

1 OPEN EXECUTIVE SESSION TO CONSIDER FAVORABLY REPORTING  
2 THE NOMINATIONS OF JEFFREY SAMUEL ARBEIT, TO BE A JUDGE  
3 OF THE UNITED STATES TAX COURT; BENJAMIN A. GUIDER III,  
4 TO BE A JUDGE OF THE UNITED STATES TAX COURT; AND CATHY  
5 FUNG, TO BE A JUDGE OF THE UNITED STATES TAX COURT

6

7 THURSDAY, JULY 25, 2024

8 U.S. Senate,

9 Committee on Finance,

10 Washington, DC.

11

12 The meeting was convened, pursuant to notice, at  
13 9:39 a.m., in Room SD-215, Dirksen Senate Office  
14 Building, Hon. Ron Wyden (chairman of the committee)  
15 presiding.

16 Present: Senator Crapo.

17 Also present: Democratic staff: Joshua  
18 Sheinkman, Staff Director; Tiffany Smith, Deputy Staff  
19 Director and Chief Counsel; and Ryder Tobin, Senior  
20 Investigative Counsel and Nominations Advisor.

21 Republican staff: Andrew Dell'Orto, Policy Advisor; Greg  
22 Richard, Staff Director; and James Williams, Tax and  
23 Economic Policy Advisor.

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

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4           The Chairman. The Finance Committee will come to  
5           order. We meet today to consider three pending  
6           nominations before the Finance Committee: Mr. Jeffrey  
7           Arbeit, Ms. Cathy Fung, and Mr. Ben Guider.

8           We are going to use this time to make statements  
9           on the nominees. I am going to make a statement  
10          followed by Senator Crapo, then followed by any other  
11          Finance member who wishes to make a statement.

12          At that point if we have a quorum, we will proceed  
13          to the vote. It appears we are not going to have a  
14          quorum, and we would recess then until the next roll  
15          call vote on the Senate floor, when the committee would  
16          reconvene off the floor to have the vote.

17          The majority and minority staff have discussed  
18          this. I believe this is acceptable to you, Senator  
19          Crapo?

20          Senator Crapo. Yes.

21          The Chairman. Okay.

22          The Finance Committee meets this morning to vote  
23          on three nominations, Jeffrey Arbeit, Cathy Fung, and  
24          Ben Guider, all nominated to serve as judges of the  
25          United States Tax Court. I am going to be very brief, then

1 turn it over to Senator Crapo.

2 The Tax Court is an essential feature of our tax  
3 system, and it is the best opportunity Americans have to  
4 dispute a bill before they have to pay. And as I am  
5 saying to all the nominees at this time, this can be a  
6 very worrisome, if not frightening process for those  
7 typical Americans trying to figure out how they are  
8 going to get through it and deal with a dispute that  
9 could possibly have them paying significant sums of  
10 money.

11 So, this process has got to be as fair as possible  
12 for all of those concerned, taxpayers and all of the  
13 parties, and that way, we could make it in a position  
14 to -- to avoid the pressure that would otherwise fall on  
15 other courts, but also to make it more understandable  
16 and more bearable to those typical Americans going  
17 through it.

18 So today, Jeffrey Arbeit will be first up, who  
19 served for nearly a decade as a legislative counsel for  
20 the staff of the Joint Committee on Taxation, whose work  
21 is focused on some of the most complicated areas of tax  
22 law, including proposals dealing with international  
23 trade issues and financial markets.

24 He brings extensive private-sector experience and  
25 clerked on the Tax Court as well. We repeat, as we have

1 on a number of occasions, how much we appreciate the  
2 terrific team at the JCT. The committee could not do  
3 our jobs without their professionalism and expertise,  
4 and we are sorry to lose anyone from JCT, but we know  
5 Mr. Arbeit will make an excellent judge.

6 Next up will be Cathy Fung, the Deputy Area  
7 Counsel at the IRS Office of Chief Counsel, where she  
8 held multiple positions since 2009. Like Mr. Arbeit,  
9 she brings valuable private-sector experience and  
10 previously served as an attorney/advisor for a Tax Court  
11 judge.

12 Finally, Ben Guider has experience spanning a  
13 decade and a half advising clients on a variety of  
14 issues including low-income housing and tax-exempt  
15 bonds. He is currently an affordable housing attorney  
16 and a member of the American Bar Association Forum on  
17 Affordable Housing and Community Development Law.

18 The group of nominees had an excellent hearing a  
19 few weeks ago. I support each of them, and I want it  
20 understood that I have talked to the ranking minority  
21 member, Senator Crapo. I have talked to Senator  
22 Cassidy. I have talked to a number of colleagues, and I  
23 believe we have strong bipartisan support for them.

24 One final note on the Tax Court nominations. I  
25 was pleased the Senate voted yesterday to advance the

1 nominations of Adam Landy and Kashi Way to serve as Tax  
2 Court judges. We are, as I indicated, working with our  
3 colleagues to ensure we can bring Rose Jenkins's  
4 nomination to the floor for a final confirmation vote as  
5 soon as possible, so she can get to work for the  
6 American people.

7 Senator Schumer has assured me that it is a  
8 priority for him. Ms. Jenkins is another highly  
9 qualified nominee, and I strongly support her  
10 nomination. Hopefully we can move all these nominations  
11 soon, and I just close by way of saying we all try to  
12 look at the future of our work, and I am hoping for a  
13 future that makes this a more understandable and  
14 bearable experience in this unique Tax Court for  
15 citizens, and I have appreciated that Senator Crapo has  
16 taken an interest in this as well.

17 Senator Crapo?

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

3

4           Senator Crapo. Thank you very much, Mr. Chairman.  
5           Today we consider the nominations of Jeffrey Arbeit,  
6           Cathy Fung, and Benjamin Guider to be judges to the  
7           United States Tax Court.

8           I was encouraged to hear each of the nominees make  
9           a commitment to being fair and impartial to all  
10          individuals before the Tax Court, and I deeply  
11          appreciate the chairman's attitude on this as well.

12          I hope that all of the judges of the Tax Court get  
13          an opportunity to listen to the comments that both  
14          Senator Wyden and I have made at the hearing and at this  
15          markup, explaining how important we feel it is that the  
16          process in our Tax Court for American citizens to have a  
17          fair treatment is something that needs to be highlighted  
18          and prioritized, and again Mr. Chairman, I appreciate  
19          your comments on this.

20          The Chairman. Thank you, Senator Crapo. I think  
21          this is something that would be uniquely bipartisan on  
22          our watch.

23          Senator Crapo. Thank you. And I will say that  
24          with regard to these three nominees, each of these  
25          nominees are qualified. They bring unique backgrounds

1 in tax law and are capable to serve on the Court.

2 Mr. Arbeit, as the chairman has indicated, has  
3 served on the Joint Committee on Taxation for 9 years,  
4 providing constructive advice in the formulation of key  
5 legislation, and I particularly appreciate his work with  
6 this committee over the years.

7 If confirmed, I expect that each of these nominees  
8 will carry out their duties with the highest degree of  
9 skill and integrity, and for these reasons I will be  
10 voting "yes" on each of the nominees. I encourage my  
11 colleagues to do the same.

12 Thank you, Mr. Chairman.

13 The Chairman. Thank you, Senator Crapo.

14 All right. I think Senator Crapo and I can look  
15 around the dais and see there is not a quorum present.  
16 So at this point, unless there is an objection, the  
17 committee will recess and reconvene to vote on the  
18 nominations, following the first vote today at 11:30 off  
19 the floor, in Room 216 in the Capitol.

20 Without objection, it is so ordered. The Senate  
21 Finance Committee stands in recess.

22 [Whereupon, at 9:45 a.m., the hearing was  
23 recessed.]

1           The open executive session was reconvened, pursuant  
2           to notice, on Thursday, July 25, 2024, at 11:30 a.m., in  
3           Room S-216, The President's Room, U.S. Capitol, Hon. Ron  
4           Wyden (chairman of the committee) presiding.

5           The Chairman. The committee will come to order.  
6           We now have a quorum. I move that we favorably report  
7           the nomination of Jeffrey Samuel Arbeit.

8           Senator Crapo. Seconded.

9           The Chairman. The Clerk will call the roll.

10          The Clerk. Ms. Stabenow?

11          Senator Stabenow. Aye.

12          The Clerk. Ms. Cantwell?

13          Senator Cantwell. Aye.

14          The Clerk. Mr. Menendez?

15          Senator Wyden. Aye by proxy.

16          The Clerk. Mr. Carper?

17          Senator Carper. Aye.

18          The Clerk. Mr. Cardin?

19          Senator Cardin. Aye.

20          The Clerk. Mr. Brown?

21          Senator Brown. Aye.

22          The Clerk. Mr. Bennet?

23          Senator Bennet. Aye.

24          The Clerk. Mr. Casey?

25          Senator Casey. Aye.



1           The Clerk.    Mr. Warner?  
2           Senator Wyden.    Aye by proxy.  
3           The Clerk.    Mr. Whitehouse?  
4           Senator Whitehouse.    Aye.  
5           The Clerk.    Ms. Hassan?  
6           Senator Hassan.    Aye.  
7           The Clerk.    Ms. Cortez Masto?  
8           Senator Wyden.    Aye by proxy.  
9           The Clerk.    Ms. Warren?  
10          Senator Warren.    Aye.  
11          The Clerk.    Mr. Crapo?  
12          Senator Crapo.    Aye.  
13          The Clerk.    Mr. Grassley?  
14          Senator Grassley.    Aye.  
15          The Clerk.    Mr. Cornyn?  
16          Senator Cornyn.    Aye.  
17          The Clerk.    Mr. Thune?  
18          Senator Thune.    Aye.  
19          The Clerk.    Mr. Scott?  
20          Senator Scott.    Aye.  
21          The Clerk.    Mr. Cassidy?  
22          Senator Crapo.    Aye by proxy.  
23          The Clerk.    Mr. Lankford?  
24          Senator Lankford.    Aye.  
25          The Clerk.    Mr. Daines?

1 Senator Daines. Aye.

2 The Clerk. Mr. Young?

3 Senator Young. Aye.

4 The Clerk. Mr. Barrasso?

5 Senator Barrasso. Aye.

6 The Clerk. Mr. Johnson?

7 Senator Johnson. Aye.

8 The Clerk. Mr. Tillis?

9 Senator Tillis. Aye.

10 The Clerk. Mrs. Blackburn?

11 Senator Crapo. Aye by proxy.

12 The Clerk. Mr. Chairman?

13 The Chairman. Aye.

14 The Clerk will announce the vote.

15 The Clerk. Mr. Chairman, the final tally is 27  
16 ayes and 0 nays.

17 The Chairman. The "ayes" have it.

18 We'll next move to favorably report the nomination  
19 of Benjamin A. Guider III.

20 Senator Crapo. Seconded.

21 The Chairman. The Clerk will call the roll.

22 The Clerk. Ms. Stabenow?

23 Senator Stabenow. Aye.

24 The Clerk. Ms. Cantwell?

25 Senator Cantwell. Aye.

1           The Clerk.    Mr. Menendez?  
2           Senator Wyden.    Aye by proxy.  
3           The Clerk.    Mr. Carper?  
4           Senator Carper.    Aye.  
5           The Clerk.    Mr. Cardin?  
6           Senator Cardin.    Aye.  
7           The Clerk.    Mr. Brown?  
8           Senator Brown.    Aye.  
9           The Clerk.    Mr. Bennet?  
10          Senator Bennet.    Aye.  
11          The Clerk.    Mr. Casey?  
12          Senator Casey.    Aye.  
13          The Clerk.    Mr. Warner?  
14          Senator Wyden.    Aye by proxy.  
15          The Clerk.    Mr. Whitehouse?  
16          Senator Whitehouse.    Aye.  
17          The Clerk.    Ms. Hassan?  
18          Senator Hassan.    Aye.  
19          The Clerk.    Ms. Cortez Masto?  
20          Senator Wyden.    Aye by proxy.  
21          The Clerk.    Ms. Warren?  
22          Senator Warren.    Aye.  
23          The Clerk.    Mr. Crapo?  
24          Senator Crapo.    Aye.  
25          The Clerk.    Mr. Grassley?

1 Senator Grassley. Aye.  
2 The Clerk. Mr. Cornyn?  
3 Senator Cornyn. Aye.  
4 The Clerk. Mr. Thune?  
5 Senator Thune. Aye.  
6 The Clerk. Mr. Scott?  
7 Senator Scott. Aye.  
8 The Clerk. Mr. Cassidy?  
9 Senator Crapo. Aye by proxy.  
10 The Clerk. Mr. Lankford?  
11 Senator Lankford. Aye.  
12 The Clerk. Mr. Daines?  
13 Senator Daines. Aye.  
14 The Clerk. Mr. Young?  
15 Senator Young. Aye.  
16 The Clerk. Mr. Barrasso?  
17 Senator Barrasso. Aye.  
18 The Clerk. Mr. Johnson?  
19 Senator Johnson. Aye.  
20 The Clerk. Mr. Tillis?  
21 Senator Tillis. Aye.  
22 The Clerk. Mrs. Blackburn?  
23 Senator Crapo. Aye by proxy.  
24 The Clerk. Mr. Chairman?  
25 The Chairman. Aye.

1           The Clerk will announce the vote.

2           The Clerk.    Mr. Chairman, the final tally is 27  
3 ayes and 0 nays.

4           The Chairman.    The "ayes" have it.

5           Finally we'll move to favorably report the  
6 nomination of Cathy Fung.

7           Senator Crapo.    Seconded.

8           The Chairman.    The Clerk will call the roll.

9           The Clerk.    Ms. Stabenow?

10          Senator Stabenow.    Aye.

11          The Clerk.    Ms. Cantwell?

12          Senator Cantwell.    Aye.

13          The Clerk.    Mr. Menendez?

14          Senator Wyden.    Aye by proxy.

15          The Clerk.    Mr. Carper?

16          Senator Carper.    Aye.

17          The Clerk.    Mr. Cardin?

18          Senator Cardin.    Aye.

19          The Clerk.    Mr. Brown?

20          Senator Brown.    Aye.

21          The Clerk.    Mr. Bennet?

22          Senator Bennet.    Aye.

23          The Clerk.    Mr. Casey?

24          Senator Casey.    Aye.

25          The Clerk.    Mr. Warner?

1 Senator Wyden. Aye by proxy.  
2 The Clerk. Mr. Whitehouse?  
3 Senator Whitehouse. Aye.  
4 The Clerk. Ms. Hassan?  
5 Senator Hassan. Aye.  
6 The Clerk. Ms. Cortez Masto?  
7 Senator Wyden. Aye by proxy.  
8 The Clerk. Ms. Warren?  
9 Senator Warren. Aye.  
10 The Clerk. Mr. Crapo?  
11 Senator Crapo. Aye.  
12 The Clerk. Mr. Grassley?  
13 Senator Grassley. Nay.  
14 The Clerk. Mr. Cornyn?  
15 Senator Cornyn. Aye.  
16 The Clerk. Mr. Thune?  
17 Senator Thune. Nay.  
18 The Clerk. Mr. Scott?  
19 Senator Scott. Nay.  
20 The Clerk. Mr. Cassidy?  
21 Senator Crapo. Aye by proxy.  
22 The Clerk. Mr. Lankford?  
23 Senator Lankford. Nay.  
24 The Clerk. Mr. Daines?  
25 Senator Daines. Nay.

1           The Clerk.    Mr. Young?

2           Senator Young.    Aye.

3           The Clerk.    Mr. Barrasso?

4           Senator Barrasso.    Nay.

5           The Clerk.    Mr. Johnson?

6           Senator Johnson.    Nay.

7           The Clerk.    Mr. Tillis?

8           Senator Tillis.    Aye.

9           The Clerk.    Mrs. Blackburn?

10          Senator Crapo.    Nay by proxy.

11          The Clerk.    Mr. Chairman?

12          The Chairman.    Aye.

13          The Clerk will announce the vote.

14          The Clerk.    Mr. Chairman, the final tally is 19  
15 ayes and 8 nays.

16          The Chairman.    The "ayes" have it.

17                 I thank my colleagues for their attendance. All  
18 nominations will be reported to the floor, and the  
19 committee stands adjourned.

20                 Whereupon, at 12:21 p.m., the meeting was  
21 adjourned.]

	STATEMENT OF:	PAGE
1		
2	Hon. Ron Wyden,	2
3	a U.S. Senator from Oregon,	
4	chairman, Committee on Finance	
5		
6	Hon. Mike Crapo,	6
7	a U.S. Senator from Idaho	
8		