

1 EXECUTIVE COMMITTEE MEETING TO CONSIDER THE NOMINATIONS
2 OF GLEN L. BOWER, TO BE JUDGE OF THE U.S. TAX COURT;
3 JAMES J. JOCHUM, TO BE ASSISTANT SECRETARY, DEPARTMENT OF
4 COMMERCE; AND JOSETTE SHEERAN SHINER, TO BE DEPUTY U.S.
5 TRADE REPRESENTATIVE, EXECUTIVE OFFICE OF THE PRESIDENT
6 WEDNESDAY, JULY 30, 2003

7 U.S. Senate,
8 Committee on Finance,
9 Washington, DC.

10 The hearing was convened, pursuant to notice, at
11 10:44 a.m., in room 215, Dirksen Senate Office Building,
12 Hon. Charles E. Grassley (chairman of the committee)
13 presiding.

14 Also present: Senators Baucus and Bunning.
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1 OPENING STATEMENT OF HON. CHARLES E. GRASSLEY, A U.S.
2 SENATOR FROM IOWA, CHAIRMAN, COMMITTEE ON FINANCE
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4 The Chairman. I can see that we do not have a
5 quorum, but I do want to at least open up in Executive
6 Session and make a short statement, and call on any other
7 member that might want to make a statement.

8 We probably will not do anything more than recess the
9 Executive Session. If there is some business we can
10 conduct in Executive Session, we would probably do that
11 in another environment, maybe in between votes on the
12 Senate floor or something like that.

13 I would like to go into Executive Session to consider
14 three nominees that have previously had confirmation
15 hearings. I would also like to comment about one
16 nominee, Mr. Glen Bower, who has been nominated to be a
17 judge for the U.S. Tax Court.

18 We have released today a joint statement from Senator
19 Baucus and me regarding Mr. Bower's tax returns. The
20 statement highlights concerns about certain deductions
21 contained in his tax return.

22 Mr. Bower has cooperated with the committee review
23 and has amended his return to pay the amount of money
24 due. It is not unique for a nominee, including a Tax
25 Court nominee, to amend his or her return after review by

1 this committee.

2 I appreciate that members of the Finance Committee
3 are concerned about these tax matters, and I want the
4 benefit of their view as we proceed to consider this
5 nomination.

6 That said, I do want to remind my colleagues of the
7 good qualities of the nominee. Mr. Bower brings an
8 enormous amount of experience to this position. He has
9 served most recently as Director of Revenue, State of
10 Illinois, for the past four years.

11 Prior that, he was Assistant Director, Revenue, for
12 the State of Illinois for seven years, and General
13 Counsel to the Illinois Department of Revenue for four
14 years. In addition, he is a member of the IRS Electronic
15 Tax Administration Advisory Committee.

16 The Tax Court has a significant caseload that deals
17 with procedural matters such as proper notification,
18 collection, due process, audit process, taxpayer rights,
19 to name a few.

20 The Tax Court would benefit from an individual that
21 has such strong understanding of the actual operations of
22 tax administration.

23 Mr. Bower also has real experience in adjudication of
24 tax law because he served the Illinois Board of Appeals
25 for three years as a member, and in the last year he was

1 chairman.

2 In addition, Mr. Bower has experience in making tax
3 law, having served as a member of the Illinois State
4 House of Representatives. It is rare that we get the
5 benefit of someone who has made tax law, administered tax
6 law, and judged tax cases to serve on this court,
7 certainly good qualifications.

8 Mr. Bower has also been a practicing attorney and has
9 been active in the State and national bar associations in
10 the field of tax.

11 Finally, I would note that Mr. Bower has served his
12 Nation in the U.S. Air Force Reserve in the Judge
13 Advocate General's Department, where he serve 25 years,
14 before recently retiring as a lieutenant colonel.

15 With this strong background, it is understandable
16 that Mr. Bower enjoys bipartisan support from Senators
17 from his State. It is my understanding that both Senator
18 Durban and Senator Fitzgerald back his nomination.

19 I would encourage my colleagues to bear in my this
20 extensive background and experience as we consider Mr.
21 Bower's nomination.

22 Senator Baucus?

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1 OPENING STATEMENT OF HON. MAX BAUCUS, A U.S. SENATOR FROM
2 MONTANA

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

5 Before you proceed with a vote on the nomination of
6 Mr. Glen Bower, I do have a few things I would like to
7 say.

8 The U.S. Tax Court plays an indispensable role in
9 preserving our voluntary self-assessment tax system.
10 Very important. It is incredible, when you stop to think
11 about it, that we have a system that is voluntary, that
12 relies upon voluntary self-assessment by individuals.

13 The Tax Court provides a judicial forum in which
14 taxpayers can dispute tax deficiencies determined by the
15 IRS prior to payment of the disputed amounts.

16 It is a court of national jurisdiction and its
17 decisions on tax matters are important to all of us. The
18 Tax Court is a highly specialized court. It is composed
19 of 19 Presidentially appointed members. All of the
20 judges have expertise in the tax laws. They apply that
21 expertise in a manner to ensure that taxpayers are
22 assessed only what they owe and no more.

23 The Tax Court also has responsibilities beyond
24 hearing disputes concerning tax deficiencies. The court
25 has authority to hear tax disputes over notices of

1 transferee liability, certain types of declaratory
2 judgment, readjustments of partnership items, failures to
3 abate interest, awards of administrative costs, worker
4 classification, innocent spouse relief, and certain
5 collection actions. These matters are highly technical.
6 They demand the consideration of a skilled and
7 knowledgeable judge.

8 Tax Court judges protect taxpayers' rights and they
9 ensure that everyone pays their fair share. They are
10 expected to know the law and apply it in a fair and
11 equitable manner, and personally adhere to its
12 requirements.

13 Although judges are appointed to 15-year terms, the
14 reality is that these are lifetime appointments. It has
15 been the tradition that judges who perform well have been
16 reappointed, regardless of political affiliation.
17 Therefore, it is critical that only those with the
18 highest degree of integrity, knowledge, and experience
19 are appointed to the bench.

20 The Finance Committee has a good track record in
21 approving qualified judges to the Tax Court. We have to
22 ensure that judges have the requisite tax law expertise
23 and judicial temperament to discharge the significant
24 responsibilities of the court.

25 Recently, the Finance Committee unanimously approved

1 five new members to the bench. The credentials of each
2 new judge met or exceeded the standards traditionally
3 followed by this committee. They are of the highest
4 caliber.

5 Not one question was raised about their
6 qualifications, their ability to serve. Not one question
7 was raised about their personal tax returns. They each
8 received a very qualified rating from the American Bar
9 Association Tax Section.

10 In contrast, with regard to Mr. Bower, the
11 committee's due diligence process revealed serious
12 questions about deductions he took on his personal tax
13 returns.

14 In my judgment, this, in turn, raises questions about
15 his knowledge of the tax laws--his knowledge of the most
16 basic tax laws, I might add--and his suitability to be a
17 competent U.S. Tax Court judge.

18 Mr. Chairman, you and I, as you mentioned, issued a
19 statement this morning providing details on the type of
20 improper deductions taken by Mr. Bower. I suspect many
21 will think that Mr. Bower should be more forthcoming
22 about the nature of those deductions and why he thought
23 they were appropriate.

24 So before we vote, maybe the court of public opinion
25 should be heard. I urge members of this committee to

1 carefully consider whether Mr. Bower belongs on the
2 court. I cannot recall a time when we did not approve a
3 Tax Court judge on a unanimous vote, and it is troubling
4 that we might do so today.

5 Mr. Bower was given a fair opportunity to clean up
6 his tax returns. After repeated attempts to get it
7 right, he came up short, woefully short. Many of the
8 issues involve basic tax law that Mr. Bower either fails
9 to understand, or simply ignores.

10 The Tax Code is, admittedly, complex. But it is
11 written in English and many sections have plain meaning,
12 including those that he failed to comply with.

13 The question is no longer about the amount of tax
14 involved or the nominee's willingness to take remedial
15 action. The question is, rather, about Mr. Bower's duty
16 and responsibility to ensure that he is complying with
17 the tax laws, the tax laws that he will be empowered to
18 enforce. This committee expects a higher degree of
19 competency regarding the tax laws than that demonstrated
20 by Mr. Bower.

21 Our voluntary tax system is at a crossroads. There
22 are too many stories about corporate shelters, offshore
23 financial accounts, various tax scams and schemes. IRS
24 compliance is way down.

25 Our investigation of Enron clearly revealed the

1 complexity of our tax laws and the arrogant abuse of that
2 complexity. Many taxpayers question whether they are the
3 only ones paying taxes.

4 So American taxpayers need to know that the Tax Court
5 judge who sits in judgment of them is, himself, compliant
6 with the tax laws. Mr. Bower's conduct evidences a
7 belief that the American taxpayer should reimburse him
8 for his personal expenses. He is wrong.

9 After carefully reviewing this matter and weighing
10 all factors regarding this nomination, I have concluded
11 that he should not be approved by this committee, nor
12 confirmed by the Senate.

13 It is not my intent or my desire to disparate the
14 reputation of Mr. Bower. He may have served well in
15 other capacities. But he does not belong on the Tax
16 Court.

17 As you know, I have shared my views with you and the
18 White House, Mr. Chairman. My position on this matter is
19 not a surprise. This committee has approved
20 approximately four dozen of the President's nominees. We
21 have not formally rejected a single one. My decision to
22 oppose this nominee reflects how strongly I feel about
23 protecting the integrity of our tax system.

24 The integrity of our tax system is only as strong as
25 the character and honesty of those who oversee it. Mr.

1 Chairman, I do not support the nomination of Mr. Bower to
2 be a U.S. Tax Court judge.

3 I know the Chairman wishes to proceed with a vote,
4 and I want to accommodate you, Mr. Chairman. But we only
5 disclosed this information to members of the committee
6 last night. Fairness dictates that we give Senators time
7 to digest the information and ask questions of Mr. Bower
8 before being asked to vote. I, therefore, ask that we
9 put off the vote on Mr. Bower.

10 The Chairman. Well, first of all, I know, Senator
11 Baucus, you give thorough consideration to every decision
12 you make and I respect your decision to oppose. We have
13 always had a good, close working relationship. Even on
14 the consideration of this, you have done that and
15 respected our working together.

16 Obviously, right now we would not be voting on this
17 anyway because we do not have a quorum. So, this and
18 other nominees will be put off, and I will have a chance
19 to consider your admonition.

20 Senator Baucus. I appreciate that, Mr. Chairman.

21 The Chairman. Do you have a comment, Senator?

22 Senator Bunning. No.

23 The Chairman. All right. Then we would recess this
24 Executive Session until the fall of the gavel. It would
25 be my attention that we would vote on at least some of

1 these nominees that are before the committee before we go
2 home, at a time maybe off the floor, or something that is
3 convenient to everybody.

4 So, I would adjourn the meeting.

5 [Whereupon, at 10:56 a.m. the meeting was concluded.]

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I N D E X

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Gilmour
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