

**NOMINATION TO
THE FEDERAL TRADE COMMISSION AND
THE SURFACE TRANSPORTATION BOARD**

HEARING

BEFORE THE

**COMMITTEE ON COMMERCE,
SCIENCE, AND TRANSPORTATION
UNITED STATES SENATE**

ONE HUNDRED FIFTEENTH CONGRESS

SECOND SESSION

APRIL 11, 2018

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED FIFTEENTH CONGRESS

SECOND SESSION

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**NOMINATION TO
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WEDNESDAY, APRIL 11, 2018

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The Committee met, pursuant to notice, at 10 a.m. in room SR-253, Russell Senate Office Building, Hon. John Thune, Chairman of the Committee, presiding.

Present: Senators Thune [presiding], Inhofe, Wicker, Blunt, Heller, Fischer, Gardner, Sullivan, Nelson, Cantwell, Tester, Markey, Peters, Hassan, and Cortez Masto.

**OPENING STATEMENT OF HON. JOHN THUNE,
U.S. SENATOR FROM SOUTH DAKOTA**

The CHAIRMAN. Well, good morning. Today we welcome three well-qualified nominees to testify before the Senate Commerce Committee. The nominees before us today have been nominated to two important independent agencies, Becca Slaughter, to be a Commissioner at the Federal Trade Commission, and Michelle Schultz and Patrick Fuchs, to be Members of the Surface Transportation Board.

Thank you, Ms. Slaughter, Ms. Schultz, and Mr. Fuchs, for your willingness to serve, and thank you to your families for your presence here today.

I also want to congratulate Ms. Slaughter on the most recent addition to her family, a little girl who was born only last week.

The FTC oversees competition and consumer protection across large segments of the U.S. economy. Congress originally created the FTC as an independent agency in 1914 to address the problem of monopolies and trusts, but its role has evolved to include its modern-day consumer protection mission, a mission that will likely continue to grow as new technologies emerge in the 21st century marketplace.

Ms. Slaughter has been nominated to become a Commissioner at the FTC. She is a graduate of Yale College as well as Yale Law School, and the majority of her career has been right here on Capitol Hill working for Senate Minority Leader Chuck Schumer. Throughout her time on Capitol Hill, she has developed a reputation as a talented staffer with an ability to work across the aisle. This will serve her well at the FTC.

The STB is responsible for the regulatory oversight of our Nation's freight rail network. In states like South Dakota, where farmers and businesses depend on rail service to get their products to market, the STB plays a critical role in ensuring access to reliable and efficient rail service for large and small shippers alike.

Ms. Schultz is an exceptionally well-qualified nominee for the STB, having worked at the Southeastern Pennsylvania Transportation Authority, or SEPTA, for the past 11 years. She currently serves as Deputy General Counsel and, in that role, is responsible for advising SEPTA on complex regulatory, statutory, and administrative law matters at the local, State, and Federal level. Relevant to this Committee, Ms. Schultz provided guidance to the U.S. Senate on compliance issues involving the Federal mandate for positive train control implementation for public passenger transportation.

Finally, Patrick Fuchs has served on this in an invaluable role as a senior professional staff member for me on this Committee for the past 3 years. His extensive knowledge of the transportation industry, especially with respect to rail operations, as well as his insight into the legislative process, has been instrumental to this Committee's work.

During his time serving this Committee, Patrick drafted and played a critical role in the successful passage of the Surface Transportation Board Reauthorization Act, the first reauthorization of the Board since its creation. The bill included important changes for agricultural producers and businesses, establishing the STB as a fully independent agency, directing the STB to set shorter timelines for reviewing rate cases and providing the agency with the ability to proactively resolve problems before they escalate into larger disputes by conducting investigations on the agency's own initiative. The Act also sought to promote collaboration among the Board members by allowing them to discuss agency matters with one another with proper disclosure.

Patrick was also instrumental in drafting many other important pieces of legislation, including the FAST Act and the first passenger rail reauthorization in over 7 years. Prior to working on the Committee, Patrick served as a policy analyst on transportation and security matters at the Office of Management and Budget.

Those of us who have had the opportunity to work with Patrick have seen firsthand how incredibly capable and talented he is.

I am confident that the Surface Transportation Board will be extremely well served by Patrick's experience, expertise, and dedication, and while we will certainly miss his hard work on the Commerce Committee, I know he is looking forward to serving on the STB.

And we have our Chairman, Ann Begeman, here today, who is anxious, I think, probably to get a full complement of folks to work with her over there on the Board.

As I've noted, all three of these nominees are exceptionally well qualified to serve the Nation in the positions to which they've been nominated. They have all demonstrated their dedication to working on the important issues facing our country, and I look forward to their swift confirmation.

Once again, I want to thank you all for testifying today, for your willingness to fill these important positions, to your families for being here, and for their willingness to support you.

And I will now turn to our Ranking Member, Senator Nelson, for any opening remarks.

**STATEMENT OF HON. BILL NELSON,
U.S. SENATOR FROM FLORIDA**

Senator NELSON. Mr. Chairman, since I'm filler until Senator Schumer gets here, do you want to me kind of speak in a slow southern draw?

[Laughter.]

The CHAIRMAN. That would be—that would be good.

Senator NELSON. Mr. Chairman, I also want to extend a warm welcome to the three nominees. Last month, we had a hearing for four of the nominees to the FTC, and I'm pleased that we finally have the fifth nominee to the agency, Rebecca Kelly Slaughter. Ms. Slaughter gave birth to a daughter, Pippa, just about 9 days ago.

The FTC is a small agency with a critical mandate protecting consumers from unfair or deceptive acts or practices. They go after robocallers that harass consumers and boiler room scams that try to rip off seniors. In addition, they make sure that multibillion dollar tech companies protect personal data and ensure that they follow their privacy policies regarding the sharing of that data.

And, sadly, as we heard at yesterday's hearing with Facebook, protecting privacy does not always happen, and the consequences can be grave. And right now, under the law, the FTC is, in fact, charged with that responsibility, and that subject came up more than a couple of times in yesterday's hearing.

Now, thankfully, we have a nominee here today that is up to addressing this very important task. Ms. Slaughter currently serves as Chief Counsel to Senator Schumer, to the minority leader. Now, Ms. Slaughter, since he got an 800 on his SAT and a perfect score on his LSAT, I want you to tell us what it's like being Chief Counsel.

[Laughter.]

Senator NELSON. She has certainly served in that position as trusted advisor on antitrust, technology, privacy, consumer protection issues.

And, Senator Schumer, I started out purposely slowly because I was the filler between this and you getting here, but you're already here.

So I will insert the rest of my opening comments, Mr. Chairman, and——

[The prepared statement of Senator Nelson follows:]

PREPARED STATEMENT OF HON. BILL NELSON, U.S. SENATOR FROM FLORIDA

Mr. Chairman, let me also extend my warm welcome to the three nominees we have here today for positions on two critical independent agencies.

Last month, we had a hearing for four of the nominees to the Federal Trade Commission, and I am pleased that we finally have the fifth nominee to the agency—Rebecca Kelly Slaughter. Ms. Slaughter gave birth to a daughter, Pippa, not nine days ago.

The FTC is a small agency with a critical mandate—protecting consumers from “unfair or deceptive acts or practices.”

They go after robocallers that harass consumers and boiler room scams that try to rip off seniors.

In addition, they make sure that multi-billion-dollar tech companies protect personal data and ensure that they follow their privacy policies regarding the sharing of that data.

Sadly, as we heard at yesterday's hearing with Facebook, protecting privacy does not always happen. And the consequences of that can be grave.

Thankfully, we have a nominee here today that is up to addressing this herculean task.

Ms. Slaughter currently serves as chief counsel to Minority Leader Schumer. In that position, she has served as his trusted advisor on antitrust, technology, privacy and consumer protection issues.

The Surface Transportation Board is also a vital independent agency that helps ensure we have a strong and efficient rail network to move freight throughout the United States.

This sixty billion industry dollar that generates more than two hundred thousand jobs moves more freight than any other freight rail system in the world.

As we know all too well in the state of Florida, the railroad industry is an important part of our economy.

Without reliable and cost-effective rail service, my state and our Nation would not be able to compete in the global market.

Our rail network also serves an important role by providing passenger rail service. Such service requires good on-time performance so that people can get to where they need to be when they need to be there.

In Florida, we are striving to restore passenger service along the Gulf Coast. Since Hurricane Katrina, there has been no passenger rail service along the coast.

This critical service would improve accessibility for more than two million residents between Louisiana and Florida that includes a growing senior population.

It also would benefit tourism and the economy for towns and cities along the Florida Panhandle.

At some point, the Surface Transportation Board may need to weigh in on Gulf Coast passenger service, and I hope the witnesses today recognize the importance of that rail service.

To both the nominees for the Surface Transportation Board, I appreciate your willingness to serve in these critical transportation positions.

I particularly want to thank Patrick Fuchs [FOEKS] for his work on Chairman Thune's side of the Commerce Committee.

Mr. Fuchs has been an important partner in helping to establish bipartisan freight and passenger rail legislation. His questionnaire notes that his nickname is PACO.

His assistance during the FAST Act helped to establish the first passenger rail reauthorization in a surface transportation bill.

And I now look forward to hearing from the witnesses and our Minority Leader Chuck Schumer.

The CHAIRMAN. Thank you, Senator Nelson. And we're very—want to welcome, glad to be joined this morning by the Democrat leader in the U.S. Senate, Senator Chuck Schumer, from New York, who is here to make an important introduction, and probably talks a little differently than the Senator from Florida.

Senator SCHUMER. A lot of my constituents speak just like—
[Laughter.]

The CHAIRMAN. Well, and a lot of your constituents are his constituents for the winter months, too, so—

[Laughter.]

The CHAIRMAN. Senator Schumer, welcome. Thank you for being here.

STATEMENT OF HON. CHARLES SCHUMER, U.S. SENATOR FROM NEW YORK

Senator SCHUMER. Thank you. Thank you, Mr. Chairman. Thank you, Senator Nelson, Senator Wicker, Senator Cortez Masto. First, thank you for having this hearing the day after yesterday's. I hope

this hearing is a little shorter and a little less controversial than the one you had yesterday, where I thought you all did a good job, for whatever that's worth.

And let me also say it's my pleasure to introduce the next nominee to be the FTC—to be a Federal Trade Commissioner, Rebecca Kelly Slaughter.

As the Committee is no doubt aware, Rebecca has served on my staff for nearly 10 years. She started out as Rebecca Kelly, ended up as Rebecca Kelly Slaughter. One of my few regrets about Rebecca is it was not one of these famous Schumer marriages. She married somebody outside the staff.

[Laughter.]

Senator SCHUMER. But, anyway, but a very fine man, who is here as well.

As the Committee is no doubt aware, she had been with me a long time. Her first stint in my office came when she spent the summer interning during law school. I doubt it was ever her intention to stay 10 years that summer. Our Chief Counsel, though, thought so highly of her that after her internship had ended, he asked her if she was available to stay on to assist in the nomination of a Supreme Court Justice. Rebecca could have informed him she was at Yale Law School and a bit busy at the moment, but, instead, she promptly took leave of absence from school to assist our office.

After graduating from law school and a spell at a prestigious law firm, she rejoined my staff, where she served as Counsel and eventually as Chief Counsel. In that time, she worked and made great progress on issues ranging from robocalls to patent trolls, intellectual property, consumer protection. As a member of my Judiciary Committee staff, she played an integral role in the confirmation of judicial nominations, including several Supreme Court Justices. The Federal bench in Upstate New York, in particular, is more talented and more diverse because of Rebecca's great work.

What stands out about Rebecca is her shining intellect and ability to puzzle out solutions to the most complex of problems. She has always worked on issues dominated by competing interests, the great issues of privacy versus security, which have wracked our Republic from its founding, between freedom and commerce, and appropriate restraints to protect consumers and defend against monopoly.

As I said, these questions are as old as the Republic itself, and it was their messy intersection that Rebecca's quality came to the fore, not only to understand the intricacies of the law as it relates to complex subjects, but to actually find a balance, bringing competing stakeholders together to forge compromise. She works—would work so diligently on issue after issue after issue, and every so often I'd get a call at 10 p.m., "I think I found a solution that Cornyn's staff will go along with."

[Laughter.]

Senator SCHUMER. Indeed, she has been able to work across the aisle for years to make bipartisan progress. She would rather build consensus than cross swords, and it's that quality, in addition to her expertise and her intellect, that makes her so qualified for the FTC, where consumer protection, privacy, and antitrust issues de-

mand finding a delicate balance within the law, and between Commissioners from different stations on the political spectrum.

Rebecca has proven time and time again that she's a tough but fair negotiator who can get things done, which I know is something this Committee cares a lot about in its own actions, and she will take those skills to fight for American consumers.

Outside these walls, and it shows you her resilience, she's the mother of three beautiful children. I love it when they come visit the office. Her son Teddy—wave, Teddy.

[Laughter.]

Senator SCHUMER. Her daughter Eloise.

[Laughter.]

Senator SCHUMER. And her little new baby, Pippa, who Justin has, who is 9 days old. So it shows you her strength and resilience. Here she is with little Pippa. Her real name is Philippa, Philippa Hope Slaughter. They're getting rid of the "Kelly," not so good.

[Laughter.]

Senator SCHUMER. They're with her today. Now, I'm sure in a few years, Pippa will join Teddy and Ellie in their love for the song "Hamilton," the soundtrack "Hamilton." They love it. They sang it to me.

[Laughter.]

Senator SCHUMER. Teddy and Ellie are particularly fond of the song where Thomas Jefferson tells Alexander Hamilton, "You don't have the votes."

[Laughter.]

Senator SCHUMER. I ask respectfully they hold off on singing that one until their mother has cleared the Committee.

[Laughter.]

Senator SCHUMER. My esteemed colleagues, it's difficult for anyone to reflect upon a decade of public service. I argue that I shouldn't have to because this Committee should give Rebecca the opportunity to continue to serve the American people on the FTC. The great loss our office will feel in her absence will be a great gain for her future colleagues on the FTC and the citizens of this country, who she will so well serve.

I thank you for accommodating me and thank this Committee for the timely hearing for Rebecca.

The CHAIRMAN. Thank you, Senator Schumer, for those great, very personalized remarks. I look forward to having her come forward.

Senator Nelson, if Senator Schumer got a perfect score on the LSAT and an 800 on the SAT, does that make him smarter than Zuckerberg?

[Laughter.]

The CHAIRMAN. So we like went from one—

Senator SCHUMER. I skipped my t-shirt today and wore a suit.

[Laughter.]

Senator SCHUMER. I will tell you a story because lest the audience think that I'm so smart. My first job was running a mimeo machine. Now, we older people know what a mimeo machine is; you younger people don't. But it was this clunky machine, and you type out stencils, put them on a cranking thing, and you crank it around, and a copy would come out. The ink smelled great. If we

still had mimeo machines, we might not have to legalize marijuana.

[Laughter.]

Senator SCHUMER. But in any case, I ran the machine nights, days, and weekends for a Madison High School teacher—I went to James Madison High School—who was starting a new business. And what was the new business he was starting? He had this brilliant idea. He was preparing students for the SATs. What was his name? He was then just a Madison High School teacher. Kaplan. And it became a big business, which he sold to the *Washington Post* years later.

But nights, weekends, and holidays, I would run the machine. We got an electric machine the second year, and I read the preparatory materials over and over and over again. And that's the reason I got all these 800s. I'm the first person to prove—it was a big debate then—that it is not aptitude, but achievement. So it's not because I'm so smart, it's because I had to work in that little grindy room for 3 years running a mimeo machine.

[Laughter.]

The CHAIRMAN. OK. Bring back the mimeograph or whatever it is.

[Laughter.]

The CHAIRMAN. Anyway, thank you, Senator Schumer.

Senator SCHUMER. Thank you.

The CHAIRMAN. We'll ask our nominees to come forward at this point.

[Nominees coming forward.]

The CHAIRMAN. Great. And we'll proceed on my left, and your right, starting with Ms. Slaughter, followed by Ms. Schultz, and Mr. Fuchs. So we'll look forward to hearing from you.

Ms. Slaughter, please proceed.

**STATEMENT OF REBECCA JOY KELLY SLAUGHTER, NOMINEE
TO BE A COMMISSIONER, FEDERAL TRADE COMMISSION**

Ms. SLAUGHTER. Thank you, Chairman Thune, Ranking Member Nelson, and members of this Committee. It's funny for me to sit on this side of the table, but I'm very excited to be here today. It is my profound pleasure and privilege to be considered to be a member of the Federal Trade Commission.

I want to particularly thank your staffs for their hard work in processing paperwork to get my nomination onto today's hearing at the last minute. And I would like to acknowledge my fellow Commissioner nominees who are here in the audience today. I saw Joe Simons, Noah Phillips, Christine Wilson, and Rohit Chopra all here. I have very much enjoyed getting to know them, and I really look forward to working with them if I'm lucky enough to be confirmed.

And, finally, I want to thank my boss, Senator Schumer, for his incredibly kind introduction, and humbling introduction, for the faith he has placed in me as a member of his staff, and especially in recommending me for this nomination.

I would like to briefly introduce some of my friends and family who have joined me here today, without whose support I would be both literally and figuratively lost. My parents, Peg and Kevin

Kelly, my Aunt Barbara Kummel, and my brother Matt Kelly all traveled here from New York. And perhaps, as you have heard, most conspicuously, my children are here. Teddy is five and a half, Eloise is three and a half, and as you heard, they are now happily joined by their brand-new baby sister, Pippa, who is about nine and a half days old.

Balancing the joys of raising them and a challenging professional career is possible for me only because of the boundless love, support, and skill of my husband, Justin, himself a Senate staff alum.

I also want to thank my many friends and colleagues who are in the audience today. I really appreciate their support.

The Senate has been my professional home for nearly a decade. Over that time, I have had the honor of working with many members of this Committee and your staffs on a wide variety of legislative and oversight endeavors. I have strived to serve my boss and his constituents, the people of my home state of New York, doing work I find meaningful and important. And I've taken enormous pride and pleasure in being able to find opportunities to reach across the aisle and forge bipartisan consensus on challenging policy problems facing consumers and markets.

The issues I have most enjoyed working on here in the Senate, the protection of consumers and the promotion of free and fair markets, are the ones at the heart of the mission of the Federal Trade Commission. Those issues have been important for the American people throughout the century the Commission has been in existence, but perhaps never more so than now.

Today, technological innovations and rapidly changing markets pose new and daunting challenges to enforcement in both competition and consumer protection. I am humbled and honored to be considered to help continue the Commission's storied legacy of work for the American people, and I look forward to answering your questions.

[The prepared statement and biographical information of Ms. Slaughter follow:]

PREPARED STATEMENT OF REBECCA JOY KELLY SLAUGHTER, NOMINEE TO BE A
COMMISSIONER, FEDERAL TRADE COMMISSION

Chairman Thune, Ranking Member Nelson, and Members of this Committee, it is my profound pleasure and privilege to be here today in order for you to consider my nomination to be a member of the Federal Trade Commission. I want to particularly thank your staffs for their hard work in processing paperwork to get my nomination onto today's hearing panel. And I would like to acknowledge my fellow Commissioner nominees who are here in the audience. I have very much enjoyed getting to know them and really look forward to working with them if I am lucky enough to be confirmed. And finally, I want to thank my boss, Senator Schumer, for the faith he has placed in me as a member of his staff and especially in recommending me for this nomination.

I would like to briefly introduce some of my friends and family who have joined me here today, without whose support I would be both literally and figuratively lost. My parents, my Aunt Barbara Kummel, and my brother Matt Kelly all traveled here from New York. And, perhaps most conspicuously, my children are here. Teddy is five and a half, Eloise is three and a half, and they are now happily joined by their brand new baby sister Pippa who is about nine and a half days old. Balancing the joys of raising them and a challenging professional career is possible for me only because of the boundless love, support and skill of my husband Justin—himself a Senate staff alum.

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The issues I have most enjoyed working on here in the Senate—the protection of consumers and the promotion of free and fair markets—are the ones at the heart of the mission of the Federal Trade Commission. Those issues have been important for the American people throughout the century the Commission has been in existence, but perhaps never more so than now. Today, technological innovations in rapidly changing markets pose new and daunting challenges to enforcement in both competition and consumer protection. I am humbled and honored to be considered to help continue the Commission's storied legacy of work for the American people, and I look forward to answering your questions.

A. BIOGRAPHICAL INFORMATION

1. Name (Include any former names or nicknames used):
 Rebecca Joy Kelly Slaughter
 Maiden name: Rebecca Joy Kelly
 Nickname: Becca
2. Position to which nominated: Commissioner, Federal Trade Commission.
3. Date of Nomination: April 9, 2018.
4. Address (List current place of residence and office addresses):
 Residence: Information not released to the public.
 Office: United States Capitol, Office of the Democratic Leader, S-211, Washington, D.C. 20510
5. Date and Place of Birth: August 6, 1981; New York, NY.
6. Provide the name, position, and place of employment for your spouse (if married) and the names and ages of your children (including stepchildren and children by a previous marriage).
Spouse: Justin Slaughter, Partner (non-equity) at Mercury Strategies LLC
7. List all college and graduate degrees. Provide year and school attended.
 B.A. Yale College 2003
 J.D. Yale Law School 2008
8. List all post-undergraduate employment, and highlight all management level jobs held and any non-managerial jobs that relate to the position for which you are nominated.
 Office of Senator Charles Schumer, Democratic Leader (2009 to present, 2005–2006).
 I have served several roles in Senator Schumer's office, starting as a law clerk and then Professional Staff Member (2005–2006), then returning as a counsel (2009–2011), then becoming Senior Counsel (2011–2014) and finally Chief Counsel (2014 to present). In this capacity, I have managed a policy portfolio focusing on legal, technology, and regulatory policy in the areas of FTC jurisdiction, including antitrust, consumer protection, privacy and technology. As Chief Counsel, I have also managed our small team of attorneys handling areas within the jurisdiction of the Judiciary Committee.
 Sidley Austin, Associate (2008–2009), Summer Associate (2007).
 Davis Polk & Wardwell, Summer Associate (2006).
 Manhattan District Attorney's Office, Appeals Bureau Paralegal (2003–2004).
9. Attach a copy of your résumé.
 A copy is attached.
10. List any advisory, consultative, honorary, or other part-time service or positions with Federal, State, or local governments, other than those listed above, within the last ten years. None.
11. List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business, enterprise, educational, or other institution within the last ten years. None.

12. Please list each membership you have had during the past ten years or currently hold with any civic, social, charitable, educational, political, professional, fraternal, benevolent or religious organization, private club; or other membership organization. Include dates of membership and any positions you have held with any organization. Please note whether any such club or organization restricts membership on the basis of sex, race, color, religion, national origin, age, or handicap.

- NY State Bar Association—Member 2010–2011, currently inactive
- Carderock Springs Swim and Tennis Club—Member, Summer 2017.
- Senate Employees Child Care Center (SECCC)—Member 2011 to present.
- *Yale Law Journal*, Board Member (*The Pocket Part Committee*, 2007–2008)
- The Andrew Morehouse Trust—Regular Member 2004–present, Board member 2004–2016.

None of these groups restrict membership on the basis of sex, race, color religion, national origin, age, or handicap.

13. Have you ever been a candidate for and/or held a public office (elected, non-elected, or appointed)? If so, indicate whether any campaign has any outstanding debt, the amount, and whether you are personally liable for that debt. No.

14. Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of \$500 or more for the past ten years. Also list all offices you have held with, and services rendered to, a state or national political party or election committee during the same period. None.

15. List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals, and any other special recognition for outstanding service or achievements.

George A. Schrader, Jr. Prize for Excellence in the Humanities, 2003 Association of Yale Alumni Community Service Summer Fellowship, 2000

16. Please list each book, article, column, or publication you have authored, individually or with others. Also list any speeches that you have given on topics relevant to the position for which you have been nominated. Do not attach copies of these publications unless otherwise instructed.

I have spoken several times—most recently in 2016—on panels at the annual CHIPLs Women in IP Conference on the topic of emerging issues in law and technology policy.

I spoke on a panel titled Women in Politics at the Brearley School's alumnae weekend in May 2017.

Note, *Defensive Shootings and Error Risk: A Collateral Cost of Changing Gun Laws?*, 26 YALE L. & POL'Y REV. 567 (2008).

17. Please identify each instance in which you have testified orally or in writing before Congress in a governmental or non-governmental capacity and specify the date and subject matter of each testimony. None.

18. Given the current mission, major programs, and major operational objectives of the department/agency to which you have been nominated, what in your background or employment experience do you believe affirmatively qualifies you for appointment to the position for which you have been nominated, and why do you wish to serve in that position?

I have spent most of the last decade working for Senator Schumer on oversight of the Federal Trade Commission and policy matters within the jurisdiction of the FTC, including antitrust and consumer protection issues. In this capacity, I have become very familiar with the responsibilities of the FTC and have worked closely with the Commission.

I am honored to be considered for the position of FTC Commissioner, because I believe firmly in its mission of protecting consumers and promoting competition. The issues under the jurisdiction of the Commission are critically important for American consumers and businesses. I would welcome the opportunity to work with the other Commissioners, in both the majority and the minority, as well as the talented staff at the agency and members of this Committee and this body to help protect the American consumer and promote healthy and fair competition in the markets.

19. What do you believe are your responsibilities, if confirmed, to ensure that the department/agency has proper management and accounting controls, and what experience do you have in managing a large organization?

I believe every Commissioner has a duty to study carefully the statutorily delegated responsibilities of the Commission and to ensure that all actions the Commis-

sion undertakes are consistent with that delegation and with the responsible stewardship of taxpayer dollars.

While I have not myself managed a large organization, I have been involved in oversight of the management of large Federal agencies for nearly ten years. That oversight work has included the Congressional review of agency spending and agency budget requests, as well as reports of management concerns at different agencies.

20. What do you believe to be the top three challenges facing the department/agency, and why?

One challenge facing the Commission is ensuring that enforcement efforts keep pace with emerging technologies. This challenge sounds across the full range of the FTC's mission, from competition to consumer protection. One specific example is in the area of unwanted spam phone calls, where technological innovations have allowed scam artists and unscrupulous businesses to evade the restrictions of the Do Not Call list. Privacy and data security enforcement also pose new technological challenges to the Commission. It is important for the Commission to adapt enforcement efforts to these new technologies while operating within the bounds of its statutorily mandated authority.

A second challenge facing the Commission is effectively coordinating its enforcement efforts with other Federal agencies that share jurisdiction for some of the issues within the Commission's authority, including the CFPB, the FCC and the DOJ.

Finally, a third challenge for the Commission is ensuring consumers know what FTC resources are available to them. Educating consumers and businesses about the FTC's mission and its resources should remain a top priority.

B. POTENTIAL CONFLICTS OF INTEREST

1. Describe all financial arrangements, deferred compensation agreements, and other continuing dealings with business associates, clients, or customers. Please include information related to retirement accounts. None.

2. Do you have any commitments or agreements, formal or informal, to maintain employment, affiliation, or practice with any business, association or other organization during your appointment? If so, please explain. No.

3. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated.

In connection with the nomination process, I have consulted with the U.S. Office of Government Ethics and the Federal Trade Commission's Designated Agency Ethics Official to identify potential conflicts of interest. If confirmed, any potential conflicts of interest will be resolved in accordance with the terms of the ethics agreement that I have entered into with the Commission's Designated Agency Ethics Official. I am not aware of any other potential conflicts of interest.

4. Describe any business relationship, dealing, or financial transaction which you have had during the last ten years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

In connection with the nomination process, I have consulted with the U.S. Office of Government Ethics and the Federal Trade Commission's Designated Agency Ethics Official to identify potential conflicts of interest. If confirmed, any potential conflicts of interest will be resolved in accordance with the terms of the ethics agreement that I have entered into with the Commission's Designated Agency Ethics Official. I am not aware of any other potential conflicts of interest.

5. Describe any activity during the past ten years in which you have been engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of any legislation or affecting the administration and execution of law or public policy.

As an employee of Senator Schumer, my professional responsibilities have included work within the jurisdiction of the Judiciary and Commerce Committees on the drafting, negotiating, and passage of legislation, as well as oversight of Federal agencies.

6. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items.

In connection with the nomination process, I have consulted with the U.S. Office of Government Ethics and the Federal Trade Commission's Designated Agency Ethics Official to identify potential conflicts of interest. If confirmed, any potential conflicts of interest will be resolved in accordance with the terms of the ethics agreement that I have entered into with the Commission's Designated Agency Ethics Official. I am not aware of any other potential conflicts of interest.

C. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics, professional misconduct, or retaliation by, or been the subject of a complaint to, any court, administrative agency, the Office of Special Counsel, professional association, disciplinary committee, or other professional group? If yes:

- a. Provide the name of agency, association, committee, or group;
- b. Provide the date the citation, disciplinary action, complaint, or personnel action was issued or initiated;
- c. Describe the citation, disciplinary action, complaint, or personnel action;
- d. Provide the results of the citation, disciplinary action, complaint, or personnel action.

No.

2. Have you ever been investigated, arrested, charged, or held by any Federal, State, or other law enforcement authority of any Federal, State, county; or municipal entity, other than for a minor traffic offense? If so, please explain. No.

3. Have you or any business or nonprofit of which you are or were an officer ever been involved as a party in an administrative agency proceeding, criminal proceeding, or civil litigation? If so, please explain. No.

4. Have you ever been convicted (including pleas of guilty or *nolo contendere*) of any criminal violation other than a minor traffic offense? If so, please explain. No.

5. Have you ever been accused, formally or informally, of sexual harassment or discrimination on the basis of sex, race, religion, or any other basis? If so, please explain. No.

6. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be disclosed in connection with your nomination. None.

D. RELATIONSHIP WITH COMMITTEE

1. Will you ensure that your department/agency complies with deadlines for information set by congressional committees?

If confirmed, I would work diligently with my fellow Commissioners to do so.

2. Will you ensure that your department/agency does whatever it can to protect congressional witnesses and whistle blowers from reprisal for their testimony and disclosures?

If confirmed, I would work diligently with my fellow Commissioners to do so.

3. Will you cooperate in providing the Committee with requested witnesses, including technical experts and career employees, with firsthand knowledge of matters of interest to the Committee? Yes.

4. Are you willing to appear and testify before any duly constituted committee of the Congress on such occasions as you may be reasonably requested to do so? Yes.

RÉSUMÉ OF REBECCA JOY KELLY SLAUGHTER

Experience

OFFICE OF SENATOR CHARLES SCHUMER, DEMOCRATIC LEADER, Washington, D.C.

Chief Counsel June 2014 to present

Senior Counsel June 2011–June 2014

Counsel May 2009–June 2011

Professional Staff Member May 2005–May 2006

Provide strategic advice and directly engage on behalf of the Democratic Leader with other Senators, as well companies, stakeholders and constituents on portfolio of issues, including antitrust, privacy, consumer affairs, intellectual property, telecommunications, technology, national security, bankruptcy, nominations and oversight. Assist Leader with caucus strategy and preparation of legislation, statements, questions, and speeches on those topics, and coordinate with relevant government agencies, including FTC, DOJ, FCC, and the White House. Manage team of attorneys, clerks, and assistants.

Significant projects include: congressional reviews of mergers and antitrust investigations, such as American Airlines merger with U.S. Airways, AT&T attempts to acquire T-Mobile and Time Warner, Comcast acquisition of NBCU, e-books litigation, and FTC investigation into Google; elements of the “Better Deal” Democratic economic agenda, including proposals on antitrust and broadband expansion; congressional responses on net neutrality, broadband privacy, and other FCC regulations; passage into law of the Moran-Schumer BOTS Act of 2016, which provides

FTC authority over deceptive ticket scalping techniques; advocacy for FTC investigations of privacy policies for consumer products such as smart TVs or home DNA kits; patent reform, “including the Schumer-Kyl business method patents provision in the America Invents Act of 2011, and negotiation of a Schumer-Cornyn compromise bill; PATRIOT Act and FISA Amendments Act reauthorizations; confirmations of all Supreme Court Justices since 2005.

SIDLEY AUSTIN, Washington, D.C.

Associate (Civil, Criminal, and Constitutional Litigation) September 2008–May 2009
Summer Associate Summer 2007

Conducted legal research, prepared memoranda, and assisted with witness preparation and document review in connection with various litigation matters, including regulatory investigation of a public accounting firm. Wrote briefs and helped craft litigation strategy for an international development organization. Researched and drafted article on mass tort class action settlements.

DAVIS POLK & WARDWELL, New York, N.Y. Summer 2006

Summer Associate. Researched legal issues in a variety of matters, including post-verdict motions in a white collar criminal case, an internal investigation of securities fraud, and a pro bono prisoner’s rights settlement.

MANHATTAN DISTRICT ATTORNEY’S OFFICE, New York, N.Y. May 2003–August 2004
Paralegal, Appeals Bureau. Provided support to Assistant District Attorneys in case research as well as brief drafting and filing. Coordinated Appeals Bureau Pro Bono Program.

Education

YALE LAW SCHOOL, New Haven, Connecticut. J.D. 2008.

Activities: *Yale Law Journal*, Editor (2006–2007), Board Member (*The Pocket Part Committee*, 2007–2008)

Head Teaching Assistant for Professor Akhil Amar (Constitutional Law)

YALE COLLEGE, New Haven, Connecticut. B.A. with distinction in Anthropology, 2003.

Honors: *magna cum laude*; George A. Schrader, Jr. Prize for Excellence in the Humanities

Skills/Interests

TS clearance. Studied French, Spanish and Kiswahili. Enjoy crossword puzzles, travel; running and the outdoors.

The CHAIRMAN. Thank you, Ms. Slaughter.
Ms. Schultz.

STATEMENT OF MICHELLE A. SCHULTZ, NOMINEE TO BE A MEMBER, SURFACE TRANSPORTATION BOARD

Ms. SCHULTZ. Thank you, Chairman Thune, Ranking Member Nelson, and distinguished members of the Commerce, Science, and Transportation Committee. I am honored to appear before you today as you consider my nomination as a Member of the Surface Transportation Board. I am also grateful to President Trump for his nomination.

For over 11 years, I have dedicated my career to serving the public in various roles with the Southeastern Pennsylvania Transportation Authority, or SEPTA, the Nation’s sixth largest provider of public transportation. While I currently serve as deputy general counsel to SEPTA, I have also served in a variety of roles touching on policy, legislation, and regulations. This has given me the opportunity to have a broad-based understanding of railroad operations and the importance of the relationships the railroads share with their customers. I have also handled compliance issues at the local, State, and Federal levels pertaining to the construction of railroad lines and issues pertaining to interoperability. These experiences have given me a firm grasp of the challenges and opportunities fac-

ing the industry and the stakeholders that rely on it. I am very excited about the prospect of serving the public at the Federal level, as transportation is so vital to our citizens and the Nation's economy.

Prior to joining SEPTA, I was a law clerk for the Superior Court of Pennsylvania and the United States Bankruptcy Court for the Eastern District of Pennsylvania. Additionally, I was an attorney at a large law firm in Philadelphia for approximately 5 years. My practice focused on creditors' rights and commercial litigation.

As you are well aware, the Board is the economic regulator of the rail industry charged by Congress with resolving railroad rate and service disputes as well as proposed railroad mergers, among other issues. The efficiency of freight and intercity passenger rail transportation is vital to the Nation's mobility and economic competitiveness. While our Nation's rail system generally performs well, challenges arise due to numerous issues, including increased demand for service, track sharing, the ongoing need to maintain existing infrastructure, and the need for increased capacity.

Because freight rail and intercity passenger rail serve an integral role in enhancing mobility within the United States, it is incumbent upon the Board to approach matters brought before it by conducting a thorough analysis of the facts and adjudicating matters in an impartial manner within the bounds of its jurisdiction and the law. If confirmed, I vow to utilize my transportation policy, regulatory, and legal experience to address the significant challenges presented to the Board in a fair and impartial manner.

If confirmed, I look forward to furthering the Board's mission by working closely with the Board's staff, my fellow Board members, stakeholders, and members of this Committee to address the many important issues that come before the Board.

Thank you for your time, and I look forward to answering any questions you may have.

[The prepared statement and biographical information of Ms. Schultz follow:]

PREPARED STATEMENT OF MICHELLE A. SCHULTZ, NOMINEE TO BE A MEMBER,
SURFACE TRANSPORTATION BOARD

Thank you Chairman Thune, Ranking Member Nelson, and distinguished Members of the Commerce, Science, and Transportation Committee. I am honored to appear before you today as you consider my nomination as a Member of the Surface Transportation Board ("Board"). I am also grateful to President Trump for his nomination.

For over eleven years, I have dedicated my career to serving the public in various roles with the Southeastern Pennsylvania Transportation Authority ("SEPTA"), the Nation's sixth largest provider of public transportation. While I currently serve as Deputy General Counsel to SEPTA, I have also served in a variety of roles touching on policy, legislation and regulations. This has given me the opportunity to have a broad based understanding of railroad operations and the importance of the relationships the railroads share with their customers. I have also handled compliance issues at the local, state and Federal levels pertaining to the construction of railroad lines and issues pertaining to interoperability. These experiences have given me a firm grasp of the challenges and opportunities facing the industry and the stakeholders that rely on it. I am very excited about the prospect of serving the public at the Federal level, as transportation is so vital to our citizens and the Nation's economy.

Prior to joining SEPTA, I was a law clerk for the Superior Court of Pennsylvania and the United States Bankruptcy Court for the Eastern District of Pennsylvania.

Additionally, I was an attorney at a large law firm in Philadelphia for approximately five years. My practice focused on creditor's rights and commercial litigation.

As you are well aware, the Board is the economic regulator of the rail industry charged by Congress with resolving railroad rate and service disputes as well as proposed railroad mergers, among other issues. The efficiency of freight and intercity passenger rail transportation is vital to the Nation's mobility and economic competitiveness. While our Nation's rail system generally performs well, challenges arise due to numerous issues including increased demand for service; track sharing; the ongoing need to maintain existing infrastructure; and the need for increased capacity. Because freight rail and intercity passenger rail serve an integral role in enhancing mobility within the United States, it is incumbent upon the Board to approach matters brought before it by conducting a thorough analysis of the facts and adjudicating matters in an impartial manner within the bounds of its jurisdiction and the law. If confirmed, I vow to utilize my transportation policy, regulatory, and legal experience to address the significant challenges presented to the Board in a fair and impartial manner. If confirmed, I look forward to furthering the Board's mission by working closely with the Board staff, my fellow Board Members, stakeholders, and the Members of this Committee to address the many important issues that come before the Board.

Thank you for your time and I look forward to answering any questions that you may have.

A. BIOGRAPHICAL INFORMATION

1. Name (Include any former names or nicknames used):

Michelle Albright Schultz (2003 to present)

Michelle Mummert Albright (1972 to 2003)

2. Position to which nominated: Member—Surface Transportation Board.

3. Date of Nomination: March 2, 2018.

4. Address (List current place of residence and office addresses):

Residence: Information not released to the public.

Office: Southeastern Pennsylvania Transportation Authority, 1234 Market Street, 5th Floor, Philadelphia, PA 19107.

5. Date and Place of Birth: March 11, 1972; Hanover, Pennsylvania.

6. Provide the name, position, and place of employment for your spouse (if married) and the names and ages of your children (including stepchildren and children by a previous marriage).

James D. Schultz (Spouse), Cozen O'Connor, Chair; Government Law and Regulatory Affairs.

7. List all college and graduate degrees. Provide year and school attended.

Pennsylvania State University, BA English—1994

Widener University School of Law, JD 1998

University of Pennsylvania, MGA—2008

8. List all post-undergraduate employment, and highlight all management level jobs held and any non-managerial jobs that relate to the position for which you are nominated.

Hanover Concrete Company—(8/98–12/99)

Superior Court of Pennsylvania—Law Clerk (1/00–6/00)

United States Bankruptcy Court—Law Clerk (7/00–1/02)

White and Williams LLP—Associate. (1/02–8/06)

Southeastern Pennsylvania Transportation Authority (8/06 to present)

Manager Legislative Affairs

Director, Legislative Affairs

Deputy General Counsel

Management positions include serving as the Treasurer of Gettysburg Concrete (1/96–12/99); Director of Legislative Affairs (10/10–12/13); Deputy General Counsel (1/14 to present).

9. Attach a copy of your résumé.

A copy is attached.

10. List any advisory, consultative, honorary, or other part-time service or positions with Federal, State, or local governments, other than those listed above, within the last ten years.

Not applicable.

11. List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business, enterprise, educational, or other institution within the last ten years.

General Partner—Tamarack Four
Officer (Treasurer)—Gettysburg Concrete Company

12. Please list each membership you have had during the past ten years or currently hold with any civic, social, charitable, educational, political, professional, fraternal, benevolent or religious organization, private club, or other membership organization. Include dates of membership and any positions you have held with any organization. Please note whether any such club or organization restricts membership on the basis of sex, race, color, religion, national origin, age, or handicap.

The Union League of Philadelphia. The club does not restrict membership on the basis of sex, race, color, religion, national origin, age or handicap.

13. Have you ever been a candidate for and/or held a public office (elected, non-elected, or appointed)? If so, indicate whether any campaign has any outstanding debt, the amount, and whether you are personally liable for that debt. No.

14. Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of \$500 or more for the past ten years.

2008

Pennsylvania Future Fund (\$1,000.00)

2009

Not applicable.

2010

Pennsylvania Future Fund \$1,000.00 (February)
Friends of Tom Corbett \$1,000.00 (June)
Friends of Tom Corbett \$1,000.00 (July)
Friends of Tom Corbett \$1,000.00 (October)
Friends of Jim Kernahan \$500.00 (September)

2011

Pennsylvania Future Fund \$1,000.00 (January)

2012

Not applicable.

2013

Not applicable.

2014

Not applicable.

2015

Pennsylvania Future Fund \$1,000.00 (February)
Williams for Mayor \$1,000.00 (March)
Keystone Alliance \$1,000.00 (April)
Kevin Dougherty for Pennsylvania \$1,000.00 (May)
Chris Christie for President \$2,700.00 (December)
Friends of Pat Toomey \$1,000.00 (January)
Friends of Bill Shuster \$1,000.00 (April)
Keystone Alliance \$1,000.00 (April)
Friends of Pat Toomey \$1,000.00 (May)
Friends of Alex Charlton \$1,000.00 (October)
Friends of Alex Charlton \$1,000.00 (November)

Also list all offices you have held with, and services rendered to a state or national political party or election committee during threesome period.

Not applicable.

15. List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals, and any other special recognition for outstanding service or achievements.

In 2008 I was awarded the Stephen B. Sweeney Award, University of Pennsylvania for commitment to local government and public service.

16. Please list each book, article, column, or publication you have authored, individually or with others. Also list any speeches that you have given on topics relevant to the position for which you have been nominated. Do not attach copies of these publications unless otherwise instructed.

I have not authored any books, articles, columns, or publications.

I have not given any speeches on any topics relevant to the position for which I have been nominated.

17. Please identify each instance in which you have testified orally or in writing before Congress in a governmental or non-governmental capacity and specify the date and subject matter of each testimony.

I have never testified before Congress.

18. Given the current mission, major programs, and major operational objectives of the department/agency to which you have been nominated, what in your background or employment experience do you believe affirmatively qualifies you for appointment to the position for which you have been nominated, and why do you wish to serve in that position?

I have worked for the Southeastern Pennsylvania Transportation Authority ("SEPTA"), the Nation's sixth largest public transportation agency for over 11 years. During this time, I have become quite familiar with how railroads operate; how they interact with each other; and the relationships they have with their customers. I am also familiar with the challenges that are associated with those interactions. During my career with SEPTA, I have handled legislative, regulatory, and legal issues. I have also handled compliance issues at the local, state, and Federal level including issues pertaining to construction and reconstruction of commuter rail lines.

Prior to joining SEPTA, I was a law clerk for the Superior Court of Pennsylvania, the United States Bankruptcy Court for the Eastern District of Pennsylvania. Additionally, I was an attorney at a law firm in Philadelphia. My practice focused on creditor's rights and commercial litigation.

I have spent most of my career serving the public in the area of transportation policy, which is so vital to our citizens and our economy. Serving on the Surface Transportation Board will allow me to continue my longstanding public service at the Federal level having greater impact on our country, utilizing my regulatory, legal, and transportation policy experience.

19. What do you believe are your responsibilities, if confirmed, to ensure that the department/agency has proper management and accounting controls, and what experience do you have in managing a large organization?

As a member of the Surface Transportation Board, it will be incumbent upon me and my colleagues to set the tone for efficiency and decision making. I believe that my responsibilities would include reviewing the financial and business management of the Surface Transportation Board ("STB") to ensure that it is in compliance with all laws and to promote the goal of efficiency. The STB is annually audited by an independent audit firm, subject to the Office of the Inspector General's oversight and in accordance with the generally accepted Government auditing standards. My responsibilities would also include implementing recommendations made by the independent audit firm.

Relevant management experience includes my work managing a ready mixed concrete company; serving as the Director of Legislative Affairs and as Deputy General Counsel to SEPTA. In my role as Deputy General Counsel, I have handled compliance matters on behalf of the agency and the Board as well as budget matters on behalf of the division.

20. What do you believe to be the top three challenges facing the department/agency, and why?

The top three challenges facing the Surface Transportation Board ("STB") appear to be as follows:

Rate Reasonableness and SAC Alternatives

Since its predecessor agency, the Interstate Commerce Commission was established over a century ago, one of the most significant issues facing the STB is its review of railroad rates. The current process, stand-alone cost ("SAC") is considered by many within the industry to be time consuming, complicated and costly. So important is this issue that Congress directed the Board in the Surface Transportation Board Reauthorization Act of 2015 to look at SAC alternatives. If confirmed, I will dedicate significant energy to support this effort by the Board to find manageable procedures that are fair to both railroads and shippers.

Regulatory Reform

The Regulatory Reform Task Force was established to comply with Executive Order 13,777. The goals of the Regulatory Reform Task Force are to identify rules and practices that are burdensome, unnecessary, or outdated, and to recommend how they should be addressed. In May 2017, the Regulatory Reform Task Force submitted its first status report. In July 2017 the Board held a listening session and received numerous comments. Upon the completion of the Regulatory Reform Task Force's work, I believe the Board should give careful consideration to the findings of both the Task Force and the comments by stakeholders to improve STB processes.

Pending Rulemakings

The Board currently has on its docket pending rulemakings of significant importance to the various stakeholders in the railroad industry. These rulemakings include competitive switching, revenue adequacy, and commodity exemptions—important issues which I have only begun to study and which this Committee has been involved with for years. While I am not in a position to weigh in on the merits, I believe the stakeholders of the industry need finality on these proceedings. I look forward to working with the STB staff and stakeholders on these matters to help bring them to a conclusion.

B. POTENTIAL CONFLICTS OF INTEREST

1. Describe all financial arrangements, deferred compensation agreements, and other continuing dealings with business associates, clients, or customers. Please include information related to retirement accounts.

General Partner in Tamarack Four. As stated in my GE Form 278e, and my Ethics Agreement, upon confirmation, I will resign from my position as a general partner of Tamarack Four and the entity will be reformed as a limited liability company. I will not hold a position with the new entity. For more detailed information please see both my OGE Form 278e and my Ethics Agreement.

I own common stock in a closely held, family company (ready mix concrete manufacturer)—Trenton Group Inc. and Gettysburg Concrete Inc.

I have a 457/401 II—Voya Fixed Account (Annuity Contract). For more detailed information about each of the funds it contains, please see my OGE Form 278e which is attached. I will continue to participate in this defined contribution plan. The plan sponsor will not make further contributions after my separation.

I am vested in SEPTA's defined benefit plan. I will continue to participate in this defined benefit plan.

2. Do you have any commitments or agreements, formal or informal, to maintain employment, affiliation, or practice with any business, association or other organization during your appointment? If so, please explain.

I own common stock in Trenton Group Inc. and Gettysburg Concrete Company. Both companies are ready-mix concrete manufacturers and are closely held family companies.

3. Indicate any investments, obligations, liabilities, or other relationships, which could involve potential conflicts of interest in the position to which you have been nominated.

I have been employed by the Southeastern Pennsylvania Transportation Authority ("SEPTA") since 2006. The Surface Transportation Board performs certain oversight of passenger rail operations, which may include SEPTA. Pursuant to my Ethics Agreement, I will not participate personally and substantially in any particular matter where SEPTA is a party for a period of one year after my resignation from SEPTA.

As reflected in my Ethics Agreement with the STB, my spouse is employed by the law firm of Cozen O'Connor and in which he is a shareholder. For as long as my spouse continues to work for Cozen O'Connor, I will not participate personally and substantially in any particular matter involving specific parties in which I know my spouse's employer or any client of my spouse is a party unless I am first authorized to participate pursuant to 5 C.F.R. § 2635.502 (d).

My spouse is a contractor with Cable News Network (CNN). As stated in my Ethics Agreement, for as long as my spouse is a contractor with CNN, I will not participate personally and substantially in any particular matter involving specific parties in which I know CNN is a party or represents a party, unless I am first authorized to participate pursuant to 5 C.F.R. § 2635.502(d).

While I am not aware of any potential conflicts of interest that could involve my relationship with my spouse besides the ones previously listed, my spouse was previously employed as a lawyer in the White House Counsel's Office in 2017. Should

I be confirmed, I will comply with all applicable ethics laws and regulations and consult with agency officials when appropriate.

4. Describe any business relationship, dealing, or financial transaction which you have had during the last ten years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

I have not had any business relationship, dealing, or financial transaction during the last ten years for myself or on behalf of a client that could in any way constitute or result in a possible conflict of interest in the position to which I have been nominated.

As previously stated, upon confirmation, I will resign from my position with SEPTA and will not participate personally and substantially in any particular matter involving specific parties in which I know SEPTA is a party or represents a party, unless I am first authorized to participate pursuant to 5 C.F.R. § 2635.502(d).

As reflected in my Ethics Agreement with the STB, my spouse is employed by the law firm of Cozen O'Connor and in which he is a shareholder. For as long as my spouse continues to work for Cozen O'Connor, I will not participate personally and substantially in any particular matter involving specific parties in which I know my spouse's employer or any client of my spouse is a party unless I am first authorized to participate pursuant to 5 C.F.R. § 2635.502 (d).

5. Describe any activity during the past ten years in which you have been engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of any legislation or affecting the administration and execution of law or public policy.

From 2006 through 2013 I served as both a Manager and Director of Legislative Affairs for SEPTA. In this capacity, I advocated for dedicated state and Federal funding for public transportation. I also advocated for changes in legislative language to advance the interests of SEPTA.

6. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items.

With regard to SEPTA, for a period of one year after my resignation from SEPTA, I will not participate personally and substantially in any matter which SEPTA is a party.

Upon confirmation, I will resign from my position as General Partner of Tamarack Four and the entity will be reformed as a limited liability company. I will not hold a position with the new entity. For more detailed information, please see my Ethics Agreement.

For as long as my spouse continues to work for Cozen O'Connor, I will not participate personally and substantially in any matter that to my knowledge has a direct and predictable effect on my spouse's financial interest in the firm, unless I first obtain a written waiver.

For as long as my spouse is a contractor with CNN, I will not participate personally and substantially in any matter involving specific parties in which I know CNN is a party or represents a party, unless I am first authorized to participate pursuant to 5 C.F.R. § 2635.502(d).

C. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics, professional misconduct, or retaliation by, or been the subject of a complaint to, any court, administrative agency, the Office of Special Counsel, professional association, disciplinary committee, or other professional group? No.

If yes:

- a. Provide the name of agency, association, committee, or group;
- b. Provide the date the citation, disciplinary action, complaint, or personnel action was issued or initiated;
- c. Describe the citation, disciplinary action, complaint, or personnel action;
- d. Provide the results of the citation, disciplinary action, complaint, or personnel action.

2. Have you ever been investigated, arrested, charged, or held by any Federal, State, or other law enforcement authority of any Federal, State, county, or municipal entity, other than for a minor traffic offense? If so, please explain. No.

3. Have you or any business or nonprofit of which you are or were an officer ever been involved as a party in an administrative agency proceeding, criminal proceeding, or civil litigation? If so, please explain. No.

4. Have you ever been convicted (including pleas of guilty or *nolo contendere*) of any criminal violation other than a minor traffic offense? If so, please explain. No.
5. Have you ever been accused, formally or informally, of sexual harassment or discrimination on the basis of sex, race, religion, or any other basis? If so, please explain. No.
6. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be disclosed in connection with your nomination.

D. RELATIONSHIP WITH COMMITTEE

1. Will you ensure that your department/agency complies with deadlines for information set by congressional committees? Yes.
2. Will you ensure that your department/agency does whatever it can to protect congressional witnesses and whistle blowers from reprisal for their testimony and disclosures? Yes.
3. Will you cooperate in providing the Committee with requested witnesses, including technical experts and career employees, with firsthand knowledge of matters of interest to the Committee? Yes.
4. Are you willing to appear and testify before any duly constituted committee of the Congress on such occasions as you may be reasonably requested to do so? Yes.

RÉSUMÉ OF MICHELLE A. SCHULTZ

Senior Attorney—Corporate & Administrative Law

Accomplished attorney with a broad background that includes 10+ years with a quasi-government entity and eight years in legal practice. Committed to thoroughly researching issues and providing sound legal advice to clients, often presenting creative, effective, and multiple solutions to problems. Employs a collaborative approach to all client and stakeholder interactions to achieve the best possible outcome.

- Background includes 7 years in government affairs and public policy, providing a solid basis for legal advice and the ability to anticipate the political and/or public relations impact of proposals.
- Regularly address compliance issues including emission standards, hours of service and fatigue management, ADA compliance, procurement, ethics laws, state and federal grant compliance, city ordinances, White House Executive Orders, First Amendment issues, zoning and construction laws, environmental issues and immunity.
- Familiarity with corporate law matters that includes drafting leases, right of entry agreements, construction contracts, and non-disclosure agreements.
- Provide advice and counsel on matters in anticipation of litigation.

PROFESSIONAL EXPERIENCE

Deputy General Counsel

Southeastern Pennsylvania Transportation Authority—2014–Present

Senior administrative law counsel responsible for advising the Authority on all complex regulatory, statutory, and administrative law matters at the local, state, and federal level. Interpret existing laws and ordinances, formulate strategic plans, and propose solutions to compliance issues. Draft compliant policies, legislative language that promotes or defends the Authority, various contract provisions and revisions, and requests for proposals (RFPs). Review and provide legal analysis on proposed state and Federal regulations. Provided advice and counsel on procurement issues pursuant to existing laws and state and federal grant contract terms. Responsible for managing the legal division expenditures. Responsible for handling negotiations with the Federal Railroad Administration regarding safety citations. Represent the Authority in matters before the Pennsylvania Public Utility Commission.

Key Achievements

- Selected to work with staffers from the Philadelphia City Council to address zoning ordinances pertaining to signage on or adjacent to city property. Drafted legislative language that helped lead to an agreement.
- Conducting ongoing research on the legality and possibility of establishing certain risk management tools for self-insured entities like SEPTA.
- Drafted an RFP for a \$80M–\$100M capital construction project.

- Requested to address a variety of legal issues surrounding the World Meeting of Families in Philadelphia.

Director, Legislative Affairs

Southeastern Pennsylvania Transportation Authority—2010–2013

Directed and coordinated advocacy outreach to attain dedicated state and Federal funding for public transportation, including advocacy efforts for MAP-21 of 2012 and Act 89 of 2013. Provide draft responses to press inquiries regarding legislative, policy, and regulatory issues. Drafted testimony for members of the Authority's executive management for appearances before legislative committees and press events. Served as the Authority's Board Member for the Pennsylvania Public Transportation Association and representative to the Keystone Transportation Funding Coalition. Maintain relationships with key groups, including Greater Philadelphia Chamber of Commerce, American Public Transportation Association, Metropolitan Rail Discussion Group, Pennsylvania Public Transportation Association, and Keystone Transportation Funding Coalition.

Key Achievements

- Worked with all providers of public transportation in Pennsylvania and drafted language on behalf of the industry to exempt all types of communications systems used for public transportation from driving distraction bills,
- Partnered with members of the bus manufacturing industry to develop a strategy for dealing with certain emissions standards established by the State of California and adopted by Pennsylvania.
- Selected to resolve an air regulations issue involving two conflicting local ordinances and state law. Developed an idling operating policy that met all three mandates, negotiated settlement of outstanding finds, and prevented future citations.
- Provided guidance on compliance issues for a \$100M vehicle procurement, identifying changes in state law that were inconsistent with new vehicle design. Asked by Pennsylvania DOT to draft the necessary legislative change, which was enacted by the Pennsylvania General Assembly in 2013.
- Commended for advocacy efforts in obtaining Act 89 Transportation Funding.
- Provided guidance on compliance issues involving the Federal mandate for public passenger transportation providers to implement Positive Train Control, including being asked by U.S. Senate staffers to draft a memo summarizing the implementation issues for the industry.

Manager, Legislative Affairs

Southeastern Pennsylvania Transportation Authority—2006–2010

Retained to provide guidance on various compliance issues, monitor regulatory changes, and assist with shaping government policy in matters of corporate concern. Handled all state and Federal constituent services on an interim basis. Monitored state and Federal legislation and provided summaries to the Director of Legislative Affairs. Trained newly hired constituent services personnel.

Key Achievements

- Commended for advocacy efforts in obtaining Act 44 Transportation Funding.

Associate

White and Williams, LLP—2002–2006

Represented businesses from diverse industries with a focus on financing matters, including Chapter 7 and 11 bankruptcy, commercial litigation, and collection matters. Litigated motions and adversary complaints for preference and fraudulent conveyance actions. Handled matters on behalf of debtors, including preparation of bankruptcy petitions, statements, and schedules, and prosecuting claims objections.

Key Achievements

- Addressed coverage issues for major insurance carriers in bankruptcy cases resulting from mass tort litigation.

CAREER DEVELOPMENT

Judicial Law Clerk

U.S. Bankruptcy Court for the Eastern District of Pennsylvania—2000–2002

- Prepared draft opinions for all bankruptcy judges of the Eastern District of Pennsylvania.

- Conducted extensive legal research to assist the bench in making decisions on a variety of bankruptcy issues.

Judicial Law Clerk

Superior Court of Pennsylvania, President Judge Emeritus Vincent A. Cirillo—2000

- Prepared draft Superior Court opinions and bench memoranda.
- Conducted legal research on a variety of complex civil and criminal issues and assisted the Judge in making decisions.

EDUCATION & PROFESSIONAL DEVELOPMENT

Education

- **Master of Government Administration** *University of Pennsylvania, Fels Institute of Government*
 - Selected by faculty to be the Commencement Speaker.
 - Awarded the Stephen B. Sweeney Award for public service.
- **Juris Doctor (JD)** *Widener University School of Law*
 - Staff Writer, *The Widener Law Forum*
 - Vice President, Student Bar Association
- **Bachelor of Arts** *Pennsylvania State University—State College*
 - Semester Abroad, Manchester, England
 - Walt Disney World College Program and Management Training Program

Admissions

- Pennsylvania and New Jersey

Professional Memberships

- Former Hearing Committee Member, The Disciplinary Board for the Supreme Court of Pennsylvania
- Member, Pennsylvania Bar Association, Philadelphia Bar Association

The CHAIRMAN. Thank you, Ms. Schultz.
Mr. Fuchs.

**STATEMENT OF PATRICK J. FUCHS, NOMINEE TO BE A
MEMBER, SURFACE TRANSPORTATION BOARD**

Mr. FUCHS. Chairman Thune, Ranking Member Nelson, distinguished members of the Committee, thank you for inviting me to appear before you today as a nominee to serve on the Surface Transportation Board. It is a tremendous honor to be nominated to this position.

I'm grateful to you, Chairman Thune, for providing me the greatest privilege of my professional life, the opportunity to serve as a staff member for this Committee. I have been exceedingly fortunate to work on rail issues for a Senator who is a former state railroad director. I deeply admire your service and accomplishments on behalf of the State of South Dakota and the country.

If confirmed, I would take with me the lessons I have learned from the principled leadership of this Committee, including an immense appreciation for the importance of cooperation, openness, and dedication in government service.

I am joined here today by my brilliant and creative wife, Katherine, and my tireless and selfless parents, Joseph and Jeanne. Thank you for your unwavering love and support. Thank you to my four wonderful siblings for helping shape who I am. And thank you to my in-laws and friends for all the support.

I am grateful to my incredible teammates on the Committee. Your professionalism, intelligence, and friendship have been some of the best parts of my job.

Today I will highlight values that, if confirmed, I would strive to bring to my position on the Surface Transportation Board.

First, I respect the statutory directives and authorities provided by Congress. As a staff member for this Committee, covering rail, hazardous materials, and maritime transportation, I have spent significant time with the challenging transportation issues facing the Nation and the statutory frameworks that address those issues.

Under the Chairman's direction, I had the privilege to work on the Surface Transportation Board Reauthorization Act of 2015. Introduced by Chairman Thune and co-sponsored by Ranking Member Nelson, this bipartisan legislation was the first reauthorization of the Board since its creation in 1996. It sought to improve the Board's dispute resolution processes, provide tools for proactive problem-solving, and reform the Board's structure. The Board has made great progress with implementation, and I am committed to fully executing the law and fulfilling its objectives.

During my time with the Committee, I also had the opportunity to work on the first passenger rail reauthorization in over 7 years, led by Senators Wicker and Booker. This bipartisan legislation included provisions important to the Board's passenger rail oversight functions. If confirmed, I would bring this firsthand experience and perspective to my position on the Board.

Second, I recognize the importance of objective, data-driven analysis in formulating regulatory policy. During my time with this Committee and my previous employment with the Office of Management and Budget, I have evaluated the design and evidentiary underpinnings of rail and other transportation rules, analyzed the effects of those rules, and sought and weighed alternative approaches to improve outcomes. If confirmed, I am committed to ensuring that my decisions are supported by sound and objective analysis.

Third, I believe both in the importance of the Board's responsibilities and in the power of market forces to achieve efficiencies and drive innovation and investment. Our Nation's freight rail system moves goods essential to Americans' well-being, and it is predominantly private freight railroads that invest in, maintain, and operate the 140,000-mile rail network so integral to our economy. Few deny the transformational effects of partial economic deregulation in 1980, with gains in productivity and safety in the years that followed.

At the same time, codified in our Nation's rail transportation policy are important consumer protections, including to maintain reasonable rates in the absence of effective competition and to avoid undue concentrations of market power. The statutory framework governing the Board therefore underscores both a need for regulation and a need for that regulation to be reasonable. If confirmed, I would be proud to advance the Board's mission and bring to my position an understanding of the value of markets.

This is an exciting time for the Board. The Board has a robust workload before it, strong leadership, and talented and dedicated staff, and, if confirmed, it would be an honor to work with them and this Committee to help ensure an efficient and competitive rail system.

Thank you for your consideration. And I look forward to your questions.

[The prepared statement and biographical information of Mr. Fuchs follow:]

PREPARED STATEMENT OF PATRICK J. FUCHS, NOMINEE TO BE A MEMBER,
SURFACE TRANSPORTATION BOARD

Chairman Thune, Ranking Member Nelson, and distinguished Members of the Committee, thank you for inviting me to appear before you today as a nominee to serve on the Surface Transportation Board. It is a tremendous honor to be nominated to this position.

I am grateful to you, Chairman Thune, for providing me with the greatest privilege of my professional life—the opportunity to serve as a staff member for this Committee. I have been exceedingly fortunate to work on rail issues for a Senator who is a former state railroad director. I deeply admire your service and accomplishments on behalf of the State of South Dakota and the country.

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I am joined here today by my brilliant and creative wife, Katherine, and my tireless and selfless parents, Joseph and Jeanne. Thank you for your unwavering love and support. Thank you to my four wonderful siblings for helping shape who I am, and thank you to my in-laws and friends for all the support. I am grateful to my incredible teammates on the Committee—your professionalism, intelligence, and friendship have been some of the best parts of my job.

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Under the Chairman's direction, I had the privilege to work on the *Surface Transportation Board Reauthorization Act of 2015* (P.L. 114–110). Introduced by Chairman Thune and co-sponsored by Ranking Member Nelson, this bipartisan legislation was the first reauthorization of the Board since its creation in 1996. It sought to improve the Board's dispute resolution processes, provide tools for proactive problem-solving, and reform the Board's structure. The Board has made great progress with implementation, and I am committed to faithfully executing the law and fulfilling its objectives.

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Third, I believe both in the importance of the Board's responsibilities and in the power of market forces to achieve efficiencies and drive innovation and investment. Our nation's freight rail system moves goods essential to Americans' well-being, and it is predominately private freight railroads that invest in, maintain, and operate the 140,000-mile rail network so integral to our economy. Few deny the transformational effects of partial economic deregulation in 1980, with gains in productivity and safety in the years that followed.

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This is an exciting time for the Board. The Board has a robust workload before it, strong leadership, and talented and dedicated staff, and—if confirmed—it would

be an honor work with them and this Committee to help ensure an efficient and competitive rail system.

Thank you for your consideration. I look forward to answering your questions.

A. BIOGRAPHICAL INFORMATION

1. Name (Include any former names or nicknames used):
Patrick John Fuchs.
Nickname: "Paco" in place of Patrick (the nickname is used among some family and friends)
2. Position to which nominated: Member, Surface Transportation Board.
3. Date of Nomination: March 6, 2018.
4. Address (List current place of residence and office addresses):
Residence: Information not released to the public.
5. Date and Place of Birth: February 3, 1988; Milwaukee, Wisconsin.
6. Provide the name, position, and place of employment for your spouse (if married) and the names and ages of your children (including stepchildren and children by a previous marriage).
Katherine Den Boer, Director—Communications & Policy, CTIA (spouse).
7. List all college and graduate degrees. Provide year and school attended.
Master of Public Affairs, University of Wisconsin—Madison, 2011.
Bachelor of Arts, Economics (major), Political Science (major), University of Wisconsin—Madison, 2010.
8. List all post-undergraduate employment, and highlight all management-level jobs held and any non-managerial jobs that relate to the position for which you are nominated.
Senior Professional Staff Member, United States Senate, Committee on Commerce, Science, and Transportation, 2017 to Present. (Professional Staff Member, 2015 to 2017).
Policy Analyst, Executive Office of the President, United States Office of Management and Budget (OMB), Office of Information and Regulatory Affairs, 2011 to 2015. (Presidential Management Fellowship, 2011 to 2013).
Foreign Service Detail—Policy Analyst (Presidential Management Fellowship), United States Department of State, United States Embassy in The Hague, Netherlands, 2013.
Project Assistant, National Center for Freight and Infrastructure Research and Education, University of Wisconsin—Madison, 2009 to 2011.
Analyst Intern, United States Government Accountability Office, Physical Infrastructure Division, 2010.
City Administration Intern, City of Middleton, Wisconsin, 2009.
Management: At the Commerce Committee, I serve as the lead staffer on rail, hazardous materials, and merchant marine issues and on certain infrastructure policy areas. In this capacity, I oversee the research and legislative work of more junior staff and detailees working on surface transportation and maritime issues. At the OMB, I managed regulatory and information collection reviews, consisting of staff from multiple Federal agencies, on rail, maritime, and other issues. At the Department of State, I conducted in-depth economic policy analysis and oversaw the work of locally-employed economic staff.
9. Attach a copy of your résumé.
A copy is attached.
10. List any advisory, consultative, honorary, or other part-time service or positions with Federal, State, or local governments, other than those listed above, within the last ten years.
Member, Financial Institutions Advisory Board, University of Wisconsin—Madison, 2008 to 2009.
Policy Intern, Office of the Lieutenant Governor, State of Wisconsin, 2008.
Office Assistant, University of Wisconsin—Madison, Department of Population Health Sciences, 2007 to 2008.
11. List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership,

or other business, enterprise, educational, or other institution within the last ten years.

Member, DTP Capital LILAC, 2014 to 2017. (I was a non-managing member of this limited liability company, which invested in residential real estate in Wisconsin. I sold my membership interest in October 2017.)

12. Please list each membership you have had during the past ten years or currently hold with any civic, social, charitable, educational, political, professional, fraternal, benevolent or religious organization, private club, or other membership organization. Include dates of membership and any positions you have held with any organization. Please note whether any such club or organization restricts membership on the basis of sex, race, color, religion, national origin, age, or handicap.

Wisconsin City/County Manager Association, Member, 2009 to 2011.

Distinguished Lecture Series, Wisconsin Union Directorate, Committee Member, 2007 to 2010.

Pi Alpha , Public Affairs Honor Society, President of University of Wisconsin—Madison chapter, 2010 to 2011.

Pi Sigma Alpha, Political Science Honor Society, Member, University of Wisconsin—Madison chapter, 2009 to 2010.

Member, Financial Institutions Advisory Board, University of Wisconsin Madison, 2008 to 2009.

St. Joseph Catholic Church, Parishioner, 1989 to 2011.

I have also worked with the charitable organization Greater DC Cares, now defunct, but this service did not involve formal membership.

None of these organizations restricts membership on the basis of sex, race, color, religion, national origin, age, or handicap.

13. Have you ever been a candidate for and/or held a public office (elected, non-elected, or appointed)? If so, indicate whether any campaign has any outstanding debt, the amount, and whether you are personally liable for that debt. No.

14. Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of \$500 or more for the past ten years. Also list all offices you have held with, and services rendered to, a state or national political party or election committee during the same period.

I have not made political contributions.

I have not held office with, or rendered services to, a state or national political party.

15. List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals, and any other special recognition for outstanding service or achievements.

Fellowships

Presidential Management Fellowship, United States Office of Management and Budget, 2011 to 2013. As part of this fellowship, I also served on detail with the United States Department of State.

Special Recognition for Outstanding Service or Achievements

Special Achievement Award, United States Office of Management and Budget, 2014, for “tireless efforts and outstanding work in improving regulatory outcomes as well as key and timely contributions in areas outside of his normal areas of responsibility.”

Meritorious Honor Award, United States Department of State, 2013, for “extraordinary contributions to substantive economic analysis and to Embassy outreach, visibility, and credibility.” Shared with Gilles Everts.

Special Achievement Award United States Office of Management and Budget, 2013, for “enthusiasm, imagination, and effectiveness in improving regulatory outcomes and processes.”

Director’s Achievement Award, University of Wisconsin—Madison, Robert M. La Follette School of Public Affairs, 2011 for an “outstanding academic record” and “evidence of being an outstanding public policy thinker and communicator.”

Other academic recognitions include: Distinction from College of Letters and Science, University of Wisconsin—Madison, 2010 (Economics, Political Science); Distinction in the Major (Political Science), University of Wisconsin—Madison, 2010; and Dean’s List, University of Wisconsin—Madison, 2007 to 2010.

Honor Society Memberships

Pi Alpha Alpha, Public Affairs Honor Society, 2010. I served as President of the University of Wisconsin—Madison chapter.

Pi Sigma Alpha, Political Science Honor Society, 2010.

Scholarships

Project Assistantship, 2009 to 2011. I received full tuition and a stipend for the 2010–11 academic year.

16. Please list each book, article, column, or publication you have authored, individually or with others. Also list any speeches that you have given on topics relevant to the position for which you have been nominated. Do not attach copies of these publications unless otherwise instructed.

Publications

Bittner, Fuchs, Baird, and Smith. (September 2011). *WisDOT Policy Research Program: Addressing Elderly Mobility Issues in Wisconsin* (Final Report No. 0092–10–19). Madison, WI: Wisconsin Department of Transportation Research & Library Unit and National Center for Freight & Infrastructure Research & Education.

In addition, while at the OMB's Office of Information and Regulatory Affairs, I was the staff member assigned to lead the production of the Information Collection Budget of the United States for Fiscal Years 2011, 2012, and 2013. I am listed as a principal contributor for these publications.

Office of Management and Budget, Office of Information and Regulatory Affairs. (September 2014). *Information Collection Budget of the United States Government, Fiscal Year 2013*. Washington: United States Office of Management and Budget.

Office of Management and Budget, Office of Information and Regulatory Affairs. (September 2014). *Information Collection Budget of the United States Government, Fiscal Year 2012*. Washington: United States Office of Management and Budget.

Office of Management and Budget, Office of Information and Regulatory Affairs. (January 2013). *Information Collection Budget of the United States Government, Fiscal Year 2011*. Washington: United States Office of Management and Budget.

I was also listed as an OMB contributor to the President's Budget for Fiscal Years 2013, 2014, and 2016. My role in these budgets was minor, because my position primarily involved regulatory and information collection issues.

Office of Management and Budget. (February 2015). *Budget of the United States Government, Fiscal Year 2016*. Washington: United States Government Printing Office.

Office of Management and Budget. (April 2013). *Budget of the United States Government, Fiscal Year 2014*. Washington: United States Government Printing Office.

Office of Management and Budget. (February 2012). *Budget of the United States Government, Fiscal Year 2013*. Washington: United States Government Printing Office.

Finally, I participated in a 2011 Transportation Research Board session: Gollnik, Wittwer, Kleinmaier, and Fuchs. (January 2011). *Poster Session 611: Northwest Passage Corridor-wide Commercial Vehicle Permitting*. Madison, WI: National Center for Freight & Infrastructure Research & Education. However, I run not listed on the final publication.

Speeches

As part of my duties as a Senate staffer, I have regularly spoken externally on panels and at conferences and meetings concerning topics relevant to surface transportation. Most of the presentations did not focus exclusively on Surface Transportation Board issues but instead covered a range of freight and passenger rail issues. Relevant presentations include:

- Surface Transportation Board Rail-Shipper Transportation Advisory Committee meetings (04/15, 11/15, 08/16, 02/17);
- National Mediation Board annual meetings (01/16, 01/17);
- Federal Railroad Administration Project Delivery conferences (10/15, 11/17);

- American Public Transportation Association conferences (03/16, 02/17, 11/17);
- Rail Customer Coalition meetings (01/16, 06/16; 11/16);
- American Short Line and Railroad Association conference and meeting (04/16, 03/17);
- Association of American Railroads conferences (06/15, 01/17);
- American Association of State Highway and Transportation Officials conferences (02/15, 02/16, 02/17, 04/17, 03/18);
- National Association of Rail Passengers conference (04/16);
- Agricultural Transportation Working Group meeting (05/17);
- American Forest & Paper Association meeting (09/16);
- Brotherhood of Maintenance of Way Employees State Representative meeting (05/17);
- Freight Rail Customer Alliance meeting (04/16);
- National Association of Railroad Passengers conference (04/16);
- Eno Center for Transportation Fellows panel (06/17); and
- Association of Transportation Law Professionals meeting (11/16).

I have lectured students on various aspects of public policy and government relations, with specific examples from surface transportation policy. These lectures include:

- Georgetown University, *Nonmarket Strategies and Government Arenas* (09/17).
- Leadership Institute, *Managing Congressional Hearings* (04/17).

During my employment with the OMB, I also presented externally on regulatory reform and design:

- Organisation for Economic Co-operation and Development (OECD), *8th Session of the Regulatory Policy Committee*, 04/13.

17. Please identify each instance in which you have testified orally or in writing before Congress in a governmental or non-governmental capacity and specify the date and subject matter of each testimony.

I have not testified orally or in writing before Congress.

18. Given the current mission, major programs, and major operational objectives of the department/agency to which you have been nominated, what in your background or employment experience do you believe affirmatively qualifies you for appointment to the position for which you have been nominated, and why do you wish to serve in that position?

During my time with the Senate Commerce Committee, I developed, drafted, and negotiated legislation to improve the Nation's transportation network, and this experience has provided me with an in-depth understanding of the issues facing the Surface Transportation Board. For example, through my work on the *Surface Transportation Board Reauthorization Act of 2015* (S. 808), the first reauthorization of the Board since its creation in 1996, I acquired a deep understanding of the Board's dispute resolution processes, structure, and authorities. Following enactment of the legislation, my work has also included close oversight of the Board's implementation efforts. As another example, through my work on the *Fixing America's Surface Transportation (FAST) Act* (P.L. 114–94), which included the first passenger rail reauthorization in over seven years and substantive permitting reforms, I gained detailed knowledge of the effects of Federal policies on railroad operations and investment decisions.

Further, during my time with the OMB, I managed the regulatory review of rail regulations of national importance from Executive Agencies, as well as the review of all information collection requests of the Surface Transportation Board. This experience provided me with a strong foundation in economic and data analysis and their application to the rail industry. My positions at both the Commerce Committee and OMB included significant work on transportation issues outside of rail policy, such as maritime, hazardous materials, and multimodal issues. This work has prepared me for the Board's other responsibilities, such as certain oversight functions for household goods carriers or non-energy, non-water pipelines. My interest and experience in transportation, particularly rail, extends back to research work with the University of Wisconsin and analyst training with the Government Accountability Office.

I wish to serve in this position because I believe the Board's responsibilities are important; our Nation's rail system moves goods essential to the well-being of the country, and the Board is charged with helping ensure that system is sound, effi-

cient, and competitive. The Board also plays an important role in the oversight of the passenger rail that carries people to medical appointments, family visits, and vacation destinations. I appreciate the importance of fair, timely, and analytically-driven decisions from the Board, and—through objective and rigorous analysis—I hope to make a meaningful positive impact on those decisions.

19. What do you believe are your responsibilities, if confirmed, to ensure that the department/agency has proper management and accounting controls, and what experience do you have in managing a large organization?

Through my legislative and oversight work with the Commerce Committee, I understand the Board's has had challenges with certain management and accounting controls, and—if confirmed—I would be committed to fixing any deficiencies, efficiently allocating resources, and complying with applicable laws and regulations. Notably, recent work of the Department of Transportation Inspector General (DOT IG)—as part of its *Federal Information Security Management Act of 2002* (FISMA) audit—found that the Board's information security program is not effective, and I believe it is the duty of all Board members to help ensure the Board implements the DOT IG's recommendations as appropriate. Moreover, the *Surface Transportation Board Reauthorization Act of 2015*, which I helped draft, included new management transparency measures concerning rate cases, regulatory proceedings, and complaints, and it is important to ensure reports are highly informative and accessible to the public.

The Board's Chairman legally holds foremost responsibility for the administration of the agency, and all Board members help oversee administrative functions. Since assuming her position, Chairman Begeman has taken strong action to fix identified deficiencies, including continuing to modernize and secure the Board's information technology (IT) system and expanding the use of deadlines for Board proceedings. I fully support these efforts, and—if confirmed—I would help drive and reinforce improvements to the IT system and decision-making process. In particular, given the sensitive information collected by the Board, I would prioritize on-going work to ensure the Board protects its IT system via timely software patch installation, adequate access and training policies, and other risk management actions consistent with the DOT IG's recommendations.

Chairman Begeman and Commissioner Miller, I have also recently taken action to update the Board's ex parte communication rules, permitting greater and more nimble information collection and exchange, subject to certain disclosure and timing requirements. I support these changes to acquire needed information and improve external communication in a quicker and less resource intensive manner.

Through my work with Commerce Committee, I have conducted oversight of the management of large agencies, and I frequently interface with the relevant Inspectors General to advance management best practices. During my time with the OMB, I gained experience managing interagency regulatory review teams to help make appropriate resource allocation decisions. Further, with the OMB, I managed information collection request reviews that involved consideration of privacy impacts, data quality, and information technology. If confirmed, I would apply that experience to help ensure the Board has proper management and accounting controls.

20. What do you believe to be the top three challenges facing the department/agency, and why?

1. *Fully Implementing the Surface Transportation Board Reauthorization Act of 2015.* Amid concerns that rate cases were too costly, complex, and time-consuming, the legislation aimed to improve the rate case process at the Board, including by streamlining administrative processes, expediting rate review timelines, and expanding voluntary arbitration to offer an alternative to litigation. The law also required the Board to look at simpler ways to conduct rate reviews. Continuing that process, the Board has published an Advanced Notice of Proposed Rulemaking (ANPRM) soliciting feedback on an alternative rate review methodology for small cases, and it recently established a Rate Reform Task Force. A key challenge facing the Board is examining feedback on the ANPRM and managing the Rate Reform Task Force to see if there are alternative methodologies that exist, or could be developed, to address the complexity of large rate cases, consistent with sound economic principles.

Moreover, the legislation aimed to increase proactive problem-solving and accountability, such as by providing the Board with authority to launch investigations based on its own initiative. Consistent with the aim of the legislation, a key challenge for the Board is deciding when and how to proactively address any major service disruptions that arise.

2. *Modernizing Information Collection, Processing, and Technology Systems.* These systems affect nearly everything the Board does, from reviewing rates and service to interacting with the general public. In recent years, the Board has increased its

collection of data (e.g., requiring service metric reporting), revisited its processing of certain data (e.g., evaluating its Uniform Railroad Costing System), and initiated a modernization of its IT systems. As noted above, the DOT IG has found that the Board's information security program is not effective. I understand that the Board is currently working to secure its IT system, replace its case management system, and upgrade its public website. A key challenge for the Board is prioritizing and managing these initiatives to ensure efficient resource allocation and successful outcomes.

3. *Making Timely, Sound Decisions on Pending Proceedings.* The Board has a large docket of existing proceedings, some of which have been on-going for several years. Notably, in 2016, the Board proposed rules on reciprocal switching and commodity exemptions, and—as noted above—it has issued an ANPRM on rate case methodologies. Many of these proceedings have large implications for the rail system, and both railroads and shippers face uncertainty about their outcomes. A key challenge for the Board is making timely decisions on outstanding proceedings while ensuring that such decisions are based on good data and rigorous analysis.

B. POTENTIAL CONFLICTS OF INTEREST

1. Describe all financial arrangements, deferred compensation agreements, and other continuing dealings with business associates, clients, or customers. Please include information related to retirement accounts.

I hold a Thrift Savings Plan and a Federal Government retirement account. I also participate in the Federal Employees Retirement System, a defined benefit retirement plan.

2. Do you have any commitments or agreements, formal or informal, to maintain employment, affiliation, or practice with any business, association or other organization during your appointment? If so, please explain. No.

3. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated.

I do not have any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which I have been nominated.

4. Describe any business relationship, dealing, or financial transaction which you have had during the last ten years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

I do not have any business relationship, dealing, or financial transaction that could in any way constitute or result in a possible conflict of interest in the position to which I have been nominated.

5. Describe any activity during the past ten years in which you have been engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of any legislation or affecting the administration and execution of law or public policy.

During my employment as a Senate staffer, an important part of my job has involved activities that directly and indirectly influenced the passage, defeat, or modification of legislation and that have affected the administration and execution of law or public policy. For example, I was heavily involved in developing, drafting, and negotiating aspects of the *Surface Transportation Board Reauthorization Act of 2015* (P.L. 114–110) and the *FAST Act* (P.L. 114–94), among other legislation, as well as in advising Senate offices on related amendments. I have also been involved in oversight efforts concerning issues within the Commerce Committee's jurisdiction.

During my employment with the OMB, I provided objective analysis and recommendations to senior Administration officials on proposed and final regulations of national importance, including significant rules governing transportation safety and housing programs. I also advised senior policy officials on legislative proposals and reviewed Congressional testimony.

During my employment with the U.S. Government Accountability Office and National Center for Freight and Infrastructure Research and Education, I was involved in reviews that covered, in part, the execution of Federal transportation programs and policies. During my work for the City of Middleton and Office of the Lieutenant Governor, State of Wisconsin, I drafted memos for policy officials on state and local government issues.

6. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items.

In connection with the nominations process, I have consulted with the Office of Government Ethics and the Surface Transportation Board's ethics official to identify

conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered with the Board's ethics official. A copy of the ethics agreement will be provided to this Committee.

C. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics, professional misconduct, or retaliation by, or been the subject of a complaint to, any court, administrative agency, the Office of Special Counsel, professional association, disciplinary committee, or other professional group? If yes:

- a. Provide the name of agency, association, committee, or group;
- b. Provide the date the citation, disciplinary action, complaint, or personnel action was issued or initiated;
- c. Describe the citation, disciplinary action, complaint, or personnel action;
- d. Provide the results of the citation, disciplinary action, complaint, or personnel action.

No.

2. Have you ever been investigated, arrested, charged, or held by any Federal, State, or other law enforcement authority of any Federal, State, county, or municipal entity, other than for a minor traffic offense? If so, please explain.

Yes. In April 2007, at the age of 19, I received a civil charge (non-criminal) for an ordinance violation for possession of marijuana. The charge was issued by the University Police of the State of Wisconsin. I pleaded no contest to an amended charge of a non-traffic ordinance violation for miscellaneous conduct on UW lands. This case resulted in no fine and \$105.00 in court costs.

3. Have you or any business or nonprofit of which you are or were an officer ever been involved as a party in an administrative agency proceeding, criminal proceeding, or civil litigation? If so, please explain. No.

4. Have you ever been convicted (including pleas of guilty or *nolo contendere*) of any criminal violation other than a minor traffic offense? If so, please explain. No.

5. Have you ever been accused, formally or informally, of sexual harassment or discrimination on the basis of sex, race, religion, or any other basis? If so, please explain. No.

6. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be disclosed in connection with your nomination. None.

D. RELATIONSHIP WITH COMMITTEE

1. Will you ensure that your department/agency complies with deadlines for information set by congressional committees? Yes.

2. Will you ensure that your department/agency does whatever it can to protect congressional witnesses and whistle blowers from reprisal for their testimony and disclosures? Yes.

3. Will you cooperate in providing the Committee with requested witnesses, including technical experts and career employees, with firsthand knowledge of matters of interest to the Committee? Yes.

4. Are you willing to appear and testify before any duly constituted committee of the Congress on such occasions as you may be reasonably requested to do so? Yes.

RÉSUMÉ OF PATRICK FUCHS

Professional Experience

U.S. Senate, Committee on Commerce, Science, and Transportation—01/15–Present
Senior Professional Staff Member, Surface Transportation and Merchant Marine

Advances the policies and priorities of Chairman Thune and Committee Majority members by developing, drafting, and negotiating legislation to improve the Nation's transportation network, including major rail reauthorization bills. Represented the Senate on rail and hazardous materials issues during the successful conference committee of the *FAST Act* (P.L. 114–94). Manages full and subcommittee hearings on surface transportation regulation, passenger rail policy, maritime security, among other issues. Conducts oversight of agencies within the Committee's jurisdiction, including the STB, FRA, and PHMSA. Advises Senate Majority offices on amendment votes. Collaborates with the Committee's communications team and conducts stakeholder outreach to build support for legislation. Served as Professional Staff Member from 2015 to 2017. Key work includes:

- *Surface Transportation Board Reauthorization Act of 2015* (S. 808), the first reauthorization of the Board since its creation in 1996, improved the agency's dispute resolution processes, enabled more proactive problem-solving, and reformed its structure to increase efficiency and transparency (P.O. 114–110);
- *Railroad Reform, Enhancement, and Efficiency Act* (S. 1626), the first passenger rail reauthorization in over seven years, instituted reforms to improve Amtrak's performance, introduce passenger rail competition, and increase safety (part of P.O. 114–94).
- *Railroad Safety and Positive Train Control Extension Act* (S. 650) avoided a significant disruption to rail transportation by extending an unrealistic statutory deadline for positive train control implementation and setting new accountability measures (part of P.O. 114–73).
- *Track, Railroad, and Infrastructure Network Act* (S. 769) streamlined historic and environmental permitting requirements to facilitate accelerated rail project delivery (part of P.L. 114–94).
- *Railroad Infrastructure Financing Improvement Act* (S. 797) reformed an inefficient railroad loan program to reduce review times, increase flexibility, and add taxpayer protections (part of P.L. 114–94).
- *Hazardous Materials Transportation Safety Improvement Act of 2015* (Title VII of the FAST Act) increased safety, streamlined grant programs, and reduced unnecessary regulatory burden (part of P.L. 114–94).

Executive Office of the President, Office of Management and Budget—06/11–01/15
Policy Analyst; Transportation and Security

Led government-wide reviews to provide objective analysis and recommendations to senior Administration officials on proposed and final regulations of national importance, including significant rules governing transportation safety and housing programs. Analyzed complex economic and financial data to help ensure Federal agencies, including DOT, accurately assessed the costs and benefits of regulations and selected the most cost-effective alternatives. Built excellent relationships with senior career staff to achieve policy improvements. Advised senior policy officials on legislative proposals, reviewed Congressional testimony, and drafted reports to Congress on government-wide management initiatives.

Improved over 40 proposed and final regulations, over 70 surveys and program evaluations with statistical methods, and a Presidential management initiative, Highlights include:

- Advised senior OMB leaders and advanced major changes to proposed regulations for crude oil and ethanol transportation by rail, saving over \$1 billion in unnecessary costs from the original proposals.
- Led the review of proposed and final regulations amending overly burdensome train technology requirements, resulting in estimated cost savings of over \$1 billion.
- Managed a government-wide paperwork burden reduction initiative, including changes that led to paperwork time savings of about \$2 billion per year.
- Received a Special Achievement Award in 2014 from OMB for “tireless efforts and outstanding work in improving regulatory outcomes as well as key and timely contributions in areas outside of his normal areas of responsibility.”
- Received a Special Achievement Award in 2013 from OMB for “enthusiasm, imagination, and effectiveness in improving regulatory outcomes and processes.”

U.S. Department of State, U.S. Embassy in The Hague, Netherlands—02/13–06/13
Policy Analyst (Foreign Service Detail), Economic Section

Developed complex economic and financial analyses on budget, labor, and banking issues for senior officials at the Department of State, the Department of the Treasury, and National Security Council. Supervised Embassy-employed economic staff with responsibilities for analyzing Dutch government reports and economic data. Coordinated and collaborated with senior diplomats in Brussels and The Hague to ensure consistent economic reporting. Built relationships with foreign government officials, businesses, academics, and policy stakeholders to gain insight into critical economic issues for U.S. strategic interests.

- Received a Meritorious Honor Award from the Department of State for “extraordinary contributions to substantive economic analysis and to Embassy outreach, visibility, and credibility.”

National Center for Freight and Infrastructure Research and Education, Madison, WI—09/09–06/11

Project Assistant, Transportation Research Projects

Assessed Wisconsin's public and specialized transportation programs and developed statistical, economic, and geospatial analyses of statewide elderly mobility data. Oversaw the development of the literature review, identification of best practices, and policy recommendations for the final research study. Designed a statewide transportation survey, with an emphasis on safety for older persons, and coordinated with over 50 local governments and non-profit organizations to garner informative public responses.

- Co-authored final elderly mobility research study for the Wisconsin DOT and presented findings at National Academies' Transportation Research Board conference.

U.S. Government Accountability Office, Washington D.C.—05/10–08/10

Analyst Intern, Physical Infrastructure Division

Analyzed the effects of the freight hours of service policies in the Rail Safety Improvement Act of 2008. Gathered economic data on freight railroads, conducted research on fatigue assessment tools, and helped develop statistical analysis of railroad accident/incident and inspection data.

Other Leadership

OECD Regulatory Policy Committee, Paris, France, Presenter—04/13

Transportation Research Board, Washington, D.C., Published Co-Author—11/10–01/12

Pi Alpha Alpha Public Affairs Honors Society, Madison, WI, President—12/10–05/11

Distinguished Lecture Series, Madison, WI, Committee Member—09/07–09/10

Select Invited Remarks: STB RSTAC meetings (04/15, 11/15, 08/16, 02/17); FRA Project Delivery conferences (10/15, 11/17); ASLRRA conferences (04/16, 03/17); AAR conferences (06/15, 01/17); Rail Customer Coalition meetings (01/16, 06/16; 11/16); AASHTO conferences (02/15, 02/16, 02/17, 04/17, 03/18); APTA conferences (03/16, 02/17, 11/17); NARP conference (04/16); and Ag Transportation Working Group meeting (05/17).

Education

University of Wisconsin

Master of Public Affairs. La Follette School of Public Affairs (05/11)

- Received Director's Award to recognize an outstanding academic record in the graduate school class
- Awarded Presidential Management Fellowship upon graduation

Bachelor of Arts, Economics; Bachelor of Arts, Political Science (05/10)

International Academic Program at National University of Singapore (06/09)

- Awarded Distinction in the Major, Political Science
- Awarded Distinction from the College of Letters and Science, Economics, Political Science

The CHAIRMAN. Thank you, Mr. Fuchs. This Committee's loss will be the STB's gain.

Mr. FUCHS. I appreciate it, sir.

The CHAIRMAN. You've taken a lot of expertise with you, and we look forward to continue to work on issues that are important to rail service in this country.

I know you all appreciate the importance of cooperation between the FTC, the STB, and Congress. Nevertheless, these nomination hearings give us an opportunity to underscore that point. A simple question: If confirmed, will you pledge to work collaboratively with this Committee and its members and to provide thorough and timely responses to our requests for information?

Mr. FUCHS. Yes, Mr. Chairman.

Ms. SCHULTZ. Yes.

Ms. SLAUGHTER. Yes.

The CHAIRMAN. All right. This is an STB-related question. As I mentioned earlier, the Surface Transportation Reauthorization Act provided STB with the authority to conduct investigations on its own initiative to allow it to more proactively resolve service issues and other problems before they escalate into larger disputes. To date, STB has not conducted any investigations under this provision.

And so this would be for our STB “noms”: If confirmed, would you be willing to use STB’s investigative authority? And if so, how would you envision it being used?

Ms. Schultz or Mr. Fuchs, whoever wants to go first.

Mr. FUCHS. Yes, Mr. Chairman. And I agree it’s an important aspect of your reauthorization legislation, that I think it really advances the goal of proactive problem-solving. So, if confirmed, I would envision using the authority on issues of national or regional significance for an alleged violation. In making a scope determination, I would consider the impacts on traffic and customers and other entities.

I would also look at the geographic scope of an issue. Any determination would be fact-specific. And at the same time, I would certainly respect due process protocols and adhere to the timing of the legislation and certainly would use the authority judiciously.

So certainly, I think this is an important tool in the Board’s toolbox, and I would use it if it were appropriate to do so.

The CHAIRMAN. Thank you, Mr. Fuchs.

Ms. Schultz.

Ms. SCHULTZ. I would concur with Patrick’s statement. The only thing that I would add is, is that I’m aware that the Board currently has a number of things that it does to work to address service challenges, including ongoing dialogues with all the stakeholders. And in addition to, of course, supporting the use of investigatory authority, I would also just add that what I would encourage to pursue first would be to further the current actions of what the Board takes, which is to try to address any types of challenges very quickly and efficiently by having ongoing conversations.

The CHAIRMAN. Ms. Slaughter, with the growth of e-commerce and social media in recent years, I’d like to just get a response from you regarding the state of competition in the American tech sector. While some argue that big tech should be subject to more antitrust scrutiny, the applicable law would seem to require a more nuanced analysis, one that is not based on size alone.

So could you kind of describe for us what your views are regarding antitrust concerns with respect to large technology firms, such as Facebook and Google?

Ms. SLAUGHTER. Thank you, Mr. Chairman for the question. I am well aware of the active debate that’s happening in the public and in this Committee about large companies in many industries, but especially in the tech industry.

And I agree strongly with what Mr. Simons and some of the other nominees said at their confirmation hearing. Big isn’t necessarily bad on its own, but where you have extreme market concentration, you have more opportunity for abuse of that market power. I think it’s incumbent upon the Commission to monitor carefully for any abuses in any sector, including the tech sector.

The CHAIRMAN. One other question, and this is back to STB, there have been recently, and then, of course, going back in my home state of South Dakota in 2013 and 2014, some serious service disruptions, fluidity issues affecting shippers. So I'm wondering if you could maybe just talk a little bit about what you see as the Board's role in responding to rail service issues. And if confirmed, what long-term actions do you believe STB should take to prevent or mitigate future service delays?

Ms. Schultz, and then Mr. Fuchs.

Ms. SCHULTZ. Sure. I think that the role of the Board is to determine how best to quickly address the service issues that are happening in the moment. As I previously discussed, the Board has a number of ways to address service issues, including the dialogue of the current rail customer program that's in place, which, again, works with both shippers and railroads to obtain metrics and to try to assess what's going on.

The Board has a few other options as well, which is to hold hearings and ultimately to initiate orders to address service issues. And if confirmed, I would pledge that I would take the issue of service disruptions very seriously, work with the very qualified staff at the Board, as well as my fellow Board members and the stakeholders of the industry to address service issues as quickly as possible.

The CHAIRMAN. Thank you, Ms. Schultz.

Mr. Fuchs.

Mr. FUCHS. Thank you, Mr. Chairman. I would agree with what Michelle said. I think the Board plays an important role in the oversight of rail service, and I think that the rail service metrics that you advocated for were helpful for better informing the Board's decisionmaking. I think, you know, one of the first steps is always to shine a light: letters, calls, requests for additional information, listening sessions.

The Board has other tools at its disposal. We've talked about the investigative authority. The Board is hosting informal meetings right now to look at the adequacy of its directed service regulations. If confirmed, I would certainly approach the job with an understanding of the importance of strong rail service to the country and to the country's economy, and I would also stay mindful of the fact that Board actions can have broader effects on the network.

The CHAIRMAN. OK. Thank you.

Senator Nelson.

Senator NELSON. Ms. Slaughter, yesterday in the hearing with Mr. Zuckerberg, I asked him if he had notified the 87 million people that their data was stolen as a result of the Cambridge Analytica scandal that you know about, and he did not answer directly that question. So he talked about how that they had withdrawn, said it was a mistake, and so forth, but did not answer the question about notification of the 87 million that their data has been stolen. So then I asked him, "Did you notify the FTC?" and he said, "No."

The FTC is the lead Federal agency protecting consumers by bringing enforcement actions against companies that encounter data breaches, and in this case, due to being asleep at the switch, in their words, in Zuckerberg's words, that they trusted, and they should not have trusted, Cambridge Analytica.

Do you agree that the FTC should continue bringing such data security enforcement actions?

Ms. SLAUGHTER. Thank you, Senator, for the question. I am very acutely aware of this Committee and the American public's interest in the Facebook matter specifically. I want to be very careful because I'm also aware that the Commission has confirmed an open investigation into Facebook, and I don't want to say anything to prejudice that particular investigation in any way. But as a general matter, I will say that, yes, I think the Commission can and should and must continue to monitor data breach issues carefully and bring enforcement cases wherever appropriate.

Senator NELSON. Right. And from that, I assume, and you tell me if my assumption is correct, therefore, to protect the privacy of the American public and protect their consumer data.

Ms. SLAUGHTER. Yes, that's correct, Senator.

Senator NELSON. OK. Mr. Fuchs, your first name is Patrick, but your fellow staff members tell me that your name is Paco.

[Laughter.]

Senator NELSON. Please explain.

[Laughter.]

Mr. FUCHS. One of my older brothers is just a couple years older than me, and my parents said "Paco" instead of "Patrick" to make it easier on his pronunciation. And I went to kindergarten, my kindergarten teacher loved it, and I went to the same school for 10 years, and it stuck.

Senator NELSON. OK.

[Laughter.]

Senator NELSON. So——

Senator WICKER. [Off microphone.]

[Laughter.]

Senator NELSON. Just a little entertainment, Senator Wicker.

[Laughter.]

Senator NELSON. All right. So we've got an Amtrak, and there are some folks that want to shut down Amtrak because they don't think that the ridership is there. There are certain segments of the service, such as the Gulf Coast, Senator Wicker included, that used to run from New Orleans all the way to Orlando, and after Katrina, the tracks were blown apart, and they did not reinstate the service. Do you have any opinion about this?

Mr. FUCHS. Thank you for the question, Senator. I know it's an important issue for folks in the Gulf Coast, and there's a lot of passion in the area about it. As a result of your efforts and the efforts of Senators Wicker and Cochran, there were significant additional resources in the last two appropriation bills for the restoration or initiation of rail service, and I know advocates for the route found those resources and will find those resources to be very helpful.

Currently, there is not a filing on the matter before the Board, and the role of the Board would be to set reasonable terms and compensation if the host railroad and Amtrak couldn't agree on the matter through one-on-one dialogues. So if there was a filing, the Board certainly has an important role to play.

Senator NELSON. OK. I'd like you also to think about the future of high-speed rail. Unfortunately, when we had \$2.5 billion sitting on the table for the first high-speed rail in America, and it would

have been the first because it ran right down the middle of Interstate 4, of which the right-of-way was already there, the state of Florida and the Governor chose to ignore that by putting it together, and, therefore, we don't have high-speed rail in America, and we are decades and decades behind the rest of the world, particularly Europe and Asia.

But one thing, that people in America would choose to fly or to drive because the passenger trains don't run on time. Now, fortunately, Acela seems to be doing a pretty good job, and I can tell you that now when I go or come from New York, I certainly prefer to take the Acela instead of going through the hassle of going through La Guardia.

What can you all do, as the Transportation Board, what can you do to try to tune them up where they will actually be on time?

Ms. SCHULTZ. Thank you for the question, Senator. And first I would like to say that I couldn't agree more with you regarding the policy and advocacy for high-speed rail here in the United States. In terms of what—I believe your question was, What was the Board's role to tune them up as it pertains to service challenges—

Senator NELSON. So that you have reliable service and on-time service.

Ms. SCHULTZ. Sure. So, again, on-time service impacts the economic vitality of the entire rail network. Recognize—I think the first step would be to recognize the importance of service challenges and to address them as expeditiously as possible. The way to do that, I believe, is to further the current actions of the Board, which is to partner with stakeholders, obtaining current metrics, and working with them to try to quickly analyze what is causing the service challenge. And so what I could say today is, is that I would commit to furthering the work of the Board and to recognize the importance of addressing service issues in a very timely fashion.

Senator NELSON. Thanks.

The CHAIRMAN. Thank you, Senator Nelson.

Senator Wicker.

**STATEMENT OF HON. ROGER F. WICKER,
U.S. SENATOR FROM MISSISSIPPI**

Senator WICKER. OK. Let's just pick up on that.

Mr. Fuchs, there is a problem with timeliness, and I agree with Senator Nelson, that passengers will use the service if it's on time and reliable. And amen about the Acela. I have to go to New York every now and then, and it's a whole lot easier on me just to walk right in there.

Amtrak, the law says Amtrak has preference over freight transportation using rail—in using a rail line.

Now, Mr. Fuchs, you talked about statutory directives. You agree that's a statutory directive, do you not?

Mr. FUCHS. Yes, Senator, preference is in statute.

Senator WICKER. Yes, OK. So in reality, freight railroads have consistently denied such preference to Amtrak. In fact, only 47 percent of long-distance trains were on time at stations in Fiscal Year 2017. And this is largely attributable to freights refusing to provide

preference to passenger rail. For the routes that travel through my home state of Mississippi, it's even worse.

Based on this reality, do you feel that host railroads are on average following the law? The law states if Amtrak and a freight railroad cannot agree on terms, of an agreement for Amtrak to assess freight railroads' rail lines, the Surface Transportation Board, quote, shall prescribe reasonable terms and conditions for that access.

So, Ms. Schultz, it's more than a partnership. There is statutory directive there.

So, Mr. Fuchs, can you tell me what you think the reasonable terms and conditions are with respect to Amtrak, and given Amtrak's recent on-time performance report card, what do you believe—why do you believe some railroads are performing better than others?

Mr. FUCHS. Thank you for the question, Senator. On the first element of the question, I think that reasonable terms and compensation are case specific. In fact, there is a case pending before the Board that's been adjudicated for a number of years on that exact point. So, the reasonable terms and compensation are dependent on the particular route.

As a general note on on-time performance, it's linked to a Board investigations under the statute. And the STB attempted to regulate on-time performance, and that rule was actually vacated by the Eighth Circuit. And the FRA-Amtrak joint rule is currently pending before the D.C. Circuit, and depending on the decision there, I think the Board would assess what action to take. And whatever action the Board took wouldn't be necessarily categorical for the rail system, but it would be based on a complaint for an individual line. So I would be hesitant to make a sweeping statement, and I would evaluate any case that came before the Board from a fair and open perspective.

Senator WICKER. OK. Well, I think you know where at least two members of the Committee are on that.

And then following up also on the Gulf Coast rail line, are you saying, Mr. Fuchs, that the role of the STB is going to be limited to whether a fouling takes place with regard to this Gulf Coast rail service?

Mr. FUCHS. Yes, Senator.

Senator WICKER. OK.

Mr. FUCHS. If the host railroad and Amtrak could not agree on mutual conditions for the restoration or initiation of service, then a party could come before the Board, petition the Board, and ask the Board to prescribe, as you mentioned, reasonable terms and conditions. It's based on those filings and the evidence that is submitted by both parties that the Board would make its decision.

Senator WICKER. OK. Well, you've been very helpful at the Committee level, and I won't prejudice your decision after you're confirmed.

One other thing, the STB's primary function is to serve as an arbiter when there is no effective rail competition. In several recent decisions from the STB, Board members have commented that the Board's principal method for resolving disputes, the standalone cost

method, is not effective and needs to be reformed. You're familiar with this, aren't you, Mr. Fuchs? [No audible response.]

Senator WICKER. We passed legislation more than 2 years ago requesting the Board find new methods for rate disputes, and yet we have not seen any meaningful reforms. So what about this? And can each of you commit to make it a priority to actually follow through on the legislation that we pass to find a better method of determining the costs?

And I'll start with you, Mr. Fuchs.

Mr. FUCHS. Yes, Senator. And I agree with you that improving dispute resolution processes was a significant component of the STB Reauthorization Act of 2015. I see kind of three different actions that the Board should be thinking about here. First is that the STB launched an Advance Notice of Proposed Rulemaking, taking a look at whether or not there were alternative methodologies for small shippers. Second, the Board convened an internal rate reform task force trying to take an expansive view of the lay of the land about all possible alternative methodologies. And, third, the Board has been working on whether or not they can elevate and improve their alternatives dispute resolution processes, and alternative to litigation. So certainly, if confirmed, I would collaborate with other Board members and work hard to see if there's a better way of doing business on rate cases consistent with the Board's statutory authorities and sound principles of economics.

Senator WICKER. Do I have time for Ms. Schultz?

The CHAIRMAN. Sure.

Senator WICKER. Yes, sir.

Ms. Schultz.

Ms. SCHULTZ. Yes, Senator. I recognize the importance of the pending regulations before the Board. And I'm also aware that some of them have been outstanding for a fairly long period of time. I'm also very much still learning about some of these very complex and challenging economic principles.

Senator WICKER. Right.

Ms. SCHULTZ. And what I do know is that we do have an internal task force that has been assigned to work on some of these issues. And I very much look forward to working with them as well as obtaining much more information about these very important issues from stakeholders and addressing and ultimately resolving some of these issues.

Senator WICKER. OK. Well, just be aware, both of you, after your confirmation, that the law, signed into law by the President, directs the Board to find new methods of rate disputes. Thank you.

And thank you for your indulgence, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Wicker.

Senator Cortez Masto.

**STATEMENT OF HON. CATHERINE CORTEZ MASTO,
U.S. SENATOR FROM NEVADA**

Senator CORTEZ MASTO. Welcome to all three of you. Congratulations on your nominations.

Mr. Fuchs and Ms. Schultz, let me start with you. As I'm sure you're aware, we have a major concern regarding an ill-conceived proposal to move and store nuclear waste at Yucca Mountain in my

home State of Nevada. Specifically, the State takes exception to the science and safety of the site and the transportation of this waste product. This project would require the shipment of waste from 76 sites in 9,500 rail casks within 2,800 trains and 2,650 trucks hauling one case each to Yucca Mountain for over 50 years. Millions of Americans and a majority of congressional districts in the country would be impacted by shipments to Yucca Mountain. And 300 miles of new railroad would be required, which brings in the STB.

As a member of the Surface Transportation Board, can I get a commitment from each of you that during your term on the Board you will be transparent, consider safety concerns, and work to include, when appropriate, my office as you consider any matters related to this flawed concept?

Ms. SCHULTZ. Yes, Senator, I can commit to that.

Mr. FUCHS. Yes, Senator.

Senator CORTEZ MASTO. Are either of you aware that DOE has an application for a certificate of public convenience and necessity pending before STB on this very project, which is involving the buildout of railroad from Caliente to Yucca Mountain?

Mr. FUCHS. Yes, Senator, I'm aware there's a pending construction application.

Ms. SCHULTZ. I am as well.

Senator CORTEZ MASTO. Have either of you formed an opinion about the DOE application?

Ms. SCHULTZ. No, I have not.

Mr. FUCHS. No, Senator.

Senator CORTEZ MASTO. Is there any reason that you should be recused from making a decision on this particular application?

Ms. SCHULTZ. No.

Mr. FUCHS. No, Senator.

Senator CORTEZ MASTO. OK. Thank you. I also want to raise an additional—an issue of concern, particularly to our rural communities, and I think this is something you'll hear from my other colleagues as well, and I've heard a little bit about it. But the California Zephyr Amtrak line is a vital link in our communities, specifically some of our rural communities, Elko, Winnemucca, and Reno. These are places that depend on the reliable rail service to bring travelers in and out of their communities, including the annual average of about 84,000 Nevada riders who travel on the line.

And just to give you a sense of the impact, I recently received a letter from the Mayor of Winnemucca, who stated that rural Nevada needs help. The Amtrak train service is an important part of the economic vitality and social fabric of my community. Many of our veterans and seniors use Amtrak to access medical services in Reno and other areas, and there's concern that the rail service will be eliminated.

And so, again, hereto can I get your commitment to bear these kinds of concerns in mind and stay in contact with my office as you're involved in cases of rail access and reliable services between the freight and passenger rail sectors in Nevada and the rest of the country?

Mr. FUCHS. Yes, Senator.

Ms. SCHULTZ. Yes, Senator.

Senator CORTEZ MASTO. Thank you.

Ms. Slaughter, can I get your commitment to be an active consumer protection agency, including on marketing practices and data security and privacy?

Ms. SLAUGHTER. Yes, Senator, I'm happy to make that commitment.

Senator CORTEZ MASTO. Thank you. And in your opinion, what is the FTC's role in handling the broader consumer protections of this Internet age, which include the Internet of Things? Have you thought about this in the role that you will—the agency should be playing as we build out the Internet of Things and the conversation that this Committee constantly has on this new world?

Ms. SLAUGHTER. Yes, Senator. Thank you for the question. I think that's a very important issue and one of those emerging technological innovations that I spoke about a little bit in my opening. The Internet of Things makes all sorts of connectivity possible, and it makes possible exciting new developments, but that also opens consumers and their data up to substantial risk in some cases. I think it's the Commission's responsibility, and if I am confirmed, I would make it my priority to actively monitor the Internet of Things, to ensure companies are being responsible stewards of data and not engaging in the unfair and deceptive practices that are prohibited by the FTC Act.

Senator CORTEZ MASTO. Thank you. And then back to Ms. Schultz and Mr. Fuchs, again, with this new technology, are you aware that in Nevada we are actually testing Hyperloop One?

Mr. FUCHS. Yes, Senator.

Ms. SCHULTZ. Yes.

Senator CORTEZ MASTO. And knowing that, is this something that you think would be on your radar as well, this new technology and a new passenger kind of—I don't know what you would really call it. It's kind of freight, but not really, and—thoughts on and your involvement and oversight of that, if any.

Ms. SCHULTZ. Just should an issue pertaining to the Board's jurisdiction come before us, I would commit to learning much more about it as well as presumably addressing, you know, a case of first impression, if you will, regarding this new technology.

Mr. FUCHS. I completely agree. As I understand it right now, it's of an unsettled matter of law because it's such a new and innovative technology, in terms of how it corresponds with the Board's definition of "rail carrier." So I think Michelle is absolutely right, it would be a case of first impression, and if confirmed, we would convene the Board's legal staff and come to a determination on it.

Senator CORTEZ MASTO. Thank you. I notice my time is up. Thank you very much.

Thank you.

The CHAIRMAN. Thank you, Senator Cortez Masto.
Senator Cantwell.

**STATEMENT OF HON. MARIA CANTWELL,
U.S. SENATOR FROM WASHINGTON**

Senator CANTWELL. Thank you, Mr. Chairman.

And again congratulations to all the nominees.

Ms. Schultz and Mr. Fuchs, agricultural growers in the Pacific Northwest, and really across the Nation, continue to see challenges

in getting their products to market due to rail congestion and rail system issues writ large. And while we've seen some improvements in that, you could say different dynamics and changing with the product mix of what's being moved, that is, changes in transport on the fossil fuel side, but we still have many steps that need to be taken to help us on this issue. What are your suggestions?

Ms. SCHULTZ. Again, I know that the Board has an internal task force that currently works to address the challenges between shippers and rail, railroads. Recently, the Board has required additional reporting of metrics, and the result of that requirement has been an ability for the Board and for stakeholders to more quickly address challenge issues and work toward a resolution.

Mr. FUCHS. Thank you, Senator. I've read recent letters from the National Grain and Feed Association and the Fertilizer Institute pointing to some of those challenges. And as I mentioned, I think the first step is always to shine a light: collect more data, listening sessions, letters, calls. And I think another tool in the Board's toolbox is their investigative authority and they are also hosting informal meetings on directed service regulations.

And then, more broadly, anytime that you can kind of informally resolve issues without getting to litigation or formal Board action, I think that can be a really positive step. And the Board maintains a rail customer and public assistance program that actually processed about 130 service-related disputes and facilitated prompt responses. So certainly, if confirmed, I would try and emphasize and elevate that program and make sure that agricultural shippers nationwide know of the potential services and can benefit if needed.

Senator CANTWELL. Well, I guess mark me down for I want new congestion strategies that don't include pricing agriculture off of rails, which has I think been the traditional response by the agency, is, "We'll just raise the price and see who can pay it," and then the consequence is a lot of shippers don't get to ship when the real issue is just congestion. We have an energy report on energy commodities that show this, even energy products themselves competing with each other to the degree of knocking ability for utilities to even serve because they can't get the product to them.

So we have a rail congestion issue, and we, in the Northwest, know very well when you try to plan for alternatives, what happened when we tried to use an alternative route sooner maybe than it should have been used, and then we had a horrific accident. So this issue isn't going away. Well, maybe I'll put a little caveat. If the President keeps persistent on his tariff idea, maybe we'll have a problem, we won't have a problem. But I'm hoping he won't and that our agricultural commodities will continue to grow with great ability in our foreign markets.

If that continues, like I think it will, because we have a rising middle class around the world, and I think America knows how to grow great product, I want it to be able to get to market. And so I hope that you guys will make this a priority, of thinking of new strategies beyond just congestion pricing that helps keep agriculture getting to its marketplace.

Mr. FUCHS. Absolutely.

Senator CANTWELL. Thank you.

Ms. Slaughter, we had a chance yesterday with Mr. Zuckerberg, he said something when I asked him about the European rules on privacy, he said, “well, we might have a different sensibility here in the U.S.” What are your sensibilities on privacy?

Ms. SLAUGHTER. Thank you, Senator, for the question. I think that the implementation of the GDPR in Europe is something that we should monitor closely and watch carefully to see if it has any instructive lessons for the U.S. I think privacy is an important value for our citizens and our country, and it’s one that if I am lucky enough to be confirmed as a Commissioner is one that I will take seriously and making sure that our laws are enforced as robustly as possible to protect privacy.

Senator CANTWELL. So do you have any thoughts on their current draft, on their moving forward?

Ms. SLAUGHTER. On the GDPR?

Senator CANTWELL. Yes. Mm-hmm.

Ms. SLAUGHTER. I think it’s in the early stages of implementation at this point. So I think it’s an innovative approach that they’re taking and one that we should watch carefully. And I look forward to, if I am confirmed, working with the expert staff at the FTC and my fellow Commissioners to figure out how what’s working there might work here or not.

Senator CANTWELL. Well, I think one thing is clear: we had a Consent Decree from the FTC that wasn’t followed. So I think—I hope you will take that into consideration when you’re thinking about your sensibilities on this issue. But clearly we have to do more unless we want consumers to just vote with their feet.

So thank you.

The CHAIRMAN. Thank you, Senator Cantwell.

Senator Markey.

**STATEMENT OF HON. EDWARD MARKEY,
U.S. SENATOR FROM MASSACHUSETTS**

Senator MARKEY. Great. Thank you, Mr. Chairman, very much. And we thank all of the candidates here today. And it’s good to see you, Becca, and I see Justin out there in the audience, and we congratulate you on your nomination and your service to our country.

So let me—I’m just going to follow up a little bit here on the line which Senator Cantwell was going down, but move over to another question. Federal Trade Commissioner McSweeney wrote, “Scraping the FCC’s net neutrality rules will harm consumers and content creators, and the Federal Trade Commission isn’t going to be able to stop it. The Federal Trade Commission does not have specialized expertise in telecommunications. We don’t have engineers with technical experience and data network management practices. These are very real and significant limits to the effectiveness of our tools and ensuring that networks are open and free of harmful discrimination.”

Would you agree with Commissioner McSweeney, that the FTC has limited tools for preventing blocking, throttling, and paid prioritization of ISPs?

Ms. SLAUGHTER. Thank you, Senator, for the question. And first let me say it’s really been a pleasure and a privilege for me to work

with your staff, for my husband, who formerly served on your staff, on these issues and others.

Senator MARKEY. Her husband was my counsel.

Ms. SLAUGHTER. Yes.

[Laughter.]

Senator MARKEY. Yes.

Ms. SLAUGHTER. For many years. And I very much respect your leadership on the issue of net neutrality.

Senator MARKEY. Thank you.

Ms. SLAUGHTER. As you well know, your CRA is currently pending in the Senate. And I think Commissioner McSweeney raised some important points about the limitations of the FTC's jurisdiction. If I am lucky enough to be confirmed as a Commissioner, what I will commit to you is that I am interested in enforcing the law to its fullest extent. I am interested in working with my fellow Commissioners and the staff at the agency to point out areas where I think the law might need to be improved to better protect consumers.

Senator MARKEY. OK, good. Thank you.

And there's a growing body of evidence from child development experts—I touched on this yesterday with Mark Zuckerberg—that technologies are being purposely made to be addictive, and here's the goal, to eventually generate revenue from digital advertising, put more simply, hook the young enough on these devices so that they're just—they're just completely unable to ever disconnect.

Under the Commission's COPPA, Children's Online Privacy Protection Act mandate, what will you do to ensure that child-directed applications and the parent consent process are fashioned in ways that really protect privacy and ensure that parents can make informed decisions about their children?

Ms. SLAUGHTER. Thank you for the question, Senator.

Senator MARKEY. And I know you just had a baby 2 weeks ago.

Ms. SLAUGHTER. I did. I did.

Senator MARKEY. So thank you—thank you for being here in such good form.

Ms. SLAUGHTER. Well, on behalf of my baby and my other children, as a parent, this is an issue that's really important to me. You know, my 5-year-old learned to use a tablet very early, so early that when he would go to a TV screen, he would try to swipe across it to get it to turn on. And that's great in some ways, he's gotten important skills and learned important things. But I do very much share the concern about addictive technology and making sure that children, in particular, are protected. And so I think COPPA provides the Commission with very important tools that should be enforced to their fullest extent so that children who don't really have the ability to look out for themselves are appropriately protected.

Senator MARKEY. Great. And, you know, the hearing yesterday with Mark Zuckerberg really is triggered by the Consent Decree by Facebook with the Federal Trade Commission in 2011. And that Consent Decree really put Facebook on privacy probation, you know, for the last 7 years. And they were violative of that Consent Decree.

So the Federal Trade Commission plays a big, big role in protecting privacy. And so, from my perspective, I'm just wondering

how you feel about the need to put stronger protections on the books, not just for adults, but for kids as well?

Ms. SLAUGHTER. Thank you, Senator. I want to, as I said earlier, be very careful talking about the Facebook case in particular because, as you've noted, there was a Consent Decree, and the Commission has confirmed an open investigation into it and into Facebook. I don't want to prejudice that investigation or the results of that investigation in any way. I will just say, as a general matter, it is important for the Commission to enforce privacy commitments and privacy rules vigorously.

Senator MARKEY. Great.

OK. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Markey.

And the Senator from Massachusetts and I have a different, slightly different, view about how to deal with the issue of net neutrality, and I believe the only way is for—ultimately, to settle the issue of net neutrality is for Congress to come up with a bipartisan legislative solution. And so just as a follow-up to his line of questioning, would you work with us? Do you agree that Congress should work to reach a bipartisan legislative solution on this issue?

Ms. SLAUGHTER. Thank you, Senator, for the question. I have had the privilege for many years of trying to work on bipartisan legislative solutions here in Congress. I think if I'm lucky enough to be confirmed to the FTC, my role would be slightly different. I respect the role of Congress in developing consensus where it exists and passing new statutes. At the Commission, my role would really be to enforce the law as it's written today and to work with my fellow Commissioners and the staff at the agency to come back to you with recommendations for how the law might be changed. So you have my commitment to do that.

The CHAIRMAN. OK. Well, I think the ambiguity in the law and the courts and everywhere else and the agency, it really points the need for Congress to set clear rules of the road on this issue.

But Senator Inhofe is up next.

**STATEMENT OF HON. JIM INHOFE,
U.S. SENATOR FROM OKLAHOMA**

Senator INHOFE. Thank you, Mr. Chairman.

So that the—I think our witnesses all realize that we have a little bit of a problem, it seems to be a problem every week, and that is that we have this Committee and the Environment and Public Works Committee with nine members in common, and they always meet at the same time. So that's the reason you don't have a full house now, but I can assure you that they are paying attention.

And by the way, I enjoyed our visit, Ms. Slaughter. I'm just—I'm so proud of you being here with that little tiny baby. Hold that little baby up.

[Laughter.]

Senator INHOFE. Isn't that—oh, we can't see the pink ribbon.

[Laughter.]

Senator INHOFE. There it is. That's good. That's good. Yes.

I told Ms. Slaughter that my wife and I have been married 58 years, and we have 28 kids and grandkids, and you now have three

children. You need to start now and have a fourth child because the math doesn't work unless you start with four.

[Laughter.]

Senator INHOFE. All right. Let me just say something about the witnesses who are here, or the nominees, who are here today. I'm going to support all three of you, and I think that there's a—for a different reason than maybe some of the others, and that is I like to see them coming from different perspectives.

Now, Patrick, you know everything there is to know on this issue because of the background that you have and the time that you've spent.

And, of course, Ms. Schultz, you come from the private sector. You know some of the problems you get from the bureaucracy, and you can address those.

And, of course, Ms. Slaughter, you have extensive background, of course, with Chuck Schumer and the others.

So I will look forward to supporting all three of you. Let me just real quickly run over some questions and then go back to the other committee meeting.

Patrick, as a member of the Board, how would you facilitate collaboration with other Board members to expedite decisionmaking in these types of cases? And you've been around that for a long time. What are your ideas?

Mr. FUCHS. Thank you for the question, Senator Inhofe. I think the Chairman's legislation had authority for a majority of Board members to meet on pending matters subject to appropriate disclosure rules, and I think that authority is really helpful for Board members coming together and collaborating. I think generally on the theme of making decisions expeditiously, the Board recently changed their ex parte rules to take in information more quickly and more comprehensively from stakeholders, and I think taking in that information and then using that Section 5 authority, that meeting authority, to collaborate with Board members would be really helpful for building consensus and coming to resolution on issues.

Senator INHOFE. Uh-huh. That's good.

And, Ms. Schultz, with your private sector experience dealing with sometimes competing regulations, how would you bring that experience to your work as a member of the Surface Transportation Board?

Ms. SCHULTZ. Sure. So in my role at SEPTA, I'm currently in the Corporate Division and tasked with a number of construction projects, including the rebuilding of a railroad line from Elwyn to Wawa that's about 3.5 miles. And part of what I've been working on with that project is compliance with local, State, and Federal laws, including, you know, stormwater as well as working with the Pennsylvania Public Utility Commission for grade crossings.

So I am very much familiar with the overlap between local, State, and Federal laws. And I think the perspective that I would bring to the Board are the challenges that working within all those different laws sometimes presents to construction projects.

Senator INHOFE. Yes. Yes, and I agree with that. Good. Good.

Ms. Slaughter, you're fully familiar with all of the tools that are available to you, as a Federal Trade Commissioner. And is there

anything you could talk about in how you can better use the tools to promote fair competition? Because the tools have been there. There is some criticism as to, have they really been utilized properly? Do you have any ideas on that?

Ms. SLAUGHTER. Thank you, Senator, for the question. And thank you for your guidance about family life, too. I'm very, very lucky to have such a supportive husband and wonderful father in Justin over there with the baby, so he deserves a lot of credit.

In response to your question, I am particularly interested in merger retrospectives, an idea Mr. Simons has talked about. I want to take a look at what has been done before and how the Commission has processed mergers in the past so that we can learn lessons about what might be done differently going forward. I think that would be a very valuable tool.

Senator INHOFE. Yes. Well, that's good.

Well, I appreciate it very much, and I look forward to working with all three of you.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Inhofe.

Senator Heller.

**STATEMENT OF HON. DEAN HELLER,
U.S. SENATOR FROM NEVADA**

Senator HELLER. Mr. Chairman, thank you.

And to the witnesses that are here, congratulations to all three of you.

And to Ms. Slaughter, I'll probably be asking most of my questions to the other two, so you can enjoy yourself for a few minutes, but I do want to congratulate you and welcome you to the cause.

But I do want to talk to those who are looking at the Surface Transportation Board nominees, and I want to piggyback a little bit on what my colleague from Nevada said on the other side of the aisle when it comes to railroads and freeways.

We have a new designated monument in the state of Nevada. Are you familiar with the laws and regulations that would allow you or not allow you to build a new freeway or railroad through a monument?

Mr. FUCHS. Thank you, Senator. I'm generally familiar with the environmental laws applicable to the Board.

Senator HELLER. So the question, the follow-up question, would be, Can you build a railroad or a freeway through a newly designated monument?

Mr. FUCHS. Senator, whenever there is a rail construction application pending before the Board, depending on who is the lead agency or if the Board is a cooperating agency, the Board has to thoroughly consider the impacts on the human and natural environment, and it has very wide authority to impose mitigation conditions as well as to disapprove applications if anything is inconsistent with applicable law.

Senator HELLER. So are you saying that there is a chance that you could build a railroad or a freeway through a monument?

Mr. FUCHS. I think such an alignment would have a very difficult time in an Environmental Impact Statement.

Senator HELLER. Do you agree, Ms. Schultz?

Ms. SCHULTZ. Senator, I'm not quite as familiar with the law surrounding a historical monument. What I can say here today is that I would promise to become much more familiar with those laws and review them and adjudicate them in a fair and impartial manner.

Senator HELLER. According to my colleague on the other side, I think you both answered affirmative that you're familiar with the proposed rail alignment and the application for this particular railroad for the purpose of hauling nuclear waste?

Mr. FUCHS. Yes, Senator, I'm familiar with the application for the Caliente line.

Senator HELLER. I'm looking at the new proposal now that goes around the proposed monument. I have a comment and a quote here from a gentleman by the name of Bob Halstead. He is the Executive Director for the State of Nevada in the Office of Nuclear Projects, and this is what he says: The recent designation of the Basin and Range National Monument shown in this attached map, which I'm happy to share with you, and the related conservation easement for the area around what's quoted as the city land sculpture installed in Garden Valley would make future considerations of the Caliente route extremely difficult. Ranchers would likely file legal challenges against the Caliente route, adverse impacts on grazing allotments, and water resources.

So in the process of taking a look at these proposed rail alignments, do you take into consideration or anticipate that you would take into consideration States' concerns for that designation?

Mr. FUCHS. Absolutely, Senator. The Board's environmental review process has extensive public participation protocols. When the Board was initially considering the application in the 2008 to 2010 range, I think it actually went out to Nevada to host a public hearing. So I would expect a robust public participation opportunity.

Ms. SCHULTZ. I concur with Patrick's statement, Senator. I would—certainly, the input from folks within the region as well as stakeholders would be something that the Board would certainly have to take under consideration in rendering its decision.

Senator HELLER. On the proposed application, in 2017, the President put in his budget, the application to renew the license for Yucca Mountain, and in 2017 I took that out of the budget. In 2018, the President put it back in his budget, and this year I took it back out. I'm going to guess, Mr. Chairman, in 2019, he puts it back in, and in 2019, I take it out.

At what point do you move forward with a proposed application like this if the licensing agreement is not available or proposed for Yucca Mountain?

Mr. FUCHS. Thank you for the question, Senator. I agree with you. I think the broader issue is the DOE application before the Nuclear Regulatory Commission, and the Caliente line is just one part of that, which is why the Board was a cooperating agency, whereas DOE was the lead agency on the Environmental Impact Statement. So I would say that it's just one aspect of the proposal. And typically, as I understand it, it's not the Board's practice to get out in front of a broader issue where it's not the lead agency.

Senator HELLER. And that's the question and the answer that you gave me yesterday when you were in the office, and I do appreciate that because I do want to make sure that the Board does not

get in front of this application process because I anticipate, as long as I'm here, that we will slow that application process down or, in fact, continue to remove it from the budget.

Ms. Schultz, do you agree?

Ms. SCHULTZ. Senator, what I—what I can say right now is that I would review the license application in a fair and impartial manner should it—should it come before—be revisited before the Board again.

Senator HELLER. OK.

Mr. Chairman.

The CHAIRMAN. Thank you, Senator Heller.

Senator Peters.

**STATEMENT OF HON. GARY PETERS,
U.S. SENATOR FROM MICHIGAN**

Senator PETERS. Thank you, Mr. Chairman.

And to the three witnesses, welcome, welcome to the Committee.

The first question is to Mr. Fuchs and Ms. Schultz. In March, the Alliance for Automotive Manufacturers sent a letter to the Surface Transportation Board about a very serious service issue impacting the transportation of finished vehicles.

According to the alliance, manufacturers continue to experience a very serious problem with rail service that is attributable to a slowdown in the rail network. The service problem means that there are substantial delays in getting vehicles to consumers. It also means that manufacturers have incurred significant costs to transport and to store those vehicles. There is even some concern that some assembly plants may have to temporarily shut down as a result of the service issues. The Auto Alliance believes that the railroads really haven't come up with an adequate plan.

So my question to each of you is, What role can the STB play to help resolve these service issues that are having a significant impact on the auto industry? And would you be committed to working on this issue?

Ms. Schultz, we'll start with you.

Ms. SCHULTZ. Thank you for the question, Senator. Yes. First I would like to take a moment to recognize that service delays have a significant economic impact on the folks that are relying upon railroads to carry those goods. I can say today that I would commit my attention to these very important matters and to work very closely with the Board's staff that partners with stakeholders to address these issues.

Senator PETERS. Thank you.

Mr. Fuchs.

Mr. FUCHS. Thank you, Senator Peters. I read the Auto Alliance letter, and I certainly saw their concerns about the serious shortage of bi-level and tri-level cars and missed car orders and service delays. I think the first step for the Board is always to shine a light, which is why I think the Board has requested responses from the railroads about locomotive power and other issues. It's important to analyze and scrutinize that data. And the Board has other tools at its disposal including investigative authority, and it's launching informal meetings on its directed service regulations to

see whether or not those are adequate for addressing service issues.

And so certainly, if confirmed, I would approach the position with an understanding of the importance of strong rail service to the economy, and I would also stay mindful of the fact that Board actions can have broader effects on the network.

Senator PETERS. And another question to both of you as well. Earlier this year, a rate case before the Surface Transportation Board found in favor of a Michigan-based company, Consumers Energy. This is the first time—my understanding at least, it's the first time in many years that the Board had actually found in favor of a shipper in a rate case. And in order to address whether the shipper was facing unreasonably high rates, the Board goes through, as you're well aware, a very elaborate cost and time-intensive test, and this can be extremely challenging for many, many shippers. And while Consumers Energy prevailed in this case, there are other shippers that face really some significant challenges to bring these cases forward despite the impact that it's having on their business.

So my question to the two of you, Do you think this is an issue that the Board should address? And what are some ways that the Board can simplify this process for shippers that have these kinds of concerns?

We'll start with Mr. Fuchs this time, we'll go the other way.

Mr. FUCHS. Thank you, Senator. And I think that there are ongoing concerns, among many, that the current rate case processes available to shippers are unduly costly and complex. And I think that's the reason why the Board has issued an Advance Notice of Proposed Rulemaking on taking a look at whether or not they can make modifications to their existing alternative methodologies for very small shippers. They have convened an internal rate reform task force to take an expansive look at alternative methodologies and bring in some of the Board's expert legal and economic staff. And I think they're always evaluating whether or not there are alternative dispute mechanisms, whether it's arbitration or another means, that can be emphasized and used without the need for costly litigation.

So certainly, if confirmed, I would collaborate with other Board members and work hard to see if there's a better way to review rates consistent with sound principles of economics and the Board's statutory authorities.

Senator PETERS. I appreciate that.

Ms. Schultz.

Ms. SCHULTZ. I concur with Patrick's statements. I'm aware that these cases are very time-consuming and very costly and they're challenging. And I know, to Patrick's point, the Board does have an internal task force that's looking into these important issues, and I look forward to addressing them in a timely fashion if confirmed.

Senator PETERS. Great. I appreciate both of your commitment to both of these issues. Thank you so much.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Peters.

Senator Blunt.

**STATEMENT OF HON. ROY BLUNT,
U.S. SENATOR FROM MISSOURI**

Senator BLUNT. Thank you, Mr. Chairman.

Thank all three of you for being willing to serve. And I appreciate what can happen and needs to happen on both of these jobs.

Ms. Slaughter, yesterday, we had a joint hearing with the Judiciary on Facebook, which turned into a little bigger discussion than that about generally Facebook and its competitors and similar organizations. There seemed to be a number of FTC discussions and one or two guidelines set out, but my impression is that there hasn't been a lot of follow up from FTC or the Congress on whether those guidelines were being viewed seriously. I wonder if you have any comments to make about the FTC role in both consumers understanding what happens when they sign up for a free service like that and organizations like that paying attention to what the FCC says they should be paying attention to?

Ms. SLAUGHTER. Thank you, Senator, for the question. I want to be very careful in what I say about Facebook specifically because, as I'm sure you're aware, the Commission has confirmed an open investigation into Facebook, and I don't want to prejudice that investigation in any way.

As a general matter, without speaking specifically about any particular company, I think the Commission has a very important role to play in policing allegations of either anticompetitive conduct or unfair and deceptive trade practices. That's a role, an obligation, that I take very seriously. If I'm confirmed, I would commit to you that I would continue to make that a priority.

Senator BLUNT. Well, I did notice in one of the questions to Mr. Zuckerberg about whether he had a monopoly or not, he said it didn't feel like a monopoly. But as these things—these organizations have grown in such an incredible way of things like Facebook and Amazon, and I'm sure they didn't set out intending to have the market power they have even in probably their greatest anticipation of what could possibly happen. And it's an issue that I think we need to be sure that we're paying attention to, and that's going to be an important part, I think, of the next—the short-term future at least at FTC. And who knows during the whole time you're there where, what direction, that might take us?

Surface transportation, obviously an area where when I spoke to the Missouri General Assembly when we were on break last week—and, you know, Missouri is right in the middle of the country and where lots of things come together—and I said, you know, location is really one of our great advantages, and that would be true for our state, but it's also true for the country. You know, Churchill once said, "there is no country more fortunately located than the United States of America," and our opportunities all over the world benefit from that. But whether we make the most of that or don't is largely going to be up to things like the regulatory environment at Surface Transportation.

Mr. Fuchs, you've been particularly helpful on this Committee of trying to find ways that we could expedite those things that needed to be expedited and still continue to protect those things that need to be protected, you know, the things like you're going to put a railroad bridge right back where a railroad bridge was, that should be

a different process than what you might go through otherwise. And I wonder if you have any comments on what you've seen happen in our Committee as we try to establish some principles that would be important principles for surface transportation?

Mr. FUCHS. Thank you for the question, Senator. I think that your TRAIN Act, which was included in the FAST Act, made several important changes for helping expedite the deployment of railroad infrastructure while staying cognizant of the important protections. And so, there's an ongoing Section 106 exemption process that FRA and the Advisory Council on Historic Preservation are working on. It had provisions for the Federal Railroad Administration to streamline the NEPA process, and it had a number of exemptions for 4(f) historic preservation requirements while staying mindful of the fact of things that are truly historic, protecting them.

But for the example that you cited, some of the routine construction activities, providing a little bit more freedom to improve railroad infrastructure, which has its own benefits for safety and the economy, while staying cognizant of the broader environmental framework. So I think that's very helpful, and certainly it's kind of an experience and some lessons that I would take with me to the Board, if confirmed.

Senator BLUNT. Well, thank you.

And, Ms. Schultz, thank you again for being willing to serve.

I may have more questions, Mr. Chairman, for the record, but that's all I have today.

The CHAIRMAN. Thank you, Senator Blunt.

I just have a couple of wrap-up questions here. I understand we may have one member on the way.

Just as a sort of again general question, but—and this would go to our STB “noms,” but another important aspect of the STB Reauthorization Act was to further promote collaboration among Board members by allowing them to talk with one another about official business matters with proper disclosure of such discussions. So I'll direct this to both of you: If confirmed, do you commit to promoting collaboration among the Board members?

Ms. SCHULTZ. Yes, Senator.

Mr. FUCHS. Yes, Senator.

The CHAIRMAN. And then I want to ask the question, Ms. Slaughter, that has to do with these are kind of, I mean, difficult issues, but some have criticized the FTC for challenging practices as unfair under the FTC Act where the consumer injury seems speculative or otherwise not truly substantial, particularly in the context of privacy and data security. What factors do you think the FTC should consider in determining whether an act or practice causes or is likely to cause substantial injury, injury to consumers?

Ms. SLAUGHTER. Thank you, Senator, for the question. This is a difficult issue, particularly in the area, as you know, of data privacy and security, where if one's data is stolen, for example, one can know that it has been used to perpetrate identity fraud or identity theft, but one might not know that it hasn't been used to do that. I think the interest of this Committee and the American people in recent data breaches and issues shows that the American people really perceive data theft and data breach as a strong viola-

tion of their personal data. So I think that's an important thing to consider.

The Commission needs to work carefully, I believe, to make sure, that when we're looking at injury, there is substantial injury and that the harm isn't outweighed by any countervailing benefits. That's sort of been the principle of the Commission for a long time. And so, if confirmed, those are the principles I would continue to look at.

The CHAIRMAN. Do you have any concerns about the FTC's case selection and enforcement priorities in this area?

Ms. SLAUGHTER. Sitting here today, I don't. However, if I am lucky enough to be confirmed, I would want to work with the staff and my fellow Commissioners to make sure we're bringing all the appropriate cases that we can within the bounds of the law as written today.

The CHAIRMAN. And do you think the FTC ought to provide more detailed guidance regarding its interpretation of the FTC Act?

Ms. SLAUGHTER. I think as a general matter, guidance to markets and to consumers is always a good thing. Transparency is generally helpful. I don't have a view at this moment of specific areas where that should be done and hasn't been done, but it's a principle that I support as a general matter.

The CHAIRMAN. Yes.

Is anybody coming?

VOICE. Huh-uh.

The CHAIRMAN. Oh, good. All right.

Well, look, I appreciate again all of you being here. And we're grateful for your service. I do have some—unanimous consent—I want to include in the record several letters. We have a letter from the fertilizer and agribusiness community signed by 21 organizations in support of both Patrick Fuchs and Michelle Schultz's nominations, a letter from 22 additional organizations in support of both Patrick Fuchs and Michelle Schultz's nominations, a letter of support from the Freight Rail Customer Alliance in support of Patrick Fuchs' nomination, a letter from the Rail Supply Institute in support of Patrick Fuchs' nomination, a letter from International Paper in support of both Patrick Fuchs' and Michelle Schultz's nominations.

[The information referred to follows:]

March 12, 2018

Hon. JOHN THUNE,
Chairman,
Committee on Commerce, Science, and
Transportation,
Washington, DC.

Hon. DEB FISCHER,
Chair,
Subcommittee on Surface
Transportation,
Washington, DC.

Hon. BILL NELSON,
Ranking Member,
Committee on Commerce, Science, and
Transportation,
Washington, DC.

Hon. GARY PETERS,
Ranking Member,
Subcommittee on Surface
Transportation,
Washington, DC.

Re: Surface Transportation Board (STB) Nominees; support for Mr. Patrick Fuchs
and Ms. Michelle Schultz

Dear Chairman Thune, Ranking Member Nelson, Subcommittee Chair Fischer and
Ranking Member Peters:

On behalf of our members in the fertilizer and agribusiness community, we write
to express our strong support for the nominations of Mr. Patrick Fuchs and Ms.
Michelle Schultz to be Members of the Surface Transportation Board (STB).

The STB provides critical rail marketplace oversight for shippers in the agri-
culture sector, many of which are dependent upon a single railroad for service.
STB's current Commissioners have made great progress implementing the *STB Re-
authorization Act of 2015* (Public Law No. 114-110). This law and their efforts are
helping the agency better reflect the modern day rail marketplace. STB moderniza-
tion, including but not limited to the *STB Reauthorization Act of 2015*, will help
farmers, agribusinesses, and manufacturers be more competitive in the global mar-
ketplace.

Both nominees have the knowledge and expertise to serve as Board Members and
to lead and advance efforts to modernize the Agency, which is critical to railroads,
shippers, and the American economy. It has been too long since the STB was fully
staffed. We urge you to move as quickly as possible to confirm Mr. Fuchs and Ms.
Schultz.

Thank you for your consideration of our views. We look forward to working with
you in support of the agriculture community and our great nation. Should you need
further information, please contact Justin Louchheim at The Fertilizer Institute at
202-515-2718 or jlouchheim@tfi.org or Richard Gupton at the Agricultural Retailers
Association at 202-595-1699 or Richard@aradc.org.

Sincerely,

The Fertilizer Institute
Agribusiness Council of Indiana
Far West Agribusiness Association
Florida Fertilizer & Agrichemical Association
Michigan Agri-Business Association
Minnesota Crop Production Retailers
New York State Agribusiness Association
Oklahoma Grain and Feed Association
South Dakota Agri-Business Association
Western Plant Health Association
Wyoming Wheat Marketing Commission

Agricultural Retailers Association
Alabama Agribusiness Council
Ohio AgriBusiness Association
Illinois Fertilizer and Chemical Association
Michigan Bean Shippers
Nebraska Agri-Business Association
North Dakota Agricultural Association
Rocky Mountain Agribusiness Association
Texas Ag Industries Association
Wyoming Ag-Business Association

Cc: Members of the Senate Committee on Commerce, Science, and Transportation

April 10, 2018

Hon. JOHN THUNE,
Chairman,
Commerce, Science, and Transportation
Committee,
U.S. Senate
Washington, DC.

Hon. BILL NELSON,
Ranking Member,
Commerce, Science, and Transportation
Committee,
U.S. Senate
Washington, DC.

Dear Chairman Thune and Ranking Member Nelson:

The undersigned groups, whose members consist of diverse range of agricultural
producers and agribusinesses, strongly support and respectfully urge the Committee
on Commerce, Science and Transportation to recommend to the U.S. Senate the con-

firmation of *Patrick J. Fuchs* and *Michelle A. Schulz* to serve as members of the Surface Transportation Board (STB).

America's transportation infrastructure—and the motor carriers, barges and railroads that operate on it—is a critical element of U.S. agriculture's world-class productivity and competitiveness, which contribute substantially to U.S. job creation and economic growth. Farmers, ranchers and agribusinesses depend on these transportation providers to move agricultural products from geographically diverse sources of production to domestic and export markets, as well as to provide critical farm inputs such as fertilizer, seed and agricultural chemicals to producers. Freight railroads account for about 24 percent of agricultural commodity shipment volumes.

The STB serves a vital role, given its charge to provide fair, objective and fact-based regulatory oversight of a freight rail industry that is exempt from U.S. anti-trust law and now consists of only seven major Class I railroads—with two dominant in the West and two in the East. The STB is charged with taking a balanced approach—as it is required to do under existing law—in weighing the need for effective competition in the rail marketplace, with appropriate regulation where effective competition does not exist, while allowing railroads to earn sufficient revenues to maintain their infrastructure and a national rail system.

Unfortunately, the STB currently is hamstrung in its ability to act on several important proceedings given the lack of a full complement of commissioners. That is why we particularly appreciate the Committee scheduling a hearing on April 11 to consider these two nominees, and urge their speedy confirmation by the full Senate.

Mr. Fuchs, whose nomination we strongly recommended earlier to President Trump, is superbly qualified to serve as a member of the STB, particularly given his background as senior professional staff member for surface transportation and merchant marine for the Senate Commerce, Science and Transportation Committee. As you know, he was instrumental in working with the Committee in helping draft and coordinating enactment of the first reauthorization bill since the STB's establishment in 1996 as the successor to the Interstate Commerce Commission. He also represented the Senate on rail and hazardous materials issues during the successful 2015 enactment of the Fixing America's Surface Transportation (FAST) Act, the five-year, \$305 billion surface transportation bill. He also helped draft and successfully negotiate enactment of legislation to avoid a disruption of the Nation's freight rail network by setting a new, realistic and achievable deadline for major carriers to install positive train control safety technology.

Mr. Fuchs has impeccable credentials for this key position. He has a keen intellect and a well-deserved reputation for integrity, thoroughness, objectivity and impartiality. He also has a passion for freight rail policy, and for bringing facts and well-grounded analysis to bear on regulatory policymaking. Those qualities served him well while previously serving as an analyst and Presidential Management Fellow for rail, maritime and housing issues at the White House Office of Management and Budget. While at OMB, he led government-wide reviews and initiatives that resulted in more than \$5 billion in cost savings through reductions in unnecessary paperwork requirements for truck drivers, amending overly burdensome train regulations and advancing more cost-effective alternatives for crude oil and ethanol transportation safety.

Mr. Fuchs also has served as an economic analyst on foreign service assignments at the U.S. Embassy in The Hague, and in research and analysis positions with the U.S. Government Accountability Office and the National Center for Freight and Infrastructure Research and Education.

While we are less familiar with Ms. Schultz, we are impressed by her credentials and work as deputy general counsel at the Southeastern Pennsylvania Transportation Authority (SEPTA), the Nation's sixth largest public transit agency in terms of ridership. In her current role, she has focused on procurement, major capital projects and commuter-rail regulation, and previously served as SEPTA's director of legislative affairs. She, too, has an impressive background, having clerked for the Superior Court of Pennsylvania and the U.S. Bankruptcy Court for the Eastern District of Pennsylvania. She received an undergraduate degree in English from Penn State University, and a law degree from the Widener University School of Law in Chester, Pa., and a master of governmental administration from the University of Pennsylvania.

We greatly appreciate your consideration of these two nominees to serve as members of the STB.

Sincerely,

Agricultural Retailers Association
Agriculture Transportation Coalition
American Farm Bureau Federation

Corn Refiners Association
 Growth Energy
 Institute of Shortening and Edible Oils
 Meat Import Council of America
 National Association of Wheat Growers
 National Cattlemen's Beef Association
 National Corn Growers Association
 National Cotton Council
 National Council of Farmer Cooperatives
 National Grain and Feed Association
 National Milk Producers Federation
 National Oilseed Processors Association
 National Pasta Association
 North American Meat Institute
 North American Millers' Association
 Pet Food Institute
 The Fertilizer Institute
 U.S. Hide, Skin and Leather Association

cc: Honorable Sen. Mitch McConnell, Senate Majority Leader

Honorable Sen. Deb Fischer, Chairman, Subcommittee on Surface Transportation and Merchant Marine Infrastructure, Safety and Security; Senate Committee on Commerce, Science, and Transportation

The Honorable Cory Booker, Ranking Member, Subcommittee on Surface Transportation and Merchant Marine Infrastructure, Safety and Security; Senate Committee on Commerce, Science, and Transportation

FREIGHT RAIL CUSTOMER ALLIANCE
 May 23, 2017

Hon. DONALD J. TRUMP,
 The White House,
 Washington, DC.

Dear President Trump:

The Freight Rail Customer Alliance (FRCA)—an umbrella organization including trade associations representing more than 3,500 manufacturing, agriculture and alternative fuels companies, electric utilities, and their customers—strongly supports the nomination of Mr. Patrick Fuchs from Wisconsin to serve as a Member of the Surface Transportation Board (STB or Board).

The *STB Reauthorization Act of 2015 (Act)*, P.L. 114–110, was signed into law in December 2015 after passing the U.S. Senate by Unanimous Consent and clearing the U.S. House of Representatives with strong bi-partisan support.

The *Act* marks the first time since 1998 that the Board was reauthorized. The reauthorizing law: (1) provides much-needed reforms to the Board's process to address numerous historical shortcomings experienced by the Board and industry stakeholders; (2) improves the Board's transparency; (3) helps the Board to operate more expeditiously and efficiently; and (4) better enables the Board to strike a more equitable balance among the interests of its diverse stakeholders. The *Act* also expands the size of the Board from three Members to five Members to allow the agency to become more functional and collaborative. The *Act* specifies that no more than three Members may be of the same political party. As the Board currently has two Democratic Members and only one Republican, your Administration has the opportunity to fill both vacant seats with Republicans.

Selecting the right Republican nominees to serve in your Administration, including these two Board Members, is an important decision. Our country's ever-growing reliance on freight rail commands the Board to provide necessary and effective oversight, especially considering only four Class I railroads control 90 percent of our Nation's freight rail traffic. Freight rail is a vital component of our Nation's economy. Farmers rely on rail both for fertilizer to grow their crops and to deliver those crops to market, and coal-burning utilities and propane suppliers rely on rail to receive the fuel they need to serve their customers. Freight rail also enhances the growth of our economy and our global competitiveness.

Mr. Fuchs is uniquely qualified to be nominated to serve as a Member of the Board. He was intimately involved with the crafting and passage of the *Act* in his role as a key committee staff member to Senator John Thune (R-SD), Chairman of the Senate Commerce, Science and Transportation Committee. He helped to achieve

the consensus support among diverse stakeholders, and he has the knowledge, background, and experience to see that the law is successfully implemented.

Along with implementing the *Act*, there are several major pending proceedings at the Board—some going back decades—that involve the most substantive issues of great importance to the Board, shippers, railroads, and the general public. These matters require resolution to reflect today's market conditions and freight rail demands.

Mr. Fuchs's noteworthy service on Capitol Hill is further complimented by his prior experience as an analyst with the White House Office of Management and Budget (OMB). There, Mr. Fuchs was recognized with the Special Achievement Award in 2014 for "tireless efforts and outstanding work in improving regulatory outcomes as well as key and timely contributions in areas outside of his normal areas of responsibility" and in 2013 for "imagination and effectiveness in improving regulatory outcomes and processes." His skills and achievements demonstrated at the OMB promise to serve your Administration and the Board well in helping to ensure government oversight is equitable and effective for all affected stakeholders.

The matters before the Board are technical, complex, and challenging. Mr. Fuchs's notable research assistantships and internships at the Federal and local government levels—the Governmental Accountability Office, National Center for Freight and Infrastructure Research and Education, and the City of Middleton WI—provided him with valuable insights and perspectives that will be helpful in this regard if serving in your Administration as a Board Member.

Again, FRCA strongly views Mr. Fuchs as the appropriate Republican nominee for STB Member to promote the national interest in preserving an efficient and fair freight rail system. Our experience working with Mr. Fuchs has been above par, and we believe that he will excel at being impartial and fair with the ultimate goal of enhancing our Nation's transportation system.

Thank you for your consideration.

Sincerely,

ANN WARNER,
Executive Director.

About FRCA

An umbrella membership organization, the Freight Rail Customer Alliance (FRCA) includes large trade associations representing more than 3,500 electric utility, agriculture, and alternative fuel companies and their consumers. Through a growing coalition of industries and associations, the mission of FRCA is to obtain changes in Federal law and policy that will provide all freight shippers with reliable rail service at competitive prices. www.railvoices.org

RAILWAY SUPPLY INSTITUTE
Washington, DC, March 26, 2018

Via e-mail

Senator JOHN THUNE,
Chairman,
Senate Commerce, Science, and Transportation Committee.

Senator BILL NELSON,
Ranking Member,
Senate Commerce, Science, and Transportation Committee.

Re: Surface Transportation Board Nominees and in support of Mr. Patrick Fuchs

Dear Mr. Chairman and Mr. Ranking Member,

On behalf of our members at the Railway Supply Institute (RSI), I write to strongly support the President's nomination of Senate Commerce Committee senior professional staff member Patrick Fuchs to the Surface Transportation Board (STB). The STB serves a vital role for the entire \$28 billion a year rail supply industry and the agency has historically provided a balanced regulatory environment. We believe Mr. Fuchs will continue to uphold these standards at the highest level.

Mr. Fuchs has unmatched expertise in rail transportation matters in both the regulatory and legislative spheres. His work in the Office of Management and Budget's Office of Information and Regulatory Affairs and as the rail subject policy lead for Senator Thune provided him with the detailed knowledge of the rail and shipping industry that will serve him very well in this new role. In addition to his subject matter expertise, we have found that Mr. Fuchs possess outstanding integrity and impartiality that will make him an excellent board member.

Finally, we also support the President's nomination to make Acting Chairman Ann Begeman permanent Chairman of the STB.

Thank you for your consideration of our views. We look forward to working with you in pursuit of policies that support the rail supply community and our great nation. Should you need further information, please contact Nicole Brewin, Vice President of Government Affairs at, brewin@rsiweb.org or at, (202) 347-4664.

Sincerely,

E. MICHAEL O'MALLEY,
President,

CC: Members of the Senate Commerce, Science and Transportation Committee

INTERNATIONAL PAPER
Washington, DC, April 10, 2018

Chairman JOHN THUNE,
Senate Commerce, Science, and Transportation Committee,
Washington, DC.

Dear Chairman Thune,

International Paper is proud to support U.S. Surface Transportation Board nominees Patrick Fuchs and Michelle Shultz that will receive consideration by the Senate's Commerce, Science and Transportation Committee on April 11, 2018. International Paper spends \$2 billion annually on U.S. freight transportation and we are the largest shipper of railroad boxcars in the Nation. As you would expect, ensuring the safe, reliable and efficient movement of our products to customers in the U.S. and around the world is a top priority.

A vibrant freight railroad network that supports a robust U.S. manufacturing industry is a critical tool to grow the economy. Railroads are a strategic supplier to manufacturers like International Paper and we are committed to working with them. However, the railroad market has changed significantly since the 1980 Staggers Act and maintaining a fully staffed Surface Transportation Board is critical to ensuring that businesses have access to a fair arbiter when challenges arise.

We have long advocated for STB nominees that understand the significant changes to the transportation marketplace in the past few decades so they can make fair decisions based on current market realities. International Paper strongly supports the nominations of Mr. Fuchs and Ms. Shultz because we believe they will take a balanced view of the rail marketplace in their critical decision-making work at the agency.

We urge the Senate Commerce Committee and the full Senate to act quickly and advance these Surface Transportation Board nominees so the agency can get back to its important work, which has slowed while it awaits more Board members. Please contact me or Julie Alsop at julie.alsop@ipaper.com with any questions.

Sincerely,

CHRIS KEULEMAN,
Vice President, Global Government Relations.

KENTUCKY COAL ASSOCIATION
Lexington, KY, April 11, 2018

Hon. JOHN THUNE,
Chairman,
Committee on Commerce, Science, and Transportation,
United States Senate,
Washington, DC.

Hon. BILL NELSON,
Ranking Member,
Committee on Commerce, Science, and Transportation,
United States Senate,
Washington, DC.

RE: Confirmation of Surface Transportation Board Nominations

Dear Chairman Thune and Ranking Member Nelson:

The Kentucky Coal Association strongly supports President Trump's nominations of Patrick Fuchs and Michelle Schultz to serve as members of the Surface Transpor-

tation Board (STB), as well as the selection of Ann Begeman to serve as STB Chairman. We urge the Senate Committee on Commerce, Science, and Transportation to confirm the nominees as quickly as possible.

KCA represents companies that mine over 80 percent of the coal produced in Kentucky and also represents more than 120 additional companies that support Kentucky's coal mining industry. Coal is vital to the economy of Kentucky and the Nation and our industry relies heavily on railroads to deliver reliable and affordable service in order to remain competitive in a global market.

The coal industry in Kentucky was devastated under policies set forth by the previous administration where coal production fell from 121 million tons of coal in 2008 to 42 million tons in 2017 . Other compounding factors such as increasing rail costs and service interruptions, especially in Eastern Kentucky, highlight the need of a fully staffed STB committed to enacting reforms that will increase access to competitive rail services. We believe this will also help streamline overly-bureaucratic procedures and improve the overall effectiveness of the Board.

The Kentucky Coal Association greatly appreciates your efforts in the confirmation of Mr. Fuchs and Ms. Shultz and the designation of Ms. Begeman as the Chairman.

Sincerely,

TYLER WHITE,
President,

Kentucky Coal Association.

The CHAIRMAN. So we want to try and process your nominations as quickly as possible, and so to the degree that you can get responses to written questions submitted so we can get them incorporated in the record as quickly as possible, that would be helpful. We would like to, during this work period, move forward and try and get these reported to the floor so we can get some of these important positions which have been vacant for way too long filled.

So thank you again for being here, and to your families. And with that, we will adjourn this hearing.

[Whereupon, at 11:35 a.m., the hearing was adjourned.]

A P P E N D I X

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN THUNE TO REBECCA JOY KELLY SLAUGHTER

Question 1. Do you believe the current FTC–DOJ Merger Guidelines are sufficiently stringent to protect against anticompetitive mergers? If not, what specifically would you change?

Answer. There has been bipartisan concern raised in recent years about increasing concentration in a variety of markets. As you note, the Better Deal agenda represents the Congressional Democrats’ proposal for legislative changes to antitrust law. If confirmed to the FTC, my role will be to enforce the laws as they are written today based on fact-specific inquiries in particular cases. The nominee to be the Chair of the FTC, Mr. Simons, has proposed merger retrospectives that will analyze whether the Commission’s past actions in merger review have had their intended effects on the promotion of competition. I strongly support Mr. Simons’s approach as a good first step in analyzing whether there are any changes that need to be made to how the FTC, in partnership with DOJ, approaches merger analysis.

Question 2. In the “A Better Deal” platform, Congressional Democrats mention specific industries for careful scrutiny and enforcement: airlines, telecom, beer, agriculture, and eyeglass industries. The resume you submitted to the Committee indicates that you contributed to the antitrust elements of the platform. Why did Congressional Democrats decide not to mention the tech sector as an industry in need of careful scrutiny and enforcement in its antitrust agenda when discussing industry-specific impacts?

Answer. In my capacity as a Senate staff member, I provided substantive and technical advice on the Better Deal platform, which represents the Congressional Democrats’ proposal for legislative changes to antitrust law. If confirmed, my role as an FTC Commissioner will be to enforce the laws as they are written today based on fact-specific inquiries in particular cases. Our antitrust laws are not industry specific; they do not exempt or excuse technology companies from enforcement. I believe the law must be applied fairly and without fear or favor to all industries within the FTC’s jurisdiction. As I noted in my testimony before the Committee, there are several areas within the broad universe of technology where markets are particularly concentrated, and sectors with high levels of concentration merit scrutiny because they are where anticompetitive conduct and effects may be more likely to occur. If confirmed, I will work with my fellow Commissioners and the expert staff at the agency to closely monitor heavily concentrated markets within our jurisdiction, including in the technology industry, and to investigate and enforce the law.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. ROY BLUNT TO REBECCA JOY KELLY SLAUGHTER

Question 1. Over the past few decades, access to increasingly large amounts of information has enabled growth in industry in just about every sector. Data has become a commodity, but I do not believe that American citizens understand the volume of data that is harvested from the digital ecosphere, or how valuable of a commodity their data has become. For this reason, some of the current industry data collection efforts concern me, including those efforts related to cross-device tracking.

In January 2017, the FTC issued a staff report which outlined benefits and concerns specific to cross-device tracking. If confirmed, will you direct the FTC to continue committing resources to analyze industry data collection methods?

Answer. Yes. Control over data, and related control over online advertising markets, may be an important factor in considering competition and consumer protection issues, because citizens (and their data) are often the product rather than the consumers. If confirmed, I will work with my fellow Commissioners and the expert staff at the Commission to ensure that our competition as well as our consumer pro-

tection efforts keep pace with technological innovations, including data issues, in rapidly changing markets.

Question 2. The Network Advertising Initiative (NAI) and Digital Advertising Alliance (DAA) are self-regulatory bodies that establish privacy practices across the digital advertising industry. In the past, the FTC has worked with these bodies to help provide transparency and privacy for consumers.

If confirmed, will you continue to work with the DAA and NAI to ensure that intra-industry guidance meets consumers' best interests?

Answer. Yes. I believe that constructive engagement and partnership with industry self-regulatory bodies can be an effective complement to the FTC's enforcement authority, helping to ensure best practices are adopted across industries.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JERRY MORAN TO
REBECCA JOY KELLY SLAUGHTER

Question 1. In 2016, Congress enacted the Better Online Ticket Sales (BOTS) Act to empower the FTC and state attorneys general to go after people who use computer programs—called “bots”—to seize up large portions of ticket inventories for live events, and re-sell them on the secondary market. Your work in Senator Schumer's office was critical to the development and progress of this law, and I appreciated your leadership on this issue. As you know, this committee voted unanimously to advance that legislation, to help our constituents access quality tickets at face value. However, laws are not effective unless they are enforced. We have provided the FTC with a tool, which we believe should be used rigorously to protect consumers. Should you be confirmed, will you commit to using this enforcement tool that Congress provided?

Answer. Yes, absolutely. Working on this issue with your office as a Senate staffer was both a privilege and a pleasure, and as a result of that work I am particularly invested in seeing the law enforced as intended. If confirmed, I look forward to continuing to work with you and your staff to ensure consumers are adequately protected from manipulation by bots.

Question 2. I am also a member of the Senate Appropriations Subcommittee that is responsible for the discretionary funding of the FTC. As you are likely aware, the White House's FY 2019 budget included \$309.7 million for the FTC, which is about \$3 million more than the enacted level for FY 2018. As Congress attempts to appropriate the necessary resources to the agency for the following Fiscal Year, do you have any recommendations for this committee and appropriators related to resources necessary to complete the agency's mission, including staff support?

Answer. At this point, I do not have any particular recommendations. However, if I am confirmed, I am committed to working with my fellow Commissioners and the expert staff at the agency to steward our allocated resources responsibly and to communicate where and how those resources could be enhanced or better tailored.

Question 3. This committee held a joint hearing with the Senate Judiciary Committee to discuss Facebook's data collection practices and how the company did or did not comply with a consent order that it reached with the FTC in 2011. While I understand that you will not be able to comment on an ongoing investigation, how do FTC enforcement actions that challenge the data security practices of companies impact the commission's ability to protect consumers?

Answer. Without commenting on any particular case, I will note that enforcement actions are a key tool for the Commission in carrying out its obligations to protect consumers.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. DAN SULLIVAN TO
REBECCA JOY KELLY SLAUGHTER

Question. Anticompetitive consolidation has been a hot topic recently, especially in regards to the enormous market capitalization of tech companies. Recent calculations value the four largest tech companies' capitalization at \$2.8 trillion dollars, which is a staggering 24 percent of the S&P 500 Top 50, close to the value of every stock traded on the Nasdaq in 2001, and to give a different perspective, approximately the same amount as France's current GDP. Press reports have also noted allegations of increased anti-competitive behavior by some of these companies. Is there a point at which these companies are simply too big from an antitrust standpoint?

Answer. Our law does not treat size alone as a basis for antitrust enforcement. However, size is often correlated with market share. Companies that acquire or maintain their size and market share through anticompetitive conduct are and must be subject to the scrutiny of our antitrust laws and enforcement agencies. If confirmed, I will work closely with my fellow Commissioners and the expert staff at the agency to ensure that we are carefully monitoring allegations of anticompetitive conduct and robustly enforcing our laws.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. AMY KLOBUCHAR TO
REBECCA JOY KELLY SLAUGHTER

Question 1. Recent data breaches at Facebook, Equifax, Uber and Yahoo have exposed the personal information of millions of Americans. While some companies have taken steps to improve their privacy practices, it is clear more must be done. These incidents raise important questions about protections for consumers and the long-term consequences of having personal information exposed online.

Ms. Slaughter, what tools does the Federal Trade Commission have to address breaches and could additional authority help protect consumers' information online?

Answer. Repeated, high-profile incidents of large scale data breaches are very concerning to me, both as a consumer and as a prospective Commissioner. When the same problem recurs again and again, it is clear that more must be done to deter future breaches. The agency's toolkit includes investigations and enforcement actions, engagement with consumers and industry stakeholders, and partnership with sister agencies in the Federal and state governments. If confirmed, I intend to work with my fellow Commissioners as well as the expert staff at the FTC to ensure that the Commission is doing all it can to protect consumers and to examine whether a request to Congress for additional tools is appropriate.

Question 2. Some pharmaceutical companies prevent generic drug companies from obtaining branded samples needed for testing generic equivalents. Some branded companies refuse to negotiate, or delay negotiations, with a generic company to reach Food and Drug Administration-mandated safety protocols. These tactics can delay the introduction of affordable generic drugs for years. That is why I, along with Senators Grassley, Leahy, and Lee, introduced the Creating and Restoring Equal Access to Equivalent Samples (CREATES) Act to provide a targeted solution to this problem.

Ms. Slaughter, do you believe that branded pharmaceutical companies withholding testing samples from generic drug companies can lead to consumer harm?

Answer. Access to affordable medications is critical to many Americans. I share your concern about practices that prevent or restrict affordable generic alternatives from entering the market, thereby harming consumers. I am familiar with your legislation, and, if confirmed, I look forward to working with my fellow Commissioners and the expert staff at the agency to identify areas where the Commission can appropriately act while Congress considers legislative changes.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. RICHARD BLUMENTHAL TO
REBECCA JOY KELLY SLAUGHTER

Question 1. What experience do you have working with State Attorneys General? What are your views regarding the Commission working with state law enforcement?

Answer. In my time at the Senate, I have found State Attorneys General to be an invaluable resource to both policy makers and enforcement agencies; they not only provide insight into troubling anticonsumer and anticompetitive practices they are seeing in their states, but they also serve as essential partners in law enforcement actions to address these practices. I firmly believe that the Commission needs to continue to work closely with State Attorneys General.

Question 2. In the Dodd-Frank Act of 2010, Congress gave the FTC extensive authority over the sale, servicing, and leasing of automobiles—charging it to protect consumers from abusive auto lending practices and granting it exclusive authority to draft rules governing unfair or deceptive acts or practices by automobile dealers.

Would you support the FTC using its rulemaking authority to rein in unfair or deceptive acts or practices by automobile dealers?

Answer. Yes, I believe the FTC should make full use of its authorities to rein in unfair or deceptive acts or practices by automobile dealers. If confirmed, I would support a careful review of current complaints and industry practices to determine what specific rules might be appropriate to protect consumers.

Question 3. More than 17 million Americans are the victims of identity theft every year. This problem seems to increase year over year as identity theft scams seem to get more sophisticated.

Three years ago, the FTC established IdentityTheft.gov. This site is supposed to be a one-stop shop for victims of identity theft where they can easily freeze credit across the big three credit reporting agencies, and recover their stolen identities.

This website's functionality is limited, however, because of what appears to be a lack of engagement by the credit bureaus to make the site what it should be.

How would you engage with credit bureaus to ensure IdentityTheft.gov has a comprehensive suite of easy to use tools allowing victims of identity theft to recover as quickly as possible, with as little stress as possible? What are your expectations with respect to the role the credit reporting agencies should play in making IdentityTheft.gov an effective one-stop shop for identity theft victims?

Answer. The idea of having a one-stop shop for victims of identity theft is an important one; the inability to figure out how to fix and address identity theft only adds insult to the injury identity theft victims have already suffered. However, a one-stop shop is only useful if it provides meaningful, effective, and comprehensive tools and information. I believe CRAs can and should engage and partner with the FTC to ensure the functionality of IdentityTheft.gov, and, if confirmed, I look forward to working with my fellow Commissioners and the expert staff at the agency to ensure they do so.

Question 4. Would you support FTC's jurisdiction be expanded to include non-profits and charities so that it can act more swiftly to prevent and stop illegal conduct in the nonprofit sector?

Answer. Abusive practices by charities and non-profits—which are granted special tax treatment because they are supposed to be dedicated to the public good—are particularly noxious. While of course the statutory reach of the FTC is a question for Congress to determine, I am generally supportive of ensuring that the Commission has the ability to go after bad actors masquerading as public interest organizations. If confirmed, I would be happy to work with my fellow Commissioners and with Congress to explore this issue further.

Question 5. Other Federal agencies charged with consumer protection make an array of data available on consumer complaints received. The FTC releases relatively very little data on companies receiving significant levels of complaints. Do you think the FTC should be more transparent about the complaints it receives?

Answer. As a general matter, I think more transparency is a good thing, provided the confidentiality of non-public investigations is not jeopardized, which could in turn hinder the Commission's important enforcement efforts.

Question 6. The Consumer Financial Protection Bureau was created in response to the 2008 financial crisis and Great Recession after it became clear that our financial sector needed far more oversight to prevent a disaster of that magnitude from happening ever again. The current Administration seems intent on gutting this agency that serves a critical role in protecting Americans from irresponsible financial institutions. Of course, the CFPB and the FTC complement each other in their protection of consumers. How do you envision the FTC's role in holding financial institutions accountable?

Answer. The FTC can and should partner with its sister agencies across the Federal government to ensure robust, coordinated, complementary enforcement of our Federal law. The FTC shares jurisdiction with the CFPB, but maintains an obligation to enforce matters within its purview to the fullest extent of the law.

Question 7. Other consumer protection agencies appear to be reducing the vigor of their enforcement work. In what way should this impact the priorities of the FTC?

Answer. I believe the FTC should prioritize work that will maximize its limited resources to return the most value for the American people. If there are areas of the Commission's jurisdiction that are being under-enforced by other agencies, the FTC should step in to fill the gaps where it can do so effectively.

Question 8. In the past, the FTC has cracked down on for-profit colleges and vocational programs with strong enforcement actions. However, we're seeing these institutions continue to defraud Americans. A study conducted by The Century Foundation found that 98 percent of complaints asking for student loan forgiveness alleging fraud by colleges were from students attending for-profit institutions. If confirmed, how will you protect Americans from being scammed by such institutions?

Answer. Institutions that take advantage of vulnerable students deserve heightened scrutiny. If confirmed, I would like to look into this issue further and ensure that the Commission's resources are being effectively used not only to punish wrongdoers but to deter others from taking their place.

Question 9. More than two of every three American households own a pet. The FTC has estimated they will spend \$10.2 billion on medications this year, of which more than \$5 billion require a prescription. It has been estimated that pet owners who can get a copy of their pet's prescription and shop around, could save 20 to 30 percent on branded medications and 50 percent when they purchase generics. This suggests that prescription portability can save pet owners billions of dollars every year—in addition to the savings in time and transportation if they can get those prescriptions filled while they are at the grocery store or pharmacy or delivered from an online pharmacy. Unlike with human medications, with our pets, the prescriber also dispenses the medication prescribed—setting up a conflict of interest whereby the prescriber is both a health care provider and a retailer.

In testimony in 2016, the FTC stated that “we believe that the greater prescription portability likely would enhance competition for the sale of pet medications and that consumers would benefit from this competition in the form of lower prices.” Do you agree with this conclusion?

Answer. As the owner of two aging dogs, I personally understand how important and expensive pet medications can be. I am very sympathetic to the notion that prescription portability could improve competition in the marketplace. If confirmed, I would like to look into the issue further and work with your office to identify specific improvements to competition in the pet medicine market that could be made.

Question 10. The prescribing and dispensing of human medications has long been separated. With eyeglasses and contact lenses, where prescribers also sell the products they prescribe, Federal law grants consumers the right to their prescriptions. Why should it be any different for pet owners with regards to medications for their pets?

Answer. As a general matter, I am sympathetic to the idea that prescription portability—for people and for pets—can provide competitive benefits. If confirmed, I would like to study this issue further to understand what, if any, justification could exist for treating pet medications differently.

Question 11. Manufacturers of pet medications can, and do offer inducements to veterinary clinics to prescribe and sell their medications.

Do you think the public, and pet owners who spend billions of dollars annually on prescription pet medications have a right to know whether their vet clinic is receiving payments from the manufacturers of drugs that clinic prescribes?

Answer. Generally speaking, I am supportive of providing more information to patients and consumers to allow them to make meaningful choices about how to spend their healthcare dollars; that is true for both people and pets. Although I do not have enough familiarity at this time with the pet medication marketplace and supply chain to comment on this particular issue, if confirmed I will work with my fellow Commissioners and the expert staff at the FTC to study it further.

Question 12. In 2003, Congress passed the Fairness to Contact Lens Consumers Act (“FCLCA”) to grant the 40 million Americans who wear contact lens wearers the right to copies of their prescriptions. The law also established a process for consumers to have their prescriptions verified when they purchase their lenses from a retailer other than the prescriber.

On September 3, 2015, the FTC launched its ten-year review of the Contact Lens Rule. The comment period closed on October 26, 2015, after the Commission received over 660 comments from a wide variety of stakeholders including optometrists, ophthalmologists, consumers, contact lens manufacturers and third-party contact lens sellers such as big box stores and online retailers.

On December 7, 2016, the Commission issued a Notice of Proposed Rulemaking (“NPRM”) concluding that “compliance with the automatic prescription release provision could be substantially improved.” This is consistent with the comments of 20 State Attorneys General who reported to the Commission that: “[t]he States are aware, from their enforcement efforts and collective experience, that not all patients receive their prescription in writing as a matter of course.” The NPRM also proposed the common sense solutions of having consumers sign an acknowledgement that they have received their prescriptions and clarifying the right of consumers and their chosen retailers to receive additional copies of those prescriptions.

If confirmed, will you prioritize finalizing this proposed rule, to help ensure all consumers will receive copies of their prescriptions, as Congress intended? Considering FTC's limited resources, and the significant resources that would be required to take action against individual prescribers who are not in compliance with this requirement under the current rule, do you agree that the FTC's proposed rule is an efficient means of promoting compliance?

Answer. I believe studies have shown that over half of Americans have problems with their vision that require corrective treatment, whether eyeglasses or contact

lenses (or both)—including me. And vision correction can be extremely expensive. My understanding is that the Commission is currently reviewing comments on the proposed changes to the Contact Lens Rule, and last month conducted a workshop to further discuss and address questions and concerns. If confirmed, I will work with my fellow Commissioners and the expert staff at the agency to ensure that any updates coming out of the rule review are clear, effective, fair, and published in a timely manner.

Question 13. The FTC has not pursued any enforcement activity under the Military Lending Act, despite having the authority to enforce this important protection. If confirmed, would you support vigorous enforcement of the MLA?

Answer. Yes.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. BRIAN SCHATZ TO
REBECCA JOY KELLY SLAUGHTER

Question 1. As an FTC commissioner, would you make it a priority to assess whether consumer reporting agencies (CRAs) are complying with the Fair Credit Reporting Act (FCRA) to ensure that credit reports are accurate, that consumers have control over their data, and are able to find and fix errors that may appear on their credit report?

Answer. Yes. CRAs have enormous power over consumers, while consumers have minimal leverage over CRAs. Exacting Federal regulatory oversight is therefore necessary to ensure consumers have access to their reports and the ability to fix errors.

Question 2. Do you think consumers have a meaningful choice when it comes to choosing which consumer reporting agencies collect and report data about them?

Answer. As the system is currently structured, I don't believe consumers have any choice at all about which CRAs collect and report data about them.

Question 3. Does the lack of consumer choice increase the risks for consumers because they are unable to control which companies collect and report data about them?

Answer. Yes. I believe the asymmetry in power between the CRAs and consumers amplifies the risks to consumers that their data may be inaccurately or inappropriately collected and shared.

Question 4. In February 2013, the Federal Trade Commission published a report that found that five percent of consumers had errors on their credit reports that could result in less favorable terms for loans.

Do you think this study raises concerns that CRAs are not in compliance with the FCRA's requirement to "follow reasonable procedures to assure maximum possible accuracy" of credit reports? (15 USC 1681e(b))

Answer. Yes, I believe the study raises serious concerns that should continue to be monitored and addressed by the Commission.

Question 4a. Do you think the FTC should conduct a follow up study to see if error rates have improved?

Answer. I do believe this is an area that should be the focus of continued attention by the Commission. If confirmed, I would like to consult with the expert staff at the agency to understand what follow-up has been done so far and whether a follow-up study would be the most effective next step to reduce error rates, or whether resources would be better dedicated to enforcement.

Question 4b. If error rates continue to impact millions of Americans, what actions should the FTC take to enforce compliance with the FCRA?

Answer. If confirmed, I would like to consult with the expert staff at the agency to determine what would be the most effective ways to ensure compliance with the FCRA. The FTC has a variety of tools, including enforcement actions, industry-wide studies, stakeholder engagement, and the power to call public attention to an ongoing problem. I want to better understand the actions the Commission has undertaken thus far—both public and non-public—in order to properly evaluate how compliance can best be ensured going forward.

Question 5. Do you think the FTC should reexamine whether the policies and practices of CRAs to handle consumer disputes are in compliance with the FCRA?

Answer. I believe the Commission has an ongoing obligation to ensure compliance with the Federal laws within its jurisdiction, including the FCRA. I am very concerned about the resolution of consumer disputes, and, if confirmed, I would support careful monitoring of the industry.

Question 6. In 2015, the New York Attorney General reached a groundbreaking settlement with the three national consumer reporting agencies—Experian, Equifax,

and TransUnion. The terms of the settlement require the CRAs to do more to ensure maximum possible accuracy of credit reports and to improve the dispute resolution process for consumers.

Do you think the FTC should coordinate with the NY attorney general to assess the implementation of the settlement and its impact on improving accuracy?

Answer. Yes, I believe the FTC should always coordinate as much as possible with State Attorneys General.

Question 6a. If the terms of the settlement have improved accuracy, do you think there is a case to be made that the settlement terms should be considered as best practices for compliance with the FCRA to ensure maximum possible accuracy?

Answer. One of the benefits of close partnership with State Attorneys General is that their enforcement actions can provide valuable instruction for the FTC and its Federal partners. If confirmed, I would support the Commission closely studying the New York settlement and its implementation to determine what lessons could be extrapolated and explored at the Federal level.

Question 7. What are your views on the inclusion of medical debt in credit reports? How would you, as a commissioner, determine whether it is appropriate for CRAs to include medical debt in credit reports?

Answer. I have not studied the law surrounding this particular issue in depth, and, if confirmed, I would hope to learn more about it. As a general matter, however, I will note that I think there are compelling reasons to treat medical debt differently from other types of consumer debt, because medical expenses are not generally incurred voluntarily and consumers often do not have the ability to shop around for lower-cost health care when they are facing the prospect of life-threatening and expensive treatment. In addition, there may be privacy concerns with the inclusion of medical debt on a credit report, as that could reveal sensitive health information about the subject of the report.

Question 8. Consumers have the right to inspect their credit reports every year. Do you think they should also have the right to inspect their credit score?

Answer. Because credit scores, often as much as the underlying reports, are used to make important decisions about a consumer's credit-worthiness, I believe it would be sound public policy for consumers to have access to their scores as well as their reports.

Question 9. Do you think the FTC has the right expertise and capacity to investigate and evaluate algorithms for unfair, deceptive, fraudulent consumer practices in the marketplace?

Answer. The issues you raise about the use of algorithms in potentially unfair, deceptive, and fraudulent consumer practices are important ones, and I believe it is critical that the FTC have both the expertise and the resources to address them. If confirmed, I will work with my fellow Commissioners and the expert staff at the agency to explore whether any changes might be necessary to the Commission's resourcing in this area.

Question 10. Will you prioritize bringing in additional technical talent to strengthen FTC's mission in the digital domain?

Answer. Yes. In my Committee questionnaire, I identified keeping up with technological innovations in rapidly changing markets as the top challenge facing the Commission. One important way to meet this challenge is with the best and brightest technical talent to ensure complex technological issues are being appropriately understood and addressed by the Commission.

Question 11. What are your views of the FTC's ability to ensure adequate oversight of online privacy?

Please discuss your views on the FTC's expertise in this area and the adequacy of the regulatory tools available to it.

What specific actions would you propose the FTC undertake to improve online privacy?

Answer. The FTC has authority under Section 5 of the FTC Act to prohibit unfair or deceptive acts or practices, and it has used this authority to enforce against violations of privacy in the digital space. If confirmed, I would strongly support robust continued enforcement in this area. I would also want to work with my fellow Commissioners, agency staff, and stakeholders to identify whether any additional actions can be taken or whether additional tools or resources are needed to further protect online privacy.

Question 12. What is your view of the propriety of the FTC imposing conditions on proposed mergers as compared with suing to block a deal? How would you evaluate when to use one or the other?

Answer. I believe that, generally speaking, any merger under consideration must be considered on its own terms with the facts specific to the case and the markets at issue. In some cases, behavioral remedies and conditions such as divestiture may be adequate to ameliorate any potential competitive harm. Where no agreement on conditions can be reached that satisfies the Commission's concerns, litigation to block the consummation of the merger is not only appropriate, but necessary. If confirmed, I would analyze the specific facts of the case and potential proposed conditions to determine if my own concerns are satisfied. In addition, I would note that Mr. Simons has proposed undertaking retrospective analysis of the Commission's past merger work; I strongly supported this undertaking when I testified before the Committee, and I continue to believe it can provide valuable instruction as to whether and when merger conditions have been effective in the past.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. TOM UDALL TO
REBECCA JOY KELLY SLAUGHTER

Question 1. What are your ideas on how to promote consumer protection in an increasingly online—and connected—world?

Answer. In my Committee questionnaire, I highlighted as a key challenge for the Commission the need to ensure our enforcement strategies keep pace with emerging technologies in rapidly changing markets. That is particularly true as more and more of our lives occur in internet-enabled spaces. If confirmed, I will work with my fellow Commissioners and the expert staff at the agency to ensure that consumers are adequately informed of their rights, that wrongdoers are effectively pursued, and that the Commission is appropriately monitoring these important issues.

Question 2. Do you believe that the current FTC enforcement principles are sufficient to protect consumers? And do you believe the FTC has the resources necessary to protect consumers given the significant amount of work on the docket for the agency?

Answer. I believe the FTC has an obligation to engage in robust enforcement of the law to protect consumers and promote competition. If confirmed, I will work with my fellow Commissioners and with the expert staff at the agency to ensure that the Commission's authorities and resources are being used as effectively as possible, and I will commit to reporting back to you if I believe additional tools or resources would be helpful to the Commission.

Question 3. In December, I wrote to the FTC, along with Senators Schumer and Blumenthal, asking for a workshop to discuss the increased use of "bots" to purchase large quantities of in-demand toys and items, particularly at Christmas. The FTC has confirmed that it will engage with key stakeholders to determine if a workshop is necessary. Will you commit to reviewing the record on this issue and to working with my office to determine next steps, including the possibility of legislation?

Answer. Yes.

Question 4. Last week, an article in *TechCrunch* showed how Facebook uses data from Onavo Protect, a subsidiary app, to gather data on its competitors; how Google uses its search rankings to demote alternate competitive sites; and Amazon's aggressive low pricing undercuts book publishers. Under your respective leadership, how will the FTC enforce the principles of unfair methods of competition against tech giants like Facebook, Google and Amazon to promote consumer welfare?

Answer. Our antitrust laws do not exempt or excuse technology companies from enforcement; I believe the law must be applied fairly and without fear or favor to all industries within the FTC's jurisdiction. If confirmed, I will work with my fellow Commissioners and the expert staff at the agency to closely monitor heavily concentrated industries, including the technology industry, and to investigate and enforce against anticompetitive practices.

Question 5. Following the FTC's approval of the Google/DoubleClick acquisition in 2007, then Commissioner Pamela Jones Harbor released a dissent detailing the need for the commission to "evaluate the implication of this kind of data merger from a competition as well as a consumer protection perspective." Since 2007, data has only become more important in the world of machine learning and ad targeting. When evaluating mergers and acquisitions in the technology industry, how will you evaluate the impact of data on competition as well as a consumer protection perspective?

Answer. Control over data, and related control over online advertising markets, may be an important factor in considering consolidation in online industries, where citizens (and their data) are often the product rather than the consumers. If con-

firmed, I will work with my fellow Commissioners and the expert staff at the Commission to ensure that our competition as well as our consumer protection efforts keep pace with technological innovations, including data issues, in rapidly changing markets.

Question 6. Recently a group of over 20 advocacy groups filed a complaint to the FTC about how YouTube¹ uses behavioral targeted advertising with children on their main application/website. How do you think about enforcing the Children's Online Privacy Protection Rule (COPPA) on applications like YouTube who have a large number of users under 13 and use behavioral targeting on those customers?

Answer. I do not want to prejudge any particular complaint or investigation. However, as a general matter, I will note that the FTC has very important enforcement obligations under COPPA. As the parent of three young children, I am especially sensitive to the responsibility I would have, if confirmed, to ensure that COPPA is robustly enforced.

Question 7. I have a long history of working with the Federal Trade Commission on false labeling of sports equipment. The FTC has done some good work—specifically it sent letters to retailers and manufacturers calling out certain deceptive practices. However, it is important that the FTC continue to monitor for future misleading labeling. Will you commit to me to continue to monitor the marketplace, including both traditional and online retailers, and use the enforcement authority of the FTC for any marketer or manufacturer repeatedly making false claims?

Answer. Yes.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. DAN SULLIVAN TO
MICHELLE A. SCHULTZ

Question. Alaska is one of about 5 states where all freight rail service is provided by regional and shortline railroads, also known as Class 2 and Class 3 railroads. Many of these small railroads are in rural areas and were created from lines that would have been abandoned by the large Class 1 railroads, although in Alaska our railroad was previously owned by the Federal government.

Regional and shortline railroads face the same types of challenges as other small businesses, because they are small businesses. Could you please give me your perspective on these small railroads and how you see the role of the STB in helping to preserve rail service in rural areas by these small railroads?

Answer. For certain areas across the country, short line and regional railroads are the only way shippers can access the national freight rail network. Shortline railroads serve a vital role to the U.S. freight rail network. As the economic regulator of the rail industry, the Surface Transportation Board has discretion to tailor its regulatory activities to meet the Nation's changing transportation needs. This discretion would include taking into account the integral role that shortline railroads play in the national freight network.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. DEAN HELLER TO
MICHELLE A. SCHULTZ

Question 1. As you both know, the Department of Energy has an application before the Surface Transportation Board for a certificate of public convenience and necessity to build the Caliente railroad to Yucca Mountain. Given Congress' repeated refusal to fund the Yucca Mountain project, I do not believe the Surface Transportation Board should act on this application knowing that the project is not funded and that it is not going to be funded.

Ms. Schultz, during questioning, you would only commit to a "fair and impartial" review of the Department of Energy's application, so I will ask you once again: Do you or do you not believe the Surface Transportation Board should act on this application regardless of whether Yucca Mountain has been funded?

Answer. Although I do not want to prejudge a pending STB proceeding, I would not expect the Board would rule upon an application that was filed approximately ten years ago and which neither of the interested parties, including the Department of Energy has sought further action upon.

Question 2. Ms. Schultz, if confirmed, will you commit to continuing the Surface Transportation Board's practice of not getting out in front of other agencies when it is not the lead agency?

¹ Maheshwari, Sapna, 9 April 2018. *New York Times*. <https://www.nytimes.com/2018/04/09/business/media/youtube-kids-ftc-complaint.htm>

Answer. I believe the current policy of the STB as you described it is appropriate.

Question 3. Under the Nuclear Waste Policy Act, the Federal government is looking at shipping 9,495 rail casks in 2,800 trains and 2,650 trucks hauling one cask each to Yucca Mountain over 50 years. These shipments would use 22,000 miles of railways and 7,000 miles of highways and cross over 44 states. Under previous questioning from me at this Committee, Federal Railroad Administrator Ronald Batory and Pipeline and Hazardous Materials Safety Administrator Howard Elliott confirmed that a transportation accident with an ensuing radiological release was possible.

Ms. Schultz, given the significant number of proposed shipments, the sheer distance to be traveled, and the 50-year duration of these shipments, do you agree with Mr. Batory and Mr. Elliott that there is a real risk of at least one transportation accident with an ensuing radiological release occurring?

Answer. Based upon the information as it has been presented here, I would have no reason to disagree with the opinions of the safety experts.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. BILL NELSON TO
MICHELLE A. SCHULTZ

Gulf Coast Rail Service. As you know, restoration of Amtrak passenger service along the Gulf Coast will help the region meet its transportation needs and boost tourism and local economies.

Question 1. In your view, do you think restoring rail service on the Gulf Coast is an important project?

Answer. The Gulf Coast project is an important issue.

Question 2. What steps should be taken to help restore Gulf Coast passenger rail service?

Answer. I am aware of the ongoing negotiations regarding the Gulf Coast service. If the parties are not able to reach an agreement, the law gives the Surface Transportation Board the ability to resolve these issues. If confirmed, and if this case should come before the Board, I would adjudicate this matter in a fair and balanced way. In the meantime, before any dispute arises, I would also like to speak with stakeholders as well as members of your staff to learn more about the issues surrounding the Gulf Coast Service.

Passenger Service. On-time performance continues to be a challenge for many passenger rail lines. Without reliable service, many passengers may choose to not take the train and instead drive or take the bus, which adds to congestion and wear and tear on our highways.

Question 3. In your view, what can be done to improve on-time rail service so that people can get to where they need to be when they need to be there?

Answer. As a current employee of a multi-modal public transportation authority, I recognize both the value of on time performance and the challenges that it presents. As you are aware, when Congress enacted the Passenger Rail Investment and Improvement Act of 2008 ("PRIIA"), it delegated to the Federal Railroad Administration and Amtrak the joint regulatory authority to promulgate metrics and standards for measuring on-time performance of passenger trains.

Because the FRA/Amtrak regulations were blocked in court, in 2016, the Surface Transportation Board promulgated its own regulations defining what constitutes "on time performance" when Amtrak operates over lines owned and controlled by freight railroads. These regulations were challenged in 2017 before the U.S. Court of Appeals for the Eighth Circuit, which held that "Congress likely did not give the FRA/Amtrak and the Board separate authority to develop two potentially conflicting on-time performance rules." See *Union Pacific Railroad Company v. Surface Transportation Board*, 863 F.3d 816, 826 (8th Cir. 2017). The Court also held that "on-time performance" means on-time performance as developed by the FRA and Amtrak under §207(a) of PRIIA." *Id.* Accordingly, the outcome of the litigation over the FRA/Amtrak rules, which is still pending in the United States Court of Appeals for the District of Columbia, will be an important factor in determining how the Board will carry out its statutory responsibilities. If confirmed, I will follow the law and apply the appropriate on time performance standards in a fair and impartial manner.

Freight Railroad Investments. Service issues faced by railroads highlight the need for ongoing investment by railroads in infrastructure and resources—such as locomotives and employees. The ever-increasing demand to move freight will only further the need for more investment.

Question 4. If confirmed, what will you do to make sure that the STB's policies do everything possible to promote private infrastructure investment?

Answer. I will support the STB's statutory mandate to promote a safe and efficient rail transportation system by allowing rail carriers to earn adequate revenue. This means that carriers should be able to earn enough revenue to maintain the rail system, reinvest in infrastructure and attract capital.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. AMY KLOBUCHAR TO
MICHELLE A. SCHULTZ

Question. In many rural parts of the country, shippers are served by only one railroad, so called "captive shippers." These shippers can face increased costs in getting their products to market. Whether they are shipping grain, coal or paper, the increased costs get passed on to the consumer.

If confirmed what steps would you take to ensure captive shippers have access to competitive shipping rates?

Answer. There are a few issues pending before the STB which pertain to shipping rates. These issues include reciprocal switching; the exploration of alternatives or modifications to the stand-alone-cost test; and the railroad revenue adequacy test. I am aware that these are important issues for captive shippers who are looking for other ways to address their concerns about rail rates. I am also aware that it is important to assess the consequences on the industry that any of these changes may impact. If confirmed, I look forward to participating in ex parte meetings with STB staff, Board Members and stakeholders to better understand the metrics that are currently in place as well as the impact that any changes to the existing standards could cause.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. RICHARD BLUMENTHAL TO
MICHELLE A. SCHULTZ

Question. The goal of the STB in many respects is consumer protection. For shippers of commodities, coal, chemicals, agricultural products, automobiles and some other goods, the shippers—if you will—are the consumers of rail. And if those shippers encounter unfair costs in shipping goods to market, then those high costs can ultimately be passed on down to consumers at the retail level.

Protecting consumers is critical to me and a key focus of my work in the Senate. How would you articulate the STB's work as a consumer protection organization?

Answer. The U.S. freight rail network enables connectivity between both buyers and sellers. Without an efficient freight network many industries would incur higher costs and those costs would most likely be reflected in the prices of consumer goods. The STB is charged by Congress with resolving railroad rate and service disputes and serves as the economic regulator of the freight rail industry. If confirmed, I would review all matters in fair and impartial manner and would recognize that decisions rendered by the STB have significant impacts on all the stakeholders, including consumers.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. TAMMY BALDWIN TO
MICHELLE A. SCHULTZ

Question 1. The Surface Transportation Board (STB) is examining existing class exemptions for certain commodities that would allow exempt commodities like steel and cement to be on the same playing field as nonexempt commodities. Currently, there is limited recourse for exempt commodities at the STB.

The forest products industry is pursuing a revocation of their exemption. The exemptions for forest and paper products were approved in a series of decisions in the late 1980s and early 1990s, before major rail mergers that drastically consolidated the railroad market and has allowed the railroads to exert market power over shippers.

The exemptions for forest and paper products are antiquated and were justified by a substantially different rail transportation marketplace and regulatory structure that no longer exist. Today, the exemptions hinder business and competition. Companies that ship paper and forest products are disadvantaged by commodity exemptions because they lack access to STB procedures that are available to non-exempt shippers to address rail rate and service concerns.

If confirmed, will you give fair consideration to the case the forest products industry has made for the revocation of their exemption and move to finalize the rulemaking?

Answer. Yes. If confirmed, I will give fair consideration to case the forest products industry has made for the revocation of their exemption and would work toward resolving this issue.

Question 2. Fuel surcharges should not be used by railroads as a cost recovery mechanism, and the STB has ruled that it is unreasonable for railroads to compute fuel surcharges in a manner that does not follow actual fuel costs for rail shipments. However, safe harbor rules can ensure that railroads are immune from challenges that they over-recover actual changes in fuel costs. The STB is considering, but has delayed, rulemaking on rail fuel surcharges.

Do you believe fuel surcharges imposed by rail carriers should be directly accounted for by changes to the carrier's actual fuel prices?

If confirmed, will you move forward with rulemaking that would modify or remove the safe harbor provision to ensure fuel surcharge programs implemented by rail carriers are reasonable?

Answer. I recognize the challenges to shippers who believe they are being charged in excess of current fuel rates. If confirmed, I would commit to working with STB staff and Board Members to reach a reasonable resolution of the rulemaking that is currently pending before the Board.

Question 3. Section 16 of the STB Reauthorization Act (P.L. 114–110) included a technical clarification making clear that Congress did not intend to require any change to how the STB determines revenue adequacy. How do you interpret Section 16 of the bill?

Answer. The legislative history provides that “[T]his section would not require any change to how the STB determines railroad revenue adequacy.” See S. Rept. 114–52—Surface Transportation Board Reauthorization Act of 2015.

Question 4. The STB is exploring its methodology for determining railroad revenue adequacy, as well as the revenue adequacy component used to judge reasonableness of rail rates. What further action do you believe the STB should take to ensure revenue adequacy tests work for all stakeholders and reflect economic realities, including the health of the rail industry and individual carriers?

Answer. The STB currently has a rate reform task force to address these issues. The STB will be doing outreach with stakeholders in groups and one and one to discuss rate reform. The STB has committed to looking into these issues and I look forward to being a part of that process and learning more about it.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. DAN SULLIVAN TO
PATRICK J. FUCHS

Question. Alaska is one of about 5 states where all freight rail service is provided by regional and shortline railroads, also known as Class 2 and Class 3 railroads. Many of these small railroads are in rural areas and were created from lines that would have been abandoned by the large Class 1 railroads, although in Alaska our railroad was previously owned by the Federal government.

Regional and shortline railroads face the same types of challenges as other small businesses, because they are small businesses. Could you please give me your perspective on these small railroads and how you see the role of the STB in helping to preserve rail service in rural areas by these small railroads?

Answer. I greatly appreciate the importance of small railroads to our Nation's rail transportation system. These railroads provide critical rail service to rural and other areas and often serve as crucial first and last mile connections throughout the Nation.

The statutory provisions governing the Surface Transportation Board recognize the importance of continued rail service to rural areas. The abandonment provisions of section 10903 of title 49, United States Code, require that, in reviewing rail carrier requests for abandonment, the Board consider the impacts on rural and community development. The Offer of Financial Assistance provisions of section 10904, which give interested financially responsible persons the opportunity to purchase or subsidize a line subject to abandonment, provide a role for the Board in potentially facilitating continued service. If confirmed, I would approach the position with an understanding of the Board's statutory authorities and an appreciation for the importance of small railroads and rail service to rural areas.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. DEAN HELLER TO
PATRICK J. FUCHS

Question 1. As you both know, the Department of Energy has an application before the Surface Transportation Board for a certificate of public convenience and necessity to build the Caliente railroad to Yucca Mountain. Given Congress' repeated refusal to fund the Yucca Mountain project, I do not believe the Surface Transportation Board should act on this application knowing that the project is not funded and that it is not going to be funded.

Mr. Fuchs, during questioning, you indicated that you agreed with me, and you said that your understanding was that "it's not the Board's practice to get out in front of a broader issue where it's not the lead agency."

Mr. Fuchs, if confirmed, will you commit to continuing the Surface Transportation Board's practice of not getting out in front of other agencies when it is not the lead agency?

Answer. Recognizing that the construction and operation application for the Caliente Line is pending before the Board, and any decision would be based on the agency record, as a general matter I can say that the Board has a long history of cooperating with other agencies in cases involving environmental and safety issues. If confirmed, I intend to uphold the Board's practice of not getting ahead of an agency that is the lead in a particular matter.

Question 2. Under the Nuclear Waste Policy Act, the Federal government is looking at shipping 9,495 rail casks in 2,800 trains and 2,650 trucks hauling one cask each to Yucca Mountain over 50 years. These shipments would use 22,000 miles of railways and 7,000 miles of highways and cross over 44 states. Under previous questioning from me at this Committee, Federal Railroad Administrator Ronald Batory and Pipeline and Hazardous Materials Safety Administrator Howard Elliott confirmed that a transportation accident with an ensuing radiological release was possible.

Mr. Fuchs, given the significant number of proposed shipments, the sheer distance to be traveled, and the 50-year duration of these shipments, do you agree with Mr. Batory and Mr. Elliott that there is a real risk of at least one transportation accident with an ensuing radiological release occurring?

Answer. Understanding the construction and operation application for the Caliente Line is pending before the Board, and any decision would be based on the agency record, as a general matter I note that the Federal Railroad Administration and Pipeline and Hazardous Materials Safety Administration have primary responsibility for, and are the principal Federal government experts on, the safety of spent nuclear fuel transportation by rail. I respect their subject matter expertise, and I have no reason to disagree with their judgement on the possibility of a release.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. BILL NELSON TO
PATRICK J. FUCHS

Gulf Coast Rail Service. As you know, restoration of Amtrak passenger service along the Gulf Coast will help the region meet its transportation needs and boost tourism and local economies.

Question 1. In your view, do you think restoring rail service on the Gulf Coast is an important project?

Answer. In my view, the actions of Congress and the enthusiasm shown in Gulf Coast communities indicate the importance placed on this potential service.

As you know, in the *Fixing America's Surface Transportation (FAST) Act* (P.L. 114-94), Congress established a working group to evaluate the restoration of intercity rail passenger service in the Gulf Coast region between New Orleans, Louisiana, and Orlando, Florida, and Congress also authorized funds for the restoration or initiation of passenger rail service. In recent appropriations bills, as a result of your efforts and the efforts of Senators Wicker and Cochran, Congress has provided significant funding, via the authorized programs in the *FAST Act*, for the restoration or initiation of passenger rail service.

In addition, I am aware that in, 2016, Amtrak—in partnership with the Southern Rail Commission—ran an inspection train touring a potential Gulf Coast passenger rail route, and the train generated significant crowds and enthusiasm in places such as Pensacola, Tallahassee, and Live Oak.

If confirmed, I would approach the position with an understanding of recent Congressional actions and Gulf Coast events, and I would consider any issue related to this service from a fair and open perspective.

Question 2. What steps should be taken to help restore Gulf Coast passenger rail service?

Answer. A critical step would be for Amtrak and the host railroad to reach an agreement on the use of facilities and provision of services for the route. In many cases, a mutually beneficial, voluntary agreement leads to successful outcomes without the need for costly litigation.

Under section 24308(a) of title 49, United States Code, if the parties cannot agree and if the Surface Transportation Board finds it necessary, the Board is responsible for ordering that facilities be made available, and services be provided, to Amtrak. The Board is also responsible for prescribing reasonable terms and compensation for such facilities and services.

While there is not currently a case pending before the Board concerning this particular service, if the parties cannot agree, Congress has provided the Board with an important responsibility for resolving such a dispute.

Passenger Service. On-time performance continues to be a challenge for many passenger rail lines. Without reliable service, many passengers may choose to not take the train and instead drive or take the bus, which adds to congestion and wear and tear on our highways.

Question 3. In your view, what can be done to improve on-time rail service so that people can get to where they need to be when they need to be there?

Answer. I am aware of the significant concerns with the on-time performance of Amtrak, and I understand how frustrating it is when passengers cannot rely on timely intercity passenger rail service to take them to business meetings, family visits, medical appointments, or other important destinations.

The Surface Transportation Board issued a rule regarding on-time performance, citing authority in section 24308(f) of title 49, United States Code. However, the U.S. Court of Appeals for the Eighth Circuit vacated the Board's rule, finding that Congress instead delegated power only to FRA and Amtrak to establish on-time performance rules.

The constitutionality of the joint rule issued by FRA and Amtrak—covering on-time performance—is currently pending before the U.S. Court of Appeals for the District of Columbia Circuit ("D.C. Circuit"). The rule was not upheld in earlier court decisions. The outcome of this case will have implications for the Board. Under section 24308(f), the Board has authority to investigate issues with on-time performance in certain situations and to award damages and other relief depending on its findings. The determination on the constitutionality of the FRA and Amtrak joint rule will be critical to the Board's authority to conduct an investigation pursuant to section 24308(f).

Given the importance of the D.C. Circuit decision for the authorities of the Board, I would assess and determine what further action, if any, is needed to fulfill the Board's statutory responsibilities following such decision.

Freight Railroad Investments. Service issues faced by railroads highlight the need for ongoing investment by railroads in infrastructure and resources—such as locomotives and employees. The ever-increasing demand to move freight will only further the need for more investment.

Question 4. If confirmed, what will you do to make sure that the STB's policies do everything possible to promote private infrastructure investment?

One of the most important responsibilities of the Board is to promote a safe and efficient rail transportation system by allowing rail carriers to earn adequate revenues, as determined by the Board. This responsibility is codified in our Nation's rail transportation policy in section 10101(3) of title 49, United States Code. Carriers that earn adequate revenues can reinvest those revenues in and—where necessary—expand the approximately 140,000-mile rail network. Through such investments, rail carriers are able to relieve congestion and facilitate the efficient flow of goods from production to destination, including ports, intermodal facilities, and factories.

Oftentimes, regulatory policy affects private investment. If confirmed, I would carefully consider the effects of any new regulation on the rail system, including the effects on private infrastructure investment. I also would consider evidence submitted during the course of proceedings and would employ sound and objective analysis, using relevant data, to fulfill the important responsibilities of the Board.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. AMY KLOBUCHAR TO
PATRICK J. FUCHS

Question. In many rural parts of the country, shippers are served by only one railroad, so called “captive shippers.” These shippers can face increased costs in getting their products to market. Whether they are shipping grain, coal or paper, the increased costs get passed on to the consumer.

If confirmed what steps would you take to ensure captive shippers have access to competitive shipping rates?

Answer. One of the Board’s core responsibilities is to maintain reasonable rates where there is an absence of effective competition, as codified in our Nation’s rail transportation policy in section 10101(6) of title 49, United States Code. I understand concerns among many shippers that the current rate review processes are unduly costly and complex or otherwise not sufficiently accessible.

If confirmed, I would focus on three initiatives relevant to this issue. First, in 2016, the Board issued an Advance Notice of Proposed Rulemaking to solicit comments on a new rate review process for small shippers. Public comments filed in this proceeding have presented valuable information for the Board to consider in evaluating its existing rate review processes. Second, in January 2018, the Board established an internal Rate Reform Task Force, staffed by expert lawyers and economists, to develop recommendations to reform the rate review methodology for large cases and improve options for small cases. I understand the Task Force plans to conduct extensive stakeholder outreach as it works to develop its recommendations. Third, pursuant to the *Surface Transportation Board Reauthorization Act of 2015* (P.L. 114–110), the Board reformed its arbitration process and certain mediation processes, and it remains open to ideas to improve alternative dispute resolution processes to mitigate the need for costly litigation.

If confirmed, I would prioritize these initiatives, collaborate with other Board Members as appropriate, and work hard to see if there is a better way of ensuring rate reasonableness, consistent with applicable law and sound principles of economics.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. RICHARD BLUMENTHAL TO
PATRICK J. FUCHS

Question. The goal of the STB in many respects is consumer protection. For shippers of commodities, coal, chemicals, agricultural products, automobiles and some other goods, the shippers—if you will—are the consumers of rail. And if those shippers encounter unfair costs in shipping goods to market, then those high costs can ultimately be passed on down to consumers at the retail level.

Protecting consumers is critical to me and a key focus of my work in the Senate. How would you articulate the STB’s work as a consumer protection organization?

Answer. The Surface Transportation Board has important consumer protection responsibilities, including—as codified in our Nation’s rail transportation policy—to maintain reasonable rates where there is an absence of effective competition and to avoid undue concentrations of market power.

In advancing the policy to maintain reasonable rates where there is an absence of effective competition, rail shippers served by market dominant rail carriers may file for a rate review before the Board. The Board has authority to provide reparations and relief to shippers whose rates are found to be unreasonable, protecting against potentially unfair costs in shipping goods to market.

In advancing the policy to avoid undue concentrations of market power, the Board reviews mergers based on a public interest standard. In 2001, the Board set new rules concerning the merger of Class I railroads, and—using the Board’s statutory public interest standard—those rules require a demonstration that the transaction would enhance competition where necessary to offset negative effects. Given potential risks to consumers posed by undue concentrations of market power, the Board’s statutory review and approval authority for mergers is another significant protection.

The Board’s consumer protection authority is not limited to these two examples. As other examples, the Board has authority to enforce the common carrier obligation, whereby a rail carrier must provide transportation to consumers upon reasonable request. And the Board generally adopts a pro-competition perspective in the evaluation of market entry applications, facilitating greater options for consumers.

If confirmed, I would value the Board’s consumer protection authorities, and I would work diligently to see if the Board could improve their use.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. TAMMY BALDWIN TO
PATRICK J. FUCHS

Question 1. The Surface Transportation Board (STB) is examining existing class exemptions for certain commodities that would allow exempt commodities like steel and cement to be on the same playing field as nonexempt commodities. Currently, there is limited recourse for exempt commodities at the STB.

The forest products industry is pursuing a revocation of their exemption. The exemptions for forest and paper products were approved in a series of decisions in the late 1980s and early 1990s, before major rail mergers that drastically consolidated the railroad market and has allowed the railroads to exert market power over shippers.

The exemptions for forest and paper products are antiquated and were justified by a substantially different rail transportation marketplace and regulatory structure that no longer exist. Today, the exemptions hinder business and competition. Companies that ship paper and forest products are disadvantaged by commodity exemptions because they lack access to STB procedures that are available to non-exempt shippers to address rail rate and service concerns.

If confirmed, will you give fair consideration to the case the forest products industry has made for the revocation of their exemption and move to finalize the rule-making?

Answer. As you point out, the review of commodity exemptions is an important on-going proceeding, with implications for the ability of certain shippers to bring rate and other complaints before the Board. While I cannot prejudge specific outcomes, I will give fair consideration to the case the forest products industry has made for the revocation of their exemption.

As a general matter, I believe that, in these sorts of revocation proceedings, data-driven analysis—including examining empirical evidence concerning market conditions for specific individual commodities—would be especially helpful for guiding regulatory decision-making. If confirmed, I would collaborate with other Board Members as appropriate and the Board's expert staff to conduct such analysis and move this proceeding to conclusion.

Question 2. Fuel surcharges should not be used by railroads as a cost recovery mechanism, and the STB has ruled that it is unreasonable for railroads to compute fuel surcharges in a manner that does not follow actual fuel costs for rail shipments. However, safe harbor rules can ensure that railroads are immune from challenges that they over-recover actual changes in fuel costs. The STB is considering, but has delayed, rulemaking on rail fuel surcharges.

Do you believe fuel surcharges imposed by rail carriers should be directly accounted for by changes to the carrier's actual fuel prices?

Answer. I understand the concerns that have been raised regarding rail fuel surcharges and the "safe harbor" standard, which allows rail carriers to use a Board-approved fuel index to measure changes in fuel prices for the purposes of rail carriers' fuel surcharge programs.

As you indicate, the Board issued an Advance Notice of Proposed Rulemaking in 2014. Given that this is a pending proceeding before the Board, I cannot prejudge specific outcomes. However, as a general matter, if confirmed, I would value the Board's role in ensuring that such surcharges are appropriate, and I would thoroughly examine the adequacy of the Board's current approach.

Question 2a. If confirmed, will you move forward with rulemaking that would modify or remove the safe harbor provision to ensure fuel surcharge programs implemented by rail carriers are reasonable?

Answer. If confirmed, I would carefully consider the concerns raised in public comments in this proceeding and evaluate the issue from a fair and open perspective. Working with other Board Members as appropriate and the Board's expert staff, I would diligently analyze the potential effects of proposals to modify or remove the safe harbor provision based on available information and decide on next steps based on that analysis.

Question 3. Section 16 of the STB Reauthorization Act (P.L. 114–110) included a technical clarification making clear that Congress did not intend to require any change to how the STB determines revenue adequacy. How do you interpret Section 16 of the bill?

I am certainly aware that Senate Report 114–52, which accompanied the *Surface Transportation Board Reauthorization Act of 2015* (P.L. 114–110), stated that Section 16 does not require any change to how the Surface Transportation Board determines revenue adequacy. I am also aware of congressional correspondence with the Board supporting this interpretation.

Because revenue adequacy is an open docket before the Board, I cannot prejudge a specific outcome. As a general matter, if confirmed, I would respect the statutory directives and authorities provided by Congress, and I would work closely with the Board's legal staff to ensure my interpretations and decisions were based on sound legal analysis.

Question 4. The STB is exploring its methodology for determining railroad revenue adequacy, as well as the revenue adequacy component used to judge reasonableness of rail rates. What further action do you believe the STB should take to ensure revenue adequacy tests work for all stakeholders and reflect economic realities, including the health of the rail industry and individual carriers?

Answer. Revenue adequacy is one of the most significant issues facing the Board. As you note, revenue adequacy is an open docket, and the Board solicited comments in 2014 and held a hearing in 2015 to examine the issue. I understand concerns among shippers that the current rate review processes are unduly costly and complex or otherwise not sufficiently accessible.

In January 2018, the Board established an internal Rate Reform Task Force, staffed by expert lawyers and economists, to develop recommendations on rate review methodologies. I understand that the Task Force plans to conduct extensive stakeholder outreach. As part of this effort, the Board recently clarified that the prohibition on ex parte communications is not applicable at this stage of the revenue adequacy proceeding, thereby facilitating greater stakeholder input.

I believe important further action for the Board would be to ensure the Task Force conducts broad outreach and searches expansively for better ways to review rates, consistent with applicable law and sound principles of economics. If confirmed, I would make the Task Force's work a top priority.

