

1 OPEN EXECUTIVE SESSION TO AUTHORIZE COMMITTEE RULES FOR  
2 THE 116TH CONGRESS; TO AUTHORIZE COMMITTEE FUNDING FOR  
3 THE 116TH CONGRESS; DESIGNATION OF SUBCOMMITTEES FOR THE  
4 116TH CONGRESS; DESIGNATION OF MEMBERS TO SERVE ON THE  
5 JOINT COMMITTEE ON TAXATION; DESIGNATION OF MEMBERS TO  
6 SERVE AS CONGRESSIONAL TRADE ADVISORS ON TRADE POLICY AND  
7 NEGOTIATIONS; AND TO CONSIDER FAVORABLY REPORTING THE  
8 NOMINATIONS OF MICHAEL FAULKENDER, OF MARYLAND, TO BE AN  
9 ASSISTANT SECRETARY OF THE TREASURY; JEFFREY KESSLER, OF  
10 VIRGINIA, TO BE AN ASSISTANT SECRETARY OF COMMERCE;  
11 ELIZABETH DARLING, OF TEXAS, TO BE COMMISSIONER ON  
12 CHILDREN, YOUTH, AND FAMILIES, DEPARTMENT OF HEALTH AND  
13 HUMAN SERVICES; AND MICHAEL J. DESMOND, OF CALIFORNIA, TO  
14 BE CHIEF COUNSEL, INTERNAL REVENUE SERVICE, AND AN  
15 ASSISTANT GENERAL COUNSEL, DEPARTMENT OF THE TREASURY  
16 TUESDAY, FEBRUARY 5, 2019  
17 U.S. Senate,  
18 Committee on Finance,  
19 Washington, DC.

20 The meeting was convened, pursuant to notice, at  
21 10:15 a.m., in room 215, Dirksen Senate Office Building,  
22 Hon. Chuck Grassley (chairman of the committee)  
23 presiding.

24 Present: Senators Crapo, Enzi, Cornyn, Thune,  
25 Isakson, Toomey, Scott, Cassidy, Lankford, Daines, Young,  
26

1 Wyden, Cantwell, Menendez, Cardin, Casey, Hassan, and  
2 Cortez Masto.

3           Also present: Republican staff: Kolan Davis, Staff  
4 Director; Jeff Wrase, Deputy Staff Director and Chief  
5 Economist; Nicholas Wyatt, Tax, Infrastructure, and  
6 Nominations Policy Advisor; Chris Allen, Senior Advisor  
7 for Benefits and Exempt Organizations; Ryan Martin,  
8 Senior Human Services Advisor; and Mark Warren, Chief Tax  
9 Counsel. Democratic staff: Joshua Sheinkman, Staff  
10 Director; Michael Evans, General Counsel; Ian Nicholson,  
11 Investigator; and Beth Vrabel, Senior Health Counsel.  
12

1       OPENING STATEMENT OF HON. CHUCK GRASSLEY, A U.S. SENATOR  
2       FROM IOWA, CHAIRMAN, COMMITTEE ON FINANCE

3

4             The Chairman.     The committee will come to order. I  
5     thank the few people who were here for being here on  
6     time.

7             This will be the beginning of a very active and  
8     productive two years for Finance Committee. In addition  
9     to organizing the committee today, we will also report  
10    the nominations of four individuals who were reported by  
11    the committee during the last Congress, but were not  
12    confirmed on the floor of the Senate the last Congress.

13            I thank the Ranking Member Wyden for helping to  
14    facilitate the processing of these nominees. And I do  
15    not want to take up too much time before handling today's  
16    business, but I do want to mention especially for the  
17    benefit of the administration one of the standard  
18    questions that all nominees who appear before this  
19    committee are asked. Each nominee is asked to commit to  
20    providing a prompt response in writing to any questions  
21    addressed to this committee by any senator of this  
22    committee.

23            This applies to questions and letters from  
24    Republicans and or Democrats. I continue to expect  
25    nominees and the administration officials to be

1 responsive to my letters and letters from my Senator.  
2 And so I would say to Senator Wyden what Senator Baucus  
3 once said to me when I was Ranking Member, to some  
4 witnesses -- and I suppose I was complaining about not  
5 getting answers to my enquiries and my oversight --  
6 Senator Baucus said, consider a letter from Senator  
7 Grassley to be a letter from me. So I would want to  
8 offer the same courtesy to Senator Wyden or Democrats on  
9 this committee.

10 It brings me back to one of the first communications  
11 I had with the new administration January or February of  
12 2017, I think it came something like this in a long  
13 letter that this administration was only going to answer  
14 letters from chairman of committees. Add together the  
15 House and Senate, that means approximately 480 Members of  
16 the Congress would never get an answer to their letters  
17 of inquiry.

18 I sent a seven-page letter to this administration  
19 saying how there were court decisions saying any Member  
20 of Congress had a right to do oversight and ought to  
21 expect answers to their letters within a month. Then  
22 somebody came up from the administration, and we sat down  
23 and talked about it in my office. Later on they  
24 rescinded that command to their administration that all  
25 Members should get their oversight requests responded to.

1           I do not think that's practiced very faithfully by  
2 any administration, this one, or Republican or Democrat  
3 previous, from my experience, but you just do not give  
4 up. So if you run into problems, fight for your right to  
5 get answers to questions. If you need my help, I will  
6 try to help you.

7           I will call on the Ranking Member, but you can  
8 finish your conversation there.

9           Senator Wyden. Mr. Chairman, after you have  
10 completed your opening statement, I have an opening  
11 statement. But at this point, I would like to express my  
12 appreciation of your point that every Member of this  
13 committee, every Democrat, every Republican, is entitled  
14 to timely responses to our questions. And you have made  
15 that point. That has been a tradition, and I appreciate  
16 it.

17           When you are done with your opening statement, I  
18 will have one.

19           The Chairman. The only thing I have to say, when  
20 we get a quorum we are going to let other -- until then,  
21 we are going to let other people speak if they want to  
22 speak. But when we get 15 people here, I would like to  
23 intercede and do our business while we still have a  
24 quorum.

25           Proceed, Senator Wyden.

26

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

3

4 Senator Wyden. Thank you, Mr. Chairman.

5 We are of course meeting today to organize for the  
6 116th the Congress. I want to thank all our Members for  
7 their interest in joining the Finance Committee.

8 I think it is worth noting there are more Members of  
9 the Finance Subcommittee on Health than there are on the  
10 entire Senate Judiciary Committee, which I think should  
11 be interpreted as a strong statement that we have no  
12 shortage of health policy wonks here on the Senate  
13 Finance Committee.

14 We are going to have four nominations we are going  
15 to vote on shortly and to save some time -- and of  
16 course, Mr. Chairman, when we have a quorum, I am happy  
17 to move to do business.

18 I do want to touch on the nomination of Elizabeth  
19 Darling to serve as Commissioner of the Administration on  
20 Children Youth and Families. One of the issues she would  
21 oversee if she is confirmed is foster care. And I just  
22 feel very strongly that I have an obligation to comment  
23 on one of the most wrongheaded un-American policies the  
24 Trump Administration has cooked up in the last two years.

25 Last month the Department of Health and Human

1 Services gave South Carolina a green light for  
2 discrimination in foster care programs, taxpayer-funded  
3 discrimination. What this means is adults who can  
4 provide safe loving and nurturing homes for foster kids  
5 are going to be denied that opportunity on religious  
6 grounds, people who are Jewish, people who are Catholic  
7 people, people who are Muslims, people who choose to  
8 practice no religion at all, LGBTQ Americans, potentially  
9 others. Under the Trump policy, they could legally  
10 become the victims of discrimination.

11 I want just as we get ready to vote to have  
12 colleagues think about what this means for foster kids.  
13 We have dedicated our work in foster care to staying in a  
14 bipartisan way to always find common ground.  
15 Unfortunately in this policy, there are going to be fewer  
16 safe loving homes available to the most vulnerable  
17 youngsters.

18 Why would anybody want to punish foster kids that  
19 way? They sure have it tough already.

20 The bottom line, the administration got this wrong.

21 It sets a horrible precedent. And so I will be unable  
22 to support this nomination and I am going to put a hold  
23 on it if it reaches the floor of the Senate.

24 We are also going to talk some more about other  
25 matters on Family First, particularly the slow

1 implementation. I hear a lot of talk about robust  
2 conversations behind the scenes. That is not good enough  
3 in my view. I want to go further.

4 Then the committee is going to consider the  
5 nomination of Michael Faulkender to be an Assistant  
6 Secretary of Treasury. When he came before the  
7 committee, he was asked about whether the Trump tax  
8 handouts to the corporations and the 1 percent would pay  
9 for themselves. He was asked about Trump promises to  
10 working families. He put on a masterclass exhibition of  
11 ducking, and bobbing and weaving his way around the  
12 questions.

13 He is going to head up the Research Office at  
14 Treasury if confirmed. That office requires a basic  
15 level of honesty and candor. I do not believe it ought  
16 to go to somebody who just seems allergic to giving  
17 straight answers at his nomination. So I will not  
18 support that today.

19 Next will be Michael Desmond's nomination to serve  
20 as Chief Counsel of the IRS. I intend to support. It is  
21 an important role.

22 I have had a number of conversations with  
23 Commissioner Rettig about getting it filled, but there is  
24 one policy matter that I just want to touch on before we  
25 proceed. There is talk in the Trump Administration about

1 bypassing the Congress and taking administrative action  
2 to index capital gains to inflation. That would be a  
3 special break for the fortunate few. Working families  
4 need not apply.

5 According to one recent analysis, it would cost more  
6 than a \$100 billion over the next decade. Eighty-six  
7 percent of that benefit goes to the top one percent of  
8 earners. More than 63 percent of the benefit goes to the  
9 top tenth of a percent of earners. That, in my view, is  
10 Trump economics in a nutshell and a big mistake.

11 At a time when the tax code already favors the  
12 fortunate few over working people when we need funds for  
13 Medicare and Medicaid, education and defense, the Trump  
14 Administration on that proposal says, well we will look  
15 at another handout for the most fortunate. And the legal  
16 basis for the administrative change--which the IRS Chief  
17 Counsel would have a role in crafting--in my view, is  
18 laughable. The first Bush Administration reached the  
19 same conclusion, that it could not do this when it looked  
20 at it 30 years ago.

21 So I am going to support Mr. Desmond. He is a  
22 qualified nominee. But the Trump Administration can  
23 expect a fight if they go down this road unilaterally  
24 with respect to indexing capital gains.

25 Finally, the last nomination will be Jeff Kessler.

1 We understand that this is a key position for Enforcement  
2 and Compliance. It means getting trade done right.

3 The Trump Administration has gotten a fair amount of  
4 splashy headlines on trade. This is a key job for  
5 enforcing our trade laws. Mr. Kessler is well-qualified  
6 and I intend to support his nomination today.

7 The Chairman. Now we will go to the agenda of the  
8 business. Some Members were seeking recognition now, and  
9 so I will stay around. This is a practice I use in  
10 Judiciary. As long as people want to speak, we will  
11 speak.

12 But this is such a hard time getting a quorum, I  
13 would like to move ahead.

14 So our first order of business is organize for this  
15 Congress, the 116th. To organize, a committee must adopt  
16 committee rules, authorize the committee budget, assign  
17 Senators to subcommittees, and designate Senators to  
18 serve on panels whose members are drawn from the  
19 membership of the committee.

20 Regarding the first item of business, the committee  
21 rules, all Senators should have a copy of the proposed  
22 rules in the material before them.

23 Senator Wyden. Mr. Chairman, I move that the  
24 committee adopt the committee rules.

25

1           Senator Thune.    Mr. Chairman, I second it.

2           The Chairman.   Without objection.  Then that is so  
3 ordered.

4           The next order of business is to approve the  
5 committee budget.  All Senators should have a copy of  
6 that before them, the Resolution concerning funding.

7           Do you want to --

8           Senator Wyden.   Yes.  Mr. Chairman, I move that the  
9 committee approve the Resolution concerning the budget.

10          Senator Thune.    Second.

11          The Chairman.    Okay.

12          Moved and seconded without objection.  That is  
13 ordered.

14          The Chairman.    The next order of business is to  
15 assign Senators too subcommittees of this committee.  
16 Senators have before them the list of Senators on each  
17 subcommittee and should be aware of those assignments.

18          Senator Wyden.    Mr. Chairman, I move to make those  
19 assignments.

20          Senator Thune.    Second.

21          The Chairman.    It has been moved and seconded.  So  
22 without objection, that is ordered.

23          The next order of business is to designate Finance  
24 Committee Members on the Joint Committee on Taxation and  
25 Congressional Trade Advisories on Trade Policy and

1 Negotiation. By statute as well as tradition, the  
2 committee designates its most senior and eligible five  
3 Senators to fill these roles. This is the designation  
4 proposed in the papers before every Senator.

5 Senator Wyden. Mr. Chairman, I would move to make  
6 those designations.

7 Senator Thune. Seconded.

8 The Chairman. Moved and seconded. Without  
9 objection it is so ordered.

10 Today we also consider four nominations: Michael  
11 Faulkender, to be Assistant Secretary of Treasury;  
12 Jeffrey Kessler, to be Assistant Secretary of Commerce;  
13 Elizabeth Darling, to be Commissioner of Children, Youth  
14 and Families at the Department of Health and Human  
15 Services; Michael Desmond to be Chief Counsel for  
16 Internal Revenue Service and Assistant General Counsel in  
17 the Department of Treasury. These are all important  
18 positions, and I believe that the nominees are all well-  
19 qualified for their positions.

20 We will now turn to consideration. First, I call up  
21 the nomination of Michael Faulkender, to be Assistant  
22 Secretary of Treasury. I understand from the Ranking  
23 Member that a recorded vote has been requested. The  
24 clerk will call the roll.

25 The Clerk. Mr. Crapo?

1 Senator Crapo. Aye.  
2 The Clerk. Mr. Roberts?  
3 The Chairman. Aye by proxy.  
4 The Clerk. Mr. Enzi?  
5 Senator Enzi. Aye.  
6 The Clerk. Mr. Cornyn?  
7 The Chairman. Aye by proxy.  
8 The Clerk. Mr. Thune?  
9 Senator Thune. Aye.  
10 The Clerk. Mr. Burr?  
11 The Chairman. Aye by proxy.  
12 The Clerk. Mr. Isakson?  
13 Senator Isakson. Aye.  
14 The Clerk. Mr. Portman.  
15 The Chairman. Aye by proxy.  
16 The Clerk. Mr. Toomey?  
17 Senator Toomey. Aye.  
18 The Clerk. Mr. Scott?  
19 Senator Scott. Aye.  
20 The Clerk. Mr. Cassidy?  
21 Senator Cassidy. Aye.  
22 The Clerk. Mr. Lankford?  
23 Senator Lankford. Aye.  
24 The Clerk. Mr. Daines?  
25 Senator Daines. Aye.

1           The Clerk.    Mr. Young?  
2           Senator Young.   Aye.  
3           The Clerk.    Mr. Wyden?  
4           Senator Wyden.   No.  
5           The Clerk.    Ms. Stabenow?  
6           Senator Wyden.   Aye by proxy.  
7           The Clerk.    Ms. Cantwell?  
8           Senator Cantwell.   Aye.  
9           The Clerk.    Mr. Menendez?  
10          Senator Menendez.    No.  
11          The Clerk.    Mr. Carper?  
12          Senator Wyden.   Aye by proxy.  
13          The Clerk.    Mr. Cardin?  
14          Senator Wyden.   Aye by proxy.  
15          The Clerk.    Mr. Brown.  
16          Senator Wyden.   Aye by proxy.  
17          The Clerk.    Mr. Bennet?  
18          Senator Wyden.   Aye by proxy.  
19          The Clerk.    Mr. Casey?  
20          Senator Casey.   Aye.  
21          The Clerk.    Mr. Warner?  
22          Senator Wyden.   Aye by proxy.  
23          The Clerk.    Mr. Whitehouse?  
24          Senator Wyden.   Aye by proxy.  
25          The Clerk.    Ms. Hassan?

1 Senator Hassan. Aye.

2 The Clerk. Ms. Cortez Masto?

3 Senator Cortez Masto. Aye.

4 The Clerk. Mr. Chairman?

5 The Chairman. Aye.

6 The Clerk. Mr. Cornyn?

7 Senator Cornyn. Aye.

8 The Clerk. Mr. Chairman, the final tally is 26  
9 ayes, 2 nays.

10 The Chairman. Okay.

11 The "ayes" have it, and the nomination is  
12 favorably reported.

13 I call up the nomination of Jeffrey Kessler to be an  
14 Assistant Secretary of Commerce. Does any Senator  
15 require a recorded vote?

16 [No response.]

17 The Chairman. As there is not a request, all in  
18 favor say "aye."

19 [A chorus of ayes.]

20 The Chairman. Opposed, say "no."

21 [No response.]

22 The Chairman. The "ayes" have it, and the  
23 nomination is ordered favorably reported.

24 I call up the nomination of Elizabeth Darling, to be  
25 Commissioner of Children Youth and Families at the

1 Department of Health and Human Services. And I  
2 understand a recorded vote is requested. So the clerk  
3 will call the roll.

4 The Clerk. Mr. Crapo?

5 Senator Crapo. Aye.

6 The Clerk. Mr. Roberts?

7 The Chairman. Aye by proxy.

8 The Clerk. Mr. Enzi?

9 Senator Enzi. Aye.

10 The Clerk. Mr. Cornyn?

11 Senator Cornyn. Aye.

12 The Clerk. Mr. Thune?

13 Senator Thune. Aye.

14 The Clerk. Mr. Burr?

15 The Chairman. Aye by proxy.

16 The Clerk. Mr. Isakson?

17 Senator Isakson. Aye.

18 The Clerk. Mr. Portman.

19 The Chairman. Aye by proxy.

20 The Clerk. Mr. Toomey?

21 Senator Toomey. Aye.

22 The Clerk. Mr. Scott?

23 Senator Scott. Aye.

24 The Clerk. Mr. Cassidy?

25 Senator Cassidy. Aye.

1           The Clerk.    Mr. Lankford?  
2           Senator Lankford.    Aye.  
3           The Clerk.    Mr. Daines?  
4           Senator Daines.    Aye.  
5           The Clerk.    Mr. Young?  
6           Senator Young.    Aye.  
7           The Clerk.    Mr. Wyden?  
8           Senator Wyden.    No.  
9           The Clerk.    Ms. Stabenow?  
10          Senator Wyden.    No by proxy.  
11          The Clerk.    Ms. Cantwell?  
12          Senator Cantwell.    No.  
13          The Clerk.    Mr. Menendez?  
14          Senator Menendez.    No.  
15          The Clerk.    Mr. Carper?  
16          Senator Wyden.    No by proxy.  
17          The Clerk.    Mr. Cardin?  
18          Senator Wyden.    No by proxy.  
19          The Clerk.    Mr. Brown.  
20          Senator Wyden.    No by proxy.  
21          The Clerk.    Mr. Bennet?  
22          Senator Wyden.    No by proxy.  
23          The Clerk.    Mr. Casey?  
24          Senator Casey.    No.  
25          The Clerk.    Mr. Warner?

1 Senator Wyden. No by proxy.

2 The Clerk. Mr. Whitehouse?

3 Senator Wyden. No by proxy.

4 The Clerk. Ms. Hassan?

5 Senator Hassan. No.

6 The Clerk. Ms. Cortez Masto?

7 Senator Cortez Masto. No.

8 The Clerk. Mr. Chairman?

9 The Chairman. Aye.

10 Would you announce the vote, please?

11 Senator Wyden. Mr. Chairman, before we announce  
12 it, we had a mistake. Mr. Whitehouse should be recorded  
13 as "aye by proxy."

14 The Clerk. Mr. Chairman, the final tally is 16  
15 ayes, 12 nays.

16 The Chairman. The "ayes" have it, and the  
17 nomination is favorably reported.

18 Finally, I call up the nomination of Michael J.  
19 Desmond, to be Chief Counsel for the Internal Revenue and  
20 also Assistant General Counsel, Treasury Department.

21 Does any Senator require a recorded vote? You do  
22 want a recorded vote?

23 The clerk will call the roll.

24 The Clerk. Mr. Crapo?

25 Senator Crapo. Aye.

1           The Clerk.    Mr. Roberts?  
2           The Chairman.  Aye by proxy.  
3           The Clerk.    Mr. Enzi?  
4           Senator Enzi.    Aye.  
5           The Clerk.    Mr. Cornyn?  
6           The Chairman.  Aye by proxy.  
7           The Clerk.    Mr. Thune?  
8           The Chairman.  Aye by proxy.  
9           The Clerk.    Mr. Burr?  
10          The Chairman.  Aye by proxy.  
11          The Clerk.    Mr. Isakson?  
12          Senator Isakson.  Aye.  
13          The Clerk.    Mr. Portman.  
14          The Chairman.  Aye by proxy.  
15          The Clerk.    Mr. Toomey?  
16          Senator Toomey.  Aye.  
17          The Clerk.    Mr. Scott?  
18          Senator Scott.   Aye.  
19          The Clerk.    Mr. Cassidy?  
20          Senator Cassidy.  Aye.  
21          The Clerk.    Mr. Lankford?  
22          Senator Lankford.  Aye.  
23          The Clerk.    Mr. Daines?  
24          Senator Daines.  Aye.  
25          The Clerk.    Mr. Young?

1 Senator Young. Aye.  
2 The Clerk. Mr. Wyden?  
3 Senator Wyden. Aye.  
4 The Clerk. Ms. Stabenow?  
5 Senator Wyden. Aye by proxy.  
6 The Clerk. Ms. Cantwell?  
7 Senator Cantwell. Aye.  
8 The Clerk. Mr. Menendez?  
9 Senator Menendez. No.  
10 The Clerk. Mr. Carper?  
11 Senator Wyden. Aye by proxy.  
12 The Clerk. Mr. Cardin?  
13 Senator Wyden. Aye by proxy.  
14 The Clerk. Mr. Brown?  
15 Senator Wyden. Aye by proxy.  
16 The Clerk. Mr. Bennet?  
17 Senator Wyden. Aye by proxy.  
18 The Clerk. Mr. Casey?  
19 Senator Casey. Aye.  
20 The Clerk. Mr. Warner?  
21 Senator Wyden. Aye by proxy.  
22 The Clerk. Mr. Whitehouse?  
23 Senator Wyden. No by proxy.  
24 The Clerk. Ms. Hassan?  
25 Senator Hassan. Aye.

1           The Clerk.    Ms. Cortez Masto?

2           Senator Cortez Masto.    Aye.

3           The Clerk.    Mr. Chairman?

4           The Chairman.    Aye.

5           Will you report the vote, please?

6           The Clerk.    Mr. Chairman, the final tally is 26  
7 ayes, 2 nays.

8           The Chairman.    Majority having reported, this  
9 nominee will be reported.

10          Senator Scott?

11          Senator Scott.    Thank you. Mr. Chairman.

12          I just wanted to take a minute or two to respond to  
13 Ranking Member Wyden's characterization of the HHS ruling  
14 as it relates to South Carolina and Miracle Hill  
15 adoption.

16          The fact of the matter is that we are going to have  
17 to wrestle as a nation and as a Congress with religious  
18 liberty. We can see that is -- religious liberty is on a  
19 crash collision course in this Congress and will have an  
20 opportunity to wrestle with the larger looming issue at  
21 another time.

22          I will say that according to Ranking Member Wyden's  
23 comments, I would disagree vehemently with those  
24 comments. The fact of the matter is that what we will see  
25 happen in South Carolina are more adoptions, more options

1 for adoptions. In fact, be told that the decision by HHS  
2 was to expand options. In a world that is focused on  
3 tolerance and acceptance for all, I think that definition  
4 of "tolerance and acceptance" must apply to people as  
5 it relates to religious liberty.

6 And so Miracle Hill provides options for adoptions  
7 that will expand opportunities for children stuck in  
8 foster care today and other places so as to provide a  
9 reasonable realistic expectation that all members of  
10 South Carolina's Community who want to participate in  
11 adoption includes communities of faith.

12 I look forward to working with the Ranking Member on  
13 other decisions in foster care and perhaps providing --  
14 as we spoke about this morning -- paths forward to  
15 education and lots of other options. On this specific  
16 issue, I could not disagree with the Ranking Member more.

17 Senator Wyden. As the new Senators are going to  
18 see, one of the most enjoyable aspects of serving  
19 together on this committee is working with Senator Scott.  
20 Once in a while, we have a difference of opinion. What a  
21 surprise. It is the United States Senate. But as he  
22 knows, this does not in any way diminish my fondness for  
23 him personally.

24 So colleagues, let me tell you why I am so concerned  
25 about this. I am going to speak as a Jew, because my

1 parents fled the Nazis, not all got out. And this is  
2 what this would mean for a Jewish child.

3 Say you have a Jewish kid who is raised Jewish. And  
4 his parents are in a horrible automobile accident. They  
5 died and the kid ends up in the foster system. Because  
6 of this, that Jewish kid -- who might have been me --  
7 gets placed with an Evangelical family who tells the  
8 Jewish kid everything your parents taught you was wrong.  
9 And so we are going to teach you something else.

10 So Senator Scott is absolutely right. We are going  
11 to have a big debate about this. This not the end of it  
12 today, and I do not want anybody to think in his heart  
13 that Senator Scott is not being sincere. And we are  
14 going to work together, as he mentioned, on a whole lot  
15 of progress in foster care.

16 Senator Scott has a terrific idea in terms of  
17 building on Families First and trying to make  
18 opportunities for young people to get college  
19 scholarships and the like. But on this one, friends  
20 disagree because under this that was approved -- and I am  
21 sure my friend Senator Scott knows that I had some  
22 spirited conversations with the administration on this --  
23 adults who can provide safe, loving and nurturing homes  
24 for foster kids will be denied that opportunity on  
25 religious grounds.

1           So Mr. Chairman, thank you. And I am glad that  
2           Senator Scott and I had at least a chance to give you a  
3           preview of what is to come. If he wants to --

4           The Chairman. Senator Scott wants the floor.

5           Senator Wyden. Absolutely.

6           Senator Scott. Thank you.

7           I recall my first days on this Finance Committee  
8           when I believe that you were the Chairman of this  
9           committee and you were so kind to extend an opportunity  
10          to sit down and talk about some of the priorities that we  
11          would experience together or face together. And having  
12          the chance to have the Chairman of the committee sit down  
13          with a new Member and explain and ensure that I would be  
14          a full participant in this committee -- I cannot imagine  
15          that happening in any other place than the United States  
16          Senate. And I truly appreciate that kind gesture.

17          I will say, however, that the facts are a little  
18          different. In South Carolina and, frankly around the  
19          country, we hope that a Jewish child would have  
20          opportunities from agencies focused on adoption from many  
21          faiths. And we do not have a problem whether it is a  
22          Jewish adoption agency, or a Muslim adoption agency, or a  
23          Christian adoption agency having the opportunity to honor  
24          their faith as it relates to their approach to adoptions.

25          I will say this as a person who is very familiar

1 with a number of adoptions that have happened at least in  
2 South Carolina where African-American kids who found  
3 themselves in a system where there were not enough  
4 parents, African American parents, participating in the  
5 aspects of adoption -- to see some of the kids who have  
6 been placed in homes that are not African American homes,  
7 to see the love, the acceptance and the embrace that has  
8 happened in those cross-cultural adoptions and to watch  
9 the parents have dignity and respect for the history and  
10 the lineage of that child and to make sure that that  
11 child has a chance to understand and appreciate culture  
12 is a significant part of what I have watched flourish in  
13 my church where dozens of families have had cross-  
14 cultural adoptions.

15 And they have all had the focus on recognizing the  
16 unique and specific aspects of that child. That is on a  
17 case-by-case basis, but the broader conversation that we  
18 will engage on today or another day as well is whether or  
19 not there ought to be options in adoption that are  
20 religious in nature. It is not the exclusive option.

21 No one is suggesting that there should be a simple  
22 exclusion for religious organizations, be they Christian,  
23 Jewish, or Muslim. The question that we are going to  
24 wrestle with is, should there be -- as a part of a plan  
25 of a broad footprint in the adoption arena -- should

1       there be a place for folks who have an observation or an  
2       observance of their faith? Should that person be  
3       excluded, should that agency be excluded from the  
4       adoption process? Not, should we force children into  
5       Christian homes, or force Christians into Jewish homes,  
6       or force anyone into another home. That is not the  
7       question. The question is, should we make sure that all  
8       faiths that want to participate are able to do so in  
9       observance of their faith. My answer is "yes." That  
10      is one of the reasons why we will have to wrestle in this  
11      Congress with issues of faith going forward.

12             The Chairman.     Senator Wyden?

13             Senator Wyden.     Thank you, Mr. Chairman.

14             Senator Scott, as always, is eloquent in offering a  
15      view that I happen to disagree with. But just that last  
16      point that he made is what this really is all about.

17             Senator Scott said, all faiths ought to be able to  
18      be part of this, particularly adoption. One of the  
19      things that I am very proud of -- and our two new  
20      members, Mr. Chairman, probably do not remember this.  
21      But you, and Senator Enzi, and I, and Senator Baucus were  
22      very involved in the Adoption Tax Credit. I do not take  
23      a backseat to anybody in terms of promoting adoptions.  
24      And we can work together in a bipartisan way in order to  
25      do that.

1           The last sentence of Senator Scott's statement about  
2 all faiths ought to be able to be part of it, that is not  
3 the case under this green-lighting of discrimination.  
4 What this particular case means is if you have got an  
5 adult who is Jewish, or Catholic, or Muslim, or a variety  
6 of other Faith, LGBTQ who can provide a safe, loving and  
7 nurturing home for a foster kid can be denied that  
8 opportunity under this particular example for religious  
9 grounds.

10           It is not as much as I would like it to be, what  
11 Senator Scott talked about is all faiths are in because  
12 it is what we ought to be. But I am just going to close  
13 this on a positive note.

14           The Chairman has already indicated, we are going to  
15 be working together on lots of things, on healthcare, and  
16 renewable energy and the like. Let us put down that we  
17 want to work together on positive things with respect to  
18 foster care and colleagues.

19           I look forward to what I hope will be a Scott-Wyden  
20 foster care bill on making sure that their scholarships  
21 for these foster kids who are so deserving.

22           Thank you, Mr. Chairman.

23           The Chairman. Does anybody else seek recognition?

24           Senator Scott. I think myself and Senator Lankford  
25 both want to be recognized.

1           I will just close my thoughts with this, Mr.  
2 Chairman and to my good friend, the Ranking Member, that  
3 we will have a robust discussion in the future as it  
4 relates to this. I know that this is not the time nor  
5 the place to have this debate and discussion.

6           I am almost excited to have it now, but we will have  
7 it at a time where it is appropriate, where we could have  
8 an actual deeper dive into the facts of adoption and what  
9 that means for the child and who actually participates in  
10 the process from an organizational perspective. Giving  
11 color and an accuracy to this debate will be helpful.

12           The Chairman.    Senator Lankford?

13           Senator Lankford.    Mr. Chairman, thank you.

14           I do want to jump in this dialogue a little bit.  
15 And I do agree with Senator Scott and pleased to be able  
16 to have the conversation with Senator Wyden as well.

17           Thanks for all of your hospitality in welcoming into  
18 the committee as well. This is an issue about how do we  
19 get more people engaged in adoption? And when the  
20 government steps in and says, no you cannot, you cannot  
21 go help children get adopted because of your religious  
22 beliefs. It flies in the face of the Supreme Court  
23 ruling with Trinity Lutheran. In the Trinity Lutheran  
24 case defined out it said, if government ever goes to an  
25 entity and says, you can only participate if you

1       surrender your faith or your faith principles, that over  
2       steps.

3               And so my desire is to get as many different  
4       adoptive agencies as possible into every different  
5       community, and to try to make sure that we do not say to  
6       an entity, you cannot participate because you have the  
7       wrong faith or because you practice your faith. That  
8       violates who we are.

9               The other thing I think is interesting in this  
10       conversation is we have four years in adoption said to  
11       Native Americans, and Native American families, and  
12       Native American adoption entities and fostering entities,  
13       they can have some exclusivity. And that has been  
14       allowed based on Native American families and  
15       backgrounds.

16               So this is not an unprecedented action. This is  
17       just an action to say you do not have to surrender your  
18       faith just to participate with your government and you  
19       can have different types of adoption agencies, but reach  
20       out to as many as possible.

21               So again, this is a dialogue for another day, but I  
22       do think it is important that we get a chance to be able  
23       to discuss the totality of what we are trying to cover  
24       here. And I look forward to it.

25               Mr. Chairman, thank you.

1           The Chairman.    Seek recognition?  If you seek  
2 recognition, go ahead.

3           Senator Cardin.    Mr. Chairman, could I ask consent  
4 that my proxy votes be changed to be here in person.  It  
5 does not change the outcome.

6           The Chairman.    If the rules allow it, the answer is  
7 yes.  So ordered.

8           Senator Cardin.    Thank you.

9           The Chairman.    Okay.

10          So I want to for the Members who stayed and were  
11 here before, and the staff report to them that I thank  
12 them very much for helping us get a quorum so we could  
13 conduct our business.  Thank you.

14          Meeting adjourned.

15          [Whereupon, at 10:46 a.m., the meeting was  
16 concluded.]

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