

S. HRG. 115-668

NOMINATIONS

HEARING OF THE COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS UNITED STATES SENATE ONE HUNDRED FIFTEENTH CONGRESS

FIRST SESSION

ON

EXAMINING THE NOMINATIONS OF MITCHELL ZAIS, OF SOUTH CAROLINA, TO BE DEPUTY SECRETARY, AND JAMES BLEW, OF CALIFORNIA, TO BE ASSISTANT SECRETARY FOR PLANNING, EVALUATION, AND POLICY DEVELOPMENT, BOTH OF THE DEPARTMENT OF EDUCATION, AND KATE S. O'SCANNLAIN, OF MARYLAND, TO BE SOLICITOR, AND PRESTON RUTLEDGE, OF THE DISTRICT OF COLUMBIA, TO BE AN ASSISTANT SECRETARY, BOTH OF THE DEPARTMENT OF LABOR

NOVEMBER 15, 2017

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NOMINATIONS

Wednesday, November 15, 2017

U.S. SENATE,
COMMITTEE ON HEALTH, EDUCATION, LABOR,
AND PENSIONS,
Washington, DC.

The Committee met, pursuant to notice, at 2:34 p.m., in room 430, Dirksen Senate Office Building, Hon. Lamar Alexander, Chairman of the Committee, presiding.

Present: Senators Alexander [presiding], Young, Murray, Casey, Franken, Murphy, Kaine, and Hassan.

OPENING STATEMENT OF SENATOR ALEXANDER

The CHAIRMAN. The Senate Committee on Health, Education, Labor, and Pensions will please come to order.

Today we're holding a confirmation hearing on Brigadier General Mitchell Zais to be Deputy Secretary of the Department of Education; James Blew to be Assistant Secretary for Planning, Evaluation, and Policy Development at the Department of Education; Kate O'Scannlain to be Solicitor of the Department of Labor; Preston Rutledge to be Assistant Secretary of Labor for the Employee Benefits Security Administration at the Department of Labor.

Senator Murray and I will each have an opening statement.

Senator Hatch wants to come by, Mr. Rutledge, to introduce you. He is presiding over the writing of the tax bill, so whenever he comes I'm going to stop whatever I'm doing and let him make comments about you, and then we'll proceed.

After Senator Murray and I have our opening statements, we'll each have an opportunity to ask—we'll have a round of 5 minutes. We'll hear from the nominees, and then we'll have a round of 5-minute questions.

I'm glad the Committee has the opportunity to hear from these important nominees, and we welcome them, and we welcome their families who are here.

I especially welcome the nominee for the position of Deputy Education Secretary. If confirmed, General Zais will be Secretary DeVos' number 2 at the Department, and it brings back some very fond memories for me because President Bush recruited David Kearns, who was the CEO of Xerox, to be in that position. General Zais, when I was Education Secretary. I knew it would be hard to persuade him because he was one of the country's chief executives of a major corporation, and his friends said why would you take all of the abuse to take a secondary position in a small department. President Bush recruited him. They were both World War II vet-

erans, respected one another. David came on board. He had such enthusiasm, skill and leadership that all the employees loved him. He found a great many career employees who, as you and I discussed, who were just looking forward to that kind of leadership, as I'm sure you will find, and he helped to recruit a distinguished team.

I used to talk about him, and I still do. When I was running for president in 1995, something I didn't succeed in, I was in Utah and I was talking about David Kearns and what a fine person he was. I thought I made a pretty good speech, and after I finished a lady came up to me and said, "That was a wonderful speech, now I know who ought to be President of the United States." I said, "well, thank you." She said, "Yes, David Kearns."

[Laughter.]

The CHAIRMAN. So good luck to you.

That's an important position, and I know that you will be a valuable and important part of the leadership following your confirmation. You have a broad background. You've been the Chief State Superintendent for South Carolina's public schools. You spent 10 years as a college president. You were a member of the South Carolina Commission on Higher Education, a subject that this Committee will be turning its attention to shortly and has been working on for the last three or 4 years. After 31 years in the U.S. Army, you retired as a brigadier general.

You were nominated on October 5. On October 30, the Committee received your paperwork; on November 9 the Office of Government Ethics paperwork, including public financial disclosure and ethics agreement.

James Blew is nominated for an important position, to help the Secretary develop policies at the Department, to help manage the budget, ensure that programs are working as intended, especially important since we just completed, not long ago, a major restructuring of the Elementary and Secondary Education Act, and implementing that as Congress wrote it will be a major task of the Department and yours.

For the last month Mr. Blew has been Special Assistant to the Education Secretary. For 20 years he has advocated improving educational opportunities for families and children, overseeing grants to low-income, high-risk schools.

He was nominated on September 28. On October 10, we received his ethics paperwork; November 2nd, we received his Committee paperwork.

We have two important Labor Department nominees. Kate O'Scannlain has been nominated to serve as the Labor Department's Solicitor. She'll be involved in every area of the Department's work, from regulations to litigation. The Department is reviewing two Obama administration rules that, in my opinion, need to be fixed, first the overtime rule. My concerns are the rapid rate of increase. The salary threshold was set to double overnight, it seemed, and the harm it would cause staff at non-profits, at church camps, students at colleges and universities. Second, the fiduciary rule will make it harder for many middle-income Americans to get retirement and financial aid they need.

Ms. O'Scannlain is a partner in the Washington, DC law firm of Kirkland and Ellis, where her practice focuses on employment and labor law.

She was nominated October 15. We received her ethics paperwork October 17; her HELP paperwork on October 17.

Preston Rutledge is nominated for Assistant Secretary for the Employee Benefits Security Administration, where he will help administer and enforce Title 1 of the Employee Retirement Income Security Act, which protects the interests of Americans participating in employee pension and welfare benefit plans. He serves as Senior Tax and Benefits Counsel for the U.S. Senate Finance Committee under Chairman Hatch. He previously served as a Senior Tax Law Specialist at the IRS, Senior Technical Reviewer in the Qualified Pension Plans branch of the IRS Office of Chief Counsel.

He was nominated October 16. We received his Committee paperwork October 25th; his ethics paperwork on the 30th.

I look forward to hearing from our witnesses.

Senator Murray.

OPENING STATEMENT OF SENATOR MURRAY

Senator MURRAY. Thank you, Chairman Alexander.

First I want to thank our nominees and their families behind them for being here today and for your willingness to serve in these critically important roles at the Department of Education and Labor.

At a time when a lot of families are still struggling to make ends meet all of you are going to be responsible for standing up for students and workers and fighting for their educational opportunities and financial security. In today's economy, housing and health care and higher education costs are on the rise, and wages have remained stagnant. While the middle class is struggling to make ends meet, corporations and billionaires are making record profits off the backs of their employees and working families.

So I'm disappointed, although not surprised, that President Trump has broken his campaign promises and has now put corporations and special interests ahead of our middle-class families by rolling back retirement and overtime standards for our workers and protections for students and borrowers.

So I look forward to hearing from each of you if you will stand up for students and workers and families and the missions of the agencies you've been nominated to serve with, or if you plan to just be a rubber stamp for President Trump's agenda.

But first I want to talk about just how widespread the harm the Trump administration has caused to our students and workers and what the Departments of Education and Labor should be doing to help working families.

General Zais and Mr. Blew, since taking office Secretary DeVos has promoted her privatization agenda to siphon taxpayer dollars away from our public schools. Despite hearing from parents across the country who have stood up and spoken out about the importance of investing in and supporting and strengthening our public schools in their communities, she is proposing major cuts to our education investments and is failing to implement our bipartisan Every Student Succeeds Act the way Congress intended by approv-

ing state plans that do not comply with all the guardrails and that may result in our most vulnerable students falling through the cracks. She has rolled back protections for defrauding students, making it easier for predatory for-profits to prey upon students, and her record on protecting students' civil rights, including survivors of sexual assault, has been very troubling.

The Department of Education's core mission is to stand up for our students, so it's disappointing to me that Secretary DeVos has decided to go a different direction and put ideology and the wishes of for-profit colleges ahead of our students and our teachers and our public schools.

Ms. O'Scannlain and Mr. Rutledge, I'm sure you both remember one of the biggest promises President Trump made constantly on the campaign trail was to put workers first. Yet, since day 1, he has undermined health and safety protections for our workers and made it harder for working families to become financially secure during their working years and into retirement, including not defending the Obama administration's overtime rule, which would give 13 million workers a raise by ensuring they are paid for the extra hours that they work.

It is the responsibility of the Department of Labor to advocate for our workers to make sure they are being treated fairly and are able to make a decent living.

So to both of you, I hope you are prepared to discuss how you plan to stand up to President Trump, or if you do, when he prioritizes corporations and special interests over workers, and how you plan to live up to the mission of the agency and truly make sure that workers' rights are respected.

I'd like to discuss some of my initial concerns that I'd like the four of you to address today.

General Zais, given Secretary DeVos' lack of experience and track record, it is clear she needs a deputy who is committed to students and public education. So to me it was troubling that you share her views on privatization, and you've made a number of comments that make me question your ability to help set a course for this agency based on facts and science and evidence, including that "5-year-olds are too young to learn," and that "abstinence-only sex education and creationism should be taught in our schools," and your decision as South Carolina's State Superintendent to reject Federal funding that would benefit students and teachers in public schools. It really makes me question whether you would act based on what is good for students.

Mr. Blew, the Department of Education's Office of Planning and Evaluation and Policy Development is critical in developing and implementing policy which impacts every student in this country. So your record of promoting school vouchers gives me pause that you will not stand up for students in our public schools.

Ms. O'Scannlain, as the Solicitor of Labor, you will be responsible for pursuing litigation and helping create policies that protect workers' rights and enables families to become financially secure, and I'm concerned about your commitment to standing up for our workers given you spent your career as a corporate lawyer representing investment firms and insurance companies and multi-billion-dollar corporations, so I want to hear from you about that.

Mr. Rutledge, as Assistant Secretary of the Employee Benefits Security Administration, you will oversee private-sector retirement plans, health plans, and other benefits for workers across our country. You have expressed your “discomfort” with the fiduciary rule, a critical and commonsense rule, in my opinion, which simply requires financial advisors to act in the best interest of their clients. So I hope you’re prepared today to talk about how you plan to put working families ahead of insurance companies and corporations, because if you want to grow our economy, we’ve got to start by strengthening that middle class, and I just don’t have faith in President Trump’s commitment to do that right now.

But I can at least hope that his nominees will commit to standing up for the mission of the agencies that you want to serve in and the people that we all represent. This is really, to me, a pivotal moment, and I really want to hear your answers on how all of you plan on lifting up families in our country today.

Thank you very much.

The CHAIRMAN. Thank you, Senator Murray.

We now will hear from our four nominees. Thanks to each of you for offering to serve our country. I’ve given each of you a pretty thorough introduction, so this will be brief.

As I said, when Senator Hatch arrives, I’ll stop and let him say a few words about Mr. Rutledge, and then go back.

The first nominee is General Mitch Zais for Deputy Secretary, South Carolina’s State Superintendent of Education, 10 years a college president, retired from the Army, 31 years a brigadier general.

Mr. James Blew worked for 20 years to promote education reform.

Kate O’Scannlain for the Solicitor of the Department of Labor, with a focus on employment and labor since 2005, a strong legal background.

Mr. Preston Rutledge, who has been working with the Finance Committee; Senator Hatch, of course, will say more about him.

So why don’t we start with you, General Zais.

If you each would summarize your thoughts in about 5 minutes, that will leave more time for questions.

Welcome, General Zais.

STATEMENT OF BRIGADIER GENERAL MITCHELL ZAIS

General ZAIS. Thank you, Chairman Alexander, Ranking Member Murray, and Committee Members. It’s an honor to appear before you today.

I’d also like to thank President Trump and Secretary DeVos for their confidence in me. It was Secretary DeVos’ vision and commitment to students that inspired me to undertake this task.

I would also like to thank my family. My wife Susan and I have been married for 38 years. She is an Army daughter, an Army wife, and an Army mother. Throughout our frequent moves she managed to make a home out of a house in 13 different locations, an average of less than 3 years per residence. Susan currently mentors a child in a high-poverty elementary school in our hometown.

My son, Bradley, is a veteran of the war in Iraq where he fought as an infantry soldier with the 101st Airborne Division. His wife,

Suzanne, is an elementary school teacher in an inner-city public charter school.

My daughter, Ashley, is a stay-at-home mom, and her husband, Michael, works as an attorney with the U.S. Justice Department.

Finally, my brother is a paratrooper, Ranger, and retired infantry colonel with a Ph.D. from Duke University.

As an Army brat, I attended 11 different schools in 13 years, including three high schools. Both of my children attended public schools here in Washington, DC, and graduated from public schools in rural South Carolina.

I come from a family of teachers. My father was coaching and my mother was teaching home economics when they met. My brother and I both taught at West Point. My wife and daughter both taught English as a second language, and my wife was an adult education teacher. My mother-in-law and sister-in-law and daughter-in-law were all elementary school teachers.

At an early age I learned the importance of education from the examples of my father and from my uncle. My father's parents, immigrants from eastern Europe, did not have much education. His mother got as far as 6th grade, his father only as far as 3rd grade. But he was able to finish high school, the only one of four boys in the family to do so. By working and getting some partial scholarships, he graduated from the University of New Hampshire. Ultimately, he became the NATO commander of the Greek and Turkish armies. To the best of my knowledge, he is the only Jewish four-star general in the history of the American Army.

Education was also vital to the success of my uncle, an orphan who quit school in the 7th grade. On his 17th birthday he enlisted in the Army, and despite lacking a high school education he got an appointment to West Point. Ultimately, he became the youngest two-star general in the history of the American Army and U.S. Ambassador to France under President Kennedy.

You understand my commitment to education, and you also know my record. I believe that one size doesn't fit all in education and that low-income families deserve the same right that high-income families have always enjoyed, which is to choose a learning environment that is a good fit for their child.

You also know that I resisted what I perceived to be well-intentioned but overly intrusive mandates from Washington. I believe that most education policy should be left to the states so they can develop solutions that best fit their own unique circumstances.

The contentious issues in K-12 are simple to me. Does one support the school system, or does one support the school students? In my view the answer is clear: students come first.

In closing, I have lived a lifetime of service. For 31 years I served my country as an infantry soldier with duty in Vietnam, Korea, Panama, and the Middle East. For 10 years I served my faith as president of a faith-based college. For 4 years I served the people of South Carolina as their elected State Superintendent of Education. I view possible confirmation as Deputy Secretary of Education as the culmination of a lifetime of service, and I look forward to your questions.

[The prepared statement of General Zais follows:]

PREPARED STATEMENT OF MITCHELL ZAIS

Chairman Alexander, Ranking Member Murray, and Members of the Committee, it is an honor to appear before you today. Thank you.

I would also like to thank President Trump and Secretary DeVos for their confidence in me. It was Secretary DeVos' vision and record of commitment to students and parents that inspired me to undertake this task.

I would also like to thank my family members who have been so supportive, some of whom are here today.

My wife, Susan, and I have been married almost 38 years. She is an Army daughter, Army wife, and Army mother. Throughout our frequent moves she made each house a home, 13 altogether, an average of less than 3 years in each residence. Susan currently mentors a child in a high-poverty elementary school in downtown Columbia, South Carolina.

My son, Bradley, is a veteran of the war in Iraq where he fought as an infantry soldier with the famed 101st Airborne Division. He now proudly serves in the South Carolina National Guard. His wonderful wife, Suzanne, is an elementary school teacher at an inner-city, public charter school in Charleston, South Carolina.

My daughter, Ashley, a stay-at-home mom, and her husband Michael, are here. Michael is an attorney with the U.S. Department of Justice.

Finally I would like to thank my older brother, Barrie, a paratrooper, Ranger, and retired infantry colonel with a Ph.D. from Duke. He has been my role model my entire life.

Growing up as an Army brat, I attended 11 different schools in 13 years, including three high schools. Both of my children attended public school here in the District of Columbia—and they graduated from a public high school in rural South Carolina.

I come from a family of teachers. My parents met when both were teaching high school. My father was teaching PE and coaching; my mother was teaching what was then known as home economics. My brother and I both taught at West Point. My wife and daughter both taught English as a second language, and my wife was also an adult education teacher. My mother-in-law and sister-in-law were both career elementary school teachers. As I mentioned, my daughter-in-law is an elementary school teacher.

At an early age, I learned the vital importance of education from the examples of my father and uncle.

My father's parents did not have much education. They were immigrants from Eastern Europe. His mother got as far as sixth-grade, this father only as far as third-grade.

My father, the youngest of four boys, was the only one who finished high school. But, by working, with a small ROTC scholarship, several partial athletic scholarships, and with help from his older brothers, he was able to graduate from the University of New Hampshire. With his education, plus hard work, he ultimately became the NATO commander of the Greek and Turkish armies. To the best of my knowledge, he is the only Jewish four-star general in the history of the American Army.

Education was also vital to the success of my uncle. An orphan, he was adopted by a coal mining family in Pennsylvania. He quit school in the seventh-grade to work to earn money for them. To escape, he ran away from home on his seventeenth birthday and lied to enlist in the Army. Despite lacking a high school education, he earned an appointment to West Point. The education he received there provided the foundation that ultimately led to his becoming the youngest two-star general in American history and U.S. Ambassador to France under President Kennedy.

So now, you understand my personal commitment to education.

You also know my record.

You know I believe that one size does not fit all in education and that no child should be forced to attend a failing school. Lower-income families deserve the same right that upper-income and middle-income families have always enjoyed—that is, to choose a school that is a good fit for their child. Upper-income families have school choice. They can choose to put their children in private schools. Middle-income families, by and large, have school choice. They can move to the suburbs or to highly ranked school districts if the local school is not a good fit. It is predominantly low-income families that are trapped in perennially failing schools, with no escape and no options.

You also know that as State Superintendent of Education in South Carolina, I resisted what I perceived as well intentioned, but overly intrusive mandates from Washington. Just as one size does not fit all students, one size does not fit all states.

I believe most education policy should be left to the states to develop solutions that best address their own unique circumstances.

The contentious issues involved in K-12 education seem to me to be pretty simple. Does one support the school system or does one support the school students? My stance has been clear: students come first.

Also, as a college president for 10 years, I learned how difficult it can be to comply with the requirements imposed from Washington. I'm aware of the "Report of the Task Force on Federal Regulation on Higher Education" and look forward to working to reduce the enormous administrative burden.

In closing, I have lived a life of service. For 31 years I served my country as an infantry soldier in the United States Army, with duty in Vietnam, Korea, Panama, and the Middle East. For 10 years I served my faith as president of a faith-based college. For 4 years I served the people of South Carolina as their elected State Superintendent of Education. I view possible confirmation as Deputy Secretary of Education as yet another chance to serve the Nation I love so dearly, and the culmination of a career of service.

Thank you for the opportunity to appear before you. I look forward to your questions.

The CHAIRMAN. Thank you, General Zais.
Mr. Blew, welcome.

STATEMENT OF JAMES BLEW

Mr. BLEW. Thank you, Chairman Alexander, Ranking Member Murray, and other Members of the Committee. It is an honor to appear before you today as the nominee for Assistant Secretary for the Office of Planning, Evaluation, and Policy Development at the U.S. Department of Education.

Mr. Chairman, I have submitted a written statement for the record. May I summarize my points?

The CHAIRMAN. Yes.

Mr. BLEW. That's great.

I do want to start by thanking my family that has been very supportive of me: my brother, who is a retired public school teacher and Army officer; my two children, one who attends university in North Carolina, another who attends university in Los Angeles; but most of all I want to thank my wife. She and I met in public high school back in Reseda, California. We became married several years later. It is our partnership and our love that makes me a better man. My wife has a very demanding orthodontic practice back in our hometown, and she could not be here today.

The second family that I wanted to thank, and I do so in my written statement, is the Walton family. I want to thank them globally for their steadfast investments in helping improve the lives of children in low-income communities across this country. I also include in there my philosophy about education reform and some of my experience that I believe is part of what prepares me for this position, if the Senate confirms me.

The bulk of this presentation goes into a ringing endorsement of the limited but very important role that the Federal Government plays in our education system: namely, the enforcement of our civil rights laws in schools and colleges; second, the assistance that the Federal Government gives our states as they address the needs of disadvantaged students, as well as students with disabilities; and finally, the support that the Federal Government gives students as they prepare, attend, and hopefully complete their degrees and certificates in higher education.

I will conclude, as I do in my written statement, by thanking the millions of parents and teachers who educate our children every day. It is my belief that the success of our country depends on us empowering those parents and teachers to improve our system.

I look forward to your questions.

[The prepared statement of Mr. Blew follows:]

PREPARED STATEMENT OF JAMES C. BLEW

Chairman Alexander, Ranking Member Murray, Members of the Committee:
It is an honor to appear before you today as the nominee for Assistant Secretary for the Office of Planning, Evaluation and Policy Development at the U.S. Department of Education.

I appreciate the confidence and support that President Trump and Secretary DeVos have placed in me and education reform with this nomination. Before sharing my approach to the position, if confirmed, I have two families that I would like to thank. Without them, I would not be appearing before you today.

First is my own family, especially my wife Carole. She has a demanding orthodontic practice back in our home town, which keeps her from joining us today. But without her consistent support, love and partnership, I would not have been able to commit much of my adult life to the education reform cause.

Second is the Walton family. After Sam Walton's death in 1992, one of his sons, John Walton, took leadership in developing a philanthropic strategy that would help our country's public education system live up to the following aspiration: every child should be educated to his or her fullest potential. It is a strategy to create more high-quality school options in lower-income communities, more transparency about school and educator performance, and more accountability for performance.

For a decade after John's untimely death in 2005, it was my great privilege to help the Walton family execute their K-12 philanthropic investment strategy. This involved, among other things, managing hundreds of grants totaling more than \$1 billion over several years.

As a country, we still have a long way to go to achieve our aspirations for every child. But thanks to the Walton family—along with like-minded philanthropists, the Federal government, and many others—our K-12 system is improving and continuously serving students better.

For 20 years, I have focused on our students and policy at the state and local level. I chose to focus locally because that's where I felt my efforts could yield the greatest change. It is also where 90 percent of K-12 funding is generated.

However, I do believe the Federal Government has important roles to play. I'll address three:

First, for more than 50 years, Congress has stood by our country's most vulnerable children. As result, it has steadily increased and refined the Department's role enforcing civil rights laws in our schools and colleges.

Second, Congress has also invested significantly in our most vulnerable children—those from lower-income communities, as well as those with disabilities.

For our lower-income students, I think the bipartisan framework laid out in the Every Student Succeeds Act is an historical step in the right direction. The Federal Government must empower states to pursue the best strategies they can devise, recognizing local context, while simultaneously enforcing the accountability guardrails Congress has put in place.

I'm equally sanguine about the Federal role in supporting our vulnerable students with disabilities. Its role is critical to making sure all special needs students get the education they need and deserve.

Third, Congress directs more than \$100 billion annually to provide students with access to higher education in this country—several times more than the amount it spends through Title I on disadvantaged K-12 students. Yet, far too many of those students are neither completing their degrees nor obtaining the skills and knowledge they need to improve their wages. We can and must do better.

Let me close by thanking the thousands of classroom teachers and parents who work every day to ensure that all children in our country get the excellent education they deserve—and that our country needs them to have. The key to our country's future success is empowering those teachers and parents to improve our education system.

Thank you again for the opportunity to appear before you. I look forward to answering your questions.

The CHAIRMAN. Thank you, Mr. Blew.
Ms. O'Scannlain.

STATEMENT OF KATE O'SCANNLAIN

Ms. O'Scannlain. Thank you, Mr. Chairman, Ranking Member Murray, and other Distinguished Members of this Committee. It's an honor to appear before you today.

I want to thank the President of the United States for nominating me, and Secretary Acosta for recommending me.

I want to thank my family members and friends who are here today supporting me.

Particularly, I want to acknowledge my husband, Matt Johnson; my parents, Diarmuid and Maura O'Scannlain; five of my seven siblings who are here today—Sean, Jane, Kevin, Megan, and Annie; my father-in-law, Walter Johnson; and my four children—Nolan, Cormac, Bowen, and Jane. I also want to recognize and thank my long-time mentor and friend from Kirkland & Ellis, John Irving, as well as my firm's leadership and colleagues for their support.

You might say that my journey to this appointment began my junior year at Jesuit High School in Portland, Oregon in Father Larry Robinson's U.S. History Class. I was part of a small group of women who transferred in that year to the previously all-male school. I remember vividly the day that Father Robinson wrote the name "Frances Perkins" on the chalk board and called on me to answer what was unique about the spelling of the name—an "e" instead of an "i"—a woman's spelling. Of course, I came to learn, and never have forgotten, that Frances Perkins was the first female Cabinet Member, the longest-serving Secretary of Labor, and the first woman in Presidential line of succession. If confirmed, it will be my honor to go to work every morning in the Frances Perkins Building to ensure that the Nation's labor laws are forcefully and fairly applied to protect our Nation's workers.

We are at a critical time in history for the American worker as our employers and labor force face increasingly complex issues: the rise of the gig economy; rapid advancements in automation and artificial intelligence; an aging workforce; more women in the workplace, including in boardrooms and the frontlines of the military; an increase of women as the primary breadwinner in families; the challenges of seasonal and agricultural workforces; revelations of sexual harassment and predatory behavior on the front pages; the burdens of excessive occupational licensing requirements; a decline in organized labor; opioid abuse that is plaguing many American families and workers; higher compliance costs for small businesses, just to name a few.

If confirmed, I pledge to tackle these challenges with the thoughtfulness and care that they merit. I will work to enforce the laws under the Labor Department's jurisdiction fully and fairly. I will collaborate with career officials who possess the bulk of the subject-matter expertise in these areas and to have open and fulsome dialog before committing to or recommending any particular course of action. I commit to listen carefully to all stakeholders.

If confirmed, I look forward to helping further this administration's labor agenda, including issues that are of particular impor-

tance to this Committee. These include job creation, advancing opportunities for profitable employment through apprenticeship and job-training programs, improving workplace safety, helping efforts to reintegrate veterans into the workforce, assuring work-related benefits and rights are protected, among many other stated goals.

I will bring a diversity of experiences to the Solicitor's office from more than a decade in private practice. In my experience, the vast majority of employers seek to comply with the law. Indeed, they spend significant amounts of money on compliance costs, only to confront laws, rules, and regulations that can be confusing in their application to the modern workplace. The rules of the road should be clear and compliance guidance ample and easily accessible. Our laws should not be a game of "gotcha" or involve gamesmanship using novel legal theories. That benefits no one, especially the American worker.

Like Secretary Acosta, I am committed to helping employers understand their obligations to their workforces and properly incentivizing compliance with the law.

If confirmed, I intend to promote understanding and effective enforcement, and to reduce unnecessary redundancies through communication and cooperation with our federal and state agencies. I would challenge this Committee, just as I will challenge the Labor Department every day of my service, to write laws, rules, and guidance that are clear to employers, employees, and unions so that we can be confident when bringing an action that the offending party deserves to be met with the full force of the Labor Department's enforcement resources.

In closing, it is not lost on me that if confirmed I will serve as the highest-ranking woman in the Labor Department. That is not a responsibility I take lightly. I pledge to this Committee to bring the totality of my experiences to bear upon the unique challenges facing today's modern workplace.

Thank you again, and I look forward to any questions the Committee may have.

[The prepared statement of Ms. O'Scannlain follows:]

PREPARED STATEMENT OF KATE O'SCANNLAIN

Thank you, Mr. Chairman, Ranking Member Murray, and Distinguished Members of the Committee. It is an honor to appear before you today as you consider my nomination to be Solicitor of Labor. I want to thank the President of the United States for nominating me and Secretary Acosta for recommending me. I want to thank the family members and friends who are here today supporting me.

In particular, I want to acknowledge my husband Matt Johnson, my parents Diarmuid and Maura O'Scannlain, five of my seven siblings who are here today (Sean, Jane, Kevin, Megan, and Annie), my father-in-law Walter Johnson, and my four children Nolan, Cormac, Bowen, and Jane. I also want to recognize and thank my long-time mentor and friend from Kirkland & Ellis, John Irving, as well as my firm's leadership and colleagues for their support.

You might say that my journey to this appointment began my junior year at Jesuit High School in Portland, Oregon in Father Larry Robinson's U.S. History Class. I was part of a small group of women who transferred that year into the previously all-male school. I remember vividly the day Father Robinson wrote the name "Frances Perkins" on the chalk board and called on me to answer what was unique about the spelling of Frances—an "e" instead of an "i"—a woman's spelling. Of course, I came to learn—and never have forgotten—that Frances Perkins was the first female Cabinet Member, the longest serving Secretary of Labor, and the first woman in Presidential line of succession. If confirmed, it will be my honor to go to work

every morning in the Department of Labor Frances Perkins Building to “ensure that the Nation’s labor laws are forcefully and fairly applied to protect [our] Nation’s workers.”¹

We are at a critical time in history for the American Worker as our employers and labor force face increasingly complex issues: the rise of the gig economy; rapid advances in automation and artificial intelligence; an aging workforce; more women in the workplace—including in Board rooms and the frontlines of the military; an increase of women as the primary bread-winner in families; the challenges of seasonal and agricultural workforces; revelations of sexual harassment and predatory behavior on the front pages; the burdens of excessive occupational licensing requirements; a decline in organized labor; opioid abuse that is plaguing many American families and workers; higher compliance costs for small businesses—just to name a few.

If confirmed, I pledge to tackle these challenges with the thoughtfulness and care that they merit. I will work to enforce laws under the Labor Department’s jurisdiction fully and fairly. I commit, if confirmed, to collaborate with the career officials who possess the bulk of the subject-matter expertise in these areas and to have open and fulsome dialog before committing to or recommending any particular course of action. I commit, to listen carefully to all stakeholders.

If confirmed, I look forward to helping further this Administration’s Labor agenda, including issues that are of particular importance to this Committee. These include job creation, advancing opportunities for profitable employment through apprenticeship and job-training programs, improving workplace safety, helping efforts to re-integrate veterans into the workforce, assuring work-related benefits and rights are protected—among many other stated goals. I will bring a diversity of experiences to the Solicitor’s office from more than a decade in private practice. In my experience, the vast majority of employers seek to comply with the law. Indeed, they spend significant amounts of money on compliance costs—only to confront laws, rules, and regulations that can be confusing in their application to the modern workplace. The rules of the road should be clear and compliance guidance ample and easily accessible. Our laws should not be a game of “gotcha” or involve gamesmanship using novel legal theories. That benefits no one, especially the American worker. Like Secretary Acosta, I am committed to helping employers understand their obligations to their workforces and properly incentivizing compliance with the law.

If confirmed, I intend to promote understanding and effective enforcement. Also to reduce unnecessary redundancies through communication and cooperation with our federal and state agencies. I would challenge this Committee, just as I will challenge the Labor Department every day of my service, to write laws, rules, and guidance that are clear to both employers, employees, and unions—so that we can be confident when bringing an action the offending party deserves to be met with the full force of the Labor Department’s enforcement resources.

In closing, it is not lost on me that if confirmed I will serve as the highest ranking woman in this Labor Department. That is not a responsibility I take lightly. I pledge to this Committee to bring the totality of my experiences to bear upon the unique challenges facing today’s modern workplace.

Thank you again. I look forward to any questions the Committee may have.

The CHAIRMAN. Thank you, Ms. O’Scannlain.
Mr. Rutledge, welcome.

STATEMENT OF PRESTON RUTLEDGE

Mr. RUTLEDGE. Thank you. Good afternoon, Chairman Alexander, Ranking Member Murray, and other Members of the Committee. Thank you for the opportunity to appear before you today. I am honored to have been recommended by Secretary Acosta and nominated by President Trump to lead the Employee Benefits Security Administration, known as EBSA, at the Department of Labor.

If I may take just a brief moment to introduce my family who are here today, I would like to do that. My wife, Julie Gackenbach, is sitting directly behind me. Without her tireless support in every facet of my life, I could not have spent as many years in public

¹DOL Solicitor’s Mission Statement.

service as I have, and that's just one of the few things she's done for me in my life.

Also here today is my older son, Charlie Rutledge, and his wife and my new daughter-in-law, Nicole Rutledge; and also my younger son, Andrew Rutledge, and his girlfriend, Gabriella Simondson. I was instructed to be sure to put the "D" in there. It's "Simondson."

The mission of EBSA is to assure the security of the retirement, health, and other workplace benefits of America's workers and families. While EBSA develops and enforces regulations, the role of EBSA is much broader. The office assists and educates workers, plan sponsors, fiduciaries, and service providers. It engages in outreach and research.

I have spent nearly my entire career as a lawyer in the employee benefits area. I believe in the importance of employee benefit programs for America's workers. If I am fortunate enough to be confirmed, I look forward to working to strengthen and expand opportunities for employers to offer and employees to benefit from retirement, health, and other employee benefit programs.

I have had the pleasure to work with many of you during my tenure at the Senate Finance Committee as I have worked to advance retirement benefit security reforms. I am most proud that we were able to work together last year to develop the Retirement Enhancement and Savings Act of 2016. The bill would have modified requirements regarding multiple employer plans, automatic enrollment, auto escalation, reporting and disclosure rules, and rules regarding the selection of lifetime income providers.

The bill also would have increased the tax credit for small employer pension plans and allow a tax credit for employers that startup a pension plan that includes automatic enrollment.

With respect to individual retirement accounts, the bill would have treated taxable non-tuition fellowship and stipend payments as compensation for the purpose of an IRA. That would allow a student to begin contributing to an IRA while they're still a student.

The bill garnered the support of every Member of the Finance Committee and was for me a great example of Chairman Hatch's and Ranking Member Wyden's leadership and our ability to work together on a bipartisan basis to improve retirement security. I've always believed that retirement should not be a partisan issue, and in my experience working for the Senate Finance Committee, it never has been.

In addition to retirement policy, I have worked closely with staff from both parties, including the staff of two Members of this Committee, Senator Burr and Senator Casey, to help Congress enact the Achieving a Better Life Experience Act, or the ABLE Act. The ABLE Act allows disabled individuals and their families to save private funds in a tax-advantaged account, similar to a college savings account, for the purpose of paying for the expenses related to living a life with disabilities. If confirmed, I look forward to working with the Chairman, the Ranking Member, and the other Members of this Committee on these and other proposals to strengthen our Nation's pension laws.

I'm running out of time to keep talking about myself, so I won't. I'll just mention briefly that I have spent a lot of time in the gov-

ernment working to support ERISA. I believe in ERISA, and I hope to bring both my public-and private-sector experience to work on the ERISA issues that the country faces.

If I'm given the opportunity to serve, I look forward to working with all of you and your staff and the talented and hard-working staff at EBSA to protect and improve the employee benefit system.

Thank you, Mr. Chairman and Ranking Member Murray, for the chance to speak to you today. I am happy to answer any questions.

[The prepared statement of Mr. Rutledge follows:]

PREPARED STATEMENT OF PRESTON RUTLEDGE

Good afternoon Chairman Alexander, Ranking Member Murray and other Members of the Committee. Thank you for the opportunity to appear before you today. I am honored to have been nominated to lead the Employee Benefits Security Administration (EBSA) at the Department of Labor.

The mission of EBSA is to assure the security of the retirement, health and other workplace related benefits of America's workers and their families. While EBSA develops and enforces regulations, the role of EBSA is much broader. The office assists and educates workers, plan sponsors, fiduciaries and service providers. It engages in outreach and research.

I have spent nearly my entire career as a lawyer in the employee benefits area. I believe in the importance of employee benefit programs to America's workers. If I am fortunate enough to be confirmed, I look forward to working to strengthen and expand opportunities for employers to offer and employees to benefit from retirement, health and other employee benefit programs.

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In addition to retirement policy, I have worked closely with staff from both parties, including the staff of two Members of this Committee, Senator Burr and Senator Casey, to help Congress enact the Achieving a Better Life Experience Act of 2014. The ABLE Act allows disabled individuals and their families save private funds in a tax-advantaged account, similar to a college savings account, for the purpose of paying for expenses related to living a life with disabilities. If confirmed, I look forward to working with the Chairman and the Members of this Committee on these and other proposals to strengthen our Nation's pension laws.

Prior to joining the Finance Committee I served in the Office of Chief Counsel for the Internal Revenue Service where I focused on tax side issues of employee benefits, plan design and administration, and compliance. I also served for many years in private practice where I was engaged in compliance and plan design as well as ERISA litigation. Before I became a lawyer, I was a Naval Officer for 4 years, served on a destroyer escort stationed in San Diego, California, making one deployment to the Western Pacific.

I hope to bring my public and private sector experience to EBSA to help Secretary Acosta help workers and employers meet the challenges inherent in our changing society—including improved longevity and changing employment relationships.

If I am given the opportunity to serve, I look forward to working with you, your staff, the talented and hardworking staff at EBSA, employees, plan sponsors and the public at large to protect and improve our Nation's employee benefit system.

Thank you Mr. Chairman and Ranking Member Murray for the chance to speak with you today. I am happy to answer any questions.

The CHAIRMAN. Thank you, Mr. Rutledge. Thanks to all of you. We'll now begin a round of 5-minute questions.

General Zais, let me begin with you. You were Superintendent of Education in South Carolina during the last administration, correct?

General ZAIS. That is correct, sir.

The CHAIRMAN. You're familiar with what the administration did with waivers when they said in order for you to have a waiver from No Child Left Behind, you had to do X, Y, and Z, such as adopt these standards or this teacher evaluation program, correct?

General ZAIS. We did develop a plan that we worked on very hard. Yes, sir.

The CHAIRMAN. But you're aware that they required you to do things in exchange for getting a waiver, correct?

General ZAIS. That is correct, sir.

The CHAIRMAN. Are you aware that we changed that law?

General ZAIS. I am.

The CHAIRMAN. That means that as Deputy Secretary of the Department of Education, if Tennessee applies for a waiver, in some circumstances you're prohibited from conditioning that waiver on some other well-intended goal.

General ZAIS. Senator, I understand absolutely. The job of the Secretary in the Department of Education is to ensure that state plans comply with the law, no more, no less.

The CHAIRMAN. We took the extraordinary step, some people thought, of actually writing prohibitions into the law not just to apply to the previous administration but to this one, and to my surprise within a few months after this one took office, there was a letter sent to Delaware saying that its state plan as proposed wasn't ambitious enough.

Now, the law says that the plan has to be an ambitious state design plan. The law also says the Secretary is prohibited from defining that. Do you agree that the Department of Education in Washington doesn't have the authority to tell Delaware that its plan is not—to reject the plan because it's not ambitious enough?

General ZAIS. That is my understanding of the law, sir. I'm not familiar with the case of Delaware or the plan they submitted.

The CHAIRMAN. Now, you might go to Delaware and say it's a dumb plan, or it's not ambitious, or they should be embarrassed, or you have a lot of suggestions for how to improve it. But the idea was that it's state designed and that the Department wouldn't do that mandate.

Let me switch gears to higher education, Mr. Blew and General Zais. We had very good work done. Senators Mikulski, Bennet, Burr and I asked a group of higher educators to come up with 59 ways to simplify more effective regulations for higher education so students could apply for and pay off their loans more efficiently, and university administrators could run our 6,000-student campus more efficiently. They came back, the Chancellor of Maryland and the Chancellor of Vanderbilt, with 59 recommendations widely endorsed by the higher education community. Of those 59, 12 can be done by the Department of Education alone. Are you familiar with that?

Mr. BLEW. I am familiar with the study. It makes a very compelling case.

The CHAIRMAN. Would you commit to review those 12 proposals and take action on those proposals if you think they're appropriate within a reasonable period of time?

Mr. BLEW. Absolutely, to the extent that it would involve my office, if confirmed.

The CHAIRMAN. General Zais, are you familiar with the Kerwin Zeppos recommendations and the fact that the Department itself could act on 12 of the 59 provisions without our involvement?

General ZAIS. Senator, I am aware of the Kerwin Zeppos task force report. Having been required to comply with in excess of several thousand pages worth of regulations and administration, I look forward to assisting the Secretary in those 12 initiatives.

The CHAIRMAN. Yes. The consensus among at least the four Senators who were working on that is that this is a rapidly changing world and we want higher education to be able to be flexible enough to deal with that, and the so-called jungle of red tape identified by this group of distinguished educators were a matter of simplifying effective regulation. In one case, the FAFSA, which Senator Bennet and I introduced a bill on, which we'll have a hearing on later this month, the recommendation was to go from 102 questions to two. Twenty million families fill out that form every year.

I have time for one more question.

Ms. O'Scannlain, in our conversations you said you know the difference between a guidance and a regulation. Will you pay attention to the guidances offered by the Department of Labor and make sure that briefs filed in the Supreme Court or the circuit courts of the United States don't allege that guidances, which are not law, are the law of the land?

Ms. O'Scannlain. Thank you, Mr. Chairman. Yes, I will. In particular, if I may have more time to answer, guidance is not law but guidance is an important aspect of making sure there's consistency and application of our laws, and that's one of my main priorities. If I'm lucky enough to be Solicitor, that is one of my main priorities, and I know that's an important issue to you as well.

The CHAIRMAN. But guidance are not law, correct?

Ms. O'Scannlain. Correct.

The CHAIRMAN. Correct. Okay.

Ms. O'Scannlain. Guidance is guidance.

The CHAIRMAN.

Senator Murray.

Senator MURRAY. Thank you, Mr. Chairman.

General Zais, let me start with you. As State Superintendent of Education in South Carolina, you repeatedly advocated for private school vouchers, including helping to pass a tax credit voucher program for students with disabilities which allows wealthy individuals and corporations to receive a tax break for contributing to private school voucher programs.

Now, President Trump has proposed spending Federal dollars to support private school voucher programs. Would you support spending taxpayer dollars for a new private school voucher program that takes money away from our public schools?

General ZAIS. Ranking Member Murray, I applaud the initiative of Florida and other states which allowed scholarships to students with disabilities to attend a school that meets their needs and was instrumental in recommending a similar program in South Carolina.

Senator MURRAY. Well, my question goes to the fact that Congress never intended ESSA to be used for vouchers. I want you to know I'm going to work every day to make sure the Department doesn't overreach in that area. I know many of my colleagues on both sides of the aisle agree with me, and I hope you will commit to uphold the tenets of our bipartisan bill as well.

General ZAIS. I understand what the law is and I can assure you that the Secretary and I, if confirmed, I will work to make sure that the law is complied with.

Senator MURRAY. Okay. In another area, General Zais, in July, when she was talking about sexual assault on campus, the Acting Assistant Secretary for Civil Rights, Candice Johnson, said, and I want to quote, "The accusations, 90 percent of them fall into the category of 'We were both drunk. We broke up, and 6 months later I found myself under a Title 9 investigation because she decided that our last sleeping together was not quite right.'"

Candice Johnson, after having said that, is still serving in the role of Acting Assistant Secretary. I want to know, if you're confirmed—you'll be second-in-command at the Department of Education—do you believe the comments made by Acting Assistant Secretary were appropriate for someone who is charged with enforcing civil rights for the Department?

General ZAIS. I'm not familiar with the comment, but I do agree that one act of sexual violence in any case is unacceptable, and that the Department should promulgate very clear guidance and help the institutions. As I understand, the Secretary has undertaken that process with a rulemaking.

Senator MURRAY. Well, I just want you to know, I'm really disturbed by her comments. She is overseeing a critical agency that oversees that. If confirmed, I hope you will think about that and determine whether or not you believe she's the right person to be there.

Mr. Blew, if confirmed, you're going to be advising the Secretary on all matters relating to policy development. Since her confirmation, Secretary DeVos has made it clear she's going to take a different path to addressing campus sexual assault. She rescinded the 2011 and 2014 guidance that are related to sexual harassment, including sexual violence, and that guidance was there to help survivors speak out about their assaults and make clear that schools could no longer sweep sexual assault under the rug.

Now, the Secretary has announced she plans a notice and comment period related to addressing sexual harassment and assault. However, it's now been 2 months since that guidance was rescinded, and it remains very unclear if and when the Secretary intends to move forward with the rulemaking process.

That lack of movement is particularly concerning as interim guidance appears inconsistent now with the previous guidance it claimed to follow and actually suggests to schools that they don't need to take efforts to minimize the impact on survivors and can

set higher standards of evidence than are allowed in other civil rights cases.

Do you believe there is a role here for guidance to clarify and ensure schools understand what is required of them to comply with Title 9 and other Federal statutes?

Mr. BLEW. Senator, you've already acknowledged that this is in the rulemaking process. I hear your impatience about the lack of movement on it. It's inappropriate for me to comment on the process itself. I do want to echo what General Zais said. Sexual violence should not be tolerated. It's clear in the law, and we have every intention of following through on that.

Senator MURRAY. Okay. Well, this is really critical because without guidance—it's been rescinded—it sort of gives schools the ability to say this isn't as important. I think critically right now we give that guidance out, we need it out soon, we need to be able to see that it is actually going to be able to protect survivors and create a climate on our campuses that says it's safe for women to be there. So I would appreciate you looking at that.

Mr. BLEW. I hear you.

The CHAIRMAN. Thank you, Senator Murray.
Senator Franken.

STATEMENT OF SENATOR FRANKEN

Senator FRANKEN. Thank you, Mr. Chairman.

Ms. O'Scannlain, it was great meeting you yesterday. In our meeting you talked about the revelations of systemic sexual harassment in the workplace across a wide variety of industries, which you mentioned in your opening remarks.

Ms. O'Scannlain. Right.

Senator FRANKEN. I think one reason that people are horrified is because they find it hard to believe that it's so widespread. Part of the reason they don't know it is so widespread is because of the forced arbitration clauses found in employment contracts which often prevent victims from speaking out, which keeps the arbitration all secret.

In an op-ed published a few months back, Gretchen Carlson, who recently took on her former boss at Fox News, Roger Ailes, wrote: "So many women are being silenced by employers who force them into a secret star-chamber proceeding called arbitration. By coercing women to remain silent about illegal behavior, the employer is able to shield abusers from true accountability and leave them in place to harass again. The arbitration process has silenced millions of women who otherwise may have come forward if they knew they were not alone."

Ms. O'Scannlain, you and I discussed this issue. Do you agree that forced arbitration clauses that prevent victims of workplace harassment from speaking out about what has happened to them are problematic?

Ms. O'SCANNLAIN. I do, Senator, and we did have a great conversation about that yesterday. I want to say that there's no place for sexual harassment in the U.S. workforce and that it obviously is a very prevalent issue, and particularly in the instance of Gretchen Carlson in the Fox News situation, that clause failed her

and it didn't enable her to know about the other women who were going through a similar situation.

Senator FRANKEN. Well, I want to get rid of that clause, that kind of clause.

Ms. O'SCANNLAIN. I understand that.

Senator FRANKEN. Would you support that?

Ms. O'SCANNLAIN. I'm not going to commit to any particular policy consideration out of deference to the Secretary, who I have not had discussions with, but I agree that they're problematic. I agree that the issue needs to be discussed and further studied, and I look forward to working with you on that.

Senator FRANKEN. Thank you very much.

General ZAIS, nice to meet you. You said to your knowledge, your father was the only Jewish four-star general in the United States Army. Is that correct?

General ZAIS. To the best of my knowledge, that's correct, Senator.

Senator FRANKEN. Did you know that Wesley Clark, a four-star general, is half-Jewish?

[Laughter.]

General ZAIS. No, sir. General Clark is a good friend with whom I've worked closely, and I did not know that.

Senator FRANKEN. Okay. Well, he's probably trying to keep it secret.

[Laughter.]

Senator FRANKEN. During your tenure as State Superintendent in South Carolina, you supported voucher programs using public dollars to send students to private schools, and if confirmed, you will serve as second-in-command to Secretary DeVos, who has spent years pushing vouchers. Are you aware of the research on the impact of vouchers on student achievement?

General ZAIS. Senator, to the best of my knowledge, whenever we give parents an opportunity to choose a school that's a good fit for their child, the result is improved outcomes.

Senator FRANKEN. No, that's not true. The academic outcomes for students who use vouchers to attend private schools is actually quite abysmal. The New York Times article from February of this year reported on three studies of large state voucher programs, three of the largest—Indiana, Louisiana, and Ohio. Each study found vouchers negatively impact results in both reading and math. In fact, in Louisiana's voucher program, public elementary school students who started at the 50th percentile in math and then used a voucher to transfer to a private school dropped to the 26th percentile in a single year.

Harvard education professor Martin West said this negative effect was “as large as any I’ve seen in the literature.” He was talking about all literature, the entire history of American education research.

There was a study of—that was Indiana. No, that was Louisiana. In Indiana, the same kind of results; the same kind of results in Ohio. These were astoundingly—in DC, we saw a recent study showed that students who used vouchers have significantly lower math and reading scores than students who did not receive a voucher. For voucher recipients coming from a low-performing pub-

lic school attending a private school, it had no effect on achievement. For voucher recipients coming from a high-performing public school, the negative effect was particularly large.

When you answered my question, you didn't answer my question. I said were you aware of the studies, and you didn't—can I just finish?

General ZAIS. Yes, sir.

Senator FRANKEN. Okay. You said, instead of answering my question, you said in every case when students had vouchers, their performance has improved. That's totally anecdotal, I assume?

General ZAIS. Senator, I was unaware of those studies that you cited.

Senator FRANKEN. I understand that. Was your—what you testified before us, was that anecdotal?

General ZAIS. Yes, it was.

Senator FRANKEN. Thank you.

The CHAIRMAN. Thank you, Senator Franken.

Senator Hassan.

STATEMENT OF SENATOR HASSAN

Senator HASSAN. Thank you, Mr. Chair and Ranking Member Murray. Good afternoon to all four nominees. Congratulations on your nominations, and congratulations and thanks to your families as well, because this is a family business when you step up to serve, so we are grateful.

Mr. Rutledge, I wanted to just follow up on a topic we discussed when we met, and thank you for meeting with me in my office. The Trump administration recently issued two interim final rules taking direct aim at birth control coverage for millions of women. These rules undermine women's access to contraceptives without out-of-pocket costs by letting a woman's employer decide, for virtually any reason, that she can no longer have access to this benefit.

These rules, which went into effect immediately after they were issued, discriminate against women and their access to basic health care. The department you are nominated to lead has a role to play here because that department ensures that employers who refuse to cover birth control are still in compliance with the rules under the Employee Retirement Income Security Act, or ERISA. This includes making sure that if employers decide to deny their employees contraceptive coverage, that is clear in the plan documents.

When we talked in my office you said you had not looked into these rules. So, Mr. Rutledge, I'd like you to commit to me that if you are confirmed, you will see to it that changes employers make under these rules are disclosed to plan participants and described in the plan documents so they have the information they need to make the decisions that are best for them.

Mr. RUTLEDGE. Senator Hassan, thank you for that question. We did have a good conversation about this in your office and in my role in the Committee at the moment. No, I have not read those regs. I did look at them quickly enough to realize they are what we call three-agency regs. It's Treasury, Labor, and HHS.

I need to and I can commit that when I get to EBSA, if I'm fortunate enough to be confirmed, I will absolutely ask to be brought up

to date and up to speed on what's happening on those regs and on the policies. Whether I can promise to have them changed to your satisfaction, I can't promise that.

Senator HASSAN. I'm not asking for a change. I'm asking that they follow the law and disclose plan changes that women should know about if they're deciding, for instance, whether to take a job with an employer who has an ERISA plan and who has decided at their own personal opinion or whim to deny a woman a benefit that she might be able to earn through another employer.

Mr. RUTLEDGE. I will confirm with the Solicitor's office, if that's the law, then I will see—I'll do my best to make sure that's enforced properly.

Senator HASSAN. Thank you.

Mr. Zais, I wanted to come back to quotes we have seen from you concerning early childhood education, and I appreciated you coming to see me in my office as well. When you were running to be Superintendent of Education in South Carolina, you were quoted as saying that you did not believe in spending money on 5-year-olds because they were too young to learn. Later, as Superintendent, you opposed increased funding for state pre-school programs.

A body of research shows that access to effective early learning programs can have a positive impact throughout a person's life, in addition to having one of the greatest returns on investment when deciding where to spend our limited public dollars.

Can you please tell us what you meant when you said that you thought 5-year-olds are too young to learn?

General ZAIS. Senator, if I ever said that, I do not recall having said that. As a grandfather of four children under the age of 5, I'm acutely aware that those children are learning at a rapid pace. I'm not opposed to early childhood education. I think it's a matter for the states to decide. Currently, one of my 2-year-old grandchildren is the recipient of some services under the Infant and Toddler provisions of IDEA, early childhood education, and I'm enormously grateful for that.

Senator HASSAN. Well, thank you for that. I would hope that you would consider the importance of Federal investment in early childhood education. It is incredibly important to our overall economy and preparation for the next generation on any number of levels.

I am running out of time, so I will submit for the record questions to you, General Zais, and to Mr. Blew about voucher programs. I disagree with the premise of your statement, General Zais, that you either have to decide between the system or the student. We should have a system that works for all students, and in New Hampshire we work very hard on personalized education that works for all. The question will go along the lines of the degree to which vouchers take away critical resources from our public schools that often serve some of our most vulnerable children. So I'll look forward to your answers on that. Thank you.

The CHAIRMAN. Thank you, Senator Hassan.

Senator Kaine.

STATEMENT OF SENATOR KAINE

Senator KAINE. Thank you, Mr. Chair, and thank you to the witnesses.

My voice is shot today, so excuse me. It's not painful, it just doesn't sound very good.

I just want to begin with a comment, a concern. I had very good office visits with General Zais and Mr. Blew that I found productive. But I learned in both of those visits that they both used the phrase "because of the firewall, I was not able to discuss that." In one instance I asked one of the individuals what their job description would be, and the answer was "because of the firewall at the DOE, I was unable to have that discussion with officials at the DOE." In some other areas, what would your priorities be, what will you be working on, "because of the firewall at the DOE, I am unable to discuss that."

They were not suggesting that they weren't telling me, but they were suggesting that they have not been read into things like their job description or what they're going to be asked to do. So it sort of made the point of my in-office interviews a little bit like, well, what can I ask you about if you've been nominated by the President but you haven't been read in on what your job description is or what you're going to be asked to do? I can read your bio. I'm more interested in what you're going to do.

This is really a comment to the Chair and Ranking, and to DOE officials. If folks are going to come before us but there's a practice, apparently, in this agency not to read them in on their job description or what they're likely to do, it really hampers us in an oversight function in a confirmation hearing. It has not been my experience with nominees coming to my office from any other department, certainly not SAS nominees, SFRC nominees, State, Defense, Labor, other agencies. I'm able to ask people about their job description and what it is they intend to do. But in this case, if the Department was not preparing these individuals to be able to answer those questions and apparently felt there was some kind of a firewall that prohibited them from being able to do so, that sort of limits my ability to really delve.

I do want to say to General Zais, I did appreciate our office visit yesterday. As somebody who has worked on both higher education in a South Carolina state commission over higher education, and K-12 education as the elected superintendent, you've worked at the state level. You've also been the president of an institution, a private college in South Carolina.

Coming into this job, how do you see the role of the Federal Government in education matters as they affect school kids across the country?

General ZAIS. Senator, I see the role of the Federal Government as to guarantee the civil rights of our students. I'm very grateful for the financial assistance that it provides to our students in our institutions of higher education. I think that the Department has a very important role in advising the states how to best comply with the laws established by Congress. But I don't believe in a one-size-fits-all education system. What works and makes sense in a rural state may not make sense in a more urban state, and I believe that states should best develop policies that meet their own unique circumstances.

Senator KAINES. Let me just tackle each of the three items that you mentioned, and I completely agree with you on the last point.

It shouldn't be one size fits all. But with respect to civil rights, the civil rights of students, those civil rights should be the same regardless of the zip code or jurisdiction where a student lives, correct?

General ZAIS. Exactly.

Senator KAINES. Then you indicated a Federal role was to provide financial assistance, and you appreciate that at the higher education level, but there's also financial assistance to states in pre-K and K-12 as well; isn't that correct?

General ZAIS. That is correct, Senator.

Senator KAINES. Then finally with respect to providing advice to states, would you view that advisory function as just providing advice about how to meet Federal law, or is it broader advice like best practices, things that are working here that you might want to consider, all with the goal of helping students achieve?

General ZAIS. Senator, that's an important function. As State Superintendent, there wasn't one teacher, one principal, one superintendent, or one school board that worked for me. I didn't pass any laws, I didn't allocate any dollars. But I did have access to the media and to the public and used that as a forum to advocate for best practices and celebrate those, and for districts or schools that were not doing well, to highlight those publicly as well.

Senator KAINES. Depending upon how your job description is fashioned, you would be willing and interested in doing the same thing in this position?

General ZAIS. I think the parallel is clear, Senator.

Senator KAINES. One final question. The Department, along with HHS, administers pre-school development grants as part of the ESSA rewrite. Virginia has been a recipient of those grants and has used it in significant ways to advance early learning to help kids achieve, to help them avoid dropping out, to help them identify early learning disabilities which, once identified, can often be rectified.

You've made some statements in the past, even during your staff interviews, having some skepticism about early learning, citing studies. There are plenty of studies. I think the best research is that early learning is—investments in early learning are sound, but I recognize there are many studies. But will you, as an administrator with the Department of Education, administer the pre-school development grants to help the states who want them and who have them make the very most of them for the youngsters who are recipients of those pre-school programs?

General ZAIS. Senator, I can assure you that if confirmed, I will work to ensure compliance with the law and make those dollars available to the states as specified in the statutes.

Senator KAINES. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Kaine.

Senator Casey.

STATEMENT OF SENATOR CASEY

Senator CASEY. Thank you, Mr. Chairman. I want to thank the panel for being here today and for your testimony.

I'll focus my questions to Mr. Blew for purposes of today. We're in and out of the hearing today because we're doing tax reform and some other things in another Committee.

I wanted to start, Mr. Blew, with the question of public education. I come from a state where a statute was passed in the 1830's, the early 1830's, for free public schools. It was quite a debate in the 1830's, but thank goodness we have maintained it all these years in Pennsylvania.

We have something on the order of 93 percent of all children in our state attending public schools. I think the national number is close to that, maybe 91 percent. One of the concerns that I had with then-nominee Betsy DeVos, now Secretary DeVos, was that she seemed to spend an inordinate amount of her time and her resources and her advocacy on behalf of for-profit institutions, for-profit charter schools. I come from a state where we have zero percent for-profit charter schools. We have charters, but they're all, by statute, non-profit charters.

She was in a state, to a certain degree because of her advocacy, where about 80 percent of the charters were for-profit. So I said to Ms. DeVos in our discussion in my office, tell me more about your strategy, your plans for supporting public education and your advocacy on behalf of public schools. Her answer wasn't satisfactory, and I literally said to her—and I wasn't doing it to try to use a one-liner. I just said if you're confirmed, you're not going to be the Secretary of Private Education, and I told her what the history in Pennsylvania was.

In your case, you're seeking the position of Assistant Secretary for Planning, Evaluation and Policy Development, so you would obviously have a huge role in the planning and the vision of the Department, responsible for creating and implementing strategies to meet the goals of the Administration. You'd be taking on the Secretary's priorities, combining with existing policy, and marshalling the Department's resources to fulfill the law and meet the Administration's goals.

In your opening you identified three areas—civil rights, vulnerable student populations, and accountability—for the billions of dollars spent in the Department.

I guess I'd start with one question. I'll have more, I guess, in writing, in light of the time. But by virtue of the fact that the Secretary hasn't stated to my knowledge at any point in the last 9 months a priority for strengthening public schools, should one of the priorities of the U.S. Department of Education be to strengthen public schools?

Mr. BLEW. Senator, I look forward to answering more of your questions in writing. But, absolutely, yes.

Senator CASEY. How would you propose to do that?

Mr. BLEW. Part of how we do that is to execute the law that Congress has passed and that this Committee was critical in developing on the K-12 side. I'm talking about the ESSA.

Senator CASEY. That was a great bipartisan effort that Chairman Alexander and Ranking Member Murray led the way on, and we're grateful that they did that.

The Secretary has also held up the Florida McKay Scholarship Program as a model both in her nomination hearings as well as in

subsequent comments, and some private schools that accept McKay Scholarships require that students with disabilities relinquish their due process rights which are guaranteed under the Individuals with Disabilities Education Act. Do you think that a family should give up their right to due process to attend a private school?

Mr. BLEW. Again, I look forward to correspondence with you on this issue. There is a lot of confusion about it. Let me just make one critical point, that all schools that accept direct Federal dollars need to follow the law. They have to follow Federal law.

Senator CASEY. Thank you very much.

The CHAIRMAN. Thank you, Senator Casey.

Senator Murphy.

STATEMENT OF SENATOR MURPHY

Senator MURPHY. Thank you very much, Mr. Chairman. Thank you all for your willingness to serve.

Mr. Rutledge, last year this Committee and Congress passed the 21st Century Cures Act, which included in it some major reforms to the Nation's mental health law. Probably the most important of the reforms included in that section of the bill was one that built on the country's mental health parity law passed in 2008. This Committee recognized that while insurance companies technically stated that you had mental illness benefits comparative to physical illness benefits, the administration of those benefits was not equal. There was more red tape and bureaucracy being put up in front of people receiving mental health benefits than for non-mental health benefits.

The Act gave a number of authorities to both HHS and to the Department of Labor, and the Administration has worked to implement some of these new requirements, like a convening of interested stakeholders to develop an action plan for improved coordination and enforcement.

I just wanted to ask you if you're aware of the provisions that you would oversee in this new capacity related to mental health parity and if we can count on you to help implement the remaining portions of that law that the Administration has not moved forward with yet.

Mr. RUTLEDGE. Senator, thank you for your question. I am not particularly familiar at this moment with mental health parity. That has not been part of the practice I've ever had or any of the work I've ever done in government. But I do expect and demand that I be briefed on that as soon as I arrive. I do want to understand it. I very much understand the importance of mental health care. I have had experiences in my life where I've represented people who sought medical care for what they call soft-tissue issues, which are harder to diagnose, and blocks were thrown up in their path, and I helped people get over those.

So although I'm not at the Department right now, I'm not familiar with what they're actually doing to implement this, implementing the law will certainly be EBSA's role, and what I can certainly commit to, although I cannot commit the Department to a position today since I'm not there, if I'm fortunate enough to be confirmed I can certainly commit that I will faithfully implement

the law to the best of my ability, and that's the recommendation I will always have for Secretary Acosta.

Senator MURPHY. I look forward to working with you on this. Thank you for that answer, Mr. Rutledge.

Mr. RUTLEDGE. Thank you, Senator.

Senator MURPHY. General Zais, thank you for your willingness to serve as well. In 2015, the South Carolina legislature took up a bill called the Second Amendment Education Act, and there's reporting suggesting you were a supporter of that piece of legislation. I have no issue with school kids being taught about the Constitution or drilling down on particular parts of the Constitution, but one provision of this act required, and I quote: "The State Superintendent of Education shall adopt a curriculum developed or recommended by the National Rifle Association." It does not seem appropriate to me that any political group should be able to write curriculum for our Nation's students.

Let me ask you to speak for yourself with respect to your support of that legislation and ask you specifically whether you think that it's appropriate for political organizations to be given the power by law to write curriculum for America's students.

General ZAIS. Senator, I did not support the adoption of the NRA curriculum. At one point I did say that students should be familiar with the Second Amendment. Of course, I support the law that says that students may not carry weapons to schools. I carried a weapon for many years as part of my job, and I know that weapons are not toys, and it's my belief that whether or not selected adults such as school resource officers are armed or not should be a decision made at the states.

Senator MURPHY. Okay. So, for the record, you did not support that legislation that I referenced?

General ZAIS. That is correct, Senator.

Senator MURPHY. Okay. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Murphy.

There may be Senators who have further questions, so let me start.

General Zais, are you familiar with—usually people do this online, but do you know what this is?

General ZAIS. Senator Alexander, could that be the free application for Federal student aid?

The CHAIRMAN. Yes, that's what it is. Twenty million families fill it out, and there are a lot of us who would like to simplify it. Senators Bennet, Burr, King, and Booker have introduced legislation to do that—and Isakson.

As a college president, what is your experience with the complexity of the Federal student aid application and the complexity of the student loan repayment plans? We have bipartisan legislation to simplify both of those.

General ZAIS. Senator, I appreciate the question because I've struggled with the FAFSA as a college president for years. Not only is it difficult for families to complete that, and for students, it's difficult to train our financial aid counselors on the intricacies of that. A financial aid counselor, what you'll find in all institutions of higher education, turn over frequently. In many schools, particu-

larly small schools like Newbury, where I was college president, it's an entry-level position, and for some families it was simply a bridge too far, particularly first-generation families where the parents were not well educated. To gather all that information was just too large of a task. Our financial aid counselors helped as well as they could, and I'm so happy that this whole process is under review.

The student loan repayment process is complicated. There's conflicting procedures and processes for different kinds of loans, and I think it would be a great contribution to simplify those things.

The CHAIRMAN. Our next major order of business is to review the Higher Education Authorization Act. We'll need to work with the Department to do that.

I want to say to Mr. Blew—you mentioned the Walton family—how much I appreciate the contributions they've made to this country, especially for low-income children, especially to startup public schools, charter schools over the years, going back for a long time. So I thank them.

Let me ask this of General Zais. There's always a lot of talk about vouchers here, it's a very explosive subject, but would you agree that a reasonable definition of a voucher would be a government scholarship or stipend that a student might spend at any accredited public or private institution?

General ZAIS. I would agree, Senator. In fact, I think we have a similar system in many higher education institutions.

The CHAIRMAN. Well, I was about to get to that. What would you call the scholarship—you're a brigadier general. In 1944 we passed something called the GI Bill. So if soldiers coming home from World War II got a scholarship, they could spend it at any institution, public, private, or religious, that was accredited. Would you call that a voucher?

General ZAIS. Yes, sir, I would.

The CHAIRMAN. Today we have about \$100 billion of student loans that we distribute every year which may be spent at any public or private or religious university that's accredited. Would you call that a voucher?

General ZAIS. I would, sir.

The CHAIRMAN. We have about \$34 billion of Pell Grants that we spend, that students may spend at any public, private, or religious institution that's accredited. Would you call that a voucher?

General ZAIS. I would, sir.

The CHAIRMAN. We have about \$8 billion of funding that we give to states for low-income mothers to choose a pre-school program for their children that may be spent at any public, private, or religious accredited institution. Would you call that a voucher?

General ZAIS. Yes, Senator, I would.

The CHAIRMAN. Would you conclude from that that vouchers by themselves might not be a bad idea since those are some of the most popular and effective social programs our country has ever passed?

General ZAIS. I agree.

The CHAIRMAN. Would you also agree that the Federal law does not allow the U.S. Department of Education to require any state to use Federal funds as a voucher that may be used as a private

school, that might be your opinion, but the Federal law doesn't permit you to mandate that of any state?

General ZAIS. Senator, the Federal law is clear in that regard.

The CHAIRMAN. Thank you. Thank you, General.

Senator Murray.

Senator MURRAY. Mr. Rutledge, I understand you have expressed your "discomfort" with the fiduciary rule. That is a rule that simply requires that retirement savers are given advice in their best interest.

As you know, President Trump issued a memorandum directing the Department to review that rule, and in response the Department has proposed a second delay. Given that conflicted advice costs our retirement savers about \$17 billion annually, do you support delaying this rule in order to conduct a study that was already completed as part of the regulatory impact analysis last year?

Mr. RUTLEDGE. Senator, thank you for that question. I'm not at the Department right now, and I can't, of course, commit the Department to a position on how to proceed on that rule. I have reviewed the Presidential memorandum, and it appears to me to direct the Department to review the rule, but to review it from the perspective like ERISA has always been in my experience, from the perspective of the investor, the participant, the worker, the retiree, are you sure you're not hurting those people. ERISA is very participant centered.

I would also like, if I may, since you mentioned the quote from that news article, I've never said I have discomfort with the fiduciary rule. What I was saying at the time was the Department of the Treasury was not involved at the time, and with ERISA a lot of the rules are two agency, Treasury as well as Department of Labor. In the case of a prospective violation of that rule, it would have triggered the necessity of the IRS to assess excise taxes, and there were those of us on the staff, and Chairman Hatch shared our view, that Treasury ought to at least be at the table if this rule was going to create additional work for them.

That was the discomfort. It wasn't about the rule. It was about the fact that Treasury didn't seem to be involved as far as we could tell.

Senator MURRAY. Well, that rule did go through an extensive process, so I just want to make that clear.

General Zais, let me come back to you. As you know, 2 years ago Congress passed the Every Student Succeeds Act, ESSA. It provides states with additional flexibility, but it maintains some very strong Federal guardrails for accountability, which is really important to our taxpayers. When they spend their tax dollars, they want to know that there's accountability, and we heard that throughout our process.

When you were the State Superintendent of Education in South Carolina, you actually wrote an op-ed supporting a proposal that would have gutted our Nation's K-12 education law and left very few protections in place for our students and our families and our taxpayers.

Now, ESSA has made some requirements related to the design of state accountability systems, subgroup accountability, and evidence-based interventions in low-performing schools. But under

Secretary DeVos the Department has now approved state plans that do not comply with all of ESSA's guardrails, an important part of that law, and I wanted to ask you, if you're confirmed, because you'll be in a position to correct those flaws, will you enforce ESSA as written, including all the Federal guardrails that are written into it?

General ZAIS. Senator, I'm unaware of the specifics of any cases where plans have been approved that do not conform with the law. But I can assure you that if confirmed, I will work to ensure that the Federal law as specified in ESSA is followed.

Senator MURRAY. Okay. I will follow up with a question for the record. That's really important to us.

Mr. Blew, my last question to you. We all know that Secretary DeVos was one of the architects of Detroit's charter school system, which even the charter school advocates have called "the biggest school reform disaster in the country." In Michigan, charter school authorizers faced no accountability for their performance. The sector has very high rates of financial corruption and mismanagement, and the results have been disastrous for children.

You have spent your career advocating for charter school expansion, and I know that while you were at the Walton Family Foundation you contributed hundreds of thousands of dollars to groups that pushed Secretary DeVos' agenda on this, and I wanted to ask you, do you think Michigan is a good example of what an effective charter school system looks like?

Mr. BLEW. Senator, one of my beliefs is the importance of accountability in education. Michigan, as you may know, has made many improvements in its laws in the last couple of years, holding authorizers and schools themselves more accountable. I do want to say that the characterization of the charter school sector in Detroit as being a disaster seems unfair. The most reliable studies are saying that, indeed, the charter school students out-perform the district students.

Senator MURRAY. Actually, Michigan's achievement rates have plummeted for all kids. But in addition, charter schools in Michigan are performing worse than traditional public schools. As I said, even charter school advocates are saying it's the biggest school reform disaster in the country. Are you aware of that?

Mr. BLEW. I'm aware of the studies you're talking about. The most reliable studies do show that the charter school students in Detroit out-perform their peers in the district schools.

Senator MURRAY. I would like to see that, because that's not the data that we have.

Mr. BLEW. I will be happy to get it for you. It's done by the Stanford Credo operation.

Senator MURRAY. I'm not aware of that organization.

Mr. BLEW. Stanford University. I'm sorry.

Senator MURRAY. I'm out of time.

The CHAIRMAN.

Senator Franken.

Senator FRANKEN. Thank you again.

General Zais, you said in response to Senator Kaine that your job as Deputy Secretary is to protect the civil rights of students. LGBT students deserve to learn in an environment free from discrimina-

tion, and they deserve to be treated with dignity and respect. But far too often LGBT kids, particularly transgender kids, endure harassment and discrimination. When that happens, those students are deprived of an equal education.

In May, the Seventh Circuit ruled in favor of a transgender boy named Ash Whitaker whose school wouldn't let him use the boy's bathroom. The court ruled that the school's discriminatory bathroom policy violated Title 9 and the Fourteenth Amendment. It's unfortunate that the Trump administration scrapped guidelines written by the Obama administration that instructed schools on how to protect transgender students under Title 9. But rescinding the guidance didn't change the law, and it didn't take away students' rights.

Dr. Zais, when a school administrator tells a boy like Ash that he can't use the same bathroom as all the other boys in his class, that student feels intimidated and shamed. You can't learn if you dread going to school. But Title 9 protects these students. The Department of Education should enforce it. If a transgender student files a complaint under Title 9 alleging unequal access, would you advise the Office for Civil Rights to investigate?

General ZAIS. Senator, I believe firmly that no child should be subjected to bullying, abuse, or intimidation, and that includes transgender students.

In terms of the legal rights, as I understand it that is now being litigated, and since it's in the court system, I don't know that it would be appropriate for me to—

Senator FRANKEN. The 7th Circuit ruled in favor of Ash Whitaker. It was just in May, and I think that's now the law.

General ZAIS. I don't know that LGBT is a protected class currently. But I can tell you that, if confirmed, I will work to comply with all aspects of the Federal law.

Senator FRANKEN. Well, that is the law, so you will enforce it.

General ZAIS. I will work with you and the Secretary. Right now I'm unclear as to what exactly the law is.

Senator FRANKEN. Okay. Let me move on.

Over 15 percent of all Federal financial aid goes to students attending for-profit colleges and universities. While there are some very good actors in the for-profit sector, many of these institutions have been putting their own financial gains above the best interests of their students. Over the last several years tens of thousands of students throughout the country have been victims of fraud and predatory lending practices by for-profit institutions. In my home state of Minnesota, Globe University and Minnesota School of Business are two examples of institutions whose fraudulent activities have left their students deep in debt with worthless degrees and futures compromised by bad credit.

I have written multiple letters urging the Department of Education to take action against these for-profit institutions and to help students get the debt relief that they deserve.

Dr. Zais, if you are confirmed as Deputy Secretary of Education, are you committed to ensuring that students who have been victims of fraudulent behavior receive the debt relief that they deserve by processing all current and future claims from students eligible to have their loans discharged?

General ZAIS. Senator, first of all, I'm very sensitive to the fact that there are a number of institutions that have engaged in fraud and deceptive advertising. I'm particularly sensitive because many of these people are veterans who have been taken advantage of.

Senator FRANKEN. Right.

General ZAIS. I understand that there's a negotiated rulemaking process in progress right now, but I definitely intend to look out for the interests of what tend to be our most vulnerable students in higher education.

Senator FRANKEN. Thank you. By the way, the highest-ranking Jew in the military is currently the Comptroller of the Coast Guard.

That's a joke. I don't know. That's anecdotal.

[Laughter.]

The CHAIRMAN. Thank you, Senator Franken.

Senator Hassan.

Senator HASSAN. It's always a little tricky to follow Senator Franken. I'm not about to try.

[Laughter.]

Senator HASSAN. General Zais, can you tell us about when the United States had a public education system for all elementary school students, by about what year?

General ZAIS. No, Senator, I don't know the year.

Senator HASSAN. Okay. My quick research just now tells me that by about 1870 all states had a public education system paid for with tax dollars, by about 1870. After that, I assume you would agree that we had a public education system for elementary and then eventually high school that served all of our kids. Is that a fair statement?

General ZAIS. That's my understanding. That's correct.

Senator HASSAN. Okay. So when the GI Bill came along in 1944, though, we didn't have a public higher education system that could absorb all the GIs. Is that fair?

General ZAIS. Well, Senator, I don't know what the capacity of our higher education system was in 1944.

Senator HASSAN. But we certainly didn't have the assumption that all of our graduates from high school would be going to higher education before 1944. Is that a fair statement?

General ZAIS. That's a fair statement.

Senator HASSAN. Okay. So that gets me back to the issue of my concerns about vouchers in particular. I will tell you that as Governor of New Hampshire I supported strategically authorized, accountable public charter schools because I think it's very important to have innovation in the public school system, and I think charter schools are a very good way to do that.

But the concern I have about vouchers is that they take taxpayer dollars, giving them to parents who often can afford to make up the difference that the voucher doesn't pay for toward a private school tuition or, for instance, for transportation expense. My concern is what that does to the public schools.

Both you and Mr. Blew—and, Mr. Blew, I'd be pleased to hear your response to this question too—you both talk about helping students leaving so-called failing schools. But do you agree that when you de-fund public schools, that can lead to those schools

having to make difficult decisions about cutting curriculum, teacher capacity, and other services?

I'll start with you, General Zais.

General ZAIS. I know that when—we haven't had vouchers in South Carolina. But I know that when students left their traditional public school to attend a public charter school, that actually more money went to the traditional public school.

Senator HASSAN. But that generally hasn't been the way it has worked. One of the concerns I've got is you look at a family that can't afford the transportation expense or the difference between the private school tuition and the voucher, and now that child and that family is left in a public school with fewer and fewer resources. When you also add to the fact that children with disabilities, particularly severe disabilities, are often ineligible for vouchers because there aren't private schools that can provide them the quality education that they deserve, that you are increasingly draining resources from the schools that are left to deal with our most vulnerable and disadvantaged students.

Mr. Blew, maybe you can answer this. How do voucher programs or proponents of voucher programs address that issue?

Mr. BLEW. Let me make a couple of points on this. First of all, Senator Murray pointed out there is no Federal voucher program in place right now.

Senator HASSAN. No, but you're talking about going to work for a Secretary of Education who has been a major proponent of one, and a president who says he wants to spend \$20 billion on it.

Mr. BLEW. The Secretary also has said publicly and repeatedly that she does not favor a Federal voucher program being imposed on the states. She believes that that's something that locals should consider, as you did in New Hampshire, for themselves.

Senator HASSAN. Except that there will be Federal dollars available for it, taking away Federal dollars for other education resources. If the President is going to devote \$20 billion, states are likely to be incentivized to apply for it.

Let me just move on to one last question, which is that there are particular examples in news reports of families who have children with disabilities who use a voucher, sign away their rights, and discover that after some time in the private school, having been promised that the school was qualified in educating their child, that they aren't. In at least one case, a child was put in seclusion, segregated from his peers, and now he has no legal rights and can't necessarily get back into the public school right away.

Tell me why it is that voucher proponents think that draining resources and splintering school systems is going to help children with disabilities.

Mr. BLEW. Senator, I'm not aware of the specific circumstance you raised. I can tell you the law is very clear on this, that the local education agency is responsible for providing a free and public education. So the comment that they couldn't go back to the public school—

Senator HASSAN. Not right away, right? They've waived a lot of their resources. I'll give you the article that outlines what happened to this family in the McKay, Florida system.

Mr. BLEW. Yes, and I think it's very important for me and everyone to be aware of these examples. It's also important to understand that there are 30,000 parents now in that program in Florida. It's grown tremendously since 2006, and most parents are overwhelmingly happy, satisfied with the services they're getting compared to what they would have had in the traditional system.

Senator HASSAN. I thank you for that comment. I'm well over my time. I would just add that there are thousands of students left in public schools that aren't happy, in part because they don't have the resources that they might have had if we had all focused on making those public school systems serve every student.

Thank you.

The CHAIRMAN. Thank you, Senator Hassan.

Senator Murray, do you have—

Senator MURRAY. Mr. Chairman, I just would like unanimous consent to enter into the record a letter from early childhood education organizations regarding the nomination of General Zais.

The CHAIRMAN. Thank you, Senator Murray.

The CHAIRMAN. I ask consent to introduce six letters of support for Preston Rutledge, including a letter from Senator Hatch. I ask consent to introduce one letter of support for Kate O'Scannlain into the record.

Those will be entered under Additional Material.

The CHAIRMAN. If Senators wish to ask additional questions of the nominees, questions for the record are due by 5 p.m. Friday, November 17. For all other matters, the hearing record will remain open for 10 days. Members may submit additional information for the record within that time.

Thank you for being here today. We appreciate the witnesses attending. We thank the families for coming.

The Committee will stand adjourned.

[Additional Material Follows:]

ADDITIONAL MATERIAL

LETTERS OF SUPPORT FOR PRESTON RUTLEDGE

AMERICAN BENEFITS COUNCIL,
WASHINGTON DC,
November 15, 2017.

Hon. LAMAR ALEXANDER, *Chairman,*
Hon. PATTY MURRAY, *Ranking Member,*
Senate Committee on Health, Education, Labor, and Pensions,
428 Dirksen Senate Office Building,
Washington, DC.

DEAR CHAIRMAN ALEXANDER AND RANKING MEMBER MURRAY: I am writing to strongly support the confirmation of Preston Rutledge as the Assistant Secretary of Labor for the Employee Benefits Security Administration (EBSA). The American Benefits Council (Council) represents companies and other organizations that either directly sponsor, or provide services to, virtually all of the Nation's employer-sponsored health and retirement plans.

Over a period of many years, in a variety of different capacities, Mr. Rutledge had demonstrated that he has the qualities needed to lead EBSA in a manner that will enhance personal financial security provided through the employer sponsored benefits system—the source of retirement and health coverage for the vast majority of Americans.

Mr. Rutledge has already had a distinguished career, most recently as Tax Counsel serving the Senate Finance Committee. In this position, he has shown a great

ability to bring people together to achieve the goals of various stakeholders in the employee benefits system.

Mr. Rutledge's skills as a public servant were exemplified by the valuable role he played in supporting the Members of the Finance Committee as they worked toward unanimous passage of the Retirement Enhancement and Savings Act of 2016. This landmark bill would break major new ground in serving retirement income security and retirement plan innovation. Senators of both parties appreciated Mr. Rutledge's expertise and tireless efforts to help the Committee achieve this important bipartisan accomplishment.

At EBSA, among his many responsibilities, Mr. Rutledge would be called upon to fairly balance the concerns and priorities of the myriad stakeholders who play a role in the U.S. employee benefits system. Foremost, of course, are the interests of the millions of Americans who rely upon a strong employer-sponsored benefits system for their financial security. As representatives of the companies and organizations whose creativity, dedication and substantial financial investment make possible that system, the Council is confident Mr. Rutledge will approach his duties with the same expertise, fairness, receptivity to hearing diverse views, and courtesy that he has displayed in the public service roles in which he has served.

We strongly support Mr. Rutledge's confirmation and thank you for considering our views.

Sincerely,

JAMES A. KLEIN, PRESIDENT,
American Benefits Council.

November 14, 2017.

Hon. LAMAR ALEXANDER, *Chairman*,
Hon. PATTY MURRAY, *Ranking Member*,
Senate Committee on Health, Education, Labor, and Pensions,
428 Dirksen Senate Office Building,
Washington DC.

DEAR CHAIRMAN ALEXANDER AND RANKING MEMBER MURRAY: The undersigned associations write in support for Preston Rutledge to be confirmed as Assistant Secretary of Labor for the Employee Benefits Security Administration (EBSA).

Mr. Rutledge has led a distinguished career in public service, and has a proven track record of working in a collaborative and bipartisan manner. As an expert in retirement policy, employee benefits, executive compensation, and the tax treatment of life and health insurance, his background makes him uniquely qualified to lead EBSA.

During his time as Tax and Benefits Counsel on the Majority Tax Staff of the Senate Finance Committee, many of us have worked with Mr. Rutledge to advance legislation important to the retirement community at large. These efforts include the Secure Annuities for Employee (SAFE) Retirement Act, the Retirement Enhancement and Savings Act (RESA), the Miners Protection Act (MPA), and the 2015 Tax Reform Working Group on Savings and Investment. These bills reflect various perspectives and illustrate his commitment to work across the aisle to achieve outcomes favorable for different types of workers and their employers.

We appreciate your consideration of Mr. Rutledge to serve in this important role. We strongly urge Members of the Committee to act swiftly and positively on his nomination.

Signed,

AMERICAN COUNCIL OF LIFE INSURERS, ASSOCIATION FOR ADVANCED LIFE UNDERWRITING, AMERICAN RETIREMENT ASSOCIATION, COMMITTEE ON INVESTMENT OF EMPLOYEE BENEFIT ASSETS, DEFINED CONTRIBUTION INSTITUTIONAL INVESTMENT ASSOCIATION, FINANCIAL SERVICES INSTITUTE, FINANCIAL SERVICES ROUNDTABLE, INSURED RETIREMENT INSTITUTE, INVESTMENT COMPANY INSTITUTE, NATIONAL ASSOCIATION OF INSURANCE AND FINANCIAL ADVISORS, NATIONAL ASSOCIATION OF PROFESSIONAL EMPLOYER ORGANIZATIONS, NTCA-THE RURAL BROADBAND ASSOCIATION, PLAN SPONSOR COUNCIL OF AMERICA, RETIREMENT INDUSTRY TRUST ASSOCIATION, SECURITIES INDUSTRY AND FINANCIAL MARKETS ASSOCIATION, SMALL BUSINESS COUNCIL OF AMERICA, SMALL BUSINESS LEGISLATIVE COUNCIL, THE ESOP ASSOCIATION, THE SPARK INSTITUTE, AND U.S. CHAMBER OF COMMERCE.

INSURED RETIREMENT INSTITUTE,
WASHINGTON, DC,
November 13, 2017.

Hon. LAMAR ALEXANDER, *Chairman,*
Hon. PATTY MURRAY, *Ranking Member,*
Senate Committee on Health, Education, Labor, and Pensions,
Washington, DC.

DEAR CHAIRMAN ALEXANDER AND RANKING MEMBER MURRAY: On behalf of our member companies, the Insured Retirement Institute (IRI)¹, is honored and privileged to write to you to state our support for the expeditious confirmation of Preston Rutledge to serve as Assistant Secretary of Labor for the Employee Benefits Security Administration at the United States Department of Labor. Mr. Rutledge has been an outstanding champion for common-sense solutions to increase retirement security for all Americans and in this position, he would continue to serve as a strong advocate for Americans to plan earlier and save more for their retirement.

Mr. Rutledge has a distinguished record of public service to our Nation, starting with his service as an Officer in the U.S. Navy and all throughout his career up until his current service as the Tax and Benefits Counsel on the Republican Tax Staff of the Senate Finance Committee. He has been active during his time with Senate Finance in working to enact legislation that would help Americans to achieve financial security in their retirement years. Mr. Rutledge has been a strong proponent of finding solutions for Americans to insure against the risk of outliving their assets and has promoted policies to support retirement financial planning by recognizing the value of products providing retirees with guaranteed lifetime income.

Most recently, Mr. Rutledge was one of the prime Senate staff architects who drafted the Retirement Enhancement and Savings Act. He then played an instrumental role in garnering bipartisan support for the bill, culminating last November in a unanimous vote in favor by Senate Finance Committee. IRI enthusiastically supported this bill as it made significant strides toward helping Americans overcome the barriers to a financially secure retirement. It contained bipartisan measures to: expand access to workplace retirement plans by encouraging the use of multiple employer plans (MEPs); increase access to lifetime income strategies that help retirees ensure they do not outlive their financial assets in retirement; provide certainty to plan sponsors regarding the selection of a lifetime income provider; enable annuity portability; and require benefit plan statements to include lifetime income estimates.

The common-sense solutions of this legislation, are ones that IRI has long-endorsed and actively advocated for their passage. With Mr. Rutledge, serving in this position at the Department of Labor, we are confident with his knowledge about and passion for retirement security, we can work together to turn these policy proposals into reality and help more Americans plan for and attain a financially secure retirement.

The current state of retirement savings readiness in America is at crisis levels and the need for dedicated and passionate leadership on this has never been greater. We believe Mr. Rutledge can provide that leadership.

For these reasons, on behalf of IRI and its member companies, I am pleased to express our wholehearted, steadfast and strong support for Preston Rutledge to be confirmed as the next Assistant Secretary for the Employee Benefits Security Administration at the United States Department of Labor. We urge all the Members of this Committee to act expeditiously to vote in favor of his nomination and move his confirmation forward to the full Senate for its consideration and action.

Sincerely,

CATHERINE WEATHERFORD, PRESIDENT & CEO,
Insured Retirement Institute.

¹The Insured Retirement Institute (IRI) is the leading association for the retirement income industry. IRI proudly leads a national consumer coalition of 40 organizations, and is the only association that represents the entire supply chain of insured retirement strategies. IRI members are the major insurers, asset managers, broker-dealers/distributors, and 150,000 financial professionals. As a not-for-profit organization, IRI provides an objective forum for communication and education, and advocates for the sustainable retirement solutions Americans need to help achieve a secure and dignified retirement. Learn more at www.irionline.org.

NATIONAL ASSOCIATION OF INSURANCE AND FINANCIAL ADVISORS,
 FALLS CHURCH VA,
November 13, 2017.

Hon. LAMAR ALEXANDER, *Chairman,*
 Hon. PATTY MURRAY, *Ranking Member,*
Senate Committee on Health, Education, Labor, and Pensions,
Washington, DC.

DEAR CHAIRMAN ALEXANDER AND RANKING MEMBER MURRAY: The National Association of Insurance and Financial Advisors (NAIFA) strongly supports the confirmation of Preston Rutledge to serve as Assistant Secretary of Labor for the Employee Benefits Security Administration at the United States Department of Labor. Mr. Rutledge's knowledge and experience in working with retirement, health and disability issues has resulted in improvements to the overall security for all Americans and therefore NAIFA urges the Committee to vote in favor of his nomination and move his confirmation forward promptly.

NAIFA Members—comprised primarily of insurance agents, many of whom are also registered representatives—are Main Street advisors¹ who serve primarily middle-market clients, including individuals and small businesses. NAIFA Members help families manage the risks of dying prematurely or outliving savings, and assist in early planning to achieve their personal retirement goals. Having robust, saver-friendly employer-sponsored programs is a critical component to overall financial security and retirement readiness. We believe Mr. Rutledge's leadership in the Employee Benefits Security Administration will result in long-term improvements to employee benefits programs.

NAIFA looks forward to working with the Committee and with the Department of Labor to enhance the financial security of American families. Please contact NAIFA Government Relations Assistant Vice President Judi Carsrud (*jcarsrud@naifa.org*) with any questions.

Sincerely,

KEVIN M. MAYEUX, CAE
CEO, NAIFA.

UNITED STATES SENATE,
 COMMITTEE ON FINANCE,
November 15, 2017.

Hon. LAMAR ALEXANDER, *Chairman,*
Senate Committee on Health, Education, Labor, and Pensions,
428 Senate Dirksen Office Building,
Washington, DC.

DEAR CHAIRMAN ALEXANDER: I am writing to express my support for the nomination of Preston Rutledge to be the Assistant Secretary of Labor for the Employee Benefits Security Administration (EBSA). His nomination is currently before the Senate Committee on Health, Education, Labor and Pensions.

For nearly seven years, Mr. Rutledge has been a valued Member of the Senate Finance Committee staff. Throughout that time, I have been very fortunate to have him on my team. I cannot think of a more qualified candidate for this position.

Mr. Rutledge is an experienced attorney with a knack for tax policy and ERISA issues. His knowledge of issues dealing with employee benefits is unsurpassed and, throughout his tenure on the Finance Committee, he has demonstrated his ability to work with Members and offices from both sides of the aisle to advance reforms to our Nation's pension and savings programs, helping to ensure a more stable and reliable retirement savings system.

Two examples of his success include the Retirement Enhancement & Savings Act, as well as the ABLE Act which provided savings enhancements for children with disabilities.

¹ **About NAIFA:** Founded in 1890 as The National Association of Life Underwriters (NALU), NAIFA is one of the Nation's oldest and largest associations representing the interests of insurance professionals from every Congressional district in the United States. NAIFA Members assist consumers by focusing their practices on one or more of the following: life insurance and annuities, health insurance and employee benefits, multiline, and financial advising and investments. NAIFA's mission is to advocate for a positive legislative and regulatory environment, enhance business and professional skills, and promote the ethical conduct of its Members.

Preston is a dedicated public servant with an outstanding track record to prove it. As a teenager he worked in our national forests, and later proudly served as an officer in the U.S. Navy. Later, he was a law clerk on the U.S. Circuit Court of Appeals for the 5111 Circuit and spent over a decade with the Internal Revenue Service focused on employee benefits and tax-exempt organizations.

Between his experience and impeccable character, I am confident that Preston is well equipped to tackle the tough issues that lie ahead for EBSA. There is no one else that I know of who would do a better job. I am confident that Preston's open-minded and inclusive approaches to problem-solving will serve to improve our Nation's benefits and retirement for workers across the country.

Make no mistake, Preston's talents and good humor will be missed on the Finance Committee. However, I share the president's view that he is the person best equipped to address the issues facing the EBSA at this time. I heartily support this nomination.

Sincerely,

ORRIN G. HATCH,
Chairman, Senate Committee on Finance.

LETTER OF SUPPORT FOR KATE O'SCANNLAIN

November 10, 2017.

Hon. Lamar Alexander Chairman,
Hon. Patty Murray,
Senate Committee on Health, Education, Labor, and Pensions,
428 Senate Dirksen Office Building,
Washington, DC.

DEAR CHAIRMAN ALEXANDER AND RANKING MEMBER MURRAY: We write in emphatic support of Kate O'Scannlain's nomination to serve as Solicitor of Labor, the highest legal position in the Department of Labor. Although we all have worked with Ms. O'Scannlain as partners and colleagues at Kirkland & Ellis LLP, we write this letter of support in our personal capacity.

For many years, each of us has worked with and alongside Ms. O'Scannlain. While we have worked on different matters together and in various contexts, our opinions are the same. Ms. O'Scannlain is a true professional, a superb lawyer, a gracious colleague, and an ethical and honorable person. Ms. O'Scannlain is a litigator and also has a broad range of knowledge and experience with employment, labor and compliance issues in business sales, acquisitions, and restructurings. Her focus has been on identification and assessment of issues, consideration of all points of view, and their thoughtful, fair and practical resolution. Importantly, she is even-tempered, and with solid and excellent judgment. She is organized, thoughtful, respectful, and respected. She is exactly the type of person needed for the broad range of legal, administrative and enforcement responsibilities of Solicitor of Labor.

Across the Firm, Ms. O'Scannlain treats everyone with dignity and respect. She is courteous and patient no matter with whom she interacts. Ms. O'Scannlain is known for her collegial demeanor and collaborative style. She mentors associates and has been instrumental in the firm's diversity initiatives.

Ms. O'Scannlain's work at Kirkland & Ellis has included *pro bono* representation of a variety of indigent and not-for-profit clients on diverse matters, including the obtaining of Combat Related Special Compensation for a disabled Operation Iraqi Freedom veteran. She is a regular volunteer at the Archdiocesan Legal Aid Clinic of Washington, DC. Every year since 2008, Kate has won the Kirkland & Ellis Pro Bono Service award for her commitment to *pro bono* service; in three of those years, she performed over 100 hours of *pro bono* work.

Outside of our law firm, Ms. O'Scannlain also serves on the Notre Dame Law Advisory Board. She has served on other boards affiliated with the University of Notre Dame, including the advisory board of a Washington, DC school educating underserved students on Capitol Hill. Ms. O'Scannlain has also served in leadership roles at her children's school and is active in her parish.

Our support for Ms. O'Scannlain is not driven by politics. We are Democrats, Republicans, and Independents, and hold views across the political spectrum. Even though some of us may disagree with the policies and politics of this Administration, we all are united in our view that Ms. O'Scannlain is fair, intellectually honest, and

judicious—a person of great integrity. In short, the President has nominated an excellent choice for Solicitor of Labor. We encourage her swift confirmation.

Respectfully,

ALLEN WINN, EUGENE ASSAF, DANIEL F. ATL RIDGE, JAMES P. GILLESPIE, BOYD H. GREENE, MICHAEL A. GLICK, MARIO MANCUSO, DIANNE MCCLANAHAN, MICHAEL W. MCCONNELL, ZACHARY AVALLONE, GOTTSCHALK TOM, SCOTT M. METZGER, AMY M. BALKEMA, PATRICK HANEY, MIHALAS ALEXANDRA, CHRISTOPHER BARTOLOMUCCI, CATALINA BENECH, LIAM PATRICK HARDY, AMANDA HAYES, LAUREN A. MITCHELL-DAWSON, CHRISTOPHER F. MIZZO, ROBERT M. BERNSTEIN, ANDREW M. HERMAN, PATRICK MONTGOMERY, HEATHER BLOOM, STEPHEN E. HESSLER, ERIN E. MURPHY, MARIN BONEY, GEORGE W. HICKS, LINDA K. MYERS, DANIEL A. BRESS, VANESSA HIGAREDA, RAGAN NARESH, CHRIS CHASE, EDWARD HOLZWANGER, BRIDGETTE O'CONNOR, MICHAEL CHISWICK-PATTERSON, LISA A. HORTON, JOHN C. O'QUINN, TOBY CHUN, HUGHES EMILY P., PATRICK F. PHILBIN, JEFFREY CLARK, ELENA IONITA, EVANGELIA PODARAS, ANDREW CLUBOK, JOHN S. IRVING, CRAIG S. PRIMIS, ASTEEENA CORREN, ELLEN M. JAKOVIC, JEFFREY S. QUINN, ADRIA M. CROWE, JONATHAN D. JANOW, JOANNA M. RITCEY-DONOHUE, SABINE CURTO, ERIN C. JOHNSTON, ROBERT S. RYLAND, ELIZABETH DALMUT, SYDNEY JONES, MIA SATHIA, WENDELL DANIELS, MATTHEW D. KEISER, DEBORAH SCARCELLA, SUSAN DAVIES, LAWAN KEITH, MICHAEL A. SCHULMAN, DEVIN A. DEBACKER, JONATHON KIDWELL, MICHAEL SHUMSKY, JOSEPH J. DESANTIS, PATRICK J. KING, ANNE McCCLAIN SIDRYS, VIET D. DINH, CARON KLINE, R. TIMOTHY STEPHENSON, MARK D. DIRECTOR, OLIVIA KWOK, BRYAN M. STEPHANY, STUART DRAKE, CHRIS LANDAU, THOMAS YANNUCCI, GARY A. DUNCAN, SUSAN E. ENGEL, WILLIAM LANE, ANDREW LANGAN, SCOTT J. VAIL, SARA WEBBER, KATHERINE ESPIRITU, ALEXANDRA FARMER, CHRISTA J. LASER, ABIGAIL E. LAUER, THOMAS P. WEIR, JASON WILCOX, PETER A. FARRELL, KENNETH R. LENCH, ERICA Y. WILLIAMS, MARK FILIP, JENNIFER LEVY, MICHAEL F. WILLIAMS, PAMELA GAGLIARDI, WALTER H. LOHMAN, MEGAN WOLD, JONATHAN F. GANTER, JAY B. STEPHENS, JODI WU, ROBERT R. GASAWAY, AND NATHAN MAMMEN.

[Whereupon, at 4:08 p.m., the hearing was adjourned.]

