

**NOMINATIONS OF MARÍA L. PAGÁN,  
BRENT NEIMAN, JOSHUA FROST, SAMUEL R.  
BAGENSTOS, AND CHRISTOPHER S. WILSON**

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**HEARING**

BEFORE THE

**COMMITTEE ON FINANCE**

**UNITED STATES SENATE**

ONE HUNDRED SEVENTEENTH CONGRESS

FIRST SESSION

ON THE

NOMINATIONS OF

MARÍA L. PAGÁN, TO BE DEPUTY UNITED STATES TRADE REPRESENTATIVE, GENEVA OFFICE, WITH THE RANK OF AMBASSADOR, EXECUTIVE OFFICE OF THE PRESIDENT; BRENT NEIMAN, TO BE DEPUTY UNDER SECRETARY FOR INTERNATIONAL FINANCE AND DEVELOPMENT, DEPARTMENT OF THE TREASURY; JOSHUA FROST, TO BE ASSISTANT SECRETARY FOR FINANCIAL MARKETS, DEPARTMENT OF THE TREASURY; SAMUEL R. BAGENSTOS, TO BE GENERAL COUNSEL, DEPARTMENT OF HEALTH AND HUMAN SERVICES; AND CHRISTOPHER S. WILSON, TO BE CHIEF INNOVATION AND INTELLECTUAL PROPERTY NEGOTIATOR, OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE, WITH THE RANK OF AMBASSADOR, EXECUTIVE OFFICE OF THE PRESIDENT

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OCTOBER 26, 2021  
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# CONTENTS

## OPENING STATEMENTS

	Page
Wyden, Hon. Ron, a U.S. Senator from Oregon, chairman, Committee on Finance .....	2
Crapo, Hon. Mike, a U.S. Senator from Idaho .....	3

## ADMINISTRATION NOMINEES

Pagán, María L., nominated to be Deputy United States Trade Representative, Geneva Office, with the rank of Ambassador, Executive Office of the President, Washington, DC .....	5
Neiman, Brent, Ph.D., nominated to be Deputy Under Secretary for International Finance and Development, Department of the Treasury, Washington, DC .....	6
Frost, Joshua, nominated to be Assistant Secretary for Financial Markets, Department of the Treasury, Washington, DC .....	7
Bagenstos, Samuel R., nominated to be General Counsel, Department of Health and Human Services, Washington, DC .....	8
Wilson, Christopher S., nominated to be Chief Innovation and Intellectual Property Negotiator, Office of the United States Trade Representative, with the rank of Ambassador, Executive Office of the President, Washington, DC .....	9

## ALPHABETICAL LISTING AND APPENDIX MATERIAL

Bagenstos, Samuel R.:	
Testimony .....	8
Prepared statement .....	41
Biographical information .....	42
Responses to questions from committee members .....	61
Crapo, Hon. Mike:	
Opening statement .....	3
Prepared statement .....	65
Frost, Joshua:	
Testimony .....	7
Prepared statement .....	67
Biographical information .....	67
Responses to questions from committee members .....	71
Neiman, Brent, Ph.D.:	
Testimony .....	6
Prepared statement .....	78
Biographical information .....	79
Responses to questions from committee members .....	86
Pagán, María L.:	
Testimony .....	5
Prepared statement .....	101
Biographical information .....	102
Responses to questions from committee members .....	106
Wilson, Christopher S.:	
Testimony .....	9
Prepared statement .....	115
Biographical information .....	116
Responses to questions from committee members .....	120

IV

	Page
Wyden, Hon. Ron:	
Opening statement .....	2
Prepared statement .....	126

COMMUNICATIONS

Families and Friends of Care Facility Residents .....	129
Underwood, Rebecca .....	131
U.S. Chamber of Commerce .....	133

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REPRESENTATIVE, WITH THE RANK OF  
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OF THE PRESIDENT**

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**TUESDAY, OCTOBER 26, 2021**

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

The hearing was convened, pursuant to notice, at 9:30 a.m., via Webex, in Room SD-215, Dirksen Senate Office Building, Hon. Ron Wyden (chairman of the committee) presiding.

Present: Senators Cantwell, Menendez, Carper, Cardin, Brown, Casey, Whitehouse, Cortez Masto, Warren, Crapo, Grassley, Thune, Portman, Cassidy, Lankford, Daines, and Barrasso.

Also present: Democratic staff: Sally Laing, Chief International Trade Counsel; Ian Nicholson, Investigator and Nominations Advisor; and Joshua Sheinkman, Staff Director. Republican staff: Lincoln Foran, Policy Advisor; John O'Hara, Trade Policy Director and Counsel; Mayur Patel, Chief International Trade Counsel; Gregg Richard, Staff Director; and Jeffrey Wrase, Deputy Staff Director and Chief Economist.

**OPENING STATEMENT OF HON. RON WYDEN, A U.S. SENATOR  
FROM OREGON, CHAIRMAN, COMMITTEE ON FINANCE**

The CHAIRMAN. The Finance Committee meets this morning to discuss an important set of nominations that span three Federal agencies and at least two continents.

María Pagán is President Biden's nominee to serve as a Deputy U.S. Trade Representative and our envoy to the WTO in Geneva. Ms. Pagán brings to her nomination nearly 3 decades of experience in international trade law. She currently serves as USTR's Deputy General Counsel, which puts her right at the heart of just about every effort to ensure that our trade laws are protecting American workers and businesses and giving them a shot to get ahead. She has valuable experience litigating disputes before the WTO, which makes her the right choice for this job.

Chris Wilson is President Biden's nominee to serve as USTR's Chief Innovation and Intellectual Property Negotiator. It is the first time a nominee for this role has come before the Finance Committee since the committee created this position in the Trade Facilitation and Trade Enforcement Act of 2015—and it was long overdue. We all take as a bedrock principle that we want to get trade done right, and getting trade done right in the modern economy means going to bat for manufacturers, farmers, and ranchers, and fighting for the high-wage, high-skill jobs and businesses of the modern economy. It also means ensuring that our policies balance the interests of IP owners, innovators, technology users, and the public at large. Mr. Wilson brings to his nomination 20 years of experience at USTR, during which he has represented American workers and businesses in negotiations across the globe. All that experience makes him an ideal choice to be the first-ever Chief Innovation and IP Negotiator.

Joshua Frost is President Biden's nominee to serve as Assistant Treasury Secretary for Financial Markets. It is a challenging job that deals with a variety of subjects that include debt management, the housing market, and the health of our financial system. Mr. Frost has more than 20 years of experience in a variety of roles at the Federal Reserve, including more than 12 years at the open markets desk. He has overseen programs aimed at preventing another financial crisis and responding to the COVID-19 crash. He is a natural fit for the position, because it is all about protecting the integrity and the stability of our financial system.

Dr. Brent Neiman is President Biden's nominee to serve as the Deputy Under Secretary of the Treasury for International Finance and Development. This job deals with the most tangled, complicated policy questions having to do with the global economy. One of the big challenges Dr. Neiman will be working on, if and when he is confirmed, is how to help solve the interruptions of global supply chains that are continuing to pop up as the pandemic continues to infect people around the world. And I know Dr. Neiman has considerable experience on these issues, and we look forward to his testimony. He will also work on the issue of currency manipulation, which is a subject this committee takes very seriously. Dr. Neiman will have a leading role in the effort to make sure that multinational corporations can no longer hide their profits in shadow tax shelters around the globe instead of paying a fair share.

Dr. Neiman is currently the Edward Eagle Brown professor of economics at the University of Chicago's Booth School of Business, and, as I indicated, his decades of research have contributed to his expertise on international macroeconomics, finance, and trade. My view is, he is an excellent choice for a difficult job.

And finally, Sam Bagenstos is President Biden's nominee to serve as General Counsel to the Department of Health and Human Services. He has worn a lot of hats in public service. Currently he serves as General Counsel to the Office of Management and Budget. From 2009 to 2011, he was Principal Deputy Assistant Attorney General for Civil Rights, and there he argued cases before the Supreme Court dealing with protections for pregnant workers and Americans with disabilities. He is an expert in civil rights law, and he is currently on leave from his position as the Frank G. Millard professor of law at the University of Michigan Law School. At Health and Human Services, he will work closely with Secretary Becerra and his team and provide legal advice on all of the Department's efforts to make health care more affordable, strengthen Medicaid, uphold the Medicare guarantee, and ensure that vulnerable people in our country are protected and cared for.

Congratulations to all five nominees. We have heard a lot of comments, from those who have followed these issues over the years, about each of you, and we look forward to your testimony.

And, after Senator Crapo makes his opening remarks, I will have a few routine questions that we ask of all nominees, and then we will have, I know, a very positive discussion.

Let me recognize my friend, Senator Crapo.

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

**OPENING STATEMENT OF HON. MIKE CRAPO,  
A U.S. SENATOR FROM OF IDAHO**

Senator CRAPO. Thank you, Mr. Chairman. And, as you have indicated, today we will hear from a panel of nominees who will influence and implement a broad range of the administration's priorities.

Dr. Neiman, the United States is the best place in the world to do business. Not surprisingly, that has drawn foreign investment, which has benefited our citizens immensely. And I look forward to hearing your views on how the United States can remain a prized destination for foreign investment. I fear that uncontrolled spending, burdensome regulations, and potential tax increases—including on the middle class—will make America less competitive and less attractive for foreign investment.

The administration's international tax negotiations are concerning, given the lack of detailed consultation with Congress as a whole. I am also concerned about how some of our overseas rivals are manipulating international organizations the U.S. helped found, like the World Bank. The U.S. and other countries established these institutions to promote global prosperity, not to further parochial interests.

Mr. Frost, I look forward to hearing about your thoughts on the administration's fiscal policy, the debt ceiling, and proposed financial market reforms, including the United States Treasury securi-

ties market and the replacement of LIBOR. The debt limit provides an important check on both the President's and Congress's policies. And if fiscal decisions that will influence debt accumulation moving forward are willfully made by one party alone, then the accompanying obligation to change the debt limit to accommodate those fiscal choices must also be made by the party making unilateral choices. Tools and time are available to unilaterally accomplish such a change in the debt limit. Along the way, Mr. Frost, I look forward to your commitment to ensure that Treasury keeps members of this committee fully and timely informed on the Nation's debt, cash balances, and debt management.

Turning to LIBOR, while recent administrations, the Federal Reserve, and market participants have worked successfully to establish the Secured Overnight Financing Rate as an alternative reference rate, nearly \$2 trillion in LIBOR-linked exposures are expected to remain outstanding after the termination of LIBOR in June 2023. It is important to understand how the administration plans to address this looming challenge.

Ms. Pagán, the World Trade Organization is critical to our trading interests, but is in need of reform. I look forward to hearing your views on how to make the institution more effective.

Mr. Wilson, if confirmed, you will be the first Deputy U.S. Trade Representative for Innovation and Intellectual Property. Strong intellectual property protections are critical to America's economic prosperity, and this is especially true today. Mr. Wilson, I want to know your priorities for the position, and how we can combat unfair practices by our global competitors like theft and forced technology transfers, and how we can protect intellectual property and private intellectual property rights. Additionally, the severity of the COVID-19 pandemic has been lessened, thanks to innovations borne out of the partnership between the American Government and American industry. It is critical that we not undermine the American people's ability to respond to future challenges with intelligence and agility.

Mr. Bagenstos, as the nominee for General Counsel at HHS, you will have a key role in opining on the legality of new regulations. I am interested in your perspective on providing legal opinions to Congress so that we can understand and discuss policymaking effectively with the administration. Already, this administration has shown a disturbing tendency to push through its policy preferences despite clear indications of the intent of Congress.

Finally, I again emphasize the importance of responsiveness to this committee. While there have been noteworthy exceptions, several nominees before this committee have provided late, incomplete, and evasive responses to questions from the members of this panel. This makes it harder for the Finance Committee and its members to work constructively with the administration.

I strongly urge the nominees here today to commit to timely and thorough communication with this committee. I congratulate the nominees here before us today, and I look forward to our discussion with you today.

Thank you, Mr. Chairman.

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



The CHAIRMAN. I thank my colleague.

What we will do now is, we will have the opening statements, and then we have some obligatory questions that we have to ask. But let us just proceed to make your complete statements a part of the record in their entirety, and let us start with Ms. Pagán.

**STATEMENT OF MARÍA L. PAGÁN, NOMINATED TO BE DEPUTY UNITED STATES TRADE REPRESENTATIVE, GENEVA OFFICE, WITH THE RANK OF AMBASSADOR, EXECUTIVE OFFICE OF THE PRESIDENT, WASHINGTON, DC**

Ms. PAGÁN. Thank you. Chairman Wyden, Ranking Member Crapo, members of the committee, good morning. It is an honor to be here today as the nominee for Deputy U.S. Trade Representative in Geneva. I am grateful to President Biden for this nomination, and to Ambassador Tai for her support. I am also grateful to my family—my parents, my two brothers and their wives, and my son—for their support, love, and inspiration. My parents are doctors and dedicated their professional lives to advancing public health in Puerto Rico. I learned from them the value of public service and of taking pride in what you do. They could not be here with me, but I am sure they are watching. My son could not be here either, as he is a first-year law student on the west coast, but his support is enormously important to me.

I come here before you today having spent nearly 30 years as a civil servant, first at the Department of Commerce, and for the last 18 years at the USTR, representing our country in trade negotiations and litigation. I want to underscore Ambassador Tai's recent speech, where she reaffirmed the United States' commitment to the WTO. However, there is a growing recognition that after 25 years, the institution needs to be reformed in order to be effective and relevant for the next 25 years. If confirmed, it would be an honor to represent the United States in Geneva at this critical juncture.

Ambassador Tai emphasized the Biden-Harris administration's belief that trade—and the WTO—can be a force for good, and she laid out her vision to help the organization reorient its mission to better serve and advance the interests of regular people. Taking steps to address the COVID-19 pandemic would be a good start. It also means finding a way to incorporate the interests and priorities of workers into the WTO's work.

Ambassador Tai also spoke about the need for dispute settlement reform to help empower members to secure actual resolutions and provide confidence that the system is fair. These challenges are central to the WTO's ability to operate as it was envisioned at its founding.

I know this will not be easy. As Deputy General Counsel at USTR, my job is to get things done, and I will bring that can-do approach and attitude to Geneva. We need to be creative; not just focus on the areas where we disagree, but find the areas where we can agree. We need to listen to each other and not just talk at one another. And we need to listen to voices outside of Geneva and Washington, DC in order to broaden our perspectives. It includes working with this committee and members of Congress. Action, or inaction, at the WTO directly affects communities, workers, farmers, and small businesses in your States.

If confirmed, I commit to maintain open lines of communication with all of you, and represent the interests of your constituents in Geneva.

As a long-time member of the USTR family, I know I will be able to count on a fantastic career staff's excellence, hard work, and creativity. It is reassuring to know they will be there to support me.

Thank you, and I look forward to answering your questions.

[The prepared statement of Ms. Pagán appears in the appendix.]

The CHAIRMAN. Next will be Dr. Neiman.

Excuse us. We are juggling a lot with Build Back Better, and I apologize.

**STATEMENT OF BRENT NEIMAN, Ph.D., NOMINATED TO BE DEPUTY UNDER SECRETARY FOR INTERNATIONAL FINANCE AND DEVELOPMENT, DEPARTMENT OF THE TREASURY, WASHINGTON, DC**

Dr. NEIMAN. Thank you. Chairman Wyden, Ranking Member Crapo, and distinguished members of this committee, thank you for the opportunity to appear here before you today as nominee to be Deputy Under Secretary for International Finance and Development at the Treasury. I am also deeply grateful to President Biden and to Secretary Yellen for placing their confidence in me.

My amazing wife Yael is here, and we are both so proud of our wonderful kids, our 11-year-old daughter Tal and our 8-year-old son Lev. My parents, Bill and Gail, have always been encouraging and are watching from home right now. I am very appreciative of my entire family's support.

My grandparents are also in my thoughts. My grandmother Margot, who fled from Germany in 1939 to Decatur, IL, always encouraged an awareness of world affairs and an understanding of other people, places, and cultures. My grandfather Julie, who ran a small manufacturer, hired me for summer jobs and taught me about entrepreneurship and small business. I am grateful for what they shared with me and imagine that all four of my grandparents would be very proud today.

My interest in international economics started early in high school, when I gave a speech about the ECU—the euro's predecessor—for the final project of my sophomore year speech class. My teacher criticized the topic as hopelessly dry, but I stuck with it. And since then, I have worked as a staff economist at the Council of Economic Advisers, written a doctoral dissertation at Harvard, consulted to the IMF, and presented to central banks all around the world.

For the past 13 years, I've taught a course at the University of Chicago's Booth School of Business called "International Financial Policy." I hope I have been able to prove my high school teacher wrong and instill some excitement about international macroeconomics into the next generation of leaders.

My research has uniquely prepared me to serve in this position at this time. I have published papers exploring the changing international role of the U.S. dollar and analyzing financial exposures of U.S. investors to emerging market borrowers. My work has evaluated the impact of exchange rate movements on productivity during a sudden stop crisis and measured the price responses of U.S.

importers and exporters to trade policies. I have developed models of how economic activity transmits across borders and used them to understand the formation and resolution of external imbalances.

The pandemic has underscored how interconnected the world economy is. Continuing hardship in foreign countries spurs foreign families to leave, seeking opportunities elsewhere. Disruptions in the global supply chain keep our workers waiting for equipment and our consumers waiting for goods that both need.

Slow growth abroad restricts markets for American businesses, large and small. Helping to alleviate suffering and restore financial and physical health to the rest of the world is worthy in its own right, but also benefits the U.S. economy and our national security.

Thank you again for the privilege of appearing here today, and for your consideration of my nomination. I look forward to answering your questions.

[The prepared statement of Dr. Neiman appears in the appendix.]

The CHAIRMAN. Thank you.

Next we will have Mr. Frost.

**STATEMENT OF JOSHUA FROST, NOMINATED TO BE ASSISTANT SECRETARY FOR FINANCIAL MARKETS, DEPARTMENT OF THE TREASURY, WASHINGTON, DC**

Mr. FROST. Thank you, Chairman Wyden, Ranking Member Crapo, and members of the committee. I thank you for the opportunity to appear before you today. I am honored to be President Biden's nominee for Assistant Secretary of the Treasury for Financial Markets, and I am grateful to Secretary Yellen for her confidence in me.

Before proceeding, I would like to take a moment to acknowledge my family, without whom I would not be sitting here today: my wife Emily, my daughter Lily, and my brother Andy. I would also like to thank my parents, Robert and Nikki, who instilled in me the importance of public service via the example that they set as dedicated public school teachers.

It was this early example of contributing to the greater good that led me to begin my career at the Federal Reserve Bank of New York. I have spent over 23 years at the New York Fed in a number of roles, and in each of those jobs I saw firsthand the dedication of this committed group of public servants who selflessly helped me to develop my understanding of how different corners of financial markets operate, and how the financial system can better serve the American people.

If confirmed, I would welcome the opportunity to continue to serve our Nation by supporting the President's and Secretary Yellen's priorities in leading the Office of Financial Markets. Among other responsibilities, this office helps formulate policy on debt management at the Federal, State, and local levels; serves to assess the capital markets implications of various policy choices; and serves as the Treasury's eyes and ears in financial markets. This set of responsibilities aligns well with my interests and experience, and having spent my entire career focused on these issues, I look forward to taking a data-driven, taxpayer-centric approach to policymaking.

Finally, I would note that managing the Nation's debt is an awesome responsibility, and if confirmed, I would be sure to ground any debt management decisions in an assessment of what provides for the lowest cost of funding over time for the taxpayer. I believe that it is also critical to have a resilient and well-functioning Treasury market, and I would look forward to working with other agencies to continue to ensure that the Treasury market is structured so that it remains the deepest, most liquid market in the world.

Chairman Wyden, Ranking Member Crapo, and members of the committee, thank you for considering my nomination. If confirmed, I look forward to working closely with you and your staff, and I appreciate the important oversight role of this committee. I would be happy to take your questions.

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

The CHAIRMAN. Thank you very much, Mr. Frost.

Mr. Bagenstos?

**STATEMENT OF SAMUEL R. BAGENSTOS, NOMINATED TO BE  
GENERAL COUNSEL, DEPARTMENT OF HEALTH AND HUMAN  
SERVICES, WASHINGTON, DC**

Mr. BAGENSTOS. Thank you, Chairman Wyden, Ranking Member Crapo, and members of the committee. I very much appreciate you considering my nomination to be General Counsel at the Department of Health and Human Services. I am humbled and honored by President Biden's decision to nominate me, and I am excited, if confirmed, to serve under the leadership of Secretary Xavier Becerra.

I would like to begin by thanking my family for their love and support. Here with me today is my wife, Margo Schlanger, who is a terrific and accomplished attorney in her own right. Watching me remotely are my children, Harry and Leila—who are twins in their senior year of college—and my mother, Naida Tushnet—who is nominally retired but works tirelessly to improve her community every day. I would also like to thank my supervisors in my former government and current government positions: Governor Deval Patrick, former Secretary of Labor Tom Perez, and Acting Director of the OMB Shalanda Young. And I would like to thank the two great, and now-departed jurists for whom I clerked, Judge Stephen Reinhardt and Justice Ruth Bader Ginsburg, whose memories are a blessing for me.

In the more than 28 years since I graduated law school, my work has sought to advance the paired principles that should always inform the application of the law: no person, no matter how high their position, should be above the law's constraints, nor should anyone be beneath its protections.

Perhaps no case illustrates those principles better than that of George Lane. George had paraplegia and was a bit down on his luck. And when he was accused of a minor criminal violation, his hearing was held on the second floor of a courthouse with no elevator. And when he could not make it into the courtroom because his disability kept him from climbing stairs, he was arrested for failure to appear in court. I worked with George to take his case to the

Supreme Court, and with the very welcome help of the President George W. Bush administration's Solicitor General, we prevailed.

George's case showed that, at its best, the law must be open and responsive to even the humblest members of the community. I am very proud to have achieved this result and to have worked with congressional and administration allies across partisan divides to build support for George's case.

Should I be fortunate enough to be confirmed, I will approach the General Counsel role in the same spirit. I will work to ensure that the actions of the Department conform to the substantive and procedural requirements that Congress has established, as well as the fundamental principles and protections of the Constitution. And I will work to ensure that the Department advances its critical mission of enhancing the health and well-being of all Americans.

During the Obama-Biden administration, I was the Principal Deputy Assistant Attorney General for Civil Rights at the Department of Justice. In addition to supervising 200 attorneys across three sections of the Civil Rights Division, I led the Department's enforcement of the Americans with Disabilities Act.

Much of my disability rights work has required me to engage with State Medicaid programs to defend the rights of people with disabilities to receive services in their own homes and communities. I have worked with Governors, Sheriffs, and other State and local officials across party lines who were committed to providing quality services to individuals with disabilities. Through this work, I learned a lot about the particular needs of different States and regions, including how important tools such as telehealth can be in serving rural and other communities without access to specialized providers. And that, of course, is a lesson that the COVID-19 pandemic has underscored for all of us yet again.

More than a year into that pandemic, the laws that HHS administers are essential to the Department's mission and to the health and well-being of Americans. Should I be confirmed, I will seek to uphold the law with commitment to equity, transparency, and accountability.

Thank you again for considering my nomination, and I look forward to your questions.

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

The CHAIRMAN. I would just note, Mr. Bagenstos, that you said your children were watching remotely. I will tell you, my children discussed watching some of our hearings remotely, my older children, and they just said, "Seems a little boring," but you all have been very interesting.

All right; Mr. Wilson?

**STATEMENT OF CHRISTOPHER S. WILSON, NOMINATED TO BE CHIEF INNOVATION AND INTELLECTUAL PROPERTY NEGOTIATOR, OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE, WITH THE RANK OF AMBASSADOR, EXECUTIVE OFFICE OF THE PRESIDENT, WASHINGTON, DC**

Mr. WILSON. Chairman Wyden, Senator Crapo, members of the committee, good morning.

In 1982, as a college junior, I spent a semester interning for my distinguished home State Senator, Bob Dole. At the time, Senator Dole was serving as chairman of this committee. To now find myself sitting at this table, in this room, is an honor that is made maybe a little bit more special by virtue of that personal history. I am honored that President Biden nominated me to serve as the first-ever Chief Innovation and Intellectual Property Negotiator at the Office of the U.S. Trade Representative. And I am grateful to you, Senators, for your consideration.

I want to acknowledge the many friends and colleagues who have enriched my career at USTR over the past 2 decades. I have had great teachers and excellent examples among both my fellow civil servants and the agency's political leaders over the years.

I am glad that my husband, Mark Hegedus, is here this morning, and I am grateful for his love and support. I am also thinking of my mom and my dad, who passed away earlier this year.

If confirmed for this position, I would be the first person to hold the title. To do a job for the first time is both exciting and a little daunting. Fortunately, Congress has provided a very clear expectation of what the position is about, namely to be a, quote, "vigorous advocate on behalf of United States innovation and intellectual property interests," end quote. If I am confirmed, those words will be prominently displayed on my desk at USTR.

I understand how protecting U.S. innovation through intellectual property rights is key to our Nation's economic success. This principle has been woven through every position I have held during my years at USTR. In addition to serving directly in USTR's IP office from 2006 to 2008, I have worked on important IP issues in my engagements with trading partners in Central America, Europe and the Middle East, South and Central Asia, and in the context of the World Trade Organization. This work has reinforced my belief that trade policy must protect American innovation and creative endeavors, and that rules governing that protection should be effectively enforced. I look forward to your input—today and going forward—on how best to advance those objectives.

Senators, one of my early mentors at USTR taught me that, in any negotiation as well as in the process of policy development, listening is as important as talking. I intend to apply that lesson every day that I am in this position. My experience has taught me that, perhaps more than in many other areas of trade policy, IP is the subject of strongly held and often widely divergent views among a broad spectrum of stakeholders. If confirmed, my door will be open to all, and I will listen carefully. I assure you that this committee and its staff would be prominent among those by whom I expect to be guided.

Ambassador Tai has laid out a worker-centered trade policy that ensures, as President Biden often says, that our economy grows from the bottom up and the middle out. If confirmed, I will always be thinking about how we can defend U.S. innovation and intellectual property in order to help workers and generate broad-based, durable prosperity.

Finally, Senators, it will be important to me to ensure that the relationship between this new Chief Negotiator function and the

dedicated career professionals in USTR's IP office is placed on a sound, sustainable, and respectful footing.

Thank you for the opportunity to appear before you this morning. I look forward to your questions and your advice.

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

The CHAIRMAN. Thank you very much, Mr. Wilson. Obviously you are someone who takes family very seriously, and it is sad to hear about the loss of both your parents so recently.

We now have some obligatory questions we have to ask of all of you. First, is there anything you are aware of in your background that might present a conflict of interest with the duties of the office to which you have been nominated? We will start with you, Ms. Pagán.

Ms. PAGÁN. No.

Dr. NEIMAN. No.

Mr. FROST. No.

Mr. BAGENSTOS. No.

Mr. WILSON. No.

The CHAIRMAN. 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 to which you have been nominated? Ms. Pagán?

Ms. PAGÁN. No.

Dr. NEIMAN. No.

Mr. FROST. No.

Mr. BAGENSTOS. No.

Mr. WILSON. No.

The CHAIRMAN. 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?

Ms. PAGÁN. Yes.

Dr. NEIMAN. Yes.

Mr. FROST. Yes.

Mr. BAGENSTOS. Yes.

Mr. WILSON. Yes.

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

Ms. PAGÁN. Yes.

Dr. NEIMAN. Yes.

Mr. FROST. Yes.

Mr. BAGENSTOS. Yes.

Mr. WILSON. Yes.

The CHAIRMAN. Very good. We will begin now. I will have some questions, then Senator Crapo will have some questions.

Ms. Pagán, let me start with you. I have been following the WTO fishing subsidies negotiations for quite some time. And I have to tell you, from the perspective of Oregon fishing families, they are getting ripped off by Chinese fishing fleets. These families are competing regularly with slave labor, and they are subsidizing long-distance Chinese fishing fleets. It is absolutely critical for the health of the oceans and the survival of the family-owned businesses, that we crack down on this behavior with strong, enforceable rules.

What would be your message this morning, Ms. Pagán, to those fishing families in Oregon that are hurting, that believe they are just getting exploited by unfair rules? What would be your message to them about your first action in Geneva to close out these negotiations in a way that would allow our fishing families to get a fair shake and have the full fruits of competition?

Ms. PAGÁN. Well, thank you for that question. My answer is, we do want to have an agreement, but we want an agreement that is effective in cracking down on fish subsidies so we can save the fish and save the fishers. So, while we want an agreement, we want an agreement that is high-standard and meaningful. Our challenge is to make sure that we achieve those rules, but that we do not also have them riddled with loopholes. The United States has been playing a leadership role in this negotiation for a long time and, if confirmed, I will continue to play that role. And hopefully we can get to an agreement that changes the status quo and does not just continue the situation the way it is. And if confirmed, I look forward to working with you on this.

The CHAIRMAN. I appreciate that. I am going to hold the record open to give you a chance to give a more complete answer. I am not sure that you are aware that this is something I feel very strongly about, and our trading opponents on these issues have been playing stall-ball on fairness in fishing for too long, and I am just committed to getting a change. And the Ambassador, to her credit, has been candid with me. So, we will hold the record open for, I will say 72 hours for a more complete answer on that. Okay?

Ms. PAGÁN. Thank you.

The CHAIRMAN. Good.

Mr. Bagenstos, let us talk about mental health. Mental health is one of the aspects of the pandemic that saw the most dramatic changes. The number of claims is now in the stratosphere, and we see folks who suffered new mental health challenges due to isolation. Families were stressed. There were challenges of distance learning.

Senator Crapo and I are working in a bipartisan way to try to respond to this. But I want to ask you specifically, as a lawyer—my brother was a schizophrenic, and every night the Wydens went to bed at night realizing he might be on the street, and he could hurt himself or somebody else. So the day when we got the bipartisan parity law in place, I said, “This means new hope for Jeff Wyden and millions of others.”

But I am concerned that the legal right to parity, parity for access to mental health services, parity between mental health and physical health, is honored as much in the breach as it is in the observance. And I would like to hear, what specifically are you going to do to get tough with these insurance companies that, in my view, are not really complying with that tough law for parity between mental health and physical health?

Mr. BAGENSTOS. Thank you, Senator Wyden, for that question. It is, as you know, an area I have worked in quite a lot in the past, and I very much appreciate your leadership on mental health issues. Mental health parity is, as you say, Senator, something that is in the law, but we have great concerns about ensuring that the law is actually complied with. One of the issues, of course, is the



fragmentation of the enforcement of mental health parity across different agencies of the Federal Government, not just HHS but also Labor, also Treasury—and not just the Federal Government, but also the States, because of the way we structure our regulation of insurance in the United States.

I can commit, if confirmed, to doing whatever I can to ensure that the laws are fully enforced and complied with, and working with you and this committee if there are additional tools that are necessary.

The CHAIRMAN. You know, this is another area where I am going to want to see more specifics. The question of our economics and our health policy are both important to me. So within the next 72 hours, I would like to see more specifics.

This is so outrageous. You may have heard, at the Oregon Health Sciences Center they could not get their bills paid for mental health services. And then we said we were going to open an investigation in an article in the newspaper, and suddenly all the bills were paid. That is not parity policy for America. So I would like to have, within 72 hours, what, again in more detail, you all are going to actually do to make sure that we are able to carry out a real parity policy, not just one that is in name only.

One last question, if I could, very quickly for Chris Wilson. On this issue of balancing innovation and protecting lives, our hearts say we need to get lifesaving technology out as fast as possible, while our heads caution the need to protect important innovations. How do you strike the balance?

Mr. WILSON. Chairman Wyden, I think you have put your finger on what is, and has been for 20 years or more, the great challenge of intellectual property trade policy. There is this tension between the need to reward innovation through intellectual property, and the equally important objective of being able to ensure access to the products of that innovation.

It is a struggle. It has been a struggle for as long as I have worked on these issues at USTR. I expect it to continue to be a struggle. We have to keep at it to try to get the balance right. And if confirmed, I would work very closely with you and others on the committee to make sure that we are getting as close to that balance line as we can.

The CHAIRMAN. Thank you.

Senator CRAPO?

Senator CRAPO. Thank you, Mr. Chairman. Before I go to questions, I wanted to just note that Senator Wyden and I have worked together on a lot of issues on a bipartisan basis, and we have had a lot of big successes. He mentioned the mental health issue in his questions. But you did not even realize this, because we have not talked about it, Senator Wyden, but you just raised in your first question to Ms. Pagán another important issue that I think we can work on together, and that is, the Chinese fishing fleets. Idaho is not a coastal State, but we are as concerned about this as is Oregon and are the rest of Americans and, frankly, Washington.

The CHAIRMAN. You bet.

Senator CRAPO. But you know, this goes beyond just the United States. The Chinese fishing fleets are aggressively damaging fisheries around the globe and creating, not only damage economically,

but they are also creating damage to some of the great traders in our oceans. And I think it is really important for us to focus on that. So again, this is not an issue that I realized would be in my questions, but I appreciate your good questions on that, Senator Wyden.

The CHAIRMAN. Thank you.

Senator CRAPO. Let me go to Mr. Frost. Mr. Frost, this summer the Congressional Budget Office estimated that under baseline spending projections, by 2031 the national debt held by the public would go to \$35.8 trillion, over 106.4 percent of GDP. Net interest would grow to \$910 billion, more than 2.6 times what it was in 2020, and would account for 11.6 percent of Federal outlays. Relatively minor increases of interest rates will force our interest obligations even higher, choking off fiscal space necessary for domestic programs that help American families.

How much debt can the United States incur before that affects the Federal Government's ability to borrow affordably while still providing for essential services and our Nation's security?

Mr. FROST. Thank you, Ranking Member Crapo. So you are raising an important issue. The level of debt is critically important. I would note, in the role to which I have been nominated, my principal responsibilities would be to manage the Nation's debt in a prudent fashion, overseeing the team that keeps the government running and keeps the government funded.

Much of the recent run-up in the debt and the deficit has been the result of helping the Nation weather the shock posed from the recent pandemic. And I would flag that decisions on the level of debt are ultimately left to Congress. The level of spending and the level of taxation ultimately, it is that leftover that needs to be funded, and that is what my role would be, to ensure that the amount that needs to get funded is funded in the most efficient manner.

If I could talk just for a moment about what financial markets are telling us about the issue you have raised?

Senator CRAPO. Yes.

Mr. FROST. Debt service costs, as you flagged, are at historically low levels now. If I look at what the yield curve is telling us, it is at historically low levels and it is quite flat, which would tell me that financial markets are not immediately focused on the issue that you are raising. It is not that it is not a critically important issue, but it is not showing through in asset prices today.

Finally, I would note that the administration's plans are intended to bring down the level of debt to GDP in the longer run, while still, in response to the pandemic, there would likely be a modest increase in the medium term.

Senator CRAPO. Well, let me follow up on that. How would your answer to the question be affected by literally trillions of dollars of new and permanent spending? Or do you believe the rhetoric that the reckless fiscal plans being considered for reconciliation have zero cost? Do you accept that there is zero cost to the spending proposals before Congress right now?

Mr. FROST. So, Senator, I do not think anything has zero cost. I think it is about managing risks and tradeoffs. And so, I still think we are in a place where we are thinking about how best to

respond to the pandemic and, from the additional plan, how best to position the economy for growth going forward.

As I mentioned, I think the projections are that this will ultimately result in a lower debt burden in the future if we take care of the issues today, and have a strong potential for growth in the future.

Senator CRAPO. Well, I appreciate your acknowledgment about the issue of zero cost.

Dr. Neiman, to you: this year the administration is contemplating massive increases in taxes and spending through reconciliation. While the size and indeed the contents of this fiscal agenda are still unclear, I am concerned about the possibility that they will exacerbate inflation trends, which even former Treasury Secretary Larry Summers has described as disturbing.

What risks do higher domestic taxes and substantial inflation pose to the reputation of the United States as a good destination for foreign investment?

Dr. NEIMAN. Thank you for the question, Ranking Member Crapo. When thinking about the destination of the United States for investment, the same things presumably that make it a better destination for foreign investment make it a better place to do domestic investment. And it is of course very important that we take steps to make it as productive as possible to invest capital here, regardless of who is doing the investment.

And you know of course, taxes are one element of the calculation. On the other side, balancing out the effect of taxes, of course, are things like the quality of our infrastructure, the investments that we make in our workforce. Are we the best place to build businesses? Are we the best place to hire people?

And so you know, there is obviously a tradeoff. As you raise taxes, the question is, are you raising them in a way that then contributes to the productivity of the workforce, that makes the country's infrastructure better, and that invites investment, whether it is domestic-sourced or foreign-sourced?

And so, thinking about that balance is, I think, very important, and hopefully, we are going to get it right.

Senator CRAPO. Well, thank you.

And just one more really quick question, again for you, Mr. Frost.

I commend the efforts by recent administrations, the Federal Reserve, and the market participants to plan for the elimination of LIBOR. Despite these best efforts, there remains \$2 trillion of LIBOR-linked exposure that market observers believe will remain outstanding after June 2023. Treasury Secretary Yellen and Fed Chair Powell have stated their belief that a Federal legislative solution is necessary to transition those exposures from LIBOR to SOFR. How do you believe the administration should address this challenge? And is legislation the answer? And, if that is what you believe, do you think that something like the S.B. 297B law passed by New York this year is a model we should look at?

Mr. FROST. Thank you, Ranking Member. You are raising another critically important issue to me. I have spent a good deal of my career focused on the transition from LIBOR. One conclusion I have come to is, it is costly. And this is something you want to

do once, and you want to do it right, and we would not want to see a move to a rate that has the same underlying flaws and vulnerabilities that LIBOR had.

While I would not want to comment on specific legislation, I do think that a legislative fix is likely going to be needed here for these so-called tough legacy contracts where there is no clear fallback, or an otherwise unworkable fallback in language.

Senator CRAPO. We will hear from you on this as we move forward.

The CHAIRMAN. Thank you, Senator Crapo.

Senator Cantwell?

Senator CANTWELL. Thank you. Congratulations to all the nominees.

Ms. Pagán, once I heard then-Commerce Secretary Ron Brown say he was Secretary of all of Commerce, but if he was getting a call from a member of Congress, he guaranteed it was about fish. And that just shows you here how important fisheries are to all our States, to the United States, and now to the globe. Why? Because we see warmer climates affecting fisheries. We see the Arctic being opened and probably claims to fisheries. We have our history about illegal fishing in our waters and setting up those boundaries. So I hope that you will be very serious about keeping your foot on these negotiations. And a growing world is looking for more protein sources, and people are looking at fisheries.

So, we have good fisheries management in the United States. I would hope that that would be something in the debate, that sustainable fisheries should be part of the requirements in trying to create more of a market. And I believe we should be in the business of exporting what those sustainable fisheries practices look like, because we are, at least in parts of our country, very good at it and very successful. So I may submit something for the record for you.

Mr. Frost, you are going to be in the office overseeing the capital markets. And one of the issues is housing policy. And I am very interested. Our committee here has done great work on the Low-Income Housing Tax Credit, but we still have a tremendous way to go. We have 7 million units that we need to have built, and over 10 million people who live in rent-burdened conditions. Fifty percent of their income is spent on rent. We have just not kept pace with supply.

So I want to make sure that the administration, now that we are talking about proposals here—they are doing a lot to put vouchers into people's hands. I appreciate that. The grants or programs that help individuals—even with the HOME grant program that the administration is pushing, 53 percent of those get built with the affordable housing tax credit. It is a partnership between the HOME grant program and LIHTC.

So, if you do not increase LIHTC, you are not going to be increasing the supply of affordable housing. So I just want to hear from you that you believe that we need a robust response here, and that you are going to work within the administration to try to get that.

Mr. FROST. Absolutely, Senator. The supply of affordable housing is a key issue now, as you flagged. LIHTC is a principal venue by which affordable housing supply is created.

There is no magic-bullet solution here. I wish there was. I wish there was a simple resolution. As you said, things that focus on increasing the supply of affordable housing, targeted programs that help with down payment supports and help folks build wealth more quickly, are all critical to the success—

Senator CANTWELL. But if we just did those, and we did not do the supply side, that would be a problem. Correct?

Mr. FROST. I completely agree.

Senator CANTWELL. That is the point I am trying to get out, particularly today, that this is the debate in front of us; that you can spend a lot of money on those issues, but if you are not increasing supply, then you are not going to have a place for these individuals to go.

And so we have to make sure that we are putting in a solid number. We proposed, in a bipartisan fashion with our colleagues here—Senator Young, Senator Portman—\$29 billion in the affordable housing tax credit—well, a proposal to increase it by 50 percent. So there is good bipartisan support, and the reason is, people know how unique the program is; that you can do lots of different things within your own States and jurisdictions. I mean, you can build something just for veterans. You can build something just for a workforce. You can do all sorts of things. So the flexibility of it is pretty supported. And frankly, I just hope we put this money there right now that is needed.

So, Mr. Wilson, I just want you and Ms. Pagán, on the innovation side—you know, we worked hard to give USTR the resources of more lawyers so we can dispute our claims internationally, and obviously build capacity internationally for those countries that do not have quite the same capacity we do to judge these cases.

But on this issue of technology, don't we need to be, first of all, getting the world community behind us on these telecommunications issues, that the only way you are going to have acceptable frameworks is if you have a rule of law. If you basically have a court system and a government that does not own the technology, or has a back door to it, don't we need to speak loudly on this point, Mr. Wilson?

Mr. WILSON. Thanks, Senator Cantwell. I agree completely with you. I think that capacity building and emphasis on respect for the rule of law has to be a critical part of our promotion of innovation through trade policy generally, and specifically in the areas of emerging technology. And I look forward to working with you on it.

Senator CANTWELL. Thank you. Thank you, Mr. Chairman.

The CHAIRMAN. I thank my colleague.

Next is Senator Grassley.

Senator GRASSLEY. My first question would be to Mr. Bagenstos in regard to the 340B program. Listen while I lead into the question. Many Iowa hospitals and pharmacists have talked to me about the 340B program, how these drug companies are harming access to it. The 340B drug program is an important program to keep drug costs low and maintain access for patients. Iowa pharmacists and hospitals have communicated to me the administrative burdens that the drug companies have placed on the 340B program. Last year I pressed the Trump administration to do some-

thing. They put out some advisories that were withdrawn. The administration has written to at least six companies about what they have to do, and they have not heard back from the companies.

The IG is investigating this. While the Biden administration has taken a different approach from the Trump administration—I want you to know that I appreciate the efforts of the Biden administration. However, timely resolution is needed or this will have financial impact on hospitals and pharmacies, and could even hurt patient access. So I want more transparency in the 340B program. The status quo is not sustainable. So, if confirmed, what additional steps could HHS take to protect the program? I hope that HHS has all the tools they need. And if not, do you have recommendations for Congress to act?

Mr. BAGENSTOS. Thank you, Senator Grassley, for that question. The 340B program is an incredibly important safety net program to ensure that folks in rural areas and other underserved areas have access to affordable prescription drugs. It matters a lot to me personally. My father actually was from a very small town in rural Iowa—my late father, who died about 10 years ago. He was from a small town called Holstein in northwest Iowa, where I am sure you have been. So I take this matter very seriously and personally.

I can tell you, in this administration the drug companies that have not been complying with 340B requirements to work with contract pharmacies, as you said, Senator, have been referred for enforcement. One of the important jobs of the General Counsel, should I be confirmed for this position, will be to ensure that those enforcement actions proceed as effectively as they can. There is also quite a lot of other litigation involving 340B which as General Counsel, should I be confirmed, I will be required to address. I think it is exceptionally important that this administration confirm its commitment to the 340B program. And, Senator, if there are additional tools that are necessary, I can commit to working with you on what those tools might be.

Senator GRASSLEY. I assume you grew up in Ida Grove or Holstein?

Mr. BAGENSTOS. So, I grew up—I was born in St. Louis, MO, actually. So the big city, by comparison.

Senator GRASSLEY. Okay.

Now, Mr. Frost, some economists and politicians have contended that due to the historically low interest rates, we should not worry about financing new spending. Some even claim that it would be foolish not to spend more money, and not to worry about it. However, with our national debt now exceeding the entire size of our economy, even small increases in the interest rates would mean trillions of dollars more spent to service that debt.

Given the sensitivity of our debt to future interest rate increases, do you agree it would be fiscally foolish to run up our national debt, betting on a wing and a prayer that interest rates would remain historically low?

Mr. FROST. Thank you for the question, Senator. So, in the role that I have been nominated for, my fiscal responsibilities will be to ensure that for any given level of debt, that that is funded in the most efficient manner possible. If I look at what signal we are getting here from financial markets about what concern is out

there about the level of debt and the prospective future level of debt, there is not a lot coming through at this point.

The yield curve—or in other words, the levels of interest rates to borrow for a shorter term or for a longer term, are both quite low. The yield curve is also quite flat, suggesting that the markets are not terribly concerned by an increase in interest rates in the intermediate to longer term.

I believe that if the plans that are being proposed are adopted, I think the administration's proposals would likely result in a modest uptick in the level of debt to GDP over the medium term, but bring it down in the longer run.

The CHAIRMAN. I thank my colleague.

Next is Senator Menendez.

Senator MENENDEZ. Thank you, Mr. Chairman.

Ms. Pagán, is human trafficking a violation of the USMCA?

Ms. PAGÁN. Senator Menendez, thank you for that question. I am going to have to think about that. Honestly, I wasn't prepared for that question.

Senator MENENDEZ. Okay. Well, from my perspective, it is. And the question, what I would ask you, as you are reviewing that, is I would like to get your commitment that if human trafficking in general is a violation of the USMCA, which I believe it is, then I would like your commitment to look at what is happening in Mexico with Cuban doctors who are being trafficked. They are sent there by the Cuban regime. Their passports are taken away. The payment for their services is sent to the Cuban regime. They get a subsistence wage. That is trafficking.

And so I would like a commitment from you that you will review it and get back to me upon your confirmation.

Ms. PAGÁN. Yes, you have my commitment that we will look at the issue; thank you. And if there is any more information that we can get from you—

Senator MENENDEZ. We have tons, so I am happy to give it all to the department.

Ms. PAGÁN. Thank you.

Senator MENENDEZ. And I know that Ambassador Tai is going to be with the committee later today, so we will raise it with her as well.

Mr. Neiman, if confirmed you will be responsible for U.S. actions at the international financial institutions. The Senate Foreign Relations Committee, which I chair, has considerable oversight over these institutions. So I want to explore one or two items with you in that regard.

As part of our efforts to counter and compete with China globally, the Senate passed my legislation authorizing a tenth general capital increase for the Inter-American Development Bank as part of the U.S. Innovation and Competition Act.

During the pandemic, countries in the hemisphere suffered the greatest economic contraction of any region in the world. Add to that the enduring challenges of poverty and inequality, massive migration flows, the damages caused by natural disasters, and we are seeing a region facing widespread difficulties. It matters to us not only in being a good neighbor but when we see migration flows coming to the United States in bulk. It is because of the uncer-

tainty these countries are facing, not to mention that China is all over the hemisphere in terms of its debt trap diplomacy.

So, if we are serious about addressing these challenges, we need the IDB to have robust resources, and a tenth general capital increase is part of that process. If confirmed, do you commit to working with me and other congressional stakeholders to ensure that the IDB has the resources to address challenges in our hemisphere and to advance a tenth general capital increase for the bank?

Dr. NEIMAN. Thank you, Senator, for that question. And if I could start—thank you for your leadership and work on issues in that region, in Latin America and the Caribbean, which is the focus of the IDB. That is a region that is also of personal importance to me. My wife, for example, was born in South America. It is also a region, as you noted, that has been particularly hard hit during the recent pandemic, something that oftentimes is not fully appreciated. And of course, it is a neighboring region.

Senator MENENDEZ. I appreciate that. Does that mean, yes, you are going to go to work with me to get to where we need to be?

Dr. NEIMAN. It does mean—thank you, Senator—it does mean that, of course, it would be a very important area and set of issues for me. And if confirmed, I would absolutely fully engage with you and your staff on all those issues.

I understand that Treasury, together with IDB management and stakeholders, is evaluating opportunities for development financing in the region, understanding the current portfolio and limitations of development funding.

Senator MENENDEZ. What I would hope is that you would commit to working with Congress to put in place a policy framework for the IDB's tenth capital increase that addresses U.S. priorities, including democratic governance, climate issues, and the need to counter Chinas predatory economic practices in the region. Can I get you to agree at least to that?

Dr. NEIMAN. I absolutely will, if confirmed, commit to work with you on those issues.

Senator MENENDEZ. Now, one other question, in the 45 seconds I have. I have a real challenge with what is happening at the IMF, and the—oh, I should say, the World Bank and the IMF—with Kristalina Georgieva, who currently serves as the Managing Director of the IMF. She was involved in pressuring staff to make specific changes to China's 2018 score in the World Bank's annual Doing Business report in an effort to increase their ranking.

That is incredibly disturbing. It damages the integrity and reputation of the World Bank and the IMF, and confirms the growing trend of the international financial institutions bowing to Chinese pressure. The ranking member and I both wrote to the Biden administration calling for full transparency and accountability at the World Bank, the IMF, and with Ms. Georgieva.

Can you tell me that you will work to provide that transparency?

Dr. NIEMAN. Senator, if confirmed, I commit to support Treasury's efforts to get the IMF to renew their commitment to data transparency and other measures like whistleblower protections that would safeguard the integrity of the international financial institutions.



Senator MENENDEZ. She has lost my confidence, and I want to see how she actually can operate under these circumstances.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Menendez. I believe we have Senator Carper on the web, and then Senator Carper would be followed by Senator Cassidy, who is here.

Senator Carper, are you out there in cyberspace?

Senator CARPER. Yes. Good morning, Mr. Chairman. Good morning. Can you hear me?

The CHAIRMAN. Good morning.

Senator CARPER. To our nominees, congratulations on your nominations. Thank you for appearing today, and for all your families across the world who are listening as well.

I would like to start off with a question, if I could, for Ms. Pagán dealing with the WTO reform. I always thought it was imperfect, and we ought to work to make it better. And there has been a great deal of conversation, really on both sides of the aisle and across the globe, about the need for reforms in the WTO. And we know that the WTO has an important role to play in combating unfair trade practices that persist in nonmarket economies like China. Unfortunately, the organization continues to face challenges with its dispute settlement system, including the lack of quorum on the Appellate Board, a body that has weakened the WTO's enforcements.

My question is this, Ms. Pagán. In your opinion, what strategy should our country take, the U.S. take, to reforming the WTO and addressing the inoperability of the WTO's Appellate Body? Please, go right ahead.

Ms. PAGÁN. Thank you, Senator Carper.

The good thing is that we all agree. I think there is consensus that the WTO and the Appellate Body need to be reformed. I guess, on the other hand, we all have different views of what "reform" means, and particularly with respect to the Appellate Body.

What we want—and if confirmed, what I will work hard to do—is to have conversations so that we can restore the Appellate Body and restore the system to what we thought we had agreed to. We never intended the Appellate Body to be a rule-making body. We believe that rules have to be enforced, but it has to be the rules as they were negotiated and agreed to by the members.

So, we need to—the USTR has been having this conversation, and we will continue to have this conversation, and I suspect I will spend a lot of time having conversations with our counterparts at the WTO to make sure that we can restore the Appellate Body and the system to the way that we envisioned it at the beginning. I do not think it is going to be an easy conversation, but it is something that I look forward to doing while I am there.

Senator CARPER. All right; thanks, Ms. Pagán.

My second question would be for Dr. Neiman, Mr. Wilson, and also for you, Ms. Pagán—for each of you. But let us start off with Dr. Neiman.

I want to begin by again thanking you for joining us and for your willingness to serve our country. These are important roles. We know that and appreciate it. But one of the biggest questions facing our country, I think facing our planet, is how to work collectively

to address our shared problems. And you may have heard the old African proverb, “If you want to go fast, travel alone; if you want to go far, travel together.” And goals like tackling climate change, tackling this pandemic, and expanding economic prosperity require global cooperation. Unfortunately, the previous administration all too often turned away from multilateral engagement, and ultimately ceded U.S. leadership on the global stage in a number of instances.

So here is my question, starting with Dr. Neiman. Should you be confirmed, you will represent the U.S. before international organizations, and within multilateral negotiations. How do you view your role within the broader effort to rebuild U.S. leadership on the global stage? Dr. Neiman, would you lead us off, please, and then Mr. Wilson, and then Ms. Pagán. Thank you.

Dr. NEIMAN. Thank you, Senator, for your question. The role for which I have been nominated I view as playing a key role in Treasury’s macroeconomic engagement with the rest of the world, whether bilaterally, country by country, or through multilateral institutions like the international financial institutions, the G7, the G20. And I am very supportive of the President’s goal of restoring America’s global standing and leadership in these institutions.

One good example I think that you mentioned in your question is our efforts, including for example, with the multilateral development banks, to encourage decarbonization efforts, since that is a good example of a problem that, of course, only really has a global solution. So that is an example of one way in which I would think about your question. And if confirmed, Senator, I would be happy to work with you and your staff and hear about other ideas you have on asserting U.S. leadership in these organizations.

Senator CARPER. Thank you. Thank you, Dr. Neiman.

Mr. Wilson, please: the same question.

Mr. WILSON. Thank you, Senator Carper. I have been privileged during my years at USTR to serve in a couple of roles that have been diplomatic in character. I worked as a diplomat representing USTR in Brussels, and then more recently at the WTO in Geneva.

I am a believer in diplomacy, and I am a very strong believer in the power of building personal relationships to be able to advance policy objectives. And if confirmed, I look forward to applying those skills to the task of rebuilding U.S. leadership. Thanks.

Senator CARPER. Thank you for that. Mr. Chairman, do I have a few seconds for Ms. Pagán to briefly respond?

The CHAIRMAN. Sure. Sure.

Senator CARPER. Thanks. Ms. Pagán, just briefly, please.

Ms. PAGÁN. Thank you. As Ambassador Tai recently said, the United States is committed to the WTO. If confirmed, it certainly would be an honor for me to represent the United States there. There are a lot of challenges, like climate change and many other things, that need to be collectively addressed, and I will do my best to represent the U.S. interests at the WTO.

Senator CARPER. All right; thanks for those responses. And thanks for your answers here. Good luck.

The CHAIRMAN. Thank you, Senator Carper.

Senator Cassidy?

Senator CASSIDY. Mr. Bagenstos, I am a gastroenterologist. You are a learned law school professor. It is with trepidation that I shall engage in this conversation, okay?

My colleagues and I worked about 2½ years to pass no surprise billings legislation. And we finally got, on a bipartisan, bicameral basis last year, signed into law, the No Surprises Act. And through that, through these 2½ years, we debated many approaches. And we got all the stakeholders together, and we finally—and among these approaches were a straight benchmark payment, an independent dispute resolution process with the median in-network as the primary factor, and finally a more open and robust independent dispute resolution framework directing the arbiter to consider a variety of factors. That was ultimately what got the stakeholders, both parties, and both committees together. Okay? That is the prologue, if you will.

And so, now I apologize for the legalese, but you will immediately get this, and if I lose those who are not attorneys, I apologize, but this is important. This is how it is read: “In determining which offer is the payment to be applied pursuant to this paragraph, the certified independent dispute resolution entity with respect to the determination for a qualified IDR item or service shall consider: the qualifying payment amounts, or QPA, also known as the median in-network rate, and subject to subparagraph D, information on any circumstance described in clause II, such information as requested in subparagraph B, roman numeral two, and any additional information provided in subparagraph B, roman numeral two.”

What is in clause II? I will read some of it. “The provider’s training and experience, the patient’s acuity and complexity, the demonstration of good faith efforts or lack thereof to enter into a network contract.” I could go on.

Clearly it is an “and.” You shall consider the median in-network rate “and this.” Now this is how the interim rule reads, and imagine the steam coming out of my ears: “Accordingly, the certified IDR entity must begin with the presumption that the QPA, the Qualified Payment Amount, is the appropriate out-of-network rate for the qualified independent resolution item or service under consideration.”

It goes on to say: “The certified IDR entity must select the offer closest to the QPA,” et cetera. Now I am a gastroenterologist, but when I read that—intuitively I understand that the statute states that the arbiter shall consider the qualified payment along with everything else, and this interim rule states the arbiter shall presume that the QPA is correct, leaving out the reference to the other items in the other paragraph, in direct opposition of a plain reading of the text.

Do you think it is right that HHS has rewritten a law that it took 2½ years for Congress to come to, balancing the needs of various stakeholders, and now it seems as if one stakeholder has gotten their wishes? Is that a correct thing for HHS to do?

Mr. BAGENSTOS. Thank you, Senator, for that question. And I will say, I hesitate, because it is clear that you are perhaps a better lawyer than me, but certainly a better lawyer than I am a gastroenterologist. [Laughter.]

And what I—I would say a couple of things. I mean, the No Surprises Act is an incredibly important piece of legislation that was agreed to on, as you say, a bipartisan basis. I think that is very important. It is a compromise.

The Department of HHS, as well as the Department of Labor, the Department of the Treasury, OPM, have under that statute been required to act under a very aggressive timeline set by Congress to put out interim final rules to implement the statute by the deadline of January. One very important aspect of these interim final rules is, they are interim final rules with a request for public comment—

Senator CASSIDY. Now I am told, though, that that is almost like, this is going to be it. Yes, you are going to get public comment, but this is a ship with inertia pushing it, and it is not going to be stopped by somebody saying, “Hey, wait a second, you are not going the way the law actually reads.”

So, I say that just to challenge, because again if I thought it would make a difference, I would be less frustrated. And here it seems that it is not going to make a difference; it is merely a show.

Mr. BAGENSTOS. Well, Senator, I can assure you that, should I be confirmed as General Counsel, we will take extremely seriously the comments that are filed for these interim final rules—

Senator CASSIDY. Can I ask, though, really quickly, since you will be a counsel, is there a difference between “shall consider” and “shall presume”? Because the interim final rule says “shall presume,” and the way we wrote it was “shall consider.”

Mr. BAGENSTOS. Senator, so that is, I think, one of the very important kind of interpretive questions that the interim final rule does address by saying that the other factors should be considered as well. But I understand your point, Senator, and I think—

Senator CASSIDY. In all seriousness, I am saying this not as a “gotcha,” because I do not know. You are the professor. Is there a difference between “shall consider” and “shall presume”?

Mr. BAGENSTOS. So I think, in the context of a presumption, you would necessarily consider other factors, unless—unless it is a conclusive presumption, which it is not in this rule. But I think the important point, Senator, that I would like to make to you is that I would commit that, should I be confirmed to this position, we will definitely take a look at this as the comments come in and take very seriously the arguments that are made about whether this is consistent with the statute.

Senator CASSIDY. And therefore, because there seems to be an equivalency between the two phrases in your mind, could I just ask that you would change “shall presume” to “shall consider”?

Mr. BAGENSTOS. So, as I say, Senator, I would very much commit to considering any of the comments that come in—

The CHAIRMAN. We are going to have to move on. I thank Senator Cassidy.

The next two will be Senator Whitehouse, and then Senator Lankford.

Senator WHITEHOUSE. Thanks very much, Mr. Chairman, and thank you to the witnesses for being here.

Let me start with Ms. Pagán. There are two issues we have been working on that involve the World Trade Organization. One is pi-

rate fishing, and in particular the use of forced labor, in fact slavery, in pirate fishing. This matters a lot to American fisheries because it is really hard to compete with foreign fishermen who use slavery to their advantage. And the second is ocean plastics. We are headed for a world in which, by 2050, there will be more ocean plastic waste than there are living ocean fish, if we do not get around this.

Could you let me know where those two issues will fall in your priorities?

Ms. PAGÁN. Thank you, Senator Whitehouse.

On forced labor and fisheries, as you probably know, the United States has made a proposal for the fish subsidies negotiations that we obviously continue to push and we hope will be part of the final outcome. So that is one way of trying to get at that issue, which is very important. And it is definitely tied to the issue of illegal fishing and harmful subsidies that we are trying to curb through the agreement. So that is certainly a priority for us.

On ocean plastics, I know this is another issue that is very important to you. I believe there are various—or at least one stream of work that is going on at the WTO on this issue, and related issues. And so, if confirmed, I will definitely work on this and continue to advance these issues in the WTO, and hope to work with you and your office on this issue.

Senator WHITEHOUSE. Thank you. This was a very strong bipartisan issue in the Senate. Senator Sullivan of Alaska did really terrific work as my main compadre on this. The previous President, Secretary of State, and Trade Representative actually all talked a good game on this issue, but once it got down into the weeds we always collapsed and were outed in the world press as being the country that was holding back progress on ocean plastics.

So, something needs to be fixed in the weeds where you will be, and I hope you will help fix it.

Ms. PAGÁN. If confirmed, I commit to working with you on this issue.

Senator WHITEHOUSE. Dr. Neiman, the Pandora Papers have shed new light on the role of kleptocracy and corruption. The President, I think, has correctly defined kleptocracy and corruption as national security hazards for America. How do you propose to prioritize anti-kleptocracy efforts in your proposed role?

Dr. NEIMAN. Thank you for the question, Senator. It is, of course, a very important issue. Anti-corruption is a real priority for the Biden administration. And in my role, one way in which I could make progress against this priority is via the international financial institutions. And so, I would commit to work with the executive directors, for example, of the MDBs, to promote good governance reforms, anticorruption efforts in the lending programs around issues like debt transparency, revenue administration, public contracting. There also are instances and reasons that we would want to be vigilant about making sure there is no corruption within the international financial institutions, and I would also keep an eye toward those issues.

Senator WHITEHOUSE. So you view this as a national security issue?

Dr. NEIMAN. Absolutely. It is a matter of projecting our values to the world. I agree, Senator.

Senator WHITEHOUSE. And stopping the subsidy and the aiding and abetting of our enemies?

Dr. NEIMAN. I agree, Senator.

Senator WHITEHOUSE. Mr. Frost, anti-money laundering requirements are really no more effective than money launderers' ability to get around them. Our banking institutions operate under robust anti-money laundering rules. But if you move over into private equity firms, hedge funds, venture capital firms, and other entities, the same rules do not apply. So it becomes super easy for somebody who wants to launder money to simply go through another gate.

If we really want to fight money laundering, we actually have to make sure it does not get through the various gates, as opposed to just closing one gate and leaving other gates wide open.

If you are confirmed, what do you intend to do about anti-money laundering requirements for private equity hedge funds and venture capital?

Mr. FROST. Thank you for the question, Senator. I would like to maybe start by acknowledging your leadership in this area on anti-money laundering, and more generally on shining a light on abuses of our financial system.

For financial markets to work and perform well, they need to be transparent. And investors need to have confidence that they are not being manipulated. If confirmed, I would be happy to work with you and your staff, and with other offices of the Treasury, including the Office of Terrorism and Financial Intelligence, to ensure that AML obligations are being met, and that there is a level and fair playing field.

Senator WHITEHOUSE. Is there nothing that you could do by regulation?

Mr. FROST. That is something, if confirmed, I would be happy to work with you and your staff—

Senator WHITEHOUSE. The reason you would be working with me and my staff is to do legislative stuff. You do not need to work with me and my staff to do regulatory stuff. You can do regulatory stuff. Is there not regulatory stuff that you could do?

Mr. FROST. Well, Senator, I would need to circle up with the relevant offices at Treasury that are a little bit more focused on these issues, but I would be happy to engage with them.

Senator WHITEHOUSE. Thank you.

My time is up. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Whitehouse.

We will have Senator Lankford, and then we will have Senator Warren.

Senator LANKFORD. Mr. Chairman, thank you.

I am slightly frustrated by just the diversity of opinions here, Mr. Chairman. At some point I would like to be able to have more time, because we have such a wide variety of different folks who are here, but thanks to you all for your service and for being here in the process.

Let me run quickly through several questions on this. Mr. Wilson, let me first start with you in this. In dealing with the role you have in protecting intellectual property and its unique task on this,

the Biden administration so far, one of the leading features they have had on intellectual property was trying to be able to give away intellectual property dealing with the TRIPS waiver. Obviously multiple entities have pushed back on that. Other countries are saying, "Yes, release intellectual property. We will try to figure out how to be able to manufacture this."

What would be your role in trying to be able to protect intellectual property of all American companies?

Mr. WILSON. Thank you, Senator Lankford. As I mentioned in my opening statement, I think the law that creates this position gives me a very clear direction to be a vigorous advocate for U.S. intellectual property and innovation and is the core of the function. And I take that to heart and would follow that guidance, if confirmed.

It is useful for me to have your perspective on the TRIPS waiver issue. As somebody inside the walls of USTR but not yet confirmed to this position, I have taken care to remove myself from active policy deliberations on that issue. But if I am confirmed, obviously I will prioritize getting up to speed on that issue and the state of play in Geneva, and I will be happy to come back to you.

Senator LANKFORD. There are quite a few other areas of research, and if we get into a point where we say, you know what, the whole world needs this, so let's just release this intellectual property, then we are going to have a cascading effect on other intellectual property. Finding ways to accelerate its usefulness and its accessibility is very different than just "that is a great invention you had, and we are going to take it away from you." That does not encourage innovation in the days ahead. So we will count on your leadership to protect that, both in China and what they actively do, but around the world as well.

Dr. Neiman, let me ask you about this, about Afghanistan in particular. There are \$9.5 billion that have been set aside and frozen out from the Taliban government at this point. Do you see a need to be able to unfreeze that \$9.5 billion and release it to the Taliban?

Dr. NEIMAN. Thank you for your question, Senator Lankford. The situation in Afghanistan is, of course, really terrible, and my heart goes out to the Afghan people. There is a real humanitarian crisis there, and we should do all that we can to try to help the Afghan people, for example working with our partners in the UN and trying to get funding to people on the ground.

At this point, without having that funding flow through the Taliban, right now my understanding is that the U.S. Government is taking a strategic pause, or a pause in not granting access to those reserves to the Taliban while the international community waits and sees how they respond to our concerns on treatment of women, treatment of girls, and I do find that appropriate at this point.

Senator LANKFORD. It would be entirely appropriate, actually. Would you favor special drawing rights of the International Monetary Fund if they actually get to the Taliban?

Dr. NEIMAN. I similarly, at this stage, think that the paused relationship between the IMF membership and the Taliban, so they do

not currently have access to the SDR allocation at the IMF, is appropriate.

Senator LANKFORD. Thank you. I agree.

Mr. Bagenstos, as you walk into the role as counsel with HHS—it is an extremely important role for all of our counsels. There is no way you could know at this point, unless someone had told you at this point. We have sent some letters to Secretary Becerra asking some very specific questions. In fact, we outlined 22 questions. He sent us a very nice letter back saying thanks for writing, but he has not answered any of the 22 questions. As we have gone through even some things that he stated in the actual nomination hearing when he came through here, things like are you going to recuse yourself from cases that you were named in as a California AG, but now you are on the other side of it, when he was literally suing HHS, now he is on the other side of it. He said, “Nope; not going to do that.”

So we asked just, “Can you give us a list of the cases you are going to recuse yourself from?” He has not even turned over that list of cases that he will recuse himself from, even though he said it during his testimony time sitting at that same table.

So are you aware of that? Has that been brought to your attention at this point? Is there a need to be able to get that kind of list when he has filed so many suits against HHS and now he is on the other side of it?

Mr. BAGENSTOS. Thank you, Senator. I very much appreciate the question and take very seriously the responsibility to be responsive to Congress and this committee. And I can tell you, should I be confirmed to the position of General Counsel, one of the functions of the General Counsel’s Office is the ethics function at HHS, including monitoring appropriate recusals, and I will certainly take seriously the ethics rules in that regard and responsiveness to this committee.

Senator LANKFORD. We will count on that, because one of the very first things that happened then from HHS was when they dropped the lawsuit that HHS had against the State of California. It was one of the early statements, but we have yet to be able to get any clarity whether the Secretary was actually involved in dropping the case against his own State right after he got into office. We need to be able to clear that up, or to be able to deal with the University of Vermont Medical Center that had a clear conscience protection issue that was placed against them, that then the administration came in and dropped immediately and said, “No, we are not going to prosecute that.”

And we also do not know about the University of Pittsburgh. There have been some real questions there about how they have handled some of the abortion issues that they have dealt with where they are literally harvesting and changing the procedures for an abortion, which is against Federal law to be able to harvest those organs. The written statements we have seen seem to show they have, but we cannot seem to get any information to be able to determine whether there is a violation of Federal law.

Those are things that we are going to want to ask in the days ahead and to be able to get clarity on.

Mr. BAGENSTOS. Thank you, Senator.



The CHAIRMAN. I thank my colleague. Senator Warren?

Senator WARREN. Thank you, Mr. Chairman.

Nearly 5 million people have died from COVID-19 worldwide. And although over 6 billion doses of the COVID-19 vaccine have now been administered globally, less than 1 percent of them have been administered in low-income countries. This inequity is disgraceful, and it also prolongs the pandemic's consequences here in the United States. The Biden administration has shown real global leadership in responding to the pandemic, but we must continue to use every tool available in the fight against COVID worldwide. And I would like to discuss some of those tools today.

Mr. Neiman, let me start with you. The first tool would fall under your purview. In August, the IMF approved a historic \$650 billion in global financial assistance in the form of special drawing rights. These SDRs are a lifeline for developing countries as they continue to struggle with the fallout from the pandemic.

Mr. Neiman, do you agree that SDRs are a critical tool for combating the COVID crisis both globally and at home?

Dr. NEIMAN. Thank you for the question, Senator. The increased SDR allocation to lower-income countries represented a very meaningful increase in their reserves, and therefore helped countries that otherwise might have been liquidity-constrained in their vaccination efforts and their ongoing preparedness for public health investments that are much needed.

Senator WARREN. Good. So I take it that is a strong "yes"?

Dr. NEIMAN. That is a strong "yes."

Senator WARREN. Good. I appreciate it, and I agree. The \$650 billion that the Biden administration helped secure is a good first step. But the IMF has made clear that the total need is somewhere in the neighborhood of \$2½ trillion.

The House has authorized additional SDRs to meet this urgent need. It is time for the Senate to do the same. Of course, to respond to the COVID-19 crisis we also need enough vaccines, PPE, tests, and treatments for everyone. And this brings us to tool number two.

I was glad to see the Biden administration put people's lives over pharma profits by supporting a waiver of international intellectual property rules to help ramp up global vaccine production in a crisis. But almost 2 years into this pandemic, countries still have not reached a deal to get it done. So, Ms. Pagán and Mr. Wilson, if confirmed, you would both have key roles to play in securing this critical tool for global vaccine access. So let me just ask each of you, will you commit to making this a priority, and using American leadership to secure a TRIPS waiver as soon as possible? Ms. Pagán?

Ms. PAGÁN. Senator Warren, thank you for the question. As you know, we have been working at the WTO since Ambassador Tai's announcement that we support a waiver of intellectual property protections for vaccines—

Senator WARREN. I just want to hear a "yes" that you are committed to this, and that you are going to make it a priority.

Ms. PAGÁN. We have been working, and we will continue to work on securing a successful outcome.

Senator WARREN. Good. Thank you.

And, Mr. Wilson, can I hear a “yes” from you?

Mr. WILSON. Yes, you can. Ambassador Tai spoke to this issue of U.S. leadership in Geneva a week ago, 2 weeks ago. Her answer was “yes” and so is mine.

Senator WARREN. Good. I like these yeses. Yeses backed up by “I am already working on it.” Best kind. This is really important, and I appreciate your commitments here.

So, while the U.S. works with partners to approve a TRIPS waiver, we still have other tools to accelerate the COVID vaccine manufacturing and distribution without depending on an international agreement. And that brings me to the third tool in the box.

Mr. Bagenstos, if confirmed will you commit to conducting a thorough examination of all of the regulatory authorities at the Department’s disposal, including the DPA and any contractual rights in which HHS is entitled to dramatically expand global access to COVID vaccines, including through vaccine technology transfer?

Mr. BAGENSTOS. Absolutely, Senator. As both the President and the Secretary have made clear, we need to do what we can to get out of this crisis. And that means considering all of the available legal tools—obviously, running them through the appropriate processes to make sure we have the authority, but I think we have to leave no stone unturned in looking for those authorities.

Senator WARREN. I very much like that approach. We have to use all of the tools. We are in a crisis, and it puts everyone at risk around the world. It puts us at risk here at home.

This is a global emergency, and we must use all of our tools to fight this virus. The pandemic will not end anywhere until it ends everywhere, and now is the time for using all our tools.

So, thank you all. I look forward to your speedy confirmation and getting you even more tools to work with. Thank you.

Thank you, Mr. Chairman.

Senator CRAPO [presiding]. Thank you.

Senator DAINES?

Senator DAINES. Senator Crapo, thank you.

I want to talk about intellectual property for a moment. Somebody who spent much of my career in global operations—I spent 6 years actually living in China working for an American corporation, launching American brands to compete against Chinese brands there in China—I believe protecting U.S. intellectual property has to be a top priority for the U.S. Trade Rep.

As you know, the United States and China signed a Phase One trade deal that includes major advancements in the protection of U.S. IP. But despite this agreement, China has not lived up to their end of the deal, and its forced technology transfers and IP violations continue.

I have sponsored this bipartisan bill—it is the PROTECT IP Act—which recently passed the Senate as part of Senate Bill 1260, that would help boost enforcement in that Phase One China deal. In fact, I was over in China meeting face to face with Liu He back at the end of that whole negotiation process in Beijing, so I have a lot of hands-on personal experience, and hence my passion on this issue.

Mr. Wilson, if confirmed, what actions will you take to ensure that IP created in America is protected?

Mr. WILSON. Thank you, Senator Daines. It is great to hear about your personal experience on these issues. And, as you point out, the issue, particularly of China's living up to the commitments that it made bilaterally to us in that earlier agreement, is critical.

Ambassador Tai spoke to this recently, and she herself is engaging directly with the Chinese. I would expect to do likewise, if confirmed, to make sure they are living up to those commitments.

Senator DAINES. Thank you. I appreciate that, truly. Furthermore, would you support taking more aggressive actions against international IP abusers?

Mr. WILSON. Senator, I think—again, if I am confirmed—one of my first priorities would be to open up the toolbox that we have at USTR, evaluate the tools, consider where they can be used most effectively, and consult with the committee on how we do that.

Senator DAINES. Thank you.

I want to talk for a moment about expanding market access for ag producers. Ms. Pagán, a question for you. As you know, with 95 percent of the world's consumers outside the United States, ensuring that our farmers and ranchers in places like Montana and across the U.S. are able to compete on a level playing field, is absolutely critical.

If confirmed, would you commit to ensuring that expanding market access for Montana and U.S. ag in foreign markets would be a priority and on the agenda in any WTO ag negotiation?

Ms. PAGÁN. Thank you for that question. Absolutely, leveling the playing field and making sure that our farmers and ranchers have access to foreign markets is very important, and it will be a priority while I am there.

Senator DAINES. And it really is the future in many ways for agriculture, where you see—as I think old Wayne Gretzky said, he was successful because he skated where the puck was headed, not where it was at. Where it is all going here—again 95 percent of the world's consumers are outside the United States. It continues to be a great opportunity for us, for ag producers here in the United States.

While multilateralism can play an important role in achieving global policy objectives, we need to make sure that all of our partners operate in a transparent manner. That is why I am upset at findings that the current head of the IMF, Kristalina Georgieva, who was then head of the World Bank, pressured staffers to boost China's ranking in the World Bank's annual Doing Business report for 2018.

Dr. Neiman, I know Senator Menendez brought this issue up earlier. Are you concerned by this scandal? And would you agree that this episode raises some fundamental questions about whether politics plays a role in other decisions being made by the IMF as well as the World Bank?

Dr. NEIMAN. Thank you for the question, Senator. You know, I agree with the Secretary that the WilmerHale report raised serious and legitimate issues and concerns. And as an academic myself, I understand very viscerally the importance of confidence and trust

in data, and confidence that analyses are conducted not with an eye toward generating any particular outcome.

And so, if confirmed, I would absolutely commit to taking strong action to encourage the IMF to make sure that they renew their commitments to things like data transparency, safeguards, whistleblower protections, at both international financial institutions.

Senator DAINES. What is your sense in looking at it so far? Do you think politics played a role?

Dr. NEIMAN. Do I think politics played a role? I read the WilmerHale report and think that the right way to approach their findings is to follow the recommendations that they made, such that whether politics mattered or not, we maintain the integrity and confidence in the international financial institutions. That seems to be the critical interest that, if confirmed, I would have in my role at Treasury: maintaining confidence in the international financial architecture.

Senator DAINES. Dr. Neiman, thank you.

Dr. NEIMAN. Thank you, Senator.

Senator DAINES. Thank you, Senator Crapo.

Senator CRAPO. Thank you.

Senator CORTEZ MASTO?

Senator CORTEZ MASTO. Thank you, Mr. Chair. To the nominees, congratulations. I look forward to working with all of you. I do not have time to ask all of you questions, so I will submit most of those for the record. But there is one issue that really is pertinent on my mind right now.

Mr. Bagenstos, you are going to be critical to addressing this. I understand you are familiar with the case of Stanley Weber. For those who do not know, he is a former pediatrician with Indian Health Service who has been convicted of more than 13 felony counts relating to the sexual abuse of young boys. These assaults began in the early 1990s. They continued for more than 20 years.

Dr. Weber practiced pediatrics through 2015 and did not leave the service until May of 2016. In the time since Weber was charged and arrested, there have been several investigations into his conduct and the systemic failures at IHS that enabled this behavior. I would like to focus on one of those investigations. It was commissioned by IHS and conducted by an independent contractor called Integritas. And that report was delivered to the IHS in January of 2020, but it was withheld from both members of Congress and the public in what the courts have since found to be a violation of the Freedom of Information Act.

The report was made public just 2 weeks ago, and it detailed a pattern of failures by IHS management to act upon years of credible accusations of assault. Here are my concerns when it comes to the involvement of the Office of General Counsel. There are two of them. One is this: the Office of General Counsel made several critical missteps in the handling of the report by refusing to make its counselors available to Integris for the investigation, and then by withholding the report itself from congressional oversight bodies and the public. That is one.

Two, the report makes clear that, in several instances, the HHS General Counsel failed to act in the best interests of IHS patients by making oversight recommendations to IHS managers that fell

far short of the urgency and seriousness that this case required. So, my question to you is, I want to know how you would handle a similar situation. Are there circumstances under which you would direct counselors not to cooperate with investigations commissioned by HHS agencies?

Mr. BAGENSTOS. Thank you, Senator, for the question. And it is an absolutely tragic case that you are talking about. As you know, I am not at HHS and so have not had the benefit of being able to review the file of this case, but I have certainly read the many news reports about this. And I can say this is a case—and cases like this, should a case like this occur in the future—that really comes at the intersection of three of the most sensitive relationships, and most important responsibilities that the Department has: to safeguard the health of the people who deal with HHS programs, the health and welfare of children, and the trust relationship that the U.S. Government has with Indian Tribes.

To fail in all three of those responsibilities, I think is just something that is unfathomable, and beyond unfortunate. And to think that folks in the office to which I have been nominated to head and will lead, if confirmed, actually failed to address it is not something that I would want to have happen, should I be confirmed.

So what does that mean? So one thing that I will want to do, as soon as I get confirmed, should I be confirmed, is actually to review the decisions that were made in this context to make sure that—there are always decisions that are made about investigative questions. Were these decisions made appropriately, and do we need to have new policies for the future—not just for IHS, but in general—in dealing with these sorts of sensitive relationships?

And, Senator, I can commit to you that if I am confirmed, I will take extremely seriously both the need to protect those in the charge of HHS, and the need to be responsive to investigators who are duly appointed, as well as to this committee and to the Congress.

Senator CORTEZ MASTO. And do you have any problems referring alleged criminal activity to law enforcement for them to investigate?

Mr. BAGENSTOS. So I think—you know, I have had to do this in many government jobs—when one comes across criminal conduct, you know, there are procedures for referring that. And I think those procedures need to be followed.

Senator CORTEZ MASTO. Do you think it is appropriate to put together some sort of investigative committee that is made up of people who are supervised by the individual they are asked to investigate?

Mr. BAGENSTOS. You know, I would want to look into the particular case here because, as I say, I do not really know much about the facts. But in general, that would be very much a red flag. We want people to be independent of those they are investigating.

Senator CORTEZ MASTO. Thank you. It is a serious matter, and that is why I have taken up most of my time on it. Listen, I get the job that you are doing runs the intersection of administration, personnel, and criminal allegations, if that happens and that has to be referred. And I understand the nexus between all three.

We failed. IHS failed in this instance in all three of those. And that is on the General Counsel's shoulders. And that is why your job is so important, because these are the consequences if you fail. And so, I am looking for somebody who understands that and is willing to step up and do the right thing, particularly by the individuals and these young boys who suffered at the hands of this doctor for too long. Too long. And so, thank you for your comments. And again, thank you, all three, for your willingness to serve.

Mr. BAGENSTOS. Thank you, Senator.

Senator CRAPO. Thank you.

Senator Brown?

Senator BROWN. Thank you, Senator Crapo. Thanks to Chair Wyden. And, Ms. Pagán, thank you for your help drafting the Brown-Wyden rapid response mechanism in USMCA. You took another corporate trade agreement and turned it into an agreement that will actually help workers in all three countries. So thank you for that.

I want to start by saying that China's entry into the WTO has been devastating for Ohio workers and Ohio companies. The Chinese Government cheats the global system using forced technology transfers, intellectual property theft, and chronic state-subsidized overcapacity in key industries like steel and solar to undermine U.S. industries.

The WTO can be a tool by which China bullies its competitors. If China continues to make a mockery of the World Trade Organization, Americans and the rest of the rule-following world are going to lose faith both in the WTO and their own leaders to appeal for relief. That is the lesson that is so important for us to understand.

So, Ms. Pagán, detail for me how you think we should reform the WTO so it actually works to address China's abuses, which harm American workers and businesses?

Ms. PAGÁN. Thank you, Senator Brown. There are a number of ways. You know, one important area is transparency. One of the areas where China fails is lack of transparency in its measures, and we want to improve transparency in terms of making sure that members are meeting their current obligations and bringing more transparency also to the WTO so we can have more conversations.

The dispute settlement system has to be reformed because it has contributed to some of the difficulties for us to combat some of the unfair practices, and that is going to be a priority, if I am confirmed, in my work forward at the WTO.

I also—I know this is an important issue, and it is an important angle to bring to everything that we do at the WTO, which is to bring the worker-centric focus to remind ourselves that, after all, we are there to do trade and to facilitate trade, but it also means that you have to protect the workers that the trade comes from. So there are any number of ways that we can address this issue, and, if confirmed, I look forward to working with you on this.

Senator BROWN. Thanks, Ms. Pagán. The U.S., thanks to the chair, Chair Wyden's efforts and his staff's efforts, has changed its approach to trade policy. The WTO must act similarly. I have confidence from our conversations, from talking to the Ambassador about your work yesterday, that you will work toward that goal at the WTO and with other member countries. So I know you have

committed to that. I know you have committed to that over and over, and we count on that.

Mr. Wilson, I appreciate our conversation the other day, how you plan to put workers at the center of our economic policy in terms of protecting intellectual property and innovation, especially in digital trade agreements. Thank you for your private commitment and your public commitment to do that.

And last, Mr. Frost, I want to switch to your work with GSEs. I chair the Banking, Housing, and Urban Affairs Committee. It used to be the Wall Street Committee. Now it is much more about housing.

We have an affordable housing crisis. We know that. We will need our entire housing system, including the GSEs, to work together to address it. We have heard from both consumer advocates and leaders about the importance of putting GSEs on a path to long-term stability so they can carry out their mission of providing all Americans with access to affordable housing.

Would you commit to working with me on strengthening the housing system, expanding access to affordable housing?

Mr. FROST. Absolutely, Senator. I know this is an area that you feel passionate about. I do as well. You have provided tremendous leadership here.

The administration is deeply committed to affordable housing, and has a number of efforts underway, as you know, to lower the cost of housing for American families. If confirmed, I am committed to working with Congress to establish a housing finance system that works better than the system worked prior to the global financial crisis and the entrance into conservatorship.

I think it is important that we have GSEs that work for the American people and do not have the too-big-to-fail issues that we saw pre-financial crisis. But, if confirmed, I would love to work with this committee and you and your staff on making it a priority—making GSE reform a priority.

Senator BROWN. We count on that. Thank you, Mr. Frost.

Thank you, Senator Crapo.

Senator CRAPO. Thank you.

Senator Barrasso?

Senator BARRASSO. Thank you very much, Senator Crapo.

Dr. Neiman, China is the world's largest economy, has access to capital, and sizeable reserves in meeting its own domestic development needs. Yet China continues to borrow billions of dollars from multilateral development banks.

In 2016, China met the criteria for graduation from the World Bank. Since then, China has received \$9 billion from the World Bank, \$7.6 billion from the Asian Development Bank, and China obtains sizeable loans. It is engaging in predatory lending, likely using that money in developing countries across the world.

So China is now the world's largest official creditor, even though it continues to get all of this money, a lot of which the United States has been putting into these organizations. The United States, I think, has a duty to make sure that U.S. taxpayer resources are going to countries that need them most, not China. A dollar lent to China is a dollar not available for a project to elimi-

nate poverty in the developing world. The multilateral development banks need to focus on their development mission.

So what is your strategy to end lending to China at multilateral development banks?

Dr. NEIMAN. Thank you for the question, Senator. I do agree that our MDB efforts and development finance should be targeting the lowest-income countries that need that assistance, and China has, as you said, by that standard graduated years ago now.

If confirmed, I would be committed to working with the executive directors to understand the best way forward to achieve that outcome, which I agree with, Senator. I also, if confirmed, would be happy to discuss these efforts with you and your staff.

Senator BARRASSO. Thank you.

Another question, Dr. Neiman. There are currently 840 million people across the globe with no electricity, none, right now, today. People who live in poor and developing nations want and need a stable energy supply to grow their economy, to improve their lives. Energy is, I believe, a single critical tool to help countries alleviate poverty.

The United States should be working to promote an all-of-the-above energy strategy. But the World Bank, and many of the multilateral development banks, are restricting lending for traditional energy projects. No modern economy can run on only renewable power, which we know is variable. A country needs continuous, abundant energy to run a manufacturing plant, a data center, or a hospital. And I think in some of my travel to Africa where we were talking to hospital staff, their biggest issue was lack of power when it comes to maternal death, and the death of the baby as well, during delivery.

So I think these restrictions in the lending only exacerbate the global inequities of energy. In fact, all of Africa, with a population of 1.3 billion people, accounts for a little more than 3 percent of the total global electricity generation. If Africa tripled its electricity consumption based on only natural gas, it would still be less than 1 percent of the annual global emissions footprint.

So, if you care about people in developing countries, and we all do, we attempt to turn the lights on. So, if confirmed, will you commit to ensuring that multilateral development banks are promoting all forms of energy projects across the globe, including oil, gas, and coal?

Dr. NEIMAN. Senator, the President and the Secretary have both described climate change as an existential threat, and that is an assessment that I wholeheartedly agree with. I think the way to think of the cost in terms of energy and infrastructure that burns carbon, emits carbon, is not just the cost today, but also the cost to the future. And so I think it is appropriate and important for our efforts with multilateral development banks, development financing, per se, to emphasize infrastructures that support our goals on climate change.

Senator BARRASSO. Well, I will take that as a direct attack against these people who are desperately looking for energy to survive today, because that is a decision, this administration; I know it is not your position, but it is the administration's position. For the existence of those alive today in these communities—if you take



a look at the number one cause of death, environmental death, it is household, indoor smoke for cooking, period. No questions asked that that is a concern, and I believe it is an affront to these people and an insult for the administration to have such a position.

So, at the U.N., President Biden announced he would once again double the U.S. contributions to international climate change. In April he pledged to increase contributions for global climate financing to \$5.7 billion. So this means that, since he just said he was going to double it, that is \$11.4 billion a year. This is happening at a time when the American people are facing significant challenges at home. Communities across the Nation are just emerging from a deadly pandemic. We are dealing with stifled economies, soaring debt, declining infrastructure.

In a front-page story in *The New York Times* today, people, under inflation, are looking at the largest increase in prices and costs for Thanksgiving dinner. This is *The New York Times* front page today. But whether it is the Green New Deal, the U.N. green climate change slush fund, the American people cannot afford these disastrous policies.

So please explain why American taxpayers should support borrowing more from countries like China in order to send it overseas to international bureaucrats in the name of climate change? And I hope to hear more about that than it is an existential threat.

Dr. NEIMAN. Senator, this is not an easy situation. I just want to acknowledge, of course it is a difficult issue, but we have trade-offs that we have to consider. And I agree with the assessment that time is running out. It is really important that we do all that we can to decarbonize the planet, and I think, as such, it is appropriate to emphasize sustainable infrastructure projects through our development financing policies.

Senator BARRASSO. Thank you, Mr. Chairman. My time has expired.

Senator CRAPO. Thank you very much, Senator Barrasso.

At this point, Senator Portman, who is on the web, is next. But we are not sure that he is back from his vote. Senator Portman, are you there?

[No response.]

Senator CRAPO. Is there any Senator who is on the web who is ready to ask questions?

[No response.]

Senator CRAPO. Well, if not, while we are waiting for the chairman to return from voting, I have a couple of questions that I might just jump into. The first is for you, Ms. Pagán, and also for Chris Wilson, and that is with regard to the TRIPS waiver. Ambassador Tai committed at the trade agenda hearing to brief this committee on negotiations to waive the U.S. rights under the WTO agreement on trade-related intellectual property rights, or TRIPS.

This has not happened. The briefing has not happened. Members on both sides of the aisle are concerned about this issue, particularly about allowing China and Russia to use our intellectual property for vaccines with impunity. My question for both of you is the same. Would you commit to opposing a waiver or a peace clause for the TRIPS agreement that extends to Russia and China? Ms. Pagán?

Ms. PAGÁN. Thank you. I know this is a very important issue. I would just say that the conversations seem to me to be ongoing and are sort of stuck. So, you know, we are trying to be constructive over there.

I will say that, on the issue of China and Russia over there—people who should not be getting access to our innovations—we will be very clear-eyed, whatever the outcome is, to ensure that does not happen. You know, the devil is always in the details, and with respect to consulting with you and the committees, we will do that.

Senator CRAPO. Thank you.

Mr. Wilson?

Mr. WILSON. Thank you, Senator Crapo. As my colleague has said, there are lots of ins and outs of this discussion in Geneva that still need to take place. It is very helpful for me to understand your particular concern about technology being shared with two WTO members in particular. I think it is incumbent on us, as we continue to be involved in the discussions, to ensure that we are managing the risks as effectively as we can.

Senator CRAPO. Well, thank you. And neither of you were willing to commit to oppose a waiver of TRIPS for Russia and China. I understand that you are working with the administration that has already said that it is considering doing that. So I would just say, I would encourage you to take back advocacy of protecting Americans and American industry and technology, rather than yielding access to that technology to Russia and China, where the case has not been made that there is an emergency that somehow justifies this.

Next, another question for you, Mr. Wilson, is on intellectual property. Actually, I think you answered this earlier, but I had to step out, or I got my attention pulled away. But, if confirmed, you will be responsible for helping to lead the new administration's policy on trade-related intellectual property rights, and your leadership will be very important for the effort to address acts, policies, and practices of foreign governments that have a significant adverse impact on the value of U.S. innovation. It will also be important in helping to ensure that private intellectual property rights are enforced and maintained in the face of increased calls to socialize private property and information.

How will you approach solving the increasingly thorny intellectual property disputes, particularly disputes in spaces like digital and pharmaceutical industries?

Mr. WILSON. Thank you, Senator. As a nominee for this position, I take very seriously the responsibility that I would have to essentially build and create this new position to develop the appropriate priorities, both for myself in the position and for the future.

I think you have pointed correctly to the complex intersections between intellectual property policy and emerging technologies, especially in the digital space. I understand that those are going to pose particular challenges. It will be very important to me, as I work with my colleagues at USTR to build the position, to stay in close touch with you, your staff, other members of the committee, to make sure that we are meeting your expectations.

Senator CRAPO. Thank you.

And, Mr. Bagenstos, a question for you on advisory opinions. The HHS Office of General Counsel has the ability to issue advisory opinions which, although they lack the force of law, can direct policymaking efforts very powerfully. Where members of Congress and the administration disagree on policy choices, the administration's rationale can be important for Congress to understand why the administration has decided to move in a particular way.

If confirmed, will you be willing to make your advisory opinions available to Congress at their request?

Mr. BAGENSTOS. Thank you, Senator. I know this is a very important matter, and I will say I take very seriously Congress's responsibility to exercise oversight. The legislative branch of government passes the laws under which the departments operate, and it appropriates the money that the departments spend. And so, it obviously has a very significant oversight responsibility. And part of that responsibility, I think, imposes a correlative responsibility on the executive branch to let Congress know what the executive branch is doing, and why the executive branch thinks they have the authority to do it.

And, if I am confirmed to this position, I can commit to you that we will engage in that conversation. And, if there is a question about what HHS is doing, and why we think we have the authority to do it, should I be confirmed, that will be communicated to you.

Senator CRAPO. Well, thank you.

Okay, I think we may have one more member almost here, and I have one more question, so I am going to go ahead with that.

This one is for you, Dr. Neiman. I am deeply concerned by the reporting that senior officials at the World Bank manipulated data to improve China's ranking in its Doing Business report at the behest of Chinese officials, at a time when the World Bank was deep into negotiations with countries, including China, for a share capital increase.

I am even more concerned that since this story was reported, one of those officials has been promoted to the leadership of the IMF, and, even more egregiously, since the story was confirmed in an investigation by an independent law firm, the IMF retained that official as its leader.

If confirmed, what will you do to ensure that foreign powers do not undermine or manipulate the international institutions like the World Bank, the IMF, and the OECD, that are tasked with promoting economic growth and financial stability?

Dr. NEIMAN. Thank you, Senator, for the question. If confirmed, one very important part of my role would be to ensure that global confidence remains and we preserve the integrity of the international financial institutions. We have worked very hard to build them up and make them a particularly important tool in the international financial landscape, and we would need to work hard to continue safeguarding them.

And I agree that the reports could reduce confidence if we do not take strong action to boost things like accountability, and protect the data integrity. The WilmerHale report that you are referring to included a number of recommendations. And, for example, together with the executive directors, I would review those recommendations and strongly consider adding things like the possi-

bility—you know, considering possibilities like potentially making the analyses more broadly available, doing things to protect the actual analysis from any sort of involvement of people outside of the team on the political side of the institutions.

Senator CRAPO. Well, thank you. And in light of the facts of this situation, do you still think it appropriate that the administration seeks an increase in SDRs for the IMF?

Dr. NEIMAN. I am not aware—I do not believe that Treasury is currently considering any additional SDR allocations.

Senator CRAPO. All right; thank you. I am glad to hear that. I would just like to let you know that I do not believe the United States should support the allocation of any additional SDRs to the IMF while the official at issue here remains the managing director. And so, I just give you that bit of opinion of my own as we approach these kinds of issues.

With that, is Senator Thune with us?

[No response.]

Senator CRAPO. Okay. If Senator Thune is not available, then that means that you are all done with your questions, with the interrogation. I would like to thank each of you for being willing to take upon yourself these commitments to serve our country, and for being here today, and for your responses, even though I did not agree with all of them.

You will get additional questions in writing. Regarding the questions for the record, the deadline for members to submit the QFRs will be next Tuesday, November 2nd, at 5 p.m. And for our members, that 5 p.m. deadline is firm.

We also—do we have a time frame for responses? Okay, we do not have a specific time frame for responses, but quickly, please. We appreciate prompt responses.

We do thank you all for your cooperation and your attendance here. And with that, this hearing is adjourned.

[Whereupon, at 11:45 a.m., the hearing was concluded.]

## APPENDIX

### ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

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#### PREPARED STATEMENT OF SAMUEL R. BAGENSTOS, NOMINATED TO BE GENERAL COUNSEL, DEPARTMENT OF HEALTH AND HUMAN SERVICES

Chairman Wyden, Ranking Member Crapo, members of the committee, thank you for considering my nomination to be General Counsel at the Department of Health and Human Services (HHS). I am humbled and honored by President Biden's decision to nominate me, and I am excited, if confirmed, to serve under the leadership of Secretary Xavier Becerra.

I would like to thank my family for their love and support. Here with me today is my wife, Margo Schlanger, who is a terrific and accomplished attorney in her own right. Watching from afar are my children, Harry and Leila—twins who are in their senior year of college—and my mother, Naida Tushnet—who is nominally retired but keeps up a full schedule fighting to improve her own community. I would also like to thank my supervisors in my government positions: former Governor Deval Patrick, former Secretary of Labor Tom Perez, and Acting Director of the Office of Management and Budget (OMB) Shalanda Young. And I would like to thank the two great, now-departed jurists for whom I clerked, Judge Stephen Reinhardt and Justice Ruth Bader Ginsburg, whose memories are a blessing.

In the more than 28 years since I graduated law school, my work has sought to advance the paired principles that should always inform the application of the law: no person, no matter how high their position, should be above the law's constraints, nor should anyone be beneath its protections.

Perhaps no case illustrates those principles better than that of George Lane. George had paraplegia and was a bit down on his luck. When he was accused of a minor criminal violation, his hearing was held on the second floor of a courthouse with no elevator. And when he couldn't make it to the courtroom because his disability kept him from climbing stairs, he was arrested for failure to appear in court. I worked with George to take his case to the Supreme Court, and—with the help of President George W. Bush's Solicitor General—we prevailed. George's case showed that, at its best, the law must be open and responsive to even the humblest members of our community. I was very proud to have achieved this result—and to have worked with congressional and administration allies across partisan divides to build support for George's case.

Should I be fortunate enough to be confirmed, I will approach the General Counsel role in the same spirit. I will work to ensure that the actions of the Department conform to the substantive and procedural requirements that Congress has established—as well as the fundamental principles and protections of the Constitution. And I will work to ensure that the Department advances its critical mission of enhancing the health and well-being of all Americans.

During the Obama-Biden administration, I was the Principal Deputy Assistant Attorney General for Civil Rights at the U.S. Department of Justice. In addition to supervising 200 attorneys across three sections of the Civil Rights Division, I led the Department's enforcement of the Americans with Disabilities Act.

Much of my disability rights work has required me to engage with State Medicaid programs—to defend the rights of people with disabilities to receive services in their own homes and communities. I worked with Governors, Sheriffs, and other State and local officials across party lines who were committed to providing quality services to individuals with disabilities. Through this work, I learned a lot about the

particular needs of different States and regions. I am especially proud of work I did to reach a historic agreement with then-Governor Sonny Perdue in Georgia to expand that State's community-based services system. In the course of that work, I saw how important tools such as telehealth can be in serving rural and other communities without access to specialized providers—a lesson that the COVID-19 pandemic has underscored for all of us.

More than a year into that pandemic, the laws that HHS administers are essential to the Department's mission. Should I be confirmed, I will seek to uphold the law with a commitment to equity, transparency, and accountability.

Thank you, again, for considering my nomination. I look forward to your questions.

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## SENATE FINANCE COMMITTEE

### STATEMENT OF INFORMATION REQUESTED OF NOMINEE

#### A. BIOGRAPHICAL INFORMATION

1. Name (include any former names used): Samuel Robert Bagenstos.
2. Position to which nominated: General Counsel, U.S. Department of Health and Human Services.
3. Date of nomination: August 10, 2021.
4. Address (list current residence, office, and mailing addresses):
5. Date and place of birth: January 5, 1970; St. Louis, MO.
6. Marital status (include maiden name of wife or husband's name):
7. Names and ages of children:
8. Education (list all secondary and higher education institutions, dates attended, degree received, and date degree granted):
  - Harvard Law School.  
Dates attended: September 1990–June 1993.  
Degree received: juris doctor.  
Date degree granted: June 1993.
  - University of North Carolina at Chapel Hill.  
Dates attended: September 1987–May 1990.  
Degree received: bachelor of arts.  
Date degree granted: May 1990.
  - Princeton High School (Princeton, NJ).  
Dates attended: September 1983–June 1987.  
Degree received: high school diploma.  
Date degree granted: June 1987.
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 for each job):
  - Office of Management and Budget.  
General Counsel (January 2021–present).  
Washington, DC.
  - University of Michigan Law School.  
Frank G. Millard professor of law (October 2014–present; on leave since January 2021).  
Professor of law (July 2009–present; on leave July 2009–July 2011 and since January 2021).  
Visiting professor of law (August–December 2008).  
Ann Arbor, MI.

Michigan Employment Relations Commission.  
Member and Chair (December 2019–January 2021).  
Lansing and Detroit, MI.

Joan and Sanford I. Weill Medical College and Graduate School of Medical  
Sciences of Cornell University Medicine.  
Contractor—legal research (2017–2019).  
New York, NY.

U.S. Department of Justice, Civil Rights Division.  
Principal Deputy Assistant Attorney General (January 2010–July 2011).  
Deputy Assistant Attorney General (July–December 2009).  
Washington, DC.

UCLA School of Law.  
Visiting professor of law (January–May 2009).  
Los Angeles, CA.

Washington University School of Law.  
Associate dean for research and faculty development (July 2007–June 2008).  
Professor of Law (July 2004–June 2008).  
St. Louis, MO.

Harvard Law School.  
Assistant professor of law (July 2000–June 2004).  
Research fellow and lecturer on law (1999).  
Cambridge, MA.

Pyle, Rome and Lichten.  
Associate (1998).  
Boston, MA.

Supreme Court of the United States.  
Law clerk to Justice Ruth Bader Ginsburg (1997–1998).  
Washington, DC.

U.S. Department of Justice, Civil Rights Division.  
Trial attorney, Appellate Section (1995–1997).  
Washington, DC.

United States Court of Appeals for the Ninth Circuit.  
Law clerk to Judge Stephen Reinhardt (1993–1994).  
Los Angeles, CA.

Jenner and Block.  
Summer associate (1992).  
Washington, DC.

Baker and Botts.  
Summer associate (1991).  
Washington, DC.

FGI, Inc.  
Telemarketer (1990).  
Chapel Hill, NC.

10. Government experience (list any current and former advisory, consultative, honorary, or other part-time service or positions with Federal, State, or local governments held since college, including dates, other than those listed above):

In addition to the positions listed above, I also served as a part-time, volunteer member of the Ann Arbor Housing Commission and its affiliated nonprofits, the Ann Arbor Housing Development Corporation and the Ann Arbor Affordable Housing Corporation, from March 2019 until I assumed my position at OMB in January 2021.

11. Business relationships (list all current and former positions held as an officer, director, trustee, partner (*e.g.*, limited partner, non-voting, etc.), proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, other business enterprise, or educational or other institution):

None.

12. Memberships (list all current and former memberships, as well as any current and former offices held in professional, fraternal, scholarly, civic, business, char-

itable, and other organizations dating back to college, including dates for these memberships and offices):

I have undertaken to answer this question as fully as I can. I do not have complete records of my memberships going back the 31 years since I graduated college.

Ann Arbor Reconstructionist Congregation.

Member (2011–present).

I served a term on the board and a couple of years on the Rabbinical Search Committee.

State Bar of Michigan.

Member (2010–present).

California State Bar.

Member (1994–present).

Disability Rights Bar Association (and predecessor Association of Disability Rights Counsel).

Member (2011–2021, various years before 2009).

Executive board (dates unknown).

National Employment Lawyers Association.

Member (2011–2020, various years before 2009).

Public Justice.

Member (2019–2021).

American Constitution Society.

Member (various times since law school but I don't have specific dates. I am not currently a member.)

ACLU of Michigan.

Pro bono cooperating attorney (at least 2014–January 2021).

Association of American Law Schools.

Member (2000–present).

Chair, disability law section (one term, dates unknown).

Law and Society Association.

Member (various years since approximately 2004).

Michigan Speech Coaches, Inc.

Member (2014–2018).

National Speech and Debate Association.

Member (2014–2018).

Member, Michigan District Committee (2017–2018).

Ann Arbor Racquet Club.

Member (2011).

13. Political affiliations and activities:

- a. List all public offices for which you have been a candidate dating back to the age of 18:

Michigan Supreme Court (Democratic nominee, 2018).

- b. List all memberships and offices held in and services rendered to all political parties or election committees, currently and during the last 10 years prior to the date of your nomination:

I am a member of the Michigan Democratic Party and the Washtenaw County Democratic Party. During the past 10 years (but not since assuming my current Federal position), I have hosted or co-hosted fundraisers for various candidates in Michigan.

- 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 prior to the date of your nomination:

See table.



<b>Contribution Description</b>	<b>Date</b>	<b>Amount</b>
Liberty and Justice for All PAC	7/10/21	\$100
Tom Perez for Governor	6/21/21	\$1,000
Kent County Democratic Party	6/13/21	\$50
Dana Nessel for Attorney General	5/26/21	\$100
Andy Levin for Congress	5/22/21	\$500
Gretchen Whitmer for Governor	4/21/21	\$1,000
Washtenaw County Democratic—Federal Account	4/17/21	\$250
Jon Ossoff for Senate	12/22/20	\$100
Jon Ossoff for Senate	12/22/20	\$100
Gretchen Whitmer for Governor	12/15/20	\$100
Warnock for Georgia	11/7/20	\$62.50
Jon Ossoff for Senate	11/7/20	\$62.50
Georgia Federal Elections Committee—Federal Account	11/7/20	\$62.50
Jon Ossoff for Senate	11/7/20	\$62.50
Biden for President	10/31/20	\$100
Biden for President	10/31/20	\$100
Michigan Democratic State Central Committee	10/29/20	\$250
Michigan Democratic State Central Committee	10/28/20	\$500
Together Fund PAC	10/25/20	\$100
Peters Victory 2020	10/25/20	\$500
Gretchen Driskell for Congress	10/25/20	\$250
Biden for President	10/25/20	\$250
Biden Victory Fund	10/25/20	\$250
Mike Espy for Senate	10/23/20	\$150
Michigan Democratic State Central Committee	10/23/20	\$400
Jon Hoadley for Congress	10/23/20	\$500
12th Congressional District Democrats	10/22/20	\$50
Michigan House Democratic Fund	10/20/20	\$250
Peters for Michigan	10/15/20	\$100
Peters Victory 2020	10/12/20	\$500
Michigan Democratic State Central Committee	10/10/20	\$250
Elizabeth Welch for Supreme Court	10/7/20	\$250
Warnock for Georgia	10/6/20	\$100

<b>Contribution Description</b>	<b>Date</b>	<b>Amount</b>
Jamie Harrison for U.S. Senate	10/6/20	\$100
Dr. Alan Gross for U.S. Senate	10/6/20	\$100
Peters for Michigan	10/5/20	\$1,000
Cal for NC	10/1/20	\$100
Peters Victory 2020	10/1/20	\$1,000
J Street PAC	10/1/20	\$100
Scholten for Congress	10/1/20	\$500
Michigan Democratic State Central Committee	9/29/20	\$250
Laurie Pohutsky for HD 19	9/29/20	\$50
Biden for President	9/27/20	\$500
Biden Victory Fund	9/27/20	\$500
Katie Porter for Congress	9/21/20	\$250
Peters for Michigan	9/19/20	\$250
Mark Kelly for Senate	9/19/20	\$100
Sara Gideon for Maine	9/19/20	\$100
Theresa Greenfield for Iowa	9/19/20	\$100
Cal for NC	9/19/20	\$100
Cal for NC	9/19/20	\$100
Yes on 16	9/14/20	\$100
Haley Stevens for Congress	9/11/20	\$500
Wendy Davis for Congress	9/11/20	\$500
Michigan Democratic State Central Committee	9/10/20	\$250
Jon Hoadley for Congress	9/8/20	\$250
Gretchen Driskell for Congress	9/6/20	\$250
Friends of Dan O'Neil	9/3/20	\$250
David Daniel Ortiz for State Representative	9/1/20	\$100
Biden for President	8/31/20	\$1,000
Biden Victory Fund	8/31/20	\$1,000
Michigan Democratic State Central Committee	8/29/20	\$250
Peters for Michigan	8/22/20	\$500
Michigan Democratic Jewish Caucus	8/21/20	\$72
J Street PAC	8/17/20	\$100
Julia Pulver for State Representative	8/17/20	\$500

<b>Contribution Description</b>	<b>Date</b>	<b>Amount</b>
12th Congressional District Democrats	8/15/20	\$50
Biden for President	8/13/20	\$74.11
Biden Victory Fund	8/13/20	\$74.11
Tania Ganguly for Canton Trustee	8/11/20	\$250
Gretchen Whitmer for Governor	8/11/20	\$1,000
Michigan Democratic State Central Committee	8/10/20	\$250
Michigan Democratic Party	8/8/20	\$250
Ohio Democratic Party	8/8/20	\$250
Andy Levin for Congress	8/3/20	\$1,000
Scholten for Congress	7/31/20	\$100
Scholten for Congress	7/31/20	\$100
Jon Hoadley for Congress	7/31/20	\$100
Jon Hoadley for Congress	7/31/20	\$250
Jon Hoadley for Congress	7/31/20	\$100
Michigan Democratic State Central Committee	7/29/20	\$250
Jon Ossoff for Senate	7/28/20	\$100
Jon Ossoff for Senate	7/28/20	\$100
Jody LaMacchia for State Representative	7/19/20	\$100
Washtenaw County Democratic—Federal Account	7/16/20	\$100
Gretchen Driskell for Congress	7/12/20	\$250
Cheri Beasley for Supreme Court	7/12/20	\$100
Jon Hoadley for Congress	7/8/20	\$250
Biden for President	7/8/20	\$500
Diane for Colorado	7/1/20	\$100
Gretchen Driskell for Congress	6/30/20	\$500
Christine A Morse	6/30/20	\$100
Michigan Democratic State Central Committee	6/29/20	\$250
Scholten for Congress	6/26/20	\$272.02
Scholten for Congress	6/26/20	\$227.98
Biden Victory Fund	6/19/20	\$1,000
Biden for President	6/19/20	\$1,000
Kelly Breen for State Representative	6/14/20	\$100
Julia Pulver for State Representative	6/14/20	\$100

<b>Contribution Description</b>	<b>Date</b>	<b>Amount</b>
Peters for Michigan	6/10/20	\$950
Peters for Michigan	6/10/20	\$50
Bowman for Congress	6/5/20	\$100
Eli Savit for Prosecuting Attorney	6/2/20	\$100
Julie Brixie Blue Wave Fund	5/31/20	\$50
Elissa Slotkin for Congress	5/29/20	\$500
Michigan Democratic State Central Committee	5/29/20	\$250
Rita Hart for Iowa	5/27/20	\$250
Committee to Elect Donna Lasinsky	5/15/20	\$250
Biden for President	5/13/20	\$250
Michigan Jewish Democrats Federal Action Fund	5/10/20	\$100
Cynthia Thornton for State Representative	5/3/20	\$50
Michigan Democratic State Central Committee	4/29/20	\$250
Jon Hoadley for Congress	4/28/20	\$500
Laurie Pohutsky for HD 19	4/20/20	\$100
Gretchen Driskell for Congress	4/14/20	\$250
Democratic National Committee	4/12/20	\$50
Democratic National Committee	4/8/20	\$50
Biden for President	4/8/20	\$250
Michigan Democratic State Central Committee	3/29/20	\$250
Wendy Davis for Congress	3/24/20	\$500
Rashida Tlaib for Congress	3/21/20	\$250
Laurie Pohutsky for HD 19	3/11/20	\$250
Committee to Elect Yousef Rabhi	3/9/20	\$500
Travis Radina for City Council	3/7/20	\$100
Peters for Michigan	3/5/20	\$250
Cal for NC	3/3/20	\$150
Tania Ganguly for Canton Trustee	3/3/20	\$250
Committee to Elect Donna Lasinsky	3/2/20	\$250
Friends of Dan O'Neil	2/29/20	\$100
Michigan Democratic State Central Committee	2/29/20	\$250
Sommer Foster for Canton Trustee	2/29/20	\$50
Warren for President	2/21/20	\$250

<b>Contribution Description</b>	<b>Date</b>	<b>Amount</b>
Warren for President	2/20/20	\$250
Jill Karofsky for Supreme Court	2/19/20	\$100
Elizabeth Welch for Supreme Court	2/18/20	\$1,000
Jody LaMacchia for State Representative	2/16/20	\$50
Elizabeth Warren for President	2/5/20	\$250
Democratic National Committee	1/29/20	\$1,000
Elissa Slotkin for Congress	1/29/20	\$500
Andy Levin for Congress	1/15/20	\$500
Andy Levin for Congress	1/1/20	\$1,000
Michigan House Democratic Fund	12/30/19	\$500
Yes We Can Democratic Club	12/19/19	\$500
Haley Stevens for Congress	12/17/19	\$500
Warren for President	12/16/19	\$250
Elissa Slotkin for Congress	12/16/19	\$500
Scholten for Congress	12/15/19	\$72.02
Scholten for Congress	12/7/19	\$500
Jon Hoadley for Congress	12/7/19	\$500
Wayne Goodwin for Insurance Commissioner	12/2/19	\$100
Friends of Mari Manoogian	12/2/19	\$250
Michigan Jewish Democrats Federal Action Fund	11/24/19	\$50
Michigan Jewish Democrats Federal Action Fund	11/24/20	\$50
Jon Ossoff for Senate	11/19/19	\$250
Committee to Elect Tedra Cobb	11/16/19	\$50
Peters for Michigan	11/15/19	\$500
Mondaire for Congress	11/15/19	\$100
Michigan Democratic State Central Committee	11/9/19	\$500
Wastenaw County Democratic—Federal Account	11/3/19	\$87.50
Julia Pulver for State Representative	10/23/19	\$100
Committee to Elect Padma Kuppa	10/20/19	\$50
Jody LaMacchia for State Representative	10/18/19	\$50
Warren for President	10/16/19	\$500
Michigan House Democratic Fund	10/13/19	\$250
Michigan Jewish Democrats Federal Action Fund	10/2/19	\$75

<b>Contribution Description</b>	<b>Date</b>	<b>Amount</b>
Rashida Tlaib for Congress	9/28/19	\$1,000
Elissa Slotkin for Congress	9/21/19	\$1,000
Scholten for Congress	9/14/19	\$1,000
ActBlue	9/14/19	\$100
Tania Ganguly for Canton Trustee	9/9/19	\$100
Liberty and Justice for All PAC	9/7/19	\$100
Eli Savit for Prosecuting Attorney	9/5/19	\$250
Peters for Michigan	8/27/19	\$1,000
Vote Kelly Breen	8/19/19	\$50
Washtenaw County Democratic—Federal Account	8/16/19	\$300
Warren for President	8/3/19	\$250
Eli Savit for Prosecuting Attorney	8/2/19	\$500
Michigan Democratic State Central Committee	8/2/19	\$120
Laurie Pohutsky for HD 19	7/25/19	\$100
Wendy Davis for Congress	7/22/19	\$250
Friends of Mari Manoogian	7/19/19	\$50
Committee to Elect Julia Pulver	7/18/19	\$50
Committee to Elect Julia Pulver	7/5/19	\$50
Tiffany Caban for District Attorney	7/4/19	\$50
ActBlue	6/30/19	\$100
Scholten for Congress	6/30/19	\$1,000
Michigan Democratic Jewish Caucus	6/25/19	\$100
Haley Stevens for Congress	6/24/19	\$250
Michigan List	6/20/19	\$275
Jon Hoadley for Congress	5/6/19	\$1,000
Vote Kelly Breen	5/3/19	\$50
Warren for President	4/22/19	\$500
Haley Stevens for Congress	3/29/19	\$1,000
Friends of Abdullah Hammoud	3/23/19	\$100
Jody LaMacchia for State Representative	2/21/19	\$50
Peters for Michigan	2/19/19	\$1,000
Chris Hinds for City Council	2/9/19	\$200
Samuel Bagenstos for Supreme Court	11/7/18	\$496

<b>Contribution Description</b>	<b>Date</b>	<b>Amount</b>
Michigan Democratic Party	11/2/18	\$2,500
Samuel Bagenstos for Supreme Court	10/31/18	\$814
Michigan Democratic Party	10/30/18	\$12,000
Laurie Pohutsky for HD 19	10/23/18	\$100
Samuel Bagenstos for Supreme Court	10/21/18	\$2,146
Michigan Democratic State Central Committee	10/19/18	\$100
Michigan Democratic State Central Committee	10/19/18	\$100
Samuel Bagenstos for Supreme Court	10/17/18	\$2,104
Heidi for Senate	10/12/18	\$1,000
Heidi for Senate	10/12/18	\$500
Samuel Bagenstos for Supreme Court	9/30/18	\$1,259
Samuel Bagenstos for Supreme Court	9/15/18	\$1,767
Canton Democratic Club	9/6/18	\$100
12th Congressional District Democrats	9/1/18	\$250
Samuel Bagenstos for Supreme Court	8/31/18	\$1,723
Michigan Democratic Party	8/17/18	\$7,500
Samuel Bagenstos for Supreme Court	8/10/18	\$1,502
Samuel Bagenstos for Supreme Court	8/9/18	\$50,000
Committee to Elect Robert Van Kirk	8/4/18	\$50
Samuel Bagenstos for Supreme Court	7/31/18	\$2,780
Michigan Federation of College Democrats	7/25/18	\$250
Friends of Dana Nessel	7/11/18	\$250
Samuel Bagenstos for Supreme Court	6/30/18	\$682
Michigan Democratic State Central Committee	6/14/18	\$200
Samuel Bagenstos for Supreme Court	5/31/18	\$559
Samuel Bagenstos for Supreme Court	5/7/18	\$39
Samuel Bagenstos for Supreme Court	4/30/18	\$562
12th Congressional District Democrats	4/28/18	\$250
Progressive Caucus of the Michigan Democratic Party	4/1/18	\$54
Samuel Bagenstos for Supreme Court	3/31/18	\$86
Steve Bieda for Congress	3/31/18	\$100
Michigan Democratic State Central Committee	3/6/18	\$450
Samuel Bagenstos for Supreme Court	2/22/18	\$5,000

<b>Contribution Description</b>	<b>Date</b>	<b>Amount</b>
Samuel Bagenstos for Supreme Court	2/15/18	\$312
Swing Left	2/13/18	\$50
Anita Earls for Supreme Court	1/23/18	\$500
Swing Left	1/13/18	\$50
Swing Left	12/13/17	\$50
Swing Left	11/13/17	\$50
Doug Jones for Senate Committee	11/13/17	\$250
Pat Miles for Attorney General	10/19/17	\$100
Jocelyn Benson for Secretary of State	10/17/17	\$500
Swing Left	10/13/17	\$50
Doug Jones for Senate Committee	9/27/17	\$250
Ben Jealous for Governor	9/24/17	\$200
Swing Left	9/13/17	\$50
Swing Left	8/13/17	\$50
Swing Left	7/13/17	\$50
Swing Left	6/13/17	\$50
Colin Allred for Congress	6/7/17	\$100
Jon Ossoff for Congress	5/30/17	\$500
Swing Left	5/13/17	\$50
Swing Left	5/4/17	\$100
Jon Ossoff for Congress	4/19/17	\$250
Swing Left	4/13/17	\$50
Jon Ossoff for Congress	4/12/17	\$250
James Thompson for Kansas	4/6/17	\$50
Rob Quist for Montana	4/6/17	\$100
Jon Ossoff for Congress	3/20/17	\$250
Jon Ossoff for Congress	3/1/17	\$100
Jon Ossoff for Congress	3/1/17	\$100
Yes We Can Democratic Club	1/14/17	\$500
Tammy Baldwin for Senate	12/31/16	\$300
Gretchen Driskell for Congress	10/19/16	\$100
Deborah Ross for Senate	10/19/16	\$62.50
Maggie for NH	10/19/16	\$62.50



<b>Contribution Description</b>	<b>Date</b>	<b>Amount</b>
Catherine Cortez Masto for Senate	10/19/16	\$62.50
Katie McGinty for Senate	10/19/16	\$62.50
Catherine Cortez Masto for Senate	10/19/16	\$62.50
Gretchen Driskell for Congress	10/19/16	\$100
Tammy for Illinois	8/22/16	\$110
Tammy for Illinois	8/22/16	\$110
Hillary Victory Fund	7/21/16	\$2,700
Hillary for America	7/21/16	\$2,700
Russ for Wisconsin	6/23/16	\$250
Gretchen Driskell for Congress	3/23/16	\$500
Tammy for Illinois	3/21/16	\$100
Gretchen Driskell for Congress	12/31/15	\$250
Tammy for Illinois	12/31/15	\$100
Melissa Gilbert for Congress	12/31/15	\$100
Russ for Wisconsin	12/31/15	\$100
Russ for Wisconsin	12/31/15	\$100
Russ for Wisconsin	12/31/15	\$100
Hillary for America	12/23/15	\$1,450
Hillary for America	10/22/15	\$250
Hillary for America	8/15/15	\$500
Hillary for America	6/30/15	\$500
Russ for Wisconsin	5/15/15	\$500
Gretchen Driskell for Congress	3/11/15	\$100
Mark Totten for Attorney General	10/19/14	\$100
Mark Schauer for Governor	10/7/14	\$2,050
Mark Schauer for Governor	9/30/14	\$500
Mark Schauer for Governor	8/25/14	\$500
Peters for Michigan	7/30/14	\$250
Peters for Michigan	7/30/14	\$250
Peters for Michigan	7/24/14	\$250
Peters for Michigan	7/24/14	\$250
Mark Schauer for Governor	7/20/14	\$250
Mark Schauer for Governor	6/26/14	\$500

<b>Contribution Description</b>	<b>Date</b>	<b>Amount</b>
Friends of Gretchen Driskell	4/16/14	\$100
Pam Byrnes for Congress	3/30/14	\$250
Mark Totten for Attorney General	3/16/14	\$100
Mark Schauer for Governor	2/27/14	\$500
Mark Schauer for Governor	2/27/14	\$500
Pam Byrnes for Congress	1/8/14	\$250
Juliette Kayyem for Governor	1/6/14	\$500
Peters for Michigan	12/30/13	\$250
Mark Schauer for Governor	12/28/13	\$250
Mark Schauer for Governor	11/27/13	\$500
Mark Schauer for Governor	9/24/13	\$500
Peters for Michigan	9/13/13	\$500
Juliette Kayyem for Governor	8/27/13	\$500
Mark Schauer for Governor	7/31/13	\$250
Mark Schauer for Governor	6/30/13	\$250
Peters for Michigan	6/30/13	\$100
Mark Schauer for Governor	6/5/13	\$250
Obama for America	11/4/12	\$250
Obama for America	10/26/12	\$100
Friends of Gretchen Driskell	10/24/12	\$50
Duckworth for Congress	10/19/12	\$100
Obama for America	10/16/12	\$100
Obama for America	10/10/12	\$1,000
Obama Victory Fund 2012	10/10/12	\$1,000
Obama for America	10/7/12	\$250
Obama for America	9/7/12	\$250
Obama for America	8/31/12	\$728
Obama for America	8/24/12	\$100
Committee to Elect Carol Kuhnke Circuit Court Judge	8/23/12	\$50
Obama for America	8/10/12	\$50
Duckworth for Congress	8/9/12	\$250
Obama for America	8/7/12	\$250
Obama for America	7/15/12	\$126

Contribution Description	Date	Amount
Obama Victory Fund 2012	7/15/12	\$126
Obama for America	7/10/12	\$500
Duckworth for Congress	7/10/12	\$100
Obama Victory Fund 2012	7/10/12	\$500
Democratic Party of Wisconsin—Federal Account	5/14/12	\$100
Stabenow for U.S. Senate	5/14/12	\$250

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 received since the age of 18):

James T. Neubacher Award, University of Michigan Council for Disability Concerns (2012).

Bethesda Voices Public Policy Award, Bethesda Lutheran Communities (2011).

Advocacy Award, National Association of Protection and Advocacy Systems (2001).

Special Commendation, Civil Rights Division, U.S. Department of Justice (1996).

Special Achievement Award, Civil Rights Division, U.S. Department of Justice (1995).

Phi Beta Kappa (1989).

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

**Law Journal Articles and Essays:**

- Subordination, Stigma, and “Disability,” 86 Va. L. Rev. 397 (2000).
- The Americans with Disabilities Act as Risk Regulation, 101 Colum. L. Rev. 1479 (2001).
- The Americans with Disabilities Act as Welfare Reform, 44 Wm. and Mary L. Rev. 921 (2003).
- “Rational Discrimination,” Accommodation, and the Politics of (Disability) Civil Rights, 89 Va. L. Rev. 825 (2003).
- Justice Ginsburg and the Judicial Role in Expanding “We the People”: The Disability Rights Cases, 104 Colum. L. Rev. 49 (2004).
- The Supreme Court, the Americans with Disabilities Act, and Rational Discrimination, 55 Ala. L. Rev. 923 (2004).
- The Future of Disability Law, 114 Yale L.J. 1 (2004).
- Has the Americans with Disabilities Act Reduced Employment for People with Disabilities?, 25 Berkeley J. Emp. and Lab. L. 527 (2004).
- Comparative Disability Employment Law From an American Perspective, 24 Comp. Lab. L. and Pol’y J. 649 (2003) (published 2004).
- Trapped in the Feedback Loop: A Response to Professor Days, 49 St. Louis U. L.J. 1007 (2005).
- The Promise was Broken: Law as a Negative Force in Bruce Springsteen’s Music, 14 Widener L.J. 837 (2005).
- The Structural Turn and the Limits of Antidiscrimination Law, 94 Cal. L. Rev. 1 (2006).
- Disability, Life, Death, and Choice, 29 Harv. J. L. and Gender 425 (2006).
- Judging the Schiavo Case, 22 Const. Comment. 457 (2005) (published 2006).
- The Perversity of Limited Civil Rights Remedies: The Case of “Abusive” ADA Litigation, 54 UCLA L. Rev. 1 (2006).
- Implicit Bias, “Science,” and Antidiscrimination Law, 1 Harv. L. and Pol’y Rev. 477 (2007).
- Mandatory Pro Bono and Private Attorneys General, 101 NW. U. L. Rev. 1459 (2007).
- Hedonic Damages, Hedonic Adaptation, and Disability, 60 Vand. L. Rev. 745 (2007) (with Margo Schlanger).

- Abolish the Integration Presumption? Not Yet, 156 U. Pa. L. Rev. Pennumbra 157 (2007).
- Spending Clause Litigation in the Roberts Court, 58 Duke L.J. 345 (2008).
- The Past and Future of Deinstitutionalization Litigation, 34 Cardozo L. Rev. 1 (2012).
- The Anti-Leveraging Principle and the Spending Clause After NFIB, 101 Geo. L.J. 861 (2013).
- Employment Law and Social Equality, 112 Mich. L. Rev. 225 (2013).
- Keynote Presentation, 11 Rutgers J.L. and Pub. Pol’y 371 (2014) (transcript of oral remarks).
- Viva Conditional Federal Spending!, 37 Harv. J.L. and Pub. Pol’y 93 (2014).
- Universalism and Civil Rights (With Notes on Voting Rights After Shelby), 123 Yale L.J. 2838 (2014).
- The Unrelenting Libertarian Challenge to Public Accommodations Law, 66 Stan. L. Rev. 1205 (2014).
- Formalism and Employer Liability Under Title VII, 2014 U. Chi. Legal F. 145 (2014).
- Bottlenecks and Antidiscrimination Theory, 93 Tex. L. Rev. 415 (2014).
- Who is Responsible for the Stealth Assault on Civil Rights?, 114 Mich. L. Rev. 893 (2016).
- Disparate Impact and the Role of Classification and Motivation in Equal Protection Law After Inclusive Communities, 101 Cornell L. Rev. 1115 (2016).
- Disability Rights and Labor: Is This Conflict Really Necessary?, 92 Ind. L.J. 277 (2016).
- From Integrationism to Equal Protection: tenBroek and the Next 25 Years of Disability Rights, 13 U. St. Thomas L.J. 13 (2016).
- The EEOC, the ADA, and Workplace Wellness Programs, 27 Health Matrix 81 (2017).
- Educational Equality for Children with Disabilities: The 2016 Term Cases, 2016–2017 ACS Sup. Ct. Rev. 17 (2017).
- Disability, Universalism, Social Rights, and Citizenship, 39 Cardozo L. Rev. 413 (2017).
- Implicit Bias’s Failure, 39 Berkeley J. Emp. and Lab. L. 37 (2018).
- Interview with Khaled Beydoun, 52 U. Mich. J.L. Reform 903 (2019) (transcript of oral remarks).
- Disability Rights and the Discourse of Justice, 73 SMU L. Rev. F. 26 (2020).
- This is What Democracy Looks Like: Title IX and the Legitimacy of the Administrative State, 118 Mich. L. Rev. 1053 (2020).
- Taking Choice Seriously in Olmstead Jurisprudence, 40 J. Legal Med. 5 (2020).
- Who Gets the Ventilator? Disability Discrimination in COVID–19 Medical-Rationing Protocols, 130 Yale L.J. Forum 1 (2020).
- *Olmstead v. L.C.*: The Supreme Court Case, 27 Geo. J. on Poverty L. and Pol’y 209 (2020) (transcript of oral remarks).
- The ADA Amendments Act and the Projects of the American Disability Rights Movement, 23 UDC L. Rev. 139 (2020).
- Legitimacy and Agency Implementation of Title IX, 43 Harv. J.L. and Gender 301 (2020).
- Consent, Coercion, and Employment Law, 55 Harv. C.R.-C.L. L. Rev. 409 (2020).
- Towards an Urban Disability Agenda, 47 Fordham Urban L.J. 1335 (2020).
- Disability and Reproductive Justice, 14 Harv. L. and Pol’y Rev. 273 (2020).
- The Personal Responsibility Pandemic: Centering Solidarity in Public Health and Employment Law (with Lindsay F. Wiley), 52 Ariz. St. L.J. 1235 (2021).

#### Articles and Essays in Other Outlets

- The Supreme Court’s Week in Review: One Step Forward, Three Steps Back, Pacific Standard, June 28, 2013, available at <http://goo.gl/yCNhju>.
- A Supreme Court Case Threatens the Independence of People with Disabilities, Huffington Post, Jan. 22, 2014, available at <http://goo.gl/9gm0oW>.
- The Preliminary Injunction Provision, in *The Voting Rights Amendment Act: A Constitutional Response to Shelby County* (ACS Issue Brief, May 2014), available at <http://goo.gl/DH9JQv>.
- Obamacare Court Ruling is Nonsensical and Cynical, L.A. Times, July 25, 2014, available at <http://goo.gl/rjS4lg> (with Jill Horwitz).
- Beware: “Wellness” May Be Hazardous to Your Health, Huffington Post, March 11, 2015, available at <http://goo.gl/coErn5> (with Judith Feder).
- The Disability Cliff, *Democracy: A Journal of Ideas*, Winter 2015, at 55, available at <http://goo.gl/spTLIf>.

- The ADA and the Supreme Court: A Mixed Record, 313 J. Am. Med. Ass'n 2217 (2015) [no hyperlink available].
- Social Change Litigation as Just Another Political Tool, New Rambler Rev., June 2015, available at <http://goo.gl/OxjYSr>.
- We Don't Need "Modern Asylums," American Prospect, Summer 2015, available at <http://goo.gl/BdPSHN> (with Harold Pollack).
- What Went Wrong with Title IX?, Washington Monthly, September/October 2015, available at <http://goo.gl/GTKQ11>.
- Kentucky Clerk Kim Davis Never Should Have Gone to Jail, New Republic, Sept. 8, 2015, available at <http://goo.gl/S7OBbK>.
- Technical Standards and Lawsuits Involving Accommodations for Health Professions Students, 18 AMA J. Ethics 1017 (2016) [no hyperlink available].
- The Spending Clause (with Ilya Somin) and For a Broad Spending Power, in Nat'l Constitution Center, Interactive Constitution (2016), available at <https://goo.gl/ohxtu0>.
- Workers' Rights, in What's the Big Idea? Recommendations for Improving Law and Policy in the Next Administration (ACS, Oct. 2016), available at <https://goo.gl/KCxxqf4>.
- Civil Rights Déjà Vu, Only Worse, American Prospect, Winter 2017, available at <https://goo.gl/o5hf2C>.
- How Congress is Hacking Away at Disability Rights, Reuters, Sept. 25, 2017, available at <http://goo.gl/r4R4up>.
- Racism Didn't Stop at Jim Crow, Democracy: A Journal of Ideas, Fall 2017, available at <http://goo.gl/TLLoqM>.
- Here's How Gov. Whitmer Can Limit Impact of Medicaid Work Requirements, Bridge, May 14, 2019, available at <https://perma.cc/H5DT-B8KT>.
- The Hidden Disability Consensus in the 2020 Campaign (with Harold Pollack), JAMA Health F., Feb. 7, 2020, available at <https://perma.cc/VE32-NELP>.
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- The DOJ's COVID-19 Nursing Home Inquiry is Nakedly Corrupt (with Margo Schlanger), Slate, Aug. 31, 2020, available at <https://perma.cc/7828-3HJ3>.
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#### Books and Book Chapters

- Law and the Contradictions of the Disability Rights Movement (Yale U. Press, 2009) [no hyperlink available].
- Disability Rights Law: Cases and Materials (Foundation Press 2010; 2d ed. 2014; 3d ed., 2020) [no hyperlink available].
- A Nation of Widening Opportunities: The Civil Rights Act at 50 (Ellen D. Katz and Samuel R. Bagenstos, eds., 2015).
- *US Airways v. Barnett* and the Limits of Disability Accommodation, in Civil Rights Stories (Myriam Gilles and Risa Goluboff, eds., 2007) [no hyperlink available].
- The Judiciary's Now-Limited Role in Special Education, in From Schoolhouse to Courthouse: The Judiciary's Role in American Education (Joshua Dunn and Martin West, eds., 2009) [no hyperlink available].

- Federalism by Waiver After the Health Care Case, in *The Health Care Case: The Supreme Court's Decision and Its Implications* (Nathaniel Persily, Gillian Metzger, and Trevor Morrison, eds., 2013).
- On Class-not-Race, in *A Nation of Widening Opportunities*, *supra* (2015).
- Foreword: Thoughts on Responding to the Left Critique of Disability Rights Law, in *Disability Politics in a Global Economy: Essays in Honour of Marta Russell* (Ravi Malhotra, ed., 2016) [no hyperlink available].
- *Nevada Department of Human Resources v. Hibbs*: Universalism and Reproductive Justice, in *Reproductive Rights and Justice Stories* (Melissa Murray, Kate Shaw and Reva Siegel, eds., 2019) [no hyperlink available].
- Health Professions and the Law, in *Disability as Diversity: A Guidebook for Inclusion in Medicine, Nursing, and the Health Professions* (Lisa Meeks and Leslie Neal-Boylan, eds., 2020) [no hyperlink available].

### Blogging

- Formerly maintained the Disability Law Blog: <https://disabilitylaw.blogspot.com/>.
  - Guest-blogged at various outlets, including Prawfsblawg, SCOTUSBlog, the ACS Blog, Concurring Opinions, Balkinization, the Take Care blog, and Just Security.
16. Speeches (list all formal speeches and presentations (*e.g.*, PowerPoint) you have delivered during the past 5 years which are on topics relevant to the position for which you have been nominated, including dates):

I do not have a list of all speeches and presentations I have delivered in the last 5 years. I do, however, have records of giving the following presentations (with hyperlinks to the extent I could find them):

- ACS Michigan: 2019–2020 SCOTUS Review, panel discussion hosted by the Michigan Chapter of the American Constitution Society, (July 30, 2020).
  - COVID–19: Disability Civil Rights and Health Care Rationing (panel discussion hosted by Wayne State University Law School, April 13, 2020).
  - #COVIDChat with Samuel Bagenstos, JD (April 28, 2020).
  - Bloggingheads.tv (April 5, 2018).
  - Olmstead: The Supreme Court Litigation, panel at Georgetown Journal on Poverty Law and Policy's Symposium on Fulfilling Olmstead: Community Living for People with Disabilities (2019) [transcript of remarks is listed in the publications section above].
  - Taking Choice Seriously in *Olmstead* Jurisprudence, keynote address at Georgia State University's Symposium on *Olmstead* at Twenty: The Past and Future of Community Integration (2019) [written version of remarks appears in the publications section above].
  - The ADA Amendments Act and the Projects of the American Disability Rights Movement, presentation at UDC Law Review's Symposium on Disability Rights: Past, Present, and Future (2019) [written version of remarks appears in the publications section above].
  - The Politics of Disability Identity, Richards Lecture on Disability Law, University of Iowa College of Law (2019).
  - Educational Equality for Children with Disabilities, Ken Campbell Lecture on Disability Law and Policy, Ohio State University (2017) [written version of remarks appears in the publications section above].
  - Disability, Universalism, Social Rights, and Citizenship, presentation at Cardozo Law Review's disability law symposium (2017) [written version of remarks appears in the publications section above].
  - Disability Rights and Labor: Is This Conflict Really Necessary?, William R. Stewart Lecture, Indiana University Maurer School of Law (2016) [written version of remarks appears in the publications section above].
  - Corporate Wellness Programs: Are They Hazardous to Well-Being?, panel discussion at Case Western University School of Law (2016) [written version of remarks appears in the publications section above].
17. Qualifications (state what, in your opinion, qualifies you to serve in the position to which you have been nominated):

When I decided to become an attorney, I was inspired by the civil rights movement, which used the law to rectify historic injustices. I have been fortunate to have been able to use my legal training to pursue equality and fairness in many important areas—notably those relating to health care and human services. I have litigated cases that helped protect those living with HIV against health-care discrimination, ensure that those who are pregnant do not lose their

jobs, secure to those with physical disabilities basic access to government facilities, and provide those who have experienced water contamination a means to hold public officials accountable. Most recently, I engaged in legal and administrative advocacy to ensure that people with preexisting disabilities may not be sent to the back of the line for COVID-19 treatments.

No individual or entity should be above the law's obligations, nor should any be below its protections. Should I be confirmed as General Counsel of the U.S. Department of Health and Human Services (HHS), I will serve in that spirit. If confirmed, I will not be a policymaker; I will have the responsibility of ensuring that policies set by the President and his appointees are developed and implemented in a way that is consistent with the law. That is the role that I currently play as General Counsel at the Office of Management and Budget (OMB) and that is the role that I am prepared to play as General Counsel at HHS.

I have spent nearly 30 years litigating, studying, and writing about substantive areas of law that implicate HHS. I have litigated health-related matters in the Michigan courts and in Federal courts throughout the country, including arguing four cases before the Supreme Court of the United States. I also have developed extensive expertise in the regulatory process during my work at OMB, at the U.S. Department of Justice (DOJ), and as an outside advocate. All of these experiences qualify me for the role of General Counsel at HHS.

Throughout my career, I have worked on complex legal and policy issues that required me to engage with key components of HHS. Those components have included the Centers for Medicare and Medicaid Services, the Centers for Disease Control and Prevention, the Food and Drug Administration, the Administration for Children and Families, the Administration for Community Living, the Administration on Aging, the Office of Civil Rights, and the Office of the General Counsel (OGC).

From 2009 to 2011, I was the Principal Deputy Assistant Attorney General for Civil Rights. In addition to supervising 200 attorneys across three sections of DOJ's Civil Rights Division—a division that is almost the same size as the entire HHS OGC, I led the Department's enforcement of the Americans with Disabilities Act. That work frequently required me to work with State Medicaid systems—negotiating amicably with them where possible, suing them where necessary—to defend the rights of people with disabilities to receive community-based services. I have a deep understanding of the legal and regulatory issues that apply to Medicaid (at both the State and Federal levels)—as well as to Medicare.

For several years, I litigated on behalf of Flint residents who were victims of the city's water crisis—a public health emergency. I successfully argued the case three times before a Federal appeals court. As a result, the Flint residents obtained the chance to make their constitutional case in court and hold accountable those who caused the crisis.

I am currently the General Counsel at OMB. One of my primary responsibilities in this role is to make sure that regulations and other administrative pronouncements issued by Federal agencies comply with the law—notably the restrictions of the Administrative Procedure Act. Because of my experience working on administrative law issues at OMB, I will be able to do my job at HHS more effectively and efficiently from day one.

## **B. FUTURE EMPLOYMENT RELATIONSHIPS**

1. Will you sever all connections (including participation in future benefit arrangements) with your present employers, business firms, associations, or organizations if you are confirmed by the Senate? If not, provide details.

I will retain my tenure at the University of Michigan but will be on an unpaid leave and receive no salary or benefits (other than continued participation, without new contributions, in my defined-contribution retirement accounts). I have ceased any work in my part-time solo legal practice, and that practice will remain dormant during my government service.

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 (aside from my answer to Question B.1.).

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 current and former investments, obligations, liabilities, or other personal relationships, including spousal or family employment, which could involve potential conflicts of interest in the position to which you have been nominated.

Any potential conflict of interest will be resolved in accordance with the terms of my ethics agreement, which was developed in consultation with ethics officials at the Department of Health and Human Services and the Office of Government Ethics. I understand that my ethics agreement has been provided to the committee. I am not aware of any potential conflict other than those addressed by my ethics agreement. If I have any questions arise, I will consult with HHS career ethics officials.

2. Describe any business relationship, dealing, or financial transaction which you have had during the last 10 years (prior to the date of your nomination), 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.

Any potential conflict of interest will be resolved in accordance with the terms of my ethics agreement, which was developed in consultation with ethics officials at the Department of Health and Human Services and the Office of Government Ethics. I understand that my ethics agreement has been provided to the committee. I am not aware of any potential conflict other than those addressed by my ethics agreement. If I have any questions arise, I will consult with HHS career ethics officials.

3. Describe any activity during the past 10 years (prior to the date of your nomination) 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.

In 2017 and 2018, I participated, with several others, in the drafting of Proposals 2 (independent redistricting commission) and 3 (voting rights), State constitutional amendments that the voters of Michigan adopted in the 2018 election.

In 2012, I testified before the Senate HELP Committee in favor of the Employment Non-Discrimination Act.

On numerous occasions, I have assisted public interest organizations in submitting comments on proposed rulemakings by Federal agencies. On occasion, I have also submitted comments on my own behalf, as in response to proposed rules for the SNAP program in 2019, and proposed rules for the Fair Housing Act in that same year.

Much of the litigation in which I have engaged through my career has "affect[ed] the administration and execution of law and public policy" as well.

4. Explain how you will resolve any potential conflict of interest, including any that are disclosed by your responses to the above items. (Provide the committee with two copies of any trust or other agreements.)

Any potential conflict of interest will be resolved in accordance with the terms of my ethics agreement, which was developed in consultation with ethics officials at the Department of Health and Human Services and the Office of Government Ethics. I understand that my ethics agreement has been provided to the committee. I am not aware of any potential conflict other than those addressed by my ethics agreement. If I have any questions arise, I will consult with HHS career ethics officials.



- 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.

I understand that my ethics agreement has been provided to the committee along with the accompanying transmittal documents.

#### D. LEGAL AND OTHER MATTERS

- 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 (*e.g.*, an Inspector General's office), professional association, disciplinary committee, or other ethics enforcement entity at any time? Have you ever been interviewed regarding your own conduct as part of any such inquiry or investigation? If so, provide details, regardless of the outcome.

No.

- 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? Have you ever been interviewed regarding your own conduct as part of any such inquiry or investigation? If so, provide details.

In 2011, due to an oversight, I failed to renew my car registration in DC. A police officer noticed the expired tag and pulled me over. Rather than issuing me a citation, the officer arrested me. When I arrived at the precinct, the desk sergeant was not pleased that the officer had arrested me rather than having merely given me a ticket. The desk sergeant released me and dismissed the charge without any admission of guilt on payment of a \$50.00 fee. (In DC, they call this practice "post and forfeit.")

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

No.

- 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.

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

N/A.

#### E. TESTIFYING BEFORE CONGRESS

- 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.

- 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 SAMUEL R. BAGENSTOS

QUESTIONS SUBMITTED BY HON. RON WYDEN

TRANSPLANT SYSTEM REFORM

*Question.* My staff have become aware of a legal determination, made by HHS, which has potentially dire consequences for Americans waiting for a transplant. As I've said before, reforming the transplant system is an urgent health equity issue. Communities of color are much more likely to need lifesaving organ transplants. For example, Black Americans are three times more likely to suffer from kidney disease than White Americans. Furthermore, experts project a dramatically increased need

for transplants as a result of COVID-19, which is likely to compound the disparities already experienced by minority populations.

Do you believe it is appropriate for HHS to reconsider its legal determination on how the Organ Procurement and Transplantation Network contract is awarded to ensure competition in the next contract cycle?

Answer. Because I am not at HHS, I have not been involved with legal issues concerning the Organ Procurement and Transplantation Network (OPTN) contract. But I would be very glad, if confirmed as General Counsel, to work with the attorneys in my office and with program experts at the Health Resources and Services Administration (HRSA) to optimize the OPTN contracting process and the Department's role in ensuring the efficient and equitable operation of this crucial lifesaving program.

*Question.* As HHS General Counsel, if confirmed, what will you do to address the critical inequities in the transplant system?

Answer. One of the top priorities of the Biden-Harris administration is to address equity issues across the health-care sector, including throughout the organ transplant community. HHS is making numerous adjustments to its policies to help close these health equity gaps.

I understand that the Centers for Medicare and Medicaid Services (CMS) recently finalized changes to organ procurement organization (OPO) outcome measures to improve the quality of OPO services and hold underperformers accountable by using objective, transparent, and reliable data. I also understand that CMS recently finalized modifications to the End-Stage Renal Disease (ESRD) Treatment Choices Model—one of the agency's first CMS Innovation Center models to directly address health equity—to encourage certain health-care providers to decrease disparities in rates of home dialysis and kidney transplants among ESRD patients with lower socioeconomic status. CMS has also announced an intention to issue a request for information that would seek public input on all aspects of the organ donation and transplant system.

If confirmed, I intend to work with HRSA and CMS to assist in using available authority to improve the function of the organ transplant system. I am also committed to working with Congress to support appropriate oversight efforts related to organ procurement.

#### TELEHEALTH FOLLOWING THE PUBLIC HEALTH EMERGENCY

*Question.* As the coronavirus began to spread in the spring of 2020, I think one of the most important actions that HHS and Congress took together was to provide new flexibilities for telehealth services, especially in Medicare. During this pandemic, these flexibilities have allowed patients to continue to receive care from their doctors, while maintaining social distancing and reducing the spread of the virus. Many of these flexibilities are authorized via waivers that last through the end of the public health emergency.

If confirmed as General Counsel at HHS, will you work with this committee to ensure a smooth transition for these telehealth flexibilities as the public health emergency ends and Congress considers long-term approaches to modernizing telehealth policies in Medicare?

Answer. Telehealth, supported by investments in broadband infrastructure, is an important tool to that can address health equity and improve access. My understanding is that HHS continues to examine the telehealth flexibilities developed for the current public health emergency and determine how we can build on this work to improve health equity and improve access to health care. CMS recently stated that certain telehealth services that were available for Medicare payment during the public health emergency will continue to be available through December 31, 2023 to allow additional time to evaluate whether these telehealth services should be paid by Medicare permanently. If confirmed, I intend to assist HHS with its review of these important services that improve access to health care.

#### HOME AND COMMUNITY-BASED SERVICES (HCBS)

*Question.* For too long, American families have struggled to help their mom, dad, relative, or child with a disability find good quality long-term care at home. Millions of Americans receive home and community-based services through Medicaid today. But many Americans sit on wait lists—sometimes for years—before they can access the services they need.

You have been a powerful advocate on behalf of people with disabilities throughout your career. As you know, Congress just made major investments in home and community-based services through the American Rescue Plan, and we're on the precipice of a historic investment through Build Back Better.

How will your experience advocating on behalf of those with disabilities inform your work at HHS, should you be confirmed, and how would you help to ensure these investments in home and community-based services will benefit American families?

Answer. I appreciate your leadership in this area. My own experience working to expand home and community-based services across the Nation gives me an acute understanding of just how far we need to go to make these programs a reality for those who want to be served in their own homes rather than in nursing homes and other institutions.

As you noted, the American Rescue Plan Act of 2021 temporarily provides additional Medicaid funding that allows States to enhance, expand, or strengthen HCBS under the Medicaid program. I understand that CMS is working with States to improve the HCBS system, both in response to the COVID-19 public health emergency and in response to longstanding priorities.

If confirmed, I look forward to working with CMS on further improving HCBS for all Americans.

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QUESTIONS SUBMITTED BY HON. RICHARD BURR

*Question.* The Family First Prevention Services Act created a new Federal category for settings that deliver trauma-informed treatment for foster children with serious emotional or behavioral issues in a residential setting, known as Qualified Residential Treatment Programs (QRTPs). QRTPs are one of the few residential settings that are eligible for title IV-E reimbursement.

On October 19, 2021, the Centers for Medicare and Medicaid Services (CMS) confirmed QRTPs with more than 16 beds meet the definition of an Institutions for Mental Diseases (IMDs), preventing Medicaid reimbursement for care in these facilities. Specifically, the CMS guidance document stated: "CMS does not have the authority to utilize general enforcement discretion or compliance action to authorize reimbursement of services provided to children residing in QRTPs that the state has assessed as meeting the definition of an IMD."

On a recent call with staff of committee members, you mentioned that you have spent a great deal of time thinking about the IMD exclusion from Medicaid payments but have not thought about the merits of a potential policy change for QRTPs. On the same call, you indicated that you had not previously contemplated whether or not you feel there is a distinction between these specialized facilities for vulnerable children and other IMDs, namely inpatient psychiatric hospitals.

You have been serving as the General Counsel for the Office of Management and Budget (OMB) since January of 2021. Typically, OMB serves as a clearinghouse for agency documents before they are made public. According to its website, one of the office's five main functions is "Coordination and review of all significant Federal regulations from executive agencies, privacy policy, information policy, and review and assessment of information collection requests."

Did OMB see the CMS guidance prior to its release on October 19, 2021?

Did you see the CMS guidance prior to its release?

If yes, why did you tell my staff that you had not considered the issue previously?

If no, why would the OMB General Counsel, who has decades of experience in disability law and has been nominated to serve in the same position as HHS, not review such an important policy guidance?

Have you provided any more consideration to the issue of whether or not QRTPs should be exempted from the IMD payment exclusion, allowing children in foster care to have Medicaid coverage in these placements?

Do you support the exclusion of QRTPs from the definition of IMDs? Please provide a "yes" or "no" answer.

Answer. The issues surrounding QRTPs are important and complex. I understand that CMS's section 1115 demonstration opportunity went through appropriate clear-

ance within the Biden-Harris administration. I understand that this demonstration opportunity was developed to provide Federal matching funds for Medicaid services provided to foster children residing in QRTPs. If confirmed, I am committed to working across HHS—with both CMS and the Administration for Children and Families (ACF)—to broadly evaluate all available administrative and legislative authorities to ensure that children in foster care receive the medical care that they need and to which they are entitled, in a safe and nurturing setting that fosters their growth and development. I will similarly work to ensure that children in foster care receive necessary medical care without disruption.

*Question.* The rapid pace of medical innovation has led to the development of novel technologies intended to prevent infectious diseases with the potential to benefit individuals with a variety of diseases in the future, such as those used in some of the COVID-19 vaccines. The Advisory Committee for Immunization Practices (ACIP) establishes the list of pediatric vaccines distributed by the Secretary through the Vaccines for Children (VFC) program. In establishing its list, ACIP may include FDA licensed or authorized vaccine products, including those that leverage novel and innovative technology, to help prevent infectious diseases in children.

Can you assure the committee that you will provide assistance, to the best of your ability, as appropriate, and to the fullest extent of your legal authority, to help ensure appropriate access to innovative pediatric immunizations for American children?

Answer. Yes.

*Question.* The inability to fully leverage our testing infrastructure in the U.S. during the early days of the COVID-19 pandemic left the U.S. Government unable to accurately track the spread of the virus, hampering our ability to effectively control the spread of the virus. Thankfully, over the last 18 months, the private sector has been highly innovative in developing advanced technology to aid in testing and surveillance.

How does HHS plan to leverage advanced or novel technology developed by private sector partners in the near and long-term to help rapidly scale surveillance and testing capabilities and capacity to better prepare for future pandemics?

Answer. As HHS continues to respond to the COVID-19 pandemic, it is important that the Department also look ahead to what can be integrated to better prepare for future pandemics. If confirmed, I will support this ongoing work.

*Question.* Are there any barriers to effective partnerships with private-sector innovators?

Answer. ASPR's Biomedical Advanced Research and Development Authority (BARDA) continuously and effectively partners with private-sector innovators. BARDA provides an integrated, systemic approach to the development of necessary vaccines, drugs, therapies, and diagnostic tools for public health emergencies, including the current COVID-19 pandemic. If confirmed, I will support this ongoing work.

*Question.* Through the Coronavirus Preparedness and Response Supplemental Appropriations Act of March 2020 and otherwise, Congress appropriated billions of dollars for the development of COVID-19 therapeutics and diagnostics. However, I have heard that multiple highly promising candidates did not receive funding, and it remains unclear whether and how the funding earmarked for the development of COVID-19 therapeutics and diagnostics was spent.

If confirmed, will you commit to investigating on what activities and programs the funds appropriated to HHS for the purposes of COVID-19 therapeutics and diagnostics through the Coronavirus Preparedness and Response Supplemental Appropriations Act were spent, and publicly release (in a manner that does not affect national security) such information, in addition to the amount of funding that remains unobligated or unspent?

Answer. I believe in transparency and, if confirmed, will carry out my new role with that perspective in mind. My understanding is that the Office of General Counsel at HHS has been consistently involved in decision-making regarding the use of HHS's COVID funding, in coordination with the Office of the Assistant Secretary for Financial Resources and the HHS Operating and Staff Divisions, and I would have a better view of this issue once confirmed.

## QUESTIONS SUBMITTED BY HON. TODD YOUNG

*Question.* The Department of Health and Human Services (HHS) finalized reforms in November of 2020 to ensure that organ procurement organizations (OPOs) will be held accountable to objective data for the first time and that failing OPOs will lose their contracts. The new regulation, however, currently does not allow HHS to decertify a failing OPO until 2026.

What actions can HHS take to accelerate that timeline?

*Answer.* I understand that CMS recently finalized changes to OPO outcome measures to improve the quality of OPO services and hold underperformers accountable by using objective, transparent, and reliable data. If confirmed, I look forward to working with you, other members of Congress, and CMS to use available authority to hold OPOs accountable for their performance.

*Question.* The Organ Procurement and Transplantation Network (OPTN) contract has been held by only one entity, the United Network for Organ Sharing (UNOS), since 1986. When the contract is up for renewal, UNOS is historically the only bidder for the contract due to contract requirements set forth by the Health Resources and Services Administration (HRSA) that make it nearly impossible for other entities to apply.

What specific steps should HHS take to ensure that all future OPTN contracting cycles—including the next, immediate cycle—have a robust, competitive bid process?

*Answer.* It is my understanding that future contracting cycles will utilize past experience and market research to gauge interest and capabilities of vendors to handle the entirety of the OPTN operational functions. If confirmed, I intend to work with HRSA and CMS to ensure we use available authority to improve the function of the organ transplant ecosystem.

*Question.* What oversight is HHS providing to ensure UNOS is living up to the requirements set out in statute?

*Answer.* It is my understanding that the current contract includes requirements that OPTN policymaking be consistent with existing statutes and regulations. If confirmed, I will work with Congress to support their oversight efforts related to organ procurement, where appropriate.

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 QUESTIONS SUBMITTED BY HON. JOHN THUNE

*Question.* If confirmed, do you anticipate that you would uphold the legal opinion offered by your predecessor related to 340B contract pharmacies, which stated that the plain meaning of 340B statute requires manufacturers to offer drugs at or below ceiling price without qualifiers?

*Answer.* The 340B drug pricing program is an important program for our safety-net providers serving some of our most vulnerable populations. If confirmed, I look forward to working with you and other members of Congress to uphold the law and ensure this vital program is able to continue supporting vulnerable communities.

*Question.* As you know, there have been multiple providers of concern at the Indian Health Service. As the Department's attorney, how would you ensure that abusive providers are held to account and that the Department is transparent with Congress?

*Answer.* I am aware of this very troubling issue. If confirmed, I am committed to supporting the Indian Health Service's (IHS) policy of no tolerance for abusing patients or failing to prevent or report abuse in the Indian health system. I will also commit to ensuring that HHS follows the law and holds all employees and contractors accountable to the advancement of our mission and maintenance of the public's trust in our services and programs. If confirmed, I will work with IHS to ensure continued transparency regarding sexual abuse within the IHS system and to being transparent with Congress and the public.

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 PREPARED STATEMENT OF HON. MIKE CRAPO,  
 A U.S. SENATOR FROM IDAHO

Today we will hear from a panel of nominees who will influence and implement a broad range of the administration's priorities.

Dr. Neiman, the United States is the best place in the world to do business. Not surprisingly, that has drawn foreign investment, which has benefited our citizens immensely. I look forward to hearing your views on how the United States can remain a prized destination for foreign investment. I fear that uncontrolled spending, burdensome regulations, and potential tax increases—including on the middle class—will make America less competitive and less attractive for foreign investment. The administration's international tax negotiations are concerning, given lack of detailed consultation with Congress as a whole.

I am also concerned about how some of our overseas rivals are manipulating international organizations the U.S. helped found, like the World Bank. The U.S. and other countries established these institutions to promote global prosperity, not to further parochial interests.

Mr. Frost, I look forward to learning about your thoughts on the administration's fiscal policy, the debt ceiling, and proposed financial market reforms, including the U.S. Treasury securities market and the replacement of LIBOR. The debt limit provides an important check on both the President's and Congress's policies. And if fiscal decisions that will influence debt accumulation moving forward are willfully made by one party alone, then the accompanying obligation to change the debt limit to accommodate those fiscal choices must also be made by the party making unilateral choices. Tools and time are available to unilaterally accomplish such a change in the debt limit.

Along the way, Mr. Frost, I look forward to your commitment to ensure that Treasury keeps members of this committee fully and timely informed on the Nation's debt, cash balances, and debt management.

Turning to LIBOR, while recent administrations, the Federal Reserve, and market participants have worked successfully to establish the Secured Overnight Financing Rate as an alternative reference rate, nearly \$2 trillion in LIBOR-linked exposures are expected to remain outstanding after the termination of LIBOR in June 2023. It is important to understand how the administration plans to address this looming challenge.

Ms. Pagán, the World Trade Organization is critical to our trading interests, but is in need of reform. I look forward to hearing your views on how to make the institution more effective.

Mr. Wilson, if confirmed, you will be the first Deputy U.S. Trade Representative for Innovation and Intellectual Property. Strong intellectual property protections are critical to America's economic prosperity. This is especially true today. I want to know your priorities for the position, and how we can combat unfair practices by our global competitors, like theft and forced technology transfers, and how we can protect intellectual property and private intellectual property rights.

Additionally, the severity of the COVID-19 pandemic has been lessened, thanks to innovations borne out of the partnership between the American government and American industry. It is critical that we not undermine the American people's ability to respond to future challenges with intelligence and agility.

Mr. Bagenstos, as the nominee for General Counsel at HHS, you will have a key role in opining on the legality of new regulations. I am interested in your perspective on providing legal opinions to Congress so that we can understand and discuss policymaking effectively with the administration. Already, this administration has shown a disturbing tendency to push through its policy preferences despite clear indications of the intent of Congress.

Finally, I again emphasize the importance of responsiveness to this committee. While there have been noteworthy exceptions, several nominees before this committee have provided late, incomplete, and evasive responses to questions from the members of this panel. This makes it harder for the Finance Committee and its members to work constructively with the administration.

I strongly urge the nominees here today to commit to timely and thorough communication with the committee.

I congratulate the nominees here before us today, and I look forward to our discussion.

PREPARED STATEMENT OF JOSHUA FROST, NOMINATED TO BE ASSISTANT SECRETARY  
FOR FINANCIAL MARKETS, DEPARTMENT OF THE TREASURY

Chairman Wyden, Ranking Member Crapo, and members of the committee, thank you for the opportunity to appear before you today. I am honored to be President Biden's nominee to be Assistant Secretary of the Treasury for Financial Markets, and I am grateful to Secretary Yellen for her confidence in me.

Before proceeding, I would like to take a moment to acknowledge my family, without whom I would not be sitting here today: my wife Emily, my daughter Lily, and my brother Andy. I would also like to thank my parents, Robert and Nikki, who instilled in me the importance of public service via the example that they set as dedicated public-school teachers.

It was this early example of contributing to the greater good that led me to begin my career at the Federal Reserve Bank of New York. I have spent over 23 years at the New York Fed in a number of roles, and in each of those jobs, I saw first-hand the dedication of this committed group of public servants who selflessly helped me to develop my understanding of how different corners of financial markets operate, and how the financial system can better serve the American people.

If confirmed, I would welcome the opportunity to continue to serve our Nation by supporting the President's and Secretary Yellen's priorities in leading the Office of Financial Markets. Among other responsibilities, this office helps formulate policy on debt management at the Federal, State, and local levels; serves to assess the capital markets implications of various policy choices; and serves as the Treasury's eyes and ears in financial markets. This set of responsibilities aligns well with my interests and experience, and having spent my entire career focused on these issues, I look forward to taking a data-driven, taxpayer-centric approach to policymaking.

Finally, I would note that managing the Nation's debt is an awesome responsibility, and if confirmed, I will be sure to ground any debt management decisions in an assessment of what provides for the lowest cost of funding over time for the taxpayer. I believe that it is also critical to have a resilient and well-functioning Treasury market, and I would look forward to working with other agencies to continue to ensure that the Treasury market is structured so that it remains the deepest, most liquid market in the world.

Chairman Wyden, Ranking Member Crapo, and members of the committee, thank you for considering my nomination. If confirmed, I look forward to working closely with you and your staff and appreciate the important oversight role of this committee. I would be happy to take your questions.

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**SENATE FINANCE COMMITTEE**

**STATEMENT OF INFORMATION REQUESTED  
OF NOMINEE**

**A. BIOGRAPHICAL INFORMATION**

1. Name (include any former names used): Joshua (Josh) Lee Frost.
2. Position to which nominated: Assistant Secretary of the Treasury for Financial Markets.
3. Date of nomination: September 13, 2021.
4. Address (list current residence, office, and mailing addresses):
5. Date and place of birth: April 19, 1976; Neptune, NJ.
6. Marital status (include maiden name of wife or husband's name):
7. Names and ages of children:
8. Education (list all secondary and higher education institutions, dates attended, degree received, and date degree granted):  
Shore Regional High School; September 1990–June 1994 (HS degree granted June 1994).

Rutgers College; September 1994–May 1998 (BA degree in mathematics and psychology granted May 1998).

New York University; August 2004–May 2006 (MBA degree with a concentration in finance granted May 2006).

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 for each job):

Federal Reserve Bank of New York; August 1998–current.

Various roles, including Director of Treasury Markets, Director of Money Markets, Co-Chair of Large Institution Supervision Coordinating Committee Liquidity Program, Lead of Corporate Credit Facilities, detail to Treasury Department.

10. Government experience (list any current and former advisory, consultative, honorary, or other part-time service or positions with Federal, State, or local governments held since college, including dates, other than those listed above):

Same as employment record above.

11. Business relationships (list all current and former positions held as an officer, director, trustee, partner (*e.g.*, limited partner, non-voting, etc.), proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, other business enterprise, or educational or other institution):

Officer of Federal Reserve Bank of New York.

12. Memberships (list all current and former memberships, as well as any current and former offices held in professional, fraternal, scholarly, civic, business, charitable, and other organizations dating back to college, including dates for these memberships and offices):

None.

13. Political affiliations and activities:

- a. List all public offices for which you have been a candidate dating back to the age of 18.

None.

- b. List all memberships and offices held in and services rendered to all political parties or election committees, currently and during the last 10 years prior to the date of your nomination.

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 prior to the date of your nomination.

Biden for President, \$2,800—June 4, 2020.

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 received since the age of 18):

Rutgers University Presidential Scholar.

Rutgers University honors program.

Phi Beta Kappa.

NYU class valedictorian.

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

Papers:

Overnight RRP Operations as a Monetary Policy Tool: Some Design Considerations, FRB of New York Staff Report No. 712—February 25, 2015, [https://privpapers.ssrn.com/sol3/Delivery.cfm/SSRN\\_ID2568698\\_code387943.pdf?abstractid=2568698](https://privpapers.ssrn.com/sol3/Delivery.cfm/SSRN_ID2568698_code387943.pdf?abstractid=2568698).

Other published materials:



The Effects of MBS Paydowns and Potential Reinvestment Options—August 5, 2010, <https://www.federalreserve.gov/monetarypolicy/files/fomc20100805memo07.pdf>.

Possible Approaches to Providing Monetary Accommodation: Reinvestment Maturity Extension Program, SOMA Portfolio Maturity Extension Program, and Long-Maturity LSAP—September 12, 2011, <https://www.federalreserve.gov/monetarypolicy/files/FOMC20110912memo01.pdf>.

The effect of an additional \$1 trillion LSAP on the exit strategy—August 28, 2012, <https://www.federalreserve.gov/monetarypolicy/files/FOMC20120828memo07.pdf>.

Options for an Additional LSAP Program—August 28, 2012, <https://www.federalreserve.gov/monetarypolicy/files/FOMC20120828memo06.pdf>.

Options for Continuation of Open-Ended Asset Purchases in 2013—November 30, 2012, <https://www.federalreserve.gov/monetarypolicy/files/FOMC20121130memo05.pdf>.

16. Speeches (list all formal speeches and presentations (e.g., PowerPoint) you have delivered during the past 5 years which are on topics relevant to the position for which you have been nominated, including dates):

Speeches/presentations:

Introducing the Secured Overnight Financing Rate (SOFR)—November 2, 2017, <https://www.newyorkfed.org/medialibrary/media/newsevents/speeches/2017/Frostpresentation.pdf>.

Presentation by Joshua Frost at the Alternative Reference Rates Committee Roundtable—November 8, 2017, <https://www.newyorkfed.org/newsevents/speeches/2017/fro171108>.

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

I have spent my entire 23-year career serving the American public in a steady progression of roles at the Federal Reserve Bank of New York, and believe that this experience has left me particularly well-qualified to serve in the role of Assistant Secretary of Financial Markets, if confirmed.

My professional career began with a 7½-year stint in the Central Bank and International Account Services area of the New York Fed. In this role, I learned the plumbing of the Treasury, mortgage-backed security, and foreign exchange markets, as well as the importance of the dollar in the global financial system.

After graduating at the top of my MBA class in finance, I joined the New York Fed's open market desk, where I built a strong understanding of all corners of financial markets. In my 12½ years on the open market desk, I led teams that briefed policymakers on market developments, provided Treasury with debt management advice, and designed the Fed's "QE" purchases in the Treasury market. I also led teams that auctioned U.S. Government debt on behalf of the Treasury, implemented monetary policy in domestic money markets, and designed, built, and published the principal successor to LIBOR (the Secured Overnight Financing Rate (SOFR)).

At the end of 2018, following 2 decades in the New York Fed's Markets Group, I took an opportunity to broaden my knowledge base and led the Federal Reserve's efforts to supervise the liquidity positions and risk management at the Nation's most systemically important banks. After roughly a year and half supervising banks, as the pandemic began to spread, I took on the challenge of leading the two Corporate Credit Facilities, jointly launched by the Treasury and Federal Reserve to ensure that the Nation's largest corporations could continue to play their crucial roles in the global economy and in the labor market.

Finally, perhaps two of the most rewarding parts of my career have been serving on the committee that sets the New York Fed's strategic priorities and serving as a leadership advisor to the bank's African American and Latino Men's Association employee resource group. Both of these opportunities gave me a fresh perspective on the ways that financial markets have historically served to reinforce some of the inequities present in our society, and have made it clear to me that we need a financial system that works for all Americans.

**B. FUTURE EMPLOYMENT RELATIONSHIPS**

1. Will you sever all connections (including participation in future benefit arrangements) with your present employers, business firms, associations, or organizations if you are confirmed by the Senate? If not, provide details.

Yes. If confirmed by the Senate, I will sever all such connections. Please note that I will remain a participant in the defined benefit plan for employees of the Federal Reserve System. Under this plan, I am eligible to receive a monthly lifetime retirement benefit in the form of a defined benefit at any time after age 50. I will not accrue additional benefits under this plan after I resign from my role at the Federal Reserve Bank of New York.

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 current and former investments, obligations, liabilities, or other personal relationships, including spousal or family employment, which could involve potential conflicts of interest in the position to which you have been nominated.

None.

2. Describe any business relationship, dealing or financial transaction which you have had during the last 10 years (prior to the date of your nomination), 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 (prior to the date of your nomination) 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 are disclosed by your responses to the above items. (Provide the committee with two copies of any trust or other agreements.)

Any potential conflict of interest will be resolved in accordance with the terms of my ethics agreement, which was developed in consultation with ethics officials at the Department of the Treasury and the Office of Government Ethics. I understand that my ethics agreement has been provided to the committee. I am not aware of any potential conflict.

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.

Provided 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 (*e.g.*, an Inspector General's office), professional as-

sociation, disciplinary committee, or other ethics enforcement entity at any time? Have you ever been interviewed regarding your own conduct as part of any such inquiry or investigation? If so, provide details, regardless of the outcome.

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? Have you ever been interviewed regarding your own conduct as part of any such inquiry or investigation? 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.

None.

#### **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 JOSHUA FROST

##### QUESTIONS SUBMITTED BY HON. ROBERT MENENDEZ

*Question.* Our financial industry has a diversity problem, especially at the highest levels. The proportion of minorities in financial services drops by 75 percent from entry-level to the C-Suites. At the highest levels, 90 percent of the C-Suite is White. Women of color make up only 2 percent of executives despite being 21 percent of the entry-level workforce. This is not just an optics problem. Lack of diversity leads to real issues in our financial system. Treasury Secretary Yellen has previously stated that “[i]f economists are mainly of one gender or race, they are likely to miss things that matter.”

Do you believe the same holds true for executives and senior management of financial institutions?

Answer. I agree. The findings from a broad body of academic research on this subject—specifically, that leadership teams that are diverse with respect to background and experience outperform those that are more homogeneous—are unambiguous.

*Question.* Do you agree that the lack of diversity at financial institutions means they may be more likely to miss things that matter, as Secretary Yellen described?

Answer. I agree, for the reasons stated above.

*Question.* If confirmed, how would you help diversify regulated financial institutions?

Answer. If confirmed, I will work with the Assistant Secretary for Financial Institutions, the Department’s newly appointed Counselor for Racial Equity, and other colleagues around the Treasury Department to promote a financial system that better reflects the diversity of our country. I would work with my colleagues to support policies that lead financial institutions to hire and retain a more diverse workforce,

create opportunities for diverse suppliers, and encourage more diverse representation at the board level.

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QUESTIONS SUBMITTED BY HON. MIKE CRAPO

INFLATION, INVESTMENT, AND ECONOMIC GROWTH

*Question.* Last week, Fed Chair Powell said, “Supply-side constraints have gotten worse. . . . [T]he risks are clearly now to longer and more persistent bottlenecks, and thus to higher inflation.”

I am deeply concerned that trillions of dollars of new social spending proposed by this administration will exacerbate inflationary trends by sending more dollars after a limited supply of goods and services.

If that happens, I believe the Fed could be constrained in its ability to address inflation through rate increases because of the large and growing deficits that this social spending requires.

However, persistent low rates could contribute to inflation even further.

How will financial markets respond to the rising inflation, growing budget deficits, and rate policy uncertainty stemming from this scenario?

*Answer.* The President’s infrastructure legislation, including investments in infrastructure, would be expected to result in a more productive economy in the long run. Upgrading our transportation infrastructure will allow more goods and services to be produced and enable U.S. firms to access new markets. As our digital economy continues to grow, people need reliable broadband in all corners of the country. Further, investing in our airports and ports will help decrease the supply-chain constraints that are leading to current pricing pressures. Therefore, I would expect financial markets, which are inherently forward-looking, to react positively to the long-run productivity benefits of the proposed legislation. I also agree with Secretary Yellen’s stated view that these investments are not likely to result in an increase in inflation.

Currently, financial markets are not signaling concern over the budget deficit or long-term debt levels. The level and shape of the yield curve are not indicative of a market belief that this is a major issue today. With respect to interest rates, I respect the independence of the Federal Reserve to make those decisions based on its congressional mandate to sustain full employment and stable prices

*Question.* What effects would uncertainty in the financial markets have on business and public sector investment, as well as economic growth?

*Answer.* In general, excessive financial market uncertainty can serve as a drag on investment and growth. This happens because firms are reluctant to invest or expand when there is greater uncertainty surrounding their prospects. When volatility increases, companies are less able to anticipate their long-run cost of capital, which can result in lower investment volumes. That is why, if confirmed, I would focus on managing the Nation’s debt in a regular and predictable manner at the lowest cost to the government. I will also work to make sure that market participants have confidence in a transparent and well-functioning Treasury market. I would also note that the administration’s proposed Build Back Better legislation is likely to result in a more productive economy and lower deficits in the long run.

On the other hand, in August, the Senate passed on a bipartisan basis the Infrastructure Investment and Jobs Act, which would provide more than \$550 billion for traditional physical infrastructure.

*Question.* Given that so many of our current economic problems stem from supply-side constraints, in order to promote economic growth, wouldn’t financial markets take more comfort from a focus by the Federal Government on policies to promote investment in traditional physical infrastructure?

*Answer.* Investments in physical capital/public infrastructure, like the bipartisan Infrastructure Investment and Jobs Act, will serve as an important boost to the economy’s long-run growth potential. I agree that there are supply-side constraints, and as I noted above, improvements to our country’s physical infrastructure will be critical in staying competitive and providing confidence to our manufacturers and workers that the government understands these challenges. However, physical infrastructure upgrades alone will not ensure that our economy is on the path to sus-

tained growth and full employment. We also need investments like those outlined in the Build Back Better Act. Financial markets have thus far responded well to the potential for these measures to grow the economy.

#### DEBT LIMIT

*Question.* The debt limit represents a statutory limitation on the value of debt subject to the limit. Increasing the debt limit serves to facilitate fresh borrowing in order to fund past obligations made by Congress and signed into law by the President. Increasing the debt limit or suspending the debt limit for a fixed future period also facilitates increased borrowing to facilitate funding of new obligations made by Congress and signed into law by the President between the date at which the debt-limit increase (or suspension) was made and the date at which the new, higher, debt limit binds (under a suspension, there will be a new, higher limit at the date on which the limit is reinstated). The debt limit, and any changes in probabilities of it being breached, can have domestic and international financial and economic effects, and the position to which you have been nominated would confront such effects.

A debt limit increase or suspension is not exclusively limited to increasing debt-issuance authorization that would only facilitate fresh borrowing to pay obligations that have been made prior to the date of the increase or suspension. Do you agree? If not, fully explain why not.

*Answer.* Increasing the debt limit does not authorize new spending. It simply allows the government to finance obligations approved by Congress. Today, an increase in or suspension of the debt limit is necessary to allow Treasury to borrow to meet obligations resulting from laws previously enacted by Congresses and Presidents of both parties. I would add that if the Federal Government failed to honor all of its obligations, the financial and economic effects would be significant.

*Question.* It is known that Treasury regularly makes projections of its near-term and longer-term operating cash balances and, in periods approaching binding of a statutory debt limit, regular (daily, and sometimes multiple times per day) projections about how much headroom is made available from so-called “extraordinary measures” to operate under a debt limit with available cash and incoming receipts, given incoming due obligations.

Will you commit to supplying member of this committee and their staff with regular updates of projections of cash holdings and extraordinary when asked?

*Answer.* If confirmed, I commit to working with members of this committee and their staffs to share information to assist the committee in its oversight capacity. I appreciate the committee’s need for information regarding projections during debt limit impasses, and if confirmed, would look forward to working with the committee on this issue.

*Question.* Will you commit to ensuring that members of the committee and their staff have, upon request, at least as much projection information as Treasury supplies to the Federal Reserve Bank of New York?

*Answer.* I would need to be fully briefed by Treasury staff on the exact nature of the information to which you are referring. As a general matter, I am fully committed to providing the committee with information about the debt limit, consistent with applicable laws, procedures, and practices. If confirmed, I would look forward to working with you to facilitate the committee’s ability to perform its important oversight role.

*Question.* Treasury officials regularly meet with financial market participants, officials from the Federal Reserve Bank of New York, officials from the Board of Governors of the Federal Reserve System, and often others, in the New York Fed’s Treasury Market Practices Group. When Treasury nears a debt limit that may bind, that Group typically engages in discussions of views about effects on markets, most prominently on markets related to Treasury securities. Indeed, in a September 2, 2021 meeting of the Group which you attended on behalf of Treasury, the debt limit was discussed. In that, and several prior meetings of the Group, relevance of a Group 2013 “white paper” on “Operational Plans for Various Contingencies for Treasury Debt Payments” was noted. That report, as the September meeting minutes reveal “focuses on operational practices associated with a delayed payment on Treasury debt, in order to reduce the adverse consequence of such an event on the markets for these securities.” The report is, in effect, one of the contingency plans we would expect Treasury, the Fed, and others to have in place to provide a road-

map of steps to take in the event of significant market disruption caused by an inability to provide timely payment on U.S. Treasury obligations—where, notably, the cause could be a cyberattack, a superstorm that disrupts systems, breach of a debt limit, or other contingencies. Such a contingency plan is something that, in a prior debt limit scare during the Obama administration, neither Treasury nor Fed officials would acknowledge.

Do you commit, if confirmed, to share contingency plans formulated by Treasury to confront adverse contingencies that could affect market functioning in markets for Treasury securities, if asked by member of this committee?

Answer. While I cannot speak to the Obama administration’s practices regarding contingency planning, if confirmed, my intention would be to ensure that Treasury is as transparent as possible regarding its plans for confronting adverse contingencies.

*Question.* Do you commit, if confirmed, to report to this committee if you are instructed by anyone to, in turn, instruct officials or staff of the Federal Reserve System, including the Federal Reserve Bank of New York, to refrain from sharing with members of this committee any information about Treasury’s cash positions, projected cash positions, or projections regarding aspects of “extraordinary measures”?

Answer. If confirmed, I would urge Treasury to work in as transparent a manner as possible and would not instruct others to refrain from sharing information in a manner consistent with applicable laws, procedures, and practices.

#### CAPITAL MARKETS/SECURITIES REGULATION

*Question.* The administration continues with an odd belief that, somehow, private-market participants do not fully understand and price-in risks presented by climate change. The belief, further, is that those fallible market participants must face more regulations and controls from the perceived infallible Federal regulators, who somehow know risks better than others.

If you agree with the administration’s stance on additional Federal financial regulations for climate change, can you provide detailed examples of exact markets and industries and companies where private-sector actors do not adequately understand risks that somehow Federal regulators know more about?

Answer. I agree with Secretary Yellen and the FSOC that “climate change is an emerging and increasing threat to America’s financial system that requires action.” The steps identified by the FSOC in its recent report, including filling climate-related data and methodological gaps and enhancing public climate-related disclosures, are important in helping the public and private sectors better understand the unique nature of climate risk. I believe it is important that Treasury work with Congress on these important issues. The FSOC’s climate report notes disclosure challenges in a number of specific financial sectors on pages 86 and 87 of the report (available at <https://home.treasury.gov/system/files/261/FSOC-Climate-Report.pdf>).

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#### QUESTION SUBMITTED BY HON. JOHN THUNE

*Question.* Inflation is at a 13-year high. Prices of more and more goods and services are increasing. Combined with supply-chain bottlenecks, labor shortages, and ultra-easy fiscal and monetary policies, there’s a growing recognition that inflation will be with us well into next year or longer. Republicans warned that pouring \$1.9 trillion into the economy earlier this year would fuel inflation, but the White House dismissed increasing price pressures as “transitory”—despite inflation forecasts having been revised up several times already. Now Democrats want to push another multi-trillion-dollar partisan spending bill onto the economy.

Do you regard this inflationary increase as transitory, as Secretary Yellen has proclaimed, or is rising inflation a persistent problem our economy will be dealing with for months, and possibly years, ahead?

Answer. I agree with Secretary Yellen’s view, which is widely held by most economic forecasters, that the inflation outlook remains transitory as the economy pivots from a steep recession back into recovery. The pandemic led to a drastic shift in consumption patterns towards goods and away from services. The pandemic has also disrupted global supply chains and kept some workers on the sidelines. As the

vaccination rate improves and cases recede, I expect these factors to reverse, bringing inflation rates lower.

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QUESTION SUBMITTED BY HON. ROB PORTMAN

*Question.* You have deep contacts at the New York Fed, which is responsible for purchasing debt that the Treasury Department sells. At the Treasury Department you will oversee the desk which sells these securities.

Can you detail which safeguards you will put in place to ensure these transactions remain lawful and are not subject to any conflict of interest?

*Answer.* I take the independence of the Federal Reserve very seriously and would pledge to never undermine this independence. I know that you and this committee are committed to assuring the independence of our Nation's central bank, and I want to assure you that I share that commitment. I also support the rigorous controls Treasury has in place regarding the conduct of its auctions of Treasury securities. If I have the honor of being confirmed, I commit to you that I will fully embrace the role to which I have been nominated and will respect the independence of the Federal Reserve in its monetary policy formulation and implementation.

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QUESTIONS SUBMITTED BY HON. JAMES LANKFORD

*Question.* According to estimates from the Congressional Budget Office, debt held by the public will reach \$35.827 trillion in the year 2031, climbing to over 106 percent of GDP at that time. While interest rates may be low now, with such a significant debt burden, even small increases in interest rates will mean trillions in debt servicing costs.

At what point will our Nation's ever-climbing national debt threaten our ability to prudently and responsibly fund essential services and protect our national security?

*Answer.* The current level of debt as a share of GDP is primarily the result of the combination of (1) fiscal policies undertaken by previous Congresses and Presidents of both parties; and (2) necessary emergency actions taken to protect American families and our economy from the impacts of COVID. While the emergency actions taken were a critical part of the government's response to the pandemic, I agree that it is imperative that we ensure that our country is on a path to long-term fiscal sustainability.

Necessary steps on this path include investments in the productive capacity of our economy and prudent steps to offset the costs of those investments.

*Question.* Do you agree that such significant levels of borrowing, fueled further by my colleagues' efforts to spend trillions more, carries significant risks?

*Answer.* As I noted above, it is imperative that we put our country on a path to long-term fiscal sustainability. At the same time, it is important to invest in our Nation's productive capacity, and I believe that right now the risks of doing too little to address long-running structural concerns outweigh the risks of doing too much.

*Question.* Some of my colleagues have suggested that because interest rates are currently low, we should not worry about deficit spending and, in fact, some have used it as the rationale for drastic increases in spending without any concern to how it will be financed in the future.

Do you agree with their view—that low interest rates eliminate any concern of deficit spending?

*Answer.* Real interest rates are at quite negative levels, and nominal interest rates are very low when compared to history. While interest rates are likely to rise over time, the projection is also that rates will remain low by historical standards. This outlook is supportive of my view that additional investment in improving the productive capacity of our economy is likely to be seen by investors in Treasury debt as a source of strength, rather than as a threat.

*Question.* Are you concerned about our current trajectory of continuing to run up our national debt without any plan for reduction in the future, while merely hoping that interest rates remain low?

Answer. As I noted above, it is imperative that we put our country on a path to long-term fiscal sustainability. It is also important to make investments in our Nation's productive capacity.

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QUESTIONS SUBMITTED BY HON. TODD YOUNG

*Question.* According to *The New York Times*,<sup>1</sup> you played an important role in the Federal Reserve's quantitative easing (QE) measures following the 2008 financial crisis. Given your knowledge and experience on this topic, I want to ask you about current QE efforts by the Federal Reserve and the relationship those strategies may be having on the skyrocketing inflation Hoosiers—and all Americans—are currently facing.

In an effort to stabilize the economy in the wake of COVID-19, the Federal Reserve began engaging in QE through purchases of government bonds and other assets. Since January 1, 2020, the Federal Reserve has added over \$4 trillion to its balance sheet, doubling the size of its holdings since the start of the pandemic.<sup>2</sup>

Can you please describe the relationship between QE and inflation?

Answer. The Federal Open Market Committee has stated that it “seeks to achieve maximum employment and inflation at the rate of 2 percent over the longer run” while seeking to ensure that “longer-term inflation expectations remain well anchored at 2 percent.” As one of the tools to meet its statutorily defined mandate, the Fed has been purchasing Treasury securities and agency mortgage-backed securities in an effort to ensure that “substantial further progress has been made toward its maximum employment and price stability goals.” As these asset purchases proceed, if they led to interest rates being too low for a given set of economic and financial conditions, there could be upward pressure on rates of inflation.

*Question.* Do you believe the elevated levels of inflation we are currently experiencing can be attributed more to QE from the Federal Reserve or instead to other policies from the Biden-Harris administration, such as massive spending?

Answer. I agree with Secretary Yellen's view that the rate of inflation would be expected to be moderately higher as the economy transitions between a steep recession and a healthy recovery, and that the outlook remains that inflation is transitory. The spending during the pandemic has been important to provide support to American businesses, communities, and households.

*Question.* Are there any lessons that can be learned from the Federal Reserve's response to the pandemic and the current inflationary environment we are in now?

Answer. I believe that the Federal Reserve's response has been robust and timely given the challenges faced and the magnitude of the pandemic's effect on the economy. There is little evidence that the policies employed by the Fed had an outsized impact on inflation. As I noted above, I agree with Secretary Yellen's view that the rate of inflation would be expected to be moderately higher as the economy transitions between a steep recession and a healthy recovery.

*Question.* Professor Larry Summers, the former U.S. Secretary of the Treasury under President Clinton, the former Director of the National Economic Council under President Obama, and the Charles W. Eliot university professor at Harvard, issued the following series of tweets on October 25, 2021:

Yesterday on @CNN w @jaketapper, @SecYellen said I was wrong about my assertion we are more at risk of losing control of inflation than at any time in my career. She expressed confidence that inflation is decelerating and will be back to target levels by the end of next year. I hope she is right but I think it's much less than a 50/50 chance. When the administration formulated its budget in February, it expected 2 percent inflation in 2021, I was warning about inflation. Their forecast is no longer operative. In May and June, @SecYellen expressed confidence that inflation would be back to the 2 percent range by late 2021 or early 2022. Now this forecast is no longer operative. In @CNN interview, @SecYellen asserts twice that inflation has decelerated. This is a bit misleading as the 3 month and 12 month CPI inflation rates are both around 5 percent on an annual basis. And the trimmed mean and median inflation rates that exclude aberrant sectors

<sup>1</sup> <https://www.nytimes.com/2011/01/11/business/economy/11fed.html>.

<sup>2</sup> <https://www.americanactionforum.org/insight/tracker-the-federal-reserves-balance-sheet/>.



(which used to be a staple of administration's rhetoric) are now accelerating. The TIPS market is suggesting inflation in 3 percent range over 5 years and more next year. Breakeven inflation over 5 years is up 40 bps in the last month. Expectations data are even more disturbing. This is part of why my alarm is increasing and Treasury should be as well. Given lags in indices, housing inflation is almost certain to soar in coming months. With super tight labor markets, rising strike activity and real wages having declined, increases in wage inflation are likely as well. I actually believe the gap between Treasury and Fed statements and the everyday experience of business and consumers in terms of inflation has widened in recent months. Until the Fed & Treasury fully recognize the inflation reality, they are unlikely to deal with it successfully.<sup>3</sup>

Do you agree with Professor Summers' analysis and conclusions as set forth above, why or why not?

Answer. As I noted above, I agree with Secretary Yellen's view that the rate of inflation would be expected to be moderately higher as the economy transitions between a steep recession and a healthy recovery, and that the outlook remains that inflation is transitory. The pandemic saw a drastic shift in consumption towards goods and away from services, while also disrupting the production and distribution of goods. These effects of the pandemic have raised goods inflation over the past year. The consensus expectation, which I agree with, is that these price pressures will abate in the near term as the pandemic recedes and return to levels that are consistent with the Federal Reserve's target.

*Question.* The Federal Reserve of San Francisco recently released an analysis suggesting that President Biden's \$1.9-trillion American Rescue Plan contributed to the inflationary crisis we find ourselves in today.<sup>4</sup> In fact, the Federal Reserve's key measure of inflation, the personal consumption expenditure price index, is on track to hit a 40-year high.<sup>5</sup>

Given these facts, do you have concerns that another massive injection of money into the economy, particularly through President Biden's revised Build Back Better Act, will only perpetuate the rapid inflation we have seen this year? Please answer "yes" or "no." If your answer is "no," please explain.

Answer. No. As I noted above, I agree with Secretary Yellen's view that the rate of inflation would be expected to be moderately higher as the economy transitions between a steep recession and a healthy recovery, and that the inflation outlook remains that inflation is transitory. The Build Back Better proposals would expand the productive capacity of our economy by raising labor participation rates and improving productivity. They also entail expenditures that are critical in unlocking our Nation's growth potential.

*Question.* According to Federal Reserve survey data, consumers,<sup>6</sup> business,<sup>7</sup> and markets<sup>8</sup> all expect inflation to remain at elevated levels in the future.

What steps should the Biden-Harris administration take to curb inflation before it is too late?

Answer. As I noted above, I agree with Secretary Yellen's view that the rate of inflation would be expected to be moderately higher as the economy transitions between a steep recession and a healthy recovery. Elevated inflation rates have been driven by the effect of the pandemic on our consumption patterns and the workforce. Ending the pandemic is central to bringing down inflation rates. In the short term, as COVID-19 cases recede, inflation rates should follow. Over the longer term, it is important to make investments in our Nation's productive capacity, and I believe that the risks of doing too little to address long-running structural concerns outweigh the risks of doing too much.

*Question.* If confirmed to this position, what specific actions would you take during the first 60 days of your tenure to address the current economic crisis brought on by this administration?

<sup>3</sup><https://twitter.com/LHSummers/status/1452698999656534018>.

<sup>4</sup><https://www.nytimes.com/2021/10/18/business/economy/fed-inflation-stimulus-biden.html>.

<sup>5</sup><https://gop-waysandmeans.house.gov/brady-families-fall-further-behind-as-bideninflation-pushes-prices-to-highest-in-30-years/>.

<sup>6</sup><https://www.newyorkfed.org/microeconomics/sce#/inflexp-1>.

<sup>7</sup><https://www.atlantafed.org/research/inflationproject/bie>.

<sup>8</sup><https://fred.stlouisfed.org/series/T5YIE>.

Answer. If I am fortunate enough to be confirmed, I will work to serve our Nation by supporting the President's and Secretary Yellen's priorities in leading the Office of Financial Markets. This includes making sure we have regular and predictable Treasury debt auctions at the lowest cost to the government, ensuring that Treasury market participants have confidence in a fair and well-functioning market, addressing the transition from LIBOR, and addressing the challenges posed by the rapidly growing and changing markets for digital assets.

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PREPARED STATEMENT OF BRENT NEIMAN, PH.D., NOMINATED TO BE DEPUTY UNDER SECRETARY FOR INTERNATIONAL FINANCE AND DEVELOPMENT, DEPARTMENT OF THE TREASURY

Chairman Wyden, Ranking Member Crapo, and distinguished members of this committee, thank you for the opportunity to appear before you today as nominee to be Deputy Under Secretary/Designated Assistant Secretary for International Finance and Development at the Treasury Department. I am also deeply grateful to President Biden and to Secretary Yellen for placing their confidence in me.

I would like to introduce my family, most of whom are in Chicago, where I was born and raised and live today. Though I didn't end up far from where I started, my wife Yael moved from Argentina to New York when she was 4 years old. Her family came to the United States seeking opportunity and they found it, as my wife was the first in her family to finish college. We are so proud of our wonderful kids—our 11-year-old daughter Tal and our 8-year-old son Lev. My parents, Bill and Gail, have always been encouraging and are watching from home right now. I am so appreciative of my entire family's support.

My grandparents are also in my thoughts. My grandmother Margot, who fled from Germany in 1939 to Decatur, IL, always encouraged an awareness of world affairs and an understanding of other people, places, and cultures. My grandfather Julie, who ran a small manufacturer, hired me for summer jobs ranging from assembling boxes to coding the company's first web page, and taught me about entrepreneurship and small business. I'm grateful for what they shared with me and imagine that all four of my grandparents would be proud today.

My interest in international macroeconomics started early in high school, when I gave a speech about the ECU (the euro's predecessor) for the final project in my sophomore year speech class. My teacher criticized the topic as hopelessly dry, but I stuck with it. Since then, I've worked as the staff economist for international finance at the Council of Economic Advisers, written a doctoral dissertation at Harvard University, consulted to the IMF and Congressional Budget Office, and presented to central banks all around the world. For the past 13 years, I've also taught a course called "International Financial Policy" at the University of Chicago's Booth School of Business. I hope I have been able to prove my high school speech teacher wrong and instill some excitement about international economics in the next generation of leaders.

My research has uniquely prepared me to serve in this position, at this time. I've published papers exploring the changing international role of the U.S. dollar and analyzing the financial exposures of U.S. investors to emerging market borrowers, including those that issue securities through offshore affiliates. My work has evaluated the impact of exchange rate movements on productivity during a sudden stop crisis and measured the price response of U.S. imports and exports to trade policies. I've developed models of how economic activity transmits across borders and used them to understand the formation and resolution of external imbalances. Most recently, I've studied cross-country differences in the ability to work from home during the pandemic.

The past 2 years have brought unprecedented challenges, with all of us struggling to stay physically safe while doing our best to satisfy economic, educational, and emotional needs. Our government's bold policies have helped tremendously, but many lower-income countries have less capacity to act and face a daunting situation in coming years.

The pandemic has underscored how interconnected the world economy is. Continuing hardship in foreign countries spurs families to leave, seeking better opportunities elsewhere. Disruptions in the global supply chain keep our workers waiting for equipment and our consumers waiting for goods that both need. Slow growth abroad restricts markets for American businesses, large and small. Helping to alleviate suffering and restore financial and physical health to the rest of the world

is worthy in its own right, but also benefits the U.S. economy and our national security.

The position for which I've been nominated plays a key role in directing Treasury's macroeconomic engagement with other countries, bilaterally and through multilateral institutions including the G7, G20, and the IMF. The United States must lead in these engagements and bring about a sustained global recovery with smart, implementable policies that enhance stability and create opportunity for all American workers and their families. If confirmed, working closely with the members and staff of this committee and with the distinguished civil servants in the Office of International Affairs at Treasury, I will dedicate myself fully toward this task.

Thank you again for the privilege of appearing here today, and for your consideration of my nomination. I look forward to answering your questions.

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## SENATE FINANCE COMMITTEE

### STATEMENT OF INFORMATION REQUESTED OF NOMINEE

#### A. BIOGRAPHICAL INFORMATION

1. Name (include any former names used): Brent Neiman.
2. Position to which nominated: Deputy Under Secretary/Designated Assistant Secretary of Treasury for International Finance and Development.
3. Date of nomination: August 10, 2021.
4. Address (list current residence, office, and mailing addresses):
5. Date and place of birth: September 1, 1977; Highland Park, IL.
6. Marital status (include maiden name of wife or husband's name):
7. Names and ages of children:
8. Education (list all secondary and higher education institutions, dates attended, degree received, and date degree granted):  
Harvard University, September 2002–June 2008, Ph.D. in economics.  
Oxford University, September 1999–September 2000, master of science in numerical analysis and scientific computing.  
University of Pennsylvania, September 1995–June 1999, bachelor of science in economics and bachelor of applied science in engineering.
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 for each job):  
University of Chicago, Booth School of Business, professor, Chicago, 2008–present.  
Council of Economic Advisers, Staff Economist, Washington DC, 2003–2004.  
Federal Reserve Bank of Chicago, graduate summer intern, Chicago, Summer 2003.  
McKinsey and Company, business analyst, San Francisco, 2000–2002.
10. Government experience (list any current and former advisory, consultative, honorary, or other part-time service or positions with Federal, State, or local governments held since college, including dates, other than those listed above):  
None.
11. Business relationships (list all current and former positions held as an officer, director, trustee, partner (*e.g.*, limited partner, non-voting, etc.), proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, other business enterprise, or educational or other institution):

Director, Initiative on International Economics, Becker Friedman Institute, University of Chicago, 2017–present.

Co-director, Initiative on Global Markets, Chicago Booth, 2019–present.

Limited partner, Hirsch Family Partners LP, 2017 (est.)–present.

Co-member, Neiman Family Partnership LLC, 2005–2021 (terminated in June).

Co-trustee, Neiman Survivorship Insurance Trust, 2002–present.

Associate Editor, *American Economic Review*, 2017–present.

Associate Editor, *Quarterly Journal of Economics*, 2014–present.

Associate Editor, *Journal of International Economics*, 2013–present.

I have served as a consultant to the following businesses and institutions during the past 5 years: Arete Wealth Management, 2017; Beacon Capital Partners, 2020; Congressional Budget Office, 2019; Hound Partners, 2016, 2017, 2019; and International Monetary Fund, 2016.

12. Memberships (list all current and former memberships, as well as any current and former offices held in professional, fraternal, scholarly, civic, business, charitable, and other organizations dating back to college, including dates for these memberships and offices):

Member, KAM Isaiah Israel Synagogue, 2021–present.

Research Fellow, Center for Economic Policy Research, 2019–present.

Member, Northmoor Country Club, 2016–present.

Research Associate, National Bureau of Economic Research, 2016–present.

Member, Macro-Finance Society, 2017–2019.

Faculty Research Fellow, National Bureau of Economic Research, 2010–2016.

Affiliate, Chicago Council on Global Affairs, 2009–present.

Community of Support, Muchin College Prep, 2009–2011.

Auxiliary Board Member, Teach for America Chicago, 2008–2011.

American Economic Association, 2008–present (various years).

13. Political affiliations and activities:

- a. List all public offices for which you have been a candidate dating back to the age of 18.

None.

- b. List all memberships and offices held in and services rendered to all political parties or election committees, currently and during the last 10 years prior to the date of your nomination.

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 prior to the date of your nomination.

Date	Recieient	Amount
October 13, 2020	Casten for Congress	\$1,000
September 1, 2020	Biden Action Fund	\$250
September 1, 2020	Biden for President	\$250
September 3, 2019	Casten for Congress	\$250
June 21, 2018	Casten for Congress	\$1,000
February 16, 2018	Quigley for Congress	\$300
September 28, 2017	Casten for Congress	\$1,000

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 received since the age of 18):

Economics in Central Banking Award (with Maggiori and Schreger), 2020.

William Ladany Faculty Scholar, 2019–2020.

AQR Insight Award (with Maggiori and Schreger), 2018.

Sloan Research Fellowship, 2014–2016.

Rosenfield Grant, 2015.

Neubauer Family Faculty Fellow, 2014–2015.

Emerging Leader, Chicago Council of Global Affairs, 2009–2011.

Charles E. Merrill Scholar, 2009–2010.

Chiles Dissertation Completion Fellowship, 2007–2008.

Harvard University Graduate Fellowship, 2002–2004.

The Thouron Award, 1999–2000.

Academic All-Ivy League, 1997–1998.

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

I performed an exhaustive hard-copy and digital search and to the best of my knowledge and belief, here are the published writings that I can identify:

#### **Academic Publications**

“Redrawing the Map of Global Capital Flows: The Role of Cross-Border Financing and Tax-Havens” (with Antonio Coppola, Matteo Maggiori, and Jesse Schreger), *Quarterly Journal of Economics*, Forthcoming, <https://globalcapitalallocation.s3.us-east-2.amazonaws.com/CMNS-Paper.pdf>.

“Exchange Rate Reconnect” (with Andrew Lilley, Matteo Maggiori, and Jesse Schreger), *Review of Economics and Statistics*, Forthcoming, [https://globalcapitalallocation.s3.us-east-2.amazonaws.com/LMNS\\_Paper.pdf](https://globalcapitalallocation.s3.us-east-2.amazonaws.com/LMNS_Paper.pdf).

“Tariff Passthrough at the Border and at the Store: Evidence from U.S. Trade Policy” (with Alberto Cavallo, Gita Gopinath, and Jenny Tang), *American Economic Review: Insights*, Vol 3., No 1, 2021, <https://brentneiman.com/research/CGNT.pdf>.

“How Many Jobs Can be Done at Home?” (with Jonathan Dingel), *Journal of Public Economics*, 2020, Volume 189 Preprint: COVID Economics, Vetted and Real-Time Papers, 2020, Issue 1, p. 16–24, <https://brentneiman.com/research/DN.pdf>.

“International Currencies and Capital Allocation” (with Matteo Maggiori and Jesse Schreger), *Journal of Political Economy*, 2020, Volume 128, Issue 6, <https://brentneiman.com/research/MNS.pdf>.

“The Rise of the Dollar and Fall of the Euro as International Currencies” (with Matteo Maggiori and Jesse Schreger), AEA Papers and Proceedings, 2019, Volume 109, p. 521–526, [https://brentneiman.com/research/MNS\\_PandP.pdf](https://brentneiman.com/research/MNS_PandP.pdf).

“Accounting for Factorless Income” (with Loukas Karabarbounis), NBER Macroeconomics Annual, 2018, Volume 33, p. 167–228, [http://brentneiman.com/research/Factorless\\_Income.pdf](http://brentneiman.com/research/Factorless_Income.pdf).

“The Global Rise of Corporate Saving” (with Peter Chen and Loukas Karabarbounis), *Journal of Monetary Economics*, 2017, 89, p. 1–19, <https://brentneiman.com/research/CKN.pdf>.

“Obstfeld and Rogoff’s International Macro Puzzles: A Quantitative Assessment” (with Jonathan Eaton and Sam Kortum), *Journal of Economic Dynamics and Control*, 2016, 72, p. 5–23, [https://brentneiman.com/research/EKN\\_OR.pdf](https://brentneiman.com/research/EKN_OR.pdf).

“Trade and the Global Recession” (with Jonathan Eaton, Sam Kortum, and John Romalis), *American Economic Review*, 2016, 106(11), p. 3401–3438, <https://brentneiman.com/research/EKNR.pdf>.

“The Price Impact of Joining a Currency Union: Evidence from Latvia” (with Alberto Cavallo and Roberto Rigobon), *IMF Economic Review*, 2015, 63(2), p. 281–297, [https://brentneiman.com/research/CNR\\_Latvia.pdf](https://brentneiman.com/research/CNR_Latvia.pdf).

“Currency Unions, Product Introductions, and the Real Exchange Rate” (with Alberto Cavallo and Roberto Rigobon), *Quarterly Journal of Economics*, 2014, 129(2), p. 529–595, <https://brentneiman.com/research/CNR.pdf>.

“Trade Adjustment and Productivity During Large Crises” (with Gita Gopinath), *American Economic Review*, 2014, 104(3), p. 793–831, <https://brentneiman.com/research/EKNR.pdf>.

“The Global Decline of the Labor Share” (with Loukas Karabarbounis), *Quarterly Journal of Economics*, 2014, 129(1), p. 61–103, <https://brentneiman.com/research/KN.pdf>.

“On Deficits and Unemployment” (with Jonathan Eaton and Sam Kortum), *Revue économique*, 2013, 64(3), p. 405–420, <https://brentneiman.com/research/EKN.pdf>.

“Trade Prices and the Global Trade Collapse of 2008–2009” (with Gita Gopinath and Oleg Itskhoki), *IMF Economic Review*, 2012, 60(3), p. 303–328, <https://brentneiman.com/research/CrisisPrices.pdf>.

“A State-Dependent Model of Intermediate Goods Pricing,” *Journal of International Economics*, 2011, 85(1), p. 1–13, [https://brentneiman.com/research/Intermediate\\_Pricing.pdf](https://brentneiman.com/research/Intermediate_Pricing.pdf).

“Growth Accounting with Misallocation: Or, Doing Less with More in Singapore” (with John Fernald), *American Economic Journal: Macroeconomics*, 2011, 3(2), p. 29–74, <https://brentneiman.com/research/Misallocation.pdf>.

“Stickiness, Synchronization, and Passthrough in Intrafirm Trade Prices,” *Journal of Monetary Economics*, 2010, 57(3), p. 295–308, <https://brentneiman.com/research/Intrafirm.pdf>.

“The Impact of Post-9/11 Visa Policies on Travel to the United States” (with Phillip Swagel), *Journal of International Economics*, 2009, 78(1), p. 86–99, <https://brentneiman.com/research/VWP.pdf>.

### Working Papers

“The Rise of Niche Consumption” (with Joe Vavra), NBER Working Paper, No. 26134, 2020, <https://brentneiman.com/research/NV.pdf>.

“Capital Depreciation and Labor Shares Around the World: Measurement and Implications” (with Loukas Karabarbounis), NBER Working Paper, No. 20606, 2014, <https://brentneiman.com/research/KN2.pdf>.

### Other Writings

“A new map of global capital allocation” (with Antonio Coppola, Matteo Maggiori, and Jesse Schreger), *FDI Magazine*, June 2021, <https://content.yudu.com/web/43wcl/0A43wm9/fDiJuneJuly2021/html/index.html?page=84&origin=reader>.

“The Global Capital Allocation Project” (with Matteo Maggiori and Jesse Schreger), NBER Reporter, Number 1, 2021, <https://www.nber.org/reporter/2021number1/global-capital-allocation-project>.

“Making a good job of remote work” (with Jonathan Dingel), *Financial Times*, February 2021, <https://on.ft.com/2LxeKIC>.

“Tariff Passthrough at the Border and at the Store: Evidence from U.S. Trade Policy” (with Alberto Cavallo, Gita Gopinath, and Jenny Tang), *VoxChina*, September 2020, <http://vochina.org/show-3-194.html>.

“What has coronavirus taught us about working from home” (with Jonathan Dingel), Economics Observatory, June 2020, <https://www.coronavirusandtheeconomy.com/question/what-has-coronavirus-taught-us-about-working-home>.

“How Many Jobs Can Be Done At Home” (with Jonathan Dingel), *VoxEU.org*, April 2020, <https://voxeu.org/article/how-many-jobs-can-be-done-home>.

“How Many Jobs Can be Done at Home? In the United States, It’s 37 percent” (with Jonathan Dingel), *ProMarket.org*, April 2020, <https://promarket.org/how-many-jobs-can-be-done-at-home-in-the-united-states-its-37-percent/>.

“Three Pillars of the Economic Policy Response to the COVID–19 Crisis” (with Eric Budish, Anil Kashyap, and Ralph Koijen), IGM Forum, March 2020, <http://www.igmchicago.org/wp-content/uploads/2020/03/Coronavirus-032320-final.pdf>.

“Exchange Rate Reconnect” (with Andrew Lilley, Matteo Maggiori, and Jesse Schreger), *VoxEU.org* column, January 2020, <https://voxeu.org/article/exchange-rate-reconnect>.

“The Rise of Niche Consumption” (with Joe Vavra), *VoxEU.org* column, September 2019, <https://voxeu.org/article/rise-niche-consumption>.

“What to Do with Missing Payments to Factors of Production” (with Loukas Karabarbounis), *VoxEU.org* column, June 2018, <https://voxeu.org/article/what-do-missing-payments-factors-production>.

“The Rise of the Dollar and Fall of the Euro in Global Asset Trade” (with Matteo Maggiori and Jesse Schreger), *VoxEU.org* column, June 2018, <https://voxeu.org/article/rise-dollar-and-fall-euro-global-asset-trade>.

“Factorless Income and Some Skepticism on the Case for Rising Markups” (with Loukas Karabarbounis), *Premarket Blog*, Chicago Booth Stigler Center, May 2018, <https://promarket.org/factorless-income-skepticism-case-rising-markups/>.

“Trends in Factor Shares: Facts and Implications” (with Loukas Karabarbounis), *NBER Reporter*, Number 4, 2017, <https://www.nber.org/reporter/2017number4/trends-factor-shares-facts-and-implications>.

“Labour Shares, Inequality, and the Relative Price of Capital” (with Loukas Karabarbounis), *VoxEU.org* column, November 25, 2014, <http://www.voxeu.org/article/labour-shares-inequality-and-relative-price-capital>.

“The Research Agenda: Loukas Karabarbounis and Brent Neiman on the Evolution of Factor Shares” (with Loukas Karabarbounis), *The EconomicDynamics Newsletter*, 15(2), November 2014, [https://brentneiman.com/research/The\\_Research\\_Agenda.pdf](https://brentneiman.com/research/The_Research_Agenda.pdf).

“Pricing to Market and Eurozone Membership: Evidence from Latvia” (with Alberto Cavallo and Roberto Rigobon), *VoxEU.org* column, August 22, 2014, <http://www.voxeu.org/article/pricing-and-ez-membership-evidence-latvia>.

“The Euro and Price Convergence” (with Alberto Cavallo and Roberto Rigobon), *VoxEU.org* column, November 29, 2013, <http://www.voxeu.org/article/euro-and-price-convergence>.

“Comment on the Decline of the U.S. Labor Share by Michael Elsby, Bart Hobijn, and Aysegul Sahin,” *Brookings Panel of Economic Activity*, September 2013, [https://brentneiman.com/research/Neiman\\_Comments\\_for\\_BPEA.pdf](https://brentneiman.com/research/Neiman_Comments_for_BPEA.pdf).

“The Great Trade Quantities Collapse” (with Gita Gopinath and Oleg Itskhoki), *VoxEU.org* column, July 28, 2012, <http://www.voxeu.org/article/great-trade-quantities-collapse>.

“Trade and the Global Recession,” *Chicago Council on Global Affairs*, 2012 Summit Expert Commentaries, May 2012 (link unavailable).

“Trade Accounting in the Recent Recession” (with Jonathan Eaton, Sam Kortum, and John Romalis), *VoxEU.org* column, July 7, 2010, <http://www.voxeu.org/article/trade-accounting-recent-recession>.

“Computers: Why the Party’s Over” (with Mike Cho), *McKinsey Quarterly*, Q1 2002, <https://go.gale.com/ps/anonymous?id=GALE%7CA82535799&sid=google Scholar&v=2.1&it=r&Jinkaccess=abs&issn=00475394&p=AONE&sw=w>.

“A Mathematical Model of Chronic Myelogenous Leukemia,” *MSc Dissertation*, Oxford University, September 2000, <https://core.ac.uk/download/pdf/96488.pdf>.

I’m happy to update and supplement this submission should I discover additional information.

16. Speeches (list all formal speeches and presentations (e.g., PowerPoint) you have delivered during the past 5 years which are on topics relevant to the position for which you have been nominated, including dates):

I performed an exhaustive hard-copy and digital search and to the best of my knowledge and belief, here are the speeches and public presentations that I can identify:

Presentations of “Redrawing the Map of Global Capital Flows: The Role of Cross Border Financing and Tax-Havens” (with Antonio Coppola, Matteo Maggiori, and Jesse Schreger; digital copy filename: “CMNS.pdf”): 2021: International Monetary Fund, Federal Reserve Bank of Cleveland, Peterson Institute for International Economics; 2020: U.S. State Department, University of Texas, NBER Conference on Emerging and Frontier Markets: Capital Flows, Risks, and Growth, Virtual International Trade and Macro Seminar, Harvard University, Bank of England; 2019: Federal Reserve Bank of Minneapolis, Federal Reserve Bank of Chicago, University of Chicago.

Presentations of “International Currencies and Capital Allocation” (with Matteo Maggiori and Jesse Schreger; digital copy filename: “MNS.pdf”): 2019: NBER–CCER Conference in Beijing; 2018: Stanford University, University of British Columbia, Northwestern University, International Monetary Fund, University of Illinois at Chicago, Bank for International Settlements; 2017: University of Michigan, University of Maryland, University of Houston, Duke University, European Central Bank, Goethe University, Carlson School of Management, University of Toronto, Bank of Canada, NBER Conference in Neemrana.

Presentations of “Obstfeld and Rogoff’s International Macro Puzzles: A Quantitative Assessment” (with Jonathan Eaton and Sam Kortum; digital copy filename: “EKN.pdf”): 2016: Central Bank of Argentina, Central Bank of Chile, Central Bank of Mexico, NBER IFM Summer Institute.

Presentations of “Accounting for Factorless Income” (with Loukas Karabounis; digital copy filename: “KN.pdf”): 2018: Columbia University, University of Chicago, NBER MacroAnnual, UCLA, Congressional Budget Office; 2017: University of Pittsburgh—Carnegie Mellon.

Presentations of “The Rise of Niche Consumption” (with Joe Vavra; digital copy filename: “NV.pdf”): 2019: NBER Conference on Economics of Mega-Firms and Changes in Market Power, Federal Reserve Bank of San Francisco, Federal Reserve Bank of New York, Boston College.

Presentation of “Real Exchange Rate Behavior: New Evidence from Matched Retail Prices” (with Alberto Cavallo and Roberto Rigobon; digital copy filename: “CNR.pdf”): 2017: Federal Reserve Board of Governors.

Other presentations/talks: November 2019: Congressional Budget Office (digital copy filename: “CBO.pdf”); October 2019: Ethical Humanist Society (digital copy filename: “EHS.pdf”); May 2019: Macro Finance Society (digital copy filename: “MFS.pdf”); and May 2018: International Monetary Fund (digital copy filename: “IMF.pdf”).

The presentations referenced above by their digital copy filenames were included in the file Presentations.zip.

I’m happy to update and supplement this submission should I discover additional information.

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

My research career has focused on applied topics in international finance, trade, and macroeconomics that are important for the prosperity and stability of the United States and for global economic development. I have studied the changing international role of the U.S. dollar, analyzed the exposures of U.S. investors to emerging market borrowers, and evaluated the impact of trade policies on U.S. importers and exporters. I have developed models of how changes in economic activity transmit across countries and used them to study the formation and resolution of trade imbalances. My work has documented how emerging market firms respond to crises and how multinational firms respond to changes in exchange rates and exchange rate regimes. This body of work gives me a deep appreciation for how interconnected our economy is with the rest of the world and for how effective international financial policies can improve outcomes.

I am a co-founder of the Global Capital Allocation Project, a research lab which produced several of the above studies and distributes codes and data useful for researchers and practitioners. As director of the Initiative on International Eco-



nomics at the Becker Friedman Institute, I cofounded and coorganize a conference on international macro finance that is now in its 9th year and includes researchers from academia, international financial institutions, and central banks. For 13 years, I have taught a course for MBA students called “International Financial Policy.”

Finally, I have presented on international macroeconomic topics at central banks and multilateral institutions around the world and served as a consultant to the International Monetary Fund. Earlier in my career, I spent a year working on international finance issues while on the staff of the Council of Economic Advisers. These experiences made clear to me that applied economic research can lead directly to improved economic policy.

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

1. Will you sever all connections (including participation in future benefit arrangements) with your present employers, business firms, associations, or organizations, if you are confirmed by the Senate? If not, provide details.

If confirmed, I will take a leave of absence from my tenured position at the University of Chicago and plan to return after government service.

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.

If confirmed, I will take a leave of absence from my tenured position at the University of Chicago and plan to return after government service.

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.

I expect to return to the University of Chicago at the end of my leave of absence, which I anticipate will last 2 years.

### **C. POTENTIAL CONFLICTS OF INTEREST**

1. Indicate any current and former investments, obligations, liabilities, or other personal relationships, including spousal or family employment, 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 Department of Treasury’s designated agency ethics official, who has consulted with the Office of Government Ethics, to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of the ethics agreement that I have entered with the Department of Treasury’s designated agency ethics official and that has been provided to this 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 (prior to the date of your nomination), 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 (prior to the date of your nomination) 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 are disclosed by your responses to the above items. (Provide the committee with two copies of any trust or other agreements.)

In connection with the nomination process, I have consulted with the Department of Treasury's designated agency ethics official, who has consulted with the Office of Government Ethics, to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of the ethics agreement that I have entered with the Department of Treasury's designated agency ethics official and that has been provided to this committee. I am not aware of any other potential conflicts of interest. Should any potential conflict of interest arise in the future, I will seek guidance from a Treasury ethics official.

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.

Provided 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 (*e.g.*, an Inspector General's office), professional association, disciplinary committee, or other ethics enforcement entity at any time? Have you ever been interviewed regarding your own conduct as part of any such inquiry or investigation? If so, provide details, regardless of the outcome.  
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? Have you ever been interviewed regarding your own conduct as part of any such inquiry or investigation? 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.  
None.

#### **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 BRENT NEIMAN, PH.D.

QUESTIONS SUBMITTED BY HON. ROBERT MENENDEZ

*Question.* As I mentioned in my questioning, I am concerned about the growing trend of the IFIs bowing to Chinese pressure.

If you are confirmed, how will you go about approaching malign Chinese influence at the IFIs?

Answer. Countering malign influence in the IFIs depends on reasserting American leadership in the IFIs and reaffirming the U.S. commitment to multilateralism, which is a priority for the Biden-Harris administration. If confirmed, I look forward to working with Secretary Yellen, our U.S. Executive Directors, and Congress, as well as like-minded partners from other countries, in underscoring this message; reinforcing the importance of the IFIs' commitment to high standards, transparency, and integrity; emphasizing that all shareholders, including the PRC, need to play appropriate roles and fulfill responsibilities in the IFIs; and delivering financing and policy advice to other countries that contribute to increased transparency, sound governance and policies, and increased capacity to counter malign influence.

*Question.* I also want to ask about how you think the IFIs should be helping developing countries in their post-COVID economic recovery. G20 proposals like the Debt-Service Suspension Initiative and the authorization of IMF special drawing rights are great tools and have helped struggling countries, but it is my belief there is more to be done. I know you, in your role at the University of Chicago, have done research on this very issue. If you are confirmed, how will you use the voice and vote at the IMF and World Bank to ensure that developing countries have more flexibility in their post-COVID economic recovery?

Answer. If confirmed, I look forward to working with Secretary Yellen, our U.S. Executive Directors, and Congress to promote robust financing and policy advice from the International Financial Institutions to support a strong, sustainable, and inclusive recovery in both advanced and developing countries, building on the important measures that the international community has already implemented for COVID-19 response and recovery. If confirmed, I will work with colleagues, as well as like-minded partners, to use the U.S. voice and vote in the IFIs to promote sound macroeconomic and financial policies, good governance, sustainability, inclusion, and private and domestic resource mobilization, while providing development assistance that responds to countries' own needs, challenges, and investment priorities.

*Question.* Further, how do you plan on using our voice and vote to counter China around the world, or for issues surrounding climate change?

Answer. Countering PRC influence around the world depends on reasserting American leadership in the IFIs and reaffirming U.S. commitment to multilateralism and working with allies, which is a priority for the Biden-Harris administration. If confirmed, I look forward to working with Secretary Yellen, our U.S. Executive Directors, and Congress, as well as like-minded partners from other countries, to use the U.S. voice and vote to underscore this message; reinforce the importance of the IFIs' commitment to high standards, transparency, and integrity; promote increased mobilization of domestic and private-sector resources; and deliver financing and policy advice to other countries that contribute to increased transparency, sound governance and policies, and increased capacity to counter malign influence.

Similarly, I look forward to working with others in the U.S. Government and like-minded partners to use the U.S. voice and vote to promote strong IFI engagement on providing financing and policy advice to support countries in mitigating and adapting to climate change, especially as the IFIs play a key role in meeting our international climate finance commitments. I understand that Secretary Yellen has been actively engaging with the leadership of the multilateral development banks to encourage them to adopt ambitious programs related to climate, stand up new facilities targeting climate change, fully align their operations with the Paris Agreement, and increase mobilization of private finance. If confirmed, I will assist in carrying forward these efforts.

*Question.* During your hearing, you committed to "absolutely and fully engage" with me and my office related to a 10th general capital increase for the Inter-American Development Bank. If confirmed, what specific steps would you take to advance a 10th general capital increase for the IDB?

Answer. I understand that IDB Group shareholders have decided on a process to examine the policy priorities, challenges, and opportunities of the IDB Group and the region, starting with a program of analytical work. If confirmed, I look forward to learning more about the details of this work, which is examining the utility of new capital for the private- and/or public-sector arms of the IDB Group, including borrowing countries' interest in the various lending instruments of the IDB, and sovereign borrowers' ability to absorb resources. I reaffirm my commitment to engage with you and your office regarding the IDB Group and Treasury's engagement with the region.

*Question.* During your hearing, you committed to work with me and my office to develop a policy framework in support of a 10th general capital increase for the Inter-American Development Bank, one that address longstanding priorities of democratic governance, climate change, and countering China's engagement in the hemisphere. If confirmed, what steps would you take to work with me and my office to develop a framework of policy priorities to accompany a 10th general capital increase for the IDB?

*Answer.* If confirmed, and as addressed above, I will look forward to learning more about the details of work underway at the IDB Board, which is examining the utility of new capital for the public- and/or private-sector arms of the IDB Group, including borrowing countries' interest in the various lending instruments of the IDB, and sovereign borrowers' ability to absorb resources. Any new capital contributions from the United States to the public- and/or private-sector arms of the IDB Group will require authorization, and I am aware that the Senate has included authorization for a capital increase for the public-sector window of the IDB in the China bill. I commit to engaging with you and your office on any policy framework that the administration might propose as the basis for a request for authorization and appropriations for the private and/or public sector arms of the IDB.

*Question.* What would be your policy priorities inside negotiations related to a 10th general capital increase for the IDB?

*Answer.* If confirmed, my policy priority for the IDB Group is to ensure that the IDB Group remains a key partner for the United States and the region in advancing market-driven, sustainable, inclusive growth in Latin America and the Caribbean, including through promotion of good governance and transparency, sound policy advice, and adherence to high standards and financial sustainability. I understand that IDB Group shareholders have decided on a process to examine the policy priorities, challenges, and opportunities of the IDB Group and the region, starting with a program of analytical work. If confirmed, I look forward to learning more about the details of this work and reaffirm my commitment to engage with you and your office regarding the IDB Group and Treasury's engagement with the region.

*Question.* What is your assessment of how a 10th general capital increase for the Inter-American Development Bank could complement the Biden administration's Build Back Better World (B3W) initiative?

*Answer.* I understand that IDB Group shareholders have decided on a process to examine the policy priorities, challenges, and opportunities of the IDB Group and the region, starting with a program of analytical work. If confirmed, I look forward to learning more about the details of this work. Regardless of any future decisions by shareholders as a result of this work, the private-sector arm of the IDB Group can be an important complement to B3W's emphasis on high-quality, private-sector-led infrastructure development, given the broader IDB Group's own adherence to high social, environmental and fiduciary standards; emphasis on fostering good governance, transparency, and private-sector development in Latin America and the Caribbean; policy advice and financing supporting infrastructure development and investment climate reform; and the strong leadership role of the United States and partnership with the region.

*Question.* Given the social and economic impact of the global COVID-19 pandemic on Latin America and the Caribbean, what is your assessment of the role that the Inter-American Development Bank can play in support the region's economic recovery from the pandemic?

*Answer.* The IDB has longstanding experience partnering with countries to strengthen social protection frameworks, foster private sector development, promote equitable access to public services and market opportunities, and build capacity in the public sector. Together with the IDB's collaboration with other partners in supporting equitable and efficient vaccine rollout, these areas are all critical to minimize social and economic scarring from the pandemic and support inclusive and climate-resilient recovery across the region. With many governments in the region needing to restore fiscal buffers in the medium-term, the IDB's contributions to increasing the effectiveness of public sectors and supporting private-sector-led growth will be particularly important. The IDB should continue to strengthen its focus on governance and transparency in the region.

*Question.* Economic growth and development in Latin America and the Caribbean have long been limited by a deficiency in modern infrastructure. Can the United States help Latin American and Caribbean governments meet those needs solely with the capacity of its development finance institutions?

Answer. I do not believe so. Compared to faster-growing regions of the world, most of the countries in Latin America and the Caribbean have low domestic savings and investment. Several feature extremely low tax-to-GDP ratios. Productivity is relatively weak, and much of the region remains outside of global value chains. The International Financial Institutions and U.S. development agencies provide significant financing and policy advice to regional governments, but it is essential that domestic policies provide an environment that supports international and domestic private-sector investment in infrastructure. Bilateral and multilateral development finance institutions can offer incentives to create and implement such policies, but they cannot overcome local political and security obstacles on their own.

*Question.* What is your assessment of the role that the Inter-American Development Bank could play in helping Latin American and Caribbean nations address infrastructure deficits?

Answer. Development finance institutions, including the IDB Group, can and do provide substantial financing and policy advice for infrastructure projects and to mobilize increased private investment, including through reforms and capacity development to improve the investment environment. However, to meaningfully address the region's infrastructure deficits and improve the investment climate, governments must complement such assistance with sound macroeconomic and financial policies, commitment to good governance and transparency, rule of law, and other efforts to increase savings and investment.

*Question.* Would a 10th general capital increase strengthen the IDB's ability to help Latin American and Caribbean government's address infrastructure needs?

Answer. I understand that IDB Group shareholders have decided on a process to examine the policy priorities, challenges, and opportunities of the IDB Group and the region, including as related to infrastructure development, starting with a program of analytical work. If confirmed, I look forward to learning more about the details of this work. Development finance institutions, including the IDB Group, can and do provide substantial financing and policy advice for infrastructure projects and to mobilize increased private investment, including through reforms and capacity development to improve the investment environment. However, to meaningfully address the region's infrastructure deficits, governments must complement such assistance with sound macroeconomic and financial policies, commitment to good governance and transparency, rule of law, and other efforts to increase savings and investment.

*Question.* If the United States is unable to help Latin American and Caribbean governments address their infrastructure needs, do you assess that the PRC would seek to fill that void? What would be the impact of expanded China's investment and presence in Latin America and the Caribbean for U.S. national interests?

Answer. It is important that the United States restores and strengthens our partnerships in the region and keeps countries from engaging in irresponsible and opaque borrowing, including from the PRC. Through the IFIs and with our allies, we must promote high-quality, private-sector-led, inclusive, and sustainable growth and development policies, with particular focus on democratic governance and respect for human rights, anti-corruption and transparency, sound macroeconomic and financial management, and debt management capacity and transparency. We must aggressively contrast these features with poor outcomes experienced in the region, such as the case of Venezuela's engagement with China, which include low-quality infrastructures and unsustainable debt burdens. If confirmed, I look forward to working with Secretary Yellen, our U.S. Executive Directors, and Congress, as well as like-minded partners from other countries, to achieve these goals.

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QUESTIONS SUBMITTED BY HON. MIKE CRAPO

INTERNATIONAL CAPITAL FLOW MEASUREMENT

*Question.* Some of your research identifies relations to work by economist Gabriel Zucman in relation to, for example, "the economic impact of tax havens." With respect to income and wealth tracing, to which some of your work applies, some of Professor Zucman's related analyses have been criticized on the bases of measurement and incorporation of a normative agenda, leading to results that many view as substantially inaccurate and substantially misleading. Some of the work that you have undertaken focuses on "unwinding corporate ownership chains and accounting for offshore issuance in tax havens around the world."

Many statistics and measures have shortcomings and advantages relative to the underlying object that those statistics and measures are intended to quantify. Some of your work identifies alternative measures to foreign investment flows and stocks. Do you believe that existing measures, used partly to inform policymaking, with respect to global capital allocations, bilateral investment statistics, and global capital flows, are fundamentally flawed and in need of revision?

Answer. In some recent academic work, my coauthors and I report several measures of bilateral investment exposures generated using methodologies that differ from the residency-based approach that underlies most official statistics. For example, we report a set of bilateral investment exposures that reflects a nationality-based approach as well as a set that reflects the geographic distribution of firms' sales. Depending on the question at hand, standard measures or our alternative measures may be more appropriate to use for analyses. In many cases, analysis can benefit from simultaneously considering multiple available measures.

*Question.* Do you intend at Treasury, if confirmed to the position to which you have been nominated, to work to alter any of the measures that have been used to date by academics and policymakers with respect to understanding how capital is allocated globally; and, if so, what alternative measures will you be advocating?

Answer. I think economic data and statistics, including those covering how capital is allocated globally, are valuable public goods. These data improve our understanding of the economy and serve as inputs into the design or evaluation of policy decisions. My understanding is that entities that collect or compile these statistics, including groups at Treasury, are continuously thinking of ways to expand and improve upon the usefulness of their economic data, and if confirmed, I would support such efforts.

#### ECONOMIC RESPONSES TO RECESSIONS

*Question.* In a March 2020 paper for the IGM Forum, you and several coauthors discussed policy responses to the "COVID-19 Crisis." To aid economic recovery from shutdowns, one recommendation was that ". . . firms might be incentivized to hire aggressively by using a payroll tax cut." In March of 2020, the unemployment rate (U-3) was 4.4 percent, with a prospect of significant future increases.

In the event that there is a future severe economic shock likely to lead to significant unemployment rate increases, do you still consider a payroll tax cut to be a worthwhile policy to consider in response? If not, what has changed your thinking relative to your March 2020 paper?

Answer. A payroll tax cut can stimulate the economy by encouraging consumption and increasing employment. If there were a future severe economic shock, the advisability of employing this form of economic stimulus relative to others would depend on multiple factors, including the nature and source of the shock, the anticipated duration of the shock, and the way in which the shock affected different households or industries. The choice of the optimal form of stimulus would also need to take into account other policies in effect at the time.

#### NEGOTIATIONS IN INTERNATIONAL FORUMS

*Question.* The position to which you have been nominated, as your testimony reveals, ". . . plays a key role in directing Treasury's engagement with other countries, bilaterally and through multilateral institutions including the G7, G20, and the IMF." Engagement internationally under the Biden administration related to Treasury's functions has been largely unilateral, with, at best, minimal substantive information being shared with Republican members of this committee. On international taxes, for example, Republican input has not been adequately incorporated into the administration's unilateral negotiations. Briefings with staff from Treasury have been void of substantive quantitative analyses that must have been performed before proclamations have been issued about some sort of international "agreement" on global taxation, including ceding of U.S. rights to tax U.S. tax bases. These are important policy decisions that will influence constituencies of members from both sides of the aisle, and cannot be made unilaterally by one political party.

Please identify steps that you would take, if confirmed, to ensure that the Treasury Department, in international engagements, represents member of Congress from both sides of the aisle.

Answer. I understand that Treasury staff and leaders communicate regularly with members of Congress and their staffs from both sides of the aisle about key policy

priorities, and if confirmed, I will continue to do so to ensure that we understand and take into account the range of views across the U.S. Government.

#### DEBT LIMIT

*Question.* The debt limit represents a statutory limitation on the value of debt subject to the limit. Increasing the debt limit serves to facilitate fresh borrowing in order to fund past obligations made by Congress and signed into law by the President. Increasing the debt limit or suspending the debt limit for a fixed future period also facilitates increased borrowing to facilitate funding of new obligations made by Congress and signed into law by the President between the date at which the debt-limit increase (or suspension) was made and the date at which the new, higher, debt limit binds (under a suspension, there will be a new, higher limit at the date on which the limit is reinstated). The debt limit, and any changes in probabilities of it being breached, can have domestic and international financial and economic effects, and the position to which you have been nominated would confront such effects.

A debt limit increase or suspension is not exclusively limited to increasing debt-issuance authorization that would only facilitate fresh borrowing to pay obligations that have been made prior to the date of the increase or suspension. Do you agree? If not, fully explain why not.

*Answer.* Increasing the debt limit does not authorize any new spending. It simply allows the government to finance legal obligations made by Congresses and Presidents of both parties.

#### LEGISLATIVE INFORMATION

*Question.* If confirmed, do you commit to full transparency regarding any proposal put forward by the administration regarding Federal debt management, and to ensure that public pronouncements of facts can be judged with reference to written details of the proposals that are available to all?

*Answer.* Federal debt management would not generally be part of my responsibilities in the position for which I have been nominated. However, if confirmed, I commit to working with this committee to enable and facilitate the sharing of information. I respect the committee's need for information and look forward to working with the committee.

#### INFLATION

*Question.* As I mentioned in the hearing, the Biden administration is planning a massive increase in taxes and spending, to be accomplished unilaterally by one political party through reconciliation. While the size, and indeed contents, of this fiscal agenda are still unclear, I am concerned about the possibility that they will exacerbate inflation trends, which even former Treasury Secretary Larry Summers has described as “disturbing.”

In September, the OECD released its Global Economic Outlook interim report. It noted:

Near-term inflation risks are on the upside, particularly if pent-up demand by consumers is stronger than anticipated, or if supply shortages take a long time to overcome. . . . [A] lasting upward move in inflation from the low rates observed before the pandemic is likely to occur only if wage inflation intensifies substantially, or if inflation expectations drift upwards. . . . [S]izeable increases in wages are occurring in some contact-intensive sectors that have reopened in the United States, such as leisure and hospitality.

The report also indicated that household 1-year inflation expectations in the United States now exceeds 5 percent.

In his town hall last Saturday, President Biden was asked whether he thought current levels of inflation would last into 2022. The president said, “I don’t think so. I don’t think it will last if—depending on what we do. If we stay exactly where we are, yes. If we don’t make these investments, yes.”

How will the social spending programs and increased taxes being discussed in the administration’s reconciliation proposals (the “investments”) address pent-up demand, supply shortages, wage inflation, and inflation expectations?

*Answer.* Treasury has stated that the administration's Build Back Better legislation is entirely paid for due to tax increases on corporations and well-off individuals. As such, the legislation should not contribute significantly to demand pressures and will likely reduce deficits over the long term. The legislation includes investments in climate change mitigation, education, and health care that should increase productivity and long-run aggregate supply as well as investments in child care that should help boost short-run labor supply.

*Question.* What risks do higher domestic taxes and substantial inflation pose to the reputation of the United States as a good destination for foreign investment?

*Answer.* The return to investment in the United States is greater when all of our workers are well-educated, healthy, and resilient, and when our infrastructure is modern, efficient, and sustainable. The tax increases included in the Build Back Better legislation enable such investments in our workers and the overall business environment and put the U.S. fiscal system on a sounder footing. Further, the agreed changes to the international corporate tax environment will end the global race to the bottom. These steps will strengthen the reputation of the United States as a great destination for foreign investment.

*Question.* By contrast, what would be the effects on supply-side bottlenecks, inflation, economic growth, and foreign direct investment in the United States resulting from investment in traditional physical infrastructure, such as the Infrastructure Investment and Jobs Act provides for?

*Answer.* Investment in physical infrastructure will also boost economic potential in the coming years and strengthen the incentives for foreign direct investment in the United States. The administration has recognized the importance of physical infrastructure and has made those a centerpiece of the American Jobs Plan.

However, there are other essential components for boosting economic growth in the long run. Investments in our workforce and increases in labor supply from expanding access to child and elder care are also critically important. For example, women's labor force participation now trails many other advanced countries. The lack of affordable child care and elder care is likely an important factor driving this. Allowing more workers to participate in the economy can improve the allocation of talent, encourage innovation, and raise productivity.

*Question.* Some argue, based on things like inflation-expectation readings drawn from yield curves, that inflation expectations are contained. There are at least three reasons for caution about such arguments. One is that the process governing changes in inflation expectations, or, more generally, an aggregation of beliefs about the future evolution of economic variables relevant for inflation determination, is not well understood. Second, yield-curve inferences may not provide reliable forecasts. Third, as the financial crisis showed, officials who make claims of containment (*e.g.*, housing troubles prior to the full onset of the financial crisis) may find that the claims are not borne out by subsequent, quite devastating realizations.

Given that inflation and expectations about inflation are being generated in an unusual, perhaps unprecedented, environment with not-well understood "supply chain" breakage dynamics, should we not be extra prudent and avoid stoking inflationary pressures at this point using massive increases in fiscal outlays, as in the reconciliation bill being considered by one party in Congress, on the heels of already massive fiscal policies that have pumped trillions of dollars into spending, incomes, and savings?

The U.S. is the best place in the world to do business. It is a prized destination for foreign investment. I want to keep it that way.

If confirmed, I encourage you to use your position to ensure the U.S. remains the premier destination for international investment.

*Answer.* The Build Back Better proposals are fundamentally different than the American Rescue Plan or earlier relief packages adopted on a bipartisan basis during the pandemic. First, the Build Back Better proposals contemplate spending gradually over the course of a decade, with a substantial component devoted to infrastructure spending which takes time to outlay. Second, these proposals are more than fully paid for, and are estimated to reduce deficits in the long run. Third, the Build Back Better agenda would meaningfully boost the productive capacity of the U.S. economy. Improving transportation infrastructure, building more affordable housing, lowering drug prices, and increasing labor force participation are all disinflationary. These proposals would help ensure that we remain an attractive destination for foreign investment.



## FOREIGN EXCHANGE VALUE OF THE DOLLAR

*Question.* Do you believe in a “strong dollar” policy and, if so, can you define what that means and how the administration’s policies advance such a policy?

*Answer.* As only the Treasury Secretary should speak on matters of the dollar, let me repeat what Secretary Yellen has stated: the value of the U.S. dollar and other currencies should be determined by markets. Markets adjust to reflect variations in economic performance and generally facilitate adjustments in the global economy.

*Question.* What do you believe will be the effect on the exchange-value of the dollar of the significant increases in inflation that we have recently seen, and which may persist for a significant future period given ongoing, unresolved supply-chain frictions?

*Answer.* The dollar has appreciated by roughly 3 percent over the course of 2021, reflecting a wide range of factors including the strength of our economy.

*Question.* What do you believe is the policy utility of the Exchange Stabilization Fund in stabilizing exchange rates governing the U.S. dollar relative to foreign currencies, and how, if at all, would you use the Exchange Stabilization Fund to execute whatever are the administration’s foreign-exchange objectives?

*Answer.* Over the past 20 years, foreign exchange interventions by the major economies have been rare. When appropriate, Treasury has used the Exchange Stabilization Fund (ESF) to intervene in foreign exchange markets in coordination with the Federal Reserve and with other major partners to stem excess volatility and disorderly movements in foreign exchange markets. The ESF continues to retain its policy utility in this regard.

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 QUESTIONS SUBMITTED BY HON. JAMES LANKFORD

*Question.* As we discussed during your confirmation hearing, on August 15, 2021, the Treasury Department froze the Afghan government’s reserves held in the United States (mostly in the Federal Reserve Bank of New York), which have an estimated value of as high as \$9.5 billion. As a result of this action, the Taliban government has not had access to this reserve capital of Afghanistan’s central bank, Da Afghanistan Bank.

Under what circumstances would the administration unfreeze the Da Afghanistan Bank’s reserve assets in U.S. financial institutions?

*Answer.* It is important to note, first, that a U.S. decision on this question will involve other entities, including the Federal Reserve and the State Department. It is too early to say at this time if or when a decision to unfreeze Da Afghanistan Bank’s reserve assets will be made. If confirmed, I look forward to working with others in the U.S. Government, Congress, and other stakeholders to examine these issues in more detail.

*Question.* Under what circumstances would the administration vote to lift current restrictions on lending to Afghanistan at the World Bank or International Monetary Fund?

*Answer.* It is too early to say at this time. If confirmed, I look forward to working with others in the U.S. Government, Congress, and other stakeholders to examine these issues in more detail, including to examine options to provide humanitarian support to the Afghan people while preventing the flow of funds to any person or entity seeking to harm the United States.

*Question.* A big part of your job description will be oversight over U.S. policy and strategy at Multilateral Development Banks and International Financial Institutions (IFIs) such as the International Monetary Fund, World Bank, and Inter-American Development Bank.

What is your strategy to coordinate the efforts of U.S. Executive Directors at the IMF, World Bank and IDB are in alignment with our broader foreign policy agenda across all multilateral entities?

*Answer.* U.S. participation in the International Financial Institutions is critical to achieving our foreign policy objectives. I will work closely with our Executive Directors at each IFI to identify opportunities to advance important U.S. foreign policy interests, and I will coordinate their efforts to ensure that we are moving in sync

across institutions. My understanding is that Treasury International Affairs oversees several processes to coordinate interagency review of IFI projects, programs, and major policy decisions and provide direction to the U.S. Executive Directors on the exercise of the U.S. voice and vote. If confirmed, I will fully support these robust processes and will maintain Treasury's ongoing dialogue with other institutions within the U.S. Government, including the White House and the State Department, to ensure that our work in the IFIs reinforces key U.S. policy objectives.

*Question.* The influence of China at International Financial Institutions and other multilateral organizations is well-documented and a top concern of this committee. It recently came to light that the IMF had elevated China's ranking on the Doing Business report, which is the IMF's annual index that measures the business environment in 190 countries and ranks them based on how friendly their investment and regulatory climate.

What is your strategy to elevating American leadership in the entities within your portfolio? Specifically, how do you plan to leverage US influence and counter China's malign influence at international financial institutions, which is counter to the interests of the U.S. and our allies?

*Answer.* It is critical that we ensure the integrity of the international financial institutions and the credibility of their analysis and reports. If confirmed, I will work with other key countries represented in these institutions to push for improved governance processes and protections for whistleblowers. I will also work to ensure fair and equal treatment for all members of these institutions, and that all members, including China, fulfill the obligations, appropriate roles, and responsibilities of membership in these institutions.

*Question.* China is still considered a "developing country" at the World Bank, despite exceeding the Bank's own graduation threshold since 2016. In December 2019, the Board of Governors approved the Country Partnership Framework with China, which continues loans to China for an additional 5 years. China's continued receipt of this development financing from the World Bank frees up other capital it raises through taxation and other means to support its predatory Belt and Road Initiative.

Will you work to ensure that countries who have exceeded the graduation threshold (currently measured at a country's gross national per capita income level of \$6,795) such as China do not receive World Bank financing?

*Answer.* I believe the PRC meets the International Bank for Reconstruction and Development's criteria for graduation, given its high per capita income, institutional capacity, and ample access to other sources of finance. If confirmed, I will press for the PRC's graduation, and will seek to advance this position by working with the U.S. Executive Director, World Bank Management, Secretary Yellen and Treasury colleagues, Congress, and other U.S. agencies, as well as like-minded partners. I understand that as part of the reform commitments accompanying its 2018 capital increase, the World Bank committed to decrease the share of lending going to countries with per capita income above the graduation threshold, more fulsomely identify the constraints to graduation for countries with per capital incomes above the graduation threshold, and better target lending in those countries on addressing the constraints identified. If confirmed, I will encourage the World Bank to adhere to those commitments, in coordination with the U.S. Executive Director and Treasury colleagues.

*Question.* While well-intentioned, I am concerned that an SDR issuance would be counterproductive to two paramount U.S. objectives: stabilizing the economy and countering Chinese influence. Since many developing countries already have high levels of indebtedness to China, this liquidity boost could simply enable them to pay back Beijing what they already owe.

Prior to supporting additional SDRs, what steps will you take to ensure that borrowing countries will not use some or all of the funds from their SDR issuance to pay back Belt and Road Initiative loans to China?

How will you ensure that borrowing countries are forthcoming and transparent about their respective debt exposures to the PRC and other predatory lenders?

*Answer.* As SDRs are an international reserve asset, any support for a new SDR allocation would be based on an assessed deficit in global reserves, something I do not currently expect based on the global economic outlook. SDRs, as an international reserve asset, are an unconditional source of liquidity, so neither the United States nor the IMF can directly control their use by other countries. However, I will continue to press the importance of IMF support and consultation with

countries considering the use of their SDRs and oppose their use to support new unsustainable or irresponsibly contracted sovereign debt obligations, including to China. I will also press the IMF and World Bank to improve public debt transparency practices and debt data disclosure from borrowing countries.

*Question.* Do you believe the United States should oppose loans to Iran and other state sponsors of terrorism at the IMF and World Bank?

Answer. Yes; consistent with U.S. law, the United States should oppose any IFI loans to Iran or other state sponsors of terrorism.

*Question.* China has increased investments in Latin America as part of its Belt and Road Initiative in an attempt to strengthen its relationships in the Americas and peel away U.S. partners.

What is your strategy to utilize U.S. influence and leadership at the Inter-American Development Bank to provide an alternative to China's predatory lending to our friends in Latin America?

Answer. It is important that the United States restores and strengthens our partnerships in the region and keeps countries from engaging in irresponsible, opaque, or unsustainable borrowing, including when borrowing from the PRC. To do this, we must reassert American leadership in the IFIs, including the IDB Group, and reaffirm the U.S. commitment to multilateralism, which is a priority for the Biden-Harris administration.

Through the IFIs and with our allies, we must promote high-quality, private-sector-led, inclusive, and sustainable growth and development policies, with particular focus on democratic governance and respect for human rights, anti-corruption and transparency, sound macroeconomic and financial management, and debt management capacity and transparency. We must aggressively contrast these features with poor outcomes experienced in the region, such as the case of Venezuela's engagement with China, which include low quality infrastructures and unsustainable debt burdens.

If confirmed, I look forward to working with Secretary Yellen, our U.S. Executive Directors, and Congress, as well as like-minded partners from other countries, to achieve these goals.

*Question.* Over the last few months, my Democratic colleagues have proposed trillions in tax increases. I am concerned that such tax increases will discourage growth and investment, and will put U.S. companies and their workforces at a competitive disadvantage.

Do you believe that a competitive tax code and a reasonable regulatory environment are necessary for attracting foreign investment to the United States?

Answer. The investment climate surely benefits from a sound tax and regulatory environment, and the return to investment in the U.S. also increases when all of our workers are well-educated, healthy, and resilient and when our infrastructure is modern, efficient, and sustainable. The tax increases included in the Build Back Better legislation enable such investments in our workers and the overall business environment and put the U.S. fiscal system on a sounder footing. Further, the agreed changes to the international corporate tax environment will end the global race to the bottom. These steps will strengthen the reputation of the U.S. as a great destination for foreign investment.

*Question.* How can we ensure that the U.S. remains a prime destination for domestic and foreign sourced investment?

Answer. It is important that we make adequate investments that lead to sustained productivity growth, including repairing roads and bridges, expanding broadband access, investing in the education and training of U.S. workers, from early childhood through higher education, and taking serious actions that respond to the reality of climate change. These sorts of public investments require tax revenue, and the United States raises much less tax revenue as a share of GDP than do most peer nations. Improved infrastructure and well-trained workers are complements to private capital and will help keep the U.S. a prime destination for domestic and foreign sourced investment.

*Question.* In response to questions from Senator Crapo last week, you said that, "When thinking about the destination of the United States for investment, the same things presumably that make it a better destination for foreign investment, make it a better place to do domestic investment." You continued to state that, "As you

raise taxes, the question is, are you raising them in a way that contributes to the productivity of the workforce, that makes the country's infrastructure better, that invites investment, whether it's domestic-sourced or foreign-sourced?"

According to the Tax Foundation's preliminary estimates, the legislation marked up by the House Ways and Means Committee in September would have eliminated hundreds of thousands of full-time equivalent jobs and moved the U.S. to 28th place on the International Tax Competitiveness Index. Further, according to the Joint Committee on Taxation, Americans at every income level would have seen tax increases under that legislation.

Now, under the recently released Build Back Better framework, the Tax Foundation estimates that the recently released legislation would reduce long-run economic output by nearly 0.4 percent, eliminate roughly 103,000 full time jobs, and reduce average after-tax incomes for many Americans in the long run.

Given that data, are you concerned that these proposals could threaten the U.S.'s reputation as a prime destination for investment, whether foreign or domestic?

Answer. Other organizations have much more positive assessments of the growth potential of these sorts of public investments. For instance, a new analysis by Moody's Analytics projected that if the bipartisan Infrastructure Investment and Jobs Act and the Build Back Better Act are enacted, total GDP will increase by nearly \$3 trillion relative to the baseline over the next decade. Moody's Analytics estimates that the two historic bills will also raise annual employment over the next decade by an average of 1.5 million jobs. An earlier International Monetary Fund analysis of the American Rescue Plan, the American Jobs Plan, and the American Families Plan—the infrastructure deal and reconciliation bill are based on the latter two—found that the plans would boost the level of GDP by 1 percent in 2030.

*Question.* Are you concerned that these proposals, contrary to your statement, would diminish productivity of our workforce and discourage investment—throwing off the balance that you said is necessary?

Answer. Given the considerations in my prior answers, I believe these proposals will help U.S. workers and improve the environment for U.S. investment.

*Question.* Congress has expressed concern in the past about the relatively short term lengths (2 years) of the Executive Directors and Alternative Executive Directors at International Financial Institutions compared to Ambassadorships and other comparable political appointments, and whether this short length of service impedes U.S. influence in multilateral forums compared to our competitors. The FY 2021 appropriations bill directs Treasury to submit a report containing a review of amending the term length for the United States Executive Director and the United States Alternate Executive Director of the World Bank by June 25, 2021, but the Department has yet to do so.

If confirmed, will you commit to (A) thoroughly examining all options on this matter and (B) ensuring this report is delivered to Congress?

Answer. Yes. If confirmed, I look forward to learning more about this issue and consulting further with you and your staff.

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#### QUESTIONS SUBMITTED BY HON. TODD YOUNG

*Question.* Secretary Yellen has been negotiating the OECD "Pillar One" agreement. She has suggested that Pillar One can be implemented without a treaty—and thus without the approval of two-thirds of the Senate.

Does Pillar One implementation in the United States require Senate ratification of a treaty, yes or no? Please explain your answer in detail.

Answer. I understand that Pillar One is subject to ongoing international discussion, and what is needed to implement Pillar One will depend on the details of those discussions. If confirmed, I hope to work with Congress and my colleagues at Treasury and the State Department to determine the appropriate approach to implementing an agreement.

*Question.* The United States has been working with G20 countries to provide debt relief to developing countries in the wake of the COVID-19 pandemic. This cooperation is taking place under the Common Framework agreement reached in November 2020 among G20 members. However, China, the world's largest sovereign lender, is not complying with its commitments under the Common Framework. Its existing

loans are not transparent and are riddled with loopholes and requirements designed to trap developing countries. One recent report suggests that developing countries now owe over \$385 billion in hidden debts to China.<sup>1</sup>

Should anything more be done to ensure China complies with its commitments under the Common Framework agreement?

Answer. I have heard concerns that China is not complying with its commitments. I am also concerned about China's participation in the Common Framework. If confirmed, I will work within Treasury as well as with our partners in the G7 and G20 and the IMF and World Bank to address these issues.

*Question.* What are the consequences of China not participating fully in the Common Framework and other debt relief efforts?

Answer. Without China's full and transparent participation in the Common Framework, countries will not be able to receive timely and effective debt treatments to restore debt sustainability. This will compound the current difficulties that low-income countries are facing, including rising poverty levels, increasing inequality and a lack of fiscal space.

*Question.* What are the risks of China squeezing its debtor countries?

Answer. My understanding is that China has resorted to various strategies and methods to exert pressure on debtor countries, such as the insertion of non-disclosure and collateral arrangements to maximize Chinese repayment prospects. If I am confirmed, I will work with allies and partners to hold China accountable for practices that could be harmful to debtor countries.

*Question.* What can be done to pressure China to increase transparency on its overseas lending activities?

Answer. If I am confirmed, I will work to push for greater debt sustainability and transparency in various international forums, particularly at the IMF and the World Bank.

*Question.* The World Bank, IMF, and other development banks have provided hundreds of billions in emergency support in response to the COVID-19 pandemic. Yet most of this has been in the form of loans, which may create debt sustainability risks as interest rates rise. And, of course, multilateral development bank (MDB) funding pales in comparison to the amounts these same countries owe China under obscure and non-transparent terms.

How can we ensure that multilateral bank lending is sustainable and does not overly burden developing countries with additional debt they cannot pay off?

Answer. The MDBs calibrate the terms and assistance envelope available to countries based on assessments of per capita income, creditworthiness, and debt sustainability, with poorer, less creditworthy countries receiving concessional assistance and the poorest countries with the highest risk of debt distress receiving grants or highly concessional loans. The World Bank regularly produces debt sustainability analyses jointly with the IMF for low-income countries to assess the risk of debt distress. The MDBs also play an important role in collecting and reporting on debt data from developing countries, promoting debt transparency, and providing financial and technical assistance to build debt management capacity in developing countries.

*Question.* What steps can the United States take to ensure that the World Bank or other multilateral development bank assistance is not used to simply pay off Chinese loans?

Answer. The World Bank and other MDBs can play an important role in collecting and reporting on debt data from developing countries, promoting debt transparency, and providing financial and technical assistance to build debt management capacity in developing countries. I understand that the International Development Association (IDA) has a Sustainable Development Finance Policy (and other MDB concessional windows have adopted or are in the process of adopting such a policy) that incentivizes IDA-eligible countries to undertake reforms related to debt management capacity and transparency on an annual basis and in some cases limits non-concessional borrowing. If confirmed, I will advocate for continued focus on this work and strong support for implementing the G20 Common Framework. Similarly, I will work with the U.S. Executive Directors to promote strong internal controls,

<sup>1</sup><https://www.aiddata.org/publications/banking-on-the-belt-and-road>.

auditing, and evaluation of MDB projects to help monitor that MDB assistance is going towards its intended purposes and delivering strong development results.

*Question.* If confirmed, what would be your approach to engaging with China on global debt transparency standards?

Answer. If confirmed, I will work with allies and partners, as well as with Chinese counterparts, bilaterally and in multilateral institutions, to pressure China to improve debt transparency in line with international standards and practices, including the G20 Operational Guidelines for Sustainable Financing.

*Question.* On October 16, 2021, when asked by CNN’s Jake Tapper whether it sounded tone deaf to suggest that rising prices and empty grocery store shelves are “high-class problems,” White House Press Secretary Jen Psaki responded, “A year ago, people were in their homes, 10 percent of people were unemployed, gas prices were low because nobody was driving, people weren’t buying goods because they didn’t have jobs. Now more people have jobs, more people are buying goods, that’s increasing the demand. That’s a good thing. At the same time, we also know that the supply is low because we’re coming out of the pandemic. And because a bunch of manufacturing sectors across the world have shut down because ports haven’t been functioning as they should be. These are all things we’re working through. What people should know is that inflation will come down next year. Economists have said that. They’re all projecting that.”<sup>2</sup>

Based on your considerable experience and expertise as an economist, do you agree with the White House’s explanation for the inflationary environment America is currently facing? Why or why not?

Answer. I agree that the pandemic has greatly shifted consumption patterns and disrupted production in a way that has put upward pressure on prices. First, since the start of the pandemic, U.S. households have shifted their consumption away from services and towards goods; demand for goods is still about 10 percent above pre-pandemic trend. This positive demand shock for goods has resulted in pricing pressures and put stress on international shipping and distribution networks since goods are generally more tradable than are services. Second, COVID–19 outbreaks have shut down some factories and ports in different countries and at different times. This negative supply shock has further added to pricing pressures. Finally, rising commodity prices have been contributing to headline inflation.

As more people are vaccinated and treatments are rolled out in the U.S. and around the world, the impact of COVID–19 will hopefully decrease, and this should alleviate both these demand and supply factors. With a global recovery from COVID–19, the composition of demand should shift back towards services and the cessation of shutdowns and return of workers should abate shipping delays and supply shortages. This logic forms the basis for the view that recent measures of elevated inflation will prove temporary. Consistent with this view, monthly core PCE inflation rates have come down sequentially from their peak in April through to September.

*Question.* As described above, the White House stated that “all” economists are predicting a return to normal levels of inflation in 2022. Specifically, when you do you predict inflation will return to normal levels? Please describe in detail the assumptions you made in developing your response to this question.

Answer. My research as an academic economist has not focused on inflation forecasting. Instead, my recent work has emphasized models of international investment, international trade, exchange rate dynamics, international use of the U.S. dollar, and the differential implications of work-from-home across rich and developing countries. That said, as noted in my previous answer, my best assessment is that the COVID–19-induced shift in demand toward goods and shutdowns of some production has caused inflationary pressures. As such, my view is that as the world recovers from COVID–19, core inflationary pressures will normalize. A quantitative forecast of inflation would also incorporate one’s view of the monetary policy reaction function, *i.e.*, how the Federal Reserve will respond to future economic conditions, and the dynamics of inflation expectations.

A new analysis by Moody’s Analytics shows inflation reverting back to normal levels in late 2022/early 2023, similar to the timing in forecasts from the IMF’s World

<sup>2</sup> <https://www.cnn.com/videos/politics/2021/10/15/jen-psaki-ron-klain-inflation-retweet-tapper-lead-vpx.cnn>.

Economic Outlook and the most recently released median forecast provided by the Federal Reserve.

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QUESTIONS SUBMITTED BY HON. BEN SASSE

*Question.* If confirmed, will you commit to blocking any assistance or financing by the World Bank, IMF, or Asian Development Bank for Afghanistan, since its government is now controlled by the Taliban, except for humanitarian assistance provided through the UN or other international organizations?

*Answer.* If confirmed, I look forward to working with others in the U.S. Government, Congress, and other stakeholders to examine these issues in more detail, including options to provide humanitarian support to the Afghan people while preventing the flow of funds to any person or entity seeking to harm the United States.

*Question.* How does the Biden administration plan to work with the World Bank and IMF to address the challenges posed by the Belt and Road Initiative on a global scale? In your view, are there situations in which the World Bank or IMF should work with Chinese Government-backed projects that are part of the Belt and Road Initiative? If so, under what criteria? Do you believe that the World Bank and IMF should coordinate with the Chinese Government on assistance to third countries? If so, under what criteria? What are the prospects for closer cooperation between the World Bank and IMF and like-minded infrastructure development finance initiatives, such as the Blue Dot Network?

*Answer.* Countering PRC influence around the world, including through their Belt and Road Initiative, depends on reasserting American leadership in the IFIs and reaffirming U.S. commitment to multilateralism and working with allies, which is a priority for the Biden-Harris administration. If confirmed, I look forward to working with Secretary Yellen, our U.S. Executive Directors, and Congress, as well as like-minded partners from other countries, to use the U.S. voice and vote to underscore this message; reinforce the importance of the IFIs' commitment to high standards, transparency, and integrity; promote increased mobilization of domestic and private sector resources; and deliver financing and policy advice to other countries that contribute to increased transparency, sound governance and policies, and increased capacity to counter malign influence.

I do not believe that the International Financial Institutions should seek to advance the bilateral foreign policy initiative of any single shareholder.

The International Financial Institutions should seek to coordinate with China on creditor transparency to understand and report on China's lending to developing countries, including the amounts and terms (including collateral) and the purpose of such lending so as to reduce risks to debt sustainability, facilitate debt relief where necessary, and avoid duplication of financing to developing countries.

The IFIs can be an important complement to multilateral initiatives focused on high-quality, private-sector-led infrastructure development, given their own adherence to high social, environmental, and fiduciary standards; emphasis on fostering good governance, transparency, and private-sector development; policy advice and financing supporting infrastructure development and investment in climate reform; and the strong leadership role of the United States and our allies in these institutions.

*Question.* Current IMF Managing Director Kristalina Georgieva has been credibly accused of manipulating data to inflate China's standing in the World Bank's 2018 Doing Business survey when she worked at the World Bank. What steps has the Biden administration taken to ensure that the World Bank maintains a transparent and accountable system for awarding contracts to any Chinese Government-backed state-owned enterprises or private Chinese companies?

*Answer.* It is critical that the IFIs take steps to ensure their integrity and that we promote strong accountability and transparency. The Biden-Harris administration is strongly committed to good governance and anti-corruption, including in the governance and management of the International Financial Institutions and through their assistance.

If confirmed, I look forward to understanding steps the U.S. Government has taken within the World Bank regarding procurement transparency. If confirmed, I will work with the U.S. Executive Director, other U.S. Government officials, and like-minded partners to advocate for implementation of a procurement framework

focused on value-for-money over the full lifecycle of a project, rather than awards to the lowest bidder, and greater scrutiny on abnormally low bids; added attention to building contracting capacity and transparency in public financial management in World Bank recipient countries; and enhanced reporting on contract awards for World Bank-funded projects.

I understand that the U.S. Government has tasked agencies to put this into action, and if confirmed, I commit to work with all parts of the U.S. Government and the U.S. Executive Directors to do our part to seek to keep forced labor out of MDB-funded projects and to apply rigorous safeguards and standards to prevent human trafficking and forced labor.

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QUESTIONS SUBMITTED BY HON. JOHN BARRASSO

*Question.* The International Monetary Fund (IMF) with the approval of the Biden administration issued \$650 billion in special drawing rights (SDRs)—the largest in history. Instead of helping the most vulnerable nations struggling with the economic impacts of the coronavirus, the funds also went to wealthy nations and rogue regimes. It appears the majority of the allocations ended up going to those countries that need it the least. Media reports indicate that high-income countries received \$400 billion of the pot, while low-income countries only received about \$21 billion.

What was the amount of special drawing rights issued to the United States and what is the current plan for those resource?

*Answer.* As outlined in the IMF's Articles of Agreement, a general allocation of SDRs is distributed to all members according to their participation, via quota share, in the IMF. Accordingly, the United States, with our 17.43 percent quota share, received 17.43 percent of the \$650-billion SDR allocation, or about 79.5 billion SDRs. The United States is currently working with the IMF and other major economies to develop mechanisms to channel a portion of these SDRs to vulnerable countries through IMF-administered trust funds, and the Biden administration's FY 2022 budget includes a request for authorization to lend up to 15 billion of our SDRs for that purpose.

*Question.* Please provided the amount of funds received by the each of the following countries as part of the special drawing rights: China, Russia, Syria, and Iran.

*Answer.* As noted above, the IMF is required to distribute SDRs to all of its members on the basis of their quota share in the IMF. Accordingly, China, Russia, Syria, and Iran received about 29.2 billion SDRs, 12.4 billion SDRs, 281 million SDRs, and 3.4 billion SDRs, respectively. China, which already has ample international reserves, has supported efforts to channel SDRs to vulnerable countries. SDRs are not a currency and have limited uses on their own. For a country to use its allocation for fiscal support it must exchange SDRs for a usable currency. The United States retains the right to refuse to voluntarily exchange SDRs for dollars with any country.

*Question.* In June, the G7 urged the International Monetary Fund (IMF) to come up with a variety of proposals to channel special drawing rights. The IMF now is looking at ways to reallocate reserves from higher income countries to developing nations.

What are the current mechanisms and proposals being considered to channel special drawing rights?

*Answer.* The administration has worked closely with the IMF and other major economies to develop mechanisms to allow donor countries to voluntarily channel some of their SDRs to countries in need. One option that already exists for SDR channeling is the IMF's Poverty Reduction and Growth Trust, which provides low-cost (currently zero-interest rate) loans to low-income countries in the context of an IMF-agreed program of structural reforms. Since the start of the pandemic, IMF members have already provided over 17 billion SDRs in new loans to the PRGT to support increased IMF lending to the poorest countries and have pledged an additional 5.3 billion SDRs. The IMF and major countries are also working to develop a new facility, the Resilience and Sustainability Trust, or RST. The RST will be financed by channeled SDRs and will provide longer-term financing to countries to build climate and pandemic resilience. President Biden joined other leaders of the G20 recently in a declaration calling for channeling up to \$100 billion in SDRs to vulnerable countries.



*Question.* What protections are in place to ensure that those resources a country wants to reallocate to low-income countries does not go to countries like China, Syria, and Iran?

*Answer.* China has ample international reserves and has no foreseeable need for IMF assistance. IMF lending programs require that countries agree to a program of reforms to address unsustainable policies and structural issues. The regimes in Syria and Iran would be unlikely to agree to this conditionality. Moreover, before agreeing to disburse funds the IMF conducts an assessment of the borrowing member's safeguards to prevent loss or misuse of IMF-provided funds. Given the substantial concerns regarding the integrity of key economic institutions in Syria and Iran, it is unlikely they would pass these assessments.

*Question.* In your view, what enhanced transparency and accountability measures should be attached to any reallocation effort?

*Answer.* The IMF's proposed RST, which would be financed through channeled SDRs, will require that borrowing countries have a concurrent standard IMF program that includes an agreed macroeconomic framework and appropriate policies. Doing so will help ensure that IMF resources are used effectively and provide a strong basis for future repayment. Since the RST will likely focus on lending to enable countries to build resilience to climate and pandemic impacts, the IMF will cooperate closely with the World Bank to establish a robust set of policy measures focused on these outcomes that will accompany the provision of financing.

*Question.* The World Bank stopped funding for projects and halted operations in Afghanistan after the Taliban took control of the country. The International Monetary Fund also suspended payments and access to lending to Afghanistan around the same time. The Biden administration has also frozen assets of the Afghan central bank that are held in the United States.

Under what conditions, if any, would you recommend the United States support the resumption of International Monetary Fund lending and World Bank aid to Afghanistan under the control of the Taliban?

*Answer.* It is too early to say at this time. If confirmed, I look forward to working with others in the U.S. Government, Congress, and other stakeholders to examine these issues in more detail, including to examine options to provide humanitarian support to the Afghan people while preventing the flow of funds to any person or entity seeking to harm the United States.

*Question.* Under what circumstances, would you recommend allowing the Taliban to access assets belonging to the Afghan central bank held in U.S. banks?

*Answer.* It is too early to say at this time. If confirmed, I look forward to working with others in the U.S. Government, Congress, and other stakeholders to examine these issues in more detail.

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PREPARED STATEMENT OF MARÍA L. PAGÁN, NOMINATED TO BE DEPUTY UNITED STATES TRADE REPRESENTATIVE, GENEVA OFFICE, WITH THE RANK OF AMBASSADOR, EXECUTIVE OFFICE OF THE PRESIDENT

Chairman Wyden, Ranking Member Crapo, members of the committee, good morning. It is an honor to be before you today as the nominee for the position of Deputy U.S. Trade Representative in Geneva. I am grateful to President Biden for this nomination, and to Ambassador Tai for her support.

I am also grateful to my family—my parents, my two brothers and their wives, and my son—for their support, love, and inspiration. My parents are doctors and have dedicated their professional lives to advancing public health in Puerto Rico. I learned from them the value of public service, of taking pride in what you do, and that there is nothing you can't achieve if you just give it a try. They couldn't be here with me, but I am sure they are watching from home. My son couldn't be here either, as he is a first-year law student on the west coast, but his support is enormously important to me.

I come before you today having spent nearly 30 years as a civil servant, first at the Department of Commerce, and for the last 18 years, at the U.S. Trade Representative's office, representing our country in trade negotiations and litigation. After almost 20 years at USTR, I know well the challenges we face domestically and abroad, and I look forward to drawing on this experience to represent USTR at the World Trade Organization, if confirmed.

I want to underscore Ambassador Tai's recent speech where she reaffirmed the United States' commitment to the WTO. However, there is a growing recognition that after 25 years, the institution needs to be reformed in order to be effective and relevant for the next 25 years. If confirmed, it would be an honor to represent the United States in Geneva at this critical juncture for the institution.

In her remarks in Geneva, Ambassador Tai emphasized the Biden-Harris administration's belief that trade—and the WTO—can be a force for good, and she laid out her vision to help the organization reorient its mission to better serve and advance the interests of regular people. For example, taking steps to address the COVID-19 pandemic would be a good start. It also means finding a way to incorporate the interests and priorities of workers into the WTO's work. Additionally, Ambassador Tai spoke about the need to reform the dispute settlement process to help empower members to secure resolutions and provide confidence that the system is fair. These challenges are central to the WTO's ability to operate as it was envisioned at its founding.

I know this won't be easy, and any successful reform requires a willingness to work cooperatively with other members. As Deputy General Counsel at USTR, my job is to get things done, and I will bring that can-do approach and attitude to Geneva. We need to be creative; not just focus on the areas where we disagree, but find the areas where we can agree. That also means listening to each other, not just talking at one another. And it means listening to voices outside of Geneva and Washington, DC so we are broadening the perspectives that can be incorporated into our agenda.

That includes working with this committee and members of Congress. Action—or inaction—at the WTO directly affects communities, workers, farmers, and small businesses in your States. If confirmed, I commit to maintain open lines of communication with all of you and represent the interests of your constituents in Geneva.

We are living in challenging times defined by rapid technological innovation, a pandemic, and climate change. Trade has an important role to play in all those areas. If confirmed, I look forward to representing the United States at the WTO to address these challenges and make sure it's a force for good.

As a longtime member of the USTR family, I know I will be able to count on a fantastic career staff to support our efforts in Geneva. USTR staff is known for its excellence and hard work, but also for creativity and can-do attitude. It is reassuring to know they will be there to support me.

Thank you again for the opportunity to appear before you this morning, and to President Biden and Ambassador Tai for their support. I look forward to answering your questions.

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## **SENATE FINANCE COMMITTEE**

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

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

1. Name (include any former names used): María L. Pagán.
2. Position to which nominated: Deputy United States Trade Representative, Geneva Office.
3. Date of nomination: August 10, 2021.
4. Address (list current residence, office, and mailing addresses):
5. Date and place of birth: February 10, 1963; San Juan, Puerto Rico.
6. Marital status (include maiden name of wife or husband's name):
7. Names and ages of children:
8. Education (list all secondary and higher education institutions, dates attended, degree received, and date degree granted):

Name: Cupeyville School.  
 Dates attended: August 1977 to May 1981.  
 Degree received: High school diploma.  
 Date degree granted: May 1981.

Name: Tufts University.  
 Dates attended: August 1981 to May 1985.  
 Degree received: B.A. in political science.  
 Date degree granted: May 1985.

Name: Georgetown University Law Center/School of Foreign Service.  
 Dates attended: August 1987 to May 1991.  
 Degrees received: J.D./Master of Science in Foreign Service (MSFS).  
 Date degrees granted: May 1991.

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 for each job):

Covington and Burling, LLP, Washington, DC, August 1985 to June 1987, paralegal.

Federal Energy Regulatory Commission, Office of General Counsel, Washington, DC, June 1988 to August 1988, law clerk.

State Department, Inter-American Affairs Bureau, Office of Press and Public Affairs, Washington DC, June 1989 to August 1989, summer intern.

Center to Prevent Handgun Violence, Washington, DC, September 1989 to April 1990, law clerk.

Collier, Shannon, and Scott, Washington, DC, June 1990 to August 1990, summer associate.

Rick Swartz and Associates, Inc., Washington, DC, October 1991 to July 1993, policy advocate.

Department of Commerce, Office of Chief Counsel for International Commerce, Washington, DC, November 1993 to October 2003, Senior Counsel.

Office of the United States Trade Representative, Office of the General Counsel, Washington, DC, October 2003 to present, Deputy General Counsel.

10. Government experience (list any current and former advisory, consultative, honorary, or other part-time service or positions with Federal, State, or local governments held since college, including dates, other than those listed above):

None.

11. Business relationships (list all current and former positions held as an officer, director, trustee, partner (*e.g.*, limited partner, non-voting, etc.), proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, other business enterprise, or educational or other institution):

Department of Commerce Day Care Center: Was a member of the parent board of the DOC Day Care Center while my son was there. Dates would have been around 1997 through 2001.

12. Memberships (list all current and former memberships, as well as any current and former offices held in professional, fraternal, scholarly, civic, business, charitable, and other organizations dating back to college, including dates for these memberships and offices):

Member of the Maryland Bar Association since December 1991.

13. Political affiliations and activities:

a. List all public offices for which you have been a candidate dating back to the age of 18.

None.

b. List all memberships and offices held in and services rendered to all political parties or election committees, currently and during the last 10 years prior to the date of your nomination.

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 prior to the date of your nomination.

None.

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 received since the age of 18):

Recipient of Sloan Foundation Minority Program Award, for internship at the State Department, Summer 1989.

Attorney of the Year Award at the Department of Commerce, 2001.

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

Author of "U.S. Legal Requirements Affecting Trade with Cuba" published in 2 Tulsa J. of Comp. and Int'l Law 291 (Spring 1995) and VII Pace Int'l Law Rev. 485 (Spring 1995).

Speaker at Practicing Law Institute's Department of Commerce Speaks program, on "Recent U.S. Trade and Investment Initiatives in Latin America and the Caribbean," October 1994.

16. Speeches (list all formal speeches and presentations (*e.g.*, PowerPoint) you have delivered during the past 5 years which are on topics relevant to the position for which you have been nominated, including dates. Provide the committee with one digital copy of each formal speech and presentation):

None.

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

I have served as a trade lawyer for the United States Government for 28 years. The last 18 years I have worked in the Office of the General Counsel at USTR, starting as a junior staff attorney and rising to become Deputy General Counsel. I am deeply familiar with U.S. trade law and U.S. trade obligations. I have participated in trade negotiations in various capacities, including being the lead lawyer for various free trade agreements, most recently the United States-Mexico-Canada Agreement. I bring years of experience not only in the law (domestic and international), but also the policy dimensions of trade for the United States. I understand that U.S. policy must reflect a vast array of stakeholders, in particular congressional. I have been proud to represent the U.S. Government not only in negotiations but also in litigation before the World Trade Organization, and believe I can use my knowledge and experience to further advance a U.S. trade policy that works for all at the World Trade Organization.

## B. FUTURE EMPLOYMENT RELATIONSHIPS

1. Will you sever all connections (including participation in future benefit arrangements) with your present employers, business firms, associations, or organizations if you are confirmed by the Senate? If not, provide details.

N/A.

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 current and former investments, obligations, liabilities, or other personal relationships, including spousal or family employment, which could involve potential conflicts of interest in the position to which you have been nominated.

None.

2. Describe any business relationship, dealing, or financial transaction which you have had during the last 10 years (prior to the date of your nomination), 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 (prior to the date of your nomination) 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 are disclosed by your responses to the above items. (Provide the committee with two copies of any trust or other agreements.)

Any potential conflict of interest will be resolved in accordance with the terms of my ethics agreement, which was developed in consultation with ethics officials at USTR and the Office of Government Ethics. I understand that my ethics agreement has been provided to the committee. I am not aware of any potential conflict other than those addressed by my ethics agreement.

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.

Provided to the committee.

6. The following information is to be provided only by nominees to the positions of United States Trade Representative and Deputy United States Trade Representative:

Have you ever represented, advised, or otherwise aided a foreign government or a foreign political organization with respect to any international trade matter at any time in any capacity? If so, provide the name of the foreign entity, a description of the work performed (including any work you supervised), the time frame of the work (*e.g.*, March to December 1995), and the number of hours spent on the representation.

None.

**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 (*e.g.*, an Inspector General's office), professional association, disciplinary committee, or other ethics enforcement entity at any time? Have you ever been interviewed regarding your own conduct as part of any such inquiry or investigation? If so, provide details, regardless of the outcome.

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? Have you ever been interviewed regarding your own conduct as part of any such inquiry or investigation? 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.  
Not aware of anything.

#### 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 MARÍA L. PAGÁN

##### QUESTION SUBMITTED BY HON. RON WYDEN

*Question.* The WTO dispute settlement system has played an important role in holding member countries accountable for their trade policies, but the Appellate Body has fallen short of its promise by overstepping its mandate and engaging in judicial overreach—hampering the application of U.S. trade enforcement laws, and leaving American workers and businesses to pay the price.

I believe the future of the WTO rests with achievable reforms that create trust in the Appellate Body as a functional dispute settlement mechanism. The Appellate Body can no longer disregard the rules that apply to it and the imbalance in the application of those rules.

If confirmed, how will you ensure that Appellate Body reform is a top priority for the WTO?

*Answer.* I share the longstanding, bipartisan concerns expressed by the Congress about the Appellate Body. We have seen how Appellate Body overreach has undermined and weakened the WTO's ability to negotiate and monitor. Appellate Body overreaching has also shielded China's non-market practices and hurt the interest of U.S. workers and businesses. Reforming the dispute settlement system in a way that addresses these problems is a top priority. But as Ambassador Tai said in her recent keynote speech in Geneva, reforming dispute settlement is not about restoring the Appellate Body for its own sake or going back to the way it used to be.

Instead, the dispute settlement system can and should better support the WTO's negotiating and monitoring functions. We want a WTO that serves as a venue for discussion and negotiations, rather than being imbalanced towards dispute settlement or litigation.

We have already started engaging with some WTO members, and we intend for the reform conversation to be inclusive so we can approach the question of WTO reform in a holistic way. A WTO dispute settlement system that helps to shield China's non-market distortions is not in the best interest of any WTO member.

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#### QUESTIONS SUBMITTED BY HON. MIKE CRAPO

##### SPECIAL AND DIFFERENTIAL TREATMENT

*Question.* One of the major elements for reform at the World Trade Organization (WTO) must be reform of "special and differential treatment" (S&D)—exemptions and flexibilities from WTO obligations intended to assist developing countries. The fact that WTO rules allows countries to decide for themselves whether they are de-

veloping—and thus eligible for S&D—undermines the effectiveness of the WTO system. Specifically, it undercuts the utility of S&D for countries that truly deserve such flexibilities and enable major powers to avoid taking on meaningful commitments. In particular, it defies belief that China—the second largest economy in the world and a country classified by the World Bank as an upper-middle-income country—claims it is a developing country entitled to S&D.

If confirmed, do you commit to pushing WTO members to adopt objective criteria regarding whether a member is developing or not, and thus eligible for S&D?

Answer. If confirmed, I will push WTO members to establish objective criteria for determining whether a WTO member may avail itself of blanket “special and differential treatment” (S&D) in current and future WTO negotiations. The United States is actively engaged in the discussion on how to reform special and differential treatment and would like it to be part of the overall reform agenda at the WTO.

#### SANITARY AND PHYTOSANITARY MEASURES

*Question.* One of the most important WTO agreements is the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement). The SPS Agreement facilitates agricultural market access by ensuring that measures taken to protect human, animal or plant life or health are supported by scientific evidence. Various WTO members have sought to undermine the effectiveness of the SPS Agreement including by failing to notify their SPS measures to the WTO and making spurious claims about the SPS Agreement’s rules, including in the WTO SPS Committee.

If confirmed, will you be a vigorous champion for ensuring the science based disciplines in the SPS Agreement are not compromised, and effectively enforced?

Answer. USTR is committed to ensuring that our trading partners live up to their WTO commitments, including their WTO obligation to base their SPS measures on scientific principles, and to base measures on international standards where they exist, or on risk assessments. I am committed to hold accountable countries that establish non-science based measures that are inconsistent with international standards, or that establish unjustified barriers to safe U.S. agricultural products.

#### DISPUTE SETTLEMENT

*Question.* During the hearing, you noted that WTO rules “needed to be enforced.” I agree. The impasse over the Appellate Body has brought dispute settlement to a standstill—and thus rules are not being enforced. I appreciate that reforming the Appellate Body will not happen overnight, but neither does litigation before a WTO panel, which can take over a year before there is anything to appeal at the Appellate Body. We have a number of potential disputes we could initiate at the WTO while the United States tries to find a way forward on the Appellate Body.

Do you agree that the United States needs to start moving forward on WTO enforcement against foreign trade barriers concurrently with reform of the Appellate Body?

Answer. I believe the United States should continue to bring disputes to the WTO when we consider WTO dispute settlement to be the most effective way to enforce U.S. rights under the WTO-covered agreements. The objective of dispute settlement is to facilitate mutually agreed solutions between members. Dispute settlement remains capable of supporting that objective for the United States and other WTO members, irrespective of the status of the Appellate Body. When it is appropriate to do so, we should continue to use WTO dispute settlement to ensure that our trading partners live up to their WTO commitments.

#### QUESTIONS SUBMITTED BY HON. ROBERT MENENDEZ

*Question.* Article 23.3.1(b) of the USMCA states: “1. Each party shall adopt and maintain in its statutes and regulations, and practices thereunder, the following rights, as stated in the ILO Declaration on Rights at Work: (b) the elimination of all forms of forced or compulsory labor.”

Given this provision, as I raised in my questions during the hearing, is human trafficking a violation of the USMCA?

Answer. Under the USMCA, one right that each party is required to maintain in its statutes, regulations, and practices is the elimination of all forms of forced or

compulsory labor. Human trafficking of anyone to Mexico is a violation of Mexico's anti-trafficking laws and should be investigated by Mexican authorities. Human trafficking is an issue that USTR and the entire administration take very seriously, and if confirmed, I am committed to working with interagency colleagues, allies, stakeholders, members of Congress, and others to combat human trafficking.

*Question.* The chapter on Cuba in the Department of State's 2020 Trafficking in Persons Report raised numerous concerns about the Cuban regime's foreign medical missions, including the fact that the missions subject Cuban doctors and medical personnel to human trafficking and forced labor conditions.

Do you agree with the Department of State's assessment about Cuba's foreign medical missions?

*Answer.* USTR is a member of the President's Interagency Task force on Human Trafficking. USTR regards the Department of State's Annual Trafficking in Persons Report as an important tool to inform USG efforts to combat human trafficking in the United States and abroad. We are aware of the indicators of forced labor as they relate to Cuba's foreign medical missions and will continue to work with the Department of State and other interagency partners on this issue.

*Question.* Given provisions in USMCA on forced labor and what is known about the forced labor conditions present in the Cuban regime's foreign medical missions, does Mexico's decision to host a Cuban medical mission amount to a violation of USMCA?

*Answer.* Human trafficking is an issue that USTR and the entire administration take very seriously, and if confirmed, I am committed to working with interagency colleagues, allies, stakeholders, members of Congress, and others to combat human trafficking and forced labor. We are aware of the indicators of forced labor as they relate to Cuba's foreign medical missions and will continue to work with the Department of State and other interagency partners on this issue.

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QUESTIONS SUBMITTED BY HON. JOHN THUNE

*Question.* In December, China will have been a member of the World Trade Organization for 20 years. In that time, China has become the WTO's largest trading nation and the second largest economy in the world—all while doubling down on a state-led, non-market approach to trade.

It makes no sense that a country like China should continue to be able to self-designate as a developing country at the WTO to gain unfair trade advantages, especially as the Chinese Communist Party takes advantage of actual developing countries through the predatory lending of the Belt and Road Initiative. I have introduced a bipartisan resolution to address this issue at the WTO, and I think this is a common-sense effort to strengthen the global trading system.

Do you believe that China declaring itself as a developing country at the WTO misidentifies its economic stature and corrodes trust in the rules-based trading system?

*Answer.* Yes, the United States is very concerned that China continues to seek developing country status at the WTO, including in ongoing negotiations. We have made that clear to China on several occasions, most recently during China's October 2021 Trade Policy Review at the WTO.

*Question.* One of the problems the U.S. faces at the WTO is that a lot of countries are not transparent and we don't know what policies they have in place that might affect U.S. agriculture exports.

If confirmed, what actions would you take to make sure that members are living up to their agricultural trade commitments?

*Answer.* Transparency is key to being able to understand the global agricultural trade landscape and the challenges facing U.S. agricultural exports. In addition, without adequate transparency we will be unable to make progress in agricultural trade reform efforts. If confirmed, I will work closely with like-minded members to improve transparency, which is widely recognized as lacking in the WTO. I will use a variety of tools, including counternotifications, formal WTO Committee Q&A processes, and bilateral engagement to bring more clarity regarding members' policies and practices that may impact U.S. agricultural exports. In addition, I will to continue to press for reform of the WTO's negotiating and monitoring arms, including



by enhancing U.S.-led efforts to improve the operation and effectiveness of notification requirements in order to facilitate greater transparency in the WTO.

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QUESTIONS SUBMITTED BY HON. ROB PORTMAN

*Question.* One of the challenges facing the World Trade Organization (WTO) is the breakdown in the WTO's ability to facilitate the negotiation of new agreements, especially to write new rules to constrain non-market behavior.

In my WTO resolution with Senator Cardin, I articulated a set of proposed reforms to the WTO aimed at addressing the loss of the negotiating function. One of these reforms was the use of plurilateral agreements without Most Favored Nation (MFN) requirements.

Do you agree that non-MFN plurilateral agreements can be a helpful tool to work with like-minded countries to restore purpose and relevance to the WTO?

*Answer.* The United States believes that plurilateral negotiations at the WTO can be a useful means to advance issues of interest to members and to keep the WTO relevant. We do not view plurilateral negotiations and outcomes as undermining multilateral ones. Rather, plurilateral initiatives can foster new ideas and creative, flexible approaches that can build momentum toward multilateral outcomes.

*Question.* Alongside the decrease in successful negotiation, there has been an increase in litigation at the WTO. This has led to concerns about activism by the Appellate Body (AB). In an attempt to stop activism by the Appellate Body both the Obama and Trump administrations blocked new appointments to the AB. The loss of the AB is problematic, yet we should also not restart the AB without correcting the longstanding flaws that the United States has articulated.

Will you commit to working with WTO members to address AB activism in an effort to restart the Appellate Body? How do you propose WTO members can work together to reduce judicial activism by the AB?

*Answer.* I share the longstanding, bipartisan concerns expressed by the Congress about the Appellate Body. We have seen how Appellate Body overreaching has undermined the WTO's functioning and weakened the WTO's negotiating and monitoring functions. At the same time, Appellate Body overreaching has shielded China's non-market practices and hurt the interest of U.S. workers and businesses. Reforming the dispute settlement system in a way that addresses these problems is a top priority. But as Ambassador Tai said in her recent keynote speech in Geneva, reforming dispute settlement is not about restoring the Appellate Body for its own sake or going back to the way it used to be.

Instead, the dispute settlement system can and should better support the WTO's negotiating and monitoring functions. We want a WTO that serves as a venue for discussion and negotiations, rather than being imbalanced towards dispute settlement or litigation.

We have already started engaging with some WTO members, and intend for the reform conversation to be inclusive so we can approach the question of WTO reform in a holistic way. A WTO dispute settlement system that helps to shield China's non-market distortions is not in the best interest of any WTO member.

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QUESTIONS SUBMITTED BY HON. PATRICK J. TOOMEY

*Question.* So far, the U.S. has mainly relied on unilateral tariffs under section 301 to push for market-oriented reforms to the Chinese market—but these measures hurt Americans, while not having much effect on Chinese trade practices. Instead of unilateral measures, the U.S. has the option of working with key allies and utilizing the WTO rules to encourage China to adopt reforms. While the WTO needs reform in some key areas, the United States has previously utilized the WTO to win a significant number of cases against China—especially as the complainant, but also as respondent. Uncovering China's WTO violations is challenging but possible, and the U.S. can use the WTO to hold China accountable, particularly in relation to the areas of intellectual property protection, forced technology transfer, and subsidies.

How can the U.S. better utilize the WTO dispute settlement system in addressing the challenges with China's non-market trade policies?

Answer. Ambassador Tai recently underscored her intent to use the full range of tools we have, but also to develop new tools as needed to defend American economic interests from harmful policies and practices, which include China's unfair economic practices. I believe the United States should continue to bring disputes to the WTO when we consider WTO dispute settlement to be the most effective way to enforce U.S. rights under the WTO-covered agreements. When it is appropriate to do so, we should continue to use WTO dispute settlement to address WTO-inconsistent measures of our trading partners—including China.

However, even when we have secured victories in our disputes against China, we have seen that China's follow-through was inconsistent and that it did not change the underlying policies. At the same time, we have seen how Appellate Body overreaching has shielded China's non-market practices and hurt the interest of U.S. workers and businesses. This overreaching by the Appellate Body has undermined our ability to protect U.S. workers and businesses from those non-market practices. That is why reforming the dispute settlement system in a way that addresses these problems is a top priority. A WTO dispute settlement system that continues to shield China's non-market distortions is not in our interest.

*Question.* For those areas of contention that are not well covered by WTO rules, how can the United States work with our allies within the WTO to develop new rules?

Answer. To protect ourselves against the damage China continues to inflict through its non-market practices—including, among other things, through industrial planning and targeting, preferential treatment of state-owned enterprises, massive subsidization, forced technology transfer, cybertheft and inadequate intellectual property enforcement—we need to be prepared to deploy all tools and explore the development of new ones, including through collaboration with other economies and countries. We are already engaging with allies to address China's harmful non-market policies and practices.

Additionally, in the G7, G20, and at the WTO, we are discussing market distortions and other unfair trade practices, such as the use of forced labor in the fisheries sector, and in global supply chains, and the use of non-market financing. We will continue to work closely with our allies and like-minded partners towards creating a more level playing field in the 21st century, including by developing new tools and negotiating new rules where appropriate.

*Question.* What are the limits of the WTO in dealing with China, and how can the U.S. help facilitate reforms to strengthen it?

Answer. The consensus nature of the WTO limits our ability to forge new rules in that forum that would address challenges raised by China's embrace of state capitalism and its litany of unfair trade practices. Moreover, over time, the core functions of the WTO—monitoring, negotiating, and dispute settlement—have become imbalanced towards dispute settlement and that imbalance towards litigation has advantaged China. Dispute settlement was never intended to supplant negotiations, yet China has been able to get around the hard part of diplomacy and negotiation by securing new rules through litigation. At the same time, Appellate Body overreaching has undermined the WTO's functioning and weakened the WTO's negotiating and monitoring functions. This imbalance has harmed U.S. interests and advantaged China, helping to shield its non-market distortions. Efforts to reform the dispute settlement system—and bring about WTO reform more generally—must address these problems. Over time, the core functions of the WTO—monitoring implementation of existing commitments, negotiating new commitments, and dispute settlement—have become imbalanced towards dispute settlement and that imbalance towards litigation has advantaged China.

*Question.* There have been two recent cases at the WTO that have challenged the broad applicability of the General Agreement on Tariffs and Trade (GATT) Article XXI, the "national security exception" in the WTO, as well as Article 73 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

A 2020 WTO ruling in a case brought by Qatar against Saudi Arabia stated that Saudi Arabia cannot use "national security" (TRIPS Article 73) as an excuse for failing to protect the intellectual property of Qatari rights holders from piracy of their broadcast rights for sports, movies, and television programming.

Additionally, a 2019 WTO ruling on a case between Russia and Ukraine clarified the limits of "national security" as a defense for breaking WTO rules against unjustified barriers to trade, stating that any such claim should be "objectively" true,

relating to weapons, war, fissionable nuclear materials or an “emergency in international relations.” The panel concluded that governmental actions for which a national security exception is claimed must “meet a minimum requirement of plausibility in relation to the proffered essential security interests.”

However, the Trump administration disagreed with both rulings claiming that measures taken by members for the purposes of national security are non-justiciable and cannot be reviewed by a WTO dispute settlement panel—siding with Russia and Saudi Arabia in the aforementioned disputes.

Do you believe that actions taken under GATT Article XXI or TRIPS Article 73 are reviewable by the WTO? If not, please explain why.

Do you believe that WTO members should explain a rationale for why they are invoking GATT Article XXI/TRIPS Article 73, or are these provisions fully “self-judging”?

Answer. Since the negotiation of the GATT in 1947, through the establishment of the WTO in 1995, and to the present day, the United States has maintained a consistent position: issues of national security are political matters not subject to review or capable of resolution by GATT/WTO dispute settlement. Every member of the WTO—including the United States—retains the authority to determine for itself those matters that it considers necessary to the protection of its essential security interests, as is reflected in the text of Article XXI of the GATT 1994. In other words, Article XXI(b) of the GATT 1994 and Article 73(b) of TRIPS—which mirrors Article XXI(b)—are self-judging. That was the U.S. position during GATT 1947 negotiations, and in 1949, when the United States invoked Article XXI(b) in a dispute with Czechoslovakia. That was also the U.S. position in 1982, when the European Communities and its member states, Canada, and Australia invoked Article XXI to justify their application of certain measures against Argentina. The United States also expressed similar views in 1985, after Nicaragua asked the GATT Council to condemn a U.S. embargo and to request that the United States revoke these measures immediately.

Article XXI(b) provides that “[n]othing in this Agreement shall be construed to prevent any member from taking any action which it considers necessary for the protection of its essential security interests.” Fundamentally, Article XXI(b) is about a member taking an action “which it considers necessary.” Whether the member “considers” that action necessary for protection of the acting member’s essential security interests is a subjective question. The text also specifies that it is “its essential security interests”—the member’s in question—that the action is taken for the protection of. In identifying such security interests, therefore, it is the judgment of the member that is relevant. Only a member like the United States—and not WTO adjudicators—can determine for itself what comprises that member’s essential security interests. Therefore, a WTO panel may not second-guess a member’s determination of what it considers necessary for the protection of its own essential security interests. Nor may a member be required to furnish reasons for or explanations of an action for which Article XXI is invoked. While a member invoking Article XXI may nonetheless choose to make information available to other members, in the absence of language imposing a requirement to furnish reasons, no such obligation may be imposed on a member through dispute settlement.

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QUESTIONS SUBMITTED BY HON. JAMES LANKFORD

*Question.* As our Ambassador to the WTO, you’ll be joining the negotiations that the Biden administration is supporting regarding the waiver of TRIPS protections for COVID-19 vaccines.

Do you understand the concerns that members of this committee have expressed about the TRIPS waiver?

Answer. Yes. If confirmed, I will consult with members of this committee to further understand the concerns that they have expressed.

*Question.* In your assessment, what potential pitfalls (if any) does a waiver of TRIPS protections for COVID-19 vaccines pose to future pharmaceutical and biomedical innovation?

Answer. If confirmed, as I work with members of the World Trade Organization, I will be clear-eyed about potential risks that you have raised. I am committed to keeping Congress fully informed of developments in the process in the WTO.

*Question.* Are there any elements of India and South Africa's request that you would consider a non-starter or a red-line in your negotiations?

Answer. If confirmed, I look forward to hearing more from members about concerns about specific proposals and will be clear eyed about the potential risks.

*Question.* Do you believe it is in the national interest for China and Russia to have access to the proprietary information behind the COVID-19 vaccine? Why or what not?

Answer. I believe strongly in intellectual property protections and the importance of safeguarding American innovation from illicit acquisition. If confirmed, as I work with members of the World Trade Organization, I will be clear-eyed about potential risks that you have raised.

*Question.* My primary frustrations with WTO litigation in recent years have been the slow pace of the dispute settlement process, as well as instances of judicial activism by the Appellate Body that disadvantage U.S. interests.

What are your ideas to speed up the dispute settlement process at the WTO and how do you plan to build consensus in Geneva towards that end?

Answer. There have been longstanding, bipartisan concerns with the way that the dispute settlement system has been functioning and for years the United States has been saying there needs to be a course correction. The objective of the dispute settlement system is to facilitate mutually agreed solutions between members, yet over time, it has become synonymous with litigation that is prolonged, expensive, and contentious. Reforming dispute settlement requires finding ways to create more opportunities for disputing parties to come together and be incentivized to solve the problem instead of prolonging litigation for its own sake. We want a WTO that serves as a venue for discussion and negotiations, rather than being imbalanced towards dispute settlement or litigation. For years, Appellate Body overreaching provided WTO members with the wrong incentives and worsened that imbalance. We have already started engaging with some WTO members, and we intend for the reform conversation to be inclusive so we can approach the question of WTO reform in a holistic way.

*Question.* What specific reforms is this administration seeking to the Appellate Body before it begins providing consent to Appellate Body vacancies?

Answer. This administration shares the longstanding, bipartisan concerns expressed by the Congress about the Appellate Body. I believe the WTO must undertake fundamental reform if the dispute settlement system is to remain viable and credible. We have seen how Appellate Body overreaching has undermined the WTO's functioning and weakened the WTO's negotiating and monitoring functions. At the same time, Appellate Body overreaching has shielded China's non-market practices and hurt the interest of U.S. workers and businesses. Reforming the dispute settlement system in a way that addresses these problems is a top priority. But as Ambassador Tai said in her recent keynote speech in Geneva, reforming dispute settlement is not about restoring the Appellate Body for its own sake or going back to the way it used to be. A WTO dispute settlement system that continues to shield China's non-market distortions is not in our interest.

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QUESTIONS SUBMITTED BY HON. TODD YOUNG

*Question.* In your opening statement, you mentioned that the WTO needs to be reformed in order to stay relevant for the future. However, there are limits as to what the WTO can and should do regarding various trade and non-trade issues. If the role of the WTO is too weak, then major markets will likely continue to react unilaterally. But if the organization is too strong, it may become overstrained and overbearing on major markets.

In your opinion, what do you believe are the key issues surrounding WTO reform?

Answer. The reality of the WTO today is that the organization does not match the ambition of its goals. The WTO has rightfully been accused of being insulated from reality, slow to recognize global developments, and not grounded in the experiences of working people. To build a more viable and durable multilateral trading system, reform is needed throughout the organization. This includes working to address problems that have undermined the negotiating function, including certain members' lack of transparency and unwillingness to make contributions commensurate with their role in trade and the global economy. It also includes efforts to revi-

talize the underappreciated monitoring and deliberating function, where members increasingly are not responding meaningfully to concerns raised with their trade measures. Further, it involves fundamental reform to dispute settlement, which has been used to supplant the negotiation of new rules through prolonged and contentious litigation, rather than to facilitate mutually agreed solutions between members.

*Question.* Do you believe the WTO should create a new system of governance with new rules or focus on greater policy coherence with stronger enforcement?

*Answer.* I see a need for reform in all three pillars of the WTO, so that the organization can achieve its founding goals: trade that raises living standards, ensures full employment, pursues sustainable development, and protects and preserves the environment. Refocusing on these goals requires that members deliberate issues and monitor compliance with existing rules; negotiate new rules that respond to the issues we face today, such as the need to protect our planet, address widening inequality, and increase economic insecurity; and have opportunities to reach mutually agreed solutions to the issues between us.

*Question.* One of the more troublesome issues with the WTO is its inadequate methods for addressing the challenges that China presents in regards to IP protections, excessive subsidies, and the predatory practices of state-owned enterprises.

If confirmed, how do you plan to work with Ambassador Tai on these concerns when negotiating new WTO rules that address China's predatory practices?

*Answer.* In a recent speech, Ambassador Tai underscored her intent to use the full range of tools we have and develop new tools as needed to defend American economic interests from harmful policies and practices, which include China's unfair economic practices you mentioned. As part of that approach, we will continue to work through multilateral channels, as well as bilateral and regional channels, to cooperate with like-minded partners who share our strong interest in ensuring that the terms of competition are fair. I intend to work with other WTO members to rebuild confidence in the system and boost motivation for creating a more level playing field in the 21st century, including by negotiating new rules where appropriate.

*Question.* Since the debate on WTO reform started, China has been proactively engaged. It continues to give the portrayal of guardian status among the global trading system, but China's pattern of vague commitments and adverse actions against the United States and like-minded nations speaks otherwise.

In your opinion, what role does China play—or should it be playing—in reforming the WTO given its economic weight in the world economy?

*Answer.* China is the world's largest trader in part because of the benefits that WTO membership has provided. When China acceded to the WTO 20 years ago, WTO members expected that the terms set forth in China's Protocol of Accession would permanently dismantle existing Chinese policies and practices that were incompatible with an international trading system expressly based on open, market-oriented policies. But those expectations have not been realized. The United States will continue to use all available mechanisms to move China to uphold its WTO obligations.

*Question.* Can the WTO be reformed to accommodate two different economic regimes—especially with China's stance to safeguard its system of state capitalism?

*Answer.* The administration is committed to working closely with our allies and like-minded partners, including at the WTO, towards building a truly fair international trade system that enables healthy competition.

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QUESTIONS SUBMITTED HON. JOHN BARRASSO

*Question.* Members from both sides of the aisle have made it very clear that the World Trade Organization is in dire need of reform.

What specific reforms do you believe are needed in order to prevent the WTO's Appellate Body from acting as a rulemaking body?

*Answer.* The WTO must undertake fundamental reform if the dispute settlement system is to remain viable and credible. Over time, certain WTO members discovered they could get around the hard part of diplomacy and negotiation by securing new rules through litigation. Dispute settlement was never intended to supplant negotiations—and the reform of these two core WTO functions is intimately linked. We

have seen how Appellate Body overreaching has undermined the WTO's functioning and weakened the WTO's negotiating and monitoring functions. At the same time, Appellate Body overreaching has shielded China's non-market practices and hurt the interest of U.S. workers and businesses. Reforming the dispute settlement system in a way that addresses these problems is a top priority. But as Ambassador Tai said in her recent keynote speech in Geneva, reforming dispute settlement is not about restoring the Appellate Body for its own sake or going back to the way it used to be. A WTO dispute settlement system that continues to shield China's non-market distortions is not in our interest.

*Question.* The U.S. sugar industry generates 142,000 jobs in 22 States and nearly \$20 billion in annual economic activity. These are good-paying jobs and critical to the local economies in many rural and urban communities. U.S. sugar policy is critical to the health of this industry.

The current world sugar market is highly dysfunctional, driven by production and trade-distorting practices employed by nearly all sugar-producing countries. It is more important than ever that the United States maintain its current no-cost sugar policy which provides a stable and predictable economic environment for U.S. producers, an environment necessary for capital investments and long-run sustainability. Then Ambassador-designate Tai indicated during the QFR process that any reforms she would pursue regarding the global sugar market would be "consistent with maintaining the current no-cost U.S. sugar policy," and that she would "work with like-minded partners to ensure that any new rules are consistent with U.S. domestic sugar goals."

Given the current challenges facing the WTO, do you believe the organization is equipped now, or can be made equipped going forward, to effectively address the full scope of underlying issues that have created the existing distortive global sugar market?

*Answer.* To address the full scope of these underlying issues that have created the existing distortive global sugar market, one must consider both the policies and practices that currently skirt existing WTO rules, as well as those that do not necessarily contravene WTO rules but are nevertheless distortive and detrimental to U.S. interests. I believe more work is needed to reform the WTO to properly address these issues. If confirmed, I will re-engage like-minded partners who also recognize the importance and necessity of reform of the WTO. This will be difficult work, but I remain hopeful that with proper U.S. leadership, we can achieve the necessary reform that will address such global trade distortions.

*Question.* Do you agree that the U.S. should not unilaterally disarm regarding existing U.S. sugar policy until such time other countries abandon their trade distortive production and export subsidies?

*Answer.* If confirmed, I will support and defend the U.S. sugar program, including as prescribed in U.S. farm bills enacted by the U.S. Congress.

*Question.* I'm concerned about the lack of action taken to date by this administration to open new markets for U.S. ranching and agriculture products. Wyoming's farmers and ranchers take great pride in their work. Our beef, barley, sugar, grain, feed and other agriculture products are second to none. In order to showcase these products around the world, Wyoming's producers need access to international markets.

If confirmed, will you commit to fighting for fair market access for America's farmers and ranchers; and

*Answer.* The Biden-Harris administration is committed to rebuilding America's international alliances and partnerships, and developing a trade policy that increases opportunity across the agriculture industry.

I know how important trade is to America's farmers and ranchers, and there are several key tools we can use to create opportunities for the agriculture industry. We can enforce our existing agreements so that our producers can fairly compete, and we can upgrade and expand existing trade frameworks to deliver market access opportunities.

*Question.* Will you aggressively highlight and push back against market access barriers that disadvantage producers in Wyoming and across the country?

*Answer.* We will use both bilateral and multilateral tools to enforce existing agreements, and to eliminate market access barriers that disadvantage American farmers and ranchers. As Ambassador to the WTO, I will ensure that we use the

WTO bodies, such as the Sanitary and Phytosanitary Committee, the Technical Barriers to Trade Committee, the Committee on Agriculture, and the Dispute Settlement Body to highlight and eliminate unfair trade barriers.

*Question.* U.S. businesses are often at a disadvantage vis-à-vis state-owned enterprises (SOEs) that are not guided by market principles. Such SOEs benefit from environmental, health, and labor standards below that of publicly traded companies. The uranium miners in Wyoming know this only too well, as U.S. mining has come to a standstill at the hands of increased imports from places like Russia, Uzbekistan and other countries where the Chinese have significant mining investments. U.S. trade policy needs a clear strategy for addressing the SOE imbalance.

Can you describe in detail how you would approach the WTO with respect to the challenges facing U.S. companies with respect to SOEs?

*Answer.* We have committed to use the full range of tools we have, including those of the WTO, and to develop new tools as needed to defend American economic interests from the harmful economic and trade policies and practices of others. The Marrakesh Declaration and WTO Agreement, on which the WTO is founded, begins with the recognition that trade should raise living standards, ensure full employment, pursue sustainable development, and protect and preserve the environment. We believe that refocusing on these goals can help bring shared prosperity to all. The administration is committed to working with like-minded partners to seek to update the WTO rulebook with more effective disciplines on industrial subsidies, unfair behavior of state-owned enterprises, and other trade and market distorting practices.

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PREPARED STATEMENT OF CHRISTOPHER S. WILSON, NOMINATED TO BE CHIEF INNOVATION AND INTELLECTUAL PROPERTY NEGOTIATOR, OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE, WITH THE RANK OF AMBASSADOR, EXECUTIVE OFFICE OF THE PRESIDENT

Chairman Wyden, Senator Crapo, members of the committee, good morning.

In 1982, as a college junior, I spent a semester interning for my distinguished home-state Senator, Bob Dole. At the time, Senator Dole was serving as chairman of this committee. To now find myself sitting at this table, in this room, is an honor that is maybe made a little more special by virtue of that personal history. I am honored that President Biden nominated me to serve as the first-ever Chief Innovation and Intellectual Property Negotiator at the Office of the United States Trade Representative. And I am grateful to you, Senators, for your consideration.

I also want to acknowledge the many friends and colleagues who have enriched my career at USTR over the past 2 decades. I have had great teachers and excellent examples among both my fellow civil servants and the agency's political leaders over the years.

I'm glad that my husband, Mark Hegedus, is here this morning, and I'm grateful for his love and support.

If confirmed for this position, I would be the first person to hold the title. To do a job for the first time is both exciting and a little daunting. Fortunately, Congress has provided a very clear expectation about what the position is about, namely to be a "vigorous advocate on behalf of United States innovation and intellectual property interests." If I'm confirmed, those words will be prominently posted on my desk at USTR.

I understand how protecting U.S. innovation through intellectual property rights is key to our economic success. This principle has been woven through every position I've held during my years at USTR. In addition to serving in USTR's IP office from 2006 to 2008, I have worked on important intellectual property issues in my engagements with trading partners in Central America, Europe and the Middle East, South and Central Asia, and in the context of the World Trade Organization.

This work has reinforced my belief that trade policy must protect American innovation and creative endeavors, and that rules governing that protection should be effectively enforced. I look forward to your input—today and going forward—on how best to advance those objectives.

Senators, one of my early mentors at USTR taught me that, in any negotiation as well as in the process of policy development, listening is as important as talking. I intend to apply that lesson every day I am in this position. My experience has taught me that, perhaps more than in many other areas of trade policy, IP is the

subject of strongly held and often widely divergent views among a broad spectrum of stakeholders. If confirmed, my door will be open to all, and I will listen carefully. I assure you that this committee and its staff would be prominent among those by whom I expect to be guided.

Ambassador Tai has laid out a worker-centered trade policy that ensures, as President Biden often says, our economy grows from the bottom up and the middle out. If confirmed, I will always be thinking about how we can defend U.S. innovation and intellectual property in order to help workers and generate broad-based, durable prosperity.

Finally, Senators, it will be important to me to ensure that the relationship between this new Chief Negotiator function and the dedicated career professionals in USTR's IP office is placed on a sound, sustainable, and respectful footing.

Thank you for the opportunity to appear before you this morning. I look forward to your questions and advice.

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## SENATE FINANCE COMMITTEE

### STATEMENT OF INFORMATION REQUESTED OF NOMINEE

#### A. BIOGRAPHICAL INFORMATION

1. Name (include any former names used): Christopher Scott Wilson.
2. Position to which nominated: Chief Innovation and Intellectual Property Negotiator (USTR).
3. Date of nomination: September 13, 2021.
4. Address (list current residence, office, and mailing addresses):
5. Date and place of birth: January 13, 1962; Butler, MO.
6. Marital status (include maiden name of wife or husband's name):
7. Names and ages of children:
8. Education (list all secondary and higher education institutions, dates attended, degree received, and date degree granted):  
Sterling High School, Sterling, KS (attended 1976–1980, graduated 1980).  
Sterling College, Sterling, Kansas (attended 1980–1982).  
Georgetown University School of Foreign Service (attended 1982–1984, graduated May 1984 with a B.S. in foreign service).  
University of Geneva, Switzerland (attended 1984–1985, certificate program in French language and civilization).
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 for each job):  
*October 1985–April 1987: U.S. Department of Commerce/International Trade Administration, Washington, DC.*  
*Mexico Desk Officer.*  
*April 1987–March 1995: U.S. Department of State.*  
*April 1987–September 1987: Junior Officer Training, Washington, DC.*  
*September 1987–July 1989: Economic Officer, U.S. Embassy, Kigali, Rwanda.*  
*July 1989–July 1991: Economic Officer, U.S. Embassy, Manila, Philippines.*  
*July 1991–July 1992: Staff Assistant, Bureau of African Affairs, Washington, DC.*  
*July 1992–August 1994: Desk Officer, Office of East African Affairs, Washington, DC.*  
*August 1994–March 1995: Language training, Washington, DC.*  
*March 1995–July 2000: C&M International, Washington, DC.*



Consultant on trade policy issues, advised corporate and trade association clients.

*July 2000–April 2012: Office of the U.S. Trade Representative.*

July 2000–September 2002: Director for Central America, Office of the Americas, Washington, DC.

September 2002–August 2006: Senior Trade Representative, U.S. Mission to the European Mission, Brussels, Belgium.

August 2006–May 2008: Deputy Assistant U.S. Trade Representative, Office of Intellectual Property and Innovation, Washington, DC.

May 2008–April 2010: Assistant U.S. Trade Representative for Europe and the Middle East, Washington, DC.

April 2010–April 2012: Assistant U.S. Trade Representative for WTO and Multilateral Affairs, Washington, DC.

*April 2012–March 2014: C&M International, Washington, DC.*

Senior director; consultant on trade policy issues, advised corporate and trade association clients.

*March 2014–present: Office of the U.S. Trade Representative.*

March 2014–February 2019: Deputy Chief of Mission, U.S. Mission to the World Trade Organization, Geneva, Switzerland.

March 2019–present: Assistant U.S. Trade Representative for South and Central Asia, Washington, DC.

10. Government experience (list any current and former advisory, consultative, honorary, or other part-time service or positions with Federal, State, or local governments held since college, including dates, other than those listed above):

N/A.

11. Business relationships (list all current and former positions held as an officer, director, trustee, partner (*e.g.*, limited partner, non-voting, etc.), proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, other business enterprise, or educational or other institution):

From 1995–2000 and again from 2012–2014, I was in a non-partnership, non-fiduciary role as an employee of Crowell and Moring International, a non-legal consulting affiliate of the Crowell and Moring law firm.

12. Memberships (list all current and former memberships, as well as any current and former offices held in professional, fraternal, scholarly, civic, business, charitable, and other organizations dating back to college, including dates for these memberships and offices):

Christ Church Washington Parish (Episcopal)—member since 2010; member of governing council (vestry), 2021–2024.

Capitol Hill Chorale—member since 2008; member of board of directors 2010–2011.

13. Political affiliations and activities:

- a. List all public offices for which you have been a candidate dating back to the age of 18.

None.

- b. List all memberships and offices held in and services rendered to all political parties or election committees, currently and during the last 10 years prior to the date of your nomination.

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 prior to the date of your nomination.

Barbara Bollier	\$50	10/24/2020
Barbara Bollier	\$50	9/28/2020
Joe Biden	\$250	9/2/2020
Barbara Bollier	\$100	8/31/2020

Joe Biden	\$100	7/20/2020
Joe Biden	\$100	6/18/2020
Barbara Bollier	\$100	6/7/2020
DSCC	\$200	4/16/2020
Amy Klobuchar	\$150	2/12/2020
Amy Klobuchar	\$50	2/7/2020
Amy Klobuchar	\$50	1/14/20
Amy Klobuchar	\$50	10/18/2019
Amy McGrath	\$50	9/30/2019
Amy Klobuchar	\$50	6/27/2019
Pete Buttigieg	\$200	4/2/2019
Amy Klobuchar	\$200	2/11/2019
Hillary Clinton	\$500	9/13/2016
Barack Obama	\$300	12/30/2011

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 received since the age of 18):

USTR William B. Kelly Award (2007).

Rotary International Fellowship (study abroad) (1984).

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

None.

16. Speeches (list all formal speeches and presentations (*e.g.*, PowerPoint) you have delivered during the past 5 years which are on topics relevant to the position for which you have been nominated, including dates):

None.

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

I have developed extensive exposure to the trade policy aspects of innovation and intellectual property during my nearly 20-year career with the Office of the U.S. Trade Representative. From 2006–2008 I served as Deputy Assistant U.S. Trade Representative in USTR’s intellectual property office. In this role, I served as principal U.S. delegate to the Council on the Trade-Related Aspects of Intellectual Property (TRIPS Council) at the World Trade Organization; I also engaged on IP trade policy issues with U.S. trading partners in Latin America, and was part of the team producing the annual Special 301 report on IP practices of U.S. trading partners. In addition, I led U.S. negotiations on geographical indications during a sensitive phase of the WTO’s Doha Round negotiations. Beyond my role in USTR’s IP office, I have encountered IP-related trade policy issues in each of my other USTR assignments, including especially my roles as Assistant USTR for WTO and Multilateral Affairs and as Deputy Permanent Representative at the U.S. Mission to the WTO. Through each of these roles, I have developed both technical expertise and policy sensitivity in this critical area of U.S. trade policy, and have had extensive exposure to the full range of stakeholder perspectives on the intellectual property dimensions of U.S. trade policy.

**B. FUTURE EMPLOYMENT RELATIONSHIPS**

1. Will you sever all connections (including participation in future benefit arrangements) 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 current and former investments, obligations, liabilities, or other personal relationships, including spousal or family employment, which could involve potential conflicts of interest in the position to which you have been nominated.  
Any potential conflict of interest will be resolved in accordance with the terms of my ethics agreement, which was developed in consultation with ethics officials at USTR and the Office of Government Ethics. I understand that my ethics agreement has been provided to the committee. I am not aware of any potential conflict other than those addressed by my ethics agreement.
2. Describe any business relationship, dealing, or financial transaction which you have had during the last 10 years (prior to the date of your nomination), 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.  
Any potential conflict of interest will be resolved in accordance with the terms of my ethics agreement, which was developed in consultation with ethics officials at USTR and the Office of Government Ethics. I understand that my ethics agreement has been provided to the committee. I am not aware of any potential conflict other than those addressed by my ethics agreement.
3. Describe any activity during the past 10 years (prior to the date of your nomination) 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 are disclosed by your responses to the above items. (Provide the committee with two copies of any trust or other agreements.)  
Any potential conflict of interest will be resolved in accordance with the terms of my ethics agreement, which was developed in consultation with ethics officials at USTR and the Office of Government Ethics. I understand that my ethics agreement has been provided to the committee. I am not aware of any potential conflict other than those addressed by my ethics agreement.
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.  
Provided 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 (*e.g.*, an Inspector General's office), professional association, disciplinary committee, or other ethics enforcement entity at any time? Have you ever been interviewed regarding your own conduct as part of any such inquiry or investigation? If so, provide details, regardless of the outcome.  
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? Have you ever been interviewed regarding your own conduct as part of any such inquiry or investigation? 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.  
N/A.

**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 CHRISTOPHER S. WILSON**
**QUESTIONS SUBMITTED BY HON. RON WYDEN****ENGAGING STAKEHOLDERS AND BALANCING PRIVATE AND PUBLIC INTERESTS**

*Question.* If confirmed, you'll be the first Chief Innovation and Intellectual Property Negotiator in U.S. history—just in time to support the historic investments of the Biden administration's Build Back Better agenda. The Biden administration has championed a worker-centric trade policy—a commitment to ensuring that everyday Americans' interests are represented when we talk about trade.

On intellectual property, it's critical that all stakeholders have a seat at the table—everyone from large and small businesses and creators, to libraries, the disability community, and the general public. All these perspectives are important to achieving balanced IP policies that protect creators, incentivize innovators, and benefit the public at large.

If confirmed, how do you plan to strike the right balance among the interests of varied stakeholders, including those in the public and private sectors?

*Answer.* Ambassador Tai has noted that creating a more inclusive process is the first step to achieving a worker-centered trade policy that delivers shared prosperity for all Americans. If confirmed, I will engage and consult with a wide range of stakeholders, including those from traditionally underrepresented or underserved groups, on innovation and intellectual property issues.

## COPYRIGHT LIMITATIONS AND EXCEPTIONS

*Question.* U.S. law, as well as international agreements like the TRIPS Agreement and Berne Convention, allow for certain limitations and exceptions to copyright. In the United States, these provisions serve a vital public function: they support the preservation of works by libraries and the access to those works by scholars, students, and the public; allow fair use, such as the creation of transformative works and reproduction for educational purposes; and ensure accessibility for people with disabilities.

If confirmed, will you support efforts by our trading partners to adopt copyright limitations and exceptions that align with U.S. law and are consistent with international obligations?

*Answer.* If confirmed, I will aim for our trading partners to adopt or maintain a standard for intellectual property protection similar to that found in U.S. law and will carry out my duties as directed by relevant U.S. law. I will also engage and consult with a wide range of stakeholders, including those from traditionally underrepresented or underserved groups, on innovation and intellectual property issues.

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 QUESTIONS SUBMITTED BY HON. MIKE CRAPO

## ENFORCEMENT

*Question.* Congress established the Chief Innovation and Intellectual Property Negotiator in the Trade Facilitation and Enforcement Act of 2015 in part to “take appropriate actions to address acts, policies, and practices of foreign governments that have a significant adverse impact on the value of United States innovation.” This is no surprise as American innovation is critical to our economic and strategic strength. Indeed, IP-intensive industries generate over 38 percent of U.S. annual GDP.

Do you agree that the following matters are precisely the types of issues that a Chief Innovation and Intellectual Property Negotiator needs to “take appropriate action to address”?

- The Cyberspace Administration of China’s cybersecurity reviews, which appear to target foreign companies in order to secure their proprietary information including source code;
- India’s attempt to amend section 31D of its Copyright Act to incorporate “Internet or digital broadcasters” (*i.e.*, streaming services), which would result in price controls that would adversely impact American creative content;
- The European Union’s proposed Digital Markets Act, which would require U.S. companies to disclose proprietary intellectual property, including source code for algorithms;
- The failure of various countries, including China and India, to take meaningful action against websites hosting pirated content; and
- High foreign tariffs on IP-intensive goods, including agricultural biotechnology, pharmaceuticals, medical devices, and Information and Communications Technology (ICT) products.

*Answer.* I understand how protecting U.S. innovation through intellectual property rights is key to our Nation’s economic success. If confirmed, I will be a vigorous advocate on behalf of United States innovation and intellectual property interests and will take appropriate actions to address acts, policies, and practices of foreign governments that have a significant adverse impact on the value of United States innovation. I will consult with you and other members of this committee on your views regarding priority IP issues.

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 QUESTIONS SUBMITTED BY HON. RICHARD BURR

*Question.* The Biden administration has announced its support for a waiver of the Trade-Related Aspects of Intellectual Property Rights (TRIPS) agreement in relation to the prevention, containment, or treatment of COVID-19 that is being negotiated at the World Trade Organization (WTO).

If you are confirmed, what will you do to ensure that such a waiver does not have a negative impact on America's world-leading biopharmaceutical industry, or undermine our preparedness for future public health threats?

Answer. If confirmed, I will be a vigorous advocate on behalf of United States innovation and intellectual property interests. I am familiar with the discussions around promoting innovation and intellectual property interests, in the context of public health crises, as reflected in agreements such as the United States-Mexico-Canada Agreement. Given this history, I will be cleared-eyed about the potential risks to our biopharmaceutical industry, as well as the goal of addressing preparedness for future public health threats.

*Question.* According to law, the Chief Innovation and Intellectual Property Negotiator "shall be a vigorous advocate on behalf of United States innovation and intellectual property interests," and is responsible for protecting the intellectual property of American innovators in accordance with trade agreements and addressing practices that have a significant adverse impact on the value of U.S. innovation.

How will you advocate for US innovation and the intellectual property rights of COVID-19 vaccine manufacturers?

Answer. If confirmed, I will be a vigorous advocate on behalf of United States innovation and intellectual property interests, including through outreach to allies and partners.

*Question.* In what specific ways does handing over the intellectual property of the makers of our COVID-19 vaccines protect the value of U.S. innovation meet the mission of the office you aspire to hold?

Answer. Given my prior service in the intellectual property office, I understand how protecting U.S. innovation through intellectual property rights is key to our Nation's economic success. I am clear-eyed about the potential risks of a COVID-19 waiver on innovators. If confirmed, I will be a vigorous advocate on behalf of United States innovation and intellectual property interests.

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QUESTION SUBMITTED BY HON. ROB PORTMAN

*Question.* As you know, the origin of the China tariffs, and the Phase One agreement, was China's rampant violation of intellectual property rights, including forced tech transfer. While there has been a lot of focus lately on China's failure to fully live up to its purchasing commitments, we shouldn't lose sight of the IP issues at stake.

How do you propose we get China to live up to its Phase One commitments on IP?

Answer. The United States has been closely monitoring China's progress in implementing its numerous commitments under the Phase One agreement. We have been regularly engaging with China using the extensive consultation processes established by the agreement to discuss China's implementation progress and any concerns as they arise. In addition, the United States and China have also held numerous technical-level meetings. We will continue to stay in close touch with U.S. stakeholders on their concerns to ensure that China adheres to the obligations set forth in the agreement.

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QUESTIONS SUBMITTED BY HON. PATRICK J. TOOMEY

*Question.* The United States-Mexico-Canada Agreement (USMCA) added several positive improvements to the North American Free Trade Agreement's (NAFTA) intellectual property (IP) chapter on geographical indications, patents, and more. Initially, it also included 10 years of IP protection for biologics—one of the most promising categories of new medicines.

These protections were trying to level the playing field for U.S. companies by making Mexico protect U.S. companies' IP. However, at the last minute, House Democrats eliminated this provision in closed-door negotiations. This removal went against decades of U.S. trade policy supporting expanding IP protection for American technology-based businesses. Trade agreements should encourage the development of the American biologics and innovation market, instead of allowing other countries to rip us off.

Your job charges you to be “a vigorous advocate on behalf of United States innovation and intellectual property interests.” Does renegotiating trade agreement text to remove pre-existing IP protections for biologics benefit U.S. innovation interests?

Answer. I understand how protecting U.S. innovation through intellectual property rights is key to our Nation’s economic success. If confirmed, I look forward to consulting with you to better understand your concerns regarding intellectual property protections for biologics.

*Question.* As Chief Innovation and Intellectual Property Negotiator, you will have significant influence in negotiating the intellectual property (IP) provisions of any future FTAs. Do you agree that we should include IP protections for biologics in future FTAs?

Answer. If confirmed, I will be a vigorous advocate on behalf of United States innovation and intellectual property interests and will consult closely with this committee on future trade agreement negotiations.

*Question.* Both Republicans and Democrats agree that we must promote technological innovation and encourage the development of important, high-knowledge industries based in the United States. Intellectual property protections are an indispensable part of attracting these critical industries to our country.

The Biden administration has stated that they want to pursue a “worker-centered” trade policy. IP-intensive industries employ over 45 million Americans, in high-paying domestic jobs. The average worker in an IP-intensive industry earned about 46 percent more than his counterpart in a non-IP industry.

Do you believe that protecting IP-intensive industries is beneficial for U.S. workers?

Answer. I understand how protecting U.S. innovation through intellectual property rights is key to our Nation’s economic success. If confirmed, I will be a vigorous advocate on behalf of United States innovation and intellectual property interests.

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QUESTIONS SUBMITTED BY HON. JAMES LANKFORD

*Question.* As we discussed in your nomination hearing, your role will be to protect American innovation from bad actors seeking to steal our intellectual property and undercut U.S. economic leadership.

Do you understand the concerns that members of this committee have expressed about the TRIPS waiver?

Answer. Yes. If confirmed, I will consult with members of this committee to further understand the concerns that they have expressed.

*Question.* In your assessment, what potential pitfalls (if any) does a waiver of TRIPS protections for COVID–19 vaccines pose to future pharmaceutical and biomedical innovation?

Answer. If confirmed, as I work with members of the World Trade Organization, I will be clear-eyed about potential risks that you have raised. I am committed to keeping Congress fully informed of developments in the process in the WTO.

*Question.* Do you believe it is in the national interest for China and Russia to have access to the proprietary information behind the COVID–19 vaccine? Why or what not?

Answer. I understand how protecting U.S. innovation through intellectual property rights is key to our Nation’s economic success. If confirmed, I will be a vigorous advocate on behalf of United States innovation and intellectual property interests.

*Question.* Since your portfolio exclusively deals with protecting American innovation and intellectual property, can I count on you to push back against the pursuit of TRIPS waivers—even if others in leadership at USTR are advocating for a waiver of IP protections?

Answer. If confirmed, I will be a vigorous advocate on behalf of United States innovation and intellectual property interests. I am committed to keeping Congress fully informed of developments in the process in the WTO.

*Question.* Business leaders in Oklahoma agree the biggest foreign threat to American innovation is China. China’s regulatory structures force U.S. businesses to choose between access to the Chinese market and protection for their intellectual

property. Beijing uses its market access as leverage to coerce mandatory disclosure of IP and/or full technology transfers to Chinese entities. The CCP also engages in strategic acquisitions and heavy subsidies to compete with American IP, as well as cyber intrusions to steal U.S. trade secrets and other confidential business information.

How do you intend to protect American IP and challenge the PRC's economic and technological predations?

Answer. As Ambassador Tai made clear in her October 2021 speech on the U.S.-China trade relationship, the United States continues to have grave concerns about the impact of China's state-led, non-market economy, including Chinese practices such as industrial planning and targeting and cybertheft. Addressing these issues remains a top priority in our work with China. In addition, I understand how protecting U.S. innovation through intellectual property rights is key to our Nation's economic success. If I am confirmed, one of my first priorities would be to open up the toolbox that we have at USTR, evaluate the existing tools, decide whether new tools are needed, consider where they can be used most effectively, and consult with the committee on how we do that.

*Question.* Given that China and Taiwan both recently submitted requests to join CPTPP, do you believe China's record on IP protections meet the standard required by CPTPP?

Answer. I understand that in the 2021 Special 301 Report, USTR noted that severe challenges persist in China because of informal pressure and coercion to transfer technology to Chinese companies, continued gaps in the scope of IP protection, incomplete legal reforms, weak enforcement channels, and lack of administrative and judicial transparency and independence.

*Question.* How do you intend to leverage U.S. influence in entities like WIPO to advance American leadership towards strong IP protections?

Answer. If confirmed, I will work with my U.S. government interagency counterparts on how to best leverage U.S. influence at international organizations, including WIPO, to advance U.S. innovation and intellectual property interests.

*Question.* In the Phase One trade agreement negotiated by President Trump's team, China committed to referring all cases of IP theft to criminal authorities, establishing criminal penalties for trade secret misappropriation, and establishing a mechanism for resolving pharmaceutical patent disputes.

In your assessment, has China kept its commitments on the IP provisions of the Phase One agreement?

Answer. China has taken a number of steps to implement its commitments under the Intellectual Property Chapter of the Phase One agreement. The United States will continue to closely monitor China's progress in implementing its commitments under that chapter of the agreement.

*Question.* What tools do you plan to utilize to enforce compliance—and punish noncompliance—with the terms of this agreement?

Answer. The United States has been regularly engaging with China using the extensive consultation processes established by the Phase One agreement to discuss China's implementation progress and any concerns as they arise. In addition, the United States and China have held numerous technical-level meetings. We will continue to stay in close touch with U.S. stakeholders on their concerns to ensure that China adheres to the obligations set forth in the agreement.

*Question.* Please describe what your priorities would be in a potential Phase Two agreement with China in IP.

Answer. We do not have plans to negotiate a Phase Two agreement. We are focusing on enforcing the terms of the Phase One agreement while also raising with China our concerns with its state-centered and non-market trade practices that were not addressed in the Phase One deal. I intend to use the full range of tools we have and develop new tools as needed to defend American economic interests from harmful policies and practices.

*Question.* President Trump's team completed seven rounds of FTA negotiations with the United Kingdom, but the Biden administration has not resumed those negotiations or sought to conclude them.



Do you agree that the UK is a valuable trading partner with strong intellectual property standards on par with U.S. standards, and that it would be in the national interest to complete these negotiations and ratify a free trade agreement?

Answer. I understand that Ambassador Tai is currently in the process of reviewing the state of the UK negotiations and that any path forward would be done in consultation with Congress, and will reflect the Biden administration's commitment to a trade policy that is worker-centered. If confirmed, I will be a vigorous advocate on behalf of United States innovation and intellectual property interests, including when conducting trade negotiations.

*Question.* The Biden administration has displayed a troubling lack of initiative in pursuing new trade agreements, either bilaterally or multilaterally, with allies.

Do you agree that the most effective way to isolate the impact of China's forced technology transfers and other IP theft is to establish agreements with other nations on IP protections?

Answer. If I am confirmed, one of my first priorities would be to open up the toolbox that we have at USTR, evaluate the existing tools, decide whether new tools are needed, consider where they can be used most effectively, and consult with the committee on how we do that. I will also consult closely with this committee on future trade agreement negotiations.

*Question.* How will you use your position to apply pressure on China to choose between changing its practices or facing a degree of economic isolation?

Answer. As Ambassador Tai highlighted in her October speech on the U.S.-China trade relationship, the United States is currently raising its concerns with China's non-market approach to trade and the economy directly with China. Where China does not make needed changes, we are prepared to use all tools at our disposal, including the development of any new tools that may be necessary, to seek to pressure China and protect U.S. interests. I will support that work in any way possible.

*Question.* What would you recommend to the President and to Ambassador Tai as the appropriate next step to strengthen IP protections among allies and partners?

Answer. I understand how protecting U.S. innovation through intellectual property rights is key to our Nation's economic success. If confirmed, I will be a vigorous advocate on behalf of United States innovation and intellectual property interests, including through outreach to allies and partners, and look forward consulting further with members to prioritize the most urgent issues.

*Question.* What role should new trade agreements play in securing strong IP protections with our trading partners, particularly countries in the Indo-Pacific with whom we don't have an FTA?

Answer. If confirmed, I will be a vigorous advocate on behalf of United States innovation and intellectual property interests and will consult closely with this committee on any future trade agreement negotiations, including with countries in the Indo-Pacific.

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QUESTIONS SUBMITTED BY HON. TODD YOUNG

*Question.* Intellectual property (IP) protections play a vital role in the American enterprise. It is because of IP protections that our businesses stand out and lead the world in innovation. However, our businesses rely on market access to prosper and due to the unfair concessions they have to make, particularly at the hands of China, many jobs and business models are under threat.

How will you seek to hold China accountable for unfair actions, and advocate for critical IP protections?

Answer. If I am confirmed, one of my first priorities would be to open up the toolbox that we have at USTR, evaluate the existing tools, decide whether new tools are needed, consider where they can be used most effectively, and consult with the committee on how we do that.

*Question.* Do you believe there is a sense of urgency to address instances of malpractice?

Answer. I understand how protecting U.S. innovation through intellectual property rights is key to our Nation's economic success. If confirmed, I will be a vigorous advocate on behalf of United States innovation and intellectual property interests

and look forward consulting further with members to prioritize the most urgent issues.

*Question.* Do you believe there is value in the United States setting forth principles to promote integrity within digital trade?

*Answer.* Our approach to digital trade will be to pursue growth that is inclusive, fair, sustainable, and advances the quality of life of human beings.

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QUESTIONS SUBMITTED BY HON. JOHN BARRASSO

*Question.* Strong intellectual property protections in the United States are critical for the invention and manufacturing of innovative medicines and medical technologies. It is not a coincidence, therefore, that the United States leads the world both in terms of inventing and manufacturing these products and providing intellectual property protections that incentivize innovation. I remain deeply concerned about the administration's efforts to waive IP protections for COVID vaccines. I think this is a mistake and one that should be corrected.

How do you intend to protect American intellectual property abroad and ensure that our trading partners value the important contributions of America's innovative industries;

*Answer.* I understand how protecting U.S. innovation through intellectual property rights is key to our Nation's economic success. If confirmed, I will be a vigorous advocate on behalf of United States innovation and intellectual property interests and will consult with members on how to best do that.

*Question.* And do you think the pursuit of a Trade-Related Intellectual Property Rights waiver will impact future investment and research in the United States?

*Answer.* There is this tension between the need to reward innovation through intellectual property, and the equally important objective of being able to ensure access to the products of that innovation. It has been and will continue to be a struggle to get the balance right. And if confirmed, I'd work very closely with you and others on the committee to make sure that we're getting as close to that balance line as we can.

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

The Finance Committee meets this morning to discuss an important set of nominations that spans three Federal agencies and at least two continents.

María Pagán is President Biden's nominee to serve as a Deputy U.S. Trade Representative and our envoy to the WTO in Geneva. Ms. Pagán brings to her nomination nearly 3 decades of experience in international trade law. She currently serves as USTR's Deputy General Counsel, which puts her right at the heart of just about every effort to ensure that our trade laws and agreements are protecting American workers and businesses and giving them a shot to get ahead. She has valuable experience litigating disputes before the WTO, which makes her the right choice for this job.

Chris Wilson is President Biden's nominee to serve as USTR's Chief Innovation and Intellectual Property Negotiator. It's the first time a nominee for this role has come before the Finance Committee since the committee created this position in the Trade Facilitation and Trade Enforcement Act of 2015. It was long overdue.

Getting trade done right in the modern economy means fighting for manufacturers, farmers, and ranchers, as well as fighting for the high-wage, high-skill jobs and businesses of the modern economy. It also means ensuring that our policies balance the interests of IP owners, innovators, technology users, and the public at large. Mr. Wilson brings to his nomination 20 years of experience at USTR, during which he has represented American workers and businesses in negotiations all across the globe. All that experience makes him an ideal choice to be the first-ever Chief Innovation and IP Negotiator.

Joshua Frost is President Biden's nominee to serve as Assistant Treasury Secretary for Financial Markets. It's a challenging job that deals with a variety of subjects including debt management, the housing market, and the health of our financial system. Mr. Frost has more than 20 years of experience in a variety of roles

at the Federal Reserve, including more than 12 years at the open markets desk. He has overseen programs aimed at preventing another financial crisis and responding to the COVID-19 economic crash. He is a natural fit for this position that's all about protecting the integrity and the stability of our economy and financial system.

Dr. Brent Neiman is President Biden's nominee to serve as Deputy Under Secretary of the Treasury for International Finance and Development. This job deals with the most tangled, complicated policy questions having to do with the global economy. One of the big challenges Dr. Neiman will be working on, if and when he's confirmed, is how to help solve the interruptions of global supply chains that are continuing to pop up as the pandemic continues to infect people around the world.

He'll also work on the issue of currency manipulation, which is a subject this committee takes very seriously. He'll have a leading role in the effort to make sure that multinational corporations can no longer hide their profits in shadowy tax shelters around the globe instead of paying a fair share. Dr. Neiman is currently the Edward Eagle Brown professor of economics at the University of Chicago's Booth School of Business, and his decades of research have contributed to his expertise on international macroeconomics, finance, and trade. He's an excellent choice for this difficult job that handles a lot of tough issues.

Sam Bagenstos is President Biden's nominee to serve as General Counsel to the Department of Health and Human Services. Mr. Bagenstos has worn a lot of hats in public service through his career. Currently he serves as General Counsel to the Office of Management and Budget. From 2009 to 2011, he was Principal Deputy Assistant Attorney General for Civil Rights. He's argued cases before the Supreme Court dealing with protections for pregnant workers and Americans with disabilities. An expert in civil rights law, he is currently on leave from his position as the Frank G. Millard professor of law at the University of Michigan Law School. At HHS, he'll work closely with Secretary Becerra and his team and provide legal advice on all the Department's efforts to make health care more affordable, strengthen Medicaid, uphold the Medicare guarantee, and ensure that vulnerable people in this country are protected and cared for.

I want to congratulate all five nominees and thank them for joining the committee today. After Senator Crapo makes his opening remarks, I'll have a few routine questions that we ask all nominees, and then I'm looking forward to our discussion.

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## COMMUNICATIONS

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FAMILIES AND FRIENDS OF CARE FACILITY RESIDENTS  
*Arkansas' Statewide Parent-Guardian Association*  
15 Eagles Nest Trail  
Norfolk, Arkansas 72658

November 9, 2021

U.S. Senate  
Committee on Finance

Dear Chairman Wyden, Ranking Member Crapo, and Members of the Committee:

In your busy schedules, review of credentials for the office for General Council of Health and Human Services (HHS) may be rather "cut and dry;" however, for families with personal stakes in the nomination, the process produces high anxiety. We ask: *if Samuel R. Bagenstos is confirmed, will he use his office to undermine and ultimately eliminate the long-term care programs upon which our vulnerable loved ones rely?*

We respectfully request that the Senate Committee on Finance not confirm Samuel R. Bagenstos to be General Counsel of the Department of Health and Human Services (HHS).

### **Who we are**

Families and Friends of Care Facility Residents (FF-CFR), Arkansas' parent-guardian association, is a 501(c)3 organization which advocates for a range of care options for persons unable to care for themselves based on the realities of the individual and their families. Most FF-CFR members have loved ones who receive residential treatment services in Medicaid certified intermediate care facilities (ICFs), the specialized residential treatment programs for persons with life-long cognitive and other developmental disabilities.

We are familiar with the nominee, Samuel R. Bagenstos, because of his actions as Deputy Attorney General for Civil Rights in the Department of Justice from 2009-2011.

### **Department of Justice Civil Rights Division—Arkansas Case**

In 2010, Civil Rights Division, Department of Justice (DOJ) brought two lawsuits in our state: one against the Conway Human Development Center (CHDC) and the other against all of the state's other developmental disabilities centers (HDCs). Arkansas' five human development centers (HDCs) serve over 800 residents from throughout the state. The majority of HDC residents are non-verbal and function in the profound range of cognition. There is no cure for their life-long cognitive deficits/developmental disabilities. During the stressful years DOJ spent investigating and litigating against Conway HDC, the center was at all times in compliance with its federal and state Medicaid certification regulations. Not one Conway center family from the over 400 residents joined with DOJ in its claims that their family members' civil rights were violated and not one area medical provider or hospital representative familiar with the center's at-risk residents and their behavioral and medical needs testified to support DOJ's claims of poor care. After a six-week trial in the fall of 2010, the federal court dismissed the DOJ case against Conway HDC in June 2011. Earlier, in 2010, the court had dismissed the DOJ case against all of the state's other HDCs. The cost to our state in defending Conway HDC against DOJ was \$4.3 million and \$150,580.00 in court costs. Our state cut and sold timber from public lands and used the Conway center's bequest funds to meet the litigation costs. We will never forget the Herculean effort our state made in defend-

ing the state's developmental centers against the Civil Rights Division, Department of Justice's deinstitutionalization case in Arkansas.

**Department of Justice Civil Rights Division—Georgia Case**

From the nominee's statement to Committee on Finance: "I am especially proud of work I did to reach a historic agreement with then-Governor Sonny Perdue in Georgia to expand that state's community-based services system."

—Samuel R. Bagenstos to U.S. Senate Committee on Finance

On October 19, 2010, DOJ entered into a comprehensive Settlement Agreement with the State of Georgia and Georgia officials, resolving the United States' complaint alleging that individuals with mental illness and developmental disabilities confined in State hospitals were unnecessarily institutionalized and subjected to unconstitutional harm to their lives, health, and safety in violation of the ADA and the U.S. Constitution. The agreement, without trial, required that Georgia cease all admissions to state-operated facilities for persons with cognitive and developmental disabilities and transition residents from licensed specialized long-term care facilities to "home and community" programs. Georgia families learned in the news that their loved ones' homes were being closed and people unable to care themselves were placed in the crucible of risk and uncertainty.

**By the Numbers**

**498**—Georgia Department of Behavioral Health and Development Disabilities patients in 2014 who died in community care.

**500**—Georgia Department of Behavioral Health and Development Disabilities patients in 2013 who died in community care.

*The Augusta Chronicle*

Saturday, March 21, 2015

This article was written by Sandy Hodson

The *Augusta Chronicle* requested the investigative reports of all 2013 deaths of developmentally disabled people living in community-based care homes. The reports were prepared by the state's Department of Behavioral Health and Developmental Disabilities.

The investigation began in earnest after the project was selected in 2014 for a National Health Journalism Fellowship, a program at the University of Southern California's School for Communication and Journalism.

The *Chronicle* used several Open Records Act requests to obtain investigative files on some of the 82 unexplained deaths in 2013 among the department's patients in community care, which was then focused on just those with developmental disabilities.

**The *Chronicle* used other Open Records Act requests to discover that nearly 1,000 patients had died in community care in the past two years and that a majority of the unexpected deaths are among patients with developmental disabilities.** (Emphasis added.)

**Conclusion and Request**

It is critically important to the nation that states have in place a range of treatment services to meet the diverse needs of the population with disabilities, including licensed institutional programs for those unable to care for themselves and who require close care for their health and safety. From his actions while in leadership at the Civil Rights Division within the Department of Justice, the nominee does not agree.

We respectfully request that the Senate Committee on Finance not confirm Samuel R. Bagenstos to be General Counsel of the Department of Health and Human Services (HHS).

Carole L. Sherman

Co-Chair, Public Affairs Committee

Mother and guardian of John, age 52, who functions on the level of a young toddler

LETTER SUBMITTED BY REBECCA UNDERWOOD

November 8, 2021

U.S. Senate  
Committee on Finance

Dear Chairman Wyden, Ranking Member Crapo, and Distinguished Members of the Senate Finance Committee.

Thank you for the opportunity to provide testimony for the record.

I write as the mother of an adult son with profound neurological impairment coupled with complex medical issues who is receiving comprehensive and synchronized medical care in an intermediate care facility for individuals with intellectual disabilities to **oppose the nomination of Mr. Samuel R. Bagenstos as General Counsel for the United States Department of Health and Human Services.**

Mr. Samuel Bagenstos testified during his confirmation hearing on Tuesday, October 26, 2021, before this Committee that he was “especially proud of work” he did to reach a historic agreement with then-Governor Sonny Perdue in Georgia “to expand that state’s community-based services system.” Mr. Bagenstos failed to mention, though, that the “historic agreement,” reached during his time at the United States Department of Justice, was obtained through his pursuit of callous and indiscriminate civil rights litigation that harmed the legal and medical interests of Georgia’s most disabled citizens.

As a result of this 2010 Settlement Agreement<sup>1</sup> negotiated behind closed doors in Georgia families and legally authorized decision-makers were stripped of their right to choose between institutional or community based services in defiance of the Social Security Act. The Agreement required **all** individuals with intellectual and other developmental disabilities to be removed from state operated institutional services within a five year time frame. These individuals were forced into a community based system which proved to be incapable of handling the intensive needs of the patients. The trail of shattered and destroyed lives through abuse, neglect and unnecessary deaths has been well documented by the *Atlanta Journal-Constitution*, *Augusta Chronicle*, and *Athens Banner-Herald*.

While Mr. Bagenstos led final negotiations with Georgia officials behind closed doors, families and other decision-makers were unaware of the proceedings affecting their family members and wards. The Complaint and the Settlement Agreement were publicly announced at the same time.

The expansion of Georgia’s community-based system that Mr. Bagenstos is so proud of came through forcing people into the system by denying them their right to make informed decisions about their own health care. Mr. Bagenstos overrode the informed choices of free Americans to higher levels of care in institutional settings by imposing his own opinions and values on people he had never met and had never known. He was not there when lives were shattered and destroyed through abuse, neglect, and unnecessary deaths.

The unprecedented Georgia Settlement Agreement, negotiated behind closed doors by Mr. Bagenstos, was further announced as the most comprehensive Agreement ever reached and would serve as a template for future enforcement efforts across the country.

The Georgia Settlement Agreement that denied thousands of Georgians the right to choose higher levels of care in institutional settings was not the end of Mr. Bagenstos’ imposition of his own opinions and values on people he has never met and will never know.

Mr. Bagenstos has also been involved in civil rights litigation to remove institutional care from people in Virginia, Pennsylvania, New Jersey, and Ohio who have exercised their rights to choose appropriate health care supports under the Social Security Act and under the U.S. Supreme Court decision in *Olmstead v L.C.*<sup>2</sup>

While Mr. Bagenstos has publicly professed his advancement of the paired principles that no person should be above the law’s constraints, nor should anyone be

<sup>1</sup> *United States v. Georgia*, No. 1:10-cv-00249-CAP (N.D.Ga.).

<sup>2</sup> 527 U.S. 581, 607 (1999).

beneath its protections,<sup>3</sup> his actions speak louder than his words. His activities in Georgia to negotiate an Agreement, outside of public purview, calling for the eviction of cognitively disabled residents from state operated facilities, along with his civil rights litigation to remove institutional care from cognitively disabled persons in other states, does not indicate his intention to protect the rights of individuals who have chosen a higher level of care through institutional services.

Parents and guardians have had to fight back at great financial expense to have their voices heard in federal court in order to protect their disabled loved ones. Judges have pushed back on the misguided and ideological policies espoused by Mr. Bagenstos:

Ohio:

Thus the Court finds that the rights of those individuals who do not wish to move from their residence in an ICF, or those who are at serious risk of institutionalization who wish to obtain a residence in an ICF, are directly impacted in this lawsuit. Those rights were not protected until the Guardians filed their Motion to Intervene.<sup>4</sup>

Virginia:

In fact, at least 84 of the 155 legal representatives of the current SEVTC residents have made formal pleas to permit their loved ones to remain in the new facility rather than be placed in community housing. Thus, the argument made by ARC and the United States regarding the risk of institutionalization fails to account for a key principle in the *Olmstead* decision: personal choice.<sup>5</sup>

Arkansas:

Most lawsuits are brought by persons who believe their rights have been violated. Not this one. The Civil Rights Division of the Department of Justice brings this action on behalf of the United States of America against the State of Arkansas . . . alleging that practices at Conway [ICF/IID] violate the rights of its residents. . . . All or nearly all of those residents have parents or guardians who have the power to assert the legal rights of their children or wards. Those parents and guardians, so far as the record shows, oppose the claims of the United States. Thus, the United States is in the odd position of asserting that certain persons' rights have been and are being violated while those persons—through their parents and guardians—disagree.<sup>6</sup>

While no longer under the employ of the Civil Rights Division of the United States Department of Justice, Mr. Bagenstos continues to demonstrate his disdain for congregate care settings/institutions. In an August 31, 2020 opinion piece published in *Slate*,<sup>7</sup> Mr. Bagenstos refers to the “inhumanity of our system of shunting away elderly and disabled people in isolated congregate institutions”. He goes on to opine that “institutions separated from the mainstream of society—nursing homes, long-term care facilities, psychiatric hospitals or jails and prisons—cause intense harm to the people who are confined there”.

Confirming Mr. Samuel Bagenstos as HHS General Counsel would place him in a position to continue his relentless pursuit of a misguided ideological agenda—“community-for-all”. Mr. Bagenstos' past civil rights litigations to eliminate institutional services for those individuals seeking a higher level of care stands in stark contrast to HHS' goal of protecting the health of all Americans and providing essential human services, especially for those who are least able to help themselves.

As HHS General Counsel supports the development and implementation of HHS' programs by providing legal services to HHS' various agencies and divisions, Mr. Bagenstos would be providing legal services to the Centers for Medicare and Medicaid Services which certifies and funds the intermediate care facilities for individuals with intellectual disabilities (ICFs/IID) which he has spent his career pursuing closure of. Mr. Bagenstos would be providing legal services to the Administration for Community Living, an HHS agency currently led by a colleague of Mr.

<sup>3</sup> [https://www.finance.senate.gov/imo/media/doc/Testimony%20Samuel%20R.%20Bagenstos\\_Final1.pdf](https://www.finance.senate.gov/imo/media/doc/Testimony%20Samuel%20R.%20Bagenstos_Final1.pdf).

<sup>4</sup> *Ball v. Kasich*, No. 2:16-cv-282, 2017 WL 3172778, \*9 (S.D. Ohio July 25, 2017).

<sup>5</sup> *ARC of Virginia v. Kaine*, No. 3:09cv686, 2009 WL 4884533, \*8 (E.D. Va. December 17, 2009).

<sup>6</sup> *United Sates v. Arkansas*, 794 F. Supp. 2d 935, 937 (E.D. Ark. 2011).

<sup>7</sup> <https://slate.com/news-and-politics/2020/08/doj-covid-nursing-home-inquiry-trump-corruption.html>.



Bagenstos, another civil rights attorney whose past history also includes litigation to eliminate ICFs/IID.

Mr. Bagenstos is an overwhelmingly inappropriate selection for General Counsel of the federal Department charged with protecting the health, safety and welfare of Americans least able to help themselves. Mr. Bagenstos' civil rights career has been dedicated to removing the safety net for the most vulnerable Americans. He has trampled on their rights resulting in human rights disasters. He fails to validate or acknowledge the existence of individuals who need and choose that higher level of care in institutional settings.

As the mother and co-legal guardian of our adult son whose 41 year survival is attributed to the extraordinary synchronized and comprehensive medical care provided in a Medicaid certified and funded intermediate care facility, I urge you to thoughtfully consider whether Mr. Bagenstos, a civil rights attorney who has endeavored for years to close HHS certified and funded facilities for individuals with the most profound disabilities, is now the most appropriate and best candidate for HHS General Counsel.

I urge you to reject Mr. Samuel Bagenstos' nomination for General Counsel for the U.S. Department of Health and Human Services.

Respectfully submitted,

Rebecca Underwood

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U.S. CHAMBER OF COMMERCE  
1615 H Street, NW  
Washington, DC 20062-2000  
<https://www.uschamber.com/>

November 2, 2021

The Honorable Ron Wyden  
Chair  
United States Senate  
Committee on Finance  
Washington, DC 20510

The Honorable Mike Crapo  
Ranking Member  
United States Senate  
Committee on Finance  
Washington, DC 20510

Dear Chair Wyden and Ranking Member Crapo:

The U.S. Chamber of Commerce supports the nomination of Christopher S. Wilson to serve as the Chief Innovation and Intellectual Property Negotiator with the Office of the U.S. Trade Representative (USTR).

Mr. Wilson is a highly qualified nominee, with over two decades of service to USTR. Throughout his career in the government, he has utilized trade policy to further IP protection with key U.S. trading partners abroad. Serving in multiple roles within USTR, Mr. Wilson has a keen understanding of the landscape of global IP protection, both in foreign countries and multilateral institutions. Mr. Wilson's long record of public service has prepared him well to advance effective IP protection through bilateral dialogues and free trade negotiations with other countries.

The Chamber supports the nomination of Mr. Wilson to serve as the Chief Innovation and Intellectual Property Negotiator at USTR. We urge the Committee to favorably report Mr. Wilson's nomination to the full Senate.

Sincerely,

Tom Quaadman  
Executive Vice President  
Global Innovation Policy Center

cc: Members of the Senate Committee on Finance

