while I was at Commerce, I was one of the key negotiators of the U.S.-Japan Agreement on Trade in Semiconductors and later enforced the terms of that agreement.

That was one of the most successful agreements ever in opening a foreign market for our exports, particularly a very difficult foreign market to open.

In addition, there are several over-arching themes I want to focus on if I am confirmed. Those are making the whole world open to U.S. digital trade, ensuring U.S. intellectual property is protected everywhere in the world, and ensuring that small and medium-sized enterprises can benefit from global trade.

We need to do all of this while making sure we do no harm to U.S. consumers and to the many companies, workers, farmers, and ranchers who benefit so much from trade.

In closing, I would like to tell a very brief story about my family. My father and mother arrived in this country in 1946 after surviving the Holocaust. They arrived on a boat called the *Ernie Pyle*.

When they docked in New York, my father had \$7 in his pocket, which he had won playing cards on the boat. I think my parents would be truly amazed if they could be here today for this hearing, amazed at the greatness of this country and at the graciousness of all the people who have worked with me in moving this appointment forward.

Thank you, Mr. Chairman, Ranking Member Wyden, and members of the committee. I would be pleased to answer your questions.

The CHAIRMAN. I am sure that your parents are watching and that they are very proud of you.

Mr. KAPLAN. Thank you.

[The prepared statement of Mr. Kaplan appears in the appendix.]

The CHAIRMAN. All right. Let us go to you, Mr. Bassett.

**STATEMENT OF MATTHEW BASSETT, NOMINATED TO BE ASSISTANT SECRETARY FOR LEGISLATION, DEPARTMENT OF HEALTH AND HUMAN SERVICES, WASHINGTON, DC**

Mr. BASSETT. Senator, good morning.

The CHAIRMAN. Good morning.

Mr. BASSETT. Thank you for the opportunity to be here. If I could take one minute, first, to thank Senator Boozman for his very generous and kind introduction of me, and for his many years of friendship. I very much appreciate it.

If I could, I would like to take a minute to introduce and thank my family who are here: my wife Stacy and my son Matthew. Can you say "hello"? My father David Bassett and my uncle Ben Ash have also joined us. And I must say "hello" to my mother who is, no doubt, one of five people enthusiastically tuning into C-SPAN today just to see me. [Laughter.]

Chairman Hatch, Ranking Member Wyden, thank you for inviting me to testify. I am honored to stand before you as the Presi-

dent's nominee for the Assistant Secretary for Legislation at the Department of Health and Human Services.

Senators, I have enjoyed the privilege of working in the health-care industry for over 20 years. I have seen many challenges to our Nation's health-care system firsthand. I have seen these challenges from the patient side, provider and payer side, public and private side, and lastly, the State and Federal side.

I am of the firm belief that as Americans, we are very fortunate to live in a country that has the greatest, most innovative health-care system in the world. People from other countries travel to the United States to seek the latest cutting-edge care and technologies that simply do not exist back home.

Yet our health-care system is not without substantial challenges. High-quality, affordable care is at risk for an unacceptable number of Americans and their families.

Addressing these challenges is an acute interest to me, and having served as Chief of Staff for Kentucky's Cabinet for Health and Family Services in the great Commonwealth, I have seen firsthand how policy formed on Capitol Hill affects the folks back home.

At the time when I served in the position, Kentucky was experiencing an opioid scourge, imploding individual and small group markets, and a Medicaid program that our State simply could not afford.

Should I have the honor to be confirmed, I hope to have the opportunity to work with all of you and your staffs to address the similar challenges that we face today.

And perhaps the most significant qualification for the position to which I have been nominated is the fact that I actually served as a Capitol Hill staffer. Having worked for two members of the House of Representatives, I understand the unique role the Assistant Secretary for Legislation has in working with members of Congress to make sure constituent voices are heard and their needs are addressed in Washington, DC.

The Office of the Assistant Secretary for Legislation is responsible for the development and implementation of the Department's legislative agenda. As a liaison between HHS and Congress, I would not take this responsibility lightly. I understand the information you rely on within HHS and all the agencies contained therein is critical to fulfill your legislative duties.

Should I receive the confidence of the Senate to serve as the Assistant Secretary for Legislation, I pledge to stay true to these lessons learned and to ensure that each and every day ASL stands as a resource for Congress, reliably and readily bringing these two great bodies to best serve the needs of the American people.

Thank you again for the opportunity to appear this morning, and I look forward to answering your questions.

The CHAIRMAN. Thank you very much.

[The prepared statement of Mr. Bassett appears in the appendix.]

The CHAIRMAN. Mr. Charrow?

**STATEMENT OF ROBERT CHARROW, NOMINATED TO BE GENERAL COUNSEL, DEPARTMENT OF HEALTH AND HUMAN SERVICES, WASHINGTON, DC**

Mr. CHARROW. Chairman Hatch, Ranking Member Wyden, and members of the committee, it is an honor to appear before you as the President's nominee to serve as the General Counsel of the Department of Health and Human Services.

I am joined by my wife, Dr. Veda Charrow, a retired Federal employee, most recently of NIH.

I would like to thank this committee for considering my nomination. I have had many productive meetings with some of you and your staff already, and I look forward to discussing the issues facing HHS with you today.

HHS's jurisdiction extends from the bench to the bedside, underwriting basic research that will lead to tomorrow's miracle drugs, new devices and biologics, and financing health care through various programs, including Medicare, Medicaid, and the Children's Health Insurance Program. In that regard, HHS is a unique blend of science, health care, and finance.

I was privileged to serve as the Deputy General Counsel and Principal Deputy General Counsel during President Reagan's second term and into the presidency of George H.W. Bush. Aside from working on President Reagan's reelection campaign as a lawyer, I had been a law professor with little experience in managing anyone other than scared law students.

My first few months at HHS in 1985 were a rude awakening. But I was lucky. The career attorneys and staff at the Office of the General Counsel were remarkably helpful and extremely competent, also very patient—traits that I understand persist and have not been lost to the passage of time. In fact, some of the career attorneys in the office 30 years ago still work there today.

Since leaving HHS in 1989, I have been in private practice, focusing on health-care law, administrative law, and general appellate litigation. In health care, I have represented academic medical centers, learned societies, hospital systems, research institutes, pharmaceutical companies, providers, and insurers.

Those nearly 3 decades of seeing problems in the real world have brought home the salient differences between the obligations of government lawyers and those in the private sector. The role of a General Counsel in a Federal agency is not the same as a private attorney for a corporate client.

The General Counsel's role and obligation are to make sure that all corners are squared and that the rules and policies issued by the agency are legally proper and consistent with the organic legislation governing the agency. They should also be consistent with the Administrative Procedure Act in the way that those rules have been issued.

In that regard, the General Counsel should act as a neutral arbiter, assessing the potential agency action as if he or she were a Federal district court judge. The notion that a rule "may withstand judicial scrutiny" is not sufficient. The question when reviewing a rule is, how would I—as an impartial judge—assess that rule in light of all possible challenges?

Private clients expect their attorneys to develop novel legal arguments. Creating new legal theories or applying old ones in new ways is the most enjoyable aspect of my private legal practice, but that is very different from the role of a General Counsel where legal creativity takes a back seat to acting as impartial arbiter.

You may ask then, why would anyone forsake creativity, which is a legitimate question. The answer is simple—the legal issues themselves are unique and fascinating. In government service, one is confronted with legal issues that are so different from what is seen in private practice, and that more than makes up for any loss of creativity.

I am well aware that many HHS rules issued over the past generation, especially those implementing the Medicare Act, have been ridiculed by Federal courts as being linguistically incomprehensible. One role of a General Counsel is to ensure that rules that defy comprehension do not see the light of day.

Experience in representing private-sector clients has highlighted the importance of virtually all actors in our health-care system. I hope that this practical legal experience will help when reviewing rules, when counseling the Secretary, and when testifying before Congress.

I know from experience that HHS will be the subject of litigation. My goal is to ensure that the agency's position in any given case is both legally correct and objectively just. The one thing I have learned over the years is that agency action which may be legally correct when viewed hyper-technically, but which offends fundamental notions of fairness, normally does not fare well in the courts.

Thank you for the opportunity to testify today. I now am happy to answer any questions you may have.

The CHAIRMAN. We are happy to have all three of you here.

[The prepared statement of Mr. Charrow appears in the appendix.]

The CHAIRMAN. Senator Grassley has one question he would like to ask before I ask some questions today.

Before I turn to Senator Grassley, I have some obligatory questions I am going to ask all of the nominees.

First, is there anything that you are aware of in your background that might represent a conflict of interest with the duties to the office for which you have been nominated?

Mr. KAPLAN. No, Mr. Chairman.

Mr. BASSETT. No, Mr. Chairman.

Mr. CHARROW. No, Mr. Chairman.

The CHAIRMAN. All right.

Do you know of any reason, personal or otherwise, that would in any way prevent you from fully and honorably discharging the responsibilities of the office for which you have been nominated?

Mr. KAPLAN. No, Mr. Chairman.

Mr. BASSETT. No, Mr. Chairman.

Mr. CHARROW. No, Mr. Chairman.

The CHAIRMAN. All right.

Do you agree without reservation to respond to any reasonable summons to appear and testify before any duly constituted committee of the Congress if you are confirmed?



Mr. KAPLAN. Yes, I do, Mr. Chairman.

The CHAIRMAN. All right.

Mr. BASSETT. I will, Mr. Chairman.

The CHAIRMAN. All right.

Mr. CHARROW. I will.

The CHAIRMAN. All right.

Finally, do you commit to provide a prompt response in writing to any questions addressed to you by any Senator of this committee?

Mr. KAPLAN. Yes, Mr. Chairman.

Mr. BASSETT. I do.

Mr. CHARROW. I do.

The CHAIRMAN. So far, the hearing has gone pretty well. [Laughter.]

We will turn to Senator Grassley. He has one question he would like to ask.

Senator GRASSLEY. Yes. I am also going to ask one question to Mr. Kaplan and one question to Mr. Bassett for answer in writing, but I have to hurry along.

So my one question is to Mr. Charrow about things we discussed in my office. And I think you gave a satisfactory answer in the office, but I would like to have something on the record.

Let me read you a couple of sentences of lead-in. In 1986, I coauthored amendments to the Lincoln-era False Claims Act that empowered whistleblowers to help the government identify and prosecute fraud on taxpayers. The False Claims Act is the most effective antifraud tool that we have.

Since the 1986 amendments, the taxpayers have recovered more than \$53 billion of public money lost to fraud. Thirty-three billion of that came from the health-care sector.

You have represented defendants in False Claims Act cases. I have no problem with you as a lawyer doing that. So I want to make sure that you can be objective about it, and that you recognize it is a crucial tool to fight fraud on taxpayers.

Now, I know that you know that fraudulent claims for Medicaid Part D funds are subject to the False Claims Act. Do you have any bias against the False Claims Act that would affect your advice to the Department of Health and Human Services in cooperation with the Inspector General, the Department of Justice, and generally on efforts to combat fraud against government health-care programs?

Mr. CHARROW. I have also represented a plaintiff in a False Claims Act case, Senator, and I have no bias.

Senator GRASSLEY. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Well, thank you.

Senator Wyden, we will go to you.

Senator WYDEN. Would you like to go first, Mr. Chairman?

The CHAIRMAN. I will wait until after you.

Senator WYDEN. Well, thank you all. I very much appreciate the way you all have addressed some of the key issues in your opening statements.

Mr. Charrow, let me start with you.

It seems to me what you are saying to the Senate Finance Committee today is the Affordable Care Act is the law of the land

whether the President likes it or not, and you are committed to seeing that it is carried out. I think that is very constructive, and I appreciate it.

Now, suffice it to say, being General Counsel of the Department of Health and Human Services is not exactly for the fainthearted right now. You are going to step in it up to your boots in an intensive controversy that affects the lives of millions of Americans.

Now, for months the President said he hoped that the Affordable Care Act would collapse. Two weeks ago he said, "We will let Obamacare fail, and then the Democrats are going to come to us." A few days ago, after the Senate voted, he took to Twitter to say, "As I said from the beginning, let Obamacare implode, then deal. Watch."

Now, that was a word-for-word quote from the President. In addition, he has threatened to withhold billions in cost-sharing assistance that helps some of the most vulnerable Americans pay their deductibles and their copayments, their out-of-pocket costs. These threats have driven up premiums, they have pushed plans out of the marketplace altogether, and it leaves Americans with fewer paths to affordable coverage.

So here is my question, and it really builds, in my view, on what you have said. The Affordable Care Act is the law of the land. It is the administration's job to faithfully execute that law. And it is going to be your job to be the honest cop on the beat.

If the President, the Secretary, or anybody else wants to take steps that are in your view inconsistent with either the letter or the spirit of the law, it is your job to tell them so. Will you do that?

Mr. CHARROW. Yes, I will.

Senator WYDEN. Okay.

I think there is only one other question that I want to ask you, Mr. Charrow, because that really fundamentally gets at my question. You talked yesterday about what you called gray areas. Tell me a little bit more about that, because I think you have addressed my fundamental concern with the question that I have asked, but tell me a little bit more about these gray areas.

Mr. CHARROW. If every member of the Senate and of the House of Representatives were all-knowing, there would be no gray areas, but language has its limitations.

Senator WYDEN. Are you saying that that is not the case? [Laughter.]

I am shocked, like in "Casablanca."

Mr. CHARROW. I am allowing you to infer it.

Language has its limitations, and as a result of that, when you write a statute, it necessarily—there are going to be provisions that are going to be ambiguous, that are going to have gray areas. My job is to use the rules of statutory interpretation to decide—in my best judgment—what those provisions mean.

As I told you yesterday, I would be guided by the language of the statute first, the legislative history, the report of this committee, floor statements to a lesser extent. I would not take into account—as I told you yesterday—post-enactment statements.

Senator WYDEN. Very good.

Let me ask you one question, if I might, Mr. Bassett. The President, as I just said, called again for the Affordable Care Act to fail.

He has made that statement literally for months. The administration, the Department of Health and Human Services are constantly trying to sabotage the law and do it even though millions of Americans every single day get up relying on the law.

Members of the committee, certainly myself, are deeply concerned with making sure the Department of Health and Human Services fulfills its obligations to the public by enforcing the Affordable Care Act. And for Congress to conduct oversight, we have to be able to rely on the Department being transparent and responding to our requests.

My question is, will you commit to ensuring that the Department, on your watch, is responsive and transparent when members of this committee submit inquiries, particularly those that involve implementing the Affordable Care Act? And that is a “yes” or “no” answer.

Mr. BASSETT. Yes, I absolutely do.

Senator WYDEN. Okay. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Let me ask a question of you, Mr. Kaplan. As you may be aware, one of the programs currently administered by the Department of Commerce is the Privacy Shield Agreement the United States has with the EU, the EEA, and Switzerland. And while we recognize that the administration has continued to emphasize their support of the agreement, there is some concern about the program’s durability from the European and civil society sides.

How do you intend to make sure that the whole world is open to the U.S. digital trade, including any views you have on the Privacy Shield Agreement?

Mr. KAPLAN. Thank you, Mr. Chairman. Yes, I think the Privacy Shield Agreement is very effective and very useful. I have heard of some of the problems expressed on the European side and the Court of First Instance looking at some of these issues, but I will work closely with our legal team and with the EU to make sure that we keep that program very strong, because I have heard many, many good things about it from many companies that use it.

In terms of making sure the whole world is open for U.S. digital trade, ITA is really uniquely positioned to be able to help with that. We have exceptional people in the global markets and U.S. and foreign commercial service and in industry and analysis, who know more about digital trade issues than anybody.

But over and above that, we have NIST, which is part of Commerce, and I would expect to work with them. We have the Bureau of Industry and Security, which does all the export controls, and they have tremendous expertise.

I think we need to have language in every one of our trade agreements assuring open access for U.S. digital trade products and services.

The CHAIRMAN. Okay.

Strong intellectual property rights are crucial for the ability of American manufacturers, services providers, and innovators to compete overseas. All too often, though, other countries have weak standards for protecting and enforcing intellectual property rights.

How, specifically, do you plan to improve intellectual property rights, protection, and enforcement by our trading partners?

Mr. KAPLAN. Well, I think we have to be prepared to use all of the tools at our disposal. I know there is some discussion about Section 301. I think 301 should be dusted off, perhaps, and that has strong language on intellectual property, which I think could be used. I know there are issues regarding imposing tariffs at the end of a 301 case, but there are other things we could do if we found intellectual property violations after a 301 case.

And then secondly, I think we need to be prepared to use any negotiating leverage we have to protect intellectual property, particularly with China, where it is such a large issue. I think we are really going to have to ramp up our willingness to enforce every one of our trade laws to make sure this intellectual property problem is solved.

The CHAIRMAN. Well thank you.

Mr. Bassett, the backlog of Medicare appeals is already unacceptably high. This makes it hard for beneficiaries and providers to get the funds back that they deserve, and the administration of the appeals process is really expensive. As the senior population continues to grow, this problem is likely to get worse.

What steps can Congress and the administration take together to address the backlog of Medicare appeals?

Mr. BASSETT. Well, Mr. Chairman, as you have indicated, the backlog is far too long. I know that this is a priority for the Secretary.

You are probably well aware we have litigation that also strongly encourages us—if not mandates us—to decrease that backlog. I would very much look forward to working with you and your staff and all of the members in coming up with innovative ways that we can shorten those times, because I agree it has to be done.

The CHAIRMAN. Okay.

Mr. Charrow, how can HHS encourage States to innovate while still assuring accountability? An example is the 1332 waivers under the Affordable Care Act, which raised the question of, will HHS be able to hold States appropriately accountable if they opt to use these waivers?

Mr. CHARROW. I believe the Department will be in that position.

The CHAIRMAN. All right.

Senator Scott, you are up.

Senator SCOTT. Thank you, Mr. Chairman.

Good morning to the panel. Thank you for being here with us.

Mr. Kaplan, South Carolina has greatly benefitted from a resurgence of manufacturing exports and foreign investment. While over 6,000 South Carolinian companies export goods and services that value over \$2.2 trillion—trade supports more than 500,000 jobs in South Carolina, from small companies, farms, global giants Boeing, BMW, Michelin, and the like—we are successful because most of our access is to the places where we have trade agreements, about 31 of them around the world.

Simply put, trade is alive and well in South Carolina. Our auto manufacturers, farmers, tire makers, paper producers, and chemical manufacturers want greater access to the 96 percent of the consumers who live outside the United States.

Good trade policy unlocks opportunity for American families and gives us the tools necessary to make sure our trade partners play by the same rules. With those thoughts in mind, I have just a few questions for you.

The Chinese government caps market access for American financial service firms operating in China. We do not do the same to their companies.

As Commerce works on eliminating the U.S.-China trade imbalance and participates in the CED, I think it is important that you address both sides of the coin, both the manufacturing side as well as the services. Why do you think the Chinese institute these caps, and what are the arguments for removing them? And will you prioritize removing them as one of your priorities?

Mr. KAPLAN. Thank you, Senator. I absolutely would prioritize eliminating those caps and making sure our financial service industries are able to access the Chinese market fully. I think they put in these caps and limits to our financial services because our industry and our services in this area are so strong that they just think once we got in there, we know how to do this so well that they would not be able to be successful.

I do not think that is true. I think there is plenty of room. It is a very large market—a very large market for life insurance. I think it may be the largest in the world.

I think that we should be able to have complete access, and we should not be subject to any caps or limits. I think you are sort of suggesting maybe we should consider putting caps on some of their services and investments in the United States. I think that is very well worth looking into. I think we have to churn up some of the pressure if we want to solve the problems with China in services and other areas.

Senator SCOTT. Absolutely. I certainly think it is an issue of reciprocity and fairness, one that we have not addressed that needs to be addressed, as we have an opportunity to see our services penetrate into foreign areas that will provide tremendous growth for our Nation, frankly, for American workers as well.

Mr. KAPLAN. Absolutely. I think reciprocity is key, and I think there is already a lot of thinking in the administration—it is my understanding—about taking some action if we cannot resolve these issues through the dialogues and bilateral agreements we already have.

Senator SCOTT. Excellent.

Another question for you: improving trade enforcement has been a priority for me and for this committee for some time. I believe the NAFTA negotiations present a great opportunity to negotiate agreed-upon practices with our North American trading partners to combat duty evasion and to improve trade enforcement.

This would be a great benefit for many South Carolina industries. Can you speak about how you see a modernized NAFTA helping to address these priorities?

Mr. KAPLAN. Certainly. In the objectives that were stated by Ambassador Lighthizer regarding NAFTA, there is specific discussion of working with Canada and Mexico to avoid duty evasion, and the reason that is so important, obviously, is because Canada and Mexico—we share very long borders with both of them. What has hap-

pened in terms of dumping duties, really for 10 or 15 years now, is products have been circumvented through Canada and Mexico and come in that way.

Senator SCOTT. Back door.

Mr. KAPLAN. Back door. The duty is never paid. So I think we need to make sure we get good agreements on the issue of duty evasion through Canada and Mexico.

Senator SCOTT. Thank you.

My time is almost out, but, Mr. Bassett, I would like to ask you one quick question.

With the previous administration, we really had very little feedback from the agencies and departments. And having worked on the Hill, you understand and appreciate that it is important for the left hand to know what the right hand is doing. But without open lines of communication with the folks within the administration, it is very difficult for us to do all that we can for our citizens.

Would you commit to making sure that you are as accessible as possible, not only to my office, but to our colleagues, left or right?

Mr. BASSETT. I absolutely do.

To your point, Senator, I very much understand the question. One thing I have heard during this nomination process is the need for responsiveness, and I fully commit to doing that in a bipartisan and a bicameral way.

Senator SCOTT. I certainly appreciate that very much.

Mr. BASSETT. Thank you.

Senator SCOTT. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator.

Senator Casey?

Senator CASEY. Mr. Chairman, thanks very much.

I want to thank the witnesses for being here, for your putting yourself forward for service, and of course, that includes your families as well.

We have had a very contentious number of months now in health care, as you know. This week, I think there has been a very positive development. We are having a lot of discussions between and among Democrats and Republicans in the Senate on a way forward on a number of health-care issues. It is going to continue to be a difficult issue, but I think we have made some good progress this week with the hearings that have been scheduled, both what Chairman Hatch spoke to today as well as in the Health, Education, Labor, and Pensions Committee. So that is the good news, that there is some progress on at least bipartisan discussions.

I will turn to some of the bad news now, which is the press reporting about what the administration might do on a whole range of issues related to our health-care system, whether it is cost-sharing reduction payments or other issues. There is also a report that the administration provided a list of regulations that the Department of Health and Human Services plans to roll back or repeal in a letter to congressional Republicans.

I have sent a letter—two letters, actually, since April—requesting this particular document from HHS. My staff has had multiple conversations with HHS staff about this, and yet the document has not been produced. There is no legal basis for that. I do not know why the administration or the Department would not provide that.

So my first question is for you, Mr. Basset, and you, Mr. Charrow. Do you agree that the administration should provide thorough, complete, and timely responses to requests for information from all members of Congress, including the minority in the Senate?

Mr. BASSETT. Senator, I do. I had the pleasure of meeting with your staff in depth during this process, and they raised a number of concerns that you are bringing up today. I appreciate those concerns and will fully cooperate and work with your staff to give accurate and timely responses. And I am sorry that has been your experience to date.

Senator CASEY. And I appreciate that. Chairman Hatch has made this point a number of times—Senator Grassley—so Democrat and Republican, I think we have a lot of agreement about producing documents and being responsive.

Mr. Bassett and Mr. Charrow as well, do you also believe the administration should provide documents to Congress when requested, absent a legal basis for withholding them, especially when those documents have been shared with other members of Congress and reported on in the press?

Mr. CHARROW. Yes.

Mr. BASSETT. Yes.

Senator CASEY. Thanks.

I want also to get to, Mr. Kaplan, a couple of questions with regard to excess capacity in steel. We are told by the OECD that there is more than 700 million metric tons of global excess capacity in steel.

China accounts for the majority of that. Last year the G20 created a new forum to address this problem. Very little action has been taken on this.

What do you think should be done to address this global excess capacity problem with regard to steel?

Mr. KAPLAN. Senator, I agree with you that it is an enormous problem. One of the biggest problems we face is overcapacity in China for some industrial products, including, of course, steel.

I think we have to use all the tools we possibly can to resolve this. I think it is good that the OECD is having talks about this, but I think we may need to do some very creative cases and turn the pressure on even more to actually get this resolved.

There are a lot of tools we have. We can self-initiate dumping and countervailing duty cases. I did that when I was in the Department of Commerce. We can use Section 301, and I think it is time to bring that back. We can use WTO cases. Those take a long time, but they are sometimes successful.

If you look at the aircraft cases, they have been—I think—very useful for the U.S. industry. Obviously, we have 232, and that process is ongoing.

Senator CASEY. Great. Thank you very much.

The CHAIRMAN. Okay.

Senator Brown?

Senator BROWN. Thank you, Mr. Chairman. Thanks for this hearing.

Mr. Kaplan, thank you for your work with me over the years in strengthening trade enforcement.

Mr. KAPLAN. You are welcome.

Senator BROWN. We know, as Senator Casey said in his question, how important that is for our country. I know that you have a long record of fighting for U.S. manufacturers. I look forward to supporting your nomination when Chairman Hatch brings it up.

As you know, we have worked to increase—for years—the number of tools the U.S. has to crack down on currency manipulation. I believe Commerce has the authority to address it under the new trade remedy laws. Do you believe currency should be treated like a countervailing subsidy in trade cases when raised by a U.S. petitioner?

Mr. KAPLAN. Senator, obviously that is something I will need to discuss with the Secretary, ultimately, but in my view, the U.S. countervailing duty law does cover currency manipulation, and it is something we should look into doing, if I am confirmed.

Senator BROWN. It is really important, I think, to both parties and almost every member of this committee. So thank you.

Section 232—the President has pretty much led us to believe he is moving on that. The Commerce Secretary spoke about moving quickly on that. As you know, the delay has been a problem in terms of foreign steel interests not playing on a level playing field, selling more and more and more steel into this country in anticipation of 232 action. The action has not happened.

Will you support a quick resolution, if confirmed, to the 232 investigation so we can put an end to this uncertainty?

Mr. KAPLAN. Yes, absolutely. I think that is very important. I am aware of the problems of steel coming in in anticipation of a result in that case.

I should mention that 232 is actually under another unit in Commerce, not ITA. It is under the Bureau of Industry and Security. So there is another nominee—

Senator BROWN. But you know people, and you are smart. And they will listen to you. [Laughter.]

Mr. KAPLAN. Well, I will do whatever I can.

Senator BROWN. We have to figure out how to get action. The excess capacity in China—not just steel, but other commodities too—it is so important that we get action and we move past these discussions and these words and these tweets or whatever we are doing or not doing about China. I know Senator Casey has been—he and I have talked about this a lot.

Mr. Charrow, thank you, and I enjoyed our brief conversation prior to your coming out here. There is an article in *The Columbus Dispatch*, the most conservative newspaper in Ohio, entitled “Trump Can Kill Ohio Plan to Save Health Exchanges.”

I would like to, Mr. Chairman, enter this in the record, and I will be brief so Senator Cantwell can get her turn.

The CHAIRMAN. Without objection.

[The article appears in the appendix on p. 35.]

Senator BROWN. Thank you, Mr. Chairman.

The *Dispatch* says nothing is guaranteed until the companies sign contracts with the Federal Government at the end of September. Even then, coverage will be certain only through 2018.

My question is this, Mr. Charrow: will you commit to upholding the law, including the ACA and its CSRs, and commit to doing ev-



everything you can in your position to provide certainty for States like Ohio?

Mr. CHARROW. Yes, I will.

Senator BROWN. Okay. Thank you. Thank you very, very much. That matters to so many people in our States. Will you commit to objecting to any efforts to sabotage the law, even if those efforts are made outside the bounds of HHS authority?

Mr. CHARROW. As I stated during my testimony, I am a firm believer in applying the law as written and passed by Congress, and if an action is inconsistent with the law, I will not approve it.

Senator BROWN. Thank you.

And last, will you commit to notifying Congress that the administration is attempting to skirt the law or if the administration moves to explicitly undermine any current provisions of the law?

Mr. CHARROW. People who know me know that I have a big mouth. [Laughter.]

Senator BROWN. And you are as smart as Mr. Kaplan, I understand, perhaps. [Laughter.]

Thank you. Thanks to the three of you.

The CHAIRMAN. All right.

Senator Cantwell?

Senator CANTWELL. Thank you, Mr. Chairman.

Mr. Kaplan, do you think it is important to have a functioning Export/Import Bank to do your job at the Department of Commerce on promoting international trade?

Mr. KAPLAN. Senator, I think it is a very important tool for exports from the United States. Secretary Ross has said it is an important tool in our tool box. The President has said that he thinks that it is a good program. He thinks it is a program, actually, that can make money for the United States. I share those views.

Senator CANTWELL. It does make money, but there are those in the Cabinet who have said from time to time they consider it controversial, and I always point out to them, it was supported by a majority of Democrats and Republicans. So it may have some detractors, but it is supported by the majority of both bodies and both parties.

I am concerned about Chinese regulation of U.S. technologies in the cloud service area. This is an important, growing development for us, and obviously we give access to those cloud computing companies here in the U.S.

So China has a draft regulation, along with the existing Chinese law, that would require U.S. cloud providers to transfer intellectual property, surrender brand names, give control of their business to Chinese companies. No other country has these kind of restrictions, and I would assume that the United States wants to do everything that we can to stop these kind of restrictions.

Mr. KAPLAN. Absolutely. I have worked on this area for a long time. I was the first person, I think, who tried to challenge what they call the great firewall in China, stopping Internet providers from getting in there by using the General Agreement on Trade Services. We made some progress. At least USTR did raise that at the services discussions in Geneva.

On cloud computing, this is a really big problem, and it is getting bigger all the time. I have heard in the press—as I am sure you

have—that USTR is considering a 301 on some of the technology transfer issues.

This is an area where we may have to be prepared to take action against companies from China if they continue to do this to our companies within China. There are opportunities, I think, to prevent certain high-tech companies from having complete access to the U.S. market if we have to do that to get satisfaction on cloud computing issues in China.

Senator CANTWELL. What do you think is a better way to pursue? Right now, what would be the next steps, do you think?

Mr. KAPLAN. Well, in the comprehensive dialogue, I think this has to be raised. I think there has been a lot of talk about services already in that dialogue, and I think probably the next step is to raise it very strongly in the comprehensive dialogue. And as I mentioned, the 301—at least there are press reports about it, and that might be very helpful too, because I think with China you have to have some kind of case at your back when you are having these discussions, to be successful.

Senator CANTWELL. Well, I also think that our northwest companies have—I just believe in competition. You are going to compete and cooperate at the same time.

Mr. KAPLAN. Sure.

Senator CANTWELL. And it is too big of a market to ignore, and at the same time, we have to press our case. So our companies have had to figure out very strategic ways of doing that. And I do think that SED, the Strategic and Economic Dialogue, is a good place to focus on the fact that Alibaba is a big player in the U.S., and why would they think that we would submit to these kinds of practices in China, as a way to continue the dialogue of how all of this market of cloud computing is going to play out. I think that would be very, very helpful.

SED has been successful on helping us focus on clean energy technology and get some MOUs. So maybe there is a possibility to do that, but I so appreciate you wanting to pay attention to it.

I would just note, Mr. Chairman, because of your help and everything that this committee did on the Customs bill, we were able to give a new enforcement tool to USTR to have more resources on enforcement. I believe if 95 percent of consumers are outside of the United States and with all our activity, we should be beefing up enforcement just to make sure business can happen.

I noticed the administration has zeroed out that program. So I do not think that is where the House and Senate are, but hopefully we can educate the White House on why it is so important to have trade enforcement resources within USTR.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

As I understand it, Senator Wyden has some questions he wants to ask. Otherwise, I am going to end this hearing. I would just as soon end it.

It is clear that you are very competent people. I am very proud of you.

I have to get over and vote, but Senator Wyden has a question, and we will just recess until he gets here after the vote. Is that okay?

Senator CANTWELL. Well, I can ask a question while he—I know we were both in a fire hearing, which is a very important topic, Mr. Chairman.

The CHAIRMAN. Why don't you go ahead with any further questions, and then if you finish and Senator Wyden is not here, recess until he gets here.

Thank you.

Senator CANTWELL [presiding]. Yes. I will ask a question of Mr. Charrow. Thank you.

Mr. Charrow, this is an important question. We are not just filler for Mr. Wyden.

If confirmed as General Counsel, will you ensure that the administrative action taken by the Department follows the law of the land and continue to administer something that is called the Basic Health Plan under section 1331 of the Affordable Care Act?

Mr. CHARROW. Yes.

Senator CANTWELL. Good. Yes. Thank you.

This is a very important tool that is bringing about great success in driving down costs of health care in the States that have implemented it, and it is different than the exchanges in the context of how it is run. So it has been very cost-effective in delivering up for consumers a big clout.

If you buy in bulk, you get a discount, and bundling up the individual market into this kind of opportunity has allowed them to get better rates from insurers and successfully drive down costs. So we want to continue to explore that as a way to help us in cost savings.

I will turn it over to my colleague.

Senator Menendez?

Senator MENENDEZ. Well, thank you, Senator Cantwell.

Congratulations on all of your nominations. I am sorry I was not here for your earlier part. We had a markup in the Foreign Relations Committee. But I did have a couple of questions that I wanted to ask.

Mr. Kaplan, our competitors around the world are dedicating greater resources towards economic diplomacy, aggressively helping their companies increase exports. Unfortunately, U.S. companies cannot count on the same level of support from the United States Government. That often prevents American firms from competing on a level playing field. As I have traveled the world and talked to our embassies and talked to American Chambers of Commerce abroad, I hear this as one of the constant refrains almost anywhere.

Now, if we cut 384 commercial and service officer positions and close 10 domestic and 35 overseas offices, it seems to me that is going to be even a greater challenge. So do you believe this budget approach is consistent with the goal of growing U.S. exports and reducing the trade deficit?

Mr. KAPLAN. Senator, I, of course, was not at Commerce—and I am not now—when this budget was put together. But as soon as I am confirmed—if I am privileged to be confirmed—I am going to look at those budget issues very carefully and discuss those with the Secretary, and with the White House if warranted, because I think we need to do everything we can to increase exports. As

many of the members have mentioned, 96 percent of the world's consumers are outside our borders. So we have to be able to get our products out there.

Senator MENENDEZ. So is it fair to say that if you are confirmed, you will be an advocate for a robust foreign commercial service?

Mr. KAPLAN. Absolutely. I think it is an incredibly important program, and I have heard many, many good things about it over the years.

Senator MENENDEZ. What do you see the Foreign Commercial Service's main mission being abroad, if you were to be confirmed?

Mr. KAPLAN. I think it is to promote and increase our exports everywhere in the world. That is their main mission, and I think they have helped many, many companies, large and small, do that.

They also do some work promoting investment back into the United States by foreign investors, and I think that is very important too.

Senator MENENDEZ. Now, one of the things that is incredibly important to our country, which continues to lead in the creation of innovation in the world, is intellectual property questions. For New Jersey, which is the medicine cabinet of the world, the intellectual property questions in the biopharmaceutical field are incredibly important. Do you have any sense of what you think the International Trade Administration can do, what more they can do to advance policies for American innovators that appropriately recognize and reward the value of medicines, that ensure patients have access to the medicines they need?

Mr. KAPLAN. Well, I think we are uniquely positioned to do that. We have intellectual property attachés as part of the Foreign Commercial Service in many of the foreign embassies, and they can push on this issue very significantly in the countries where they are located.

Secondly, as of course you know, the Patent and Trademark Office is part of Commerce, and I intend to work closely with them to develop international strategies.

And finally—I mentioned this a little earlier in the hearing—I think it is time, maybe, to dust off what is called Section 301, which is a very important trade law that has very strong intellectual property language in it. If need be, we can turn to that to use the litigation approach to make sure our pharmaceutical companies are protected.

Senator MENENDEZ. Well, thank you for those thoughtful answers.

Mr. Bassett, as a former Hill staffer, I know you would appreciate—I hope—how much members and staff value open lines of communication with agencies. Can you speak to your plan for ensuring that members on both sides of the aisle and the Capitol get the responses they need to their inquiries?

Mr. BASSETT. Yes, Senator. Thank you for your question.

In my opening remarks and in several other remarks, I mentioned that, in doing the due diligence through this nomination process, the need for responsiveness was something that came through crystal clear from both sides. And I gave this committee my absolute commitment to work in a bicameral and bipartisan

fashion to get you and your staff the information you need in order to do your jobs.

Senator MENENDEZ. And in particular, Senator Booker and I have been having issues getting responses from the FDA about an issue I would appreciate your help with—should you be confirmed—working with us just to get an answer. So we will commend that to your attention upon your confirmation.

Finally, Mr. Charrow, let me ask you this. We were able to spend some time together, and I appreciated you stopping by the office to talk about the role of the General Counsel, which I think is incredibly important.

We have had a great debate over the last, not just 7 years but 7 months, intensively, about the Affordable Care Act. For those who like it and for those who do not like it, it is the law of the land. Americans are free to disagree with the law, but they are not free to disobey it.

So my question is, as General Counsel, will you ensure that, in any of the actions taken by the Secretary and/or his subordinates in the Department of Health and Human Services, you will advise them as General Counsel to faithfully and fully administer the Affordable Care Act as it is in law?

Mr. CHARROW. That is the most important aspect of my job, and I will do so.

Senator MENENDEZ. Okay.

And you mentioned that HHS regulations are often thought by the courts to be linguistically incomprehensible.

Mr. CHARROW. That is correct.

Senator MENENDEZ. Now, I get that. I share that view in some respects, but given that the administration is committed to reducing the number of regulations, how will you ensure that regulations are promulgated to ensure clarity for HHS programs in light of the administration's view that we need less regulation?

I am not one of those who advocate for regulations for regulations' sake, but there is a broad swath that is left as a result of congressional past statutory law that does get interpreted, needs to be interpreted, so that people know what are the rules of the road, how to follow it, how to stay within it. Give me a sense of that.

Mr. CHARROW. I think, as you pointed out, it is a balancing act. You do not want to overregulate, but you want to provide all the sectors that are affected with enough information so that they can do their business.

I am of the firm view that regulations that are necessary should be there, and they should be promulgated in a way that is consistent with the APA. And if a regulation is unnecessary, then we should look into, perhaps, repealing it, or in fact, replacing it with a guidance which tends to be more flexible.

Senator MENENDEZ. Thank you, Mr. Chairman.

Senator WYDEN [presiding]. I thank my friend from New Jersey and appreciate him giving me the chance to return.

Mr. Kaplan, let us turn to trade for a moment. I have been clear that meaningful consultations with the Congress and communications with the public are essential for all the aspects of the trade agenda. Yet the Commerce Department has been keeping the committee in the dark on several matters, including proposals being

developed by Commerce Department officials to resolve the ongoing dispute with Canada over softwood lumber.

Senator Crapo and I noted at June's trade hearing that the committee has to be consulted every step of the way and should be briefed on the details of the proposals before they are made to Canada.

The two of us, Senator Crapo and I, sent a letter, along with five other members of the committee, to Secretary Ross and Ambassador Lighthizer emphasizing the need for a strong outcome for American mill workers. I also put this in the context of what we think is real consultation.

Real consultation is not telling us 5 minutes before something is going to happen, before a proposal is offered, or agreement is reached, or something of that nature. It is done in a way where members of this committee, both Democrats and Republicans, can actually have a chance to reflect on what is being considered and give our comments. That is what we think real consultation is all about.

Will you commit fully to having that kind of real briefing? From now on, I am not just going to talk about a briefing. I am going to talk about a real briefing, so there is an opportunity for meaningful consultation between members of the committee and their staff, in particular on the softwood lumber case, and before our country gives the proposals to Canada.

Mr. KAPLAN. Senator, I hear you loud and clear on that, and I absolutely agree to do that with all the members of this committee. I actually very much enjoy speaking with members of the Finance Committee, because I learn so much, and it is so important. So yes, I do agree to do that.

I should mention that the date of the lumber final is September 6th. So if I am privileged to be confirmed and confirmed before then, I will be more effective in that regard. But I absolutely—

Senator WYDEN. That is a really clever argument for the United States Senate Finance Committee to move quickly. We have had ingenious arguments made over the years. I think yours is about as good as I have heard. [Laughter.]

Mr. KAPLAN. Thank you, Senator.

Senator WYDEN. Okay.

As you know, I have been very impressed with the quality of your work, as we have talked about in the past. And I am not going to call this the Kaplan Doctrine on Consultation or anything like that, but it is different than when we have asked the question in the past. Please communicate to the whole trade team that that is how I am going to ask for it in the future: consultation is not giving us something 5 minutes before something is going to happen. Okay?

Mr. KAPLAN. I understand that.

Senator WYDEN. Let me turn to one other question, if I might.

Senator Thune and I, for years, have been a little bit of an outpost supporting digital trade and digital goods. And a lot of this, of course, has shown incredible economic potential, and it has all happened basically after NAFTA. And a lot of the trade architecture that is in place and is vital to exporters in every State, and

to industries—we have called on the administration to tackle a very wide range of barriers to our digital exports.

Now in the past, the Commerce Department has been a leader in the executive branch on a number of these issues that are important to digital trade. I would like to hear your thoughts about how you are going to follow up specifically on making sure that digital trade is at the top of your agenda and look at the structure of the agency in order to figure out where the barriers are and the challenges.

Mr. KAPLAN. Senator, I definitely will do that. And I think Commerce and ITA are uniquely qualified to work on digital trade issues. I think, obviously, USTR will play a big role in that. But I think we have many layers of expertise on digital trade, first in ITA, but then also in NIST, in the Patent and Trademark Office, in the Bureau of Industry and Security, and I think we ought to be a central force for making sure that United States digital trade has access and is not pressured anywhere in the world.

Senator WYDEN. Okay.

Well, thank you all. You all bring substantial qualifications to these positions. It is my intention to work with my colleagues on both sides to advance the consideration of your nominations. I was going to do that even before Mr. Kaplan offered his clever, fresh argument about being moved quickly. [Laughter.]

With regards to written questions for the record, on behalf of the chairman, I would just like to make clear, per the chairman's instruction—which I support—that committee members submit them by close of business on August 8th.

With that, we are adjourned.

[Whereupon, at 11:30 a.m., the hearing was concluded.]





## APPENDIX

### ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

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PREPARED STATEMENT OF MATTHEW BASSETT, NOMINATED TO BE ASSISTANT SECRETARY FOR LEGISLATION, DEPARTMENT OF HEALTH AND HUMAN SERVICES

Chairman Hatch, Ranking Member Wyden, thank you for inviting me to testify today. I am honored to stand before you as the President's nominee for Assistant Secretary for Legislation at the Department of Health and Human Services.

First, I would like to take a minute to introduce and thank my family who are here today: my wife Stacy and my son Matthew, Jr. My father David Bassett and my uncle Ben Ash have also joined us, and I must say hello to my mother Georgia who is no doubt one of five people enthusiastically tuning into C-SPAN today just to see me.

Senators, having enjoyed the privilege of working in the health-care industry for over 20 years, I have seen many challenges to our Nation's health-care system firsthand. I have seen these challenges from the patient, provider and payer side; the public and private side; and the State and Federal side. I'm of the firm belief that as Americans, we are very fortunate to live in a country that has the greatest, most innovative healthcare system in the world. People from other countries travel to the United States to seek the latest cutting edge care and technologies that don't exist back home. Yet our health-care system is not without substantial challenges. High-quality, affordable care is at risk for an unacceptable number of Americans and their families.

Addressing these challenges is of acute interest to me, and having served as the Chief of Staff at the Cabinet for Health and Family Services in the great Commonwealth of Kentucky, I saw firsthand how policy formed on Capitol Hill affects folks back home. At the time I served in this position, Kentucky was experiencing an opioid scourge, imploding individual and small group markets, and a Medicaid program our State could simply not afford. Should I have the honor to be confirmed, I hope to have the opportunity to work with you and your staff as we all face similar challenges today.

And perhaps the most significant qualification for the position to which I have been nominated is the fact that I actually served as a Capitol Hill staffer. Having worked for two members of the House of Representatives, I understand the unique role the Assistant Secretary for Legislation has in working with members of Congress to make sure constituents' voices are heard and their needs are addressed in Washington, DC.

The Office of the Assistant Secretary for Legislation is responsible for the development and implementation of the Department's legislative agenda. As a liaison between HHS and Congress, I would not take this responsibility lightly. I understand that the information you rely on within HHS and all of the agencies contained therein is critical to fulfill legislative duties.

Should I receive the confidence of the Senate to serve as the Assistant Secretary for Legislation at HHS, I pledge to stay true to these lessons learned, and to ensure that each and every day ASL stands as a resource for Congress, reliably and readily bridging these two great bodies to best serve the American people.

Thank you again for the opportunity to appear this morning, and I look forward to answering your questions.

**SENATE FINANCE COMMITTEE**  
**STATEMENT OF INFORMATION REQUESTED**  
**OF NOMINEE**

**A. BIOGRAPHICAL INFORMATION**

1. Name (include any former names used): Matthew David Bassett.
2. Position to which nominated: Assistant Secretary for Legislation at Health and Human Services.
3. Date of nomination: May 8, 2017.
4. Address (list current residence, office, and mailing addresses):
5. Date and place of birth: January 27, 1973; Ft. Lauderdale, Florida.
6. Marital status (include maiden name of wife or husband's name):
7. Names and ages of children:
8. Education (list secondary and higher education institutions, dates attended, degree received, and date degree granted):  
 Cardinal Gibbons High School, 1990–1991, High School Diploma, May 1991.  
 Baylor University, 1992–1995, B.A. Communications Specialist, August 1995.  
 Trinity University, 1996–December 1998, Master of Science, Health Care Administration.
9. Employment record (list all jobs held since college, including the title or description of job, name of employer, location of work, and dates of employment):  
 Senior vice president of government relations, my NEXUS, Nashville TN, March 2015–November 2015.  
 Principal of Bassett Consulting LLC, Nashville TN, November 2012–February 2015.  
 Senior vice president, Revive Health, July 2011–December 2011.  
 Vice president for public policy, DaVita Inc. home office in Lexington, KY and Nashville, TN, May 2006–July 2011.  
 Chief of Staff, Kentucky Cabinet for Health and Family Services, December 2003–April 2006.  
 Deputy Chief of Staff, Congressman Ernie Fletcher, Washington, DC, January 2003–November 2003.  
 Senior Legislative Assistant, Congressman Pete Sessions, Washington, DC, January 2001–December 2002.  
 Hospital and Health Facility Development Consultant at the Texas Department of Health, Austin, TX, September 1999–December 2000.  
 Policy Analyst for Texas Senate Health Services Committee, Austin, TX, February 1999–September 1999.  
 Administrative fellow, Baylor Health Care System, Dallas, TX January 1998–January 1999.
10. Government experience (list any advisory, consultative, honorary, or other part-time service or positions with Federal, State, or local governments, other than those listed above):  
 Board of directors of the Access Tennessee Health Insurance Pool (AccessTN).
11. Business relationships (list all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, other business, enterprise, or educational or other institution):

I consulted for Liberty Partners Group, LLC on behalf of their Dental Service Organization clients. I tracked legislation, provided strategic advice and on occasion attended meetings to represent them.

12. Memberships (list all memberships and offices held in professional, fraternal, scholarly, civic, business, charitable, and other organizations):  
None.
13. Political affiliations and activities:
  - a. List all public offices for which you have been a candidate.  
None.
  - b. List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.  
None.
  - c. Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of \$50 or more for the past 10 years.  
2010, Trey Grayson for U.S. Senate, \$500.  
2012, Newt Gingrich for President, \$500.
14. Honors and awards (list all scholarships, fellowships, honorary degrees, honorary society memberships, military medals, and any other special recognitions for outstanding service or achievement):  
None.
15. Published writings (list the titles, publishers, and dates of all books, articles, reports, or other published materials you have written):  
Wrote op-ed in the Lexington *Herald Leader* in my capacity as Chief of Staff for the Kentucky Cabinet of Health and Family Services, 2004/2005.
16. Speeches (list all formal speeches you have delivered during the past 5 years which are on topics relevant to the position for which you have been nominated):  
None.
17. Qualifications (state what, in your opinion, qualifies you to serve in the position to which you have been nominated):
  - Health-care policy expert with over 20 years of experience in both the public and private sectors.
  - Senior executive who has represented both elected officials and private interests with the United States Congress, State legislatures, Federal and State regulatory agencies, associations, coalitions, and the media.
  - Extensive experience regarding: Medicare, Medicaid, and insurance/payer issues.
  - Strategist who has designed and managed both public policy and legislative campaigns in multiple States and in Washington, DC.
  - Effective manager who has overseen multi-million dollar budgets in State agency and corporate environments and has led corporate, government agency, and contract staff.

#### **B. FUTURE EMPLOYMENT RELATIONSHIPS**

1. Will you sever all connections with your present employers, business firms, associations, or organizations if you are confirmed by the Senate? If not, provide details.  
Yes.
2. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, provide details.  
No.
3. Has any person or entity made a commitment or agreement to employ your services in any capacity after you leave government service? If so, provide details.

No.

4. If you are confirmed by the Senate, do you expect to serve out your full term or until the next presidential election, whichever is applicable? If not, explain.

Yes

### C. POTENTIAL CONFLICTS OF INTEREST

1. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated.

I am a passive partial owner of a home and hospice company, Adoration LLC, in the central Tennessee area. I will be divesting this holding within the prescribed guidelines and timetable.

2. Describe any business relationship, dealing, or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

None.

3. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of any legislation or affecting the administration and execution of law or public policy. Activities performed as an employee of the Federal Government need not be listed.

None.

4. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items.

I will be divesting my holding in Adoration LLC, within the prescribed guidelines and timetable.

5. Two copies of written opinions should be provided directly to the Committee by the designated agency ethics officer of the agency to which you have been nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position.

Copies of the written opinions have been supplied to the committee.

### D. LEGAL AND OTHER MATTERS

1. Have you ever been the subject of a complaint or been investigated, disciplined, or otherwise cited for a breach of ethics for unprofessional conduct before any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, provide details.

No.

2. Have you ever been investigated, arrested, charged, or held by any Federal, State, or other law enforcement authority for a violation of any Federal, State, county, or municipal law, regulation, or ordinance, other than a minor traffic offense? If so, provide details.

No.

3. Have you ever been involved as a party in interest in any administrative agency proceeding or civil litigation? If so, provide details.

No.

4. Have you ever been convicted (including pleas of guilty or *nolo contendere*) of any criminal violation other than a minor traffic offense? If so, provide details.

No.

5. Please advise the committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination.

Letters of support have been supplied to the committee.

### E. TESTIFYING BEFORE CONGRESS

1. If you are confirmed by the Senate, are you willing to appear and testify before any duly constituted committee of the Congress on such occasions as you may be reasonably requested to do so?

Yes.

2. If you are confirmed by the Senate, are you willing to provide such information as is requested by such committees?

Yes.

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#### QUESTIONS SUBMITTED FOR THE RECORD TO MATTHEW BASSET

##### QUESTION SUBMITTED BY HON. ORRIN G. HATCH

*Question.* The ACA created the Star Ratings program, where Medicare Advantage plans with four or more stars receive add-on payments to their benchmarks. The ACA also placed a cap on each county's benchmark. The quality bonus add-on payment is included in determining the benchmark cap. This can result in plans that would have been rewarded for high quality ratings not receiving the full value of their add-on payment, which can be a disincentive for quality.

I understand that CMS does not believe it has the authority to lift the benchmark cap or to remove quality incentive payments from the benchmark cap and has stated it would require a legislative change. Will you commit to reviewing this issue and determining whether the Secretary has the authority to address this issue?

*Answer.* If confirmed, I will be glad to work with the Office of the General Counsel and the appropriate policy divisions to review this matter and determine whether the Secretary has the authority to address this issue.

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#### QUESTIONS SUBMITTED BY HON. CHUCK GRASSLEY

*Question.* In recent months my staff has reached out to both CMS and HHS for technical assistance on legislation under consideration. In some cases it has taken multiple requests by my staff to get this assistance.

Do you intend to be responsive to requests from my office?

*Answer.* Yes. If you believe there have been instances in which technical assistance has been unduly delayed, I look forward to working with your office to improve response times.

*Question.* Furthermore, do you intend to be responsive to staff and members of this committee?

*Answer.* Absolutely. If confirmed, I will always make it a priority to respond to all members and congressional offices.

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#### QUESTIONS SUBMITTED BY HON. JOHN THUNE

*Question.* I appreciate your commitment to ensuring the Department is responsive to Senators. As I've raised with Secretary Price, Administrator Verma, and other nominees who have come before the committee, I have serious concerns regarding the ongoing challenges faced by the Indian Health Service. In fact, late last week we received notice from the Acting Assistant Secretary that the IHS Sioux San Hospital emergency and inpatient departments would be permanently closed within a year. This is a decision that impacts the tribal members that utilize this facility as well as the local hospital who will now have the responsibility of caring for these patients. As we continue discussions with stakeholders in our state, if confirmed, will you commit to ensuring that HHS responds to questions regarding this closure in a timely fashion?

*Answer.* If confirmed, I will respond to all member requests in a timely and appropriate manner. If confirmed, I will have the Office of the Assistant Secretary for Legislation contact your office so that we can begin discussions on your concerns.

*Question.* Senators Barrasso, Hoeven, and I have introduced the Restoring Accountability in the IHS Act, which will give HHS flexibility to terminate poorly performing employees, streamline the hiring process so IHS can recruit talented health care providers, and create incentives so those folks will stay on the job longer. Though we've already been working with the Department on technical assistance, I want to ask, if confirmed, for your commitment to continue working with us on this bill and ensure timely feedback.

*Answer.* I will respond to all member requests in a timely and appropriate manner. If confirmed, I will have the Office of the Assistant Secretary for Legislation contact your office so that we can discuss this technical assistance and other ways in which the office may be helpful.

*Question.* I want to highlight one other pending item that my office has with HHS and CMS regarding reimbursement for durable medical equipment. At our budget and confirmation hearings with Secretary Price, he expressed his interest in finding solutions to the challenges rural areas face with the application of competitive bidding rates in non-competitively bid areas. 48 other Senators and I recently sent a letter urging the Department to take swift action to provide relief through the regulatory process. As we're approaching the end of the year, we're hopeful to receive a quick response. As such, if confirmed, will you commit to helping get a response to that letter in the near future?

*Answer.* I will respond to all member requests in a timely and appropriate manner. If confirmed, I will have the Office of the Assistant Secretary for Legislation contact your office so that a response to your letter can be drafted as quickly as possible.

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QUESTIONS SUBMITTED BY HON. DEBBIE STABENOW

*Question.* There are many priorities I want to work on during this Congress, including improving access to school based health centers, expanding the Excellence in Mental Health Demonstration, and strengthening and improving the Medicare program.

Will you commit to working with me, and consistently responding in a timely manner, both when we share policy positions and when we may not?

*Answer.* Absolutely. If confirmed, it is my intent to respond appropriately to all member requests.

*Question.* One of ASL's missions is to work with the White House to advance presidential initiatives. My opinion is the health care of the Americans should be put first by the agency that serves them. I'm concerned that President Trump recently said the plan was to "let Obamacare fail," rather than working to make our health-care system better. At HHS, there have been efforts to limit outreach and decrease enrollment in health care plans and make tax credits less generous, for example.

If confirmed, how will you handle situations in which the administration's objective is not aligned with the mission of your office?

*Answer.* The mission of the Department is to provide for the health and well-being of all Americans and, if confirmed, I will uphold that mission in my work for the administration.

*Question.* Do you agree that HHS should "let Obamacare fail"?

*Answer.* The administration has emphasized the importance of reforming our health-care system to one that works better for patients and their providers. Should I have the privilege to serve, I am eager to work with Congress toward that end and to ensure the American people have access to affordable coverage.

SUBMITTED BY HON. SHERROD BROWN, A U.S. SENATOR FROM OHIO

From *The Columbus Dispatch*, August 1, 2017

TRUMP CAN KILL OHIO PLAN TO SAVE HEALTH EXCHANGES

By Marty Schladen

If President Donald Trump carries through on his threat to end \$7 billion in annual Federal reimbursements to insurers, that could prompt the collapse of the federal and state health exchanges.

Insurance coverage is likely to be restored on the Federal health exchange for Ohioans in at least 19 of 20 counties where insurers recently announced they are pulling out.

But the measure appears to be only a temporary fix—and it may never happen if President Donald Trump carries out a threat to undermine Obamacare.

The Ohio Department of Insurance has found five insurers who are willing to expand into all but one of the underserved Ohio counties, Chris Brock, the department's assistant director of public affairs, said Monday. The search for a Paulding County insurer continues.

He cautioned, however, that nothing is guaranteed until the companies sign contracts with the Federal Government at the end of September. Even then, coverage would be certain only through 2018.

"This is not a commitment that they will be here in the next 2 years or 5 years or 10 years," Brock said.

Indeed, uncertainty surrounding the future of health care continues to reign in Washington. Republican efforts to repeal or dramatically scale back the program have repeatedly failed on Capitol Hill, leaving Trump threatening to let Obamacare "fail."

Many have interpreted those threats to mean the administration would end \$7 billion in annual Federal reimbursements to insurers for subsidizing prescription and medical copays for lower-income Americans. Ending the subsidies would prompt double-digit premium increases and possibly send the Federal and State health exchanges into a death spiral, experts have said.

Brock said the uncertainty in Washington could undermine arrangements in Ohio.

"Nothing is really final until these contracts are signed at the end of September," he said. "There are things at the Federal level that could change this."

In a statement, Ohio Senator Jay Hottinger, R-Newark, seemed to agree.

"The challenges and uncertainty in the marketplace continue to be a house of cards, and the slightest changes could result in further turmoil, but today we celebrate the good news of the five carriers who have stepped up to serve Ohioans in those counties," he said.

Created under the Affordable Care Act, also known as Obamacare, the health exchanges were created so that individuals who are not otherwise covered could buy health insurance. Those earning up to four times the Federal poverty standard can qualify for Federal subsidies for their insurance on the Federal and State exchanges. (Ohio uses the Federal exchange.)

Mega-insurer Anthem, citing uncertainty about Obamacare's future as part of the reason, announced in June it would pull out of Ohio at the end of this year, leaving 20 counties without a coverage option. Dayton-based Premier Health Plan also announced that it would leave the nine counties in which it offered coverage on the health exchange at the start of 2018.

With about 11,000 Ohioans standing to lose coverage because of the moves, Monday's news of a possible reprieve was welcomed by advocates.

"This is a great way to make sure people in those counties have access to some insurance," said Steve Wagner, executive director of the Universal Health Care Action Network Ohio.

Tentative arrangements have been made to provide insurance options for 2018 in Coshocton, Crawford, Guernsey, Hancock, Harrison, Hocking, Holmes, Jackson, Knox, Lawrence, Logan, Morgan, Muskingum, Noble, Perry, Van Wert, Vinton, Wil-

liams and Wyandot counties, Ohio Insurance Commissioner Jillian Froment said in a statement.

Those counties have relatively small populations, making them less attractive to insurers, said Cynthia Cox, associate director for the Study of Health Reform and Private Insurance at the Henry J. Kaiser Family Foundation.

Typically, just 5 percent of a county's population participates in the individual markets, meaning that insurers have to create networks of doctors and hospitals for a relatively small number of patients in rural counties, Cox said.

"It's not a surprise that you would have only a handful of companies compete for that business," Cox said.

She added that it's also not surprising that four of the five insurers expanding into the underserved Ohio counties—Buckeye Health Plan, CareSource, Molina Health Care of Ohio and Paramount Health Care—also operate Medicaid managed-care plans in the State. That means they already have provider networks in those areas, Cox said.

Medical Mutual of Ohio is the sole non-Medicaid insurer eyeing expansion into the underserved Ohio counties.

It's unclear how much arm-twisting was needed to get the Medicaid contractors to expand onto the rural exchanges, but Cox said some States require all such contractors to also offer plans on the individual exchanges in all counties.

"That's one of the only ways the States or the Federal Government can get insurers to go into some of these more rural counties," she said.

Dispatch Reporter Andrew Keiper contributed to this story.

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PREPARED STATEMENT OF ROBERT CHARROW, NOMINATED TO BE GENERAL COUNSEL,  
DEPARTMENT OF HEALTH AND HUMAN SERVICES

Chairman Hatch, Ranking Member Wyden, and members of the committee, it is an honor to appear before you as the President's nominee to serve as the General Counsel of the Department of Health and Human Services. I am joined by my wife, Dr. Veda Charrow, a retired Federal employee most recently at the National Institutes of Health.

I would like to thank this committee for considering my nomination. I have had many productive meetings with some of you and your staff already, and look forward to discussing the issues facing HHS with you today.

HHS's jurisdiction extends from the bench to the bedside, underwriting basic research that will lead to tomorrow's miracle drugs, new devices and biologics, and financing health care through various programs including Medicare, Medicaid, and the Children's Health Insurance Program. In that regard, HHS is a unique blend of science, health care, and finance.

I was privileged to serve as the Deputy General Counsel and Principal Deputy General Counsel during President Reagan's second term and into the presidency of George H.W. Bush. Aside from working on President Reagan's re-election campaign as a lawyer, I had been a law professor with little experience managing anyone other than scared law students. My first few months at HHS in 1985 were a rude awakening. But I was lucky. The career attorneys and staff at the Office of the General Counsel were remarkably helpful and extremely competent; traits that I understand persist and have not been lost to the passage of time. In fact, some of the career attorneys in the office 30 years ago still work at the Office of the General Counsel.

Since leaving HHS in 1989, I have been in private practice focusing on health-care law, administrative law, and general appellate litigation. In health care, I have represented academic medical centers, learned societies, hospital systems, research institutes, pharmaceutical companies, providers, and insurers. Those nearly three decades of seeing problems in the real world have brought home the salient differences between the obligations of government attorneys and those in the private sector.

The role of a General Counsel in a Federal agency is not the same as private attorney for a corporate client. The General Counsel's role and obligation is to make sure that all corners are squared and that the rules and policies issued by the agency are legally proper. They should be consistent with the legislation in substance. And



these rules and policies must follow the process required by the Administrative Procedure Act. In that regard, a General Counsel should act as a neutral arbiter assessing potential agency action as if he or she were a Federal district judge. The notion that a rule “may withstand judicial scrutiny” is not sufficient. The question, when reviewing any rule, is—how would I, as an impartial judge, assess that rule in light of all possible challenges.

Private clients expect their attorneys to develop novel legal arguments. Creating new legal theories or applying old ones in new ways is the most enjoyable aspect of my private legal practice. But that is very different than the role of General Counsel where legal creativity takes a back seat to acting as impartial arbiter. You may ask then, why would anyone forsake creativity? A legitimate question. The answer is simple—the legal issues themselves are unique and fascinating. In government service, one is confronted with legal issues that are so different from what is seen in private practice, and that more than makes up for any loss in creativity.

I am well aware that many HHS rules issued over the past generation, especially those implementing the Medicare Act, have been ridiculed by Federal courts as being linguistically incomprehensible. One role of a General Counsel is to ensure that the rules that defy comprehension do not see the light of day.

Experience representing private-sector clients has highlighted the importance of virtually all of the actors in our health-care system. I hope that this practical legal experience will help when reviewing rules, when counseling the Secretary, and when testifying before Congress.

I know from experience that HHS will be the subject of litigation. My goal is to ensure that the agency’s position in any given case is both legally correct and objectively just. The one thing I have learned over the years is that agency action which may be legally correct when viewed hyper-technically, but which offends fundamental notions of fairness, normally does not fare well in the courts.

Thank you for the opportunity to testify today. I now am happy to answer any questions.

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## SENATE FINANCE COMMITTEE

### STATEMENT OF INFORMATION REQUESTED OF NOMINEE

#### A. BIOGRAPHICAL INFORMATION

1. Name (include any former names used): Robert Phillip Charrow.
2. Position to which nominated: General Counsel, Department of Health and Human Services.
3. Date of nomination: June 6, 2017.
4. Address (list current residence, office, and mailing addresses):
5. Date and place of birth: October 21, 1944; St. Louis, Missouri.
6. Marital status (include maiden name of wife or husband’s name):
7. Names and ages of children:
8. Education (list secondary and higher education institutions, dates attended, degree received, and date degree granted):  
 John H. Francis Polytechnic High School (1959–1962), H.S. diploma—6/62.  
 Harvey Mudd College (1962–1966), B.S. physics—6/66.  
 Stanford University School of Law (1966–1969), J.D.—6/69.
9. Employment record (list all jobs held since college, including the title or description of job, name of employer, location of work, and dates of employment):

- a. Greenberg Traurig, LLP, Washington, DC: June 10, 2002–present (currently a principal shareholder); I practice law with an emphasis on health-care litigation.
  - b. Crowell and Moring, Washington, DC: June 1989–June 9, 2002 (last a partner); I practiced law with an emphasis on health-care litigation.
  - c. Office of the General Counsel, Department of Health and Human Services, Washington, DC: July 1985–April 1989 (last Principal Deputy General Counsel).
  - d. Reagan-Bush 1984, Washington, DC: Feb. 1984–July 1985 (deputy chief counsel) (lawyer for the President’s authorized re-election committee).
  - e. University of Cincinnati College of Law, Cincinnati, OH: Aug. 1980–Aug. 1983 (associate professor of law).
  - f. Howard University School of Law, Washington, DC: Jan. 1975–June 1980 (last an associate professor of law).
  - g. Federal Home Loan Bank Board, Office of Industry Development, Washington, DC: Dec. 12, 1977–Aug. 1978 (par-time consultant).
  - h. Center for Applied Linguistics, Arlington, VA: June 1, 1976–May 31, 1978 (co-principal investigator on NSF grant) (part-time).
  - i. United States House of Representatives; Washington, DC: July 1974–Dec. 1974 (Legislative Assistant).
  - j. University of Santa Clara College of Law, Santa Clara, CA: Sept. 29, 1972–June 15, 1974 (lecturer in law and supervising attorney).
  - k. Robert P. Charrow, Palo Alto, CA: June 12, 1971–June, 30 1974 (private practice of law).
  - l. Charrow and Reisman, Palo Alto, CA: Oct. 1, 1970–June 11, 1972 (private practice of law).
  - m. Layne, Brodie, and Germino, Palo Alto, CA: Feb. 1, 1970–Sept. 30, 1970 (associate-private practice of law).
  - n. Ralph J. Gampell, Esq., San Jose, CA: Nov. 15, 1969–Jan. 15, 1970 (law clerk).
  - o. Sequoia Union High School District, Redwood City, CA: Oct. 1, 1969–Nov. 14, 1969 (substitute teacher).
  - p. Legal Aid Society of San Mateo County, East Palo Alto, CA: June 10, 1968–Sept. 1, 1968 (summer law clerk).
  - q. RCA—Laser Division, Burlington, MA: July 1967–Sept. 1967 (laser physicist).
  - r. Korad—Laser Division of Union Carbide, Santa Monica, CA: June 1966–Sept. 1966 (laser physicist).
10. Government experience (list any advisory, consultative, honorary, or other part-time service or positions with Federal, State, or local governments, other than those listed above):
- Member of the Secretary’s Advisory Committee on Organ Transplantation (2001–2005) (waived compensation).
- Member, election board of town of Chevy Chase (May 2015–Sept. 2015) (no compensation).
- Board of advisors, Institute of Human Virology, University of Maryland School of Medicine (1999–present) (no compensation).
- Member, advisory board, The Institute for Cellular Therapeutics, University of Louisville, School of Medicine, Louisville, KY (1999–2001) (no compensation).
- Past advisor to the Pattern Jury Instruction Committees for the States of Maryland and Illinois (no compensation).
- Proposal reviewer, National Science Foundation (no compensation).
- Taught a one-week course in health law at Arizona State University College of Law (Jan. 2006) (travel expenses reimbursed; any compensation would have been paid to Greenberg Traurig).
- Judge Pro Tempore, Santa Clara County Municipal Court (portion of summer 1973) (no compensation).
- Interned in the District Attorney’s Office, Santa Clara County (1968–1969) (part-time) (no compensation).
11. Business relationships (list all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, other business enterprise, or educational or other institution):

Excluding clients of my two law firms, the positions are as follows:

Principal Shareholder, Greenberg Traurig, LLP.

Partner, Crowell and Moring.

Sterling Gas Drilling Fund 1981 ( $\frac{1}{800}$  interest) sold in Dec. 2016 for \$1,000 (passive investment).

Franklin Forest Valley Associates ( $\frac{1}{120}$  interest) sold about 15–20 years ago (passive investment).

Partner, Charrow and Resiman.

12. Memberships (list all memberships and offices held in professional, fraternal, scholarly, civic, business, charitable, and other organizations):

American Law Institute.

Cosmos Club.

American Bar Association.

California Bar Association.

District of Columbia Bar Association.

Adas Israel Congregation.

Federalist Society (contributor, but unclear whether I am a member).

American Statistical Association.

American Health Lawyers Association (through Greenberg Traurig, LLP).

Association of Trial Lawyers of America (faculty membership).

Republican National Lawyers Association.

Law and Society Association.

Linguistic Society of America.

Food and Drug Law Institute (through Greenberg Traurig, LLP).

Smithsonian (associate member).

Phillips Collection (member).

Advisory Board, BNA Medical Research Law and Policy Report (member) (2002–present) (no compensation).

13. Political affiliations and activities:

- a. List all public offices for which you have been a candidate.

None.

- b. List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.

No offices; currently represent a House Chief of Staff and a congressional campaign committee in an Ethics Committee proceeding in the House of Representatives. As GT client, have represented the NY State Democratic Party.

- c. Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of \$50 or more for the past 10 years.

Friends of Isiah Ike Leggett (Montgomery County) (2006) \$75.

Robert J. Garagiola for Congress (2012) \$500.

Romney for President (2011) \$250.

John McCain 2008 Inc. (2008) \$1,000.

Susan Collins for Senator (2007) \$250.

Greenberg Traurig, P.A. PAC (monthly) \$850/annum (2004–2011) and \$750/annum (2012–present).

Catania for Mayor (DC) Exploratory Committee (2014) \$600.

14. Honors and awards (list all scholarships, fellowships, honorary degrees, honorary society memberships, military medals, and any other special recognitions for outstanding service or achievement):

American Law Institute.

National Science Foundation Grant (Co-PI), 1976–1978.

Stanford University Scholarship, 1966–1969.

California State Scholarship, 1962–1966.

Secretary's Commendation (1987).

15. Published writings (list the titles, publishers, and dates of all books, articles, reports, or other published materials you have written):

A. Books

1. Charrow R., and L. Klaus, *The Short Book on Standing: A Practical Primer for the Practitioner* (New York: Thomson Reuters/Aspatore, 2015).
  2. Charrow, V., Erhardt, M., and Charrow, R., *Clear and Effective Legal Writing* (5th Edition) (New York: Aspen Publishers, Inc., 2013).
  3. Charrow, R., *Law in the Laboratory: A Guide to the Ethics of Federally Funded Science Research* (Chicago: University of Chicago Press, 2010).
- B. Articles/Chapters/Monographs
4. Charrow, R., and Klaus, L., “Birthers, Gifters, and Standing,” *National Law Journal* (Feb. 20, 2017).
  5. Charrow, R., and Serbaroli, F., “Office of Inspector General (OIG) Proposes New Anti-Kickback Law and CMP Safe Harbors,” *Nat’l L. Rev.* (posted on Thursday, November 20, 2014).
  6. Charrow, R., and Klaus, L., “Judicial Developments—Homeland Security in American Bar Association’s Developments in Administrative and Regulatory Practice 2013” at 8 (Jeffrey Lubbers, ed., 2014).
  7. Charrow, R., “Circuits Split Over Legality of IRS Rule Mandating Tax Credits for Individuals Covered Through Federal Exchanges Under the Affordable Care Act,” *Nat’l L. Rev.* (posted on Friday, August 15, 2014).
  8. Charrow, R., “Supreme Court Extends PLIVA Case to Preempt Certain Design Defect Claims Against Generic Drug Manufacturers,” *Nat’l L. Rev.* (posted on Friday, August 9, 2013).
  9. Charrow, R., Cherniga, M., Malone, M., and Taylor, N., “Stark Law Violations Costly to Intermountain Health Care Inc.,” *Nat’l L. Rev.* (posted on Friday, April 5, 2013).
  10. Charrow, R., and Klaus, L., “Judicial Developments—Homeland Security in American Bar Association’s Developments in Administrative and Regulatory Practice 2012” at 8 (Jeffrey Lubbers, ed., 2013).
  11. Charrow, R., and Taylor, N., “Supreme Court Upholds Affordable Care Act,” *Nat’l L. Rev.* (posted on Thursday, June 28, 2012).
  12. Charrow, R., and Taylor, N., “Accountable Care Organization (ACO)—The Real Journey Begins,” *Nat’l L. Rev.* (posted on Monday, April 11, 2011).
  13. Charrow, R., and Klaus, L., “Judicial Developments—Homeland Security in American Bar Association’s Developments in Administrative and Regulatory Practice 2008–2009” at 295 (Jeffrey Lubbers, ed., 2010).
  14. Kenney Jr., Robert J., Charrow, Robert P., et al., “The Implications of Obama’s Executive Order on the Study of Embryonic Stem Cells,” BNA’s Medical Research Law and Policy Report 253 (April 1, 2009).
  15. Charrow, R., “Protection of Human Subjects: Is Expansive Regulation Counter-productive?,” 101 *Nw. U. L. Rev.* 707 (2007).
  16. Charrow, R., and Ross, J., “Institutional Review Boards—Are They Science’s Answer to Hollywood’s Hays Board?,” BNA’s Medical Research Law and Policy Report (July 5, 2006).
  17. Charrow, R., and Goldman, E., “Regulation of Clinical Trials by the FDA: A Process in Search of Procedures,” BNA’s Medical Research Law and Policy Report (Feb. 4, 2004).
  18. Charrow, R., “The Federal Research Grant—Renaissance Patronage With Legal Formalities,” BNA’s Medical Research Law and Policy Report (May 1, 2002).
  19. Charrow, R., “The HIPAA Quagmire: Can Electronic Privacy Be Enhanced Constitutionally by a Paperwork Rule?,” *Health Care Review* (June 2001).
  20. Charrow, R., and Bramlage, J., “Biomedical Research—Human Subjects Protection,” *National L. J.* B10 (Oct. 30, 2000).
  21. Charrow, R., “Advisory Committees and the Federal Regulation of Biomedical Research,” 3 *J. Biolaw and Bus.* 5 (1999).
  22. Charrow, R., and Greenlees, L., “ERISA Pre-Emption—A Law in Search of a Doctrine,” 27 *Health Law Digest* 3 (March 1999).

23. Charrow, R., "Wheat, Guns and Science: The Commerce Clause and Human Subjects," 9 *J. NIH Res.* (Nov. 1997).
24. Charrow, R., Main, D., and Onek, J., "Retooling Medicine Through PSOs and Medicare+Choice Plans: Can Providers Catch the Brass Ring?," 25 *Health Law Digest* 3 (Oct. 1997).
25. Charrow, R., "Life, Death, and the Archbishop: The Supreme Court Redefines Federal Authority," 9 *J. NIH Res.* 53 (Sept. 1997).
26. Charrow, R., "Grants, Contracts, and Science: The Legal Basis of Research Funding," 9 *J. NIH Res.* 53 (July 1997).
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28. Charrow, R., "Courting Science: Rational Decision Making in an Irrational Environment," 9 *J. NIH Res.* 56 (March 1997).
29. Charrow, R., "Why Your Grant Application is a Trade Secret," 8 *J. NIH Res.* 61 (Nov. 1996).
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31. Charrow, R., "Trial By Jury—Or By Dice?," 8 *J. NIH Res.* 68 (July 1996).
32. Charrow, R., "Miscalculated Risk: Redefining Misconduct is Unnecessary and Dangerous," 8 *J. NIH Res.* 61 (May 1996).
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35. Charrow, R., "The Perils of Publishing in Cyberspace," 7 *J. NIH Res.* 74 (Dec. 1995).
36. Charrow, R., "Intendo: The Legal Game of Gauging *Mens Rea*," 7 *J. NIH Res.* 79 (Nov. 1995).
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38. Charrow, R., "Lawless in the Laboratory," 7 *J. NIH Res.* 87 (Sept. 1995).
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40. Charrow, R., "A Legal Dog Fight: *Florida vs. The Tobacco Industry*," 7 *J. NIH Res.* 76 (June 1995).
41. Charrow, R., "The Commission on Research Integrity: A Horse in Search of Two Humps," 7 *J. NIH Res.* 65 (May 1995).
42. Charrow, R., "The Congress Shall Make No Law . . . Abridging the Freedom of Speech, Or Shall It?," 7 *J. NIH Res.* 90 (April 1995).
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46. Charrow, R., "Changes at an Old Club: A Primer on Rules of the House," 7 *J. NIH Res.* 62 (Jan. 1995).
47. Charrow, R., "Whose Tissue Is It, Anyway?," 6 *J. NIH Res.* 79 (Dec. 1994).
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51. Charrow, R., "Scientific Misconduct Five Years Later," 6 *J. NIH Res.* 20 (May 1994).
52. Charrow, R., "A Natural Elixir for Breaking the Logjam at FDA," 6 *J. NIH Res.* 92 (April 1994).
53. Charrow, R., "The Scientist as a Client: Some Tips on Shopping for an Attorney," 6 *J. NIH Res.* 92 (March 1994).
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55. Charrow, R., "A Novice's Guide to Jurisprudence: Learning the Law Through ORI Press Releases," 6 *J. NIH Res.* 64 (Jan. 1994).
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57. Charrow, R., "The Legal System Confronts Peer Review: Is a Tradition About to be Breached?," 5 *J. NIH Res.* 90 (Nov. 1993).
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62. Charrow, R., "The Mice That Roared: Patenting Basic Research," 5 *J. NIH Res.* 82 (June 1993).
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64. Charrow, R., "Biomedical Research Joins the Pork Parade," 5 *J. NIH Res.* 80 (April 1993).
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67. Charrow, R., "The Foibles of FOIA: Balancing Privacy and Curiosity," 5 *J. NIH Res.* 80 (Jan. 1993).
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69. Charrow, R., "Extremism in the Cause of Perfection Can be a Vice," 4 *J. NIH Res.* 92 (Nov. 1992).
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74. Charrow, R., "Legislating Morality on the Banks of Styx," 4 *J. NIH Res.* 83 (June 1992).
75. Charrow, R., and Onek, J., "The Most Expensive Election of All," *Washington Post* A25 (June 17, 1992).
76. Charrow, R., "Tinker to Evers to Chance: A Primer on Insider Trading and the Flow of Information," 4 *J. NIH Res.* 81 (May 1992).

77. Charrow, R., "And You Thought the Football Season Was Long: A Spectator's Guide to Presidential Electioneering," 4 *J. NIH Res.* 89 (April 1992).
78. Charrow, R., "Purity, Patents and Life: The Blood Stem Cell Controversy," 4 *J. NIH Res.* 97 (March 1992).
79. Charrow, R., and Saks, M., "Legal Responses to Allegations of Scientific Misconduct," in M. Herson, *Research Fraud in the Behavioral and Biomedical Sciences* (1992).
80. Charrow, R., "A Proposal for Reforming the Misconduct Quagmire," 4 *J. NIH Res.* 96 (Feb. 1992).
81. Charrow, R., "To Say or Not to Say: A Primer on the Law of Defamation," 4 *J. NIH Res.* 78 (Jan. 1992).
82. Charrow, R., "Cases and Controversies: A Perspective on the Supreme Court," 3 *J. NIH Res.* 80 (Dec. 1991).
83. Charrow, R., "Sex, Politics, and Science," 3 *J. NIH Res.* 80 (Nov. 1991).
84. Charrow, R., "PHS's Office of Scientific Integrity Review: Housekeeping Is in Order," 3 *J. NIH Res.* 80 (Oct. 1991).
85. Charrow, R., "The Scorpion and the Turtle: The Parable of AZT and Government Regulation," 3 *J. NIH Res.* 97 (Sept. 1991).
86. Charrow, R., "Introduction to D. Hardy, America's New Extremists: What You Need to Know About the Animal Rights Movement," Washington Legal Foundation (Washington, DC 1991).
87. Charrow, R., "Now You're Covered, Now You're Not: Indemnification, the Silent Insurance," 3 *J. NIH Res.* 112 (July 1991).
88. Schwartz, V., and Charrow, R., "Regulatory Action in Tort Law: Toward a More Benign Relationship," 19 *Prod. Safety and Liability Rptr.* 672 (June 7, 1991) and 6 *Toxics Law Rptr.* 68 (June 12, 1991).
89. Charrow, R., "Forensic Evidence in the Courtroom Is Really Probability Theory in the Jury Box," 3 *J. NIH Res.* 96 (June 1991).
90. Charrow, R., "The Mystery of the Migrating Virus," 3 *J. NIH Res.* 87 (May 1991).
91. Charrow, R., "Fetal Tissue Transplantation Ban: Illegal Political Solution to a Moral Problem," 3 *J. NIH Res.* 20 (April 1991).
92. Charrow, R., "Controlling Health Care Costs: A Major Problem in Need of an Enlightened Solution," 3 *J. NIH Res.* 74 (March 1991).
93. Charrow, R., "Message to NIH's Office of Scientific Integrity: Here Comes the Judge," 3 *J. NIH Res.* 97 (Feb. 1991).
94. Charrow, R., "Contracting Away the First Amendment: Publish and Perish," 3 *J. NIH Res.* 78 (Jan. 1991).
95. Charrow, R., and Kochan, Donald J., "The Real Transition: How to Stem a Deluge of Regulations," *Washington Times* A15 (Jan. 15, 2001).
96. Kochan, Donald J., and Charrow, R., "Stopping the Last-Minute Regulatory Deluge," *Boston Globe* 11 (Jan. 6, 2001).
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99. Charrow, R., "Scientific Misconduct Revisited: OSI on Trial," 2 *J. NIH Res.* 83 (Oct. 1990).
100. Charrow, R., "Untangling the Bureaucratic Web: Should NIH Remain in the Department of Health and Human Services?," 2 *J. NIH Res.* 80 (Sept. 1990).
101. Charrow, R., "Choosing an NIH Director: Blending the Politics of Science With the Science of Politics," 2 *J. NIH Res.* 83 (July 1990).

102. Charrow, R., "Scientific Misconduct: Sanctions in Search of Procedures," 2 *J. NIH Res.* 91 (June 1990).
103. Charrow, R., "Article III Meets Godzilla: Animal Rights and the Right to Sue," 2 *J. NIH Res.* 90 (May 1990).
104. Charrow, R., Book Review, *Washington Times* (1990).
105. Charrow, R., "Liability in the Laboratory," 2 *J. NIH Res.* 88 (April 1990).
106. Charrow, R., "Intellectual Property Rights: Who Owns What, and When? Part II," 2 *J. NIH Res.* 88 (March 1990).
107. Charrow, R., "Intellectual Property Rights: Who Owns What, and When? Part I," 2 *J. NIH Res.* 91 (Jan.-Feb. 1990).
108. Charrow, R., "Judicial Review of Peer Review," 1 *J. NIH Res.* 117 (Nov.-Dec. 1989).
109. Charrow, R., "Weighing Conflicting Solutions to Conflict of Interest," 1 *J. NIH Res.* 135 (Sept.-Oct. 1989).
110. Shapiro, M., and Charrow, R., "The Role of Data Audits in Detecting Scientific Misconduct: Results of the FDA Program," 261 *J. American Medical Assn.* 2505 (May 5, 1989).
111. Shapiro, M., and Charrow, R., "Scientific Misconduct in Investigational Drug Trials," 312 *New England Journal of Medicine* 731 (March 14, 1985).
112. Charrow, R., "Symposium on Science and the Rules of Legal Procedure," 101 *F.R.D.* 599 (1984) (ed. William Thomas).
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131. Charrow, R., and Gallo, S., “Waivers of Certain Fraud and Abuse Laws Permitted in CJR Model” (Nov. 2015).
132. Charrow, R., “Court Holds That ‘Supremacy Clause’ Does Not Create a Private Right of Action to Enforce the Provisions of Medicaid” (April 2015).
133. Charrow, R., “Supreme Court Upholds Affordable Care Act Rule Authorizing Health Subsidies in States With Federal Exchanges” (June 2015).
134. Charrow, R., and Ledford, A., “Court Holds That ‘Supremacy Clause’ Does Not Create a Private Right of Action to Enforce the Provisions of Medicaid” (April 2015).
135. Charrow, R., White, D., and Taylor, N., “Circuits Split Over Legality of IRS Rule Mandating Tax Credits for Individuals Covered Through Federal Exchanges Under the Affordable Care Act” (July 2014).
136. Charrow, R., and Serbaroli, F., “OIG Proposes New Anti-Kickback Law and CMP Safe Harbors” (Nov. 2014).
137. Charrow, R., Cherniga, M., Taylor, N., and Malone, M., “Stark Law Violations Costly to Intermountain Health Care Inc.” (April 2013).
138. Charrow, R., “Supreme Court Extends PLIVA to Preempt Certain Design Defect Claims Against Generic Manufacturers” (Aug. 2013).
139. Charrow, R., Taylor, N., and Hayes, M., “Supreme Court Upholds Affordable Care Act” (June 2012).
140. Solomons, M., Charrow, R., and Klaus, K., “Beyond the Courts of Appeals: The Potential for Expedited Supreme Court Review of Health Care Reform,” GT alert (Feb. 2011).
141. Asaro, T., et al., “Accountable Care Organization (ACO)—The Real Journey Begins” (April 2011).
142. Charrow, R., “Supreme Court Opens the Way for Direct Corporate Participation in the Electoral Process” (Jan. 2010).
143. Charrow, R., and Dunn, B., “Health Care Reform: Pharmaceutical and Device Sectors” (April 2010).
144. Charrow, R., Klaus, L., and Taylor, N., “U.S. Supreme Court Rejects Complete Preemption Defense for Drug Manufacturers” (March 2009).
145. Charrow, R., and Taylor, N., “Summary of the Major Health Care Provisions Included in the Recently Passed American Recovery and Reinvestment Act of 2009” (Feb. 2009).
146. Charrow, R., “Supreme Court Holds That State Tort Law is Expressly Preempted by Food, Drug, and Cosmetic Act in Suits Involving FDA Approved Devices” (Feb. 2008).
147. Charrow, R., “Fifth Circuit Confirms Strength of Peer Review Immunity” (Aug. 2008).
148. Stouck, J., and Charrow, R., “Recent Amendments to Freedom of Information Act Ease Recovery of Both Documents and Attorneys’ Fees” (Jan. 2008).

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<sup>1</sup> Some alerts may also appear as *National Law Review* postings and are so indicated in section B of publications.

149. Charrow, R., and Rosenfeld, L., "Fifth Circuit Confirms Strength of Peer Review Immunity" (July 2008).
  150. Charrow, R. and Isasi, J., "Supreme Court Holds That State Tort Law is Expressly Preempted by Food, Drug, and Cosmetic Act in Suits Involving FDA Approved Devices" (Feb. 2008).
  151. Charrow, R., Glaser, M., and Oppenheimer, J., "Proposed New Federal Ethics and Gift Rules Will Impact Public Officials, Lobbyists, and Entities That Employ Lobbyists" (Aug. 2007).
  152. Taylor, N., Charrow, R., and Eck, W., "S. 1932, The Deficit Reduction Act of 2005 and Skilled Nursing Facilities" (Feb. 2006).
  153. Charrow, R., and Taylor, N., "S. 1932, The Deficit Reduction Act of 2005 and Managed Care Organizations" (Feb. 2006).
  154. Taylor, N., and Charrow, R., "S. 1932, The Deficit Reduction Act of 2005 and Drug Manufacturers" (Feb. 2006).
  155. Taylor, N., Charrow, R., and Eck, W., "S. 1932, The Deficit Reduction Act of 2005 and Hospitals" (Feb. 2006).
16. Speeches (list all formal speeches you have delivered during the past 5 years which are on topics relevant to the position for which you have been nominated):

The following are short courses that I have taught.

Charrow, R., "Science, the Law, and the Public," presented at the University of Maryland School of Medicine, Baltimore, MD, March 29, 2017.

Charrow, R., "Origins and Organizational Structure of FDA and Overview of the Regulatory Process," presented at Food and Drug Law Inst., Washington, DC, June 16, 2015.

Charrow, R., "Products Liability for Drugs and Devices—A Really Quick Course for Non-Lawyers," presented at Food and Drug Law Inst., FDA Campus, January 11, 2016.

Charrow, R., "Law in the Laboratory: A Primer for Scientists Conducting Federally Funded Research," presented at Cold Spring Harbor Laboratory, Oct. 31, 2016.

Charrow, R., "Law in the Laboratory: A Primer for Scientists Conducting Federally Funded Research," presented at Cold Spring Harbor Laboratory, Sept. 30, 2015.

Charrow, R., "Law in the Laboratory: A Primer for Scientists Conducting Federally Funded Research," presented at Cold Spring Harbor Laboratory, Sept. 10, 2014.

Charrow, R., "Law in the Laboratory: A Primer for Scientists Conducting Federally Funded Research," presented at Cold Spring Harbor Laboratory, Sept. 11, 2013.

Charrow, R., "Law in the Laboratory: A Primer for Scientists Conducting Federally Funded Research," presented at Cold Spring Harbor Laboratory, Sept. 12, 2012.

Charrow, R., Klein, A., and Stoll, R., "Judicial Review of Agency Rulemaking in Rulemaking 101," 8th Annual Administrative Law and Regulatory Practice Institute, Washington, DC, May 9, 2012.

17. Qualifications (state what, in your opinion, qualifies you to serve in the position to which you have been nominated):

I previously served as the Deputy General Counsel and Principal Deputy General Counsel of HHS from 1985–1989, and since 1989, I have practiced health-care law with two large law firms covering Medicare, Medicaid, FDA, Fraud and Abuse, and PHS Act related issues (*e.g.*, NIH, CDC, HRSA) and representing a broad range of clients from universities, learned societies, charitable organizations (*e.g.*, March of Dimes) and academic medical centers, to pharmaceutical companies and insurers. I have also written extensively on matters within or involving the jurisdiction of HHS, including the rulemaking process under the Administrative Procedure Act, a book devoted to the laws governing federally

funded research, and another book on Article III standing, an issue central to many lawsuits involving HHS.

### B. FUTURE EMPLOYMENT RELATIONSHIPS

1. Will you sever all connections with your present employers, business firms, associations, or organizations if you are confirmed by the Senate? If not, provide details.  
Yes.
2. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, provide details.  
No.
3. Has any person or entity made a commitment or agreement to employ your services in any capacity after you leave government service? If so, provide details.  
No.
4. If you are confirmed by the Senate, do you expect to serve out your full term or until the next presidential election, whichever is applicable? If not, explain.  
Yes.

### C. POTENTIAL CONFLICTS OF INTEREST

1. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated.  
Apple Inc.  
Cisco Systems Inc.  
First Energy Corp.  
International Business Machines Corp.  
Microsemi Corp.  
The Walt Disney Company.  
Wells Fargo Stable Value Fund.  
Greenberg Traurig, LLP.  
Will divest interests in all of the above as per OGE agreement.
2. Describe any business relationship, dealing, or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.  
During the past 10 years I have represented numerous clients with respect to matters involving or before CMS, FDA, PHS, OCR, and OIG. Except as noted below, those matters have been closed or otherwise resolved.
  - a. PRRB: I had one pending matter before the Provider Reimbursement Review Board within CMS that was tried in September 2016, and we are awaiting a decision. It was on behalf of a NY hospice (Westchester) and I am withdrawing from that representation.
  - b. Qui tam cases: Federal qui tam cases—Illinois SD, a qui tam case that I have not been actively involved in but was on the pleadings. Withdrawal papers are being submitted for that case (*U.S. ex rel. Garbe v. Kmart*).  
California Superior Court. A State-only qui tam in Superior Court for the State of California in and for the County of Sacramento. The qui tam cases all involve either drug pricing or the compliance with State Medicaid rules for dispensing drugs (*Omlansky v. Save Mart*). The Federal Government is not a party and the State declined to intervene.  
Intrexon—Oxitec Mosquito—provided FDA advice and was a lobbyist for two quarters in 2016.
 All clients that I have represented since January 1, 2015 have been identified, and I will be recused from involvement in any department matter in which that client is a party during the periods required by law or by the administration's ethics pledge and during my entire tenure at OGC, should I be confirmed, from

any matter that I was personally involved in while in private practice, irrespective of when I was involved. I will also be recused as required by the Rules of Professional Responsibility from any matter involving a former client, whether I was personally and substantially involved or not, from whom I may have acquired confidential information.

3. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of any legislation or affecting the administration and execution of law or public policy. Activities performed as an employee of the Federal Government need not be listed.

I have in the past been registered as a lobbyist on behalf of two clients. I lobbied on behalf of the American Psychiatric Association from January 10, 2003 to June 30, 2004 with respect to implementation of HIPAA's electronic code set provisions. I also lobbied on behalf of Intrexon from March 2016 to June 30, 2016 with respect to FDA's authority to issue Emergency Use Authorizations for animal drugs. My registration for Intrexon was terminated retroactively to June 30, 2016 on March 23, 2017.

4. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items.

I have no trust agreements. OGE and the ADEO have prepared an ethics agreement which requires that my wife and I divest our interest in certain stocks, which will be done. I signed that agreement on June 7, 2017. In addition, we will establish an ethics screen at OGC, should I be confirmed, to ensure that I am recused with involvement in any matter involving any specific client during the requisite periods and from any matter that I may have been personally involved in while in private practice or as may be required by the Rules of Professional Responsibility.

5. Two copies of written opinions should be provided directly to the committee by the designated agency ethics officer of the agency to which you have been nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position.

Copies have been provided.

#### **D. LEGAL AND OTHER MATTERS**

1. Have you ever been the subject of a complaint or been investigated, disciplined, or otherwise cited for a breach of ethics for unprofessional conduct before any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, provide details.

No.

2. Have you ever been investigated, arrested, charged, or held by any Federal, State, or other law enforcement authority for a violation of any Federal, State, county, or municipal law, regulation, or ordinance, other than a minor traffic offense? If so, provide details.

No.

3. Have you ever been involved as a party in interest in any administrative agency proceeding or civil litigation? If so, provide details.

*Charrow v. Cohen*, SC11657-76, DC Superior Court. Filed suit on June 4, 1976 to collect \$112 as a result of an auto accident; settled prior to trial for \$112.

*In Re Papadopoulos*, No. 90A-0321 (*Charrow v. Papadopoulos*). My spouse and I were creditors of Chris Papadopoulos, a bankrupt home contractor. We filed a claim with the bankruptcy court against Papadopoulos as an adversary proceeding. The matter settled.

In 1991, I filed a claim against Papadopoulos with the Maryland Home Improvement Commission entitled *Maryland Home Improvement Commission v. Papadopoulos*, No. 91(05)1164. We were awarded \$10,000.

*Kennsington Plumbing and Heating, Inc. v. Robert and Veda Charrow*, No. 9382-90 (MD. Dist. Court, 11 First Field Rd., Gaithersburg, MD 20878). This suit was instituted against us for \$416 by subcontractor of Papadopoulos who claimed that Papadopoulos failed to pay him. Matter went to trial on August 8, 1990 and judgment was entered for defendants.

*Charrow v. Marc Carrington*, No. 4062–92, District Court for Montgomery County, MD. Complaint to collect damages from a contractor for breach of contract—judgment entered for plaintiff in amount of \$14,916 + \$10 on July 8, 1992. On May 19, 1994, defendant filed a motion to strike the judgment. That motion was denied on June 27, 1994; defendant sought to appeal, but the appeal was dismissed on August 2, 1995.

*Jacqueline Lee Jackson v. Charrow et ux*, Case No. 03–CA–005274, DC Superior Court. R. Charrow was dismissed before trial judgment entered in favor of Veda Charrow on November 24, 2004. Plaintiff motion for a new trial was denied on December 20, 2004 (James Boasberg, J.). Case arose out of a traffic accident on February 24, 2003.

*Philip W. Wyers and Wyers Products Group, Inc. v. Greenberg Traurig, LLP, Mark Hogge, Laura Klaus, and Robert P. Charrow*, Dist. Ct. for city and county of Denver, 41645933 (December 30, 2011). Case removed to Federal court for Dist. of Colorado, No. 12–cv–00750. Case against Hogge, Klaus, and Charrow dismissed on March 24, 2015 in anticipation of settlement; notice of settlement as to GT filed on April 6, 2015; case voluntarily dismissed as to GT on February 18, 2016 as a result of settlement.

4. Have you ever been convicted (including pleas of guilty or *nolo contendere*) of any criminal violation other than a minor traffic offense? If so, provide details.  
No.

5. Please advise the committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination.

In February 1987, I was nominated to be a judge on the U.S. Claims Court, but the nomination did not proceed to a hearing, and I asked that it be withdrawn later that year.

#### E. TESTIFYING BEFORE CONGRESS

1. If you are confirmed by the Senate, are you willing to appear and testify before any duly constituted committee of the Congress on such occasions as you may be reasonably requested to do so?

Yes.

2. If you are confirmed by the Senate, are you willing to provide such information as is requested by such committees?

Yes.

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#### QUESTIONS SUBMITTED FOR THE RECORD TO ROBERT CHARROW

##### QUESTION SUBMITTED BY HON. ORRIN G. HATCH

*Question.* The ACA created the Star Ratings program, where Medicare Advantage plans with four or more stars receive add-on payments to their benchmarks. The ACA also placed a cap on each county's benchmark. The quality bonus add-on payment is included in determining the benchmark cap. This can result in plans that would have been rewarded for high quality ratings not receiving the full value of their add-on payment, which can be a disincentive for quality.

I understand that CMS does not believe it has the authority to lift the benchmark cap or to remove quality incentive payments from the benchmark cap and has stated it would require a legislative change. Will you commit to reviewing this issue and determining whether the Secretary has the authority to address this issue?

Answer. Yes, I will commit to reviewing this issue. If confirmed, I will have the Office of the Assistant Secretary for Legislation contact your office so that we can begin discussions on your concerns.

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#### QUESTIONS SUBMITTED BY HON. RON WYDEN

##### INTERPRETING STATUTES

*Question.* If you are confirmed as the General Counsel of the Department of Health and Human Services (HHS), you will advise the agency as it develops and

implements major health-care programs outlined in Acts of Congress. Specifically, you will guide the Department as it considers how to interpret and implement laws passed by Congress that affect health care for millions of Americans.

If confirmed as General Counsel, how would you approach a situation where HHS proposes an interpretation of a statute that diverges from a previous administration's interpretation?

Answer. As I mentioned during my testimony, if confirmed, my goal would be to ensure that the agency's position in any given case is both legally correct and objectively just. Agency action that may be legally correct but which offends fundamental notions of fairness does not typically fare well. My job will be to use the rules of statutory interpretation to determine what the provisions of the law mean. As I testified, that will include the significant reliance on statute's text. However, in interpreting statutes that have been previously interpreted by a prior General Counsel, I would accord that prior interpretation due deference under *Skidmore*.

*Question.* Would your approach differ from the above situation for either new statutes or situations where HHS has not previously spoken on the applicable statute?

Answer. It would not. If confirmed, I would continue to evaluate the agency's position based on the legislative text, the legislative history, the report of the relevant committee, and floor statements.

#### ETHICS

*Question.* Earlier this year, the Office of Government Ethics (OGE) released ethics waivers collected in response to a data call issued to all executive branch agencies and offices.<sup>1</sup> The data call revealed that two dozen political appointees received ethics waivers during the first 3 months of the Trump administration, including Secretary Tom Price, Secretary Price's Chief of Staff, and Centers for Medicare and Medicaid (CMS) Administrator Seema Verma.<sup>2</sup>

The OGE data call, issued on April 28, 2017,<sup>3</sup> sought information pertaining to the issuance of ethics waivers and authorizations pursuant to various executive orders, Federal ethics regulations, and Federal law between May 1, 2016 and April 30, 2017.<sup>4</sup> On May 17, 2017, Office of Management and Budget (OMB) Director Mulvaney asked OGE to stay the data call. On May 26, 2017, following an exchange of letters, Director Mulvaney stated that OMB "never sought to impede OGE nor to prevent others, including agencies, from acting as required by law."<sup>5</sup> Subsequently, the White House released copies of these waivers for its staff,<sup>6</sup> and records for other agencies were released shortly thereafter.

Following the White House release, Ranking Member Wyden sent a letter to Secretary Price on June 15, 2017 requesting that the Department of Health and Human Services ("Department") provide the Committee on Finance copies of any *subsequent* ethics waivers, within the categories covered by the OGE data call, issued to employees of the Department within 7 days of their issuance. When such waivers are granted subject to 18 U.S.C. § 208(b) or 5 CFR § 2635.502(d), they allow Federal employees to work on issues where there might be a real or perceived conflict of interest. Review of these waivers is critical to the committee's understanding as to whether the Department's political appointees are appropriately recused from issues that former clients or employers may bring before the Department.

On July 27, 2017, Ranking Member Wyden received a response to his request from Ms. Elizabeth Fischmann, the Department's Associate General Counsel for

<sup>1</sup> Office of Government Ethics, "Certain waivers and authorizations issued between May 1, 2016, and April 30, 2017," <https://www.oge.gov/Web/OGEnsf/Resources/Certain+Waivers+and+Authorizations+issued+between+May+1,+2016+-+April+30,+2017>, accessed on June 12, 2017.

<sup>2</sup> Bill Allison, "Trump Administration Waived Ethics Rules for 10 Appointees," *Bloomberg News*, June 12, 2017, <https://www.bloomberg.com/politics/articles/2017-06-07/trump-administration-waived-ethics-rules-for-10-appointees>.

<sup>3</sup> Program Advisory—"Data Call for Certain Waivers and Authorizations," PA-17-02, April 28, 2017.

<sup>4</sup> Executive Order 13770, Executive Order 13490, 18 U.S.C. § 208(b)(1), 5 CFR § 2635.502(d), and 5 CFR § 2635.503(c).

<sup>5</sup> Letter from Mick Mulvaney to Walter Shaub, May 26, 2017.

<sup>6</sup> Matea Gold, "White House grants ethics waivers to 17 appointees, including four former lobbyists," *Washington Post*, May 31, 2017, [https://www.washingtonpost.com/news/post-politics/wp/2017/05/31/white-house-grants-ethics-waivers-to-17-appointees-including-four-former-lobbyists/?utm\\_term=.8383c084ad0b](https://www.washingtonpost.com/news/post-politics/wp/2017/05/31/white-house-grants-ethics-waivers-to-17-appointees-including-four-former-lobbyists/?utm_term=.8383c084ad0b).

Ethics and the Designated Agency Ethics Official (DAEO). The response indicated that two additional waivers had been granted since the OGE data call, and the referenced waivers were provided to the committee. However, the Department did not make any commitment to continue providing future waivers to the committee, as had been requested.

Will you, if confirmed, commit to providing the committee any ethics waivers that have been issued *subsequent* to Ms. Fischmann's July 27th response?

Answer. Yes, consistent with all applicable laws and privileges, if asked by the committee, I will provide any ethics waivers issued subsequent to July 27th.

*Question.* Will you, if confirmed, commit to providing any future waivers within 7 days of their issuance going forward?

Answer. I will be glad to promptly respond to any committee requests for waivers granted by the Department.

*Question.* As currently organized, the HHS DAEO is a senior official within the Office of General Counsel—the Associate General Counsel for Ethics. If confirmed, will you commit to ensuring that ethics reviews and determinations made by this official are independent of any political pressure or interference?

Answer. Yes.

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QUESTIONS SUBMITTED BY HON. DEBBIE STABENOW

*Question.* As general counsel, you will be advising the administration on the cost sharing reductions (CSRs), the impact of the lawsuit, and the implications of any related legislation in Congress. In my State of Michigan, families will have to pay more for their health insurance next year if the administration takes away the CSRs.

What do you see your role being as it relates to the CSRs, and what would be your recommendation to the administration?

Answer. The agency is currently one of the named parties in litigation related to the cost sharing reduction payments. As a nominee, I am unfamiliar with the details of this case at this time, but if confirmed, I will be more than willing to discuss with your office after I have a chance to evaluate those aspects of the case and as permitted by the Rules of Professional Conduct.

*Question.* Your office is also in charge overseeing ethics violations and inquiries from members of Congress.

To what extent will you work with members of Congress on potential ethics violations?

Answer. If confirmed, I will always be available to discuss these matters with members and their staff, through the Office of the Assistant Secretary of Legislation, and as permitted by the Rules of Professional Conduct and subject to the caveat that my ability to discuss on-going internal investigations is likely to be limited. The Office of the Assistant Secretary of Legislation will also be able to coordinate the sharing of information when possible.

*Question.* Can we expect timely responses?

Answer. Yes.

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PREPARED STATEMENT OF HON. ORRIN G. HATCH,  
A U.S. SENATOR FROM UTAH

WASHINGTON—Senate Finance Committee Chairman Orrin Hatch (R-Utah) today delivered the following opening statement at a hearing to consider the nominations of Gilbert B. Kaplan to be Under Secretary of Commerce for International Trade, Matthew Bassett to be an Assistant Secretary of Health and Human Services, and Robert Charrow to serve as General Counsel of Health and Human Services:

I would like to extend a warm welcome to each of the nominees here today. Congratulations on your nominations, and thank you for your willingness to serve in these important positions.

In today's hearing, I want to stress two major themes: integrity and responsiveness. These are both important elements for any position in government, particularly for a Senate-confirmed position. They are absolutely essential for the positions under review today. The Under Secretary of Commerce for International Trade is responsible for promoting American trade around the globe and enforcing U.S. trade laws.

If confirmed, Mr. Kaplan will need to be a strong advocate for American exporters, while holding our trading partners accountable for improper trade practices. There is a good deal of work that needs to be done to improve compliance with our Nation's anti-dumping and countervailing duty laws, but that mission should not come at the expense of seeking to expand opportunities for U.S. goods and services providers. It will be critical that the Department of Commerce work with Congress and consult closely with members of the committee. Frankly, there is room for improvement here, but I am confident Mr. Kaplan understands the importance of the Department's responsibilities to Congress and will work with Secretary Ross to ensure those responsibilities are met.

As for the nominees to the Department of Health and Human Services, your responsibilities are similarly connected to themes of integrity and responsiveness.

Mr. Bassett, has been nominated to serve as an Assistant Secretary with the specific function of performing legislative affairs. This means that both the agency as well as Congress will rely on you to ensure that we are kept well informed of the goings on at HHS. This will be critical over the next few months.

Obviously, the effort to fix our nation's health-care system suffered a setback recently. The recent series of events intensifies the importance of this position as cooperation between Congress and HHS will likely be more essential than ever.

Members of the Finance Committee expect to be in constant contact with HHS and need timely and responsive answers to questions and submitted inquiries. We hope that Mr. Bassett will commit today to providing answers.

Finally, I'd like to highlight the critical importance of integrity for the position of General Counsel at HHS, for which Mr. Charrow has been nominated. While Mr. Charrow certainly has a considerable amount of experience as a practicing lawyer, the position of General Counsel at HHS brings with it challenges that are sure to be new.

There are likely to be times where the officials in the Department and the White House may disagree on how to proceed in a specific course of action. If confirmed, your responsibility will be to ensure that the laws on the books, as written, are followed and implemented.

We've seen some thorny issues at both Commerce and at HHS as the administration has, in some ways, gotten off to a rocky start. That is all the more reason for the committee to move as quickly as possible to consider and report these nominations.

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PREPARED STATEMENT OF GILBERT B. KAPLAN, NOMINATED TO BE UNDER SECRETARY FOR INTERNATIONAL TRADE, DEPARTMENT OF COMMERCE

Mr. Chairman, Ranking Member Wyden, members of the committee, it is a great honor to be here today as the President's nominee to serve as Under Secretary of Commerce for International Trade. I first testified before this committee in 1986, when I was the Deputy Assistant Secretary of Commerce for Import Administration, and I continue to be deeply impressed by the rigorous and careful attention this committee gives to international trade.

In some ways I feel that I have been preparing to hold this position during my entire career. When I was fortunate enough to run Import Administration in the 1980s under President Reagan and Commerce Secretary Malcolm Baldrige, we conducted over 500 antidumping and countervailing duty cases, including cases on agricultural products, steel products, textiles and apparel, and semiconductors.

That unit, now called Enforcement and Compliance will be one of my areas of responsibility at the International Trade Administration ("ITA") if I am confirmed.

After leaving Import Administration I have devoted myself to representing American companies and workers in a wide range of trade cases and trade policy issues.



I filed and prosecuted the first successful countervailing duty (anti-subsidy) case ever against China, in 2007.

Another area of my responsibility, if I am confirmed, will be developing programs to build up the international competitiveness of the manufacturing base in the United States, within the Industry and Analysis unit of ITA. In that regard I was the founder of The Conference on the Renaissance of American Manufacturing. I was also the co-founder of the Manufacturing Policy Initiative (“MPT”) at Indiana University School of Public and Environmental Affairs, the first and only university program in the country focusing on what public policy steps should be taken to revitalize U.S. manufacturing.

Finally, I will be working extensively to promote American exports and break down trade barriers through the Global Markets and U.S. and Foreign Commercial Service unit at Commerce. In that regard while I was at Commerce I was one of the key negotiators of the U.S.-Japan Agreement on Trade in Semiconductors and later enforced the terms of that agreement. That was one of the most successful agreements ever in opening a foreign market, particularly a very difficult foreign market to open.

Within the Global Markets unit at Commerce, we will also be focusing on bringing foreign investment to the United States, to help rebuild our manufacturing base and create good-paying jobs.

In addition, there are several over-arching themes I want to focus on if I am confirmed: making sure the whole world is open to U.S. digital trade, ensuring U.S. intellectual property is protected everywhere in the world, and ensuring that small and medium-sized enterprises can benefit from global trade.

There is an enormous amount of work to be done. We need to level the playing field, increase exports, and revitalize industry. This will entail vigorous trade law enforcement, including self-initiation of cases, and vigorous negotiation of trade agreements, all while making sure we do no harm to U.S. consumers and to the many companies, workers, farmers, and ranchers who benefit so much from trade.

If I am confirmed, I look forward to working for a man who is already making a big difference in these areas. That is Secretary Wilbur Ross. I would like to thank Secretary Ross for the confidence he has shown in me by supporting me for this role.

In closing, I would like to tell a very brief story about my family. My father and mother arrived in this country in 1946 after surviving the Holocaust. They arrived on a boat called the *Ernie Pyle*. When they docked in New York, my father had \$7 in his pocket, which he had won playing cards on the boat.

I think my parents would be truly amazed if they could be here today for this hearing, amazed at the greatness of this country, and at the graciousness of all the people who have worked with me in moving this appointment forward.

Chairman Hatch, Ranking Member Wyden, and members of the committee, thank you for your consideration, and I would be pleased to answer any questions.

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## **SENATE FINANCE COMMITTEE**

### **STATEMENT OF INFORMATION REQUESTED OF NOMINEE**

#### **A. BIOGRAPHICAL INFORMATION**

1. Name (include any former names used): Gilbert Bruce Kaplan.
2. Position to which nominated: Under Secretary of Commerce for International Trade.
3. Date of nomination: May 25, 2017.
4. Address (list current residence, office, and mailing addresses):
5. Date and place of birth: July 9, 1951, Endicott, New York.
6. Marital status (include maiden name of wife or husband’s name):

7. Names and ages of children:
8. Education (list secondary and higher education institutions, dates attended, degree received, and date degree granted):  
 Harvard Law School, *JD cum laude*, 1977 (attended 1974–1977).  
 Harvard College, *AB magna cum laude*, 1974 (attended 1969–1972; 1973–1974).  
 Phillips Exeter Academy, Exeter, NH; graduated with high honors, 1969 (attended 1966–1969).
9. Employment record (list all jobs held since college, including the title or description of job, name of employer, location of work, and dates of employment):  
*June 2004—Present: Partner, King and Spalding LLP*, Washington, DC, International Trade Group. Responsible for trade remedy cases (antidumping and countervailing duty), as well as intellectual property matters (section 337); filed and won the first ever successful U.S. anti-subsidy cases against China; substantial WTO experience in disputes on United States trade remedy laws.  
 Co-Founder, Manufacturing Policy Initiative (“MPI”) at Indiana University School of Public and Environmental Affairs (2015), Bloomington and Indianapolis, Indiana; the first and only university program in the country focusing on what public policy actions should be taken to revitalize United States manufacturing.  
 Founder, Conference on the Renaissance of American Manufacturing (2010); organized and ran two full-day conferences on U.S. manufacturing revival at the National Press Club in Washington, DC.  
 President, Committee to Support U.S. Trade Laws (2010–2012), an organization dedicated to preserving and enhancing the United States unfair trade laws.  
*1990–May 2004: Senior partner, Hale and Dorr*, Washington, DC and Boston, MA; chairman of the Government and Regulatory Affairs Department; hiring partner for the Mid-Atlantic Region; handled major cases on dumping and subsidies in the semiconductor area.  
*1988–1990: Partner, Morrison and Foerster*, Washington, DC; head of the international trade practice.  
*1985–1988: Deputy Assistant Secretary and First Acting Assistant Secretary of Commerce for Import Administration. United States Department of Commerce.*  
 Supervised department with over 300 staff. Responsible for administering the antidumping and countervailing duty laws, overseeing the implementation of trade agreements with foreign countries (key negotiator of U.S.-Japan Semiconductor Agreement), the Foreign Trade Zones program, and section 232 cases on import relief for national security purposes. Supervised over 500 trade remedy cases.  
 Oversaw legislative issues regarding trade remedy laws for the administration; oversaw GATT affairs and GATT negotiations with respect to the trade remedy laws. Became the first Acting Assistant Secretary for Import Administration when this new position was created as the result of a reorganization at the end of 1987.  
*1983–1985: Director, Office of Investigations*, United States Department of Commerce; in charge of day-to-day trade remedy law administration.  
*1977–1983, and Summer 1976: Hill and Barlow*, Boston, MA; Associate, Litigation and General Corporate Practice.  
*Summer 1975: Research assistant, Professor Richard Parker*, Harvard Law School, Cambridge, MA; research on constitutional law.  
*Summer 1974: Cambridge School of Weston Summer Camp*, Weston, MA; camp counselor.
10. Government experience (list any advisory, consultative, honorary, or other part-time service or positions with Federal, State, or local governments, other than those listed above):  
 Appointed by Governor William Weld to be a member of the Massachusetts International Trade Advisory Board; served as Co-Chairman of the Export Pro-

motion Task Force of the board; formulated and wrote a new export finance provision for Massachusetts that was enacted into law in 1992.

11. Business relationships (list all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, other business enterprise, or educational or other institution):

Member, advisory board; Manufacturing Policy Initiative (“MPI”), Indiana University School of Public and Environmental Affairs, appointed 2016 for a 3-year term.

12. Memberships (list all memberships and offices held in professional, fraternal, scholarly, civic, business, charitable, and other organizations):

I was the president of the Committee to Support U.S. Trade Laws (“CSUSTL”) from 2010–2012. Prior to that I was head of the Lawyer’s Committee. From 2012–2017 I served as head of the Public Affairs and Membership Committee. As noted above, CSUSTL is an association of companies, workers, farmers, and individuals dedicated to maintaining the strength of the United States unfair trade laws.

I was the co-founder of The Manufacturing Policy Initiative (“MPI”) at the School of Public and Environmental Affairs at Indiana University. As noted above, this is the first and only university program in the country dedicated to studying and making recommendations regarding which public policies to pursue to revitalize United States manufacturing. MPI was started in 2015. I serve on the Advisory Board of MPI, which was created earlier this year, but has not yet met.

I was the founder of the Conference on the Renaissance of American Manufacturing, which is an *ad hoc* organization that sponsored two conferences at the National Press Club (in 2010 and 2012) on reviving United States manufacturing.

I was a member of the Coalition for a Prosperous America (“CPA”) in 2015 and 2016. As stated on their website, “The Coalition for a Prosperous America is the Nation’s premier nonprofit organization working at the intersection of trade, jobs, tax, and economic growth. We are a bipartisan coalition of farmers and ranchers, manufacturers, and labor groups working for a national strategy to eliminate the trade deficit, create good-paying jobs, protect U.S. sovereignty, and achieve broadly shared prosperity.”

I am a member of the American Bar Association and have been since the 1980s.

I am a member of the National Press Club and have been since the 1990s.

I am a member of the Metropolitan Club in Washington, DC, since 2007.

13. Political affiliations and activities:

- a. List all public offices for which you have been a candidate.

Candidate for Massachusetts State Representative, Back Bay Beacon Hill Section of Boston, 1982.

- b. List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.

Member of presidential candidate Mitt Romney’s Trade Advisory Board, 2012.

Host committee, NRSC Governors for a Senate Majority Reception, September 8, 2014; host committee, Senator Orrin G. Hatch breakfast, July 26, 2012; host committee, Senator Evan Bayh breakfast, May 5, 2009; host committee, Congressman Sandy Levin breakfast, April 28, 2009; host committee, Senator Arlen Specter breakfast, April 23, 2008; host committee, Senator Orrin G. Hatch reception, January 19, 2006.

- c. Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of \$50 or more for the past 10 years.

Date	Amount	Recipient
October 15, 2007	\$1,000.00	Giuliani, Rudolph
December 31, 2007	\$2,250.00	King and Spalding Political Action Committee
March 12, 2008	\$500.00	Peters, Gary
April 28, 2008	\$2,300.00	Specter, Arlen
August 29, 2008	\$2,500.00	King and Spalding Political Action Committee
September 7, 2008	\$2,300.00	McCain-Palin Victory 2008
September 30, 2008	\$2,300.00	Republican National Committee
April 28, 2009	\$1,000.00	Levin, Sander
May 11, 2009	\$1,000.00	Bayh, Evan
August 30, 2009	\$2,550.00	King and Spalding Political Action Committee
November 18, 2009	\$1,000.00	Schumer, Charles
March 30, 2010	\$1,000.00	McCain, John
April 22, 2010	\$500.00	Peters, Gary
August 20, 2010	\$250.00	Hatch, Orrin
October 22, 2010	\$1,000.00	Coats, Dan
June 30, 2011	\$1,500.00	Olympia's List (Olympia, Snowe)
July 31, 2011	\$2,000.00	King and Spalding Political Action Committee
November 1, 2011	\$500.00	Hastings, Doc
December 28, 2011	\$1,000.00	Romney for President
January 9, 2012	\$500.00	Romney for President
May 7, 2012	\$1,000.00	Romney, Mitt
May 7, 2012	\$2,500.00	Romney, Mitt
May 7, 2012	\$5,000.00	Republican National Committee
May 7, 2012	\$5,000.00	Republican National Committee
June 10, 2012	\$500.00	Chambliss, Saxby
July 16, 2012	\$1,000.00	Romney Victory, Inc.
July 18, 2012	\$1,000.00	Republican National Committee
August 10, 2012	\$1,500.00	Hatch, Orrin
August 17, 2012	\$1,000.00	Republican National Committee
August 17, 2012	\$1,000.00	Romney Victory, Inc.
September 7, 2012	\$10,000.00	Republican National Committee
September 7, 2012	\$10,000.00	Romney Victory, Inc.
September 28, 2012	\$1,000.00	Camp, Dave
September 25, 2013	\$1,000.00	Portman, Rob
September 30, 2013	\$500.00	Lane, Charlotte
March 31, 2014	\$20,000.00	Republican National Committee
September 11, 2014	\$2,000.00	NRSC
September 21, 2014	\$250.00	Sullivan, Dan
September 30, 2014	\$250.00	Murphy, Tim
March 17, 2015	\$500.00	Morrisey for West Virginia
April 24, 2015	\$1,000.00	Grassley, Charles
May 7, 2015	\$500.00	Schumer, Charles
May 15, 2015	\$1,650.00	King and Spalding Political Action Committee
September 25, 2015	\$1,000.00	NRSC
September 30, 2015	\$1,000.00	Portman, Rob
March 22, 2016	\$250.00	Morrisey for West Virginia

14. Honors and awards (list all scholarships, fellowships, honorary degrees, honorary society memberships, military medals, and any other special recognitions for outstanding service or achievement):

Recognized in *Chambers (America's Leading Lawyers); Super Lawyers; Who's Who in America; Who's Who in American Law.*

15. Published writings (list the titles, publishers, and dates of all books, articles, reports, or other published materials you have written):

Practice at the International Trade Commission, Chapter 106 of *Intellectual Property Counseling and Litigation* (Matthew Bender 2014) (co-author with other colleagues at my firm).

"How VAT Trade Zones Can Boost American Manufacturing," with John Taylor, New America Foundation, May 2011.

"A New Focus for Trade Talks," *Baltimore Sun*, December 2008.

"Five Myths About the Death of the American Factory," *The Washington Post*, June 2008; reprinted in *Repository*, in Canton, OH; *The Pioneer Press*, in St. Paul, MN; *The Cleveland Plain Dealer*; *The Dispatch*, in Brainerd, MN; *The*

*Austin American-Statesman*; *The Atlanta Journal-Constitution*; and *The Deseret Morning News*, in Salt Lake City, UT.

“The First Affirmative Countervailing Duty Case Against China,” with Christopher Cloutier, Metropolitan Corporate Counsel, May 2007.

“The ITC or the District Court? Where to Protect Your International Intellectual Property,” with Courtland Reichman, Monograph Series, National Legal Center for the Public Interest, November 2006.

“Summer Mixer, Take a Hiring Partner’s Advice,” *Legal Times*, May 29, 2000 (article on how to have a good summer associate experience).

*The GATT 1994 Antidumping Agreement; Evolution, Basic Principles, and Dispute Settlement Proceedings*, with Michael D. Esch and Cris R. Revaz, Oceana Publications (1999).

“GATT Talks: Selling Ourselves Short,” *The Washington Post*, Sunday, February 25, 1990.

“The Use of Arbitration to Resolve Market Access Disputes,” 22 *Cornell International Law Journal* 469 (1989).

“Recent Developments and Trends in Unfair Trade Laws: Antidumping and Countervailing Duties,” with Bonnie B. Varga and Thomas A. Behney, in *Trade Law and Policy*, Practising Law Institute Course Series (1989).

“Antidumping, Countervailing Duty, and National Security Provisions in the 1988 Trade Act,” with Susan Haggerty Kuhbach and Ronald K. Lorentzen, 22 *George Washington Journal of International Law and Economics* 553 (1989).

“Cost Analysis Under the Antidumping Law,” with Lynn G. Kamarck and Marie Parker, 21 *George Washington Journal of International Law and Economics* 357 (1988).

“The Causes of Unfair Trade: A Trade Law Enforcer’s Perspective,” with Susan Haggerty Kuhbach, 56 *Antitrust Law Journal* 445 (1987).

“How to Prepare a Good Dumping or Countervailing Duty Case,” with Kenneth C. Stanhagen; published in *International Trade Law*, Professional Education Systems Inc., 1985.

The following are recent posts written by me and published in *The Huffington Post*:

September 29, 2016: “U.S. Manufacturing, Alexander Hamilton, and the Presidential Election.”

September 16, 2015: “What President Obama Should Say to President Xi on Trade.”

December 30, 2014: “Make Trade Promotion Authority Into Jobs Promotion Authority.”

January 24, 2014: “The War on Poverty, International Trade, and the State of the Union.”

16. Speeches (list all formal speeches you have delivered during the past 5 years which are on topics relevant to the position for which you have been nominated):

No formal speeches during this period.

17. Qualifications (state what, in your opinion, qualifies you to serve in the position to which you have been nominated):

I am deeply committed to the mission of the International Trade Administration (“ITA”) at the U.S. Department of Commerce. I believe my prior experience in the government (in a unit that is part of ITA) enforcing the trade laws and assisting U.S. manufacturers, workers, and farmers; in my law practice representing U.S. manufacturers in their struggle to achieve fair trade competition; and in establishing innovative programs regarding revitalizing United States manufacturing all make me uniquely qualified to assume the position of Under Secretary for International Trade at the U.S. Department of Commerce.

While in the United States government, from 1983 to 1988, I served in several senior positions. I was the Acting Assistant Secretary and Deputy Assistant Secretary for Import Administration at the U.S. Department of Commerce.

While there, I was in charge of administering the U.S. antidumping and countervailing duty laws and conducted over 500 antidumping and countervailing duty cases. These included cases on agricultural products, such as potatoes, roses, and ethanol, steel products, textiles, and apparel, and a variety of semiconductor and high-technology products.

While at the Department of Commerce, I also supervised the President's Steel Program, the U.S.-Japan Agreement on Trade in Semiconductors, the U.S.-Canada agreement on lumber, and the machine tool program. In addition, I oversaw the foreign trade zones program, as well as the Office of Industrial Resource Administration, which develops and implements programs to ensure the availability of industrial resources to meet U.S. peace-time and emergency requirements. I was a principal spokesman for the administration on legislative and congressional issues related to the dumping, countervailing duty, and National Security import relief (section 232) laws.

In my private law practice, I have focused on representing U.S. manufacturers in a wide range of cases on antidumping (price discrimination), countervailing duties (subsidies), and section 337 (intellectual property infringement). I have also advised clients on trade policy matters, as well as trade negotiations such as those involving the WTO and international anti-subsidy agreements. Among other major matters, I filed and prosecuted the first successful countervailing duty (anti-subsidy) cases ever against China, in 2007 on behalf of U.S. paper and pipe manufacturers. I also filed a series of successful cases for the U.S. semiconductor industry on subsidies to foreign semiconductor producers. I am currently a partner at the firm of King and Spalding and was previously a partner at Hale and Dorr, and had the opportunity to work with and learn from many exceptional lawyers at both firms.

As noted above in the questionnaire, I have published extensively in the international trade field, including a monograph on section 337 cases at the International Trade Commission entitled *The ITC or the District Court? Where to Protect Your International Intellectual Property*, National Legal Center for the Public Interest, 2006. I published an op-ed piece in the *Washington Post* Outlook Section in 2008 entitled, "5 Myths about the Death of the U.S. Factory," which was extensively republished. I have published a number of law review articles on the enforcement of the unfair trade laws, an area that will be within my responsibilities if I am confirmed, including "Cost Analysis Under the Anti-dumping Law," with Lynn G. Kamarck and Marie Parker, 21 *George Washington Journal of International Law and Economics* 357 (1988).

I served as the first president of the Committee to Support U.S. Trade Laws (CSUSTL), from 2010–2012. CSUSTL is an organization of companies, trade associations, farmers, ranchers, workers, and individuals dedicated to preserving and enhancing the U.S. trade remedy laws.

As noted, I have worked extensively on revitalizing the United States manufacturing industry. I am the founder of The Conference on the Renaissance of American Manufacturing, which among other activities held two all-day conferences on revitalizing manufacturing at the National Press Club in Washington, DC, in 2010 and 2012. Many members of the Senate and House spoke at these conferences. I also am the co-founder of the Manufacturing Policy Initiative at the Indiana University School of Public and Environmental Affairs, the first and only university program in the country dedicated to studying and making recommendations regarding the best public policies to revitalize United States manufacturing.

## B. FUTURE EMPLOYMENT RELATIONSHIPS

1. Will you sever all connections with your present employers, business firms, associations, or organizations if you are confirmed by the Senate? If not, provide details.

Yes. However, as noted in my ethics agreement, from the date of my resignation from King and Spalding through the year 2025, I will receive fixed monthly retirement payments from the law firm. The amount of these fixed payments will be calculated at the time of my departure from the firm, based on my "equivalency unit" points at the time of my departure.

2. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, provide details.

No.

3. Has any person or entity made a commitment or agreement to employ your services in any capacity after you leave government service? If so, provide details.

No.

4. If you are confirmed by the Senate; do you expect to serve out your full term or until the next presidential election, whichever is applicable?

Yes.

### C. POTENTIAL CONFLICTS OF INTEREST

1. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated.

In connection with the nomination process, I have consulted with the Office of Government Ethics and ethics officials at the Department of Commerce to identify potential conflicts of interest. Any potential conflicts will be resolved in accordance with the terms of the ethics agreement that I have entered into with the Department of Commerce and that has been provided to the committee. I am not aware of any other potential conflicts of interest.

2. Describe any business relationship, dealing, or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

I am not aware of any. I will comply with all points in my ethics agreement.

3. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of any legislation or affecting the administration and execution of law or public policy. Activities performed as an employee of the Federal Government need not be listed.

As president of the Committee to Support U.S. Trade Laws ("CSUSTL"), a position I held from 2010–2012, I advocated for strong enforcement of the unfair trade laws, including for the passage of the so-called GPX legislation (U.S. Public Law 112–99 enacted on March 13, 2012), providing that the countervailing duty law could be applied to non-market economy countries.

4. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items.

As noted above, in connection with the nomination process, I have consulted with the Office of Government Ethics and ethics officials at the Department of Commerce to identify potential conflicts of interest. Any potential conflicts will be resolved in accordance with the terms of the ethics agreement that I have entered into with the Department of Commerce and that has been provided to the committee. I am not aware of any other potential conflicts of interest.

5. Two copies of written opinions should be provided directly to the committee by the designated agency ethics officer of the agency to which you have been nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position.

### D. LEGAL AND OTHER MATTERS

1. Have you ever been the subject of a complaint or been investigated, disciplined, or otherwise cited for a breach of ethics for unprofessional conduct before any court, administrative agency, professional association, disciplinary committee, or other professional group?

No.

2. Have you ever been investigated, arrested, charged, or held by any Federal, State, or other law enforcement authority for a violation of any Federal, State, county, or municipal law, regulation, or ordinance, other than a minor traffic offense?

No.

3. Have you ever been involved as a party in interest in any administrative agency proceeding or civil litigation?  
No.
4. Have you ever been convicted (including pleas of guilty or *nolo contendere*) of any criminal violation other than a minor traffic offense?  
No.
5. Please advise the committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination.  
I can't think of any not already provided.

#### E. TESTIFYING BEFORE CONGRESS

1. If you are confirmed by the Senate, are you willing to appear and testify before any duly constituted committee of the Congress on such occasions as you may be reasonably requested to do so?  
Yes.
2. If you are confirmed by the Senate, are you willing to provide such information as is requested by such committees?  
Yes.

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#### QUESTIONS SUBMITTED FOR THE RECORD TO GILBERT B. KAPLAN

##### QUESTIONS SUBMITTED BY HON. ORRIN G. HATCH

*Question.* The NAFTA modernization negotiations are an opportunity to establish strong, enforceable international trade rules for ensuring cross-border data flows.

Do you support including rules to allow cross-border data flows in a modernized NAFTA?

*Answer.* The administration recognizes the importance of the digital economy to American jobs and prosperity, and the necessary role cross-border data flows play in facilitating trade. Cross-border data flows are vital to every industry sector conducting trade, and preserving data flows ensures U.S. companies maintain their leadership in this area.

In fact, the McKinsey Global Institute noted in its March 2016 report on “Digital Globalization: The New Era of Global Flows” that “Over a decade, global flows have raised world GDP by at least 10 percent; this value totaled \$7.8 trillion in 2014 alone. Data flows now account for a larger share of this impact than global trade in goods.”

I am committed to ensuring high-quality standards ensuring the free flow of data across borders as these data flows are a necessary part of any modern trade relationship including a modernized NAFTA.

*Question.* In the wake of the administration’s release of specific objectives for the upcoming negotiations with Canada and Mexico, there has been some interest in the United States’ commitment to the APEC Cross-Border Privacy Rules system, or APEC–CBPRs. The Department of Commerce has played an instrumental role in negotiating and structuring this agreement.

How do you think the APEC–CBPRs and an updated NAFTA will function together, and how do you plan to prioritize continued and improved data flows with our Canadian and Mexican neighbors?

*Answer.* The Department of Commerce continues to work with APEC economies, including Canada and Mexico, to bolster the APEC Cross-Border Privacy Rules system for the benefit of U.S. industry in the region. I am encouraged that all parties to NAFTA participate in the APEC–CBPR system, and believe the mechanism’s role in NAFTA can ensure the free flow of commercial data throughout the NAFTA region.

One of the many areas that have necessitated a modernization of NAFTA is the lack of an existing digital trade chapter in the current agreement. In 2015, the United States had a trade surplus of nearly \$22 billion in potentially ICT-enabled services among NAFTA parties. Every sector of the American economy relies on



cross-border data flows, and ensuring mechanisms for digital trade—including through use of the APEC–CBPR system—will preserve the leadership position of U.S. industry across sectors.

*Question.* India remains one of our most problematic trading partners, ranking last among G20 countries in the World Bank’s Doing Business report, and near the bottom of the U.S. Chamber of Commerce International IP index every year. What is your plan for engaging with the Government of India for the benefit of U.S. exporters?

*Answer.* I intend to continue the International Trade Administration’s (ITA) efforts to regularly raise U.S. exporter concerns through its bilateral commercial dialogue with the Indian Ministry of Commerce and Industry as well as USTR’s Trade Policy Forum. Through these engagements, ITA seeks opportunities to resolve market access barriers that impact U.S. exporters, including issues with IPR protection and enforcement, standards harmonization, and the rationalization of taxes and tariffs. ITA also facilitates direct dialogue between U.S. exporters and the Government of India (GOI) through venues such as the U.S.-India CEO Forum, the U.S.-India Ease of Doing Business Private Sector Outreach webinar series, and other business-to-government engagements. Through its seven Indian offices, the Foreign Commercial Service provides vital support to U.S. exporters to help them navigate the Indian market, connect with potential partners, and gain access to GOI decision-makers. The ITA Advocacy Center works with U.S. exporters to ensure they benefit from a level playing field when competing for GOI tenders, including in growing sectors such as aerospace, defense, energy, and health care. Along with USTR and the U.S. Patent and Trademark Office, ITA also develops regular workshops and exchange programs with the Government of India on topics including anti-piracy, copyright protections, trade secrets, and patent issues related to bio-pharmaceuticals, bio-agriculture, and computer-related inventions.

*Question.* I am disturbed by what I see as an increasing trend by certain international organizations to engage in initiatives that threaten U.S. competitiveness, including last year’s High-Level Panel on Access to Medicines and multiple initiatives that harm U.S. dairy. The key to counteracting these initiatives is consistent interagency coordination. In some cases, I have seen U.S. agencies responsible for interacting with these international organizations fail to run an effective interagency process that takes into account the views of all stakeholders. How will you ensure that the Department of Commerce will work with other agencies to improve interagency coordination and ensure that trade and economic issues are front and center in interagency deliberations?

*Answer.* To ensure the Department represents the needs of U.S. industry in government trade policy decision-making, ITA fully engages the interagency Trade Policy Staff Committee (TPSC) process at all its levels. ITA administers Commerce representation in the TPSC process, and ensures that decisions under consideration are evaluated by relevant experts within the Department, that the Department is appropriately represented in all facets of decision-making, and that our positions are conveyed in a clear and timely manner.

If confirmed, I will commit to ensuring that the commercial interests of U.S. manufacturers, farmers, ranchers, workers, and intellectual property holders are clearly and vigorously defended in the interagency process and promoted in international fora.

*Question.* Investor-state dispute settlement (ISDS) provides crucial protections for American firms developing products in the United States and selling them overseas. In the Bipartisan Congressional Trade Priorities and Accountability Act of 2015, protection for U.S. investors is a principal negotiating objective of the United States. This has been a critical part of most U.S. free trade agreements, and has been a part of U.S. international economic policy through bilateral investment treaties for decades.

If confirmed, will you work to reduce or eliminate artificial or trade distorting barriers to U.S. investment, and secure for U.S. investors overseas enforceable rights that are comparable to those that would be available under U.S. legal principle and practice?

*Answer.* If confirmed, I will work to ensure that U.S. investments abroad are accorded a level playing field and that such investments receive the same types of substantive protections and enforceable rights that are available under U.S. legal principles and practice. We are fully aware of the important provisions on this issue in the Bipartisan Congressional Trade Priorities and Accountability Act of 2015. If con-

firmed, I will seek to ensure that such tools are in place in a way that will protect U.S. investors without limiting the U.S. Government's ability to enforce its laws and regulations.

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QUESTIONS SUBMITTED BY HON. RON WYDEN

TRANSPARENCY AND CONSULTATIONS

*Question.* I have been clear that meaningful consultations with Congress and communications with the public are necessary for every aspect of our trade agenda. Yet the Commerce Department has kept this committee in the dark on several matters, including proposals being developed by Commerce Department officials to resolve the ongoing dispute with Canada over softwood lumber trade. As Senator Crapo and I noted at June's trade agenda hearing, this committee must be consulted every step of the way, and should be briefed on the details of U.S. proposals before they are made to Canada. Senator Crapo and I recently sent a letter, along with five other members of the Senate Finance Committee, to Secretary Ross and Ambassador Lighthizer emphasizing the need for a strong outcome for American millworkers.

I note also that such consultations will only be meaningful if conducted in a way that allows members of this committee and their staffs to actually reflect on what is being considered and to offer comments. It is simply unacceptable to only engage the committee just before a proposal is offered or an agreement reached.

If confirmed, will you commit to fully brief upon request the members of the Finance Committee and their staffs in detail on the softwood lumber case, to do so before the United States gives proposals to Canada, and to do so in a manner that allows the opportunity for meaningful consultation with the committee?

*Answer.* Yes, if confirmed, I commit to fully brief the members of the Finance Committee and their staffs on the softwood lumber case and on proposals regarding resolution of the ongoing dispute, upon request from members or their staffs, and before proposals are made. I will do so in a manner that allows for meaningful consultations with the committee.

DIGITAL TRADE

*Question.* Last month, Senator Thune and I sent a letter outlining some of our priorities on digital trade, which is now vital to exporters in every State and industry. In particular, we called on the administration to tackle the full range of barriers to America's digital exports. In recent years, the Commerce Department has been a leader in the executive branch on many of these issues critical to a large and growing part of the U.S. economy.

Do you commit to keeping digital trade at the top of your agenda and to examining the structure within the agency to ensure that the Commerce Department is best positioned to effectively tackle digital trade barriers?

*Answer.* Yes. The Department of Commerce plays a key role in driving international digital trade initiatives, whether it is market access for U.S. digital products, standards, cybersecurity, emerging technologies, cross-border data flows, privacy issues, or the impact of digital trade on many other goods and services (as noted in the letter referenced above.) The International Trade Administration has led the government and Department of Commerce in a number of cross-cutting digital issues, including cybersecurity, cloud technologies, digital media and entertainment, privacy, and cross-border data flows. It is imperative that the Department of Commerce continue this important work, and steer the U.S. Government's efforts to combat discriminatory policies that hurt U.S. industry operating globally. In bilateral and multilateral engagement, the International Trade Administration is best positioned to lead the Government's efforts to expand the U.S. economy by facilitating digital trade and this will remain at the top of ITA's agenda if I am confirmed. I also commit to examine the structure within the agency to see if any improvements can be made.

*Question.* What international initiatives do you plan specifically to enable digital trade to thrive and grow?

*Answer.* The administration has already begun establishing bilateral dialogues with partners around the world, including a strategic economic dialogue with Japan on digital trade issues, and the Comprehensive Economic Dialogue with China, among others, to take concrete steps to improve digital trade conditions for U.S. in-

dustry. The modernized NAFTA will also include new provisions on digital trade. The Department of Commerce will continue to create new opportunities for U.S. businesses and the American economy, and improve upon existing initiatives. As such, the International Trade Administration will continue to lead the EU–U.S. Privacy Shield, U.S.-Swiss Privacy Shield, and APEC Cross-Border Privacy Rules System, facilitate digital trade and e-commerce chapters of Free Trade Agreements in partnership with our colleagues at USTR, and address barriers to digital trade, such as forced data localization and the measures around revealing source code. The International Trade Administration will maintain its role as the leading agency in the government for numerous digital trade issues. It is a priority for the administration to ensure America remains the global leader in all sectors supported by digital trade, and we look forward to continuing the important work we lead at the International Trade Administration.

#### PRIVACY SHIELD

*Question.* Under the previous administration, ITA negotiated and launched the EU–U.S. Privacy Shield. This vital mechanism allows U.S. companies to transfer personal data from the European Union to the United States while providing strong privacy protections. The EU participates in an annual review of the program and of U.S. privacy practices to ensure its citizens' privacy remains adequately protected when their data is transferred here.

The first such review, between the European Commission and a U.S. delegation led by the Commerce Department, is occurring in September. European advocacy groups and parliamentarians continue to object to the Privacy Shield and have challenged it in European courts. Failure to secure the EU's consent to continue the data transfer mechanism would be devastating for many U.S. exporters.

If confirmed, will you personally ensure that Privacy Shield remains a priority for both ITA and Commerce Department leadership, as it was in the previous administration?

*Answer.* Yes. The Privacy Shield Framework is critically important to U.S. industry's ability to do business from the United States, since it enables U.S. companies to access personal data in the United States necessary to provide goods and services globally. As of August 2017, over 2,300 organizations have participated in and benefited from the Privacy Shield, and that number continues to grow each month. We will continue to support the Privacy Shield at ITA. In fact, Secretary Ross has reiterated the importance of the Framework and the Department's support for it, and we will continue to prioritize it in ITA if I am confirmed. As this Framework is critical to U.S. business interests, it will remain a priority at the Department of Commerce.

*Question.* In view of ongoing European criticism of the Privacy Shield, how should the Commerce Department use the upcoming joint review to defend the agreement and ensure its continuity?

*Answer.* The U.S.–EU economic relationship is the largest in the world, with trade flows valued at over \$1 trillion annually, and combined stocks of investment in each economy sourced from the other market close to \$4 trillion. Data flows are crucial to and underpin this strong economic relationship, allowing businesses in all sectors to cooperate across the Atlantic. The annual review is a unique mechanism that will allow both parties to engage on a regular basis to not only build relationships, but address any concerns about Privacy Shield. The Department of Commerce has been in close communication with their European counterparts, and we are confident both sides will continue this important work and engagement to address any concerns and achieve a successful result.

*Question.* If confirmed, will you engage vigorously with interagency partners, including the national security-focused agencies, to ensure the United States is a credible actor on data privacy issues?

*Answer.* Yes. The Privacy Shield Framework contains critical elements related to national security and law enforcement issues that require close collaboration with colleagues across the Federal Government, including ODNI, DOJ and the Department of State. The Department of Commerce regularly engages with these interagency partners to ensure that all of the pieces of the Framework are in place. We will continue to collaborate with them to coordinate on all aspects of the Privacy Shield, including leading up to the annual review which will provide an important avenue for engagement with our European partners.

## EXPORTS AND THE TRADE DEFICIT

*Question.* The Trump administration has talked a lot about reducing the trade deficit. It seems to me the best way to do that is to increase exports—which is what I have been saying for years. We need to grow things here, make things here, add value to them here and ship them to the rest of the world. The Commerce Department has an important role in promoting and supporting U.S. exports. For example, ITA's Portland office has made a difference for exporters in my State. Similar offices are operating in the States of almost every member of the Finance Committee.

But the President has proposed cuts to ITA funding that would, among other harms, shut down 10 local offices helping small businesses across the country increase their exports.

Will you fight to ensure that the administration fully funds key export programs?

*Answer.* Yes. Exports support millions of high-paying jobs for American citizens, and the administration wants to see them grow. If confirmed, I will fight to ensure that ITA has the funds necessary to enable its mission of promoting the exportation of U.S. goods and services.

*Question.* Recognizing the administration's commitment to manufacturing, how will you work to expand exports to grow U.S. manufacturing jobs and seek to address foreign barriers without putting those exports at risk?

*Answer.* ITA has established a non-tariff barrier (NTB) task force. The goal is to help increase exports by leveraging Commerce's global footprint, its experts, industry input, and policy levers to help reduce, remove, and prevent NTBs to trade, to remedy unfair situations, and to improve agreements compliance and market access globally for U.S. stakeholders. This work is helping to open markets and expand our exports, helping to grow U.S. manufacturing jobs. As part of this work, ITA develops an appropriate strategy that ensures U.S. interests are not adversely affected by U.S. engagement. ITA works hand-in-glove with the company and/or industry to ensure any action taken does not put our exports at risk. The plan seizes upon the unique roles and skill-sets from each ITA unit and adds increased ITA-wide collaboration to advance a next generation set of trade enforcement and compliance activities to resolve trade barriers in a commercially-meaningful time frame. ITA has been quite successful in helping our companies and industries and if I am confirmed I look forward to continuing this collaboration to ensure U.S. companies can compete globally and succeed.

## EXCESS CAPACITY IN STEEL

*Question.* Mr. Kaplan, we have a serious problem of global overcapacity in steel, aluminum, solar, and other products resulting from foreign government subsidies and other market-distorting practices. The OECD has been trying to address these issues in the steel sector; the Commerce Department is currently investigating whether imports of steel and aluminum pose a threat to our national security. While that investigation is ongoing, foreign steel is flooding our markets, further threatening U.S. jobs. Clearly we need a more comprehensive strategy to deal with the problem.

In your view, what are the specific steps the United States should take to obtain concrete results in the reduction of global steel, aluminum, and solar capacity?

*Answer.* With regard to steel, there are several areas where the United States is working to address the global excess capacity problem. One is in the Global Forum which originated in the G20 where Leaders in Hangzhou (September 2016) agreed to establish a forum where participants could evaluate the causes of excess capacity and encourage market-based adjustment. At the G20 Hamburg Summit in July 2017, Leaders reaffirmed this mandate and directed the Global Forum members to (1) complete information-sharing by August 2017, and (2) provide a substantive report with concrete policy solutions by November 2017. The work of the Global Forum is on-going, Leaders reaffirmed its importance in July and look forward to the report in November.

With regard to aluminum, global overcapacity and lower prices are primarily a result of excess production by China's aluminum sector. The United States must utilize every forum to pressure China to reduce its aluminum capacity. The United States has requested WTO consultations on subsidies that China provides to certain producers of primary aluminum. The administration has also joined other G20 countries to develop a forum similar to the steel Global Forum to evaluate the causes

of excess capacity and encourage market-based adjustment. Similar steps should be examined for the solar industry.

I believe one model we should look to to deal with excess capacity in a range of industries (steel, aluminum, solar) is the method we used to deal with excess capacity in memory semiconductors in the 1980s in Japan. There the United States self-initiated a dumping case on DRAM semiconductors, pursued a Section 301 case on market access for semiconductors, vigorously negotiated with Japan, and ultimately reached a comprehensive agreement (the U.S.-Japan Agreement on Trade in Semiconductors) which dealt with dumping and other unfair practices both into the United States and third countries, and with market access in Japan. We combined a trade case strategy (dumping and Section 301) with tough negotiating to reach a very positive result. In view of the subsidies involved in the industries you mention, at this time we should consider self-initiating countervailing duty cases where warranted and then lead into vigorous negotiations.

#### U.S.-CHINA TRADE

*Question.* We have many challenges in our trade relationship with China. In April, Chairman Hatch and I sent a letter to the President laying out the areas that we think should be top priorities, including discriminatory and distortive technology policies and burdensome regulations on cloud providers. After “initial results” of the 100-day action plan were announced there were no further results—or even progress—out of the Comprehensive Economic Dialogue and 100-day process that ended July 19th. And, I am not aware of any plans for future discussions or any strategy to tackle the issues. The Commerce Department co-leads the Comprehensive Economic Dialogue and thus has a vital role in setting the agenda for engagement with China.

How will you, in your role at Commerce, work to address the real issues that U.S. businesses face in China, and what avenues of engagement do you see as most effective in producing results?

*Answer.* I am committed to pressing China to eliminate its market-distorting industrial policies and to open its market further to exports of U.S. goods and services. We will rigorously enforce existing U.S. trade laws to protect U.S. firms and U.S. workers from unfair trade practices. Working closely with our colleagues at USTR and the State Department, we will push China to implement market opening measures that they have previously agreed to in either bilateral or multilateral negotiations and if China does not act, we will take appropriate action under U.S. or international trade law. We will also aggressively negotiate with China to take further steps to open its markets to U.S. exports. Finally, our Foreign Commercial Service will continue to work with U.S. industry to help them sell in the China market.

Also on August 14th, President Trump signed a Presidential Memorandum directing the U.S. Trade Representative to determine whether to initiate a Section 301 investigation of China’s laws, industrial policies, and other measures that may harm American intellectual property rights, innovation, or technological development. In the memorandum, the President indicated his concern in particular with certain Chinese measures that may “encourage or require the transfer of American technology and intellectual property to enterprises in China or that may otherwise negatively affect American economic interests.”

The most effective approach is a coordinated combination of trade negotiations to create new market openings, trade enforcement to ensure that existing agreements are implemented and existing trade is fair to U.S. firms and workers, and trade promotion to help U.S. firms take advantage of the opportunities in the market.

#### TRADE NEGOTIATIONS

*Question.* I believe the NAFTA negotiations present a great opportunity to negotiate agreed-upon practices with our North American trading partners to combat duty evasion and to improve trade enforcement, and this would be a great benefit for many industries. Combating duty evasion and improving trade enforcement have been priorities for the Finance Committee for some time now.

Can you speak about how you see a renegotiated NAFTA helping to address these priorities?

*Answer.* Combating duty evasion and improving trade enforcement are also priorities for ITA. A renegotiated NAFTA that leads to increased information sharing and collaborative enforcement efforts between the NAFTA countries could signifi-

cantly help to address these priorities. For example, sharing knowledge about bad actors and past attempts to fraudulently enter goods into any of the NAFTA countries could result in actions that stop the fraudulently traded goods from crossing our border thus ensuring a level playing field for domestic industries. The NAFTA Negotiating Objectives put forth by USTR in July specify as objectives increasing cooperation among trade remedy administrators, and strengthening procedures to prevent AD/CVD duty evasion. If confirmed I will work with USTR to achieve these goals.

The President pulled out of the Trans-Pacific Partnership because he is in favor of bilateral deals.

*Question.* Where do you see the opportunities for our exporters to access new markets supporting high paying jobs here in the United States?

*Answer.* There is tremendous opportunity for the United States to increase its exports over the next 5 years. By 2025, global infrastructure spending is projected to reach \$9 trillion per year. By 2050, per capita incomes in Asia and parts of Africa are projected to triple and be on par with the wealthiest economies of today. These factors will combine to create huge demand for infrastructure products and services, transportation equipment, high-tech machinery, energy, and intellectual property (IP)-intensive products and services—all sectors in which U.S. companies are most competitive.

Despite the economic benefits that exporting provides to businesses, workers, and communities, only about 5 percent of U.S. companies currently export. U.S. firms under-export and are under-represented in foreign markets compared to competitors from other industrialized nations. The Department is addressing this imbalance by aggressively promoting “Made in America” products and services, by helping U.S. businesses (especially SMEs) access reliable actionable information and qualified international buyers and distributors, reach potential tourists, and remove challenges and barriers when doing business overseas by reducing the costs and complexities of exporting.

Renegotiation of NAFTA and the holding of a special session of the joint committee of KORUS are also part of a broader effort by the administration to open foreign markets, eliminate foreign market distortions and level the playing field. The administration has launched a comprehensive review of our trading systems and relationships to identify where the system is not working and how we might restore the trade balance to become more free and more reciprocal to the benefit of U.S. businesses, workers, farmers, ranchers, and service providers. With respect to trade agreements, the administration has expressed its intent to deepen economic ties, including through negotiation of trade agreements, with Japan, the European Union, and the United Kingdom so far. The administration is also looking at all members of the TPP 11.

*Question.* What is your view of sectoral agreements such as TiSA and EGA, that may not be bilateral, but have significant potential benefits for U.S. companies?

*Answer.* While the President has expressed a preference for bilateral deals, there may be instances where a number of like-minded trading partners can fashion an agreement that is in accordance with their level of ambition without the risk of having to make concessions to a smaller player of lesser ambitions. When such agreements can benefit U.S. companies and workers, they should be pursued.

#### SMALL BUSINESS EXPORTERS

*Question.* The number of SMEs that export has risen exponentially since 1992, reaching nearly 300,000 companies today. SMEs were responsible for about one-third of goods exports by value in 2015, or \$440 billion in exports, and they stand to gain by expanding their reach in the global marketplace. The National Small Business Association reported that most respondents to their survey export to less than 5 countries, with Canada and Mexico at the top of the list (and North America as the market with the greatest potential over the next 3 years). Yet the 7 percent of SMEs who exported to 10 or more countries in 2015 accounted for more than half of total SME export value.

How can ITA help SMEs reach new markets and expand the volume of exports?

*Answer.* If confirmed, I definitely want to help increase both the number of markets that U.S. SMEs export to as well as the volume of U.S. exports, by the following steps:

- To address the inherent market failures and disadvantages that SMEs face when seeking to take advantage of global market opportunities, ITA provides actionable market intelligence, including practical transactional know-how on the mechanics of exporting, guidance to manage and overcome barriers to trade, and information on trade financing options. Recognizing the speed at which companies need to operate, ITA will enable U.S. companies to access this information and exporter services rapidly through self-service options on its website and other digital channels.
- ITA will develop more focused initiatives on emerging industries such as 21st-century technologies, infrastructure development, services sector trade, and the digital economy/e-commerce. These emerging industries provide great opportunity for SMEs to begin exporting and establishing themselves as global players while the industries are still young.
- Strengthening and expanding partnerships with State, local, and international export resources, economic development organizations, trade associations, and corporations enable the Department to reach more potential exporters. ITA will continue to develop strategic partnerships with service providers and trade facilitators across the United States to reach a broader network of exporters and potential exporters and to help more companies increase sales and productivity.
- ITA will work with USTR to include an SME chapter in Free Trade Agreements. This chapter specifically will help SMEs become aware of the specific benefits to them, giving them greater opportunity and reason to export to those markets.

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QUESTION SUBMITTED BY HON. CHUCK GRASSLEY

*Question.* The administration is currently conducting a 232 investigation for steel and aluminum imports, but I want to hear your views on another import issue that is endangering thousands of manufacturing jobs around the country, and that is the massive growth of subsidized biodiesel imports into the United States.

Last year, more than a billion gallons of biodiesel was imported, which equates to roughly 39 percent of the total market. Imports are continuing to take away market share from U.S. producers, as our domestic production has shrunk to about 65 percent of production capacity. I'm sure you're aware of the pending anti-dumping and countervailing duty case the Department is investigating concerning highly subsidized biodiesel imports from Argentina and Indonesia. While the Department's initial determination is due in a few weeks, I am curious to get your opinion on how we are letting jobs and market share being taken away along with our energy security.

*Answer.* The administration remains focused on U.S. energy security and is committed to vigorously enforcing our trade remedy laws to address unfair trade practices that impact American workers and companies in the energy sector. If confirmed, I can assure you that I will employ all of the tools provided under the law to take swift action against harmful trade practices that put Americans at a disadvantage. Further, if confirmed, I will commit to focus on increasing U.S. market share and jobs within the energy sector and ensuring that U.S. companies and workers harmed by unfair trade practices receive the full relief provided under U.S. law.

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QUESTION SUBMITTED BY HON. MICHAEL B. ENZI

*Question.* The U.S. soda ash industry is a shining example of U.S. competitiveness in manufacturing. The industry is the most competitive and environmentally friendly in the world due to a unique deposit of the soda ash material, trona, in Green River, WY. The industry exports over \$1 billion annually, over half of its total output. However, as a result of China's excess steel capacity, U.S. workers have experienced devastation from massive Chinese exports to the United States. In the context of the Joint Committee on Commerce and Trade (JCCT), China made commitments to exchange information with the Commerce Department regarding its excess capacity in soda ash. Does the administration plan to enforce this obligation through the JCCT or will excess capacity in China's soda ash market be addressed in the context of the U.S.-China Comprehensive Economic Dialogue?

Answer. Under the JCCT, the United States repeatedly raised the issue of China's soda ash production, exports and government supports, but China did not respond to our concerns. At the 2016 JCCT, China agreed to an exchange of information regarding the soda ash industry. The administration has established a new framework for our engagement with China and in July the United States and China held the first Comprehensive Economic Dialogue under which the issue of excess capacities was discussed. Eliminating unfair trade practices around the world, particularly by China, is a top priority for President Trump and Secretary Ross. As the administration works out detailed arrangements under the new framework, we will determine the appropriate forum to implement the JCCT outcome and raise our concerns regarding soda ash. In any case, the commitments made by China regarding China's excess capacity in soda ash will be enforced. We will keep you informed regarding this issue as we move forward.

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QUESTIONS SUBMITTED BY HON. JOHN CORNYN

MARKET ACCESS

*Question.* China is the United States' largest global trading partner but with good reason also stands as one of the most frequently cited trouble spots for industries in the United States due to a wide range of market-distorting industrial policies and discriminatory market conditions.

How would you seek to address problematic Chinese actions more effectively while minimizing economic disruption or the risk of retaliatory action against businesses and workers in the United States?

Answer. ITA is committed to press China to eliminate its market-distorting industrial policies and to open its market further to exports of U.S. goods and services. We will rigorously enforce existing U.S. trade laws to protect U.S. firms and U.S. workers from unfair trade practices. Working closely with our colleagues at USTR and the State Department, we will push China to implement market opening measures that they have previously agreed to in either bilateral or multilateral negotiations and if China does not act, we will take appropriate action under U.S. or international trade law. We will also aggressively negotiate with China to take further steps to open its markets to U.S. exports. Finally, our Foreign Commercial Service will continue to work with U.S. industry to help them sell in the China market.

At the same time, we understand the risk of retaliation against U.S. exports. By acting consistently with U.S. and international law and by seeking to make progress through negotiated solutions, those risks will be minimized.

*Question.* President Trump and Chinese President Xi Jinping had a frank dialogue in April during the Mar-a-Lago summit, and struck a cooperative tone—including announcements of China's 100-day plan and upcoming commercial dialogues. The 100-day plan's final results covered some areas, but the first Comprehensive Economic Dialogue did not produce the results many had hoped.

How will you, in your role at Commerce (one of the CED's two leads), work to address the real issues that U.S. businesses face in China?

What approaches, both existing and new, do you see as most effective in producing results?

Answer. I will work closely with Secretaries Ross and Mnuchin to press China to eliminate its market-distorting industrial policies and to open its market further to exports of U.S. goods and services. The 100-day plan achievements were part of the Comprehensive Economic Dialogue, which is an ongoing process. China's market-distorting industrial policies and mercantilist trade regime not only injure U.S. firms and workers, they also raise prices and limit choices for Chinese consumers, create instability in China's economy and ultimately make Chinese firms less competitive. We will use the CED to push for measurable results—a substantial increase in U.S. exports—that show that China is addressing these problems. We are also very cognizant of the large build-up of overcapacity in certain industries due to subsidies. We will explore fully options to deal with this overcapacity build up including the use of self-initiated countervailing duty cases and dealing with this issue through multilateral forums.

Moreover, on August 14th, President Trump signed a Presidential Memorandum directing the U.S. Trade Representative to determine whether to initiate a Section 301 investigation of China's laws, industrial policies, and other measures that may



harm American intellectual property rights, innovation, or technological development. In the memorandum, the President indicated his concern in particular with certain Chinese measures that may “encourage or require the transfer of American technology and intellectual property to enterprises in China or that may otherwise negatively affect American economic interests.”

The most effective approach is a coordinated combination of trade negotiations to create new market openings, trade enforcement to ensure that existing agreements are implemented and existing trade is fair to U.S. firms and workers, and trade promotion to help U.S. firms take advantage of the opportunities in the market.

*Question.* At present, China maintains a 50% foreign equity cap restriction on foreign direct investment in the Chinese domestic life insurance market. An equity cap is unnecessary to protect a Chinese life/health insurance industry that controls 95% of the market and is actively expanding in foreign markets, including in the United States, where no such equity caps exist. Removal of the Chinese equity cap restriction has been an industry objective since the Chinese joined the WTO in 2000. I applaud the administration’s commitment to getting China to play fairly in the international marketplace and note the recent announcement of an agreement between the United States and China to make progress on some issues. At the hearing, you suggested other items were also being pursued as part of the “100-day plan” agreed to between President Trump and President Xi.

Can you tell me if the life insurance equity cap restriction has been or will be tabled as part of the ongoing CED with China?

*Answer.* China’s 50% foreign equity cap on life insurance is a trade barrier and its removal would provide significant commercial benefits to U.S. life insurers. This issue has been a part of our ongoing CED dialogue with China.

*Question.* Can you commit to pursuing this and other market-opening advancements in the Chinese domestic financial services sector?

*Answer.* Yes, this issue is critically important and we will continue to pursue this and other market opening measures in the Chinese domestic financial services sector. China’s restrictions on investment by U.S. life insurance and other financial services firms were discussed at the CED and those discussions will continue until China grants full, fair, and reciprocal access to its markets to all U.S. services firms.

#### NAFTA

*Question.* More money is spent on biomedical R&D in the United States than in any other country in the world. Proposals under consideration in Canada to dramatically change the way medicines are paid for would ignore this important investment and instead apply harmful pricing setting measures from other countries to Canada’s private market. This would significantly harm U.S. biopharmaceutical companies and ultimately exacerbate delays in patient access to medicine.

What more do you think the International Trade Administration can do to advance policies for American innovators that appropriately recognize and reward the value of medicines and ensure patients have access to the medicines they need?

*Answer.* I recognize that Canada and many other trading partners fail to appropriately value U.S. pharmaceuticals and biopharmaceuticals in their government pricing and reimbursement regimes, causing enormous harm to patients and undermining future biomedical investment and innovation. If confirmed, I will work with our interagency partners to ensure that trade agreements include enforceable commitments that government pricing and reimbursement systems appropriately value and reward innovation as well as provide transparency and procedural fairness to U.S. companies. I will also ensure that the International Trade Administration works to achieve these objectives in other bilateral engagements with individual countries. We are fully aware of the important provisions on this issue in the Bipartisan Congressional Trade Priorities and Accountability Act of 2015.

*Question.* The administration has worked to advance an ambitious trade agenda, which has the potential to significantly strengthen economic growth and accelerate the pace of innovation in our economy.

Do you agree that NAFTA modernization will be one of the first opportunities to level the playing field for American innovators by advancing strong standards and will also be critical for setting a high bar for future agreements?

*Answer.* NAFTA was negotiated more than 23 years ago, and, since that time, the U.S. economy and U.S. businesses have changed considerably. NAFTA has not kept

up with these changes; instead, most chapters are outdated and do not reflect the most recent standards in U.S. trade agreements.

NAFTA's renegotiation is one component in a broader strategy of this administration. A cohesive trade policy is key to the administration's efforts to promote growth and innovation and we intend to set a high bar in our renegotiation of NAFTA and certainly expect these high standards will set a valuable precedent for other negotiations the administration may undertake in the future. The NAFTA objectives set forth by USTR in July make clear that inclusion of strong provisions on digital trade, cross-border data flows, and intellectual property are a critical part of this effort.

*Question.* Moreover, do you believe that it is important to establish strong IP standards as part of a NAFTA renegotiation?

*Answer.* Absolutely. Our IP-intensive industries are significant drivers of economic growth, job creation, and exports. I believe a renegotiated NAFTA should provide a fair and level playing field for U.S. businesses, and strong IP standards are a prerequisite to ensuring that happens.

*Question.* Mexico is an essential market for Texas agriculture. In addition to the beef we export there, it's our top foreign dairy market by far. Nationwide, U.S. exports to Mexico are about triple what they are in China, despite that market's tremendous importance. So when we're looking south, we want to make sure there's a strong priority on keeping the access we have, which is relevant for tariffs and nontariff policies. Furthermore, it is essential that the NAFTA modernization efforts incorporate text on the issue of geographical indications (GIs) and common names. The trade agreement between Canada and the European Union is set to be implemented this summer. The protections the EU demanded from Canada will impair market access for cheese and other food products from third countries and are in complete disregard of Canadian intellectual property laws. Also, Mexico has been negotiating FTA expansion with the European Union that is intended to incorporate GI provisions. As the European Commission seeks to incorporate GI provisions in all its FTAs, it has been attempting to use the negotiation with Mexico to impose de facto barriers to trade and competition on various common name products that the EU falsely claims as GIs. It is critical that the U.S. continue to reinforce that GIs are a type of intellectual property.

*Question.* Will GI provisions similar to those in TPP be incorporated into NAFTA and future U.S. trade deals?

*Answer.* I share your concerns that the EU's approach to the protection of geographical indications in the EU and third-country markets can inhibit U.S. producers' access to those markets, posing particular challenges for those who rely on the use of common food names. I am fully aware of the importance of this issue and will work to preserve U.S. market access opportunities for common name products despite the EU's efforts to misuse GIs to erect barriers to those products. I agree that U.S. export markets must remain open to American goods, and that access should not be restricted through protectionist policies. Our Commerce Department staff, including staff from ITA and the U.S. Patent and Trademark Office (USPTO) work through bilateral and multilateral channels to advance U.S. market access interests in foreign markets and ensure that GI-related trade initiatives of the EU and its member states and international organizations do not undercut such market access. I would also note that the NAFTA objectives put forth by USTR in July specifically state the following objective: "prevent the undermining of market access for U.S. products through the improper use of a country's system for protecting or recognizing geographical indications, including failing to ensure transparency and procedural fairness and protecting generic terms." I will work with USTR to achieve this goal.

#### INTELLECTUAL PROPERTY

*Question.* Intellectual property-intensive industries not only support nearly 46 million jobs, but also account for over half (52%) of all U.S. exports.

What role do you believe American's innovation-led industries, such as the biopharmaceutical, software, and motion picture industries, can play in helping to address our trade imbalances?

*Answer.* These industries are a critical element in dealing with trade imbalances. First, the very high-end products and services they produce are in demand worldwide and are very important exports already. But by enhancing intellectual property

protection worldwide and further opening foreign markets, we can expand even further the role of these exports and the importance of these industries. As you noted, our IP-intensive industries are a significant source of both jobs and exports. The world's demand for U.S. innovation and creativity manifests itself in report after report that show the outsized effect these industries continue to have on the U.S. economy. Open markets and rules-based trading will allow these industries to continue their positive contribution toward our trade balances. Finally, the very high level of expertise and dynamism these industries embody lead to whole new categories of products and services that can over time greatly contribute to lessening trade imbalances.

*Question.* What role do you believe the International Trade Administration should play to advance this goal?

*Answer.* ITA will contribute to this goal by advocating for a trading system that respects intellectual property, by confronting unfair trade barriers wherever they are found, and through our already significant engagement and consultation with innovation-led industry. We also will be a leader in digital trade issues, ensuring that our trade agreements provide full world-wide access for U.S. digital trade products, that the industry is not subjected to artificial constraints, and that their intellectual property is protected.

*Question.* We have seen a disturbing trend in recent years whereby some of our trading partners have ignored their international commitments, particularly with respect to intellectual property protection, either by failing to fully implement agreements or by flouting the rules in order to give their businesses an unfair advantage. These decisions are short-sighted and ultimately discourage innovation, investment and job growth.

What do you believe ITA should be doing to ensure our trading partners are enforcing existing commitments and deter countries from weakening such standards in their own IP regimes?

*Answer.* Insisting on a fair and equitable international trading system is a top priority for me. Our businesses are increasingly reliant on multiple forms of intellectual property with those industries providing an outsized effect on the U.S. economy and job growth. Our trading partners should expect nothing less from us than an insistence on full compliance with the agreements we have made. The United States has many tools, some carrot, some stick, that can be wielded to address any shortcomings among our trading partners. These include the use of domestic trade cases as well as WTO cases. Also direct intervention by our country and industry experts, including those on the ground with the Foreign Commercial Service within our trading partners, can lead to progress. As the lead for ITA, I would support using whatever tool would get the job done.

#### AIR CARGO

*Question.* The International Trade Administration has a unique responsibility to promote U.S. trade, investment, and exports, while also ensuring that U.S. companies face fair trade practices around the globe. The U.S. air cargo industry is a leading exporter of shipping and logistics services and a major contributor to moving exported U.S. products to foreign markets. I have recently learned that the U.S. air cargo industry is facing challenges in China that undermine their abilities to compete. Aviation authorities in China have significantly restricted the take-off and landing "slots" that are available to U.S. carriers and, in particular, cargo carriers. In addition to restrictions that force U.S. cargo carriers to land at odd hours and keep expensive aircraft idle on the ramp for hours unnecessarily, the U.S. cargo carriers have not seen any appreciable increase in the availability of new slots, despite substantial airport infrastructure growth in China over the last decade. Additionally, they sometimes are prevented from serving two points in China on the same flight even though the U.S.-China air transport agreement permits them to do so. I am concerned that the China aviation authorities are providing preferential treatment to their domestic cargo carriers in awarding new slots and not living up to China's commitments in the U.S.-China air transport agreement.

What will you do at ITA to work with Departments of State and Commerce to ensure that U.S. cargo carriers have access to take-off and landing slots in China on a fair and nondiscriminatory basis?

*Answer.* I am well aware of the U.S. cargo industry's concerns in this area and commit to meet with the impacted U.S. cargo airlines to hear and address their concerns, and to consult with you and your staff regarding this problem.

Recognizing that China is not meeting their full obligations under the U.S.-China air transport agreement, the United States has made clear to China that we will not negotiate the further improvements they seek to the agreement that would allow more passenger flights from east China airports to the United States, until they meet their obligations under our existing agreement. These obligations include the ones mentioned related to non-discriminatory and commercially viable slot allocation to all U.S. cargo and passenger airlines and permitting “co-terminalized” flights by cargo air carriers that link two airports in China on the same flight routing.

With the Departments of State and Transportation, ITA has held discussions with the Chinese aviation authorities, and proposed solutions that would improve the fairness, transparency, and efficiency of Chinese slot allocation at congested airports. With my interagency colleagues, I will continue to work closely with U.S. aviation industry stakeholders to address their concerns and make every effort to solve this discriminatory treatment issue.

#### OTHER FTAS

*Question.* The United States has negotiated bilateral, regional, multilateral, and sectoral trade agreements to open foreign markets, eliminate foreign market distortions, and level the playing field. Beyond NAFTA and KORUS, which countries, regions and sectors are priorities for the Trump administration?

*Answer.* Renegotiation of NAFTA and the holding of a special session of the joint committee of KORUS are part of a broader effort by the administration to open foreign markets, eliminate foreign market distortions, and level the playing field. The administration has launched a comprehensive review of our trading systems and relationships to identify where the system is not working and how we might restore the trade balance to become more free and more reciprocal to the benefit of U.S. businesses, workers, farmers, ranchers, and service providers. With respect to trade agreements, the administration has expressed its intent to deepen economic ties, including through negotiation of trade agreements, with Japan, the European Union, and the United Kingdom so far. We are also looking at all members of the TPP 11.

#### DISPUTE SETTLEMENT

*Question.* Foreign investment is a critical tool that allows American manufacturers to grow and thrive, allowing them to reach the 95 percent of consumers who exist outside of U.S. borders and boosting income they contribute to the U.S. economy. Indeed, little known is the fact that U.S. companies that invest overseas are the predominant exporters from the United States that have U.S.-based capital investment and research and development. But investors have to receive fair treatment in order for that investment to benefit the U.S. That is why investor-state dispute settlement mechanisms are such a critical part of our trade agreements. All investors in the U.S. benefit from protections baked into the U.S. Constitution, but such basic protections are not always available when U.S. investors invest in other countries, meaning that investors must lean on investor-state dispute settlement to ensure a fair treatment and the rule of law.

Congress included investor-state as part of Trade Promotion Authority, voting by a heavy majority in the Senate to keep this important provision in our trade agreements going forward.

Will you commit that you and your team at Commerce will commit to following Congress’s direction on the importance of investor-state enforcement, as part of a robust U.S. enforcement tool kit—including in NAFTA renegotiations?

*Answer.* We are fully aware of the important provisions on this issue in the Bipartisan Congressional Trade Priorities and Accountability Act of 2015. If confirmed, I commit to work to ensure that U.S. investments abroad are accorded a level playing field and that such investments receive the same types of substantive protections and enforceable rights that are available under U.S. legal principles and practice, including in NAFTA. This is an important part of our enforcement tool kit.

The NAFTA negotiating objectives set forth by USTR in July state as one objective: “Secure for U.S. investors in the NAFTA countries important rights consistent with U.S. legal principles and practice, while ensuring that NAFTA country investors in the United States are not accorded greater substantive rights than domestic investors.” If confirmed I will work with USTR to achieve this objective.

## EXPORT PROMOTION

*Question.* The Commerce Department and ITA play a vital role in providing strategic direction for the Federal Government's export promotion activities and also offers tangible support for many U.S. exporters, through its Foreign and Commercial Service personnel and Advocacy Center as well as the interagency Trade Promotion Coordinating Committee.

How will you support and expand the trade promotion initiatives, so that more U.S. companies can capture export sales and support job growth here at home?

*Answer.* There are three areas of priority for the Commerce Department and ITA to fully engage more U.S. companies in export growth:

- I plan to strengthen our advocacy efforts to ensure we are effective and have the administration's support for U.S. companies bidding on infrastructure projects that have been duly qualified and can benefit from U.S. Government advocacy. To do this, I will work with my team to ensure the TPCC Advocacy Working Group has the attention of its senior-level officials across the administration to advocate on behalf of U.S. business interests in such areas as infrastructure, aerospace and defense, energy, healthcare, and ITC.
- We will deepen our work with State and local partners. For the first time earlier this year, ITA developed export strategies with each State. We want to expand and improve this effort to include elements on performance metrics and training in connection with these strategies. We will also monitor State activity and progress to ensure the strategies are implemented.
- We will also work to ensure that our overseas officers and staff are trained on the latest issues facing U.S. exporters be it intellectual property or e-commerce. We want to ensure that U.S. companies get all the assistance they need.

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 QUESTIONS SUBMITTED BY HON. RICHARD BURR

*Question.* Despite frequent bilateral engagement with India since 2014, India has failed to create significant positive opportunities for U.S. workers, businesses, and farmers. It remains a tough place to do business, ranking last among G20 countries in the World Bank's Doing Business report, and on the United States Trade Representative's Priority Watch List in the 2017 Special 201 Report, due to its insufficient protection of intellectual property rights. Aside from bilateral discussion, what venues and opportunities does Commerce have to address these issues with the government of India to affect change?

*Answer.* The International Trade Administration (ITA) does seek to lower trade barriers with India through its bilateral commercial dialogues with the Indian Ministry of Commerce and Industry and through USTR's Trade Policy Forum. But in addition to these bilateral engagements, ITA plays a key role in facilitating direct dialogue between U.S. industry and the Government of India (GOI) through venues such as the U.S.-India CEO Forum and the U.S.-India Ease of Doing Business Private Sector Outreach webinar series. The ITA Advocacy Center works with U.S. exporters to ensure they benefit from a level playing field when competing for GOI tenders. Through its Enforcement and Compliance unit, ITA ensures that India and other trading partners abide by fair trading practices that are consistent with international trade obligations. This unit is devoted to making sure all trade agreements are complied with and can focus on Indian intellectual property issues and other Indian trade issues. ITA also seeks to promote stronger protection and enforcement of intellectual property rights during this year's Global Entrepreneurship Summit, to be held in Hyderabad, India November 28–30, 2017. Finally, Commerce is also the home of the United States Patent and Trademark Office ("PTO") which can bring tremendous technical resources to bear in solving these Indian intellectual property problems.

*Question.* The American Manufacturing Competitiveness Act (AMCA), passed by Congress in May 2016, establishes a new process for the consideration and enactment of the Miscellaneous Tariff Bill (MTB). I appreciate the U.S. Department of Commerce's efforts on the MTB, in cooperation with the U.S. International Trade Commission and U.S. Customs and Border Protection, to implement the ongoing MTB review process, as required under the AMCA. I am concerned, however, that some aspects of the ITC's process will lead to the improper exclusion of a number

of petitions from the ITC's final report. What steps will you take to ensure that these issues are remedied during future MTB reviews?

Answer. The American Manufacturing Competitiveness Act (AMCA) sets out clearly defined roles for agencies in the MTB review process, and the International Trade Administration has taken the requirements of the AMCA very seriously. During the recent review, ITA staff spent countless hours reviewing the petitions for domestic production concerns to make sure their analysis was as accurate as possible. ITA then worked closely with U.S. Customs and Border Protection and the U.S. Department of Agriculture to send the Commerce report to the USITC and the relevant committees. ITA has a good working relationship with the USITC, which I believe will continue into the next MTB review. We will make every effort to make sure no improper exclusions occur. Commerce has significant authority in this area because, in fact, section 3(c) of the AMCA requires that the USITC, "tak[e] into account the report of the Secretary of Commerce," when preparing its report.

Ultimately, however, the determination on how MTB petitions are categorized in the USITC report is the USITC's to make.

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QUESTION SUBMITTED BY HON. PATRICK J. TOOMEY

AIR CARGO

*Question.* The International Trade Administration has a unique responsibility to promote U.S. trade, investment, and exports, while also ensuring that U.S. companies face fair trade practices around the globe.

The U.S. air cargo industry is a leading exporter of shipping and logistics services and a major contributor to moving exported U.S. products to foreign markets. It is my understanding that the U.S. air cargo industry is facing challenges in China that undermine their ability to compete. Aviation authorities in China have significantly restricted the take-off and landing "slots" that are available to U.S. carriers and, in particular, cargo carriers. In addition to restrictions that force U.S. cargo carriers to land at odd hours and keep expensive aircraft idle on the ramp for hours unnecessarily, the U.S. cargo carriers have not seen any appreciable increase in the availability of new slots, despite substantial airport infrastructure growth in China over the last decade. Additionally, they sometimes are prevented from serving two points in China on the same flight even though the U.S.-China air transport agreement permits them to do so. I am concerned that the China aviation authorities are providing preferential treatment to their domestic cargo carriers in awarding new slots and not living up to China's commitments in the U.S.-China air transport agreement.

What will you do at ITA to work with Departments of State and Commerce to ensure that U.S. cargo carriers have access to take-off and landing slots in China on a fair and nondiscriminatory basis?

Answer. I am well aware of the U.S. cargo industry's concerns in this area and commit to meet with the impacted U.S. cargo airlines to hear and address their concerns, and to consult with you and your staff regarding this problem.

Recognizing that China is not meeting their full obligations under the U.S.-China air transport agreement, the United States has made clear to China that we will not negotiate the further improvements they seek to the agreement that would allow more passenger flights from east China airports to the United States, until they meet their obligations under our existing agreement. These obligations include the ones mentioned related to non-discriminatory and commercially viable slot allocation to all U.S. cargo and passenger airlines and permitting "co-terminalized" flights by cargo air carriers that link two airports in China on the same flight routing.

With the Departments of State and Transportation, ITA has held discussions with the Chinese aviation authorities, and proposed solutions that would improve the fairness, transparency, and efficiency of Chinese slot allocation at congested airports. With my interagency colleagues, I will continue to work closely with U.S. aviation industry stakeholders to address their concerns and make every effort to solve this discriminatory treatment issue.

## QUESTIONS SUBMITTED BY HON. ROBERT MENENDEZ

*Question.* We have seen a disturbing trend in recent years whereby some of our trading partners have ignored their international commitments, particularly with respect to intellectual property protection, either by failing to fully implement agreements or by flouting the rules in order to give their businesses an unfair advantage. These decisions are short-sighted and ultimately discourage innovation, investment, and job growth.

What do you believe ITA should be doing to ensure our trading partners are enforcing existing commitments and deter countries from weakening such standards in their own IP regimes?

*Answer.* Insisting on a fair and equitable international trading system is a top priority for me. Our businesses are increasingly reliant on multiple forms of intellectual property with those industries providing an outsized effect on the U.S. economy and job growth. Our trading partners should expect nothing less from us than an insistence on full compliance with the agreements we have made. The United States has many tools, some carrot, some stick, that can be wielded to address any shortcomings among our trading partners. These include the use of domestic trade cases as well as WTO cases. Also direct intervention by our country and industry experts, including those on the ground with the Foreign Commercial Service within our trading partners, can lead to progress. As the lead for ITA, I would support using whatever tool would get the job done.

*Question.* In the context of the Joint Committee on Commerce and Trade (JCCT), China made commitments to exchange information with the Commerce Department regarding its excess capacity in soda ash.

Does the administration plan to enforce this obligation through the JCCT, or will excess capacity in China's soda ash market be addressed in the context of the U.S.-China Comprehensive Economic Dialogue?

*Answer.* Under the JCCT, the United States repeatedly raised the issue of China's soda ash production, exports and government supports, but China did not respond to our concerns. At the 2016 JCCT, China agreed to an exchange of information regarding the soda ash industry. The new administration has established a new framework for our engagement with China and in July the United States and China held the first Comprehensive Economic Dialogue under which the issue of excess capacities was discussed. Eliminating unfair trade practices around the world, particularly by China, is a top priority for President Trump and Secretary Ross. As the administration works out detailed arrangements under the new framework, we will determine the appropriate forum to implement the JCCT outcome and raise our concerns regarding soda ash. In any case, the commitments made by China regarding China's excess capacity in soda ash will be enforced. We will keep you informed regarding this issue as we move forward.

*Question.* I understand that China's new cybersecurity law, as well as other related regulations, has created a number of restrictions for U.S. companies that operate in China. These regulations require annual security reviews, forfeiture of proprietary information, and also mandate that all data be stored locally in China. And because these regulations are also unclearly defined, they're creating confusion for companies and the U.S. Government alike.

How will you work to ensure that China's regulations do not discriminate against U.S. firms and allow U.S. businesses to compete on a level playing field?

*Answer.* I am committed to press China to eliminate its market-distorting industrial policies and to open its market further to exports of U.S. goods and services. I am very concerned about the restrictions in China's Cybersecurity Law, and other laws, regulations, and measures. To address the inequities in China's market, I intend to rigorously enforce existing U.S. trade laws to protect U.S. firms and U.S. workers from unfair trade practices. Working closely with my colleagues at USTR and the State Department, we will push China to implement market opening measures that they have previously agreed to in either bilateral or multilateral negotiations and if China does not act, we will take appropriate action under U.S. or international trade law. We will also aggressively negotiate with China to take further steps to open its markets to U.S. exports. Finally, ITA staff working closely with our Commercial Service on the ground in China, will continue to work with U.S. industry to help them sell in the China market including in the high technology space.

Moreover, on August 14th, President Trump signed a Presidential Memorandum directing the U.S. Trade Representative to determine whether to initiate a Section 301 investigation of China's laws, industrial policies, and other measures that may harm American intellectual property rights, innovation, or technological development. In the memorandum, the President indicated his concern in particular with certain Chinese measures that may "encourage or require the transfer of American technology and intellectual property to enterprises in China or that may otherwise negatively affect American economic interests."

*Question.* The OECD estimates that there is more than 700 million metric tons of global excess capacity in steel and China accounts for the majority of it. Last year, the G20 created a new forum to try to address this ongoing problem. But thus far nothing has been done to solve it. In fact, China has not even shared the data necessary to inform our discussions about the problem.

What do you think should be done to address the ongoing global excess capacity problems in steel and other sectors?

*Answer.* With regard to steel, there are several areas where the United States is working to address the global excess capacity problem. One is in the Global Forum which originated in the G20 where Leaders in Hangzhou (September 2016) agreed to establish a forum where participants could evaluate the causes of excess capacity and encourage market-based adjustment. At the G20 Hamburg Summit in July 2017, Leaders reaffirmed this mandate and directed the Global Forum members to (1) complete information-sharing by August 2017, and (2) provide a substantive report with concrete policy solutions by November 2017. The work of the Global Forum is on-going, Leaders reaffirmed its importance in July, and look forward to the report in November.

With regard to aluminum, global overcapacity and lower prices are primarily a result of excess production by China's aluminum sector. The United States must utilize every forum to pressure China to reduce its aluminum capacity. The United States has requested WTO consultations on subsidies that China provides to certain producers of primary aluminum. The administration has also joined other G20 countries to develop a forum similar to the steel Global Forum to evaluate the causes of excess capacity and encourage market-based adjustment.

I believe one model we should look at to deal with excess capacity in a range of industries (steel, aluminum, solar) is the method we used to deal with excess capacity in memory semiconductors in the 1980s in Japan. There the United States self-initiated a dumping case on DRAM semiconductors, pursued a Section 301 case on market access for semiconductors, vigorously negotiated with Japan, and ultimately reached a comprehensive agreement (the U.S.-Japan Agreement on Trade in Semiconductors) which dealt with dumping and other unfair practices both into the United States and third countries, and with market access in Japan. We combined a trade case strategy (dumping and Section 301) with tough negotiating to reach a very positive result. In view of the subsidies involved in steel, at this time we should consider self-initiating countervailing duty cases where warranted and then lead into vigorous negotiations.

*Question.* I have had longstanding concerns that currency manipulation by our trading partners has repeatedly undermined U.S. competitiveness and led to job losses.

How would you use Commerce's existing authorities to address this behavior?

*Answer.* Currency manipulation and misalignment is a critical issue when it comes to the United States' ability to compete in international trade on a level playing field. This administration has made clear its view that it is unacceptable for any country to try to grow its exports based on a manipulated or misaligned exchange rate, and I firmly believe the United States should not stand idly by while U.S. companies, workers, farmers and ranchers suffer the consequences of having to compete against such unfair practices. While the authority to monitor and report on currency manipulation rests with the Department of the Treasury, Commerce separately has the authority to investigate an allegation that foreign producers and exporters are benefitting from currency-related foreign government subsidies, provided the allegation meets the requirements for initiating an investigation under the U.S. countervailing duty law. An allegation of a countervailable currency subsidy made by a petitioning U.S. industry or its workers will be carefully examined by Commerce based on the merits of and evidence underlying the allegation, in conformity with the initiation requirements under U.S. law. I am committed to vigorously enforcing the



trade remedy laws to ensure that U.S. companies, workers, farmers, and ranchers receive the relief from unfair trade to which they are entitled under law.

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PREPARED STATEMENT OF HON. RON WYDEN,  
A U.S. SENATOR FROM OREGON

The Finance Committee meets this morning to discuss three nominations. First is Mr. Robert Charrow's nomination to serve as the General Counsel of the Department of Health and Human Services. This is a tough job under normal circumstances, but it's especially tough in the Trump administration. That's because the HHS General Counsel's role is to enforce the law, and right now the President and his team are determined to undermine the law.

A few examples: the law on the books tells the administration to make cost sharing payments that help keep down the cost of health insurance for millions of Americans. But the President keeps threatening to cut those payments off to score a misguided political win. The lack of certainty this is causing in the private markets is already setting up to hit Americans directly in the pocketbooks with premium hikes on January 1st. If the payments do stop, the markets will go into a tailspin.

Additionally, the administration is taking taxpayer dollars that are intended to help get individuals and families signed up for health coverage, and it's using those funds to stifle enrollment. That means more people are living without access to the care they need.

I recall sitting right here during Secretary Price's nomination hearing when he said, quote: ". . . My role will be one of carrying out the law that you all in Congress pass. It's not the role of the legislator. . . ." Everything the administration has done to undermine the law tells a different story.

Bottom line, the General Counsel needs to ensure the Department is faithfully executing the law, meeting the highest standard of ethics, and cooperating fully with congressional oversight. Mr. Charrow is going to face tough questions today as to whether he's prepared for that task.

Next is Mr. Matthew Basset's nomination to serve as Assistant Secretary for Legislation at the Department of Health and Human Services. It's my hope that the Senate moves in a bipartisan direction with respect to health care and the many other issues under the HHS umbrella.

If the two sides are going to come together around lasting proposals that can pass with big majorities, it'll be necessary to have partners at HHS who are willing to work with members regardless of party.

So I'm looking forward to hearing from Mr. Bassett, who would be the liaison between HHS and the Congress if confirmed, how he plans to accomplish that. I am also looking for his commitment that he will respond to requests from all members of this committee, both Democrats and Republicans.

Finally, Mr. Gilbert Kaplan is nominated to serve as the Under Secretary for International Trade at the Department of Commerce, which would put him at the top of the International Trade Administration.

So far in this administration, there's been a lot of tough talk on trade enforcement, but there hasn't been much in the way of action. And there is a real cost to all the over-hyped rhetoric when the follow-through isn't there. For example, in response to all of the tough talk on steel, countries have shipped even more steel to the United States in a rush to get in ahead of any hike in tariffs.

My friend Leo Gerard, president of the United Steelworkers, recently informed me that imports have surged 18% since the President launched his section 232 investigation. Meanwhile, the administration appears to be backing off. This episode demonstrates how tough talk without a real strategy hurts American workers.

Mr. Kaplan's background suggests he will be a tough trade enforcer, and that's exactly what's needed right now at ITA. I expect he'll refrain from making promises on trade enforcement unless and until the administration has done its homework and is prepared to follow through. Beyond enforcement, it's also critical that ITA is as committed to growing American exports. But the administration's budget proposals would slash funding for a host of programs within ITA that American small businesses depend on to break into foreign markets. So I look forward to hearing how Mr. Kaplan, if confirmed, would ensure that American workers and manufac-

urers don't lose out on opportunities to sell to consumers around the world because the administration insisted on self-defeating budget cuts.

I want to thank all three nominees for being here today, and I look forward to hearing their testimony. Thank you, Chairman Hatch.

