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MEMORANDUM

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BY ELECTRONIC MAIL

FROM: Olsson Frank Weeda Terman Matz PC

RE: Robert F. Kennedy, Jr. Senate Finance and Health Committee Hearings

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On January 29, 2025, Robert F. Kennedy Jr., President Trump's nominee to lead the U.S. Department of Health and Human Services (HHS), appeared before the Senate Finance Committee. If confirmed by the Senate, Mr. Kennedy would be responsible for a $1.7 trillion Department that oversees an immense portfolio including, the U.S. Food Drug Administration (FDA) and the National Institutes of Health (NIH), and the areas under its purview - human and animal food and food safety, nutrition policy, public health, dietary supplements, tobacco, and pharmaceuticals.

In addition, today, January 30, 2025, the Senate Committee on Health, Education, Labor, and Pensions (HELP) held a courtesy nomination hearing. Although only the Senate Finance Committee vote will determine whether Mr. Kennedy's nomination will advance to the full Senate, both the Senate Finance and HELP Committee Hearings produced relevant information that could influence the vote on his confirmation. The Hearings were long, varied, and, as reported in the media, focused significantly upon Mr. Kennedy's views on vaccines and vaccinations. While some of that discussion is summarized here, this memorandum focuses in significant part upon the less reported aspects of the Hearings -- Mr. Kennedy's testimony on food-related issues and what, if confirmed, he has signaled regarding his regulation and oversight of the food industry.[1]

[1] OFW Law previously discussed the Trump Administration and Kennedy's potential impact on HHS in detail in a November 2024 memorandum (here).

The Make America Healthy Again (MAHA) agenda received bi-partisan support from the Committees, but we believe, in light of the Hearings, there is a significant question as to whether Senate Finance will vote in Kennedy's favor and advance his nomination to the full Senate. Democrats were generally unsupportive of the nominee, questioning his past anti-vaccination advocacy, his lack of knowledge of HHS, and his commitment to following consensus, credible science. These criticisms were not unwarranted – Mr. Kennedy often appeared unprepared, provided incorrect answers, made unsupported or inaccurate arguments, demanded that the Senators prove him wrong, and even accused the Senators of financial bias.

As explained below, one Republican vote in opposition could result in Kennedy's nomination not moving forward. This decision could hang in the balance of Dr. Bill Cassidy (R-LA), member of both Senate Finance, and Chairman of HELP. Dr. Cassidy, a gastroenterologist, expressed significant reservations over Mr. Kennedy's anti-vaccination views and was very concerned that Mr. Kennedy could use his credibility and position to continue to undermine vaccine use resulting in vaccine-preventable deaths. Dr. Cassidy repeatedly allowed Mr. Kennedy to provide clarifications that would assuage these concerns, which Mr. Kennedy in significant part declined to do.

The Hearings focused on numerous issues, which are summarized in more detail below:

- Food-related policy
    - Processed foods and additives
    - School Lunch and SNAP
- Evidence-based approach
    - Commitment to science
    - Vaccine science
- Mr. Kennedy's knowledge and fitness
    - Lack of knowledge and understanding of HHS programs
    - Abortion and deference to President Trump
    - Self-interest and Conflicts of Interest
- Next Steps

I. Republican Support v. Democrat Opposition, and Votes for the Nomination

There was bi-partisan support for Mr. Kennedy and the Trump Administration's MAHA objectives to make Americans healthy, reduce chronic diseases, and increase transparency. Republicans showed support for the nominee and expressed support for the MAHA agenda and reducing healthcare costs. Republicans highlighted Mr. Kennedy's commitment to consumers, children's health, and his goal of furthering the President's MAHA agenda. Republicans also defended Kennedy, explaining that science is not always certain, and that "it is good to ask questions."

Democrats expressed concerns over Mr. Kennedy's background, particularly his many years of anti-vaccine advocacy. Finance Committee Ranking Member Wyden stated that Mr. Kennedy "has supported quacks, charlatans, and has sowed distrust of childhood vaccines." Democrats also

focused on Mr. Kennedy's past extreme statements, his very recent changes in position on vaccines and abortion, his financial gain from his anti-vaccine campaign while putting children at risk, and his lack of experience and expertise to manage HHS.

The Finance Committee is comprised of 14 Republicans, 12 Democrats, and 1 Independent. The success of the nomination could turn on one or more members not voting along party lines. Although it is rare for the Finance Committee to not recommend the confirmation of a nominee, we believe the last two days of Hearings reveal significant uncertainty as to the outcome of Mr. Kennedy's advancement out of the Committee.

All 12 Democrats appeared aligned against the nominee, in addition to Mr. Bernie Sanders (I-VT). Mr. Sanders is a member of Senate Finance and the Ranking Member of the HELP Committee. The HELP Hearing became contentious when Mr. Kennedy accused Mr. Sanders of accepting political contributions from pharmaceutical manufacturers, which Sanders vehemently denied. This came after Mr. Sanders challenged Mr. Kennedy for his reliance upon a debunked study linking the MMR vaccine to autism.

Mr. Kennedy's exchanges with Dr. Cassidy, also took a turn for the worse, when Mr. Kennedy defended theories linking autism to vaccines; he further refused to confirm that he would reassure mothers to administer vaccines. Mr. Kennedy informed Dr. Cassidy that the Senator would need to "show [him] the data." Dr. Cassidy referred to studies and meta-analyses confirming the absence of such a link. Mr. Kennedy, in turn, referred Dr. Cassidy to a "peer-reviewed" "study" that was published last week that he contends supports his view of an association with autism.[2] Dr. Cassidy surmised that Mr. Kennedy's approach to science is to use "selective evidence," rather than looking at all the evidence. Dr. Cassidy stated that the question for his nomination rests on whether Kennedy can "be trusted to support the best public health" or "will use his credibility to undermine" vaccines. If Dr. Cassidy votes against the nomination, it will likely result in a majority (14 votes) against the nomination.

II. Food-Related Policy

a. Unclear Policy

As expected, there was widespread support within the Committee for Mr. Kennedy's commitment to reduction in chronic disease, including obesity and diabetes, which Mr. Kennedy firmly links to poor diet and lack of exercise in the American population and environmental factors. There was, however, little granularity or clear policy on how this important reduction in disease might occur.

Without acknowledging food manufacturers, Mr. Kennedy stated that he was not the "enemy of food producers." He wants to "work with our farmers and food producers to remove burdensome

[2] We looked into the study and note that it suffers many of the same methodological shortcomings Mr. Kennedy criticizes – the study was funded by anti-vaccine organizations, conducted by an author with multiple retractions, was not subject to legitimate scientific scrutiny, used methodologies that are being scrutinized, and is "published" on a WordPress blog.

regulations and unleash American ingenuity… MAHA cannot succeed without partnership with farmers."

a. Processed Foods and Additives

Mr. Kennedy raised food additives several times and broadly linked "ultra-processed" foods and food additives to illness. He urged the deployment of FDA and NIH research to understand the relationship between additives and chronic disease. He explained that research funding has been exclusively conducted for infectious diseases and there has been no investment in chronic disease research.

Mr. Kennedy blamed obesity on chemical-laden highly processed food and stated that "We need to fix our food supply." He explained that Americans needed more transparency about the foods they eat and how, for example, Twinkies or McDonald's hamburgers, would impact health. He also repeatedly compared the U.S. to other countries, claiming that there are 10,000 additives in the U.S. and that there are nine ingredients in McDonald's French fries in the U.S., and only three in Europe.

Mr. Kennedy boasted that FDA agreed with him in its acknowledgment that FD&C Red No. 3 causes cancer. He was not challenged on this statement, or that, in fact, FDA found that FD&C Red No. 3 did not pose risks to humans. He criticized cereal manufacturers for putting up to 9 synthetic dyes in products. When asked about the GRAS food additives, he criticized the FDA review and review standard for food additives stating that "any additive is innocent until proven guilty," without any explanation. He placed significant emphasis on changing our food supply to reduce processed foods and remove certain additives in food. Kennedy indicated that he would "work with manufacturers" in making such changes, which would be necessary for him to uphold his commitment to not "take food away from people." He also wants Americans to know the impact of foods on health, suggesting the need for transparency and potentially consumer education.

b. School Lunch and SNAP

Mr. Kennedy was repeatedly asked about healthier foods in school meals and SNAP programs and also brought up these initiatives on his own. Mr. Kennedy stated that more requirements around healthy foods in SNAP and school meal programs might accomplish these goals. Of course, SNAP and school meal programs are the purview of the U.S. Department of Agriculture (USDA), not HHS. At various times, Mr. Kennedy also spoke of his commitment to farmers. This overstepping of boundaries – or perhaps ignorance of these jurisdictional issues – resulted in comment by Senator Grassley (R-IA). During his questioning, Senator Grassley noted Mr. Kennedy's previous commitment in meetings to leave agricultural matters to USDA.

III. Evidence-Based Approach

a. Commitment to Science

During numerous rounds of questioning, Senators obtained Mr. Kennedy's commitment to science, to evidence-based decision-making, and to returning health agencies to a "gold standard." Mr. Kennedy denied being a "conspiracy theorist." However, Democrats repeatedly questioned the scientific basis of many of his past statements and statements made at the hearings, e.g.:

- antidepressants caused school shootings.
- withdrawal from antidepressants was worse than his own from heroin.
- food allergies were related to or perhaps caused by environmental and chronic disease factors.
- pharmaceuticals are not making people healthier, noting, for instance, the number of children on ADD medications.

Mr. Kennedy often tried to soften his more controversial and scientifically unsupported statements by arguing simply that he was merely in favor of all data being released, or that more research needed to be done to answer questions. In a frequently used phrase, he touted the importance of "radical transparency." He repeatedly stated that he wanted to restore agency review to the "gold standard" of science to retain trust.

b. <u>Vaccine Science</u>

Anti-vaccination advocacy was the most widely discussed topic. Although Mr. Kennedy claimed he is not "anti-vaccination" and that he is "pro-safety," many Senators questioned his commitment to this view due to his long history as an opponent of vaccination. It also became clear that Mr. Kennedy appears to continue to question consensus scientific conclusions regarding vaccine safety and effectiveness. Senators raised many of his past controversial statements regarding vaccine safety, e.g.:

- Vaccines cause autism
- Comparing vaccines to Nazi death camps
- Gardasil is killing girls
- The Covid vaccine is the deadliest vaccine ever created

Senators also brought up Mr. Kennedy's purported involvement in anti-vaccination advocacy in Samoa which led to the death of 83 people in 2019. Mr. Kennedy disputed the characterization of his role in the deaths and sought to explain his belief that that measles is not a deadly disease, and the deaths were not caused by the disease.

Mr. Kennedy refused to affirm the safety of the Covid, MMR, and Hep-B vaccines. He challenged Senators to show him the data demonstrating vaccine safety and that more study was needed. As discussed above, Mr. Kennedy refused to commit to Dr. Cassidy that he would ensure parents that vaccines are safe and do not cause autism. When Mr. Kennedy refused to acknowledge that vaccines do not cause autism, Mr. Sanders exclaimed "That's disturbing."

IV. Mr. Kennedy's Knowledge and Fitness

a. Lack of Knowledge and Understanding of HHS Programs

Numerous members of the Committee, including Dr. Cassidy, questioned Mr. Kennedy about Medicare and Medicaid. Mr. Kennedy was ill-prepared to address these questions and indeed, frequently seemed to confuse the two programs and how they were funded and delivered. He and Senators agreed on problems with rural healthcare access and delivery.

Though he stated President Trump had nominated him to "make Medicare and Medicaid better," he continually emphasized that the problem rested with making Americans healthier rather than any specific changes to the programs. Mr. Kennedy's ideas for remedying the healthcare system, Medicare, and Medicaid seemed to involve "radical transparency," use of AI to replace or augment healthcare staff including nurses, telehealth, and health savings accounts.

Mr. Kennedy also seemed unaware of the Finance Committee's work involving drug pricing, drug advertising, and increased accountability for pharmacy benefit managers (PBMs). He also appeared unaware of how the Executive Order freeze on funding and grants impacted entities, including State Medicaid programs, that were delivering healthcare services to individuals.

Senators were outspoken over concerns regarding his knowledge and vision of HHS programs, and his overall understanding of the basic responsibilities of the Department.

b. Abortion Policy - Deference to President Trump

Republican members queried Mr. Kennedy repeatedly about his support for President Trump's positions on abortion while Democratic members noted Mr. Kennedy's very recent support for reproductive health and abortion access. Mr. Kennedy repeatedly stated that "every abortion is a tragedy" and that he would support the President's views on State determinations of abortion policy, conscience objections, and reinstatement of the first Trump Administration's Title X program prohibitions upon abortion-related services. Although Mr. Kennedy will carry out President Trump's policy, Democrats were successful in highlighting Mr. Kennedy's recent changes in abortion views. There has been Republican opposition to his confirmation on this basis.

c. Self-interest and Conflicts of Interest

Mr. Kennedy's past self-interest was evident. He has financial interests in law firms that sue vaccine manufacturers and persistently criticizes the safety and effectiveness of vaccines, yet admitted to fully vaccinating his own children. He would not opine on the safety of HPV vaccines, and has previously alleged "Gardasil killing girls," and is also involved in a lawsuit against the manufacturer. Several Senators alleged that Kennedy profited from the spread of misinformation that resulted in the death of children.

Senator Elizabeth Warren (D-MA) pressed Mr. Kennedy on his self-interest, highlighting that he is in a position to significantly influence vaccines and vaccination policy, yet continues to receive compensation from plaintiffs' law firms who sue vaccine manufacturers. Mr. Kennedy refused to commit to not receiving future compensation from such lawsuits; nor did he seem willing to acknowledge that his positions and policies on vaccines as HHS Secretary could financially benefit such lawsuits.

IV. Next Steps

The Finance Committee vote could occur as soon as next week; however, the process can take longer for other controversial appointees as Senators may wait until they receive written answers to questions submitted to the nominee. If the Committee votes favorably to report Mr. Kennedy to the full Senate for consideration, he must garner at least 51 votes to be confirmed. If the Finance Committee does not vote favorably to report Mr. Kennedy to the full Senate, then his nomination is likely killed; however, there might be further procedural efforts to try to bring his nomination to a vote.

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We hope this proves useful. Please contact us with any of your public policy, scientific, and regulatory questions and/or needs.