

## Senate taxwriters vet another trio of Tax Court nominees

On the heels of voting last month to advance three Tax Court judicial nominees to the full Senate for confirmation, the Senate Finance Committee this week heard from three more—Jeffrey Arbeit, Cathy Fung, and Benjamin Guider III—who, if cleared by the panel and confirmed by the full Senate, will begin their own 15-year terms adjudicating disputes between the IRS and taxpayers.

Arbeit has spent the past nine years as a staff lawyer at the Joint Committee on Taxation; Fung has worked in the IRS Office of Chief Counsel since 2009 and currently is a deputy counsel; and Guider is an affordable housing lawyer, currently with Longwell Riess. Arbeit previously clerked for a Tax Court judge, and Fung began her legal career as an attorney-advisor at the court.

### Questions about *Chevron*, judicial fairness

The Finance Committee's ranking Republican, Sen. Mike Crapo of Idaho, took the opportunity at the July 10 hearing to question the nominees about the recent Supreme Court decision in *Loper Bright Enterprises v. Raimondo* overturning judicial deference to federal agency regulations when the language of the underlying statute is ambiguous and the agency's rule provides a reasonable interpretation, that has been precedent since the Court's 1984 decision in *Chevron USA Inc. v. National Resources Defense Council Inc.* All three nominees indicated that they would be comfortable ruling that a Treasury Department rule is invalid if the guidance does not align with the statutory language and legislative history.

URL: [https://www.supremecourt.gov/opinions/23pdf/22-451\\_7m58.pdf](https://www.supremecourt.gov/opinions/23pdf/22-451_7m58.pdf)

URL: <https://supreme.justia.com/cases/federal/us/467/837/#tab-opinion-1955635>

"The foundation of every legal analysis is finding an interpretation that is consistent with the statute and that reflects the intent of Congress," Arbeit said.

The nominees also committed to both Crapo and Finance Committee Chairman Ron Wyden, D-Ore., that they would focus on treating taxpayers fairly and on ensuring that individuals who come before the court without a lawyer, as many do, receive sufficient guidance about the process and the resources available to them.

Wyden told the nominees that he "would like to see [them] go into the history books as the group that really made a difference in terms of taking this oddly complicated system and making it intelligible to folks who don't have power, don't have clout, [and] don't have counsel."

### What's next?

The Finance Committee will hold votes on advancing these nominees to the full Senate at a yet-to-be-scheduled mark-up session.

The committee on June 13 voted to send three other Tax Court nominees—Rose Jenkins, Adam Landy, and Kashi Way—to full Senate for final confirmation. Majority Leader Charles Schumer, D-N.Y., this week filed

cloture on the nominations of Landy and Way, setting up final confirmation votes as early as the week of July 22, when lawmakers return from a week-long recess for the upcoming Republican presidential nominating convention. Timing for a vote on Jenkins's confirmation is currently unclear.

If all six of the current nominees are confirmed by the Senate, the 19-seat court will have a full bench.

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Tax Policy Group  
Deloitte Tax LLP

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