

1 OPEN EXECUTIVE SESSION TO CONSIDER FAVORABLY REPORTING
2 THE NOMINATIONS OF ERIC D. HARGAN, OF ILLINOIS, TO BE
3 DEPUTY SECRETARY, DEPARTMENT OF HEALTH AND HUMAN
4 SERVICES; DAVID MALPASS, OF NEW YORK, TO BE UNDER
5 SECRETARY FOR INTERNATIONAL AFFAIRS, DEPARTMENT OF THE
6 TREASURY; ANDREW K. MALONEY, OF VIRGINIA, TO BE
7 ASSISTANT SECRETARY FOR LEGISLATIVE AFFAIRS, DEPARTMENT
8 OF THE TREASURY; AND BRENT JAMES McINTOSH, OF MICHIGAN,
9 TO BE GENERAL COUNSEL, DEPARTMENT OF THE TREASURY
10 WEDNESDAY, JUNE 14, 2017

11 U.S. Senate,
12 Committee on Finance,
13 Washington, DC.

14 The hearing was convened, pursuant to notice, at
15 10:05 a.m., in room 215, Dirksen Senate Office Building,
16 Hon. Orrin G. Hatch (chairman of the committee)
17 presiding.

18 Present: Senators Crapo, Burr, Toomey, Wyden,
19 Cantwell, Menendez, Cardin, and Casey.

20 Also present: Republican Staff: Chris Campbell,
21 Staff Director; and Nicholas Wyatt, Tax and Nominations
22 Professional Staff Member. Democratic Staff: Joshua
23 Sheinkman, Staff Director; Michael Evens, General
24 Counsel; Elizabeth Jurinka, Chief Health Adviser; and
25 Ian Nicholson, Investigator. Non-Designated Staff:

1 Joshua LeVasseur, Chief Clerk and Historian; and Bryan
2 Palmer, Deputy Clerk.
3

1 The Chairman. I would like to welcome everyone
2 here this morning.

3 Before we begin, I want to take a moment to
4 acknowledge today's most unfortunate events. At this
5 time, all of our thoughts and prayers go out to our
6 congressional colleagues, staffers and Capitol Police
7 officers who were injured in the attack earlier this
8 morning.

9 The shooting that took place in Alexandria this
10 morning was a terrible tragedy that, as I understand
11 from news reports, would have been much worse if not for
12 the heroic actions of Capitol Police officers on the
13 scene, who apparently were shot themselves as they took
14 down the shooter.

15 I think I speak for everyone here in expressing the
16 deepest gratitude for those who serve in the Capitol
17 Police, who serve on that force and work hard every day,
18 at great risk to their own safety, to keep all of us
19 safe.

20 I hope and pray for the safety of all our Capitol
21 Police officers and for a swift recovery for those who
22 were injured in this unfortunate shooting today as they
23 were serving in the line of duty today.

24 It is beyond horrifying to hear that our fellow
25 members of Congress and staffers who support them had

1 been under attack, and I pray that they will also
2 recover quickly from their injuries.

3 With that, though it will difficult, I think we
4 should turn to the business at hand, which will
5 hopefully provide an opportunity for us to come together
6 and set differences aside.

7

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

3

4 The Chairman. Now, we were supposed to consider
5 today, and I think we still will, and hopefully report
6 the nominations of Eric Hargan to serve as Deputy
7 Secretary of Health and Human Services, David Malpass to
8 serve as Under Secretary for International Affairs of
9 the Treasury, Andrew Maloney to serve in a position to
10 be designated as Assistant Secretary for Legislative
11 Affairs for the Treasury, and Brent McIntosh to serve as
12 general counsel for the Treasury.

13 Last week, the committee had a chance talk with
14 each of these fine nominees. And I think they carried
15 themselves very well and demonstrated further their
16 qualifications to serve in these important positions.

17 As we heard from Governor Tommy Thompson, Mr.
18 Hargan will bring experience, common sense and a
19 meaningful work ethic to Health and Human Services. No
20 doubt his prior service at HHS will bring thoughtfulness
21 and institutional stability at what really is a crucial
22 time.

23 Second on our list is Mr. Malpass. Mr. Malpass's
24 training as an economist in conjunction with his prior
25 experience at Treasury under Presidents Reagan and Bush

1 make him an excellent nominee for this role at Treasury.

2 I think it is fair to say that his input and
3 expertise will be crucial as we seek to reform the tax
4 code.

5 Third, we have Mr. Maloney, who, with more than 25
6 years of government affairs experience, will step
7 naturally into his role as Assistant Secretary for
8 Legislative Affairs at the Treasury.

9 Last, but certainly not least, we have Mr. McIntosh
10 who has a great deal of experience working as a lawyer
11 in the executive branch. His time at the Department of
12 Justice and in the White House make him an excellent
13 candidate to serve as general counsel for the Treasury.

14 I look forward to favorably reporting each of these
15 nominations to the full Senate where, with any luck,
16 they will be confirmed in short order.

17 Before I conclude my statement, I want to say that
18 it was my understanding that some of my colleagues on
19 the other side of the aisle had intended to use today's
20 markup to highlight partisan divides surrounding the
21 health care debate. No doubt there are some fierce
22 disagreements about the direction this debate has been
23 going, and I intended to come here today to offer a
24 fierce rebuttal of some of the accusations that recently
25 have been levied at myself and other committee chairmen.

1 However, on a day like today, I think it is
2 essential that we set our differences aside and work
3 together on what has, up to now, been a cooperative and
4 bipartisan process for these nominations. And I hope
5 all of my colleagues on the committee will be willing to
6 do the same.

7 I suspect we are going to have to conclude this
8 markup off the floor. But with that, we will turn to
9 Senator Wyden.

10

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

3

4 Senator Wyden. Thank you very much, Mr. Chairman.

5 And first of all, Mr. Chairman, I want to associate
6 myself with your very appropriate remarks with respect
7 to this horrific shooting. I think all of us when we
8 learned about Congressman Scalise, the aides and
9 officers who were injured, we all said once again
10 unspeakable violence is coming very, very close to this
11 community.

12 We are very grateful for the Capitol Police, the
13 first responders who did so much, and I think the chair
14 touched on this as well, to keep this act of violence
15 from becoming far worse.

16 So I want it understood, Mr. Chairman, I very much
17 appreciate your remarks. And everyone on our side
18 associates ourselves with what you have said.

19 The Chairman. Well, thank you.

20 Senator Wyden. Now to the business at hand.

21 The Finance Committee will vote on four nominations
22 to important positions in the executive branch. One of
23 our four votes will be on the nomination of Mr. Eric
24 Hargan to fill the Deputy Secretary position at the
25 Department of Health and Human Services.

1 Given what the job entails, it is fair to call Mr.
2 Hargan a health care nominee, and here is why that
3 presents a big issue.

4 At this moment, the American public and most of the
5 Congress, except for a group of 13 male Republican
6 Senators -- and not even they seem to know what is going
7 on -- is being kept in the dark about what the Senate
8 majority has in store for American health care.

9 So when there is discussion about there being a
10 partisan divide, I would just submit to my colleagues
11 there is no partisan divide when it comes to seeing a
12 piece of legislation that affects millions and millions
13 of Americans and one-sixth of the American economy.
14 That is not a partisan matter to be able to see a piece
15 of legislation.

16 What is especially troubling to me is that my good
17 friend, Chairman Hatch, our good friend, the leader of
18 the committee of jurisdiction for health care reform, is
19 being cut out, our committee completely disregarded, as
20 this charade of writing a bill behind closed doors where
21 nobody on our side has seen anything continues.

22 Under Chairman Baucus with Ranking Member Grassley,
23 the Senate Finance Committee had dozens of hearings,
24 dozens, colleagues, some of them started in the morning
25 and went well into the night, on health care reform.

1 But at this point, the leader, Leader McConnell, has
2 kept Finance members from even seeing the bill, much
3 less doing their jobs as representatives of their state
4 by actually legislating.

5 An American voter would expect, for example, that
6 if provisions of this bill harmed colleagues on the
7 other side of the aisle, say it harmed people in Texas,
8 Senator Cornyn would work in committee to fix the
9 legislation.

10 We know that there are thousands and thousands of
11 older people in Pennsylvania who might lose their
12 nursing home coverage under the Republican bill, and
13 they have got every right to expect that one of our
14 members, Senator Toomey, would look out for them and
15 devise a bipartisan solution in committee that protects
16 our most vulnerable citizens.

17 That is not to be. The committee right now, the
18 chairman has been bypassed. This is a political process
19 on Trumpcare that makes the House look transparent. The
20 public has seen the House-passed version of Trumpcare,
21 and that bill has gone over with the public about as
22 well as prolonged root canal work.

23 But now that the bill has come to the Senate, the
24 majority leader has kept it hidden behind closed doors
25 and committed to rushing the bill to a partisan vote on

1 the floor with (A) no hearings, (B) no review, and (C)
2 no accountability to the American people.

3 Democrats in the Senate have said to our colleagues
4 over and over and over, set aside the rhetoric of
5 "repeal, repeal, repeal," stop the President from
6 sabotaging the markets where millions of Americans get
7 their insurance, and what we would like to do is sit
8 down and legislate together.

9 And I am looking down the dais on the other side.
10 I have colleagues here who have worked with me
11 repeatedly on bipartisan health care legislation. I
12 want to do that again. And if you stop the rhetoric of
13 "repeal, repeal, and repeal" and stop sabotaging the
14 insurance markets, we can do that. We can find ways to
15 inject more competition in the insurance markets to
16 bring down pharmaceutical prices.

17 In particular, we update the Medicare guarantee, a
18 matter we have been talking about a lot here to reflect
19 the care seniors need in the future, particularly those
20 with chronic conditions. That is where we ought to be,
21 working on health care on a bipartisan basis. Those are
22 issues that the chairman and members of this committee
23 in the past have shown great interest in tackling.

24 Instead, we have the majority leader leading
25 members down a radically partisan path. The public can

1 only guess at the details of what is being drafted
2 behind closed doors: How many millions will lose
3 insurance? How many hundreds of billions of dollars
4 will be slashed from Medicaid? How much each special
5 interest will get for their silence? How massive the
6 tax breaks are going to be for the very wealthy?

7 It is impossible for us to evaluate a nomination
8 for the number-two spot at HHS without viewing it
9 through that lens.

10 So I will be unable to support Mr. Hargan's
11 nomination today.

12 With respect to Mr. Malpass, Mr. McIntosh, and Mr.
13 Maloney, they are all nominated to significant roles at
14 the Treasury Department. It is my judgment that
15 Treasury's number-one focus in the months and years
16 ahead ought to be finding fresh, bipartisan policies
17 that give everybody in America a chance to get ahead.

18 I know we can do that, having worked with our
19 former colleague Senator Coats on a bipartisan bill. I
20 worked with Judd Gregg, who was then Mitch McConnell's
21 economics lieutenant, on a bipartisan bill. I know we
22 can write a bipartisan tax reform program to give
23 everybody a chance to get ahead, but you have to reject
24 partisan approaches like reconciliation, and it means
25 reaching out to the opposite party in Congress instead

1 of stonewalling them on oversight.

2 I want to thank finally Chairman Hatch and Chairman
3 Grassley for speaking out against the administration's
4 stated policy of ignoring inquiries from Democrats,
5 because that would set a truly dangerous and
6 undemocratic precedent.

7 During the hearing last week, each of the nominees
8 we are considering today committed to responding to
9 questions from Senators of either party. So it is my
10 expectation these nominees will follow through with that
11 commitment that they made to both sides of the aisle.

12 Thank you, Mr. Chairman.

13 The Chairman. Well, thank you, Senator.

14 You know, I want to welcome my Democratic
15 colleagues to the health care debate. In the years
16 since the Affordable Health Care Act was signed into
17 law, we have had no fewer than 36 hearings, 10 since I
18 became chairman, where the state of our nation's health
19 care system was the central focus. That does not
20 include tax hearings or confirmation hearings where
21 Obamacare was also discussed at length. In fact, I
22 would surmise that few subjects have garnered as much
23 attention from this committee as the failings in the
24 design and implementation of Obamacare.

25 Throughout that time, I and many others have urged

1 my colleagues to recognize the problems under Obamacare
2 and work with us, yet only now when the Senate appears
3 ready to finally address these problems are my
4 colleagues insistent on more health care hearings, or at
5 least some colleagues are. They want more debate, they
6 want more discussion.

7 Now, I will take my colleagues' newfound interest
8 in having a discussion on the health care system and
9 their demands for more hearings under advisement. But I
10 hope that they will acknowledge that the subject of
11 Obamacare and its many failings is well-covered
12 territory, I think by both sides, to be honest with you.

13 And I will also remind my colleagues that as the
14 Senate prepared to pass the reconciliation legislation
15 associated with the Affordable Care Act, no committee
16 hearings were held on that legislation or the process
17 used for passing it.

18 So, you know, I think we all know what is going on
19 here. And I think we all know basically what we have to
20 do as a committee. And I hope that we will. I hope
21 that we will work together and have this committee be a
22 central focus of really what can and should happen in
23 health care.

24 Senator Wyden. Mr. Chairman, may I just briefly
25 respond?

1 The Chairman. Sure. Sure.

2 Senator Cardin. Can I get on the list for a
3 response?

4 The Chairman. Who? Senator Cardin? Sure.

5 Senator Casey. Same here.

6 The Chairman. Okay.

7 Senator Wyden. Mr. Chairman, just briefly, because
8 I think I outlined my views. I do not see how you can
9 have a hearing when there is no bill, at least nothing
10 that we have seen. That is number one.

11 Number two, this legislation is going to
12 fundamentally remake the Medicaid program, not for the
13 better, in my view, as it relates to the millions of
14 people who depend on it, seniors who need nursing home
15 care, special needs kids, the disabled.

16 Again and again, we are hearing from our
17 constituents they think these Medicaid changes are going
18 to hit them like a wrecking ball. We have had no
19 hearings on something like that.

20 My understanding is that there is a bill that has
21 been sent to the Congressional Budget Office. We have
22 not seen it. We would very much like to see what has
23 been sent to the Congressional Budget Office. So that
24 is the reason why there is so much concern on our side
25 of the aisle. And it seems to me this is in sharp

1 contrast to the way this committee does business.

2 If you are talking about a fundamental
3 restructuring of the social safety net in America, which
4 is Medicaid, and you do it without any discussion in
5 this committee whatsoever, I think what the majority
6 leader is basically doing is fostering legislative
7 malpractice. You do not deal with issues like this
8 without the committee of jurisdiction.

9 We are the committee of jurisdiction over Medicaid
10 -- Medicaid -- and we have had no hearings to examine
11 these issues. Thank you.

12 The Chairman. Well, thank you, sir.

13 Let me just say this. Because we just had a
14 hearing on these nominees a week ago, I would strongly
15 urge my colleagues to submit any statements of
16 colloquies in writing for the record.

17 Senator Cardin. Mr. Chairman? Mr. Chairman?

18 The Chairman. But we are going to certainly allow
19 anybody to speak who wants to speak, so, Senator?

20 Senator Cardin. Mr. Chairman, I am going to vote
21 against Mr. Hargan because of several reasons, but the
22 timing with the rumors out that we are going to be
23 considering a health care bill in the next two weeks
24 without hearings, that is unacceptable.

25 I want to take my colleagues back to when I was

1 first elected to the Senate with Senator Casey. A
2 little bit before the swearing-in, I got a call from
3 Leader Reid asking what committees I would like to serve
4 on. I only gave him one name, it was the Senate Finance
5 Committee, and I did that because of my great interest
6 in taxes and health care and knowing the importance of
7 this committee in developing the health policy of this
8 country.

9 I had a long career in the House of Representatives
10 working with Democrats and Republicans on health policy.
11 I worked closely with Bill Thomas, and not many people
12 could say they could work closely with him, but I did.
13 And I worked closely with Democrats and Republicans in
14 developing health policy. And that is the reason I
15 wanted to be on this committee.

16 I would hope that the Democrats and Republicans on
17 this committee would come together and say "no" to a
18 process that would allow the health policy of this
19 country to be developed without the input of this
20 committee in collective deliberation.

21 That means, yes, hearings. What has passed the
22 House of Representatives has never been subject to the
23 hearing of this committee. Now, I do not know if that
24 is the bill you are working on or if you are working on
25 a different bill, but we certainly have a right to

1 understand what is being suggested on the floor of the
2 Senate through this committee's deliberation.

3 And, yes, we should be able to offer amendments.
4 This is the United States Senate. We are not going to
5 be able to offer amendments to bills? And they should
6 be first considered in this committee. This is the
7 committee that has the expertise.

8 So, yes, I think this is an affront to the Senate
9 Finance Committee and the United States Senate and to
10 the American people.

11 And I would hope that the leadership of this
12 committee would support the Finance Committee's
13 engagement on the health policy of this nation.

14 So, yes, I will use my voice, I will use my vote in
15 an effort that we as a committee can weigh in on health
16 policy in America. That is why we have the Finance
17 Committee. And I would hope that we would work together
18 to preserve the role of this committee.

19 The Chairman. Well, thank you, Senator. I
20 appreciate your comments very much.

21 Anybody on this side?

22 Who is next? Senator Casey, and then we will come
23 to --

24 Senator Casey. Mr. Chairman, I will address two
25 broad issues; the first more at length and the second

1 more briefly. But the first is about the nominees and
2 the process.

3 I want to, first of all, thank you, Mr. Chairman,
4 for getting responses to some of the questions that I
5 posed to Treasury in January and then again last month.
6 My staff received one of those responses last night, for
7 which I am grateful, and I appreciate your help on that.

8 The Chairman. Thank you.

9 Senator Casey. The first request was a request for
10 foreclosure data, but that remains outstanding.

11 Senator Heller had requested data with regard to
12 foreclosure data in Nevada. He got that at that time,
13 and I am happy he got his response, but I did not get
14 mine. So that is fairly basic, and I think the chairman
15 understands that.

16 Second, I would simply note that when Chairman
17 Hatch placed this request, you were able to turn a
18 response around in two days while I waited four months,
19 a little bit of a difference there.

20 We got a letter last night from Treasury, which was
21 helpful, but not everything we need. So that is one
22 issue.

23 Third, with regard to two of the nominees, neither
24 nominee before us today, and I am talking about Mr.
25 McIntosh and Mr. Maloney, neither would commit to

1 informing the chairman or ranking member of the Finance
2 Committee if White House counsel directs them to not
3 respond to Democratic requests. In other words, if they
4 get that instruction, will they report that directive or
5 communication from White House counsel?

6 I do not know why they would not commit to
7 reporting that to this committee. This would be a major
8 change in practice and should be immediately conveyed to
9 the committee if that were to happen.

10 It would be in, I think, not only my view but the
11 view of a lot of people here, a serious breach of well-
12 established norms and rules of the Senate and of this
13 committee's structure to do otherwise.

14 Just to give you an example, Mr. Chairman, here is
15 what I am talking about. A question for Drew Maloney
16 from me. The question is, if the Treasury general
17 counsel on their own or at the White House counsel
18 directs that you only respond to requests from
19 Republican offices and not Democratic offices, will you
20 inform the chairman and ranking member of the Finance
21 Committee promptly that you have been directed not to
22 respond to Democratic requests? So that is the question
23 I asked.

24 Here is the supplemental response we just got last
25 night at 7:00, quote: "I believe that agencies should

1 provide appropriate responses to requests for
2 information from members of Congress from both parties."
3 So far, so good, right?

4 Again, I am quoting: "If confirmed, I would advise
5 my colleagues, consistent with my views on this matter,"
6 unquote. That response is fine in terms of the words
7 used there, but it is woefully inadequate and
8 incomplete.

9 My question was: will you tell the chairman and
10 ranking member if you are directed to not respond to
11 Democratic requests; would you inform them of that?

12 So that is the explanation for the point I am
13 making on a lack of an answer on what the counsel would
14 instruct them.

15 And I believe it should not take the intervention
16 of the chairman of the committee, Chairman Hatch, it
17 should not take your intervention to get responses that
18 we have requested. And I know that Senator Grassley
19 spoke to this last week as well.

20 We have three coequal branches of government, and
21 we have a right to get responses. And I think this lack
22 of responsiveness is troubling in every case, but
23 especially in this case where the Secretary provided
24 similar information to Republican offices. And I think
25 that is pretty self-evident. And I appreciate your

1 support on that.

2 With regard to health care, I want to join the
3 sentiment that has been expressed a number of times. If
4 there is a bill that emerges, and it sounds like there
5 will be a bill that emerges, why we would not have a
6 hearing on that does not make any sense at all to me.

7 I remember as a member of the HELP Committee, we
8 started having hearings because the HELP Committee had
9 its own bill, as you remember. The chairman was a
10 member of the committee. We were in and out for hours
11 at a time. I think when you add up all the HELP
12 Committee hearings, it was 13 that I remember.

13 But in June and July of 2009, you remember, Mr.
14 Chairman, in the Russell Building, we had days and days
15 and days where members were in and out of those
16 hearings, hours at a time, able to ask questions, able
17 to offer amendments.

18 So I do not think it is in any way unreasonable to
19 suggest or to seek a hearing on a bill that will be a
20 consensus Republican bill on health care before a vote.
21 I think that is, you know, the essence of
22 reasonableness.

23 Thank you, Mr. Chairman.

24 The Chairman. Well, thank you.

25 Senator Menendez, we will go to you.

1 Senator Menendez. Thank you, Mr. Chairman.

2 Mr. Chairman, I have a great deal of affection and
3 respect for you. And I came here just to vote on these
4 nominees. But after listening to some of the comments,
5 I have to be honest, I feel compelled to say a few
6 words.

7 I had to laugh and I chuckled, maybe a little too
8 out loud, when you said, "Welcome, my Democratic
9 colleagues, to the health care debate."

10 I remember sitting on this committee during the
11 whole process of the Affordable Care Act. I remember
12 before that a group of Republican Senators, many from
13 this committee, working with Max Baucus, the former
14 chairman, for months, trying to come up with a
15 bipartisan effort on health care, which ultimately did
16 not succeed because there did not seem to be a real
17 intention to try to achieve that goal.

18 And then I remember sitting through countless
19 hearings and a markup that was a marathon in which many
20 Republican amendments were offered and some
21 incorporated. So that is far from "welcome to the
22 health care debate."

23 Now, there are some of us who have all along since
24 then understood that any sweeping piece of legislation,
25 whether it be Dodd-Frank or this one, is never a perfect

1 piece of legislation. And there are many of us,
2 including myself, who are more than willing and
3 understanding that there were both unintended
4 consequences and things that could be done better and
5 new ideas that could ultimately achieve better success.

6 But every time we have sought to open up the
7 patient to heal it, my colleagues on the other side want
8 to just simply open up the patient to slay it. And that
9 is not the way in which we are going to get to the type
10 of health care that America needs.

11 Now, I find it amazing that what we have is a
12 process that is going on behind the back room door,
13 which will pop up at some point, have no review by this
14 committee, no hearing by this committee, unlike all of
15 the amendments and all of the hearings that went into
16 the Affordable Care Act, with a piece of legislation
17 that affects the lives of millions of Americans --
18 millions -- and many who are challenged in terms of
19 their health care.

20 So I have one point of concurrence with the
21 chairman, and that is, we all do know what is happening
22 here. We have, like lemmings, gone over the cliff
23 blindly, in a way, just to fulfill a political promise,
24 but not to actually improve the health of Americans.

25 So we have been at the debate. We have shed blood

1 to try to make a system that is far better. We are
2 ready to deal with more to improve it. But we are
3 willing to do so in the way in which we created the law,
4 which is open and public and with debate and input. So
5 whether you were for or against, at least the American
6 people knew what they were getting.

7 The Chairman. Well, thank you.

8 Do we have anybody else?

9 Well, since we do not have a quorum, the committee
10 is going to reconvene off the Senate floor during the
11 rollcall vote.

12 And with that, the committee will be in recess
13 until further notice when we meet off the floor.

14 [Whereupon, at 10:32 a.m., the executive session
15 was concluded.]

I N D E X

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