

S. HRG. 118-651

**NOMINATION TO THE FEDERAL TRADE  
COMMISSION AND THE CONSUMER  
PRODUCT SAFETY COMMISSION**

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**HEARING**

BEFORE THE

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

ONE HUNDRED EIGHTEENTH CONGRESS

FIRST SESSION

SEPTEMBER 20, 2023

Printed for the use of the Committee on Commerce, Science, and Transportation



Available online: <http://www.govinfo.gov>

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WASHINGTON : 2025

SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED EIGHTEENTH CONGRESS

FIRST SESSION

MARIA CANTWELL, Washington, *Chair*

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BRIAN SCHATZ, Hawaii	JOHN THUNE, South Dakota
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GARY PETERS, Michigan	DEB FISCHER, Nebraska
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JACKY ROSEN, Nevada	TED BUDD, North Carolina
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MELISSA PORTER, *Deputy Staff Director*

JONATHAN HALE, *General Counsel*

BRAD GRANTZ, *Republican Staff Director*

NICOLE CHRISTUS, *Republican Deputy Staff Director*

LIAM MCKENNA, *General Counsel*

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**NOMINATION TO THE FEDERAL TRADE  
COMMISSION AND THE CONSUMER  
PRODUCT SAFETY COMMISSION**

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**WEDNESDAY, SEPTEMBER 20, 2023**

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

The Committee met, pursuant to notice, at 10:04 a.m., in room SR-253, Russell Senate Office Building, Hon. Maria Cantwell, Chairwoman of the Committee, presiding.

Present: Senators Cantwell [presiding], Klobuchar, Markey, Peters, Baldwin, Tester, Sinema, Rosen, Hickenlooper, Welch, Cruz, McConnell, Thune, Wicker, Fischer, Moran, Sullivan, Blackburn, Young, Schmitt, Vance, Capito, and Lee.

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

The CHAIR. [Technical problems]—having a nomination hearing on the nomination of the Honorable Rebecca K. Slaughter of Maryland to be Commissioner of the Federal Trade Commission, the nomination of Andrew N. Ferguson of Virginia to be the Commissioner for the Federal Trade Commission, and the nomination of Melissa Holyoak of Utah to be Commissioner of the Federal Trade Commission, and nomination of Mr. Douglas Dziak of Virginia to be a Commissioner of the Federal Consumer Product Safety Commission.

So, we have a very busy agenda here to ask these individuals about their nominations, their ideas, and how to enforce very important laws in these various oversight agencies for us. We will start with opening statements, and I am going to let my colleague this morning go to an opening statement.

**STATEMENT OF HON. TED CRUZ,  
U.S. SENATOR FROM TEXAS**

Senator CRUZ. Thank you, Madam Chair. I want to congratulate each of the nominees here today. Congress has charged the Federal Trade Commission and the Consumer Product Safety Commission with important responsibilities.

I am pleased that this committee is working to fill the current vacancies and to bring each agency up to its full capacity. The FTC is tasked with protecting American consumers from unfair or deceptive business practices, and unfair methods of competition.

I look forward from hearing from Melissa Holyoak, Andrew Ferguson, and Commissioner Rebecca Slaughter about their qualifications and their vision for the FTC, as well as the current challenges that are facing the agency. CPSC's mandate is to protect consumers from dangerous products.

I look forward to hearing from Doug Dziak today on the considerable expertise he will bring to the CPSC to help fulfill its mission. I previously worked at the FTC as the Director of the Office of Policy Planning, where I helped develop the long term strategy and policy goals for the agency.

My experience gave me great respect for the talented staff at the FTC, who often find themselves at the intersection of technology, consumer protection, and competition. They have the difficult task of considering how to protect American consumers as markets evolve and new technologies emerge.

When I was at the FTC, I witnessed Commissioners of diverse views collegially working together to address new challenges while remaining within the agency's statutory powers. That bipartisan camaraderie was a defining characteristic of the FTC for many decades, and one of the reasons why the agency was often successful. But today's FTC is sadly unrecognizable from the FTC that I knew.

Over the past two years, Chairwoman Lisa Khan has taken the FTC wildly off course and pursued a blatantly partisan agenda far outside the agency's legal authority and mission.

In just the last year alone, the FTC has weaponized its enforcement authority against the Biden Administration's political opponents by pursuing inappropriate and burdensome demands against Twitter, pursued unlawful efforts to regulate entire swaths of the U.S. economy under an unprecedented competition rulemaking, unlawfully deleted documents hindering Congressional investigations and potential litigation, as well as undermining transparency in Government, conspired with EU regulators to impose foreign laws on American tech employees so that they would be less competitive globally, sought unauthorized regulation of artificial intelligence in a manner that infringes on Constitutionally protected speech and can be expected to chill entrepreneurship, proposed broad data privacy and security rules without Congressional authorization, and has sought to impose expensive and expansive, pre-merger notification requirements that would levy a de facto tax on market activity.

These are but a few of the FTC's alarming decisions, many of which occurred without input from a single Republican FTC Commissioner after the stunning resignation of former Commissioner Christine Wilson.

In announcing her departure, Wilson said that she did not want to give Khan's endeavor "any further hint of legitimacy by remaining."

I have known Commissioner Wilson for over 20 years. We served together at the FTC. She is a woman of high talent and integrity. I am deeply concerned by Commissioner Wilson's observation about what has become of the FTC. But you do not need to take my word for it or Commissioner Wilson's word for it.

The data show that the FTC staff is depleted and demoralized. According to the most recent OPM Federal Employee Viewpoint

Survey, less than half of the FTC employees agree that FTC “leaders maintain high standards of honesty and integrity.”

That depressing statistic reflects a 38 point drop since the start of Chairwoman Khan’s term. In just two years, she has caused a 38 point drop in her employees’ assessment of whether the leaders at the FTC “maintain high standards of honesty and integrity.” That should concern every member of this committee on both sides of the aisle.

To me, it is not surprising that staff morale has dropped during a time of agency overreach. It is a tangible reminder that the FTC is on the wrong track. We must reverse the damage done to the FTC so that it can fulfill its bipartisan mission within the framework provided by Congress.

I look forward to hearing from each of our witnesses here today, learning about their qualifications and better understanding what they hope to bring to their respective agencies. Thank you.

The CHAIR. Thank you, Senator Cruz. We are joined by two distinguished members, our leader, Republican leader, Senator McConnell, who will introduce Mr. Ferguson in just a minute, and our former colleague, Senator—from this committee, Senator Lee, who is going to introduce Ms. Holyoak from Utah.

I am going to put a statement in the record for my support for the renomination of Commissioner Slaughter, unless there is objection.

[The prepared statement of Senator Cantwell follows:]

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

Today, the Commerce Committee is having a nomination hearing on the nominations of Honorable Rebecca K. Slaughter of Maryland to be a Commissioner of the Federal Trade Commission, the nomination of Andrew N. Ferguson of Virginia to be a Commissioner of the Federal Trade Commission, the nomination Melissa Holyoak of Utah to be a Commissioner of the Federal Trade Commission, and Douglas Dziak of Virginia to be a Commissioner on the Consumer Product Safety Commission. We have a very busy agenda here to ask these individuals about their nominations, their ideas, and how to enforce very important laws in these various oversight agencies for us.

We’re joined by two distinguished members, Republican Leader Senator McConnell who will introduce Mr. Ferguson in just a minute, and our former colleague, Senator Lee, who is going to introduce Ms. Holyoak from Utah. I’m going to put a statement in the record for [Leader Senator Schumer’s] support for the renomination of Commissioner Slaughter, unless there is objection.

Commissioner Slaughter was sworn in for her current term [to the FTC] in 2018. We welcome her back for this nomination.

Mr. Ferguson and Ms. Holyoak serve as Solicitors General of the Commonwealth of Virginia and the State of Utah, respectively. We welcome both of them to the committee and I will be asking them about their respective views that they have used in their states and what the mission critical aspects of the FTC are and what they think it should be for the future.

That mission, of course, is to protect consumers from deceptive, unfair and anti-competitive business practices. The FTC’s role has never mattered more.

In 2022, American consumers reported losing over \$8.8 billion to fraud, a 30 percent increase over 2021—a number likely to increase as bad actors exploit the ability to try to turbocharge fraud.

Corporate consolidation and market manipulation has led to increased prices and supply chain issues in products ranging from gasoline to prescription drug prices, two issues that this committee has dealt with.

And companies have continued to collect troves of sensitive data on consumers without their consent. These practices, I believe, need some attention from this Committee.

Petroleum market transparency continues to be a major drag on families' budget, at least on the West Coast. In my state, my constituents are paying more than \$5 a gallon for gasoline right now. We have an isolated market, but still even that doesn't call for \$5. Many Washingtonians are shelling out more to fill up their cars than in the past.

Last year, the Committee received expert testimony highlighting petroleum market anomalies that have likely driven up billions of dollars on the West Coast.

The legislation that I authored and enacted in 2017 makes oil market manipulation a crime. And I look forward to asking our nominees about this.

The FTC is investigating fraudulent practices resulting from artificial intelligence, conducting 6(b) studies to learn more about black-box markets, like PBMs, and challenging mergers across industries that will result in anticompetitive effects, and exercising rulemaking authority to examine commercial data surveillance practices.

I look forward to hearing from our nominees on their commitment to supporting robust enforcement efforts.

I hope that Congress can work together to restore the FTC's ability to seek consumer refunds.

And we must pass a comprehensive privacy law to empower the FTC to safeguard American's privacy and personal information.

My Republican colleagues are likely to paint a different picture of the FTC today, but here is the reality: the FTC is a Federal agency using the powers that we, as Congress, granted it, all with the aim of protecting consumers, workers, small businesses, and our free and fair markets. I welcome our nominees and look forward to their testimony.

And I look forward to our nominee for the Consumer Product Safety Commission because it is an all-too-important mission that we need to protect Americans from risks posed by products they buy. And the mission is particularly important to protect the most vulnerable among us.

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

Thank you, Chair Cantwell, Ranking Member Cruz, and members of the Committee. It's my privilege to introduce Rebecca Kelly Slaughter for her nomination to serve a second term as a Commissioner of the Federal Trade Commission.

I'm sorry I couldn't be there today, but I didn't want to miss the chance to sing Rebecca's praises on the record before the Committee.

As many of you are aware, Rebecca served on my staff for nearly ten years, first as a summer intern during law school, then as Counsel, and eventually as Chief Counsel. In that time, she demonstrated her sheer intellect and ability to puzzle out real solutions to real problems—from robocalls, to patent trolls, to consumer protection—that Americans faced every day. But what struck me most about Rebecca was her ability to find a balance to complex subjects, bringing Senators and stakeholders together to reach compromise.

I'm proud to know that Rebecca carried the same qualities she had working here in the Senate while serving at the FTC for the last five years. During her time on the Commission, Rebecca has been a staunch advocate for consumers—especially those in underrepresented and marginalized communities—and a vocal critic of unfair and deceptive practices. She has consistently found ways to build consensus on wide-ranging issues, and has been a strong proponent of greater resources, more transparency, and an expansion of the Commission's rulemaking authorities to better serve all Americans.

Rebecca's stellar work over the five years has more than proven that she belongs on the FTC, and I am proud to once again offer her my highest recommendation.

I thank Chair Cantwell, Ranking Member Cruz, and Members of the Committee for accommodating me, and for considering Rebecca Kelly Slaughter to continue serving on the FTC.

The CHAIR. Commissioner Slaughter was sworn in her current term in 2018, and we welcome her back for this nomination.

Mr. Ferguson and Ms. Holyoak serve as Solicitor General of the Commonwealth of Virginia and the State of Utah, respectively, and we welcome both of them to the Committee, and we will be asking them about their respective views that they have used in their States, and what the mission critical aspects of the FTC is, and what they think it should be for the future.

That mission, of course, is to protect consumers from deceptive and unfair and anti-competitive business practices. The FTC's role has never mattered more, and in 2022, American consumers reported losing \$8.8 billion to fraud, a 30 percent increase over 2021, a number likely to increase as bad actors continue to exploit the ability to try to turbocharge fraud.

Corporate consolidation, market manipulation has led to increases in pricing, supply chain issues, products ranging from gasoline to prescription drug prices, two issues this committee has dealt with, and companies have continued to collect troves of sensitive data on consumers without their consent.

These practices, I believe, need some attention from this committee. Petroleum market transparency continues to be a major drag on family budgets, at least on the West Coast. In my state, my constituents are paying more than \$5 a gallon for gasoline right now. We have an isolated market, but still, even that doesn't include for \$5.

Many Washingtonians are shelling out more to fill up their cars than in the past. Last year, the Committee received expert testimony highlighting petroleum market anomalies that have likely driven up billions of dollars on the West Coast. The legislation I authored and enacted in 2017 makes oil market manipulation a crime, and I look forward to asking our nominees about this.

The FTC is investigating fraudulent practices resulting from artificial intelligence, conducting 6(b) studies to learn more about black box markets like PBMs, and challenging mergers across industries that will result in anti-competitive activities, and exercising rule-making to examine commercial data and surveillance practices.

So, I look forward to hearing from the nominees on their commitment to supporting robust enforcement efforts. I hope that Congress can work together to restore the FTC's ability to seek consumer refunds. We must pass a comprehensive privacy law to empower the FTC to guard—safeguard America's privacy and personal information.

And I will look forward to our nominee for the Consumer Product Safety Commission, because it is an all too important mission that we need to protect Americans from the risk posed by products that they buy, and the mission is particularly important to protect the most vulnerable among us.

So, we have a very busy agenda here this morning, and now I will turn it to my colleague, the—Leader McConnell, for his basically, statement, yes.

**STATEMENT OF HON. MITCH McCONNELL,  
U.S. SENATOR FROM KENTUCKY**

Senator McCONNELL. [Technical problems]—it is a pleasure to be here this morning to make some comments about a couple of outstanding nominees. But first, I would like to welcome back Doug Dziak back to the Senate.

Right up until Doug took on his current responsibilities at the Consumer Product Safety Commission, he was a seasoned and familiar Senate legislative expert. You served our late friend and former colleague Mike Enzi with distinction, and I am confident he will bring the same sense of service to his role as Commissioner.

I also want to welcome Melissa Holyoak, the first of two nominees to the Federal Trade Commission. In my judgment, Melissa is a standout candidate for her next job, for the same reason she excels right now in her service to the people of Utah, a razor sharp legal mind, probing intellectual curiosity, staggeringly broad professional experience.

Melissa is prepared to make immediate contributions as the FTC takes on a host of consequential regulatory questions. Finally, I am particularly proud to commend to our colleagues the nomination of my friend and former senior adviser Andrew Ferguson.

It is good to see Andrew back in the Senate, and I am glad to welcome his parents, Roy and Susan Ferguson, who are with us today as well. Andrew served as my Chief Counsel for just over 2 years and in the Senate for 3 years.

With the relatively brief time, I had the privilege of drawing on Andrew's intellect and instincts turned out to be one of the most consequential periods of both our careers. As I said when Andrew left in 2021, the outsized impact he left was a result of the intense and infectious enthusiasm he cannot help but bring to everything he does.

When Andrew takes on a challenge, he goes all in. For example, he didn't just work his way up to a top tier law degree, he earned clerkships at each of the Nation's two highest courts. And he didn't settle for understanding the highest reaches of the Federal Judiciary from the inside, he lent a big brain to this body and helped us exercise our crucial role in the confirmation process.

But the intensity of Andrew's focus and the depth of his principles don't stop there. Covering a massive policy portfolio on my staff, we devoured a tall and rotating stack of library books as he relentlessly sharpened his expertise on a whole laundry list of controversial issues. And several stints in private practice meant covering up the niche legal expertise that Andrew now deploys with precision as the top legal advocate in the Commonwealth of Virginia.

Through it all, Andrew's intense enthusiasm has been his calling card. I have observed before that one of the most familiar sounds in my office was Andrew's voice from multiple rooms away, presenting a spirited argument to his colleagues. Sometimes it was a vehement dissent, sometimes a vigorous concurrence, but every time it was a master class in principled persuasion.

Any number of worthy causes would be well-served by a zealous advocate like Andrew Ferguson. But at a pivotal point for our economy with open questions about the future of free enterprise, technology, and privacy, the FTC would be especially fortunate to draw on Andrew's extensive experience in antitrust, consumer protection, and appellate litigation, his devotion to our Nation's founding principles, and the boundless, boundless enthusiasm that continues to drive it all. Thank you.

The CHAIR. Leader McConnell, thank you so much for being here. I am sure it means a lot to all the nominees to have your presence and comments.

Again, thank you for being here, and we understand you have a busy schedule. So, we will turn now to our former colleague from the Committee, Senator Mike Lee.

**STATEMENT OF HON. MIKE LEE,  
U.S. SENATOR FROM UTAH**

Senator LEE. Thanks so much, Chair Cantwell, and Ranking Member Cruz, and members of the Committee.

It is great to be back in this room. Would love to join you again the next time I get the chance. It is my great honor and pleasure today to be here to introduce my friend, Melissa Holyoak, to the Commerce Committee, and to offer my full support for her nomination and confirmation to be a Commissioner on the Federal Trade Commission.

I also want to welcome Melissa's husband, Josh, and their children, Lucy, Jane, Henry, and Margot, who are here to support her today. Fortunately, Margot, their youngest child, has offered to answer any questions that might escape her mom's ability to answer, which I am sure that won't happen, but Margot is ready just in case.

Melissa is from my home state of Utah, and I have known Melissa for about 20 years. I first met her in church and social circles, and more recently I have worked with her a lot in her current capacity, serving my constituents in Utah.

Melissa is an exceptionally talented lawyer who is committed to Constitutionally limited Government, and I want to highlight a few of her accomplishments and her attributes that I think make her an exceptional and really, really unusually well-qualified candidate to be an FTC Commissioner.

She has been an outstanding Solicitor General in the Utah Attorney General's Office since September 2020. She oversees civil and criminal appeals, Constitutional defense, special litigation, and antitrust divisions for the Attorney General's Office. During her tenure as Utah's Solicitor General, Melissa has led and authored an amicus brief that 34 other states joined in support of Epic Games lawsuit against Apple for anti-competitive and antitrust conduct relating to Apple's iOS App Store, which negatively affected millions of American consumers.

In a similar stride for fair competition, she assisted the Utah Attorney General in filing a lawsuit, joined by 36 Attorneys General, against Google for its measures to restrict competition in the Google Play Store for Android users.

Melissa is a gifted public speaker, and she has given numerous speeches and panel presentations in connection with her role as Solicitor General, many of which are relevant to topics that she may end up covering.

She is an entrepreneur, having co-founded the Hamilton Lincoln Law Institute in order to challenge administrative and regulatory actions, and abuses of the class action and civil justice system, and challenge restrictions on free speech. Her litigation experience will itself be an invaluable asset at the FTC, which currently lacks Commissioners with a similar background.

Her ability to assess facts and the law quickly and immediately discern the difference between a kerfuffle and a Federal case will prove to be instrumental in her work on the Commission. She will be instrumental to the FTC's responsibility of enforcing consumer protection and antitrust laws and will draw on her vast breadth of

experience when casting her vote on whether or not to pursue a complaint.

It has been nearly 6 months since the FTC has had a Republican Commissioner. It is my hope that Melissa will help restore the Commission to its Congressionally imposed limits and improve transparency and accountability, first and foremost, to follow the law, something Melissa is exceptionally good at doing.

Melissa's ability to interact with other people, her magnetic personality, her enthusiasm for the law and for getting to the right answer, along with a keen recognition of the fact that the law does provide a right answer most of the time, these are all things that will benefit her and will cause her colleagues on the Commission to enjoy working alongside her.

Her commitment to public service is truly commendable, and I have every confidence that she will be a successful Commissioner at the FTC. I am so proud to be here to support her nomination.

While I am here, I will also note in closing, I am a big fan of Andrew Ferguson's. I got to know him while he was working for Leader McConnell, and I found his advice, his insight on legal and Constitutional matters to be incisive, well-reasoned, and almost always right. I can't think of a time when I disagreed with him and echo the leader's support for him as well.

Thank you very much.

The CHAIR. Thank you, Senator Lee. And again, thanks for joining us this morning. So now we will make a transition, announce the nominees to come before us, and take your seat at the witness table. We will ask each of you to make a 5-minute statement about your desire for this post, and then following those statements, we will get to questions from members.

Even though some of your families have been introduced, feel free to introduce them again. But again, welcome to everybody that is here this morning. We will start with you, Ms. Slaughter, and go down the line from there.

**STATEMENT OF REBECCA K. SLAUGHTER, NOMINEE TO BE A COMMISSIONER, FEDERAL TRADE COMMISSION**

Ms. SLAUGHTER. Thank you so much, Chair Cantwell, Ranking Member Cruz, and members of this committee. It is an incredible honor to return to this committee as you consider my nomination, as well as those of my fellow nominees.

I would like to begin by acknowledging my family. I am joined today by my son, Teddy, who is 11. My daughter Ellie, who is nine. My daughter Pippa, who is five.

And I will note at my first confirmation hearing, Pippa was only 9 days old, and she is now a proud kindergartner and proud big sister to my youngest child, Harriet, who is three and is sitting right—no, has already exited the room.

[Laughter.]

Ms. SLAUGHTER. She lasted longer than I expected, so I am grateful to them for their patience and for being here. And I am boundlessly grateful to my husband, Justin, for his partnership, love, and support.

I also want to acknowledge my parents who traveled here from New York City, as well as the many staff of the FTC who are here

in the room, and many other friends and family online and in person who mean so much to me. And in particular, I want to recognize my colleagues, Commissioner Bedoya and Chair Khan, who are here.

When I last sat before you as a nominee, the Senate had been my professional home for a decade. I could not imagine that I could find another job as fulfilling and challenging as the work I was privileged to do for this great body, but the last 5 years I have spent at the FTC have exceeded all my expectations.

The FTC is made up of dedicated, brilliant, professional staff who are deeply committed to our mission and from whom I learn every day. The work we do is not easy. Markets are complicated, resources are limited, and we are often forced to make very difficult decisions, but it is incredibly rewarding.

We wake up every day dedicated to carrying out Congress's directive to protect consumers and promote competition, and I appreciate that these are more than abstract concepts.

At the heart of our work are the real Americans who bear the brunt of unfair and deceptive acts and practices, and unfair methods of competition, that make it harder to put food on the table, to pay for health care, to build a business, and to navigate the digital world.

So, when we succeed at stopping and deterring illegal conduct, we are taking meaningful steps to helping those Americans participate freely, fully, and fairly in the economy. And that, in turn, makes our markets stronger.

When honest businesses compete to provide better products and services at better prices, America wins. One of the best parts about working at the FTC is the opportunity to engage with people who have a wide variety of perspectives and expertise, including the staff, academics, advocates, attorneys, economists, and, of course, my fellow Commissioners.

I believe the work of the Commission is at its best when it is the product of robust exchange of ideas and viewpoints, so I am particularly glad to be sitting here today with nominees for the two Republican seats on the Commission.

I have sorely missed my colleagues, former Commissioners Noah Phillips and Christine Wilson, and I look forward to the opportunity to get to know and work with Melissa and Andrew. We will not always agree, but I am committed to always engaging with them and seeking out common ground wherever it is available.

Thank you again for your consideration, and I look forward to your questions.

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

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

Thank you Chair Cantwell, Ranking Member Cruz, and members of the Committee. It is an incredible honor to return to this committee as you consider my nomination as well as those of my fellow nominees.

I would like to begin by acknowledging and thanking my family. I'm joined today by my son, Teddy, who is 11, my daughter Ellie, who is 9, and my daughter Pippa, who is 5. And I will note—at my first nomination hearing, Pippa was only nine days old. She is now a proud kindergartener, and proud big sister to my youngest child,

Harriet, who is 3, and sitting right near her. And I am boundlessly graceful to my husband Justin for his partnership, love, and support. I also want to acknowledge my parents and brother, who traveled here from New York City, as well as the many other friends and family online and in person whose support means so much to me.

When I last sat before you as a nominee, the Senate had been my professional home for a decade. I could not imagine that I could find another job as fulfilling and challenging as the work I was privileged to do for this great body. But the last five years I've spent at the FTC have exceeded all my expectations. The FTC is made up of dedicated, brilliant, professional staff who are deeply committed to our mission and from whom I learn every day. The work we do is not easy—markets are complicated, resources are limited, and we are often forced to make very difficult decisions—but it is incredibly rewarding. We wake up every day dedicated to carrying out Congress's directive to protect consumers and promote competition, and I appreciate that these are more than abstract concepts. At the heart of our work are the real Americans who bear the brunt of unfair and deceptive acts and practices, and unfair methods of competition, that make it harder to put food on the table, to pay for healthcare, to build a business, and to navigate the digital world.

So when we succeed at stopping and deterring illegal conduct, we are taking meaningful steps to helping those Americans participate freely, fully, and fairly in the economy. And that, in turn, makes our markets stronger—when honest businesses compete to provide better products and services at better prices, America wins.

One of the best parts about working at the FTC is the opportunity to engage with people who have a wide variety of perspectives and expertise, including the staff, academics, advocates, attorneys, economists, and of course my fellow Commissioners. I believe the work of the Commission is at its best when it is the product of a robust exchange of ideas and viewpoints. So I am particularly glad to be sitting here today with nominees for the two Republican seats on the Commission. I have sorely missed my colleagues, former Commissioners Noah Phillips and Christine Wilson, and look forward to the opportunity to get to know and work with Solicitors General Holyoak and Ferguson. We will not always agree, but I am committed to always engaging with them and seeking out common ground wherever it is available. Thank you again for your consideration, and I look forward to your questions.

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#### A. BIOGRAPHICAL INFORMATION

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

Rebecca Joy Kelly Slaughter (formerly Rebecca Joy Kelly; nickname Becca)

2. Position to which nominated: Commissioner, Federal Trade Commission.

3. Date of Nomination: February 13, 2023.

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

Residence: Information not released to the public.

Office: Federal Trade Commission, 600 Pennsylvania Ave. NW, Washington DC 20580.

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, Policy Director, Paradigm

7. List all college and graduate schools attended, whether or not you were granted a degree by the institution. Provide the name of the institution, the dates attended, the degree received, and the date of the degree.

Yale College, 1999–2003, B.A., 2003

Yale Law School, 2004–2008, J.D., 2008

8. List all post-undergraduate employment, including the job title, name of employer, and inclusive dates of employment, and highlight all management-level jobs held and any non-managerial jobs that relate to the position for which you are nominated.

*Federal Trade Commission* (2018 to present).

I have served as a Commissioner on the Federal Trade Commission since May 2018. I served as the Acting Chair of the agency from January to June 2021.

*Office of Senator Charles Schumer, Democratic Leader* (2009–2018, 2005–2006). I 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 (2014–2018). In that capacity, I 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 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.  
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 after 18 years of age. 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. None.

12. Please list each membership you have had after 18 years of age or currently hold with any civic, social, charitable, educational, political, professional, fraternal, benevolent or religiously affiliated organization, private club, or other membership organization. (For this question, you do not have to list your religious affiliation or membership in a religious house of worship or institution.) 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 disability.

- Carderock Springs Swim and Tennis Club—Member, Summer 2017 to present.
- Senate Employees Child Care Center (SECCC)—Member, 2011–2018.
- NY State Bar Association—Member, 2010–2011; currently inactive.
- *Yale Law Journal*—Board Member (*The Pocket Part Committee*), 2007–2008.
- The Andrew Morehouse Trust—Regular Member, 2004 to 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. List all memberships and offices held with and services rendered to, whether compensated or not, any political party or election committee within the past ten years. If you have held a paid position or served in a formal or official advisory position (whether compensated or not) in a political campaign within the past ten years, identify the particulars of the campaign, including the candidate, year of the campaign, and your title and responsibilities. None.

15. Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of \$200 or more for the past ten years.

- Josh Riley for Congress (\$250, 6/10/22)
- Ossoff-Warnock Victory Fund (\$500, 12/16/20)

16. 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

17. List each book, article, column, letter to the editor, Internet blog posting, or other publication you have authored, individually or with others. Include a link to each publication when possible. If a link is not available, provide a digital copy of the publication when available.

- Slaughter, Rebecca, with Janice Kopec and Mohamad Batal, *Algorithms and Economic Justice: A Taxonomy of Harms and a Path Forward for the Federal Trade Commission*, Yale Journal of Law and Technology, 2021.

- Slaughter, Rebecca, *Op-Ed: You Should Have the Right to Sue Apple*, New York Times, December 12, 2018.
- Slaughter, Rebecca, *I got my dream job and had my baby the same week. So I brought my baby to work*, Vox Media, November 13, 2018.
- Kelly, Rebecca, *Note: Defensive Shootings and Error Risk: A Collateral Cost of Changing Gun Laws*, Yale Law & Policy Review, 2008.

18. List all speeches, panel discussions, and presentations (e.g., PowerPoint) that you have given on topics relevant to the position for which you have been nominated. Include a link to each publication when possible. If a link is not available, provide a digital copy of the speech or presentation when available.

- *Competition Law Enforcement Issues Raised by Monopsonies*, United Nations Conference on Trade and Development, July 5, 2023.
- *Taking on Big Tech: Using All the Tools in the Consumer Protection Toolbox*, United Nations Conference on Trade and Development, July 4, 2023.
- *Enforcement Priorities Around the World: From Children Privacy, to AdTech*, Japan Privacy Symposium, June 22, 2023.
- *The FTC, Consumers, and Technology*, 19th Represents Summit, May 18, 2023.
- *Keynote Fireside Chat*, Privacy + Security Forum, May 12, 2023.
- *Hot Topics Panel*, ABA Antitrust Law Spring Meeting, March 30, 2023.
- *Fireside Chat*, George Mason Law Review Antitrust Symposium, February 24, 2023.
- *Algorithms and Economic Justice: A Taxonomy of Harms and a Path Forward for the FTC*, Privacy Papers for Policymakers Forum, February 16, 2023.
- *Quick Hits: Algorithmic Biases and Economic Harms*, Antitrust Women. Connected Gender Competition Roundtable, January 26, 2023.
- *Conversation with a Commissioner*, CES 2023, January 7, 2023.
- *Fireside Chat: A Manifesto on Enforcing Law in the Age of AI*, Athens Roundtable on AI and the Rule of Law, December 1, 2022.
- *Big Tech, Little Tech, and Small Business: Re-Thinking the Tech Ecosystem*, Politico AI and Tech Summit, September 29, 2022.
- *Keynote Remarks*, Resourcing a New Paradigm: The Future of Antimonopoly Research, July 19, 2022.
- *Keynote Remarks*, FTC/DOJ Pharmaceutical Task Force Workshop, June 14, 2022.
- *Protecting Privacy Online Through Antitrust Regulation*, Access Now RightsCon, June 9, 2022.
- *Manipulative Design Practices: Online Policy Solutions for the EU and the U.S.*, Computers, Privacy and Data Protection Conference, May 23, 2022.
- *Remarks*, Common Ground Conference: Working Together to Protect Colorado Consumers, May 6, 2022.
- *A Rethink of the U.S. Merger Guidelines*, ABA Antitrust Law Spring Meeting, April 7, 2022.
- *Storming the Concentration Castle: Antitrust Lessons from the Princess Bride*, Greg Lastowka Memorial Lecture at Rutgers Law School, March 31, 2022.
- *Fireside Chat*, Privacy + Security Forum Spring Academy, March 24, 2022.
- *Remarks of Commissioner Rebecca Kelly Slaughter*, NTIA Listening Session on Privacy, Equity, and Civil Rights, December 14, 2021.
- *SEPs, Antitrust, and the FTC*, ANSI World Standards Week: Intellectual Property Rights Policy Advisory Group Meeting, October 29, 2021.
- *Wait But Why? Rethinking Assumptions About Surveillance Advertising*, IAPP Privacy Security Risk Closing Keynote, October 22, 2021.
- *Disputing the Dogmas of Surveillance Advertising*, National Advertising Division Conference, October 1, 2021.
- *Opening Remarks*, PrivacyCon 2021, July 27, 2021.
- *An Evening with FTC Commissioner Rebecca Slaughter*, Kroll Settlement Administration, July 14, 2021.
- *Panel Discussion*, Florence Competition Summer Conference: Effective Remedies Vis-a-Vis Digital Platforms, June 24, 2021.

- *What's the Progress on Integrating Antitrust & Privacy?*, CEPR Privacy & Antitrust: "Integration", Not Just "Intersection," June 17, 2021.
- *Welcome to the Consumer Marketplace of the Future*, OECD International Consumer Conference: The Consumer Marketplace of the Future, June 15, 2021.
- *The Perspective from Heads of Competition Agencies*, Canadian Competition Bureau: Competition and Growth Summit, June 3, 2021.
- *Discussion with Federal Consumer Protection Partners*, National Association of Attorneys General Consumer Protection Spring Virtual Conference, May 11, 2021.
- *Keynote Remarks*, Consumer Federation of America's Virtual Consumer Assembly, May 4, 2021.
- *Opening Remarks*, FTC's "Bringing Dark Patterns to Light" Workshop, April 29, 2021.
- *Centering Anti-Racism in the Anti-Monopoly Fight*, Economic Security Project Panel Discussion, April 7, 2021.
- *Women's Leadership Fireside Chat*, Federal Communications Bar Association, March 29, 2021.
- *Vertical is the New Horizontal*, American Bar Association Antitrust Law Section Spring Meeting, March 26, 2021.
- *Regulate Them or Break Them Up? The Role of Competition Policy Towards Big Tech*, International Conference on Competition, March 4, 2021.
- *Keynote Panel on Competition Policy in the Economic Recovery*, OECD Competition Open Day, February 24, 2021.
- *Protecting Consumer Privacy in a Time of Crisis*, Future of Privacy Forum, February 10, 2021.
- *Looking Back to Look Forward: What Can 2020 Tell Us About the Future of Merger Enforcement*, Global Competition Review Antitrust Law Leaders Forum, February 5, 2021.
- *Does Antitrust Perpetuate Structural Racism?*, New York State Bar Association Antitrust Law Section Symposium, January 25, 2021.
- *The First 100 Days: Tech Policy in the Biden Administration*, Protocol Panel Discussion, January 19, 2021.
- *Work-Life Imbalance: Moving Ahead in the Age of COVID*, Women Lawyers on Guard Panel, December 14, 2020.
- *Antitrust at a Precipice*, GCR Interactive: Women in Antitrust, November 17, 2020.
- *Antitrust and Privacy in Times of National Emergency*, ABA Fall Forum, November 12, 2020.
- *Antitrust & the FTC in the Next Administration*, Technology Policy Institute Aspen Forum: Tech Policy, COVID, and the Election, October 20, 2020.
- *FTC Data Privacy Enforcement: A Time of Change*, NYU School of Law Program on Corporate Compliance and Enforcement Cybersecurity and Data Privacy Conference, Program on Corporate Compliance and Enforcement, NYU School of Law, October 16, 2020.
- *David E. Nelson Keynote: A View from the Federal Trade Commission*, Berkeley Center for Law & Technology Privacy Law Forum, October 9, 2020.
- *Award Presentation*, Concurrences Antitrust Writing Awards Virtual Ceremony, October 5, 2020.
- *Hot Topics*, American Bar Association Antitrust Law Section Virtual Spring Meeting, April 28, 2020.
- *The Crystal Ball: Implications for Future Competition Policy and Practice*, Competition and Markets Authority Understanding Digital Markets: Innovation, Investment and Competition Conference, March 3, 2020.
- *Think Big . . . [Tech!] Thoughts About the Path Forward for Enforcement*, GCR Telecoms, Media & Technology Conference, March 2, 2020.
- *A Chat with FTC Commissioners*, Tech Policy Institute Roundtable, February 5, 2020.
- *Predictions on Data Privacy and Security: 2020 and Beyond*, New York State Bar Association Intellectual Property Law Section Annual Meeting, January 28, 2020.
- *Algorithms and Economic Justice*, UCLA School of Law, January 24, 2020.

- *New Decade, New Resolve to Protect and Promote Competitive Markets for Workers*, FTC Workshop on Non-Compete Clauses in the Workplace, January 9, 2020.
- *Chief Privacy Officer Roundtable: What Do Consumers Want?*, CES 2020, January 7, 2020.
- *Insights with the FCC and FTC*, Consumer Technology Association Policy Forum, January 7, 2020.
- *Specific Protection for Children Under the GDPR and National Laws*, IAPP Europe Data Protection Congress, November 21, 2019.
- *Opening Remarks*, ABA Section of Antitrust Women's Initiative Gender and Competition Workshop, November 19, 2019.
- *Data as an Asset*, ABA Antitrust Section Fall Forum Tech Summit, November 18, 2019.
- *Luncheon Discussion*, 11th Annual Berkeley-Georgetown Conference on Patent Law & Policy: The Role of the Courts in Patent Law & Policy, November 15, 2019.
- *The Role of the Federal Trade Commission in Privacy and Beyond*, Brookings Institution, October 28, 2019.
- *International Data Protection Law Cooperation: Comparative Lessons*, Privacy + Security Forum, October 15, 2019.
- *Enabling Responsible and Trusted Data Sharing*, International Institute of Communications Workshop: The Cross-Cutting Issues of Privacy and (Personal) Data Protection as They Impact on the TMT Sector, October 11, 2019.
- *Competition Policy in the Online World: is There a Need to Adapt to Respond to the Challenges of Digitalisation?*, International Institute of Communications International Regulators' Forum, October 7, 2019.
- *Remarks*, National Institute for the Defense of Free Competition and the Protection of Intellectual Property Peruvian Competition Day, September 18, 2019.
- *Fireside Chat*, The Media Institute Communications Forum, September 12, 2019.
- *Keynote Address*, Privacy Law Salon Policymaker Roundtable, September 12, 2019.
- *Discussion with Commissioner Slaughter*, Association of National Advertisers Government Relations Committee Meeting & Capitol Hill Day, September 11, 2019.
- *The Near Future of U.S. Privacy Law*, Silicon Flatirons, University of Colorado Law School, September 6, 2019.
- *A Chat with Federal Trade Commissioners*, Technology Policy Institute Aspen Forum, August 19, 2019.
- *DC Summer Program Seminar Speaker*, Silicon Flatirons, July 30, 2019.
- *Healthcare, Labor, and other Hot Consumer and Competition Topics: Views from an FTC Commissioner and the Washington Attorney General's Office*, Washington State Bar Association, July 18, 2019.
- *Standard Essential Patents and Antitrust*, The Sedona Conference's Patent Conference (Part 2): Promoting Invention, Entrepreneurship, Economic Growth, and Job Creation, June 28, 2019.
- *Keynote Address*, Federal Retirement Thrift Investment Board Privacy Awareness Day, June 24, 2019.
- *Should Enforcers Presume that Mergers are Pro-Competitive? Factoring Unenforceable and Undelivered Efficiency Claims into Merger Review*, American Antitrust Institute's 20th Annual Policy Conference: Strengthening Antitrust Enforcement, June 20, 2019.
- *Opening Remarks: That's the Ticket*, FTC Workshop on Online Ticket Sales, June 11, 2019.
- *Remarks*, Consumer Data Industry Association Law & Industry Conference, June 5, 2019.
- *Keynote Fireside Chat*, Cleveland-Marshall's Cybersecurity and Privacy Protection Conference, May 30, 2019.
- *Competition Policy and Regulation: Pressures in a Globalised Economy*, Chatham House Competition Policy 2019 Conference: Need for a Paradigm Switch, May 23, 2019.

- *Keynote Remarks*, European Data Protection Days Conference, May 21, 2019.
- *Antitrust and Health Care Providers: Policies to Promote Competition and Protect Patients*, Center for American Progress, May 14, 2019.
- *Privacy and Antitrust: Regulating a Digital Economy*, International Association of Privacy Professionals Global Privacy Summit, May 3, 2019.
- *Remarks*, Sidley Austin Women in Privacy Luncheon, May 2, 2019.
- *Fireside Chat*, National Retail Federation Spring Privacy Meeting, May 1, 2019.
- *Presentation of Distinguished Public Service Award to Helen Dixon*, Future of Privacy Forum 10th Anniversary Celebration, April 30, 2019.
- *Merger Retrospective Lessons from Mr. Rogers*, FTC Hearings on Competition and Consumer Protection in the 21st Century: Merger Retrospectives, April 12, 2019.
- *Remarks*, FTC Hearings on Competition and Consumer Protection in the 21st Century: the FTC's Approach to Consumer Privacy, April 10, 2019.
- *Reshaping Privacy Regulations—Compliance and Consequences*, American Bar Association Antitrust Law Section Spring Meeting, March 28, 2019.
- *'The ABA Fringe': Are the Europeans Creating Momentum on Digital Enforcement?*, Charles River Associates, March 27, 2019.
- *Privacy & Security in the Age of Intelligent Connectivity*, GSMA Ministerial Programme, Mobile World Congress, February 27, 2019.
- *What Do Consumers Want?*, GSMA Ministerial Programme, Mobile World Congress, February 26, 2019.
- *Cross-Regulatory Roundtable on the Future of Data Privacy*, GSMA Ministerial Programme, Mobile World Congress, February 25, 2019.
- *Fireside Chat*, State of the Net Conference, January 29, 2019.
- *Remarks*, Communications Law Forum of the Women's Bar Association of DC Holiday Tea, December 11, 2018.
- *Remarks*, Digital Dialogue Forum Lunches, November 8, 2018.
- *Closing Remarks*, FTC Hearings on Competition and Consumer Protection in the 21st Century: Innovation and Intellectual Property, October 24, 2018.
- *Opening Remarks*, COPPA at 20: Protecting Children's Privacy in the New Digital Era, Georgetown Law School Institute for Technology Law & Policy, October 24, 2018.
- *Regulatory Panel*, ChIPs Global Summit, October 19, 2018.
- *The U.S. and EU: Areas of Convergence, Areas of Divergence?*, Privacy + Security Forum, October 5, 2018.
- *Visions and Goals for the Future of IoT in the USA and Globally*, Forum Global 6th Annual Internet of Things Global Summit, October 4, 2018.
- *Closing Keynote*, Bill Kovacic Antitrust Salon: Where is Antitrust Policy Going?, George Washington University Law School, September 24, 2018.
- *Remarks*, FTC Hearings on Competition and Consumer Protection in the 21st Century, September 21, 2018.
- *Privacy's Next Chapter*, Privacy Law Salon Policy Roundtable, September 14, 2018.
- *The Internet of Bodies*, DEFCON Biohacking Village, August 10, 2018.
- *Raising the Standard: Bringing Security and Transparency to the Internet of Things?*, Open Technology Institute, July 26, 2018.

Prior to joining the FTC, I spoke several times on panels at the annual ChIPs Women in IP Conference on the topic of emerging issues in law and technology policy. I also spoke on a panel titled Women in Politics at the Brearley School's alumnae weekend in May 2017.

19. List all public statements you have made during the past ten years, including statements in news articles and radio and television appearances, which are on topics relevant to the position for which you have been nominated, including dates. Include a link to each statement when possible. If a link is not available, provide a digital copy of the statement when available.

#### **Public Statements Made on Federal Trade Commission Matters**

- *Statement Regarding the Health Breach Notification Rule and the Biometric Policy Statement*, FTC Open Commission Meeting, May 18, 2023.

- *Policy Statement of the Federal Trade Commission on Biometric Information and Section 5 of the Federal Trade Commission Act*, FTC Open Commission Meeting, May 18, 2023.
- *Statement Regarding the Issuance of a Notice of Penalty Offenses on Substantiation of Product Claims*, March 31, 2023 (joined by Chair Lina M. Khan and Commissioner Alvaro M. Bedoya).
- *Statement Regarding Amazon.com, Inc's Acquisition of 1Life Healthcare, Inc.*, February 27, 2023 (joint with Chair Lina M. Khan, Commissioner Christine S. Wilson, and Commissioner Alvaro M. Bedoya).
- *Statement In the Matter of HSR Premerger Notification*, February 10, 2023 (joined by Chair Lina M. Khan and Commissioner Alvaro M. Bedoya).
- *Statement Regarding the Notice of Proposed Rulemaking on Non-Compete Clauses*, January 5, 2023 (joined by Commissioner Alvaro M. Bedoya).
- *Statement In the Matter of Linde AG; Praxair, Inc.; and Linde PLC*, November 15, 2022 (joined by Chair Lina M. Khan).
- *Statement In the Matter of Drizzly*, October 21, 2022.
- *Statement Regarding Advance Notice of Proposed Rulemaking for Trade Regulation Rule Concerning Reviews and Endorsements*, FTC Open Commission Meeting, October 20, 2022.
- *Statement Regarding Advance Notice of Proposed Rulemaking Regarding Funeral Industry Practices Rule*, FTC Open Commission Meeting, October 20, 2022.
- *Statement Regarding Advance Notice of Proposed Rulemaking for Unfair or Deceptive Fees*, FTC Open Commission Meeting, October 20, 2022.
- *Statement Regarding Advance Notice of Proposed Rulemaking for Unfair or Deceptive Fees*, FTC Open Commission Meeting, October 20, 2022.
- *Statement Regarding Bureau of Consumer Protection Staff Report: "Bringing Dark Patterns to Light,"* FTC Open Commission Meeting, September 15, 2022.
- *Statement Regarding FTC Policy Statement on Enforcement Related to Gig Work*, FTC Open Commission Meeting, September 15, 2022.
- *Statement Regarding Notice of Proposed Rulemaking on Impersonation of Government and Business*, FTC Open Commission Meeting, September 15, 2022.
- *Statement at the Commercial Surveillance and Data Security Public Forum*, September 8, 2022.
- *Statement Regarding the Commercial Surveillance and Data Security Advance Notice of Proposed Rulemaking*, August 11, 2022.
- *Statement Regarding the Notice of Proposed Rulemaking on a Motor Vehicle Dealers Trade Regulation Rule*, June 23, 2022 (joint with Chair Lina M. Khan, Commissioner Noah Joshua Phillips, and Commissioner Alvaro M. Bedoya).
- *Statement Regarding the Commission's Report to Congress: Combatting Online Harms Through Innovation*, FTC Open Commission Meeting, June 16, 2022.
- *Statement Regarding the Policy Statement of the Federal Trade Commission on Rebates and Fees in Exchange for Excluding Lower-Cost Drug Products*, FTC Open Commission Meeting, June 16, 2022.
- *Statement Regarding the Use of Compulsory Process and Issuance of 6(b) Orders to Study Contracting Practices of Pharmacy Benefit Managers*, June 7, 2022.
- *Statement Regarding the Request for Public Comments on the Amendments to the Endorsement Guides*, FTC Open Commission Meeting, May 19, 2022.
- *Statement Regarding the Policy Statement on Education Technology and the Children's Online Privacy Protection Act*, FTC Open Commission Meeting, May 19, 2022.
- *Statement Regarding Section 13(b) of the FTC Act*, FTC Open Commission Meeting, April 28, 2022.
- *Concurring Statement Regarding FTC and State of Rhode Island v. Lifespan Corporation and Care New England Health System*, February 17, 2022 (joint with Chair Lina M. Khan).
- *Statement Regarding the Advance Notice of Proposed Rulemaking on the Use of Earnings Claims*, FTC Open Commission Meeting, February 17, 2022.
- *Concurring Statement Regarding the 2022 Revised Clayton Act Thresholds*, January 24, 2022.
- *Dissenting Statement Regarding Ascension Data & Analytics, LLC*, December 22, 2021.

- *Statement Regarding Advance Notice of Proposed Rulemaking on Government and Business Impersonation Fraud*, FTC Open Commission Meeting, December 16, 2021.
- *Statement In the Matter of Vision Path, Inc. d/b/a Hubble*, December 8, 2021
- *Statement Regarding Criminal Referral and Partnership Process*, FTC Open Commission Meeting, November 18, 2021.
- *Remarks Regarding the FTC Staff Report—A Look at What ISPs Know About You: Examining the Privacy Practices of Six Major Internet Service Providers*, FTC Open Commission Meeting, October 21, 2021.
- *Statement In the Matter of Resident Home LLC*, October 8, 2021 (joint with Chair Lina M. Kahan and Commissioner Rohit Chopra).
- *Statement Regarding the Report to Congress on Privacy and Security*, October 1, 2021.
- *Statement Regarding the Withdrawal of the Vertical Merger Guidelines*, FTC Open Commission Meeting, September 15, 2021 (joint with Chair Lina M. Khan and Commissioner Rohit Chopra).
- *Remarks Regarding the Proposed Recission of the FTC's Approval of the 2020 Vertical Merger Guidelines*, FTC Open Commission Meeting, September 15, 2021.
- *Remarks Regarding the Commission's Policy Statement on Privacy Breaches by Connected Health Apps*, FTC Open Commission Meeting, September 15, 2021.
- *Remarks Regarding Non-HSR Reported Acquisitions by Select Technology Platforms, 2010–2019: An FTC Study*, FTC Open Commission Meeting, September 15, 2021.
- *Concurring Statement In the Matter of Tate's Auto*, July 29, 2021.
- *Statement Regarding the Adoption of Revised Section 18 Rulemaking Procedures*, FTC Open Commission Meeting, July 1, 2021 (joined by Chair Lina M. Khan and Commissioner Rohit Chopra).
- *Concurring Statement In the Matter of Seven & i Holdings Co., Ltd./ Marathon Petroleum Corporation*, June 25, 2021 (joint with Commissioner Rohit Chopra).
- *Statement Regarding the Federal Trade Commission's Report to Congress on Rebate Walls*, May 28, 2021.
- *Statement Regarding the Closing of the 7-Eleven and Marathon Transaction*, May 14, 2021 (joint with Commissioner Rohit Chopra).
- *Concurring Statement Regarding the Revised Clayton Act Thresholds*, February 5, 2021.
- *Statement In the Matter of Amazon Flex*, February 2, 2021 (joint with Commissioner Noah Joshua Phillips).
- *Dissenting Statement Regarding Final Approval of Settlement with Zoom Video Communications, Inc.*, February 1, 2021.
- *Concurring Statement In the Matters of Just in Time Tickets; Cartisim Corp.; and Concert Specials*, January 22, 2021.
- *Dissenting Statement Regarding the FTC Staff Comment on the VA's Interim Final Rule on the Authority of VA Professionals to Practice Health Care*, January 15, 2021.
- *Statement Concurring in Part, Dissenting in Part, In the Matter of Flo Health, Inc.*, January 13, 2021 (joint with Commissioner Rohit Chopra).
- *Dissenting Statement Regarding the Vertical Merger Commentary*, December 22, 2020 (joint with Commissioner Rohit Chopra).
- *Statement Regarding Social Media and Video Streaming Service Providers' Privacy Practices*, December 14, 2020 (joint with Commissioner Rohit Chopra and Commissioner Christine S. Wilson).
- *Concurring Statement In the Matter of AppFolio, Inc.*, December 8, 2020.
- *Concurring Statement In the Matter of Midwest Recovery Systems*, November 30, 2020.
- *Concurring Statement In the Matter of Linde AG, et al.*, November 13, 2020.
- *Dissenting Statement In the Matter of Zoom Video Communications, Inc.*, November 9, 2020.
- *Statement Regarding the Hart-Scott-Rodino Act Premerger Notification Rule-making Notices*, September 21, 2020.

- *Opening Statement*, United States Senate Committee on Commerce, Science, and Transportation Hearing on Oversight of the Federal Trade Commission, August 5, 2020.
- *Statement of the Commission In the Matter of Alimentation, Couche-Tard, and CrossAmerica Partners LP*, July 6, 2020.
- *Dissenting Statement Regarding FTC–DOJ Vertical Merger Guidelines*, June 30, 2020.
- *Statement Regarding the Contact Lens Rule Review*, June 23, 2020.
- *Statement In the Matter of Liberty Chevrolet, Inc. d/b/a Bronx Honda*, May 27, 2020.
- *Dissenting Statement In the Matter of AbbVie/Allergan*, May 5, 2020.
- *Dissenting Statement Regarding FTC v. Progressive Leasing*, April 20, 2020.
- *Dissenting Statement Regarding the FTC Fiscal Year 2021 Budget Request*, February 10, 2020.
- *Concurring Statement Regarding the Request for Comment on the Funeral Rule*, February 4, 2020.
- *Concurring Statement In the Matter of Shop Tutors, Inc. d/b/a LendEDU*, February 3, 2020.
- *Concurring Statement Regarding FTC and State of New York v. Vyera Pharmaceuticals, LLC; Phoenixus AG; Martin Shkreli; and Kevin Mulleady*, January 27, 2020.
- *Statement Regarding FTC–DOJ Draft Vertical Merger Guidelines*, January 10, 2020.
- *Statement of the Federal Trade Commission In the Matter of Holding/Spark Therapeutics*, December 16, 2019.
- *Concurring Statement In the Matter of the University of Phoenix, Inc.*, December 10, 2019.
- *Dissenting Statement In the Matter of Bristol-Myers Squibb and Celgene*, November 15, 2019.
- *Statement of the Federal Trade Commission Concerning the Commission’s Consent Order In the Matter of Your Therapy Source, LLC, Neeraj Jindal, and Sheri Yarbray*, October 31, 2019.
- *Statement In the Matter of Your Therapy Source, LLC, Neeraj Jindal and Sheri Yarbray*, October 31, 2019.
- *Remarks Regarding Retina-X Studios, LLC Press Call*, FTC Press Call, October 22, 2019.
- *Comment on the CFPB’s Proposed Regulation F*, September 18, 2019.
- *Statement In the Matter of DTE Energy/Generation Pipeline*, September 12, 2019 (joint with Commissioner Rohit Chopra).
- *Dissenting Statement In the Matter of Google LLC and Youtube LLC*, September 4, 2019.
- *Dissenting Statement In the Matter of FTC v. Facebook*, July 24, 2019.
- *Statement In the Matter of FTC v. Equifax, Inc.*, July 22, 2019.
- *Statement Regarding FTC Report on the Use of Section 5 to Address Off-Patent Pharmaceutical Price-Spikes*, June 24, 2019 (joint with Commissioner Rohit Chopra).
- *Statement In the Matter of UnitedHealth Group and DaVita*, June 19, 2019 (joint with Commissioner Rohit Chopra).
- *Dissenting Statement Regarding the Matters of Sandpiper/PiperGear and Patriot Puck*, April 17, 2019.
- *Statement In the Matter of Musically, Inc. (now known as TikTok)*, February 27, 2019 (joint with Commissioner Rohit Chopra).
- *Dissenting Statement In the Matter of Fresenius Medical Care/NxStage*, February 19, 2019.
- *Statement In the Matter of Syacmore Partners, Staples, and Essendant*, January 28, 2019.
- *Concurring Opinion In the Matter of 1–800 Contacts, Inc.*, November 14, 2018.
- *Statement In the Matter of Uber Technologies, Inc.*, October 26, 2018.
- *Concurring Statement In the Matters of Nectar Sleep, Sandpiper/PiperGear, and Patriot Puck*, September 12, 2018 (joined by Chair Joseph J. Simons).

- *Statement of Federal Trade Commission Concerning FTC v. Speedway Motors, Inc.*, August 9, 2018.
- *Dissenting Statement Regarding the Appointment of the Director of the Bureau of Consumer Protection*, May 16, 2018.

#### **Statements Made in Press Releases**

- *Response from FTC Acting Chairwoman Slaughter to Letter from Chamber of Commerce Regarding Section 13(b) of FTC Act*, May 19, 2021.
- *Statement from FTC Acting Chairwoman Slaughter and Commissioner Chopra on 7-Eleven/Speedway Merger*, May 14, 2021.
- *Multilateral Pharmaceutical Merger Task Force Seeks Public Input*, May 11, 2021.
- *FTC Returns Nearly \$60 Million to Those Suffering from Opioid Addiction Who Were Allegedly Overcharged in Suboxone Film Scheme*, May 10, 2021.
- *FTC Acting Chairwoman Slaughter Announces New Appointments to Agency Leadership Positions*, May 5, 2021.
- *FTC, CFPB Send Notice Letters to Landlords Regarding Pandemic Eviction Moratorium*, May 3, 2021.
- *Statement by FTC Acting Chairwoman Rebecca Kelly Slaughter on the U.S. Supreme Court Ruling in AMG Capital Management LLC v. FTC*, April 22, 2021.
- *In First Action Under COVID-19 Consumer Protection Act, FTC Seeks Monetary Penalties for Deceptive Marketing of Purported Coronavirus Treatments*, April 15, 2021.
- *U.S. Court of Appeals for the Fifth Circuit Upholds FTC's Opinion against Generic Pharmaceutical Company Impax Laboratories, LLC*, April 13, 2021.
- *Acting FTC Chairwoman Slaughter Appoints Marta E. Wosińska as Director of Bureau of Economics*, April 13, 2021.
- *FTC Challenges Illumina's Proposed Acquisition of Cancer Detection Test Maker Grail*, March 30, 2021.
- *Statement by Acting Chairwoman Rebecca Kelly Slaughter on Agency's Decision not to Petition Supreme Court for Review of Qualcomm Case*, March 29, 2021.
- *Joint Statement by FTC Acting Chairwoman Rebecca Kelly Slaughter and CFPB Acting Director Dave Uejio*, March 29, 2021.
- *Acting FTC Chairwoman Releases 2020 Annual Highlights*, March 25, 2021.
- *FTC Acting Chairwoman Slaughter Announces New Rulemaking Group*, March 25, 2021.
- *Acting FTC Chairwoman Slaughter Appoints Lindsay Kryzak the Agency's Public Affairs Director*, March 23, 2021.
- *Statement of Acting FTC Chairwoman Rebecca Kelly Slaughter on the Nomination of Lina M. Khan*, March 22, 2021.
- *FTC Announces Multilateral Working Group to Build a New Approach to Pharmaceutical Mergers*, March 16, 2021.
- *Statement by Acting FTC Chairwoman Rebecca Kelly Slaughter on Enactment of the American Rescue Plan Act*, March 12, 2021.
- *Following Federal Trade Commission Staff Recommendation to Challenge Transaction, Two Health Care Systems in Central Georgia Abandon Proposed Merger*, March 3, 2021.
- *FTC Launches Initiative to Encourage Lower-Income Communities to Report Fraud*, March 3, 2021.
- *FTC Report Cites Benefits of International Cooperation on Antitrust and Consumer Protection Enforcement*, February 16, 2021.
- *FTC, DOJ Temporarily Suspend Discretionary Practice of Early Termination*, February 4, 2021.
- *Following Federal Trade Commission Staff Recommendation to Challenge Transaction, Tronox Holding plc. Abandons Proposed Acquisition of TiZir Titanium and Iron*, January 29, 2021.
- *FTC Acting Chair Rebecca Kelly Slaughter Announces Interim Leadership Appointments*, January 25, 2021.
- *FTC Commissioner Rebecca Kelly Slaughter Designated Acting Chair of the Agency*, January 21, 2021.

**Statements Made in Interviews**

- *Interview*, Key Roger W. Jones Executive Leaders Podcast Series, December 10, 2021.
- *In The U.S.A.'S Tech-Driven Economy, Is Enough Being Done to Protect Consumer Choice and Privacy?*, Brookings TechTank Podcast, November 15, 2021.
- *Interview*, Global Competition Review, September 24, 2021.
- *Facing Off with Facebook (with Rebecca Kelly Slaughter)*, Stay Tuned with Preet, August 26, 2021.
- *Stay Tuned Bonus*, The CAFE Insider Podcast, August 26, 2021.
- *'Don't lie': FTC Commissioner Rebecca Slaughter on Why Today's Data Privacy Approaches Don't Work*, Digiday, July 7, 2021.
- *FTC Chairwoman Discusses Consumer Privacy in the Digital Economy*, Wall Street Journal, June 2, 2021.
- *CPI Talks . . . with Rebecca Kelly Slaughter*, Competition Policy International, April 20, 2021.
- *Yahoo Finance Presents: FTC Chairwoman Rebecca Slaughter*, Yahoo Finance, March 12, 2021.
- *Policing Facebook Under a Biden Administration*, New York Magazine's Pivot Podcast, January 19, 2021.
- *Talking Tech with FTC Commissioner Rebecca Slaughter*, Yale Law School, November 18, 2020.
- *How FTC Commissioner Slaughter Wants to Make Antitrust Enforcement Antiracist*, CNBC, September 26, 2020.
- *The Communicators: FTC, Privacy & Internet Regulation*, C-SPAN, September 17, 2020.
- *Interview*, #Kidtech Podcast, March 13, 2020.
- *FTC Commissioner on New Tech Like Self-Driving Cars: I 'See Lots of Risk,'* Yahoo Finance, January 9, 2020.
- *Interview*, Broadband Conversations with Jessica, November 14, 2019.
- *Interview*, Recode Decode with Nilay Patel, September 30, 2019.
- *FTC Settlement Won't Change Facebook's Behavior, Commissioner Slaughter Says*, Bloomberg Technology, July 29, 2019.
- *Federal Trade Commission Announces Major Crackdown on Robocalls*, CBS News, June 25, 2019.
- *Antitrust Thought Leaders Interview*, Capitol Forum, March 28, 2019.
- *Keynote Interview*, The Atlantic Festival, October 2, 2018.
- *Superhuman? No, Just a Working Mom.*, New York Times, May 31, 2018.

**Statements Made to Other Agencies**

- *Comment on Circular A-4 Modernization Updates*, Office of Information and Regulatory Affairs, June 6, 2023.
- *Comment on the Proposed Rule on Independent Contractor Status Under the Fair Labor Standards Act*, Department of Labor, October 26, 2020.
- *Letter Regarding the Proposed Rule Defining Unfair or Deceptive Practices*, Department of Transportation, May 28, 2020.
- *Comment on the Proposed Rulemaking to Revise Regulations Implementing Sections 201 and 210 of the Public Utility Regulatory Policies Act of 1978*, Federal Energy Regulatory Commission, November 26, 2019.

20. List all digital platforms (including social media and other digital content sites) on which you currently or have formerly operated an account, regardless of whether or not the account was held in your name or an alias. Include the full name of an "alias" or "handle", including the complete URL and username with hyperlinks, you have used on each of the named platforms. Indicate whether the account is active, deleted, or dormant. Include a link to each account if possible.

- Facebook: *Becca Kelly Slaughter*
- Instagram: *@rebeccajoykelly*
- Twitter: *@RKSLaughterFTC*; I also used to have an old twitter account that I used just to read; I believe it was *@BeccaJoy101*
- TikTok: *@becca joy tktk*
- LinkedIn: *Becca Kelly Slaughter*

21. 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.

- House Committee on Energy and Commerce, Subcommittee on Innovation, Data, and Commerce, *Hearing on Fiscal Year 2024 Federal Trade Commission Budget*, April 18, 2023 (Appropriations).
  - *Prepared Statement of the Federal Trade Commission*
  - *Opening Statement*
- House Committee on Energy and Commerce, Subcommittee on Consumer Protection and Commerce, *Transforming the FTC: Legislation to Modernize Consumer Protection*, July 28, 2021 (Pending consumer protection legislation).
  - *Commission Testimony*
  - *Statement*
- Senate Committee on Commerce, Science and Transportation, *Letter Regarding Section 13(b) of the Federal Trade Commission Act*, May 18, 2021.
- House Committee on Energy and Commerce, Subcommittee on Consumer Protection and Commerce, *The Urgent Need to Fix Section 13(b) of the FTC Act*, April 27, 2021. (Pending consumer protection legislation).
  - *Prepared Statement of the Federal Trade Commission*
  - *Opening Statement*
- Senate Committee on Commerce, Science, and Transportation, *Strengthening the Federal Trade Commission's Authority to Protect Consumers*, April 20, 2021 (Section 13(b) of the FTC Act).
  - *Prepared Statement of the Federal Trade Commission*
  - *Opening Statement*
- House Committee on the Judiciary, Subcommittee on Antitrust, Commercial, and Administrative Law, *Reviving Competition Part 3: Strengthening the Law to Address Monopoly Power*, March 18, 2021 (Potential legislative changes to antitrust law).
  - *Prepared Statement of the Federal Trade Commission*
  - *Opening Statement*
- Senate Committee on Commerce, Science and Transportation, *Oversight of the Federal Trade Commission*, August 5, 2020 (Agency oversight).
  - *Opening Statement*
- House Committee on Energy and Commerce, Subcommittee on Digital Commerce and Consumer Protection, *Oversight of the Federal Trade Commission: Strengthening Protections for Americans' Privacy and Data Security*, May 8, 2019 (Agency oversight).
  - *Prepared Statement of the Federal Trade Commission*
  - *Statement*
- Senate Committee on Commerce, Science and Transportation, Subcommittee on Consumer Protection, Product Safety, Insurance, and Data Security, *Oversight of the Federal Trade Commission*, November 27, 2018 (Agency oversight).
  - *Prepared Statement of the Federal Trade Commission*
  - *Statement*
- House Committee on Energy and Commerce, Subcommittee on Digital Commerce and Consumer Protection, *Oversight of the Federal Trade Commission*, July 18, 2018 (Agency oversight).
  - *Prepared Statement of the Federal Trade Commission*
- Senate Committee on Commerce, Science and Transportation, *Hearing on Nominations*, April 11, 2018 (Nomination hearing).

22. 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 ap-

pointment to the position for which you have been nominated, and why do you wish to serve in that position?

It has been a tremendous honor to serve as an FTC Commissioner for five years, including five months as Acting Chair in 2021. Over the course of my FTC tenure, I have dedicated myself to ensuring that we are faithfully executing the responsibilities Congress has entrusted to us. I have worked closely with fellow Commissioners of both parties and with staff throughout the agency to understand and support their work and to ensure that we are doing the best we can every day to serve the American people by promoting competition and protecting consumers.

There are many reasons serving as an FTC Commissioner is a dream job: the opportunity to work with brilliant and dedicated agency staff; the chance to learn something new every day; the drive to find areas of common ground and consensus with fellow Commissioners; and the responsibility to grapple with challenging and novel questions of law and policy. But, above all that,

the greatest privilege—and obligation—that comes with being a Commissioner at the FTC is the ability to work every day to right wrongs and to improve the lives of the people we serve.

23. 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 that every Commissioner has a duty to study carefully the statutorily delegated responsibilities of the Commission and to ensure that all actions the Commission undertakes are consistent with that delegation and with the responsible stewardship of taxpayer dollars. I work closely with the staff of our Financial Management Office and fellow Commissioners to develop and stick to a prudent budget that delivers on our mission. I have spearheaded efforts to reduce expenses, such as by having more of our staff economists trained to serve as experts instead of having to outsource to high-priced outside experts. As a Commissioner, I have consistently advocated for more resources to be allocated to the FTC because I know that it provides a terrific return on the investment of taxpayer dollars.

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

The FTC's greatest challenge has been and continues to be meeting the enforcement demands on the agency within the confines of our limited budget. Doing so requires making difficult decisions about what conduct we investigate and which cases we ultimately choose to litigate.

A second acute challenge is executing on our mission while adapting to various court decisions that have substantially cut back on the agency's longstanding authority. The most obvious example of this is the Supreme Court's decision in *AMG Capital Management, LLC v. FTC*, which thwarted the Commission's ability to go to Federal court and seek restitution for consumers who've had money wrongfully taken from them.

Finally, the agency faces an ongoing challenge of ensuring our enforcement efforts keep pace with fast-changing technology and market conduct.

#### 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, such as a 401(k) or pension plan. 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. Explain how you will resolve each potential conflict of interest.

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 re-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. Explain how you will resolve each potential conflict of interest.

For the entirety of the last ten years, I have been an employee of the U.S. Federal government. 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 re-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. Identify any other potential conflicts of interest, and explain how you will resolve each potential conflict of interest.

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 re-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.

6. Describe any activity during the past ten years, including the names of clients represented, 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.

For the entirety of the past ten years, I have been an employee of the Federal government. As a Commissioner of the Federal Trade Commission, I have occasionally been called upon to give my perspective on pending legislation or the agency's need for new legislation. As an employee of Senator Schumer, my professional responsibilities 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.

#### 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, an Inspector General, professional association, disciplinary committee, or other professional group? If yes:

- a. Provide the name of court, 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, and that your department/agency endeavors to timely comply with requests for information from individual Members of Congress, including requests from members in the minority?

If re-confirmed, I would work diligently with my fellow Commissioners to do so, as has been my practice during my tenure at the FTC.

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

If re-confirmed, I would work diligently with my fellow Commissioners to do so, as has been my practice during my tenure at the FTC.

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.

## REBECCA KELLY SLAUGHTER

### EXPERIENCE

#### FEDERAL TRADE COMMISSION, Washington, D.C.

*Commissioner*

May 2018–present

*Acting Chairwoman*

January–June 2021

As one of five Senate-confirmed leaders of the independent federal agency responsible for competition and consumer protection, advocate for the nation's consumers and workers, and endeavor to build consensus for a progressive vision. Particular focus and interests include: growing threats related to competition and the broad abuse of consumers' data; targeted merger retrospectives; corrective enforcement; comprehensive use of the Commission's statutory and rulemaking authorities; the relationship between competition and consumer protection enforcement; and improving the agency's resources and transparency.

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

*Chief Counsel*

June 2014–April 2018

*Senior Counsel*

June 2011–June 2014

*Counsel*

May 2009–June 2011

*Professional Staff Member*

May 2005–May 2006

Provided strategic advice and directly engaged on behalf of the Democratic Leader with other Senators, as well as companies, stakeholders and constituents on portfolio of issues, including antitrust, privacy, consumer affairs, intellectual property, telecommunications, technology, national security, bankruptcy, nominations and oversight. Assisted Leader with caucus strategy and preparation of legislation, statements, questions, and speeches on those topics, and coordinated with relevant government agencies, including FTC, DOJ, FCC, and the White House. Managed team of attorneys, clerks, and assistants. Granted TS-SCI clearance.

*Significant projects included:* 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; investigation into Russian interference with the 2016 election; 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; all Supreme Court Justice nominations 2005–2017.

#### 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.

### 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

September 11, 2023

Hon. MARIA CANTWELL,  
Chair,  
Committee on Commerce, Science, and  
Transportation,  
United States Senate,  
Washington, DC.

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

Dear Chair Cantwell and Ranking Member Cruz,

I write to supplement my Committee Questionnaire with a few items I inadvertently omitted on submission.

Question 15 asks the respondent to “itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of \$200 or more for the past 10 years.” I omitted two donations:

- Biden for President (\$500, 9/18/20)<sup>1</sup>
- Biden Victory Fund (\$500, 9/28/20).

Your staff also inquired about various sub-\$200 donations to ActBlue that were reported on the FEC website. I do not believe these are responsive to the Committee’s questionnaire.

However, in the interest of being transparent and responsive to your questions, I am happy to disclose the details of those donations. Specifically, in 2020, I made eleven donations of \$100 each: nine to Democratic candidates for the Senate,<sup>2</sup> one to Color of Change, and one to Future Now Fund. For five of those donations, I added a \$10 “tip” to ActBlue directly.<sup>3</sup> With the exception of the total of \$50 in tips, these donations were not to ActBlue itself but to individual candidates or causes and processed through the ActBlue platform.

Question 19 asks the respondent to list “all public statements you have made during the past ten years.” I omitted a video I recorded for the FTC website:

- *Avoid Covid-19 Stimulus Payment Scams*, FTC Blog Post, March 12, 2021.

I sincerely apologize for these omissions; in preparing my questionnaire, I endeavored to complete as thorough a search as possible and include everything responsive to the Committee’s request, and anything I left out was an accidental oversight. I appreciate your staff’s calling these items to my attention and the opportunity to provide this supplement.

Sincerely,

REBECCA KELLY SLAUGHTER.

The CHAIR. Thank you, Ms. Slaughter. And again, welcome to your family and it is great to have your parents here as well. Mr. Ferguson.

**STATEMENT OF ANDREW N. FERGUSON, NOMINEE TO BE A  
COMMISSIONER, FEDERAL TRADE COMMISSION**

Mr. FERGUSON. Good morning. Chair Cantwell, Ranking Member Cruz, and members of this Committee, I thank you for holding today’s hearing and for inviting me to testify. I thank President Biden for nominating me to serve as a Commissioner on the FTC.

I am honored to have been chosen for the role. I also thank Leader McConnell for his generous introduction, for recommending me to the President for this post, and for the opportunity to serve in

<sup>1</sup>I found three donations listed on the FEC website—the two listed here, and an additional \$500 to Biden for President on 9/28/20. However, when I expanded out the information about that second donation, it reflects “Biden Victory Fund” in the memo line. I cross checked my e-mail receipts and my credit card statements, and could only find the two donations I have included above, leading me to conclude the second entry on the FEC site is duplicative.

<sup>2</sup>These candidates were: Jaime Harrison, Sara Gideon, Theresa Greenfield, Cal Cunningham, Steve Bullock, Alan Gross, Barbara Bollier, Gary Peters, and MJ Hegar.

<sup>3</sup>Again, I cross checked the FEC website with my e-mail receipts and my credit card statements to confirm this information. I saw additional small dollar donations to ActBlue (and WinRed) from people named Rebecca Slaughter, but those were made by different people with the same name as me.

his office for several years. Leader McConnell is one of the most influential legislators in American history and I will always be grateful for my time working for him. I also think Senator Lee for his kind words.

I really enjoyed working with him in the Senate as well. My parents are in the hearing room today, and other family and friends are watching both here and remotely. I am deeply grateful to my parents. They both made tremendous personal sacrifices while raising three boisterous boys into men and ensuring that we all had access to a Christian education. Whatever good I have to offer the world was because of them.

The free enterprise system is perhaps America's greatest contribution to the world. It has lifted countless millions of people out of poverty and has liberated them to pursue the sort of human flourishing to which all members of society are entitled. No economic system has promoted the common good more than free enterprise. But the free enterprise system is not automatically self-defending.

Society reaps the benefits of the free enterprise system only if it protects the system from monopolies and fraud. That is the FTC's crucial mission, to protect against unfair methods of competition in our markets, and to protect consumers from fraud and other deceptive practices.

Without vigorous enforcement of our competition and consumer protection laws, our free enterprise system would cease to be the miraculous engine for mass flourishing that has transformed the world. It would promote the interests of a select few at the expense of the many.

I firmly believe in the FTC's mission, and I believe my experience as a litigator and policy advisor will empower me to help lead the agency in the execution of that mission. In private practice, I litigated consumer protection and antitrust investigations before the FTC and the Justice Department.

I also litigated antitrust class actions in merger cases, including one of the largest Section 7 cases in history. And then as a Senate staffer, I saw the legislative process up close. I understand the difficult negotiations and careful compromises that go into the creation of our laws. I learned during my work on the CARES Act negotiations that our institutions function best through bipartisan cooperation, whenever that is possible.

And I know that Congress expects, and our Constitution requires, that Executive Branch agencies like the FTC will vigorously enforce the laws as Congress has written them, respect the separation of powers, and obey the constraints Congress imposes on their authority.

Most recently, I served for nearly 2 years as the Solicitor General of Virginia, where I have helped lead the Attorney General's efforts to protect the Commonwealth's consumers.

I am Counsel of Record for Virginia in a coalition of 16 other states, states led by both Republican and Democratic Attorneys General, alongside the United States in an important Section 2 lawsuit against Google, alleging that Google has monopolized the ad tech markets.

I have also filed amicus briefs defending state efforts to regulate TikTok in *Alario & TikTok v. Knudsen*, and State laws protecting consumers from pharmaceutical companies in re Fosamax.

And in addition, I recently filed an amicus brief before the Supreme Court on the Attorney General's behalf alongside a bipartisan coalition of 42 states and territories to help protect veterans' access to the GI benefits that they have earned. Consumer protection and competition are not partisan issues.

Every American has a stake in ensuring that our free enterprise system works for the common good of all. If confirmed, I commit to protecting consumers, enforcing the laws as Congress has written them, and fulfilling the FTC's mandate to ensure that the free enterprise system works for everyone. I look forward to your questions. Thank you.

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

PREPARED STATEMENT OF ANDREW N. FERGUSON, NOMINEE TO BE A COMMISSIONER,  
FEDERAL TRADE COMMISSION

Chair Cantwell, Ranking Member Cruz, and members of this Committee, I thank you for holding today's hearing and for the invitation to testify.

I thank President Biden for nominating me to serve as a Commissioner on the Federal Trade Commission. I am honored to have been chosen for this role.

I also thank Leader McConnell for his generous introduction, for recommending me to the President for this post, and for the opportunity to serve in his office for several years. Leader McConnell is one of the most influential legislators in American history, and I will always be grateful for my time working for him.

My parents are in the hearing room today, and other family and friends are watching remotely. I am deeply grateful to my parents. They both made tremendous personal sacrifices while raising three boisterous boys, and in ensuring we all had access to a Christian education. Whatever good I have to offer the world is because of them.

The free-enterprise system is perhaps America's greatest contribution to the world. It has lifted countless millions of people out of poverty, and has liberated them to pursue the sort of human flourishing to which all members of society are entitled. No economic system has promoted the common good more than free enterprise.

But the free-enterprise system is not automatically self-defending. Society reaps the benefits of free enterprise only if it protects the system from monopolies and fraud. That is the FTC's crucial mission—to protect against unfair methods of competition in our markets and to protect consumers from fraud and other deceptive practices. Without vigorous enforcement of our competition and consumer-protection laws, our free-enterprise system would cease to be the miraculous engine for mass flourishing that has transformed the world. It would promote the interests of a select few at the expense of the many.

I firmly believe in the FTC's mission. And I believe my experience as a litigator and policy advisor will empower me to help lead the FTC in the execution of its mission.

In private practice, I litigated consumer-protection and antitrust investigations before the FTC and the Justice Department. I litigated antitrust class-action and merger cases, including one of the largest Section 7 cases in history.

Then, as a Senate staffer, I saw the legislative process up close. I understand the difficult negotiations and careful compromises that go into the creation of our laws. I learned during my work on the CARES Act negotiations that our institutions function best through bipartisan cooperation whenever that is possible. And I know that Congress expects—and our Constitution requires—that executive-branch agencies like the FTC will vigorously enforce the laws as Congress has written them, respect the separation of powers, and obey the constraints Congress imposes on their authority.

Most recently, I have served for nearly two years as the Solicitor General of Virginia, where I have helped lead the Attorney General's efforts to protect consumers. I am counsel of record for Virginia and a coalition of sixteen other States—led by both Republican and Democratic attorneys general—alongside the United States in

an important Section 2 lawsuit against Google, alleging that Google has monopolized the ad-tech markets. I have also filed amicus briefs defending State efforts to regulate TikTok in *Alario & TikTok v. Knudsen*, and State laws protecting consumers from pharmaceutical companies in *In re Fosamax Products Liability Litigation*. In addition, I recently filed an amicus brief before the Supreme Court on behalf of a bipartisan coalition of forty-two States and territories to help protect veterans' access to GI benefits in *Rudisill v. McDonough*.

Consumer protection and competition are not partisan issues. Every American has a stake in ensuring our free-enterprise system works for the common good. If confirmed, I commit to protecting consumers, enforcing the law, and fulfilling the FTC's mandate to ensure the free-enterprise system works for all.

I look forward to your questions.

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#### A. BIOGRAPHICAL INFORMATION

1. Name (Include any former names or nicknames used): Andrew N. Ferguson.
2. Position to which nominated: Commissioner, Federal Trade Commission.
3. Date of Nomination: July 11, 2023.
4. Address (List current place of residence and office addresses):  
Residence: Information not released to the public.  
Office: 202 North Ninth Street, Richmond, Virginia 23220.
5. Date and Place of Birth: June 17, 1986; Harrisonburg, Virginia.
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). None.
7. List all college and graduate schools attended, whether or not you were granted a degree by the institution. Provide the name of the institution, the dates attended, the degree received, and the date of the degree.

University of Virginia, 2005–2009, B.A. awarded May 2009

William & Mary School of Law, 2009–2010 (transferred)

University of Virginia School of Law, 2010–2012, J.D. awarded May 2012

8. List all post-undergraduate employment, including the job title, name of employer, and inclusive dates of employment, and highlight all management-level jobs held and any non-managerial jobs that relate to the position for which you are nominated.

Solicitor General of the Commonwealth of Virginia, 2022 to present\*

Transition Counsel, Miyares for Virginia, 2021–2022

Chief Counsel to the Senate Republican Leader Mitch McConnell, 2019– 2021\*

Adjunct Professor, George Mason University Antonin Scalia School of Law, 2019, 2021

Chief Counsel for Nominations and the Constitution to the Chairman of the Senate Judiciary Committee Lindsey Graham, 2018–2019\*

Senior Special Counsel to the Chairman of the Senate Judiciary Committee Chuck Grassley, 2018\*

Associate, Sidley Austin LLP, 2018\*

Law clerk to Justice Clarence Thomas, Supreme Court of the United States, 2016–2017\*

Associate, Bancroft PLLC, 2015–2016\*

Associate, Covington & Burling, 2014–2015\*

Law clerk to Circuit Judge Karen L. Henderson, U.S. Court of Appeals for the D.C. Circuit, 2012–2014\*

Summer Associate, Gibson, Dunn & Crutcher, 2011

Summer Associate, Williams Mullen, 2010

Intern to Senior District Judge Norman K. Moon, U.S. District Court for the Western District of Virginia, 2010

\*Denotes management-level jobs and non-managerial jobs that relate to the position for which I am nominated.

9. Attach a copy of your résumé.  
See Attachment A.

10. List any advisory, consultative, honorary, or other part-time service or positions with Federal, State, or local governments, other than those listed above after 18 years of age. 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.

Consultant, A Safer Virginia PAC, 2021–2022

12. Please list each membership you have had after 18 years of age or currently hold with any civic, social, charitable, educational, political, professional, fraternal, benevolent or religiously affiliated organization, private club, or other membership organization. (For this question, you do not have to list your religious affiliation or membership in a religious house of worship or institution.) 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 disability.

Virginia State Bar, Member, 2013–Present

District of Columbia Bar, Member, 2015–Present

Supreme Court of the United States, Bar Member, 2021 to present

U.S. Court of Appeals for the Second Circuit, Bar Member, 2015 to present (inactive)

U.S. Court of Appeals for the Third Circuit, Bar Member, 2015 to present

U.S. Court of Appeals for the Fourth Circuit, Bar Member, 2021 to present

U.S. Court of Appeals for the Sixth Circuit, Bar Member, 2015 to present

U.S. Court of Appeals for the Ninth Circuit, Bar Member, 2015 to present

U.S. Court of Appeals for the D.C. Circuit, Bar Member, 2014 to present

U.S. District Court for the Western District of Virginia, Bar Member, 2022 to present

U.S. District Court for the Eastern District of Virginia, Bar Member, 2022 to present

U.S. District Court for the District of North Dakota, Bar Member, 2023 to present

Federalist Society, Member, 2010 to present

Teneo Network, Member, 2022 to present

Virginia Bar Association, Member, 2022 to present

Committee on Special Issues of National and State Importance, Member, 2022 to present

National Rifle Association, Member, 2017–2020

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

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.

I have not been a candidate for elected office. Since January 2022, I have served as the appointed Solicitor General of the Commonwealth of Virginia. There was no campaign associated with that appointment. That position is the only public office I have held.

14. List all memberships and offices held with and services rendered to, whether compensated or not, any political party or election committee within the past ten years. If you have held a paid position or served in a formal or official advisory position (whether compensated or not) in a political campaign within the past ten years, identify the particulars of the campaign, including the candidate, year of the campaign, and your title and responsibilities.

I served as a transition counsel for Attorney General Jason Miyares's 2021 campaign for Attorney General of Virginia from December 2021 until January 2022. I advised the campaign on hiring and policy issues. This was a compensated position.

I was a volunteer lawyer on Governor Glenn Youngkin's 2021 campaign for Governor of Virginia in November 2021.

I was a campaign volunteer on Matthew Lohr's 2005 campaign to be a member of the Virginia House of Delegates for the 26th District.

15. Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of \$200 or more for the past ten years.

Grassley Committee, Inc.—\$250 (March 14, 2022)  
 Youngkin for Governor—\$500 (October 29, 2021)  
 Tom Cotton for Senate—\$250 (November 2, 2020)  
 McConnell Senate Committee—\$500 (July 10, 2019)  
 John Adams for Virginia—\$500 (September 30, 2017)  
 John Adams for Virginia—\$250 (June 8, 2016)

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

Richard Heath Dabney Prize for Outstanding Thesis in United States History, University of Virginia (2009)  
 Virginia Lawyers Weekly “Up & Coming Lawyers” (2022)

17. List each book, article, column, letter to the editor, Internet blog posting, or other publication you have authored, individually or with others. Include a link to each publication when possible. If a link is not available, provide a digital copy of the publication when available. None.

18. List all speeches, panel discussions, and presentations (*e.g.*, PowerPoint) that you have given on topics relevant to the position for which you have been nominated. Include a link to each publication when possible. If a link is not available, provide a digital copy of the speech or presentation when available.

\*I have given several speeches, panel presentations, and other public remarks in connection with my work as a Senate staffer and as Solicitor General of Virginia. Very few of my public remarks are relevant to the position to which I have been nominated. The following is the most complete list I have been able to compile of my speeches and public remarks.

Panelist, “Developments in Religious Liberty,” Office of the Attorney General CLE Series (July 27, 2023), no public recording available. I have included the outline distributed to attendees as Attachment B to this questionnaire.

Speaker, “Summer Rooftop Reception,” Columbia Law School and University of Pennsylvania Law School Alumni Chapters (July 26, 2023), no recording available.

Panelist, “Academic Freedom in Higher Education: The Role of States Defending Freedom of Thought,” Panel at the 2023 Federalist Society Freedom of Thought Conference (June 28, 2023), recording at: <https://fedsoc.org/conferences/2023-freedom-of-thought-conference?#agenda-item-panel-4-academic-freedom-in-higher-education-the-role-of-states-defending-freedom-of-thought>.

Panelist, “Appellate Brief-Writing 101,” Office of the Attorney General CLE Series (June 27, 2023), no public recording available. I have included the outline distributed to attendees as Attachment C to this questionnaire.

Speaker, “The Role of a State Solicitor General,” University of Virginia School of Law Federalist Society Event (February 2, 2023), no recording available.

Panelist, “How Big is too Big? Competition in the Tech Sector,” Knight Foundation INFORMED event (November 29, 2022), recording at: <https://knightfoundation.org/events/knight-media-forum/informed-conversations-on-democracy-in-the-digital-age/>.

Speaker, “Small Group Dinner with Andrew Ferguson and Will Levi,” DC Federalist Society Young Lawyers Chapter Event (October 12, 2022), no recording available.

Panelist, “SCOTUS Review and Preview,” Eighth Annual Federalist Society Texas Chapters Conference (September 23, 2022), no recording available.

Panelist, “The Roberts Court at Age 16,” Virginia Bar Association Summer Meeting (July 22, 2022), <https://vba.inreachce.com/Details/Information/c7294956-4dbb-41f6-9857-36d2af181dd6>.

Panelist, “A Conversation with Two Solicitors General,” Federalist Society Puerto Rico Lawyers Chapter Event (May 26, 2022), no recording available.

Panelist, “A Conversation with Three Solicitors General,” Federalist Society Richmond Lawyers Chapter (March 21, 2022), no recording available.

Speaker, “Protecting the Family through the Rule of Law,” Family Foundation of Virginia Meeting (March 19, 2022), no recording available.

Panelist, “The Role of Federalism and the Separation of Powers in Challenging Government Overreach,” Federalist Society Florida Chapters Conference, (February 5, 2022), no recording available.

Speaker, “Advice and Consent: Top Senate Staffers’ Perspectives on the Barrett Confirmation,” Federalist Society DC Young Lawyers Chapter Event (December 2, 2020), no recording available.

Panelist, “Federal Opportunities: Promoting Freedom and the Rule of Law,” Alliance Defending Freedom Blackstone Legal Fellowship Conference (August 31, 2020), no recording available.

Panelist, “Lawyering on the Hill,” Federalist Society Capitol Hill Chapter Event (August 1, 2019), no recording available.

Panelist, “Federal Efforts to Safeguard Religious Liberty,” Alliance Defending Freedom Summit on Religious Liberty (July 9, 2019), no recording available.

19. List all public statements you have made during the past ten years, including statements in news articles and radio and television appearances, which are on topics relevant to the position for which you have been nominated, including dates. Include a link to each statement when possible. If a link is not available, provide a digital copy of the statement when available.

\*I have done my best to identify all public statements I have made over the past ten years, including statements in news articles and radio and television appearances, including through a thorough review of personal files and searches of publicly available electronic databases. Despite my searches, there may be other materials I have been unable to identify, find, or remember. I have located the statements listed below. This list does not include instances where news articles have quoted from written submissions I have filed with courts in my capacity as Solicitor General of the Commonwealth of Virginia.

Testimony before the Virginia House of Delegates Committee on the Courts of Justice, Civil Subcommittee, regarding several bills (February 13, 2023), recording available at: <https://viriniageneralassembly.gov/house/chamber/chamberstream.php>.

Testimony before the Virginia Senate Committee on the Judiciary regarding SB 1224 (February 1, 2023), recording available at: [https://virinia-senate.granicus.com/MediaPlayer.php?view\\_id=3&clip\\_id=5668](https://virinia-senate.granicus.com/MediaPlayer.php?view_id=3&clip_id=5668).

Testimony before the Virginia House of Delegates Committee on the Courts of Justice, Criminal Subcommittee, regarding HB 2015 (January 16, 2023), recording available at: <https://viriniageneralassembly.gov/house/chamber/chamberstream.php>.

Denise Lavoie, *Loudoun County NAACP Asks to Join Virginia redistricting lawsuit*, ABC7 News (March 22, 2022), <https://wjla.com/news/local/loudoun-county-naacp-asks-to-join-virginia-redistricting-lawsuit-paul-goldman-mark-herring>.

Cher Muzyk, *Can Va. Public Schools Ask Some Students to Wear Masks to Protect Their High Risk Classmates? A Federal Judge Says He’ll Decide “Quickly,”* Prince William Times (March 8, 2022), [https://www.princewilliamtimes.com/news/can-va-public-schools-ask-some-students-to-wear-masks-to-protect-their-high-risk/article\\_13245d64-9ee8-11ec-b6bc-4f62271f6a37.html](https://www.princewilliamtimes.com/news/can-va-public-schools-ask-some-students-to-wear-masks-to-protect-their-high-risk/article_13245d64-9ee8-11ec-b6bc-4f62271f6a37.html).

Hannah Natanson & Justin Jouvenal, *Judge Halts Loudoun’s School Mask Mandate as State Mask-Optional Law Takes Effect*, Washington Post (February 16, 2022), <https://www.washingtonpost.com/education/2022/02/16/judge-halts-loudouns-school-mask-mandate-halted-state-mask-optional-law-takes-effect/>.

Anya Sczerzenie, *Loudoun Makes Masks Optional Immediately After Judge Grants Injunction*, Inside NoVa (February 16, 2022), [https://www.insidenova.com/news/education/loudoun-makes-masks-optional-immediately-after-judge-grants-injunction/article\\_1ac65cda-8fa6-11ec-ba6c-23c1c921ce0f.html](https://www.insidenova.com/news/education/loudoun-makes-masks-optional-immediately-after-judge-grants-injunction/article_1ac65cda-8fa6-11ec-ba6c-23c1c921ce0f.html).

Miyares Picks *ex-McConnell Counsel as Solicitor General*, Associated Press (December 8, 2021), <https://apnews.com/article/us-supreme-court-virginia-mitch-mcconnell-congress-supreme-court-of-virginia-1bf4927157410fb987f6395dfcd2797>.

Erin Flynn, *Climbing His Way to The Top*, Daily-News Record (April 6, 2016), [https://www.dnronline.com/news/climbing-his-way-to-the-top/article\\_d6729c5b-fa58-522b-a43d-9d9f720af014.html](https://www.dnronline.com/news/climbing-his-way-to-the-top/article_d6729c5b-fa58-522b-a43d-9d9f720af014.html).

Eric Williamson, *Andrew Ferguson ’12 to Clerk for Supreme Court Justice Clarence Thomas*, University of Virginia School of Law (March 3, 2016), <https://www.law.virginia.edu/news/201603/andrew-ferguson-12-clerk-supreme-court-justice-clarence-thomas>.

20. List all digital platforms (including social media and other digital content sites) on which you currently or have formerly operated an account, regardless of

whether or not the account was held in your name or an alias. Include the full name of an “alias” or “handle”, including the complete URL and username with hyperlinks, you have used on each of the named platforms. Indicate whether the account is active, deleted, or dormant. Include a link to each account if possible.

Twitter: @nocleverideas (<https://twitter.com/nocleverideas>) (active)

Facebook: Andrew Ferguson (<https://www.facebook.com/profile.php?id=1520985>) (active)

Instagram: @andytheferg (dormant)

LinkedIn: <https://www.linkedin.com/in/andrew-ferguson-472168203> (dormant)

21. 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.

22. 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 am an experienced litigator and policy advisor who has worked on antitrust and consumer-protection issues over the course of my eleven years as a lawyer. I have been Solicitor General of the Commonwealth of Virginia since January 2022. In that role, I manage the Commonwealth’s appellate litigation, constitutional defense, multi-state amicus practice, and special litigation. I have represented parties in dozens of cases in the Supreme Courts of the United States and Virginia, the intermediate Federal and state appellate courts, and state and Federal trial courts. I am also lead counsel for Virginia and sixteen other States in *United States v. Google*, a major Sherman Act Section 2 case in the United States District Court for the Eastern District of Virginia alleging that Google has monopolized the ad-tech market.

Before serving as Solicitor General of Virginia, I was an advisor to the Senate Republican Leader and two Chairmen of the Senate Judiciary Committee, which has jurisdiction over antitrust issues. As the chief legal advisor to the Republican Leader, I advised him on judicial nominations, appointments to Federal agencies including the FTC, and on antitrust and consumer-protection policy issues.

I also handled complex commercial litigation in the private sector, focusing on antitrust and consumer-protection law. As a lawyer in private practice, I litigated private class-action claims under Section 1 of the Sherman Act and a major government-enforcement action in a merger case under Section 7 of the Clayton Act. I also represented firms before the Department of Justice and the FTC in pre-merger and consumer-protection investigations.

I am also fortunate to have insight into how courts consider antitrust and consumer protection lawsuits, as well as challenges to agency actions, from my time serving as a law clerk on the D.C. Circuit and the U.S. Supreme Court.

I would be honored to serve as a Commissioner on the FTC. I have spent the vast majority of my career in public service and have demonstrated a commitment to protecting the public interest. I have experience in both the public and private sector working on antitrust and consumer-protection issues both as a litigator and policy advisor. If confirmed, I would do my level best to carry out Congress’s mandate to promote and protect the value of competition in our dynamic economy, and to protect consumers from deceptive and unfair business practices.

23. 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?

The Commission should deploy the taxpayers’ resources efficiently and effectively. If confirmed, my responsibility would be to work with the Chair, the Commissioners, and the staff to steward those resources by pursuing enforcement actions consistent with the law and sound policy.

As Solicitor General of Virginia, I manage a staff of eight lawyers and paralegals that oversee the Commonwealth’s appellate litigation and provide advice on constitutional questions to a wide range of state agencies. As a Senate staffer on the Judiciary Committee, I managed teams of lawyers and law clerks that advised Senators on judicial nominations and constitutional questions.

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

I believe the Commission’s top three challenges include (1) applying the FTC’s antitrust and consumer-protection enforcement tools to address emerging technology and the novel business practices and markets; (2) protecting the privacy and secu-

urity of increasing volumes of consumer data; and (3) protecting consumers from unfair methods of competition to ensure competitive U.S. markets and the fostering of innovation.

#### 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, such as a 401(k) or pension plan.

- a. Sidley Austin 401(k): I will continue to participate in this defined contribution plan, but the plan sponsor and I no longer make any contributions.
- b. Commonwealth of Virginia ORPPA Plan: I will continue to participate in this defined contribution plan. The plan sponsor will not make further contributions after my separation.
- c. Commonwealth of Virginia 457 Plan: I will continue to participate in this defined contribution plan. The plan sponsor will not make further contributions after my separation.
- d. Commonwealth of Virginia Cash Match Plan: I will continue to participate in this defined contribution plan. The plan sponsor will not make further contributions after my separation.

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. Explain how you will resolve each potential conflict of interest.

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.

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. Explain how you will resolve each potential conflict of interest.

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.

5. Identify any other potential conflicts of interest, and explain how you will resolve each potential conflict of interest.

I am not aware of any other potential conflicts of interest.

6. Describe any activity during the past ten years, including the names of clients represented, 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.

None, except in my role as a Senate staffer and as Solicitor General of Virginia.

#### 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, an Inspector General, professional association, disciplinary committee, or other professional group?

If yes:

- a. Provide the name of court, 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.

I have no additional information to disclose.

#### D. RELATIONSHIP WITH COMMITTEE

1. Will you ensure that your department/agency complies with deadlines for information set by congressional committees, and that your department/agency endeavors to timely comply with requests for information from individual Members of Congress, including requests from members in the minority?

If confirmed, I would work diligently with my fellow commissioners to ensure compliance with deadlines and requests for information.

2. Will you ensure that your department/agency does whatever it can to protect congressional witnesses and whistleblowers 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.

### ATTACHMENT A

#### RÉSUMÉ OF ANDREW N. FERGUSON

##### EMPLOYMENT

##### **Office of the Attorney General of Virginia**, Richmond, VA

*Solicitor General of Virginia*, January 2022-present

- Chief appellate litigator for the Commonwealth of Virginia
- Manage an office of eight lawyers responsible for briefing and arguing Virginia's appellate litigation in state and Federal courts, as well as overseeing Virginia's multi-state amicus and litigation practice

##### **Antonin Scalia Law School**, Arlington, VA

*Adjunct Professor*, Spring 2019, Spring 2021

- Courses taught: Conflict of Laws and Federal Courts

##### **U.S. Senate Republican Leader Mitch McConnell**, Washington, DC

*Chief Counsel*, July 2019–September 2021

- Chief legal advisor to the Majority Leader, providing counsel on constitutional, national-security, immigration, intellectual-property, election, antitrust, and criminal-justice issues
- Principal advisor to the Majority Leader on judicial nominations and confirmation strategy, including the development and execution of the Majority Leader's strategy for the confirmation of Justice Amy Coney Barrett
- Advised the Majority Leader on the development and drafting of major tort-reform legislation to address the economic effects of the COVID-19 pandemic (the SAFE TO WORK Act)

##### **U.S. Senate Committee on the Judiciary**, Washington, DC

*Chief Counsel for Nominations and the Constitution to Chairman Lindsay Graham*, December 2018–July 2019

- Principal advisor to then-Chairman Graham on nominations, including the confirmation of Attorney General William P. Barr, twelve circuit judges, and dozens of district judges
- Led a team of lawyers, law clerks, and other professional staff who vetted judicial and executive-branch nominees, directed confirmation hearings for those

nominees, organized their Committee votes, and assisted the Majority Leader's staff in preparing for confirmation votes on the Senate floor

- Principal advisor to then-Chairman Graham on constitutional issues within the Committee's legislative and oversight jurisdiction

**U.S. Senate Committee on the Judiciary**, Washington, DC

*Senior Special Counsel to Chairman Chuck Grassley*, July 2018–October 2018

- Led a team of more than a dozen lawyers and law clerks who assisted then-Chairman Grassley on the confirmation of Justice Brett Kavanaugh by reviewing documents from Justice Kavanaugh's White House service, reviewed and analyzed Justice Kavanaugh's judicial record, planned and executed the confirmation hearings, and prepared rapid-response materials throughout the confirmation process
- Developed the Committee's strategy for obtaining and reviewing hundreds of thousands of White House documents, and oversaw the acquisition and review of those documents

**Sidley Austin LLP**, Washington, DC

*Associate*, January 2018–July 2018

- Represented clients in business litigation matters in state and Federal trial and appellate courts
- Represented clients in antitrust and consumer-protection investigations conducted by the Federal Trade Commission and the Department of Justice

**Bancroft PLLC**, Washington, DC

*Associate*, April 2015–June 2016

- Drafted more than a dozen petitions for certiorari, merits briefs, and amicus briefs in cases before the Supreme Court, and helped prepare experienced advocates for oral arguments before the Supreme Court
- Represented clients in major appellate litigation in U.S. courts of appeals throughout the country

**Covington & Burling LLP**, Washington, DC

*Associate*, February 2014–March 2015

- Represented commercial clients in complex antitrust litigation and provided antitrust counseling and advice regarding transactions and government investigations
- Successfully defended major trade organization from tort suits filed in more than a dozen state and Federal courts
- Provided *pro bono* employment law counseling to non-profit organizations

CLERKSHIPS

**Hon. Clarence Thomas, Supreme Court of the United States**, Washington, DC  
*Law Clerk*, July 2016–July 2017

**Hon. Karen LeCraft Henderson, U.S. Court of Appeals for the D.C. Circuit**, Washington, DC  
*Law Clerk*, August 2012–January 2014

EDUCATION

**University of Virginia School of Law**, Charlottesville, VA  
J.D., 2012

- *Virginia Law Review*, Articles Editor
- Supreme Court Litigation Clinic
- Research assistant to Professors Sai Prakash and John Harrison
- Federalist Society

**William & Mary School of Law**, Williamsburg, VA

Completed First Year, 2009–2010

- Selected for *William & Mary Law Review*
- Bushrod T. Washington Moot Court Competition, Champion

**University of Virginia**, Charlottesville, VA

B.A. in History, with Highest Distinction, 2009

- Richard Heath Dabney Prize for Outstanding Thesis in U.S. History
- Miller Center GAGE and Presidential Recordings Program, Research Assistant

OTHER

- Admitted to the bars of Virginia and the District of Columbia

- TS/SCI security clearance (deactivated)

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ATTACHMENT B

**Developments in Religious Liberty**

**Office of the Attorney General**

**July 27, 2023**

Presenters:

Andrew Ferguson, Solicitor General of Virginia  
 Kevin Gallagher, Deputy Solicitor General and Director of Tenth Amendment Litigation  
 Rick Eberstadt, Assistant Solicitor General

• **Introduction**

- Over the last few years, the U.S. Supreme Court and Supreme Court of Virginia have issued momentous decisions about religious protections.
- We will walk through six categories of religious liberty protections that government lawyers need to know.

• **Federal and constitutional protections applicable to all government policies**

- The First Amendment provides that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.”
  - The two parts of this provision are known as the Establishment Clause and the Free Exercise Clause.
  - Although the First Amendment applies only to Federal action by its terms, the U.S. Supreme Court has applied the First Amendment to the States through the Due Process Clause of the Fourteenth Amendment. See *Everson v. Board of Education of the Township of Ewing*, 330 U.S. 1 (1947) (incorporating Establishment Clause); *Cantwell v. Connecticut*, 310 U.S. 296 (1940) (incorporating the Free Exercise Clause).
- Federal Establishment Clause
  - For decades, the U.S. Supreme Court applied the test announced in *Lemon v. Kurtzman*, 403 U.S. 602 (1971), to determine whether government action violated the Establishment Clause.
    - The *Lemon* test, however, proved difficult to apply, and the Court began to move away from *Lemon* towards a historically informed approach in *Town of Greece v. Galloway*, 572 U.S. 565 (2014), and *The American Legion v. American Humanist Association*, 588 U.S. \_\_\_, 139 S. Ct. 2067 (2019).
    - In *Kennedy v. Bremerton School District*, 597 U.S. \_\_\_, 142 S. Ct. 2407 (2022), the Supreme Court overruled *Lemon*’s “ambitious, abstract, and a historical” approach to the Establishment Clause.
    - Instead, the Court instructed that the Establishment Clause must be interpreted by reference to historical practices and understandings.
  - After *Bremerton*, government action is not a violation of the Establishment Clause if the action is consistent with historical tradition.
  - What is unclear, however, is how the Establishment Clause applies to government action that is not consistent with historical tradition.
- Federal Free Exercise Clause
  - For decades, the U.S. Supreme Court enforced a rigorous understanding of the Free Exercise Clause under which government intrusion on the exercise of one’s religion had to survive strict scrutiny. See *Sherbert v. Verner*, 374 U.S. 398 (1963); *Wisconsin v. Yoder*, 406 U.S. 205 (1972).
    - To satisfy strict scrutiny, the government must show that the burden on religion advances a governmental interest of the utmost importance (compelling-interest prong), and that the burden is the least restrictive means available to advance that interest (narrow-tailoring prong).
  - In *Employment Division v. Smith*, 494 U.S. 872 (1990), however, the Supreme Court abandoned this framework and held that a government policy does not violate the Free Exercise Clause even if it substantially burdens

the exercise of religion, so long as (1) the policy is neutral with regard to religion and (2) the policy is generally applicable. Such policies are subject only to rational-basis review.

- The rule of *Smith*, however, is cabined by two important qualifications
  - First, government action, even if facially neutral with regard to religion, is not “neutral” for *Smith* purposes if it is based on religious animus, that is, if it proceeds in a manner intolerant of religious beliefs or restricts practices because of their religious nature. *Church of the Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 520 (1993).
  - Second, government action is not generally applicable if it invites the government to consider the particular reasons for a person’s conduct by providing a mechanism for individualized exemptions. *Fulton v. City of Philadelphia*, 593 U.S. \_\_\_, 141 S. Ct. 1868 (2021).
  - *Lukumi* animus is relatively difficult to prove. But because may statutes and regulations include exceptions or confer discretionary authority to grant exceptions, much “neutral” government action will be subject to strict scrutiny under *Fulton*.
- State establishment and free-exercise provisions
  - Article I, § 16 of the Virginia Constitution contains establishment and free-exercise protections.<sup>1</sup>
  - The Virginia Supreme Court has held that Article I, § 16 is “a ‘parallel provision’ to the Establishment Clause” of the Federal Constitution. *Virginia College Building Authority v. Lynn*, 260 Va. 608, 626 (2000).
  - The meaning of Virginia’s free-exercise protection is unclear.
    - The Virginia Supreme Court recently heard argument in *Vlaming v. West Point School Board*, No.211061, where one of the questions presented is whether Article I, § 16 should be interpreted consistently with the U.S. Supreme Court’s interpretation of the First Amendment in *Smith*, or whether some other standard should apply.
    - The Commonwealth has argued in *Vlaming* that the Court should apply strict scrutiny to every government policy that burdens an individual’s religious exercise because when Virginia ratified the current free-exercise provision in 1971, the ratifying public generally understood that it was adopting then then-prevailing First Amendment strict-scrutiny test.
    - Strict scrutiny is also consistent with the original public meaning of Virginia’s free-exercise provision when that provision was first ratified in 1776.
- **First Amendment protections of access to generally available public benefits programs**
  - Excluding religious individuals or institutions from otherwise generally available public-benefits programs because of their religious status or conduct violates the Free Exercise Clause.
    - The Free Exercise Clause protects against indirect coercion or penalties on the free exercise of religion, not just outright prohibitions.
    - The U.S. Supreme Court recently applied this principle in the context of three state laws that excluded religious organizations from participating in otherwise generally available public-benefit programs. See *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. \_\_\_, 137 S. Ct. 2012 (2017);

<sup>1</sup> Article I, § 16 provides: “That religion or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence; and, therefore, all men are equally entitled to the free exercise of religion, according to the dictates of conscience; and that it is the mutual duty of all to practice Christian forbearance, love, and charity towards each other. No man shall be compelled to frequent or support any religious worship, place, or ministry whatsoever, nor shall be enforced, restrained, molested, or burthened in his body or goods, nor shall otherwise suffer on account of his religious opinions or belief; but all men shall be free to profess and by argument to maintain their opinions in matters of religion, and the same shall in nowise diminish, enlarge, or affect their civil capacities. And the General Assembly shall not prescribe any religious test whatever, or confer any peculiar privileges or advantages on any sect or denomination, or pass any law requiring or authorizing any religious society, or the people of any district within this Commonwealth, to levy on themselves or others, any tax for the erection or repair of any house of public worship, or for the support of any church or ministry; but it shall be left free to every person to select his religious instructor, and to make for his support such private contract as he shall please.”

*Espinoza v. Montana Dep't of Revenue*, 591 U.S. \_\_\_, 140 S. Ct. 2246 (2020); *Carson v. Makin*, 596 U.S. \_\_\_, 142 S. Ct. 1987 (2022).

- There remains one lone outlier in the public-benefits-program jurisprudence—*Locke v. Davey*, 540 U.S. 712 (2004).
- Article VIII, § 10 of the Virginia Constitution—a form of Blaine Amendment—generally forbids the Commonwealth and its municipal subdivisions from expending public funds on any private education institution that is not “non-sectarian.”
  - The restriction is not limited merely to direct appropriations; it bars the use of public funds to support religious institutions more generally.
  - When this provision was ratified in 1971, the U.S. Supreme Court had recognized “room for play in the joints” between the Establishment Clause and Free Exercise Clauses. In other words, the Court had understood that there is some conduct which a State may prohibit without violating the Free Exercise Clause on the basis of generalized anti-establishment concerns, even if the prohibited conduct would not in fact violate the Establishment Clause. *Walz v. Tax Commission of the City of New York*, 397 U.S. 664, 669 (1970).
  - *Carson*, however, rejected the proposition that States may use generalized anti-establishment concerns to justify burdening the exercise of religion. The lawfulness of Article VIII, § 10’s prohibition on the expenditure of public funds on “sectarian” private schools is therefore solely doubtful after *Carson*.
- **Employment-specific statutory protections**
  - Title VII of the Civil Rights Act of 1964 prohibits an employer from “fail[ing] or refus[ing] to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s . . . religion.” 42 U.S.C. § 2000e-2(a)(1). “The term ‘religion’ includes all aspects of religious observance and practice, as well as belief. . . .” *Id.* § 2000e(j).
  - Title VII’s prohibition on religious discrimination requires an employer “to reasonably accommodate to an employee’s or prospective employee’s religious observance or practice,” unless doing so would impose an “*undue hardship* on the conduct of the employer’s business.” *Id.* § 2000e(j) (emphasis added).
  - For decades, lower courts applied language from the U.S. Supreme Court’s decision in *Trans World Airlines, Inc. v. Hardison*, 432 U.S. 63 (1977), to hold that an employer suffers an “undue hardship” in accommodating an employee’s religious exercise whenever doing so would require the employer to “bear more than a de minimis cost.”
  - In *Groff v. DeJoy*, 600 U.S. \_\_\_, 143 S. Ct. 2279 (2023), however, the Supreme Court narrowed the scope of the “undue hardship” exception to cover only those situations where an accommodation would substantially increase costs in relation to the conduct of the employer’s business.
  - The relationship between Title VII and the First Amendment poses unique challenges for government employers: Title VII requires government employers to grant religious exemptions to its employment policies absent substantial burdens on the employer, but granting exemptions likely subjects those same employment policies to strict scrutiny under the First Amendment.
- **Federal and State Religious Freedom Restoration Acts (RFRAs)**
  - Federal RFRA
    - RFRA was a reaction to *Smith*
      - The Supreme Court’s decision in *Smith* jettisoning strict scrutiny for most free exercise claims was deeply unpopular.
      - Congress responded by passing RFRA almost unanimously in 1993.
      - Under RFRA, government action that “substantially burden[ed] a person’s exercise of religion” was lawful only if the government could “demonstrate[ ] that the application of the burden” was “in furtherance of a compelling government interest” and was “the least restrictive means of furthering that compelling governmental interest.” 42 U.S.C. § 2000bb-1(a), (b)(1), (2)
      - The unambiguous purpose of RFRA purported to restore the *Sherbert/Yoder* strict scrutiny test for all free-exercise claims against any gov-

- ernment—federal, state, or local. *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 430–31 (2006)
- Shortly after RFRA’s enactment, however, the Supreme Court substantially narrowed its scope only to *federal* governmental action.
    - In *City of Boerne v. Flores*, 521 U.S. 507 (1997), the U.S. Supreme Court held that RFRA’s application to States and local governments was beyond Congress’s power under Section 5 of the Fourteenth Amendment.
    - As a result, RFRA no longer applies to States or local governments but continues to constrain Federal government action—particularly Federal regulations. See, e.g., *Burwell v. Hobby Lobby, Inc.*, 573 U.S. 682 (2014).
  - Virginia, like many other States, passed its own state RFRA—sometimes referred to as “Baby RFRA”—in the aftermath of *City of Boerne*.
    - Nearly half the States adopted Baby RFRA on wide, bipartisan bases in response to *Smith* and *City of Boerne*.
    - Virginia’s RFRA, adopted in 2007, tracks the Federal RFRA in prohibiting the state and local governments from “substantially burden[ing] a person’s free exercise of religion . . . unless [the government] demonstrate that application of the burden to the person is (i) essential to further a compelling governmental interest and (ii) the least restrictive means of furthering that compelling governmental interest.” Va. Code § 57.2–02(B).
    - The Virginia Supreme Court has not interpreted the Virginia RFRA, but it recently heard arguments in *Vlaming v. West Point School Board*, No. 211061, where one of the questions presented is how the Virginia RFRA ought to be interpreted.
    - One of the most important questions for Virginia’s RFRA is the scope of Subsection E.
      - Va. Code § 52.02(E) provides that “nothing in [the Virginia RFRA] shall prevent any governmental institution or facility from maintaining health, safety, security or discipline.”
      - The only judicial interpretation of Subsection E read it to permit the government to burden the exercise of religion in dire emergencies. See *Lighthouse Fellowship Church v. Northam*, 458 F. Supp. 3d 418 (E.D. Va. 2020).
      - The Commonwealth in *Vlaming* argued that the exception enumerates the sorts of interest that qualify as “compelling governmental interests” for strict scrutiny, but that the government must still satisfy the narrow-tailoring requirement when asserting those interests as grounds for burdening an individual’s free exercise.
  - **Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA)**
    - RLUIPA is another important post-*Smith* federal religious liberty provision that, unlike the Federal RFRA, applies to state and local government action.
    - In 2000, Congress once again unanimously adopted legislation intended to protect religious liberty from government intrusion.
    - Responding to *City of Boerne*, Congress relied on its power under the Commerce Clause and Spending Clause of Article I, § 8 rather than its enforcement power under § 5 of the Fourteenth Amendment (as it had for RFRA).
    - Like RFRA, RLUIPA re-imposes the *Sherbert/Yoder* strict-scrutiny test, but does so for only two situations: prisons and land-use/zoning decisions
      - For prisoners, RLUIPA forbids the government from “impos[ing] a substantial burden on the exercise of a” prisoner or other institutionalized person “unless the government demonstrates that imposition of the burden on that person . . . is in furtherance of a compelling governmental interest . . . and is the least restrictive means of further that compelling governmental interest.” 42 U.S.C. § 2000cc-1(a).
        - The Court has interpreted RLUIPA to forbid States from requiring Muslim prisoners to shorten their beards, *Holt v. Hobbs*, 574 U.S. 352 (2015), and to forbid States from imposing a categorical ban on physical touch by a minister during the execution of a capital sentence, see *Ramirez v. Collier*, 595 U.S. \_\_\_, 142 S. Ct. 1264 (2022).
      - For land-use decisions, the government may not “impose or implement a land use regulation in a manner that imposes a substantial burden on the

religious exercise of a person . . . unless the government demonstrates that the imposition of that burden . . . is in furtherance of a compelling governmental interest . . . and is the least restrictive means of furthering that compelling governmental interest.” 42 U.S.C. § 2000cc(a)(1). The prohibition applies for any program that receives Federal financial assistance; that affects interstate, foreign, or Indian commerce; or that permits the government to make individualized assessment about how land will be used. *Id.* § 2000cc(a)(2).

- The Supreme Court has never addressed the land-use provision of RLUIPA, and it has been subject to widely varying interpretations as to what qualifies as a “land use regulation” and whether RLUIPA applies to eminent domain.
- **Virginia Human Rights Act**
  - The Virginia Human Rights Act prohibits discrimination in public accommodations and discrimination by employers on the basis of, among other things, religion. See Va. Code §§ 2.2–3904, 2.2–3905.
  - A Federal court recently held that the VHRA does not contain an explicit waiver of sovereign immunity for Commonwealth agencies. *Mais v. Albemarle Cnty. Sch. Bd.*, \_\_\_ F. Supp. 3d \_\_\_, No. 3:22-cv-51, 2023 WL 2143471 (Feb. 21, 2023).

*Cases are described in further detail below.*

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### ***Town of Greece v. Galloway***

572 U.S. 565 (2014)

#### ISSUE

Does a town violate the Establishment Clause when it opens its Board meetings with a clergy-delivered prayer, if the Board has a nondiscrimination policy of clergy selection and does not regulate the content of the prayers?

#### HOLDING

The town’s legislative prayer practice is constitutional. The Establishment Clause is not violated by longstanding traditional practices whose existence and longevity demonstrate their compatibility with the First Amendment. Here, nondiscriminatory legislative prayer qualifies as such a practice, and Greece allowed members of any religion to become the chaplain and offer legislative prayer. Greece need not require that the prayers be non-sectarian; indeed, that requirement would only create rather than solve Establishment Clause concerns.

#### FACTS

Greece is a mid-sized city in upstate New York. Monthly town board meetings in Greece, New York, had long opened with a moment of silence. Beginning in 1999, the meetings opened with a roll call, the Pledge of Allegiance, and then a prayer given by a local clergy member. The clergy member—who was an unpaid volunteer—would change each month, and was chosen from congregations listed in a local directory. The Board allowed the clergy member to pray however he or she saw fit. The prayer program was open to all creeds, though in practice nearly all of the local congregations were Christian, and thus nearly all of the participating prayer givers had been Christian as well.

#### PROCEDURAL HISTORY

Two participants at the town board meetings brought suit in Federal district court, alleging that the prayer program violated the First Amendment’s Establishment Clause. They did not seek to end the prayer, but rather to limit the prayers to only “inclusive and ecumenical” prayers that referenced only a “generic God” and would not risk associating the local government with any one faith. The district court upheld the prayer practice on summary judgment. The Second Circuit reversed, holding that a reasonable observer would believe that Greece was endorsing Christianity.

## ANALYSIS

The Supreme Court had previously held, in *Marsh v. Chambers*, 463 U.S. 783 (1983), that a state legislature may open its session with a prayer delivered by a chaplain because the practice had long been understood as compatible with the First Amendment. Here, the Court clarified that *Marsh* did not merely permit a practice that would have been a constitutional violation if not for its historical practice. Rather, the First Amendment must be interpreted in reference to historical practices and understandings. Thus the long history of legislative prayer—dating back even to the First Congress—demonstrates that the practice was never understood by the ratifiers to be incompatible with the First Amendment. In Establishment Clause cases involving legislative prayer, or other practices with a long post-ratification history, “it is not necessary to define the precise boundary of the Establishment Clause where history shows that the specific practice is permitted.”

The question here was whether Greece’s prayer practice fits this long tradition of legislative prayer. Respondents had two arguments on this front: first, that legislative prayer does not approve of prayer containing sectarian language or themes, and second, that the setting of the Greece meetings creates social pressures that effectively require those present to remain or feign participation. Both of these arguments failed. Legislative prayer is not only constitutional when it is generic, and the tradition of legislative prayer has not included this requirement; instead, the history and tradition of legislative prayer has often allowed non-generic prayer. And to require prayers to be generic would require the government to regulate the conduct of the prayer, creating the very Establishment Clause questions that the court is trying to solve. Absent a pattern of prayer that over time denigrates, proselytizes, or betrays a government purpose, a challenge to the content of the prayer is unlikely to establish a constitutional violation. Nor did the town need to search beyond its borders for non-Christian clergy, as long as it maintained its non-discrimination policy for clergy selection.

As to the question of coercion, prayers would violate the First Amendment if they were coercive. But these were not. The tradition of legislative prayer allows those present to know that they are not compelled to join. And the primary audience for the prayers was not the public but rather the lawmakers. Where the prayer is delivered during the ceremonial portion of the meeting, the prayer acknowledges the role of religion in the lives of many present, and does not require others to participate.

## CONCURRENCES

Justice Alito, joined by Justice Scalia, concurred, arguing that the dissent was mistaken on two points. First, the dissent mistook the facts of the history of prayer in Greece. Second, the specific facts underlying the long tradition of legislative prayer undercut the dissent’s objections.

Justice Thomas, joined by Justice Scalia, concurred in part and concurred in the judgment. He argued that the Establishment Clause should be read as a provision of federalism, and that under an original understanding of its meaning, legislative prayer does not implicate the Clause.

## DISSENTS

Justice Breyer dissented, arguing that the majority opinion had not given enough weight to the relevant underlying facts in Greece’s prayer program. For example, Greece was not an exclusively Christian town, so the minuscule number of prayers given by non-Christians was indicative of an Establishment Clause violation, and Greece did not affirmatively inform the non-Christian houses of worship about the ability to offer prayers.

Justice Kagan also dissented, with whom Justices Ginsburg, Breyer, and Sotomayor joined. She argued that the prayers given here were primarily sectarian in nature, and that Greece’s failure to recognize religious diversity meant that the town was allowing public sectarian prayers in a particular religious direction, and this would violate the Establishment Clause.

***Kennedy v. Bremerton School District***

142 S. Ct. 2407 (2022)

## ISSUES

Do the Free Exercise and Free Speech Clauses of the First Amendment protect a public employee's religious speech that does not arise from the scope of their employment?

Is the Establishment Clause of the First Amendment violated when a "reasonable observer" could interpret a public employee's religious speech as state endorsement of religion?

## HOLDING

A government employee's brief, quiet, and personal prayers are doubly protected by the Free Exercise and Free Speech Clauses of the First Amendment. When regulating a sincere religious practice, a government policy presumptively violates the Free Exercise Clause if it is not neutral and generally applicable. Furthermore, if religious speech arises outside the scope of the individual's employment, it is protected by the Free Speech Clause.

To defend a policy that otherwise violates the Free Exercise and Free Speech clauses, the government entity must have a compelling state interest that justifies the policy. While avoiding a violation of the First Amendment's Establishment Clause could be a compelling interest, that standard is not met in this case. *Lemon v. Kurtzman*, 403 U.S. 602, and its progeny, which were "long ago abandoned" by the Court, suggested that the Establishment Clause is violated when a "reasonable observer" could think that the state endorsed religion. *Kennedy*, slip op. at 22. It does not include a heckler's veto that compels the government to purge religion from public life. Barring an effort to coerce religious practice, then, a government employee's personal prayer does not run afoul of the Establishment Clause.

## FACTS

As a person with sincere religious beliefs, high school football coach Joseph Kennedy knelt on the school's field, bowed his head, and silently prayed after games. Fearing that it would be sued for a violation of the First Amendment's Establishment Clause, the Bremerton School District told Kennedy to stop this religious practice. In compliance, Coach Kennedy only prayed during a brief time after the game where coaches were permitted to attend to private affairs. However, the District placed Kennedy on leave and prohibited him from engaging with the football program because he did not stop praying.

## PROCEDURAL HISTORY

Kennedy sued the Bremerton School District, alleging that they violated the Free Speech and Free Exercise Clauses of the First Amendment. However, the Ninth Circuit held that the District's regulations did not violate the First Amendment: Kennedy's prayers were not private speech, and their policy was justified because the District had a compelling state interest to avoid violating the Establishment Clause.

## ANALYSIS

The Free Speech and Free Exercise Clauses of the First Amendment work together when religious speech is at issue. Once a plaintiff demonstrates an infringement of these rights, the defendant must show that a compelling state interest justifies the regulation and that it is narrowly tailored to achieve that goal.

## FREE EXERCISE CLAIM

To prove a Free Exercise violation, the plaintiff must show that "a government entity has burdened his sincere religious practice pursuant to a policy that is not 'neutral' or 'generally applicable.'" *Id.* at 12. The Court found that Kennedy discharged this burden. His prayers constituted a "sincerely motivated religious exercise," and the District's policy was not "neutral" or "generally applicable" because it was "specifically directed" at Kennedy's religious conduct. *Id.* at 13.

## FREE SPEECH CLAIM

To determine the validity of a public employee's Free Speech claim, the Court must pursue a two-step inquiry. First, it must determine whether the restricted speech is public or private. A public employee speaking pursuant to his official duties is not shielded from an employer's control by the First Amendment. However, he is protected when speaking "as a citizen addressing a matter of public concern." *Id.* at 15. If the employee's speech is private, the Court must then employ a "delicate balancing of the competing interests surrounding the speech and its consequences." *Id.*

The Court held that Kennedy's prayers were private speech. The prayers were not "ordinarily within the scope of his duties as a coach," and he did them at a time when coaches were free to engage in private speech. *Id.* at 17. Though the Court acknowledges the authority of coaches over students, it rejects an "excessively broad job description" for teachers and coaches that converts all their speech into "government speech subject to government control." *Id.* at 18.

## SCRUTINY ANALYSIS

Notwithstanding these burdens, the District argued that its policy satisfied strict scrutiny, claiming that the policy served a compelling state interest by avoiding an Establishment Clause violation. The Court rejected this argument. The District's argument is based on the "long ago abandoned *Lemon*" test, which claims that the Establishment Clause "is offended whenever 'a reasonable observer' could conclude that the government has 'endorse[d]' religion." *Id.* at 22. In reality, the Establishment Clause "must be interpreted by reference to historical practices and understandings." *Id.* at 23. Historically, the Establishment Clause was not intended to purge religion from the public sphere. It contains "nothing like a 'modified heckler's veto, in which . . . religious activity can be proscribed based on 'perceptions' or 'discomfort.'" *Id.* at 22. If Coach Kennedy coerced students to pray, it would likely run afoul of the Establishment Clause. However, there was no evidence that he pressured students to pray.

## CONCURRENCES

Justice Thomas emphasized that the Court did not resolve two issues: first, it did not consider whether public employees have different Free Exercise rights than the general public; and second, it did not decide what standard of scrutiny applies for evaluating Free Exercise claims for religious speech.

Justice Alito noted that the opinion does not decide what standard applies to private speech under the Free Speech Clause. Instead, it only limits retaliation against Kennedy's private expression.

## DISSENT

Justice Sotomayor argued that the Court's opinion requires public schools to permit employees to "incorporate a public, communicative display of the employee's personal religious beliefs into a school event." *Id.* at 13 (Sotomayor, J., dissenting). In her view, this requires schools to violate the Establishment Clause, as these activities are likely to coerce students, who are "uniquely susceptible to 'subtle coercive pressure,'" into religious exercise. *Id.* at 15 (Sotomayor, J., dissenting).

***Sherbert v. Verner***

374 U.S. 398 (1963)

## ISSUE

Whether provisions of a South Carolina statute that disqualified a Seventh Day Adventist from unemployment benefits abridged her right to the free exercise of religion under the Free Exercise Clause?

## HOLDING

South Carolina could not constitutionally apply the eligibility provisions of the unemployment compensation statute so as to deny benefits to claimant who had refused employment, because of her religious beliefs, which would require her to work on Saturday.

## FACTS

Sherbert was a member of the Seventh-Day Adventist Church who was discharged by her South Carolina employer because she would not work on Saturday, the Sabbath Day of her faith. When she was unable to obtain other employment because she would not take Saturday work due to her religious beliefs, she filed a claim for unemployment compensation benefits under the South Carolina Unemployment Compensation Act. The Employment Security Commission found that her restriction upon her availability for Saturday work brought her within the provision disqualifying for benefits insured workers who fail, without good cause, to accept “suitable work when offered by the employment office or the employer.”

## PROCEDURAL HISTORY

The Commission’s finding was sustained by the Court of Common Pleas for Spartanburg County. That court’s judgment was in turn affirmed by the South Carolina Supreme Court, which rejected Sherbert’s contention that, as applied to her, the disqualifying provisions of the South Carolina statute abridged her right to the free exercise of religion secured under the Free Exercise Clause of the First Amendment through the Fourteenth Amendment.

## ANALYSIS

The Court laid out a test for analyzing Sherbert’s Free Exercise claim: for the government to succeed against Sherbert’s constitutional challenge, either “her disqualification as a beneficiary represents no infringement by the State of her constitutional rights of free exercise” or “any incidental burden on the free exercise of [her] religion may be justified by a compelling state interest in the regulation of a subject within the State’s constitutional power to regulate.” *Id.* at 403 (cleaned up).

The Court first dealt with the question of whether the disqualification for benefits imposed a burden on Sherbert’s free exercise of religion, holding that it clearly did. *Ibid.* Sherbert’s ineligibility for benefits “derive[d] solely from the practice of her religion” and there was an “unmistakable” pressure upon her to “forego that practice.” *Id.* at 404. The government was forcing her “to choose between following the precepts of her religion and forfeiting benefits, on the one hand, and abandoning one of the precepts of her religion in order to accept work, on the other hand.” *Ibid.*

The Court next turned to whether some compelling state interest would justify the substantial infringement of Sherbert’s First Amendment right. “[N]o showing merely of a rational relationship to some colorable state interest would suffice,” the Court held: “in this highly sensitive constitutional area, only the gravest abuses, endangering paramount interest, give occasion for permissible limitation.” *Id.* at 406 (cleaned up). And, even if a compelling interest could be proffered, “it would plainly be incumbent upon the [government] to demonstrate that no alternative forms of regulation would combat such abuses without infringing First Amendment rights.” *Id.* at 407. Here, the government’s proffered interest—the possibility of spurious claims diluting the unemployment benefit fund and disrupting the scheduling of work—was not compelling, nor had the government shown its actions to be narrowly tailored to such interest.

## CONCURRENCES

Justice Douglas concurred to note the “profound[ly] important[ce]” of this case. *Id.* at 410. Specifically, because “many people hold beliefs alien to the majority of our society,” the First Amendment protects their free exercise of religion from being “trodden upon under the guise of ‘police’ or ‘health’ regulations reflecting the majority’s views.” *Id.* at 411.

Justice Stewart concurred in the result, believing the Court to have not succeeded in “papering over” a “double-barreled dilemma.” *Id.* at 413. Specifically, because of the Court’s case law on the Free Exercise Clause and the Establishment Clause, “there are many situations where legitimate claims under the Free Exercise Clause will run into head-on collision with the Court’s insensitive and sterile construction of the Establishment Clause.” *Id.* at 414.

## DISSENT

Justice Harlan, joined by Justice White, dissented, believing the majority’s decision to be “disturbing both in its rejection of existing precedent and in its implications for the future.” *Id.* at 418. The Court’s holding “necessarily overrule[d]” prior precedent and would mean that the State is “constitutionally compelled to carve out

an exception to its general rule of eligibility,” which would create Establishment Clause problems. *Id.* at 421–23.

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***Wisconsin v. Yoder***

406 U.S. 205 (1972)

ISSUE

Does the Free Exercise Clause protect members of the Amish community against the requirement to send their children to high school, if doing so would violate their genuinely-held religious belief?

HOLDING

The Free Exercise Clause protects the Amish community’s right to remove their children from school after eighth grade and educate them instead in the Amish religion and way of life.

FACTS

Wisconsin required compulsory school attendance by law until the age of 16. Members of the Amish religion refused to send their children to public or private school after eighth grade, deciding instead to provide them with informal vocational education designed to prepare them for life in the Amish community, based on their sincere belief that high school attendance was contrary to the Amish religion and way of life. Several members of the Amish religion were convicted of violating Wisconsin’s compulsory school attendance law. The respondents argued that the First and Fourteenth Amendments protected them against the convictions.

PROCEDURAL HISTORY

The state trial court convicted the respondents of violating the compulsory school attendance law, over respondents’ First Amendment and Fourteenth Amendment defenses. The Wisconsin Circuit Court affirmed the convictions. But the Wisconsin Supreme Court reversed the convictions, sustaining respondents’ Free Exercise Clause claim.

ANALYSIS

The question was whether the respondents’ rights under the Free Exercise Clause outweigh the state’s interest in compelling school attendance beyond eighth grade. Here, the Amish refusal to attend high school was based on a sincere religious belief, and their religion taught that entanglement and participation in secular life at that point (in contrast to learning and living the Amish way of life) risked endangering their souls. Thus the Wisconsin law affirmatively compelled them to perform acts at odds with the fundamental tenets of their religious beliefs.

The state’s argument—that the First Amendment protects only religious beliefs and not religious actions—was mistaken. And the fact that this law applied to everyone similarly does not save the state’s case, because a neutral regulation may, in application, unduly burden the free exercise of a particular religion. So the primary question remained whether the state’s interest in education is so compelling that the Amish religious practices must give way.

Here, the state had an interest in education. But the Amish did not oppose the idea of educating their children; instead, they educated them in a religious manner rather than a secular one. The state’s interest in educating Amish children in the particular way that the state wanted, rather than in the way that the Amish wanted, was considerably weaker than its interest in ensuring that they were educated generally. The genuinely-held Amish beliefs outweighed the state’s interest.

CONCURRENCES

Justice Steward, joined by Justice Brennan, concurred, noting that Amish children were still legally allowed to attend high school if they so chose.

Justice White, joined by Justices Brennan and Steward, concurred, arguing that the case would be different if the religion prevented children from attending any school at any time and prohibited compliance with the educational standards set by the state.

## DISSENT

Justice Douglas dissented in part, arguing that the interests at play here were not only those of the parents and of the state, but also of the children, and that the child's own religious beliefs should control the outcome.

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***Employment Division v. Smith***

494 U.S. 872 (1990)

## ISSUE

Whether the Free Exercise Clause of the First Amendment permits the State of Oregon to include religiously inspired peyote use within the reach of its criminal prohibition on use of that drug, and thus permits the State to deny unemployment benefits to persons dismissed from their jobs because of religiously inspired use.

## HOLDING

The Free Exercise Clause did not prohibit application of Oregon's drug laws to ceremonial ingestion of peyote and, thus, the State could deny claimants unemployment compensation for work-related misconduct based on the use of the drug, consistent with the Free Exercise Clause.

## FACTS

Two individuals were fired by a private drug rehabilitation organization because they ingested peyote, a hallucinogenic drug, for sacramental purposes at a ceremony of their Native American Church. Their applications for unemployment compensation were denied by the State of Oregon under a state law disqualifying employees discharged for work-related "misconduct."

## PROCEDURAL HISTORY

The Oregon State Court of Appeals reversed the denial of unemployment compensation, holding that the denials violated the individuals' First Amendment Free Exercise rights. The Oregon Supreme Court affirmed. The United States Supreme Court vacated the judgment and remanded for a determination of whether sacramental peyote use is proscribed by Oregon's controlled substance law, otherwise refusing to decide whether such use is protected by the Constitution. On remand, the Oregon Supreme Court held that sacramental peyote use violated, and was not excepted from, the state drug laws, but concluded that the prohibition was invalid under the Free Exercise Clause.

## ANALYSIS

The Court held that, although a State would be prohibiting the free exercise of religion if it sought to ban the performance of (or abstention from) physical acts solely because of their religious motivation, the Free Exercise Clause does not relieve an individual of the obligation to comply with a law that incidentally forbids (or requires) the performance of an act that his religious belief requires (or forbids) if the law is not specifically directed to religious practice and is otherwise constitutional as applied to those who engage in the specified act for nonreligious reasons. The Court explained that it had only held the First Amendment to bar application of a neutral, generally applicable law to religiously motivated action when the cases involved not just the Free Exercise Clause alone, but that Clause in conjunction with other constitutional protections.

The Court further held that the individuals' claim for a religious exemption from the Oregon law could not be evaluated under the balancing test set forth in *Sherbert* and its progeny, whereby governmental actions that substantially burden a religious practice must be justified by a compelling governmental interest. The Court held that that test was developed in a context—unemployment compensation eligibility rules—that lent itself to individualized governmental assessment of the reasons for the relevant conduct and was inapplicable to an across-the-board criminal prohibition on a particular form of conduct.

A contrary holding would create an extraordinary right to ignore generally applicable laws that are not supported by a compelling government interest on the basis of religious belief. Thus, the Court held, although it is constitutionally *permissible*

to exempt sacramental peyote use from the operation of drug laws, it is not constitutionally *required*.

#### CONCURRENCE

Justice O'Connor (with whom Justices Brennan, Marshall, and Blackmun joined as to part of the opinion) concurred in the judgment. She believed that, although the result was correct, the Court's holding "dramatically departs from well-settled First Amendment jurisprudence, appears unnecessary to resolve the question presented, and is incompatible with our Nation's fundamental commitment to individual religious liberty." *Id.* at 891.

#### DISSENT

Justice Blackmun, joined by Justices Brennan and Marshall, dissented. He believed the majority opinion "effectuate[d] a wholesale overturning of settled law concerning the Religion Clauses of our Constitution," most notably the precedents establishing that a state statute that burdens the free exercise of religion "may stand only if the law in general, and the State's refusal to allow a religious exemption in particular, are justified by a compelling interest that cannot be served by less restrictive means." *Id.* at 907–08. The dissent largely agreed with Justice O'Connor's concurrence, except that it would have held the Free Exercise Clause *was* violated here.

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### ***Church of the Lukumi Babalu Aye, Inc. v. Hialeah***

508 U.S. 520 (1993)

#### ISSUE

Whether city ordinances dealing with the ritual slaughter of animals violated the Free Exercise Clause?

#### HOLDING

The ordinances were not neutral or generally applicable, and the governmental interest assertedly advanced by the ordinances did not justify the targeting of religious activity.

#### FACTS

A church and its congregants practiced Santeria, which employs animal sacrifice as one of its principal forms of devotion. After the church leased land in the City of Hialeah and announced plans to establish a house of worship there, the city council held an emergency public session and passed several city ordinances: (1) a resolution noting city residents' concern over religious practices inconsistent with public morals, peace, or safety, and declaring the city's commitment to prohibiting such practices; (2) an ordinance which incorporated Florida animal cruelty laws that had been interpreted to reach killings for religious reasons; (3) an ordinance which prohibited the possession, slaughter, or sacrifice of an animal if it was killed in "any type of ritual," but exempting licensed food establishments; (4) an ordinance prohibiting the sacrifice of animals; and (5) an ordinance defining "slaughter" as the killing of animals for food and prohibiting slaughter outside of areas zoned for slaughterhouses, with a few minor exemptions.

#### PROCEDURAL HISTORY

The Church filed a suit under 42 U.S.C. § 1983, alleging violations of their rights under, *inter alia*, the Free Exercise Clause. Although acknowledging that the ordinances were not religiously neutral, the district court ruled for the City, concluding, among other things, that compelling governmental interests in preventing public health risks and cruelty to animals fully justified the absolute prohibition on ritual sacrifice accomplished by the ordinances, and that an exception to that prohibition for religious conduct would unduly interfere with fulfillment of the governmental interest because any more narrow restrictions would be unenforceable as a result of the Santeria religion's secret nature. The court of appeals affirmed.

## ANALYSIS

The Court explained that *Smith* had held that a law that burdens religious practice need not be justified by a compelling governmental interest if it is neutral and of general applicability. Where such a law is not neutral or not of general applicability, however, it must undergo strict scrutiny: it must be justified by a compelling governmental interest and must be narrowly tailored to advance that interest. Neutrality and general applicability are interrelated, and failure to satisfy one requirement is a likely indication that the other has not been satisfied.

The Court held that the ordinances' texts and operation demonstrate that they were not neutral, but had as their objection the suppression of Santeria's central element: animal sacrifice. That religious exercise was targeted was evidenced by the statements of concern and commitment in the resolution, and by the use of the words "sacrifice" and "ritual" in the ordinances. Moreover, the ordinances were gerymandered to proscribe religious killings of animals by Santeria church members but to exclude almost all other animal killings. They also suppressed much more religious conduct than is necessary to achieve their stated ends: the legitimate governmental interests in protecting the public health and preventing cruelty to animals could be addressed by restrictions stopping far short of a flat prohibition of all Santeria sacrificial practice.

Further, each of the ordinances pursued the City's governmental interests only against conduct motivated by religious belief and thereby violated the requirement that laws burdening religious practice must be of general applicability. The ordinances were substantially underinclusive with regard to the City's interest in preventing cruelty to animals, since they were drafted to forbid few animal killings but those occasioned by religious sacrifice.

Finally, the ordinances could not withstand strict scrutiny because they were overbroad and underinclusive in substantial respects, since the proffered objectives were not pursued with respect to analogous nonreligious conduct and the interests could be achieved by narrower ordinances that burdened religion to a far lesser degree. Where, as here, the government restricts only conduct protected by the First Amendment and fails to enact feasible measure to restrict other conduct producing substantial harm or alleged harm of the same sort, the governmental interests given in justification of the restriction cannot be regarded as compelling.

## CONCURRENCES

Justice Scalia (joined by Chief Justice Rehnquist) concurred in part and concurred in the judgment. He did not join one section of the opinion because "it departs from the opinion's general focus on the object of the *laws* at issue to consider the subjective motivation of the *lawmakers*, *i.e.*, whether the Hialeah City Council actually *intended* to disfavor the religion of Santeria." *Id.* at 558.

Justice Souter concurred in part and concurred in the judgment, writing that the case "turns on a principle about which there is no disagreement, that the Free Exercise Clause bars government action aimed at suppressing religious belief or practice." *Id.* at 559. He wrote separately, given the Court's reference to *Smith* in dicta, to "explain why the *Smith* rule is not germane to this case and to express [his] view that, in a case presenting the issue, the Court should re-examine the rule *Smith* declared." *Ibid.*

Justice Blackmun (joined by Justice O'Connor) concurred in the judgment. He disagreed with the *Smith*-based framework used by the Court: "I continue to believe that *Smith* was wrongly decided, because it ignored the value of religious freedom as an affirmative individual liberty and treated the Free Exercise Clause as no more than an antidiscrimination principle." *Id.* at 578. He would have achieved the same result by using the *Sherbert* balancing test.

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***Fulton v. City of Philadelphia***

141 S. Ct. 1868 (2021)

## ISSUE

Did the City of Philadelphia's refusal to contract with a religious foster care agency unless it agreed to certify same-sex couples as foster parents violate the Free Exercise Clause of the First Amendment?

## HOLDING

The refusal of the City of Philadelphia to contract with the foster care agency for the provision of foster care services unless the agency agreed to certify same-sex couples as foster parents violated the Free Exercise Clause of the First Amendment.

## FACTS

The City of Philadelphia enters standard annual contracts with private foster care agencies to place children with foster families. One of the responsibilities of the agencies is certifying prospective foster families under state statutory criteria. Catholic Social Services (CSS) contracted with the City to provide foster care services for over 50 years. Because CSS believes that certification of prospective foster families is an endorsement of their relationship, it would not certify same-sex couples, given its religious belief that marriage is a sacred bond between a man and a woman. Following press coverage on the issue, the City informed CSS that unless it agreed to certify same-sex couples, the City would no longer refer children to the agency or enter a full foster care contract with it in the future. The City explained that CSS's refusal to certify same-sex couples violated both a non-discrimination provision in the agency's contract with the City as well as the non-discrimination requirements of a citywide Fair Practices Ordinance.

## PROCEDURAL HISTORY

CSS and three affiliated foster parents filed suit seeking to enjoin the City's referral freeze on the grounds that the City's actions violated the Free Exercise and Free Speech Clauses of the First Amendment. The district court denied preliminary relief, reasoning that the contractual non-discrimination requirement and the Fair Practices Ordinance were both neutral and generally applicable under *Smith* and that CSS's Free Exercise claim was therefore unlikely to succeed. The court of appeals affirmed.

## ANALYSIS

The Court held that the City's actions burdened CSS's religious exercise by forcing it to either curtail its mission or to certify same-sex couples as foster parents in violation of its religious beliefs. The Court further held that this case fell outside of *Smith* because the City had burdened CSS's religious exercise through policies that do not satisfy the threshold requirement of being neutral and generally applicable.

The Court held that a law is not generally applicable if it invites the government to consider the particular reasons for a person's conduct by creating a mechanism for individualized exemptions. Where such a system of individual exemptions exists, the government may not refuse to extend that system to cases of religious hardship without a compelling reason. Here, the non-discrimination requirement of the City's standard foster care contract was not generally applicable because the contract permitted exceptions to the requirement at the sole discretion of the Commissioner. Further, the Fair Practices Ordinance did not apply to CSS's actions because foster care certification is not "made available to the public."

Because the contractual non-discrimination requirement burdened CSS's religious exercise and was not generally applicable, it was subject to strict scrutiny. The question, the Court held, is not whether the City has a compelling interest in enforcing its non-discrimination policies generally, but whether it has such an interest in denying an exception to CSS. Under the circumstances here, the City did not have a compelling interest in refusing to contract with CSS: CSS sought only an accommodation that would allow it to continue serving the children of Philadelphia in a manner consistent with its religious beliefs, rather than seeking to impose its beliefs on anyone else.

## CONCURRENCES

Justice Barrett (joined by Justice Kavanaugh and, largely, Justice Breyer) concurred. She noted that "Petitioners, their *amici*, scholars and Justices of this Court have made serious arguments that *Smith* ought to be overruled." *Id.* at 1882. She saw "no reason to decide in this case whether *Smith* should be overruled, much less what should replace it." *Id.* at 1883.

Justice Alito (joined by Justice Thomas and Justice Gorsuch) concurred in the judgment. He would have reached the question of whether *Smith* should be overruled, holding instead that *Smith* was "fundamentally wrong and should be corrected." *Ibid.*

Justice Gorsuch (joined by Justice Thomas and Justice Alito) also concurred in the judgment. He criticized the majority and Justice Barrett’s concurrence for believing there was “no ‘need’ or ‘reason’ to address the error of *Smith* today.” *Id.* at 1926.

***Trans World Airlines, Inc. v. Hardison***

432 U.S. 63 (1977)

ISSUE

What is the scope of the “reasonable accommodations” that employers must provide for religious employees under Title VII of the Civil Rights Act?

HOLDING

An employer must make “reasonable efforts to accommodate” a religious employee, but it does not need to bear any “undue hardship” to do so. The employer does not need to succeed in securing the accommodation: they must simply make a clear effort to find a compromise. In this case, the bona fide seniority system negotiated by the union impeded the employer’s ability to accommodate the religious employee. This failure to accommodate, however, did not violate Title VII because it would require the employer to bear an “undue hardship,” defined as anything “more than a *de minimis* cost.”

FACTS

While working for Trans World Airlines (TWA), Hardison joined the Worldwide Church of God, which required him to observe the Sabbath on Saturdays. To avoid conflicts with his demanding work schedule, Hardison transferred to a job that could accommodate his Sabbath. Later, he transferred into another job that could not accommodate him because he did not have sufficient seniority under the collective bargaining agreement to modify his schedule. After considering several accommodation options, Hardison and his supervisors could not find any satisfactory solution, so he was discharged for insubordination after refusing to report for work on Saturdays.

PROCEDURAL HISTORY

Hardison sued, arguing that TWA engaged in religious discrimination when they fired him, violating Title VII of the Civil Rights Act, and that his union failed to adequately represent him in the dispute. Hardison lost in the district court but won in the Eighth Circuit. Both courts agreed that Title VII’s accommodation requirements were not an unconstitutional establishment of religion. However, the Eighth Circuit held that TWA did make reasonable efforts to accommodate Hardison because it rejected several reasonable alternatives—“any one of which would have satisfied its obligation without undue hardship.” *Id.* at 76.

ANALYSIS

The purpose of enacting Title VII was to “eliminate discrimination in employment; similarly situated employees are not to be treated differently solely because they differ with respect to race, color, religion, sex, or national origin.” *Id.* at 71. Interpreting this provision, the EEOC issued a guideline stating that an employer was obligated “to make reasonable accommodations to the religious needs of employees . . . where such accommodations can be made without undue hardship on the conduct of the employer’s business.” *Id.* at 72. A similar definition was incorporated into the Civil Rights Act by Congressional Amendment in 1972. None of these provisions defined the extent of the accommodations that employers must provide, nor did they clarify what was meant by “undue hardship.”

The Court held that TWA made “reasonable efforts to accommodate,” and that the Eighth Circuit undersold its attempts to accomplish this goal. *Id.* at 77. TWA met with the plaintiff, approved accommodations for his observance of religious holidays, and authorized the union steward to search for voluntary shift swaps. Even though they were unsuccessful in finding swaps, TWA “cannot be faulted for having failed to work out a shift or job swap for Hardison.” *Id.* at 79–80.

Though a collective bargaining agreement or a seniority system cannot be used to intentionally discriminate against people, seniority systems generally do not violate Title VII when they cause conflict with religious observances. Seniority systems are meant to navigate tensions between employees in advance, so allowing a reli-

religious person to circumvent the seniority system would be unfair to more senior employees. Because there was no evidence of discriminatory intention in this case, the unequal treatment caused by the seniority system was acceptable. For “Hardison and others like him [to get] the days off necessary for strict observance of their religion,” TWA would have to do so “only at the expense of others who had strong, but perhaps nonreligious, reasons for not working on weekends.” *Id.* at 81. Because Hardison could not find someone to willingly swap shifts, “TWA would have had to deprive another employee of his shift preference at least in part because he did not adhere to a religion that observed the Saturday Sabbath. Title VII does not contemplate such unequal treatment.” *Id.*

The Court noted that asking TWA to allow Hardison to work a four-day week would have constituted an “undue hardship.” Because it would have to replace Hardison with other employees at a premium rate, the Court found that this requirement would “involve unequal treatment of employees on the basis of their religion.” *Id.* at 84. “To require TWA to bear more than a *de minimis* cost in order to give Hardison Saturdays off is an undue hardship.” *Id.*

#### DISSENT

Justice Marshall argued that this decision “deals a fatal blow to all efforts under Title VII to accommodate work requirements to religious practices.” *Id.* at 86. According to the majority, any accommodation for religious observers is invalid because it requires some “unequal treatment” of the religious person. But this is the point of the statute. “The accommodation issue by definition arises only when a neutral rule of general applicability conflicts with the religious practices of a particular employee.” “To [grant an exemption from the neutral rule] will always result in a privilege being ‘allocated according to religious beliefs,’ unless the employer gratuitously decides to repeal the rule *in toto.*” *Id.* at 88.

The TWA did not face undue hardship, as their efforts to seek an accommodation were insufficient. Furthermore, it is not reasonable to say that “one of the largest air carriers in the Nation” would have faced undue hardship by shuffling one person into this timeslot. *Id.* at 91. The “singular advantage” of the Court’s opinion is to avoid a constitutional challenge by not asking if requiring employers to incur substantial costs to aid religious employees constitutes an Establishment Clause violation. *Id.* at 89. Even though the accommodations at issue in this case are relatively costless, the Court still considers these to be too costly of a burden.

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### **Groff v. DeJoy**

600 U.S. \_\_\_, 2023 WL 4239256 (2023)

#### ISSUE

At what point does an employee’s need for religious accommodations impose an “undue hardship on the conduct of [an] employer’s business,” under Title VII of the Civil Rights Act of 1964?

#### HOLDING

An “undue hardship” under Title VII is shown when the need for religious accommodations is “substantial in the overall context of the employer’s business.” Slip op. at 16–17. The Supreme Court’s decision in *Trans World Airlines, Inc. v. Hardison*, 432 U.S. 63 (1977), provided contradictory definitions of the phrase “undue hardship,” and many lower courts adopted a test defining an “undue hardship” as merely “more than a *de minimis* cost.” *Groff*, slip op. at 3. The Court rejected this “*de minimis* cost” language. Instead, it requires employers to show that required accommodations would incur “substantial additional costs,” contextually determined based on the business’s specific nature, size, and cost structure. This means that an accommodation inciting hostility from coworkers or requiring minimal organizational costs is not enough to constitute “undue hardship”—it must impact the business more substantially.

#### FACTS

Gerald Groff, an Evangelical Christian, believes that he should not work on Sundays for religious reasons. While working for the United States Postal Service, he refused to deliver mail on Sundays. Despite attempts at accommodations, USPS’s

memorandum governing Sunday deliveries led to Groff being repeatedly disciplined for failing to work on his Sabbath day.

#### PROCEDURAL HISTORY

Groff sued the Postmaster General under Title VII, alleging that USPS could have accommodated his Sabbath practice “without undue hardship on the conduct of [USPS’s] business.” However, the Third Circuit ruled against Groff, finding that the Supreme Court’s decision in *Hardison* controlled. Following *Hardison*, the court held that an “undue hardship” occurs when an employer must “bear more than a *de minimis* cost” to accommodate an individual’s religion. *Id.* at 174, n. 18. Because exempting Groff from work on his Sabbath created impositions on his coworkers and workplace, the Third Circuit found that the accommodations created an “undue hardship.”

#### ANALYSIS

The Court found that *Hardison* created confusion about what constitutes an “undue hardship.” In *Hardison*, the Court focused most of the opinion on the question of the seniority rights negotiated in a collective bargaining agreement—not the definition of “undue hardship.” The language defining this phrase as “more than a *de minimis* cost” conflicted with other parts of the opinion that “an accommodation is not required when it entails substantial costs or expenditures.” *Hardison*, slip op. at 12 (internal quotation marks omitted). Though some lower courts recognized the “substantial costs” definition of “undue hardship,” many others accepted the “*de minimis cost*” definition.

To clarify the law, the Court held that proving an “undue hardship” is more demanding than merely showing that a business incurred “more than *de minimis cost*.” The “common parlance” meaning of the phrase “undue hardship” suggests something “more severe than a mere burden.” *Id.* at 16. A “hardship” is “at a minimum, something hard to bear,” and “the modifier ‘undue’ means that the requisite burden, privation, or adversity must rise to an ‘excessive’ or ‘unjustifiable’ level.” *Id.* Employers, then, may be required to bear “substantial additional costs” to accommodate their religious employees. *Id.* at 17.

Though the parties disputed the best way to phrase the new test, the Court emphasized that determining an “undue hardship” requires the court to consider all relevant factors to the employer’s operations—including the details of requested accommodations, the size of the employer’s business, and the magnitude of the costs. The Court leaves much of the EEOC’s guidance on accommodations unaffected, but it declines to ratify them wholesale. The guidelines are only useful insofar as they help courts “resolve whether a hardship would be substantial in the context of an employer’s business in the commonsense manner that it would use in applying any such test.” *Id.* at 19.

To prove an “undue hardship,” the employer must show more than mere “coworker impacts.” If a religious person’s accommodations affect their coworkers, the only issues that are cognizable for “undue hardship” analysis are those that impact the “conduct of the business.” *Id.* at 19. Certain coworker conflicts, especially those stemming from a coworker’s animosity towards religion or religious people, are off the table as evidence of undue hardship. As the Court states, “If bias or hostility to a religious practice or a religious accommodation provided a defense to a reasonable accommodation claim, Title VII would be at war with itself.” *Id.* at 20.

Finally, an employer faced with a request must consider all potential reasonable accommodations. It is not enough for an employer to decide that they cannot force other employees to work overtime to cover a religious Sabbath request. “Faced with an accommodation request like Groff’s, . . . [c]onsideration of other options, such as voluntary shift swapping, would also be necessary.” *Id.* at 20.

#### CONCURRENCE

Justice Sotomayor emphasizes that the core holding of *Hardison* still stands, in part on grounds of *stare decisis*: an accommodation that would “deprive other employees of their seniority rights under a collective-bargaining agreement” or incur other substantial costs is an “undue hardship.” *Id.* at 1 (Sotomayor, J., concurring).

*Trinity Lutheran Church of Columbia, Inc. v. Comer*

137 S. Ct. 2012 (2017)

## ISSUE

Does the Free Exercise Clause of the First Amendment prevent a government entity from denying a religious entity an otherwise-available public benefit on account of its religious status?

## HOLDING

The Free Exercise Clause requires that courts subject to strict scrutiny a government action that denies publicly-available benefits to an entity solely because of the entity religious character.

## FACTS

Missouri's Department of Natural Resources offered reimbursement grants to non-profits that installed playground surfaces made from recycled tires (the "Scrap Tire Program"). The Missouri Constitution required that "no money shall ever be taken from the public treasury . . . in aid of any church, section or denomination of religion." The Director of the Department of Natural Resources interpreted this to mean that religious institutions were ineligible for participation in the Scrap Tire Program. Trinity Lutheran Church Child Learning Center was a Missouri preschool and daycare center that had merged with a church and operated on church property. When Trinity Lutheran applied to participate in the Scrap Tire Program to replace a gravel playground with a rubber surface, Missouri denied the application on the grounds that it denied all such applications from religious entities. Trinity Lutheran would have received the benefit of the program but for the fact that it was owned or controlled by a church.

## PROCEDURAL HISTORY

Trinity Lutheran sued the Director of Missouri's Department of Natural Resources, asserting free exercise claims and seeking declaratory and injunctive relief. The district court dismissed Trinity Lutheran's case and the Ninth Circuit affirmed.

## ANALYSIS

The Free Exercise Clause requires courts to use a strict scrutiny analysis for any government action that discriminates based on religious status. When a government denies publicly-available benefits to an organization based on the organization's religious status, the government thereby discriminates based on religious status; in other words, the government discriminates on this basis and subjects itself to strict scrutiny if it would give an entity a public benefit but for its religious character. Trinity Lutheran and other religious organizations have a right to participate in a government benefit program "without having to disavow its religious character." A prior case (*Locke v. Davey*, 540 U.S. 712 (2004)) had allowed the government to deny benefits based on what the recipient planned to *do* with those benefits, including to use them for religious purposes; but here, the government denied benefits based on what the recipient *was*—a religious organization. A state subjects itself to strict scrutiny when it effectively asks an organization to renounce its religious character in order to be eligible for a public benefit.

Nor did the policy here withstand a strict scrutiny analysis. Here, the state would need to show an interest "of the highest order." But the state's stated interest of avoiding Establishment Clause concerns is insufficient and does not qualify as compelling. A state's interest in avoiding Establishment Clause entanglements more thoroughly than the Constitution requires is not an interest "of the highest order" that would justify discriminating against religious entities. The policy is unconstitutional.

## CONCURRENCES

Justice Thomas, joined by Justice Gorsuch, concurred and also would overturn *Locke* to the extent that it had allowed "even a mild kind" of religious discrimination.

Justice Gorsuch, joined by Justice Thomas, concurred and offered two qualifications. First, he doubted that the majority's distinction between religious status and religious action would be workable in practice, and also doubted whether the First

Amendment allows this distinction. Second, he wanted to clarify that the majority's holding applied more broadly than merely to cases involving playground or other child-related cases.

Justice Breyer concurred in the judgment, but emphasized that the particular public benefit here would secure and improve the health and safety of children, and thus was the type of government-provided benefit to which religious entities should have access.

#### DISSENT

Justice Sotomayor, joined by Justice Ginsburg, dissented and emphasized that the majority's opinion "profoundly changes that relationship [between church and state]" by holding that the Constitution requires the government directly to fund a church. The dissent argued that the majority's opinion weakened the country's commitment to the separation of church and state. The dissent would have held that the direct funding of a religious entity raised separate Establishment Clause concerns, and thus state "prophylactic rule[s]" against the use of public funds for houses of worship were permissible rather than unconstitutionally discriminatory.

### *Espinoza v. Montana Dep't of Revenue*

140 S. Ct. 2246 (2020)

#### ISSUE

Does the Free Exercise Clause prohibit a state from applying a no-aid provision that prevents religious schools from receiving funds from a state-funded scholarship program?

#### HOLDING

The Free Exercise Clause does not allow a state to apply a no-aid provision to schools such that religious schools would be prohibited from receiving scholarship funds for which they would be eligible if they had instead been secular schools.

#### FACTS

The Montana Legislature created a program to grant tax credits for donations to organizations that gave scholarships for private school tuition. But the Department of Revenue also created "Rule 1," which prevented families from using the scholarships at religious schools, to comply with the Montana Constitution's prohibition on government aid to sectarian schools (the "no-aid provision"). Rule 1 blocked three mothers from using the scholarship funds for tuition at their children's private Christian school.

#### PROCEDURAL HISTORY

The three mothers sued the Montana Department of Revenue in state court, claiming that Rule 1 was based on a mistake of law, and also that it discriminated against them based on their religious beliefs and the religious views of their school. The district court enjoined Rule 1 and held that the rule had been based on a mistake of law (specifically, that the Department had mistaken tax credits to apply to the Montana Constitution's prohibition on funding for sectarian schools). The Montana Supreme Court reversed, and held that the department had exceeded its authority in promulgating Rule 1, that the no-aid provision applied broadly in the absence of Rule 1, and that therefore the no-aid provision prohibited the scholarship program from existing at all—either to religious or nonreligious schools.

#### ANALYSIS

The Free Exercise Clause requires courts to apply strict scrutiny whenever a government prohibits otherwise-eligible recipients from receiving a public benefit solely because of their religious status. Here, the no-aid provision prevented religious schools from receiving an otherwise-available public benefit (scholarship funds) solely because of the religious character of the schools. The provision also prevented parents from using the funds to send their children to certain schools rather than others based entirely on the religious status of the school in question. This case is about religious status rather than religious action because the Montana Supreme Court had applied the no-aid provision solely by reference to the school's religious

status; the case is unlike *Locke v. Davey*, 540 U.S. 712 (2004), because that case involved prohibition of funds for what was the “essentially religious endeavor” of training a minister, whereas this case involves a prohibition generally on funds going to schools that happen to be religious.

Applying strict scrutiny, the majority held that the state’s interest in separating church and state “more fiercely” than the U.S. Constitution requires “cannot qualify as compelling in the face of the infringement of free exercise here.” (cleaned up). And the Department’s argument that the no-aid provision promoted religion failed, because a religious infringement cannot be justified by the state’s view that the infringement instead advanced religious interests. Moreover, the state’s interest in public education was underinclusive because that objective was only being pursued here as to secular, rather than sectarian, institutions.

Finally, the state’s argument that there was no violation here because the state eliminated the scholarship program altogether also failed. The legislature created the program and never ended it; rather, a court eliminated the program pursuant to an unconstitutional provision of law. The Montana Supreme Court’s decision thus did not rest on adequate and independent state law grounds, and required reversal.

#### CONCURRENCES

Justice Thomas, joined by Justice Gorsuch, concurred to argue that the Court’s interpretation of the Establishment Clause hampered free exercise rights. The concurrence stated that overly-broad Establishment Clause jurisprudence (including *Locke*) caused cases like this one to arise, and thus thwarted rather than promoted equal treatment of religion.

Justice Alito also concurred, writing separately to argue that a law’s original motivation should have no bearing on the present constitutionality of that law.

Justice Gorsuch also concurred, writing separately to argue that the majority’s continued reliance on the distinction between religious status and religious activity was not a tenable distinction.

#### DISSENTS

Justice Ginsburg, joined by Justice Kagan, dissented, arguing that the Montana Supreme Court’s elimination of the program in its entirety results in equal treatment between religious and nonreligious schools, thereby foreclosing a free exercise challenge.

Justice Breyer also dissented, joined in part by Justice Kagan, and argued that the majority’s view risked entangling states in Establishment Clause conflicts, and that *Locke* controlled this case to the opposite conclusion.

Justice Sotomayor also dissented, arguing that the majority had decided a question not presented, and that its reasoning was wrong for the same reason as its decision in *Trinity Lutheran* had been wrong.

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### ***Carson v. Makin***

142 S. Ct. 1987 (2022)

#### ISSUE

Does state law violate the Free Exercise Clause when the state provides a tuition-assistance program, but requires parents to use the funds only on “nonsectarian” schools?

#### HOLDING

The Free Exercise Clause prohibits a state from operating a tuition-assistance program that provides tuition assistance only to nonsectarian schools. The principles of *Trinity Lutheran* and *Espinoza* require this result; when a state provides a public benefit, such as tuition assistance, it cannot limit this benefit based on the religious nature of the entity that would receive the benefit. And a state cannot avoid this conclusion simply by casting status-based discrimination as activity-based discrimination.

#### FACTS

Maine enacted a tuition-assistance program for parents who live in a school district that lacks a secondary school, under which parents designated their child’s secondary school of choice and the school district transmitted payments to that school

to alleviate tuition costs. But Maine limited these tuition assistance payments to “nonsectarian” schools. Several parents who lived in districts that lacked a secondary school sought tuition assistance from the program to send their children to private religious schools. But the Maine Department of Education denied them tuition assistance because the schools were sectarian.

#### PROCEDURAL HISTORY

The parents filed a §1983 action against Maine’s Commissioner of the Department of Education, alleging that the requirement violated the U.S. Constitution’s Free Exercise Clause, Establishment Clause, and Equal Protection Clause of the Fourteenth Amendment. The district court granted the Commissioner’s motion for summary judgment. The First Circuit affirmed, distinguishing the case from *Espinoza* on the grounds that first, Maine barred the tuition based on the religious use of the funds rather than on schools’ religious status, and second, that Maine had tried to provide a rough equivalent of the public-school education that Maine is constitutionally permitted to keep secular.

#### ANALYSIS

The Free Exercise Clause requires that courts impose strict scrutiny on governmental decisions to exclude religious entities from eligibility for otherwise-available public benefits. The Court stated that, for the same reasons that the Court explained in *Trinity Lutheran* and *Espinoza*, that principle applies to this case as well. Maine had offered its citizens a public benefit in the form of tuition assistance, under which religious schools were ineligible “solely because of their religious character.” Thus the Court applied strict scrutiny to the program.

Applying this strict scrutiny analysis, Maine needed to present “interests of the highest order” and actions that were “narrowly tailored” in pursuit of those interests. Here, Maine’s interest in promoting stricter separation of church and state than the U.S. Constitution requires is not a sufficient interest because a state’s “antiestablishment interest does not justify enactments that exclude some members of the community from an otherwise generally available public benefit because of their religious exercise.”

The majority disagreed with the First Circuit’s attempts to distinguish this case from *Espinoza*. First, the First Circuit’s holding that the private tuition funds were essentially public-education equivalency was mistaken, both because the statute expressed no such thing, and also because the private schools receiving tuition assistance were substantially different (including different curricula and teacher certifications) that were completely different from those in public schools. The only substantial similarity was that they must both be secular. And second, the First Circuit’s holding that the program involved “religious action” rather than “religious status” was mistaken, because neither *Espinoza* nor *Trinity Lutheran* held that discrimination against “religious action” violated the Free Exercise any less than those based on “religious status.” *Locke v. Davey* turned on the fact that the recipient tried to use state funds for training to join the clergy, which was effectively religious training; no such facts applied here.

#### DISSENTS

Justice Breyer, joined by Justice Kagan and in part by Justice Sotomayor, argued in dissent that the majority’s focus on the Free Exercise Clause effectively ignored the Establishment Clause and the interplay between the two. As a result, the majority unreasonably ignores a state’s legitimate interest in avoiding entanglements with the Establishment Clause. Moreover, neither *Espinoza* nor *Trinity Lutheran* require this result.

Justice Sotomayor also dissented, arguing *Trinity Lutheran* and its progeny have been wrongly decided, that the consequences of this line of cases are substantial, and that the benefit at issue here is public education which the Establishment Clause requires to be secular.

**Locke v. Davey**

540 U.S. 712 (2004)

## ISSUE

When a State offers a scholarship for higher education, does the Free Exercise Clause permit the State to exclude the scholarship funds from being used to pursue a devotional theology degree?

## HOLDING

The Free Exercise Clause permits a State to exclude scholarship funds from being used to pursue a devotional theology degree, even if the scholarship can be used to study any other topic.

## FACTS

Washington State established the Promise Scholarship Program to help gifted students pay for postsecondary education expenses. But in accordance with the Washington Constitution, students could not use this state-funded scholarship to pursue a devotional theology degree. Joshua Davey received the scholarship and chose to attend Northwest College, a private Christian college, and decided to double major in pastoral ministries and business administration. Pastoral ministries was a devotional theological degree that was excluded under the Promise Scholarship Program. Washington stopped sending Davey the scholarship funds as a result.

## PROCEDURAL HISTORY

Davey brought action in Federal district court to enjoin Washington from refusing to award the scholarship funds, arguing that the denial here violated the Free Exercise, Establishment, and Free Speech Clauses of the First Amendment, as well as the Equal Protection Clause of the Fourteenth Amendment. The district court denied Davey's request for a preliminary injunction, and ruled against him on summary judgment.

The Ninth Circuit reversed, holding that Washington had singled out religion for unfavorable treatment, and that under *Lukumi* the state's antiestablishment concerns were not sufficiently compelling to support the denial.

## ANALYSIS

This funding scheme comported with the First Amendment, because although the State could permit the scholars to pursue a degree in devotional theology, it was not required to permit recipients to pursue such a degree. The court distinguished *Lukumi* because there, the state's law sought to suppress particular practices in a specific religion, whereas here, it created no sanctions for religions practice and did not deny ministers the right to participate in the community. Instead, the State had "merely chosen not to fund a distinct category of instruction."

The Court held that training somebody to lead a congregation was essentially a religious endeavor, and was as akin to a religious calling as it was to an academic pursuit. The Washington Constitution drew a more stringent line than that in the U.S. Constitution, but here, the State had a strong antiestablishment interest, because the State would be directly funding a religious vocation. And rather than show hostility to religion, the program here permitted students to attend religious schools. Davey's claims thus lacked the presumption of unconstitutionality and therefore failed.

## DISSENTS

Justice Scalia, joined by Justice Thomas, dissented, arguing that *Lukumi* was irreconcilable with the result in this case. He argued that when a State makes a public benefit generally available, the First Amendment requires that this benefit is the baseline against which burdens on religion are measured, so the State violates the law when it denies the benefit based on religion. Here, by singling out religion as the disfavored study, Washington effectively treated religious study to a tax, and thereby violated the First Amendment.

Justice Thomas also dissenting, arguing that the study of theology did not necessarily implicate religious devotion here; the definition in the law also would deny the study of theology from the secular perspective, but the litigants and the Court

had interpreted it only to deny the study from the religious perspective, and he dissented to that extent.

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***City of Boerne v. Flores***

521 U.S. 507 (1997)

ISSUE

Did Congress exceed the scope of its enforcement power under the Fourteenth Amendment by passing the Religious Freedom Restoration Act (RFRA)?

HOLDING

Under the enforcement authority conferred in §5 of the Fourteenth Amendment, Congress can pass legislation to enforce constitutional rights against the states. This broad enforcement power, though, is limited to remedial legislation. By explicitly rejecting the Supreme Court's holding in *Employment Div., Dept. of Human Resources of Oregon v. Smith*, 494 U.S. 872 (1990), RFRA represented a Congressional effort to change the meaning of the Free Exercise Clause. Accordingly, RFRA was not remedial. Congress exceeded the scope of its enforcement power, rendering RFRA unconstitutional as applied to the states.

FACTS

On behalf of a rapidly growing Catholic church in Boerne, Texas, the Archbishop of San Antonio applied for a building permit to expand the church's building. However, the Boerne City Council had designated the area around the church as a historic district, preventing the Archdiocese from modifying the building.

PROCEDURAL HISTORY

The Archbishop sued on several grounds, including the argument that the historic district designation violated RFRA. The Western District of Texas found that Congress had exceeded the scope of its enforcement authority under §5 of the Fourteenth Amendment when it passed RFRA. The Fifth Circuit reversed, holding that RFRA was constitutional.

ANALYSIS

In *Sherbert v. Verner*, 374 U.S. 398 (1963), the Supreme Court held that a generally applicable law that "substantially burden[s] a religious practice" violates the Free Exercise Clause of the First Amendment, so long as the burden is not "justified by a compelling state interest." *Flores*, 521 U.S. at 513. However, the Court changed course in *Employment Div. v. Smith*. Because the *Sherbert* test creates "a constitutional right to ignore neutral laws of general applicability" on the basis of religion, the Court advanced a bright line rule: only laws that facially target religious practices violate the Free Exercise Clause.

Congress passed RFRA to reinstate the *Verner* test, in opposition to the *Smith* decision. RFRA prohibits both the Federal government and the states from "substantially burdening a person's exercise of religion even if the burden results from a rule of general applicability." *Id.* at 515. If a neutral law burdened religion, government would have to demonstrate that the rule "is in furtherance of a compelling governmental interest" and that it "is the least restrictive means" of advancing that interest. *Id.* at 515–16.

When passing RFRA, Congress relied upon §5 of the Fourteenth Amendment, which enumerates the power to enforce the amendment "by appropriate legislation." *Id.* at 517. Though this enforcement power is broad, it is not unlimited: it only extends to provisions that enforce provisions of the Fourteenth Amendment. Put differently, it is a "remedial," not substantive, power. *Id.* at 519. The Court acknowledges that "the line between measures that remedy . . . unconstitutional actions and measures that make a substantive change in the governing law is not easy to discern." *Id.* at 519. Nonetheless, "the distinction exists and must be observed." *Id.* at 520.

Because RFRA "alters the meaning of the Free Exercise Clause," it "cannot be said to be enforcing [it]." *Id.* at 519. The Court embraces *Employment Div. v. Smith* as the controlling interpretation of the First Amendment, so restoring the *Sherbert* test would contravene the meaning of the First Amendment. "Congress does not enforce a constitutional right by changing what the right is." *Id.* at 519.

Furthermore, RFRA is not an exercise of remedial power because of the incongruity between its means and ends. RFRA is “so out of proportion to a supposed remedial object that it cannot be understood as responsive to, or designed to prevent, unconstitutional behavior.” *Id.* at 532. Because RFRA affirms exemptions against neutral and generally applicable laws, “[s]weeping coverage ensures its intrusion at every level of government, displacing laws and prohibiting official actions of almost every description and regardless of subject matter.” *Id.* Unlike the Voting Rights Act, which was specifically targeted towards regions that had historically discriminated against racial minorities, RFRA applies at all levels of the government—“a considerable congressional intrusion into the States’ traditional prerogatives and general authority to regulate for the health and welfare of their citizens.” *Id.* at 534. As it will be “difficult to contest” claims that religious exercise is burdened, *Sherbert’s* compelling interest test (“the most demanding test known to constitutional law”) will make it so that “many laws will not meet the test.” *Id.*

Ultimately, RFRA contradicts vital principles necessary to maintain separation of powers and the Federal balance.” *Id.* at 536. It does not even provide “a discriminatory effects or disparate-impacts test,” because it would challenge “numerous state laws, such as the zoning regulations at issue here.” *Id.* If Congress could pass RFRA, “no longer would the Constitution be ‘superior paramount law, unchangeable by ordinary means.’ It would be . . . alterable when the legislature shall please to alter it.” *Id.* at 529.

#### CONCURRENCES

Justice Stevens argued that RFRA violates the Establishment Clause by privileging religious entities over nonreligious entities in the face of neutral, generally applicable laws.

Justice Scalia argued that the historical record supported the Court’s *Smith* decision, permitting this case to proceed under the assumption that *Smith* provides the correct view of the First Amendment.

#### DISSENTS

Justice O’Connor agreed that the appropriate question is whether RFRA is an appropriate use of Congress’s § 5 enforcement power under the Fourteenth Amendment. However, she argued that *Smith* misinterprets the Free Exercise Clause. As such, it cannot be used as a yardstick to evaluate the constitutionality of RFRA. “The Free Exercise Clause is not simply an antidiscrimination principle that protects only against those that laws that single out religious practice for unfavorable treatment.” *Id.* at 46 (O’Connor, J., concurring). The historical record of the American founding supports the view that the Clause guarantees “the right to participate in religious practices and conduct without impermissible governmental interference, even when such conduct conflicts with a neutral, generally applicable law.” *Id.* Accordingly, the Court should direct the parties to brief this issue and reargue the case.

Justice Souter wanted to dismiss the writ of certiorari for this case, as reconsideration of the *Smith* decision would be required before reaching the enforcement power question.

Justice Breyer found the *Smith* question to be essential. Therefore, reaching the question about Section Five of the Fourteenth Amendment was unnecessary.

### ***Burwell v. Hobby Lobby Stores, Inc.***

573 U.S. 682 (2014)

#### ISSUES

Does a mandate requiring employers to provide contraceptive services to its employees, in violation of the business owners’ sincerely held religious beliefs, run afoul of the Religious Freedom Restoration Act of 1993 (RFRA)?

#### HOLDING

RFRA bars this mandate. Owners of for-profit companies do not forfeit protections of their religious beliefs when they decide to organize their business as a corporation. Under RFRA, the contraceptive mandate outlined by the Department of Health and Human Services (HHS) substantially burdened the exercise of religion by forcing business owners to choose between millions of dollars in fines or violating their

religious beliefs. Though the HHS regulation likely serves the compelling government interest of providing women with healthcare, it is not the least restrictive means of serving that interest.

#### FACTS

Under the Affordable Care Act of 2010 (ACA), employers with 50 or more full-time employees were required to offer a group health insurance plan that provides “minimum essential coverage.” *Id.* at 696. If they do not, they risked incurring heavy fines. As part of this essential coverage, employers had to provide women with “preventive care and screenings” without “any cost sharing requirements,” defined to include contraception. *Id.* at 697. Religious employers were explicitly exempted from the contraception requirements, and certain religious nonprofits are also implicitly exempted. *Id.* at 698.

The burdened businesses in this consolidated case were for-profit corporations helmed by people whose religious beliefs dictate that life begins at conception. The contraception mandate required them to violate those beliefs by following the law, or incur fines in the millions of dollars.

#### PROCEDURAL HISTORY

The businesses separately sued HHS under RFRA and the Free Exercise Clause. Against Conestoga Wood Specialties, the Third Circuit denied a motion for preliminary injunction, holding in a contested opinion that “for-profit, secular corporations cannot engage in religious exercise” under RFRA or the First Amendment. *Id.* at 702. Against Hobby Lobby, the Tenth Circuit granted a preliminary injunction, holding that Hobby Lobby is a person under RFRA. Hobby Lobby had established a likelihood of success on their RFRA claim because the mandate substantially burdened their exercise of religion. Furthermore, HHS had not demonstrated a compelling interest in enforcing the mandate against Hobby Lobby.

#### ANALYSIS

RFRA applies to “a person’s exercise of religion.” *Id.* at 707 (internal quotation marks omitted). Here, the Court held that the definition of a “person” includes corporations. Using a “familiar legal fiction,” the Court argues that recognizing the protection of the religious exercise of corporations ultimately “provide[s] protection for human beings.” *Id.* at 706. Corporations cannot be separated from the people who own, run, and work for them. Furthermore, the Dictionary Act defines person expansively to include corporations, and all parties conceded that a nonprofit corporation could be a “person” under the act. *Id.* at 708. Therefore, it logically follows that a for-profit corporation should not be excluded.

Though HHS argued that corporations cannot exercise religion, the Court found that they can. The fact that these businesses are for-profit enterprises does not diminish religious liberty interests implicated in the marketplace. For profit corporations engage in activities beyond making money, and “modern corporate law does not require for-profit considerations to pursue profit at the expense of everything else.” *Id.* at 711–12. Furthermore, the line between nonprofit and for-profit corporations is blurry, so the Court refuses to interpret RFRA as requiring a distinction between the two.

RFRA does not precisely reconstruct the pre-*Employment Division v. Smith*, 494 U.S. 872 (1990), legal landscape. Prior to *Smith*, no case had explicitly held that a for-profit corporation has free exercise rights. However, the text of the original RFRA and its amendment through the Religious Land Use and Institutionalized Persons Act (RLUIPA) are geared towards broadly protecting religious exercise, so it does not follow that a for-profit corporation should necessarily be excluded.

HHS argued that ascertaining the sincerity of a corporation’s religious belief would be difficult, but the Court disagreed. RLUIPA demonstrates that Congress was “confident in the ability of Federal courts to weed out insincere claims.” *Id.* at 718.

Given that RFRA applies, the Court then found that the HHS contraceptive mandate “substantially burden[s]” the exercise of religion. If business do not comply with the mandate, they will be subjected to millions of dollars in fines. That burden cannot be mitigated by any alternative cost structures or institutional practices, as defying the mandate would force businesses to incur either fines or excessive additional costs to provide healthcare for their employees in accordance with the ACA.

HHS argued that the connection between providing health insurance and destroying embryos is too attenuated to sustain a claim. However, the Court held that mak-

ing this inquiry would require courts to impermissibly adjudicate religious and moral questions, which they do not have the authority to do.

Finally, the Court held that the law is not the least restrictive means by which to achieve the end of promoting public health. Because the “least-restrictive means standard is exceptionally demanding,” the Court finds that it is not satisfied here. *Id.* at 728. The Federal government could bear the costs of this policy more easily than businesses. Alternatively, HHS could simply adopt its accommodation for non-profit organizations with religious objectives when considering for-profit entities. The dissent argued that this would lead to businesses falsely claiming substantial religious objections on many healthcare requirements and employment practices. Nonetheless, the Court noted that its holding is narrowed by its deference to compelling state interests that limit burdens on religion as much as possible.

#### CONCURRENCE

Justice Kennedy emphasized that for this case specifically, the government’s burden of accommodating religious liberty is not high enough to justify placing such a substantial burden onto the employers.

#### DISSENTS

Justice Ginsburg argued that *Smith* should preclude the majority’s position. The Court is making RFRA far broader than it was otherwise intended to be, striking down a broad range of otherwise valid statutes with incidental costs for religious people.

Justices Breyer and Kagan separately dissented to note that the Court did not need to decide the issue of whether for profit corporations or their owners can bring claims under RFRA.

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### ***Holt v. Hobbs***

574 U.S. 352 (2015)

#### ISSUES

Does the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA) prohibit a Muslim inmate from growing a beard in accordance with his religious beliefs?

#### HOLDING

RLUIPA prohibits a state or local government from actions that “substantially burden the religious exercise of an institutionalized person unless the government demonstrates that the action constitutes the least restrictive means of furthering a compelling governmental interest.” *Id.* at 356. The Arkansas Department of Corrections’ grooming policy substantially burdened the inmate’s free exercise.

Furthermore, the grooming policy does not seem to be the least restrictive means of furthering its governmental interest in identifying prisoners and preventing the smuggling of contraband.

#### FACTS

Gregory Holt (petitioner), also known as Abdul Maalik Muhammad, wanted to grow a beard in keeping with his Muslim religious beliefs. However, the Arkansas Department of Corrections had a grooming policy that prohibits him, an inmate, from growing out his beard. Though his beliefs required him not to trim the beard at all, he compromised by offering to only grow a ½-inch beard. Nonetheless, his request was denied, and he was threatened with punishment from the prison system.

#### PROCEDURAL HISTORY

The District Court and the Eighth Circuit dismissed the petitioner’s *pro se* complaint. Though the District Court granted a preliminary injunction, a Magistrate Judge recommended that the preliminary injunction be vacated and that the claim be dismissed for failure to state a claim. The Eighth Circuit briefly noted that the grooming policy was the least restrictive means of furthering the prison’s compelling security interests, and that courts should generally be deferential to the expertise of prison authorities.

## ANALYSIS

In contrast to the District Court, the Supreme Court held that the policy burdened petitioner's sincere religious beliefs. No one disputes that the petitioner's religious belief that his faith requires him to grow a beard was sincere. Because the Department's policy requires him to shave his beard, therefore, the policy "puts petitioner to this choice: between his religious beliefs and disciplinary action." *Id.* at 361.

The District Court committed three errors when finding that the petitioner's free exercise was not burdened. First, it suggested that the availability of other religious accommodations, like a prayer rug and dietary accommodations, justified burdening this particular religious exercise. Second, it said that the burden was only slight because "his religion would 'credit' him for attempting to follow his religious beliefs, even if that attempt proved to be unsuccessful." Finally, the District Court found that not all Muslim men believe that they must grow beards. However, "RLUIPA provides greater protection" than even other lines of First Amendment cases, which consider "alternative means of practicing religion" as justifications for burdening a religious exercise. *Id.* at 361–62. It covers beliefs that are not shared by all members of a particular sect, and it applies to exercises of religion that are important, even if not "compelled" by a person's tradition.

Once the petitioner established that his religious exercise was substantially burdened, the burden shifted to the Department of Corrections to show 1) that its policy furthered a compelling government interest, and 2) that it was the least restrictive means of doing so.

The Department alleged two compelling interests that the grooming policy protected, but the Court found neither of them to overcome RLUIPA's demands. The compelling interest to prevent the smuggling of contraband into the prison is important, but it "is hard to take seriously" the idea that "this interest would be seriously compromised by allowing an inmate to grow a 1/2-inch beard." *Id.* at 363. Even if petitioner could somehow hide contraband in such a short beard, the prison guards could search that beard just like they search other inmates' hair and clothing. Thus, the grooming requirement is not the least restrictive means of achieving security goals. Furthermore, the Department has a compelling interest in preventing prisoners from disguising their identities through shaving. However, the Court noted that the prison can take photos of the petitioner with and without the beard, in order to easily identify him in the event that he shaved to escape detection. The fact that the prison allows some prisoners to grow short beards for medical reasons further demonstrates that facial hair does not raise a serious security concern.

Beyond this core analysis, the Court notes that "the proffered objective" of limiting contraband and facilitating prisoner identification are not equally pursued for "analogous nonreligious conduct." The grooming policy is underinclusive because it permits 1/4-inch beards for some prisoners with medical needs. Additionally, it differs from the "vast majority of States and the Federal Government," which permit growing facial hair for any reason. *Id.* at 368. To the Court, this line of argument suggests that the prison is making the "classic rejoinder of bureaucrats throughout history: If I make an exception for you, I'll have to make one for everybody, so no exceptions." *Id.* "[W]hen so many prisons offer an accommodation, a prison must, at a minimum, offer persuasive reasons why it believes that it must take a different course." *Id.* at 369. The Department fails to do so here.

## CONCURRENCES

Justice Ginsburg notes that accommodating these religious beliefs would not harm those who do not share the prisoner's beliefs, which distinguishes this case from *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014).

Justice Sotomayor emphasizes that the majority opinion does not preclude deference to prison officials' policies, which would otherwise restrict religious liberty, when they articulate better reasons for doing so.

***Mais v. Albemarle Cnty. Sch. Bd.***

—F. SUPP. 3D—, 2023 WL 2143471 (FEB. 21, 2023)

## ISSUES

Does the Virginia Constitution's Free Speech Clause create a sovereign-immunity waiver that opens the Commonwealth and its entities to lawsuits?

Does the Virginia Human Rights Act create a sovereign-immunity waiver that opens the Commonwealth and its entities to lawsuits?

Does the Virginia Constitution's Free Speech Clause support a cause of action for wrongful discharge in violation of public policy?

Do allegations of a hostile anti-racism training program, in which the plaintiff alleges that she was discriminated against for her race and later precede her resignation, give rise to several Title VII claims?

#### HOLDING

The Virginia Constitution's Free Speech Clause is not self-executing for the purposes of this suit, nor did the legislature pass accompanying legislation waiving sovereign immunity, so the clause does not allow suit against the Commonwealth or its entities. Similarly, the Virginia Human Rights Act lacks any sort of explicit sovereign immunity waiver, and definitions provided in separate generally-applicable legislation do not provide such a waiver. And the Virginia Constitution does not serve as a basis for a wrongful discharge claim. But, the plaintiff has alleged sufficient facts to allow her Title VII claims to proceed.

#### FACTS

Emily Mais worked as an assistant principal at a public elementary school in Albemarle County, Virginia. In 2019 the School Board adopted an anti-racism policy that required faculty to attend training that defined "racism" and "anti-racism," during which Mais relayed the concerns of other teachers about the content of the training, and complained that the training vilified white people. She also alleges that she accidentally used the word "colored" instead of "people of color" and was publicly chastised by the trainer. Mais alleges that she continued to complain about ongoing content in the trainings, and that the School Board ignored her complaints that the training was undermining staff morale and causing racial tension to emerge. She ultimately resigned in 2021, stating that her resignation was based on her deteriorating physical and mental health as a result of the ongoing strife in the anti-racism trainings.

#### PROCEDURAL HISTORY

Mais filed a Charge of Discrimination with the Virginia Attorney General's Office of Civil Rights. The Office forwarded the charge to the U.S. Equal Employment Opportunity Commission, which told her that it would not process the Charge or proceed further with the investigation. Mais filed in Federal district court, alleging ten claims against the School Board, including violation of her free speech rights under Article I, § 12 of the Virginia Constitution (Count 1), wrongful discharge in violation of public policy (Count 2), and several violations under the Virginia Human Rights Act ("VHRA") (Counts 3–6) and Title VII (Counts 7–10). The School Board moved to dismiss these claims.

#### ANALYSIS

Several claims turned on sovereign immunity. The court observed that pursuant to sovereign immunity, the Commonwealth is immune from suit against its own consent. Typically, legislation must explicitly waive sovereign immunity in order to allow suit against the Commonwealth and its agencies. In addition, a constitutional provision must either be self-executing or accompanied by associated legislation that allowed a cause of action against the Commonwealth to allow suit against the same.

#### FREE SPEECH CLAIM UNDER THE VIRGINIA CONSTITUTION

Mais argued that the School Board violated her free speech rights under the Virginia Constitution, but the School Board responded that the Commonwealth was immune from suit based on sovereign immunity. The court held that, here, the provision is not self-executing (except to challenge laws and ordinances), and lacks accompanying legislation that would allow the suit. Thus, the School Board was immune from the free speech claim.

#### VHRA CLAIMS

Mais brought several claims under the VHRA, which prohibits an employer from discriminating against an employee based on the employee's race, and which allows lawsuits against people who perpetuate that discrimination. The School Board ar-

gued that these claims also were barred by sovereign immunity because the VHRA lacked an explicit waiver of sovereign immunity.

The court agreed that the VHRA did not contain an express waiver of sovereign immunity, and held that this fact meant the Commonwealth had not waived sovereign immunity. Plaintiff's argument that the VHRA should be read in conjunction with the definitions found in Virginia Code § 1-230 (which includes Commonwealth agencies in the definition of "person") failed, because that statute is a statute of general application that failed to provide a specific waiver of sovereign immunity in the unrelated VHRA. Moreover, the court held that general principles of statutory construction supported this outcome, because the VHRA specifically defined "employer" (without including Commonwealth agencies), so that definition prevails over the generalized and separate definition in Code § 1-230. Thus, the VHRA did not contain a waiver of sovereign immunity, and Mais's VHRA claims failed.

#### WRONGFUL DISCHARGE IN VIOLATION OF PUBLIC POLICY

Mais alleged that the School Board had effectively discharged her in violation of public policy. The court observed that several courts had found that the Virginia Constitution could not serve as a basis for a wrongful discharge claim. The court thus held that this claim failed for the same reason.

#### TITLE VII CLAIMS

Mais also alleged several violations of Title VII, which prohibits employment discrimination based on "race, color, religion, sex, or national origin." The court held that Mais had alleged sufficiently "severe or pervasive" harassment to allow the racial hostile work environment claim to proceed. The court also held that Mais's allegations of race-based comments that caused her distress supported her constructive discharge claim, and allowed it to proceed. Finally, the court held that Mais had alleged protected activity—complaining that the anti-racist training had created a hostile work environment and that the School Board had discriminated against her—that could plausibly have been the but-for cause of the hostile conduct and her constructive discharge; thus her retaliatory hostile work environment and retaliatory constructive discharge claims could proceed.

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#### ATTACHMENT C

### Appellate Brief-Writing 101: Effective Appellate Briefing for OAG Attorneys

JUNE 27, 2023 | 10:00 A.M.

- **Writing an Appellee Brief**
  - OAG appellate writing is primarily as appellee
  - Good appellate brief-writing is good writing: clear, concise, and well-organized
  - Appellee briefs should not primarily be responses to the appellant brief: develop your own themes and arguments
- **Introductions**
  - Include an introduction!
  - Introductions are important to orient the judge to the key issues in the case
  - Introductions should set forth your key themes in a clear and compelling way
    - How to identify key themes
    - Introductions are not summaries of argument
    - The key themes should drive your drafting decisions for all parts of the brief
- **Statements of Facts**
  - The goal is to emphasize your theme and tell a self-contained story by the end of which the reader is on your side.
    - The reader should know everything that matters on appeal from reading your facts alone without ever picking up another brief
  - Do not write a dry, neutral recitation
    - The facts are not part of a neutral bench memo, nor are you creating a record digest for the court

- Although the fact section must be accurate, cited to the record/appendix, and fulfil your duty of candor, it is just as much a persuasive part of the brief as your argument section
- Structure it in a logical fashion consistent with the narrative and argument you are creating. Emphasize favorable details while minimizing the role of unfavorable facts without infringing your duty of candor
- Avoid focusing on factual disagreements with the other side
- Avoid block quotes, especially lengthy exchanges with witnesses. Quote only the most important language. Only the rare case that turns around an exchange in a transcript will merit extensive quoting from the transcript.
- **Assignments of Error/Framing the Issues**
  - Because OAG typically represents the appellee, you usually will not be drafting assignments of error but rather responding to assignments presented by the appellant
  - You are not bound by how the appellant frames the issues. Instead, frame your brief in the structure most favorable for your position
    - Often appellants will present many assignments of error, but the case is only about, say, two main issues. Frame your brief around those two issues. Do not let the other side's assignments of error dictate your structure.
    - In general, less is more—fewer issues make for a more accessible brief.
  - In general, lead with your most favorable issue. The topic the appellant addresses third may be the one you should address first.
  - Because Virginia has relatively draconian waiver rules, analyze the appellant's assignments of error for potential waivers or defaults:
    - Is the assignment of error too vague to provide adequate notice of the issue?
    - Do the arguments on brief fall within the assignments of error?
    - Is any assignment of error inadequately briefed?
    - Do the assignments of error include adequate citation to preservation in the record?
    - Does the assignment of error correctly identify the lower court's alleged error? (I.e., on appeal to the SCV from a CAV affirmance, did the CAV actually find that the evidence at issue was hearsay, or did it find that issue not preserved?)
    - Did the appellant change the wording/nature of the assignments of error between designating them/the SCV granting them and the merits briefing?
- **Arguments**
  - Everything you say must be supported by the record and case law
    - Your credibility is your most important asset—especially as a government attorney
    - Cites are a critical part of a brief
  - Draft your argument section to advance your key themes
    - Your key arguments should be the most prominent, both in placement and in how thoroughly you develop them
    - Accentuate the positive
    - Always keep your audience in mind
      - Appellate judges are generalists, and typically will not have prior experience with your case
      - Explain your key points
      - Keep it simple: judge and clerks will have limited time and attention for your case
  - Structure pointers
    - Generally, your strongest arguments should be first
      - Exceptions: jurisdictional arguments and arguments that are logically antecedent
    - Affirmative arguments should come before counter-arguments
    - Aim for simplicity in structuring the argument section

- As a rule of thumb, you should generally have between 2 and 4 main (roman numeral) argument sub-sections
- Style pointers: keep your drafting as clear as possible
  - Break long units into subunits: shorter sentences, paragraphs, and sections are easier for the reader to follow
  - Refer to parties by name or trial-court designation, not as “appellant” and “appellee”
  - Minimize the use of acronyms
  - Minimize the use of footnotes
  - Minimize the use of block quotations
    - Block quotations should be used (very sparingly) only to set forth key statutory language, contractual text, etc.
    - There is never a good reason to block quote case law
  - Show, don’t tell
    - Avoid use of heated rhetoric, overly pejorative or emotional language
    - Instead, explain why your position is correct and the appellant’s position is not

The CHAIR. Thank you, Mr. Ferguson. Ms. Holyoak, welcome, and welcome to your family.

**STATEMENT OF MELISSA HOLYOAK, NOMINEE TO BE A  
COMMISSIONER, FEDERAL TRADE COMMISSION**

Ms. HOLYOAK. Thank you. Chair Cantwell, Ranking Member Cruz, and members of the Committee, thank you for holding the hearing and for the opportunity to appear before you today. I want to thank President Biden for nominating me to serve as Commissioner on the Federal Trade Commission. I am deeply humbled by this honor.

I also want to thank Leader McConnell for recommending me to the President. I would also like to thank Senator Lee for the introduction and kind words. I have been honored to work with him and Utah’s Federal delegation as Solicitor General for Utah.

With me in the hearing room are my husband, Dr. Josh Holyoak, and our children, Lucy, Jane, Henry, and Margot, while my extended family and friends watch remotely. I want to thank my family. None of this would be possible without their love and support, particularly my husband’s and my children’s.

As a working mom of four, like Commissioner Slaughter, it is not always easy, and I am so grateful for their patience, sacrifices, and extra help to make our family work. My children also provide me valuable perspective for the work that I would be doing if I am fortunate enough to be confirmed.

The Committee and the FTC have worked diligently on issues relating to children’s privacy and safety online. Parenting can be tough, and parenting children’s online activity is particularly challenging, especially when our kids seem to understand the technology better than we do.

We must continually strive to protect our children, especially as we encounter new challenges that can come from technological advancements. I believe the FTC is uniquely positioned to apply its statutory tools faithfully to confront these challenges, stop bad actors, and educate parents on how to protect their children. Of course, this is just one example of the many important issues before the FTC.

The FTC's mission is to protect the public from deceptive or unfair business practices and from unfair methods of competitions through law enforcement, advocacy, research, and education, and I am committed to protecting Americans from those harms.

I would bring to the FTC nearly 20 years of litigation experience, including in consumer protection and antitrust. After graduating law school in 2003, I spent 5 years at the law firm of O'Melveny & Myers focusing on commercial and financial services litigation.

I later joined the Center for Class Action Fairness and spent 8 years ensuring that consumers were the primary beneficiaries of class action settlements.

The Center won hundreds of millions of dollars for consumers. For the last 3 years, I have had the privilege of serving as Solicitor General in the Office of the Utah Attorney General. In that capacity, I oversee the criminal appeals, civil appeals, Constitutional defense, and special litigation, and antitrust and data privacy divisions.

Overseeing the office's antitrust efforts has allowed me to collaborate with FTC staff in reviewing proposed merger transactions, and I have been thoroughly impressed with the commitment and passion of the FTC's experts. As Utah Solicitor General, I have also played a leading role in holding companies accountable when they engage in anti-competitive behavior that harms consumers.

For example, I led our offices' work in *Utah v. Google*, an antitrust lawsuit challenging Google's exclusionary conduct relating to the Google Play Store and App Store for Android. We recently announced a settlement with Google and 50 states, the District of Columbia, and Puerto Rico.

This is a tremendous win for consumers. In addition, I have led to amicus briefs filed by 35 states in a lawsuit against Apple, alleging anti-competitive conduct relating to the iOS App Store. I also supervise Utah's participation as a plaintiff in antitrust lawsuits brought by multiple states, including *New York v. Meta*, *Colorado v. Google*, and *Texas v. Google*.

The FTC has a consistent history of bipartisan collaboration, which I hope to continue. The issues before the FTC impact Americans' daily lives. At a time when Americans need to stretch their dollar just a bit further, I am inspired and committed to ensuring consumers are not harmed by unfair, deceptive, or anti-competitive conduct.

Thank you. I look forward to your questions.

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

PREPARED STATEMENT OF MELISSA HOLYOAK, NOMINEE TO BE A MEMBER,  
FEDERAL TRADE COMMISSION

Chair Cantwell, Ranking Member Cruz, and members of the Committee, thank you for holding this hearing and for the opportunity to appear before you today.

I want to thank President Biden for nominating me to serve as a Commissioner on the Federal Trade Commission. I am deeply humbled by this honor.

I would also like to thank Senator Lee for the introduction and kind words. I have been honored to work with him and Utah's Federal delegation as Solicitor General for Utah.

With me in the hearing room are my husband Dr. Josh Holyoak and our children Lucie, Jane, Henry, and Margot, while my extended family and friends watch remotely.

I want to thank my family. None of this would be possible without their love and support, particularly my husband's and children's. As a working mom of four, like Commissioner Slaughter, it is not always easy, and I am so grateful for their patience, sacrifices, and extra help to make our family work.

My children also provide me valuable perspective for the work that I will be doing if I am fortunate enough to be confirmed. This Committee and the FTC have worked diligently on issues relating to children's privacy and safety online. Parenting can be tough. Parenting children's online activity is particularly challenging, especially when our kids seem to understand the technology better than we do.

We must continually strive to protect our children, especially as we encounter new challenges that can come from technological advancement. I believe the FTC is uniquely positioned to apply its statutory tools faithfully to confront these challenges, stop bad actors, and educate parents on how to protect their children.

Of course, this is just one example of the many important issues before the FTC. The FTC's mission is to protect the public from deceptive or unfair business practices and from unfair methods of competition through law enforcement, advocacy, research, and education. And I am committed to protecting Americans from these harms.

I would bring to the FTC nearly twenty years of litigation experience including in consumer protection and antitrust. After graduating law school in 2003, I spent five years at the law firm of O'Melveny & Myers focusing on complex commercial and financial services litigation. I later joined the Center for Class Action Fairness and spent eight years ensuring that consumers were the primary beneficiaries of class action settlements. The Center won hundreds of millions of dollars for consumers.

For the last three years, I have had the privilege of serving as Solicitor General in the Office of the Utah Attorney General. In that capacity, I oversee the criminal appeals, civil appeals, constitutional defense and special litigation, and antitrust and data privacy divisions.

Overseeing the Office's antitrust efforts has allowed me to collaborate with FTC staff in reviewing proposed merger transactions. I have been thoroughly impressed with the commitment and passion of the FTC's experts.

As Utah's Solicitor General, I have also played a leading role in holding companies accountable when they engage in anticompetitive behavior that harms consumers. For example, I led our Office's work in *Utah v. Google*, an antitrust lawsuit challenging Google's exclusionary conduct relating to the Google Play Store, an app store for Android. We recently announced a settlement with Google and 50 states, the District of Columbia, and Puerto Rico. This is a tremendous win for consumers.

In addition, I have led two amicus briefs filed by 35 states in a lawsuit against Apple alleging anticompetitive conduct relating to the iOS App Store. I also supervise Utah's participation as a plaintiff in antitrust lawsuits brought by multiple states, including *New York v. Meta Platforms*, *Colorado v. Google*, and *Texas v. Google*.

The FTC has a consistent history of bipartisan collaboration which I hope to continue. The issues before the FTC impact Americans' daily lives. At a time when Americans need to stretch their dollar just a bit further, I am inspired and committed to ensuring consumers are not harmed by unfair, deceptive, or anticompetitive conduct.

Thank you. I look forward to your questions.

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#### A. BIOGRAPHICAL INFORMATION

1. Name (Include any former names or nicknames used): Melissa Ann Holyoak (nee Watkins).
2. Position to which nominated: Commissioner, Federal Trade Commission.
3. Date of Nomination: July 11, 2023.
4. Address (List current place of residence and office addresses):

Residence: Information not released to the public.

Office: Utah Attorney General's Office, 350 N. State Street, Suite 230, Salt Lake City, UT 84114.

5. Date and Place of Birth: October 6, 1976; Boise, Idaho.
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: Joshua D. Holyoak, M.D., Urologist, Granger Medical Clinic.

7. List all college and graduate schools attended, whether or not you were granted a degree by the institution. Provide the name of the institution, the dates attended, the degree received, and the date of the degree.

J.D., University of Utah S.J. Quinney College of Law, 2003  
B.A., University of Utah, 2000

8. List all post-undergraduate employment, including the job title, name of employer, and inclusive dates of employment, and highlight all management level jobs held and any non-managerial jobs that relate to the position for which you are nominated.

- a. Utah Attorney General's Office, *Solicitor General*, Salt Lake City, Utah (September 2020 to present). I oversee the civil appeals, criminal appeals, constitutional defense and special litigation, and antitrust and data privacy divisions; I supervise approximately 40 attorneys. I also oversee multistate litigation including matters involving consumer protection claims.\*
- b. Hamilton Lincoln Law Institute, *President and General Counsel*, Washington, D.C. (February 2019 to September 2020). I co-founded a five-attorney public interest law firm engaged in protecting consumers from class action abuse. I managed case selection, litigation, and supervision of attorneys.\*
- c. Competitive Enterprise Institute (CEI), *Senior Attorney*, Washington, D.C. (October 2015 to February 2019). I litigated for CEI's Center for Class Action Fairness representing *pro bona* class members from class action abuse.\*
- d. Center for Class Action Fairness, *Senior Counsel and Corporate Secretary*, Washington, D.C. (July 2012 to October 2015). The public interest firm was engaged in protecting consumers from class action abuse; I represented *pro bono* class members from class action abuse.\*
- e. Gunster, Yoakley & Stewart, P.A., *Contract Attorney*, West Palm Beach, Florida (December 2010 to April 2012).
- f. Holland & Knight LLP, *Manager, Projects and Innovation*, Jacksonville, Florida (August 2010 to September 2011).\*
- g. City of Columbia Prosecutor's Office, *Assistant Prosecutor*, Columbia, Missouri (May 2010 to November 2010).
- h. KermaPartners, *Consultant*, New York, New York (May 2008 to May 2010).
- i. O'Melveny & Myers, LLP, *Associate*, Washington, D.C. (September 2003 to April 2008).
- j. U.S. Attorney's Office, *Law Clerk*, Salt Lake City, Utah (July 2001 to April 2002; October 2002 to May 2003).
- k. Ray Quinney & Nebeker, *Law Clerk*, Salt Lake City, Utah (May 2002 to August 2002).

\*Denotes management-level jobs and non-managerial jobs that relate to the position for which I am nominated.

9. Attach a copy of your résumé.  
Please see Attachment A.

10. List any advisory, consultative, honorary, or other part-time service or positions with Federal, State, or local governments, other than those listed above after 18 years of age. 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.

Federal Bar Association, Salt Lake City Chapter (nonprofit)—Treasurer (January 2023 to present); Board Member (February 2021 to present)

Federalist Society, Salt Lake City Chapter (nonprofit)—Board Member (January 2019 to present)

Hamilton Lincoln Law Institute (nonprofit)—President and General Counsel (February 2019 to September 2020)

Center for Class Action Fairness (nonprofit)—Corporate Secretary (July 2012 to October 2015)

Children's Grove, Columbia, Missouri (local nonprofit supporting emotional and mental health in youth through education and arts programs)—Board Member (April 2017 to December 2018)

Language Tree, Columbia, Missouri (local nonprofit French and Spanish immersion preschool)—Board Member (June 2015 to February 2018)

MorSupport, Columbia, Missouri (local nonprofit providing emotional and logistical support to women with cancer)—Board Member (April 2015 to March 2017)

12. Please list each membership you have had after 18 years of age or currently hold with any civic, social, charitable, educational, political, professional, fraternal, benevolent or religiously affiliated organization, private club, or other membership organization. (For this question, you do not have to list your religious affiliation or membership in a religious house of worship or institution.). 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 disability.

Utah Bar—member (2003 to present)

D.C. Bar—member (2004 to present)

Missouri Bar—inactive member (2010 to present)

United States Supreme Court—member (2018 to present)

U.S. Court of Appeals for the Third Circuit—member (2022 to present)

U.S. Court of Appeals for the Fifth Circuit—member (2006 to present)

U.S. Court of Appeals for the Sixth Circuit—member (2005 to present)

U.S. Court of Appeals for the Seventh Circuit—member (2014 to present)

U.S. Court of Appeals for the Eighth Circuit—member (2015 to present)

U.S. Court of Appeals for the Ninth Circuit—member (2012 to present)

U.S. Court of Appeals for the Tenth Circuit—member (2020 to present)

U.S. Court of Appeals for the Eleventh Circuit—member (2020 to present)

U.S. Court of Appeals for the D.C. Circuit—member (2018 to present)

U.S. District Court for the District of Columbia—member (2004–2008; 2020 to present)

U.S. District Court for the Northern District of Illinois—member (2007 to present)

U.S. District Court for the Western District of Missouri—member (2016 to present)

U.S. District Court for the District of North Dakota—member (2022 to present)

U.S. District Court for the Eastern District of Texas—member (2006 to present)

U.S. District Court for the Northern District of Texas—member (2023 to present)

U.S. District Court for the Southern District of Texas—member (2006 to present)

U.S. District Court for the Western District of Texas—member (2007 to present)

U.S. District Court for the District of Utah—member (2007 to present)

Federal Bar Association—member (2021 to present)

Federalist Society—member (2016 to present)

Utah Republican Party—member (2020 to present)

Professional Republican Women of Utah—member (2022 to present)

Teneo Network—member (2023 to present)

Elwood L. Thomas American Inn of Court—member (2013)

Missouri Symphony Society—member (2016–2017)

West Broadway Swim Club—member (2009–2018)

Salt Lake Tennis & Health Club—member (2018 to present)

Fairview Elementary School Parent-Teacher Association (Columbia, Missouri)—member (2013–2018)

Morningside Elementary School Parent-Teacher Association (Salt Lake City, Utah)—member (2019 to present)

United States Tennis Association—member (2015 to present)

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

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. List all memberships and offices held with and services rendered to, whether compensated or not, any political party or election committee within the past ten years. If you have held a paid position or served in a formal or official advisory position (whether compensated or not) in a political campaign within the past ten years, identify the particulars of the campaign, including the candidate, year of the campaign, and your title and responsibilities.

Utah Republican Party—member (2020 to present); precinct chair (2022 to present); state delegate (2022 to present).

15. Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of \$200 or more for the past ten years.

Jeff Gray, Utah County Attorney. I contributed \$500 (3/24/2022) and \$1,000 (6/13/2022).

Liz Murrill, Louisiana Attorney General. I contributed \$1,000 (10/6/2021) and \$200 (11/9/2022).

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

Legal Elite 2022, Utah Business Magazine

S.J. Quinney College of Law

2003, Order of the Coif

2003, CALI Excellence for Future Award

Spring 2002, William H. Leary Scholar Award

Fall 2001, William H. Leary Scholar Award

Academic Year 2000–2001, William H. Leary Scholar Award

17. List each book, article, column, letter to the editor, Internet blog posting, or other publication you have authored, individually or with others. Include a link to each publication when possible. If a link is not available, provide a digital copy of the publication when available.

Please see Attachment B.

18. List all speeches, panel discussions, and presentations (*e.g.*, PowerPoint) that you have given on topics relevant to the position for which you have been nominated. Include a link to each publication when possible. If a link is not available, provide a digital copy of the speech or presentation when available.

Please see Attachment C.

19. List all public statements you have made during the past ten years, including statements in news articles and radio and television appearances, which are on topics relevant to the position for which you have been nominated, including dates. Include a link to each statement when possible. If a link is not available, provide a digital copy of the statement when available.

Please see Attachment D.

20. List all digital platforms (including social media and other digital content sites) on which you currently or have formerly operated an account, regardless of whether or not the account was held in your name or an alias. Include the full name of an “alias” or “handle”, including the complete URL and username with hyperlinks, you have used on each of the named platforms. Indicate whether the account is active, deleted, or dormant. Include a link to each account if possible.

Facebook: <https://www.facebook.com/melissaholyoak/> (active)

Instagram: @melholyoak (active)

LinkedIn: <https://www.linkedin.com/in/melissa-holyoak-4b3650/> (active)

Twitter: @HolyoakMelissa (active)

Pinterest: @melissaholyoak (active)

21. 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.

22. 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 am an experienced attorney and litigator, with much of my twenty years of practice focused on protecting the welfare and interests of consumers.

Since 2020, I have served as the Utah Solicitor General with the Utah Attorney General's Office, where I manage the civil appeals, criminal appeals, constitutional defense and special litigation, and antitrust and data privacy divisions. In my role supervising antitrust and data privacy, I have engaged in merger reviews, often collaborating with the FTC, and I oversee the Office's antitrust litigation including a 39-state action led by Utah challenging Google's exclusionary conduct relating to the Google Play Store for Android. I have also worked with the Utah Department of Commerce's Director of Consumer Protection and the white collar & commercial enforcement division of the Attorney General's Office on consumer protection investigations and enforcement actions, recently leading the Office's efforts to secure outside counsel for litigation against social media companies relating to harms to youth.

Prior to my work as Utah's Solicitor General, I worked for eight years in public interest law protecting the rights of consumers by litigating class action abuse; our efforts included *Frank v. Gaos*, a Supreme Court case challenging a Google settlement that directed *cy pres* relief to third-party organizations. I also worked as an associate with O'Melveny & Myers LLP handling a variety of matters, including complex commercial and financial services litigation.

I would be honored to serve as a commissioner. My service in government and track record demonstrates my steadfast commitment to protecting the welfare and interests of consumers. That commitment drives me every day as Solicitor General of Utah and it is why I wish to serve on the FTC. As a commissioner, I would strive to fulfill the FTC's mandate to protect the public from deceptive or unfair business practices and from unfair methods of competition.

23. 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 would seek to ensure proper management and accounting controls of the FTC by engaging with my fellow Commissioners and other leaders from the Commission's bureaus and offices. I would draw on my experience as Solicitor General, overseeing the litigation and enforcement work of multiple divisions at the Utah Attorney General's Office.

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

I believe the agency's top three challenges include (i) managing merger transactions, particularly in light of proposed filing requirements that will involve novel analysis and significantly larger volumes of information; (ii) protecting consumers' data privacy and security based on increased and evolving cyber attacks that present new cybersecurity challenges; and (iii) facilitating innovation while protecting consumers from scams and frauds in emerging technologies.

#### 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, such as a 401(k) or pension plan.

- a. Utah State Retirement Systems 401(k). I will continue to participate in this defined contribution plan. The plan sponsor will not make further contributions after my separation.
- b. Competitive Enterprise Institute 403(b). I will continue to participate in this defined contribution plan. The plan sponsor will not make further contributions after my separation.

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. Explain how you will resolve each potential conflict of interest.

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.

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. Explain how you will resolve each potential conflict of interest.

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.

5. Identify any other potential conflicts of interest, and explain how you will resolve each potential conflict of interest.

I am not aware of any other potential conflicts of interest.

6. Describe any activity during the past ten years, including the names of clients represented, 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. None.

#### 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, an Inspector General, professional association, disciplinary committee, or other professional group? If yes:

- a. Provide the name of court, 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. No.

#### D. RELATIONSHIP WITH COMMITTEE

1. Will you ensure that your department/agency complies with deadlines for information set by congressional committees, and that your department/agency endeavors to timely comply with requests for information from individual Members of Congress, including requests from members in the minority?

If confirmed, I would work diligently with my fellow commissioners to ensure compliance with deadlines and requests for information.

2. Will you ensure that your department/agency does whatever it can to protect congressional witnesses and whistleblowers 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.

## ATTACHMENT A

MELISSA A. HOLYOAK

## EXPERIENCE

9/2020-present	Utah Attorney General's Office, <i>Solicitor General</i>	Salt Lake City, UT
	<ul style="list-style-type: none"> <li>▪ Oversee civil appeals, criminal appeals, constitutional defense and special litigation, and antitrust divisions including managing litigation; author and edit briefs, present oral argument, and prepare attorneys for oral argument</li> <li>▪ Advise Attorney General on positions the State will take on questions of state and federal law including requests to join amicus briefs and multistate actions in federal district and appellate courts; manage multistate litigation</li> </ul>	
2/2019-9/2020	Hamilton Lincoln Law Institute (HLLI), <i>President and General Counsel</i>	Washington, DC
	<ul style="list-style-type: none"> <li>▪ Co-founded five-attorney public interest law firm formed to engage in litigation that advances the public interest by challenging administrative and regulatory actions or abuses of the class-action and civil justice system and challenging improper restrictions on speech and other actions beyond constitutional bounds</li> <li>▪ Managed incorporation and overall operations of firm including human resources, fiscal activities, publicity and development; managed case selection, litigation, and supervision of attorneys</li> <li>▪ Litigated for HLLI's Center for Class Action Fairness (CCAF), representing <i>pro bono</i> class member and shareholder objectors in class action and derivative lawsuits; authored federal appeals, motions, and briefs</li> <li>▪ Litigated regulatory actions including oral argument in D.C. Circuit (<i>CEI v. FCC</i>, 970 F.3d 372 (2020))</li> </ul>	
10/2015-2/2019	Competitive Enterprise Institute (CEI), <i>Senior Attorney</i>	Washington, DC
	<ul style="list-style-type: none"> <li>▪ Litigated for CEI's Center for Class Action Fairness (CCAF), representing <i>pro bono</i> class member and shareholder objectors in class action and derivative lawsuits before federal district and appellate courts including oral argument in the Seventh Circuit (<i>Pearson v. Target Corp.</i>, 893 F.3d 980 (2018)), Eighth Circuit (<i>In re Target Corporation Customer Data Security Breach Litigation</i>, 847 F.3d 608 (2017)) and Ninth Circuit (<i>Kumar v. Salvo North America Corp.</i>, 737 Fed. Appx. 341 (2018))</li> </ul>	
7/2012-10/2015	Center for Class Action Fairness, <i>Senior Counsel and Corporate Secretary</i>	Washington, DC
	<ul style="list-style-type: none"> <li>▪ Assisted in managing Center including regulatory compliance and supervision of attorneys</li> <li>▪ Represented <i>pro bono</i> class member and shareholder objectors in class action and derivative lawsuits before federal district and appellate courts including oral argument in the Seventh Circuit (<i>In re Southwest Airlines Voucher Litigation</i>, 799 F.3d 701 (2015))</li> </ul>	
12/2010-4/2012	Gunster, Yoakley & Stewart, P.A., <i>Contract Attorney</i>	West Palm Beach, FL
	<ul style="list-style-type: none"> <li>▪ Analyzed contracts, developed defenses and drafted responses to thousands of secondary mortgage market investor repurchase demands for large financial services client including origination, servicing, and fraud allegations</li> </ul>	
8/2010-9/2011	Holland & Knight LLP, <i>Manager, Projects and Innovation</i>	Jacksonville, FL
	<ul style="list-style-type: none"> <li>▪ Managed project for large financial services client including process development, re-engineering, and relocation of third-party process</li> </ul>	
5/2010-11/2010	City of Columbia Prosecutor's Office, <i>Assistant Prosecutor</i>	Columbia, MO
	<ul style="list-style-type: none"> <li>▪ Prosecuted criminal city ordinance violations; drafted informations and filed charges including drug offenses, theft, and other crimes; prepared and conducted infraction/misdemeanor trials</li> </ul>	

5/2008-5/2010	KermaPartners, <i>Consultant</i>	New York, NY
	<ul style="list-style-type: none"> <li>▪ Developed and implemented strategic planning initiatives for American Lawyer 200 firms and other professional services firms including business structure, practice development, and merger candidates</li> </ul>	
9/2003-4/2008	O'Melveny & Myers LLP, <i>Associate</i>	Washington, DC
	<ul style="list-style-type: none"> <li>▪ Litigation: managed complex commercial and financial services litigation; argued before the Fifth Circuit Court of Appeals and other federal and state courts; deposed witnesses; authored various motions and briefs in state and federal trial and appellate courts</li> <li>▪ White Collar: conducted internal investigations regarding federal investigations; provided counsel on compliance and cases involving Foreign Corrupt Practices Act and False Claims Act violations</li> <li>▪ Government Relations: counseled prospective federal executive and legislative branch officers regarding ethical and financial disclosure reporting obligations</li> </ul>	
10/2002-5/2003	U.S. Attorney's Office for the District of Utah <i>Law student Criminal Clinic under the third-year practice rule</i>	Salt Lake City, UT
	<ul style="list-style-type: none"> <li>▪ Argued before the Tenth Circuit Court of Appeals; tried three misdemeanor trials; sat second chair on felony bribery trial; negotiated plea agreements; drafted change of pleas and pre-trial motions</li> </ul>	
5/2002-8/2002	Ray, Quinney & Nebeker, <i>Summer Associate</i>	Salt Lake City, UT

#### EDUCATION

2000-2003	University of Utah College of Law, <i>Juris Doctor, May 2003</i>	Salt Lake City, UT
	<ul style="list-style-type: none"> <li>▪ GPA 3.69, Order of the Coif (top 10%)</li> <li>▪ Utah Law Review, Staff Member and Staff Editor</li> <li>▪ Fall 2002 CALI Award (highest grade in seminar course)</li> </ul>	
1994-1999	University of Utah, <i>Bachelor of Arts, French, May 2000</i>	Salt Lake City, UT
	<ul style="list-style-type: none"> <li>▪ 3.9 GPA in major</li> </ul>	

#### ADMISSIONS/AFFILIATIONS

- State: Utah; District of Columbia; Missouri (*inactive*)
- Federal: United States Supreme Court; United States Court of Appeals for the Third, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh, and District of Columbia Circuits; United States District Courts for the District of Columbia, Northern District of Illinois, Western District of Missouri, Eastern District of Texas, Southern District of Texas, Western District of Texas, and District of Utah

## ATTACHMENT B

I have done my best to identify all books, articles, columns, letters to the editor, Internet blog postings, or other publications I have authored, either individually or with others, including through a thorough review of personal files and searches of publicly available electronic databases. Despite my searches, there may be other materials I have been unable to identify, find, or remember. I have located the following:

Melissa Holyoak, *Vaccine Mandates in Utah Q&A*, Utah Attorney General's Office (Feb. 10, 2022), <https://www.attorneygeneral.utah.gov/vaccine-mandates-in-utah-q-a/>

Katherine Robertson & Melissa Holyoak, *Equal Rights in Name Only*, RealClearPolitics (Jan. 27, 2022), [https://www.realclearpolitics.com/articles/2022/01/27/equal\\_rights\\_in\\_name\\_only\\_147099.html](https://www.realclearpolitics.com/articles/2022/01/27/equal_rights_in_name_only_147099.html)

Melissa Holyoak, *Biden Makes a Delaware-Size Land Grab in Utah*, Wall Street Journal (Nov. 5, 2021), <https://www.wsj.com/articles/biden-makes-a-delaware-size-land-grab-in-utah-grand-staircase-monument-11636141134>

Melissa Holyoak, *Landmark Ruling for Shareholders in Walgreens Class Action Lawsuit*, Hamilton Lincoln Law Institute (Aug. 11, 2016), <https://hlli.org/landmark-ruling-for-shareholders-in-walgreens-class-action-lawsuit/>

Melissa Holyoak, *Google Settlement: How Class Action Abuse Gives Money to Attorneys and Third Parties, Leaving Consumers with Nothing*, Hamilton Lincoln Law Institute (Jan. 3, 2018), <https://hlli.org/google-settlement-how-class-action-abuse-gives-money-to-attorneys/>

Melissa Holyoak, *Class Action Lawyers in Target Case Hoard the Settlement Pie*, Hamilton Lincoln Law Institute (Apr. 24, 2017), <https://hlli.org/class-action-lawyers-in-target-case-hoard-the-settlement-pie/>

Editorial Board Member, *Guidelines and Best Practices Implementing 2018 Amendments to Rule 23 Class Action Settlement Provisions*, Bolch Judicial Institute, Duke Law School (Aug. 2018), <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1003&context=bolch>

Friedrich R. Blase *et al.*, *Project Management: Myths, Reality and Why We Should Care*, New York Law Journal Online (Oct. 17, 2011), <https://www.law.com/newyorklawjournal/almID/1202518811511/>

Melissa Holyoak, *Scope of Public Policy Sources for an At-Will Employee's Wrongful Termination Claim*, 2001 Utah L. Rev. 1046 (2001), <https://collections.lib.utah.edu/ark:/87278/s67t0sw4>

## ATTACHMENT C

\*I have given numerous speeches, panel presentations, and other public remarks in connection with my work as Utah Solicitor General. Very few of my public remarks have been relevant to the position to which I have been nominated. The following is the most complete list I have been able to compile of my speeches and public remarks.

Moderator, "Discussion of District Priorities with Trina Higgins, U.S. Attorney, USAO Utah, and Scott A. Wilson, Federal Public Defender, FPD Utah," Utah Chapter of the Federal Bar Association, 2023 Dee Benson Criminal Law Seminar, U.S. District Court for the District of Utah, Salt Lake City, Utah (June 29, 2023), remarks unavailable.

Remarks discussing *Utah v. EPA* ozone transport litigation, Utah State Legislature, Public Utilities, Energy, and Technology Interim Committee (June 14, 2023), <https://le.utah.gov/av/committeeArchive.jsp?mtgID=18874>

Remarks discussing *Utah v. EPA* ozone transport litigation, Utah State Legislature, Federalism Commission (June 12, 2023), <https://le.utah.gov/av/committeeArchive.jsp?mtgID=18938>

Panelist, "SEC Regulations and Lawsuits," Republican Attorneys General Association, Summer National Meeting, Nashville, Tennessee (June 6, 2023), remarks unavailable.

Remarks discussing public lands resource management plans, Utah State Legislature, Federalism Commission (May 30, 2023), <https://le.utah.gov/av/committeeArchive.jsp?mtgID=18915>

Remarks discussing *Utah v. EPA* ozone transport litigation, Utah Association of Counties, Management Conference, Salt Lake City, Utah (Apr. 28, 2023), remarks unavailable.

Introduction of Pro Bono Award Recipient R. Blake Hamilton, Utah Chapter of the Federal Bar Association, Annual Awards Dinner, Salt Lake City, Utah (Apr. 20, 2023), remarks unavailable.

Remarks and discussion regarding public lands litigation, San Juan County Commission, Monticello, Utah (Apr. 18, 2023), <https://mccmeetings.blob.core.usgovcloudapi.net/sanjuancut-pubu/MEET-Minutes-6d9500c67b41496f8a7100e135169bla.pdf>, remarks unavailable.

Remarks providing update for Utah Attorney General Sean Reyes regarding *Garfield County v. Biden* national monuments litigation, *Utah v. EPA* ozone transport litigation, *Utah v. DOL* ERISA ESG rule litigation, Salt Lake County Republican Party, Organizing Convention, Salt Lake City, Utah (Mar. 11, 2023), remarks unavailable.

Remarks providing update for Utah Attorney General Sean Reyes regarding *Garfield County v. Biden* national monuments litigation, *Utah v. EPA* ozone transport litigation, *Utah v. DOL* ERISA ESG rule litigation, Davis County Republican Party, Lincoln Day Dinner, Layton, Utah (Mar. 4, 2023), remarks unavailable.

Remarks providing update for Utah Attorney General Sean Reyes regarding *Garfield County v. Biden* national monuments litigation, *Utah v. EPA* ozone transport litigation, *Utah v. DOL* ERISA ESG rule litigation, Washington County Republican Party, Lincoln Day Dinner, St. George, Utah (Feb. 18, 2023), remarks unavailable.

Panelist discussing *Utah v. EPA* ozone transport litigation and *Utah v. DOL* ERISA ESG rule litigation, Republican Attorneys General Association, Winter National Meeting, New Orleans, Louisiana (Feb. 13, 2023), remarks unavailable.

Panelist discussing *Utah v. DOL* ERISA ESG rule litigation, Western Caucus Foundation, remote presentation (Feb. 10, 2023), remarks unavailable.

Remarks discussing role of the Utah Attorney General's Office and state litigation, Utah Federation of Republican Women, Salt Lake City, Utah (Feb. 3, 2023), remarks unavailable.

Remarks discussing *Dobbs v. Jackson Women's Health Organization*, Utah Attorney General's Youth Advisory Committee, Salt Lake City, Utah (Dec. 14, 2022), remarks unavailable.

Panelist discussing multistate litigation, Republican Attorneys General Association, Fall National Meeting, Charleston, South Carolina (Nov. 13, 2022), remarks unavailable.

Panelist, "What is the Equal Access to Justice Act?," 2022 Uintah Basin Energy Summit, Vernal, Utah (Oct. 28, 2022), <https://www.youtube.com/watch?v=8gNINvCm99g>

Panelist, "Labor and Big Tech in 2022 and Beyond," 2022 Lee E. Teitelbaum Utah Law Review Symposium—The New Roaring Twenties: The Progressive Agenda for Antitrust and Consumer Protection Law, University of Utah S.J. Quinney College of Law, Salt Lake City, Utah (Oct. 21, 2022), <https://www.youtube.com/watch?v=1LF-XjUNhIY>

Introduction of Magistrate Judge Paul Kohler, Utah Chapter of the Federal Bar Association, Ronald Boyce Seminar, Salt Lake City, Utah (Oct. 20, 2022), remarks unavailable.

Panelist, "Alphabet Soup Agencies: Comments and Strategies," Rule of Law Defense Fund, Miami, Florida (Oct. 6, 2022), remarks unavailable.

Remarks discussing EPA's proposed ozone transport rule, Utah State Legislature, Public Utilities, Energy, and Technology Interim Committee (Sept. 21, 2022), <https://le.utah.gov/av/committeeArchive.jsp?mtgID=18278>

Panelist, "Supreme Court Roundup," Federalist Society, Reno Lawyers Chapter, Reno, Nevada (Sept. 13, 2022), remarks unavailable.

Guest Lecture, "Role of the State Solicitor General," BYU Law School, Appellate Brief Writing, Provo, Utah (Sept. 12, 2022), remarks unavailable.

Panelist, "Supreme Court Roundup," Federalist Society, Baton Rouge Lawyers Chapter (Sept. 8, 2022), <https://www.facebook.com/centralitynews.us/videos/federalist-society-update-on-supreme-term/31777369721504/>

Remarks discussing *Ohio v. OSHA* vaccine mandate litigation, Utah Society for Human Resource Management, Work Elevated Conference, Lehi, Utah (Aug. 31, 2022), remarks unavailable.

Welcome Remarks, First Liberty Institute, National Leaders Summit, Park City, Utah (July 14, 2022), remarks unavailable.

Panelist, "Challenging Crisis Overreach in the Courts," Competitive Enterprise Institute, Policy Summit, Santa Fe, New Mexico (June 24, 2022), remarks unavailable.

Panelist, "Issues Facing Women in the Law," Center for Law & Policy, Women's Summit, Palm Beach, Florida (June 17, 2022), remarks unavailable.

Video, "Vaccine Mandates," Utah Attorney General's Office, Legally Speaking Podcast (June 7, 2022), <https://www.youtube.com/watch?v=RAmpbX8eMb0>

Remarks discussing career and leadership opportunities, Junior Achievement Program, Edison Elementary School, Salt Lake City, Utah (May 19, 2022), <https://youtube/x1GoKeq8tEw>, remarks unavailable.

Remarks providing update for Utah Attorney General Sean Reyes regarding *Louisiana v. Biden* oil and gas leasing litigation and *Ohio v. OSHA* vaccine mandate litigation, Davis County Republican Convention, Farmington, Utah (Mar. 26, 2022), remarks unavailable.

Remarks providing update for Utah Attorney General Sean Reyes regarding *Louisiana v. Biden* oil and gas leasing litigation and *Ohio v. OSHA* vaccine mandate litigation, Morgan County Republican Convention, Morgan, Utah (Mar. 26, 2022), remarks unavailable.

Remarks providing update for Utah Attorney General Sean Reyes regarding *Louisiana v. Biden* oil and gas leasing litigation and *Ohio v. OSHA* vaccine mandate litigation, Weber County Republican Convention, Pleasant View, Utah (Mar. 26, 2022), remarks unavailable.

Remarks providing update for Utah Attorney General Sean Reyes regarding *Louisiana v. Biden* oil and gas leasing litigation and *Ohio v. OSHA* vaccine mandate litigation, Cache County Republican Convention, North Logan, Utah (Mar. 26, 2022), remarks unavailable.

Remarks providing update for Utah Attorney General Sean Reyes regarding *Louisiana v. Biden* oil and gas leasing litigation and *Ohio v. OSHA* vaccine mandate litigation, Box Elder County Republican Convention, Brigham City, Utah (Mar. 26, 2022), remarks unavailable.

Video, "What is the Utah Solicitor General?" Utah Attorney General's Office, Salt Lake City, Utah (Mar. 23, 2022), <https://m.facebook.com/UtahAttorneyGeneral/videos/people-often-ask-what-is-a-solicitor-general-utahs-solicitor-general-melissa-hol/1008782116704405/>

Panelist, "Appellate Brief Writing & Practice Tips," Utah State Bar, Appellate Practice Section, remote presentation (Mar. 22, 2022), remarks unavailable.

Remarks discussing *Ohio v. OSHA* vaccine mandate litigation, International Association of Venue Managers, Utah Chapter Workshop, West Valley City, Utah (Feb. 22, 2022), remarks unavailable.

Guest Lecture, "Role of the State Solicitor General," George Mason University Antonin Scalia Law School, Attorney General Authorities, remote presentation (Feb. 15, 2022), remarks unavailable.

Remarks discussing appropriation requests, Utah State Legislature, Utah Executive Appropriations Committee (Feb. 10, 2022), <https://le.utah.gov/MtgMinutes/publicMeetingMinutes.jsp?Com=APPEXE&meetingId=17968>

Welcome Remarks, 2022 Utah Trafficking in Persons Task Force (UTIP) Conference, remote presentation (Jan. 26, 2022), remarks unavailable.

Panelist, "Supreme Court Midterm Review," Republican Attorneys General Association, Winter National Meeting, Orlando, Florida (Jan. 25, 2022), remarks unavailable.

Remarks discussing *Ohio v. OSHA* vaccine mandate litigation, Utah Attorney General's Youth Advisory Committee, Salt Lake City, Utah (Jan. 12, 2022), remarks unavailable.

Remarks discussing *Ohio v. OSHA* vaccine mandate litigation, Liberty Forum, Provo, Utah (Jan. 12, 2022), remarks unavailable.

Panelist, "Utah Supreme Court Review," Federalist Society, Brigham Young Student Chapter, remote presentation (Jan. 11, 2022), remarks unavailable.

Guest Lecture, “Role of the State Solicitor General,” University of Utah, Mechanical Engineering Law and Contracts, Salt Lake City, Utah (Dec. 1, 2021), remarks unavailable.

Guest Lecture, “Role of the State Solicitor General,” Ensign College, American Government, Salt Lake City, Utah (Nov. 15, 2021), remarks unavailable.

Panelist, “Work Different: Finding the opportunities that match your priorities,” Federalist Society, National Lawyer’s Convention, Washington, D.C. (Nov. 12, 2021), remarks unavailable.

Panel, “Privacy for and from the Digital Person,” Federalist Society National Symposium on Law and Technology, Stanford Constitutional Law Center (Oct. 18, 2021), <https://fb.watch/i-sPwUOYzF/>

Remarks regarding OSHA vaccine mandate, Utah State Legislature, Business and Labor Interim Committee (Oct. 4, 2021), <https://le.utah.gov/MtgMinutes/publicMeetingMinutes.jsp?Com=INTBUS&meetingId=17778>

Panelist, “Public Lands & Federal Policy,” 2021 Uintah Basin Energy Summit, Vernal, Utah (Sept. 28, 2021), <https://www.youtube.com/watch?v=fBjX0m6c4i4>

Remarks discussing ARPA tax mandate litigation, Utah State Legislature, Revenue and Taxation Interim Committee (June 16, 2021), <https://le.utah.gov/MtgMinutes/publicMeetingMinutes.jsp?Com=INTREV&meetingId=17690>

Presentation, “Thorny Issues in Religious Liberty Cases,” J. Reuben Clark Law Society, Salt Lake Chapter, remote presentation (Mar. 16, 2021), remarks unavailable.

Remarks discussing HB220 pretrial detention amendments, Utah State Legislature, Senate Government Operations and Political Subdivisions Standing Committee (Mar. 2, 2021), <https://le.utah.gov/MtgMinutes/publicMeetingMinutes.jsp?Com=SSTGOP&meetingId=17605>

Remarks discussing SB171 pretrial detention revisions, Utah State Legislature, Senate Judiciary, Law Enforcement, and Criminal Justice Standing Committee, (Feb. 23, 2021), <https://le.utah.gov/MtgMinutes/publicMeetingMinutes.jsp?Com=SSTJLC&meetingId=17533>

Debate, “A Conservative Case for Class Action: A Debate!” Federalist Society, Salt Lake City Lawyers Chapter, Salt Lake City, Utah (Feb. 4, 2020) (debating Professor Brian T. Fitzpatrick), remarks unavailable.

Video, “*Frank v. Gaos*: CEI Fighting to Protect Consumers from Greedy Attorneys.” Competitive Enterprise Institute (Oct. 18, 2018), <https://www.youtube.com/watch?v=VBexmu7czqc>

Panelist discussing *Frank v. Gaos*, CEI Alfred Kahn Discussion Series, Washington, D.C. (Oct. 17, 2018), remarks unavailable.

Panelist, “The Class Action Settlement Problem,” CEI Policy Summit, Key West, Florida (Jan. 2018), remarks unavailable.

Speaker, “Class Action Litigation Reform: Are Class Action Settlements Structured to Benefit Class Counsel at the Expense of the Class?” Federalist Society, Salt Lake City Lawyers Chapter, Salt Lake City, Utah (Feb. 3, 2017), remarks unavailable.

Panelist, “Compensation of Objectors,” Duke Law Center for Judicial Studies, Class Action Settlements Conference, San Diego, California (Oct. 6, 2016), remarks unavailable.

Panelist, “Commercial Class Actions: Hot Topics, Trends and Settlement Fairness,” Federal Bar Association Chicago Chapter, Chicago, Illinois (Feb. 23, 2016), remarks unavailable.

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#### ATTACHMENT D

I have done my best to identify all public statements I have made over the past ten years, including statements in news articles and radio and television appearances, which are on topics relevant to the position for which I have been nominated, including through a thorough review of personal files and searches of publicly available electronic databases. Despite my searches, there may be other materials I have been unable to identify, find, or remember. I have located the following:

1. KSL Radio Interview, *The Not So Good Neighbor Rule Utah is Fighting*, Inside Sources with Boyd Matheson (Mar. 22, 2023), <https://omny.fm/shows/inside-sources-with-boyd-matheson/the-not-so-good-neighbor-rule>

2. Lindsay Aerts, *Utah AG claims ESG or 'climate investing' contributed to SVB collapse*, KSL News Radio (Mar. 22, 2023), <https://kslnewsradio.com/1994977/utah-ag-claims-esg-or-climate-investing-contributed-to-svb-collapse/>
3. Press Release, *Office of Attorney General; Utah Solicitor General Signs Women's Bill of Rights Pledge*, Utah Attorney General's Office (Sept. 1, 2022), <https://attorneygeneral.utah.gov/utah-solicitor-general-signs-womens-bill-of-rights-pledge/>
4. Ben Winslow, *Utah sues the feds over Bears Ears, Grand Staircase-Escalante national monument boundaries*, Fox13 News (August 24, 2022), <https://www.fox13now.com/news/local-news/utah-sues-the-feds-over-bears-ears-grand-staircase-escalante-national-monument-boundaries>
5. Press Release, *AGO Asks SCOTUS to Protect Consumers*, Utah Attorney General's Office (July 19, 2022), <https://attorneygeneral.utah.gov/ago-asks-scotus-to-protect-consumers/>
6. Press Release, *Supreme Court Rule EPA Overstepped its Authority in Regulating Nation's Electricity Grid*, Utah Attorney General's Office (June 30, 2022), <https://attorneygeneral.utah.gov/supreme-court-rules-epa-overstepped-its-authority-in-regulating-nations-electricity-grid/>
7. Bryan Schott, *Utah AG's office wants \$2 million annually to sue the Federal government*, Salt Lake Tribune (Feb. 11, 2022), <https://www.sltrib.com/news/politics/2022/02/11/utah-ags-office-wants/>
8. Ariane de Vogue & Ladd Egan, *Utah joins appeal asking Supreme Court to block large employer vaccine mandate*, KSL5 TV (Dec. 20, 2021), <https://ksltv.com/479614/utah-joins-appeal-asking-supreme-court-to-block-large-employer-vaccine-mandate/>
9. Ben Winslow, *Utah expected to sue over Biden's monument proclamations*, Fox13 News (Oct. 8, 2021), <https://www.fox13now.com/news/local-news/utah-expected-to-sue-over-bidens-monument-proclamations/>; Zak Podmore, *What does Biden's national monuments decision mean for legal challenges to the Antiquities Act?*, Salt Lake Tribune (Oct. 11, 2021), <https://www.sltrib.com/news/environment/2021/10/11/what-does-bidens-national/>
10. Press Release, *Utah Defends Indian Child Welfare Act Protections*, Utah Attorney General's Office (Oct. 8, 2021), <https://attorneygeneral.utah.gov/icwa-protections/>; Ben Winslow, *Utah sides with tribes asking to uphold Indian Child Welfare Act*, Fox13 News (Oct. 8, 2021), <https://www.fox13now.com/news/local-news/utah-sides-with-tribes-asking-to-uphold-indian-child-welfare-act>
11. The Federalist Society, *Member Profile*, *The Federalist Paper: The Magazine of the Federalist Society*, at 9 (Fall 2021), <https://fedsoc-cms-public.s3.amazonaws.com/update/pdf/e3gHcNV9TfgnReSurMOBN1WWezBRJ7VvH90Si3zP.pdf>
12. Bryan Schott, *Utah Republican leaders rage about proposed Federal COVID-19 vaccine mandate*, Salt Lake Tribune (Sept. 18, 2021), <https://www.sltrib.com/news/politics/2021/09/18/utah-republican-leaders/>
13. Press Release, *Utah to FDA: Regulate E-Cigarettes/Oral Nicotine to Protect Youth from Addiction*, Utah Attorney General's Office (Aug. 19, 2021), <https://attorneygeneral.utah.gov/utah-to-fda-regulate-e-cigarettes-oral-nicotine-in-bipartisan-letter/>; Will Feelright, *A.G. Reyes Joins Bipartisan Coalition in Calling on FDA to Regulate E-Cigarettes and Oral Nicotine Products*, CacheValleyDaily.com (Aug. 19, 2021), <https://www.cachevalleydaily.com/news/archive/2021/08/19/a-g-reyes-joins-bipartisan-coalition-in-calling-on-fda-to-regulate-e-cigarettes-and-oral-nicotine-products/>
14. Press Release, *Utah Calls for Faster Implementation of Anti-Robocall Technology*, Utah Attorney General's Office (Aug. 12, 2021), <https://attorneygeneral.utah.gov/utah-calls-for-faster-implementation-of-anti-robocall-technology/>; Will Feelright, *Utah calls for faster implementation of anti-robocall technology*, CashValleyDaily.com (Aug. 13, 2021), <https://www.cachevalleydaily.com/news/archive/2021/08/13/utah-calls-for-faster-implementation-of-anti-robocall-technology/>
15. Ben Winslow, *Utah joins lawsuit to overturn Roe v. Wade*, Fox13 News (July 29, 2021); Dennis Romboy, *Why Utah joined Mississippi abortion case to overturn Roe v. Wade*, Deseret News (July 29, 2021), <https://www.deseret.com/utah/2021/7/29/22600741/utah-joins-mississippi-abortion-case-overturn-roe-wade-supreme-court/>; Rick Aaron, *'Extremely upset': Utah supports effort to overturn Roe v. Wade, even if many Utahns don't*, ABC4.com (July 30, 2021),

- <https://www.abc4.com/news/local-news/extremely-upset-utah-supports-effort-to-overturn-roe-v-wade-even-if-many-utahns-dont/>; Press Release, *Utah Joins SCOTUS Abortion Case*, Utah Office of the Attorney General (Aug. 4, 2021), <https://attorneygeneral.utah.gov/utah-joins-scotus-abortion-case/>
16. Bryan Schott, *Utah A.G. says statehood for Washington, D.C., is unconstitutional*, Salt Lake Tribune (Apr. 13, 2021), <https://www.sltrib.com/news/politics/2021/04/13/utah-ag-says-statehood/>
  17. Dennis Romboy, *New Utah solicitor general apologizes for mistake, avoids sanctions in Florida case*, Deseret News (Sept. 28, 2020), <https://www.deseret.com/utah/2020/9/28/21492542/utah-solicitor-general-sanctions-mistake-florida-class-action-lawsuit-melissa-holyoak>; Bethany Rodgers, *Utah solicitor general apologizes, agrees to pay \$3,750 for erroneous court filing*, Salt Lake Tribune (Sept. 28, 2020), <https://www.sltrib.com/news/politics/2020/09/28/utah-solicitor-general/>; Melissa Heelan Stanzione, *Utah SG Won't Face Sanction in Class Action Settlement Objection*, Bloomberg Law (Sept. 17, 2020), <https://news.bloomberglaw.com/legal-ethics/utah-sg-wont-face-sanction-in-class-action-settlement-objection?context=search&index=9>
  18. Alison Frankel, *New Utah SG dogged by judge's criticism of class action objection*, Reuters.com (Sept. 10, 2020), <https://www.reuters.com/article/legal-us-otc-tire/new-utah-sg-dogged-by-judges-criticism-of-class-action-objection-idUSKBN2613FU>
  19. Bethany Rodgers, *Utah's new solicitor general facing potential court sanctions*, Salt Lake Tribune (Sept. 9, 2020), <https://www.sltrib.com/news/politics/2020/09/09/utahs-new-solicitor/>; Dennis Romboy, *New Utah solicitor general faces sanctions in Florida for making false statements*, Deseret News (Sept. 9, 2020), <https://www.deseret.com/utah/2020/9/9/21429069/utah-national-tire-lawsuit-sanctions-federal-court-attorney-general-sean-reyes-melissa-holyoak>
  20. Press Release, *Melissa A. Holyoak Joins Utah Attorney General's Office as Solicitor General*, Utah Attorney General's Office (Sept. 8, 2020), <https://attorneygeneral.utah.gov/melissa-a-holyoak-joins-utah-attorney-generals-office-as-solicitor-general/>
  21. CEI News Release, *CEI Successfully Challenges Harmful and Unlawful Conditions on Charter-Time Warner Merger*, Competitive Enterprise Institute (Aug. 14, 2020), [https://cei.org/news\\_releases/cei-successfully-challenges-harmful-and-unlawful-conditions-on-charter-time-warner-merger/](https://cei.org/news_releases/cei-successfully-challenges-harmful-and-unlawful-conditions-on-charter-time-warner-merger/)
  22. CEI News Release, *CEI Asks Court to Invalidate the FCC's Costly Conditions on 2016 Charter Cable Merger*, Competitive Enterprise Institute (Jan. 15, 2019), [https://cei.org/news\\_releases/cei-asks-court-to-invalidate-the-fccs-costly-conditions-on-2016-charter-cable-merger/](https://cei.org/news_releases/cei-asks-court-to-invalidate-the-fccs-costly-conditions-on-2016-charter-cable-merger/)
  23. Charles Fain Lehman, *SCOTUS Hears Case Against Google Giving Away Settlement Money to Friends*, The Washington Free Beacon (Oct. 31, 2018), <https://freebeacon.com/issues/scotus-hears-case-google-giving-away-settlement-money-friends/>
  24. CEI News Release, *Supreme Court Hears Challenge to Unfair Class Action Settlement that Gives Millions to Attorneys, Zero Dollars to Class Members*, Competitive Enterprise Institute (Oct. 30, 2018), [https://cei.org/news\\_releases/supreme-court-hears-challenge-to-unfair-class-action-settlement-that-gives-millions-to-attorneys-zero-dollars-to-class-members/](https://cei.org/news_releases/supreme-court-hears-challenge-to-unfair-class-action-settlement-that-gives-millions-to-attorneys-zero-dollars-to-class-members/)
  25. John Sammon, *Supreme Court case to decide issue of class action funds directed to 'pet causes'*, Legal Newsline (Oct. 26, 2018), <https://legalnewsline.com/stories/511611133-supreme-court-case-to-decide-issue-of-class-action-funds-directed-to-pet-causes>
  26. CEI Court Cases, *CEI v. FCC*, Competitive Enterprise Institute (Oct. 9, 2018), [https://cei.org/court\\_case/cei-v-fcc/](https://cei.org/court_case/cei-v-fcc/)
  27. CEI News Release, *CEI Challenges Frivolous Suit Paying Attorneys over \$300,000 but Leaving Class members with \$0*, Competitive Enterprise Institute (Sept. 12, 2018), [https://cei.org/news\\_releases/cei-challenges-frivolous-suit-paying-attorneys-over-300000-but-leaving-class-members-with-0/](https://cei.org/news_releases/cei-challenges-frivolous-suit-paying-attorneys-over-300000-but-leaving-class-members-with-0/)
  28. Amanda Bronstad, *Critical Mass: Roundup Trial Goes to Jury | New Expert Standard in New Jersey | 7th Circuit Fee Focus*, Law.com (Aug. 8, 2018), <https://www.law.com/2018/08/08/critical-mass-roundup-trial-goes-to-jury-new-expert-standard-in-new-jersey-7th-circuit-fee-focus/>
  29. CEI News Release, *CEI Files Supreme Court Brief in Case Challenging Abuse of Class Action System*, Competitive Enterprise Institute (July 9, 2018),

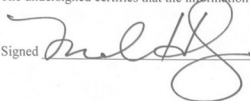
- [https://cei.org/news\\_releases/cei-files-supreme-court-brief-in-case-challenging-abuse-of-class-action-system/](https://cei.org/news_releases/cei-files-supreme-court-brief-in-case-challenging-abuse-of-class-action-system/)
30. CEI News Release, *CEI Wins Appeal, Heads Back to Court to Challenge Bad Faith Objectors in Pearson Class Action*, Competitive Enterprise Institute (June 26, 2018), [https://cei.org/news\\_releases/cei-wins-appeal-heads-back-to-court-to-challenge-bad-faith-objectors-in-pearson-class-action/](https://cei.org/news_releases/cei-wins-appeal-heads-back-to-court-to-challenge-bad-faith-objectors-in-pearson-class-action/)
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  33. CEI News Release, *Unfair Target Data Breach Settlement Returns to Appeals Court*, Competitive Enterprise Institute (Aug. 15, 2017), [https://cei.org/news\\_releases/unfair-target-data-breach-settlement-returns-to-appeals-court/](https://cei.org/news_releases/unfair-target-data-breach-settlement-returns-to-appeals-court/)
  34. KBIA Radio Interview, *Paul Pepper: Children's Grove Photo Contest & Maplewood Barn, "The Ideal Husband,"* KBIA (Aug. 29, 2017), <https://www.kbia.org/arts-and-culture/2017-08-29/paul-pepper-childrens-grove-photo-contest-maplewood-barn-the-ideal-husband>
  35. KBIA Radio Interview, *Paul Pepper: Stewart Scott, Cevet Tree Care & Debbie Furnell and Melissa Holyoak, GenCOMO 2017*, KBIA (Aug. 4, 2017), <https://www.kbia.org/arts-and-culture/2017-08-04/paul-pepper-stewart-scott-cevet-tree-care-debbie-furnell-and-melissa-holyoak-gencomo-2017>
  36. CEI News Release, *Attorneys Target Holographic Weapons Owners for Million-Dollar Windfall*, Competitive Enterprise Institute (May 25, 2017), [https://cei.org/news\\_releases/attorneys-target-holographic-weapons-owners-for-million-dollar-windfall/](https://cei.org/news_releases/attorneys-target-holographic-weapons-owners-for-million-dollar-windfall/)
  37. Martin Moylan, *Lone consumer holds up Target data breach settlement*, MPR News (May 18, 2017), <https://www.mprnews.org/story/2017/05/18/lone-consumer-holds-up-target-data-breach-settlement>
  38. Shayna Posses, *Objector to \$10M Target Breach Fails to Sway Judge*, Law360.com (May 18, 2017), <https://www.law360.com/articles/925420/objector-to-10m-target-breach-deal-fails-to-sway-judge>
  39. Dee Thompson, *Attorney fees clipped, class awards tripled under new deal to end Southwest drink voucher class action*, Cook County Record (Feb. 16, 2017), <https://web.archive.org/web/20170712023136/http://cookcountyrecord.com/stories/511082645-attorney-fees-clipped-class-awards-tripled-under-new-deal-to-end-southwest-drink-voucher-class-action>
  40. Jessica Karmasek, *Eighth Circuit reverses, remands \$10 million settlement in Target data breach class action*, Legal Newsline (Feb. 7, 2017), <https://web.archive.org/web/20170207233502/http://legalnewsline.com/stories/511080442-eighth-circuit-reverses-remands-10-million-settlement-in-target-data-breach-class-action>
  41. David Pitt, *Court orders review of Target security breach settlement*, Associated Press (Feb. 3, 2017), <https://news.yahoo.com/court-orders-review-target-security-204611261.html>
  42. CEI News Release, *Center for Class Action Fairness Wins Big in Southwest Airlines Coupons Case, Triples Relief for Class Members*, Competitive Enterprise Institute (Feb. 2, 2017), [https://cei.org/news\\_releases/center-for-class-action-fairness-wins-big-in-southwest-airlines-coupons-case-triples-relief-for-class-members/](https://cei.org/news_releases/center-for-class-action-fairness-wins-big-in-southwest-airlines-coupons-case-triples-relief-for-class-members/)
  43. CEI Court Cases, *Walgreen Co. Stockholder Litigation*, Competitive Enterprise Institute (Aug. 10, 2016), [https://cei.org/court\\_case/walgreen-co-stockholder-litigation/](https://cei.org/court_case/walgreen-co-stockholder-litigation/)

**Addendum to the questionnaire submitted to the Senate Committee on  
Commerce, Science and Transportation, 118th Congress  
by Melissa Ann Holyoak.**

Upon further review, I have identified two additional digital platform accounts, both of which are dormant, that are responsive to question A.20 on the Committee's questionnaire. They are:

Twitter: @melissaholyoak (dormant) and @melissaholyoak1 (dormant).

The undersigned certifies that the information contained in the public addendum is true and correct.

Signed  Date: Aug. 29, 2023

The CHAIR. Thank you. And last but not least, very important position, Mr. Dziak. Thank you for being here. Please introduce anybody you would like to introduce.

**STATEMENT OF DOUGLAS DZIAK, NOMINEE TO BE A  
COMMISSIONER, CONSUMER PRODUCT SAFETY COMMISSION**

Mr. DZIAK. Chair Cantwell, Ranking Member Cruz, members of the Senate Commerce Committee, good morning and thank you for the opportunity to appear before the Senate Commerce, Science, and Transportation Committee as a nominee to serve on the Consumer Product Safety Commission. CPSC's mission is critical.

The Commission works with Congress, the public, and many stakeholders to protect the public against unreasonable risks of injury associated with consumer products. CPSC's jurisdiction spans thousands of consumer products and affects all of us, but it does its work with just over 500 dedicated career staff who work every day to keep consumers safe.

I want to thank President Biden for nominating me. It would be an honor to serve as a CPSC Commissioner working to improve consumer safety. I would also like to thank Leader McConnell for his kind words and for recommending me to the President for this nomination. I want to first thank my mom and dad.

My mom, who passed away from dementia in November 2021, was a nurse who worked in various public health settings. She was and will always be my biggest champion. My dad, who lives in Ohio and is unable to join me due to his own health, was a union welder at a local power company. While working a full time job, he also served part time as a police officer in my hometown.

My parents' commitment to helping others is something that remains with me. Here with me today is my wife, Leigh Anne, who is the most dedicated public servant I know. She served 26 years in Federal law enforcement before retiring to care for her mom, who is watching this hearing from home.

While some may have made a second career in the private sector or simply enjoyed retirement, she recently returned to Federal service, joining the Department of Justice's Organized Crime Drug Enforcement Task Forces.

I do not tell her often enough how proud I am of her work or how grateful I am of her support for mine. I am also grateful for my family and friends, including the many colleagues with whom I worked over the years on both sides of the political aisle.

These efforts included bipartisan legislation that I worked on with Senator Bayh and his staff to create the Office of Intellectual Property Enforcement Coordinator, and with Senator Casey and his staff on the successful reauthorization of the Perkins Career Technical Education Act.

I would not have had the successes I did without such great colleagues to work with. Since graduating from law school, I have worked as a regulatory attorney, a U.S. Senate staffer, and for the past two and a half years, as Chief Counsel to CPSC Commissioner Peter Feldman, who I would also like to thank for adding me to his team.

My varied professional experiences have taught me valuable lessons about law and public policy from a variety of perspectives. I believe that these experiences would serve me well as a Commissioner.

I have also been blessed with many mentors. Two in particular deserve recognition. Senator George Voinovich of my home State of Ohio, whom I served as Counsel and then Legislative Director, and Senator Mike Enzi of Wyoming, who I served as Legislative Director and then Budget Committee Staff Director.

Senators Voinovich and Enzi taught me much about public service. More importantly, they taught me about teamwork and serving honorably. Senators Voinovich and Enzi were lost too soon. I miss

them both. Should I have the honor of being confirmed, I will do my best to emulate their examples.

As I close, I want to thank and recognize in particular my CPSC colleagues. Their efforts each day to protect consumers and to achieve the CPSC safety mission are inspiring. If confirmed, I look forward to working with Congress, safety advocates, and all other stakeholders to advance the Commission's safety mission and continue my public service in this new role.

Again, thank you for the opportunity to appear before you today, and for your consideration of my nomination. I am happy to answer any questions.

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

STATEMENT OF DOUGLAS DZIAK, NOMINEE TO BE A COMMISSIONER,  
U.S. CONSUMER PRODUCT SAFETY COMMISSION

United States Senate Committee on Commerce, Science, and Transportation Chair Cantwell, Ranking Member Cruz, and members of the Committee.

Good morning and thank you for the opportunity to appear before the Senate Committee on Commerce, Science, and Transportation, as a nominee to serve as a Commissioner on the United States Consumer Product Safety Commission (CPSC).

CPSC's mission is critical. The Commission works with Congress, the public, and many stakeholders to protect the public against unreasonable risks of injury associated with consumer products. CPSC's jurisdiction spans thousands of consumer products and affects all of us, but it does its work with just over 500 dedicated career staff, who work every day to keep consumers safe.

I want to thank President Biden for nominating me. It would be an honor to serve as a CPSC Commissioner, working to improve consumer safety.

I also want to thank my mom and dad. My mom, who passed away from dementia in November 2021, was a nurse who worked in various public health settings. She was and will always be my biggest champion.

My dad, who lives in Ohio and is unable to join me today due to his health, was a union welder at the local power company. While working a full-time job, he was also a part-time police officer in my hometown.

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Here with me today, is my wife Leigh Anne, who is the most committed public servant I know. She served 26 years in Federal law enforcement before retiring to care for her mom who is watching this hearing from home.

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I do not tell her often enough how proud I am of her work or how grateful I am that she has always supported me in mine.

I am grateful for my family and friends, including the many colleagues with whom I have worked over the years on both sides of the political aisle.

These efforts included bipartisan legislation that I worked on with Senator Bayh and his staff to create the Office of the Intellectual Property Enforcement Coordinator and with Senator Casey and his staff on the successful reauthorization of the Perkins Career and Technical Education Act.

I would not have had the successes I did without such great colleagues to work with.

Since graduating from law school, I have worked as a regulatory attorney, a United States Senate staffer, and for the past two and a half years as Chief Counsel to CPSC Commissioner Peter Feldman, who I would also like to thank for adding me to his team.

My varied professional experiences have taught me valuable lessons about law and public policy from a variety of perspectives. I believe these experiences would serve me well as a Commissioner.

I have also been blessed with many wonderful mentors. Two in particular deserve mention.

Senator George Voinovich of my home state of Ohio, whom I served as Counsel and then Legislative Director; and Senator Mike Enzi of Wyoming, whom I served as Legislative Director and then as Budget Committee Staff Director.

Senators Voinovich and Enzi taught me much about public policy. More importantly, they taught me about teamwork and serving honorably. Senators Voinovich and Enzi were lost too soon. I miss them both. Should I have the honor of being confirmed, I will do my best to emulate their examples.

As I close, I want to recognize and thank in particular my CPSC colleagues. Their efforts each day to protect consumers and to achieve the CPSC's safety mission are inspiring.

If confirmed, I look forward to working with Congress, safety advocates, and all other stakeholders to advance the Commission's safety mission and continue my public service in this new role.

Again, thank you for this opportunity to appear before you today and for your consideration of my nomination. I am happy to answer any questions.

#### A. BIOGRAPHICAL INFORMATION

1. Name (Include any former names or nicknames used): Douglas (Doug) Dziak.
2. Position to which nominated: Commissioner, U.S. Consumer Product Safety Commission.
3. Date of Nomination: March 30, 2023.
4. Address (List current place of residence and office addresses):

Residence: Information not released to the public.  
Office: 4330 East-West Hwy, Bethesda, MD 20814.

5. Date and Place of Birth: December 2, 1970; Lorain, Ohio.
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).

Leigh Anne Mosby, retired from Federal service. We have no children.

7. List all college and graduate schools attended, whether or not you were granted a degree by the institution. Provide the name of the institution, the dates attended, the degree received, and the date of the degree.

Institution	Dates Attended	Degrees Received	Dates of Degrees
Ohio University	1989–1995	BA, Economics and English MA, Economics	August 1993 BA November 1995 MA
William & Mary Law School	1996–1999	JD	May 1999
Lorain County Community College	June–July 1992	N/A	N/A (Summer class)

8. List all post-undergraduate employment, including the job title, name of employer, and inclusive dates of employment, and highlight all management-level jobs held and any non-managerial jobs that relate to the position for which you are nominated.

U.S. Consumer Product Safety Commission (CPSC or Commission), Bethesda, MD, Office of Commissioner Peter A. Feldman, Chief Counsel, February 2021 to present. Advise CPSC Commissioner and work with other Commissioner of offices and career staff to achieve the Commission's safety mission.

U.S. Senate Committee on the Budget, Staff Director and General Counsel, February 2020 to February 2021. Managed Senate Budget Committee Majority and non-partisan front-office staff.

U.S. Senator Michael B. Enzi, Legislative Director, June 2018 to February 2020. Managed senior U.S. Senator's staff, including legislative portfolios related to the Senate Health Education Labor & Pensions, Finance, Homeland Security and Governmental Affairs (HSGAC), and Small Business committees.

Holland & Knight LLP, Washington, D.C., Senior Counsel, March 2017 to June 2018. Government relations and regulatory law practice.

Nixon Peabody LLP, Washington, D.C., Counsel, March 2011 to March 2017. Government relations and regulatory law practice.

U.S. Senator George V. Voinovich, Legislative Director & Chief Counsel/HSGAC, Subcommittee on Oversight of Government Management, the Federal Workforce and the District of Columbia, General Counsel/Counsel (Senator Voinovich was the Chair and Ranking Member of the OGM subcommittee during my service), January 2006 to January 2011. As Legislative Director, I man-

aged U.S. Senator's staff, including providing management over legislative portfolios related to Senate HSGAC, Environment and Public Works, and Appropriations committees.

Freshfields, Bruckhaus, Deringer LLP, Washington, D.C., Associate Attorney, October 2002 to January 2006.

Hunton and Williams LLP (now Hunton Andrews Kurth LLP), Washington, D.C., Associate Attorney, September 1999 to September 2002.

William & Mary Law School, Professors Alan J. Reese and Raj Bhala, Williamsburg, VA, Research Assistant, academic years of 1997 and 1998.

Arter & Hadden LLP, Cleveland, OH, Summer Associate, Summer 1998 (full-time job offer extended, but declined).

Ford's Colony Swim and Tennis Club, Williamsburg, VA, Lifeguard, Summer 1997.

Hale and Dorr LLP (now WilmerHale), Washington, D.C., Legal Assistant, Fall 1995 to Summer 1996. I performed legal and general research, prepared documents for filing, and assisted in the preparation of documents for the Hale and Dorr attorneys.

Cambridge Associates, Arlington, VA, Fall 1995. This was an entry level position in which I performed research and data analysis for client use.

Atlantic Pool Service, Arlington VA, part-time Lifeguard, Fall 1995 to Summer 1996.

Arlington County Parks and Recreation, Arlington, VA, part-time Swim Instructor, Fall 1995 to Spring 1996.

Ohio University Department of Economics, Athens, Ohio, Economics Instructor, August 1994 to June 1995. As part of my graduate student aid, I taught introductory economics courses at Ohio University branch campuses.

Ohio University Graduate Research Assistant, Professor Al Eckes, Athens, OH, Research Assistant, August 1993 to June 1994. As part of my graduate-student aid, I assisted Professor Eckes, a former Chair of the U.S. International Trade Commission, in researching his book regarding U.S. trade history.

Ohio University Aquatic Center, Athens, OH, estimated 1990 to 1994, Lifeguard and Swim Instructor.

City of Athens Ohio, Lifeguard and Swim Instructor, Summers of 1993, 1994, and 1995.

9. Attach a copy of your résumé. See 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 after 18 years of age.

I served as a *pro bono* advisor to the William & Mary Law School's Lewis B. Puller Jr. Veterans Benefits Clinic from 2011 to 2018.

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.

I was a board member of the Dominion Greens Home Owners Association (DGHOA), Arlington, VA, until December of 2022. DGHOA is the homeowners' association for the community where I have lived since 2002.

I am currently a member and chairman of the board of the Windswept Ridge Property Owner's Association (WSRPOA). WSRPOA is a 30-member condominium community in Corolla, NC. I joined the board in October 2017.

12. Please list each membership you have had after 18 years of age or currently hold with any civic, social, charitable, educational, political, professional, fraternal, benevolent or religiously affiliated organization, private club, or other membership organization. (For this question, you do not have to list your religious affiliation or membership in a religious house of worship or institution.). 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 disability.

District of Columbia Bar, active, sworn in September 11, 2000.

State of Maryland Bar, inactive, sworn in December 14, 1999.

University Club of Washington D.C., 2011 to 2018. I served on the Club's finance and audit committees.

William & Mary Law School Association, Association Board Member, 2004 to 2010, general member 1999 to present.

The Currituck Club golf course in Corolla, NC. I joined in 2016 and remain a member.

I am a member of the DGHOA, Arlington, VA, where I have lived since 2002.

I am a member of the WSRPOA.

I am a member of the District of Columbia Bar Board on Professional Responsibility (BPR), as a Lawyer Alternative (LA) for hearing committees. I completed a 6-year term from 2015 to 2022, and the BPR selected me for another 6-year term in March 2023, <https://www.dcbbar.org/attorney-discipline/board-on-professional-responsibility>.

I was a member of the American Bar Association (ABA) over the course of my law firm employment. I was also a member of the ABA Antitrust subcommittee from 1999 to 2006.

Federalist Society, Public Sector Member, from March 2019 to September 2021. I was also a member during law school.

William & Mary Law School Republicans (Vice-President, 1997 to 1998).

William & Mary Environmental Law and Policy Review, Articles Editor, 1998 to 1999.

To my knowledge, none of the organizations that I have been a member has any policy of restricting membership on the basis of sex, race, color, religion, national origin, age, or disability.

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. List all memberships and offices held with and services rendered to, whether compensated or not, any political party or election committee within the past ten years. If you have held a paid position or served in a formal or official advisory position (whether compensated or not) in a political campaign within the past ten years, identify the particulars of the campaign, including the candidate, year of the campaign, and your title and responsibilities.

I served on the John Kasich for President DC Steering Committee in 2016. This committee was ceremonial in nature.

15. Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of \$200 or more for the past ten years.

Recipient	Date	Amount
WENSTRUP FOR CONGRESS	1/18/13	\$250.00
FRIENDS OF DAVID SCHWEIKERT	2/5/13	\$250.00
VALUE IN ELECTING WOMEN POLITICAL ACTION COMMITTEE	2/27/13	\$250.00
CAPITO FOR WEST VIRGINIA	3/13/13	\$250.00
ALEXANDER FOR SENATE 2020 INC	3/20/13	\$250.00
FRIENDS OF DAVE JOYCE	3/29/13	\$250.00
CAPITO FOR WEST VIRGINIA	4/15/13	\$250.00
CAPITO FOR WEST VIRGINIA	5/13/13	\$250.00
CAPITO FOR WEST VIRGINIA	6/18/13	\$250.00
TIM SCOTT FOR SENATE	6/28/13	\$250.00
FRIENDS OF DAVID SCHWEIKERT	7/18/13	\$250.00
STIVERS FOR CONGRESS	7/30/13	\$500.00
ROBERT HURT FOR CONGRESS	8/7/13	\$250.00
TOM REED FOR CONGRESS	12/31/13	\$500.00
JOHNSON FOR CONGRESS	3/3/14	\$1,000.00
FRIENDS OF DAVE JOYCE	4/8/14	\$250.00
RENEE ELLMERS FOR CONGRESS COMMITTEE	6/30/14	\$250.00
DOLD FOR CONGRESS	9/15/14	\$500.00
DOLD FOR CONGRESS	10/1/14	\$250.00
FRIENDS OF PAT TOOMEY	3/1/16	\$250.00
FRIENDS OF TIBERI	2/13/17	\$500.00
HOLLAND & KNIGHT COMMITTEE FOR EFFECTIVE GOVERNMENT	7/7/17	\$76.92
VALUE IN ELECTING WOMEN POLITICAL ACTION COMMITTEE	7/10/17	\$250.00
HOLLAND & KNIGHT COMMITTEE FOR EFFECTIVE GOVERNMENT	7/21/17	\$76.92
HOLLAND & KNIGHT COMMITTEE FOR EFFECTIVE GOVERNMENT	8/4/17	\$76.92
HOLLAND & KNIGHT COMMITTEE FOR EFFECTIVE GOVERNMENT	8/18/17	\$76.92
HOLLAND & KNIGHT COMMITTEE FOR EFFECTIVE GOVERNMENT	9/1/17	\$76.92
HOLLAND & KNIGHT COMMITTEE FOR EFFECTIVE GOVERNMENT	9/15/17	\$76.92
HOLLAND & KNIGHT COMMITTEE FOR EFFECTIVE GOVERNMENT	9/29/17	\$76.92
HOLLAND & KNIGHT COMMITTEE FOR EFFECTIVE GOVERNMENT	10/13/17	\$76.92
HOLLAND & KNIGHT COMMITTEE FOR EFFECTIVE GOVERNMENT	10/27/17	\$76.92
HOLLAND & KNIGHT COMMITTEE FOR EFFECTIVE GOVERNMENT	11/10/17	\$76.92
HOLLAND & KNIGHT COMMITTEE FOR EFFECTIVE GOVERNMENT	11/24/17	\$76.92

Recipient	Date	Amount
HOLLAND & KNIGHT COMMITTEE FOR EFFECTIVE GOVERNMENT	12/8/17	\$76.92
HOLLAND & KNIGHT COMMITTEE FOR EFFECTIVE GOVERNMENT	12/22/17	\$76.92
HOLLAND & KNIGHT COMMITTEE FOR EFFECTIVE GOVERNMENT	2/2/18	\$76.92
HOLLAND & KNIGHT COMMITTEE FOR EFFECTIVE GOVERNMENT	2/16/18	\$76.92
ANTHONY GONZALEZ FOR CONGRESS	2/27/18	\$250.00
HOLLAND & KNIGHT COMMITTEE FOR EFFECTIVE GOVERNMENT	3/2/18	\$76.92
ANTHONY GONZALEZ FOR CONGRESS	3/12/18	\$250.00
HOLLAND & KNIGHT COMMITTEE FOR EFFECTIVE GOVERNMENT	3/16/18	\$76.92
VALUE IN ELECTING WOMEN POLITICAL ACTION COMMITTEE	3/11/19	\$250.00
WINRED	9/21/20	\$50.00
WINRED	10/8/20	\$10.00
WINRED	10/8/20	\$10.00
WINRED	10/15/20	\$10.00
WINRED	10/29/20	\$35.00
WINRED	10/31/20	\$10.00
WINRED	11/8/20	\$10.00
WINRED	11/15/20	\$10.00
WINRED	11/22/20	\$10.00
WINRED	11/29/20	\$10.00
WINRED	12/6/20	\$10.00
WINRED	12/13/20	\$10.00
WINRED	12/20/20	\$10.00
WINRED	12/27/20	\$10.00
VALUE IN ELECTING WOMEN POLITICAL ACTION COMMITTEE	2015	\$250.00

Note: My recollection is that the WINRED donations were for the campaigns of Senators Susan Collins and Joni Ernst.

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

Ohio University, *summa cum laude*, August 1993.

Articles Editor, William & Mary Environmental Law and Policy Review, 1998 to 1999.

College of William & Mary Law School, Dean's Certificate Class of 1999.

College of William & Mary Law School, Student Bar Association Vice-President 1998–1999.

Dean's and Department of Economics scholarship recipient, Ohio University 1990 to 1993.

The William & Mary Law School, Paul M. Shapiro Memorial Scholarship recipient.

The College of William & Mary's Lewis B. Puller, Jr. Veterans Clinic and the National Law School Veterans Clinic Consortium have recognized my *pro bono* work for these organizations in several of their media releases.

17. List each book, article, column, letter to the editor, Internet blog posting, or other publication you have authored, individually or with others. Include a link to each publication when possible. If a link is not available, provide a digital copy of the publication when available.

Doug Dziak, *Will a Resignation Bring the FEC's Work to a Halt?* Holland and Knight Alert, February 12, 2018, <https://www.mondaq.com/unitedstates/constitutional-administrative-law/672546/will-a-resignation-bring-the-fec39s-work-to-a-halt?type=mondaqai&score=47>.

Christopher DeLacy, Andrew Emerson, and Doug Dziak, *What is the Lobbying Disclosure Act (LDA)?*, Holland and Knight Alert, November 16, 2017, <https://www.hklaw.com/en/insights/publications/2017/11/what-is-the-lobbying-disclosure-act-lda>. (Although I am no longer listed as a co-author, based on a LinkedIn post, I believe I was an original co-author of this client alert.)

Christopher DeLacy and Doug Dziak, *Congress Contemplates Changes to the Foreign Agents Registration Act (FARA)*, Holland and Knight Alert, November 16, 2017, <https://www.hklaw.com/en/insights/publications/2017/11/congress-contemplates-changes-to-the-foreign-agent>. (Although I am no longer listed, based on a social media post, I was a co-author of this post.)

Hon. Thomas M. Reynolds, Sally Vastola, Douglas Dziak, and Jodi Richardson, *Moving Forward, the Trump Administration & 115th Congress*, Nixon Peabody Government Relations Group Alert, November 2016. (Digital Copy Attached).

Douglas Dziak, *The Miscellaneous Tariff Bill: if your company produces in the U.S., cost saving may be coming your way*. Nixon Peabody Government Relations Group Alert, April 18, 2016. (Digital Copy Attached).

Anjali Vohra, Alexandra Lopez-Casero and Doug Dziak, *New changes to Iran sanctions: what you need to know*, Nixon Peabody Export Controls Alert, January 19, 2016. (Digital Copy Attached).

Hon. Thomas M. Reynolds, Sally Vastola, and Douglas Dziak, *What does "international tax reform" mean to your business? NP's Government Relations team can help you find out*. Nixon Peabody Government Relations Group Alert, September 22, 2015. (Digital Copy Attached).

Douglas Dziak, *McCutcheon v. FEC: A victory for the First Amendment or something in between?*, Nixon Peabody Government Relations Group Alert, 2014. (Unavailable).

Alexandra Lopez-Casero, D. Grayson Yeargin and Douglas Dziak, *Latest Ukraine-Related Sanctions Likely Won't Be The Last*, March 18, 2014, Law360. (Digital Copy Attached).

Alexandra Lopez-Casero and Doug Dziak, *Takeaways from CFIUS' Latest Win in Court*, November 12, 2013, Law360. (Digital Copy Attached).

Alexandra Lopez-Casero and Doug Dziak, *Court delivers (another) win for CFIUS*, NP M&A and Corporate Transactions Law Alert, October 30, 2013. (Digital Copy Attached).

Douglas Dziak, *Revisiting the Ethical Road Not Taken*, Roll Call, March 18, 2013, <https://rollcall.com/2013/03/18/dziak-revisiting-the-ethical-road-not-taken/>.

The American Bar Association, Section of Antitrust Law, *Premerger Coordination, the Emerging Law of Gun Jumping and Information Exchange*, William J. Vidgor, Editor, 2006, Douglas Dziak, Contributing Drafter regarding U.S. legal issues. I do not recall the particular sections I drafted.

Doug Dziak, *SBA V-P Report*, The Amicus, February 22, 1999, <https://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1320&context=newspapers>.

Doug Dziak, *SBA VP says get Beach Week Housing, Barrister's Tickets ASAP*, The Amicus, February 3, 1999, <https://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1045&context=newspapers>.

Doug Dziak, *Vice President Address*, The Amicus, October 26, 1998, <https://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1043&context=newspapers>.

Jeff Timmers and Doug Dziak, *Buy FFG Tickets ASAP*, The Amicus, October 5, 1998, <https://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1042&context=newspapers>.

Doug Dziak, *SBA VP Report*, The Amicus, September 7, 1998, <https://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1319&context=newspapers>.

Doug Dziak, *From the SBA Vice President*, The Amicus, April 20, 1998, <https://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1041&context=newspapers>.

Doug Dziak, *From the SBA*, The Amicus, April 6, 1998, <https://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1040&context=newspapers>.

Doug Dziak, *From the SBA Vice-President*, The Amicus, March 23, 1998, <https://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1361&context=newspapers>.

Jeff Timmers and Doug Dziak, *the SBA Candidates Speak*, The Amicus, February 23, 1998, <https://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1368&context=newspapers>.

To complete this question, I performed a search of online and other records to locate and identify responsive items. Although I have conducted a diligent search, it is possible that items may have been inadvertently omitted or missed.

18. List all speeches, panel discussions, and presentations (*e.g.*, PowerPoint) that you have given on topics relevant to the position for which you have been nominated. Include a link to each publication when possible. If a link is not available, provide a digital copy of the speech or presentation when available.

I have not given any speeches, presentations, or participated in any panel discussions regarding consumer product safety or the Commission. Nevertheless, I have included events that I participated in as either moderator or panelist. These programs involved my *pro bono* work on veterans' issues and alumni engagement with Ohio University.

The National Law School Veterans Clinic Consortium, National Conference on Law Clinics Serving Veterans, February 28—March 1, 2018, panel on February 28, 2018, Working with Congressional Offices and Staff. I led a panel to discuss how

law school veterans' clinics could work with Congressional offices to achieve their mission. <https://www.law.du.edu/documents/veterans/2018-Program.pdf>.

I acted as a moderator for an Ohio University Washington Policy Forum on January 28, 2016, held at the Capitol Visitor's Center. Ohio University's College of Arts and Sciences, Scripps College of Communications, Ohio University Alumni Association and the Voinovich School of Leadership and Public Affairs organized the event. I welcomed the participants and introduced the panel, which included Ohio University Economics Professor Richard Vedder and Ohio University Alumni Richard May and Hebah Abdalla. (link and digital copy unavailable)

I participated on a panel for Ohio University students visiting Washington, DC, as part of Ohio University's DC Networking Week. Ohio University Director of Legal Engagement & Pre-Law, Larry Hayman, moderated the event, which was a Q&A format and discussed political outsiders, the U.S. Supreme Court and the 2016 election. I did not make a presentation. (link and digital copy unavailable)

To complete this question, I performed a search using Internet and Lexis searches. I am including the speeches, presentations, or panel discussions I recalled or found; however, it is possible that events may have been inadvertently missed.

19. List all public statements you have made during the past ten years, including statements in news articles and radio and television appearances, which are on topics relevant to the position for which you have been nominated, including dates. Include a link to each statement when possible. If a link is not available, provide a digital copy of the statement when available. None.

20. List all digital platforms (including social media and other digital content sites) on which you currently or have formerly operated an account, regardless of whether or not the account was held in your name or an alias. Include the full name of an "alias" or "handle", including the complete URL and username with hyperlinks, you have used on each of the named platforms. Indicate whether the account is active, deleted, or dormant. Include a link to each account if possible.

I have operated the following social media accounts:

*Active*

Facebook: <https://www.facebook.com/dougfromDC> (Doug DC)

LinkedIn: <https://www.linkedin.com/in/douglas-d-70012a1/> (Douglas Dziak)

Instagram: [https://www.instagram.com/ohio\\_doug/](https://www.instagram.com/ohio_doug/) (ohio doug)

Peloton: <https://members.onepeloton.com/profile/overview> (OhioDoug)

*Dormant / Inactive*

Twitter: <https://twitter.com/Doug08129000> (@Doug08129000)

Nextdoor: <https://nextdoor.com/profile/018Ls3XqjnpPZtgWT/> (Doug D.)

21. 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.

22. 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 believe that my public service career, including my current service as Chief Counsel to CPSC Commissioner Peter Feldman, and my legal career as a regulatory attorney qualify me to serve as a CPSC Commissioner. In my current role at the CPSC, since 2021, I have worked closely with other Commission offices and career staff to help the CPSC achieve its vital mission of protecting the public from unreasonable risks of injury and death from consumer products.

I served eight years as a Senate staffer, including as a Staff Director of the Budget Committee and Legislative Director for two Senators. In those roles, I managed Senate staff, worked with Senate committees and other Senators' staff to draft and pass legislation addressing issues including health and health care, safety, finance, intellectual property, and budget and appropriations.

Outside of government, I served for roughly 15 years as a regulatory attorney working on a range of legal issues including antitrust, energy, telecommunications, and political law. This experience provided me with a significant and varied background, which has and will continue to serve me well as the CPSC engages in a range of activities ranging from rulemakings to administrative litigation.

I would be honored to continue in public service as a CPSC Commissioner. I was privileged to work with two dedicated public servants in Senators Enzi and Voinovich. Both taught me the fulfillment gained in solving problems by working with others to find common ground on challenging issues.

The CPSC is an agency with a critical safety mission. I am committed to working with all stakeholders to solve problems. I have worked my entire career to bring parties together and am committed to continuing that should I be confirmed.

One of the Commission's areas of particular importance, and one of the issue areas I hope to focus on should I be confirmed, is how to reduce consumer related injuries to adults 65 and older. My spouse and I each have an aging parent and I see the risks that surround them in the home. Finally, I believe it is important the CPSC have a fully-staffed Commission to help it achieve its safety mission.

23. 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?

Ensuring management and financial controls is critical to achieving any department or agency's mission. The public and Congress must have confidence that departments and agencies are good stewards of taxpayer resources. Otherwise, we will lose their trust and should that happen, it may result in an audience less likely to listen to the messages we are trying to share about our core consumer safety issues.

I served as the Staff Director for the U.S. Senate Committee on the Budget. The Budget Committee regularly worked with the Government Accountability Office (GAO) regarding financial and accounting controls as well as general program management issues. During my OGM tenure with Senator Voinovich, we also worked with GAO and Inspectors General (IG).

I have and will continue to work with the CPSC's IG to ensure the Commission is working to implement his office's recommendations across a range of areas, including management and accounting control.

I am particularly proud of the work the Commission has done over the past two years to implement its IG's recommendations into the Fiscal Year operating plans.

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

*E-commerce*—The direct sale of products from businesses to consumers provides bad-actor companies, which are often located overseas, with the ability to circumvent existing enforcement methods. Increasingly, consumers are able to purchase products via e-commerce websites directly from businesses. Such sales are sent directly to consumers via de minimis shipments and thus are not subject to the traditional inspection methods.

The volume of the business-to-consumer sales will continue to increase significantly, posing greater risk of violative product getting into commerce. While the Commission is growing its online enforcement with efforts like our e-safe program, including de minimis shipments and growing our traditional port inspections, challenges remain. For example, as noted, many of these sellers are located overseas and sell in small quantities, making tracking questionable products a greater challenge than in the past when a port inspector could stop a large shipment for review.

*Safety Risks for Adults 65 years and Older*—The CPSC's Division of Hazard Analysis March 2023 report observed that from 2017 to 2021, adults 65 and older sustained an estimated 14.9 million emergency department-treated injuries associated with consumer products. The volume of these injuries among this demographic demonstrates that interactions with otherwise safe consumer products is a significant and, based on trend lines, a growing issue.

The costs, both societal and to the family, can be enormous. I have seen this first hand as my mother-in-law had a major head trauma after an in-home fall and subsequent brain bleed. She has never entirely recovered to her former level of activity and has required significant treatments and care.

CPSC data shows increasing risks as adults age. The rate of injuries is significantly higher for adults 65 and above (5.5 consumer product injuries per 100 adults in the over 65 group versus 2.9 injuries per 100 adults aged 25 to 64). In addition, injuries to older adults more frequently led to hospitalization. I believe it is important that the Commission heighten its communications to illustrate the greater risk of injury to adults 65 and older as they interact with consumer products.

*Recall Effectiveness*—When the CPSC works with a company to recall a product using a corrective action plan (CAP) (commonly known as a recall), the number of consumers who take advantage of a CAP is often low versus the number of products eligible. This ratio, known as recall effectiveness, has been an issue of concern for both Congress and the Commission.

In a November 2020 report, GAO recommended the Commission take steps to better monitor companies subject to a CAP to improve recall effectiveness. Efforts to increase recall effectiveness continue, yet challenges remain. For example, there are significant issues in notifying consumers about a product recall. In a world in which information flows constantly, once-innovative methods of communications such as e-mail are often now so frequent, it is easy for consumers to miss recall notifications.

The CPSC is working with companies to increase direct-to-consumer outreach. Connected devices provide one innovative method to contact consumers. The connected device may provide notice on the device itself, in an app running the device, or a text to the phone number attached to the device.

#### 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, such as a 401(k) or pension plan. 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. None.

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. Explain how you will resolve each potential conflict of interest.

As a Schedule C CPSC employee, I am a current Office of Government Ethics (OGE) financial disclosure filer. As a result of my consultations with CPSC's Designated Agency Ethics Officer (DAEO), I am recused from three matters at the CPSC as a result of individual stocks I currently own: Peloton, Costco, and NVIDIA.

In connection with the nomination process, I have consulted with the Office of Government Ethics (OGE) and the CPSC DAEO to identify any conflicts of interest, and any potential conflicts will be resolved within the terms of the ethics agreement I have entered into with OGE. As part of that process and within the terms of the ethics agreement I have entered into with OGE, I have agreed to divest specific publicly-traded stocks I currently own. Should I be confirmed, I will abide by this ethics agreement, and although I am unaware of any other potential conflicts of interest, should issues arise, I commit to continue to work with the CPSC's DAEO to resolve any future conflicts.

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. Explain how you will resolve each potential conflict of interest.

In connection with the nomination process, I have consulted with OGE and the CPSC DAEO to identify any conflicts of interest and any identified conflicts. As part of that process and within the terms of the ethics agreement I have entered into with OGE, I have agreed to divest specific publicly-traded stocks I currently own. Should I be confirmed, I will abide by this ethics agreement, and although I am unaware of any other potential conflicts of interest, should issues arise, I commit to continue to work with the CPSC's DAEO to resolve any such future conflicts. I am unaware of any other conflicts.

5. Identify any other potential conflicts of interest, and explain how you will resolve each potential conflict of interest.

I am unaware of any other conflicts of interest. In connection with the nomination process, I have consulted with OGE and the CPSC DAEO to identify any conflicts of interest, and any conflicts will be resolved within the terms of the ethics agreement I have entered into with OGE. Should I be confirmed, I will abide by this ethics agreement, and although I am unaware of any other potential conflicts of interest, should issues arise, I commit to continue to work with CPSC's DAEO to resolve any such future conflicts.

6. Describe any activity during the past ten years, including the names of clients represented, 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.

I provided government relations services to the following entities: Wegmans Food Markets, Inc., Council for Affordable Housing and Rural Development, Cooperative Regions of Organic Producer Pools (CROPP)/Organic Valley, Huff Management Company, Inc., Rensselaer Polytechnic Institute, National Eating Disorders Association, Starrett City, Inc., Monroe County Water Authority, Navient Solutions, Cleveland BioLabs, Inc., Preservation Development Partners, LLC, Covidien LP, Goldman Sachs Group, Inc., Western University of Health Sciences, Building America's Future, Abrasive Blasting Manufacturers Alliance, AbbVie, Camber Property Group, Innovative Wireless Technologies, Inc., Brookshire Grocery, Dawson Holdings, Hogan Lovells, and New York City Housing Authority. To the best of my recollection, I have not represented a client regarding a consumer product safety issue.

## 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, an Inspector General, professional association, disciplinary committee, or other professional group? If yes:

- a. Provide the name of court, 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 the fall of 1990 when I was a 19-year old college student, I was charged with underage consumption of alcohol.

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.

Yes. In the fall of 1990 when I was a 19-year old college student, I was charged with underage consumption of alcohol. I pled no contest to the violation. I recall paying a fine and serving several hours of community service. The conviction was expunged in December 1994.

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, and that your department/agency endeavors to timely comply with requests for information from individual Members of Congress, including requests from members in the minority? Yes.

2. Will you ensure that your department/agency does whatever it can to protect congressional witnesses and whistleblowers 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.

**Douglas Dziak****PROFESSIONAL EXPERIENCE**

- Consumer Product Safety Commission, Bethesda, MD** 2021–Present  
*Chief Counsel – Office of Commissioner Peter A. Feldman*
- Provide legal and policy counsel to CPSC Commissioner Feldman on matters before the Commission.
- United States Senate, Washington, DC** 2018–2021  
*Staff Director – U.S. Senate Committee on the Budget*
- Supervised majority and non-designated staff to ensure the Chairman's and Committee members' needs were met.
  - Developed and implemented committee oversight projects using legal and policy experience.
- Legislative Director – Senator Michael B. Enzi (WY)*
- Promoted Senator Enzi's positions particularly related to his service on the Senate Finance, Homeland Security and Governmental Affairs, and Health, Education, Labor & Pensions committees.
  - Reviewed and edited speeches, press statements, and social media communications.
- Holland and Knight LLP, Washington, DC** 2017–2018  
*Senior Counsel – Public Policy & Regulation Group*
- Advised a range of clients to advance public policy goals before Congress and agencies.
  - Counseled corporate, trade association, and non-profit clients regarding the Lobbying Disclosure Act, the Federal Election Campaign Act, Congressional and Executive branches of the federal government, and state campaign finance laws.
- Nixon Peabody LLP, Washington, DC** 2011–2017  
*Counsel – Regulatory & Government Relations Group*
- Created and implemented government relations strategic plans on issues including international trade, tax reform, affordable housing, regulatory rulemaking, and education for a range of firm clients.
- United States Senate, Washington, DC** 2006–2011  
*Legislative Director and Chief Counsel – Senator George V. Voinovich (OH)*
- Led policy team advising Senator Voinovich on all legislation before the Senate.
  - Oversaw office ethics program including advice to Senator Voinovich and his staff.
- General Counsel – Homeland Security and Governmental Affairs, OGM Subcommittee*
- Formulated legislative initiatives regarding intellectual property, trade, immigration, workforce development, antitrust, economic development, judicial, and ethics issues.
  - Served as the attorney-advisor to the Chairman of the Senate Select Committee on Ethics, including developing his strategy regarding the Honest Leadership and Open Government Act.

**Freshfields Bruckhaus Deringer, Washington, DC** 2002–2005  
*Associate – Antitrust and Competition Team*

- Advised clients regarding competition issues arising under Sections 1 & 2 of the Sherman Antitrust Act and Section 7 of the Clayton Antitrust Act as applied to mergers, acquisitions, joint ventures, and other business combinations, as well as criminal antitrust investigations.

**Hunton & Williams LLP, Washington, DC** 1999–2002  
*Associate – Litigation, Intellectual Property, and Antitrust Team*

- Advised clients, with an emphasis on regulated industries in energy and telecommunications industries regarding competition and merger issues before federal agencies, including the Federal Trade Commission, DOJ Antitrust Division, the Federal Communications Commission, the Federal Energy Regulatory Commission, the Court of Appeals for District of Columbia Circuit, and AAA arbitrations.

#### EDUCATION

*The College of William and Mary, Williamsburg, Virginia, Juris Doctor*  
*Ohio University, Athens, Ohio, M.A., Economics; B.A., Summa Cum Laude*

#### BAR ADMISSIONS AND SECURITY CLEARANCE

District of Columbia Bar (active) and Maryland (inactive).  
Top Secret and Q security clearances.

#### SELECTED PROFESSIONALLY-RELATED & PUBLIC SERVICE ACTIVITIES

- Served as pro bono counsel to the College of William and Mary School of Law, Lewis B. Puller, Jr. Veterans Benefits Clinic, the National Law School Veterans Clinic Consortium, and the Junior League of Washington.
- D.C. Bar – Board on Professional Responsibility, Lawyer Alternate

## Latest Ukraine-Related Sanctions Likely Won't Be The Last

(March 18, 2014, 9:55 PM EDT)

On March 17, President Barack Obama imposed the next set of what is likely to be a series of sanctions in response to the Russia-Ukraine crisis. These sanctions, coming a day after the U.S. and the European Union rejected the results of Crimea's referendum to secede from Ukraine and join Russia, are targeted at Russian and Ukrainian officials believed to be responsible for the escalation of the crisis.



Alexandra Lopez-Casero

The new executive order issued by the president "expands upon" the Ukraine-related sanctions that the president issued on March 6. The March 6 executive order did not name specific individuals, but laid the ground for targeted sanctions by declaring a national emergency with respect to Ukraine.

The new executive order sanctions 11 Russian and Ukrainian officials by blocking their properties and assets that are in the U.S., or come within the possession or control of any U.S. person. The named individuals include former Ukrainian President Viktor Yanukovich, Russian presidential aides and advisers, State Duma officials and Crimea-based separatist leaders. The Office of Foreign Assets Control of the U.S. Department of the Treasury added these individuals to its specially designated nationals (SDN) list on March 17.

One telling fact is that Russian President Vladimir Putin's name is missing from this list. U.S. officials have stated that it would be "extraordinary" for them to target a head of state with sanctions. It is clear, however, that the sanctions are intended to send a message to President Putin as they include several of his closest advisers, including Vladislav Surkov, who has been called "Putin's Rasputin."

Specifically, the new executive order blocks all property that is in the U.S. or comes within the possession or control of any U.S. person (including foreign branches) of:

- The 11 Russian and Ukrainian officials named in its annex; and
- Anyone determined by the Secretary of the Treasury, in consultation with the Secretary of State:
  - to be a Russian official;
  - to operate in the arms or related material sector in Russia;
  - to be owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, a senior Russian official or a person whose property has been blocked by the new executive order; and
  - to have materially assisted, sponsored or provided financial, material or technological support for, or goods or services to or in support of, a senior Russian official or a person whose property has been blocked by the new executive order.

The new executive order also prohibits:

- transferring, paying, exporting, withdrawing or otherwise dealing in any blocked property;
- providing any funds, goods or services to, or for the benefit of, any person whose property and interests in property are blocked pursuant to the new executive order;

- making any donations by, to or for the benefit of, any person whose property and interests in property are blocked pursuant to the new executive order; and
- receiving any contribution or provision of funds, goods or services from such persons.

The new executive order also imposes a U.S. travel ban on sanctioned persons by denying immigrant and nonimmigrant entry into the U.S.

According to a written fact sheet issued by the White House, the administration "fashioned these sanctions to impose costs on named individuals who wield influence in the Russian government and those responsible for the deteriorating situation in Ukraine. We stand ready to use these authorities in a direct and targeted fashion as events warrant."

Moreover, the fact sheet states that "[t]he United States also will seek to hold accountable individuals who use their resources or influence to support or act on behalf of senior Russian government officials. We recognize that the Russian leadership derives significant support from, and takes action through, individuals who do not themselves serve in any official capacity [italics added]. Our current focus is to identify these individuals and target their personal assets, but not companies that they may manage on behalf of the Russian state."

This should serve as a warning to individuals, particularly wealthy Russian political and business leaders, who have supported senior Russian government officials.

What does this mean for U.S. companies? For now, U.S. companies, particularly U.S. exporters, financial institutions, technology firms, retailers, hotel chains and other service providers, including their foreign branches and affiliates (especially near Russia, Ukraine, London or other EU locations with significant Russian investment), should continue to screen carefully all persons with which they do business against the U.S. lists, adhere to sound compliance practices, and carefully monitor the ongoing developments in the region.

If additional persons are sanctioned by the U.S. government, they will generally be listed on a U.S. designated persons lists, such as the SDN list. Based on the action by the president and the current situation in the region, it seems likely that additional Russian and Crimean-based officials and potentially also business leaders will be sanctioned by the United States. Even if it is unlikely that such individuals have property in the United States or at a U.S. financial institution (including at foreign branches), being added to a U.S. list would have repercussions beyond the U.S.

Most multinational companies, and many companies in Europe and other Western-leaning countries, screen their customers and business parties not only against their regional (for example, EU) prohibited persons lists, but generally also against the U.S. lists. If an individual or an entity is on a list, businesses that screen their customers are unlikely to sell to, or otherwise do business with, that individual or entity.

Being placed on a U.S. list could particularly have repercussions for wealthy Russian political or business leaders. If put on a list, they could find themselves shunned from the U.S. financial system (including U.S. correspondent banks) or shut out of U.S. and Western luxury chains, hotels or coveted global brands that seek to comply with the U.S. sanctions laws. They could also be affected by the U.S. travel ban.

Moreover, in addition to U.S. actions, on March 17 European foreign ministers imposed EU-wide sanctions against 21 Russian and Ukrainian officials.

In addition to the president's issuance of the new executive order, the U.S. House of Representatives passed legislation that allows for \$1 billion in loan guarantees for Ukraine. On March 13, by a vote of 14 to 3, the Senate Foreign Relations Committee approved The Support for the Sovereignty, Integrity, Democracy and Economic Stability of Ukraine Act of 2014.

While the House legislation was limited to providing Ukraine loan guarantees, the Senate legislation includes additional assistance, including asset recovery linked to corruption, technical assistance from the Financial Crimes Enforcement Network, security cooperation, authorization for sanctions against individuals — including Russian Federation officials — and certain reforms to the International

Monetary Fund.

The Senate tried to clear the legislation on March 13, before the start of a recess period; however, objections to including the IMF language and the desire to amend the bill resulted in the legislation failing to pass the Senate via unanimous consent. Nevertheless, when the Senate returns on March 24, particularly after the Crimean vote, Congress is expected to eventually pass an aid package and sanctions bill.

—By Alexandra Lopez-Casero, D. Grayson Yeargin and Douglas Dziak, Nixon Peabody LLP

*Alexandra Lopez-Casero is counsel, Grayson Yeargin is a partner and Douglas Dziak is counsel in Nixon Peabody's Washington, D.C., office.*

*The opinions expressed are those of the author(s) and do not necessarily reflect the views of the firm, its clients, or Portfolio Media Inc., or any of its or their respective affiliates. This article is for general information purposes and is not intended to be and should not be taken as legal advice.*



PREPARED BY:  
HON. THOMAS M. REYNOLDS, DOUGLAS DZIAK,  
SALLY VASTOLA AND JODI RICHARDSON



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## THE ELECTION IS OVER. NOW WHAT?

In what has been described using a variety of adjectives, on November 8, Donald J. Trump was elected to serve as the 45<sup>th</sup> President of the United States. Given the outcome of the election combined with its surprising conclusions, the 2016 election is likely to be studied in political science classes for years to come.

Beyond this headline was the news that for the first time since 2004, post-election, the Legislative and Executive branches of government will be under the control of Republican leadership. With the start of any new administration comes a change in control among the Departments and agencies in government. While every new administration results in change, given President-elect Trump's lack of elected service, what his Administration will do, and who will be elevated to serve at the senior levels in the Trump administration are important questions. The answers to these questions will provide direction about what to expect over the course of the next four years.

This briefing is designed to describe what issues are likely to be priorities for the Trump Administration as well as an early look at the leaders President-elect Trump will appoint and work with in Congress to effect these priorities.

### Likely issues in the first six months

#### 1. FUNDING THE GOVERNMENT

While garnering much less attention than other campaign issues, the stop-gap fiscal year 2017 (FY17) funding bill expires on December 9. Typically, a new administration and Congress would want these issues resolved prior to the January 20 inauguration. However, in this instance, a number of Republican members have suggested that Congress pass another continuing resolution (CR) that would run through March or April. Recently, House Appropriations Chairman Hal Rogers has stated that the committee will work on a CR through March 31, yet Senate Democrats have also indicated a preference to complete the federal spending bills before the end of this Congress.

*BOTTOM LINE: As Congress returns to Washington in late November and early December, and the new Trump administration has an opportunity to weigh in with congressional leadership, the fate of the FY17 appropriations bills will be determined.*



## 2. TAX REFORM

One of the key agenda items for President-elect Trump and congressional leaders is tax reform.<sup>1</sup> Speaker of the House Paul Ryan has already released an outline of the House's tax plan that provides a high-level outline of how it would accomplish such a plan.<sup>2</sup> Senate Majority Leader McConnell has also expressed interest in passing tax reform. Thus, while tax reform has been something often discussed, yet rarely moved on, one-party control of the Legislative and Executive branch of government makes the chances of accomplishing such legislation much higher. One wildcard is whether Republican lawmakers want to pass such legislation alone, without any Democratic support, something that is possible using a process known as reconciliation,<sup>3</sup> or if they will want to enlist Democratic support for such legislation. Such support might be tied to the infrastructure legislation that President-elect Trump has promised, though such legislation has been met with some skepticism among some Republicans.<sup>4</sup>

President-elect Trump and the House Republicans have proposed different tax plans, but both share similar principles. Both budgets would reduce the top tax rate for individuals to 33% from the current 39.6%, and reduce the top corporate rate to 15% (Trump) to 20% (House) versus the current top corporate rate of 35%.

*BOTTOM LINE: Given that so many Republicans and the President-elect have campaigned for and promised tax reform, it is likely that such reforms will be a significant part of six to twelve months of the new Trump administration. The most significant question is how much the new Trump administration decides to negotiate with Democratic members.*

## 3. IMMIGRATION ISSUES/BORDER CONTROL

President-elect Trump made border control and immigration a cornerstone of his campaign, including his repeated promise that he would build a wall on the U.S. southern border. While some in Congress share his views on border enforcement and immigration, congressional views on immigration have varied over the years. Thus, it is not clear that President Trump will have the support he needs to enact all of his promised plans. For example, in the past, Congress had already allocated significant resources to build a border wall, but logistical and engineering issues hindered its completion. These prior efforts required significant spending, and for President Trump to complete them, he will need cooperation from Congress.

Still, President Trump is likely to rescind or scale back President Obama's immigration relief programs, such as the Deferred Action for Childhood Arrivals (DACA) and step up internal enforcement to remove current undocumented aliens. He could also see greater interest in a

<sup>1</sup> [https://assets.donaldjtrump.com/\\_landings/contract/O-TRU-102316-Contractv02.pdf](https://assets.donaldjtrump.com/_landings/contract/O-TRU-102316-Contractv02.pdf).

<sup>2</sup> <http://abetterway.speaker.gov/>.

<sup>3</sup> A part of the budget process, reconciliation would permit the Senate to get around its normal procedural requirements to obtain 60 votes for any bill to completion.  
<http://www.politico.com/story/2016/10/paul-ryan-budget-congress-229216>.

<sup>4</sup> <http://www.npr.org/2016/11/09/501451368/here-is-what-donald-trump-wants-to-do-in-his-first-100-days>.

mandatory employee verification system, though such systems have been discussed in the past and have been problematic.

President-elect Trump included ending funding to so-called sanctuary cities in his pre-election commitments, and while this was vague, there has been support in Congress to limit spending to such cities in the past. In addition, given President-elect Trump's stated commitment to immigration reform, we expect to see increasing funding for the Department of Homeland Security and the Department of Justice to effect this commitment.

*BOTTOM LINE: Given that President-elect Trump campaigned so strongly on border control and immigration reform, it is likely that he will focus considerable resources on immigration enforcement and perhaps build a wall across the U.S. southern border and increase internal enforcement and removal. Moreover, it is likely that President Trump will reverse many of the immigration programs, like DACA, President Obama instituted, and he may seek to implement a more stringent employment verification system.*

#### 4. INFRASTRUCTURE

President-elect Trump has long spoken about the need to focus on U.S. infrastructure. During his victory speech early Wednesday morning, he said, "We are going to fix our inner cities and rebuild our highways, bridges, tunnels, airports, schools, hospitals," Trump said. "We're going to rebuild our infrastructure—which will become, by the way, second to none—and we will put millions of our people to work as we rebuild it."

Nevertheless, Senate Majority Leader McConnell, as well as some conservative groups, expressed skepticism toward a significant national infrastructure plan.<sup>5</sup> Still, infrastructure is one area where the new administration could find bipartisan support given the continued issues facing U.S. infrastructure, which has been graded to be in poor condition.<sup>6</sup>

*BOTTOM LINE: Given the bipartisan support for infrastructure, and depending on President Trump's commitment to it, a robust infrastructure bill is possible, though if it is to be bipartisan, such legislation will be more complex than some of his other agenda items.*

#### 5. REFORM OF THE AFFORDABLE CARE ACT

Given that President-elect Trump and the Republican Congressional leadership have proclaimed a desire to repeal and replace the Affordable Care Act (ACA), it is likely that most, if not all, of the ACA will be repealed or significantly altered.

Still, President-elect Trump has indicated that he may be open to keeping some ACA provisions, such as allowing children to stay on their parents' insurance until the age of 26 and guaranteeing coverage for pre-existing conditions. It is likely that the repeal and replace effort will take longer

<sup>5</sup> <http://www.npr.org/2016/11/09/501451368/here-is-what-donald-trump-wants-to-do-in-his-first-100-days>.

<sup>6</sup> <http://www.infrastructurereportcard.org/>.



than anticipated. Congressional leaders have discussed using a budget tool, known as reconciliation, as the means to repeal/amend the ACA. The use of the reconciliation tool, by its nature and statutory limitations, will limit how much of the ACA can be repealed or changed without bipartisan support.

In addition, the health care community has undertaken significant investment and training to implement the ACA; it will take time to unwind these changes and implement any new system, and feedback from these stakeholders will affect the final product.

*BOTTOM LINE: Change is coming to the ACA, but that change, necessary to both develop the new system as well as transition from the old, will take time. Engaging in discussions with stakeholders is the key to having one's voice heard and being a part of this change*

#### 6. REGULATORY REFORM

President Trump will have significant opportunities to change and eliminate many of the regulations President Obama put in place. In particular, President-elect Trump has stated on numerous occasions that he will reverse Obama administration regulations regarding immigration and energy. Most of these efforts will not require Congressional action. The country may start to see some of these changes in the earliest days of the new administration when President Trump reverses, as he has repeatedly promised, President Obama's executive orders. Other regulatory changes, undertaken through the rulemaking process, may take longer as the departments and agencies comply with the Administrative Procedures Act and its requirements.

It is also important to keep in mind that Congress may use its authority under the Congressional Review Act (CRA), which was enacted in 1996 and requires all final rules be submitted to both houses of Congress and the Government Accountability Office (GAO) before they can take effect. Congress has 60 days to introduce a joint resolution of disapproval. While the President would normally veto such a resolution, given the administration promulgated the rule, the CRA combined with a change in administrations (in this instance the Obama to Trump administration) provides an opportunity for Congress to assert its authority under the CRA with a degree of expected success. A Congressional Research Service note has suggested that any new rules finalized after May 16, 2016, could be reversed under the CRA, depending on the length of the Congress's lame duck session.<sup>7</sup>

*BOTTOM LINE: Significant regulatory changes are likely under the Trump administration and the new Congress. The depth and breadth of those changes will take time, but the individuals who are named to cabinet and other positions in the new administration will play a key role as these regulatory changes are made. In addition, Congress may assert its authority under the CRA and also work to reverse some of the Obama administration's recent rulemakings.*

<sup>7</sup> See <http://src.bna.com/cAk>



## 7. THE SUPREME COURT

The death of Justice Antonin Scalia has left an opening on the U.S. Supreme Court. Senate Majority Leader McConnell has indicated since Justice Scalia's death that he would wait to hold hearings until the new President was sworn in. President Trump will now have his opportunity to nominate Justice Scalia's replacement, and possibly, others should any justices decide to retire.

This potential shifting of the Supreme Court could provide a longer-lasting legacy than any particular legislation, yet the country will not see that potential possibly for years to come.

*BOTTOM LINE: Candidate Trump published a number of judges that he indicated he would select from for the Court. That list can be found here: <https://www.donaldjtrump.com/press-releases/donald-j-trump-adds-to-list-of-potential-supreme-court-justice-picks>. President Trump is expected to nominate a new justice relatively early, but the Supreme Court is likely to remain in its current 8 justice make-up for the next several months as the nominee works through the process, competing against legislative and other nominations for time on the Senate's calendar.*

## 8. ENERGY

President-elect Trump has repeatedly stated that he will lift any of President Obama's executive orders and regulatory rules that restrict domestic energy production. Moreover, with Republicans retaining control of both houses of Congress, he is likely to be working with a Congress that agrees with his views. Based on the public release of information about his transition, it appears he will take a significantly different view on domestic energy than President Obama. In particular, the use of coal, nuclear, and natural gas are likely to receive a much more favorable audience versus renewables under the Trump administration. This point of view is likely to be reflected in President Trump's review of existing Obama administration executive orders and regulatory rules.

While President-elect Trump has stated his interest in such administrative changes, it is less clear what Congress can agree on in the first six months of the administration. In particular, if legislative changes are proposed, President Trump will need to work with Congress, and in particular the Senate, to obtain the necessary bipartisan legislation to make such changes.

*BOTTOM LINE: Given President-elect Trump's statements about increasing traditional domestic energy sources, we believe that these areas of energy are likely to see a more favorable regulatory environment, while renewable energy will likely see a less favorable environment.*

## The Cabinet

In the next few days and weeks, President-elect Trump will name individuals to serve in his cabinet. These individuals will assist the new President in effecting change at the Department and agency level. Moreover, over 4,000 presidential appointments will be made in the days and months ahead, and many of those will affect significant constituencies.

President-elect Trump's selection of the Republican National Committee (RNC) Chairman, Reince Priebus, as his Chief of Staff and Steve Bannon as a chief strategist and senior counselor suggests that he will continue to rely on the same team that helped him win the election. Mr. Priebus, as the RNC chair also brings experience in dealing with members of the House and Senate as well as a grass-roots network that will assist President Trump in navigating Washington.



In addition to these picks, a number of individuals have been floated as members of the Trump cabinet, including various members of Congress and “outsiders.” The cabinet positions will start to be filled over the course of the next several weeks.

#### The Congress

In addition to the new administration, congressional leadership will also see changes. Here is what we expect to see in the House and Senate:

##### 1. SENATE LEADERSHIP

**REPUBLICAN**—Senator Mitch McConnell is expected to remain the Senate Majority Leader. In addition we expect to see Senators John Cornyn continue as Senate Republican Whip, John Thune as Senate Republican Conference Chairman, John Barrasso as Senate Republican Policy Chairman, and Roy Blunt as Senate Republican Vice Conference Chairman. A new National Republican Senatorial Committee Chairman will be selected to replace Chairman Roger Wicker.

**DEMOCRATIC**—Senator Harry Reid, the current Minority Leader, will retire after this Congress and Senator Charles Schumer will replace him in that role. Senator Dick Durbin will serve as the Minority Whip, Senator Patty Murray as Assistant Democratic Leader, Senator Debbie Stabenow as the Chair of the Democratic Policy and Communications Committee, Senators Elizabeth Warren, and Mark Warner as Vice Chairs of the Conference, Senator Bernie Sanders as Chair of Outreach, Senator Joe Manchin will serve as Vice Chair of the Policy and Communications Committee and Senator Tammy Baldwin as Conference Secretary. Senator Jon Tester, who is in cycle in 2018, is not expected to continue as the Chair of the Democratic Senatorial Campaign Committee.

##### 2. HOUSE LEADERSHIP

**REPUBLICAN**—Rep. Paul Ryan was re-elected as the Speaker of the House. In addition, Majority Leader Kevin McCarthy, Majority Whip Steve Scalise, and Republican Conference Chairman McMorris Rodgers were also re-elected to continue their roles. Rep. Steve Stivers was elected to chair the National Republican Campaign Committee.

**DEMOCRATIC**—While Rep. Nancy Pelosi had been expected to continue as the Democratic Leader, with her team of Democratic Whip Steny Hoyer and Assistant Democratic Leader James Clyburn, there is no guarantee. Democratic leaders postponed leadership elections, at the request of some Democratic members, from November 15th to November 30th. This delay could give candidates time to mount an election challenge to the Democratic leadership team, an outcome that bears monitoring.

#### Congressional committees

##### 1. THE U.S. SENATE

**AGING**: Senator Susan Collins is expected to remain as the Chair. Senator Bob Casey is expected to replace Senator Claire McCaskill, who is expected to take over Homeland Security and Governmental Affairs, as Ranking Member.

**AGRICULTURE**: Senators Pat Roberts and Debbie Stabenow are expected to remain as the Chair and Ranking Member of the committee.



**ARMED SERVICES:** Senators John McCain and Jack Reed are expected to remain as the Chair and Ranking Member of the committee.

**APPROPRIATIONS:** Senator Thad Cochran is expected to remain as the Chair; Senator Patrick Leahy is expected to replace retiring Senator Barbara Mikulski as the Ranking Member of the committee.

**SENATE COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS:** Senator Mike Crapo is expected to replace Senator Richard Shelby, who is term limited, as the Chair. Senator Sherrod Brown is expected to continue as the Ranking Member.

**SENATE BUDGET COMMITTEE:** Senators Mike Enzi and Bernie Sanders are expected to remain as the Chair and Ranking Member of the committee.

**COMMERCE COMMITTEE:** Senators John Thune and Bill Nelson are expected to remain as the Chair and Ranking Member of the committee.

**ENERGY AND NATURAL RESOURCES:** Senators Lisa Murkowski and Maria Cantwell are expected to remain as the Chair and Ranking Member of the committee.

**ENVIRONMENT AND PUBLIC WORKS:** The current chair and ranking member will not return. The next EPW Chair is likely Senator John Barrasso. Shelley Moore Capito could become chair if Senator Barrasso passes on the opportunity. The Ranking Member is likely to be Senator Tom Carper.

**SENATE FINANCE COMMITTEE:** Senators Orrin Hatch and Ron Wyden are expected to continue in their roles as chair and ranking member.

**SENATE FOREIGN RELATIONS COMMITTEE:** Senators Bob Corker and Ben Cardin are expected to continue in their roles as chair and ranking member.

**SENATE HEALTH, EDUCATION, LABOR & PENSIONS:** Senators Lamar Alexander and Patty Murray are expected to remain as the Chair and Ranking Member.

**SENATE HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS COMMITTEE:** Senator Ron Johnson is expected to continue as the Chair. Current Ranking Member, Tom Carper, is likely to claim the Ranking Member position on the EPW committee, in which case Senator Claire McCaskill would likely become the Ranking Member.

**INDIAN AFFAIRS COMMITTEE:** Senator John Barrasso could take the EPW Chair. If so, Senator John Hoeven could take the chair. Senator Jon Tester is expected to remain as Ranking Member of the committee.

**INTELLIGENCE COMMITTEE:** Senator Richard Burr is expected to remain as the Chair, while Senator Mark Warner may serve as the new Ranking Member, replacing Senator Dianne Feinstein who moves to Judiciary.

**JUDICIARY COMMITTEE:** Senator Charles Grassley is expected to remain as the Chair. Senator Dianne Feinstein will serve as Ranking Member.

**RULES AND ADMINISTRATION:** Senator Roy Blunt is expected to remain the Chair, while Amy Klobuchar will serve as Ranking Member.

**SMALL BUSINESS AND ENTREPRENEURSHIP:** Senator James Risch is in line to succeed retiring Chair David Vitter. If Senator Risch took another Chair, then Senator Mark Rubio would be in line to chair this committee. Senator Jeanne Shaheen is expected to remain as Ranking Member.



VETERANS AFFAIRS: Senators Johnny Isakson and Richard Blumenthal are expected to remain as the Chair and Ranking member.

## 2. THE U.S. HOUSE OF REPRESENTATIVES

APPROPRIATIONS: Reps. Rodney Frelinghuysen or Robert Aderholt are expected to serve as Chair; Rep. Nita Lowey is expected to continue to serve as the Ranking Member.

ARMED SERVICES: Reps. Mac Thornberry and Adam Smith are expected to continue as Chair and Ranking Member.

BUDGET COMMITTEE: Rep. David Price is expected to remain as the Chair, while Rep. John Yarmuth is likely to take over as Ranking Member.

EDUCATION AND WORKFORCE: Rep. Virginia Foxx is expected to take over for John Kline, while Rep. Bobby Scott is expected to continue to serve as the Ranking Member.

ENERGY AND COMMERCE: Reps. John Shimkus or Greg Walden are expected to become the Chair, while Rep. Frank Pallone is expected to remain as Ranking Member.

FINANCIAL SERVICES: Reps. Jeb Hensarling and Maxine Waters are expected to continue as Chair and Ranking Member.

FOREIGN AFFAIRS: Reps. Ed Royce and Eliot Engel are expected to continue as Chair and Ranking Member.

JUDICIARY: Reps. Bob Goodlatte and John Conyers are expected to continue as Chair and Ranking Member.

NATURAL RESOURCES: Reps. Rob Bishop and Raul Grijalva are expected to continue as Chair and Ranking Member.

RULES: Reps. Pete Sessions and Louise Slaughter are expected to continue as Chair and Ranking Member.

TRANSPORTATION AND INFRASTRUCTURE: Rep. Bill Shuster is expected to remain as Chair and Rep. Pete DeFazio is expected to remain as Ranking Member.

VETERANS AFFAIRS: Reps. Phil Roe, Gus Bilirakis, Doug Lamborn and Mike Coffman are expected to contend for the Chair, while Reps. Mark Takano and Tim Walz will contend for the Ranking Member position.

WAYS AND MEANS: Reps. Kevin Brady and Sandy Levin are expected to continue as Chair and Ranking Member.

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GOVERNMENT RELATIONS ALERT | NIXON PEABODY LLP

APRIL 18, 2016



NP

## The Miscellaneous Tariff Bill: if your company produces in the U.S., cost saving may be coming your way

By Douglas Dziak

If you are a U.S. producer of goods that imports component parts for your finished product, in the past your company enjoyed tax relief every two years (or so) when Congress would pass tariff relief legislation. Since it last expired in 2012, the Miscellaneous Tariff Bill (MTB), a compilation of individual tariff suspension bills that are functionally a short-term manufacturing tax cut, has been stuck in legislative limbo because the underlying legislation making up the MTB, even though it was not automatically a specific benefit to a specific company, was deemed to violate the earmark ban, which Congress enacted in 2011.

For the past several years, Members in both the House and Senate, on a bipartisan basis, have been working to find relief for these domestic producers, and it finally appears relief has arrived. On April 13, the U.S. House Committee on Ways and Means and the U.S. Senate Finance Committee released legislation that would create a new MTB process and allow the import relief that many producers relied upon to begin again.<sup>1</sup>

For industries ranging from agriculture to technology and everything in between, such legislation will be welcome tax relief. Congress last passed MTB legislation in 2010, and those provisions expired in 2012, subjecting American producers to increased input costs that many of their foreign competitors did not face.

The American Manufacturing Competitiveness Act of 2016 will create a reformed MTB process that would keep many of the features of prior generations of MTB legislation. Included in these features is the following test: (1) Are there any domestic producer objections? (2) Is the revenue loss for a specific duty reduction no more than \$500,000 annually? and (3) Is the suspension available to any importer? The new process would begin with petitions to the U.S. International

<sup>1</sup> See <http://www.finance.senate.gov/imo/media/doc/American%20Manufacturing%20Competitiveness%20Act%20.pdf> and <http://waysandmeans.house.gov/wp-content/uploads/2016/04/AmericanManufacturingCompetitivenessAct.pdf>

Trade Commission (ITC). In the past, domestic producers would work through a Member of Congress to get their product included in the MTB. The ITC would then conduct an analysis, similar to prior MTB bills, to confirm there is no domestic production, and to ensure the appropriate tariff headings and other technical issues are addressed. The ITC would then issue a public report to Congress discussing and recommending products that meet the test described above.

#### **Why the need?**

There are two significant drivers for reforming the MTB process:

1. Congress last enacted legislation to address these taxes in 2010, and since 2012, U.S. producers, facing significant global competition, have been paying an estimated \$748 million tariff to produce in the United States; and
2. MTBs were traditionally non-controversial; they were a method to help domestic producers of all sizes and across a range of industries that might otherwise move production abroad, while maintaining U.S. bargaining power in future trade negotiations. Given the growing concern about domestic production being moved abroad, this legislation is designed to provide incentives to keep domestic production.

#### **What are the potential changes and what do they mean for my business?**

We believe the legislation will move a new round of MTB legislation forward, providing significant tariff relief to a range of U.S. producers. If passed, users of the products that could receive tariff relief will need to monitor a new process and ensure that they meet the deadlines and application criteria included in the new process. These changes will require monitoring of the Congress, the U.S. International Trade Commission and the U.S. Department of Commerce processes.

#### **How can NP's GR team help?**

Our team has deep bipartisan relationships in Congress with the tax and trade committees and has the requisite experience with the agencies involved in the new MTB process to provide your company with the assistance it needs to take advantage of this new process.

The NP Government Relations and Public Policy team is led by the Hon. Thomas M. Reynolds, who served as a senior member of the House Ways and Means Committee, and served on the Ways and Means Trade subcommittee. While serving on the subcommittee Congressman Reynolds authored and passed several MTB bills into law. Our team also includes Douglas Dziak who drafted numerous MTB bills that were enacted into law during his time working in the U.S. Senate and has worked on matters before the U.S. International Trade Commission in his legal practice. Our team knows the old MTB process, as well as how these proposed changes will create new opportunities for significant cost savings for specific companies.

Let us work with you to answer questions about how MTB legislation might affect your company.

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GOVERNMENT RELATIONS ALERT | NIXON PEABODY LLP

SEPTEMBER 22, 2015



## NP What does “international tax reform” mean to your business? NP’s Government Relations team can help you find out.

By Hon. Thomas M. Reynolds, Sally Vastola and Douglas Dziak

Leaders from the U.S. House of Representatives Ways and Means Committee and the U.S. Senate Finance Committee are increasingly writing about the importance of international tax reform to protecting U.S. jobs and bolstering the nation’s economy. And there’s a growing consensus among the business community and Congress that this reform can’t wait any longer. Recently, Senators Chuck Schumer (D-NY) and Rob Portman (R-OH) have drafted a bipartisan framework—one that we think is jumpstarting the reform process.

### What’s driving international tax reform?

- A U.S. tax code that encourages U.S. companies to move jobs and investments overseas.
- A need to finance government priorities, such as a much needed long-term infrastructure bill.

### How could international tax reform legislation like the Portman-Schumer framework affect my business?

**Deemed repatriation.** This may have significant tax consequences on your company’s earnings currently held or invested outside of the U.S.

**Issue:** Appropriate discounted repatriation rate, foreign tax credit treatment, and what is covered.

**Innovation box regime.** This would provide a substantially lower tax rate for intellectual property (IP). Legislation drafted by House Ways and Means Committee Members Charles Boustany (R-LA) and Richard Neal (D-MA) suggests a tax rate of 10% for IP as opposed to the 35% general corporate rate.

**Issue:** Given upcoming changes to OECD tax rules, without the innovation box, there will be greater pressures for U.S. companies to move R&D to countries with more favorable tax regimes, potentially costing jobs and U.S. innovation advantage.

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**Potential consequences of the Portman-Schumer framework**

- Repatriation may not be optional for your company and result in unknown, significant tax consequences.
- Repatriated funds could be used “for investments in transportation infrastructure,” make certain tax extenders permanent, or lower tax rates.

**Why us?**

- We can help you identify significant and impactful issues early on and develop sound government relations strategies addressing them.
- Our team has bipartisan relationships in Congress with tax writing, transportation, and judiciary (IP jurisdiction) committees.
- We draw on the experience of a former member of Congress, who was a senior member of the House Ways and Means Committee, a Chief of Staff, a Legislative Director, as well as other congressional staffers.

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The CHAIR. Thank you, Mr. Dziak, and thank you—that is a very wonderful statement about both your parents and about your wife, thank you so much. We will now go to questions. Five minute rounds. We have got a lot of members here, so it shows you the importance of these various agencies to the members of the Senate.

So, hopefully everybody will keep within the 5-minutes. I am going to go pretty fast because I have lots of questions I want to ask, but I want to start with a 13(b) authority that is so important to getting consumers refunds.

Do you, each of you on the FTC nominations, do you support re-establishing 13(b) in—without limitations, or could you, if you believe in limitations, explain what limitations that you think we need?

Ms. SLAUGHTER. Yes. The 13(b) authority is critical for our ability to help injured consumers be whole, so I strongly support restoring it.

The CHAIR. Mr. Ferguson.

Mr. FERGUSON. I agree with Commissioner Slaughter. This is a critical—that what they thought was the 13(b) authority was a critical component of the FTC's enforcement toolkit, and I support restoring something that looks very much like it.

Ms. HOLYOAK. And I agree. Before the AMG case, the decade before that, the FTC recovered \$10 billion for consumers. It is a very important tool for enforcers.

The CHAIR. So, and you believe that it should be similar to what is the authority they had. You wouldn't want to see a standard set so high that the FTC could never get disgorgement for consumers?

Ms. SLAUGHTER. That is correct.

Mr. FERGUSON. I certainly wouldn't want a standard so high it never gets disgorgement, although, of course, the appropriate balance to strike here is Congress's call.

Ms. HOLYOAK. Yes, I agree with that. And I think, I know that Congress is working hard with that, and I am happy to continue that dialog with you to ensure that that authority is restored.

The CHAIR. Well, I would just say that—likely, if you are successful in your nominations, I guarantee you we will be back to this very specific question. And so, we are trying to get an intent here, and I think I have it.

But look, consumers deserve to get these refunds without great hampering, and I think that is really important. So, if anybody has anything else to say on that?

[No response.]

The CHAIR. OK. PBMs. You know, I think that in this information age, where people can use information and data and do all sorts of interesting things that are deleterious, we want to see a strong FTC use their enforcement capabilities. On PBMs, do you support the FTC playing a more aggressive role here?

Ms. SLAUGHTER. Yes.

Mr. FERGUSON. The PBM market is very complicated. I really look forward to the results of the 6(b) study that the FTC is conducting, and, you know, I think it would be very important that whatever the FTC does in this space is, A, based on what the 6(b) study reveals, and be consistent with its existing authority, or whatever additional authority Congress confers.

The CHAIR. Do you think that applying the unfair and deceptive practices to PBMs is a key issue for the FTC?

Mr. FERGUSON. I certainly think that if the 6(b) study reveals that PBMs are engaged in unfair and deceptive acts or practices, the FTC should act. Health care costs have gotten higher and higher and higher over the last 15 years.

They are rapidly outstripping inflation. If unfair and deceptive acts on the part of PBMs are contributing to that, I think the FTC should be acting. But I am really, really interested to see what the 6(b) study reveals.

The CHAIR. Or manipulative practices? I think Senator Grassley and I—probably have been working on this issue for a long time.

And I think, well I don't want to speak for Senator Grassley, but we have come to a conclusion on legislation that more specificity, giving the FTC direction, very specific direction on what are considered illegal acts.

If you would take for the record, looking at that legislation and give us feedback, if you think that those standards are standards that you think are important to enshrine into law. In the context of, again, the practices themselves, do you think that they are manipulative, or unfair, or deceptive?

Mr. FERGUSON. Absolutely. I have looked at the bill. I am more than happy to continue discussing that with you and your staff.

The CHAIR. Yes, I will ask for the record your thoughts on whether those kinds of things, being given to the FTC, do you think that meets that unfair, deceptive, or manipulative. OK. Ms. Holyoak.

Ms. HOLYOAK. Yes. This is an extremely important issue. Having access to affordable prescription drugs is an important issue for Americans. In the State of Utah's Solicitor General, we have recently sought to intervene in a class action relating to PBMs and these types of practices.

I am, like Mr. Ferguson mentioned, I do want to understand these issues better and talk to the experts with respect to that 6(b)—who are working on that 6(b) study, to understand these practices, and understand if we have the tools now to go after them.

I think there are both issues—there could be potential issues on the competition side, as well as the consumer protection side, and see what laws we have. And then, if confirmed, continue that dialog on your legislation.

The CHAIR. Thank you. Mr. Dziak, I am going to send to the record the Consumer Product Safety Act prevents disclosure of certain information to consumers without express permission from the company.

I think this is something the Commission has struggled with when you are trying to get important information like on strollers or elevators and things of that nature. Do you support reforming this provision? And so, we will take that for the record. Senator Cruz.

Senator CRUZ. Thank you, Madam Chair. Congratulations to each of the nominees. I have to say at the outset, all four of the nominees before us are qualified for the positions for which you have been nominated. Each of you has impressive professional credentials.

And I have to note, Commissioner Slaughter and General Holyoak, your children are absolutely precious and gorgeous. They are eight of the most fantastic children who have been in this hearing room. And I will say being married to Heidi Cruz, the mom of two girls, I respect both of you and the professional careers you have led while taking on the extraordinary challenging job of being a mom at the same time.

That is not easy, and you have a lot to be proud of. I also want to say to General Ferguson and General Holyoak, you are both serving as State Solicitors General. I might question your judgment and sanity for choosing to lose—leave one of the best jobs on planet Earth to join the FTC, but nonetheless, congratulations on the nomination and I look forward to your serving honorably there.

Commissioner Slaughter, I want to continue a conversation that you and I had earlier this week, and it is a conversation about what has been happening at the FTC. The FTC, I spent 2 years there. It is an institution I love. It is an institution with incredible men and women who are dedicated career professionals. It is a bipartisan institution. It is an institution that for decades has worked well and built a reputation for ethics and integrity.

And as you know, I am deeply concerned that in the last 2 years, that reputation has been damaged profoundly. Now, I would note these questions really should not be directed to you. Chair Khan, who is sitting in this hearing room today, has not testified before this committee since April 21st, 2021, her confirmation hearing. That is 882 days without a single oversight hearing.

So, this committee has not had the opportunity to question Chair Khan on what has been a disastrous tenure as Chair of the FTC. Since she is not at the witness table right now, although I hope she will be very soon, I am going to instead ask you about the conduct that has occurred under her watch, but under your watch as well.

And I recognize as a Commissioner, it is not easy to stand up to the Chairman of the Committee, particularly a Chairman of the same party that appointed you. As you know, in February, former FTC Commissioner Wilson wrote a *Wall Street Journal Op-Ed* in which she explained her decision to resign from the FTC.

One of the basis of that decision, she criticized your decision and Commissioner Bedoya's decision to heavily redact one of her dissents, which had highlighted the fact that Chairman Khan had ignored the recusal advice of the FTC's designated agency ethics official.

Unlike with other information, FTC information that is protected from disclosure by law, here, there is no statutory prohibition on Commissioner Wilson revealing the designated agency ethics official's advice in her dissent.

Yet the FTC majority, you and Commissioner Bedoya, imposed the redactions in voluntarily under the guise of protecting staff deliberations. I have to admit, I have never seen this happen before. I have never seen a dissent forcibly redacted. Now, since those redactions, the original dissent has been made public and is in the public domain.

And I want to compare the original dissent to what you voted to release. The original dissent said, and I quote, "here, the FTC ethics staff had strong reservations with Chair Khan participating in

an adjudication in this proceeding, where fairly recently before joining the Commission, she repeatedly called the FTC to block any further acquisition of Facebook.”

In the view of the FTC ethics staff, these statements would raise a question in the mind of a reasonable person about Chair Khan’s impartiality as an adjudicator in the Commission’s Meta Within Merger Review.

The FTC ethics staff therefore concluded that a reasonable person would question Chair Khan’s impartiality when serving as an adjudicator in “Meta Within.” Those are very serious allegations that the career staff advised the Chair that it was unethical of her to offer to participate in the proceeding. She disregarded that advice.

Acted as a deciding vote, nonetheless. And then when Commissioner Wilson sought to let the world know about it, you and your colleagues voted to release—on the right is what was released. That entire paragraph was blocked out.

Do you believe that the information that Commissioner Wilson was focusing on was relevant to the public allegations that the Chair was behaving unethically? And if so, do you think the Commission operated properly, hiding it from the American people, and demanding that it be redacted from the dissent?

Ms. SLAUGHTER. Thank you for the question, Senator. And I want to say thank you for your kind words about my family. I am incredibly proud of them. And I appreciate the opportunity to talk about this.

You are right that there is no statute that requires the protection of information prepared by staff for Commission deliberations, but there is a Commission rule. It was put in place by Chairman Jim Miller in the 1980s, and it says that staff deliberations cannot be made public, or information prepared by staff for Commission deliberations cannot be made public.

And it has been applied equally to Commissioners of both parties. So, Commissioners decide what to put in their opinions and dissent. I have never chosen to put, I don’t believe I have ever chosen to put information that would have to be redacted into opinions I have written, but I know my former colleague, Commissioner Chopra, did sometimes, and his opinions had to be redacted pursuant to Commission rules.

And I think the rules are there. We should follow them because they are there. But I also think they are there to protect something really important, which is candid advice from our staff. I rely on our staff to tell me what they think.

That is valuable when I end up agreeing with them. It is even more valuable if I don’t agree with them at the end of the day, and I want them to feel protected that they can give me that candid advice without being caught in between public debates and debates between Commissioners.

We are all free to adopt staff opinions as our own, to articulate our reasoning, and that is an important thing for us to do, because I do think we should be publicly accountable for the choices that we make. But I don’t think that we should be putting staff in the middle of those debates, and the Commission rules prohibit us from doing so.

Senator CRUZ. Well, I would point out that has not been the practice of the FTC in the past. And I would like to enter into the record two documents, one from 1999, a second from 2007, both of which are FTC public documents released to the public that describe the recommendations of a designated agency ethics official.

And the FTC has done that in the past. And in this instance, when the allegation is the Chair is behaving unethically, I think the Commission has an obligation to make those allegations public, and it explains a lot why the staff believes integrity has gone down so severely in the last two years. I would like to enter these in the record.

The CHAIR. Without objection.  
[The information referred to follows:]



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According to the DAEO, Mr. Parker is "authorized to participate as a Commission official in the Intel matter." DAEO Auth. at 1. The DAEO concluded: "A concern that your participation in the Intel matter would cause a reasonable person to question the integrity of the agency's actions seems spurious." DAEO Auth. at 4.<sup>2</sup>

On December 11, 1998, the DAEO requested advice from the Office of Government Ethics ("OGE") regarding Mr. Parker's continued participation in this matter. Letter from Christian White to Honorable Stephen D. Potts, Ex. D at 4. On January 13, 1999, OGE advised that it found "no reason to question [the DAEO's] authorization of Mr. Parker's participation in the Intel matter." Letter from Stephen Potts, Director OGE, to Christian White, DAEO, at 1 ("OGE letter," Ex. D).

The comments to the ABA Model Rules state that a disqualification motion "should be viewed with caution . . . for it can be misused as a technique for harassment." Model Rules of Professional Conduct Rule 1.7 cmt. 15. "Motions to disqualify opposing counsel are subject to strict judicial scrutiny because of the cost and inconvenience they may impose on the judicial system and the party whose attorney is disqualified. . . . Motions made on the eve of trial are subject to particular scrutiny because they may be a tactical move to disadvantage the other party." *Harker v. CIR*, 1994 Tax Ct. Memo LEXIS 598, \*28 (Dec. 1, 1994), *aff'd*, 82 F.3d 806 (8<sup>th</sup> Cir. 1996). In *Harker*, where the DOJ attorney had begun working on the case two months before trial, the court found that the filing of a disqualification motion two weeks before trial could be seen only as a "delay tactic." *Id.* Here Intel has known of Mr. Parker's participation for more than four months.

Intel argues that ABA Model Rule 1.11(c) supports disqualification. That rule is qualified, disallowing participation in certain cases "except as the law may otherwise expressly

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<sup>2</sup> The DAEO advised Mr. Parker to limit his interaction with AMD. DAEO Auth. at 4-5. To the extent AMD witnesses testify at trial in this matter, they will be prepared and put on the stand by attorneys other than Mr. Parker. Parker Decl. ¶ 8.

permit.<sup>3</sup> Here, Mr. Parker obtained express authorization as provided in the applicable federal law -- the Standards of Conduct -- and is therefore in full compliance with Rule 1.11(c).<sup>4</sup>

Moreover, Rule 1.11(c) is not controlling here. Although the Commission has on occasion looked to the ABA rules for guidance, the Commission has also consulted the District of Columbia Rules of Professional Conduct. Commission Rule 4.1(e)(1) provides that "all attorneys practicing before the Commission shall conform to the standards of ethical conduct required by the bars *of which the attorneys are members*" (emphasis added).

Mr. Parker is a member of the D.C. Bar, which has not adopted ABA Model Rule 1.11(c). Under D.C.'s Rules, Mr. Parker's participation is permitted.<sup>5</sup>

The District of Columbia's version of Model Rule 1.11 is important because it differs significantly from its ABA counterpart and because it probably governs more lawyers than any other non-federal rule. . . . *The rule does not provide prohibitions, as Model Rule 1.11 does, on lawyers moving from private to government employment, instead leaving this prohibition to Model Rule 1.7, which protects against lawyers representing adverse interests, and to Model Rule 1.9, which protects the interests of former clients.*

Dawson, "Working Guidelines for Successive Conflicts of Interest Involving Government and Private Employment," 11 *Geo. J. Legal Ethics* 329, 338 (1998) (emphasis added).

The Comments to the D.C. rules suggest that the rule proposed by Intel is inappropriate because other sanctions are available to regulate conduct by government attorneys:

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<sup>3</sup> Rule 1.11(c) states: "Except as law may otherwise expressly permit, a lawyer serving as a public officer or employee shall not (1) participate in a matter in which the lawyer participated personally and substantially while in private practice or nongovernmental employment, unless under applicable law no one is, or by lawful delegation may be, authorized to act in the lawyer's stead in the matter. . . ."

It is worth noting that the Rule 1.11 comments state that Rule 1.11(c) does "not prohibit a lawyer from jointly representing a private party and a government agency when doing so is not otherwise prohibited by law." Thus, even in a situation far more likely than this one to create an appearance problem because divided loyalty is likely, the Model Rules would not support disqualification.

<sup>4</sup> The comments to Rule 1.11 confirm that "statutes and government regulations regarding conflict of interest" are paramount for government lawyers. ABA Rule 11 cmt. 2.

<sup>5</sup> Mr. Parker is also a member of the California bar, which also has not adopted ABA Rule 1.11(c).

[i]n the District of Columbia, where there are so many lawyers for the federal and D.C. governments and their agencies, a number of whom are constantly leaving government and accepting other employment, particular heed must be paid to the federal conflict-of-interest statutes.

D.C. Rules of Prof. Conduct Rule 1.11 cmt. 2 (1996). In other words, the District of Columbia, with its uniquely extensive experience in dealing with revolving door issues, has determined that the Standards of Conduct and the criminal conflict of interest statute (18 U.S.C. § 208), in conjunction with D.C. Rules 1.7 and 1.9, not ABA Rule 1.11(c), should govern the conduct of government attorneys who have previously been in private practice. D.C. Bar Opinion No. 273, Ethical Considerations of Lawyers Moving from One Practice to Another (Sept. 17, 1997) (Ex. I).

Under the D.C. Rules, participation in a matter is precluded only where the successive representation presents an actual conflict or an adverse interest situation. Such would be the situation here only if Mr. Parker previously had represented Intel, which he has not.

Intel argues that Mr. Parker's participation will deny it due process. This theory was rejected by the Commission in *Tyson's Corner Regional Shopping Center*, 82 F.T.C. 1459 (1973), where the Director of the Bureau of Competition participated "as a member of a private law firm in a related private antitrust suit against the respondents, which was settled prior to his assumption of his present position with the Commission. . . ." 82 F.T.C. at 1459-60. The Commission found that the charges were "really no more than an allegation of staff bias." The Commission explained: "we would be surprised if attorneys charged with prosecution of any matter in any agency could consistently maintain a position of complete impartiality much less an appearance of total impartiality." The Commission "fail[ed] to see how the mere appearance of impropriety, without more, could prejudice respondents." *Id.* at 1461-62.

Intel argues that since Mr. Parker has been on the case, complaint counsel "has recently shifted gears in an effort to adopt a theory advocated by the prosecutor's private client. . . ." Motion of Respondent Intel Corporation to Disqualify Complaint Counsel Richard G. Parker at 18. From what I have seen, however, complaint counsel's theory of the case has not fundamentally changed. The focus of this case is Intel's expropriation of computer technology, not from AMD, but from Digital Equipment Corporation, Intergraph Corporation, and Compaq Computer Corporation. The theory of the case is that Intel's conduct excludes competition and entrenches its monopoly position.

Intel asserts that *Young v. United States ex rel. Vuitton et Fils, S.A.*, 481 U.S. 787 (1987), casts doubt on the *Tyson's* decision. In *Vuitton*, the petitioners had entered into a settlement, including an injunction, resolving claims that they had sold counterfeit Vuitton products. Subsequently, the district court appointed Vuitton's attorneys to prosecute a criminal contempt action for violation of the injunction against infringing Vuitton's trademark. *Id.* at 790. The Supreme Court held that the concurrent representation created actual conflicts: the prosecutor's client (Vuitton) stood to benefit substantially if the petitioners were found to have violated the injunction; Vuitton had various civil actions pending against some of the petitioners; and one of the prosecutors was a defendant in a defamation action filed by one of the respondents. *Id.* at

For Release

## FTC Issues Statements Regarding Recusal Petition for Review of Proposed Acquisition of Hellman & Friedman Capital Partners V, LP (DoubleClick, Inc.) By Google, Inc.

Statement of Chairman Deborah Platt Majoras concerning Petition Seeking My Recusal from Review of Proposed Acquisition of Hellman & Friedman Capital Partners V, LP (DoubleClick Inc.) by Google, Inc. Statement of Commissioner William E. Kovacic concerning R  
December 14, 2007

- Statement of Chairman Deborah Platt Majoras
- Statement of Commissioner William E. Kovacic
- Statement of Commissioners Pamela Jones Harbour, Jon Leibowitz, and J. Thomas Rosch

This statement responds to the "Complaint Requesting Recusal of the Federal Trade Commission Chairman From the Pending Review of the Proposed Google-DoubleClick Merger" ("Petition"), which was filed with the Federal Trade Commission ("FTC") by Messrs. Rotenberg and Chester on December 12, 2007. After reviewing the relevant facts and consulting with the FTC's Designated Agency Ethics Official, Deputy General Counsel Christian S. White, the General Counsel, my fellow Commissioners, and members of my staff, I have determined not to recuse myself from this matter because the relevant laws and rules, as detailed below, neither require nor support recusal.

To fully explain why recusal is not required here, I first must correct some key factual errors contained in the Petition. The Petition states that "Petitioners learned on Monday, December 10, 2007 that Doubleclick, has retained the Washington law firm of Jones Day to represent the company before the Federal Trade Commission in the pending merger review." (*Petition, page 1 ¶ 3*). Commission staff has advised me that Jones Day represents Hellman & Friedman Capital Partners V, LP (a.k.a. DoubleClick) in the review of this transaction by the competition authorities of the European Commission ("EC"). Jones Day does not represent DoubleClick before the FTC and, indeed, in dozens of meetings and submissions, has never appeared or even been mentioned. The law firm of Simpson, Thacher & Bartlett LLP represents DoubleClick before the FTC. I understand that no one at the FTC was aware that Jones Day was involved in the EC review of this transaction until the afternoon of Tuesday, December 11, 2007, at which time staff learned and contacted me. Following my customary practice when I learn that Jones Day is or may be involved in a matter, I immediately contacted the FTC's Ethics Official, and asked him to undertake a conflict of interest analysis.

More importantly, the Petition also incorrectly states that “The Spouse of the FTC Chairman, John M. Majoras, is currently an equity partner with the law firm Jones Day.” (*Petition, page 2 ¶ 5*). As of January 1, 2006, John Majoras converted from an equity to a non-equity status and became a fixed participation partner in Jones Day. I understand that as a fixed participation partner, his compensation will not be increased or affected by changes in the firm’s income. Further, all benefits my husband receives from Jones Day are the same as those earned by other similarly situated non-equity partners in the firm. Therefore, my husband does not have a financial interest in the firm’s income, and thus I do not have an imputed financial interest. Similarly, the Petition states on page 6, ¶ 30: “However, Petitioners do not accept the premise that the spouse of the Chairman should represent a client in the pending matter and profit from an outcome that is favorable to the client.” My husband does not represent any party in the Google-DoubleClick matter. He is in no way connected to the matter, nor are any of the parties to the matter otherwise currently his clients. <sup>1</sup>

The absence of a financial interest in the matter is important because an executive branch official is prohibited by 18 U.S.C. § 208(a) from participating personally and substantially in any particular matter in which, to her knowledge, she has a financial interest, if the outcome of, or determinations made in, the particular matter will have a “direct and predictable effect” on that interest or the interest of someone whose financial interests are imputed to the employee. Because my husband is not an equity partner in Jones Day, any decisions that I may make in any case in which Jones Day represents a party cannot be said to directly and predictably affect my husband’s interest in Jones Day. Hence, I do not have a financial conflict in this matter. <sup>2</sup>

In 2004 and 2005, when my husband was still an equity partner, I assumed that I would have a financial interest in FTC matters in which Jones Day represented a party and recused myself in such matters, as petitioners note.<sup>3</sup> (*Petition, page 3 ¶ 8-12*). After my husband relinquished his equity interest in the firm’s income, I began to consider participating in FTC matters in which Jones Day represented a party, in consultation with the FTC’s Ethics Official. FTC staff and I continue to actively monitor FTC filings and public appearances, as well as any public statements that we may see, to determine whether Jones Day is involved in FTC matters. Since January 1, 2006, in each matter in which the FTC becomes aware that Jones Day is representing a party or a third party, I consult with the FTC’s Ethics Official to review the relevant factors for considering whether to participate, as described below. (Indeed, based on an incorrect rumor that I heard last summer that Jones Day was representing a *third* party in this transaction, I immediately consulted with the FTC’s Ethics Official, who determined that I had no conflict and recommended that I continue to participate.) Based on the advice provided on a case-by-case basis, I have participated, since January 1, 2006, in various matters in which Jones Day has represented a party or third party.

Despite the absence of a financial conflict, the “Standards of Ethical Conduct for Employees of the Executive Branch,” 5 C.F.R. § 2635, (“Standards of Conduct”) also require that an employee not participate in a particular matter involving specific parties when she knows the matter is likely to affect the financial interests of a member of her household, or when she knows that a person with whom she has a covered relationship is or represents a party, if she determines that a reasonable person with knowledge of the relevant facts would question her impartiality in the matter. 5 C.F.R. § 2635.502(a). When I learned that Jones Day might represent DoubleClick in

the review of this transaction by the competition authorities of the EC in Brussels, Belgium, even though I had worked on this matter for seven months, I asked the FTC's Designated Agency Ethics Official to consider whether this fact would implicate the impartiality subpart of the Standards of Conduct. 5 C.F.R. § 2635.502.

As it has been explained to me over the past several years, the Standards of Conduct are premised on protecting the integrity of government decision making, while also allowing government officials appropriately to carry out their duties. The FTC's Ethics Official determined that, based on the applicable facts, including those described above, no impartiality conflict exists. Further, he determined that, even if my participation in this matter could reasonably raise an appearance issue, the Standards of Conduct did not dictate my recusal. A federal official may participate in such a matter, provided such participation is authorized in accordance with the standards in Section 502(d). Participation may be authorized if, based on the relevant circumstances, the interest of the Government in the employee's participation outweighs the concern that a reasonable person might question the integrity of the agency's programs and operations. Factors to be considered include, *inter alia*, the nature of the relationship involved, the nature and importance of the employee's role in the matter, and the difficulty of reassigning the matter to another employee. *Id.* at 2635.502(d). Based on his analysis of the factors specified in Section 502(d), the FTC Ethics Official determined that any concern about my participation in the Google-DoubleClick matter would be outweighed by the agency's interest in my participation. Critical to that analysis was the fact that the decision making authority of an FTC Commissioner cannot be transferred to any other person.

Because my participation in this matter is consistent with federal ethics laws and regulations, I intend to fulfill the duties entrusted to me when I was appointed and confirmed.

1. Petitioners make repeated reference to the fact that my husband has responsibility for business development in the Washington, D.C. office. The FTC's Ethics Official informed me that this responsibility, in and of itself, does not create any additional conflict.
2. I do not understand what is meant by the Petition's statement, "The Chairman failed to notify the petitioners and the public of this arrangement." (*Petition, Page 5 ¶ 22*). That is, it is unclear what petitioners believe I was supposed to have told them or publicly disclosed. The Commission was unaware of Jones Day's representation in Europe. But even if we had been aware sooner, assuming that the conflict analysis resulted in the same recommendation to continue participating – and I have no reason to believe it would not – the fact that I had reviewed with the FTC's Ethics Official a potential conflict and determined not to recuse myself would not have been announced. Under applicable ethics rules, there is no requirement or, as I understand it, even expectation, that Commissioners publicly reveal that they are not recusing themselves on matters; indeed, that has not been the practice.
3. As petitioners note, I formerly was a partner at Jones Day (though, for the record, not an equity partner, as the Petition incorrectly states). Accordingly, applicable conflict rules

required that I recuse myself, for a period of one year, from any matter in which Jones Day represented a party. Under the applicable ethics rules, an employee has a "covered relationship" with, inter alia, "[a]ny person for whom the employee has, within the last year, served as officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee[.]" 5 C.F.R. at § 2635.502(b)(1)(iv). I observed this "cooling off" period for 16 months, from August 2004, when I assumed my position, until January 1, 2006.

As of January 1, 2006, my wife, Kathryn Fenton, converted to a nonequity status at the law firm of Jones Day and became a fixed participation partner in that firm. As a fixed participation partner, her compensation will not be increased or affected by changes in the firm's income. Further, all benefits received by Ms. Fenton from Jones Day are the same as those earned by other similarly situated non-equity partners in the firm. I have read the Statement by Chairman Deborah Platt Majoras responding to the Petition filed by the Electronic Privacy Information Center and the Center for Digital Democracy seeking the Chairman's recusal from the Proposed Acquisition of Hellman & Friedman Capital Partners V, LP (DoubleClick Inc.) by Google, Inc. and agree with her analysis. Further, even though the petition does not ask for my recusal, I want my position to be clear to avoid any future questions relating to this issue. Because, like the Chairman, I do not have any current conflicts in this matter, I have determined not to recuse myself.

We have reviewed the letters of December 12 and 13, 2007, from Marc Rotenberg and Jeffrey Chester seeking disqualification of Chairman Majoras from participation in an investigation of the pending Google-DoubleClick transaction. We have also reviewed the responses of Chairman Majoras and Commissioner Kovacic to the arguments made in those letters.

We agree with the analyses in Chairman Majoras's and Commissioner Kovacic's responses, and see no legal grounds that would disqualify them from participating in the investigation of the Google-DoubleClick transaction. It is evident that these Commissioners have at all times taken affirmative steps to conduct themselves in complete conformity with the ethical standards that apply to their positions.

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The CHAIR. Senator Tester.

**STATEMENT OF HON. JON TESTER,  
U.S. SENATOR FROM MONTANA**

Senator TESTER. Yes, thank you, Madam Chair. And I want to thank all of you for the jobs you have done and the jobs that hopefully you will be confirmed to depending on how this hearing goes. So, I just want to ask really, how many people get robocalls of the folks that are testifying? Do you get them every day? Every day? Every day.

Well, I am with you. In fact, I got one yesterday. I got two yesterday. And they go something like this, hi, I am Amy, and I am here to help you with your back taxes. And if you say anything or hit a button, it starts over and says, hi, I am Amy and I am here to help you with your back taxes.

This kind of stuff drives me insane. And you guys all know that the FTC is about unfair and deceptive business practices. Oftentimes when I get these calls, they are from a number in my neighborhood, OK. And yet, I go through the whole process, which is a waste of life, and I get done, and they say, well, we are going to take you off the list, and I guarantee you either later that day or the next day, I get it.

We have had many hearings on robocalls in this committee. It has gotten worse. It hasn't gotten better. So, for each one of you that are on the FTC docket, could you tell me what the FTC's role is or what you see the FTC's role is? In Commissioner Slaughter's case, what the FTC has done about it. I will start with—I will go from right to left, how is that?

Ms. HOLYOAK. All right. I guess I am the right, right?

Senator TESTER. That is right. My right.

Ms. HOLYOAK. All right. And this is an excellent question. This is the number one complaint that the FTC receives, over 3 million unwanted calls last week. And the FTC has a strong history of this. As we know, the do not call registry, which I think we all loved, and applauded—

Senator TESTER. But it doesn't work—it doesn't work—

Ms. HOLYOAK. And I think that is the question is, what is happening now? I think since that time there has been technological advancements. I know the FTC and FCC have been working hard on this, and this is an issue that impacts our state as well and that we have heard from many complaints on this.

And I would, if confirmed, would work—would support continued enforcement on this. And particularly because it is not just telemarketers, like you said, but there are lots of frauds and scams in this—

Senator TESTER. Bingo.

Ms. HOLYOAK.—and they are getting even smarter and more brazen. And this is something that I would, if confirmed, support strong enforcement of.

Senator TESTER. Mr. Ferguson.

Mr. FERGUSON. I totally agree with Mrs. Holyoak. I have gotten to the point that if I get a number from my area code I don't recognize, I don't even take the call because it is almost certainly going to be what you just described, Senator Tester.

So, you know, as the scammers get smarter, the FTC needs to do everything it can to keep up. My understanding is the FTC is working extremely hard on this, but, you know, more work will need to be done, and if I am confirmed, this would be one of my top priorities.

Senator TESTER. Commissioner.

Ms. SLAUGHTER. I agree with all of them. I think the thing that is really important is the do not call list worked fine for legitimate telemarketers. It does not work very well for somebody who is already perpetrating a criminal operation to commit a fraud or a scam and may be located overseas.

This is why I think the focus really needs to be on the pipes. How are the calls getting to us? So, we have targeted our enforcement toward VoIP providers recently who are able to sort of turbo charge the provision of these spoofing, auto dialing calls.

This committee passed important legislation into law a few years ago, the TRACED Act, that also helps authentic—call authentication that makes it more important. I will tell you my own view is we should apply all of our tools, but I think the onus really needs to be on the carriers to stop the illegal traffic over their pipes, and some of that does go beyond what the FTC is able to do, but we should be throwing everything we can at it because it is so annoying to everybody.

Senator TESTER. Yes, it is unfair. It is deceptive. It is annoying. They are crooks. I don't know if you guys assess the penalties or the FCC assess the penalties, but I would make sure they don't have a dime left in their bank account.

Ms. SLAUGHTER. Can I just respond? I think the penalties under—for us, the telemarketing sales rule, again, can be effective for telemarketers, but the crooks that you are talking about who are already committing criminal activity are not particularly caring about a civil penalty. Which is why I think we need to make sure that the system is not facilitating the calls, not just that we are thinking penalties can stop the activity.

Senator TESTER. Well, as I said in my opening, and I have run out of time otherwise I would ask three more questions, I appreciate your guys' willingness to serve. I think you all have the ability to know what the right thing to do is, and if you do that, you will be fine. Thank you, Madam Chair.

The CHAIR. Thank you, Senator Tester. Under the buzzer. Senator Thune, would you like to go next or would you like to defer to Senator—

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

Senator THUNE. I will make this quick. I thank you, Madam Chair. Welcome to all of you. Congratulations on your nominations. The FTC has indicated it may regulate emerging technologies like artificial intelligence. And the question I have is, do you believe the FTC has the authority to regulate AI or should it be left to Congress? Ms. Slaughter.

Ms. SLAUGHTER. Thank you, Senator. I think a really important thing in the space of AI, as well as any other emerging technology,

is that existing law does apply to new technologies. The FTC Act has adapted to new technologies over its 100 plus year history.

It may be that new authority is also needed or new laws are needed, and that is entirely up to Congress to debate and decide. So, our job is to look at the laws that we have, which as we have discussed, primarily prohibit unfair and deceptive acts and practices and unfair methods of competition.

And some of those may be triggered by some deployments or uses of AI, and we should be thoughtful about applying them. There may be things that Congress deems are problematic that go beyond what the FTC Act covers, and that is up to you to decide whether additional rules are required.

Senator THUNE. Mr. Ferguson.

Mr. FERGUSON. No, I agree with Commissioner Slaughter that the FTC doesn't, you know, regulate specific industries. It enforces rules and laws across all industries. If the conduct that AI facilitates violates those laws or rules, I think that the FTC should act.

But insofar as, you know, we are contemplating sort of a grand regulatory framework for AI, I think that that is squarely within the purview of Congress. If we are going to address an emerging technology sort of square on rather than taking existing rules that apply to everybody, I think that has to be with Congress.

Senator THUNE. Thank you. Ms. Holyoak.

Ms. HOLYOAK. Thank you. And I agree with Commissioner Slaughter and Mr. Ferguson on all of those points. And I agree that there are quite a bit of concerning things with respect to artificial intelligence in the frauds and scams like we were just talking about with robocalls.

Those are going to be used to become even better phishing e-mails, even better texts, even more—it is going to be directed at us and look so real that we won't be able to tell what is real and what is not, and it is concerning.

And I think we apply the laws that we have, but certainly if I am confirmed, we will talk to you about if there are gaps that we think that we need to address.

Senator THUNE. Well, and let me just say, I have serious concerns about the FTC regulating or making any attempt to regulate AI. There is no doubt that there are breakthroughs in AI that are likely going to have significant implications for society and U.S. global competitiveness, especially as China and the EU move to assert their world leadership in the space.

But rather than having the heavy handed regulations from agencies like the FTC that I think in many cases stifle innovation in this emerging space, I have been working with my colleagues up here on both sides of the aisle to develop a light touch approach that avoids the unnecessary Government intervention that so that innovation can continue to flourish.

Senator Schatz and I introduced the Internet PACT Act, which is bipartisan legislation that would hold big tech accountable by providing much needed transparency to online consumers, and it is my hope that the Committee will consider the legislation in a future markup.

Among other things, the bill would stipulate that Section 230 immunity does not apply to civil enforcement actions brought by the

Federal Government. Would removing Section 230 immunity from enforcement actions brought by the Federal Government, such as the FTC, be beneficial to consumers? And if so, why?

Ms. SLAUGHTER. I am happy to start. Yes, I think that would be really important. We frequently find ourselves in investigations where we are stymied by the application of 230 in civil enforcement actions.

And I think that it is important, where the law has been violated, that there not be a get out of jail free clause just for intermediaries. You know, they would have to have actual liability. I don't think your bill would impose direct liability on them, but it would give us the opportunity, if liability applies, to pursue it without some special immunity, and I think that that would make a big difference.

Senator THUNE. Mr. Ferguson.

Mr. FERGUSON. I don't want to speak for Mrs. Holyoak, but I bet she agrees with me on this. I don't think any State litigator in the country has not had to confront 230 when trying to address the harms that, you know, some social media platforms inflict on the citizens of our states.

You know, whatever 230 was originally understood to mean, it has become incredibly broad. And I think capping it in its immunity for Federal enforcement actions, and, you know, hopefully someone will consider for State enforcement actions as well, which is where a huge bulk of the consumer protection work is done on a daily basis in this country, would be truly, truly meaningful for American consumers.

Ms. HOLYOAK. I agree.

Senator THUNE. OK. All right. That is—my time expired. Thank you, Madam Chair.

The CHAIR. Thank you. Senator Hickenlooper.

**STATEMENT OF HON. JOHN HICKENLOOPER,  
U.S. SENATOR FROM COLORADO**

Senator HICKENLOOPER. Thank you, Madam Chair. And thank all of you for your public service already served and for your not just willingness, but your eagerness to step into what by any measure is going to be a very complex and challenging environment. So, let me start off, Ms. Holyoak and Mr. Ferguson, the new volunteers.

As we discussed with both of you, a strong data privacy legislation would empower consumers, creators, help us grow our modern AI-enabled economy. What role do you think the FTC should play to protect consumers' data?

Ms. HOLYOAK. I guess I will take a stab at that. As you note, data privacy is an issue that is very concerning to many Americans. It touches on so many aspects of our lives.

The FTC has had a strong history of investigations and enforcement actions into all types of privacy related areas, including collection, storage, usage, all those types of things. So, I do believe the FTC is well-positioned to take on that type of role. I also know that my fellow—mister—I am sorry.

Mr. Ferguson, I think, has—might agree with me on this. I know that Virginia and Utah also have strong data privacy laws. But the

Commissioners, Commissioner Slaughter, Commissioner Bedoya, and Commissioner Khan have also spoken about these issues and that it is probably best for Congress to speak here for—to have a comprehensive privacy legislation in this space.

Mr. FERGUSON. Yes, I agree. Virginia passed the data privacy law in 2020 like lots of states are doing, you know, consistent with sort of our Federal structure. States are doing all sorts of experimenting on the best approach here.

But data privacy sort of uniquely touches on questions of interstate commerce that make it difficult, I think, for the states to address this square on without creating sort of a patchwork system that can be very difficult for regulated entities to comply with. It can be very difficult for consumers to know what their rights are, you know, depending on where violations occur, where the conduct took place.

And so, you know, I think sort of consistent with our Constitutional design, this is precisely the sort of thing I think, that cries out for Congressional intervention. I think that the FTC as an agency has some experience in this, and if the, you know, if Congress were looking for an agency to sort of lodge this authority, I think the FTC is a good candidate.

But I think the most important thing here is for Congress to take the lead in addressing what is, you know, a brand new market and a brand new market concern that touches the whole country.

Senator HICKENLOOPER. All right. Thank you for that. And Ms. Slaughter, I will let you answer that as well, but then I will have—you get your own question as the incumbent, or one of the incumbents. The FTC has established the Office of Technology to assist with investigations and rulemaking to help protect consumers online.

How will technology—how well technology experts within the agency help to enforce the FTC Act? And within that, buried, and you have to respond to this, but some of the concern all of us have is how can we make sure that the FTC continues to have the talent to keep up with these incredibly fast evolutions and innovations in technology.

So last part of the question is, are additional authorities and subject matter experts needed to meet the challenges consumers face?

Ms. SLAUGHTER. Thank you so much, Senator. First on data privacy legislation. I have long been and continue to be a strong supporter of Congress passing comprehensive privacy legislation. I think this is a really important area. It is one where lots of people on this committee, and in the public, and at the agency feel a huge sense of urgency.

It is also why, even while I think Congress should move forward, I have supported the FTC really making sure we are doing everything we can with the tools that we have right now. And it is why I supported our ongoing open rulemaking proceeding on commercial surveillance and data security.

I want to be really clear, because I know a lot of members have expressed concerns about wide ranging FTC regulation. We can't do, by regulation, what we could not do in individual enforcement actions. The authority that Congress has given us allows us to promulgate rules in the consumer protection space that address un-

fair, deceptive acts and practices that are prevalent in the economy.

Those are two substantive guideposts. So those are the kinds of things that we could bring individual enforcement actions on. You can do much more with legislation. We are cabbed into the FTC Act.

You can look at these issues much more broadly. So, I think we should be doing that, but it is not nearly as much as you could be doing. On your question about Office of Technology, I was really proud to support its establishment.

I am grateful to Chair Khan for setting it up for exactly the reasons that you articulate. It is critically important that we have the analytical skillsets in-house to understand how markets are developing and moving. Technologists are going to be a huge part of that. Almost every single case we bring implicates technology of some kind.

Lawyers have excellent skills, economists have excellent skills, but we are not programmers for the most part, we are not coders, and making sure that we understand what is going on behind the scenes in the companies we investigate is critical to us getting those investigations right and getting the remedies right.

So, embedding technologists on our case teams, the same way we have embedded economists, I think is going to be a really important way to move forward. And in terms of what more do we need? I would be remiss if I didn't beat the drum that I always be before this committee, which is in terms of the resources that we have.

The FTC does an incredible amount of work with the funding that Congress is generous enough to give us by hiring the best talent, having them have—giving them a reasonable amount of work that isn't totally overwhelming given the demands of the market, really requires an ongoing infusion of resources, and I think that remains really important for the Commission.

Senator HICKENLOOPER. Yes, well, that is a point well made. I am out of time. It seems so unjust, but let me just finish by saying, I appreciate all of your nonpartisanship. This is a Commission that really should be as much as possible, bipartisan, nonpartisan, really working together to get some of these basic issues, because I think there is so much we agree to.

The CHAIR. Senator Fischer.

**STATEMENT OF HON. DEB FISCHER,  
U.S. SENATOR FROM NEBRASKA**

Senator FISCHER. Thank you, Madam Chair. And thank you to the nominees for being here today. I really appreciate your desires to continue with your public service.

If confirmed, you will be tasked with vital responsibilities protecting Americans' personal safety. Fulfilling these responsibilities will also allow free enterprise and innovation to thrive, whether it is identifying monopoly misconduct or market oriented safety solutions.

Mr. Ferguson, I wanted to focus on how Congress provides resources and guidance for Commission activities. In our conversation, I really thought your insights on this are really helpful, and I would like all of our colleagues to hear this. So, from your per-

spective, is there a key policy that lawmakers should be focusing on right now to provide better guidance or authority to the Commission?

Mr. FERGUSON. Thanks, Senator Fischer. I enjoyed our conversation as well. Like we discussed, and like we just discussed with Senator Hickenlooper, from the perspective of a State law enforcer, I think sort of a critical question for Congress to address is data privacy, largely because in the absence of Congressional action or what I think is uniquely an interstate commercial question, the states have had to act.

That is good. That is how the Constitution was designed. But as the states act and as they experiment, as they come up with unique solutions, we end up with this patchwork problem, which can be very difficult for regulated entities.

It can be very difficult for consumers. I think that of all of the, sort of, like commercial activity that takes place in the country today, this so clearly falls within the interstate commerce power that the founders gave to Congress. And I think this is precisely the sort of thing that Congress should take the lead on.

I agree with Commissioner Slaughter that insofar as these issues touch on the FTC's existing authority, I think it is critically important for the FTC to be doing what it can with the authority that it has.

But this issue is new, it is complicated, and it affects people in a way the Commission simply aren't going to be able to grapple with the way that a Senate can with its constituents. And so, I think this really, really cries out for Congressional leadership in a unique way.

Senator FISCHER. You know, when you are looking at the states that are moving forward in this area, it is fairly new, but there still are a couple that are moving forward. Do you have any that you would hold up some of their—I am going to put you on the spot—some of their practices where they have been this laboratory, and they are experimenting basically, so we can watch and see what works. So, what works?

Senator HICKENLOOPER. Well, I am the principal vindicator of Virginia's laws and of its sovereign interests.

Senator FISCHER. You think they are the best.

Mr. FERGUSON. So, you know, I certainly am going to say good things about Virginia's law. But I recognize that, you know, balancing these issues, defining the harm that arises in a privacy violation, deciding, you know, where to lodge enforcement authority—in Virginia, we are giving it to the Attorney General.

You know, I think that that works very well in Virginia. But there are all sorts of, you know, contrary approaches other States are trying. The experimenting is good. That is part of the Constitutional design. It is a feature, not a bug.

But, you know, when you wind up with potentially 50 different approaches to a truly interstate commercial question, I think that is exactly when Congress needs to step in.

Senator FISCHER. OK. Thank you. Ms. Holyoak, for many years, the FTC consistently ranked among the very best Federal agencies to work at with very high employee morale, but I am disappointed to see that that morale is taking a nosedive.

For an agency that must attract talent with technical skills, and workplace satisfaction is critical. It doesn't matter how much funding Congress is going to throw at the agency. So, if you are confirmed, how do you plan to engage with experienced career staff to advance your goals and also to advance really the missions and responsibility of the Commission?

Ms. HOLYOAK. Oh, thank you for that question. As Solicitor General, I oversee approximately 40 attorneys, but I work with many more in other divisions that I do not oversee on other cases in which I have a leadership role.

With all of them, I think it is very important to come in and understand their perspectives, understand their recommendations. And so, if confirmed, I would want to just day one meet with all of the offices.

I want to listen to them, understand what their perspective on these issues, understand their concerns and the best way that I could support them.

Senator FISCHER. Thank you very much. Commissioner Slaughter, I am concerned that the FTC has lost all capacity for bipartisanship. I really, really appreciate hearing all of you and your comments today. When Commissioner Wilson resigned, she said nice things about you. Very nice things.

She noted that you provided transparency and robust lines of communication with all Commissioners, in addition to constructive debate on policy issues, respect for the agency's experienced and knowledgeable staff.

Do you think that there is a way forward at this point in time for the Commission to be able to instill these basic principles again?

Ms. SLAUGHTER. Absolutely. I think working with people who have different views from you is not only important, it is an incredible opportunity. It is an opportunity to learn. It is an opportunity to build consensus. It is how I felt when I worked in the Senate. And it is one of the great privileges of working at an agency like the FTC. So, yes, I believe there is a way forward and I am fully committed to it.

Senator FISCHER. Thank you. Thank you, Madam Chair.

The CHAIR. Thank you. Senator Klobuchar.

**STATEMENT OF HON. AMY KLOBUCHAR,  
U.S. SENATOR FROM MINNESOTA**

Senator KLOBUCHAR. [Technical problems]—Ms. Slaughter. I appreciate that. Mr. Dziak, welcome. I wanted to ask you about a specific program, and that is the Virginia Grant Baker Pool and Spa Safety Act. I worked on this as a brand new Senator when we had a tragic drowning of a little girl, Abigail Taylor, in Minnesota.

She actually survived the pool incident, was maimed, and came out of it after 16 surgeries, and then died. And it was a malfunctioning situation with the drain. We passed a law. I am really proud of it.

We have gotten the deaths down to practically none as of a few years ago of kids in public pools. It has been a real victory, actually, and I just want to make sure that you will work with us to supporting the CPSC's Drowning Prevention Program.

Mr. DZIAK. Senator, I am aware of your long standing interest in this matter. In fact, we have, as a staffer, worked with Abbey's Hope and other pool safety advocates. The seriousness of this issue can't be overstated.

Drownings for children between the ages of 1 and 4 is the number one cause of death, and the number two cause of death for children between the ages of 5 and 14. So, yes, I am committed to working with you, this committee, and all outside organizations on pool safety issues.

Senator KLOBUCHAR. Thank you very much. I appreciate that. And then I will turn to FTC. I had some really good discussions yesterday with you, Mr. Ferguson, and Ms. Holyoak. Thank you very much. I am going to start with that. The, as you know, the merger activity hit record levels in 2021, and we have many issues related to tech.

We still haven't passed a tech competition bill since the onset of the internet, even though we have gotten a number of bills through the Judiciary committee. And there are major suits, as you know, going on at both the Justice Department antitrust and the FTC. Senator Grassley and I passed our Merger Filing Fee Modernization Act. Worked with Senator Lee on that.

Ms. Holyoak and Mr. Ferguson, do you want to talk about your expectations about the FTC's merger review workload, and maybe, Mr. Ferguson, you want to focus on the Google ad-tech case and the other bill passed about not being able to move venues for the tech companies on antitrust cases? That was Senator Lee's bill with me.

Mr. FERGUSON. Sure. Thank you, Senator Klobuchar. I enjoyed our conversation yesterday as well. Like I said in my opening, Virginia is the lead co-plaintiff with the United States in the Section 2 suit alleging the monopolization of the ad-tech markets by Google.

When we filed our suit, Google understandably tried—we filed it in my home courts in the Eastern District of Virginia, and Google tried to transfer that suit up to go alongside a pending MDL in the Southern District of New York.

And we filed our suit not terribly long after the Congress had passed and this President had signed the State Antitrust Enforcement Venue Act, the one you referred to. And I argued in that—against that transfer motion on the ground, that, you know, if you—if the court were to transfer us up to New York, they would kind of be defeating the purpose of this law that Congress had just passed to protect states from having to do MDLs and antitrust enforcement cases.

And the District Court agreed and kept us in the Eastern District of Virginia, and alongside the United States and our other coalition states. You know, that suit is moving apace, headed toward trial. So, you know, I got to experience on the ground Congress's very good work in this area.

On, you know, on the ad-tech case itself, I think it is critically important—I know that Congress is engaged appropriately in a robust debate about whether additional antitrust enforcement tools are necessary to confront the challenge of big tech, which I do think is the competition question for our time. But, you know, I do

just at least want to note, I think there is a lot of good work that enforcers can do with the existing laws.

Virginia and Utah have both been on the forefront of doing everything that they are able to do with the existing laws. I know that Mrs. Holyoak has done a ton of work on this in the big tech space. Virginia is doing it as well.

Senator KLOBUCHAR. Thank you, Mr. Ferguson. I am just going to give her one chance to answer as well on this question. And I know that I have already talked to Commissioner Slaughter about this, and she does great work. So, I am going to give our new nominee here a chance to pitch in on this.

Ms. HOLYOAK. Absolutely. And thank you, Senator. And I enjoyed our conversation the other day, and I absolutely agree with everything Mr. Ferguson was saying. We are involved in those same cases. And thank you for your work on the Venue Act.

That is extremely important. As far as, and I will just say quickly, the volume of merger transactions, it is concerning, and we want to make sure that we do it and we do it right. I would like to, if confirmed, talk to the FTC staff and understand the volume and how best to support them to make sure we get it done.

That we stay vigilant, particularly in digital markets, as many of the Commissioners have talked about.

Senator KLOBUCHAR. All right. Thank you, all of you. Appreciate it. Thank you.

The CHAIR. Senator Blackburn.

**STATEMENT OF HON. MARSHA BLACKBURN,  
U.S. SENATOR FROM TENNESSEE**

Senator BLACKBURN. Thank you, Madam Chairman. Thank you to each of you for being with us. We are pleased to move forward with the confirmation hearing. The FTC has not had Republican Commissioners for quite a period of time, and Senator Fischer pointed that out. So, I want to do a few yes and no questions, and I want an answer from each of you.

We will start with Ms. Holyoak, Mr. Ferguson, and then Ms. Slaughter. Data privacy is an area where I have done a good bit of work as we are doing hearings on AI and quantum and looking at renewing the quantum initiative.

What we are hearing from witnesses is that we need a Federal privacy standard. That means Congress needs to take an action. And we were all a little bit surprised that last November the FTC moved forward with a rulemaking on commercial surveillance and data security. And the agency has, of course, asked for public input on these roles.

So yes or no, does the rulemaking exceed the authority given to the FTC by Congress? Ms. Holyoak, start with you, yes or no?

Ms. HOLYOAK. Thank you for that question. And it is difficult to know because I haven't looked at—

Senator BLACKBURN. Yes or no?

Ms. HOLYOAK. I don't know.

Senator BLACKBURN. You don't know. OK, Mr. Ferguson, is the FTC exceeding its authority?

Mr. FERGUSON. I don't know, Senator. I would have to consider that very carefully.

Senator BLACKBURN. Ms. Slaughter.

Ms. HOLYOAK. No, I do not believe we are.

Senator BLACKBURN. Well, I think that you are, because we have not given you that authority to move forward with privacy. OK, second question. Yes or no, again. Would you support the FTC tabling this rulemaking until Congress provides clear legislative authority and direction to the agency? Again, Ms. Holyoak, starting with you.

Ms. HOLYOAK. Yes, I would support that.

Senator BLACKBURN. OK. Mr. Ferguson.

Mr. FERGUSON. I would as well.

The CHAIR. Ms. Slaughter.

Ms. SLAUGHTER. No, Senator. We can only in a rule—

Senator BLACKBURN. No, ma'am. Yes or no?

Ms. SLAUGHTER. No. The answer is no.

Senator BLACKBURN. OK. AI regulation, I mentioned this earlier. If confirmed, would you support FTC actions related to AI other than those concerning fraud, deception, and competition issues? Those clearly fall under the FTC's jurisdiction.

What we are concerned about is restrictions on the ways in which companies handle consumer data or looking at bias in the algorithms used to fuel AI applications. So, would you confirm—would you support the FTC going beyond the authority that they have been given when it comes to AI? Ms. Holyoak.

Ms. HOLYOAK. I would not support going beyond any of the authorities, but I would want to understand all—statutes—

Senator BLACKBURN. I am not hearing you—not hearing you.

Ms. HOLYOAK. Oh. I am so sorry. No, I would support not going beyond any of the authorities that Congress has—been given us.

Senator BLACKBURN. OK. So, you are a no. OK. Mr. Ferguson.

Mr. FERGUSON. No, I do not think the FTC should exceed its statutory authority.

Senator BLACKBURN. OK. Ms. Slaughter.

Ms. HOLYOAK. No, I do not think the FTC should exceed statutory authority.

Senator BLACKBURN. OK, thank you. The BOTS Act was passed in 2016. This is something that I introduced. Senator Schumer carried it in the Senate. And it would prohibit scalpers from using bots to circumvent online sales restrictions and automate the purchases of mass amounts of tickets selling.

Of course, we had this issue come up with some entertainers earlier this year. We have had a hearing on it. But the FTC has only brought forward one single enforcement action under the BOTS Act, and they got the authority that is there. So, if confirmed, will you commit to enforcing the BOTS Act, yes or no?

Ms. HOLYOAK. Yes, I would.

Senator BLACKBURN. Thank you.

Mr. FERGUSON. Yes.

Senator BLACKBURN. OK. Ms. Slaughter?

Ms. SLAUGHTER. Yes.

Senator BLACKBURN. Why do you think that the FTC has chosen not to use the authority—the authority that is given to them, Ms. Slaughter?

Ms. SLAUGHTER. Well, Senator, this is actually a piece of legislation I was privileged to work on with your office when I served for Senator Schumer. I think it is critically important. I think it is important that we bring the cases, which also means finding the cases and looking within the existing—

Senator BLACKBURN. But we are going to be working with you to continue to continue to get that—to get those enforcement actions done.

Ms. SLAUGHTER. I am enthusiastic about that.

Senator BLACKBURN. Mr. Dziak, I have a question for you on the 6(b) authority, but I am out of time, so I will submit it to you for a written response. Thank you all. Thank you, Madam Chairman.

The CHAIR. Thank you. Senator Markey.

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

Senator MARKEY. Thank you. Today, big tech collects vast amounts of data on children and teens, building detailed profiles of every user. And they use that personal information as raw material to power algorithms that push toxic content and targeted advertising that harms young people.

You just have to look at the results. One in three high school girls contemplated suicide in 2021. At least one in ten girls attempted suicide that very same year. And amongst LGBTQ youth, that number was more like one in five. That is a staggering number. We must address this mental health crisis.

That is why Senator Cassidy and I introduced the Children and Teens Online Privacy Protection Act, or COPPA 2.0, to put parents and young people back in control of their data. Commissioner Slaughter, Ms. Holyoak, and Mr. Ferguson, do you agree that children and teens deserve robust privacy protections, yes or no?

Ms. SLAUGHTER. Yes. Absolutely.

Mr. FERGUSON. Unequivocally, yes.

Ms. HOLYOAK. Yes.

Senator MARKEY. Thank you. To the same three nominees, do you agree that targeted marketing can be inherently manipulative to children and to teens, yes or no?

Ms. HOLYOAK. I think it can be, yes.

Senator MARKEY. Thank you.

Mr. FERGUSON. I certainly think it can be manipulative.

Ms. SLAUGHTER. I also think it can be manipulative, and I will point out that the FTC put out a report last week about the ways in which advertising to children can be problematic.

Senator MARKEY. Thank you. And I agree with that report.

In fact, the Federal Trade Commission did just release a report stating that children have a difficult time recognizing advertising that is embedded into entertainment content. And finally, if confirmed, will you commit to strictly enforcing COPPA's requirements? Ms. Holyoak.

Ms. HOLYOAK. Yes, absolutely.

Mr. FERGUSON. Absolutely. Yes.

Ms. SLAUGHTER. Yes.

Senator MARKEY. I am glad to hear that, because we need to address the mental health crisis immediately.

I was proud that in July, the Senate Commerce Committee, thank you, Madam Chair, thank you Ranking Member Cruz, advanced my bills and the Cassidy's bill with a voice vote without a single objection, and I look forward to advancing that bill on the Senate floor and working with the Commission to ensure children and teens have robust and comprehensive privacy protections online, not just up to age 12, but up to and through age 16, in terms of targeted advertising, in terms of rights for parents and children and teenagers to be able to do something about that targeting.

I also want to discuss the hottest topic in Washington, artificial intelligence. We are having an AI moment, but data privacy, protection from bias, algorithms, and algorithmic justice are not new topics.

We know that biased AI powered algorithms such as facial recognition systems can discriminate against people of color and other disadvantaged communities right now. Commissioner Slaughter, Ms. Holyoak, and Mr. Ferguson, do you agree that algorithms can disproportionately harm minority communities?

Ms. SLAUGHTER. Yes, I believe they can.

Senator MARKEY. Mr. Ferguson.

Mr. FERGUSON. Yes, under some circumstances, I am sure that they can.

Ms. HOLYOAK. Yes, I agree.

Senator MARKEY. Thank you. And I know that, you know, the evidence is out there, as we said earlier with the other report, to document those biases that are built right now into algorithms that lead to real world harms for minority populations.

In February, for example, a pregnant black woman was wrongfully arrested for robbery and carjacking due to a mistaken result from facial recognition technology. As companies adopt complex algorithms to make critical decisions on everything from housing to consumer prices, the Federal Trade Commission must keep a very close eye on this conduct and ensure algorithmic discrimination does not become a feature of our marketplace.

I thank all of you for your willingness to serve in these important positions. We are at a critical inflection point technologically in our country's history, where all of the issues of harm that are already existent in this era of digital technology are going to be supercharged by additional augmentation that AI is going to make possible, but it will just be in degree that is the harms rather than in kind.

It will give people a greater opportunity to be able to discriminate, to be able to harm young people in our society, and I hope that this Commission will be able to stand in the forefront of the battle to protect young people and families in our country. Thank you, Madam Chair.

The CHAIR. Thank you. Senator Schmitt.

**STATEMENT OF HON. ERIC SCHMITT,  
U.S. SENATOR FROM MISSOURI**

Senator SCHMITT. Thank you, Madam Chair. Thank you all for being here today. One of the issues of a particular interest to me related to big tech is the relationship between big tech and the

Federal Government and an expansive censorship regime that has been uncovered. I happen to know in the *Missouri v. Biden* lawsuit.

Quite shocking, the coordination, the collusion that took place to censor Americans under the guise of combating misinformation or disinformation, and I hope that as you serve on the FTC, that you will keep that, and I know that you will, the Constitution in mind and protecting people's right to free speech.

The temptation for Government actors to be the decider on these things is a powerful drug and I think needs to be combated with restraint, and I hope that you will keep that in mind. The second issue that's very important to me in your role is, I am a dad of three kids, two teenage daughters, so it is—you know, these issues related to social media are personal, as they are, I know, to you all too.

And we have legislation—we are still trying to grapple with this in the Committee and on the floor, what that looks like. But the FTC plays a very important role in this. And I know that is sort of front and center.

It has been the subject of a few questions already. So, as you approach those, I know that you will weigh all of the various considerations and the authority that you have. Ms. Holyoak, it is good to see you again. In your testimony, you mentioned the importance of protecting our kids online. Could you just touch on, as a Commissioner, how you view that role in protecting kids?

Ms. HOLYOAK. Absolutely. As some of the Senators mentioned before, there are the COPPA statutes, and likely coming COPPA legislation, which I would, if confirmed and if enacted, would vigorously enforce. In addition, there is the COPPA rule, and that just recently has—has been under review at the FTC. And I do like what the Commissioners have said about that, some of the statements, particularly. I know that Commissioner Bedoya talked about the importance with respect to privacy and education technology. So, when kids are all online doing their homework, and they should not have to give up all their data and all their privacy just to do their homework. So, I think that is a very, very important issue. But I will continue to work with the FTC, and I would—happy to work with all of the Committee members in future legislation relating to children's privacy.

Senator SCHMITT. Yes. And I guess changing gears a little bit. Of course, there was, I guess it is 2 years ago now, or a year and a half ago now, the *West Virginia v. EPA* case. Could you just talk about how that changes how you look at FTC action, and if you agree, that certainly narrows the scope of what can be done and what is considered, you know, sort of narrowing *Chevron*?

Ms. HOLYOAK. Oh, certainly. Happy to. In the *West Virginia v. EPA* case, this is the case that involved major questions doctrine. This is a statutory tool of interpretation. So, what the court does is they look at the statute and trying to decide—well, they first identify, is there some sort of impact that has vast economic and significant impact from whatever this agency action is.

And then we are looking at the tool, the statutory tool, an authorization that is the basis of the action, and whether Congress clearly gave the agency that authority to act. So that is something at the forefront of our minds now, entering into, if I am confirmed,

as an agency, understanding the authorization, the authorities that Congress gave us, and making sure we stay in those bounds.

Senator SCHMITT. Mr. Ferguson, I don't have a lot of time, but in my previous role, we are also involved in some of these litigation against some of the big tech giants and their monopolistic behaviors.

But I do, with the remaining time, I do want to ask your opinion, you know, with the ongoing litigation related to the Government's coordination with big tech. Could you talk about how important the right of free speech is and what role does the FTC have in protecting the freedom of expression?

Mr. FERGUSON. Yes, Senator Schmitt. Obviously, the right to free speech is the foremost among the rights in the Bill of Rights, and I think it is that way for a reason.

And I also think that, you know, your litigation or the litigation you launched while you were Attorney General reveals the importance of policing monopolies. It is a lot easier for the Government to control the conduct of the individual citizen if it only has to coerce a couple market participants and they can control people downstream.

And I think that is why the aggregation of private power is potentially so dangerous, because if the Government can coordinate with only a few actors, it is a lot easier to control the rest of us.

And I think that the litigation that your state launched revealed how this can potentially work in real time. I think that is part of why the FTC's mission to protect the economy from monopolies is important, both for the functioning of the economy, but also for the preservation of individual liberty.

Senator SCHMITT. Thank you all. And I will just close with saying, your kids not only look adorable, they are so well-behaved. I am very jealous of what we have seen here over the first hour and a half. So, thank you. Thank you very much.

The CHAIR. Senator Peters.

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

Senator PETERS. Thank you, Madam Chair. And each of the nominees, congratulations on your nomination and your willingness to serve in these very important positions.

My first question is going to be to all three of our FTC nominees, and look forward, not just say yes or no answer, you can expand on the answer as well for the question that I am asking.

You know, every day, thousands of data brokers, they collect, they compile, and then sell consumers' personal information to third parties, and they do so with virtually no oversight from the Federal Government.

Data brokers do this with many different types of personal information, ranging from addresses and phone numbers, to income and political preferences, to health information, and even real time location data. And once it is gathered, brokers link it to specific users and then sell these data profiles commercially.

My bill, the Data Broker List Act, would require data brokers to register with the Federal Trade Commission and then provide information about the ways that they both use and share that very

personal information about people. The bill would also require that these brokers implement safeguards to prevent security breaches from occurring, which can be devastating to individuals.

So, my questions for all three of you is, in your view, how would American consumers benefit from increased data broker transparency and a requirement that data brokers implement a comprehensive security program as well? Ms. Slaughter, we will start with you, and then Mr. Ferguson and Ms. Holyoak.

Ms. SLAUGHTER. Thank you so much, Senator. I think you have highlighted a really important issue. We think a lot about have people consented or not consented to the sharing of their data, but usually that consent, to the extent that it is even valid consent, happens in the first party interaction.

Data brokers take that data, and it goes into this whole opaque ecosystem where people don't really know what is happening to it and couldn't consent or withdraw consent even if they wanted to, and the lack of transparency is just part of the problem there. One of the really important cases that the FTC is in the middle of litigating right now is against a data broker called Code Java.

And in that case, the agency—in its complaint, the agency talks about some of the ways this use of data can be incredibly damaging. So, I really appreciate the attention to this issue, and I think it is critically important.

Senator PETERS. Thank you. Mr. Ferguson.

Mr. FERGUSON. I agree with Commissioner Slaughter. The collection, aggregation, and sale of private data basically happens in the background of like ordinary online transactions. And the consumer has almost no idea that it is happening. And even regulators here often don't know what is happening once the data is collected, aggregated, where it goes, who does what with it.

My first boss in the Senate, Senator Grassley, is very fond of the saying that “sunshine is the best disinfectant.” I think that transparency at the very least can go a long way to informing consumers about what is happening in the background every time they are engaging in online transactions.

Senator PETERS. Right. Thank you. Ms. Holyoak.

Ms. HOLYOAK. Thank you. And I agree with Commissioner Slaughter and Mr. Ferguson on these issues. And I think the case that Commissioner Slaughter was talking about highlights some of these issues, particularly this precise geolocation information that would, if most consumers knew was being collected, would not be happy about it.

I know a lot of states have reacted to this. Utah has the statutes not in effect yet, but it does talk about sensitive data, and it would include those—that kind of information, so that it is very important to provide protections, and I look forward to working with you, if confirmed.

Senator PETERS. All right. Well, I appreciate the support for this concept from all three of you and will work with you, if confirmed, to make sure it becomes a reality. Transparency is absolutely critical, and consumers have no idea how much information is really out there. And if they did, I think they would be very frightened about that.

My next question is for Mr. Dziak. As a Michigander, it has been a long priority of mine to do all I can in Congress to address PFAS contamination. We know that PFAS exposure can lead to serious health effects, including cancer, low infant birth rate, liver and kidney issues, and reproductive and developmental problems, among many others.

In 2021, I worked to help to establish the PFAS Inter-Agency Working Group to improve the coordination between Federal agencies to address this contamination. In this Congress, I have introduced bipartisan legislation, the Protecting Consumers from PFAS Act, to add the Consumer Product Safety Commission to the list of Federal agencies required to participate on the PFAS Interagency Working Group.

Because the CPSC is a Federal agency tasked with protecting the public against any injury or harm associated with consumer products such as water resistant clothing, nonstick cookware, and other products that may contain PFAS chemicals, it only make sense in my mind that the Commission would have a permanent seat on this working group.

And my question for you, sir, is, as we seek to bolster the Federal Government's response to this contamination, can you speak to the importance of having—the CPSC having a seat on the PFAS Interagency Working Group?

Mr. DZIAK. Yes. Senator Peters, I am aware of your record on this issue as well, as the record of others and the concerns about PFAS of members of the Commerce Committee. I know that you and others have been a leader on the issue.

I appreciate the work that you and Senator Lummis, Senator Welch, and Senator Collins have done on the PFAS legislation that you cited. As a former Senate staffer, I don't want to endorse a particular piece of legislation.

That is the purview of the legislative branch. But as you know, the NDAA, Fiscal Year 2021 NDAA created an all of Government approach with 19 enumerated entities. Currently, the CPSC is a participant in the PFAS Interagency Working Group.

It currently includes agencies such as EPA, Department of Defense, Department of Transportation, among those 19. Sharing important information begins with—across Government begins with a seat at the table, and that is especially something that is important for a smaller agency like the Consumer Product Safety Commission.

This approach will ensure more efficiency and more across Government reduction in the duplication of efforts. If confirmed, I am committed to continuing to work with this Commission—this committee, sorry, and you, as well as other members of the Commerce committee on the PFAS issue and on the specific issue of our seat at the Interagency Working Group.

Senator PETERS. Thank you. Thank you, Madam Chair.

The CHAIR. I know we have several more members to ask questions. I am going to recognize Senator Vance and give Senator Capito a distinguished member award just for being here at the whole hearing.

Right after gavel, though. Some members got in ahead of you. But thank you for your patience this morning. Then I am going to

ask Senator Welch to take over the hearing after that. So, Senator Vance.

**STATEMENT OF HON. J. D. VANCE,  
U.S. SENATOR FROM OHIO**

Senator VANCE. Great. Thanks. Thanks, Madam Chair. And I will try to be brief here, because I do have to run after my 5 minutes are up, but I want to direct the first question to Commissioner Slaughter.

And, you know, one criticism of the FTC during Lina Khan's tenure, a criticism, to be frank, I don't—I often disagree with, is that whatever the need for aggressive antitrust enforcement, conservatives should not trust the FTC to enforce antitrust laws without incorporating partisan views about race, gender, and sexual orientation.

In other words, there is a fear that antitrust enforcement often overlaps too much with progressive political ideology. You are somewhat vulnerable to that criticism, having said in the past that antitrust should be used to combat systemic racism.

So, I just want to give you a sense to sort of explain your own views. Let me just ask directly, do you think the FTC should be thinking about race, sexual orientation, gender identity when deciding whether to bring an antitrust case?

Ms. SLAUGHTER. Thank you, Senator. I enjoyed the opportunity to get to chat with you a little bit yesterday, and I am happy to answer the question today. I think it is really important that all Americans deserve the equal protection of the laws that the FTC enforces. We can't change what those laws are.

That is for you to do. We are—have to be squarely within the bounds of the FTC Act and related statutes. But within those boundaries, we have to make important decisions about which cases to bring and what to prioritize.

On the consumer protection side of our house, for many, many years we have had something called the Every Community Initiative, through which we ensure that every community in America gets the protection of the laws that we enforce, and that means people of color, but it also means rural Americans, senior citizens, members of the military, where experience teaches us that if we don't go out proactively to look for those cases, we might unintentionally just bring cases that help the same group of already privileged Americans that don't need our help the most.

And so, what I have been trying to articulate is a view that we should apply that same principle, that all Americans deserve the equal protection of the laws that we enforce on the competition side of our house.

And one of the ways that that matters is, for example, if we just made decisions about which merger to investigate, say, which hospital merger to investigate based on where we thought there was likely to be the highest dollar harm or the highest dollar value of the merger, we would probably focus our hospital merger enforcement program on high dollar urban centers where high cost care is being delivered, and that would leave out rural areas where hospital closures can have a cascading effect throughout the community.

So, I think being—having transparency into who our work is affecting and how is an important thing for us to do.

Senator VANCE. Sure. Appreciate the answer there. And just one last question, also to Commissioner Slaughter. So, I wonder about the intersection and how you think about the intersection between viewpoint discrimination and the antitrust enforcement.

In particular, one thing that we have heard a fair amount from some of our friends who work in, you know, to be direct, conservative media is that you sometimes have what look like coordinated advertiser boycotts that seem to be directed specifically at particular organs of the media.

And I wonder, when you think about sort of, you know, competition and harms to competition, do you think about viewpoint discrimination as the sort of thing that proper competition policy can address?

Ms. SLAUGHTER. I will be honest, that is a really interesting question to which I would like to give a little bit more thought before giving you a thorough answer. I think a couple of flags that jump out to me is when you are talking about viewpoint and expression, you are talking about important issues of speech where the Government needs to tread very, very carefully, as Mr. Ferguson articulated.

And then I also think about how can we—is there an articulable violation of the laws that we enforce, and that has to be the first thing that we start with and think about. But beyond that, I haven't given enough thought to your particular question to answer it more thoroughly.

Senator VANCE. OK. We will follow up then, because I would love to get a response after you have had more time to think about it. Appreciate all of you being here. Appreciate all of you being willing to serve. And I yield the remainder of my time. Thanks.

**STATEMENT OF HON. PETER WELCH,  
U.S. SENATOR FROM VERMONT**

Senator WELCH. Thank you, Senator. And I have a few questions. And first of all, thank you all. And Mr. Ferguson, Ms. Holyoak, I enjoyed our conversation. And the Commissioner Slaughter, great job you have been doing. We really appreciate it. And Mr. Dziak, congratulations.

This is incredibly important work. I do want to emphasize what my colleague, Senator Fischer, said. We have had just a lot of deadlock on some of our very important Commissions. It is incredibly important to try to work together to get to an outcome that is beneficial for the American people.

So, I just urge all of you to do your best to make that FTC really functional. One of the areas I have always had concern is about health care and how expensive it is, and I think the biggest threat to access in health care is the expense of health care. It is just beyond the ability of individuals to pay, for employers where the premiums keep going up, and for Government, for taxpayers.

And one of the recent developments is that private equity is buying up practices, or small hospitals, or nurse staffing agencies where once they get a hold of it, in our small hospitals, any hospitals really, have to get traveling nurses. This is just an example.

The price explodes and it really threatens our small community hospitals in particular.

It is—I want to ask each of the FTC nominees your thoughts on whether that is an area of inquiry for your Commission. I will start with you, Ms. Holyoak. The efforts by private equity essentially to buy up medical practices, and what we have seen is that that generally results in higher utilization, and higher cost, and oftentimes fewer practitioners.

Ms. HOLYOAK. And thank you, Senator. And I really appreciate the question, and I appreciate our conversation we had the other day. I really enjoyed it. I think this is an extremely interesting question.

As I had mentioned to you, my husband is a doctor and has been employed in various capacities, and health care—the health care industry is a very interesting intersection of those issues. I think the FTC has a very strong history of both competition and consumer protection enforcement actions in health care.

And I agree with you, Americans are very concerned about costs and having access to affordable health care. Again, this is another issue that I would love to understand, if confirmed, the FTC's experts on this issue. I want to know if they have looked at this, if they have seen this type of interaction that you were describing and—

Senator WELCH. Mr. Ferguson—I don't want to have—I don't mean to interrupt, but I just want to—

Mr. FERGUSON. I agree with you on the condition of the market. Health care, the price of health care has exploded since 2010. It has gone like seven times the rate of inflation or something outrageous like that.

Over the last 20 years, much of the FTC's most successful work has been in this area. Lots of successful cases preventing hospital mergers in local markets that would have created monopolies. I think this is like a core part of the FTC's work.

It is one of the most important things that the FCC does, and if I were confirmed, this would be one of my top priorities is doing whatever we can to promote competition and arrest the rising cost of health care.

Senator WELCH. Thank you. Ms. Slaughter.

Ms. SLAUGHTER. Thank you so much, Senator. I agree with my fellow nominees that this is a critically important issue.

And I think it is really important, to be clear, that I don't believe our antitrust laws permit companies to achieve scale through a roll up strategy of serial acquisitions that they would not be permitted to achieve through a single acquisition.

So, making sure that we are paying attention not just to each acquisition myopically, but to the broader strategy is what I believe the Clayton Act instructs us to do.

Senator WELCH. Thank you. And I have got a question for Mr. Dziak. The level of penalties at the CPSC are low, according to Mary Boyle, actually. Do you think that the fines that can be imposed meet the purpose of trying to deter bad conduct, or do these need to be raised?

Mr. DZIAK. Senator, the statutory level of the fines was set by Congress in a most recently updated, I believe it was in 2008

CBSIA. So, in terms of what that level is, I would certainly defer to Congress on if that is appropriate. Obviously, the higher—

Senator WELCH. You don't have an opinion?

Mr. DZIAK. I don't. Again, as a former Senate staffer, I would defer to Congress. That is a legislative judgment. But what I would say is the level of—the higher the level of the fine—

Senator WELCH. I am asking you for a recommendation.

Mr. DZIAK. The—and again, I am not trying to—

Senator WELCH. OK. So, you don't have an opinion. Thank you. And I recognize Senator Capito.

**STATEMENT OF HON. SHELLEY MOORE CAPITO,  
U.S. SENATOR FROM WEST VIRGINIA**

Senator CAPITO. Thank you very much. Thank all of you for being here. You have wonderful families, and thanks for their recognition and patience.

I am very pleased to be here. In 2018, I had the honor of introducing former Commissioner Christine Wilson, she is a resident of West Virginia, for her nomination. And both she and former Commissioner Noah Phillips resigned their positions before their 7 year terms were up.

In it, she wrote a very well-publicized letter that she felt that the leadership had disregard for the rule of law and due process and brought some questions about bipartisanship. And you have heard a lot of questions about this, and you all addressed this in your opening statements.

Mr. Ferguson said, “consumer protection and competition are not partisan issues.” So, for each one of you, just quickly, because I do have another question I want to get to—it is important to me. How are we going to get back to that and not keep generating very partisan, 3–2 positions coming out of the Commission? And, Ms. Holyoak, I will start with you—Holyoak.

Ms. HOLYOAK. Thank you. Like Mr. Ferguson, I have worked on some antitrust and consumer protection actions within the State of Utah as Solicitor General, and I have found that those are the most—those actions, those investigations, and matters are the most bipartisan.

It is where—these are issues that affect Americans' everyday lives, and everyone cares about them, and we want to work together on this. I have met, just previously I have had the opportunity to meet with Commissioner Slaughter, with Commissioner Bedoya, and Chair Khan, and I do believe that we will work together—well together.

I don't think we will agree on everything, but I think we will find consensus on many, many issues.

Senator CAPITO. Mr. Ferguson.

Mr. FERGUSON. Thank you, Senator Capito. We are going to have disagreements, of course. This is how—Congress has disagreements. The Supreme Court has disagreements. That is OK.

Disagreeing often sharpens and improves outcomes. Justice Scalia and Justice Ginsburg used to say about each other all the time that their dissents made their majorities better. I think that is good. But I think it is important for a bipartisan agency like the

FTC, that the process is free of gamesmanship and that there is transparency in the process.

And I can only speak for myself, but if I were confirmed, I would do everything I could, even in cases where I disagree, for all of us to work together on the process and improve the outcome, whatever that outcome ends up being.

Senator CAPITO. Ms. Slaughter.

Ms. SLAUGHTER. Yes, I agree with both Solicitor General Holyoak and Ferguson, and the only thing I can add to what I think they articulated very well is that I also think personal relationships matter and making the effort to get to know your colleagues, find common ground with them personally, as well as professionally, is worthwhile.

I was really privileged to get to know Commissioner Wilson during her time here and at the FTC, and I learned a lot from her and really continue to value that relationship. So that is something I really try to invest myself in.

Senator CAPITO. Thank you. Ms. Slaughter, I am going to address this question to you since you have been on the Commission and you kind of went into the ballpark when you said personal relationships. What is the FTC's policy on workers being in the office, physically?

Ms. SLAUGHTER. I believe our current policy requires workers to have 2 days, at least 2 days, in-person per pay period.

Senator CAPITO. So that is two days, every two weeks.

Ms. SLAUGHTER. Every two weeks.

Senator CAPITO. Do you all set that policy at the Commission or is that set—do you have to OK that policy?

Ms. SLAUGHTER. The Commission itself doesn't vote on the policy. Those policies are set by the Chair's Office in coordination with central Federal Government, OPM rules and regulations.

Senator CAPITO. OK. So, we have a Commission here who according to Senator Cruz's letter of June 19, 2023, he cites a study that says that in 2020, 87 percent of FTC employees believe the agency's leaders maintained high standards of honesty and integrity. Now it is just 44 percent. So, or 44 percent have said that they have a high level respect for senior leaders. That is an erosion of a pretty substantial half. It is half of the employees. In my view—this is Government wide, but we are talking FTC right here. You talk about the importance of personal relationships. You talk about mentoring and all the way, and the value of the decisions that are rendered by the staff—yet, you have a Commission that only has people coming in 2 days out of every 2 weeks. I understand Zoom and all that. We have all done all that. But that does not replace the inner workings of really developing these good relationships. Do you have any comments on that?

Ms. SLAUGHTER. Yes, I think you are pointing to a really important tension that not only the FTC but the rest of the Federal Government, and frankly, all of the workplace is grappling with, which is the tension between people's desire for flexibility, not spending hours commuting, and more ability to get their work done, with the benefit of in-person engagement.

And I know that this is something the private sector is grappling with, too. I will tell you, I take the results of the FEVS survey ex-

tremely seriously, and I have really worked hard to talk to staff and get a sense from them of what do they think is working, not working, where do they see the need for improvement? And I will be really honest that I have not heard from any of our staff a desire to be required to go into the office more. Many of them—

Senator CAPITO. That is pretty—I mean, I could get that one.

Ms. SLAUGHTER. Sure. But I think what is—100 percent, and that is the tension that I talked about a little bit, but I think it is important for us to be—to listen, to not make assumptions about what is driving staff views, and to listen to them, and understand them.

And then I think we need to continue to apply corrective action and in an iterative way to see what is working. But I am really eager for not just us, but the entirety of the workforce to figure out a better way to maintain a sense of community, while also maintaining flexibility. And I will just add that this is something I grapple with every day.

I come to the office more frequently than every two weeks, but I will admit that every morning when I am trying to get up and leave my house, it is hard for me to do that. I am juggling my children, and I am dealing with other things. And then once I get to the office, I am really glad to be there with my colleagues.

So, I experience it personally and I think about it from a management perspective, as well as a person.

Senator CAPITO. Yes. These issues are so huge, and the morale of a workplace really has great impacts on not just what kind of decisions you can come to, but how you can get to the transparency and bipartisanship that you all express a great—a desire for.

And so, I agree everybody is grappling with this, but you see news every single day where the private sector is saying, you got to come to work. Thank you. Do you want me to keep talking?

[Laughter.]

Senator HICKENLOOPER. I was lost in juggling the gavel. Senator Capito—oh, you are done. Sullivan. Senator Sullivan.

**STATEMENT OF HON. DAN SULLIVAN,  
U.S. SENATOR FROM ALASKA**

Senator SULLIVAN. Thank you, Mr. Chairman. And to the nominees, congratulations. I want to follow up on Senator Blackburn's really good discussion, and I am trying to have a bunch of questions. Hopefully, you can keep your answers relatively short. Where does the FTC derive its power? Why don't we start with you very quickly there.

Ms. SLAUGHTER. From the—

Senator SULLIVAN. Ms. Slaughter.

Ms. SLAUGHTER. From the statutes that Congress has passed.

Senator SULLIVAN. Mr. Ferguson.

Mr. FERGUSON. In the first instance, from the Federal Trade Commission Act.

Senator SULLIVAN. OK.

Ms. HOLYOAK. I agree with those answers.

Senator SULLIVAN. And then Mr. Dziak. I am not talking just FTC, but you as well.

Mr. DZIAK. We derive it from the Consumer Product Safety Act.

Senator SULLIVAN. So, we could get rid of you tomorrow if we voted on it, right? We could limit the number of Commissioners. All your power derives from the statutory authority we grant you, correct?

Ms. SLAUGHTER. Yes.

Mr. FERGUSON. Yes.

Ms. HOLYOAK. Yes.

Senator SULLIVAN. OK. I just want to make that clear. I think we are in an age of remarkable independent agency overreach. Let me give you one example. Actually, let me give you two examples. I had meetings like this with the FCC Chairman before he became the FCC Chairman.

I said, look, I know you are going to be tempted to make your Commission all about climate change, but you don't have any authority, statutory, you don't have any expertise. So, Mr. Nominee, will you commit me to make sure you don't make the FCC all about climate change? No, Senator, I don't plan on doing anything like that.

The FCC Chairman told me that. He lied to me. And I hope he is watching, and he is probably not. So, this is the kind of thing that just aggravates us because he doesn't have that authority. I did it with the chairman of the Fed. Same thing, right, a Republican. You don't have the statutory authority, you don't have the expertise to make the Fed all about climate change, but he did. OK.

So, there is this remarkable period in which independent agencies come to us, oh, we are going to stay with our statutory authority, and then you get confirmed, and holy cow, it is nuts. So, when Republican Commissioner Christine Wilson decided to resign as the FTC Commissioner back in February, she cited the agency, "disregard of Congressionally imposed limits on agency jurisdiction, defiance of legal precedent, and abuse of power."

So, can I get your commitment not only to stay within the bounds of statutory authority, but you guys are all smart lawyers, and as you know, in legal opinions, most good judges always start with a big paragraph on here is how I derived jurisdiction. Here is how the court derived jurisdiction. They go into detail.

So, can I get your commitment on every opinion that you issue to begin the opinion with a detailed discussion of your statutory authority? Not hey, we get this through FTC, organic statute x. I am talking about down to the details. Can I get your commitment, each one of you? I will start with you, Ms. Slaughter. Every opinion, give it to us. How do you derive the authority on what you are about to do in detail? Can I get your opinion—commitment to do that?

Ms. SLAUGHTER. Yes. So, Senator, I fully agree with you that the only authority we have and can exercise is that which Congress has given us.

The FTC's authority, for the record, is relatively broad in its statutory terms. It doesn't, for example, include the word health care, but we have talked about the important health care work that the agency has done. I am reluctant to make a commitment on how to craft opinions because—

Senator SULLIVAN. You don't want to—

Ms. SLAUGHTER.—sometimes other colleagues are the primary drafters of them. But I will promise you that I am extremely committed to ensuring that there is clear statutory authority for everything that we do.

Senator SULLIVAN. Commissioner—Mr. Ferguson.

Mr. FERGUSON. If you will indulge me to say, I won't necessarily put it in the opening paragraph in any opinion that I write.

Senator SULLIVAN. OK.

Mr. FERGUSON. If I am in the majority, I will explain why I think the Commission has the statutory authority to proceed. And if I am in dissent, I will explain why I think they don't have the statutory authority to proceed.

Senator SULLIVAN. Good. Ms. Holyoak.

Ms. HOLYOAK. Same—same answer.

Senator SULLIVAN. OK. Mr. Dziak. I don't want to leave you out there. You are feeling a little lonely. I came with a lot of questions—

Mr. DZIAK. I agree with my colleagues.

Senator SULLIVAN. Same question, though, for you, right?

Mr. DZIAK. I agree with Mr. Ferguson—

Senator SULLIVAN. We you could get rid of you tomorrow, if we wanted to, couldn't we?

Mr. DZIAK. That would be the right of Congress.

Senator SULLIVAN. Yes, sure. OK. I have a quick, very specific Alaska question. In the Kroger Albertson's grocery store merger was announced in October. I know you can't prejudge FTC reviews, but it is currently undergoing review. The two companies together own 35 grocery stores across Alaska.

That is a sizable footprint for us. The news of the merger and recent divestment plan have raised concerns among Alaskans that it could result in store closures and high food prices. Everybody is dealing with high food prices.

Our supply chain is especially vulnerable. Little redundancies, Alaska imports 95 percent of its food, almost entirely through the port of Alaska. So, as you can understand, Alaskans would be cautious of anything that would drive up prices and exacerbate these issues.

If confirmed, will each of you ensure that the FTC review takes into account the concerns that I just mentioned with regard to Alaska and our unique challenges as relates to that merger? Can I—not prejudge. Ms. Slaughter.

Ms. SLAUGHTER. Yes. I get—even beyond prejudging, I can't comment on any particular potential nonpublic investigation, but I will tell you that I think the issues you raised are extremely important. People's access to food matters more than almost anything else, so I take it very seriously.

Senator SULLIVAN. Mr. Ferguson.

Mr. FERGUSON. I also commit to take your concerns very seriously.

Senator SULLIVAN. Ms. Holyoak.

Ms. HOLYOAK. Me as well, yes.

Senator SULLIVAN. OK, great. And then my final question, Mr. Chairman. It is not just agency overreach. The FTC, in my view, under the current Chairman, has kind of made a name for herself,

but not in a good way. It is on overreach, but it is also really importantly, and something this committee takes very seriously, Democrats, Republicans, on ethics.

And there was this big discussion of her recusal in a certain case. Later, months later, after she decided not to recuse herself in the Meta case, a memo from the FTC's designated agency ethics official was made public, and it revealed that the FTC ethics official had recommended that the Chairman remove herself from the case.

So, you got the ethics lawyers saying, Mr. Chairman, Madam Chairman, you shouldn't be part of this. She ignored it. Tried to bury it. Ms. Slaughter, I think you supported the Chairman on this.

Can you explain why? I mean, the Chairman looks like just blew off the ethics official and said, I don't care, I am going to do this, and then you supported it.

Why did you support that? I mean, we need to have an agency that is above reproach in terms of ethics, and the Khan FTC is not only looking like an overreach factory, but a very ethically challenged group of Commissioners, and it is really troubling to me.

Ms. SLAUGHTER. Thank you, Senator. I will point out that I explained in detail my position in that 30 page opinion with Commissioner Bedoya. And I know you don't have the time for that here, so I will give you the short version.

Senator SULLIVAN. Oh, you did, against the ethics official's memo that was buried for months during this controversy.

Ms. SLAUGHTER. So, as I said earlier to Senator Cruz, I think it is important that we not put staff in the middle of Commissioner debates. And also—I did say that the Chair should not have to—

Senator SULLIVAN. Wait a minute. We do that all the time in the Senate. I go to Senate ethics on issues all the time. All the time. I use them all the time. Any issue, my staff, hey, we are not sure on the ethical issues.

I go to Senate ethics and say, hey, give me an opinion. And when they give me opinion, I abide by it. So that is not putting staff in between, that is getting an ethics opinion which you got, buried, and then you didn't abide by—like, that is unethical actions, isn't it?

Ms. SLAUGHTER. So, I appreciate it—I appreciate the importance of the views of our ethics official.

Senator SULLIVAN. But you ignore them?

Ms. SLAUGHTER. Well, let me be very clear. There are some parts of the statute and the Commission's rule that say that the views of the ethics official are dispositive. If our ethics official says you cannot participate, you cannot participate.

Those are cases that mostly involve financial conflicts of interest. The question here in this case was not one involving a financial conflict of interest. It was one alleging that the Chair had prejudged the matter at issue. In most cases—

Senator SULLIVAN. Well, she had, right, because she had publicly called for a ban on future acquisitions.

Senator HICKENLOOPER. Senator, I think we are—you are over time.

Senator SULLIVAN. No, I am not, Mr. Chairman. I mean, who is next? It is an important issue. It is ethics at the FTC. Can I ask

unanimous consent to be able to finish my questioning? It is a really important line of questioning. I don't think there is anyone after me, is there?

Ms. SLAUGHTER. I am happy to continue to explain this because I think it is an important issue to talk about. So, there is a distinction between financial conflicts of interest and the question of prejudice. And on those questions, the rules and the statute do not say that the views of the ethics official are dispositive.

So, telling you how I approach these cases. I take the views of our staff extremely seriously. I take them on all the matters, and I take their advice, and then I go back to the text of the statute, I go back to the related rules, and I go back to any related jurisprudence to try to form my own opinion.

I think it is not consistent with my oath of office to rubber stamp the opinion of any staff in the agency, unless the rules tell me that I have to treat that opinion as dispositive. I think it is my job to formulate my own judgment, and that is what I did in this case, where it was clear to me, based on the precedent, and the statute, and the Commission rules, that the chair, who was appointed largely because of her expertise and views on tech policy issues—

Senator SULLIVAN. Yes, no that is—

Ms. SLAUGHTER.—concentration—

Senator SULLIVAN. That is a stretch, right? Just that is a stretch. A lot of us didn't even vote for her. Look, bottom line is, I need a commitment from all of you to uphold the highest standards of ethics under the law. When you are giving advice on that, can I get a commitment from each one of you—all four of you, please?

Ms. HOLYOAK. Absolutely.

Mr. FERGUSON. Unequivocally, yes.

Ms. SLAUGHTER. Yes.

Senator SULLIVAN. OK. Thank you. Thank you, Mr. Chairman.

Senator HICKENLOOPER. Great. Thank you all. I have one more question that I will slip in since I am in this seat, and I ask all three of you, you don't have to go on a great length, but obviously and I think this has been well reported, entrepreneurs are less likely to start a business if they think a market incumbent is too powerful to compete against.

And I think we talked about, actually at various times, we have all talked about how important small businesses are, how essential they are to spurring innovation, creating—expanding economy and expanding businesses. So how should the FTC think about promoting competition and support innovation in the technology sector?

Ms. SLAUGHTER. Thank you, Senator. I think this is a really important issue, and I think that this is actually one of the reasons there is so much bipartisan consensus on competition issues. I think everybody wants to see a market where the person with the best idea can start a new business, and build a better mousetrap, and enter and thrive.

And incumbents with too much market power can protect themselves from competition, and that is really problematic for the growth of small businesses. So, our attention needs to be not just on the ability—on effects of mergers or anti-competitive conduct on prices, but on their effects on innovation and entry, and the oppor-

tunity to achieve that American dream of starting a business, and entering the market, and building yourself to success.

Mr. FERGUSON. I agree, and I enjoyed our talk on this specifically, Senator Hickenlooper, the other day. You know, I think that the biggest obstacle to the success of the free enterprise system are barriers to entry, and I think that there are two big ones that every potential entrepreneur confronts.

The first are incumbents who might have monopoly power, and the other is regulation. And I think that the anti-monopoly impulse is the same as the deregulatory impulse, because both of those things can be huge obstacles to taking a good idea in its incipiency and transforming into something that improves everybody's life.

And so, you know, I think that that is the balance, is we need to protect markets from monopolies, but not give in to a hyper regulatory impulse.

Ms. HOLYOAK. I agree with everything that they just said, and I would just add that I think we can get there with robust law enforcement in these—against anti-competitive conduct and enforcing the statutes that we have.

Senator HICKENLOOPER. Mr. Dziak, do you have a comment?

Mr. DZIAK. I do not. That is outside of the jurisdiction of the CPSC.

Senator HICKENLOOPER. It sure is. But I didn't want to deny you that opportunity. Thank you. I really appreciate that, and I think it is an opportunity for bipartisanship, as you all three just displayed. Senator Cruz, second round of questions?

Senator CRUZ. Thank you, Mr. Chair. Commissioner Slaughter, I want to go back to the questions that Senator Capito asked.

I think there is a disturbing pattern in the Biden Administration of Federal employees not showing up for work. And after the pandemic, the Biden Administration has decided that Federal work doesn't actually entail going to the office, and it is—the absenteeism is a massive problem throughout the Biden Administration.

My staff inquired of the FTC what the data are, and I will tell you what your staff told us. As of June 30th, 103 staff, approximately 8 percent of the FTC employees, are working remotely. Now, that on its face doesn't sound horrific, 8 percent of the staff is teleworking, not going into the office at all.

They then continue to say the remaining 92 percent of the workforce are reporting to the office on a regular recurring basis. Well, regular recurring basis sounds good, until they specify, and this is based on the badging—so the badges when you are coming in and out of the office, there are records.

According to the FTC, of the “regularly recurring working staff,” 60 percent of them are showing up to work 1 day a week. Another 20 percent are showing up to work 2 days a week. And another 20 percent are showing up to work three to 5 days a week. Notice three to five doesn't specify.

So, we don't know how many are showing up five days a week. I am got to tell you, when I was at the FTC in 2001, in 2002, and 2003, to the best of my knowledge, every single employee showed up at the office five days a week unless they were sick or on vacation, because it was a job. It was a job for the American people, paid for by the taxpayers.

You mentioned the private sector. I don't know a single private sector employee—employer that sits there and allows 80 plus percent of their employees not to show up for work.

Do you think it is being faithful to the American people that under your leadership and Chair Khan's leadership, although she has now left, that over 80 percent of the employees are showing up to work 2 days a week or less?

Ms. SLAUGHTER. Senator, I think it is really important to distinguish between working from—in the office and the concept of showing up to work. There is no one—

Senator CRUZ. Do you think it is acceptable to the American people—you know what, if you are a steelworker or if you are a truck driver, if you are a waiter, if you are a waitress, there are a whole ton of jobs, you don't have the chance to sit at home, you don't have the chance to go play golf on Fridays and Mondays when you want to and treat it like a part time job.

Do you think the American people, you honor your commitment to the American people by having over 80 percent of the staff not in the office at least 3 days a week, and maybe four or more?

Ms. SLAUGHTER. If I believe that anyone at the agency was treating their full time job like a part time job or going off and playing golf, I would have a huge problem with it. So, what I know them to be doing is working—

Senator CRUZ. So let me get a direct answer. Do you believe it is OK that over 80 percent of the staff does not show up physically in the office 3 days a week or more?

Ms. SLAUGHTER. I believe that that is 100 percent consistent with the guidance that we have gotten. It is different—

Senator CRUZ. Guidance from whom?

Ms. SLAUGHTER. I believe the Office of Personnel Management, but I want to get back to you.

Senator CRUZ. Well, I believe you, because it is a problem throughout the Biden Administration. The Biden Administration has decided Federal employees don't need to show up to work. And I will tell you, the rest of the country shows up to work.

So, that is distressing. Let's shift to another—look, and I think this is endemic of an attitude, which is that this agency is unaccountable. When you and I sat down and talked, I asked you about multiple oversight letters I had sent to the agency that you still had not responded on.

Do you have any of those oversight responses here today?

Ms. SLAUGHTER. Well, Senator, as you know, I am not the Chair of the agency. The Chair's—the letters are directed at the Chair's office and the Chair's office is—

Senator CRUZ. So, it is the Chair that is being recalcitrant. I believe you there. Let's go back to the Chair. We talked about how the Chair deliberately disregarded the advice of the designated agency ethics official.

And then you and Commissioner Bedoya voted with the Chair to forcibly redact Commissioner Wilson's dissent, letting the public know that. Subsequently, during an April hearing before the House Committee on Energy and Commerce, Chair Khan was asked, were there any instances where she had, "not followed the designated agency ethics official's advice?"

Here is what she said. “No, in instances where companies like Facebook or Amazon have petitioned for my recusal, I have consulted with the DEO and have taken actions that are consistent with the legal statements the DEO has made.” Was that a truthful and candid response?

Ms. SLAUGHTER. First of all, I think the Chair should be able to speak for herself.

Senator CRUZ. I would love to, but she hasn’t testified in over 800 days here, so you are the only Commissioner that we have in front of us.

Ms. SLAUGHTER. I also want to be consistent with what I told you before about not wanting to disclose staff guidance myself. But since you referenced that it was already in the public, that memo that is in the public says that the rules do not require the Chair’s recusal in that case, and I think—I understood her to be saying that.

Senator CRUZ. So, you believe that was a truthful and candid advice? She is speaking so precisely as a lawyer, she says, I have not taken—I have consulted with the DEO and have taken actions that are consistent with the legal statements the DEO has made.

And legal statements, boy, those words are carrying a lot of work. Because you are right, the DEO didn’t say you are legally required, you must recuse. The DEO said, I recommend that you recuse because it is a serious problem.

There is a perception of bias. She ignored that recommendation. We just read through that. And then she goes to Congress under oath and doesn’t acknowledge that she took a recommendation from the DEO and ignored it.

She just said, well, I followed the legal statements. Do you consider that truthful and candid testimony?

Ms. SLAUGHTER. Senator, I really don’t think it is appropriate for me to opine on it. I will tell you that sitting here——

Senator CRUZ. Why not?

Ms. SLAUGHTER. Because I wasn’t in the Chair’s head. I don’t——

Senator CRUZ. But you voted to censor the evidence that would have shown that was a lie.

Ms. SLAUGHTER. I voted consistent with Commission rules——

Senator CRUZ. Except I have shown you multiple instances where the Commission has released that information.

Ms. SLAUGHTER. But I wasn’t part of those decisions. And my job is to follow the Commission rules as I see them.

Senator CRUZ. All right. Let me ask you, subsequently. As you know, I, along with Chairman Colmer and Chairman Jordan, sent a letter to the FTC investigating many of its abusive actions. The FTC stated in response that per agency practice, it had deleted the e-mail accounts of former employees who had worked on a non-compete agreement rulemaking soon after they left the agency.

Now, under Federal law, agencies are required to protect Federal records, are required to keep them for 7 years. Under 44 U.S. Code Section 3301, the definition of records includes all recorded information, and as NARA says, that includes electronic messages, including e-mail, instant messages, and text.

Why is the FTC purging its e-mails of all of the e-mails of employees as soon as they leave? And in particular here, you have got

two employees that came from left wing advocacy groups that went and worked at the FTC, and as soon as they leave, you erase all of the records in direct contravention of Federal law and acting to shield those records from investigation from Congressional oversight?

Ms. SLAUGHTER. Senator, since I got to the FTC, I have worked really hard to understand what the rules around record retention are because they are different from where I came from in the Senate, where there are not similar rules.

And I will tell you, the rules are actually a little bit hard to understand. The guidance I got from our General Counsel's Office and the Secretary's Office from the beginning is that all e-mails are not Federal records.

Certain things are Federal records that are required to be preserved. Also, we are required to preserve anything that is subject to a FOIA request or a litigation hold. But outside of that, we are not required to preserve things and in fact are directed to delete before e-mails—agency security, hygiene purposes—

Senator CRUZ. I will say, my time is expired, but I will point out that that definition is hyper technical, because as I understand it, the FTC operates under the fiction that when an employee is leaving, that employee will print out and save whichever e-mails are Federal records.

And so, the agency can then just go and delete them all. Now, I don't know anyone who does that, and you don't know anyone who does that. That is designed to prevent litigation from getting access to those e-mails and prevent Congressional oversight.

And given the pattern of unethical behavior by the Chair of this Commission, and then the pattern of the Commissioners being willing to cover it up, deleting e-mails in defiance of Congressional oversight is deeply troubling, and it suggests an agency that believes it is not accountable to the American people.

Senator HICKENLOOPER. Thank you all. Thank you, Ranking Member Cruz. Again, I appreciate your willingness to do public service. Obviously, these are difficult times, but I think you will bring—you, new candidates will bring a fresh body of enthusiasm and energy to the work of the Commission, and I look forward to seeing that—the results of your labor.

And again, thank you, all of you, for your public service. Before we close the hearing today, I have one more question to ask of all the nominees, and that is, if confirmed, will you pledge to work collaboratively with this committee, provide thorough and timely responses to our requests for information, as we put together and address the important policy issues and appear before—and appear before the Committee when requested?

Ms. SLAUGHTER. Yes.

Mr. FERGUSON. Yes.

Ms. HOLYOAK. Yes.

Mr. DZIAK. Yes.

Senator HICKENLOOPER. Thank you for that commitment. Senators will have until close of business Monday, September 25, to submit questions for the record to the Committee. Witnesses will have until close of business on Monday, October 2, to respond to those questions.

Again, one last time, thank you all for your time today, but for your public service. That concludes today's hearing.  
[Whereupon, at 12:30 p.m., the hearing was adjourned.]



## A P P E N D I X

NATIONAL RETAIL FEDERATION  
*September 20, 2023*

Hon. MARIA CANTWELL,  
Chair,  
Committee on Commerce, Science, and  
Transportation,  
Washington, DC.

Hon. TED CRUZ,  
Ranking Member,  
Committee on Commerce, Science, and  
Transportation,  
Washington, DC.

Dear Senators Cantwell and Cruz:

On behalf of the National Retail Federation (NRF), I write to thank you for calling today's hearing regarding nominations to the Federal Trade Commission (FTC). As you review the nominees' qualifications, NRF urges you to assert aggressive oversight over FTC, particularly as several recent notable Commission actions have been outside the bounds of the authority delegated to the Commission by Congress.

The National Retail Federation passionately advocates for the people, brands, policies and ideas that help retail succeed. From its headquarters in Washington, D.C., NRF empowers the industry that powers the economy. Retail is the Nation's largest private-sector employer, contributing \$3.9 trillion to annual GDP and supporting one in four U.S. jobs—52 million working Americans. For over a century, NRF has been a voice for every retailer and every retail job, educating, inspiring and communicating the powerful impact retail has on local communities and global economies.

First, NRF opposes the Noncompete Clause Rulemaking, published in the Federal Register on January 19, 2023, primarily because the Commission lacks any authority to regulate, much less ban, noncompete agreements. Without clear Congressional authorization, the FTC seeks to regulate a significant portion of the American economy that has been governed exclusively by state law for over 200 years. Regarding the merits of the rule, NRF opposes attempts to ban the inclusion of noncompete agreements in employment contracts with employees. Federal and state laws have long recognized that noncompete agreements serve a legitimate purpose in our economy. These agreements allow retailers to protect trade secrets, customer relationships, and confidential information. They are particularly necessary and appropriate when NRF members enter into employment contracts with higher-level executives, yet the rule makes no distinction between highly compensated executives and other employees.

Secondly, the FTC recently solicited public comments on "Provisions of Franchise Agreements and Franchisor Business Practices." NRF is concerned that this is the beginning of an effort by the FTC to pursue regulations that would have a detrimental impact on the franchise business model. As the Committee is aware, the franchise model has provided significant economic opportunity and wellbeing to entrepreneurs across the country and the economy generally. Unfortunately, an FTC effort to impose joint employer liability between franchisors and franchisees would endanger such arrangements. Should the FTC pursue such a course of action, fewer individuals would risk opening their own small business and fewer franchisors would be willing to offer the support and services they currently provide to franchisees. In short, FTC seems to be taking strides to regulate in this area, which would threaten the very foundations of the franchise model and have devastating consequences for the economy.

Additionally, NRF is highly concerned that a recently proposed FTC rule would result in a massive reframing of antitrust premerger notification in the United States. The rule seeks to impose substantial additional burdens on merging parties that will be exceedingly costly, in terms of both time and money. Because the existing Hart-Scott-Rodino (HSR) Act notification process has been effective at preserving competition, and because the burdens under the proposed rule would disproportionately disadvantage many of NRF's members, the NRF continues to urge

the FTC to reconsider its course and avoid substantial deviation from the current premerger notification program.

We respectfully request that this letter be made a part of the record of the hearing and thank you for your attention to this issue.

Sincerely,

DAVID FRENCH,  
Senior Vice President Government Relations.

FEDERAL TRADE COMMISSION  
Washington, DC, August 31, 2022

MEMORANDUM

TO: Christine S. Wilson  
Commissioner

FROM: Lorielle L. Pankey  
Designated Agency Ethics Official

SUBJECT: Federal Ethics Response to Meta Petition for Chair Khan's Recusal

This memorandum addresses Federal ethics issues raised by the petition filed by Meta Platforms, Inc. ("Meta")<sup>1</sup> calling for Chair Lina M. Khan's recusal from the FTC's review of Meta's proposed merger with Within Unlimited, Inc. ("Within"). The Commission has exercised its discretion to treat Meta's petition as properly filed and Meta's petition is now under the Chair's consideration. For the reasons discussed below, I recommend Chair Khan elect to recuse from participating in Meta/Within as adjudicator to avoid an appearance of partiality even though I do not find her participation would constitute a *per se* federal ethics violation.

The primary arguments made by Meta are focused on prejudice and due process concerns. I continue to defer to the FTC's Deputy General Counsel for Legal Counsel and my other colleagues in the Office of the General Counsel to provide guidance on such issues.<sup>2</sup> From a Federal ethics perspective, I have strong reservations with Chair Khan participating as an adjudicator in this proceeding where—fairly recently, before joining the Commission—she repeatedly called for the FTC to block *any* future acquisition by Facebook. In my view, such statements would raise a question in the mind of a reasonable person about Chair Khan's impartiality as an adjudicator in the Commission's Meta/Within merger review. Accordingly, I recommend Chair Khan recuse to avoid an appearance of partiality concern pursuant to 5 C.F.R. § 2635.502.

My recommendation notwithstanding, a decision by Chair Khan to participate in this matter as adjudicator is not a *per se* federal ethics violation. Given the nature of the appearance concern at issue, Chair Khan may exercise her discretion to conclude there is no reasonable basis to question her impartiality in this matter. Should Chair Khan decide to participate, Meta's petition must be reviewed by the Commission. Whether the Chair should participate as an adjudicator in this proceeding may later be reviewed by a Federal court. Ultimately, regardless of what conclusions are made and by whom, my inquiry must focus on upholding the integrity of FTC programs, operations, and decisions. Maintaining public confidence in the FTC's integrity is my sole focus as the agency's career Designated Agency Ethics Official.

**Background:**

*(1) Procedural History*

On July 25, 2022, Meta petitioned for Chair Khan's recusal "from participating in any decisions concerning the FTC's review of Meta's proposed merger with Within Unlimited, Inc. ('Within'), including any upcoming agency action or vote related to the merger."<sup>3</sup> Meta's July 2022 Petition expressly incorporates the same statements allegedly made by Chair Khan before joining the Commission and the same legal

<sup>1</sup>Meta was previously known as Facebook, Inc. ("Facebook").

<sup>2</sup>Legal ethics, administrative law, and related concerns are beyond the purview and expertise of the FTC's Designated Agency Ethics Official. However, it is worth noting that the Commission previously indicated the Federal judicial recusal standard, 28 U.S.C. § 455, is the relevant standard to apply in a Part 3 proceeding when addressing the appearance of bias on due process grounds. See *Intel Corp., Docket No. 9341, Opinion and Order of the Commission Denying Motion for Disqualification (Public Version)*, at p. 5 (Dec. 18, 2009).

<sup>3</sup>*In re Petition for Recusal of Chair Lina M Khan from Involvement in the Proposed Merger between Meta Platforms, Inc. and Within Unlimited, Inc.* (July 25, 2022) ("July 2022 Petition").

arguments raised by the company in its July 2021 Petition to recuse Chair Khan from a different FTC antitrust matter.<sup>4</sup> To properly consider Meta's July 2022 Petition, one must understand what happened in the past year.

Pursuant to Commission Rule of Practice 16 C.F.R. § 4.17, the FTC's Office of the Secretary rejected Facebook's July 2021 Petition as improperly filed since no administrative proceeding was pending before the Commission. The Commission later filed an amended complaint against Facebook in Federal district court, alleging monopolization in the social networking market. *See Fed. Trade Comm'n v. Facebook, Inc.*, No. CV 20–3590 (JEB), 2022 WL 103308, (D.D.C. Jan. 11, 2022). Facebook moved to dismiss the amended complaint and again challenged Chair's Khan decision to participate.

The district court denied the motion to dismiss and resolved the recusal question in favor of the Commission. The district court concluded that when voting in favor of filing a Federal court complaint against Facebook, the Chair was acting as a prosecutor. After determining due process standards applicable to adjudicators and those applicable to final decisionmakers in rulemaking proceedings did not apply when voting to issue a complaint in Federal court, the district court applied the due process standards applicable to prosecutors. Finally, the district court held that none of the statements Facebook attributed to the Chair required her to recuse from her service as prosecutor on due process or Federal ethics grounds.<sup>5</sup>

Meta expressly acknowledges it failed to convince the district court to require Chair Khan's recusal when serving in a prosecutorial role.<sup>6</sup> Accordingly, the primary focus of Meta's July 2022 petition is whether Chair Khan must recuse when serving as adjudicator in the FTC's Meta/Within merger review. To be clear, Meta also expressly challenges Chair Khan's participation in the vote to issue an administrative complaint.<sup>7</sup> Considering the district court opinion, Meta appears to argue the vote to issue an administrative complaint is adjudicatory. It is not necessary to resolve that question in light of the Commission's vote to issue a Part 3 complaint.<sup>8</sup> Now that the matter is in adjudication and before the Chair under 16 C.F.R. § 4.17, the key question is whether Chair Khan is required to recuse from any further participation in this adjudicatory proceeding.

## (2) *Prior Statements about Facebook Acquisitions*

Before being appointed to the Commission, Chair Khan spoke and wrote extensively about Facebook and competition law.<sup>9</sup> The most relevant statements appear below in bold, with context helpfully identified and summarized by my colleagues in the Office of the General Counsel:

On November 1, 2017, while serving as Director of Legal Policy for the Open Markets Institute ("OMI"), Chair Khan signed a letter to then Acting FTC Chair Ohlhausen stating that "**[r]ecent events reveal that Facebook has become too big and complex for any executive team to manage responsibly, and has provided a back-door through which America's enemies can attack our vital social and democratic institutions.**"<sup>10</sup> The letter further states that "**[t]he most obvious immediate step to address Facebook's current power is to prohibit mergers between Facebook other potentially competitive social networks or other new and promising products and services. In other words, until the American people,**

<sup>4</sup>See *In Re Petition for Recusal of Chair Lina M Khan from Involvement in the Pending Antitrust Case Against Facebook, Inc* at 1 (July 14, 2021) ("July 2021 Petition"), attached as Ex. A to July 2022 Petition.

<sup>5</sup>*Id.* at \*19–21.

<sup>6</sup>July 2022 Petition at 3.

<sup>7</sup>To the extent Meta intends to relitigate whether the Chair's statements require her to recuse from participating in a prosecutorial function, both the district court and the FTC's Designated Agency Ethics Official have already addressed that concern. *See* Attachment I: *Federal Ethics Response to Petitions for Chair Khan's Recusal* at p.1 (July 26, 2021) (concluding, "the Amazon and Facebook petitions are not meritorious at least to the extent they seek to recuse Chair Khan on Federal ethics grounds from participating as a prosecutor/investigator in FTC antitrust matters concerning Amazon and/or Facebook.").

<sup>8</sup>The Commission voted to issue an administrative complaint in Meta/Within on August 11, 2022. It is rather futile to split hairs about whether a vote to issue an administrative complaint is a prosecutorial vs. an adjudicatory function. To protect the integrity of Commission decisions, if an employee should recuse from the subsequent administrative adjudication, the prudent course is to also recuse from participating in the vote authorizing the administrative adjudication.

<sup>9</sup>See e.g., Lina M. Khan, *The Separation of Platforms and Commerce*, 119 Colum. L. Rev. 973, 1002 (2019).

<sup>10</sup>Press Release, Open Markets Inst., *Open Markets Institute Calls on the FTC to Block All Facebook Acquisitions* (Nov. 1, 2017), <https://www.openmarketsinstitute.org/publications/open-markets-institute-calls-on-the-ftc-to-block-all-facebook-acquisitions> (accessed Aug. 2, 2022).

working through our government, determine how to ensure that Facebook's power does not harm our Nation's security, democratic institutions, or the political rights and commercial freedoms of individual citizens, *Facebook should not be able to amass any greater power through acquisition.*"<sup>11</sup>

On March 22, 2018, in an op-ed published in *The Guardian* and a related press release on OMI's website, the Executive Directors of OMI called on the FTC to "prohibit all future acquisitions by Facebook for at least five years."<sup>12</sup> [Although she served as OMI's Director of Legal Policy at that time, Chair Khan's name does not appear in this op-ed or the OMI press release.]

On May 15, 2018, in a video interview with Bernie Sanders, the Chair, speaking as OMI's Director of Legal Policy, said, in response to the statement by another speaker of the need to break Facebook's power: "I think that's exactly right. *I think one of the first steps is to make sure Facebook is not acquiring further power. So, if Facebook tomorrow announces that it's acquiring another company, I would hope the FTC would look at that very closely and block it. Making sure that it's not just out there expanding its power is really important.* It's also important that we have a system of outside checks so it's not just Zuckerberg seeing who sees what information."<sup>13</sup>

In addition to the statements above, the Chair has also stated in her academic writing that Facebook "blocks apps that it deemed competitive threats . . . [and] systematically copied them" and that Facebook used its informational advantage to "thwart rivals and strengthen its own position, either through introducing replica products or buying out nascent competitors."<sup>14</sup>

Finally, while counsel to the U.S. House Judiciary Committee's Subcommittee on Antitrust, Commercial, and Administrative Law, the Chair had a leading role in authoring an October 2020 report summarizing the Committee's investigation into digital markets.<sup>15</sup> The report concluded that "Facebook has monopoly power in the market for social networks . . . [which is] firmly entrenched and unlikely to be eroded by competitive pressure from new entrants or existing firms."<sup>16</sup> The report described the Oculus virtual reality headset as one of Facebook's five primary product offerings, and noted that Facebook had acquired "several virtual reality and hardware companies, such as Oculus . . . [and] Oculus game developers."<sup>17</sup> The report added that Facebook and other tech companies "have recently focused on acquiring startups in the artificial intelligence and virtual reality spaces," and that in these spaces, "the dominant firms of today could position themselves to control the technology of tomorrow."<sup>18</sup>

Office of the General Counsel Memorandum, "Meta Petition to Recuse Chair Khan" at p. 3-4 (August 10, 2022) (emphasis added).

#### Discussion:

- (1) *Chair Khan is required to recuse from participating as an adjudicator in Meta/ Within if she determines a reasonable person would question her impartiality. Otherwise, Chair Khan is not required to recuse on Federal ethics grounds and her participation would not be a per se federal ethics violation.*

Federal employees are required to ensure their conduct upholds public trust in Federal decisions, programs, and operations. More specifically, Federal employees must be, *as well as appear to be*, impartial in the course of performing their official duties:

<sup>11</sup> *Id.*

<sup>12</sup> Press Release, Open Markets Inst., *Fines for Facebook Aren't Enough: The Open Markets Institute Calls on FTC to Restructure Facebook to Protect Our Democracy* (Mar. 22, 2018), <https://www.openmarketsinstitute.org/fines-for-facebook-arent-enough-the-open-markets-institute-calls-on-the-ftc-to-restructure-facebook-to-protect-our-democracy> (accessed Aug. 2, 2022).

<sup>13</sup> The Bernie Sanders Show: *The Greatest Threat to Our Democracy?* (May 15, 2018) (starting at 20:29), <https://www.youtube.com/watch?v=wuCAy10h1HI> (accessed Aug. 2, 2022).

<sup>14</sup> Lina M. Khan, *The Separation of Platforms and Commerce*, 119 Colum. L. Rev. 973, 1002-3.

<sup>15</sup> Lina Khan C.V. (archival version), <https://web.archive.org/web/20210628071354/http://www.linamkhan.com/bio-1> (accessed Aug. 4, 2022).

<sup>16</sup> Majority Staff of H. Subcomm. on Antitrust, Commercial, and Admin. Law of the Comm. on the Judiciary, 116th Cong., *Investigation of Competition in Digital Markets* at 6 (2020), [https://judiciary.house.gov/uploadedfiles/competition\\_in\\_digital\\_markets.pdf?utm\\_campaign=4493-519](https://judiciary.house.gov/uploadedfiles/competition_in_digital_markets.pdf?utm_campaign=4493-519) (accessed on Aug. 4, 2022).

<sup>17</sup> *Id.* at 124.

<sup>18</sup> *Id.* at 327.

- Employees shall act impartially and not give preferential treatment to any private organization or individual; and
- Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in this part. Whether particular circumstances create an appearance that the law or these standards have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts.

5 C.F.R. §§ 2635.101(b)(S), (14).

The Standards of Ethical Conduct for Employees of the Executive Branch (“Standards of Conduct”) attempt to balance protecting the integrity of Government operations with the important aim of achieving mission success through optimal use of uniquely qualified, highly skilled personnel. An employee “should not participate in a particular matter involving specific parties which he knows is likely to affect the financial interests of a member of his household, or in which he knows a person with whom he has a covered relationship is or represents a party, if he determines that a reasonable person with knowledge of the relevant facts would question his impartiality in the matter.” 5 C.F.R. § 2635.501(a). The use of the term “covered relationship” in the Standards of Conduct “pinpoint[s] certain relationships that are especially likely to raise issues of lack of impartiality [and] helps to focus the employee’s inquiry.” 57 Fed. Reg. 35006, 35025 (August 7, 1992) (preamble to final rule). Federal employees have a “covered relationship” with:

- (i) A person, other than a prospective employer described in § 2635.603(c), with whom the employee has or seeks a business, contractual or other financial relationship that involves other than a routine consumer transaction;
- (ii) A person who is a member of the employee’s household, or who is a relative with whom the employee has a close personal relationship;
- (iii) A person for whom the employee’s spouse, parent or dependent child is, to the employee’s knowledge, serving or seeking to serve as an officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee;
- (iv) Any person for whom the employee has, within the last year, served as officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee; or
- (v) An organization, other than a political party described in 26 U.S.C. 527(e), in which the employee is an active participant.

5 C.F.R. § 2635.502(b)(1)(i)-(v).

The Standards of Conduct also contain a regulatory catch-all provision: “[a]n employee who is concerned that other circumstances would raise a question regarding his impartiality should use the process described in § 2635.502 to determine whether he should or should not participate in a particular matter.” *Id.* § 2635.501(a); *see also id.* § 2635.502(a)(2) (reiterating that “[a]n employee who is concerned that circumstances other than those specifically described in this section would raise a question regarding his impartiality should use the process described in this section to determine whether he should or should not participate in a particular matter.”). Accordingly, the U.S. Office of Government Ethics (OGE) recognizes that certain situations, even if not prohibited by law, are likely to raise a question in the mind of a reasonable person about an employee’s impartiality. *Id.* §§ 2635.502(a)-(b).

Notably, none of the situations OGE expressly identifies in its regulations are at issue here. No one has alleged the Chair has a “covered relationship” with a party or party representative in this proceeding. Further, no one has alleged this proceeding would affect the financial interests of a member of the Chair’s household. Meta’s petition therefore must be considered within the scope of OGE’s regulatory catch-all provision concerning “other circumstances,” as set out in §§ 2635.501(a) and 2635.502(a)(2) that may give rise to an appearance concern.

OGE regulations require employees to first evaluate for themselves whether appearance concerns warrant their recusal from specific party matters. However, the Standards of Conduct provide that the agency designee may independently determine whether an employee must recuse due to certain appearance of partiality concerns.<sup>19</sup> *Id.* § K 2635.502(c); *see also id.* § 2638.104(c)(6) (the Designated Agency Ethics

<sup>19</sup>Perhaps the Standards of Conduct included this provision recognizing that affected employees are not always best suited to discern their own appearance concerns and to ensure consistency in Federal ethics decisions made within agencies and across the Executive Branch. Some agencies have addressed this issue by removing the affected employee’s perspective from the

Official is responsible for, among other things, “[t]aking appropriate action to resolve conflicts of interest and the appearance of conflicts of interest, through recusals, directed divestitures, waivers, authorizations, reassignments, and other appropriate means.”). Further, the Standards of Conduct state:

If the agency designee determines that the employee’s impartiality is likely to be questioned, he shall then determine, in accordance with paragraph (d) of this section, whether the employee should be authorized to participate in the matter. Where the agency designee determines that the employee’s participation should not be authorized, the employee will be disqualified from participation in the matter in accordance with paragraph (e) of this section.

*Id.* § 2635.502(c)(1).

Unless he receives an authorization to participate from the agency designee, “an employee **shall not** participate” in a specific party matter if the agency designee determines “that the financial interest of a member of the employee’s household, or the role of a person with whom he has a covered relationship, is likely to raise a question in the mind of a reasonable person about his impartiality.” *Id.* § 2635.502(e) (emphasis added). As stated above, Meta’s July 2022 Petition does not allege partiality concerns based on the financial interests of a member of Chair Khan’s household or the Chair’s covered relationships. The provisions in Section 2635.502(e) and (c) (quoted above) do not reference the regulatory catch-all language found in 5 C.F.R. §§ 2635.501(a) or 2635.502(a)(2) when referring to the agency designee’s authority to make independent determinations regarding appearance concerns and recusal requirements.<sup>20</sup> Thus, recusal is not legally required under these circumstances. Any decision by the Chair to participate in this matter as an adjudicator is not a *per se* federal ethics violation.

(2) *Several of Chair Khan’s statements-made within the past five years, less than three years before her Commission appointment-create an appearance of bias sufficient for the FTC’s Designated Agency Ethics Official to recommend Chair Khan recuse from participating as an adjudicator in Meta/Within. Nonetheless, Chair Khan may disagree and decide to participate.*

Evidence of actual bias is not the standard from a Federal ethics perspective. The standard is whether it is reasonable to conclude the employee appears biased. *See id.* § 2635.101(b)(14); *see also* § 2635.501–502. Chair Khan should recuse from serving as an adjudicator from Meta/Within if her prior statements about Facebook would raise a question in the mind of a reasonable person about her impartiality.

Although the Chair may reach a different conclusion, it is appropriate to explain why I think a reasonable person would question her impartiality when serving as an adjudicator in Meta/Within. *Id.* §§ 2635.502; 2638.104(c)(6). As Designated Agency Ethics Official, I am frequently required to provide guidance in gray areas, including when an appearance concern arises within the scope of the regulatory catch-all provision of the Standards of Conduct. These issues are rarely litigated and OGE has indicated it will not make these judgement calls for agencies.<sup>21</sup> I strive to provide consistent advice to all FTC employees, taking care to evaluate situations at hand on a case-by-case basis. This careful approach is critical not only to ensure the overall integrity of FTC operations but to make clear to both the public and all FTC employees that everyone will receive the same Federal ethics guidance, regardless of their political leanings, rank, or their passionate opinions about how particular matters pending at the FTC should be resolved. To the best of my knowledge, no FTC employee has participated in a specific party matter when the agency designee has recommended recusal on appearance or other Federal ethics grounds. That said, to the best of my knowledge, the participation of an FTC employee has not been challenged on grounds like the allegations Meta and Amazon have made against Chair Khan.<sup>22</sup>

analysis altogether via supplemental Federal ethics regulations. *See e.g.*, 5 C.F.R. §§ 9401.108–111.

<sup>20</sup>This does not appear to be an oversight as OGE regulations addressing the scope of the agency designee’s authority repeat (twice) all other key components of the appearance of partiality analysis. *Id.* §§ 2635.502(c), (e).

<sup>21</sup>OGE is reluctant to serve as the final decisionmaker as to whether a reasonable person would question the impartiality of an employee’s participation in an agency particular matter. *See OGE Advisory 00 x 4* (April 11, 2000) (“Ultimately, an employee and the agency ethics official are considered the best arbiters of whether the circumstances of an individual case warrant recusal under section 2635.502.”).

<sup>22</sup>Amazon has petitioned for Chair Khan’s recusal on similar grounds. *In Re Motion to Recuse Chair Lina M Khan From Involvement in Certain Antitrust Matters Involving Amazon.com, Inc.*

The statements that, in my view, would raise appearance of partiality concerns in the mind of a reasonable person if Chair Khan serves as an adjudicator in this merger review stem from her repeated calls for the FTC to block all future acquisitions by Facebook. Some may argue that Chair Khan's statements about Facebook in bold text above do not raise a question in the mind of a reasonable person about her impartiality as adjudicator in this proceeding. I disagree. Where Chair Khan has fairly recently called for the FTC to block any and all acquisitions by Facebook, there is support for a reasonable, disinterested person to question whether the Chair would be impartial in a Commission adjudication of a merger by that same company. From a Federal ethics standpoint, recusal should follow solely based on appearances.

As stated in my response to Facebook's July 2021 Petition,<sup>23</sup> Meta refers to a variety of public statements made by Chair Khan, prior to her current appointment to demonstrate "other circumstances" are present that warrant her recusal from this matter due to an appearance of partiality. The heart of Meta's argument is that Chair Khan launched her career in large part by making numerous public statements about the legality of Facebook's business practices. Meta attempts to distinguish her remarks from other statements often made by other senior officials prior to entering Federal service by alleging Chair Khan repeatedly made conclusory statements specifically about the legality of its business practices as opposed to opining on competition issues more generally.

The existence of Chair Khan's public comments concerning Facebook prior to her FTC appointment is not in dispute. Even assuming without deciding Facebook's characterizations of her public statements as described in its July 2021 and July 2022 Petitions are accurate,<sup>24</sup> the question remains whether such commentary warrants Chair Khan's recusal from serving as an adjudicator in Meta/Within. Notably, Chair Khan will presumably become privy to non-public information in the course of this proceeding that may alter her alleged prior views. Meta stating this would be impossible for Chair Khan to do impartially does not make it so.

Nonetheless, the question is not whether the Chair will serve impartially but whether she appears to be impartial from the perspective of a reasonable person with knowledge of the relevant facts. In my view, the statements in bold text above attributed to Chair Khan on their face raise an appearance concern in the mind of a reasonable person where Chair Khan would be serving as an adjudicator in the Commission's review of an acquisition by that same company.<sup>25</sup> I do not reach this conclusion lightly and have already expressed my view-specifically, as applied to Chair Khan, Facebook, and Amazon-that rarely should employees' statements made prior to their Federal appointments trigger recusal on catch-all appearance grounds.<sup>26</sup>

Where the statements concern a specific company (Meta, formerly known as Facebook) and a particular outcome at this agency (calling for the FTC to block any acquisition Facebook seeks), it is difficult to conclude there is no reasonable appearance concern with Chair Khan serving as an adjudicator in the Commission's merger review of Meta/Within. In contrast, there likely would be no reasonable basis to question her impartiality if the statements were made long ago or if Meta's business practices had changed dramatically since the statements were made. Such drastically changed circumstances would likely make the opinions the Chair expressed previously largely irrelevant or at least woefully outdated and worthy of revisiting in the mind of a reasonable person. For example, if the Chair's statements had been made a decade or more ago or if Meta had already broken apart into a smaller com-

(June 30, 2021); *Petition of Reconsideration of Recusal Petition By Amazon.com, Inc.* (July 15, 2021).

<sup>23</sup> See Attachment 1: *Federal Ethics Response to Petitions for Chair Khan's Recusal* at p.5 (July 26, 2021).

<sup>24</sup> I have focused on the excerpts cited above, which were also used by my OGC colleagues in their memorandum to you about due process.

<sup>25</sup> This memorandum focuses on Chair Khan's role as adjudicator because that is nature of her participation in this proceeding. In my view, someone may reasonably question Chair Khan's ability to serve as a prosecutor in Meta/Within. However, that is irrelevant to this proceeding. Moreover, I have already independently issued a 5 C.F.R. § 502(d) authorization for Chair Khan to participate as an investigator/prosecutor in FTC antitrust matters affecting Meta (and Amazon). Attachment 1: *Federal Ethics Response to Petitions for Chair Khan's Recusal* (July 26, 2021). No one has brought information to my attention that warrants revoking that authorization. Accordingly, my prior Section 502(d) authorization for Chair Khan to participate as prosecutor/investigator remains in place.

<sup>26</sup> Generally speaking, such an approach would be impossible to implement, easily subject to manipulation, and likely disqualify large swaths of senior officials with relevant experience from serving the United States. See *id.* at p.6-7.

pany, the Chair's prior calls for the FTC to block any Facebook acquisition would no longer appear particularly relevant to the matter now before the Commission.

All of the statements above tied to the Chair were made within the past 5 years and since the statements were made Meta has only continued to grow.<sup>27</sup> Although Facebook recently rebranded itself as Meta, the parent company (Facebook) was simply renamed—none of Facebook's underlying companies changed in connection with the rebranding.<sup>28</sup> Notably, when Meta changed its ticker symbol months later in connection with the rebranding, OGE advised there was no reportable transaction for senior officials who previously held Facebook (FB) stock because in practice they continued to hold the same interest in the same company (*i.e.*, the same conflicts applied as before, there was simply a change in name; stockholders did not acquire an interest in a new or different company).

Further, it appears that Meta's largest acquisitions—including, purchasing the popular virtual reality platform Oculus—took place prior to the statements tied to Chair Khan above.<sup>29</sup> Thus, Facebook's entry into this space was already a point of concern when the statements were made. Within is also a virtual reality company. Whether Meta owning Oculus is relevant to the Commission's Meta/Within review is a question for our staff in the Bureau of Competition and the Bureau of Economics to answer. In any event, since the statements tied to Chair Khan were made fairly recently, after Facebook entered into the virtual reality space, and Meta has subsequently continued to grow via acquisitions, it is reasonable for a disinterested person to question her impartiality when serving as an adjudicator in the Commission's review of Meta/Within.<sup>30</sup>

(3) *The Designated Agency Ethics Official has not issued an authorization for Chair Khan to participate as an adjudicator in Meta/Within. An ethics authorization is not required for Chair Khan's participation unless she determines a reasonable person would question her impartiality.*

Even if a reasonable person would question an employee's ability to be impartial, the employee may receive an ethics authorization<sup>31</sup> to participate if the Designated Agency Ethics Official determines the interests of the United States in the employee's participation outweighs the appearance concern. 5 C.F.R. § 2635.502(d). For the reasons discussed further below, in my view, the Government's need for Chair Khan to participate in this proceeding does not outweigh the appearance concern. Accordingly, I did not issue a Section 502(d) authorization for the Chair to participate as an adjudicator in Meta/Within.

As a threshold concern, no employee is entitled to a Federal ethics waiver. Some agencies never issue Federal ethics waivers and, according to OGE, many others rarely issue waivers and more often require recusal, divestiture, or even resignation to address conflicts. Nonetheless, OGE recognizes situations may infrequently arise where an actual conflict or the appearance of conflict is outweighed by the need for the United States to act in a particular matter. OGE has developed waiver processes, with agency designees always playing an essential role, to address those rare occasions. *Id.* § 2638.104(c)(6); OGE Advisory *DO-10-005* at p. 5 (April 22, 2010) (“Evaluating possible waivers is one of the more significant duties that ethics officials perform to ensure public confidence in the Government's operations and programs. Both the individual employee's interests and those of the Government are best served when this process is carried out in a careful and consistent manner.”). The specific procedures to obtain and execute a Federal ethics waiver vary depending on the nature of the conflict, but in all circumstances “waiver processes permit a review of facts presented in a specific situation, and authorize someone other than

<sup>27</sup>I do not intend to suggest that five years is the litmus test. I point that timeframe out as a reference point since her former employer, OMI, while Chair Khan worked there, advocated for a block of all Facebook acquisitions for at least the next five years.

<sup>28</sup>See “The Facebook Rebrand: What is Meta?” by Aleksander Hougan, last updated Feb. 15, 2022 at <https://www.cloudwards.net/facebook-rebrand/#:~:text=Key%20Takeaways%3A,be%20affected%20by%20the%20rebranding> (accessed Aug. 29, 2022).

<sup>29</sup>See “Facebook Acquisitions—The Complete List (2022)” by Shruti Bose (Feb. 17, 2022) at <https://www.techwyse.com/blog/infographics/facebook-acquisitions-infographic/> (accessed Aug. 29, 2022).

<sup>30</sup>I do not recommend that Chair Khan recuse from all future Commission adjudications involving Meta. For example, nothing in Meta's petition leads me to believe I would make this same recommendation if this were a privacy, false advertising, or other consumer protection litigation matter.

<sup>31</sup>For purposes of this discussion the terms “waiver” and “authorization” are interchangeable. Technically, an employee may receive an authorization from the Designated Agency Ethics Official, under 5 C.F.R. § 2635.502(d), to participate despite someone reasonably questioning the employee's impartiality. In practice, a Section 502(d) ethics authorization to participate operates and is often referred to by laypersons as an ethics waiver.

the affected employee to make a reasoned determination as to whether a waiver is warranted.” OGE Advisory DO–10–005 at p. 3.

OGE has unequivocally advised retroactive Federal ethics waivers are invalid. *Id.* Since Chair Khan has already participated in the Commission vote to issue an administrative complaint, one may argue that Chair Khan is unable to now obtain an authorization to participate as an adjudicator in this proceeding. However, voting to issue an administrative complaint is arguably a prosecutorial function. Regardless, your request for my written analysis about the Chair’s participation as an adjudicator in this matter is not when I first considered the issue. After careful consideration, prior to the Commission vote to authorize an administrative complaint, I decided not to provide an authorization under 5 C.F.R. § 2635.502(d) for Chair Khan to participate as an adjudicator in Meta/Within. More specifically, after determining there was a reasonable basis to question Chair Khan’s impartiality when serving as an adjudicator in Meta/Within, I also considered whether her participation should nonetheless be authorized. Upon examining the relevant facts in the context of Chair Khan serving as an adjudicator in this particular merger review, I did not provide an authorization for the Chair to participate.

Chair Khan may participate as an adjudicator in Meta/Within, despite any impartiality concerns, if the agency designee authorizes the participation in accordance with the Standards of Conduct. 5 C.F.R. § 2635.502(d). The agency designee may authorize participation if, based on the relevant circumstances, the interest of the Government in the employee’s participation outweighs the concern that a reasonable person may question the integrity of the agency’s programs and operations. *Id.* Factors to be considered include:

1. the nature of the relationship involved;
2. the effect that resolution of the matter would have on the financial interest of the person involved in the relationship;
3. the nature and importance of the employee’s role in the matter;
4. the sensitivity of the matter;
5. the difficulty of reassigning the matter to another employee; and
6. adjustments that may be made in the employee’s duties that would reduce or eliminate the likelihood that a reasonable person would question the employee’s impartiality.

*Id.* Considering these factors, I concluded that the United States’ interest in Chair Khan’s participation does not outweigh the concern that a reasonable person might question her ability to be impartial.

Factors 1–2 favor Chair Khan’s participation as there is no financial interest, “covered relationship” or other personal or business affiliation at issue. Factors 3–4 initially appear to cut in both directions. As Chair, Ms. Khan’s role in any FTC specific party matter is important and the antitrust concerns at issue are critical to the U.S. economy. It is critically important that Chair Khan is empowered to fulfill her official duties while also complying with both the letter and the spirit of Federal ethics requirements. Competition matters that come before the Commission often raise cutting-edge questions of antitrust, intellectual property, and other law. The resolution of Meta/Within is likely to have major effects on the marketplace, even beyond the two parties to the proposed merger. As agency head, it directly serves the public interest that the FTC have the benefit of Chair Khan’s participation in matters before the Commission that raise significant competition policy questions.

However, since the Chair would be serving as an adjudicator in this high-profile FTC litigation matter, the scale for factors 3–4 is tipped in favor of recusal. All employees must act (and appear to act) impartially, but an employee’s role in a proceeding warrants careful consideration when deciding whether to grant a waiver. When a Federal employee serves as an adjudicator in a specific party matter, due process requires a strict standard when evaluating appearance of bias concerns.<sup>32</sup> As noted above, *supra* n. 2, the Commission previously indicated the Federal judicial recusal standard (28 U.S.C. § 455) is the relevant standard to apply in a Part 3 proceeding when addressing the appearance of bias on due process grounds. Section 455 provides in relevant part “[a]ny justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.” *Id.* § 455(a). When considering whether to issue an ethics authorization under 5 C.F.R. § 2635.502(d), I see no reason to deviate from the Com-

<sup>32</sup> Employees working as an adjudicator in a rulemaking proceeding or serving as a prosecutor/investigator in a litigation matter have comparatively less strict standards.

mission's prior approach absent an extraordinary circumstance.<sup>33</sup> Thus, the Chair's role of adjudicator in this litigation matter makes a Federal ethics waiver harder to justify when a reasonable person may question her impartiality. Further, the high-profile, sensitive nature of this proceeding warrants taking all reasonable steps, including electing to recuse, to preserve the integrity of any decisions the Commission makes in this matter.

Factor 5 also favors recusal. The Commission is certainly able to function regardless of whether a Commissioner recuses from a matter. To be clear, Chair Khan's recusal would deprive the Commission of one of its Presidentially-appointed decision makers. Her voice would be wholly removed, the Commission would not be able to benefit from her expertise and judgment as Chair. Given Chair Khan's antitrust professional experience and scholarship, she is uniquely qualified to participate in broad policy as well as FTC particular matters that concern competition. However, Commissioners (including an agency head) have recused from various FTC particular matters in the past when Federal ethics or other legal requirements supported recusal. The Commission is able to review this proposed merger with or without the participation of a single Commissioner. Factor 6 is largely moot for a Chair (and other Commissioners); Chair Khan either fully participates or she recuses.

Only Factors 1–2 favor Chair Khan receiving an authorization to participate as adjudicator in Meta/Within (*i.e.*, there is no financial interest, "covered relationship" or other personal or business affiliation at issue). While section 2635.502(d) states that the "[f]actors which *may* be taken into consideration *include*" the six factors discussed above, those are not the only factors that the agency designee may consider when determining whether to issue an authorization (emphasis added). For the reasons expressed above, the spirit of the catch-all provision squarely favors recusal here. Regardless, since only two of the above six factors support issuing an authorization, I decided not to provide such an authorization to Chair Khan under these specific circumstances.

There is one sentiment stated above worth repeating—if Chair Khan decides to participate as adjudicator in Meta/Within, there is no *per se* violation of Federal ethics requirements. OGE leaves the resolution of appearance concerns that fall within the scope of the Standards of Conduct's catch-all provision to the discretion of the affected employee.<sup>34</sup> OGE emphasized the importance of the affected employee's perspective by advising that:

[I]f an employee believes that a personal friendship, or a professional, social, political or other association not specifically treated as a covered relationship, may raise an appearance question, then the employee should use the section 2635.502 process to resolve the question. If the employee does use this process and does make a commitment to recuse, then that commitment is binding and must be observed.

*OGE Advisory 99 x 8* at p.2 (April 26, 1999).

Accordingly, unless Chair Khan, herself, determines that her impartiality may reasonably be questioned, Chair Khan is not required to recuse from participating as adjudicator in this proceeding on Federal ethics grounds. Moreover, notwithstanding the FTC's Designated Agency Ethics Official's recommendation to recuse and decision not to provide a section 2635.502(d) authorization, any choice Chair Khan makes to participate in Meta/Within as adjudicator is not *per se* evidence of a Federal ethics violation.

#### **Conclusion:**

Federal employees must avoid any actions creating the appearance they are violating law or ethical standards. Whether there is a reasonable appearance concern or an interest of the United States that overrides such a concern must be considered on a case-by-case basis. I have not been asked to provide Chair Khan an authorization to participate as an adjudicator in Meta/Within, and she is not required to obtain an authorization from me to participate unless she herself concludes a reasonable person with knowledge of the relevant facts may question her impartiality to serve as an adjudicator in this proceeding.

<sup>33</sup> *Intel Corp., Docket No. 9341, Opinion and Order Denying Motion for Disqualification (Public Version)* at p. 5, n.10 (Dec. 18, 2009) ("The Federal statute arguably raises the bar higher by requiring recusal unless the parties' consent is obtained and, unlike the Standards of Conduct, there is no provision for authorizing one's participation in certain circumstances.")

<sup>34</sup> "OGE has consistently maintained that, although employees are encouraged to use the process provided by section 2635.502(a)(2), '[t]he election not to use that process cannot appropriately be considered to be an ethical lapse.'" *OGE Advisory 01 x 8* at p.3 (Aug. 23, 2001) (citations omitted).

As communicated during the nomination process, I recommend Chair Khan seek guidance from the FTC's Designated Agency Ethics Official and others in the Office of the General Counsel, as appropriate, before participating in any FTC matter where someone may reasonably question her ability to work on any FTC particular matter. I am unaware of any action Chair Khan has taken since her appointment that amounts to a *per se* federal ethics violation, and I do not believe her participation as an adjudicator in Meta/Within would constitute a *per se* federal ethics violation. In my opinion, there is a reasonable appearance concern with her participation in this matter as an adjudicator. I also recognize that reasonable minds may disagree. For the reasons discussed above, I recommend Chair Khan elect to recuse from participating as an adjudicator in this proceeding.

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Lina M. Khan, Chair  
Rebecca Kelly Slaughter  
Christine S. Wilson  
Alvaro M. Bedoya

In the Matter of  
  
Meta Platforms, Inc.,  
a corporation,  
  
Mark Zuckerberg,  
a natural person,  
  
and  
  
Within Unlimited, Inc.,  
a corporation.

DOCKET NO. 9411

DISSENTING STATEMENT OF COMMISSIONER CHRISTINE S. WILSON

Today, the Commission rules on whether Federal Trade Commission (“FTC”) Chair Lina M. Khan must recuse herself from playing an adjudicatory role in the FTC’s challenge, in Part 3 administrative litigation, to the acquisition of Within Unlimited, Inc. (“Within”) by Meta Platforms, Inc. (“Meta”) <sup>1</sup> (the “Meta/Within Transaction”). This ruling is prompted by Meta’s July 25, 2022 petition requesting the recusal of Chair Khan from participating “in any decisions concerning the FTC’s review of” the Meta/Within Transaction (the “Petition for Recusal”).<sup>2</sup> On July 27, 2022, the FTC filed a complaint in the Northern District of California seeking a temporary restraining order and a preliminary injunction of the Meta/Within Transaction.<sup>3</sup> On August 11, 2022, the FTC filed an administrative Part 3 complaint seeking a permanent injunction of the Meta/Within Transaction.<sup>4</sup> On August 24, 2022, Meta was informed that its recusal petition would be considered as a disqualifica-

<sup>1</sup>Meta, as used in this opinion, is equivalent to references that appear in cited material to Facebook, Inc. Meta is the successor company of Facebook, Inc. This analysis considers Respondent Meta and Respondent Mark Zuckerberg equivalent because Mark Zuckerberg is the Ultimate Parent Entity of Meta. See 16 C.F.R. § 801.1.

<sup>2</sup>Petition for Recusal of Chair Lina M. Khan from Involvement in the Proposed Merger between Meta Platforms, Inc. and Within Unlimited, Inc., FTC No. 221–0040 (July 25, 2022) [*hereinafter* Petition for Recusal].

<sup>3</sup>Complaint at 2, FTC v. Meta Platforms, 3:22-cv-04325 (N.D. Cal. July 27, 2022).

<sup>4</sup>Complaint, Meta Platforms, Inc., FTC No. 221–0040 (Aug. 11, 2022).

tion motion under Rule 4.17.<sup>5</sup> On October 13, 2022, the FTC filed an amended complaint (“Amended Part 3 Complaint”), again seeking a permanent injunction of the Meta/Within Transaction.<sup>6</sup>

This petition is not the first of its type that Meta has filed. Roughly one year before the FTC filed its complaint seeking to enjoin the Meta/Within Transaction, Meta filed a petition to disqualify Chair Khan from an FTC suit in Federal court alleging that Meta monopolized the market for personal social networking services.<sup>7</sup> The FTC first filed this complaint on December 9, 2020.<sup>8</sup> Judge Boasberg, the presiding judge, dismissed the complaint on June 28, 2021.<sup>9</sup> On August 19, 2021, the FTC amended its Federal court complaint against Meta; Chair Khan joined two other Commissioners in voting to authorize the amended complaint.<sup>10</sup> On October 4, 2021, Meta moved to dismiss the amended complaint, arguing that Chair Khan’s participation in the decision to file the amended complaint violated due process and Federal ethics rules.<sup>11</sup> On January 11, 2022, Judge Boasberg denied Meta’s motion to dismiss the FTC’s amended complaint.<sup>12</sup> Judge Boasberg applied the prosecutorial standard for voting out a Federal court complaint, and ruled that due process and Federal ethics obligations did not require Chair Khan’s disqualification.<sup>13</sup>

The issue before the Commission today is distinct in material and important ways from the issue that Judge Boasberg previously decided. Three factually analogous cases (one with facts nearly identical to those in the current situation) represent the most relevant precedent for considering recusal of an FTC Commissioner.<sup>14</sup> Those cases make the conclusion here inevitable. As explained below, Chair Khan’s participation as an adjudicator in the Meta/Within Transaction would violate both due process principles and Federal ethics standards. Chair Khan’s participation would deprive the merging parties of due process because her prior statements and work declare Meta’s acquisition strategy in the virtual reality space illegal, and she publicly demanded that the FTC block all Meta transactions.<sup>15</sup> Federal ethics requirements, separate from and in addition to the due process concerns, also necessitate Chair Khan’s disqualification as an adjudicator in this matter.<sup>16</sup> Chair Khan stated under oath during her confirmation hearing that she would “seek the guidance of the relevant ethics officials at the agency and proceed accordingly” if she were asked to recuse herself from a matter.<sup>17</sup> Despite making this commitment, Chair Khan either (1) did not “seek the guidance of the relevant ethics officials at the agency and proceed accordingly” or (2) asked for guidance and then ignored the recommendation.<sup>18</sup> Avoiding or ignoring unwanted guidance from the FTC ethics staff does not obviate the need for Chair Khan’s recusal as an adjudicator for the Meta/Within Transaction.

### Procedure for Disqualification and Procedural History

Commission procedures set forth the process for determining “all motions seeking the disqualification of a Commissioner from any *adjudicative or rulemaking* proceeding.”<sup>19</sup> Under Commission Rule 4.17, the “motion shall be addressed in the first instance by the Commissioner whose disqualification is sought.”<sup>20</sup> If the “Commissioner declines to recuse [herself,] the Commission shall determine the motion with-

<sup>5</sup> Letter from April J. Tabor, Meta Platforms, Inc., FTC No. 221-0040 (Aug. 24, 2022). The Petition for Recusal is broader than the question of Chair Khan’s recusal as an adjudicator. The current question before the Commission is limited to Chair Khan’s role as an adjudicator.

<sup>6</sup> Amended Complaint, Meta Platforms, Inc., FTC No. 221-0040 (Oct. 13, 2022) [*hereinafter* Amended Part 3 Complaint].

<sup>7</sup> In re Petition for Recusal of Chair Lina M. Khan from Involvement in the Pending Antitrust Case Against Facebook, Inc. (July 14, 2021). That petition, and its supporting documents, are Exhibit A of the Meta/Within Transaction Petition for Recusal.

<sup>8</sup> Complaint, FTC v. Facebook, Inc., No. 1:20-cv-03590-JEB (D.D.C. Dec. 9, 2020).

<sup>9</sup> FTC v. Facebook, Inc., 560 F. Supp. 3d 1, 3-4 (D.D.C. June 28, 2021).

<sup>10</sup> Press Release, Fed. Trade Comm’n, FTC Alleges Facebook Resorted to Illegal Buy-or-Bury Scheme to Crush Competition After String of Failed Attempts to Innovate (Aug. 19, 2021), <https://www.ftc.gov/news-events/news/press-releases/2021/08/ftc-alleges-facebook-resorted-illegal-buy-or-bury-scheme-crush-competition-after-string-failed>.

<sup>11</sup> Memorandum in Support of Facebook, Inc.’s Motion to Dismiss the FTC’s Amended Complaint at 38-45, FTC v. Facebook, Inc., No. 20-cv-03590-JEB (D.D.C. Oct. 4, 2021).

<sup>12</sup> FTC v. Facebook, Inc., 581 F. Supp. 3d 34 (D.D.C. Jan. 11, 2022).

<sup>13</sup> *Id.* at 61-65.

<sup>14</sup> See *infra* notes 86-88.

<sup>15</sup> See *infra* notes 86-212 and accompanying text.

<sup>16</sup> See *infra* notes 213-263 and accompanying text.

<sup>17</sup> Senator Mike Lee, *Senator Lee Questions FTC Nominee Lina Khan on Rulemaking, Antitrust Views*, YOUTUBE (April 21, 2021), [https://www.youtube.com/watch?v=PQSeqIW\\_3r8](https://www.youtube.com/watch?v=PQSeqIW_3r8).

<sup>18</sup> [REDACTED]

<sup>19</sup> 16 C.F.R. § 4.17(a) (emphasis added).

<sup>20</sup> 16 C.F.R. § 4.17(b)(3)(i).

out the participation of such Commissioner.”<sup>21</sup> Commission procedure does not provide for full Commission involvement to resolve petitions for Commissioner recusal in a prosecutorial or investigative role.<sup>22</sup> The analysis in this opinion is therefore limited to the question of recusal concerning Chair Khan’s adjudicatory role.<sup>23</sup> In other words, the question before the Commissioners today is whether Chair Khan can serve as a judge with respect to issues arising from the FTC’s administrative proceedings concerning the Meta/Within Transaction.

On September 26, Chair Khan’s office sent to other Commissioners’ offices a “Circulation for Information” with a five-page statement (the “September 26 Statement”) attached. The statement’s first paragraph states, “I reject Meta’s petition and decline to recuse myself from this matter.”<sup>24</sup> The memo then describes Chair Khan’s reasoning for declining to recuse herself.<sup>25</sup> Based on that statement, the three remaining Commissioners tasked with deciding recusal believed that Chair Khan had addressed the “petition in the first instance” and the next step of the Rule 4.17 process began.<sup>26</sup> Believing that the recusal petition then fell to the remaining Commissioners to “determine the motion without the participation of” Chair Khan,<sup>27</sup> a Commission meeting was held on October 4, 2022, to discuss the issue.

On October 5, 2022, the Commissioners were notified that Chair Khan’s September 26 Statement inadvertently was distributed to FTC staff litigating to block the Meta/Within Transaction. FTC staff requested that the September 26 Statement be provided to counsel for Meta and Within to cure any potential information asymmetry in the Part 3 proceeding. The Commission believed that the September 26 Statement was part of the Commission’s deliberative process in deciding recusal. Discussion ensued regarding waiving the deliberative process privilege so that the FTC’s Office of the Secretary could provide the September 26 Statement to counsel for Meta and Within. Before the Commission could act, the Commission was informed that the Chair considered the September 26 Statement to be a draft, and that the Chair potentially controlled work product privilege over the document such that a question was raised whether the Commission unilaterally could release it.

To attempt to rectify the situation, the FTC’s Office of the Secretary sent a letter on October 6, 2022, stating:

the motion to stay the administrative proceeding in this matter is fully briefed and is before the Commission. Please be advised that this motion will be resolved after the Commission determines the motion for disqualification that is currently pending before it. Commission Rule 4.17 provides that in the event that the Commissioner who is the subject of a recusal motion ‘declines to recuse himself or herself from further participation in the proceeding, the Commission shall determine the motion without the participation of such Commissioner.’<sup>28</sup>

This letter was meant to cure any information asymmetry that existed.<sup>29</sup>

<sup>21</sup> 16 C.F.R. § 4.17(b)(3)(ii).

<sup>22</sup> See 16 C.F.R. § 4.17(a) (“ . . . any adjudicative or rulemaking proceeding.”).

<sup>23</sup> In the separate matter involving the FTC and Meta concerning alleged monopolization of personal social networking services discussed above, Judge Boasberg ruled that due process and Federal ethics did not require Chair Khan’s recusal despite a motion from Meta requesting Chair Khan’s disqualification. Judge Boasberg applied the prosecutorial standard for voting out a complaint to be filed in Federal court. Judge Boasberg’s analysis shines no light on the question of whether Chair Khan can sit as an adjudicator in a Part 3 proceeding. Judge Boasberg held that a line of cases involving former FTC Chair Dixon is “not relevant because” in those cases, the Commissioners were “acting there as an adjudicatory body” while in the case in front of Judge Boasberg, the Commissioners were “simply filing a case in Federal court.” *Facebook*, 581 F. Supp. 3d at 61–65.

<sup>24</sup> Internal Statement of Chair Lina M. Khan Regarding the Petition for Recusal from Involvement in the Proposed Merger Between Meta Platforms, Inc. and Within Unlimited, Inc., FTC No. 221–0040 (Sept. 26, 2022) [hereinafter September 26 Statement]. On November 18, 2022, the Chair provided an additional statement that revises the September 26 Statement in ways that are immaterial to the analysis in this dissent.

<sup>25</sup> *Id.*

<sup>26</sup> 16 C.F.R. § 4.17(b)(3). On September 26, 2022, the same day the Chair’s statement was circulated, the offices of all three Commissioners tasked with deciding recusal communicated agreement to schedule a meeting to discuss the recusal issue. The next day, on September 27, 2022, a Sunshine Motion was circulated, and a Commission meeting was scheduled for October 4, 2022.

<sup>27</sup> 16 C.F.R. § 4.17(b)(3)(ii).

<sup>28</sup> Letter from April J. Tabor, Meta Platforms, Inc., FTC No. 221–0040 (Oct. 6, 2022), [https://www.ftc.gov/system/files/ftc\\_gov/pdf/D9411LetterCounselFB.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/D9411LetterCounselFB.pdf).

<sup>29</sup> Joint Statement of Recent Decision, *FTC v. Meta Platforms*, Case 3:22-cv-04325 (N.D. Cal. Oct. 17, 2022) (“According to the FTC, these developments are reflected in an October 6, 2022

Chair Khan sent the following e-mail to Commissioners’ office on October 7, 2022:

It has come to my attention that there may be ambiguity concerning the statement circulated for information on September 26, 2022. Pursuant to Rule 4.17(b)(3), I have declined to recuse myself from further participation in the proceeding. This decision was effective on September 26, 2022. The September 26 statement outlining my rationale for this decision is a draft and some of the language may change. I will circulate a more final statement at a later date.

Because the Commissioners remained concerned about an ongoing information asymmetry in the Part 3 litigation, an emergency Commission meeting was held on October 10, 2022. At that meeting, the Commission determined that Chair Khan in fact did not hold work product privilege over the document and that the Commission consequently could vote to waive its deliberative process privilege. Participating Commissioners agreed that counsel for Meta and Within should receive the September 26 Statement and an explanatory letter. These materials were sent to counsel for Meta and Within on October 12, 2022.

Two of the three participating Commissioners have determined that Chair Khan’s recusal from the Part 3 proceedings is not warranted. For the reasons explained below, I respectfully dissent.

#### **Chair Khan’s Work and Statements**

The Petition for Recusal claims that “Chair Khan has prejudged the propriety of the pending merger between Meta and Within” and that her participation “would violate both due process and her obligations of impartiality under the Federal ethics rules.”<sup>30</sup> The Petition for Recusal focuses on work in which “Chair Khan has consistently and publicly maintained that Meta has violated the antitrust laws” and “Chair Khan’s public statements and writings reflect her belief that the government should block future acquisitions by Meta, regardless of the merits of the transaction.”<sup>31</sup> Certain statements and written work, attributable to Chair Khan and explained below, are relevant to this analysis.

##### *Chair Khan’s Work at Open Markets Institute*

In 2017 and 2018, Chair Khan was Legal Director at Open Markets Institute (“OMI”). On November 1, 2017, Chair Khan and other senior leaders at OMI signed a letter to then-Acting FTC Chair Ohlhausen stating that “[t]he most obvious immediate step to address Facebook’s current power is to prohibit mergers between Facebook [and] other potentially competitive social networks or other new and promising products and services.”<sup>32</sup> The letter explained now-Chair Khan’s reasoning behind her request for the FTC to block all transactions involving Meta. The letter stated that “[r]ecent events reveal that Facebook has become too big and complex for any executive team to manage responsibly, and has provided a back-door through which America’s enemies can attack our vital social and democratic institutions.”<sup>33</sup> The letter stated that all transactions involving Meta should be blocked “until the American people, working through our government, determine how to ensure that Facebook’s power does not harm our Nation’s security, democratic institutions, or the political rights and commercial freedoms of individual citizens, Facebook should not be able to amass any greater power through acquisition.”<sup>34</sup>

In a press release issued on March 22, 2018, “Open Markets [Institute] call[ed] on the FTC to . . . prohibit all future acquisitions by Facebook for at least five years.”<sup>35</sup> The press release referenced an op-ed authored by the Executive Director of OMI and a fellow at OMI that mirrored the calls in the press release.<sup>36</sup> Not only was Chair Khan Legal Director of OMI at this time, but as explained below, Chair

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letter from the Secretary to counsel, which appears on the FTC’s public docket and is attached hereto as Exhibit A[.].”

<sup>30</sup> Petition for Recusal, *supra* note 2, at 2.

<sup>31</sup> *Id.* at 1–2.

<sup>32</sup> Press Release, Open Markets Inst., Open Markets Institute Calls on the FTC to Block All Facebook Acquisitions (Nov. 1, 2017), <https://www.openmarketsinstitute.org/publications/open-markets-institute-calls-on-the-ftc-to-block-all-facebook-acquisitions>.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> Press Release, Open Markets Inst., Fines for Facebook Aren’t Enough: The Open Markets Institute Calls on FTC to Restructure Facebook to Protect Our Democracy (Mar. 22, 2018), <https://www.openmarketsinstitute.org/publications/fines-for-facebook-arent-enough-the-open-markets-institute-calls-on-ftc-to-restructure-facebook-to-protect-our-democracy>.

<sup>36</sup> *Id.*

Khan subsequently embraced this proposal in her academic writing by citing to this op-ed and adopting its positions.<sup>37</sup>

On May 15, 2018, speaking as OMI's Director of Legal Policy in a video interview, Chair Khan said, "I think one of the first steps is to make sure Facebook is not acquiring further power. So, if Facebook tomorrow announces that it's acquiring another company, I would hope the FTC would look at that very closely and block it. Making sure that it's not just out there expanding its power is really important."<sup>38</sup>

*Chair Khan's Work on the House Majority Staff's Investigation and Report*

In June 2019, the House Judiciary Committee's Subcommittee on Antitrust, Commercial, and Administrative Law (the "House Subcommittee") began an investigation into "the dominance of Amazon, Apple, Facebook, and Google, and their business practices to determine how their power affects our economy and our democracy."<sup>39</sup> Chair Khan served as Counsel to the Majority Staff of the House Subcommittee, during which time she "led the congressional investigation into digital markets and the publication of its final report."<sup>40</sup> According to press reports, Chair Khan and a small group of staffers "often worked 70-hour weeks to keep the probe on track, all the way from the highly orchestrated questioning of the big tech CEOs down to whether Basecamp's David Heinemeier Hansson wore a jacket during his testimony. . . . The future of antitrust in the U.S. will be indelibly tied to the work of these relatively unknown staffers, who wielded massive influence over issues that matter to tech executives and their businesses—for better or for worse."<sup>41</sup> Chair Khan reportedly "poured her 'sweat and blood' into the investigation" and "left her fingerprints all over the investigation."<sup>42</sup> Zephyr Teachout, a law professor and antitrust enforcer for whom Chair Khan served as policy director during Teachout's run for Governor of New York, reported that she "'could see Lina's work everywhere in the [CEO] hearing,' . . . pointing out that many of the questions harkened directly back to [Chair Khan's] academic work."<sup>43</sup>

The investigation entailed collecting nearly 1.3 million documents from the companies under investigation and third parties, and interviewing more than 240 market participants.<sup>44</sup> Additionally, the Subcommittee held seven hearings, including testimony from the Chief Executive Officers of the investigated companies—which included Meta's Mark Zuckerberg.<sup>45</sup> The result of the investigation was a 450-page report authored by the Subcommittee's Majority staff ("Majority Staff Report"), which included Chair Khan as a co-author.<sup>46</sup> The Majority Staff Report described Meta's "Oculus, a virtual reality gaming system[.]" as one of Meta's "five primary product offerings[.]"<sup>47</sup> The investigation found that Meta "acquired several virtual reality and hardware companies, such as Oculus" and "[m]ore recently. . .Oculus game developers[.]"<sup>48</sup> The report's analysis into the acquisition of Oculus game developers included Meta's acquisition of Beat Games (maker of Beat Saber), Sanzaru

<sup>37</sup> See Lina M. Khan, *Sources of Tech Platform Power*, 2 GEO. L. TECH. REV. 325, 333 (2018) [hereinafter Khan, *Sources of Tech Platform Power*] (citing Barry Lynn & Matt Stoller, *Facebook Must Be Restructured. The FTC Should Take These Nine Steps Now*, GUARDIAN (Mar. 22, 2018)) ("These reforms would include, for example, structuring competition in platform markets (by creating a presumption against future acquisitions and undoing past acquisitions where necessary) and ending surveillance-based business models (by requiring platforms to spin off their ad networks)."). See also *supra* notes 53 & 181 and accompanying text.

<sup>38</sup> The Bernie Sanders Show, *The Greatest Threat to Our Democracy?* (May 15, 2018) (starting at 20:29), <https://www.youtube.com/watch?v=wuCAy10h1HI>.

<sup>39</sup> MAJORITY STAFF REPORT AND RECOMMENDATIONS OF H. SUBCOMMITTEE ON ANTITRUST, COMMERCIAL, AND ADMINISTRATIVE LAW OF THE COMMITTEE ON THE JUDICIARY, 116TH CONG., INVESTIGATION OF COMPETITION IN DIGITAL MARKETS at 6 (2020), [hereinafter Majority Staff Report] [https://judiciary.house.gov/uploadedfiles/competition\\_in\\_digital\\_markets.pdf?utm\\_campaign=4493-519](https://judiciary.house.gov/uploadedfiles/competition_in_digital_markets.pdf?utm_campaign=4493-519).

<sup>40</sup> Petition for Recusal, *supra* note 2, at ex. C.

<sup>41</sup> Emily Birnbaum, *A tiny team of House staffers could change the future of Big Tech. This is their story.*, PROTOCOL (Oct. 6, 2020), <https://www.protocol.com/house-antitrust-report-staffers-big-tech#toggle-gdpr>.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> Majority Staff Report, *supra* note 39, at 6 & 8.

<sup>45</sup> *Id.* at 6.

<sup>46</sup> The Majority Staff Report was later adopted by the U.S. House Committee On The Judiciary. Press Release, U.S. House Committee On The Judiciary, Judiciary Committee Publishes Final Report on Competition in the Digital Marketplace (July 19, 2022), <https://judiciary.house.gov/news/documentsingle.aspx?DocumentID=5025>.

<sup>47</sup> Majority Staff Report, *supra* note 39, at 132.

<sup>48</sup> *Id.* at 149.

Games, and Ready at Dawn.<sup>49</sup> The report found that “Facebook’s serial acquisitions reflect the company’s interest in purchasing firms that had the potential to develop into rivals before they could fully mature into strong competitive threats.”<sup>50</sup>

The report concludes that:

all four of the firms investigated by the Subcommittee have recently focused on *acquiring startups in the artificial intelligence and virtual reality space.*

Ongoing acquisitions by the dominant platforms raise several concerns. Insofar as any transaction entrenches their existing position, or eliminates a nascent competitor, it strengthens their market power and can close off market entry. Furthermore, by pursuing additional deals in artificial intelligence *and in other emerging markets, the dominant firms of today could position themselves to control the technology of tomorrow.*

It is unclear whether the antitrust agencies are presently equipped to block anticompetitive mergers in digital markets. The record of the Federal Trade Commission and the Justice Department in this area shows significant missteps and repeat enforcement failures.<sup>51</sup>

#### *Chair Khan’s Public Statements and Academic Work*

Chair Khan has made additional public statements, including through her academic writings and interviews, that are relevant to the recusal petition. As noted above, Chair Khan’s academic work directly influenced her work on the House Subcommittee and the Majority Staff Report. In reference to the congressional investigation into digital markets, Zephyr Teachout, a co-author of Chair Khan’s and for whom Khan served as policy director during Teachout’s campaign to become the Governor of New York, commented that she “‘could see Lina’s work everywhere in the [CEO] hearing,’ . . . pointing out that many of the questions harkened directly back to [Chair Khan’s] academic work.”<sup>52</sup> Chair Khan’s academic work also adopted the positions she and her previous employers advanced. For example, Chair Khan, in an academic article, adopted the decision to create “a presumption against future acquisitions” by citing the OMI op-ed that argued for prohibiting “all future acquisitions by Facebook for at least five years.”<sup>53</sup>

Chair Khan’s academic writings have explained Meta’s acquisition strategy regarding nascent markets and potential competitors. For example, Chair Khan asserted that Meta “systematically copied” apps that “it deemed competitive threats” and “established a systemic informational advantage (gleaned from competitors) that it can reap to thwart rivals and strengthen its own position, either through introducing replica products or buying out nascent competitors.”<sup>54</sup> Chair Khan has argued that Meta can “detect which rival apps are succeeding” and “would often give companies a choice: Be acquired by [Meta], or watch it roll out a direct replica.”<sup>55</sup> Chair Khan has described this strategy as Meta’s “systematic ability to exploit information.”<sup>56</sup>

In a later interview, Chair Khan expanded on her views, stating that Meta’s “acquisition strategy was basically a land grab to buy up as many assets and kind of lock up the market, and that certain acquisitions such as [Meta’s] purchase of Instagram was an effort to really neutralize these competitive threats[.]”<sup>57</sup> The problem, according to Chair Khan, is that Meta “can either make an aggressive acquisition bid, taming the nascent threat by bringing it in-house, or can introduce an identical app, eating into its business.”<sup>58</sup> Chair Khan argued in one academic article that Meta’s “threat of entry . . . into platform-adjacent markets is dampening investment in complementary segments[.]”<sup>59</sup> Specifically, Chair Khan wrote

<sup>49</sup> *Id.* at 424 (listing acquisitions by Meta); *id.* at fn. 859 (citing articles referencing Meta’s acquisitions of Oculus game developers Beat Games, Sanzaru Games, and Ready at Dawn).

<sup>50</sup> *Id.* at 150.

<sup>51</sup> *Id.* at 387 (emphasis added).

<sup>52</sup> Birnbaum, *supra* note 41.

<sup>53</sup> Khan, Sources of Tech Platform Power, *supra* note 37, at 333.

<sup>54</sup> Lina M. Khan, *The Separation of Platforms and Commerce*, 119 COLUM. L. REV. 973, 1002–3 (2019) [*hereinafter* Khan, *The Separation of Platforms and Commerce*].

<sup>55</sup> *Id.* 977–78.

<sup>56</sup> Khan, Sources of Tech Platform Power, *supra* note 37, at 330.

<sup>57</sup> Sway, Opinion, *She’s Bursting Big Tech’s Bubble*, N.Y. TIMES (Oct. 29, 2020), <https://www.nytimes.com/2020/10/29/opinion/sway-kara-swisher-lina-khan.html?showTranscript=1> (transcript).

<sup>58</sup> Khan, Sources of Tech Platform Power, *supra* note 37, at 330–31.

<sup>59</sup> Khan, *The Separation of Platforms and Commerce*, *supra* 54 at 1009 (“Anecdotal evidence suggests that both actual entry and the threat of entry by digital platforms into platform-adjacent markets is dampening investment in complementary segments, now known as a ‘kill-zone.’ For example, a survey of more than two dozen Silicon Valley investors revealed that Facebook’s

that Meta’s “willingness to appropriate information from and mimic the functionality of apps has created ‘a strong disincentive for investors’ to fund services that [Meta] might copy.”<sup>60</sup>

Chair Khan’s statements also connect her views of Meta’s conduct to the virtual reality space. Chair Khan, in commenting on Meta’s Instagram and WhatsApp acquisitions, explained that “[i]n hindsight, I think, looking back, looking at the documents, looking at the evidence that was available, now the agency was able to determine, that was an illegal transaction.”<sup>61</sup> In commenting on the “complaints from FTC & 48 AGs suing” Meta to unwind the Instagram and WhatsApp acquisitions, Chair Khan connected Meta’s earlier acquisition strategy to virtual reality by stating that Meta “is now following this playbook in the virtual reality space. Quoting [Representative Pramila Jayapal] & [the Majority Staff Report], Bloomberg notes [Meta] is using same ‘copy-acquire-kill’ strategy it used to monopolize social networking. Key task for enforcers is to prevent a repeat[.]”<sup>62</sup>

Chair Khan’s academic writings add further context regarding her agenda for Meta. Chair Khan analyzed and commented on Meta’s conduct while “in competition with developers” including allegedly having “foreclosed competitors from its platform and appropriated [developers’] business information and functionality.”<sup>63</sup> Chair Khan argued that users and advertisers rely on Meta as a dominant intermediary.<sup>64</sup> According to Chair Khan, users are beholden to Meta because of its dominant position and a lack of alternatives, which allows Meta to pursue deliberate strategies to downgrade the privacy and control of their users.<sup>65</sup> Chair Khan also concluded in her academic work that Meta “is a dominant social network.”<sup>66</sup> Chair Khan stated that app developers and online publishers rely on Meta and that in this context, Meta “has used its dominant position to appropriate from rivals.”<sup>67</sup> Additionally, Chair Khan found that Meta “leveraged its dominant position as a communications network to extract sensitive business information from publishers.”<sup>68</sup> Chair Khan’s scholarship states that the “backdrop of platform dominance and democratic decay” requires “attending to issues of market structure or political economic influence[.]”<sup>69</sup>

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willingness to appropriate information from and mimic the functionality of apps has created ‘a strong disincentive for investors’ to fund services that Facebook might copy. . . . This concern raised by venture capitalists makes sense: A potential innovator (or a potential funder of a potential innovator) decides whether to invest based on the anticipated risk and reward of realizing the innovation. Anticipating platform discrimination or appropriation will lower expected rewards, depressing the incentive to invest. Even the uncertainty of discrimination can dissuade entry by heightening risk.” (internal citations omitted).

<sup>60</sup> *Id.*

<sup>61</sup> Sway, Opinion, *Exclusive: Lina Khan Is (Still) Bursting Big Tech’s Bubble*, N.Y. TIMES (Jan. 19, 2022), <https://www.nytimes.com/2022/01/19/opinion/sway-kara-swisher-lina-khan.html?showTranscript=1>.

<sup>62</sup> Petition for Recusal, *supra* note 2, at ex. D.

<sup>63</sup> Khan, *The Separation of Platforms and Commerce*, *supra* 54 at 1001 (“Facebook also delivers certain apps and features directly, placing it in competition with developers. It has both foreclosed competitors from its platform and appropriated their business information and functionality.”).

<sup>64</sup> Dave E. Pozen & Lina M. Khan, *A Skeptical View of Information Fiduciaries*, 133 HARV. L. REV. 497, 516 (2019) (“Many advertisers and content producers are just as captive to Facebook as its end users are, or even more so. Insofar as the purpose of the information-fiduciary proposal is to rebalance the relationship between dominant online intermediaries and those who depend on them, it is unclear why its protections should cover only one set of dependents.”).

<sup>65</sup> *Id.* at 517–18 (“The loss of privacy and control experienced by Facebook users therefore does not stem, organically, ‘from the structure and nature of the fiduciary relation.’ It stems from Facebook’s deliberate efforts to create such vulnerabilities. Facebook’s dominant market position supports this strategy. To the extent that users feel beholden to Facebook, it is not because the company offers them especially skillful services or judgments so much as because of a lack of viable alternatives. By virtue of owning four of the top five social media applications, Facebook makes it difficult to escape the company’s ecosystem.”) (internal citations omitted).

<sup>66</sup> Khan, *The Separation of Platforms and Commerce*, *supra* 54 at 1001.

<sup>67</sup> *Id.* (“There are at least two sets of market participants that both rely on Facebook’s network and find themselves in competition with Facebook: app developers and online publishers. In both markets, Facebook has used its dominant position to appropriate from rivals.”).

<sup>68</sup> *Id.* at 1003.

<sup>69</sup> Pozen & Khan, *supra* note 64, at 528 (“Against this backdrop of platform dominance and democratic decay, the user-centric nature of the information-fiduciary proposal should give pause. The relevant inquiry for legal reformers, we submit, should be not just how a firm such as Google or Facebook exercises its power over end users, but whether it ought to enjoy that kind of power in the first place. Limiting the dominance of some of these firms may well have salutary effects for consumer privacy, both by facilitating competition on privacy protection and by reducing the likelihood that any single data-security failure will cascade into a much wider

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In her academic writing, Chair Khan has likened Meta CEO Mark Zuckerberg to a doctor called “Marta Zuckerberg” who “floods you (and her two billion other patients) with ads for all manner of pills and procedures[.]”<sup>70</sup>

#### **Allegations in the Meta/Within Transaction Complaint**

On October 13, 2022, the FTC filed the Amended Part 3 Complaint alleging that Meta’s acquisition of Within is an illegal acquisition.<sup>71</sup> The complaint explains that Meta is “one of the largest technology companies in the world and the leading provider of virtual reality (‘VR’) devices and applications (‘apps’) in the United States” and that Within is “a software company that develops apps for VR devices[.]”<sup>72</sup> The complaint claims that Meta is a “global technology behemoth” that “reaches into every corner of the world through its ‘Family of Apps’—Facebook, Instagram, Messenger, and WhatsApp—with more than three billion regular users.”<sup>73</sup>

The complaint alleges that Meta is now “[s]eeking to expand its empire even further, Meta in recent years has set its sights on building, and ultimately controlling, a VR ‘metaverse.’”<sup>74</sup> According to the complaint, “Meta’s campaign to conquer VR began in 2014 when it acquired Oculus[.]”<sup>75</sup> The complaint notes that “Meta controls the wildly popular app Beat Saber, which it acquired by purchasing Beat Games in November 2019” and that “Meta owns a number of other VR apps, some of which it developed in-house but most of which it acquired by rolling up other app studios.”<sup>76</sup> Specifically, the complaint notes that “[s]ince its acquisition of Beat Games, Meta has continued to acquire a series of studios behind many popular VR apps”<sup>77</sup> including Sanzaru Games<sup>78</sup> and Ready at Dawn Studios.<sup>79</sup> The complaint claims that “Meta has an explicit strategy of harnessing strong network effects in VR to ensure its leading status in this growing industry. Meta could have chosen to try to compete with Within on the merits; instead, Meta decided it preferred to simply buy[.]”<sup>80</sup>

According to the complaint, “network effects on a digital platform can cause the platform to become more powerful—and its rivals weaker and less able to seriously compete—as it gains more users, content, and developers”<sup>81</sup> and “Meta seeks to exploit the network-effects dynamic in VR.”<sup>82</sup> The complaint notes that Meta’s VR “strategy” and “vision,” through instructions from Meta’s CEO, date back “[a]s early as 2015.”<sup>83</sup> The complaint alleges that the “proposed acquisition of Within would be one more step along that path toward dominance.”<sup>84</sup> The complaint’s requested relief includes enjoining the Meta/Within Transaction.<sup>85</sup>

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harm. More than that, the very effort to think through the ramifications of platform power would force policymakers to grapple with a wide range of systemic concerns that fall outside the fiduciary frame. To be clear, we do not believe that addressing the market clout of companies like Facebook will remedy the full panoply of harms associated with them. Nor do we view antitrust enforcement as the sole tool for addressing this dominance. Our point here (which we will develop further in section IV.B) is that any broad regulatory framework or ‘grand bargain’ for social media that focuses on abusive data practices, without attending to issues of market structure or political economic influence, is bound to be at best highly incomplete and at worst an impediment to necessary reforms.”)

<sup>70</sup>*Id.* at 514 (“ . . . imagine visiting a doctor—let’s call her Marta Zuckerberg—whose main source of income is enabling third parties to market you goods and services. Instead of requesting monetary payment for services rendered, Dr. Zuckerberg floods you (and her two billion other patients) with ads for all manner of pills and procedures from the second you set foot in her office, and she gets paid every time you try to learn more about one of these ads or even look in their direction. In fact, this is just about the only way she gets paid—as her financial backers are apt to remind her. The ads themselves, moreover, are tightly tailored to your economic, demographic, and psychological profile and to any consumer frailties you exhibit. They are also continually updated in light of information Dr. Zuckerberg collects on you; to be sure she does not miss anything, she has planted surveillance devices all around your neighborhood as well as her office. Can this institutional sociology and incentive structure plausibly be reconciled with a commitment to prioritizing your health?”)

<sup>71</sup> Amended Part 3 Complaint, *supra* note 6, at Count 1.

<sup>72</sup> *Id.* at ¶ 1.

<sup>73</sup> *Id.* at ¶ 2.

<sup>74</sup> *Id.*

<sup>75</sup> *Id.* at ¶ 3.

<sup>76</sup> *Id.* at ¶ 4.

<sup>77</sup> *Id.* at ¶ 27.

<sup>78</sup> *Id.* at ¶ 27.a.

<sup>79</sup> *Id.* at ¶ 27.b.

<sup>80</sup> *Id.* at ¶ 5.

<sup>81</sup> *Id.* at ¶ 6.

<sup>82</sup> *Id.* at ¶ 7.

<sup>83</sup> *Id.*

<sup>84</sup> *Id.* at ¶ 8.

<sup>85</sup> *Id.* at page 18.

### Due Process and Federal Ethics

The Commission is required to recuse Chair Khan if her participation would violate either due process or Federal ethics requirements.

#### *Due Process Requirements*

In a case dealing with the potential recusal of a former FTC Chair from agency adjudication, the D.C. Circuit held that “[t]he test for disqualification has been succinctly stated as being whether ‘a disinterested observer may conclude that (the agency) has in some measure adjudged the facts as well as the law of a particular case in advance of hearing it.’”<sup>86</sup> In other words, as stated by the Sixth Circuit in another case involving the potential recusal of the same former FTC Chair, “[i]t is fundamental that both unfairness and the appearance of unfairness should be avoided. Wherever there may be reasonable suspicion of unfairness, it is best to disqualify.”<sup>87</sup>

These two cases and one other D.C. Circuit case<sup>88</sup> are most analogous to the facts at hand and best present the case law for considering recusal of an FTC Commissioner. The cases involve former FTC Chair Paul Rand Dixon. Dixon began his career as a trial attorney at the FTC in 1938.<sup>89</sup> He served almost 20 consecutive years as a staff member at the FTC, leaving only for his years of service in the Navy during WWII and returning to the FTC after the war.<sup>90</sup> Dixon left the FTC and served as Counsel and Staff Director for the U.S. Senate Antitrust and Monopoly Subcommittee beginning in 1957.<sup>91</sup> In 1961, Dixon became Chair of the FTC. He remained Chair until January 1, 1970, but he continued to serve as an FTC Commissioner (and briefly Acting Chair in 1976) until his retirement on September 25, 1981.<sup>92</sup>

#### *Cinderella Career & Finishing Schools*

In *Cinderella Career & Finishing Schools, Inc. v. FTC*, the FTC filed a complaint charging a trade school with “making representations and advertising in a manner which was false, misleading and deceptive[.]”<sup>93</sup> The specific allegations included that the “operator of a Washington, D.C., trade school . . . misrepresented[ed] that the school extends loans to students, that it is approved by a government agency, that its courses will qualify students to be airline stewardesses or buyers for retail stores, exaggerating the availability of jobs through the school’s placement service, and using false inducements to obtain signatures on obligations to pay money.”<sup>94</sup> An FTC hearing examiner<sup>95</sup> held hearings and then issued an initial decision dismissing the complaint.<sup>96</sup> Complaint counsel appealed the initial decision to the Commissioners.<sup>97</sup>

While the appeal was pending before the Commission, Chair Dixon gave a speech to the Government Relations Workshop of the National Newspaper Association.<sup>98</sup> In the speech, Chair Dixon posed questions about the “standards” a newspaper

<sup>86</sup>*Cinderella Career & Finishing Schools, Inc. v. FTC*, 425 F.2d 583, 591 (D.C. Cir. 1970) (quoting *Gilligan, Will & Co. v. SEC*, 267 F.2d 461, 469 (2d Cir. 1959), cert. denied, 361 U.S. 896 (1959)).

<sup>87</sup>*American Cyanamid Co. v. F.T.C.*, 363 F.2d 757, 767 (6th Cir. 1966).

<sup>88</sup>*Texaco, Inc. v. FTC*, 336 F.2d 754 (D.C. Cir. 1964), vacated on other grounds, 381 U.S. 739 (1965).

<sup>89</sup>Paul Rand Dixon Personal Papers, John F. Kennedy Presidential Library and Museum, <https://www.jfklibrary.org/asset-viewer/archives/PRDPP> (“Dixon joined the Federal Trade Commission (FTC) in July 1938 as a trial attorney, focusing on both antimonopoly and anti-deceptive practice cases.”).

<sup>90</sup>*Id.* (“During World War II, he served as a Lieutenant in the U.S. Navy. Following the war, he returned to his position with the FTC.”).

<sup>91</sup>*Id.*

<sup>92</sup>*Id.*

<sup>93</sup>425 F.2d at 584.

<sup>94</sup>*In re of Sch. Servs., Inc.*, 74 F.T.C. 920 (1968) (describing the Commission’s order deciding the appeal), rev’d. 425 F.2d 583 (D.C. Cir. 1970).

<sup>95</sup>For the purposes of the analysis in this opinion, a “hearing examiner” is equivalent to what the FTC now calls an administrative law judge.

<sup>96</sup>*Cinderella Career & Finishing Schools*, 425 F.2d at 584 (“ . . . a hearing examiner held a lengthy series of hearings which consumed a total of sixteen days; these proceedings are reported in 1,810 pages of transcript. After the Commission had called twenty-nine witnesses and the petitioners twenty-three, and after the FTC had introduced 157 exhibits and petitioners 90 (Petitioners’ Brief at 7), the hearing examiner ruled in a ninety-three page initial decision that the charges in the complaint should be dismissed.”).

<sup>97</sup>*Id.*

<sup>98</sup>*Id.* at 589.

“maintain[s] on advertising acceptance[.]”<sup>99</sup> The speech included hypothetical questions: “What would be the attitude toward accepting good money for advertising by a merchant who conducts a ‘going out of business’ sale every five months? What about carrying ads that offer college educations in five weeks, fortunes by raising mushrooms in the basement, getting rid of pimples with a magic lotion, or becoming an airline’s hostess by attending a charm school?”<sup>100</sup> He closed the relevant paragraph of his speech by stating that “advertising acceptance standards could stand more tightening by many newspapers” because “the Federal Trade Commission, even where it has jurisdiction, could not protect the public as quickly.”<sup>101</sup>

On appeal from the hearing examiner’s initial decision, the Commissioners issued a final order reversing the hearing examiner on some of the charges.<sup>102</sup> On appeal from the final order, the D.C. Circuit considered whether Chair Dixon should have been recused due to prejudgment concerns stemming from his speech.<sup>103</sup> The court held that Commissioners do not have “license to prejudge cases or to make speeches which give the appearance that the case has been prejudged.”<sup>104</sup> Statements giving the appearance that a case has been prejudged “may have the effect of entrenching a Commissioner in a position which he has publicly stated, making it difficult, if not impossible, for him to reach a different conclusion in the event he deems it necessary to do so after consideration of the record.”<sup>105</sup> The D.C. Circuit vacated the Commission’s order and remanded with instructions to consider the case without Chair Dixon’s participation.<sup>106</sup>

#### *Texaco*

In *Texaco, Inc. v. FTC*, the FTC issued a complaint claiming that “Texaco coerce[d] its dealers, through economic pressure, to distribute Goodrich [tires, batteries and accessories (TBA)] and thus unfairly and unlawfully prevent[ed] Goodrich’s competitors from selling TBA to Texaco’s outlets.”<sup>107</sup> After evidentiary hearings, an initial decision was issued by the hearing examiner.<sup>108</sup> On appeal, the Commission reversed and remanded the case back to the hearing examiner.<sup>109</sup> After remand, Paul Rand Dixon joined the Commission and replaced the previous Chair.<sup>110</sup> The hearing examiner conducted additional hearings and a new initial decision was filed.<sup>111</sup>

While the case was pending before the hearing examiner on remand, Chair Dixon delivered a speech to the National Congress of Petroleum Retailers, Inc.<sup>112</sup> In the speech, Chair Dixon stated:

Your problems are many, and many of them are the problems of the Federal Trade Commission, too; for the Commission is concerned with promoting fair competition. More particularly, many of your problems are ours because they arise from practices prohibited by two of the most important statutes administered by the Commission—discriminatory pricing, prohibited by the Robinson-

<sup>99</sup> *Id.* at 589.

<sup>100</sup> *Id.* at 589–90 (emphasis added).

<sup>101</sup> *Id.* at 590.

<sup>102</sup> *Id.* at 584.

<sup>103</sup> *Id.* at 584–85.

<sup>104</sup> *Id.* at 590.

<sup>105</sup> *Id.*

<sup>106</sup> *Id.* at 592 (“For the reasons set forth above we vacate the order of the Commission and remand with instructions that the Commissioners consider the record and evidence in reviewing the initial decision, without the participation of Commissioner Dixon.”).

<sup>107</sup> 336 F.2d at 756.

<sup>108</sup> *Id.* (“Answers by the companies placed the essential allegations of the complaint in issue, after which evidentiary hearings were conducted over a period of nearly three years. They were concluded December 10, 1958. The examiner, in his initial decision issued October 23, 1959. . . .”).

<sup>109</sup> *Id.* at 757–59.

<sup>110</sup> *Id.* at 759 (“The order of remand of March 9, 1961, was entered by a Commission composed of Chairman Kintner and Commissioners Secret, Anderson and Kern. Accompanying it was the opinion to which we have referred, written by Chairman Kintner and concurred in by the other three members of the Commission. Shortly thereafter on March 21, 1961—Earl W. Kintner was replaced as Chairman by Paul Rand Dixon, who had not been a member of the Commission theretofore.”).

<sup>111</sup> *Id.* at 758 (“More than a year after the remand of March 9, 1961, the examiner conducted hearings from July 16 to July 19, 1962, at which the only proof introduced was in the form of exhibits received over the objection of the petitioners. A new initial decision was filed by the examiner September 24, 1962.”).

<sup>112</sup> *Id.* at 759 (“The basis of the motion was a speech made by Dixon before the National Congress of Petroleum Retailers, Inc., in Denver, Colorado, on July 25, 1961, while the case was pending before the examiner after remand and before any steps had been taken by him.”).

Patman Act, and other unfair acts, practices, and methods of competition, prohibited by the Federal Trade Commission Act.

We at the Commission are well aware of the practices which plague you and we have challenged their legality in many important cases.

You know the practices—price fixing, price discrimination, and overriding commissions on TBA.

You know the companies—Atlantic, Texas, Pure, Shell, Sun, Standard of Indiana, American, Goodyear, Goodrich, and Firestone.

Some of these cases are still pending before the Commission; some have been decided by the Commission and are in the courts on appeal. You may be sure that the Commission will continue and, to the extent that increased funds and efficiency permit, will increase its efforts to promote fair competition in your industry.<sup>113</sup>

The speech led Texaco to file a motion that Chair Dixon be disqualified from participating in the proceeding.<sup>114</sup> Chair Dixon declined to recuse himself and the Commissioners denied the motion.<sup>115</sup> The Commission, with Chair Dixon's participation, entered an order adopting the hearing examiner's second initial decision.<sup>116</sup>

The speech referenced "three business practices, seven oil companies, and three tire manufacturers" and "was qualified by the statement that '[s]ome of these cases are still pending before the Commission; some have been decided by the Commission and are in the courts on appeal.'<sup>117</sup> Chair Dixon explained that he believed "it would be taken for granted that, insofar as [his] other remarks suggested the actual existence and illegality of the named practices, the references were to the already-decided cases, not to those still pending before the agency."<sup>118</sup> Chair Dixon believed that "the reference to the, other proceedings—those still pending before the agency—was intended merely as a statement of the allegations in the complaints, not as prejudgment of their merits."<sup>119</sup> The D.C. Circuit explained that "[o]nce an adjudicator has taken a position apparently inconsistent with an ability to judge the facts fairly, subsequent protestations of open-mindedness on his part cannot restore a presumption of impartiality."<sup>120</sup>

The court in *Texaco* found that the "administrative hearing in the present case was certainly as important as that" in other cases that required recusal.<sup>121</sup> Consequently, the administrative hearing "must be attended, not only with every element of fairness but with the very appearance of complete fairness. Only thus can the tribunal conducting a quasi-adjudicatory proceeding meet the basic requirement of due process."<sup>122</sup>

The D.C. Circuit held that "a disinterested reader of Chairman Dixon's speech could hardly fail to conclude that he had in some measure decided in advance that Texaco had violated the Act."<sup>123</sup> Chair Dixon's speech, "made before the matter was submitted to the Commission but while it was before the examiner, plainly reveals that he had already concluded that Texaco and Goodrich were violating the Act, and that he would protect the petroleum retailers from such abuses."<sup>124</sup> Chair Dixon's "speech suggest[ed] not only a substantial conviction" that the petitioners violated the law, "but an implied promise to support the petroleum retailers in their struggle against alleged abuses by their suppliers."<sup>125</sup>

<sup>113</sup> *Id.*

<sup>114</sup> *Id.* ("On February 18, 1963, before the Commission had acted on the examiner's new initial decision of September 24, 1962, Texaco filed a motion that Chairman Dixon withdraw from participation in the proceeding or that the Commission determine him to be disqualified.")

<sup>115</sup> *Id.* ("The Commission denied the motion that it determine Chairman Dixon to be disqualified, and he declined to withdraw from participation.")

<sup>116</sup> *Id.* ("Instead, he took part in the entry of the order of April 15, 1963, more than two years after the remand, which adopted the examiner's initial decision and order of September 25, 1962[.]")

<sup>117</sup> *In re Pure Oil Company*, 66 FTC 1552, 1559 (1964).

<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

<sup>120</sup> *Texaco*, 336 F.2d at 764 (Washington, J., concurring in part and dissenting in part).

<sup>121</sup> *Id.* at 760 ("We said in [*Amos Treat*]: '. . . An administrative hearing of such importance and vast potential consequences must be attended, not only with every element of fairness but with the very appearance of complete fairness. Only thus can the tribunal conducting a quasi-adjudicatory proceeding meet the basic requirement of due process.' The administrative hearing in the present case was certainly as important as that in the *Amos Treat* case, and has perhaps even greater potential consequences.")

<sup>122</sup> *Id.* (citing *Amos Treat & Co. v. SEC*, 306 F.2d 260, 267 (D.C. Cir. 1962)).

<sup>123</sup> *Id.*

<sup>124</sup> *Id.*

<sup>125</sup> *Id.* (Washington, J., concurring in part and dissenting in part).

*American Cyanamid*

In *American Cyanamid Company v. FTC*, the FTC issued a complaint alleging that five companies violated Section 5 of the FTC Act in connection with the production and sale of tetracycline, a broad-spectrum antibiotic.<sup>126</sup> The hearing examiner issued his initial decision in favor of the drug companies and dismissed the complaint.<sup>127</sup> After notice of appeal, all five drug companies filed motions to disqualify Chair Dixon from participating in the proceeding.<sup>128</sup> The motions to disqualify:

were based upon the contention that Chairman Dixon, in his former capacity as Chief Counsel and Staff Director of the Subcommittee on Antitrust and Monopoly of the Committee on the Judiciary of the United States Senate, played an 'active role' in an investigation by that Subcommittee of many of the same facts and issues and of the same parties as are involved in this proceeding, and participated in the preparation of the report of the Subcommittee on the same facts, issues and parties.<sup>129</sup>

The motions to disqualify were denied.<sup>130</sup> On appeal, the Commissioners reversed the hearing examiner.<sup>131</sup>

Paul Rand Dixon served as the Chief Counsel and Staff Director of the subcommittee investigating "the drug industry, including the manufacture and sale of tetracycline."<sup>132</sup> At the subcommittee, soon-to-be-Chair Dixon "played an active part in the investigation. These hearings were concerned specifically, among other things, with issues which were decided against petitioners by the Commission in [the *American Cyanamid* case]."<sup>133</sup> Dixon questioned witnesses about tetracycline during the subcommittee's investigation.<sup>134</sup> The subcommittee received evidence relating to petitioner's prices for broad spectrum antibiotics, including tetracycline,<sup>135</sup> and the report included discussions of tetracycline and the conduct of the five petitioner drug companies.<sup>136</sup> "The letter of Senator Kefauver transmitting the report to the Chairman of the Senate Committee on Judiciary expressed appreciation for the 'efforts of Paul Rand Dixon[.]'"<sup>137</sup>

The Sixth Circuit concluded that "the questions and comments of Mr. Dixon" during the investigation demonstrated that he formed opinions that were conclusions

<sup>126</sup> *American Cyanamid*, 363 F.2d at 760–62.

<sup>127</sup> *Id.* at 762 ("The hearing examiner issued his initial decision, finding in favor of the petitioner drug companies on all issues, and dismissed the complaint").

<sup>128</sup> *Id.* at 763 ("After notice of appeal to the Commission from this decision, all five petitioners filed motions on December 13, 1961, to disqualify Chairman Paul Rand Dixon from participating in the proceeding.").

<sup>129</sup> *Id.*

<sup>130</sup> *Id.* ("These motions to disqualify Chairman Dixon were made or renewed on three separate occasions prior to the Commission's final decision. The motions were denied.").

<sup>131</sup> *Id.* at 762 ("On appeal, the Commission reversed, finding that the hearing examiner had misconstrued the actions of the patent examiner and the information which he deemed relevant to the application. The Commission found that Pfizer made deliberately false and misleading statements to, and withheld material information from, the Patent Office in securing its tetracycline patent; that this conduct amounted to 'unclean hands,' 'inequity' and 'bad faith' vis-a-vis the Patent Office; that Pfizer asserted monopoly rights under its patent in order to prevent competition in the tetracycline market; and that the effects of Pfizer's acts and conduct before the Patent Office have been to restrain competition, to foreclose access to substantial markets to competitors and potential competitors, and to create a monopoly in the manufacture and sale of tetracycline in violation of Section 5 of the Federal Trade Commission Act. The Commission further found that Cyanamid made erroneous representations to the Patent Office concerning matters bearing upon the patentability of tetracycline; and that although Cyanamid soon discovered that these representations were inaccurate, it did not disclose this fact to the Patent Office until after the tetracycline patent had been granted to Pfizer, thereby aiding the latter in its efforts to obtain a patent. The Commission ruled that this suppression of material information, combined with the cross-licensing agreement between Pfizer and Cyanamid and the acceptance by the latter of a license from the former to produce and sell tetracycline, constituted an illegal attempt to share a monopoly with Pfizer and amounted to a combination in restraint of trade. Similar charges against Bristol, Squibb and Upjohn were dismissed by the Commission, although these latter three companies were found guilty of price-fixing. On the issue of price-fixing, the Commission decided that the record as a whole sustains the conclusion that the five petitioners fixed and maintained the price of tetracycline in substantial markets through conspiracy and combination.").

<sup>132</sup> *Id.* at 765.

<sup>133</sup> *Id.*

<sup>134</sup> *Id.*

<sup>135</sup> *Id.*

<sup>136</sup> *Id.* at 766.

<sup>137</sup> *Id.* at 767.

of facts.<sup>138</sup> According to the court, these opinions were “not merely an underlying philosophy or a crystallized point of view on questions of law or policy.”<sup>139</sup> The Sixth Circuit held that “the participation of Chairman Dixon in the hearing ‘amounted . . . to a denial of due process which invalidated the order under review’ because Chair “Dixon sat with the other members as triers of the facts and joined in making the factual determination upon which the order of the Commission is based. As counsel for the Senate Subcommittee, he had investigated and developed many of these same facts.”<sup>140</sup> The court ruled “that disqualification is required when, as in the present case, the legislative committee investigation involved the same facts and issues concerning the same parties named as respondents before the administrative agency[.]”<sup>141</sup>

*Due Process Requires Chair Khan’s Recusal*

Due process requires that the FTC’s adjudicatory proceedings maintain the “very appearance of complete fairness.”<sup>142</sup> For the reasons explained below, “a disinterested observer may conclude that [Chair Khan] has in some measure adjudged the facts as well as the law”<sup>143</sup> regarding the Meta/Within Transaction, and the Chair must therefore be recused from adjudicating the Meta/Within Transaction.

*Chair Khan Appears to Have Prejudged the Law and Facts*

Prior to joining the FTC, Chair Khan wrote to then-FTC Chair Ohlhausen asking the FTC “to prohibit mergers between Facebook. . . [and] other new and promising products and services.”<sup>144</sup> The letter stated that Meta “has become too big and complex for any executive team to manage responsibly” and that all transactions involving Meta should be blocked until the government “determine[s] how to ensure that Facebook’s power does not” lead to a long list of potential harms.<sup>145</sup>

Calling for the FTC, which Chair Khan now leads, to ban all future Meta transactions is an express statement that Meta transactions are illegal. Because *Cinderella* articulated that Commissioners cannot make statements that “give the appearance that the case has been prejudged,”<sup>146</sup> Chair Khan’s letter requires her to be recused from the Meta/Within transaction. In *Cinderella*, Chair Dixon gave a speech that mentioned one fact similar to a pending case and stated, “the Federal Trade Commission, even where it has jurisdiction, could not protect the public as quickly.”<sup>147</sup> Chair Dixon was recused in *Cinderella* despite not naming the parties, referencing only one fact among many hypothetical examples included in the speech,<sup>148</sup> and concluding only that if the FTC has jurisdiction it would still protect the public more quickly for newspapers to have higher advertising standards.<sup>149</sup> Chair Khan’s letter goes far beyond Chair Dixon’s speech. Chair Khan names Meta and demands that all of its acquisitions be blocked by the FTC.<sup>150</sup> The Meta/Within transaction is now before the FTC, and Chair Khan’s letter “give[s] the appearance that the case has been prejudged.”<sup>151</sup>

Chair Khan made another statement about blocking all Meta acquisitions on May 15, 2018 when she stated that if Meta is “acquiring another company, I would hope

<sup>138</sup> *Id.* at 765 (“Some of the questions and comments of Mr. Dixon as quoted in Appendix E demonstrate to us that he then had formed the opinion that tetracycline prices quoted by petitioners were artificially high and collusive and that the patent interference settlement between Pfizer and Cyanamid involved improper aid by Cyanamid to Pfizer in obtaining the tetracycline patent. Any opinions so formed were conclusions as to facts, and not merely an ‘underlying philosophy’ or a ‘crystallized point of view on questions of law or policy.’ The facts to which questions were directed as set forth in Appendix E are inseparably a part of the ultimate findings of fact of the Commission in disagreeing with the decision of the trial examiner in the present proceeding.”).

<sup>139</sup> *Id.* (internal quotations omitted).

<sup>140</sup> *Id.* at 767.

<sup>141</sup> *Id.* at 768.

<sup>142</sup> *Texaco*, 336 F.2d at 760.

<sup>143</sup> *Cinderella Career & Finishing Schools*, 425 F.2d at 591.

<sup>144</sup> Press Release, Open Markets Inst., Open Markets Institute Calls on the FTC to Block All Facebook Acquisitions (Nov. 1, 2017), <https://www.openmarketsinstitute.org/publications/open-markets-institute-calls-on-the-ftc-to-block-all-facebook-acquisitions>.

<sup>145</sup> *Id.*

<sup>146</sup> *Cinderella Career & Finishing Schools*, 425 F.2d at 590.

<sup>147</sup> *Id.* at 589–90.

<sup>148</sup> *Id.*

<sup>149</sup> *Id.*

<sup>150</sup> See Press Release, Open Markets Inst., Open Markets Institute Calls on the FTC to Block All Facebook Acquisitions (Nov. 1, 2017), <https://www.openmarketsinstitute.org/publications/open-markets-institute-calls-on-the-ftc-to-block-all-facebook-acquisitions>.

<sup>151</sup> See *Cinderella Career & Finishing Schools*, 425 F.2d at 590.

the FTC would look at that very closely and block it.”<sup>152</sup> In *Texaco*, Chair Dixon’s speech listed many companies,<sup>153</sup> he made clear that he was speaking about potential cases and only suggested FTC action “if funds and efficiency permitted future efforts[.]”<sup>154</sup> The *Texaco* court did not recuse Chair Dixon because his speech referenced the exact matter at issue, but instead because “a disinterested reader of Chairman Dixon’s speech could hardly fail to conclude that he had in some measure decided in advance that Texaco had violated the Act.”<sup>155</sup> Similarly, a disinterested observer “could hardly fail to conclude” that Chair Khan has “in some measure decided in advance” that the Meta/Within Transaction should be blocked by the FTC given her repeated calls for the FTC to block all Meta transactions.

Chair Khan connected Meta’s earlier acquisition strategy, which she deemed illegal based on her comments and writings, to virtual reality by stating that Meta “is now following this playbook in the virtual reality space” by “using [the] same ‘copy-acquire-kill’ strategy it used to monopolize social networking. Key task for enforcers is to prevent a repeat[.]”<sup>156</sup> Chair Khan’s comments that Meta’s past acquisition strategy resulted in unlawful transactions, and her public statement connecting the past strategy to virtual reality, demonstrates that she has prejudged Meta’s virtual reality acquisition strategy—and consequently the Meta/Within Transaction—as illegal.

#### *Chair Khan’s Congressional Work Requires Recusal*

Chair Khan’s work on the House Subcommittee’s investigation into Meta, Amazon, Apple, and Google requires that Chair Khan be disqualified from adjudicating the Meta/Within Transaction for the same reasons that Chair Dixon’s work on the Senate Subcommittee’s investigation into the drug industry required his disqualification. Soon-to-be-Chair Dixon “played an active part in the investigation” into the drug industry;<sup>157</sup> soon-to-be-Chair Khan “led the congressional investigation into digital markets and the publication of its final report”<sup>158</sup> and “highly orchestrated” the hearings with a small group of staffers.<sup>159</sup> Chair Dixon’s Senate investigation was “concerned specifically, among other things, with” products, companies, and practices at issue in *American Cyanamid*.<sup>160</sup> Chair Khan’s House investigation examined Meta’s acquisitions of virtual reality game developers (including Beat Saber, one of the studios primarily at issue in the Meta/Within transaction)<sup>161</sup> and Meta’s alleged strategy of “serial acquisitions [that] reflect the company’s interest in purchasing firms that had the potential to develop into rivals before they could fully mature into strong competitive threats.”<sup>162</sup> Notably, Chair Khan’s work was published in a staff report that she co-authored,<sup>163</sup> whereas Chair Dixon’s investigation resulted in a Committee Report (Chair Dixon was only thanked in the cover letter for his work).<sup>164</sup> Consequently, the findings in Chair Khan’s report are even more attributable to Chair Khan than the findings in the *American Cyanamid* report are attributable to Chair Dixon.

The Majority Opinion argues that Chair Khan’s House Subcommittee work “did not involve the ‘same facts and issues’ as this case nor fully the ‘same parties,’ which distinguishes it from *American Cyanamid*.”<sup>165</sup> But like Chair Dixon in *American Cyanamid*, due process requires Chair Khan’s disqualification because she “investigated and developed many of these same facts” at issue in the present case.<sup>166</sup> As summarized in the chart below, which compares language in the Majority Staff

<sup>152</sup>The Bernie Sanders Show, *The Greatest Threat to Our Democracy?* (May 15, 2018) (starting at 20:29), <https://www.youtube.com/watch?v=wuCAy10h1HI>.

<sup>153</sup>*Texaco*, 336 F.2d at 759 (“You know the companies—Atlantic, Texas, Pure, Shell, Sun, Standard of Indiana, American, Goodyear, Goodrich, and Firestone.”).

<sup>154</sup>*Id.* (“Some of these cases are still pending before the Commission; some have been decided by the Commission and are in the courts on appeal. You may be sure that the Commission will continue and, to the extent that increased funds and efficiency permit, will increase its efforts to promote fair competition in your industry.”).

<sup>155</sup>*Id.* at 760.

<sup>156</sup>Petition for Recusal, *supra* note 2, at Ex. D.

<sup>157</sup>*American Cyanamid*, 363 F.2d at 765.

<sup>158</sup>Petition for Recusal, *supra* note 2, at Ex. C.

<sup>159</sup>Birnbaum, *supra* note 41.

<sup>160</sup>*American Cyanamid*, 363 F.2d at 765.

<sup>161</sup>Majority Staff Report, *supra* note 39, at fn. 859 (citing articles referencing Meta’s acquisitions of Oculus game developers Beat Games, Sanzaru Games, and Ready at Dawn); *id.* at 424 (listing acquisition by Meta).

<sup>162</sup>*Id.* at 150.

<sup>163</sup>Petition for Recusal, *supra* note 2, at Ex. C.

<sup>164</sup>*American Cyanamid*, 363 F.2d at 767.

<sup>165</sup>Order Denying Petition for Recusal, FTC No. 221–0040 (Jan. 31, 2023) [*hereinafter* Majority Opinion].

<sup>166</sup>*American Cyanamid*, 363 F.2d at 767.

Report to language in the Meta/Within Transaction complaint by topic, the facts and issues in the Meta/Within Transaction are the same as the facts and issues in the Majority Staff Report:

The Same Facts, Issues, and Parties Appear in the Majority Staff Report and the Complaint

Topic	Majority Staff Report	Meta/Within Transaction Complaint
Virtual Reality Product Offering	“[Meta] is the largest social networking platform in the world. Its business operates around five primary product offerings, including: (5) Oculus, a virtual reality gaming system.” <sup>a</sup>	“Meta, one of the largest technology companies in the world and the leading provider of virtual reality (‘VR’) devices and applications (‘apps’) in the United States ” <sup>b</sup>
Family of Apps	“[Meta] reported that its family of products—including Facebook, Instagram, Messenger, and WhatsApp—includes 2.47 billion daily active people (DAP), 3.14 billion monthly active people (MAP), ” <sup>c</sup>	“A global technology behemoth, Meta reaches into every corner of the world through its ‘Family of Apps’—Facebook, Instagram, Messenger, and WhatsApp—with more than three billion regular users.” <sup>d</sup>
Oculus Acquisition	“[Meta] has also acquired several virtual reality and hardware companies, such as Oculus.” <sup>e</sup>	“Meta’s campaign to conquer VR began in 2014 when it acquired Oculus VR, Inc., a VR headset manufacturer.” <sup>f</sup>
Beat Games	The mergers and acquisitions appendix cites to the Beat Games acquisition. <sup>g</sup>	“Meta controls the wildly popular app Beat Saber, which it acquired by purchasing Beat Games in November 2019.” <sup>h</sup>
Continued VR Game Developer Acquisitions	“[Meta] has acquired Oculus game developers” (citing articles that note the acquisitions of Ready at Dawn, Sanzaru, and Beat Saber). <sup>i</sup> The mergers and acquisitions appendix cites Ready at Dawn and Sanzaru Games. <sup>j</sup>	“Since its acquisition of Beat Games, Meta has continued to acquire a series of studios behind many popular VR apps : a. In January 2020, Meta acquired Sanzaru games, b. In May 2020, Meta acquired Ready at Dawn Studios .” <sup>k</sup>
Ongoing Acquisition Strategy	“As discussed earlier in this Report, Facebook’s senior executives described the company’s mergers and acquisitions strategy in 2014 as a ‘land grab’ to ‘shore up our position.’ Facebook’s serial acquisitions reflect the company’s interest in purchasing firms that had the potential to develop into rivals before they could fully mature into strong competitive threats.” <sup>l</sup>	“As early as 2015, Mr. Zuckerberg instructed key Facebook executives that his vision for ‘the next wave of computing’ was control of apps and the platform on which those apps were distributed” <sup>m</sup>
Roll-up Acquisitions	“Over the course of the investigation, the Subcommittee uncovered evidence that the antitrust agencies failed, at key occasions, to stop monopolists from rolling up their competitors and failed to protect the American people from abuses of monopoly power. Forceful agency action is critical.” <sup>n</sup>	“In addition to Beat Games, Meta owns a number of other VR apps, some of which it developed in-house but most of which it acquired by rolling up other app studios.” <sup>o</sup>
Use of Data to Make Strategic Decisions	“[Meta] used its data advantage to create superior market intelligence to identify nascent competitive threats and then acquire, copy, or kill these firms.” <sup>p</sup>	“Meta’s control over the Quest platform also gives it unique access to VR user data, which it uses to inform strategic decisions.” <sup>q</sup>
Network Effects	“Facebook’s executives—including Mr. Zuckerberg—have extensively discussed the role of network effects and tipping points as part of the company’s acquisition strategy and overall competitive outlook” <sup>r</sup>	“As Meta fully recognizes, network effects on a digital platform can cause the platform to become more powerful—and its rivals weaker and less able to seriously compete—as it gains more users, content, and developers. The acquisition of new users, content, and developers each feed into one another, creating a self-reinforcing cycle that entrenches the company’s early lead.” <sup>s</sup> “Meta has an explicit strategy of harnessing strong network effects in VR to ensure its leading status in this growing industry.” <sup>t</sup>

## The Same Facts, Issues, and Parties Appear in the Majority Staff Report and the Complaint—Continued

Topic	Majority Staff Report	Meta/Within Transaction Complaint
Big Tech Expansion into VR	“Meanwhile, all four of the firms investigated by the Subcommittee have recently focused on acquiring startups in the artificial intelligence and virtual reality space. Ongoing acquisitions by the dominant platforms raise several concerns. Insofar as any transaction entrenches their existing position, or eliminates a nascent competitor, it strengthens their market power and can close off market entry.” <sup>u</sup>	“Meta’s internal codename for the proposed acquisition of Within was ‘Project Eden,’ a reference to its belief that Apple was also interested in acquiring Within.” <sup>v</sup> “Seeking to expand its empire even further, Meta in recent years has set its sights on building, and ultimately controlling, a VR ‘metaverse.’” <sup>w</sup>

Sources: (a) Majority Staff Report, *supra* note 39, at 132; (b) Amended Part 3 Complaint, *supra* note 6, at ¶1; (c) Majority Staff Report, *supra* note 39, at 132; (d) Amended Part 3 Complaint, *supra* note 6, at ¶2; (e) Majority Staff Report, *supra* note 39, at 149; (f) Amended Part 3 Complaint, *supra* note 6, at ¶3; (g) Majority Staff Report, *supra* note 39, at 424; (h) Amended Part 3 Complaint, *supra* note 6, at ¶4; (i) Majority Staff Report, *supra* note 39, at 149; (j) Majority Staff Report, *supra* note 39, at 424; (k) Amended Part 3 Complaint, *supra* note 6, at ¶27; (l) Majority Staff Report, *supra* note 39, at 149–50; (m) Amended Part 3 Complaint, *supra* note 6, at ¶7; (n) Majority Staff Report, *supra* note 39, at 7; (o) Amended Part 3 Complaint, *supra* note 6, at ¶4; (p) Majority Staff Report, *supra* note 39, at 14; (q) Amended Part 3 Complaint, *supra* note 6, at ¶62; (r) Majority Staff Report, *supra* note 39, at 143; (s) Amended Part 3 Complaint, *supra* note 6, at ¶6; (t) Amended Part 3 Complaint, *supra* note 6, at ¶5; (u) Majority Staff Report, *supra* note 39, at 387; (v) Amended Part 3 Complaint, *supra* note 6, at ¶79; (w) Amended Part 3 Complaint, *supra* note 6, at ¶2.

Chair Khan attempts to differentiate her situation from *American Cyanamid* by stating that “none of the examples of [her] prior statements that Meta cites in support of its petition even involve any of the relevant markets or products being reviewed here, let alone the ‘same facts and issues.’”<sup>167</sup> The Majority Opinion similarly states that Chair Khan’s House Subcommittee work “did not involve the ‘same facts and issues’ as this case nor fully the ‘same parties,’ which distinguishes it from *American Cyanamid*.”<sup>168</sup> In doing so, Chair Khan and the Majority Opinion raise the test for recusal to a requirement that Chair Khan had conducted the identical investigation in her past work. But *American Cyanamid* requires recusal if the investigation that Chair Khan led involved the same parties, facts, and issues. In attempting to justify Chair Khan’s role as an adjudicator in the Part 3 process, Chair Khan and the Majority Opinion have adopted a heightened standard for disqualification that exceeds the standard articulated by the relevant case law.

*Chair Khan Took an Active Part in the House Subcommittee Investigation*

*American Cyanamid* is distinguished in *Safeway Stores, Inc. v. FTC*, which again involved Chair Dixon’s prior work as Chief Counsel and Staff Director of the Antitrust and Monopoly Subcommittee of the United States Senate.<sup>169</sup> Chair Dixon was recused in *American Cyanamid* and not recused in *Safeway Stores*, even though both situations involved Chair Dixon’s role in a Congressional investigation. In *Safeway Stores*, the FTC found that baking companies engaged in a conspiracy to fix the price of bread.<sup>170</sup> On appeal, the Ninth Circuit considered disqualifying Chair Dixon from sitting as an adjudicator because “he participated in a Subcommittee hearing on administered pricing in the bread industry” before joining the Commission.<sup>171</sup> Specifically, soon-to-be-Chair Dixon “interrogated [the petitioner’s] president, and [the petitioner urged the Ninth Circuit to find] that his questions suggest such a fixed view on one aspect of the present controversy that [the Court] should overrule the Commission’s determination that [Chair Dixon] was not disqualified.”<sup>172</sup> The Ninth Circuit did “not agree that an attorney’s personal opinion on a factual controversy may be inferred from questions he puts in the performance of his professional duty.”<sup>173</sup> The Ninth Circuit found that Chair Dixon “took a much more active part in the investigation” at issue in *American Cyanamid* than the one at issue in *Safeway Stores*.<sup>174</sup>

Chair Khan was praised for leading the investigation<sup>175</sup> and co-authored the Majority Staff Report that resulted from the investigation.<sup>176</sup> Further, as explained by Chair Khan’s academic co-author Zephyr Teachout, Chair Khan “poured her ‘sweat and blood’ into the investigation” and “left her fingerprints all over the investiga-

<sup>167</sup> September 26 Statement, *supra* note 24, at 4.

<sup>168</sup> Majority Opinion, *supra* note 165, at 10.

<sup>169</sup> *Safeway Stores, Inc. v. F.T.C.*, 366 F.2d 795 (9th Cir. 1966).

<sup>170</sup> *Id.* at 796.

<sup>171</sup> *Id.* at 801.

<sup>172</sup> *Id.*

<sup>173</sup> *Id.*

<sup>174</sup> *Id.* at 802.

<sup>175</sup> Birnbaum, *supra* note 41.

<sup>176</sup> Majority Staff Report, *supra* note 39.

tion.”<sup>177</sup> According to Teachout, she “could see [Chair Khan’s] work everywhere in the [CEO] hearing.”<sup>178</sup> Chair Khan’s involvement goes beyond Chair Dixon’s involvement in *American Cyanamid*. The only notable difference is that Chair Dixon questioned witnesses in *American Cyanamid*. But Chair Dixon also questioned witnesses in *Safeway Stores*, where he was not recused, so questioning witnesses cannot be the operative fact in deciding whether disqualification is warranted.

*Chair Khan’s Academic Work Adopted Her Professional Positions*

The Majority Opinion argues that “the positions taken by Chair Khan as an advocate on behalf of OMI should not necessarily be ascribed to her personally[.]”<sup>179</sup> Even if one were to stipulate that there should be an exception for advocates, a position with which I disagree, there are reasons that Chair Khan’s work as an advocate should be considered in deciding the motion for disqualification.

First, Chair Khan’s academic work adopted positions advanced in her professional role. For example, Chair Khan, in an academic article, adopted the recommendation to create “a presumption against future acquisitions” by citing the OMI op-ed that argued for prohibiting “all future acquisitions by Facebook for at least five years.”<sup>180</sup> An OMI press release—issued while Chair Khan was legal director—called for the FTC to “prohibit all future acquisitions by Facebook for at least five years.”<sup>181</sup> This demand was made by OMI on March 22, 2018.<sup>182</sup> Five years will not run until March 22, 2023. A demand made by Chair Khan’s former organization while she was its Legal Director “may have the effect of entrenching” the Chair “in a position which [she] has publicly stated, making it difficult, if not impossible, for [her] to reach a different conclusion in the event [she] deems it necessary to do so after consideration of the record.”<sup>183</sup> But even if it is argued that Chair Khan was an advocate and the press release should not be attributed to her personal opinion, her academic work adopting this position and citing the exact source strongly implies that these views are held personally by Chair Khan.

Second, evidence also suggests that the Majority Staff Report co-authored by Chair Khan can be attributed to Chair Khan’s academic work. For example, Zephyr Teachout “point[ed] out that many of the questions [in the CEO hearing] harkened directly back to [Chair Khan’s] academic work.”<sup>184</sup>

Finally, as noted above, many of Chair Khan’s relevant statements are drawn directly from her academic work.<sup>185</sup> These statements cannot be attributed to OMI or the House Subcommittee. Chair Khan bears ownership of her academic work.

*The Timing of Chair Khan’s Statements and Work Do Not Prevent Recusal*

Chair Khan and the Majority Opinion both attempt to distinguish the facts of *Cinderella*. Chair Khan claims that in *Cinderella*, Chair Dixon “gave a speech . . . in which he used specific behavior by Cinderella as an example of misconduct” and that “the court stated that it was ‘the timing of the speech in relation to the proceedings’ that gave a ‘disinterested observer’ a ‘reasonable inference’ to view his remarks as connected to the case.”<sup>186</sup> Chair Khan distinguishes the present situation with *Cinderella* by stating that “none of the statements that Meta cites in support of its petition were made during the pendency of this matter, let alone during [Chair Khan’s] time serving on the Commission.”<sup>187</sup> Similarly, the Majority Opinion states that the “court made clear that its concern was with Chair Dixon’s speaking on ‘a case awaiting his official action.’”<sup>188</sup>

<sup>177</sup> Birnbaum, *supra* note 41.

<sup>178</sup> *Id.*

<sup>179</sup> Majority Opinion, *supra* note 165, at 9.

<sup>180</sup> Khan, Sources of Tech Platform Power, *supra* note 37, at 333.

<sup>181</sup> Press Release, Open Markets Inst., *Fines for Facebook Aren’t Enough: The Open Markets Institute Calls on FTC to Restructure Facebook to Protect Our Democracy* (Mar. 22, 2018), <https://www.openmarketsinstitute.org/publications/fines-for-facebook-arent-enough-the-open-markets-institute-calls-on-ftc-to-restructure-facebook-to-protect-our-democracy>.

<sup>182</sup> *Id.*

<sup>183</sup> See *Cinderella Career & Finishing Schools*, 425 F.2d at 590.

<sup>184</sup> Birnbaum, *supra* note 41.

<sup>185</sup> See *supra* notes 52–70 and accompanying text.

<sup>186</sup> September 26 Statement, *supra* note 24.

<sup>187</sup> *Id.* at 4.

<sup>188</sup> Majority Opinion, *supra* note 165, at 9. Notably, the full quote from *Cinderella* is: “To this tenet of self-appraisal we apply Lord Macaulay’s evaluation more than 100 years ago of our American government: ‘It has one drawback—it is all sail and no anchor.’ We find it hard to believe that former Chairman Dixon is so indifferent to the dictates of the Courts of Appeals that he has chosen once again to put his personal determination of what the law requires ahead of what the courts have time and again told him the law requires. If this is a question of ‘discre-

Chair Khan and the Majority Opinion mischaracterize the D.C. Circuit's analysis regarding the importance of the timing of the speech. Chair Dixon's speech mentioned one fact similar to a pending case.<sup>189</sup> Chair Dixon did not name the parties, referenced many hypothetical examples, and concluded only that if the FTC had jurisdiction it would still protect the public more quickly if businesses had advertising standards instead of waiting for the FTC's involvement.<sup>190</sup> The D.C. Circuit used the timing of Chair Dixon's speech (*i.e.*, while the matter was pending at the Commission) to conclude that the fact mentioned by Chair Dixon in the speech showed prejudgment of the matter.<sup>191</sup> In other words, the D.C. Circuit used the timing of the speech to infer the relevance of the comment. In Chair Khan's situation, it is unnecessary to speculate on Chair Khan's thoughts about the Meta/Within Transaction. Chair Khan's work has explicitly demanded that all transactions by Meta be blocked by the FTC<sup>192</sup> and concluded that Meta's acquisition strategy in the virtual reality space is illegal.<sup>193</sup>

Further, the *Texaco* concurrence was concerned that Chair Dixon's statement could be seen as "an implied promise to support the petroleum retailers in their struggle against alleged abuses by their suppliers."<sup>194</sup> Similarly, Chair Khan's repeated calls for the FTC to block all Meta transactions could be seen as an "an implied promise to" take such action in the future if given the power.

The Majority Opinion implies that Chair Khan should not be disqualified because the statements and work forming the basis of recusal were made before the President nominated Chair Khan, and before the Senate confirmed her.<sup>195</sup> Chair Dixon's work at issue in *American Cyanamid*, which took place prior to his becoming a Commissioner, demonstrates that the nomination and confirmation processes do not invalidate due process concerns.<sup>196</sup> Many people with conflicts are nominated. In their confirmation hearings, nominees routinely promise to abide by conflicts rules and Federal ethics obligations. The President and Senate did not, and could not, grant Chair Khan a waiver to ignore due process and Federal ethics requirements.

*The Relevant Role is that of an Adjudicator, Not a Prosecutor*

Chair Khan's September 26 Statement largely analyzes recusal in her role as a prosecutor and relies on Judge Boasberg's decision in the FTC's conduct case against Meta.<sup>197</sup> As noted above, the Commission's decision under Rule 4.17 is limited to Chair Khan's role as an adjudicator.<sup>198</sup> Meta was informed that the recusal petition would be considered as a disqualification motion under Rule 4.17.<sup>199</sup> Consequently, Chair Khan's involvement as a prosecutor is for Federal courts to decide in light of the facts of the Meta/Within Transaction, but are largely irrelevant under

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tion and judgment,' Commissioner Dixon has exercised questionable discretion and very poor judgment indeed, in directing his shafts and squibs at a case awaiting his official action. We can use his own words in telling Commissioner Dixon that he has acted 'irrespective of the law's requirements'; we will spell out for him once again, avoiding tired cliché and weary generalization, in no uncertain terms, exactly what those requirements are, in the fervent hope that this will be the last time we have to travel this wearisome road." *Cinderella Career & Finishing Schools*, 425 F.2d at 591. This full quote does not imply that it was "clear that [the court's] concern was with" the timing of the speech as the Majority Opinion suggests.

<sup>189</sup>*Cinderella Career & Finishing Schools*, 425 F.2d at 589–90 ("What would be the attitude toward accepting good money for advertising by a merchant who conducts a 'going out of business' sale every five months? What about carrying ads that offer college educations in five weeks, fortunes by raising mushrooms in the basement, getting rid of pimples with a magic lotion, or becoming an airline's hostess by attending a charm school? Or, to raise the target a bit, how many newspapers would hesitate to accept an ad promising an unqualified guarantee for a product when the guarantee is subject to many limitations?" (emphasis added)).

<sup>190</sup>*Id.* at 589–90.

<sup>191</sup>*Id.* at fn. 10 ("In its brief the respondent has attempted to demonstrate that Chairman Dixon's speech made reference not to the currently pending case, but rather to two cases which had been decided by the Commission in 1964. In light of the timing of the speech in relation to the proceedings herein, we think the reasonable inference a disinterested observer would give these remarks would connect them inextricably with this case.")

<sup>192</sup>*See, e.g.*, The Bernie Sanders Show, *The Greatest Threat to Our Democracy?* (May 15, 2018) (starting at 20:29), <https://www.youtube.com/watch?v=wuCAy10h1HI>.

<sup>193</sup>Petition for Recusal, *supra* note 2, at ex. D.

<sup>194</sup>*Texaco*, 336 F.2d at 764 (Washington, J., concurring in part and dissenting in part).

<sup>195</sup>Majority Opinion, *supra* note 167, at 12–13.

<sup>196</sup>*American Cyanamid*, 363 F.2d at 765.

<sup>197</sup>September 26 Statement, *supra* note 24 at 1–2 ("Meta largely recycles the same arguments rejected by the Federal district court in *Meta I*. For both the reasons stated by Judge Boasberg in *Meta I* as well as the additional reasons discussed below, I reject Meta's petition and decline to recuse myself from this matter.") (internal citation omitted).

<sup>198</sup>*See supra* notes 5 & 23.

<sup>199</sup>Tabor, *supra* note 5.

Rule 4.17.<sup>200</sup> Judge Boasberg’s opinion did not analyze disqualification in terms of Chair Khan’s role as an adjudicator. Judge Boasberg described the role of an adjudicator to differentiate the analysis he conducted with respect to his analysis of prosecutorial bias.<sup>201</sup> Judge Boasberg draws no conclusions about the propriety of Chair Khan’s serving in an adjudicatory function and his analysis consequently cannot serve as a basis for Chair Khan and the Majority Opinion’s analysis.

*Meta’s Other VR Transactions Do Not Show an Absence of Prejudgment*

The Majority Opinion argues that Chair Khan has not prejudged Meta’s mergers in the virtual reality space because the FTC has not challenged previous Meta mergers, including the virtual reality mergers cited in the complaint that have been consummated while Chair Khan has been in charge of the FTC.<sup>202</sup> If Chair Khan had voted to close an investigation or to not file a complaint in any transaction conducted by Meta, that vote could be evidence of considering each case on its merits. But the Majority Opinion points to nothing that indicates Chair Khan has ever voted on a transaction involving Meta except for the Meta/Within Transaction or any other evidence indicating that the Chair made a considered choice not to challenge these transactions.

*The Majority Relies on Peripheral Case Law*

The Majority Opinion relies on a selection of cases that walk on the edge of relevance to the present analysis in an attempt to establish that an “irrevocably closed mind” standard applies. The Majority Opinion primarily relies on *Southern Pacific Communications Company v. American Telephone & Telephone Company*, which states that the test is whether the judge’s mind is “irrevocably closed” on the issues as they arise in the context of the specific case.<sup>203</sup> But in *Southern Pacific*, there was “no claim that the District Judge was biased in the sense of having adjudged the facts in advance of hearing the case. . . . Rather, [the Petitioner] asserts that the District Judge was biased only in the sense that he held firm views concerning law and policy and decided the case on the basis of these views, thus depriving [the Petitioner] of an impartial judgment.”<sup>204</sup> The allegations in *Southern Pacific* were based on the District Judge’s personal policy views expressed in his written judgment deciding the case.<sup>205</sup> Here, the need for Chair Khan’s recusal is not driven by allegations that she has expressed policy views. The concern presently at issue is that Chair Khan prejudged the Meta/Within Transaction. The cases involving former Chair Dixon, which (as described above) are analogous to Chair Khan’s situation, explain that Chair Dixon’s actions are “not merely an underlying philosophy or a crystallized point of view on questions of law or policy.”<sup>206</sup> In other words, like Chair Dixon, Chair Khan’s work and statements are not mere views on law and policy, as explained in detail in the sections above.

The Majority Opinion makes this error repeatedly, suggesting that Chair Khan’s statements are mere views regarding law and policy.<sup>207</sup> To support this position, the Majority Opinion cites inapposite (and distinguishable) case law while giving short shrift to the Chair Dixon cases.<sup>208</sup>

The Majority Opinion also relies on *Association of National Advertisers, Inc. v. FTC* for the position that adjudicators “are free to decide cases involving policy

<sup>200</sup>It remains an outstanding question whether voting for a complaint into administrative court is an adjudicatory or prosecutorial function. Regardless of the answer to that question, Judge Boasberg’s opinion analyzed a complaint voted into Federal court, which is a prosecutorial function.

<sup>201</sup>*Facebook*, 581 F. Supp. 3d at 63 (“[*Cinderella* and *American Cyanamid*] deal with an agency official adjudicating the merits of a case, not authorizing the filing of one.”).

<sup>202</sup>Majority Opinion, *supra* note 167, at 9.

<sup>203</sup>740 F.2d 980, 991 (D.C. Cir. 1984).

<sup>204</sup>*Id.*

<sup>205</sup>*Id.* at 983 (“[I]n his Memorandum Opinion, the District Judge strongly expressed his personal policy view that an AT & T monopoly, and not competition, is in the public interest in the telecommunications industry. Moreover, in drafting his extremely lengthy Memorandum Opinion, the trial judge simply copied—word-for-word (including even typographical errors)—most of AT & T’s proposed findings of fact and conclusions of law. Virtually every assessment of the credibility of witnesses, finding of fact and conclusion of law is in favor of AT & T.”).

<sup>206</sup>*American Cyanamid*, 363 F.2d at 765 (internal quotations omitted).

<sup>207</sup>*Compare* Majority Opinion, *supra* note 165, at 5–8 & 11 (discussing Chair Khan’s past actions and statements as mere views regarding law and policy) *with* Majority Opinion, *supra* note 165, at 10–12 (attempting to distinguish the Chair Dixon cases).

<sup>208</sup>*See supra* notes 203–207 and accompanying text discussing *Southern Pacific* and *infra* notes 209–211 discussing *Association of National Advertisers* and *Cement Institute*. *See also Phillip v. ANR Freight Sys., Inc.*, 945 F.2d 1054, 1056 (8th Cir. 1991) (requesting recusal of a trial judge during a jury trial for making a comment not in the presence of the jury about Title VII cases).

questions on which they previously have expressed a view.”<sup>209</sup> But *Association of National Advertisers* is specific to rulemaking because it involved an advertising association’s attempt to disqualify the FTC Chair from participating in a rulemaking proceeding and the D.C. Circuit stated explicitly that it “never intended the *Cinderella* rule to apply to a rulemaking procedure such as the one under review.”<sup>210</sup> Finally, in *FTC v. Cement Institute*, one of the issues on appeal was that the entire Commission should disqualify itself based on Commission reports required under Section 6 of the FTC Act and testimony in Congress.<sup>211</sup> The *Cement Institute* court expressed concern that “[h]ad the entire membership of the Commission disqualified in the proceedings against these respondents, this complaint could not have been acted upon by the Commission or by any other government agency.”<sup>212</sup> This concern does not arise in Chair Khan’s situation because neither a 6(b) report nor Congressional testimony drives the need for Chair Khan’s recusal and disqualification of the entire Commission is not being considered.

#### *Federal Ethics Requirements*

Chair Khan’s participation in an adjudicatory role with respect to the Meta/Within Transaction raises Federal ethics concerns that are separate from the due process issues explained in the Chair Paul Rand Dixon line of cases. The Standards of Ethical Conduct for Employees of the Executive Branch (“Standards of Conduct”) are regulations issued by the U.S. Office of Government Ethics.<sup>213</sup> The Standards of Conduct are premised on a reasonable person standard, and explain that “[w]hether particular circumstances create an appearance that the law or these standards have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts.”<sup>214</sup>

The Standards of Conduct establish two broad areas of inquiry. First, a government employee “should not participate in a particular matter involving specific parties which he knows is likely to affect the financial interests of a member of his household, or in which he knows a person with whom he has a covered relationship is or represents a party, if he determines that a reasonable person with knowledge of the relevant facts would question his impartiality in the matter.”<sup>215</sup> Second, a regulatory catch-all provision requires that “[a]n employee who is concerned that other circumstances would raise a question regarding his impartiality should use the process described in [the Standards of Conduct] to determine whether he should or should not participate in a particular matter.”<sup>216</sup> In other words, even if not per se prohibited by law, when an employee faces circumstances that “would raise a question regarding his impartiality[, the employee] should use the process described in [the Standards of Conduct] to determine whether he should or should not participate in a particular matter.”<sup>217</sup>

The Standards of Conduct provide that “[i]f the [FTC ethics staff] determines that the employee’s impartiality is likely to be questioned, [the FTC ethics staff] shall then determine . . . whether the employee should be authorized to participate in the matter.”<sup>218</sup> How this provision is applied depends on which broad bucket of concern is in play. First, if a financial interest or covered relationship exists, then the FTC ethics staff determines whether “the financial interest of a member of the employee’s household, or the role of a person with whom he has a covered relationship, is likely to raise a question in the mind of a reasonable person about his impartiality.”<sup>219</sup> If the FTC ethics staff determines the situation will raise a question in

<sup>209</sup> 627 F.2d 1151, 1171 n.51 (D.C. Cir. 1979).

<sup>210</sup> *Id.* at 1168.

<sup>211</sup> 333 U.S. 683, 700 (1948).

<sup>212</sup> *Id.* at 701.

<sup>213</sup> Codified in 5 C.F.R. Part 2635, as amended at 81 FR 81641 (effective January 1, 2017). In prior cases, the Commission used “the Federal judicial recusal standard, 18 U.S.C. § 455, [as] the relevant standard” to consider Commissioner recusal on due process grounds. The Commission noted that it is not necessary to “separately assess the impact of the Standards of Conduct” and the judicial recusal standard “because the reasonable person impartiality assessment therein mirrors what is contained in 28 U.S.C. 455(a).” See *Intel Corp.*, Docket No. 9341, Opinion and Order of the Commission Denying Motion for Disqualification (Public Version), at p. 5, n.10 (Dec. 18, 2009). Notably, the “federal statute arguably raises the bar higher [than the Standards of Conduct] by requiring recusal unless the parties’ consent is obtained and, unlike the Standards of Conduct, there is no provision for authorizing one’s participation in certain circumstances.” *Id.*

<sup>214</sup> 5 C.F.R. §§ 2635.101(b)(14).

<sup>215</sup> *Id.* § 2635.501(a).

<sup>216</sup> *Id.*

<sup>217</sup> *Id.* at §§ 2635.502(a)(2).

<sup>218</sup> *Id.* at § 2635.502(c)(1).

<sup>219</sup> *Id.* at § 2635.502(e).

the mind of a reasonable person about his impartiality, the employee can only participate if the employee receives authorization to participate from the FTC ethics staff. Second, if the catch-all provision is at issue, then the FTC ethics staff can recommend that the employee not participate but cannot require the employee's disqualification.<sup>220</sup> In the same manner that an employee can receive authorization when there is a financial interest or covered relationship, the FTC ethics staff can authorize the employee to participate despite a regulatory catch-all concern.

The FTC ethics staff may authorize participation if the interest of the Government in the employee's participation outweighs the concern that a reasonable person may question the integrity of the proceedings.<sup>221</sup> In making this determination, the FTC ethics staff considers the following factors: "(1) the nature of the relationship involved; (2) the effect that resolution of the matter would have on the financial interest of the person involved in the relationship; (3) the nature and importance of the employee's role in the matter; (4) the sensitivity of the matter; (5) the difficulty of reassigning the matter to another employee; and (6) adjustments that may be made in the employee's duties that would reduce or eliminate the likelihood that a reasonable person would question the employee's impartiality."<sup>222</sup>

#### *Federal Ethics Concerns Require Chair Khan's Disqualification*

Chair Khan promised—at her confirmation hearing and under oath—that “there are instances where defendants before the Commission petition to have particular Commissioners recused, those cases are resolved on a case-by-case basis. There's no categorical decision about that. If it were to arise, I would seek the guidance of the relevant ethics officials at the agency and proceed accordingly.”<sup>223</sup> Chair Khan either: (1) did not “seek the guidance of the relevant ethics officials at the agency and proceed accordingly”; or (2) asked for guidance and then ignored the recommendation. Avoiding or ignoring unwanted guidance from the FTC ethics staff does not obviate the need for Chair Khan's recusal as an adjudicator for the Meta/Within Transaction. Notably the decision by Chair Khan to decline to recuse herself is unprecedented because [REDACTED]

Meta has not alleged that the Chair has a “covered relationship” or that this proceeding would affect the financial interests of a member of Chair Khan's household. Absent those express ethics concerns, only the Standards of Conduct regulatory catch-all provision is relevant in the present situation.<sup>228</sup> Because this analysis falls into the catch-all provision [REDACTED] instead it is up to Chair Khan in the first instance to determine<sup>230</sup> whether there is an appearance that the law or standards will be violated “from the perspective of a reasonable person with knowledge of the relevant facts.”<sup>231</sup> The standard under the Federal ethics perspective is whether it is reasonable to conclude the employee *appears* biased—the standard does not require evidence of actual bias.<sup>232</sup>

The facts described above with respect to Chair Khan's prior statements and written work are also relevant here. Specifically, Chair Khan's prior statements and written work include claims about Meta's acquisition strategy and violation of antitrust laws, including in the virtual reality space. Chair Khan has called for the FTC—at whose helm she now sits—to “prohibit mergers between [Meta] . . . [and] other new and promising products and services.”<sup>233</sup> Chair Khan stated that “if Facebook tomorrow announces that it's acquiring another company, I would hope

<sup>220</sup> Compare *id.* at §§ 2635.502(e) and (c) to §§ 2635.501(a) and 2635.502(a)(2).

<sup>221</sup> *Id.* at § 2635.502(d).

<sup>222</sup> *Id.*

<sup>223</sup> Senator Mike Lee, *Senator Lee Questions FTC Nominee Lina Khan on Rulemaking, Antitrust Views*, YouTube (April 21, 2021), [https://www.youtube.com/watch?v=PQSeq1W\\_3r8](https://www.youtube.com/watch?v=PQSeq1W_3r8).

<sup>228</sup> 5 C.F.R. §§ 2635.501(a) & 2635.502(a)(2). Chair Khan also fails to analyze the Federal ethics catch-all provision and only analyzes the financial interest and covered relationship requirement. September 26 Statement, *supra* note 24, at 4–5.

<sup>230</sup> 5 C.F.R. §§ 2635.502(a)-(b).

<sup>231</sup> *Id.* at §§ 2635.101(b)(14).

<sup>232</sup> See *id.* at § 2635.101(b)(14); *id.* §§ 2635.501 & 2635.502.

<sup>233</sup> Press Release, Open Markets Inst., *Open Markets Institute Calls on the FTC to Block All Facebook Acquisitions* (Nov. 1, 2017), <https://www.openmarketsinstitute.org/publications/open-markets-institute-calls-on-the-ftc-to-block-all-facebook-acquisitions>. See also Press Release, Open Markets Inst., *Fines for Facebook Aren't Enough: The Open Markets Institute Calls on FTC to Restructure Facebook to Protect Our Democracy* (Mar. 22, 2018), <https://www.openmarketsinstitute.org/publications/fines-for-facebook-arent-enough-the-open-markets-institute-calls-on-ftc-to-restructure-facebook-to-protect-our-democracy> (“Open Markets [Institute] call[ed] on the FTC to . . . prohibit all future acquisitions by Facebook for at least five years.”).

the FTC would look at that very closely and block it.”<sup>234</sup> Chair Khan’s academic writings claim that Meta “systematically copied” apps that “it deemed competitive threats” and Meta “thwart[s] rivals and strengthen[s] its own position, either through introducing replica products or buying out nascent competitors.”<sup>235</sup> Chair Khan accused Meta of “following this playbook in the virtual reality space” by “using [the] same ‘copy-acquire-kill’ strategy it used to monopolize social networking.”<sup>236</sup> Chair Khan noted that the “[k]ey task for enforcers is to prevent a repeat[.]”<sup>237</sup> In other words, Chair Khan called on enforcers to prevent a repeat of an acquisition strategy she already deemed illegal and publicly characterized as the same strategy Meta is repeating in virtual reality.

Chair Khan now leads the enforcement agency that can declare this strategy in virtual reality by Meta illegal and block Meta’s future acquisitions. If not recused, Chair Khan will sit as a judge if the Meta/Within Transaction is appealed to the Commission. Even before that, if not recused, Chair Khan will participate in ruling on substantive and procedural adjudicatory issues even as the Part 3 proceeding progresses before the administrative law judge.<sup>238</sup> These circumstances would make a reasonable person with knowledge of Chair Khan’s written work and statements question her impartiality to adjudicate the Meta/Within Transaction.

Chair Khan also led<sup>239</sup> the House Subcommittee’s investigation that focused on Meta and three other companies,<sup>240</sup> collected 1.3 million documents,<sup>241</sup> and held seven hearings—including one with Meta’s CEO.<sup>242</sup> The investigation analyzed Meta’s acquisitions and strategies across its product lines, including in the virtual reality space.<sup>243</sup> The investigation’s report, co-authored by Chair Khan, found that “Facebook’s serial acquisitions reflect the company’s interest in purchasing firms that had the potential to develop into rivals before they could fully mature into strong competitive threats.”<sup>244</sup> Chair Khan’s leading role in the investigation that included Meta’s acquisition strategy (including in the virtual reality space) and the investigation’s conclusions (through a staff report co-authored by Chair Khan) that Meta’s strategy is illegal, would make a reasonable person with knowledge of Chair Khan’s role in the House Subcommittee’s investigation question her impartiality to sit as judge in a Part 3 proceeding for the Meta/Within Transaction.

Chair Khan could still participate, despite ethics concerns in this matter or any future matter, if the FTC ethics staff were to authorize her participation<sup>255</sup> using the six-factor analysis outlined above.<sup>256</sup>

Both the Majority Opinion and the Chair rely heavily on Judge Boasberg’s opinion in the FTC’s conduct case against Meta.<sup>260</sup> As discussed in the preceding section, that reliance is misplaced because that opinion analyzed Chair Khan’s role as a prosecutor, not as an adjudicator.<sup>261</sup> As noted above, the analysis under Federal ethics may produce different determinations based on whether the role under consideration is one of prosecutor or adjudicator. For this reason Judge Boasberg’s analysis is unavailing here.

#### *Federal Ethics Related Redactions*

The redactions imposed on this dissent are inconsistent with precedent. A 1984 policy prevents individual Commissioners from revealing predecisional advice without the consent of a majority of participating Commissioners.<sup>264</sup> Nothing in the policy prevents the Commission from waiving any alleged deliberative process privilege for the sake of transparency at a government agency. In at least five instances, the Commission disclosed staff materials allegedly protected by deliberative process

<sup>234</sup> The Bernie Sanders Show, *The Greatest Threat to Our Democracy?* (May 15, 2018) (starting at 20:29), <https://www.youtube.com/watch?v=wuCAy10hlHI>.

<sup>235</sup> Khan, *The Separation of Platforms and Commerce*, *supra* note 54, at 1002–3.

<sup>236</sup> Petition for Recusal, *supra* note 2, at ex. D.

<sup>237</sup> *Id.* at ex. D.

<sup>238</sup> For example, motions to stay and motions for summary judgment can be decided by the Commission before an initial decision by the ALJ is ever appealed.

<sup>239</sup> *Id.* at ex. C.

<sup>240</sup> Majority Staff Report, *supra* note 39, at 6.

<sup>241</sup> *Id.*

<sup>242</sup> *Id.*

<sup>243</sup> See *supra* notes 47–50 and accompanying text.

<sup>244</sup> Majority Staff Report, *supra* note 39, at 150.

<sup>255</sup> 5 C.F.R. § 2635.502(d).

<sup>256</sup> *Id.*

<sup>260</sup> September 26 Statement, *supra* note 24; Majority Opinion, *supra* note 167, at 2, 6, 12 & 14.

<sup>261</sup> *Facebook*, 581 F. Supp. 3d at 63.

<sup>264</sup> 140 Commission Minutes 674–675 (July 25, 1984).

privilege.<sup>265</sup> In addition, the Commission has released or quoted DAEO recusal opinions.<sup>266</sup> Similarly, the FTC's Administrative Law Judge has disclosed DAEO recusal opinions.<sup>267</sup> Other agencies have also disclosed or quoted DAEO recommendations,<sup>268</sup> including at least four disclosures that discussed a DAEO recommendation under the catch-all provision.<sup>269</sup>

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"A fair trial in a fair tribunal is a basic requirement of due process."<sup>270</sup> "[E]very procedure which would offer a possible temptation to the average man as a judge . . . not to hold the balance nice, clear, and true between the State and the accused denies the latter due process of law."<sup>271</sup> "Such a stringent rule may sometimes bar trial by judges who have no actual bias and who would do their very best to weigh the scales of justice equally between contending parties. But to perform its high function in the best way, justice must satisfy the appearance of justice."<sup>272</sup> Here, justice demands that Chair Khan be recused from serving in an adjudicative role with respect to the Meta/Within Transaction.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. TAMMY DUCKWORTH TO  
REBECCA K. SLAUGHTER

**Topic: Infant Formula Shortage**

Since the February 2022 recall of Abbott formula, many families around the country are still feeling the impact of the infant formula shortage. While some progress has been made, it is difficult to say whether we have taken the necessary steps to ensure a similar crisis does not happen again in the future. I appreciate FTC moving forward with its investigation and issuing three Civil Investigative Demand (CID) requests to three infant formula manufacturers.

*Question.* Commissioner Slaughter, can you please provide an update on the FTC's efforts to root out potential anticompetitive behavior in this highly concentrated marketplace so families across the country have access to and can afford the formula they need to feed their babies?

*Answer.* While I cannot comment on any nonpublic investigation, the Commission did issue a public ruling on April 25, 2023, enforcing a civil investigative demand against an infant formula manufacturer.

<sup>265</sup> See *Kellogg Co.*, 92 F.T.C. 938, 1978 WL 206543 (Dec. 8, 1978); *American Brands, Inc.*, 77 F.T.C. 1623, 1970 WL 117288 (May 1, 1970); *Shell Oil Co.*, 62 F.T.C. 1488, 1963 WL 66699 (Feb. 1, 1963); *In the Matter of Gen. Motors Corp.*, 103 F.T.C. 58, 1984 WL 565314 (1984); Press Release, Fed. Trade Comm'n, Following Federal Trade Commission Staff Recommendation to Challenge Transaction, Two Health Care Systems in Central Georgia Abandon Proposed Merger (March 3, 2021), <https://www.ftc.gov/news-events/news/press-releases/2021/03/following-federal-trade-commission-staff-recommendation-challenge-transaction-two-health-care>.

<sup>266</sup> Press Release, Fed. Trade Comm'n, FTC Issues Statements Regarding Recusal Petition for Review of Proposed Acquisition of Hellman & Friedman Capital Partners V, LP (DoubleClick, Inc.) By Google, Inc (Dec. 14, 2007), <https://www.ftc.gov/news-events/news/press-releases/2007/12/ftc-issues-statements-regarding-recusal-petition-review-proposed-acquisition-hellman-friedman#pj>.

<sup>267</sup> Order Denying Motion to Disqualify Richard G. Parker, Esq., In the Matter of Intel Corp., No. 9288 (Feb. 9, 1999), <https://www.ftc.gov/sites/default/files/documents/cases/1999/02/990209orddml.pdf>.

<sup>268</sup> Notice to Show Cause, District Hospital Partners, L.P., Case 05-CA-216482 (July 14, 2022); Notice to Show Cause, CVS/Pharmacy, Case 13-UC-266228 (Jan. 7, 2022); Notice to Show Cause, Marathon Petroleum Co., Case 09-CA-162710 (Jan. 7, 2022); Notice to Show Cause, Exxon Mobil Research & Engineering, Case 22-CA-218903 (Jan. 7, 2022); Statement of FCC Commissioner Robert M. McDowell, WC Docket No. 06-74 (De. 18, 2006), [https://transition.fcc.gov/commissioners/mcdowell/mcdowell\\_att\\_bellsouth\\_statement.pdf](https://transition.fcc.gov/commissioners/mcdowell/mcdowell_att_bellsouth_statement.pdf).

<sup>269</sup> National Labor Relations Board's Ethics Recusal Report at 40-48 (Nov. 19, 2019), <https://www.nlr.gov/sites/default/files/attachments/pages/node-6353/ethics-recusal-review-incorporating-jan-9-2020-revisions.pdf> (discussing the DAEO's reasoning in *Hy-Brand*); Notice to Show Cause at 4-7, National Labor Relations Board, In the Matter of Universal Health Services, Inc., 05-CA-230128 (July 14, 2022), <https://apps.nlr.gov/link/document.aspx/0903ld45837/lbel>; Letter from Lauren McFerran to Congress (Nov. 5, 2021), <https://www.nlr.gov/sites/default/files/attachments/pages/node-166/mcferran-ltr-re-oversight-on-members-participation-in-seiu-lawsuit-final-for-nov-5-002.pdf>; Statement of FCC Chairman William E. Kennard Concerning His Participating in the Personal Attack and Political Editorial Rule Proceeding, Fed. Communications Comm'n (Sept. 18, 2000), <https://www.fcc.gov/document/statement-fcc-chairman-william-e-kennard-concerning-his-participation>.

<sup>270</sup> *American Cyanamid*, 363 F.2d 763 (quoting *In re Murchison*, 349 U.S. 133, 136 (1955)).

<sup>271</sup> *Id.* (quoting *Tumey v. State of Ohio*, 273 U.S. 510, 532 (1927)).

<sup>272</sup> *Id.* (quoting *Offutt v. United States*, 348 U.S. 11, 14 (1954)).

In addition, in May 2022, the Commission issued a Request for Information to the public on the infant formula market. I am hopeful that the Commission will be able to publish the results of this RFI in the near future to bring additional transparency to this critically important market.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. KYRSTEN SINEMA TO  
REBECCA K. SLAUGHTER

**Agency Authority/Artificial Intelligence.** Both the threats and potential benefits of artificial intelligence are far-reaching, a phenomenon reflected in various government agencies and Congressional committees learning and addressing these issues from their particular vantage points. Some members have already raised concerns with the steps taken thus far by the Federal Trade Commission (FTC) and there is no doubt that the agency will play a significant role going forward.

*Question 1.* Under its current authorities—including but not limited to enforcement actions—what role do you believe the FTC is to play in the regulation of artificial intelligence? What roles do you believe different parts of the FTC should play for the agency to best address these evolving issues?

Answer. The statutes that the FTC enforces—primarily, the FTC Act’s prohibitions on unfair and deceptive acts or practices and unfair methods of competition—were drafted broadly to apply to markets and technologies across the economy. There is no statutory exemption in the FTC Act or any other statute we enforce for artificial intelligence. Accordingly, we should address artificial intelligence as we would any new technology: by seeking to understand its use in the markets, identifying and investigating any possible law violations as they occur, and pursuing appropriate remedies consistent with our statutory mandate.

Investigating and addressing these challenges will necessarily require a collaborative effort across the agency, leveraging the expertise of our technologists, our economists, our investigators, and our competition and consumer protection attorneys. We also must work closely with those outside the agency, including academics, industry, advocates, and peer regulators domestically and internationally.

*Question 2.* In your view, where should Congress best concentrate its attention to ensure that the FTC has the proper resources and authorities to fulfill its statutory mandates for the American people in the AI space?

Answer. Our obligation is to enforce the statutes as they exist today; artificial intelligence is likely to impose a substantial demand on the agency in terms of the staff hours and technological resources necessary to properly investigate the law violations it may generate. We are grateful for any and all resources Congress provides us to undertake this work; it is critically important that our funding levels keep pace with the demands on the agency.

It may be the case that addressing the challenges of AI requires additional tools beyond what our existing statutes provide; it is for Congress to decide whether and how to provide new authorities to the Commission. I should note that Congress is uniquely well positioned to act because, among other reasons, it can do so proactively. The Commission’s strongest tools, by contrast, are mostly reactive, such as enforcement actions as well as rulemaking under section 18, which requires that the act or practice being regulated already be prevalent in the economy before the Commission can propose a rule.

*Question 3.* As Acting Chair you established a rulemaking group in the general counsel’s office intended to allow the FTC to take a strategic and harmonized approach to rulemaking across its different authorities and mission areas. How do you believe this and other kinds of similar initiatives could help the FTC as AI issues evolve?

Answer. The statutory tools Congress provided to the FTC allow us to pursue law violations through individual enforcement actions and through rulemaking; however, we can only address in a rule conduct that is already prohibited under the FTC Act. In the case of unfair or deceptive acts or practices, the conduct must also be prevalent in the market to be the topic of a proposed rule.

Rulemaking can be helpful to establish clear guidance for the markets and facilitate compliance, especially as compared to case-by-case enforcement. All of our rules have to be the product of an open and participatory public record, and are subject to judicial review once finalized. Rules can and should be amended as market conditions evolve. These facets of rulemaking are true generally, and may be particularly useful for technologies such as AI that are being deployed rapidly in the markets.

**Section 13(b) Authority and Congressional Action.** The FTC’s loss of its 13(b) authority has certainly altered how the agency operates.

*Question 4.* Now that the agency has operated without the 13(b) authority it employed for four decades prior to the Supreme Court ruling in April 2022 could you please explain the immediate and the downstream impacts this had on the agency and provide

*Answer.* The Supreme Court's ruling has been highly detrimental to the Commission's ability to return money to consumers who were harmed by law violations. That ability still exists in certain contexts, such as when we can plead a consumer-protection rule violation (or a violation of a statute such as the Restore Online Shoppers' Confidence Act that operates as a rule). But our ability to return money to consumers harmed by competition-law violations has vanished; for example, the Commission had prevailed in court and secured \$448 million in monetary relief for consumers who were overcharged for the drug Androgel as a result of AbbVie's conduct, but that judgment was wiped out to \$0 as a result of the Supreme Court's ruling. In certain cases, the Commission can partner with a state enforcer whose office has substantial state-law redress authority. Finally, there is a narrow ability to seek redress under section 19 of the FTC Act for consumer-protection violations that are fraudulent or dishonest through a second lawsuit once a cease-and-desist order has been achieved in a first lawsuit. This process has substantial drawbacks, including that it caps redress at three years no matter how long the scam lasted, and it requires the expenditure of substantially more agency resources than a section 13(b) case would have.

In summary, the Supreme Court's ruling immediately made it much less likely that consumers get their money back and much more likely that scammers get to keep their ill-gotten gains. Downstream, the agency cannot bring as many cases because each case now requires more resources, and the cases we can bring are not as successful.

*Question 5.* In your view, based on the results since the ruling, what should Congress do to address this problem and protect consumers?

*Answer.* I strongly encourage Congress to pass a section 13(b) fix that empowers the Commission to seek redress for Americans who have been harmed by violations of the laws we enforce.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. RAPHAEL WARNOCK TO  
REBECCA K. SLAUGHTER

***Antitrust Enforcement.*** The Federal Trade Commission (FTC) plays a critical role in antitrust enforcement across many sectors, including in the defense industry. Unlike in other sectors, however, defense industry contractors are often Federal government entities that derive their revenue from taxpayer dollars. This creates a special responsibility for the government to ensure competition in these markets, especially considering the essential role of the defense industrial base in our national security.

*Question.* How do you view the significance of enforcing antitrust laws in ensuring fair competition, innovation, and cost-effectiveness in defense procurement?

*Answer.* Ensuring that the defense industry is competitively healthy helps protect not only taxpayer dollars but also national security. We are vulnerable when there is monopoly in our defense supply chains: vulnerable to bloated costs, limited innovation, and security risks when there is a disruption to a monopoly supplier.

*Question.* How would you prioritize and approach this issue?

*Answer.* Because of the risk that defense industry consolidation poses to national security, the Commission must be vigilant in identifying and investigating potentially illegal mergers and anticompetitive conduct. It is also critically important that we work constructively with our partners at DOD to carry out our shared goal of promoting competition.

I was especially proud of the FTC's unanimous, bipartisan vote to challenge Lockheed's acquisition of Aerojet in 2022. This challenge was the culmination of a thorough investigation by FTC staff in collaboration with the Office of the Undersecretary of Defense for Acquisition and Sustainment. The agency's complaint alleged that, if the deal were allowed to proceed, Lockheed would use its control of Aerojet to harm rival defense contractors and further consolidate multiple markets critical to national security and defense. The case would have been the agency's first litigated defense merger challenge in decades, but the parties abandoned the transaction before it went to trial.

**Frauds and Scams.** According to the FTC's Consumer Sentinel report for 2022, Georgia had the highest per-capita rate of fraud reports in the Nation.<sup>1</sup>

*Question.* How would you prioritize and approach the issue of combatting frauds and scams?

*Answer.* Addressing frauds and scams is the bread and butter of the FTC's enforcement work, as my former colleague Commissioner Phillips has said. This is a critical part of our enforcement agenda.

However, it is not lost on me that many fraudsters are, in fact, criminals, and they are unlikely to be effectively deterred by civil enforcement actions. That is why I have worked to ensure that our criminal referral program is as effective as possible and that we are working closely with Federal and local authorities so that, when scammers belong in jail, they are sent there. In addition, I believe we need to continuously review and evaluate our fraud program to ensure that we are adapting our enforcement to scams as they evolve in the market and working hard to prevent them from succeeding in the first place. This includes both effective deterrence and community education efforts. Finally, I strongly support Congress's passing a fix to the Supreme Court decision in *AMG Capital*, a decision that made it substantially harder for us to return money to those who have had it wrongfully taken in frauds and scams.

*Question.* What steps you believe the FTC should take to combat frauds and scams as new technologies, including generative artificial intelligence, may enable bad actors to create more sophisticated scams while using fewer resources?

*Answer.* I was proud to support the creation of the FTC's new Office of Technology, a central hub of technological prowess to bolster the ability of our case teams to tackle increasingly sophisticated bad actors. Generative AI poses serious risks in its potential ability to supercharge scams, and our first task is to understand those risks. One step we have taken that may prove useful in this effort is a proposed rule that would ban the impersonation of government, businesses, or their officers. Such impersonation scams are already a scourge on Americans, and I worry that generative AI could make them orders of magnitude worse. If the record supports its finalization, a rule against impersonation that allows us to seek both civil penalties against bad actors and redress for the consumers who are harmed could prove a potent if partial solution.

**Consumer Data Sales.** Last year, the FTC brought a lawsuit against a data broker alleging that the company acquired consumers' precise geolocation data and then marketed it in a form that allowed both current and prospective clients to track consumers' movements to and from sensitive locations like places of worship and health clinics.<sup>2</sup> The complaint charged that this conduct represents an unfair trade practice, in violation of the FTC Act. Part of the FTC's consumer protection authority is educating consumers and businesses about their rights and responsibilities, especially in relation to the security of their data.

*Question.* What steps can the FTC take within its statutory authority to protect and educate consumers about the sale of precise geolocation data?

*Answer.* Through its 6(b) authority, the FTC can conduct industry studies and publish results to educate the public about the practices of data brokers, as it did with an important report in 2014. But nearly a decade later, the data broker business has only grown, as has the threat to the privacy and security of every American.

Consumer education is a critically important part of the FTC's work, and I share the view that most Americans would be horrified to know just how much personal data about them is collected and sold by data brokers.

Education is not likely to solve this problem, however, because the reality is that, in today's economy, Americans are forced to give up troves of data to participate in society, and they have little control about what happens to that data once they have relinquished it.

That is why we must bring appropriate enforcement action and consider rule-making proceedings to address unfair or deceptive uses of data.

*Question.* What can Congress do to better inform consumers about the business-to-business sale of their data?

*Answer.* I support efforts to bring not only transparency but also substantive guardrails to this industry. A national privacy law is a great place to start.

*Question.* What can the FTC do to minimize the consumer geolocation data that is available to businesses to be shared and sold?

<sup>1</sup> [https://www.ftc.gov/system/files/ftc\\_gov/pdf/CSN-Data-Book-2022.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/CSN-Data-Book-2022.pdf) at 20.

<sup>2</sup> <https://www.ftc.gov/legal-library/browse/cases-proceedings/ftc-v-kochava-inc>.

Answer. In addition to consumer education, the FTC must bring appropriate enforcement action and consider rulemaking proceedings to address unfair or deceptive uses of data.

**Civil Rights and Privacy.** In August 2021, a coalition of civil rights organizations sent a letter to the FTC urging the Commission to establish an Office of Civil Rights in light of the need for the FTC to protect “protect civil rights and privacy in data-driven commerce.”<sup>3</sup>

*Question.* Do you believe the FTC should establish an Office of Civil Rights?

Answer. I believe that the FTC has an obligation to ensure that all Americans get the equal protection of the laws we enforce. That necessarily involves transparency into which communities are affected by the illegal practices we investigate. I am less focused on the structure of that work, but I believe the substance is very important.

*Question.* Do you believe existing authorities are sufficient for the FTC to address automated decision-making and their potential to reproduce patterns of discrimination?<sup>4</sup> What additional authorities could assist the FTC in conducting or expanding its work in this space?

Answer. I am committed to using the tools we have to address problems in the markets, including with new technologies, and also to respecting the limits of those tools. The application of automated decision-making and artificial intelligence tools has the potential to cause substantial injury to Americans in ways that reproduce patterns of discrimination. The FTC can address these practices only if they violate the FTC Act or other statutes we enforce, such as the Equal Credit Opportunity Act. Congress may determine that some of these market practices require specific prohibitions because they do not constitute violations of the FTC Act as it exists today. I welcome the opportunity to continue to discuss with members of the Committee whether particular patterns of behavior in the market are outside the scope of the laws we enforce and would require additional action from Congress.

*Question.* Do you believe that commercial adoption of robust data minimization standards can help protect consumers’ civil rights and privacy? If so, what steps should Congress or the FTC take to encourage such adoption?

Answer. Yes. I believe that data minimization is an important, longstanding principle that protects both security and privacy and that is more effective than the outdated notice-and-choice model. The FTC has been implementing data minimization provisions in its data security and privacy orders, consistent with our statutory mandate, and will continue to do so. I welcome any attention from Congress on this important and fundamental data security principle.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. TED CRUZ TO  
REBECCA K. SLAUGHTER

*Bipartisanship at the FTC*

For many years, the FTC was known for its bipartisan collegiality and collaboration on key issues. I am disappointed that is no longer the case. When we met in my office, we discussed this matter at length and my concerns with the recent direction of the agency.

You spoke quite fondly of working with former Commissioners Phillips and Wilson as well former Chairman Simons—all of whom were Republican commissioners. You even noted that being challenged by differing viewpoints benefitted your work as a commissioner.

*Question 1.* Do you agree that the FTC is at its best when it operates at full capacity and that, as a commissioner, you benefit from the perspective of minority commissioners even when you disagree?

Answer. Yes, absolutely.

*Redaction of FTC Staff Advice*

During the hearing we discussed my serious concerns that you and Commissioner Bedoya voted to redact Commissioner Christine Wilson’s dissent in order to hide the fact that Chairwoman Khan did not follow the advice of the Designated Agency Ethics Official (DAEO) to recuse herself from a matter before the Commission.

<sup>3</sup> <https://www.lawyerscommittee.org/wp-content/uploads/2021/08/FTC-civil-rights-and-privacy-letter-Final-1.pdf>.

<sup>4</sup> See, e.g., <https://www.ftc.gov/business-guidance/blog/2020/04/using-artificial-intelligence-and-algorithms>.

*Question 2.* You cited a 1984 Commission precedent put in place by former Chairman Jim Miller. Please provide the Committee with a copy of the 1984 Commission meeting minutes from when that precedent was put in place.

Answer. See attached.

*Federal Employee Viewpoint Survey*

Until recently, the FTC had a reputation as one of the best Federal agencies to work for. But that reputation has taken a major hit under Chairwoman Khan.

The annual Federal Employee Viewpoint Surveys tell us that there is something seriously wrong. In 2020, 87 percent of surveyed employees said they believed that the agency's leaders had "high standards of honesty and integrity." In the 2022 survey, less than half of employees shared that belief. The FTC has slipped from its place as the second-best midsize agency to work for in 2019 to the bottom of the list.

I wrote Chairwoman Khan a letter about this earlier this year. In response to my concerns about whether any action has been taken to improve staff morale, she said that since the 2022 survey was administered, her office has been "creating opportunities for continued dialogue about priorities, action steps and progress." I was disappointed that Chairwoman Khan did not identify any concrete actions taken by her office to address the recent survey results.

*Question 3.* As someone who served on the commission when the FTC was one of the top-rated Federal agencies, why do you think the morale of FTC staff sunk so low so quickly? Please be specific.

Answer. As discussed below, I have solicited input from staff throughout the agency to better understand changes in the FEVS results. Although our staff's views are not monolithic, I heard several consistent themes. These have included: communication of priorities and expectations; the events policy that limited the ability of staff to participate in public events (now rescinded); the intensity of the workload given limited resources; and frustration about being stuck in the middle of public disputes between Commissioners.

*Question 4.* What specific actions have you taken to increase the staff's view of FTC leadership and overall satisfaction with the agency?

Answer. The first step I took was to meet directly with staff, division by division, throughout the agency, to ask them what factors they believe were behind the survey results. This is a continuation of a practice I began when I got to the agency of setting up regular check-ins with all our staff to ensure that they have an opportunity to share their views with me and have their questions answered by me, outside of the context of any specific matter. I routinely share the feedback I receive, as well as concrete suggestions, with the Chair's office and the Office of the Executive Director. I have also endeavored to communicate directly with case teams as early as possible to learn about their investigations, share my perspectives, and highlight questions or priorities I am likely to have as the case develops. In addition, I have worked hard to resolve disagreements with fellow Commissioners, articulate our differences respectfully when they cannot be resolved, and in all cases to keep staff out of disagreements between Commissioners.

It is important to note that diagnosing a problem correctly is only a first step; we must then apply solutions and continue to evaluate whether those solutions are working effectively or need to be modified.

*Remote Work by FTC Employees*

In the hearing we discussed my concerns about the number of FTC employees working remotely.

*Question 5.* For each workday since September 25, 2021, how many FTC employees have entered FTC headquarters? As an alternative to listing out each day, you may provide a spreadsheet with badge entry logs for each workday with unique but anonymized identifiers, such as employee or badge ID numbers.

Answer. Matters of Commission administration, including ID badge information, are within the purview of the Chair's office; I have passed this question along to them.

I would, however, like to emphasize that, for more than five years now, I have observed first-hand the FTC's hard-working staff showing up to work on behalf of the American public each and every day, from Seattle to Atlanta and here in D.C., with enthusiasm and dedication. I care very much *that* they show up; *where* they do so is not particularly important to me as long as the work is getting done well. And that is undoubtedly happening. Some of the Commission's work is inherently location-inflexible, such as for trial teams in a courtroom or investigators who need to use special technology, but I know that many staff greatly appreciate being able

to do location-flexible work from locations other than the office, consistent with OPM guidance and the Telework Promotion Act.

*Question 6.* Since September 25, 2021, how many days have you been physically in the office at FTC headquarters (by number of times you badged in for the period)?

*Answer.* Since the FTC's Evacuation Order was lifted in February 2022, I have worked from the headquarters office approximately two days per week on average, not including when I have been traveling or when my work requires my presence at non-FTC locations. All of my schedules are available to the public, and I have attached them here for your convenience.

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

### 1. Data Privacy: FTC Acting Without Congress

Last year, the U.S. Supreme Court in *West Virginia v. EPA* reaffirmed the principle that Federal agencies must operate within their statutory boundaries, emphasizing the need for a clear grant of authority under the “major questions doctrine” for rulemaking. Since that decision was issued, the FTC has pursued rulemaking on a number of issues, including data privacy.

How should the FTC apply the *West Virginia v. EPA* decision when considering rulemaking projects? Can significant rulemaking projects be undertaken, even if the FTC has no clear grant of authority from Congress to pursue the rulemaking?

*Answer.* The FTC must apply all relevant precedent, including *West Virginia v. EPA*, when considering or pursuing rulemakings (or, for that matter, other agency actions). The *West Virginia* decision says, in plain English, that agencies cannot creatively infer grants of authority over major political or economic questions—such grants of authority must be clear.

Congress, in passing section 5 of the FTC Act, 15 U.S.C. 45, explicitly gave the FTC a broad mandate to stamp out “unfair methods of competition” and (later, in 1938) also “unfair or deceptive acts or practices.” To carry out that mandate, Congress gave the Commission powerful tools, including a variety of investigation and enforcement mechanisms, the potent study power of section 6(b), 15 U.S.C. 46(b), and the power “to make rules and regulations” to further the Act’s purposes in section 6(g), 15 U.S.C. 46(g). I find the authority “to make rules and regulations” in section 6(g) quite clear. In addition to this original general grant of rulemaking authority, a specific rulemaking directive to address unfair and deceptive acts and practices was added by Congress when it enacted section 18 of the FTC Act in 1975. This provision empowers the FTC to promulgate trade regulation rules to prescribe “rules which define with specificity acts or practices which are unfair or deceptive acts or practices in or affecting commerce,” 15 U.S.C. 57a(a)(1)(b), provided that those acts or practices are “prevalent” in the market, 15 U.S.C. 57a(b)(3).

Congress has also, in section 22 of the FTC Act, required all FTC rulemaking, whether under section 6(g) or section 18, to adhere to requirements beyond those of the Administrative Procedure Act, such as conducting preliminary and final regulatory analyses that describe reasonable alternatives considered and estimate the costs and benefits of the agency’s proposal as well as the costs and benefits of the alternatives. 15 U.S.C. 57b-3.

The rulemaking authority set forth in section 18 is the basis of many long-standing and valuable Commission consumer protection rules that are not explicitly directed by statute, including the Funeral Rule, 16 C.F.R. pt. 432, the Eyeglass Rule, 16 C.F.R. pt. 456, the Negative Option Rule, 16 C.F.R. pt. 425, and the Business Opportunity Rule, 16 C.F.R. pt. 437, to name just a few.

Of course, any rule the Commission promulgates is subject to judicial review.

### Data Privacy: Preemption of State Laws

Do you believe a Federal comprehensive data privacy law should preempt state laws? Why or why not?

*Answer.* I strongly support a Federal data privacy law. I understand that any law that Congress enacts is likely to be the result of a carefully crafted compromise, and I believe it is the prerogative of Congress to determine the elements of that compromise. As a general matter, I am sympathetic to the notion that it is at best challenging and at worst impossible for businesses to comply in good faith with a patchwork of different and potentially contradictory state laws. Statutory preemption provisions can be crafted narrowly to invalidate only state laws that present an actual conflict with Federal law or they can be crafted more broadly. I would be very concerned about a weak Federal law that broadly preempts state laws.

## 2. FTC “Zombie” Votes

Last November, Politico reported that Commissioner Chopra submitted as many as 20 votes on his last day at the FTC that, thanks to the FTC voting rules, would allow those votes to be used for Commission business for up to 60 days.

Allowing Commissioners’ votes to count after they depart their post seems counter to common sense and good governance principles. This is why I introduced the FTC Integrity Act, which would ensure this practice would not continue. An amendment version of this bill received unanimous support in this Committee last Congress.

Regardless of whether Commissioner Chopra’s votes comported with the Commission’s rules at the time, do you believe that Commissioners should be able to vote after leaving the FTC?

Answer. No Commissioner can or should be able to cast a vote after leaving the Commission.

## 3. Staff Morale at the FTC

An April 2023 study found that staff morale at the FTC has decreased dramatically since 2020, when the Commission was the highest-ranking Federal agency in terms of employee satisfaction. Particularly concerning are scores pertaining to FTC employee satisfaction with Commission leadership, which fell from 84.3 in 2020 to 46.6 in 2022.

In general, what factors contribute to high employee satisfaction? How can organization leaders impact the morale of staff?

In your experience, why has employee satisfaction with FTC leadership fallen at such an alarming rate since 2020? What have you done to rectify this situation?

Answer. The career staff of the FTC are our agency’s greatest asset. They are brilliant, dedicated, hardworking, professional civil servants. They do extraordinary work, often under challenging circumstances, and they are entitled to respect and appreciation for that work.

I was very disturbed by the results of the FEVS survey, and I met directly with staff, division by division, throughout the agency to ask them what factors they believed contributed to the survey results. This is a continuation of a practice I began when I got to the agency of setting up regular check-ins with the staff to ensure that they have an opportunity to share their views with me and have their questions answered by me, outside of the context of any specific matter. I routinely share the feedback I receive, as well as concrete suggestions, with the Chair’s office and the Office of the Executive Director.

Although our staff’s views are not monolithic, I heard several consistent themes. These have included: communication of priorities and expectations on particular cases; the events policy that limited the ability of staff to participate in public events (since rescinded); the intensity of the workload given limited resources; and frustration about being stuck in the middle of public disputes between Commissioners.

It is important to note that diagnosing a problem correctly is only a first step; we must then apply solutions and continue to evaluate whether those solutions are working effectively or need to be modified.

## 4. Motor Vehicle Dealers Trade Regulation Rule

Last summer, the FTC noticed the Motor Vehicle Dealers Trade Regulation Rule, which would add requirements for dealerships to follow and change the way Americans purchase vehicles. I understand the FTC did not pursue an Advanced Notice of Proposed Rulemaking in this case, which would have given stakeholders an additional opportunity to provide the FTC information on the car buying process.

Generally speaking, do you believe the FTC should pursue all available information-gathering avenues and conduct thorough cost-benefit analyses before acting to implement a significant rule, like the Motor Vehicle Dealers Rule?

Answer. One of my favorite parts about rulemaking is the robust public records that our proceedings can develop. I regularly encourage members of the public, businesses and business associations, consumer groups, Members of Congress, state attorneys general, academics, and others to participate in our rulemakings. I agree with you that the Motor Vehicle Dealers Rule is a significant rule, and I am grateful that an extremely robust comment record was generated in response to the Commission’s notice of proposed rulemaking, including from ordinary car consumers, dealers’ associations, individual dealers, advocates, and others.

(More than eleven thousand of these comments are posted on the rulemaking docket here: <https://www.regulations.gov/docket/FTC-2022-0046>.)

It is true that the Commission proposed this rule without first conducting an advance notice of proposed rulemaking. As you know, for some rules, including rules

we issue under section 18 of the FTC Act such as the Funeral Rule, Eyeglass Rule, and Business Opportunity Rule, an advance notice of proposed rulemaking is required by statute. For other rules, such as the Children’s Online Privacy Protection Act Rule, the Telemarketing Sales Rule, and the Made in USA Rule, no ANPR is required, and the Commission may proceed with an NPRM (the process most agencies use under the Administrative Procedure Act) to issue or amend the rule. In the case of the Motor Vehicle Dealers Rule, Congress authorized the FTC to issue such a rule using the ordinary process of the Administrative Procedure Act.

Your question also asked whether I believe that the Commission should conduct thorough cost-benefit analysis before acting to implement (or propose, in this case) a significant rule. The answer is yes, I do believe that the Commission should conduct thorough cost-benefit analysis. Such an analysis is also required, for most new or major rules, by section 22 of the FTC Act. I am grateful to the tremendous staff of the FTC’s Bureau of Economics for their nuanced and thorough exploration of the costs and benefits of the proposed rule and its reasonable alternatives, which features prominently in the notice of proposed rulemaking. *See* 87 Fed. Reg. 42012, 42031–44 (July 13, 2022). The notice also specifically asked about this analysis and requested additional data, views, or arguments about costs and benefits. I am committed to carefully considering the record on the NPRM. Of course, any rule the Commission finalizes will be subject to judicial review.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. DAN SULLIVAN TO  
REBECCA K. SLAUGHTER

*Question 1.* During the hearing, when asked where the Federal Trade Commission (FTC) derives its power, you answered, “From the statutes that Congress has passed.”

Since being sworn in as a Federal Trade Commissioner in 2018, you’ve been very vocal in arguing that antitrust enforcement should not be “race-blind” and “value-neutral.” For example, at a 2021 panel for the Economic Security Project, titled “Centering Anti-racism in the Antimonopoly Fight, you stated, “I think it’s time to start talking about utilizing antitrust as an anti-racist tool.”<sup>1</sup> Later that year, during an interview with CPI, you declared that “antitrust can and should be deployed in the fight against racism,” and went on to say that the FTC needs to “think strategically about using antitrust as a tool for combatting structural racism.”<sup>2</sup>

More recently, you’ve argued that the FTC should prioritize cases that “disproportionately affect already marginalized communities and populations”<sup>3</sup> in an effort to “equalize our society more effectively.”<sup>4</sup>

Can you cite to the statutory authority that authorizes the FTC to use antitrust laws as “anti-racist tools” in order to “equalize our society more effectively?”

Answer. The FTC enforces the laws that Congress passes; primarily this involves bans on unfair or deceptive acts or practices as well as unfair methods of competition. It also includes additional statutes such as the Equal Credit Opportunity Act.

There are many more violations of the laws that we enforce than we have time or resources to pursue, so one of the hardest parts of our job is making difficult decisions about what cases to pursue and how to prioritize them.

I believe our priority should be ensuring that all Americans have the equal protection of the laws we enforce. Unfortunately, experience has taught us that if we are not deliberate about ensuring that our cases protect all Americans, some communities may be unintentionally excluded from our enforcement efforts. One reason for this is that some communities are more aware of the laws the FTC enforces and more likely to file complaints with us (or hire lawyers to do so). That is why, on the consumer protection side of our agency, we have for decades counted on our Every Community Initiative, which recognizes that we need to be proactive in ensuring everyone—not only people of color but also seniors, veterans, kids, non-English speakers, rural Americans—gets our attention.

We have not brought this same attention to our competition work, which I think is problematic. Without transparency into which communities are affected by the cases we pursue, we could inadvertently end up excluding significant portions of the American public from our enforcement efforts.

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<sup>1</sup><https://economicsecurityproject.org/resource/centering-anti-racism-in-the-anti-monopoly-fight/>

<sup>2</sup><https://www.competitionpolicyinternational.com/cpi-talks-with-rebecca-kelly-slaughter/>

<sup>3</sup><https://www.youtube.com/watch?v=l2LY0XBQPLk>

<sup>4</sup><https://www.protocol.com/the-first-100-days-tech-in-the-biden-administration>

For example, imagine we had to decide which of two hospital mergers our limited resources would allow us to investigate at one time; we could make that decision based purely on the dollar value of the transaction or initial estimates of harm, but that would likely mean we prioritize enforcement in wealthy urban or suburban areas at the expense of rural areas where communities can least afford a marginal dollar increase in healthcare cost or least tolerate the closure of a facility.

You ask about specific statutory authority to prioritize matters that are not spelled out explicitly in our antitrust laws. One of the features of the FTC Act is that it is a broad statute that allows us to address market problems as they evolve and throughout the economy. That requires us to apply broad and general statutory language to a range of specific issues and priorities. A small sampling of language that does not appear in the statutes we enforce but has been key to the Commission's efforts over the last century include: healthcare, occupational licensing, pharmaceuticals, consumer welfare, data security, hypothetical monopolist. As market practices and conditions evolve, we should continue to adapt our priorities with the goal of ensuring all Americans are protected by the laws we enforce.

## ATTACHMENTS

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July 26, 1984

ordinance to gradually eliminate the entry restrictions for Chicago taxicabs.

For the minute record, the five Commissioners were recorded as voting in the affirmative.

(12) Docket 9000 - International Telephone & Telegraph Corporation, et al.

Background: On November 26, 1974, the Commission issued a complaint charging International Telephone & Telegraph Corporation and ITT Continental Baking, Inc., with violation of §5 of the Federal Trade Commission Act and §2(a) of the Clayton Act, as amended by the Robinson-Patman Act, in the conduct of their wholesale baking business. The matter was tried before an Administrative Law Judge.

On May 1, 1981, the Administrative Law Judge filed his Initial Decision containing an Order to Cease and Desist. Both sides appealed to the Commission from the Initial Decision. Briefs were filed and an oral argument was heard by the Commission on January 7, 1982.

By walk-around adjudicative memorandum of February 24, 1984, Commissioner Douglas circulated "For Information" his evaluation of the legal and economic standard that Commissioner Bailey proposed to use in deciding this matter.

On March 27, 1984, this matter was reassigned from Commissioner Bailey to Commissioner Douglas.

By non-agenda adjudicative matter of May 25, 1984, Commissioner Douglas circulated "For Information" a draft Opinion.

By walk-around matter of June 22, 1984, Commissioner Douglas moved approval of the attached Final Order and Opinion.

By walk-around adjudicative matter of July 24, 1984, Commissioner Douglas circulated "For Information" a corrected draft of the Commission's Opinion and Final Order.

By non-agenda adjudicative matter of July 25, 1984, Commissioner Bailey circulated her statement concurring in part and dissenting in part.

By non-agenda matter of July 25, 1984, Commissioner Pertschuk circulated "For Information" the advice that he joined in Commissioner Bailey's Statement.

Commission Action: On July 25, 1984, the Opinion of the Commission by Commissioner Douglas was approved.

For the reasons stated in its Opinion, the Commission reversed the Initial Decision and dismissed the complaint in all respects.

The Final Order was approved and, with the Opinion of the Commission and the Statement by Commissioner Bailey Concurring in Part and Dissenting in Part, in which Commissioner Pertschuk joined, was referred to the Secretary for issuance and service.

For the public record, Commissioners Miller, Douglas and Calvani were recorded as voting in the affirmative. Commissioners Bailey and Pertschuk were recorded as concurring in part and dissenting in part.

(13) Procedures at Commission Level

In re: Confidentiality Rules

Submission: In memorandum of May 16, 1984, the Deputy General Counsel

July 26, 1984

rendered a decision on the propriety of proposed testimony to be delivered by Commissioner Pertschuk on May 16, 1984, before the Fossil and Synthetics Fuels, and Commerce and Transportation Subcommittees, House Committee on Energy and Commerce. The testimony quoted directly from two nonpublic staff memoranda provided to the Commission in connection with its consideration of the proposed Social/Gulf merger.

It was the opinion of the Deputy General Counsel that the staff memoranda constituted privileged material protected from mandatory public disclosure under the Freedom of Information Act, with the possible exception of segregable factual portions not protected by the United States Code.

The General Counsel advised "The Commission's Rules provide for a single mechanism through which nonpublic documents covered by Rule 4.10 may be made publicly available. That mechanism consists of the FOIA process delineated in Rule 4.11. ... The Rules delegate to the Deputy Executive Director for Planning and Information and the General Counsel limited authority to authorize certain disclosures; otherwise, only the Commission itself, acting collectively, may exercise discretion to waive the protections afforded ... documents under Rule 4.10 and the FOIA. Accordingly, under the Rules, no individual Commissioner or Commission employee has the right to publicly divulge nonpublic material outside of the FOIA process. ..."

By walk-around memorandum of July 16, 1984, Chairman Miller moved adoption of the Deputy General Counsel's opinion.

In non-agenda "For Information" memorandum of July 25, 1984, Commissioner Bailey set forth her reasons for casting an abstaining vote in this matter.

With non-agenda "For Information" matter of July 25, 1984, Commissioner Pertschuk circulated a dissenting statement.

**Commission Action:** On July 25, 1984, to protect the deliberative privilege regarding materials submitted by staff and to reaffirm the need as a body for full and frank staff debate for FTC decisions, the Commission adopted the Opinion by the Deputy General Counsel on the Commission's confidentiality Rules.

For the minute record, Commissioners Miller, Douglas and Calvani were recorded as voting in the affirmative. Commissioner Pertschuk was recorded as voting in the negative with a dissenting statement. Commissioner Bailey was recorded as abstaining.

(14) File 822 3197 - American Society of Sanitary Engineering

**Background:** During the course of an investigation by the Bureau of Consumer Protection of alleged exclusionary conduct on the part of the American Society of Sanitary Engineering and the International Association of Plumbing and Mechanical Officials, evidence was developed indicating that ASSE had unreasonably refused to extend standards coverage to an innovative plumbing device manufactured by J.H. Industries.

**Staff Recommendation:** With memoranda of June 19 and July 3, 1984, the Bureau of Consumer Protection forwarded a complaint charging ASSE with violation of §5 of the Federal Trade Commission Act. An executed consent agreement with the company was also submitted with the recommendation that

September 20, 2021 - September 26, 2021		September 2021	October 2021
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<p><b>Monday, September 20</b></p> <ul style="list-style-type: none"> <li>10:00am - 11:00am Staff Meeting (b)(6) Slaughter, Rebecca</li> <li>11:00am - 11:30am Weekly Meeting with Chair Khan and Commissioner Slaughter (b)(6) Khan, Lina</li> <li>11:30am - 12:00pm OPP Monthly Meeting w/ Commissioner Slaughter (b)(6) Slaughter, Rebecca</li> <li>2:00pm - 3:00pm ACP Check-in w/ Commissioner Slaughter (b)(6)</li> <li>3:00pm - 4:00pm BCP Biweekly Meeting w/ Commissioner Slaughter (b)(6)</li> </ul>	<p><b>Tuesday, September 21</b></p> <ul style="list-style-type: none"> <li>11:00am - 11:30am NAD Conference Rehearsal: Keynote (b)(6)</li> <li>3:00pm - 3:30pm Meeting w/ Commissioner Slaughter &amp; IG Katsaros (b)(6)</li> </ul>
<p><b>Wednesday, September 22</b></p> <ul style="list-style-type: none"> <li>12:00pm - 1:00pm (b)(5) Microsoft Teams Meeting) - Dixon, Jennifer (ATR)</li> <li>2:00pm - 2:30pm All Hands Staff Meeting with Chair Khan (b)(6)</li> <li>3:00pm - 4:00pm Meeting w/ Todd Phillips re: (b)(5)</li> </ul>	<p><b>Thursday, September 23</b></p> <ul style="list-style-type: none"> <li>10:00am - 10:30am Weekly w/ Acting Chair Slaughter &amp; Comr. Phillips (b)(6)</li> <li>2:00pm - 2:30pm Meet &amp; Greet w/ Gwendolyn Cooley, NAAAG Chair</li> <li>3:00pm - 3:30pm Weekly Mtg. w/Commissioner Slaughter &amp; Commissioner Wilson (b)(6) Wilson, Christine</li> </ul>
<p><b>Friday, September 24</b></p> <ul style="list-style-type: none"> <li>10:00am - 10:30am Tech &amp; Printer Check w/ Comr. Slaughter (b)(6)</li> <li>10:00am - 10:30am Test 1 - Tellez, Andrew CTR</li> <li>10:30am - 11:00am Weekly Check-in w/ Commissioner Slaughter &amp; Commissioner Chopra (b)(6)</li> <li>4:00pm - 5:00pm (b)(5) Microsoft Teams Meeting) - Dixon, Jennifer (ATR)</li> </ul>	<p><b>Saturday, September 25</b></p> <p><b>Sunday, September 26</b></p>



October 4, 2021 - October 10, 2021		October 2021	November 2021
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		31	
<b>Monday, October 4</b>		<b>Tuesday, October 5</b>	
<p>10:00am - 11:00am Staff Meeting (b)(6)</p> <p>11:00am - 11:30am Weekly Meeting with Chair Khan and Commissioner Slaughter (b)(6) Khan, Lina ☐</p> <p>12:30pm - 1:00pm (b)(5) (b)(6) Holland, Caroline</p> <p>1:30pm - 2:00pm OPA Monthly Meeting w/ Commissioner Slaughter (b)(6)</p>		<p>1:00pm - 2:30pm FYI-Hispanic Heritage Month Event w/ Speaker Gulliana Valencia-Banks of the Esperanza Center (b)(6)</p> <p>2:00pm - 3:00pm OGC Monthly Mtg with Cmsshr Slaughter (b)(6)</p> <p>3:00pm - 3:30pm Meeting w/ Dana Rao, Adobe GC (b)(6)</p>	
<b>Wednesday, October 6</b>		<b>Thursday, October 7</b>	
<p>(b)(6)</p> <p>12:00pm - 1:00pm BCP Biweekly Meeting w/ Comr. Slaughter (b)(6)</p> <p>1:00pm - 1:30pm OCR Monthly Meeting w/ Commissioner Slaughter (b)(6)</p> <p>3:00pm - 4:00pm OIA Monthly Meeting w/ Commissioner Slaughter (b)(6)</p> <p>9:00pm - 10:00pm An In-Person Fireside Chat with Sukhinder Singh Cassidy (by ChiPs) (b)(6) Jenn Hagan</p>		<p>10:00am - 10:30am Weekly w/ Acting Chair Slaughter &amp; Comr. Phillips (b)(6) Slaughter, Rebecca ☐</p> <p>1:00pm - 2:30pm Closed Commission Meeting Scheduled for October 7, 2021 (b)(6)</p> <p>3:00pm - 3:30pm Weekly Mtg. w/Commissioner Slaughter &amp; Commissioner Wilson (b)(6) Wilson, Christine ☐</p> <p>3:00pm - 4:00pm FYI-Ask Me Anything Session with Agency Leaders (b)(6)</p>	
<b>Friday, October 8</b>		<b>Saturday, October 9</b>	
(b)(6)		(b)(6)	
		<b>Sunday, October 10</b>	



October 18, 2021 - October 24, 2021		October 2021	November 2021
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		31	
<b>Monday, October 18</b>		<b>Tuesday, October 19</b>	
<p>10:00am - 11:00am Staff Meeting (b)(6) Slaughter, Rebecca</p> <p>11:00am - 11:30am Weekly Meeting with Chair Khan and Commissioner Slaughter (LK to call RKS (b)(6) Khan, Lina</p> <p>3:00pm - 4:00pm DPIP Check-in w/ Comr. Slaughter (https://ftc.zoomgov.com (b)(6) Slaughter, Rebecca</p>		<p>11:00am - 12:00pm Lunch w/ Comr. Starks (Millie's) (b)(5)</p>	
<b>Wednesday, October 20</b>		<b>Thursday, October 21</b>	
<p>12:50pm - 5:42pm (b)(6) (DCA-SAN)</p>		<p>10:00am - 10:30am Weekly w/ Acting Chair Slaughter &amp; Comr. Phillips (b)(6) Slaughter, Rebecca</p> <p>1:00pm - 3:00pm Open Commission Meeting (Commissioners Room and Public Comments Room Links Below) - Tabor, April</p> <p>3:00pm - 3:30pm Weekly Mtg. w/Commissioner Slaughter &amp; Commissioner Wilson (Call- (b)(6) Wilson, Christine</p> <p>(b)(6)</p>	
<b>Friday, October 22</b>		<b>Saturday, October 23</b>	
<p>8:30am - 9:00am On-site arrival (Marriott Marquis-Marriott Ballroom 5 (Lobby Level))</p> <p>9:00am - 10:15am IAPP PSR (San Diego)</p> <p>2:05pm - 11:59pm (b)(6) (SAN-DCA)</p>			
		<b>Sunday, October 24</b>	

<b>October 25, 2021 - October 31, 2021</b>		October 2021 Su Mo Tu We Th Fr Sa 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31	November 2021 Su Mo Tu We Th Fr Sa 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30
<b>Monday, October 25</b> 10:00am - 11:00am Staff Meeting (b)(6) Slaughter, Rebecca 11:00am - 11:30am Weekly Meeting with Chair Khan and Commissioner Slaughter (LK to call RKS (b)(6) Khan, Lina 1:30pm - 2:00pm Weekly w/ Comr. Slaughter & Comr. Phillips Slaughter, Rebecca	<b>Tuesday, October 26</b> 10:00am - 10:30am BE Biweekly Meeting w/ Commissioner Slaughter (https://ftc.zoomgov.com/(b)(6) Slaughter, Rebecca 2:00pm - 3:00pm BCP Biweekly Meeting w/ Comr. Slaughter (https://ftc.zoomgov.com/(b)(6) Slaughter, Rebecca 3:00pm - 4:00pm BC Biweekly Meeting w/ Commissioner Slaughter		
<b>Wednesday, October 27</b> 10:00am - 11:00am TechTank Podcast (Link in body) 12:30pm - 2:00pm Strategic Planning Session (HQ (b)(6) Slaughter, Rebecca 2:00pm - 3:00pm Quarterly Meeting (https://ftc.zoomgov.com/(b)(6) FTC Diversity Council 3:30pm - 4:30pm FTC Event - 2021 National Disability Employment Awareness Month (Zoom Link: https://ftc.zoomgov.com/(b)(6) Greer, Kristin	<b>Thursday, October 28</b> 11:00am - 11:30am Weekly Mtg. w/Commissioner Slaughter & Commissioner Wilson (Call: (b)(6) Wilson, Christine 1:00pm - 1:50pm IG Quarterly Meeting w/ Acting Chair Slaughter (b)(6) Slaughter, Rebecca 2:00pm - 3:00pm DAP Check-in w/ Comr. Slaughter (https://ftc.zoomgov.com/(b)(6) Slaughter, Rebecca 3:00pm - 4:00pm Marketing Practices Check-in w/ Commissioner Slaughter (https://ftc.zoomgov.com/(b)(6) Slaughter, Rebecca 4:00pm - 5:00pm All FTC staff webinar: Serving Communities of Color (https://ftc.zoomgov.com/(b)(6)		
<b>Friday, October 29</b> (b)(6) 11:30am - 12:15pm Fall IPRPAG Meeting (https://goansi.webex.com/(b)(6)	<b>Saturday, October 30</b>		
	<b>Sunday, October 31</b> Halloween (United States)		

November 1, 2021 - November 7, 2021		November 2021	December 2021
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		28 29 30	26 27 28 29 30 31

Monday, November 1	Tuesday, November 2
<p>10:00am - 11:00am Staff Meeting (b)(6) Slaughter, Rebecca</p> <p>11:00am - 11:30am Weekly Meeting with Chair Khan and Commissioner Slaughter (LK to call RKS (b)(6))</p> <p>2:30pm - 3:00pm OPA Monthly Meeting w/ Commissioner Slaughter (https://ftc.zoomgov.com/(b)(6)) Slaughter, Rebecca</p> <p>(b)(6)</p>	<p>(b)(6)</p> <p>2:00pm - 3:00pm OGC Monthly Mtg with Cmshr Slaughter (https://ftc.zoomgov.com/(b)(6)) Hunt, Julia</p>
Wednesday, November 3	Thursday, November 4
<p>11:00am - 11:30am Pre-Recorded Remarks   2021 Roger W. Jones Award (https://american.zoom.us/(b)(6)) Lam-Anh Le</p> <p>1:00pm - 1:30pm OCR Monthly Meeting w/ Commissioner Slaughter (https://ftc.zoomgov.com/(b)(6)) Slaughter, Rebecca</p> <p>2:45pm - 3:00pm Early logon requested</p> <p>3:00pm - 4:00pm Closing remarks at event w/ Senator Lujan &amp; Free Press Action (Zoom link in body)</p>	<p>10:00am - 12:00pm Closed Commission Meeting Scheduled for November 4, 2021 (https://ftc.zoomgov.com/(b)(6)) Daniels, Dominique K.</p> <p>2:30pm - 3:30pm Vaccination Portal Demo and AMA - Session 1 (https://ftc.zoomgov.com/(b)(6)) Robbins, David</p> <p>3:30pm - 4:00pm Weekly Mtg. w/Commissioner Slaughter &amp; Commissioner Wilson (Call (b)(6)) Wilson, Christine</p>
Friday, November 5	Saturday, November 6
<p>10:30am - 11:00am Weekly w/ Comr. Slaughter &amp; Comr. Phillips (b)(6) Slaughter, Rebecca</p> <p>1:30pm - 2:30pm ABA Fall Forum Outline and Panel Prep (See webex details below) - Zanfagna, Gary</p>	
	Sunday, November 7

November 8, 2021 - November 14, 2021		November 2021	December 2021
		Su Mo Tu We Th Fr Sa	Su Mo Tu We Th Fr Sa
		1 2 3 4 5 6	5 6 7 8 9 10 11
		7 8 9 10 11 12 13	12 13 14 15 16 17 18
		14 15 16 17 18 19 20	19 20 21 22 23 24 25
		21 22 23 24 25 26 27	26 27 28 29 30 31
		28 29 30	
<b>Monday, November 8</b>		<b>Tuesday, November 9</b>	
<p>10:00am - 11:00am Staff Meeting (b)(6) Slaughter, Rebecca</p> <p>11:00am - 11:30am Weekly Meeting with Chair Khan and Commissioner Slaughter (b)(6) Khan, Lina</p> <p>(b)(7)(A)</p> <p>2:30pm - 3:00pm BC Biweekly Meeting w/ Commissioner Slaughter</p>		<p>8:45am - 9:45am ABA Fall Forum Panel-Inaugural Visions (Ronald Reagan Building &amp; Int'l Trade Center)</p> <p>3:00pm - 4:00pm BC Biweekly Meeting w/ Commissioner Slaughter</p>	
<b>Wednesday, November 10</b>		<b>Thursday, November 11</b>	
<p>(b)(6)</p> <p>11:30am - 12:00pm FYI-FTC CFC Kick-off Event (b)(6)</p> <p>12:30pm - 1:30pm Roger W. Jones Executive Leaders Podcast Interview (b)(6)</p> <p>1:30pm - 2:00pm OPP Monthly Meeting w/ Commissioner Slaughter (b)(6)</p> <p>2:00pm - 3:00pm BCP Biweekly Meeting w/ Comr. Slaughter (b)(6)</p> <p>3:00pm - 3:30pm Weekly Mtg. w/Commissioner Slaughter &amp; Commissioner Wilson (b)(6)</p> <p>(b)(7)(A)</p>		<p>Veteran's Day (United States)</p>	
<b>Friday, November 12</b>		<b>Saturday, November 13</b>	
<p>(b)(6)</p> <p>10:00am - 10:30am Weekly w/ Acting Chair Slaughter &amp; Comr. Phillips (b)(6) Slaughter, Rebecca</p>		<b>Sunday, November 14</b>	

November 15, 2021 - November 21, 2021		November 2021	December 2021
		Su Mo Tu We Th Fr Sa	Su Mo Tu We Th Fr Sa
		1 2 3 4 5 6	5 6 7 8 9 10 11
		7 8 9 10 11 12 13	12 13 14 15 16 17 18
		14 15 16 17 18 19 20	19 20 21 22 23 24 25
		21 22 23 24 25 26 27	26 27 28 29 30 31
		28 29 30	
<b>Monday, November 15</b>		<b>Tuesday, November 16</b>	
<p>10:00am - 11:00am Staff Meeting (b)(6)</p> <p>(b)(6) Slaughter, Rebecca</p> <p>11:00am - 11:30am Weekly Meeting with Chair Khan and Commissioner Slaughter (b)(6) Khan, Lina</p> <p>1:00pm - 2:00pm FP Check-in w/ Comr. Slaughter</p> <p>(b)(6)</p>		<p>10:00am - 11:00am OIA Monthly Meeting w/ Commissioner Slaughter</p> <p>(b)(6)</p> <p>1:00pm - 1:45pm FTC-DOJ Discussion re: Criminal Referral Process</p> <p>(b)(6)</p>	
<b>Wednesday, November 17</b>		<b>Thursday, November 18</b>	
<p>10:00am - 12:00pm AB Confirmation Hearing</p> <p>1:00pm - 2:00pm FYI-Ask Me Anything &amp; Vaccination Portal Demo - Session 2</p> <p>(b)(6)</p> <p>3:00pm - 4:00pm FTC-NAAG Discussion re: Criminal Referral Process</p> <p>(b)(6)</p> <p>4:00pm - 5:00pm Policy Letter</p> <p>(b)(6)</p>		<p>7:25am - 8:25am OECD Council Recommendation on Children in the Digital Environment: High-Level Launch Event - Children's Privacy and Data Online (Zoom link in body) -</p> <p>10:00am - 10:30am Weekly w/ Acting Chair Slaughter &amp; Comr. Phillips (b)(6) Slaughter, Rebecca</p> <p>1:00pm - 3:00pm November Open Commission Meeting (UPDATED ZOOM LINKS) (Commissioners Room and Public Comments Room Links Below) - Tabor, April</p> <p>3:00pm - 3:30pm Weekly Mtg. w/Commissioner Slaughter &amp; Commissioner Wilson (b)(6) Wilson, Christine</p> <p>(b)(6)</p> <p>5:00pm - 6:15pm Formal Invitation   2021 Roger W. Jones Award Ceremony</p>	
<b>Friday, November 19</b>		<b>Saturday, November 20</b>	
<p>(b)(6)</p>			
		<b>Sunday, November 21</b>	

November 22, 2021 - November 28, 2021		November 2021	December 2021
		Su Mo Tu We Th Fr Sa	Su Mo Tu We Th Fr Sa
		1 2 3 4 5 6	1 2 3 4
		7 8 9 10 11 12 13	5 6 7 8 9 10 11
		14 15 16 17 18 19 20	12 13 14 15 16 17 18
		21 22 23 24 25 26 27	19 20 21 22 23 24 25
		28 29 30	26 27 28 29 30 31
<b>Monday, November 22</b>		<b>Tuesday, November 23</b>	
<input type="checkbox"/> 10:00am - 11:00am Staff Meeting (b)(6) (b)(6)		<input type="checkbox"/> 12:00pm - 5:00pm <input type="checkbox"/> 12:00pm - 1:00pm Meeting with managers (b)(6)	
<input type="checkbox"/> 11:00am - 11:30am Weekly Meeting with Chair Khan and Commissioner Slaughter (LK to call RK) (b)(6) ⇅ (b)(6)		(b)(5)	
<input type="checkbox"/> 2:30pm - 3:00pm BC Biweekly Meeting w/ Commissioner Slaughter ⇅ <input type="checkbox"/> 3:00pm - 4:00pm BCP Biweekly Meeting w/ Comr. Slaughter (b)(6)			
(b)(6)			
<b>Wednesday, November 24</b>		<b>Thursday, November 25</b>	
(b)(6)		<input type="checkbox"/> Thanksgiving Day	
<b>Friday, November 26</b>		<b>Saturday, November 27</b>	
(b)(6)			
(b)(6)			
		<b>Sunday, November 28</b>	

November 29, 2021 - December 5, 2021		November 2021	December 2021
		Su Mo Tu We Th Fr Sa	Su Mo Tu We Th Fr Sa
		1 2 3 4 5 6	1 2 3 4
		7 8 9 10 11 12 13	5 6 7 8 9 10 11
		14 15 16 17 18 19 20	12 13 14 15 16 17 18
		21 22 23 24 25 26 27	19 20 21 22 23 24 25
		28 29 30	26 27 28 29 30 31
<b>Monday, November 29</b>		<b>Tuesday, November 30</b>	
(b)(6)		(b)(6)	
<p>10:00am - 11:00am Staff Meeting (202-326-[b)(6)] Meeting ID [b)(6)] (b)(6)</p> <p>Access code [b)(6)] Slaughter, Rebecca ☺</p> <p>1:00pm - 1:30pm Meeting w/ [b)(6)] (https://ftc.zoomgov.com/[b)(6)]) (b)(6)</p>		<p>1:00pm - 1:30pm OCR Monthly Meeting w/ Commissioner Slaughter (https://ftc.zoomgov.com/[b)(6)]) (b)(6) Slaughter, Rebecca ☺</p> <p>3:00pm - 3:30pm FYI-FTC CFC Giving Tuesday Event (https://ftc.zoomgov.com/[b)(6)]) (b)(6) Preer, Kristin</p>	
<b>Wednesday, December 1</b>		<b>Thursday, December 2</b>	
(b)(6)		(b)(6)	
(b)(6)		<p>10:00am - 10:30am Weekly w/ Acting Chair Slaughter &amp; Comr. Phillips [b)(6)] Slaughter, Rebecca ☺</p> <p>11:00am - 12:00pm 2021 SES Ethics Training (https://ftc.zoomgov.com/[b)(6)]) (b)(6) Duarte, Regina L.</p> <p>12:00pm - 12:30pm Meeting with Chair Khan and Comr. Slaughter (LK to call RKS [b)(6)] Khan, Lina</p> <p>1:00pm - 3:00pm Closed Commission Meeting Scheduled for December 2, 2021 (https://ftc.zoomgov.com/[b)(6)]) (b)(6) Dahiels, Dominique K.</p> <p>3:00pm - 3:30pm Weekly Mtg. w/ Commissioner Slaughter &amp; Commissioner Wilson (Call- [b)(6)] [b)(6)]) Wilson, Christine ☺</p>	
<b>Friday, December 3</b>		<b>Saturday, December 4</b>	
(b)(6)			
<p>10:00am - 11:00am Meeting w/ [b)(6)] (https://ftc.zoomgov.com/[b)(6)]) (b)(6)</p> <p>11:30am - 12:00pm Comm. Slaughter Mtg. with Reg. Mgmt. (https://ftc.zoomgov.com/[b)(6)]) (b)(6) Unruh, Rebecca</p> <p>1:00pm - 2:00pm Lunch with Alvaro</p> <p>3:30pm - 4:30pm [b)(7)(A)] Dial-in below</p>			
<b>Sunday, December 5</b>			

December 6, 2021 - December 12, 2021		December 2021	January 2022
		Su Mo Tu We Th Fr Sa	Su Mo Tu We Th Fr Sa
		1 2 3 4	1
		5 6 7 8 9 10 11	2 3 4 5 6 7 8
		12 13 14 15 16 17 18	9 10 11 12 13 14 15
		19 20 21 22 23 24 25	16 17 18 19 20 21 22
		26 27 28 29 30 31	23 24 25 26 27 28 29 30 31
<p><b>Monday, December 6</b></p> <ul style="list-style-type: none"> <li>■ 10:00am - 3:30pm FYI-Making Competition Work: Promoting Competition in Labor Markets (Live webcast)</li> <li>■ 10:00am - 11:00am Staff Meeting (202-326-(b)(6)) Meeting ID: (b)(6) Access code: (b)(6) Slaughter, Rebecca ☺</li> <li>■ 11:00am - 11:30am Weekly Meeting with Chair Khan and Commissioner Slaughter (LK to call RKS (b)(6)) Khan, Lina ☺</li> <li>■ 1:00pm - 1:30pm OPA Monthly Meeting w/ Commissioner Slaughter (https://ftc.zoomgov.com/(b)(6)) (b)(6) Slaughter, Rebecca ☺</li> </ul>		<p><b>Tuesday, December 7</b></p> <ul style="list-style-type: none"> <li>■ 10:30am - 4:30pm FYI-Making Competition Work: Promoting Competition in Labor Markets (Live webcast)</li> <li>■ 11:00am - 12:00pm HOLD: Coffee w/ AG Weiser</li> <li>■ 2:00pm - 3:00pm OGC Monthly Mtg with Cmsr Slaughter (https://ftc.zoomgov.com/(b)(6)) (b)(6) Hunt, Julia ☺</li> </ul>	
<p><b>Wednesday, December 8</b></p> <ul style="list-style-type: none"> <li>■ 10:00am - 11:00am Meeting w/ (ICO) Steve Wood &amp; Andrew Rimmer (b)(6) Slaughter, Rebecca</li> <li>■ 11:00am - 12:00pm BCP Biweekly Meeting w/ Comr. Slaughter (https://ftc.zoomgov.com/(b)(6)) (b)(6) Slaughter, Rebecca</li> <li>■ 1:00pm - 1:30pm Briefing on FTC next steps (https://ftc.zoomgov.com/(b)(6)) (b)(6) Slaughter, Rebecca</li> <li>■ 2:30pm - 3:00pm BE Biweekly Meeting w/ Commissioner Slaughter ☺</li> <li>■ 3:00pm - 4:00pm OIA Monthly Meeting w/ Commissioner Slaughter (https://ftc.zoomgov.com/(b)(6)) (b)(6) Slaughter, Rebecca ☺</li> </ul>		<p><b>Thursday, December 9</b></p> <ul style="list-style-type: none"> <li>■ 10:00am - 10:30am Weekly w/ Acting Chair Slaughter &amp; Comr. Phillips (b)(6) Slaughter, Rebecca ☺</li> <li>■ 11:00am - 11:30am OPP Monthly Meeting w/ Commissioner Slaughter ((202) 326-(b)(6)) Meeting Number: (b)(6) Access Code: (b)(6) Slaughter, Rebecca ☺</li> <li>■ 11:30am - 12:00pm Chat w/ (b)(6) RKS to call (b)(6) Slaughter, Rebecca</li> <li>■ 3:30pm - 4:00pm BC Biweekly Meeting w/ Commissioner Slaughter ☺</li> </ul>	
<p><b>Friday, December 10</b></p> <p>(b)(6)</p> <ul style="list-style-type: none"> <li>■ 11:30am - 12:00pm Weekly Mtg. w/Commissioner Slaughter &amp; Commissioner Wilson (Call-(b)(6)) Wilson, Christine ☺</li> </ul> <p>(b)(6)</p>		<p><b>Saturday, December 11</b></p>	
		<p><b>Sunday, December 12</b></p>	

December 13, 2021 - December 19, 2021		December 2021	January 2022
		Su Mo Tu We Th Fr Sa	Su Mo Tu We Th Fr Sa
		1 2 3 4	1
		5 6 7 8 9 10 11	2 3 4 5 6 7 8
		12 13 14 15 16 17 18	9 10 11 12 13 14 15
		19 20 21 22 23 24 25	16 17 18 19 20 21 22
		26 27 28 29 30 31	23 24 25 26 27 28 29 30 31
<p><b>Monday, December 13</b></p> <ul style="list-style-type: none"> <li>■ 10:00am - 11:00am Staff Meeting (202-326-[b)(6)] Meeting ID: [b)(6)] Access code: [b)(6)] Slaughter, Rebecca ☺</li> <li>■ 11:00am - 11:30am Weekly Meeting with Chair Khan and Commissioner Slaughter (LK to call RKS: [b)(6)] Khan, Lina ☺</li> <li>■ 1:00pm - 1:30pm NTIA's Privacy, Equity, and Civil Rights Listening Sessions (<a href="https://ftc.zoomgov.com/join/[b)(6)]">https://ftc.zoomgov.com/join/[b)(6)]</a> [b)(6)] Mam, Sometha CTR</li> <li>■ 2:00pm - 3:15pm Civil Rights Roundtable (<a href="https://ftc.zoomgov.com/join/[b)(6)]">https://ftc.zoomgov.com/join/[b)(6)]</a> [b)(6)] FTC Chair Khan</li> </ul>	<p><b>Tuesday, December 14</b></p> <p>[b)(6)]</p>		
<p><b>Wednesday, December 15</b></p> <ul style="list-style-type: none"> <li>■ 10:00am - 12:00pm Laptop Refresh - Tellez, Andrew CTR</li> <li>■ 12:00pm - 1:00pm Meeting with Civil Rights, Privacy, and Technology Table (<a href="https://zoom.us/j/[b)(6)]">https://zoom.us/j/[b)(6)]</a> [b)(6)] Slaughter, Rebecca</li> <li>■ 1:00pm - 3:00pm Team Slaughter Holiday [b)(6)] Slaughter, Rebecca</li> </ul>	<p><b>Thursday, December 16</b></p> <ul style="list-style-type: none"> <li>■ 10:00am - 10:30am Weekly w/ Acting Chair Slaughter &amp; Comr. Phillips [b)(6)] Slaughter, Rebecca ☺</li> <li>■ 1:00pm - 3:00pm December Open Commission Meeting (New Zoom Link) (Links to Commissioners and Public Comment Room in message below) - Tabor, April</li> <li>■ 3:00pm - 3:30pm Weekly Mtg. w/ Commissioner Slaughter &amp; Commissioner Wilson (Call: [b)(6)] Wilson, Christine ☺</li> </ul>		
<p><b>Friday, December 17</b></p> <p>[b)(6)]</p>	<p><b>Saturday, December 18</b></p>		
		<p><b>Sunday, December 19</b></p>	

December 20, 2021 - December 26, 2021		December 2021	January 2022
		Su Mo Tu We Th Fr Sa	Su Mo Tu We Th Fr Sa
		1 2 3 4	1
		5 6 7 8 9 10 11	2 3 4 5 6 7 8
		12 13 14 15 16 17 18	9 10 11 12 13 14 15
		19 20 21 22 23 24 25	16 17 18 19 20 21 22
		26 27 28 29 30 31	23 24 25 26 27 28 29 30 31
<b>Monday, December 20</b>		<b>Tuesday, December 21</b>	
(b)(6)		(b)(6)	
10:00am - 10:30am Staff Meeting (b)(6) Slaughter, Rebecca		1:00pm - 1:45pm Attorney Advisor Interview (b)(6)	
11:00am - 11:30am Weekly Meeting with Chair Khan and Commissioner Slaughter (LK to call RKS (b)(6) Khan, Lina		(https://ftc.zoomgov.com) (b)(6)	
1:00pm - 1:30pm Law Clerk interview (b)(6)		3:00pm - 4:00pm BC Biweekly Meeting w/ Commissioner Slaughter	
2:00pm - 2:30pm Law Clerk Interview (b)(6)			
(b)(6)			
4:00pm - 5:00pm DivCo/WERG/PERG Holiday Zoom			
(https://ftc.zoomgov.com) (b)(6)			
(b)(6) kun, Daria			
<b>Wednesday, December 22</b>		<b>Thursday, December 23</b>	
(b)(6)		(b)(6)	
<b>Friday, December 24</b>		<b>Saturday, December 25</b>	
(b)(6)		(b)(6)	
Christmas Eve (United States)		Christmas Day (United States)	
(b)(6)			
		<b>Sunday, December 26</b>	
		(b)(6)	

<b>December 27, 2021 - January 2, 2022</b>		<small>December 2021</small> <small>Su Mo Tu We Th Fr Sa</small> <small>1 2 3 4</small> <small>5 6 7 8 9 10 11</small> <small>12 13 14 15 16 17 18</small> <small>19 20 21 22 23 24 25</small> <small>26 27 28 29 30 31</small>	<small>January 2022</small> <small>Su Mo Tu We Th Fr Sa</small> <small>1</small> <small>2 3 4 5 6 7 8</small> <small>9 10 11 12 13 14 15</small> <small>16 17 18 19 20 21 22</small> <small>23 24 25 26 27 28 29</small> <small>30 31</small>
<b>Monday, December 27</b> (b)(6)	<b>Tuesday, December 28</b> (b)(6)		
<b>Wednesday, December 29</b> (b)(6)	<b>Thursday, December 30</b> (b)(6)		
<b>Friday, December 31</b> (b)(6) <input type="checkbox"/> <b>New Year's Eve</b> (United States)	Non Responsive Record		

<b>January 3, 2022 -</b> <b>January 9, 2022</b>		January 2022 Su Mo Tu We Th Fr Sa 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31	February 2022 Su Mo Tu We Th Fr Sa 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28
<b>Monday, January 3</b> 10:00am - 11:00am Staff Meeting (202-326-(b)(6)) Meeting ID: (b)(6) Access code: (b)(6) - Slaughter, Rebecca 11:00am - 11:30am Weekly Meeting with Chair Khan and Commissioner Slaughter (LK to call RKS at (b)(6)) Khan, Lina	<b>Tuesday, January 4</b> 10:00am - 10:30am BE Biweekly Meeting w/ Commissioner Slaughter (https://ftc.zoomgov.com/ (b)(6)) Slaughter, Rebecca 10:30am - 11:00am Law Clerk Interview w/ (b)(6) (b)(6) 2:00pm - 3:00pm OGC Monthly Mtg with Cmsr Slaughter (https://ftc.zoomgov.com/ (b)(6)) - Hunt, Julia 3:00pm - 4:00pm BC Biweekly Meeting w/ Commissioner Slaughter		
<b>Wednesday, January 5</b> 10:00am - 11:00am Staff Briefing (Lockheed / Aerojet) w/ Commissioner Slaughter (https://ftc.zoomgov.com/ (b)(6)) Slaughter, Rebecca 11:00am - 12:00pm BCP Biweekly Meeting w/ Commissioner Slaughter (https://ftc.zoomgov.com/ (b)(6)) 1:00pm - 1:30pm OCR Monthly Meeting w/ Commissioner Slaughter (https://ftc.zoomgov.com/ (b)(6)) 2:00pm - 3:00pm EOWI Quarterly Meeting w/ Commissioner Slaughter ((202) 326-(b)(6)) Meeting Number: (b)(6) Access Code: (b)(6) Slaughter, Rebecca 3:00pm - 4:00pm OIA Monthly Meeting w/ Commissioner Slaughter (https://ftc.zoomgov.com/ (b)(6))	<b>Thursday, January 6</b> (b)(6) 10:00am - 10:30am Weekly Mtg. w/ Comm'r Slaughter & Comm'r Phillips (202-326-(b)(6)) - Slaughter, Rebecca 2:00pm - 3:00pm LM/AJRD - Meeting with Commissioner Slaughter (Zoom Link Below) - Rumin, Lisa 3:00pm - 3:30pm Weekly Mtg. w/ Commissioner Slaughter & Commissioner Wilson (Call- (b)(6)) Wilson, Christine 3:30pm - 4:00pm (b)(6) (https://ftc.zoomgov.com/ (b)(6)) Pankey, Lonielle		
<b>Friday, January 7</b> (b)(6)	<b>Saturday, January 8</b> (b)(6)		
	<b>Sunday, January 9</b>		

<b>January 10, 2022 - January 16, 2022</b>		January 2022 Su Mo Tu We Th Fr Sa 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31	February 2022 Su Mo Tu We Th Fr Sa 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28
<b>Monday, January 10</b> ■ <b>10:00am - 11:00am Staff Meeting</b> (202-326-(b)(6)) Meeting ID: (b)(6) Access code: (b)(6) Slaughter, Rebecca ☐ ■ <b>11:00am - 11:30am Weekly Meeting with Chair Khan and Commissioner Slaughter</b> (LK to call RKS at (b)(6)) Khan, Lina ☐ ■ <b>2:00pm - 3:00pm Lit Tech Check-in w/ Commissioner Slaughter</b> (https://ftc.zoomgov.com/ (b)(6)) (b)(6) Slaughter, Rebecca	<b>Tuesday, January 11</b> ■ <b>9:00am - 10:00am Meeting with Chair Khan and Commissioner Slaughter</b> (https://ftc.zoomgov.com/ (b)(6)) (b)(6) Khan, Lina		
<b>Wednesday, January 12</b> ■ <b>11:00am - 11:30am Call w/</b> (b)(6) ■ <b>1:00pm - 2:00pm</b> (b)(7)(A) <b>Staff Briefing w/ Commissioner Slaughter &amp; Chair Khan</b> (https://ftc.zoomgov.com/ (b)(6)) (b)(6) Slaughter, Rebecca ■ <b>2:30pm - 3:00pm CFC Campaign Close-out event</b> (https://ftc.zoomgov.com/ (b)(6)) (b)(6) Greer, Kristin ■ <b>3:30pm - 4:00pm Merger Guidelines</b> (b)(7) <b>Briefing w/ Commissioner Slaughter</b> (https://ftc.zoomgov.com/ (b)(6)) (b)(6) Slaughter, Rebecca	<b>Thursday, January 13</b> ■ <b>10:00am - 10:30am Weekly Mtg. w/ Comm'r Slaughter &amp; Comm'r Phillips</b> (202-326-(b)(6)) Slaughter, Rebecca ☐ ■ <b>11:00am - 11:30am OPP Monthly Meeting w/ Commissioner Slaughter</b> ((202) 326-(b)(6)) Meeting Number: (b)(6) Access Code: (b)(6) Slaughter, Rebecca ☐ ■ <b>12:00pm - 12:25pm Zoom: Federal Trade Commission /</b> (b)(5) (b)(5) Invites (GR) ■ <b>2:00pm - 2:30pm Welcome Ricardo!</b> (https://ftc.zoomgov.com/ (b)(6)) (b)(6) Slaughter, Rebecca ■ <b>3:00pm - 3:30pm Weekly Mtg. w/ Commissioner Slaughter &amp; Commissioner Wilson</b> (Call- (b)(6)) Wilson, Christine ☐		
<b>Friday, January 14</b> <input type="checkbox"/> <b>Vote on Section 8 Threshold Adjustment</b>	<b>Saturday, January 15</b>		
	<b>Sunday, January 16</b>		

<b>January 17, 2022 -</b> <b>January 23, 2022</b>		January 2022 Su Mo Tu We Th Fr Sa 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31	February 2022 Su Mo Tu We Th Fr Sa 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28
<b>Monday, January 17</b> <input type="checkbox"/> Martin Luther King Day	<b>Tuesday, January 18</b> 10:00am - 11:00am Staff Meeting (202-326-(b)(6)) Meeting ID: (b)(6) Access code: (b)(6) - Slaughter, Rebecca 11:00am - 11:30am Weekly Meeting with Chair Khan and Commissioner Slaughter (LK to call RKS at (b)(6)) Khan, Lina 1:30pm - 2:00pm BE Biweekly Meeting w/ Commissioner Slaughter		
<b>Wednesday, January 19</b> 11:00am - 11:30am Quarterly Meeting w/ Comm'r Slaughter & Comm'r Starks (Comm'r Starks to call RKS) - Slaughter, Rebecca 1:00pm - 2:00pm (b)(7)(A) Party Meeting w/ Commissioner Slaughter (https://ftc.zoomgov.com/(b)(6)) Slaughter, Rebecca 2:30pm - 3:00pm OPA Monthly Meeting w/ Commissioner Slaughter (https://ftc.zoomgov.com/(b)(6)) Slaughter, Rebecca 3:00pm - 4:00pm BC Biweekly Meeting w/ Commissioner Slaughter	<b>Thursday, January 20</b> 9:30am - 10:00am Weekly Mtg. w/ Comm'r Slaughter & Comm'r Phillips (202-326-(b)(6)) Slaughter, Rebecca 10:00am - 11:00am U.S. Feedback on the EU Artificial Intelligence Act - Scott, Maxwell D 11:00am - 11:30am Becca/Ricardo Check-In (https://ftc.zoomgov.com/(b)(6)) Woolery, Ricardo 1:00pm - 3:00pm January Open Commission Meeting (Links to Rooms Below) - Tabor, April 3:00pm - 4:00pm BCP Biweekly Meeting w/ Commissioner Slaughter (https://ftc.zoomgov.com/(b)(6)) Slaughter, Rebecca		
<b>Friday, January 21</b> (b)(6) 10:00am - 11:00am DOJ/FTC Meeting with Competition Groups (https://ftc.zoomgov.com/(b)(6)) Khan, Lina 12:00pm - 1:00pm Video-- (b)(5), (b)(7)(A) Staff Briefing w/ Cmr. Wilson (https://ftc.zoomgov.com/(b)(6)) Lewis, Tina M. 1:00pm - 1:30pm Sartorius/Novasep Staff Briefing w/ Commissioner Slaughter (https://ftc.zoomgov.com/(b)(6)) Slaughter, Rebecca	<b>Saturday, January 22</b>		
	<b>Sunday, January 23</b>		

January 24, 2022 - January 30, 2022		January 2022	February 2022
		Su Mo Tu We Th Fr Sa	Su Mo Tu We Th Fr Sa
		1	1 2 3 4 5
		2 3 4 5 6 7 8	6 7 8 9 10 11 12
		9 10 11 12 13 14 15	13 14 15 16 17 18 19
		16 17 18 19 20 21 22	20 21 22 23 24 25 26
		23 24 25 26 27 28 29	27 28
		30 31	
<p><b>Monday, January 24</b></p> <ul style="list-style-type: none"> <li>■ 10:00am - 11:00am Staff Meeting (202-326-(b)(6)) Meeting ID: (b)(6) Access code: (b)(6) Slaughter, Rebecca ☺</li> <li>■ 11:45am - 12:00pm Call w/ Sharon Block (Sharon to call (b)(6) sell)</li> <li>■ 2:00pm - 2:30pm Weekly Meeting with Chair Khan and Commissioner Slaughter (LK to call RKS at (b)(6)) Khan, Lina ☺</li> </ul>	<p><b>Tuesday, January 25</b></p> <ul style="list-style-type: none"> <li>■ 10:00am - 11:00am DCRO Check-in w/ Commissioner Slaughter (https://ftc.zoomgov.com/ (b)(6)) (b)(6) Slaughter, Rebecca</li> <li>■ 1:00pm - 2:00pm Sartorius/Novasep Party Meeting (Joint with Chair Khan and Cmr. Slaughter) (https://ftc.zoomgov.com/ (b)(6)) (b)(6) Zhao, Daniel</li> <li>■ 3:00pm - 4:00pm Video-(b)(5), (b)(7)(A) &amp; Commissioner Wilson (https://ftc.zoomgov.com/ (b)(6)) (b)(6) Lewis, Tina M.</li> </ul>		
<p><b>Wednesday, January 26</b></p> <ul style="list-style-type: none"> <li>■ 10:00am - 10:30am Weekly Mtg. w/ Comm'r Slaughter &amp; Comm'r Phillips (202-326-(b)(6)) Slaughter, Rebecca ☺</li> <li>■ 3:00pm - 3:30pm Weekly Mtg. w/Commissioner Slaughter &amp; Commissioner Wilson (Call-(b)(6)) Wilson, Christine ☺</li> <li>■ 3:00pm - 4:00pm FYI-Diversity Council Quarterly Meeting (https://ftc.zoomgov.com/ (b)(6)) (b)(6) Huber, Susan</li> </ul>	<p><b>Thursday, January 27</b></p> <ul style="list-style-type: none"> <li>■ 2:30pm - 4:30pm Closed Commission Meeting Scheduled for January 27, 2022 (https://ftc.zoomgov.com/ (b)(6)) (b)(6) Daniels, Dominique K.</li> </ul>		
<p><b>Friday, January 28</b></p>	<p><b>Saturday, January 29</b></p>		
	<p><b>Sunday, January 30</b></p>		

# January 31, 2022 - February 6, 2022

January 2022							February 2022						
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30	31												

Monday, January 31	
(b)(6)	Non Responsive Record
10:00am - 11:00am Staff Meeting (202-326-(b)(6)) Meeting ID: (b)(6) Access code: (b)(6) - Slaughter, Rebecca ☐	
11:00am - 11:30am Weekly Meeting with Chair Khan and Commissioner Slaughter (LK to call RKS at: (b)(6)) Khan, Lina ☐	
1:15pm - 2:00pm Meeting with Commissioner Slaughter (https://fjc.zoomgov.com/join/((b)(6))) Khan, Lina ☐ (b)(6)	
(b)(6)	Non Responsive Record
(b)(6)	Non Responsive Record

<b>January 31, 2022 - February 6, 2022</b>							
<table border="0" style="width: 100%;"> <tr> <td style="text-align: center;">January 2022</td> <td style="text-align: center;">February 2022</td> </tr> <tr> <td style="text-align: center;">Su Mo Tu We Th Fr Sa</td> <td style="text-align: center;">Su Mo Tu We Th Fr Sa</td> </tr> <tr> <td style="text-align: center;">2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31</td> <td style="text-align: center;">1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28</td> </tr> </table>		January 2022	February 2022	Su Mo Tu We Th Fr Sa	Su Mo Tu We Th Fr Sa	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28
January 2022	February 2022						
Su Mo Tu We Th Fr Sa	Su Mo Tu We Th Fr Sa						
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28						
<b>Monday, January 31</b> <div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;">                 (b)(6)             </div> <div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;">                 10:00am - 11:00am Staff Meeting (202-326 (b)(6)) Meeting ID (b)(6)                  Access code (b)(6) Slaughter, Rebecca ↵             </div> <div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;">                 11:00am - 11:30am Weekly Meeting with Chair Khan and Commissioner Slaughter (LK to call RKS at (b)(6) Khan, Lina ↵             </div> <div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;">                 1:15pm - 2:00pm Meeting with Commissioner Slaughter                  (https://ftc.zoomgov.com/ (b)(6) Khan, Lina (b)(6)             </div> <div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;">                 (b)(6)             </div>	<b>Tuesday, February 1</b> <div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;">                 10:00am - 10:30am BE Biweekly Meeting w/ Commissioner Slaughter                  (https://ftc.zoomgov.com/ (b)(6) Slaughter, Rebecca ↵             </div> <div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;">                 (b)(6)             </div> <div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;">                 1:00pm - 2:00pm Enforcement Check-in w/ Commissioner Slaughter                  (https://ftc.zoomgov.com/ (b)(6)             </div> <div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;">                 2:00pm - 3:00pm OGC Monthly Mtg with Cmsr Slaughter                  (https://ftc.zoomgov.com/ (b)(6) Hunt, Julia ↵             </div> <div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;">                 2:30pm - 4:30pm FYI-Commerce Subcommittee Hearing: Stopping COVID-19 Fraud and Price Gouging             </div> <div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;">                 3:00pm - 4:00pm BC Biweekly Meeting w/ Commissioner Slaughter ↵             </div> <div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;">                 (b)(6)             </div>						
<b>Wednesday, February 2</b> <div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;"> <input type="checkbox"/> Groundhog Day (United States)             </div> <div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;">                 12:00pm - 1:00pm Video--Lifespan/Care New England Staff Brfg w/Cmsr. Wilson &amp; Slaughter                  (https://ftc.zoomgov.com/ (b)(6) Lewis, Tina M.             </div> <div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;">                 1:00pm - 1:30pm OCR Monthly Meeting w/ Commissioner Slaughter                  (https://ftc.zoomgov.com/ (b)(6) Slaughter, Rebecca ↵             </div> <div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;">                 2:00pm - 2:30pm Weekly Mtg. w/ Comm'r Slaughter &amp; Comm'r Phillips (202-326 (b)(6) Slaughter, Rebecca ↵             </div> <div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;">                 3:00pm - 4:00pm OIA Monthly Meeting w/ Commissioner Slaughter                  (https://ftc.zoomgov.com/ (b)(6) Slaughter, Rebecca ↵             </div>	<b>Thursday, February 3</b> <div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;">                 10:00am - 11:00am DCBE Check-in w/ Commissioner Slaughter                  (https://ftc.zoomgov.com/ (b)(6) Slaughter, Rebecca             </div> <div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;">                 2:00pm - 2:30pm Welcome Henry and Darren                  (https://ftc.zoomgov.com/ (b)(6) Slaughter, Rebecca             </div> <div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;">                 3:00pm - 3:30pm Weekly Mtg. w/Commissioner Slaughter &amp; Commissioner Wilson (Call (b)(6) Wilson, Christine ↵             </div>						
<b>Friday, February 4</b> <div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;">                 (b)(6)             </div>	<b>Saturday, February 5</b> 						
	<b>Sunday, February 6</b> 						

February 7, 2022 - February 13, 2022		February 2022	March 2022
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		20 21 22 23 24 25 26	20 21 22 23 24 25 26
		27 28	27 28 29 30 31
<b>Monday, February 7</b> <b>10:00am - 11:00am Staff Meeting</b> (202-326-(b)(6)) Meeting ID: (b)(6) Access code: (b)(6) - Slaughter, Rebecca ↻ <b>11:00am - 11:30am Weekly Meeting with Chair Khan and Commissioner Slaughter</b> (LK to call RKS at (b)(6)) - Khan, Lina ↻ <b>2:00pm - 3:00pm Lifespan/CNE Party Meeting w/ Commissioner Slaughter</b> (https://ftc.zoomgov.com/ (b)(6)) (b)(6) Slaughter, Rebecca <b>3:00pm - 4:00pm BCP Biweekly Meeting w/ Commissioner Slaughter</b> (https://ftc.zoomgov.com/ (b)(6)) (b)(6) Slaughter, Rebecca ↻		<b>Tuesday, February 8</b> <b>10:00am - 11:00am Discussion w/ Bert Lee (&amp;others) re: Office of Civil Rights (FTC)</b> (https://zoom.us/ (b)(6)) (b)(6) - Slaughter, Rebecca (b)(6)	
<b>Wednesday, February 9</b> <b>1:00pm - 2:00pm Meeting w/</b> (b)(5) (b)(5) (https://ftc.zoomgov.com/ (b)(6)) (b)(6) Slaughter, Rebecca <b>2:30pm - 3:00pm OIG Update w/ Commissioner Slaughter &amp; IG Katsaros</b> (202-326-(b)(6)) Meeting Number: (b)(6) Access Code: (b)(6)		<b>Thursday, February 10</b> <b>10:00am - 10:30am Weekly Mtg. w/ Comm'r Slaughter &amp; Comm'r Phillips</b> (202-326-(b)(6)) - Slaughter, Rebecca ↻ <b>11:00am - 11:30am OPP Monthly Meeting w/ Commissioner Slaughter</b> ((202) 326-(b)(6)) Meeting Number: (b)(6) Access Code: (b)(6) Slaughter, Rebecca ↻ <b>2:00pm - 3:00pm PNO Check-in w/ Commissioner Slaughter</b> (https://ftc.zoomgov.com/ (b)(6)) (b)(6) Slaughter, Rebecca <b>3:00pm - 3:30pm Weekly Mtg. w/Commissioner Slaughter &amp; Commissioner Wilson</b> (Call- (b)(6)) Wilson, Christine ↻ <b>4:00pm - 5:00pm FYI-Pride ERG: Valentine's Day Zoom Happy Hour (UPDATED)</b> (https://ftc.zoomgov.com/ (b)(6)) Solomon, Ronnie	
<b>Friday, February 11</b> <b>10:00am - 10:30am Call w/ Cat Zakrzewski (WaPo)</b> (b)(6) (b)(6)		<b>Saturday, February 12</b> <b>Lincoln's Birthday</b> (United States)	
		<b>Sunday, February 13</b>	

February 2022		March 2022											
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27	28						27	28	29	30	31		

Monday, February 14	Tuesday, February 15
<p>☐ Valentine's Day (United States)</p> <p>10:00am - 11:00am Staff Meeting (202-326 (b)(6)) Meeting ID: (b)(6) Access code: (b)(6) Slaughter, Rebecca ↻</p> <p>11:00am - 11:30am Weekly Meeting with Chair Khan and Commissioner Slaughter (LK to call RKS at (b)(6)) Khan, Lina ↻</p> <p>1:00pm - 1:30pm OPA Monthly Meeting w/ Commissioner Slaughter (https://ftc.zoomgov.com/ (b)(6)) Slaughter, Rebecca ↻</p> <p>2:00pm - 4:00pm Closed Commission Meeting Scheduled for February 14, 2022 (https://ftc.zoomgov.com/ (b)(6)) Daniels, Dominique K.</p>	<p>10:00am - 10:30am BE Biweekly Meeting w/ Commissioner Slaughter (https://ftc.zoomgov.com/ (b)(6)) Slaughter, Rebecca ↻</p> <p>11:30am - 1:30pm FYI-WERG w/ HCMO Ask Me Anything (https://ftc.zoomgov.com/ (b)(6))</p> <p>1:00pm - 2:00pm Meeting w/ (b)(5), (b)(7)(D) (https://ftc.zoomgov.com/ (b)(6))</p> <p>2:00pm - 3:00pm Video (b)(7)(A) Staff Brfg w/Cmrs. Wilson &amp; Slaughter (https://ftc.zoomgov.com/ (b)(6)) Lewis, Tina M.</p> <p>3:00pm - 4:00pm BC Biweekly Meeting w/ Commissioner Slaughter ↻</p>
Wednesday, February 16	Thursday, February 17
<p>(b)(6)</p> <p>10:00am - 11:00am M1 Check-in w/ Commissioner Slaughter (https://ftc.zoomgov.com/ (b)(6)) Slaughter, Rebecca</p> <p>11:00am - 12:00pm Meeting w/ (b)(5), (b)(7)(D) Teams link in body - Slaughter, Rebecca</p> <p>12:00pm - 1:15pm Meeting with Comm. Slaughter and (b)(7)(A) (https://kirkland.zoom.us/ (b)(6)) (b)(7)(D)</p> <p>1:00pm - 2:00pm FYI-Black History Month event (Zoom link in body)</p> <p>3:00pm - 4:00pm (b)(7)(A) Staff Briefing w/ Commissioner Slaughter (https://ftc.zoomgov.com/ (b)(6)) Slaughter, Rebecca</p>	<p>10:00am - 10:30am Weekly Mtg. w/ Comm'r Slaughter &amp; Comm'r Phillips (202-326 (b)(6)) Slaughter, Rebecca ↻</p> <p>10:30am - 11:30am Meeting to Discuss Worker Surveillance &amp; Algorithmic Management (https://ftc.zoomgov.com/ (b)(6)) Slaughter, Rebecca</p> <p>1:00pm - 3:00pm February Open Commission Meeting (Links to Rooms are Below) - Tabor, April</p> <p>3:00pm - 3:30pm Weekly Mtg. w/Commissioner Slaughter &amp; Commissioner Wilson (Call- (b)(6)) Wilson, Christine ↻</p>
Friday, February 18	Saturday, February 19
<p>(b)(6)</p> <p>12:00pm - 1:00pm BCP Biweekly Meeting w/ Commissioner Slaughter (https://ftc.zoomgov.com/ (b)(6)) Slaughter, Rebecca ↻</p>	
	Sunday, February 20

February 2022		March 2022												
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27	28							27	28	29	30	31		

<p><b>February 21, 2022 - February 27, 2022</b></p> <p><b>Monday, February 21</b></p> <p><input type="checkbox"/> Presidents' Day</p>	<p><b>Tuesday, February 22</b></p> <p>(b)(6)</p> <p><b>10:00am - 11:00am Staff Meeting</b> (202-326-(b)(6)) Meeting ID: (b)(6) Access code: (b)(6) Slaughter, Rebecca ☺</p> <p><b>11:00am - 11:30am Weekly Meeting with Chair Khan and Commissioner Slaughter</b> (LK to call RKS at (b)(6)) Khan, Lina ☺</p>
<p><b>Wednesday, February 23</b></p> <p><input type="checkbox"/> 1:00pm - 2:00pm FYI-Black History Month event (Zoom link in body )</p> <p><input type="checkbox"/> 3:00pm - 4:00pm Equity Update w/ Commissioner Slaughter (https://ftc.zoomgov.com/(b)(6)) Slaughter, Rebecca</p>	<p><b>Thursday, February 24</b></p> <p><input type="checkbox"/> 10:00am - 10:30am Weekly Mtg. w/ Comm'r Slaughter &amp; Comm'r Phillips (202-326-(b)(6)) Slaughter, Rebecca ☺</p> <p><input type="checkbox"/> 10:30am - 11:00am Meeting w/ IAPP (H-540) - Slaughter, Rebecca</p> <p><input type="checkbox"/> 12:00pm - 12:15pm Chat w/ Lara Ellenberg &amp; Lindsay Wilson (Rulemaking group law clerks) (H-540)</p> <p><input type="checkbox"/> 12:15pm - 2:00pm Strategic Planning Meeting (HQ-540) - Slaughter, Rebecca</p> <p><input type="checkbox"/> 2:00pm - 3:00pm (b)(6) Staff Briefing for Cmr. Phillips (https://ftc.zoomgov.com/(b)(6)) Dickinson, Charles</p> <p><input type="checkbox"/> 3:00pm - 4:00pm Chair Khan Party Meeting with (b)(7)(A) (https://ftc.zoomgov.com/(b)(6)) Zhao, Daniel</p>
<p><b>Friday, February 25</b></p> <p><input type="checkbox"/> 11:30am - 12:00pm Weekly Mtg. w/Commissioner Slaughter &amp; Commissioner Wilson (Call-(b)(6)) Wilson, Christine ☺</p> <p><input type="checkbox"/> 2:00pm - 3:00pm Meeting w/ Andy Green, USDA (b)(5) (https://ftc.zoomgov.com/(b)(6)) Slaughter, Rebecca</p>	<p><b>Saturday, February 26</b></p> <p><b>Sunday, February 27</b></p>

# February 28, 2022 - March 6, 2022

February 2022							March 2022						
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27	28						27	28	29	30	31		

## Monday, February 28

- 10:00am - 11:00am Staff Meeting (202-326-(b)(6)) Meeting ID: (b)(6)  
Access code: (b)(6) Slaughter, Rebecca
- 11:00am - 11:30am Weekly Meeting with Chair Khan and Commissioner Slaughter (LK to call RKS at (b)(6)) Khan, Lina
- 2:00pm - 3:00pm M2 Check-in w/ Commissioner Slaughter  
(https://ftc.zoomgov.com/join/((b)(6))) Slaughter, Rebecca

Non Responsive Record

Non Responsive Record

February 28, 2022 - March 6, 2022		February 2022	March 2022
		Su Mo Tu We Th Fr Sa	Su Mo Tu We Th Fr Sa
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		6 7 8 9 10 11 12	6 7 8 9 10 11 12
		13 14 15 16 17 18 19	13 14 15 16 17 18 19
		20 21 22 23 24 25 26	20 21 22 23 24 25 26
		27 28	27 28 29 30 31
<b>Monday, February 28</b>		<b>Tuesday, March 1</b>	
<p>10:00am - 11:00am Staff Meeting (b)(6) Meeting ID: (b)(6) Access code (b)(6) Slaughter, Rebecca</p> <p>11:00am - 11:30am Weekly Meeting with Chair Khan and Commissioner Slaughter (LK to call RKS at (b)(6) Khan, Lina</p> <p>2:00pm - 3:00pm M2 Check-in w/ Commissioner Slaughter (https://ftc.zoomgov.com/(b)(6)) Slaughter, Rebecca</p>		<p>10:00am - 10:30am BE Biweekly Meeting w/ Commissioner Slaughter (https://ftc.zoomgov.com/(b)(6)) Slaughter, Rebecca</p> <p>1:00pm - 2:00pm FY23 Budget Briefing w/ Commissioner Slaughter (https://ftc.zoomgov.com/(b)(6)) Slaughter, Rebecca</p> <p>2:00pm - 3:00pm OGC Monthly Mtg with Cmsr Slaughter (https://ftc.zoomgov.com/(b)(6)) Hunt, Julia</p> <p>3:00pm - 4:00pm BC Biweekly Meeting w/ Commissioner Slaughter</p>	
<b>Wednesday, March 2</b>		<b>Thursday, March 3</b>	
<p>10:00am - 11:00am (b)(7)(A) Party Meeting w/ Commissioner Slaughter (https://ftc.zoomgov.com/(b)(6)) Slaughter, Rebecca</p> <p>1:00pm - 1:30pm OCR Monthly Meeting w/ Commissioner Slaughter (https://ftc.zoomgov.com/(b)(6)) Slaughter, Rebecca</p> <p>2:00pm - 2:30pm ABA Antitrust Spring Meeting - Program Call (b)(6) Conference code (b)(6) Slaughter, Rebecca</p> <p>3:00pm - 4:00pm OIA Monthly Meeting w/ Commissioner Slaughter (https://ftc.zoomgov.com/(b)(6)) Slaughter, Rebecca</p>		<p>(b)(6)</p> <p>10:00am - 10:30am Weekly Mtg. w/ Comm'r Slaughter &amp; Comm'r Phillips (202-326-(b)(6)) Slaughter, Rebecca</p> <p>3:00pm - 3:30pm Weekly Mtg. w/Commissioner Slaughter &amp; Commissioner Wilson (Call--Odd days, (b)(6) Even days, (b)(6) - Wilson, Christine</p>	
<b>Friday, March 4</b>		<b>Saturday, March 5</b>	
<p>(b)(6)</p> <p>11:00am - 12:00pm BCP Biweekly Meeting w/ Commissioner Slaughter (https://ftc.zoomgov.com/(b)(6)) Slaughter, Rebecca</p>			
		<b>Sunday, March 6</b>	

<b>March 7, 2022 - March 13, 2022</b>		March 2022 Su Mo Tu We Th Fr Sa 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31	April 2022 Su Mo Tu We Th Fr Sa 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30
<b>Monday, March 7</b> 10:00am - 11:00am Staff Meeting (202-326-[b](6)) Meeting ID: [b](6) Access code: [b](6) - Slaughter, Rebecca ☺ 2:00pm - 3:00pm M4 Check-in w/ Commissioner Slaughter (https://ftc.zoomgov.com/[b](6)) [b](6) Slaughter, Rebecca	<b>Tuesday, March 8</b> 11:00am - 1:00pm Closed Commission Meeting Scheduled for March 8, 2022 (https://ftc.zoomgov.com/[b](6)) [b](6) niels, Dominique K. 1:30pm - 2:00pm Weekly Meeting with Chair Khan and Commissioner Slaughter (LK to call RKS at [b](6)) Khan, Lina ☺ 3:00pm - 4:00pm TED Check-in (https://ftc.zoomgov.com/[b](6)) [b](6) [b](6)		
<b>Wednesday, March 9</b> 12:00pm - 1:00pm Spring Faculty Speaker Prep Session [b](6) Andrea Whittington 1:00pm - 1:30pm Chat w/ Ricardo & BKS (RW's cell [b](6)) Slaughter, Rebecca	<b>Thursday, March 10</b> 10:00am - 10:30am Weekly Mtg. w/ Comm'r Slaughter & Comm'r Phillips (202-326-[b](6)) Slaughter, Rebecca ☺ 11:00am - 11:30am OPP Monthly Meeting w/ Commissioner Slaughter (https://ftc.zoomgov.com/[b](6)) [b](6) Slaughter, Rebecca ☺ 3:00pm - 3:30pm Weekly Mtg. w/ Commissioner Slaughter & Commissioner Wilson (Call--Odd days, [b](6) even days, [b](6)) Wilson, Christine ☺		
<b>Friday, March 11</b>	<b>Saturday, March 12</b>		
	<b>Sunday, March 13</b>		

<b>March 14, 2022 - March 20, 2022</b>		March 2022 Su Mo Tu We Th Fr Sa 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31	April 2022 Su Mo Tu We Th Fr Sa 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30
<b>Monday, March 14</b> 10:00am - 11:00am Staff Meeting (202-326-(b)(6)) Meeting ID: (b)(6) Access code: (b)(6) Slaughter, Rebecca ☺ 11:00am - 11:30am Weekly Meeting with Chair Khan and Commissioner Slaughter (LK to call RKS at (b)(6) - Khan, Lina ☺ 1:00pm - 1:30pm OPA Monthly Meeting w/ Commissioner Slaughter (https://ftc.zoomgov.com/join/(b)(6)) Slaughter, Rebecca ☺	<b>Tuesday, March 15</b>		
<b>Wednesday, March 16</b> 1:00pm - 2:00pm FYI-WERF Women's History Month: Jennifer L. Porter (b)(6)	<b>Thursday, March 17</b> Saint Patrick's Day (United States) 10:00am - 10:30am Weekly Mtg. w/ Comm'r Slaughter & Comm'r Phillips (202-326-(b)(6)) Slaughter, Rebecca ☺ 10:45am - 11:30am BCP Biweekly Meeting w/ Commissioner Slaughter (https://ftc.zoomgov.com/join/(b)(6)) Slaughter, Rebecca ☺ 1:00pm - 3:00pm March Open Commission Meeting (Links to Rooms are Below) - Tabor, April 3:00pm - 3:30pm Weekly Mtg. w/ Commissioner Slaughter & Commissioner Wilson (Call--Odd days (b)(6) even days (b)(6) Wilson, Christine ☺		
<b>Friday, March 18</b> (b)(6) 11:00am - 11:45am Fireside Chat w/ Chair Khan & AAG Kanter (Zoom to be provided) (b)(6)	<b>Saturday, March 19</b>		
	<b>Sunday, March 20</b>		

March 21, 2022 - March 27, 2022		March 2022	April 2022
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		27 28 29 30 31	24 25 26 27 28 29 30

<p><b>Monday, March 21</b></p> <ul style="list-style-type: none"> <li>10:00am - 11:00am Staff Meeting (202-326-(b)(6)) Meeting ID: (b)(6) Access code: (b)(6) - Slaughter, Rebecca ☐</li> <li>11:00am - 11:30am Weekly Meeting with Chair Khan and Commissioner Slaughter (LK to call RKS at (b)(6)) - Khan, Lina ☐</li> <li>2:30pm - 3:30pm BC Biweekly Meeting w/ Commissioner Slaughter ☐ (b)(6)</li> </ul>	<p><b>Tuesday, March 22</b></p> <ul style="list-style-type: none"> <li>(b)(6)</li> <li>10:00am - 11:00am Healthcare Check-in w/ Commissioner Slaughter (https://ftc.zoomgov.com/ (b)(6))</li> <li>11:00am - 11:30am Law Clerk Interview w/ (b)(6) (b)(6)</li> <li>12:00pm - 12:30pm Call--Cmr. Wilson &amp; Cmr. Slaughter (CW will call Cmr. Slaughter) - Wilson, Christine</li> <li>1:00pm - 2:00pm Meeting w/ Commissioner Slaughter (Federal Trade Commission, 600 Pennsylvania Ave., Washington, DC 20580) -</li> <li>1:00pm - 2:00pm Meeting w/ Prof. Dr. Jürgen Köhling, Chairman of Monopolies Commission (Germany) (H-(b)(6)) &amp; 202-326-(b)(6) (b)(6)</li> </ul>
<p><b>Wednesday, March 23</b></p> <ul style="list-style-type: none"> <li>(b)(6)</li> <li>10:00am - 11:00am Meeting w/ (b)(7)(D) (b)(7)(D) at (b)(5) (https://ftc.zoomgov.com/ (b)(6)) (b)(6) Slaughter, Rebecca</li> <li>11:00am - 12:00pm M3 Check-in w/ Commissioner Slaughter (https://ftc.zoomgov.com/ (b)(6)) (b)(6) Slaughter, Rebecca</li> <li>1:00pm - 2:00pm Discussion re: ABA Mergers Panel (https://ftc.zoomgov.com/ (b)(6)) (b)(6) Slaughter, Rebecca</li> </ul>	<p><b>Thursday, March 24</b></p> <ul style="list-style-type: none"> <li>(b)(6)</li> <li>10:00am - 10:30am Weekly Mtg. w/ Comm'r Slaughter &amp; Comm'r Phillips (202-326-(b)(6)) - Slaughter, Rebecca ☐</li> <li>11:00am - 12:00pm ACP Check-in w/ Commissioner Slaughter (https://ftc.zoomgov.com/ (b)(6)) (b)(6) Slaughter, Rebecca</li> <li>12:45pm - 1:00pm Logon</li> <li>1:00pm - 2:00pm Keynote the Privacy+Security Forum (Zoom link in body)</li> <li>2:00pm - 3:30pm WERG Women's History Month: Dr. Tokars (https://ftc.zoomgov.com/ (b)(6)) (b)(6) werg@ftc.gov</li> <li>3:00pm - 3:30pm Weekly Mtg. w/ Commissioner Slaughter &amp; Commissioner Wilson (Call--Odd days (b)(6) even days (b)(6)) Wilson, Christine ☐</li> </ul>
<p><b>Friday, March 25</b></p> <ul style="list-style-type: none"> <li>(b)(6)</li> <li>11:00am - 12:00pm Intuit Party Meeting w/ Commissioner Slaughter (https://ftc.zoomgov.com/ (b)(6)) (b)(6) Slaughter, Rebecca</li> <li>12:00pm - 1:30pm Team Lunch (b)(6) Slaughter, Rebecca</li> </ul>	<p><b>Saturday, March 26</b></p> <p><b>Sunday, March 27</b></p>

<b>March 28, 2022 - April 3, 2022</b>																																																																																																			
<table border="1"> <tr> <th colspan="7">March 2022</th> <th colspan="7">April 2022</th> </tr> <tr> <th>Su</th><th>Mo</th><th>Tu</th><th>We</th><th>Th</th><th>Fr</th><th>Sa</th> <th>Su</th><th>Mo</th><th>Tu</th><th>We</th><th>Th</th><th>Fr</th><th>Sa</th> </tr> <tr> <td></td><td></td><td></td><td>1</td><td>2</td><td>3</td><td>4</td><td>5</td><td></td><td></td><td></td><td></td><td>1</td><td>2</td> </tr> <tr> <td>6</td><td>7</td><td>8</td><td>9</td><td>10</td><td>11</td><td>12</td><td>3</td><td>4</td><td>5</td><td>6</td><td>7</td><td>8</td><td>9</td> </tr> <tr> <td>13</td><td>14</td><td>15</td><td>16</td><td>17</td><td>18</td><td>19</td><td>10</td><td>11</td><td>12</td><td>13</td><td>14</td><td>15</td><td>16</td> </tr> <tr> <td>20</td><td>21</td><td>22</td><td>23</td><td>24</td><td>25</td><td>26</td><td>17</td><td>18</td><td>19</td><td>20</td><td>21</td><td>22</td><td>23</td> </tr> <tr> <td>27</td><td>28</td><td>29</td><td>30</td><td>31</td><td></td><td></td><td>24</td><td>25</td><td>26</td><td>27</td><td>28</td><td>29</td><td>30</td> </tr> </table>		March 2022							April 2022							Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa				1	2	3	4	5					1	2	6	7	8	9	10	11	12	3	4	5	6	7	8	9	13	14	15	16	17	18	19	10	11	12	13	14	15	16	20	21	22	23	24	25	26	17	18	19	20	21	22	23	27	28	29	30	31			24	25	26	27	28	29	30
March 2022							April 2022																																																																																												
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<p><b>Monday, March 28</b></p> <ul style="list-style-type: none"> <li>10:00am - 11:00am Staff Meeting (202-326-(b)(6) Meeting ID: (b)(6) Access code: (b)(6) - Slaughter, Rebecca ☞</li> <li>11:00am - 11:30am Weekly Meeting with Chair Khan and Commissioner Slaughter (LK to call RKS at (b)(6) - Khan, Lina ☞</li> <li>12:00pm - 1:00pm University of Maryland Law School Anchor Even: Antitrust and "Big Tech": Regulation or Litigation? - Sturiale, Jennifer</li> <li>3:00pm - 4:00pm BCP Biweekly Meeting w/ Commissioner Slaughter (https://ftc.zoomgov.com/ (b)(6) Slaughter, Rebecca ☞</li> <li>3:00pm - 4:00pm FYI-M&amp;A Listening Forum-Food and Agriculture (Webcast via FTC.gov)</li> </ul> <p><b>Wednesday, March 30</b></p> <ul style="list-style-type: none"> <li>(b)(6)</li> <li>10:30am - 11:30am Meeting with UK MPs re Digital Competition Policy (HQ- (b)(6) 202-326-(b)(6) Meeting ID: (b)(6) Access code: (b)(6) Slaughter, Rebecca ☞</li> <li>(b)(6)</li> </ul> <p><b>Friday, April 1</b></p> <ul style="list-style-type: none"> <li>(b)(6)</li> <li>2:30pm - 3:00pm Weekly Mtg. w/ Comm'r Slaughter &amp; Comm'r Phillips (202-326-(b)(6) - Slaughter, Rebecca ☞</li> </ul>	<p><b>Tuesday, March 29</b></p> <ul style="list-style-type: none"> <li>10:00am - 10:30am BE Biweekly Meeting w/ Commissioner Slaughter (https://ftc.zoomgov.com/ (b)(6) Slaughter, Rebecca ☞</li> <li>11:00am - 11:30am Law Clerk Interview w/ (b)(6)</li> <li>12:00pm - 12:30pm Briefing w/ Commissioner Slaughter re (b)(5) (https://ftc.zoomgov.com/ (b)(6)</li> <li>1:00pm - 1:30pm Law Clerk Interview w/ (b)(6)</li> <li>2:00pm - 3:00pm Meeting w/ Andy Green, Dept. of Ag (https://ftc.zoomgov.com/ (b)(6) Slaughter, Rebecca ☞</li> <li>3:00pm - 4:00pm BC Biweekly Meeting w/ Commissioner Slaughter ☞</li> </ul> <p><b>Thursday, March 31</b></p> <ul style="list-style-type: none"> <li>9:00am - 11:00am Yale ISP Breakfast event (b)(6)</li> <li>3:00pm - 3:30pm Weekly Mtg. w/ Commissioner Slaughter &amp; Commissioner Wilson (Call--Odd days, (b)(6) even days, (b)(6) Wilson, Christine ☞</li> <li>4:00pm - 5:30pm Lastowka Lecture (Rutgers)</li> </ul> <p><b>Saturday, April 2</b></p> <p><b>Sunday, April 3</b></p>																																																																																																		

## April 4, 2022 - April 10, 2022

April 2022						May 2022							
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17	18	19	20	21	22	23	22	23	24	25	26	27	28
24	25	26	27	28	29	30	29	30	31				

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### Monday, April 4

- 8:00am - 9:30am (b)(6)
- 9:45am - 10:35am Enforcers Summit-Merger Guidelines for Modern Economies  
(b)(6)
- 12:15pm - 1:05pm 12:15 PM [UPDATED TIME]: Conversation #3: U.S. Enforcers  
(b)(6)
- 3:10pm - 5:20pm Enforcers Summit-Breakout Discussions (Links in body)  
(b)(6)
- 4:00pm - 6:00pm (b)(6)
- 6:00pm - 7:00pm Enforcers Summit Gathering (b)(6)
- 6:45pm - 8:45pm dinner (b)(6)  
Coppola, Maria

### Wednesday, April 6

- 12:00am ABA Spring Meeting →
- 8:00am - 9:30am (b)(6)
- 1:00pm - 1:30pm OCR Monthly Meeting w/ Commissioner Slaughter  
(https://rtc.zoomgov.com (b)(6)  
(b)(6) Slaughter, Rebecca
- 4:00pm - 6:00pm (b)(6)

### Friday, April 8

- 12:00am ABA Spring Meeting  
(b)(6)
- 3:00pm - 5:30pm Team Outing (b)(6)  
Slaughter, Rebecca

### Tuesday, April 5

- 8:00am - 9:30am (b)(6)
- 10:00am - 11:00am Staff Meeting (202-326 (b)(6) Meeting ID (b)(6)  
Access code (b)(6) Slaughter, Rebecca
- 11:00am - 12:00pm Meeting w/ Andrea Coscelli (b)(6)
- 12:00pm - 1:00pm FYI-Discussion w/ Andrea Coscelli (b)(6)
- 1:00pm - 1:30pm Meeting with Danilo Silva, Ecuadorian Superintendent for the Control of Market Power (SCMP) (b)(6)  
Slaughter, Rebecca
- 2:00pm - 4:00pm Women @ Competition Americas event (b)(6)  
(b)(6)
- 4:00pm - 6:00pm (b)(6)
- 6:00pm - 7:00pm ABA Reception for International Law Enforcers  
(b)(6)

### Thursday, April 7

- 12:00am ABA Spring Meeting →
- 8:00am - 9:30am (b)(6)
- 10:00am - 10:30am Weekly Mtg. w/ Comm'r Slaughter & Comm'r Phillips (202-326 (b)(6) Slaughter, Rebecca
- 10:30am - 11:00am (b)(2) (b)(6)  
Slaughter, Rebecca
- 11:00am - 11:30am Weekly Mtg. w/Commissioner Slaughter & Commissioner Wilson (Call--Odd days (b)(6) Even days (b)(6)
- 12:00pm - 12:30pm (b)(2) (b)(6) Slaughter, Rebecca
- 1:00pm - 1:30pm Pre-Meeting for Speakers for the ABA Spring Meeting Program - A Rethink of the US Merger Guidelines (ABA
- 1:30pm - 3:00pm ABA Panel (Salons A-H)
- 6:15pm - 7:00pm ABA Chair's Reception (b)(6)

### Saturday, April 9

- 12:00am ABA Spring Meeting  
(b)(6)

### Sunday, April 10

- 12:00am ABA Spring Meeting  
(b)(6)

<b>April 11, 2022 -</b> <b>April 17, 2022</b>		April 2022 Su Mo Tu We Th Fr Sa 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30	May 2022 Su Mo Tu We Th Fr Sa 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31
<b>Monday, April 11</b>		<b>Tuesday, April 12</b>	
(b)(6)		(b)(6)	
10:00am - 11:00am Staff Meeting (202-326 (b)(6) Meeting ID (b)(6) Access code (b)(6) Slaughter, Rebecca ↕ 11:00am - 11:30am Weekly Meeting with Chair Khan and Commissioner Slaughter (LK to call RKS at (b)(6) Khan, Lina ↕ 11:30am - 12:00pm Quarterly Chat w/ Commissioner Starks (RKS to call GS) 1:00pm - 1:30pm OPA Monthly Meeting w/ Commissioner Slaughter (https://ftc.zoomgov.com/ (b)(6) (b)(6) Slaughter, Rebecca ↕		3:00pm - 4:00pm BC Biweekly Meeting w/ Commissioner Slaughter ↕ 3:00pm - 4:00pm My Name is Pauli Murray (Viewing) (https://ftc.zoomgov.com/ (b)(6) Huber, Susan (b)(6)	
<b>Wednesday, April 13</b>		<b>Thursday, April 14</b>	
(b)(6)		(b)(6)	
		11:00am - 11:30am OPP Monthly Meeting w/ Commissioner Slaughter ((202) 326 (b)(6) Meeting Number (b)(6) Access Code: (b)(6) Slaughter, Rebecca ↕ 2:00pm - 3:00pm FYI-M&A Listening Forum: Health Care (Live webcast via FTC.gov) 3:00pm - 3:30pm Weekly Mtg. w/Commissioner Slaughter & Commissioner Wilson (Call--Odd days (b)(6) even days (b)(6) Wilson, Christine ↕	
<b>Friday, April 15</b>		<b>Saturday, April 16</b>	
(b)(6)		(b)(6)	
		<b>Sunday, April 17</b> (b)(6)	

<b>April 18, 2022 - April 24, 2022</b>		April 2022 Su Mo Tu We Th Fr Sa 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30	May 2022 Su Mo Tu We Th Fr Sa 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31
<b>Monday, April 18</b> (b)(6) 10:00am - 11:00am Staff Meeting (202-326-(b)(6)) Meeting ID: (b)(6) Access code: (b)(6) - Slaughter, Rebecca ↻ 11:00am - 11:30am Weekly Meeting with Chair Khan and Commissioner Slaughter (LK to call RKS at (b)(6)) - Khan, Lina ↻ 12:00pm - 1:00pm BCP Biweekly Meeting w/ Commissioner Slaughter (https://ftc.zoomgov.com/join/(b)(6)) (b)(6) Slaughter, Rebecca ↻ 2:00pm - 3:00pm MWR Virtual Visit w/ Commissioner Slaughter (https://ftc.zoomgov.com/join/(b)(6)) (b)(6) - Slaughter, Rebecca	<b>Tuesday, April 19</b> (b)(6)		
<b>Wednesday, April 20</b> (b)(6)	<b>Thursday, April 21</b> (b)(6) 3:00pm - 3:30pm Weekly Mtg. w/Commissioner Slaughter & Commissioner Wilson (Call--Odd days (b)(6) even days (b)(6)) Wilson, Christine ↻		
<b>Friday, April 22</b> (b)(6)	<b>Saturday, April 23</b> (b)(6)		
	<b>Sunday, April 24</b>		

April 25, 2022 - May 1, 2022		April 2022	May 2022
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		24 25 26 27 28 29 30	29 30 31
<b>Monday, April 25</b>		<b>Tuesday, April 26</b>	
<p>10:00am - 11:00am Staff Meeting (202-326-(b)(6)) Meeting ID: (b)(6) Access code: (b)(6) Slaughter, Rebecca ☐</p> <p>1:00pm - 2:00pm OIA Monthly Meeting w/ Commissioner Slaughter (https://ftc.zoomgov.com/join/(b)(6))</p> <p>2:00pm - 2:30pm Weekly Meeting with Chair Khan and Commissioner Slaughter (LK to call RKS at (b)(6)) Khan, Lina ☐</p> <p>2:30pm - 3:00pm Quick check-in (https://ftc.zoomgov.com/join/(b)(6)) Khan, Lina</p> <p>3:00pm - 4:00pm BCP Biweekly Meeting w/ Commissioner Slaughter (https://ftc.zoomgov.com/join/(b)(6))</p> <p>4:00pm - 5:00pm Discussion w/ Commissioner Slaughter</p>		<p>10:00am - 10:30am BE Biweekly Meeting w/ Commissioner Slaughter (https://ftc.zoomgov.com/join/(b)(6)) Slaughter, Rebecca ☐</p> <p>10:30am - 11:00am (b)(2) (H-(b)(6)) Slaughter, Rebecca</p> <p>1:00pm - 2:00pm SER Virtual Visit w/ Commissioner Slaughter (https://ftc.zoomgov.com/join/(b)(6)) Slaughter, Rebecca</p> <p>2:00pm - 3:00pm DivCo Quarterly Meeting (https://ftc.zoomgov.com/join/(b)(6)) Huber, Susan</p> <p>3:00pm - 4:00pm BC Biweekly Meeting w/ Commissioner Slaughter ☐</p>	
<b>Wednesday, April 27</b>		<b>Thursday, April 28</b>	
<p>10:00am - 10:30am (b)(2) (H-(b)(6)) Slaughter, Rebecca</p> <p>11:00am - 11:30am (b)(2) (H-(b)(6)) Slaughter, Rebecca</p> <p>11:45am - 12:15pm (b)(2) (H-(b)(6))</p> <p>12:45pm - 1:15pm (b)(2) (b)(6) (https://ftc.zoomgov.com/join/(b)(6)) Slaughter, Rebecca</p> <p>1:00pm - 1:30pm (b)(2) Discussion (Microsoft Teams Meeting) - Woolery, Ricardo</p> <p>1:30pm - 2:30pm FYI-M&amp;A Listening Forum: Media and Entertainment (Live webcast via FTC.gov)</p> <p>3:30pm - 6:00pm (b)(6)</p>		<p>10:00am - 11:00am ECR Virtual Visit w/ Commissioner Slaughter (https://ftc.zoomgov.com/join/(b)(6)) Slaughter, Rebecca</p> <p>11:00am - 11:30am (b)(2) Discussion w/ Linda Wilson (H-(b)(6))</p> <p>1:00pm - 3:00pm April Open Commission Meeting (Links to Meeting Rooms Below) - Tabor, April</p> <p>3:00pm - 3:30pm Weekly Mtg. w/Commissioner Slaughter &amp; Commissioner Wilson (Call--Odd days (b)(6) even days (b)(6)) Wilson, Christine ☐</p>	
<b>Friday, April 29</b>		<b>Saturday, April 30</b>	
<p>(b)(6)</p> <p>10:00am - 10:30am Chat w/ Darren (b)(6) Slaughter, Rebecca</p> <p>1:00pm - 1:30pm (b)(6) (b)(6) (https://ftc.zoomgov.com/join/(b)(6)) Slaughter, Rebecca</p>		<b>Sunday, May 1</b>	

<b>May 2, 2022 -</b> <b>May 8, 2022</b>		May 2022 Su Mo Tu We Th Fr Sa 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31	June 2022 Su Mo Tu We Th Fr Sa 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30
<b>Monday, May 2</b> (b)(6)	<b>Tuesday, May 3</b> (b)(6)		
<b>Wednesday, May 4</b> 10:00am - 11:00am Meeting w US Ambassador to Germany	<b>Thursday, May 5</b> (b)(6)		
<b>Friday, May 6</b> (b)(6) 10:00am - 11:00am Breakfast w/ AG Weiser ( (b)(6) ) (b)(6) 11:00am - 4:00pm Common Ground Conference (History Colorado Center, 1200 Broadway, Denver)	<b>Saturday, May 7</b> (b)(6)		
		<b>Sunday, May 8</b>	

<b>May 9, 2022 - May 15, 2022</b>		May 2022 SuMo TuWe Th Fr Sa 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31	June 2022 SuMo TuWe Th Fr Sa 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30
<b>Monday, May 9</b> (b)(6) 10:00am - 11:00am Staff Meeting (202-326-(b)(6)) Meeting ID: (b)(6) Access code: (b)(6) Slaughter, Rebecca ☐ 11:00am - 11:30am Budget Briefing w/ Commissioner Slaughter (https://ftc.zoomgov.com/ (b)(6)) 11:30am - 12:00pm Weekly Meeting with Chair Khan and Commissioner Slaughter (LK to call RKS at (b)(6)) Khan, Lina 1:00pm - 1:30pm OPA Monthly Meeting w/ Commissioner Slaughter 2:00pm - 3:00pm WRLA Virtual Visit w/ Commissioner Slaughter (https://ftc.zoomgov.com/ (b)(6)) 3:00pm - 4:00pm BCP Biweekly Meeting w/ Commissioner Slaughter (b)(6)	<b>Tuesday, May 10</b> (b)(6) 10:00am - 10:30am BE Biweekly Meeting w/ Commissioner Slaughter (https://ftc.zoomgov.com/ (b)(6)) (b)(6) Slaughter, Rebecca ☐ 1:00pm - 2:00pm BC Biweekly Meeting w/ Commissioner Slaughter (b)(6)		
<b>Wednesday, May 11</b> (b)(6) (b)(6) 11:00am - 12:00pm NER Virtual Visit w/ Commissioner Slaughter (https://ftc.zoomgov.com/ (b)(6)) (b)(6) Slaughter, Rebecca ☐ 1:00pm - 2:00pm Compliance Check-in w/ Commissioner Slaughter (https://ftc.zoomgov.com/ (b)(6)) (b)(6) Slaughter, Rebecca ☐ 3:30pm - 4:00pm OCR Monthly Meeting w/ Commissioner Slaughter (https://ftc.zoomgov.com/ (b)(6)) (b)(6) Slaughter, Rebecca ☐	<b>Thursday, May 12</b> (b)(6) (b)(6) 8:00am - 9:30am ACLI Capital Challenge (b)(6) 10:00am - 10:30am Weekly Mtg. w/ Comm'r Slaughter & Comm'r Phillips (202-326-(b)(6)) Slaughter, Rebecca ☐ 11:00am - 11:30am OPP Monthly Meeting w/ Commissioner Slaughter ((202) 326-(b)(6)) Meeting Number: (b)(6) Access Code: (b)(6) Slaughter, Rebecca ☐ 12:00pm - 1:00pm Lunch w/ Director Chopra & Commissioner Phillips (CFPB lobby (1700 G Street, NW)) 2:00pm - 3:00pm RWJ Barnabas / St. Peter's Briefing w/ Commissioner Slaughter 3:00pm - 3:30pm Weekly Mtg. w/ Commissioner Slaughter & Commissioner Wilson (Call--Odd days, (b)(6) Even days, (b)(6))		
<b>Friday, May 13</b> (b)(6)	<b>Saturday, May 14</b> (b)(6)		
	<b>Sunday, May 15</b> (b)(6)		

<b>May 16, 2022 -</b> <b>May 22, 2022</b>		May 2022 Su Mo Tu We Th Fr Sa 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31	June 2022 Su Mo Tu We Th Fr Sa 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30
<b>Monday, May 16</b> (b)(6)	<b>Tuesday, May 17</b> (b)(6)		
<b>Wednesday, May 18</b> (b)(6)	<b>Thursday, May 19</b> (b)(6)	<b>10:00am - 11:00am Staff Meeting</b> (202-326-(b)(6)) Meeting ID: (b)(6) Access code: (b)(6) Slaughter, Rebecca ↻	<b>10:00am - 10:30am Weekly Mtg. w/ Comm'r Slaughter &amp; Comm'r Phillips</b> (202-326-(b)(6)) Slaughter, Rebecca ↻
<b>12:30pm - 12:40pm FTC Leadership Academy Welcome Remarks</b> (https://ftc.zoomgov.com/(b)(6)) (b)(6)	<b>11:00am - 12:00pm HCA/Steward Staff Briefing w/ Commissioner Slaughter</b> (https://ftc.zoomgov.com/(b)(6)) Slaughter, Rebecca	<b>12:45pm - 1:30pm Meeting w/ Olivier Sylvain</b> (b)(6) Slaughter, Rebecca	<b>1:00pm - 3:00pm May Open Commission Meeting</b> (Links to Rooms Below) - Tabor, April
<b>2:00pm - 3:00pm Commissioner Bedoya's Ceremonial Swearing-in</b> [please do not circulate] (FTC HQ Courtyard) - Robbins, David	<b>3:00pm - 3:30pm Weekly Mtg. w/ Commissioner Slaughter &amp; Commissioner Wilson</b> (Call--Odd days, (b)(6) even days, (b)(6)) Wilson, Christine ↻		<b>3:30pm - 4:00pm Weekly Meeting with Chair Khan and Commissioner Slaughter</b> (LK to call RKS at (b)(6)) Khan, Lina ↻
<b>Friday, May 20</b> (b)(6)	<b>Saturday, May 21</b>	<b>1:00pm - 2:00pm Com. Slaughter and Children and Teens Advocates</b> (b)(6)	
<b>2:00pm - 2:45pm Initial Call w/ Cmsr Slaughter and AD - Zoom Meeting</b> (https://ftc.zoomgov.com/(b)(6)) #Hunt, Julia	<b>Sunday, May 22</b> (b)(6)		

# May 23, 2022 - May 29, 2022

May 2022							June 2022							
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15	16	17	18	19	20	21		12	13	14	15	16	17	18
22	23	24	25	26	27	28		19	20	21	22	23	24	25
29	30	31						26	27	28	29	30		

Monday, May 23	Tuesday, May 24
<p>(b)(6)</p> <p>11:15am - 12:15pm CPDP Panel-Manipulative Design Practices Online: policy solutions for the EU and the US (b)(6)</p>	<p>2:30am - 11:30am Forum for EU-US Legal-Economic Affairs (Mentor Group) (b)(6)</p> <p>1:00pm - 2:30pm UK Mission Drinks Reception (b)(6)</p> <p>(b)(6)</p>
Wednesday, May 25	Thursday, May 26
<p>(b)(6)</p> <p>(b)(6)</p>	<p>(b)(6)</p> <p>10:00am - 10:30am Weekly Mtg. w/ Comm'r Slaughter &amp; Comm'r Phillips (202-326-(b)(6)) Slaughter, Rebecca ☐</p> <p>11:00am - 11:30am Weekly Mtg. w/Commissioner Slaughter &amp; Commissioner Wilson (Call--Odd days,(b)(6)even days, (b)(6)) Wilson, Christine ☐</p> <p>11:30am - 12:00pm Weekly Meeting with Chair Khan and Commissioner Slaughter (LK to call RKS at (b)(6)) Khan, Lina ☐</p> <p>1:00pm - 2:00pm HCA/Steward Party Meeting w/ Commissioner Slaughter (https://ftc.zoomgov.com/(b)(6))</p> <p>2:00pm - 3:00pm BC Biweekly Meeting w/ Commissioner Slaughter ☐</p> <p>3:00pm - 4:00pm RWJ Barnabas Party Meeting w/ Commissioner Slaughter (</p>
Friday, May 27	Saturday, May 28
<p>(b)(6)</p> <p>11:00am - 12:00pm BCP Biweekly Meeting w/ Commissioner Slaughter (https://ftc.zoomgov.com/(b)(6)) Slaughter, Rebecca ☐</p> <p>3:30pm - 5:30pm Team Slaughter Outing (b)(6) Slaughter, Rebecca</p>	<p>(b)(6)</p>
	Sunday, May 29
	<p>(b)(6)</p>

**May 30, 2022 - June 5, 2022**

May 2022							June 2022							
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa	
	1	2	3	4	5	6	7		1	2	3	4		
8	9	10	11	12	13	14		5	6	7	8	9	10	11
15	16	17	18	19	20	21		12	13	14	15	16	17	18
22	23	24	25	26	27	28		19	20	21	22	23	24	25
29	30	31						26	27	28	29	30		

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**Monday, May 30**

Memorial Day

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**Tuesday, May 31**

(b)(6)

**10:00am - 11:00am Staff Meeting** (202-326-(b)(6)) Meeting ID: (b)(6)  
Access code: (b)(6) Slaughter, Rebecca ☺

**11:30am - 12:30pm Planning check in** - Slaughter, Rebecca  
(b)(6)

**2:30pm - 3:00pm Weekly Meeting with Chair Khan and Commissioner Slaughter** (LK to call RKS at (b)(6)) Khan, Lina ☺

**3:00pm - 4:00pm OIA Monthly Meeting w/ Commissioner Slaughter**  
(<https://ftc.zoomgov.com>) (b)(6)  
(b)(6) Slaughter, Rebecca

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(b)(6), Non Responsive Record

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Slaughter, Rebecca 1 6/6/2022 8:36 PM

<b>May 30, 2022 - June 5, 2022</b>		May 2022 Su Mo Tu We Th Fr Sa 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31	June 2022 Su Mo Tu We Th Fr Sa 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30
<b>Monday, May 30</b> <input type="checkbox"/> Memorial Day	<b>Tuesday, May 31</b> (b)(6) 10:00am - 11:00am Staff Meeting (202-326-(b)(6)) Meeting ID: (b)(6) Access code: (b)(6) - Slaughter, Rebecca ☺ 11:30am - 12:30pm Planning check in - Slaughter, Rebecca 1:00pm - 2:00pm (b)(6) 2:30pm - 3:00pm Weekly Meeting with Chair Khan and Commissioner Slaughter (LK to call RKS at (b)(6)) - Khan, Lina ☺ 3:00pm - 4:00pm OIA Monthly Meeting w/ Commissioner Slaughter (https://ftc.zoomgov.com/(b)(6)) (b)(6) - Slaughter, Rebecca		
<b>Wednesday, June 1</b> (b)(6) 1:00pm - 1:30pm OCR Monthly Meeting w/ Commissioner Slaughter (https://ftc.zoomgov.com/(b)(6)) (b)(6) - Slaughter, Rebecca ☺ 2:00pm - 3:00pm Health Care Briefing w/ Commissioner Slaughter (https://ftc.zoomgov.com/(b)(6)) (b)(6) - Slaughter, Rebecca	<b>Thursday, June 2</b> (b)(6) 10:00am - 10:30am Weekly Mtg. w/ Comm'r Slaughter & Comm'r Phillips (202-326-(b)(6)) - Slaughter, Rebecca ☺ 1:00pm - 3:00pm Closed Commission Meeting Scheduled for June 2, 2022 (https://ftc.zoomgov.com/(b)(6)) (b)(6) - Tabor, April 3:00pm - 3:30pm Weekly Mtg. w/ Commissioner Slaughter & Commissioner Wilson (Call--Odd days (b)(6) even days (b)(6)) - Wilson, Christine ☺		
<b>Friday, June 3</b> <input type="checkbox"/> 10:00am - 11:00am (b)(6) <input checked="" type="checkbox"/> 12:30pm - 1:30pm Lunch	<b>Saturday, June 4</b>          <b>Sunday, June 5</b>		

# June 6, 2022 - June 12, 2022

June 2022							July 2022						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
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19	20	21	22	23	24	25	17	18	19	20	21	22	23
26	27	28	29	30			24	25	26	27	28	29	30
							31						

<p><b>Monday, June 6</b></p> <p>(b)(6)</p> <p>(b)(6)</p> <p>10:00am - 11:00am Staff Meeting (202-326-(b)(6)) Meeting ID: (b)(6) Access code: (b)(6) - Slaughter, Rebecca ☐</p> <p>11:00am - 11:30am Weekly Meeting with Chair Khan and Commissioner Slaughter (LK to call RKS at (b)(6)) - Khan, Lina</p> <p>11:30am - 12:00pm (b)(6)</p> <p>12:30pm - 1:00pm Weekly Mtg w/ Commissioner Bedoya &amp; Commissioner Slaughter (H-(b)(6)) - Slaughter, Rebecca ☐</p> <p>1:30pm - 2:00pm (b)(5), (b)(7)(A) Briefing w/ Comrs.' Slaughter and Bedoya</p> <p>2:00pm - 3:00pm (b)(5), (b)(7)(A) w/ Commissioner</p> <p>3:00pm - 4:00pm BCP Biweekly Meeting w/ Commissioner</p> <p>4:00pm - 6:00pm (b)(6)</p>	<p><b>Tuesday, June 7</b></p> <p>8:00am - 9:30am (b)(6)</p> <p>10:15am - 10:45am BE Biweekly Meeting w/ Commissioner Slaughter (https://ftc.zoomgov.com/(b)(6)) - Slaughter, Rebecca ☐</p> <p>1:00pm - 2:00pm NWRO Virtual Visit w/ Commissioner Slaughter (https://ftc.zoomgov.com/(b)(6)) - Slaughter, Rebecca</p> <p>2:00pm - 3:00pm FW: AWG Supply Chain Presentation for Commissioner Slaughter - Shearer, Tyler L.</p> <p>3:00pm - 4:00pm BC Biweekly Meeting w/ Commissioner Slaughter ☐</p> <p>4:00pm - 6:00pm (b)(6)</p>
<p><b>Wednesday, June 8</b></p> <p>(b)(6)</p> <p>1:00pm - 3:00pm Strategic Planning Meeting (b)(6) ☐ &amp; 202-326-(b)(6) Meeting ID: (b)(6) Access code: (b)(6) - Slaughter, Rebecca</p> <p>4:00pm - 6:00pm (b)(6)</p>	<p><b>Thursday, June 9</b></p> <p>(b)(6)</p> <p>8:00am - 9:30am (b)(6)</p> <p>10:00am - 10:30am Weekly Mtg. w/ Comm'r Slaughter &amp; Comm'r Phillips (202-326-(b)(6)) - Slaughter, Rebecca ☐</p> <p>11:00am - 11:30am OPP Monthly Meeting w/ Commissioner Slaughter ((202) 326-(b)(6)) Meeting Number: (b)(6) Access Code: (b)(6) - Slaughter, Rebecca ☐</p> <p>1:00pm - 2:15pm Interview w/ Leslie Overton (Microsoft Teams) - Slaughter, Rebecca</p> <p>2:15pm - 3:15pm RightsCon 2022 Fireside Chat (https://us02web.zoom.us/(b)(6)) - Slaughter, Rebecca ☐</p> <p>4:00pm - 5:00pm PRIDE Month Kick-Off Event (H-432 &amp; Zoom)</p>
<p><b>Friday, June 10</b></p> <p>(b)(6)</p> <p>11:00am - 11:30am Weekly Mtg. w/ Commissioner Slaughter &amp; Commissioner Wilson (Call--Odd days, (b)(6) even days, (b)(6)) - Wilson, Christine ☐</p> <p>1:00pm - 1:30pm -</p>	<p><b>Saturday, June 11</b></p> <p><b>Sunday, June 12</b></p>

## June 13, 2022 - June 19, 2022

June 2022							July 2022						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
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19	20	21	22	23	24	25	17	18	19	20	21	22	23
26	27	28	29	30			24	25	26	27	28	29	30
													31

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### Monday, June 13

- 9:15am - 9:30am Log in
- 9:30am - 10:30am Florence Summer Competition Conference Keynote (Zoom link in body)
- 11:00am - 11:30am Weekly Meeting with Chair Khan and Commissioner Slaughter (LK to call RKS at (b)(6)) - Khan, Lina
- 11:30am - 12:00pm Staff Meeting (202-326-(b)(6)) Meeting ID: (b)(6) Access code: (b)(6) - Slaughter, Rebecca
- 12:00pm - 1:00pm FYI-Save the Date! The State of LGBTQ+ Rights in America (Zoom) - Solomon, Ronnie
- 12:30pm - 1:00pm Weekly Mta w/ Commissioner Bedoya & Commissioner Slaughter (b)(6) - Slaughter, Rebecca
- 1:00pm - 1:30pm OPA Monthly Meeting w/ Commissioner Slaughter
- 1:00pm - 1:30pm KRISTIN GREER's Zoom Meeting
- 2:00pm - 3:00pm FYI-NAAG Antitrust and Labor Issues Working

### Tuesday, June 14

- Flag Day (United States)
- 9:00am - 12:00pm FYI: Pharma Task Force Workshop (https://ftc-the-future-of-pharmaceutical-(b)(6))
- 9:00am - 9:30am The Future of Pharmaceuticals Virtual Workshop: Welcome/Intro/Keynote - Chair Khan, AAG Kanter and Commissioner Slaughter (Zoom Link Included) - Brayboy, Jacqueline
- 1:00pm - 1:30pm Discuss (b)(5) Cmsr. Slaughter (Microsoft Teams Meeting) - Hunt, Julia
- 1:30pm - 2:00pm Paralegal Interview w/ (b)(6) (914)-217-8756
- 2:00pm - 3:00pm (b)(5), (b)(7)(A) (https://ftc.zoomgov.com/join/(b)(6)) - Dickinson, Charles
- 3:00pm - 4:00pm Meeting to discuss privacy & civil rights rulemaking (https://ftc.zoomgov.com/join/(b)(6))

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### Wednesday, June 15

- 9:00am - 11:30am FYI: Pharma Task Force Workshop (TBD)
- 2:00pm - 3:00pm (b)(6)
- 3:00pm - 4:00pm OIA Monthly Meeting w/ Commissioner Slaughter (https://ftc.zoomgov.com/join/(b)(6)) - Slaughter, Rebecca

### Thursday, June 16

- 10:00am - 10:30am Weekly Mtg. w/ Comm'r Slaughter & Comm'r Phillips (202-326-(b)(6)) - Slaughter, Rebecca
- 1:00pm - 3:00pm June Open Commission Meeting (Links to Rooms Below) - Tabor, April
- 3:00pm - 3:30pm Weekly Mtg. w/Commissioner Slaughter & Commissioner Wilson (Call--Odd days, (b)(6) even days, (b)(6) - Wilson, Christine

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### Friday, June 17

- 10:00am - 10:30am Paralegal Interview w/ (b)(6) (202-758-5723)
- 2:00pm - 2:30pm Audio Only: Kim Vandecar & Cmr. Wilson (Microsoft Teams Meeting) - Wilson, Christine

### Saturday, June 18

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### Sunday, June 19

Slaughter, Rebecca
1
7/6/2022 1:51 PM

<b>June 20, 2022 -</b> <b>June 26, 2022</b>																																																																																												
<div style="display: flex; justify-content: space-around;"> <table border="1"> <caption>June 2022</caption> <tr><th>Su</th><th>Mo</th><th>Tu</th><th>We</th><th>Th</th><th>Fr</th><th>Sa</th></tr> <tr><td></td><td></td><td></td><td>1</td><td>2</td><td>3</td><td>4</td></tr> <tr><td>5</td><td>6</td><td>7</td><td>8</td><td>9</td><td>10</td><td>11</td></tr> <tr><td>12</td><td>13</td><td>14</td><td>15</td><td>16</td><td>17</td><td>18</td></tr> <tr><td>19</td><td>20</td><td>21</td><td>22</td><td>23</td><td>24</td><td>25</td></tr> <tr><td>26</td><td>27</td><td>28</td><td>29</td><td>30</td><td></td><td></td></tr> </table> <table border="1"> <caption>July 2022</caption> <tr><th>Su</th><th>Mo</th><th>Tu</th><th>We</th><th>Th</th><th>Fr</th><th>Sa</th></tr> <tr><td></td><td></td><td></td><td></td><td></td><td>1</td><td>2</td></tr> <tr><td>3</td><td>4</td><td>5</td><td>6</td><td>7</td><td>8</td><td>9</td></tr> <tr><td>10</td><td>11</td><td>12</td><td>13</td><td>14</td><td>15</td><td>16</td></tr> <tr><td>17</td><td>18</td><td>19</td><td>20</td><td>21</td><td>22</td><td>23</td></tr> <tr><td>24</td><td>25</td><td>26</td><td>27</td><td>28</td><td>29</td><td>30</td></tr> <tr><td>31</td><td></td><td></td><td></td><td></td><td></td><td></td></tr> </table> </div>		Su	Mo	Tu	We	Th	Fr	Sa				1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30			Su	Mo	Tu	We	Th	Fr	Sa						1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31						
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<b>Monday, June 20</b> Juneteenth 12:30pm - 1:00pm Weekly Mtg w/ Commissioner Bedoya & Commissioner Slaughter (b)(6) - Slaughter, Rebecca ☐	<b>Tuesday, June 21</b> (b)(6) Office Day 10:00am - 11:00am Staff Meeting (202-326-(b)(6)) Meeting ID:(b)(6) Access code:(b)(6) - Slaughter, Rebecca ☐ 11:30am - 12:00pm Weekly Meeting with Chair Khan and Commissioner Slaughter (LK to call RKS at (b)(6)) - Khan, Lina ☐ 1:00pm - 3:30pm (b)(5) Zoom link in body)																																																																																											
<b>Wednesday, June 22</b> (b)(6)	<b>Thursday, June 23</b> (b)(6)																																																																																											
11:00am - 12:00pm SWR Virtual Visit w/ Commissioner Slaughter (https://ftc.zoomgov.com/join/(b)(6)) - Slaughter, Rebecca 12:00pm - 1:00pm FYI-LGBTQ+ Youth Mental Health (Zoom link in body) 3:00pm - 4:00pm BC Biweekly Meeting w/ Commissioner Slaughter ☐	(b)(6) 10:00am - 10:30am Weekly Mtg. w/ Comm'r Slaughter & Comm'r Phillips (202-326-(b)(6)) - Slaughter, Rebecca ☐ 12:00pm - 1:00pm BCP Biweekly Meeting w/ Commissioner Slaughter (https://ftc.zoomgov.com/join/(b)(6)) - Slaughter, Rebecca ☐ 2:00pm - 3:00pm Meeting w/ Spencer Waller (H-326) 5:00pm - 7:00pm Pride FTC/USTR Happy Hour (b)(6) - Pride Employee Resource Group																																																																																											
<b>Friday, June 24</b> (b)(6)	<b>Saturday, June 25</b> (b)(6)																																																																																											
(b)(6)	<b>Sunday, June 26</b> (b)(6)																																																																																											



**June 27, 2022 -  
July 3, 2022**

June 2022						July 2022							
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26	27	28	29	30			24	25	26	27	28	29	30
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Non Responsive Record

Friday, July 1	Saturday, July 2
(b)(6)	
12:30pm - 1:00pm Weekly Mtg. w/Commissioner Slaughter & Commissioner Wilson (Call--Odd days (b)(6) even days (b)(6) - Wilson, Christine ☺	
	Sunday, July 3
	(b)(6)





<b>July 18, 2022 -</b> <b>July 24, 2022</b>		July 2022 Su Mo Tu We Th Fr Sa 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31	August 2022 Su Mo Tu We Th Fr Sa 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31
<b>Monday, July 18</b> (b)(6) 10:00am - 11:00am Staff Meeting (202-326-(b)(6)) Meeting ID: (b)(6) Access code: (b)(6) - Slaughter, Rebecca ☐ 11:00am - 11:30am Weekly Meeting with Chair Khan and Commissioner Slaughter (LK to call RKS at (b)(6)) - Khan, Lina ☐ 12:30pm - 1:00pm Weekly Mtg w/ Commissioner Bedoya & Commissioner Slaughter (b)(6) - Slaughter, Rebecca ☐ 3:00pm - 4:00pm BCP Biweekly Meeting w/ Commissioner Slaughter (https://ftc.zoomgov.com/(b)(6)) (b)(6) Slaughter, Rebecca ☐	<b>Tuesday, July 19</b> 10:00am - 10:30am BE Biweekly Meeting w/ Commissioner Slaughter (https://ftc.zoomgov.com/(b)(6)) (b)(6) Slaughter, Rebecca ☐ 11:00am - 11:30am Chat w/ Maria (https://ftc.zoomgov.com/(b)(6)) (b)(6) 12:00pm - 1:00pm (b)(5), (b)(7)(A) w/ Commissioner Slaughter (https://ftc.zoomgov.com/(b)(6)) (b)(6) Slaughter, Rebecca ☐ 2:00pm - 2:45pm BC Biweekly Meeting w/ Commissioner Slaughter ☐ 2:45pm - 4:30pm LPE/ESP Antimonopoly Academic Research Event		
<b>Wednesday, July 20</b> (b)(6) 10:00am - 11:00am (b)(5), (b)(7)(A) w/ Commissioner Slaughter (https://weil.zoom.us/(b)(6)) (b)(6) Slaughter, Rebecca ☐ 1:00pm - 2:00pm Meet With the Commissioners: Their Own Path to the FTC (https://ftc.zoomgov.com/(b)(6)) (b)(6) Strother, Darryl ☐ 3:30pm - 5:30pm Randy Tritell's Farewell Party (b)(6)	<b>Thursday, July 21</b> 10:00am - 10:30am Weekly Mtg. w/ Comm'r Slaughter & Comm'r Phillips (202-328-(b)(6)) - Slaughter, Rebecca ☐ 10:30am - 11:30am (b)(5) (b)(6) (b)(6) - Slaughter, Rebecca ☐ 1:00pm - 4:00pm HomeAdvisor Oral Argument (https://openexc.zoom.us/(b)(6)) (b)(6) Tabor, April		
<b>Friday, July 22</b> KG AWS ☐ Office afternoon 2:00pm - 2:30pm Erik Winker's Zoom Meeting (https://ftc.zoomgov.com/(b)(6)) (b)(6) Winker, Erik ☐ 3:00pm - 4:00pm Phillips/Slaughter Gathering (b)(6) - Greer, Kristin	<b>Saturday, July 23</b>   		
	<b>Sunday, July 24</b>   		

<b>July 25, 2022 - July 31, 2022</b>		July 2022 Su Mo Tu We Th Fr Sa	August 2022 Su Mo Tu We Th Fr Sa
		1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31
<b>Monday, July 25</b>		<b>Tuesday, July 26</b>	
<ul style="list-style-type: none"> <li>■ 10:00am - 11:00am Staff Meeting (202-326-(b)(6)) Meeting ID: (b)(6) Access code: (b)(6) - Slaughter, Rebecca ☐</li> <li>■ 11:00am - 11:30am Weekly Meeting with <b>Chair Khan and Commissioner Slaughter</b> (LK to call RKS at (b)(6)) - Khan, Lina ☐</li> <li>■ 12:30pm - 1:00pm Weekly Mtg w/ <b>Commissioner Bedoya &amp; Commissioner Slaughter</b> (AB to call RKS at (b)(6)) - Slaughter, Rebecca ☐</li> <li>■ 1:00pm - 3:00pm Closed Commission Meeting (<a href="https://ftc.zoomgov.com/join/((b)(6))">https://ftc.zoomgov.com/join/((b)(6))</a>) - Tabor, April</li> </ul>		<ul style="list-style-type: none"> <li>■ 10:00am - 10:30am Weekly Mtg. w/ <b>Comm'r Slaughter &amp; Comm'r Phillips</b> (202-326-(b)(6)) - Slaughter, Rebecca ☐</li> <li>■ 11:30am - 12:00pm Chat w/ <b>Reilly</b> (b)(6)</li> <li>■ 12:30pm - 2:00pm (b)(5), (b)(7)(A)</li> <li>■ 2:00pm - 3:00pm Monthly Mtg w/ <b>Cmsr Slaughter Staff and OGC</b> (Microsoft TEAMS) - Hunt, Julia ☐</li> </ul>	
<b>Wednesday, July 27</b>		<b>Thursday, July 28</b>	
<ul style="list-style-type: none"> <li>■ 9:00am - 9:30am Closed Commission Meeting (<a href="https://ftc.zoomgov.com/join/((b)(6))">https://ftc.zoomgov.com/join/((b)(6))</a>) - Tabor, April</li> <li>■ 11:00am - 11:30am Quarterly w/ <b>Commissioner Starks</b> (GS will call BKS)</li> <li>■ 2:00pm - 3:00pm Diversity Council Quarterly Meeting (<a href="https://ftc.zoomgov.com/join/((b)(6))">https://ftc.zoomgov.com/join/((b)(6))</a>) - FTC Diversity Council</li> </ul>		<ul style="list-style-type: none"> <li>■ 3:00pm - 3:30pm Weekly Mtg. w/ <b>Commissioner Slaughter &amp; Commissioner Wilson</b> (Call--Odd days: (b)(6) even days: (b)(6)) - Wilson, Christine ☐</li> </ul>	
<b>Friday, July 29</b>		<b>Saturday, July 30</b>	
<ul style="list-style-type: none"> <li>■ 10:30am - 11:00am Farewell <b>Reilly</b> (<a href="https://ftc.zoomgov.com/join/((b)(6))">https://ftc.zoomgov.com/join/((b)(6))</a>) - Slaughter, Rebecca</li> </ul>			
		<b>Sunday, July 31</b>	

<b>August 1, 2022 - August 7, 2022</b>																																																																																																			
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<b>Monday, August 8</b> (b)(6) 11:00am - 11:30am Weekly Meeting with Chair Khan and Commissioner Slaughter (LK to call RKS a (b)(6)) - Khan, Lina ☺	<b>Tuesday, August 9</b> 10:00am - 11:00am Staff Meeting (202-326-2415   Meeting ID: (b)(6)) Access code: (b)(6) - Slaughter, Rebecca ☺																																																																																																		
<b>Wednesday, August 10</b> 10:00am - 10:30am Chat w/ Leah Samuel (b)(6) 11:00am - 11:30am Law Clerk Interview (b)(6) (b)(6) 12:30pm - 1:00pm Weekly Mtg w/ Commissioner Bedoya & Commissioner Slaughter (b)(6) - Slaughter, Rebecca ☺ 2:00pm - 3:00pm Executive Director Ask Me Anything Sessions about the Future of Work 3:30pm - 4:00pm Law Clerk Interview (b)(6) (b)(6) 5:00pm - 5:15pm Call w/ Senator Wicker (Dial: (b)(6)) Access Code: (b)(6) - Slaughter, Rebecca 6:00pm - 6:15pm Call w/ Senator Wyden (202) 326-2415   Meeting Number: (b)(6) Access Code: (b)(6) - Slaughter, Rebecca 6:30pm - 7:00pm Call w/ Senator Schatz (202-326-2415   Meeting ID: (b)(6)) Access code: (b)(6) - Slaughter, Rebecca	<b>Thursday, August 11</b> 10:00am - 10:30am Weekly Mtg. w/ Comm'r Slaughter & Comm'r Phillips (202-326-3776) - Slaughter, Rebecca ☺ 10:30am - 12:00pm HOLD: Outreach 12:00pm - 12:30pm ANPR Press Conference (Zoom link in body) - Slaughter, Rebecca 1:00pm - 2:00pm Executive Director Ask Me Anything Sessions about the Future of Work 2:00pm - 2:30pm Law Clerk Interview (b)(6) 2:30pm - 3:00pm (b)(6) (https://ftc.zoomgov.com/(b)(6)) 3:00pm - 3:30pm Weekly Mtg. w/Commissioner Slaughter & Commissioner Wilson (Call--Odd days, (b)(6))even days, (b)(6) - (b)(6) 3:30pm - 4:00pm Law Clerk Interview (b)(6) (b)(6) 4:00pm - 4:30pm Call w/ Congresswoman Castor (202-326-2415)																																																																																																		
<b>Friday, August 12</b> (b)(6) 11:00am - 11:30am Chat w/ Achutha (b)(6)	<b>Saturday, August 13</b> (b)(6)																																																																																																		
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<b>Friday, August 19</b> Non Responsive Record 11:30am - 11:30am (b)(5) (b)(5) Wilson, Christine ↻ 2:30pm - 3:00pm Call w/ Congresswoman Schakowsky (202-326-2415   Meeting ID: (Non) Access code: (Non) - Slaughter, Rebecca	<b>Saturday, August 20</b> (b)(6)																																																																																																																																																																								
(b)(6)	<b>Sunday, August 21</b> Non Responsive Record																																																																																																																																																																								

<b>August 22, 2022 - August 28, 2022</b>		<small>August 2022</small> <small>Su Mo Tu We Th Fr Sa</small> <small>1 2 3 4 5 6</small> <small>7 8 9 10 11 12 13</small> <small>14 15 16 17 18 19 20</small> <small>21 22 23 24 25 26 27</small> <small>28 29 30 31</small>	<small>September 2022</small> <small>Su Mo Tu We Th Fr Sa</small> <small>1 2 3</small> <small>4 5 6 7 8 9 10</small> <small>11 12 13 14 15 16 17</small> <small>18 19 20 21 22 23 24</small> <small>25 26 27 28 29 30</small>
<b>Monday, August 22</b>	<b>Tuesday, August 23</b>		
<small>(b)(6)</small>  11:00am - 11:30am Weekly Meeting with <b>Chair Khan and Commissioner Slaughter</b> (LK to call RKS at <small>(b)(6)</small> ) - Khan, Lina <small>☺</small>			
<b>Wednesday, August 24</b>	<b>Thursday, August 25</b>		
<small>(b)(6)</small>			
<b>Friday, August 26</b>	<b>Saturday, August 27</b>		
Non Responsive Record			
		<b>Sunday, August 28</b>	

<b>August 29, 2022 - September 4, 2022</b>		August 2022 Su Mo Tu We Th Fr Sa 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31	September 2022 Su Mo Tu We Th Fr Sa 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30
<b>Monday, August 29</b> 10:00am - 11:00am Staff Meeting (202-326-2415   Meeting ID: (b)(6) Access code: (b)(6) - Slaughter, Rebecca 12:30pm - 1:00pm Weekly Mtg w/ Commissioner Bedoya & Commissioner Slaughter (b)(6) - Slaughter, Rebecca 2:00pm - 2:30pm Chat w/ Viola (b)(6) - Slaughter, Rebecca	<b>Tuesday, August 30</b> 10:00am - 10:30am BE Biweekly Meeting w/ Commissioner Slaughter (https://ftc.zoomgov.com/(b)(6)) (b)(6) - Slaughter, Rebecca 10:30am - 11:00am RKS & Syna Chat (b)(6) (https://ftc.zoomgov.com/(b)(6)) (b)(6) - Greer, Kristin 1:00pm - 2:00pm Monthly Mtg w/ Cmshr Slaughter Staff and OGC (Microsoft TEAMS) - Hunt, Julia		
<b>Wednesday, August 31</b> 10:00am - 11:00am (b)(5) Commissioner Slaughter (https://ftc.zoomgov.com/(b)(6)) (b)(6) 11:00am - 12:00pm BC Biweekly Meeting w/ Commissioner Slaughter (https://ftc.zoomgov.com/(b)(6)) (b)(6) - Slaughter, Rebecca	Non Responsive Record		
Non Responsive Record			

# August 29, 2022 - September 4, 2022

August 2022							September 2022							
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28	29	30	31					25	26	27	28	29	30	

Non Responsive Record

Non Responsive Record

**Thursday, September 1**

- 10:00am - 10:30am Weekly Mtg. w/ Comm'r Slaughter & Comm'r Phillips (202-326-3776) - Slaughter, Rebecca
- 11:00am - 12:00pm OIA Monthly Meeting w/ Commissioner Slaughter  
(https://ftc.zoomgov.com/ [b](6) ) - Slaughter, Rebecca
- 1:30pm - 2:00pm [b](6)

**Friday, September 2**

[b](6)

- 11:00am - 12:00pm BCP Biweekly Meeting w/ Commissioner Slaughter  
(https://ftc.zoomgov.com/ [b](6) ) - Slaughter, Rebecca

**Saturday, September 3**

**Sunday, September 4**

## September 5, 2022 - September 11, 2022

September 2022						October 2022							
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25	26	27	28	29	30		23	24	25	26	27	28	29
							30	31					

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**Monday, September 5**

- Labor Day
- 12:30pm - 1:00pm Weekly Mtg w/ Commissioner Bedoya & Commissioner Slaughter (b)(6) - Slaughter, Rebecca ☐
- 5:15pm (b)(6)

**Tuesday, September 6**

- 7:20am (b)(6)
- 12:00pm - 3:00pm Welcome Reception & Dinner (b)(6)
- (b)(6)

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**Wednesday, September 7**

- 2:30am - 10:30am G7 Day 1 (b)(6)
- (b)(6)
- 12:00pm - 1:00pm Beethoven Haus Visit
- 1:00pm - 3:00pm Dinner (b)(6)

**Thursday, September 8**

- 3:00am - 8:00am G7 Day 2 (b)(6)
- (b)(6)
- 9:00am - 10:00am Tour of German "Haus der Geschichte" (House of History)
- 10:00am - 10:30am Weekly Mtg. w/ Comm'r Slaughter & Comm'r Phillips (202-326-3776) - Slaughter, Rebecca ☐
- 12:00pm - 12:45pm Bilateral Mtg. w/ Commissioner Kelber (b)(6)
- (b)(6) - Slaughter, Rebecca
- 2:00pm - 4:45pm Commercial Surveillance Public Forum
- ([https://openex.zoom.us/\(b\)\(6\)](https://openex.zoom.us/j/(b)(6)))
- (b)(6)

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**Friday, September 9**

- 7:10am - 4:00pm (b)(6)

**Saturday, September 10**

**Sunday, September 11**

Slaughter, Rebecca

2

9/30/2022 1:15 PM

September 2022		October 2022											
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
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25	26	27	28	29	30		23	24	25	26	27	28	29
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September 12, 2022 - September 18, 2022	September 12	September 13	September 14	September 15	September 16	September 17	September 18
	<p><b>Monday, September 12</b></p> <ul style="list-style-type: none"> <li>Lawrence &amp; Amita's first day</li> <li>10:00am - 11:00am Staff Meeting (202-326-2415   Meeting ID: [b](6)   Access code: [b](6) - Slaughter, Rebecca</li> <li>11:00am - 11:30am Weekly Meeting with Chair Khan and Commissioner Slaughter (LK to call RKS at [b](6) - Khan, Lina</li> <li>11:30am - 1:30pm Altria-Julul Oral Argument (D9393) (https://openex.zoom.us/[b](6) - Freer, Daniel R.</li> <li>2:30pm - 3:00pm OPA Monthly Meeting w/ Commissioner Slaughter (https://ftc.zoomgov.com/[b](6) - Slaughter, Rebecca</li> <li>3:00pm - 3:30pm Meeting w/ JFTC Commissioner Aoki [b](6) - Slaughter, Rebecca</li> </ul>	<p><b>Tuesday, September 13</b></p> <ul style="list-style-type: none"> <li>10:00am - 10:30am BE Biweekly Meeting w/ Commissioner Slaughter (https://ftc.zoomgov.com/[b](6) - Slaughter, Rebecca</li> <li>12:30pm - 1:00pm Weekly Mtg w/ Commissioner Bedoya &amp; Commissioner Slaughter [b](6) - Slaughter, Rebecca</li> <li>1:00pm - 1:20pm Welcome Amita and Lawrence! (https://ftc.zoomgov.com/[b](6) - Greer, Kristin</li> <li>2:00pm - 3:30pm Georgetown Global Antitrust Enforcement Symposium [b](6)</li> <li>3:45pm - 5:15pm FYI-Commissioner Phillips panel [b](6)</li> </ul>	<p><b>Wednesday, September 14</b></p> <ul style="list-style-type: none"> <li>10:00am - 10:30am OCR Monthly Meeting w/ Commissioner Slaughter (https://ftc.zoomgov.com/[b](6) - Slaughter, Rebecca</li> <li>11:00am - 12:00pm BCP Biweekly Meeting w/ Commissioner Slaughter (https://ftc.zoomgov.com/[b](6) - Slaughter, Rebecca</li> <li>12:30pm - 1:30pm [b](5); [b](7)(A) w/ Commissioner Slaughter (https://ftc.zoomgov.com/[b](6) - Slaughter, Rebecca</li> <li>3:00pm - 4:00pm BC Biweekly Meeting w/ Commissioner Slaughter</li> </ul>	<p><b>Thursday, September 15</b></p> <ul style="list-style-type: none"> <li>10:00am - 10:30am Weekly Mtg. w/ Comm'r Slaughter &amp; Comm'r Phillips (202-326-3776) - Slaughter, Rebecca</li> <li>11:30am - 12:00pm OPP Monthly Meeting w/ Commissioner Slaughter ((202) 326-2415   Meeting Number: [b](6)   Access Code: [b](6) - Slaughter, Rebecca</li> <li>1:00pm - 3:00pm September Open Commission Meeting (Updated with Links) (Links to Rooms Below) - Tabor, April</li> <li>3:00pm - 3:30pm Weekly Mtg. w/Commissioner Slaughter &amp; Commissioner Wilson (Call--Odd days [b](6) even days [b](6) - Wilson, Christine</li> <li>3:00pm - 4:00pm Diversity Council Special Meeting (Virtual) (https://ftc.zoomgov.com/[b](6) - FTC Diversity Council</li> </ul>	<p><b>Friday, September 16</b></p>	<p><b>Saturday, September 17</b></p>	<p><b>Sunday, September 18</b></p>

September 19, 2022 - September 25, 2022		September 2022	October 2022
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		25 26 27 28 29 30	23 24 25 26 27 28 29
			30 31
<b>Monday, September 19</b> 10:00am - 11:00am Staff Meeting (202-326-2415   Meeting ID: (b)(6)) Access code: (b)(6) - Slaughter, Rebecca ☺ 11:30am - 12:00pm Weekly Meeting with Chair Khan and Commissioner Slaughter (LK to call RKS at (b)(6)) - Khan, Lina ☺ 2:00pm - 3:00pm (b)(6) 3:30pm - 4:00pm Meeting w/ Cmr. Slaughter & DEI Taskforce Leadership Team (https://ftc.zoomgov.com/join/(b)(6)) (b)(6) Greer, Kristin		<b>Tuesday, September 20</b> 10:00am - 11:00am (b)(5), (b)(7)(A) (https://ftc.zoomgov.com/join/(b)(6)) (b)(6) - Slaughter, Rebecca 2:00pm - 5:30pm Mentor Group Forum (b)(6) (b)(6)	
<b>Wednesday, September 21</b> 10:00am - 11:00am Meeting w/ EDPS Wiewirowski (b)(6) - Slaughter, Rebecca 11:00am - 11:30am (b)(6), (b)(7)(C) (b)(6) - Slaughter, Rebecca 11:30am - 12:00pm (b)(6), (b)(7)(C) (b)(6) - Slaughter, Rebecca 1:00pm - 1:30pm OIG Update w/ Commissioner Slaughter & IG Katsaros (202-326-2415   Meeting Number: (b)(6)   Access Code: (b)(6)) 1:30pm - 3:00pm Strategic Planning Meeting (b)(6) & (b)(6) 202-326-2415   Meeting ID: (b)(6)   Access code: (b)(6) - Slaughter, Rebecca 3:00pm - 3:30pm Weekly Mtg. w/ Comm'r Slaughter & Comm'r Phillips (202-326-3776) - Slaughter, Rebecca ☺		<b>Thursday, September 22</b> 10:00am - 11:00am FW: (b)(5) Meeting with Commissioner Slaughter (https://davispolk.zoom.us/join/(b)(6)) (b)(6) - Lee, Grace 11:00am - 12:00pm (b)(5), (b)(7)(A) w/ Commissioner Slaughter (https://ftc.zoomgov.com/join/(b)(6)) (b)(6) - Slaughter, Rebecca 12:00pm - 1:30pm (b)(6) 2:00pm - 2:30pm (b)(6), (b)(7)(C) - Slaughter, Rebecca 3:00pm - 3:30pm Weekly Mtg. w/ Commissioner Slaughter & Commissioner Wilson (Call--Odd days: (b)(6) even days: (b)(6)) - Wilson, Christine ☺	
<b>Friday, September 23</b>		<b>Saturday, September 24</b>	
		<b>Sunday, September 25</b>	

<b>September 26, 2022 - October 2, 2022</b>	
September 2022 Su Mo Tu We Th Fr Sa 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30	October 2022 Su Mo Tu We Th Fr Sa 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31
<b>Monday, September 26</b> (b)(6)	<b>Tuesday, September 27</b> (b)(6) 10:00am - 11:00am Staff Meeting (202-326-2415   Meeting ID: (b)(6) Access code: (b)(6) - Slaughter, Rebecca ↻
<b>Wednesday, September 28</b> 10:00am - 10:30am (b)(6), (b)(7)(C) (BKS to call JK) - Slaughter, Rebecca 10:45am - 11:15am (b)(6), (b)(7)(C) (BKS to call GL) - Slaughter, Rebecca 11:30am - 12:00pm Weekly Meeting with Chair Khan and Commissioner Slaughter (LK to call RKS at (b)(6)) - Khan, Lina ↻ 1:00pm - 2:00pm Meeting w/ Andy Green re: seeds IP & competition (b)(6) - Slaughter, Rebecca 2:00pm - 3:00pm Monthly Mtg w/ Cmsr Slaughter Staff and OGC (Microsoft TEAMS) - Hunt, Julia ↻ 3:00pm - 4:00pm Meeting w/ coalition re: Petition for 6(b) Study of Electric Utilities (https://ftc.zoomgov.com/(b)(6)) (b)(6) - Slaughter, Rebecca	<b>Thursday, September 29</b> 9:40am - 10:00am Requested arrival (b)(6) 10:05am - 10:30am Q&A-POLITICO AI & Tech Summit (b)(6) (b)(6) 11:30am - 12:00pm (b)(6), (b)(7)(C) (b)(6) - Slaughter, Rebecca 12:00pm - 1:00pm BC Biweekly Meeting w/ Commissioner Slaughter (https://ftc.zoomgov.com/(b)(6)) (b)(6) - Slaughter, Rebecca ↻ 1:00pm - 3:00pm Closed Commission Meeting (https://ftc.zoomgov.com/(b)(6)) (b)(6) - Tabor, April
<b>Friday, September 30</b> (b)(6) 10:00am - 10:30am BE Biweekly Meeting w/ Commissioner Slaughter (https://ftc.zoomgov.com/(b)(6)) (b)(6) - Slaughter, Rebecca ↻ 10:30am - 11:00am Eyeglass Rule - DAP briefing w/ Commissioner Slaughter (https://ftc.zoomgov.com/(b)(6)) (b)(6) - Slaughter, Rebecca 11:00am - 11:30am Weekly Mtg w/ Commissioner Bedoya & Commissioner Slaughter (AB to call RKS) - Slaughter, Rebecca ↻ 12:30pm - 1:30pm Hispanic Heritage Month-A Fireside Chat with Commissioner Alvaro Bedoya and the Honorable Mari Carmen Aponte (https://ftc.zoomgov.com/(b)(6)) (b)(6)	<b>Saturday, October 1</b>  <b>Sunday, October 2</b>

<b>September 26, 2022 - October 2, 2022</b>		September 2022	October 2022										
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25	26	27	28	29	30		23	24	25	26	27	28	29
							30	31					

(b)(6); Non Responsive Record	
(b)(6); Non Responsive Record	<b>Saturday, October 1</b>
(b)(6); Non Responsive Record	<b>Sunday, October 2</b>

October 2022		November 2022											
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
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16	17	18	19	20	21	22	20	21	22	23	24	25	26
23	24	25	26	27	28	29	27	28	29	30			
30	31												

Monday, October 3	Tuesday, October 4
<p><b>10:00am - 11:00am Staff Meeting</b> (202-326-(b)(6)) Meeting ID: (b)(6) Access code: (b)(6) - Slaughter, Rebecca ↻</p> <p><b>12:30pm - 1:00pm Weekly Mtg. w/ Commissioner Bedoya &amp; Commissioner Slaughter</b> (b)(6) - Slaughter, Rebecca ↻</p> <p><b>3:00pm - 3:30pm</b> (b)(7)(A) Microsoft Teams Meeting) - Chun, Barbara</p>	<p><b>12:30pm - 1:30pm Closed Commission Meeting</b> (b)(7)(A) (https://ftc.zoomgov.com/join/(b)(6)) Tabor, April</p> <p><b>2:00pm - 3:00pm OIA Monthly Meeting w/ Commissioner Slaughter</b> (https://ftc.zoomgov.com/join/(b)(6)) Slaughter, Rebecca ↻</p> <p><b>3:00pm - 3:30pm OCR Monthly Meeting w/ Commissioner Slaughter</b> (https://ftc.zoomgov.com/join/(b)(6)) Slaughter, Rebecca ↻</p> <p><b>3:30pm - 5:00pm</b></p>
Wednesday, October 5	Thursday, October 6
<p><b>8:00am - 5:00pm Yom Kippur</b></p>	<p><b>11:00am - 12:00pm Chat w/ Elizabeth Wilkins &amp; Comm. Slaughter</b> (b)(6) Slaughter, Rebecca</p> <p><b>1:00pm - 1:30pm Weekly Meeting with Chair Khan and Commissioner Slaughter</b> (LK to call RKS at (b)(6)) Khan, Lina ↻</p> <p><b>1:30pm - 2:15pm IAPP Planning Call</b> (https://ftc.zoomgov.com/join/(b)(6)) Slaughter, Rebecca</p> <p><b>3:00pm - 3:30pm Weekly Mtg. w/ Commissioner Slaughter &amp; Commissioner Wilson</b> (Call--Odd days, (b)(6) even days, (b)(6) - Wilson, Christine ↻</p> <p><b>3:00pm - 4:00pm Daniel Gilman's Farewell</b> (HQ-Courtyard) - Martinez, Melody</p> <p><b>5:30pm - 10:00pm CDT's Tech Prom</b> (The Anthem)</p>
Friday, October 7	Saturday, October 8
<p><b>10:15am - 10:45am Weekly Mtg. w/ Comm'r Slaughter &amp; Comm'r Phillips</b> (202-326-(b)(6)) Slaughter, Rebecca ↻</p>	<p>(b)(6)</p>
	Sunday, October 9
	<p>(b)(6)</p>

October 2022		November 2022											
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16	17	18	19	20	21	22	20	21	22	23	24	25	26
23	24	25	26	27	28	29	27	28	29	30			
30	31												

<p><b>October 10, 2022 -</b> <b>October 16, 2022</b></p>	
<p><b>Monday, October 10</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Columbus Day</li> <li><input checked="" type="checkbox"/> 1:30pm - 3:00pm Closed Commission Meeting (b)(7)(A) (https://ftc.zoomgov.com/ (b)(6)) Tabor, April</li> </ul>	<p><b>Tuesday, October 11</b></p> <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> 10:00am - 11:00am Staff Meeting (202-326-(b)(6)) Meeting ID: (b)(6) Access code: (b)(6) - Slaughter, Rebecca ↕</li> <li><input checked="" type="checkbox"/> 11:00am - 11:30am Audio Only: OS Quarterly Check-in w/ Commissioner Slaughter (Microsoft Teams Meeting) - Kalepe, Roland ↕</li> <li><input checked="" type="checkbox"/> 12:30pm - 1:00pm Weekly Mtg w/ Commissioner Bedoya &amp; Commissioner Slaughter (b)(6) Slaughter, Rebecca ↕</li> <li><input checked="" type="checkbox"/> 1:30pm - 2:00pm BE Biweekly Meeting w/ Commissioner Slaughter ↕</li> <li><input checked="" type="checkbox"/> 2:00pm - 2:30pm GPA Discussion w/ Commissioner Slaughter (https://ftc.zoomgov.com/ (b)(6)) Slaughter, Rebecca</li> <li><input checked="" type="checkbox"/> 4:30pm - 5:00pm Weekly Mtg. w/Commissioner Slaughter &amp; Commissioner Wilson (Call--Odd days, (b)(6)even days, (b)(6)) Wilson, Christine ↕</li> </ul>
<p><b>Wednesday, October 12</b></p> <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> 1:00pm - 3:22pm (b)(6)</li> </ul>	<p><b>Thursday, October 13</b></p> <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> 9:40am - 10:10am Requested arrival time (JW Marriott Austin-Spotlight Stage)</li> <li><input checked="" type="checkbox"/> 10:00am - 11:00am IAPP Privacy, Security, Risk, 2022 (Spotlight Stage, Lone Star Ballroom F, Level 3)</li> <li><input checked="" type="checkbox"/> 2:00pm - 3:00pm Closed Commission Meeting (b)(7)(A) (https://ftc.zoomgov.com/ (b)(6)) Tabor, April</li> <li><input checked="" type="checkbox"/> 3:50pm - 4:20pm Sync CPO Dupree and Commissioner Slaughter (JW Marriott Austin Meeting Room 205) - ROBINSON, BRENT</li> </ul>
<p><b>Friday, October 14</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> (b)(6)</li> <li><input checked="" type="checkbox"/> 12:07pm - 4:54pm (b)(6)</li> </ul>	<p><b>Saturday, October 15</b></p> <p><b>Sunday, October 16</b></p>

October 2022		November 2022											
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16	17	18	19	20	21	22	20	21	22	23	24	25	26
23	24	25	26	27	28	29	27	28	29	30			
30	31												

### October 17, 2022 - October 23, 2022

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#### Monday, October 17

- 10:00am - 11:00am Staff Meeting (202-326-(b)(6)) Meeting ID: (b)(6)  
Access code: (b)(6) Slaughter, Rebecca ↗
- 11:00am - 11:30am Weekly Meeting with Chair Khan and Commissioner Slaughter (LK to call RKS at (b)(6) Khan, Lina ↗
- 12:30pm - 1:00pm Weekly Mtg w/ Commissioner Bedoya & Commissioner Slaughter (b)(6) Slaughter, Rebecca ↗
- 1:00pm - 2:00pm DEI Strategic Plan Task Force Mtg. w/ Commissioner Slaughter  
(https://ftc.zoomgov.com/(b)(6))
- 2:00pm - 2:30pm OPA Monthly Meeting w/ Commissioner Slaughter  
(https://ftc.zoomgov.com/(b)(6))
- 3:00pm - 4:00pm COPPA rule/YouTube kids briefing w/ Comr. Slaughter  
(https://ftc.zoomgov.com/(b)(6))

#### Tuesday, October 18

- 10:00am - 10:30am FW: Ditchley Call (Microsoft Teams Meeting) - Raquel Mariani Fernandez
- 1:00pm - 2:00pm Durbin Amendment Briefing w/ Commissioner Slaughter  
(https://ftc.zoomgov.com/(b)(6)) Slaughter, Rebecca
- 2:00pm - 3:00pm Meeting w/ Paul Barrett, NYU  
(https://ftc.zoomgov.com/(b)(6)) Slaughter, Rebecca

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#### Wednesday, October 19

- 12:00pm - 1:00pm BC Mom's Group (Microsoft Teams Meeting) - Tasso, Christine
- 1:00pm - 1:30pm OPP Monthly Meeting w/ Commissioner Slaughter ((202) 326-(b)(6)) Meeting Number: (b)(6) Access Code: (b)(6) Slaughter, Rebecca ↗
- 1:30pm - 2:15pm OPA Discuss ESI Policy (Microsoft Teams Meeting) - Tabor, April
- 2:30pm - 3:00pm Call w/ Abigail Ferguson (b)(6)
- 3:30pm - 4:00pm FW: Commissioner Slaughter | Brad Smith (Microsoft Teams Meeting) - Randy Long (CELA)

#### Thursday, October 20

- 11:00am - 11:30am GPA schedule chat  
(https://ftc.zoomgov.com/(b)(6)) Slaughter, Rebecca
- 1:00pm - 3:00pm October Open Commission Meeting (Link Information) (Commissioners Room and Public Comments Room Links Below) - Tabor, April
- 3:00pm - 3:30pm Weekly Mtg. w/Commissioner Slaughter & Commissioner Wilson (Call--Odd days (b)(6) even days, (b)(6) Wilson, Christine ↗
- 4:00pm - 5:00pm FW: (b)(7)(A) Meeting with Commissioner Slaughter  
(https://paulweiss.zoom.us/(b)(6)) Margolis, Sam C.

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#### Friday, October 21

#### Saturday, October 22

6:10pm (b)(6) →

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#### Friday, October 21

#### Sunday, October 23

10:00am (b)(6)

<b>October 24, 2022 -</b> <b>October 30, 2022</b>		October 2022 Su Mo Tu We Th Fr Sa	November 2022 Su Mo Tu We Th Fr Sa
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<b>Monday, October 24</b> 12:00am Global Privacy Assembly 6:15am - 9:30am FPF Private Group Tour on the Bosphorus (Karaköy Pier, Kemankeş Karamustafa Paşa Mah, Kemankeş Karamustafa Paşa, Rıhtım Cd. No:13, 34425 Beyoğlu/Istanbul, Turkey) - FPF Events Calendar 10:30am - 12:30pm CIPL cocktail reception (The Marmara Taksim Panorama   Osmanlı Sokak No 1/8 Taksim 34437, Istanbul, Türkiye) - Slaughtner, Rebecca 12:30pm - 2:30pm IAPP Dinner (Hamdi Restaurant - Eminonu) - Slaughtner, Rebecca		<b>Tuesday, October 25</b> 12:00am Global Privacy Assembly 10:40am - 11:40am PETS Panel (Hasköy Meeting Room (inside the Convention Center where the Open Session takes place)) - Slaughtner, Rebecca 1:00pm - 3:00pm GPA Welcome Reception (Haliç Congress Center) - Slaughtner, Rebecca	
<b>Wednesday, October 26</b> 12:00am Global Privacy Assembly 6:15am - 7:15am Lunch (Lazzoni Hotel (Sutluce Mahallesi Imrahor Caddesi No.14, 34445 Eyüp Istanbul, Türkiye); Jin Terrace Floor 6) 7:30am - 8:00am Meet with CNIL president Marie-Laure Denis (H-6) - Roschke, Guilherme 12:00pm - 2:30pm Sonsini Goodrich & Rosati cocktails & dinner (Çırağan Palace Kempinski, located Çırağan Cad. 32 - Beşiktaş 34349) - Slaughtner, Rebecca		<b>Thursday, October 27</b> 12:00am Global Privacy Assembly KG OOO 6:55am - 1:05pm (b)(6)	
<b>Friday, October 28</b> (b)(6)		<b>Saturday, October 29</b>	
		<b>Sunday, October 30</b>	

# October 31, 2022 - November 6, 2022

October 2022							November 2022						
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16	17	18	19	20	21	22	20	21	22	23	24	25	26
23	24	25	26	27	28	29	27	28	29	30			
30	31												

## Monday, October 31

- Halloween (United States)
- 10:00am - 11:00am Staff Meeting (202-326-(b)(6)) Meeting ID: (b)(6)  
Access code: (b)(6) Slaughter, Rebecca ↕
- 11:00am - 11:30am Weekly Meeting with Chair Khan and Commissioner Slaughter (LK to call RKS at (b)(6)) Khan, Lina ↕
- 12:30pm - 1:00pm Weekly Mtg w/ Commissioner Bedoya & Commissioner Slaughter (-(b)(6)) Slaughter, Rebecca ↕
- 1:00pm - 3:00pm Intuit Oral Argument (D09408)  
(https://openex.zoom.us/j/(b)(6)) Tabor, April
- 3:00pm - 3:30pm Weekly Mtg. w/Commissioner Slaughter & Commissioner Wilson (Call--Odd days, (b)(6) ven days, (b)(6)) Wilson, Christine ↕

Non Responsive Record

Non Responsive Record

<b>October 31, 2022 - November 6, 2022</b>		October 2022	November 2022
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		30 31	
		<b>Tuesday, November 1</b>	
		(b)(6)	
<b>Wednesday, November 2</b>		<b>Thursday, November 3</b>	
		(b)(6)	
■ 1:30pm - 2:00pm FYI-CFC Kickoff			
<b>Friday, November 4</b>		<b>Saturday, November 5</b>	
(b)(6)			
		<b>Sunday, November 6</b>	

November 7, 2022 - November 13, 2022		November 2022	December 2022
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		13 14 15 16 17 18 19	11 12 13 14 15 16 17
		20 21 22 23 24 25 26	18 19 20 21 22 23 24
		27 28 29 30	25 26 27 28 29 30 31
<b>Monday, November 7</b> ■ 10:00am - 11:00am Staff Meeting (b)(6) Meeting ID: (b)(6) Access code: (b)(6) - Slaughter, Rebecca ■ 11:00am - 11:30am Weekly Meeting with Chair Khan and Commissioner Slaughter (LK to call RKS at (b)(6) - Khan, Lina ■ 12:30pm - 1:00pm Weekly Mtg w/ Commissioner Bedoya & Commissioner Slaughter (b)(6) Slaughter, Rebecca ■ 3:00pm - 4:00pm BCP Biweekly Meeting w/ Commissioner Slaughter (https://ftc.zoomgov.com/join/(b)(6)) Slaughter, Rebecca		<b>Tuesday, November 8</b> ■ 10:00am - 10:30am BE Biweekly Meeting w/ Commissioner Slaughter (https://ftc.zoomgov.com/join/(b)(6)) Slaughter, Rebecca ■ 2:00pm - 2:30pm Benjamin Wiseman's Zoom Meeting (https://ftc.zoomgov.com/join/(b)(6)) Wiseman, Benjamin ■ 3:00pm - 4:00pm BC Biweekly Meeting w/ Commissioner Slaughter	
<b>Wednesday, November 9</b> ■ 10:00am - 10:45am Meeting with Fabienne Siredey-Garnier (VP of French Autorité) (b)(6) Slaughter, Rebecca ■ 3:00pm - 5:00pm FYI-NJP Farewell Party (b)(6) - Slaughter, Rebecca		<b>Thursday, November 10</b> (b)(6)	
<b>Friday, November 11</b> Veteran's Day (United States)		<b>Saturday, November 12</b>  <b>Sunday, November 13</b>	

November 14, 2022 - November 20, 2022		November 2022	December 2022
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		13 14 15 16 17 18 19	11 12 13 14 15 16 17
		20 21 22 23 24 25 26	18 19 20 21 22 23 24
		27 28 29 30	25 26 27 28 29 30 31
<p><b>Monday, November 14</b></p> <ul style="list-style-type: none"> <li>10:00am - 11:00am Staff Meeting (b)(6) Meeting ID: (b)(6) Access code: (b)(6) - Slaughter, Rebecca</li> <li>11:00am - 11:30am Weekly Meeting with Chair Khan and Commissioner Slaughter (LK to call RKS at (b)(6) - Khan, Lina</li> <li>12:30pm - 1:00pm Weekly Mtg w/ Commissioner Bedoya &amp; Commissioner Slaughter (b)(6) Slaughter, Rebecca</li> <li>1:00pm - 1:30pm OPA Monthly Meeting w/ Commissioner Slaughter (https://ftc.zoomgov.com/ (b)(6)</li> <li>1:30pm - 1:45pm (b)(5) prep (https://ftc.zoomgov.com/ (b)(6) - Slaughter, Rebecca</li> <li>2:00pm - 3:00pm AWAREmed Party Meeting w/ Commissioner Slaughter (https://ftc.zoomgov.com/ (b)(6)</li> </ul>		<p><b>Tuesday, November 15</b></p> <ul style="list-style-type: none"> <li>10:30am - 11:00am Chat w/ Aviv Nevo (https://ftc.zoomgov.com/ (b)(6)</li> <li>1:00pm - 1:30pm OCR Monthly Meeting w/ Commissioner Slaughter (https://ftc.zoomgov.com/ (b)(6) Slaughter, Rebecca</li> <li>2:00pm - 3:00pm FYI-Fireside Chat w/ LK &amp; Bill Kovacic (CC (b)(6) &amp; Zoom )</li> <li>4:00pm - 5:00pm PERG Reception w/Sam Levine (b)(6) - Levine, Samuel</li> </ul>	
<p><b>Wednesday, November 16</b></p> <ul style="list-style-type: none"> <li>10:00am - 10:30am Brussels Prep (https://ftc.zoomgov.com/ (b)(6) - Slaughter, Rebecca</li> <li>11:00am - 11:30am Weekly Mtg. w/Commissioner Slaughter &amp; Commissioner Wilson (Call--Odd days, (b)(6) even days, (b)(6) Wilson, Christine</li> <li>2:00pm - 2:30pm OIA Monthly Meeting w/ Commissioner Slaughter (https://ftc.zoomgov.com/ (b)(6) - Slaughter, Rebecca</li> </ul>		<p><b>Thursday, November 17</b></p> <ul style="list-style-type: none"> <li>RW at Fall Forum</li> <li>10:00am - 10:30am Law Clerk Interview w/ (b)(6)</li> <li>11:00am - 11:30am OQP Monthly Meeting w/ Commissioner Slaughter (b)(6) Meeting Number: (b)(6) Access Code: (b)(6) Slaughter, Rebecca</li> <li>1:00pm - 3:00pm November Open Commission Meeting (Link Information) (Commissioners Room and Public Comments Room Links Below) - Tabor, April</li> </ul>	
<p><b>Friday, November 18</b></p>		<p><b>Saturday, November 19</b></p>	
		<p><b>Sunday, November 20</b></p>	

November 21, 2022 - November 27, 2022		November 2022	December 2022
		Su Mo Tu We Th Fr Sa	Su Mo Tu We Th Fr Sa
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		6 7 8 9 10 11 12	4 5 6 7 8 9 10
		13 14 15 16 17 18 19	11 12 13 14 15 16 17
		20 21 22 23 24 25 26	18 19 20 21 22 23 24
		27 28 29 30	25 26 27 28 29 30 31
<b>Monday, November 21</b>		<b>Tuesday, November 22</b>	
(b)(6)		(b)(6)	
<p>10:00am - 11:00am Staff Meeting (b)(6) Meeting ID: (b)(6)                      Access code: (b)(6) Slaughter, Rebecca ↕</p> <p>11:00am - 11:30am Weekly Meeting with Chair Khan and Commissioner Slaughter (LK to call RKS at (b)(6) Khan, Lina ↕</p> <p>12:30pm - 1:00pm Weekly Mtg w/ Commissioner Bedoya &amp; Commissioner Slaughter (b)(6) Slaughter, Rebecca ↕</p> <p>1:00pm - 1:45pm The Athens Roundtable - Coordination for Dec 1st Session - Manifesto                      (b)(6)                      (b)(6)@thefuturesociety.org</p> <p>3:00pm - 4:00pm BCP Biweekly Meeting w/ Commissioner Slaughter                      (https://ftc.zoomgov.com (b)(6)                      (b)(6) Slaughter, Rebecca ↕</p>		<p>10:00am - 10:30am BE Biweekly Meeting w/ Commissioner Slaughter                      (https://ftc.zoomgov.com (b)(6)                      (b)(6) Slaughter, Rebecca ↕</p> <p>3:00pm - 4:00pm BC Biweekly Meeting w/ Commissioner Slaughter                      ↕</p>	
<b>Wednesday, November 23</b>		<b>Thursday, November 24</b>	
(b)(6)		(b)(6)	
		Thanksgiving	
<b>Friday, November 25</b>		<b>Saturday, November 26</b>	
(b)(6)			
		<b>Sunday, November 27</b>	

## November 28, 2022 - December 4, 2022

November 2022							December 2022							
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa	
			1	2	3	4	5				1	2	3	
6	7	8	9	10	11	12		4	5	6	7	8	9	10
13	14	15	16	17	18	19		11	12	13	14	15	16	17
20	21	22	23	24	25	26		18	19	20	21	22	23	24
27	28	29	30					25	26	27	28	29	30	31

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### Monday, November 28

- 10:00am - 11:00am Staff Meeting (b)(6) Meeting ID: (b)(6)  
Access code: (b)(6) - Slaughter, Rebecca ☺
- 10:00am - 11:00am Staff Meeting  
(https://ftc.zoomgov.com/join/ (b)(6))  
(b)(6) - Greer, Kristin
- 11:00am - 11:30am Weekly Meeting with Chair Khan and Commissioner Slaughter (LK to call RKS at (b)(6) - Khan, Lina ☺
- 11:30am - 12:00pm Weekly Mtg. w/ Commissioner Slaughter & Commissioner Wilson (Call--Odd days (b)(6) even days (b)(6) Wilson, Christine ☺
- 12:30pm - 1:00pm Weekly Mtg. w/ Commissioner Bedoya & Commissioner Slaughter (b)(6) Slaughter, Rebecca ☺
- 5:50pm (b)(6) →

### Tuesday, November 29

- 7:30am - 8:30am DG-COMP Brownbag (Madou Building, 1 Place Madou)
- 9:00am - 10:00am Meeting w/ DDG Guillaume Lorient (Madou Building, 1 Place Madou)
- 10:30am - 11:00am Meeting w/ Astrid Van Hecke & Matthew Fullerton, USEU (Rue Zinner 13)
- 1:30pm - 3:00pm Dinner

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### Wednesday, November 30

- 9:00am - 9:45am Meeting w/ Head of Cabinet Genevieve Tuts (Berlaymont at 200 rue de la Loi)
- 2:00pm - 3:30pm Speaker Dinner | The Athens Roundtable (Strofilia, Rue du Marché aux Porcs 11/13, 1000 Bruxelles, Belgium) - (b)(6)@thefuturesociety.org

Slaughter, Rebecca

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12/1/2022 10:43 AM

**November 28, 2022 -  
December 4, 2022**

November 2022							December 2022						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
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13	14	15	16	17	18	19	11	12	13	14	15	16	17
20	21	22	23	24	25	26	18	19	20	21	22	23	24
27	28	29	30				25	26	27	28	29	30	31

[Redacted]

[Redacted]

**Thursday, December 1**  
9:15am - 10:00am Requested early arrival  
10:00am - 2:00pm Athens Roundtable (Rue Wiertz 60, 1047 Brussels, Belgium)  
11:20am - 12:00pm Fireside Chat  
2:00pm - 2:30pm Farewell Amita & Lawrence  
(https://ftc.zoomgov.com) (b)(6)  
(b)(6) - Greer, Kristin  
3:30pm - 5:00pm Closed Commission Meeting: (b)(7)(A)  
(b)(7)(A)  
(https://ftc.zoomgov.com) (b)(6)  
(b)(6) Labor, April

**Friday, December 2**  
(b)(6)  
5:55am - 2:45pm (b)(6)

**Saturday, December 3**

**Sunday, December 4**

December 5, 2022 - December 11, 2022		December 2022	January 2023
		Su Mo Tu We Th Fr Sa	Su Mo Tu We Th Fr Sa
		1 2 3	1 2 3 4 5 6 7
		4 5 6 7 8 9 10	8 9 10 11 12 13 14
		11 12 13 14 15 16 17	15 16 17 18 19 20 21
		18 19 20 21 22 23 24	22 23 24 25 26 27 28
		25 26 27 28 29 30 31	29 30 31
<b>Monday, December 5</b>		<b>Tuesday, December 6</b>	
<p>9:00am - 9:30am (b)(6)</p> <p>10:00am - 11:00am Staff Meeting (202-326-2415, meeting ID (b)(6) access code (b)(6) Slaughter, Rebecca</p> <p>10:30am - 11:30am Video: Microsoft/Activision Staff Prep w/Cmm'r's Wilson &amp; Slaughter (Microsoft Teams Meeting) - Lewis, Tina M.</p> <p>12:30pm - 1:00pm Weekly Mtg w/ Commissioner Bedoya &amp; Commissioner Slaughter (b)(6) Slaughter, Rebecca</p> <p>1:00pm - 1:30pm OPP Monthly Meeting w/ Commissioner Slaughter ((202) 326-2415   Meeting Number (b)(6)   Access Code: (b)(6))</p> <p>1:30pm - 2:00pm Weekly Meeting with Chair Khan and Commissioner Slaughter (LK to call RKS at (b)(6) Khan, Lina</p> <p>2:00pm - 2:30pm Chat w/ Amita (b)(6)</p> <p>3:00pm - 4:00pm BCP Biweekly Meeting w/ Commissioner Slaughter</p>		<p>10:00am - 10:30am BE Biweekly Meeting w/ Commissioner Slaughter (https://ftc.zoomgov.com (b)(6) (b)(6) - Slaughter, Rebecca</p> <p>11:00am - 11:30am Meeting with EVP Vestager (Becca's office) - Coppola, Maria</p> <p>3:00pm - 4:00pm 2022 SES Live Annual Ethics Training (https://ftc.zoomgov.com (b)(6) (b)(6) Duarte, Regina L.</p>	
<b>Wednesday, December 7</b>		<b>Thursday, December 8</b>	
<p>9:45am - 10:00am Staff Photo-Comm Slaughter (b)(6) Alexander, Robert CTR</p> <p>10:00am - 11:00am Meeting w/ Communications Workers of America (CWA) (https://ftc.zoomgov.com (b)(6)</p> <p>11:00am - 12:00pm Meeting w/ Public Knowledge (https://ftc.zoomgov.com (b)(6) Slaughter, Rebecca</p> <p>12:30pm - 1:00pm Chat w/ Lawrence (b)(6)</p> <p>1:00pm - 1:30pm OCR Monthly Meeting w/ Commissioner Slaughter (https://ftc.zoomgov.com (b)(6)</p> <p>2:00pm - 3:00pm Meeting w/ International Brotherhood of Teamsters</p> <p>3:00pm - 4:00pm FW: Microsoft and Activision Meeting with Commissioner Slaughter</p>		<p>(b)(6)</p> <p>11:00am - 1:00pm Closed Commission Meeting (b)(7)(A) (b)(6) (https://ftc.zoomgov.com (b)(6) Chewning, George</p> <p>3:00pm - 4:00pm OIA Monthly Meeting w/ Commissioner Slaughter (https://ftc.zoomgov.com (b)(6) (b)(6) Slaughter, Rebecca</p>	
<b>Friday, December 9</b>		<b>Saturday, December 10</b>	
<p>(b)(6)</p> <p>11:00am - 12:00pm BC Biweekly Meeting w/ Commissioner Slaughter (https://ftc.zoomgov.com (b)(6) (b)(6) Slaughter, Rebecca</p>		<p>(b)(6)</p>	
		<b>Sunday, December 11</b>	

<b>December 12, 2022 - December 18, 2022</b>		December 2022 Su Mo Tu We Th Fr Sa 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31	January 2023 Su Mo Tu We Th Fr Sa 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31
<b>Monday, December 12</b> <ul style="list-style-type: none"> <li>■ 10:00am - 11:00am Staff Meeting (202-326-2415   Meeting ID: (b)(6) Access code: (b)(6) - Slaughter, Rebecca ↻</li> <li>■ 11:00am - 11:30am Weekly Meeting with Chair Khan and Commissioner Slaughter (LK to call RKS at (b)(6) Khan, Lina ↻</li> <li>■ 11:30am - 12:00pm Weekly Mtg. w/Commissioner Slaughter &amp; Commissioner Wilson (Call--Odd days:(b)(6) even days:(b)(6) Wilson, Christine ↻</li> <li>■ 12:30pm - 1:00pm Weekly Mtg w/ Commissioner Bedoya &amp; Commissioner Slaughter (b)(6) Slaughter, Rebecca ↻</li> <li>■ 1:00pm - 1:30pm OPA Monthly Meeting w/ Commissioner Slaughter (https://ftc.zoomgov.com/(b)(6) (b)(6) Slaughter, Rebecca ↻</li> </ul>	<b>Tuesday, December 13</b> <ul style="list-style-type: none"> <li>■ 10:30am - 11:00am Quarterly Check-in w/ Commissioner Starks (Microsoft Teams)</li> <li>■ 1:00pm - 4:00pm Illumina/Graill (D09401): Oral Argument + Executive Session (b)(6) Tabor, April</li> </ul>		
<b>Wednesday, December 14</b> <ul style="list-style-type: none"> <li>■ 11:00am - 1:00pm December Open Commission Meeting (Commissioners Room and Public Speaker Room Links Below) - Tabor, April</li> <li>■ 12:00pm - 1:00pm Crafty Lunch (Microsoft Teams) - Rothfarb, Lisa ↻</li> <li>■ 1:30pm - 4:00pm Team Slaughter Holiday (b)(6) Slaughter, Rebecca</li> </ul>	<b>Thursday, December 15</b> <ul style="list-style-type: none"> <li>■ 11:30am - 12:30pm A Very Merry Alumni Gathering (https://ftc.zoomgov.com/(b)(6) Slaughter, Rebecca</li> <li>■ 1:00pm - 4:00pm FTC Annual Awards &amp; Holiday Party (CC-ABC with streaming to (b)(6) Regional Offices, and Zoom) - ExecutiveDirector</li> </ul>		
<b>Friday, December 16</b>	<b>Saturday, December 17</b>		
	<b>Sunday, December 18</b>		

December 19, 2022 - December 25, 2022		December 2022	January 2023
		Su Mo Tu We Th Fr Sa	Su Mo Tu We Th Fr Sa
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		4 5 6 7 8 9 10	8 9 10 11 12 13 14
		11 12 13 14 15 16 17	15 16 17 18 19 20 21
		18 19 20 21 22 23 24	22 23 24 25 26 27 28
		25 26 27 28 29 30 31	29 30 31
Monday, December 19	Tuesday, December 20		
(b)(6)			
<p>10:00am - 11:00am Staff Meeting (202-326-2415, meeting ID (b)(6), access code (b)(6)) Slaughter, Rebecca ↕</p> <p>11:00am - 11:30am Weekly Meeting with Chair Khan and Commissioner Slaughter (LK to call RKS at (b)(6)) Khan, Lina ↕</p> <p>12:30pm - 1:00pm Weekly Mtg w/ Commissioner Bedoya &amp; Commissioner Slaughter (b)(6) Slaughter, Rebecca ↕</p> <p>1:00pm - 1:30pm Julia/Becca Check-In (b)(6) Steinberg, Julia</p> <p>3:45pm - 4:15pm Party Meeting with Chair Khan (b)(7)(A)</p> <p>(b)(7)(A)</p> <p>(b)(6)</p> <p>(b)(6) Rindfuss, Peter</p>	<p>12:00pm - 1:00pm BCP Biweekly Meeting w/ Commissioner Slaughter</p> <p>(https://fc.zoomgov.com (b)(6)) (b)(6) - Slaughter, Rebecca ↕</p> <p>3:00pm - 4:00pm BC Biweekly Meeting w/ Commissioner Slaughter ↕</p>		
Wednesday, December 21	Thursday, December 22		
(b)(6)			
8:00am - 5:00pm			
Friday, December 23	Saturday, December 24		
(b)(6)			
		Sunday, December 25	
		(b)(6)	

## December 26, 2022 - January 1, 2023

December 2022						January 2023							
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4	5	6	7	8	9	10	8	9	10	11	12	13	14
11	12	13	14	15	16	17	15	16	17	18	19	20	21
18	19	20	21	22	23	24	22	23	24	25	26	27	28
25	26	27	28	29	30	31	29	30	31				

Monday, December 26	Tuesday, December 27
(b)(6)	
<div style="border: 1px solid black; padding: 2px;"> <p><b>Christmas Day (observed)</b></p> <p><b>10:00am - 11:00am Staff Meeting</b> (202-326-2415, meeting ID (b)(6)) access code (b)(6) Slaughter, Rebecca ↻</p> </div>	
Wednesday, December 28	Thursday, December 29
(b)(6)	
Friday, December 30	Saturday, December 31
(b)(6)	(b)(6)
	<p><b>New Year's Eve</b> (United States)</p>

Slaughter, Rebecca
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1/4/2023 9:56 AM

<b>January 2, 2023 -</b> <b>January 8, 2023</b>																																																																																					
<div style="display: flex; justify-content: space-around;"> <table border="1"> <caption>January 2023</caption> <tr><th>Su</th><th>Mo</th><th>Tu</th><th>We</th><th>Th</th><th>Fr</th><th>Sa</th></tr> <tr><td></td><td>1</td><td>2</td><td>3</td><td>4</td><td>5</td><td>6</td></tr> <tr><td>7</td><td>8</td><td>9</td><td>10</td><td>11</td><td>12</td><td>13</td></tr> <tr><td>14</td><td>15</td><td>16</td><td>17</td><td>18</td><td>19</td><td>20</td></tr> <tr><td>21</td><td>22</td><td>23</td><td>24</td><td>25</td><td>26</td><td>27</td></tr> <tr><td>28</td><td>29</td><td>30</td><td>31</td><td></td><td></td><td></td></tr> </table> <table border="1"> <caption>February 2023</caption> <tr><th>Su</th><th>Mo</th><th>Tu</th><th>We</th><th>Th</th><th>Fr</th><th>Sa</th></tr> <tr><td></td><td></td><td>1</td><td>2</td><td>3</td><td>4</td><td></td></tr> <tr><td>5</td><td>6</td><td>7</td><td>8</td><td>9</td><td>10</td><td>11</td></tr> <tr><td>12</td><td>13</td><td>14</td><td>15</td><td>16</td><td>17</td><td>18</td></tr> <tr><td>19</td><td>20</td><td>21</td><td>22</td><td>23</td><td>24</td><td>25</td></tr> <tr><td>26</td><td>27</td><td>28</td><td></td><td></td><td></td><td></td></tr> </table> </div>		Su	Mo	Tu	We	Th	Fr	Sa		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31				Su	Mo	Tu	We	Th	Fr	Sa			1	2	3	4		5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28				
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<b>Monday, January 2</b> (b)(6) New Years Day (observed)	<b>Tuesday, January 3</b> (b)(6) 10:00am - 11:00am Staff Meeting (202-326-2415, meeting ID (b)(6) access code (b)(6) - Slaughter, Rebecca 11:30am - 12:30pm (b)(6) Staff Briefing w/ Commissioner Slaughter (https://ftc.zoomgov.com (b)(6) (b)(6) Slaughter, Rebecca 2:00pm - 3:00pm (b)(7)(A) Staff Briefing w/ Commissioner Slaughter (https://ftc.zoomgov.com (b)(6) (b)(6) Slaughter, Rebecca 2:00pm - 3:00pm FW: (b)(7)(A) Staff Briefing w/ Commissioner Slaughter (https://ftc.zoomgov.com (b)(6) (b)(6) Slaughter, Rebecca 3:00pm - 3:30pm International Events Chat (b)(6) - Slaughter, Rebecca																																																																																				
<b>Wednesday, January 4</b> 1:30pm - 3:00pm Strategic Planning Meeting (H-328; 202-326-2415, Meeting ID (b)(6) Access Code (b)(6) - Slaughter, Rebecca	<b>Thursday, January 5</b> 12:00am CES → 10:00am - 10:30am NPRM Call - Jane Flannagan (RKS to Call Jane Flannagan at (b)(6) 10:30am - 11:00am NPRM Call - Diana Moss (RKS to call Diana Moss at (b)(6) 11:00am - 11:30am PPO call 2:00pm - 2:30pm Weekly Meeting with Chair Khan and Commissioner Slaughter (LK to call RKS at (b)(6) - Khan, Lina 5:57pm - 8:22pm (b)(6)																																																																																				
<b>Friday, January 6</b> ← CES → (b)(6) 2:00pm - 3:00pm CES Showroom Tour (Las Vegas Convention Center, 3150 Paradise Rd., Las Vegas, NV 89109, N263, North Hall)	<b>Saturday, January 7</b> ← 7:00pm CES → 12:20pm - 1:20pm Fireside Chat (LVCC, North Hall, N262) 4:43pm - 9:05pm (b)(6)																																																																																				
	<b>Sunday, January 8</b> (b)(6)																																																																																				

<b>January 9, 2023 - January 15, 2023</b>		January 2023 Su Mo Tu We Th Fr Sa 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31	February 2023 Su Mo Tu We Th Fr Sa 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28
<b>Monday, January 9</b> ■ <b>10:00am - 11:00am Staff Meeting</b> (202-326-2415, meeting ID (b)(6) access code (b)(6)) Slaughter, Rebecca ☺ ■ <b>10:00am - 11:00am Staff Meeting</b> (https://ftc.zoomgov.com/ (b)(6)) Slaughter, Rebecca ■ <b>11:00am - 11:30am Weekly Meeting with Chair Khan and Commissioner Slaughter</b> (LK to call RKS at (b)(6)) Khan, Lina ☺ ■ <b>1:00pm - 1:30pm OPA Monthly Meeting w/ Commissioner Slaughter</b> (https://ftc.zoomgov.com/ (b)(6)) Slaughter, Rebecca ☺ ■ <b>3:00pm - 3:30pm Audio Only: OS Quarterly Check-in w/ Commissioner Slaughter</b> (https://ftc.zoomgov.com/ (b)(6)) Slaughter, Rebecca	<b>Tuesday, January 10</b> (b)(6) ■ <b>3:00pm - 3:30pm Welcome</b> (b)(6) (https://ftc.zoomgov.com/ (b)(6)) Steinberg, Julia		
<b>Wednesday, January 11</b> ■ <b>2:00pm - 3:00pm DPIP Check-in w/ Commissioner Slaughter</b> (CC-8102; https://ftc.zoomgov.com/ (b)(6)) Slaughter, Rebecca ■ <b>2:00pm - 3:00pm DPIP Check-in with Commissioner Slaughter</b> (https://ftc.zoomgov.com/ (b)(6)) McCarron, Katherine	<b>Thursday, January 12</b> ■ <b>10:00am - 11:00am M3 Check-in w/ Commissioner Slaughter</b> (CC) - Slaughter, Rebecca ■ <b>11:00am - 12:00pm M1 Check-in w/ Commissioner Slaughter</b> (b)(6) Slaughter, Rebecca ■ <b>1:00pm - 1:30pm BE Biweekly Meeting w/ Commissioner Slaughter</b> ■ <b>3:00pm - 3:30pm Canceled: Weekly Mtg. w/ Commissioner Slaughter &amp; Commissioner Wilson</b> (Call--Odd days) (b)(6) Wilson, Christine ☺ ■ <b>3:30pm - 4:00pm OPP Monthly Meeting w/ Commissioner Slaughter</b> (https://ftc.zoomgov.com/ (b)(6)) Slaughter, Rebecca ☺		
<b>Friday, January 13</b>	<b>Saturday, January 14</b>		
	<b>Sunday, January 15</b>		

<b>January 16, 2023 -</b> <b>January 22, 2023</b>																																																																																					
<div style="display: flex; justify-content: space-around;"> <table border="1"> <caption>January 2023</caption> <tr><th>Su</th><th>Mo</th><th>Tu</th><th>We</th><th>Th</th><th>Fr</th><th>Sa</th></tr> <tr><td>1</td><td>2</td><td>3</td><td>4</td><td>5</td><td>6</td><td>7</td></tr> <tr><td>8</td><td>9</td><td>10</td><td>11</td><td>12</td><td>13</td><td>14</td></tr> <tr><td>15</td><td>16</td><td>17</td><td>18</td><td>19</td><td>20</td><td>21</td></tr> <tr><td>22</td><td>23</td><td>24</td><td>25</td><td>26</td><td>27</td><td>28</td></tr> <tr><td>29</td><td>30</td><td>31</td><td></td><td></td><td></td><td></td></tr> </table> <table border="1"> <caption>February 2023</caption> <tr><th>Su</th><th>Mo</th><th>Tu</th><th>We</th><th>Th</th><th>Fr</th><th>Sa</th></tr> <tr><td></td><td></td><td>1</td><td>2</td><td>3</td><td>4</td><td></td></tr> <tr><td>5</td><td>6</td><td>7</td><td>8</td><td>9</td><td>10</td><td>11</td></tr> <tr><td>12</td><td>13</td><td>14</td><td>15</td><td>16</td><td>17</td><td>18</td></tr> <tr><td>19</td><td>20</td><td>21</td><td>22</td><td>23</td><td>24</td><td>25</td></tr> <tr><td>26</td><td>27</td><td>28</td><td></td><td></td><td></td><td></td></tr> </table> </div>		Su	Mo	Tu	We	Th	Fr	Sa	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31					Su	Mo	Tu	We	Th	Fr	Sa			1	2	3	4		5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28				
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<b>Monday, January 16</b> <input type="checkbox"/> Martin Luther King Jr. Day	<b>Tuesday, January 17</b> (b)(6) 10:00am - 11:00am Staff Meeting (202-326-2415   Meeting ID: (b)(6)) Access code: (b)(6) Slaughter, Rebecca 12:30pm - 1:00pm Weekly Mtg. w/ Commissioner Bedoya & Commissioner Slaughter (b)(6) Slaughter, Rebecca 1:00pm - 2:00pm BC Biweekly Meeting w/ Commissioner Slaughter 3:30pm - 3:40pm Meet & Greet w/ Lisa Hone (b)(6) - Slaughter, Rebecca																																																																																				
<b>Wednesday, January 18</b> 11:00am - 12:00pm BCP Biweekly Meeting w/ Commissioner Slaughter (https://ftc.zoomgov.com/ (b)(6) Slaughter, Rebecca 12:00pm - 1:00pm Meeting w/ Olivier Sylvain (b)(6) Slaughter, Rebecca 2:00pm - 3:00pm Panel on DEIA and Hiring at the FTC (Microsoft Teams Meeting) - Huber, Susan 3:00pm - 4:00pm Meeting w/ Commissioner Bedoya (https://ftc.zoomgov.com/ (b)(6) Slaughter, Rebecca	<b>Thursday, January 19</b> 10:30am - 11:00am Meeting w/ Erika (https://ftc.zoomgov.com/ (b)(6) Steinberg, Julia 11:00am - 1:00pm January Open Commission Meeting (Links to Rooms are Below) - Tabor, April 1:30pm - 2:00pm Closed Commission Mtg (b)(7)(A) (b)(6) 3:00pm - 3:30pm Audio Only (b)(7)(A) w/ Cmm'rs Wilson & Slaughter (Microsoft Teams Meeting) - Lewis, Tina M.																																																																																				
<b>Friday, January 20</b>	<b>Saturday, January 21</b>  <b>Sunday, January 22</b>																																																																																				

<b>January 23, 2023 -</b> <b>January 29, 2023</b>		January 2023 Su Mo Tu We Th Fr Sa 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31	February 2023 Su Mo Tu We Th Fr Sa 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28
<b>Monday, January 23</b> 10:00am - 11:00am Staff Meeting (202-326-2415, meeting ID (b)(6) access codi (b)(6) Slaughter, Rebecca 11:00am - 11:30am M3 Follow-Up Debrief (Becca's Office) - Woolery, Ricardo 12:30pm - 1:00pm Weekly Mtg. w/ Commissioner Bedoya & Commissioner Slaughter (b)(6) Slaughter, Rebecca	<b>Tuesday, January 24</b> 10:00am - 10:30am BE Biweekly Meeting w/ Commissioner Slaughter (https://ftc.zoomgov.com (b)(6) Slaughter, Rebecca 2:00pm - 3:00pm Monthly Mtg w/ Cmshr Slaughter Staff and OGC (Microsoft TEAMS) - Hunt, Julia 4:00pm - 4:25pm Zoom: Paradigm / OGE (b)(6)@paradigm.xyz		
<b>Wednesday, January 25</b> 12:00pm - 1:00pm Crafty Lunch (Microsoft Teams) - Rothfarb, Lisa 1:00pm - 2:00pm Meeting w/ Public Citizen (https://ftc.zoomgov.com (b)(6) Slaughter, Rebecca 6:30pm - 8:30pm Speaker's Dinner (Café Riggs (900 F St NW, Washington, DC 20004, United States))	<b>Thursday, January 26</b> ABA Gender Competition Summit (b)(6) 10:15am - 10:45am Quick Hits: Algorithmic Biases and Economic Harms (Riggs Washington DC (900 F St NW, Washington, DC 20004, United States)) 3:00pm - 3:30pm Weekly Mtg. w/ Commissioner Slaughter & Commissioner Wilson (Call--Odd days, (b)(6) even days, (b)(6) Wilson, Christine		
<b>Friday, January 27</b>	<b>Saturday, January 28</b>		
	<b>Sunday, January 29</b>		

<b>January 30, 2023 - February 5, 2023</b>	January 2023	February 2023
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<b>Monday, January 30</b>	<b>Tuesday, January 31</b>
<ul style="list-style-type: none"> <li>■ <b>10:00am - 11:00am Staff Meeting</b> (202-326-2415, meeting ID (b)(6) access code (b)(6) Slaughter, Rebecca ☺</li> <li>■ <b>12:30pm - 1:00pm Weekly Mtg. w/ Commissioner Bedoya &amp; Commissioner Slaughter</b> (BKS Calls AB at (b)(6) - Slaughter, Rebecca ☺</li> <li>■ <b>2:00pm - 3:00pm</b> (b)(6)</li> </ul>	<ul style="list-style-type: none"> <li>■ <b>9:30am - 10:30am</b> (b)(6)</li> <li>■ <b>10:30am - 12:30pm ACP: Meeting with Commissioner Slaughter.</b> (<a href="https://ftc.zoomgov.com">https://ftc.zoomgov.com</a>) (b)(6) Strother, Darryl</li> <li>■ <b>11:00am - 12:00pm ACP Check-in w/ Commissioner Slaughter</b> (b)(6) Slaughter, Rebecca</li> <li>■ <b>2:00pm - 3:00pm Commissioner Slaughter meet and greet with Division of Advertising Practices</b> (hybrid meeting: meet in (b)(6) or see Zoom link below) - Hann, Carolyn Lee</li> </ul>

Slaughter, Rebecca 5 2/1/2023 7:53 AM

<b>January 30, 2023 - February 5, 2023</b>		January 2023 Su Mo Tu We Th Fr Sa 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31	February 2023 Su Mo Tu We Th Fr Sa 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28
<b>Wednesday, February 1</b> <div style="border: 1px solid black; padding: 2px; margin-bottom: 5px;">(b)(6)</div> <div style="border: 1px solid black; padding: 2px; margin-bottom: 5px;">                     1:00pm - 1:30pm OCR Monthly                      (https://ftc.zoomgov.com/ (b)(6))                      (b)(6) Slaughter, Rebecca ↗                 </div> <div style="border: 1px solid black; padding: 2px;">                     3:00pm - 4:00pm BC Biweekly w/ Commissioner Slaughter                      (https://ftc.zoomgov.com/ (b)(6))                      (b)(6) Slaughter, Rebecca                 </div>	<b>Thursday, February 2</b> <div style="border: 1px solid black; padding: 2px; margin-bottom: 5px;"> <input type="checkbox"/> Groundhog Day (United States)                 </div> <div style="border: 1px solid black; padding: 2px; margin-bottom: 5px;">                     11:00am - 12:00pm M2 Check-In w/ Commissioner Slaughter                      (b)(6) OR see below Zoom link) - Slaughter, Rebecca                 </div> <div style="border: 1px solid black; padding: 2px; margin-bottom: 5px;">                     2:00pm - 3:00pm Compliance Check-in w/ Commissioner Slaughter                 </div> <div style="border: 1px solid black; padding: 2px;">                     3:00pm - 3:30pm Weekly Mtg. w/ Commissioner Slaughter &amp; Commissioner Wilson (Call--Odd days, (b)(6) even days, (b)(6) Wilson, Christine ↗                 </div>		
<b>Friday, February 3</b> <div style="border: 1px solid black; padding: 2px;">                     3:00pm - 3:30pm Law Clerk Interview (b)(6) RKS to Call                      (b)(6) (b)(6) - Slaughter, Rebecca                 </div>	<b>Saturday, February 4</b>           <b>Sunday, February 5</b>		

February 6, 2023 - February 12, 2023		February 2023	March 2023
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		19 20 21 22 23 24 25	19 20 21 22 23 24 25
		26 27 28	26 27 28 29 30 31
<b>Monday, February 6</b> <input type="checkbox"/> 1:30pm - 2:00pm (b)(6)		<b>Tuesday, February 7</b> <input type="checkbox"/> (b)(6) <input checked="" type="checkbox"/> 10:00am - 10:30am BE Biweekly Meeting w/ Commissioner Slaughter (https://ftc.zoomgov.com/ (b)(6) (b)(6) - Slaughter, Rebecca ↻ <input checked="" type="checkbox"/> 11:30am - 12:00pm Weekly Mtg. w/ Commissioner Bedoya & Commissioner Slaughter (RKS to Call AB (b)(6) Slaughter, Rebecca ↻ <input checked="" type="checkbox"/> 1:30pm - 2:30pm Meeting w/ Elizabeth Wilkins (RKS to Call EW (b)(6) (b)(6) - Slaughter, Rebecca <input checked="" type="checkbox"/> 3:00pm - 4:00pm WRSF Virtual Visit w/ Commissioner Slaughter (https://ftc.zoomgov.com/ (b)(6) (b)(6) - Slaughter, Rebecca	
<b>Wednesday, February 8</b> <input type="checkbox"/> (b)(6) <input checked="" type="checkbox"/> 12:00pm - 1:00pm Crafty Lunch (Microsoft Teams) - Rotharb, Lisa ↻ <input checked="" type="checkbox"/> 3:00pm - 3:45pm In re (b)(7)(A) Commissioner Slaughter Conversation (Microsoft Teams Meeting) - Woolery, Ricardo		<b>Thursday, February 9</b>	
<b>Friday, February 10</b> <input checked="" type="checkbox"/> 12:30pm - 2:30pm (b)(6) (b)(6) Slaughter, Rebecca <input checked="" type="checkbox"/> 1:00pm - 3:00pm Optional PPPM Authors/Discussants Office Hours (b)(6)		<b>Saturday, February 11</b>	
		<b>Sunday, February 12</b> <input type="checkbox"/> Lincoln's Birthday (United States)	

February 2023		March 2023											
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26	27	28					26	27	28	29	30	31	

Monday, February 13	Tuesday, February 14
<p>10:30am - 11:00am OCIO VTC Training (b)(6) Slaughter, Rebecca</p> <p>12:30pm - 1:00pm Weekly Mtn, w/ Commissioner Bedoya &amp; Commissioner Slaughter (b)(6) Slaughter, Rebecca</p> <p>1:00pm - 1:30pm OPA Monthly Meeting w/ Commissioner Slaughter (https://ftc.zoomgov.com/ (b)(6) Slaughter, Rebecca</p> <p>2:00pm - 3:00pm DLT A Check-in w/ Commissioner Slaughter (https://ftc.zoomgov.com/ (b)(6) Slaughter, Rebecca</p> <p>3:00pm - 4:00pm BCP Biweekly Meeting w/ Commissioner Slaughter (https://ftc.zoomgov.com/ (b)(6) Slaughter, Rebecca</p>	<p>Valentine's Day (United States)</p> <p>10:00am - 11:00am Healthcare Check-in w/ Commissioner Slaughter (https://ftc.zoomgov.com/ (b)(6) Slaughter, Rebecca</p> <p>12:00pm - 12:45pm (b)(6) (CC Cafeteria) - Petrizzi, Maribeth</p> <p>1:00pm - 2:00pm DMP Check-in w/ Commissioner Slaughter (b)(6) Slaughter, Rebecca</p> <p>2:30pm - 3:30pm DFP Check-in w/ Commissioner Slaughter (b)(6) (r see Zoom link below) - Slaughter, Rebecca</p>
Wednesday, February 15	Thursday, February 16
<p>(b)(6)</p> <p>11:30am - 12:00pm OIA Monthly Meeting w/ Commissioner Slaughter (https://ftc.zoomgov.com/ (b)(6)</p> <p>12:00pm - 1:00pm (b)(7)(A) Staff Briefing w/ Commissioner Slaughter (https://ftc.zoomgov.com/ (b)(6)</p> <p>1:00pm - 2:30pm Black History Month Event - The Divine Nine (https://ftc.zoomgov.com/ (b)(6)</p> <p>2:30pm - 3:00pm (b)(5) Discussion w/ OIA (b)(6) r see Zoom link (https://ftc.zoomgov.com/ (b)(6)</p> <p>3:00pm - 3:30pm APEC Panel Prep Meeting (https://ftc.zoomgov.com/ (b)(6)</p>	<p>10:00am - 11:00am Commissioner Slaughter Visits DCBE (b)(6)</p> <p>11:30am - 12:00pm BE Biweekly Meeting w/ Commissioner Slaughter (https://ftc.zoomgov.com/ (b)(6)</p> <p>12:00pm - 3:00pm Noncompete Public Forum (b)(6)</p> <p>2:00pm - 3:00pm (b)(6)</p> <p>3:00pm - 4:00pm DCRO Check-in w/ Commissioner Slaughter (https://ftc.zoomgov.com/ (b)(6)</p> <p>4:45pm - 5:00pm FPF Awards Requested early arrival (120 Constitution Ave NE Washington DC 20002, The Senate Hart Building.</p> <p>4:45pm - 8:30pm 13th Privacy Papers for Policymakers Awards Event (120 Constitution Ave NE, Washington, DC 20002) - FPF Events</p>
Friday, February 17	Saturday, February 18
<p>(b)(6)</p> <p>10:30am - 11:00am Commissioner Slaughter &lt;- Winnona chat about law / policy careers! (b)(6)</p> <p>11:00am - 11:30am Becca/AVIV chat (https://ftc.zoomgov.com/ (b)(6) Nevo, Aviv</p>	<p>(b)(6)</p>
	Sunday, February 19
	<p>(b)(6)</p>

February 20, 2023 - February 26, 2023		February 2023					March 2023								
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		26	27	28					26	27	28	29	30	31	

Monday, February 20	Tuesday, February 21
(b)(6)	(b)(6)
<p>10:30am - 2:40pm (b)(6)</p> <p>3:47pm - 8:08pm (b)(6)</p>	<p>12:00am APEC Workshop - Capacity-Building Workshop on Effective &amp; Efficient Competition Litigation and Regulatory Advocacy</p> <p>11:30am - 12:00pm Requested early arrival (Renaissance Palm Springs Hotel (888 E Tahquitz Canyon Way, Palm Springs, CA 92262, United States))</p> <p>12:15pm - 12:30pm Opening Remarks from Comm. Rebecca Kelly Slaughter (San Jacinto Room, First floor, Renaissance Hotel Palm Springs, CA)</p> <p>2:15pm - 3:25pm A View from the Judiciary and Agency Decision-makers (San Jacinto Room Renaissance Hotel Palm Springs, CA)</p>
Wednesday, February 22	Thursday, February 23
(b)(6)	(b)(6)
<p>12:00am APEC Workshop - Capacity-Building Workshop on Effective &amp; Efficient Competition Litigation and Regulatory Advocacy</p> <p>12:00pm - 1:00pm Crafty Lunch (Microsoft Teams) - Rothfarb, Lisa</p> <p>1:00pm - 2:30pm Black History Month Event - Dr. John-Patrick Ifedi (https://ftc.zoomgov.com/ (b)(6))</p> <p>4:00pm - 6:40pm (b)(6)</p>	<p>10:00am - 11:00am (b)(5) w/ OED (https://ftc.zoomgov.com/ (b)(6)) - Slaughter, Rebecca</p> <p>11:00am - 12:00pm Staff Meeting (b)(6) or see below Zoom link - Slaughter, Rebecca</p> <p>12:00pm - 12:30pm Weekly Meeting with Chair Khan and Commissioner Slaughter (LK to call RKS at (b)(6)) Khan, Lina</p> <p>12:30pm - 1:00pm Law Clerk Interview - (b)(6) (RKS Calls (b)(6)) Slaughter, Rebecca</p> <p>1:00pm - 2:00pm SER Virtual Visit w/ Commissioner Slaughter (https://ftc.zoomgov.com/ (b)(6))</p> <p>2:00pm - 3:00pm BC Biweekly Meeting w/ Commissioner Slaughter</p> <p>3:30pm - 4:00pm Law Clerk Interview (b)(6) RKS Calls (b)(6) Slaughter, Rebecca</p>
Friday, February 24	Saturday, February 25
(b)(6)	(b)(6)
<p>26th Annual Antitrust Symposium (b)(6)</p> <p>12:10pm - 1:30pm Luncheon Keynote - George Mason Law Review 26th Annual Antitrust Symposium (Van Metre Hall, George Mason University (formerly Founders Hall) (Van Metre Hall, 3351 Fairfax Dr, Arlington, VA, United States))</p>	
	Sunday, February 26
	(b)(6)

## February 27, 2023 - March 5, 2023

February 2023							March 2023						
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### Monday, February 27

- (b)(6)
- 10:00am - 11:00am Staff Meeting (b)(6) or see below Zoom link:  
<https://ftc.zoomgov.com/join/9118151762>  
(b)(6) Slaughter, Rebecca
- 11:00am - 11:30am Weekly Meeting with Chair Khan and Commissioner Slaughter (LK to call RKS at (b)(6) Khan, Lina
- 12:30pm - 1:00pm Weekly Mtg. w/ Commissioner Bedoya & Commissioner Slaughter (b)(6) Slaughter, Rebecca
- 1:00pm - 1:30pm Monthly Mtg w/ Cmsr Slaughter Staff and OGC (Microsoft TEAMS) - Hunt, Julia
- 1:30pm - 2:00pm OCR Monthly  
(https://ftc.zoomgov.com/join/9118151762) (b)(6)  
(b)(6) Slaughter, Rebecca

### Tuesday, February 28

- (b)(6)
- 11:30am - 12:00pm Weekly Mtg. w/Commissioner Slaughter & Commissioner Wilson (Call--Odd days (b)(6) even days (b)(6) Wilson, Christine
- 12:00pm - 1:00pm BCP Biweekly Meeting w/ Commissioner Slaughter  
(https://ftc.zoomgov.com/join/9118151762) (b)(6)  
(b)(6) Slaughter, Rebecca
- 5:50pm (b)(6)

<b>February 27, 2023 - March 5, 2023</b>		February 2023 Su Mo Tu We Th Fr Sa 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	March 2023 Su Mo Tu We Th Fr Sa 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31
<b>Wednesday, March 1</b>		<b>Thursday, March 2</b>	
(b)(6)		(b)(6)	
1:00pm - 3:00pm Speaker's Dinner (BELvue Museum (Brussels Brussels Region, Belgium))		Antitrust, Regulation & the Political Economy (Steigenberger Wiltcher's Hotel (71 Avenue Louise, Brussels 1050)) 7:40am - 8:40am "Plugging in Gaps" in Antitrust Enforcement (Steigenberger Wiltcher's Hotel (71 Avenue Louise, Brussels 1050)) 1:00pm - 3:30pm Speaker's Dinner (IT Tower, Louizalaan 480, 1050 Brussels)	
<b>Friday, March 3</b>		<b>Saturday, March 4</b>	
(b)(6)		5:55am - 2:25pm IAD-BRU (b)(6)	
		<b>Sunday, March 5</b>	
		(b)(6)	

<b>March 6, 2023 -</b> <b>March 12, 2023</b>		March 2023 Su Mo Tu We Th Fr Sa 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31	April 2023 Su Mo Tu We Th Fr Sa 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30
<b>Monday, March 6</b> (b)(6) <b>10:00am - 11:00am Staff Meeting</b> (b)(6) for see below Zoom link: <a href="https://ftc.zoomgov.com/join/9123456789">https://ftc.zoomgov.com/join/9123456789</a> (b)(6) Slaughter, Rebecca ↗ <b>11:30am - 12:00pm Andi/Rebecca red</b> (b)(7)(A) <a href="https://fda.zoomgov.com/join/9123456789">https://fda.zoomgov.com/join/9123456789</a> (b)(6) Frisestad, Andi <b>2:00pm - 3:00pm Antitrust II Check-In w/ Commissioner Slaughter</b> <a href="https://ftc.zoomgov.com/join/9123456789">https://ftc.zoomgov.com/join/9123456789</a> (b)(5) Slaughter, Rebecca <b>3:00pm - 4:00pm Audio Only: Ice/Black Knight Prep Call</b> <a href="https://ftc.zoomgov.com/join/9123456789">https://ftc.zoomgov.com/join/9123456789</a> (b)(5) Slaughter, Rebecca		<b>Tuesday, March 7</b> (b)(6) <b>10:00am - 11:00am TED Meeting with Commissioner Slaughter</b> (Zoom) (b)(6) <a href="https://ftc.zoomgov.com/join/9123456789">https://ftc.zoomgov.com/join/9123456789</a> (b)(6) Cerilli, Krisha <b>1:00pm - 2:00pm Intercontinental Exchange/Black Knight Party Meeting w/ Commissioner Slaughter</b> <a href="https://ftc.zoomgov.com/join/9123456789">https://ftc.zoomgov.com/join/9123456789</a> (b)(6) Slaughter, Rebecca (b)(6)	
<b>Wednesday, March 8</b> (b)(6)		<b>Thursday, March 9</b> (b)(6)	
(b)(6) <b>12:00pm - 12:30pm Speaker Prep Session - ABA Spring Meeting</b> (b)(6) Kara Kendall <b>12:00pm - 1:00pm Crafty Lunch</b> (Microsoft Teams) - Rothfarb, Lisa ↗ <b>1:30pm - 2:00pm OPP Monthly Meeting w/ Commissioner Slaughter</b> <a href="https://ftc.zoomgov.com/join/9123456789">https://ftc.zoomgov.com/join/9123456789</a> (b)(6) Slaughter, Rebecca ↗ <b>2:00pm - 3:00pm Enforcement Check-In w/ Commissioner Slaughter</b> <a href="https://ftc.zoomgov.com/join/9123456789">https://ftc.zoomgov.com/join/9123456789</a> (b)(6) Slaughter, Rebecca		(b)(6) <b>10:30am - 11:00am BE Biweekly Meeting w/ Commissioner Slaughter</b> <a href="https://ftc.zoomgov.com/join/9123456789">https://ftc.zoomgov.com/join/9123456789</a> (b)(6) Slaughter, Rebecca ↗ <b>11:00am - 1:00pm CCM 3/9/2023 Intercontinental Exchange/Black Knight and</b> (b)(7)(A) Zoom (Link Below) - Chewning, George <b>1:00pm - 2:00pm Meeting w/ Electronic Privacy Information Center</b> <a href="https://ftc.zoomgov.com/join/9123456789">https://ftc.zoomgov.com/join/9123456789</a> (b)(6) Slaughter, Rebecca <b>3:00pm - 3:30pm Weekly Mtg. w/ Commissioner Slaughter &amp; Commissioner Wilson</b> (Call--Odd days, (b)(6) even days, (b)(6) Wilson, Christine ↗	
<b>Friday, March 10</b> (b)(6)		<b>Saturday, March 11</b> (b)(6)	
		<b>Sunday, March 12</b> (b)(6)	

March 13, 2023 - March 19, 2023		March 2023						April 2023							
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<p><b>Monday, March 13</b></p> <p>10:00am - 11:00am Staff Meeting (b)(6) or see below Zoom link: <a href="https://ftc.zoomgov.com/join/join?j=...">https://ftc.zoomgov.com/join/join?j=...</a> (b)(6)</p> <p>(b)(6) Slaughter, Rebecca</p> <p>11:30am - 12:00pm ABA Antitrust Spring Meeting Hot Topics Panel Prep Call 1 (b)(6)</p> <p>(b)(6) Rice, Ilana M.</p> <p>11:45am - 12:35pm Introducing FTC Commissioner Alvaro Bedoya / ACM (b)(6)</p> <p>1:00pm - 1:30pm OPA Monthly Meeting w/ Commissioner Slaughter (https://ftc.zoomgov.com/join/join?j=...) (b)(6)</p> <p>(b)(6) Slaughter, Rebecca</p> <p>2:00pm - 3:00pm Meeting w/ Family Online Safety Institute (b)(6) Slaughter, Rebecca</p> <p>(b)(6)</p>	<p><b>Tuesday, March 14</b></p> <p>(b)(6)</p> <p>10:00am - 11:00am NER Virtual Visit w/ Commissioner Slaughter (https://ftc.zoomgov.com/join/join?j=...) (b)(6)</p> <p>(b)(6) Slaughter, Rebecca</p> <p>11:00am - 11:30am Biden Ethics Pledge Overview (Materials Attached) (Microsoft Teams Meeting) - Pankey, Lorielle</p> <p>(b)(6)</p>
<p><b>Wednesday, March 15</b></p> <p>(b)(6)</p> <p>11:00am - 12:00pm MWR Virtual Visit w/ Commissioner Slaughter (https://ftc.zoomgov.com/join/join?j=...) (b)(6)</p> <p>(b)(6) Slaughter, Rebecca</p> <p>12:00pm - 12:30pm Weekly Mtg. w/ Commissioner Slaughter &amp; Commissioner Wilson (Call--Odd days, (b)(6) even days, (b)(6) Wilson, Christine</p> <p>(b)(6)</p>	<p><b>Thursday, March 16</b></p> <p>11:00am - 1:00pm March Open Commission Meeting (Links/Webcast Information Below) (Links to Rooms/Webcast Below) - Tabor, April</p> <p>1:00pm - 2:00pm OIA Monthly Meeting w/ Commissioner Slaughter (https://ftc.zoomgov.com/join/join?j=...) (b)(6)</p> <p>(b)(6) Slaughter, Rebecca</p> <p>2:00pm - 3:00pm NWRO Check-In w/ Commissioner Slaughter (https://ftc.zoomgov.com/join/join?j=...) (b)(6)</p> <p>(b)(6) Slaughter, Rebecca</p> <p>(b)(6)</p>
<p><b>Friday, March 17</b></p> <p><input type="checkbox"/> Saint Patrick's Day (United States)</p>	<p><b>Saturday, March 18</b></p> <p><b>Sunday, March 19</b></p>

<b>March 20, 2023 - March 26, 2023</b>	<table border="1" style="font-size: 8px; border-collapse: collapse; margin: auto;"> <tr> <th colspan="6">March 2023</th> <th colspan="6">April 2023</th> </tr> <tr> <th>Su</th><th>Mo</th><th>Tu</th><th>We</th><th>Th</th><th>Fr</th><th>Sa</th> <th>Su</th><th>Mo</th><th>Tu</th><th>We</th><th>Th</th><th>Fr</th><th>Sa</th> </tr> <tr> <td></td><td></td><td></td><td>1</td><td>2</td><td>3</td><td>4</td> <td></td><td></td><td></td><td></td><td></td><td></td><td>1</td> </tr> <tr> <td>5</td><td>6</td><td>7</td><td>8</td><td>9</td><td>10</td><td>11</td> <td>2</td><td>3</td><td>4</td><td>5</td><td>6</td><td>7</td><td>8</td> </tr> <tr> <td>12</td><td>13</td><td>14</td><td>15</td><td>16</td><td>17</td><td>18</td> <td>9</td><td>10</td><td>11</td><td>12</td><td>13</td><td>14</td><td>15</td> </tr> <tr> <td>19</td><td>20</td><td>21</td><td>22</td><td>23</td><td>24</td><td>25</td> <td>16</td><td>17</td><td>18</td><td>19</td><td>20</td><td>21</td><td>22</td> </tr> <tr> <td>26</td><td>27</td><td>28</td><td>29</td><td>30</td><td>31</td><td></td> <td>23</td><td>24</td><td>25</td><td>26</td><td>27</td><td>28</td><td>29</td> </tr> <tr> <td></td><td></td><td></td><td></td><td></td><td></td><td></td> <td>30</td><td></td><td></td><td></td><td></td><td></td><td></td> </tr> </table>	March 2023						April 2023						Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa				1	2	3	4							1	5	6	7	8	9	10	11	2	3	4	5	6	7	8	12	13	14	15	16	17	18	9	10	11	12	13	14	15	19	20	21	22	23	24	25	16	17	18	19	20	21	22	26	27	28	29	30	31		23	24	25	26	27	28	29								30						
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<p><b>Monday, March 20</b></p> <p>(b)(6)</p> <p>9:00am - 11:30am Equity Across the World: A comparative discussion of equity &amp; enforcement  <a href="https://ftc.zoomgov.com">https://ftc.zoomgov.com</a> (b)(6)</p> <p>10:00am - 11:00am Staff Meeting (b)(6) or see below Zoom link:  <a href="https://ftc.zoomgov.com">https://ftc.zoomgov.com</a> (b)(6) Slaughter, Rebecca ☺</p> <p>12:00pm - 12:30pm (b)(7)(A) Staff Briefing w/ Commissioner Slaughter  <a href="https://ftc.zoomgov.com">https://ftc.zoomgov.com</a> (b)(6) Slaughter, Rebecca</p> <p>1:00pm - 2:00pm ABA Antitrust Spring Meeting Hot Topics Panel <b>Prep Call 3</b>            (b)(6) Rice, Ilana M.</p>	<p><b>Tuesday, March 21</b></p> <p>(b)(6)</p> <p>1:00pm - 1:45pm Enforcement Follow-up Discussion (b)(6) Slaughter, Rebecca</p>																																																																																																														
<p><b>Wednesday, March 22</b></p> <p>10:25am - 11:00am BCP Biweekly Meeting w/ Commissioner Slaughter  <a href="https://ftc.zoomgov.com">https://ftc.zoomgov.com</a> (b)(6) Slaughter, Rebecca</p> <p>12:05pm - 1:00pm (b)(7)(A) Party Meeting w/ Commissioner Slaughter  <a href="https://ftc.zoomgov.com">https://ftc.zoomgov.com</a> (b)(6) Slaughter, Rebecca</p>	<p><b>Thursday, March 23</b></p> <p>10:00am - 11:00am ECR Virtual Check-In w/ Commissioner Slaughter  <a href="https://ftc.zoomgov.com">https://ftc.zoomgov.com</a> (b)(6) Slaughter, Rebecca</p> <p>11:00am - 12:00pm BC Biweekly Meeting w/ Commissioner Slaughter  <a href="https://ftc.zoomgov.com">https://ftc.zoomgov.com</a> (b)(6)</p> <p>12:15pm - 1:00pm Meeting w/ OfCom CEO (b)(6) - Slaughter, Rebecca</p> <p>1:00pm - 1:30pm Prep meeting w/ staff - (b)(7)(A) party meetings  <a href="https://ftc.zoomgov.com">https://ftc.zoomgov.com</a> (b)(6) Rose, Evan</p> <p>1:30pm - 2:30pm USDA/USPTO Seeds kickoff (see below link)</p> <p>3:00pm - 3:30pm Weekly Mtg. w/Commissioner Slaughter &amp; Commissioner Wilson (Call--Odd days (b)(6) even days, (b)(6) Wilson, Christine ☺</p>																																																																																																														
<p><b>Friday, March 24</b></p> <p>12:00pm - 1:00pm (b)(7)(A) Meeting w/ Commissioner Slaughter  <a href="https://ftc.zoomgov.com">https://ftc.zoomgov.com</a> (b)(6) Slaughter, Rebecca</p>	<p><b>Saturday, March 25</b></p> <p><b>Sunday, March 26</b></p>																																																																																																														

## March 27, 2023 - April 2, 2023

March 2023							April 2023						
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### Monday, March 27

- 9:30am - 5:30pm DOJ Enforcer's Summit (U.S. Department of Justice (950 Pennsylvania Ave NW, Washington, DC 20530, United States))
- 5:30pm - 7:00pm Enforcer's Summit Reception (Assistant AG's Conference Room; U.S. Department of Justice)

### Tuesday, March 28

- 10:00am - 11:00am Staff Meeting (b)(6) or see below Zoom link: <https://ftc.zoomgov.com/join/914360438> (b)(6)
- (b)(6) Slaughter, Rebecca
- 11:30am - 12:15pm Meeting w/ Trinidad & Tobago FTC (b)(6) Slaughter, Rebecca
- 1:00pm - 1:45pm Meeting w/ Chair Commissioner - COFECE (b)(6) Slaughter, Rebecca
- 3:00pm - 3:30pm Meeting w/ Dr. Willard Mwemba, Head of the COMESA Competition Commission (b)(6) Slaughter, Rebecca

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### Wednesday, March 29

- 12:00am ABA Antitrust Spring Meeting (Marriott Marquis Washington, DC (901 Massachusetts Ave NW, Washington, DC 20001, United States))
- 10:45am - 12:00pm FYI: ROBINSON-PATMAN COMPLIANCE: A NEW ERA? (M2: SALONS 1-4)
- 12:30pm - 1:00pm Check in with Commissioner Slaughter (LK to call RKS at (b)(6) - Khan, Lina
- 1:45pm - 3:15pm FYI: eCommerce Platforms After Apple v. Pepper - ABA Spring Mtg Panel (Ricardo) (Salons A-D)
- 3:30pm - 5:00pm FYI: "Pay Me Now or Pay Me Later" - ABA Spring Mtg Panel (Salons A-D)
- 3:30pm - 5:00pm FYI: ARE VERTICAL MERGERS FALLING FLAT? (M2: SALONS 9&10)

### Thursday, March 30

- 10:15am - 12:00pm FYI: Chair's Showcase (M2: MARQUIS BALLROOM)
- 12:00pm - 2:00pm Crowell & Bates White Luncheon (Long View Gallery (1234 9th St NW, Washington, DC 20001, United States))
- 3:15pm - 5:00pm ABA Panel: Hot Topics (Marriott Marquis Washington, DC (901 Massachusetts Ave NW, Washington, DC 20001, United States))
- 3:30pm - 5:00pm FYI: PRIVATE EQUITY: VILLAIN OR BOGEYMAN? (M2: SALONS 3&4)
- 5:00pm - 7:00pm Black Antitrust Lawyers Reception (Anthem (901 Massachusetts Ave NW, Washington, DC 20001, United States))

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### Friday, March 31

- 12:00am ABA Antitrust Spring Meeting (Marriott Marquis Washington, DC (901 Massachusetts Ave NW, Washington, DC 20001, United States)) (b)(6)
- 8:30am - 9:45am FYI: AGENCY UPDATE WITH THE FTC BUREAU DIRECTORS (M4: SALONS A-H)
- 10:00am - 12:00pm FYI: Enforcer's Roudntable (M2: MARQUIS BALLROOM)

<b>April 3, 2023 -</b> <b>April 9, 2023</b>		April 2023 Su Mo Tu We Th Fr Sa 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30	May 2023 Su Mo Tu We Th Fr Sa 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31
<b>Monday, April 3</b>		<b>Tuesday, April 4</b>	
(b)(6)		(b)(6)	
<input type="checkbox"/> 10:00am - 11:00am Staff Meeting (b)(6) or see below Zoom link: <a href="https://ftc.zoomgov.com/join/917277130">https://ftc.zoomgov.com/join/917277130</a> (b)(6) Slaughter, Rebecca ↻		<input type="checkbox"/> 12:00am IAPP Global Privacy Summit (Marriott Marquis Washington, DC (901 Massachusetts Ave NW, Washington, DC 20001, United States)) (b)(6)	
<input type="checkbox"/> 11:00am - 12:00pm Meeting w/ Chairperson Ko - Korea PIPC (b)(6) Slaughter, Rebecca		<input type="checkbox"/> 10:30am - 11:00am Chat w/ Emilia (RKS Call Emilia at (b)(6))	
<input type="checkbox"/> 12:00pm - 2:00pm IAPP DPA Luncheon (FIG & OLIVE (934 Palmer Alley NW, Washington, DC 20001, United States))		<input type="checkbox"/> 11:30am - 12:00pm Commissioner Slaughter Meeting w/ CIPL (b)(6) Slaughter, Rebecca	
<input type="checkbox"/> 2:05pm - 2:25pm Public Policy & Legal Summit ((Convene, 600 14th Street NW))		<input type="checkbox"/> 1:00pm - 1:45pm Meeting w/ OECD (b)(6) Slaughter, Rebecca	
<input type="checkbox"/> 4:00pm - 5:00pm FTC Reception for visiting Data Protection Authorities (DPAs) (b)(6) Roschke, Guilherme		<input type="checkbox"/> 2:15pm - 3:15pm Meeting w/ Commissioner Kelber (b)(6) Slaughter, Rebecca	
<input type="checkbox"/> 5:00pm - 5:30pm G7 Enforcement Group Check-In (b)(6) Slaughter, Rebecca		<input type="checkbox"/> 6:30pm - 8:30pm Goodwin Dinner at the IAPP Global Privacy Summit 2023 (Brasserie Beck, 1101 K St NW, Washington, DC 20005)	
<b>Wednesday, April 5</b>		<b>Thursday, April 6</b>	
(b)(6)		(b)(6)	
<input type="checkbox"/> 12:00am IAPP Global Privacy Summit (Marriott Marquis Washington, DC (901 Massachusetts Ave NW, Washington, DC 20001, United States))		<input type="checkbox"/> 10:30am - 11:00am Audio Only: OS Quarterly Check-in w/ Commissioner Slaughter (Microsoft Teams Meeting) - Kalepe, Roland ↻	
<input type="checkbox"/> First Night of Passover		<input type="checkbox"/> 1:00pm - 2:00pm FY23 Budget Briefing ( <a href="https://ftc.zoomgov.com/join/917277130">https://ftc.zoomgov.com/join/917277130</a> ) (b)(6) Slaughter, Rebecca	
<input type="checkbox"/> 10:30am - 11:00am BE Biweekly Meeting w/ Commissioner Slaughter ( <a href="https://ftc.zoomgov.com/join/917277130">https://ftc.zoomgov.com/join/917277130</a> ) (b)(6) Slaughter, Rebecca ↻			
<input type="checkbox"/> 12:00pm - 1:00pm Crafty Lunch (Microsoft Teams) - Rothfarb, Lisa ↻			
<input type="checkbox"/> 1:00pm - 1:30pm OCR Monthly ( <a href="https://ftc.zoomgov.com/join/917277130">https://ftc.zoomgov.com/join/917277130</a> ) (b)(6) Slaughter, Rebecca ↻			
<b>Friday, April 7</b>		<b>Saturday, April 8</b>	
(b)(6)			
		<b>Sunday, April 9</b>	
		<input type="checkbox"/> Easter	

<b>April 10, 2023 - April 16, 2023</b>		April 2023 Su Mo Tu We Th Fr Sa 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30	May 2023 Su Mo Tu We Th Fr Sa 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31
<b>Monday, April 10</b>  <div style="border: 1px solid black; padding: 5px; margin-bottom: 10px;">(b)(6)</div>	<b>Tuesday, April 11</b> <ul style="list-style-type: none"> <li>■ <b>10:00am - 11:00am M4 Check-In w/ Commissioner Slaughter</b> ((400 7th Street, SW, Washington, DC 20506); (b)(6) <a href="https://ftc.zoomgov.com">https://ftc.zoomgov.com</a> (b)(6) Slaughter, Rebecca</li> <li>■ <b>11:30am - 12:30pm Staff Meeting</b> (b)(6) or see below Zoom link: <a href="https://ftc.zoomgov.com">https://ftc.zoomgov.com</a> (b)(6) Slaughter, Rebecca ↻</li> <li>■ <b>1:30pm - 2:30pm BC Biweekly Meeting w/ Commissioner Slaughter</b> ↻</li> <li>■ <b>4:00pm - 5:00pm Hearing Prep</b> (Microsoft Teams Meeting) - Wayne, Catherine</li> </ul>		
<b>Wednesday, April 12</b> <ul style="list-style-type: none"> <li>■ <b>10:00am - 10:30am Office Move Discussion</b> (b)(6) Slaughter, Rebecca</li> <li>■ <b>11:00am - 12:00pm DCP Check-In w/ Commissioner Slaughter</b> ((600 Pennsylvania Ave NW, Washington, DC 20580); (b)(6) <a href="https://ftc.zoomgov.com">https://ftc.zoomgov.com</a> (b)(6) Slaughter, Rebecca</li> <li>■ <b>1:00pm - 1:30pm OPA Monthly Meeting w/ Commissioner Slaughter</b> (<a href="https://ftc.zoomgov.com">https://ftc.zoomgov.com</a> (b)(6) Slaughter, Rebecca ↻)</li> <li>■ <b>1:30pm - 2:00pm Chat w/ Donnavon</b> (RKS Call Donnavon (b)(6) Slaughter, Rebecca</li> <li>■ <b>2:00pm - 4:00pm E&amp;C Hearing Prep</b> (<a href="https://ftc.zoomgov.com">https://ftc.zoomgov.com</a> (b)(6) Slaughter, Rebecca</li> </ul>	<b>Thursday, April 13</b> <ul style="list-style-type: none"> <li>■ <b>11:00am - 11:30am OPP Monthly Meeting w/ Commissioner Slaughter</b> (<a href="https://ftc.zoomgov.com">https://ftc.zoomgov.com</a> (b)(6) Slaughter, Rebecca ↻)</li> <li>■ <b>12:00pm - 1:00pm Brown Bag Lunch: Commissioner Slaughter + OIA</b> (b)(6) or see below Zoom link: <a href="https://ftc.zoomgov.com">https://ftc.zoomgov.com</a> (b)(6) Slaughter, Rebecca</li> <li>■ <b>3:00pm - 4:00pm WRLA Check-In w/ Commissioner Slaughter</b> (<a href="https://ftc.zoomgov.com">https://ftc.zoomgov.com</a> (b)(6) Slaughter, Rebecca</li> </ul>		
<b>Friday, April 14</b>  <div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;">(b)(6)</div> <ul style="list-style-type: none"> <li>■ <b>11:00am - 11:30am Farewell</b> (b)(6) (<a href="https://ftc.zoomgov.com">https://ftc.zoomgov.com</a> (b)(6) Slaughter, Rebecca</li> </ul>	<b>Saturday, April 15</b>  <div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;">(b)(6)</div>		
	<b>Sunday, April 16</b>		

<b>April 17, 2023 - April 23, 2023</b>		April 2023 Su Mo Tu We Th Fr Sa 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30	May 2023 Su Mo Tu We Th Fr Sa 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31
<b>Monday, April 17</b> 10:00am - 11:00am Staff Meeting (b)(6) [r see below Zoom link: <a href="https://ftc.zoomgov.com">https://ftc.zoomgov.com</a> (b)(6) (b)(6) - Slaughter, Rebecca ↗ 12:00pm - 1:00pm E&C Joint Prep Session (https://ftc.zoomgov.com (b)(6) (b)(6) - Childs, Annette	<b>Tuesday, April 18</b> 10:00am - 1:00pm E & C Oversight Hearing		
<b>Wednesday, April 19</b> 10:30am - 11:00am BE Biweekly Meeting w/ Commissioner Slaughter (https://ftc.zoomgov.com (b)(6) (b)(6) - Slaughter, Rebecca ↗ 12:00pm - 1:00pm Crafty Lunch (Microsoft Teams) - Rothfarb, Lisa ↗ 2:05pm - 3:05pm BCP Biweekly Meeting w/ Commissioner Slaughter (https://ftc.zoomgov.com (b)(6) (b)(6) - Slaughter, Rebecca 3:00pm - 5:00pm Commissioner Wilson Open House (b)(6) 3:00pm - 4:00pm Staff Briefing with Cmr. Slaughter (Microsoft Teams Meeting) - De Marchi Sleigh, Lisa	<b>Thursday, April 20</b> 10:00am - 10:45am Meeting w/ Open Markets Institute (https://ftc.zoomgov.com (b)(6) (b)(6) - Slaughter, Rebecca 11:00am - 12:00pm Antitrust I Check-In w/ Commissioner Slaughter (b)(6) - Slaughter, Rebecca 2:00pm - 2:45pm Meeting w/ Senator Deacon (600 Pennsylvania Ave NW, Washington, District of Columbia 20580, United States) - Slaughter, Rebecca 3:00pm - 4:00pm (b)(7)(A) Staff Briefing with Comm'r Slaughter (https://ftc.zoomgov.com (b)(6) (b)(6) - Skrober, Aylin		
<b>Friday, April 21</b>	<b>Saturday, April 22</b>		
	<b>Sunday, April 23</b>		

April 24, 2023 - April 30, 2023

April 2023							May 2023						
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**Monday, April 24**

10:00am - 11:00am Staff Meeting (b)(6) or see below Zoom link: <https://ftc.zoomgov.com/join/9123456789> (b)(6)  
 (b)(6) Slaughter, Rebecca

11:00am - 11:30am Performance Review Chat w/ (b)(6)  
 (b)(6) - Slaughter, Rebecca

1:00pm - 2:00pm (b)(7) Staff Meeting w/ Commissioner Slaughter  
 (https://ftc.zoomgov.com/join/9123456789) (b)(6)  
 (b)(6) - Slaughter, Rebecca

**Tuesday, April 25**

10:00am - 11:00am Closed Commission Meeting: (b)(7)(A)  
 (b)(7)(A) (https://ftc.zoomgov.com/join/9123456789) (b)(6)  
 (b)(6) Tabor, April

12:00pm - 1:00pm (b)(7)(A) Party Meeting w/ Commissioner Slaughter  
 (https://ftc.zoomgov.com/join/9123456789) (b)(6)  
 (b)(6) - Slaughter, Rebecca

1:00pm - 2:00pm BC Biweekly Meeting w/ Commissioner Slaughter  
 (https://ftc.zoomgov.com/join/9123456789) (b)(6)  
 (b)(6) Slaughter, Rebecca

2:00pm - 3:00pm (b)(7) Party Meeting w/ Commissioner Slaughter  
 (https://ftc.zoomgov.com/join/9123456789) (b)(6)  
 (b)(6) Slaughter, Rebecca

3:00pm - 4:00pm (b)(7)(A) Party Meeting w/ Commissioner Slaughter  
 (https://ftc.zoomgov.com/join/9123456789) (b)(6)

**Wednesday, April 26**

10:00am - 11:00am (b)(7)(A) Staff Briefing with Cmr. Slaughter  
 (https://ftc.zoomgov.com/join/9123456789) (b)(6)  
 (b)(6) De Marchi Sleigh, Lisa

12:00pm - 1:00pm Brown Bag Lunch: Commissioner Slaughter + OPP (b)(6) or see below zoom link: <https://ftc.zoomgov.com/join/9123456789> (b)(6)  
 (b)(6) Slaughter, Rebecca

1:00pm - 1:30pm Performance Chat w/ (b)(6) Slaughter, Rebecca

1:30pm - 2:00pm Performance Chat w/ (b)(6) Slaughter, Rebecca

2:00pm - 3:00pm DivCo Quarterly Meeting - Diversity Council

3:00pm - 4:00pm Office of Technology Check-in w/ Commissioner Slaughter (b)(6) Slaughter, Rebecca

**Thursday, April 27**

(b)(6)

10:30am - 11:00am Performance Review Chat w/ (b)(6) Slaughter, Rebecca

11:00am - 11:45am Meeting w/ ITA DAS  
 (https://ftc.zoomgov.com/join/9123456789) (b)(6)

1:00pm - 1:30pm Performance Chat w/ (b)(6) Slaughter, Rebecca

1:30pm - 2:00pm Performance Chat w/ (b)(6) Slaughter, Rebecca

2:00pm - 3:00pm FYI: Chair Khan Testifies Before The House Committee on Appropriations

2:30pm - 3:00pm Meeting w/ DPC (b)(6) (https://ftc.zoomgov.com/join/9123456789) (b)(6)

3:30pm - 5:00pm (Belated) good-bye to (b)(6) (b)(6) Holland, Caroline

**Friday, April 28**

**Saturday, April 29**

**Sunday, April 30**

May 1, 2023 - May 7, 2023		May 2023	June 2023
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<p><b>Monday, May 1</b></p> <p>(b)(6)</p> <p>10:00am - 11:00am Staff Meeting (b)(6) or see below Zoom link: <a href="https://ftc.zoomgov.com/join/9123456789">https://ftc.zoomgov.com/join/9123456789</a> (b)(6)</p> <p>(b)(6) Slaughter, Rebecca</p> <p>11:00am - 11:30am Weekly Mtg w/ Elizabeth Wilkins (RKS Call EW (b)(6) - Slaughter, Rebecca</p> <p>(b)(6)</p>	<p><b>Tuesday, May 2</b></p> <p>11:45am - 12:45pm Brown Bag: OGC &amp; Commissioner Slaughter's Office (b)(6) Kappler, Burke</p> <p>2:30pm - 3:00pm Regional Managers Meeting w/ Commissioner Slaughter (b)(6) Slaughter, Rebecca</p> <p>(b)(6)</p> <p>3:00pm - 4:00pm HOLD: Franchisee Listening Event</p>
<p><b>Wednesday, May 3</b></p> <p>(b)(6)</p> <p>10:30am - 11:00am BE Biweekly Meeting w/ Commissioner Slaughter</p> <p>(https://ftc.zoomgov.com/join/9123456789) (b)(6) Slaughter, Rebecca</p> <p>12:00pm - 1:00pm Crafty Lunch (Microsoft Teams) - Rothfarb, Lisa</p> <p>1:00pm - 1:30pm OCR Monthly (https://ftc.zoomgov.com/join/9123456789) (b)(6) Slaughter, Rebecca</p> <p>(b)(6)</p>	<p><b>Thursday, May 4</b></p> <p>11:00am - 11:30am FW: The 19th Interview: Commissioner Slaughter (b)(6) @19thnews.org</p> <p>11:00am - 12:00pm FYI: Fireside Chat with Chair Khan and Former FTC Chairman Jon Leibowitz (b)(6)</p> <p>1:00pm - 1:30pm OIG Check-In w/ Commissioner Slaughter (https://ftc.zoomgov.com/join/9123456789) (b)(6) Slaughter, Rebecca</p> <p>2:00pm - 3:00pm Monthly Mtg w/ Cmsr Slaughter Staff and OGC (Microsoft TEAMS) - Hunt, Julia</p> <p>(b)(6)</p>
<p><b>Friday, May 5</b></p> <p>(b)(6)</p>	<p><b>Saturday, May 6</b></p> <p><b>Sunday, May 7</b></p>

# May 8, 2023 - May 14, 2023

May 2023						June 2023								
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## Monday, May 8

**10:00am - 11:00am Staff Meeting** (b)(6) or see below Zoom link:  
[https://ftc.zoomgov.com](https://ftc.zoomgov.com/join/join?pwd=(b)(6)) (b)(6)  
(b)(6) Slaughter, Rebecca ☺

**11:00am - 11:30am Weekly Mtg w/ Elizabeth Wilkins** (RKS Call EW  
(b)(6) Slaughter, Rebecca ☺

**1:00pm - 1:30pm OPA Monthly Meeting w/ Commissioner Slaughter**  
([https://ftc.zoomgov.com](https://ftc.zoomgov.com/join/join?pwd=(b)(6))) (b)(6)  
(b)(6) Slaughter, Rebecca ☺

**3:00pm - 4:00pm BCP Biweekly Meeting w/ Commissioner Slaughter**  
([https://ftc.zoomgov.com](https://ftc.zoomgov.com/join/join?pwd=(b)(6))) (b)(6)  
(b)(6) Slaughter, Rebecca

## Tuesday, May 9

**10:00am - 11:00am PNO Check-In w/ Commissioner Slaughter**  
(CC-5416) - Slaughter, Rebecca

**11:30am - 12:00pm Eisenhower Fellowships Mtg: Commissioner Slaughter & Lucrezia Busa** (b)(6) Slaughter, Rebecca

**1:00pm - 2:00pm BC Biweekly Meeting w/ Commissioner Slaughter**  
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**2:00pm - 3:00pm SWR Virtual Check-In w/ Commissioner Slaughter**  
([https://ftc.zoomgov.com](https://ftc.zoomgov.com/join/join?pwd=(b)(6))) (b)(6)  
(b)(6) Slaughter, Rebecca

## Wednesday, May 10

(b)(6)

**1:00pm - 2:00pm** (b)(7)(A) Commissioner Slaughter Staff Briefing (Microsoft Teams Meeting) - Skroejer, Aylin

## Thursday, May 11

(b)(6)

**1:00pm - 2:30pm FYI: Cloud Computing Discussion**  
(<https://www.ftc.gov/news-events/events/2023/05/cloud-computing-taking-stock-looking-ahead>)

## Friday, May 12

< 12:00am Becca OOO

**11:00am - 12:00pm Amgen/Horizon Party Mtg w/ Commissioner Slaughter**  
(<https://ftc.zoomgov.com/join/join?pwd=T2hSdFRVWkNlMG5udEtuU2czVTcvdz09&from=addon>) - Slaughter, Rebecca

**1:30pm - 2:30pm Privacy + Security Forum Keynote** (GW University: University Student Center, 800 21st St NW, Washington, DC 20052)

**3:00pm - 5:00pm Closed Commission Meeting 5/12/2023** (See Below) - Chewning, George

## Saturday, May 13

## Sunday, May 14





May 29, 2023 - June 4, 2023		May 2023	June 2023
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		28 29 30 31	25 26 27 28 29 30

Monday, May 29	Tuesday, May 30
<input type="checkbox"/> Memorial Day	(b)(6)
	<b>10:00am - 11:00am Staff Meeting</b> (b)(6) <a href="#">pr see below Zoom link: https://ftc.zoomgov.com/join/</a> (b)(6) (b)(6) Slaughter, Rebecca
	<b>1:00pm - 2:00pm</b> (b)(7)(A) <b>Commissioner Slaughter Briefing</b> (Microsoft Teams Meeting) - Skroeger, Aylin
	<b>3:00pm - 3:30pm Weekly Mtg w/ Elizabeth Wilkins</b> (RKS Call EW) (b)(6) Slaughter, Rebecca
Wednesday, May 31	
(b)(6)	
<b>12:00pm - 12:30pm Slaughter Office/BC Staff Conversation re Amgen/Horizon</b> (https://ftc.zoomgov.com/join/ (b)(6) Woolery, Ricardo	
<b>12:30pm - 1:00pm</b> (b)(7)(A) <b>w/ C. Slaughter</b> (Microsoft Teams Meeting) - Bedoya, Alvaro	
<b>1:00pm - 2:00pm Lit Group Check-In w/ Commissioner Slaughter</b> (https://ftc.zoomgov.com/join/ (b)(6) Slaughter, Rebecca	
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Slaughter, Rebecca (she/her) 5 6/1/2023 10:05 AM

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARIA CANTWELL TO ANDREW N. FERGUSON

The State of Virginia joined an amicus brief in *Illumina, Inc. and Grail, Inc.*, No. 23–60167 (5th Cir.), in which the amici states argued, among other points, that (1) Congress’s delegation of authority to the Federal Trade Commission (“FTC”) to “pick its forum as between its own administrative law judge and an Article III court[.]” is unconstitutional, and (2) the FTC’s structure is unconstitutional because FTC commissioners cannot be removed by the President except for cause.

*Question 1.* Setting aside your participation in the amicus brief, do you believe the FTC’s structure is unconstitutional? If yes, why?

*Answer.* If confirmed as an FTC Commissioner, I will abide by binding Supreme Court precedent. The Supreme Court has held that the FTC’s removal provisions

are consistent with Article II of the Constitution. See *Humphrey's Executor v. United States*, 295 U.S. 602 (1935). Although subsequent decisions have drawn *Humphrey's Executor* into question, see, e.g., *Collins v. Yellen*, 141 S. Ct. 1761 (2021); *Seila Law LLC v. Consumer Financial Protection Bureau*, 140 S. Ct. 2183 (2020), the Supreme Court has instructed time and again that “it is [the Supreme] Court’s prerogative alone to overrule one of its precedents,” *Bosse v. Oklahoma*, 580 U.S. 1, 3 (2016) (quoting *United States v. Hatter*, 532 U.S. 557, 567 (2001)). The Supreme Court’s “decisions remain *binding precedent* until [it] see[s] fit to reconsider them, regardless of whether subsequent cases have raised doubts about their continuing validity.” *Hohn v. United States*, 524 U.S. 236, 252–53 (1998).

I note that although the Commonwealth of Virginia joined the amicus brief in *Illumina, Inc. & Grail, Inc. v. FTC*, No. 23–60167 (5th Cir.), I was recused from participating in the Attorney General’s decision in that case.

**Question 2.** Setting aside your participation in the amicus brief, do you believe the FTC’s authority to choose to bring an action before its own administrative law judge or an Article III court is an unconstitutional delegation of authority? If yes, why?

**Answer.** If confirmed as an FTC Commissioner, I will abide by binding Supreme Court precedent. The Supreme Court is currently considering whether a similar grant of authority to the SEC violates the nondelegation doctrine. See *Securities Exchange Commission v. Jarkesy*, No. 22–859 (U.S.). The Court’s decision in that case could affect the scope of the FTC’s Part 3 authority. In any event, the Supreme Court has “stated that ‘adjudication of the constitutionality of congressional enactments has generally been thought beyond the jurisdiction of administrative agencies.’” *Elgin v. Department of Treasury*, 567 U.S. 1, 16 (2012) (quoting *Thunder Basin Coal Co. v. Reich*, 510 U.S. 200, 215 (1994)); see also *Axon Enterprise, Inc. v. Federal Trade Commission*, 598 U.S. 175, 190 n.2 (2023) (holding Federal courts have jurisdiction to consider constitutional challenges to the structure of the FTC even prior to the conclusion of agency proceedings).

**Question 3.** Please list each and every action taken by the FTC within the past 5 years that you believe was unconstitutional, in whole or in part.

**Answer.** If confirmed as an FTC Commissioner, I will abide by binding Supreme Court precedent. I am not aware of any Supreme Court opinions, or indeed any judicial opinions, in the last five years declaring an FTC action unconstitutional.

As Americans become more and more reliant on technology, privacy and data security couldn’t be more important. In 2020, the FTC entered into a record \$5 billion settlement with Facebook for its privacy violations. This past May, the FTC alleged that Meta violated the 2020 settlement, a big sign that the FTC’s \$5 billion fine was just a slap on the wrist. Companies often treat FTC fines as a cost of doing business. Plainly, government enforcement alone is not enough to protect consumer privacy.

**Question 4.** Do you agree that Congress should pass a privacy law that gives individuals a private right of action they can enforce in court when they have been seriously harmed by privacy violations? If no, why not?

**Answer.** I support Congress enacting comprehensive data-privacy legislation. In the absence of Congressional legislation, the states, including Virginia, have passed data privacy legislation. That is consistent with our federalist structure. But the nature of data privacy on the Internet is inherently a question of interstate commerce that the Constitution gives Congress the power to regulate.

The question whether to include a private right of action in a Federal privacy law involves balancing a wide range of important policy considerations and is difficult to answer in the abstract. The answer would turn on considerations like the persons to whom the right would be extended; the courts to which jurisdiction to hear such claims would be granted; the definition of the elements of the cause of action; the scope and type of available remedies; the defenses available to defendants; and the extent of the resources that Congress would make available to the States and the Federal government to enforce the law apart from a private cause of action. Weighing these considerations is a task that the Constitution commits uniquely to Congress. If I were confirmed, and if Congress sought the views of the FTC on this question, I would solicit the input of the Commission’s career experts and my fellow Commissioners to advise Congress appropriately.

Consumers are paying prices for gasoline and diesel that are way too high. West Coast Consumers are paying well over a dollar per gallon, sometimes two dollars per gallon, more than consumers in other parts of the country. Congress gave the FTC anti-manipulation authority in 2007, but we have yet to see the agency use it to protect consumers from manipulative market practices.

*Question 5.* Will you support the FTC's use of its current authority to investigate and bring enforcement actions relating to manipulation in the transportation fuel market? If no, why?

Answer. Yes, where such an investigation and enforcement action is consistent with the FTC's statutory authority.

*Question 6.* Do you support giving the FTC more resources and authority to fight market manipulation that is causing Americans to pay more at the pump?

Answer. If I were confirmed, I would consult the FTC's career experts and my fellow Commissioners to determine whether additional resources or authority are needed to fulfill the FTC's mandate to protect against manipulation in the petroleum markets.

Since 2014, prescription drug prices have increased 35 percent, outpacing increases in wages, gas, Internet service, and food. Evidence suggests that pharmacy benefit manager ("PBM") practices are part of the high drug costs.

*Question 7.* Would you support the FTC using its Section 5 authority over unfair or deceptive practices to investigate or bring enforcement action against PBMs? Why or why not?

Answer. Yes. If consistent with the authority conferred by Congress on the FTC, I would support using the FTC's Section 5 authority to bring enforcement actions against pharmacy benefit managers that are engaging in unfair methods of competition, or in unfair or deceptive acts or practices.

*Question 8.* Do you believe the FTC's authority to use its Section 5 authority to investigate or bring enforcement actions against PBMs is tied to the outcome of its current Section 6(b) study of PBMs? Why or why not?

Answer. The FTC's authority to enforce Section 5 does not turn on the results of studies commissioned pursuant to Section 6(b). Although I believe the FTC's ongoing 6(b) study is important and could be a very helpful aid to future agency action, nothing in Section 5 requires a Section 6(b) study before initiating enforcement proceedings.

You are a member of the Teneo Network, a network with plans to "crush liberal dominance" and a website "crafted so as not to pique the interest of Senate staffers who might look up the group if one of its members mentions Teneo during a confirmation process for a judgeship or a cabinet position" according to ProPublica reporting (see <https://www.propublica.org/article/leonard-leo-teneo-videos-documents>).

*Question 9.* How will your affiliation with this organization impact your ability to make independent decisions as a FTC Commissioner?

Answer. It will not.

*Question 10.* Will you defer to the principles, beliefs, or agenda of the Teneo Network, or any other organization to which you belong, when making decisions as a FTC Commissioner?

Answer. I will not.

*Question 11.* What would the founders, leadership, or members of the Teneo Network want to keep from the Senate or Senate staffers during a confirmation process?

Answer. The language quoted above appears to be a reporter's paraphrasing of someone else's statement. I have no idea what it means. I can speak only for myself. I have provided and will continue to provide to the Senate the information it requires to consider my nomination.

You were an adjunct law professor at the Antonin Scalia School of Law at George Mason University in 2019 and 2021, which is the same law school where former FTC Commissioner Joshua Wright, who was recently accused by multiple women of sexual misconduct, worked until Summer of 2023 when he resigned. His alleged behavior was purportedly an "open secret" at the law school.

*Question 12.* Did you have any conversations with Mr. Wright about becoming an FTC Commissioner prior to your nomination? After?

Answer. Before my nomination, I occasionally discussed antitrust issues with Mr. Wright but do not recall any conversations about my becoming a Commissioner. After my nomination, we had limited communications about the nomination. I spoke with other former Commissioners about my nomination as well.

*Question 13.* If confirmed, will you commit to ensuring that the FTC is a workplace free of sexual misconduct.

Answer. I commit without reservation to doing everything I can to keep the FTC free of sexual misconduct, if confirmed.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. TAMMY DUCKWORTH TO  
ANDREW N. FERGUSON

**Topic: Infant Formula Shortage**

Since the February 2022 recall of Abbott formula, many families around the country are still feeling the impact of the infant formula shortage. While some progress has been made, it is difficult to say whether we have taken the necessary steps to ensure a similar crisis does not happen again in the future. I appreciate FTC moving forward with its investigation and issuing three Civil Investigative Demand (CID) requests to three infant formula manufacturers.

*Question 1.* Mr. Ferguson, do you support the Federal Trade Commission's work in this area? If not how would you recommend we ensure the infant formula industry promotes effective competition and more resilient supply chains remains is a critical national priority?

Answer. Promoting competition in the market for infant formula—and for all other markets in which mothers participate to care for their children—is a critically important function of the FTC's competition mandate. Although I lack access to the information underlying the FTC's decision to issue the CIDs you describe, I support the FTC taking action consistent with its Section 5 authority to promote competition for infant formula. If confirmed, I would work quickly with FTC staff to get up to speed on these important issues.

*Question 2.* Mr. Ferguson, if confirmed, will you commit to continuing to work your fellow commissioners and my office on addressing this issue?

Answer. Yes.

**Topic: Biometric Information Privacy Act**

As you may know, Illinois has one of the strongest biometric privacy laws in the country, the Biometric Information Privacy Act, also known as BIPA. In fact, Commissioner Bedoya recently stated BIPA was far ahead of its time in recognizing the sensitivity of biometric data and establishing protections to guard it. I was pleased to see in May, the FTC take heed of the important of protecting biometric data and following Illinois's leadership when it issued a policy statement addressing concerns relating to the collection and use of biometric information and outlines the FTC power to act under Section 5 of the FTC Act.

*Question 3.* Mr. Ferguson, do you agree with the FTC's biometric policy statement? How would you work with states, like Illinois, to protect biometric data?

Answer. In the absence of Federal legislative action, States like Illinois have taken the lead in protecting consumer data. That is exactly what our Constitution contemplates. Illinois—and the vast majority of other States to have taken up privacy legislation, including Virginia—appropriately treat biometric data as sensitive data. This apparent consensus on the treatment of biometric data as sensitive data subject to the highest level of protection demonstrates why Congress should take action to address this important issue of interstate commerce.

In the absence of Congressional action, the FTC should take enforcement actions regarding the use of biometric data where the facts make clear that the collection, use, or transfer of those data violates Section 5's prohibition on unfair methods of competition, or where collection, use, or transfer constitutes an unfair or deceptive act or practice.

As a state law enforcer, I am particularly sensitive to the FTC's relationship with the States. The FTC frequently collaborates with state law enforcers to great effect. If confirmed, I would work to promote further collaboration.

**Topic: Artificial Intelligence and Algorithmic Decision Making**

Every day, we see more and more businesses integrate AI algorithms across their systems, including inside automated systems that process personal information. In almost all of those systems, it's unclear to the end user how their data is being used.

*Question 4.* How do you see the FTC's role in ensuring AI algorithms are not used in ways that could introduce inaccuracy, bias, and even discrimination into commercial decisions that affect people's lives?

Answer. The FTC should enforce its statutory mandates regarding AI practices as vigorously as it does for every other industry. If the use of AI constitutes an unfair method of competition or an unfair or deceptive act or practice, or violates some other statute the FTC enforces—for example, the Equal Credit Opportunity Act's prohibition on discrimination in the extension of credit—the FTC should take enforcement action consistent with the law.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. KYRSTEN SINEMA TO  
ANDREW N. FERGUSON

**Agency Authority/Artificial Intelligence.** Both the threats and potential benefits of artificial intelligence (AI) are far-reaching, a phenomenon reflected in various government agencies and Congressional committees learning and addressing these issues from their particular vantage points. Some members have already raised concerns with the steps taken thus far by the Federal Trade Commission (FTC) and there is no doubt that the agency will play a significant role going forward.

*Question 1.* Under its current authorities—including but not limited to enforcement actions—what role do you believe the FTC is to play in the regulation of artificial intelligence? What roles do you believe different parts of the FTC should play for the agency to best address these evolving issues?

Answer. I believe the FTC should vigorously enforce the statutes Congress has charged it with enforcing, and that it should go no further than Congress has expressly authorized it to go. Congress has charged the FTC with enforcing the laws prohibiting unfair methods of competition and unfair or deceptive acts or practices. The FTC should initiate enforcement actions regarding artificial intelligence only insofar as the use of artificial intelligence constitutes an unfair method of competition or an unfair or deceptive act or practice, or violates some other law that the FTC enforces. For example, it has become clear that AI can be used to create deepfakes, voice clones, and enhance the sophistication of e-mail phishing schemes that primarily target elderly Americans. This is a critical area on which the FTC should focus its enforcement resources, consistent with its Section 5 authority.

*Question 2.* Do you believe that the FTC is at risk of going beyond its statutory authority in the approach it has taken to AI to date?

Answer. Both in its enforcement and rulemaking proceedings, the FTC should always remain well within the bounds of the authority granted to it by Congress. If confirmed, I would work hard to ensure that the FTC would act only where Congress has clearly authorized it to act, and only in the manner Congress has authorized it to act.

*Question 3.* In your view, where should Congress best concentrate its attention to ensure that the FTC has the proper resources and authorities to fulfill its statutory mandates for the American people in the AI space?

Answer. If confirmed, I would consult with the career staff and with other Commissioners to determine whether the FTC has the resources it needs to carry out its congressional mandate successfully. If more resources are required to enforce existing authorities, or if additional authority is needed to protect consumers, I would work with Congress to obtain those resources and that additional authority.

**Section 13(b) Authority and Congressional Action.** The FTC's loss of its 13(b) authority has certainly altered how the agency operates.

*Question 4.* In your view, based on how the agency has operated since the ruling, what should Congress do to address this problem and protect consumers?

Answer. The authority the FTC believed it had under Section 13(b) of the Federal Trade Commission Act was a critical part of the FTC's enforcement toolkit. The FTC invoked that authority to recover billions of dollars in restitution and disgorgement for consumers. I believe Congress should pass legislation authorizing the FTC to obtain court-ordered monetary relief for consumers injured by unfair or deceptive acts or practices.

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RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. BEN RAY LUJÁN TO  
ANDREW N. FERGUSON

*Question.* The FTC is an *independent* agency with a statutory mandate to both protect consumers and promote competition. As an independent agency, the FTC is able to act without pressure from elected officials, political appointees, or special interests. In your view, why is it important to maintain the *independence* of the FTC?

Answer. Congress has tasked the FTC with protecting consumers from unfair methods of competition and from unfair or deceptive acts and practices. The FTC cannot perform that duty unless it acts in the best interest of American consumers, rather than at the behest of special interest groups or other self-interested actors.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN HICKENLOOPER TO  
ANDREW N. FERGUSON

*Section 5 of the FTC Act.* Section 5 of the Federal Trade Commission Act (FTC Act) grants the Commission authority to protect consumers from “unfair or deceptive acts or practices in or affecting commerce”. The FTC has used its authorities under Section 5 (15 U.S.C. 45) to issue rules prohibiting certain practices that harm consumers and collect civil penalties from companies who violate established rules.

*Question.* Do you believe the FTC has used its authorities under 15 U.S.C. 45 appropriately? If not, in what instances do you believe the FTC has used its authorities beyond the scope of Section 5 of the FTC Act? If confirmed, how would you apply the FTC’s authorities under Section 5 when considering proposed rulemakings?

*Answer.* Congress in Section 18 of the Federal Trade Commission Act has carefully delineated the FTC’s authority to promulgate rules regarding unfair or deceptive acts or practices in or affecting commerce. See Magnusson-Moss Warranty—Federal Trade Commission Improvement Act, Pub. L. 93–637, §202, 88 Stat. 2183, 2193–98 (1975) (codified at 15 U.S.C. §57a). The FTC may issue rules to address unfair or deceptive acts or practices that are “prevalent” in the markets. 15 U.S.C. §57a(b)(3). The Act also requires the FTC to follow special procedures for any Section 18 rulemaking. If confirmed, I would work hard to ensure that the FTC does not exceed Congress’s grant of rulemaking authority, and that it complies with all the procedural safeguards imposed by Congress.

*FTC & Consumer Welfare Standard.* The “consumer welfare standard”—where individuals benefit from consuming goods and services—has been used by courts when evaluating the potential impacts and antitrust implications that a proposed corporate merger may have on consumers. In today’s modern economy, consumers can benefit from goods and services in the physical and digital domains, which has raised questions about whether U.S. antitrust laws have kept pace.

*Question.* If confirmed, how would you apply the consumer welfare standard in future proposed transactions brought before the FTC? Would you consider other impacts of proposed transactions on consumers?

*Answer.* The FTC enforces the Clayton Act, which prohibits mergers the effect of which “may be substantially to lessen competition, or to tend to create a monopoly.” 15 U.S.C. §18. In determining whether a merger may substantially lessen competition or tend to create a monopoly, courts and the Commission consider a wide variety of factors—including market share; probable effects on price and output; the effect on input markets, including the risk of monopsony; potential effects on product quality and innovation; and the effect of the merger on potential entrants. If confirmed, I would vigorously enforce the Clayton Act’s prohibition on anti-competitive mergers.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. RAPHAEL WARNOCK TO  
ANDREW N. FERGUSON

*Antitrust Enforcement.* The Federal Trade Commission (FTC) plays a critical role in antitrust enforcement across many sectors, including in the defense industry. Unlike in other sectors, however, defense industry contractors are often Federal government entities that derive their revenue from taxpayer dollars. This creates a special responsibility for the government to ensure competition in these markets, especially considering the essential role of the defense industrial base in our national security.

*Question.* How do you view the significance of enforcing antitrust laws in ensuring fair competition, innovation, and cost-effectiveness in defense procurement?

*Answer.* Promoting competition and innovation in our defense markets is critically important not only to protect taxpayer resources, but also to ensure a ready supply of materiel and the industrial infrastructure to produce it in the event of armed conflict. Our antitrust laws are the principle means Congress has chosen to promote competition and protect innovation in our markets, including our defense markets. Vigorous enforcement of the antitrust laws in the defense markets is therefore a critical part of the FTC’s statutory mandate.

*Question.* How would you prioritize and approach this issue if confirmed as an FTC nominee?

*Answer.* If I were confirmed, I would work with the FTC’s staff and my fellow Commissioners to ensure the FTC was doing everything its resources allow to promote competition in these important markets.

**Frauds and Scams.** According to the FTC's Consumer Sentinel report for 2022, Georgia had the highest per-capita rate of fraud reports in the Nation.<sup>1</sup>

*Question.* If confirmed, how would you prioritize and approach the issue of combatting frauds and scams?

*Answer.* Preventing and combatting frauds and scams is one of the FTC's most critical missions. As a state law enforcer, I am keenly aware of the important role that state attorneys general play in protecting consumers from fraud and scams. The FTC has a long history of collaborating with state attorneys general to protect consumers. If confirmed, I would work to promote further collaboration with state law-enforcement officials to protect consumers from frauds and scams.

*Question.* What steps you believe the FTC should take to combat frauds and scams as new technologies, including generative artificial intelligence, may enable bad actors to create more sophisticated scams while using fewer resources?

*Answer.* As scammers and fraudsters become more sophisticated, the FTC must do its level best to keep pace. The FTC recently established the Office of Technology in part to ensure that the FTC could stay up to speed on technological developments, including artificial intelligence. I believe this is a step in the right direction. If confirmed, I would work with my fellow Commissioners to ensure the FTC continues adapting its enforcement tools to new technology and practices.

**Consumer Data Sales.** Last year, the FTC brought a lawsuit against a data broker alleging that the company acquired consumers' precise geolocation data and then marketed it in a form that allowed both current and prospective clients to track consumers' movements to and from sensitive locations like places of worship and health clinics.<sup>2</sup> The complaint charged that this conduct represents an unfair trade practice, in violation of the FTC Act. Part of the FTC's consumer protection authority is educating consumers and businesses about their rights and responsibilities, especially in relation to the security of their data.

*Question.* What steps can the FTC take within its statutory authority to protect and educate consumers about the sale of precise geolocation data?

*Answer.* The collection of consumer data, including precise geolocation data, generally happens in the background of consumer transactions without the consumer's awareness. Consumers have even less insight into the aggregation and sale of those data. The FTC has taken steps to educate consumers, and I support taking further efforts to educate consumers. Insofar as the collection, aggregation, or sale of precise geolocation data constitutes an unfair method of competition or an unfair or deceptive practice or act, the FTC has statutory authority to bring enforcement actions.

*Question.* What can Congress do to better inform consumers about the business-to-business sale of their data?

*Answer.* The regulation of the collection, aggregation, and sale of consumer data is a critical question of interstate commerce that is appropriately the subject of Federal legislation. I support congressional action to educate consumers on the collection, aggregation, and sale of consumer data, and to protect the privacy of those data.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. PETER WELCH TO  
ANDREW N. FERGUSON

*Question 1.* What are your thoughts on the impact AI will have on competition in the technology sector, and what do you believe is the appropriate role of the FTC in reducing the anticompetitive effects of AI in the technology sector?

*Answer.* Like many new technologies, AI presents opportunities both to foster innovation and efficiency, and to assist bad actors carrying out monopolistic schemes, frauds, and scams. The FTC has a long history of adapting its enforcement tools to confront changing technologies and new markets. I believe that AI is one example in a long line of technological advancements to which the FTC must adapt its enforcement tools.

*Question 2.* If confirmed, how would you approach mitigating the potential harms of artificial intelligence?

*Answer.* The FTC's mission is to police unfair methods of competition and unfair or deceptive acts or practices. Congress first mandated that mission more than a century ago. The FTC has consistently adapted to execute that mission in the face of substantial and constant changes in technology. If confirmed, I would work close-

<sup>1</sup> [https://www.ftc.gov/system/files/ftc\\_gov/pdf/CSN-Data-Book-2022.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/CSN-Data-Book-2022.pdf) at 20.

<sup>2</sup> <https://www.ftc.gov/legal-library/browse/cases-proceedings/ftc-v-kochava-inc.>

ly with the FTC's expert staff and my fellow Commissioners to ensure that the FTC enforcement tools keep pace with changes in technology, and to vigorously enforce Section 5 when artificial intelligence is used in furtherance of unfair methods of competition or unfair or deceptive acts or practices.

*Question 3.* Do you believe AI will increase competition or will it lead to further consolidation?

Answer. It is difficult to predict the competitive effects of AI given the almost infinite number of uses to which AI may eventually be put. Like many new technologies, AI may promote competition in some instances and degrade it in others.

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RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. TED CRUZ TO  
ANDREW N. FERGUSON

In questions at the hearing regarding FTC's advanced notice of proposed rulemaking on commercial surveillance and data security, you said you would be willing to table the rule.

*Question.* What did you mean by that?

Our system of government depends on each branch of the Federal government exercising only the powers the Constitution assigns to them. Congress makes the laws, and the executive branch—including the FTC—executes those laws. The Executive Branch cannot make law, and it is critically important that agencies of the Executive Branch exercise only those powers Congress has given them. The FTC should bring enforcement actions where consumer data is used to facilitate unfair methods of competition or unfair or deceptive acts or practices. But I have reservations about the rule contemplated by the advanced notice of proposed rulemaking; it may exceed the authority conferred on the FTC by Congress. Moreover, I am firmly of the view that congressional action is the only way to address data privacy and security comprehensively. Prudence suggests that the FTC should be slow to enact regulations which risk disrupting Congress's ongoing consideration of comprehensive privacy legislation.

My reservations notwithstanding, if I were confirmed I would consider the comments submitted in response to the advanced notice of proposed rulemaking and the text of any draft rule with an open mind. I would base any decision regarding that rule exclusively on the law as Congress has written it.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN THUNE TO  
ANDREW N. FERGUSON

*Question 1.* Mr. Ferguson and Ms. Holyoak, earlier this year, the FTC issued a "Request for Information" on franchising which included many questions about private franchise contracts and franchisors' association with franchisee employees. If confirmed, would you agree that the FTC should proceed with caution and not create any rules or obligations that would unravel or threaten the franchise model in the United States and the survival of the 800,000 franchise businesses and their workers across America?

Answer. The franchise model has been a boon to the American economy. Because I have not yet been confirmed, I am unfamiliar with the record underlying the FTC's request for information. If confirmed, I would work with FTC staff to get up to speed on the request for information. The FTC should not take any action in any industry, including franchises, that is inconsistent with its statutory mandate.

*Question 2.* As you know, I am one of the authors of the TRACED Act that was passed into law in 2019, creating, among other things the registered traceback consortium. We've seen some progress since then, including a decline in illegal and fraudulent robocalls. If confirmed, will you commit to continue to prioritize FTC efforts to stop illegal robocalls?

Answer. Yes. Robocalls are a plague from which no consumer is immune, and if confirmed I would work with my colleagues to make this a top priority for the FTC.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JERRY MORAN TO  
ANDREW N. FERGUSON

**1. Data Privacy: FTC Acting Without Congress**

I was disappointed the FTC chose to pursue a Section 18 rulemaking on data privacy and security. No directive was given to the FTC or Congress to pursue such

a rulemaking, as the issue is a matter of ongoing and active debate in Congress, and this Committee in particular.

Last year, the U.S. Supreme Court in *West Virginia v. EPA* reaffirmed the principle that Federal agencies must operate within their statutory boundaries, emphasizing the need for a clear grant of authority under the “major questions doctrine” for rulemaking. Since that decision was issued, the FTC has pursued rulemaking on a number of issues, including data privacy.

How should the FTC apply the *West Virginia v. EPA* decision when considering rulemaking projects? Can significant rulemaking projects be undertaken, even if the FTC has no clear grant of authority from Congress to pursue the rulemaking?

Answer. If confirmed, I would follow Supreme Court precedent, including *West Virginia v. EPA*, and abide by the limits Congress has imposed on the FTC’s authority. Our system of government depends on each branch of the Federal government exercising only the powers the Constitution assigns to them. Congress makes the laws, and the executive branch—including the FTC—executes those laws. The Executive Branch cannot make law, and it is critically important that agencies of the Executive Branch exercise only those powers Congress has given them. The FTC cannot undertake any rulemaking project—significant or insignificant—unless Congress has unambiguously conferred upon it the authority to do so. The major-questions doctrine, which is central to the Supreme Court’s holding in *West Virginia v. EPA*, safeguards this important separation-of-powers principle.

## 2. Data Privacy: Preemption of State Laws

What are the potential consequences to small businesses if a Federal comprehensive data privacy law does not preempt the patchwork of state data privacy laws? Do you believe a Federal comprehensive data privacy law should preempt state laws? Why or why not?

Answer. In the absence of Federal privacy legislation, the States have stepped in to protect their citizens’ data. That is consistent with our constitutional system built on federalism. The many approaches taken by the States run the risk of creating a regulatory patchwork, which creates uncertainty and unpredictability for both regulated entities and consumers. Addressing the patchwork problem may require preempting some state laws. Congress should, however, respect the States’ long-standing role as the principal protector of the rights of consumers, and preempt no more State law than necessary to accomplish Congress’s objectives.

## 3. FTC “Zombie” Votes

Last November, Politico reported that Commissioner Chopra submitted as many as 20 votes on his last day at the FTC that, thanks to the FTC voting rules, would allow those votes to be used for Commission business for up to 60 days.

Allowing Commissioners’ votes to count after they depart their post seems counter to common sense and good governance principles. This is why I introduced the FTC Integrity Act, which would ensure this practice would not continue. An amendment version of this bill received unanimous support in this Committee last Congress.

Regardless of whether Commissioner Chopra’s votes comported with the Commission’s rules at the time, do you believe that Commissioners should be able to vote after leaving the FTC?

Answer. Permitting a Commissioner to vote on matters that are not decided by the FTC until after that Commissioner has departed is inconsistent with principles of sound deliberation and collective decision making. It denies sitting Commissioners the opportunity to debate the departing Commissioner’s views and undermines transparency.

## 4. Staff Morale at the FTC

An April 2023 study found that staff morale at the FTC has decreased dramatically since 2020, when the Commission was the highest-ranking Federal agency in terms of employee satisfaction. Particularly concerning are scores pertaining to FTC employee satisfaction with Commission leadership, which fell from 84.3 in 2020 to 46.6 in 2022.

In general, what factors contribute to high employee satisfaction? How can organization leaders impact the morale of staff?

Answer. It is my experience that employees are satisfied with their work if they have a clear sense of their mission, and have leaders who insist on excellence in the execution of that mission, and who work to promote a culture of excellence.

If confirmed by the Senate, how would you work to increase employee satisfaction at the Commission?

Answer. I would meet with the FTC staff to understand what concerns they have, how they understand their mission, what I can do to support them in its execution, and to solicit input on how to promote a culture of excellence within the agency.

##### 5. Motor Vehicle Dealers Trade Regulation Rule

Last summer, the FTC noticed the Motor Vehicle Dealers Trade Regulation Rule, which would add requirements for dealerships to follow and change the way Americans purchase vehicles. I understand the FTC did not pursue an Advanced Notice of Proposed Rulemaking in this case, which would have given stakeholders an additional opportunity to provide the FTC information on the car buying process.

Generally speaking, do you believe the FTC should pursue all available information-gathering avenues and conduct thorough cost-benefit analyses before acting to implement a significant rule, like the Motor Vehicle Dealers Rule?

Answer. I generally believe that more information is better than less, and that regulations premised on a comprehensive understanding of markets, consumer behavior, and potential costs and benefits are better than those that are not premised on a comprehensive understanding.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. CYNTHIA LUMMIS TO  
ANDREW N. FERGUSON

1) Last year, the FTC issued an Advanced Notice of Proposed Rulemaking (ANPR) for the Trade Regulation Rule on Commercial Surveillance and Data Security. I expressed my concerns in a letter that this rulemaking would only add to the regulatory uncertainty that businesses face when complying with data privacy regulation and potentially increase costs. I additionally voiced my concerns that the FTC was exceeding its authority by proposing a broad rulemaking action that would have large-scale impacts on the U.S. economy.

a) Do you believe that the FTC overstepped its authority in issuing the ANPR for the Trade Regulation Rule on Commercial Surveillance and Data Security?

Answer. Our system of government depends on each branch of the Federal government exercising only the powers the Constitution assigns to them. Congress makes the laws, and the executive branch—including the FTC—executes those laws. The Executive Branch cannot make law, and it is critically important that agencies of the Executive Branch exercise only those powers Congress has given them. The FTC should bring enforcement actions where consumer data is used to facilitate unfair methods of competition or unfair or deceptive acts or practices. But I have reservations about the rule contemplated by the advanced notice of proposed rulemaking; it may exceed the authority conferred on the FTC by Congress. Moreover, I am firmly of the view that congressional action is the only way to address data privacy and security comprehensively. Prudence suggests that the FTC should be slow to enact regulations which risk disrupting Congress's ongoing consideration of comprehensive privacy legislation.

My reservations notwithstanding, if I were confirmed I would consider the comments submitted in response to the advanced notice of proposed rulemaking and the text of any draft rule with an open mind. I would base any decision regarding that rule exclusively on the law as Congress has written it.

b) Do you believe that the FTC should wait for Congress to enact comprehensive data privacy regulation before issuing rules on data privacy?

Answer. I believe that Congress alone possesses the authority to address data privacy comprehensively, and that the FTC should not exercise its authority in a way that would exceed its statutory authority or which might interfere with the development of comprehensive privacy legislation by Congress.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARIA CANTWELL TO  
MELISSA HOLYOAK

The State of Utah joined an amicus brief in *Illumina, Inc. and Grail, Inc.*, No. 23–60167 (5th Cir.), in which the amici states argued, among other points, that (1) Congress's delegation of authority to the Federal Trade Commission ("FTC") to "pick its forum as between its own administrative law judge and an Article III court[]" is unconstitutional, and (2) the FTC's structure is unconstitutional because FTC commissioners cannot be removed by the President except for cause.

*Question 1.* Setting aside your participation in the amicus brief, do you believe the FTC's structure is unconstitutional? If yes, why?

Answer. If confirmed, I will comply with Supreme Court precedent. In *Humphrey's Executor v. United States*, the Supreme Court held that the FTC's structure is constitutional. 295 U.S. 602, 629–30 (1935).

*Question 2.* Setting aside your participation in the amicus brief, do you believe the FTC's authority to choose to bring an action before its own administrative law judge or an Article III court is an unconstitutional delegation of authority? If yes, why?

Answer. In *SEC v. Jarkesy*, No. 22–859, the Supreme Court granted certiorari to consider whether statutory provisions that authorize the SEC to choose to enforce the securities laws through an agency adjudication instead of filing a district court action violate the nondelegation doctrine. It is unclear how the Court will decide that question and whether its decision will impact similar questions relating to the FTC's authority.

*Question 3.* Please list each and every action taken by the FTC within the past 5 years that you believe was unconstitutional, in whole or in part.

Answer. With respect to completed matters, I am unaware of any FTC action in the past five years that is unconstitutional although I have not done an exhaustive review of every FTC action during that time period. As a nominee, I am not in a position to comment on the constitutionality of any pending or active matters.

As Americans become more and more reliant on technology, privacy and data security couldn't be more important. In 2020, the FTC entered into a record \$5 billion settlement with Facebook for its privacy violations. This past May, the FTC alleged that Meta violated the 2020 settlement, a big sign that the FTC's \$5 billion fine was just a slap on the wrist. Companies often treat FTC fines as a cost of doing business. Plainly, government enforcement alone is not enough to protect consumer privacy.

*Question 4.* Do you agree that Congress should pass a privacy law that gives individuals a private right of action they can enforce in court when they have been seriously harmed by privacy violations? If no, why not?

Answer. I agree that Congress should enact comprehensive privacy legislation that includes appropriate remedies. Whether or not those remedies should include a private right of action is a question I would like to research further. If confirmed, I will confer with the FTC staff and my fellow Commissioners to better understand their views and experiences regarding privacy enforcement proceedings including how a private right of action could impact the FTC's enforcement of a data privacy law. I would also seek to understand what additional resources may be necessary for enforcement of a data privacy law and how the FTC could partner with state attorneys general on enforcement. I look forward to working with your office on this, if confirmed.

Consumers are paying prices for gasoline and diesel that are way too high. West Coast Consumers are paying well over a dollar per gallon, sometimes two dollars per gallon, more than consumers in other parts of the country. Thanks to Enron, we know energy markets can be manipulated. Congress gave the FTC anti-manipulation authority in 2007, but we have yet to see the agency use it to protect consumers from manipulative market practices.

*Question 5.* Will you support the FTC's use of its current authority to investigate and bring enforcement actions relating to manipulation in the transportation fuel market? If no, why?

Answer. Yes, where the facts and the law warrant such enforcement.

*Question 6.* Do you support giving the FTC more resources and authority to fight market manipulation that is causing Americans to pay more at the pump?

Answer. I am not privy to any current FTC investigations or actions relating to transportation fuel market manipulation. If confirmed, I will confer with the FTC staff and my fellow Commissioners and familiarize myself with FTC's ongoing investigations, if any, to determine whether there is a need for additional resources or authority.

You are a member of the Teneo Network, a network with plans to “crush liberal dominance” and a website “crafted so as not to pique the interest of Senate staffers who might look up the group if one of its members mentions Teneo during a confirmation process for a judgeship or a cabinet position” according to ProPublica reporting (see <https://www.propublica.org/article/leonard-leo-teneo-videos-documents>).

*Question 7.* How will your affiliation with this organization impact your ability to make independent decisions as a FTC Commissioner?

Answer. My affiliation with this organization does not and will not impact my ability to make independent decisions.

*Question 8.* Will you defer to the principles, beliefs, or agenda of the Teneo Network, or any other organization to which you belong, when making decisions as a FTC Commissioner?

Answer. If confirmed, I will not defer to the views of any outside organization in making decisions, but instead, I will carefully and neutrally consider the facts and legal authorities.

*Question 9.* What would the founders, leadership, or members of the Teneo Network want to keep from the Senate or Senate staffers during a confirmation process?

Answer. I have submitted all information requested by the Senate in my confirmation process and I will continue to do so. But I am not in a position to respond on anyone else's behalf.

Former FTC Commissioner Joshua Wright, who was recently accused by multiple women of sexual misconduct, is a well-known figure in the antitrust community.

*Question 10.* Did you have any conversations with Mr. Wright about becoming an FTC Commissioner prior to your nomination? After?

Answer. As I did with other former FTC Commissioners, I spoke with him about his experience in becoming and serving as an FTC Commissioner after Leader McConnell recommended me to the President for this position, both before and after President Biden nominated me. I have not spoken with him since I learned of those allegations in the media.

*Question 11.* If confirmed, will you commit to ensuring that the FTC is a workplace free of sexual misconduct?

Answer. If confirmed, I will do everything in my power to ensure that the FTC is a workplace free of sexual misconduct.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. TAMMY DUCKWORTH TO  
MELISSA HOLYOAK

**Topic: Infant Formula Shortage**

Since the February 2022 recall of Abbott formula, many families around the country are still feeling the impact of the infant formula shortage. While some progress has been made, it is difficult to say whether we have taken the necessary steps to ensure a similar crisis does not happen again in the future. I appreciate FTC moving forward with its investigation and issuing three Civil Investigative Demand (CID) requests to three infant formula manufacturers.

*Question 1.* Ms. Holyoak, do you support the Federal Trade Commission's work in this area? If not how would you recommend we ensure the infant formula industry promotes effective competition and more resilient supply chains remains is a critical national priority?

Answer. Ensuring that the country does not face another infant formula shortage is critically important. I am familiar with the FTC's work on the issue but I am not privy to the details of the investigations. If confirmed, I will confer with FTC staff and support all actions where the law and the facts warrant enforcement.

*Question 2.* Ms. Holyoak, if confirmed, will you commit to continuing to work with your fellow commissioners and my office on addressing this issue?

Answer. Yes.

**Topic: Biometric Information Privacy Act**

As some of you may know, Illinois has one of the strongest biometric privacy laws in the country, the Biometric Information Privacy Act, also known as BIPA. In fact, Commissioner Bedoya recently stated BIPA was far ahead of its time in recognizing the sensitivity of biometric data and establishing protections to guard it. I was pleased to see in May, the FTC take heed of the important of protecting biometric data and following Illinois's leadership and issuing a policy statement addressing concerns relating to the collection and use of biometric information and outlines the FTC power to act under Section 5 of the FTC Act.

*Question 3.* Ms. Holyoak, do you agree with the FTC's biometric policy statement? How would you work with states, like Illinois, to protect biometric data?

Answer. I agree that the FTC should combat unfair or deceptive acts or practices relating to biometric information. The increased collection and use of biometric information raises consumer privacy and data security concerns. This is a critical area for the FTC to exercise its authority because biometric data is being used to create voice clones, deepfakes, and other fraudulent practices that significantly harm Americans, particularly the elderly. Further, the FTC has a long history of coordinating with state attorneys general. If confirmed, I will work with FTC staff to un-

derstand the FTC's pending investigations and collaborative efforts with states like Illinois. I commit to using the statutory authorities vested in the FTC by Congress to protect the privacy and security of Americans' biometric data.

**Topic: Artificial Intelligence and Algorithmic Decision Making**

Every day, we see more and more businesses integrate AI algorithms across their systems, including inside automated systems that process personal information. In almost all of those systems, it's unclear to the end user how their data is being used.

*Question 4.* How do you see the FTC's role in ensuring AI algorithms are not used in ways that could introduce inaccuracy, bias, and even discrimination into commercial decisions that affect people's lives?

Answer. While the technological advances in AI and machine learning may be new, the FTC has experience in considering automated decision-making and its effects on Americans. In addition to its authority to enforce against unfair or deceptive acts or practices, the FTC is charged with enforcing the Equal Credit Opportunity Act, which prohibits discrimination in credit decisions, as well as the Fair Credit Reporting Act, which protects the accuracy of consumers' credit reporting information. This work can help guide the FTC as it considers application of its statutory authorities to new technologies. If confirmed, I will enforce FTC's statutory authorities relating to AI algorithms where the law and the facts support such enforcement.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. KYRSTEN SINEMA TO  
MELISSA HOLYOAK

**Agency Authority/Artificial Intelligence.** Both the threats and potential benefits of artificial intelligence (AI) are far-reaching, a phenomenon reflected in various government agencies and Congressional committees learning and addressing these issues from their particular vantage points. Some members have already raised concerns with the steps taken thus far by the Federal Trade Commission (FTC) and there is no doubt that the agency will play a significant role going forward.

*Question 1.* Under its current authorities—including but not limited to enforcement actions—what role do you believe the FTC is to play in the regulation of artificial intelligence? What roles do you believe different parts of the FTC should play for the agency to best address these evolving issues?

Answer. The FTC's mission is to protect Americans from deceptive or unfair business practices and from unfair methods of competition through law enforcement, advocacy, research, and education. To fulfill this mission, the FTC must stay abreast of technological advancements relating to artificial intelligence. Understanding these issues is critical not only for investigating and enforcing the FTC's competition and consumer protection mandate, but also for educating consumers.

*Question 2.* Do you believe that the FTC is at risk of going beyond its statutory authority in the approach it has taken to AI to date?

Answer. The FTC is currently engaged in investigations and enforcement actions relating to AI to which I am not privy. I look forward to being briefed on these matters by FTC staff and my fellow Commissioners, if confirmed, and to understanding better the various bases for these actions.

*Question 3.* In your view, where should Congress best concentrate its attention to ensure that the FTC has the proper resources and authorities to fulfill its statutory mandates for the American people in the AI space?

Answer. While the technological advances in AI and machine learning may be new, the FTC has experience in considering analogous technologies like automated decision-making and its effects on Americans through the Equal Credit Opportunity Act and the Fair Credit Reporting Act. This work can help guide the FTC as it considers application of its statutory authorities to new technologies. If confirmed, I will enforce FTC's statutory authorities relating to AI algorithms where the law and the facts support such enforcement. To better understand what resources or additional tools are needed, I would want to discuss these issues with FTC experts and my fellow Commissioners, if I am confirmed. I would also seek to maintain a continued dialogue with Congress on these matters.

**Section 13(b) Authority and Congressional Action.** The FTC's loss of its 13(b) authority has certainly altered how the agency operates.

*Question 4.* In your view, based on how the agency has operated since the ruling, what should Congress do to address this problem and protect consumers?

Answer. The ability to recover equitable monetary relief in court to make consumers whole is an important and effective tool for enforcers. I generally support Congress's efforts to restore this tool.

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RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. BEN RAY LUJÁN TO  
MELISSA HOLYOAK

*Question.* The FTC is an *independent* agency with a statutory mandate to both protect consumers and promote competition. As an independent agency, the FTC is able to act without pressure from elected officials, political appointees, or special interests. In your view, why is it important to maintain the *independence* of the FTC?

Answer. The FTC is charged with protecting Americans from deceptive or unfair business practices and from unfair methods of competition. In fulfilling its mandate, the FTC should focus on protecting Americans and faithfully and neutrally applying the law across all industries. If confirmed, I will not defer to the views of any outside organization in making decisions, but instead, I will carefully and neutrally consider the facts and legal authorities.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN HICKENLOOPER TO  
MELISSA HOLYOAK

*Section 5 of the FTC Act.* Section 5 of the Federal Trade Commission Act (FTC Act) grants the Commission authority to protect consumers from “*unfair or deceptive acts or practices in or affecting commerce*”. The FTC has used its authorities under Section 5 (15 U.S.C. 45) to issue rules prohibiting certain practices that harm consumers and collect civil penalties from companies who violate established rules.

*Question.* Do you believe the FTC has used its authorities under 15 U.S.C. 45 appropriately? If not, in what instances do you believe the FTC has used its authorities beyond the scope of Section 5 of the FTC Act? If confirmed, how would you apply the FTC's authorities under Section 5 when considering proposed rulemakings?

Answer. The FTC has authority to issue rules addressing unfair or deceptive acts or practices. The FTC issues such rules pursuant to the procedures set forth in Section 18 of the FTC Act. *See* 15 U.S.C. § 57a. The FTC may only issue such rules if the unfair acts or practices are prevalent. If confirmed, I would faithfully follow the statutory requirements set forth in Section 18 for unfair or deceptive acts or practices rulemaking.

*FTC & Consumer Welfare Standard.* The “consumer welfare standard”—where individuals benefit from consuming goods and services—has been used by courts when evaluating the potential impacts and antitrust implications that a proposed corporate merger may have on consumers. In today's modern economy, consumers can benefit from goods and services in the physical and digital domains, which has raised questions about whether U.S. antitrust laws have kept pace.

*Question.* If confirmed, how would you apply the consumer welfare standard in future proposed transactions brought before the FTC? Would you consider other impacts of proposed transactions on consumers?

Answer. The FTC reviews proposed transactions and takes action to prevent anti-competitive mergers or acquisitions where the transaction would substantially lessen competition. In analyzing a proposed transaction, courts assess a range of factors including reduced output, decreased product quality, stifled innovation, higher prices, and other effects. To that end, the current antitrust laws are sufficiently broad and flexible to address emerging technologies including digital markets. If confirmed, I would enforce competition laws under applicable statutory authorities and legal precedent.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. RAPHAEL WARNOCK TO  
MELISSA HOLYOAK

***Antitrust Enforcement.*** The Federal Trade Commission (FTC) plays a critical role in antitrust enforcement across many sectors, including in the defense industry. Unlike in other sectors, however, defense industry contractors are often Federal government entities that derive their revenue from taxpayer dollars. This creates a special responsibility for the government to ensure competition in these markets, especially considering the essential role of the defense industrial base in our national security.

*Question.* How do you view the significance of enforcing antitrust laws in ensuring fair competition, innovation, and cost-effectiveness in defense procurement?

*Answer.* The antitrust laws protect competition across all industries including the defense industry. Robust competition in the defense industry serves both the Defense Department and the American taxpayer by leading to lower prices, higher quality goods and services, and more innovation.

*Question.* How would you prioritize and approach this issue if confirmed as an FTC nominee?

*Answer.* If confirmed, I would seek to understand from FTC experts what the FTC is currently doing with respect to these issues and how best to proceed. I am committed to vigorously enforcing the antitrust laws where the facts and the law warrant such enforcement.

**Frauds and Scams.** According to the FTC's Consumer Sentinel report for 2022, Georgia had the highest per-capita rate of fraud reports in the Nation.<sup>1</sup>

*Question.* If confirmed, how would you prioritize and approach the issue of combatting frauds and scams?

*Answer.* If confirmed, I would combat frauds and scams through investigation, enforcement, consumer education, and collaboration with law enforcement partners. The FTC recently published a Request for Information seeking comments on how the FTC can more effectively collaborate with state attorneys general to educate consumers regarding fraud. I look forward to reviewing the comments submitted in response to the Request and implementing effective strategies to improve collaboration and outreach, if confirmed.

*Question.* What steps you believe the FTC should take to combat frauds and scams as new technologies, including generative artificial intelligence, may enable bad actors to create more sophisticated scams while using fewer resources?

*Answer.* Fraudsters and scammers are taking advantage of new technologies like artificial intelligence to personalize scam texts and e-mails, or clone voices of family or friends, often targeting the most vulnerable Americans, such as the elderly. The FTC must stay abreast of these technologies and effectively adapt enforcement and outreach.

**Consumer Data Sales.** Last year, the FTC brought a lawsuit against a data broker alleging that the company acquired consumers' precise geolocation data and then marketed it in a form that allowed both current and prospective clients to track consumers' movements to and from sensitive locations like places of worship and health clinics.<sup>2</sup> The complaint charged that this conduct represents an unfair trade practice, in violation of the FTC Act. Part of the FTC's consumer protection authority is educating consumers and businesses about their rights and responsibilities, especially in relation to the security of their data.

*Question.* What steps can the FTC take within its statutory authority to protect and educate consumers about the sale of precise geolocation data?

*Answer.* Most consumers are unaware of the collection and sale of their precise geolocation data. The FTC's website educates consumers on how and why websites and apps track consumers and what consumers can do to eliminate tracking. If confirmed, I would want to understand from FTC staff how to improve these education efforts.

*Question.* What can Congress do to better inform consumers about the business-to-business sale of their data?

*Answer.* This is an issue on which, if confirmed, I would seek insight from FTC staff and my fellow Commissioners. If confirmed, I would welcome a dialogue with Congress regarding consumer education on data privacy.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. PETER WELCH TO  
MELISSA HOLYOAK

*Question 1.* Earlier this year, I along with my colleague Senator Bennet, reintroduced the Digital Platform Commission Act to help centralize how our government oversees and regulates social media platforms. This bill would create a new independent agency of subject matter experts to provide comprehensive regulation of digital platforms to protect consumers, promote competition, and defend the public interest. The bill was updated this Congress to incorporate regulations related to artificial intelligence (AI).

<sup>1</sup> [https://www.ftc.gov/system/files/ftc\\_gov/pdf/CSN-Data-Book-2022.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/CSN-Data-Book-2022.pdf) at 20.

<sup>2</sup> <https://www.ftc.gov/legal-library/browse/cases-proceedings/ftc-v-kochava-inc.>

a. What do you believe is the appropriate role, if any, of the FTC in addressing the potential harms of social media platforms—including addressing practices like algorithmic boosting, extensive data collection, and concentration among platforms?

Answer. The FTC has brought enforcement actions relating to unauthorized data collection, as well as antitrust claims, against social media platforms. In addition, the FTC is currently engaged in a 6(b) study regarding how social media and video streaming services collect and use data. I look forward to understanding the results of this study and would support continued investigation and enforcement of social media platforms where the facts and the law warrant such enforcement.

b. If confirmed, what steps would you take to bolster accountability at, and more effectively regulate, Big Tech companies?

Answer. To effectively protect consumers from unfair or deceptive acts or practices and anticompetitive conduct in the digital markets, the FTC must stay abreast of technological advancements and adapt enforcement and outreach accordingly.

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RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. TED CRUZ TO  
MELISSA HOLYOAK

In questions at the hearing regarding FTC’s advanced notice of proposed rulemaking on commercial surveillance and data security, you said you would be willing to table the rule.

*Question.* What did you mean by that?

Answer. The FTC’s advanced notice of proposed rulemaking on commercial surveillance and data security involved a myriad of topics on which the FTC received over 11,000 comments. I believe the best approach to addressing data privacy is comprehensive legislation. Such legislation would necessarily direct any rulemaking in this space. I generally support delaying formulation and publication of proposed data privacy rules given that Congress may take up comprehensive privacy legislation and such legislation would likely require revisions to any proposed rules. However, before making a decision on a draft rule, I would review the text of the draft rule, consider the administrative record including the public comments, and speak with the FTC career staff and my colleagues on the Commission.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN THUNE TO  
MELISSA HOLYOAK

*Question 1.* Mr. Ferguson and Ms. Holyoak, earlier this year, the FTC issued a “Request for Information” on franchising which included many questions about private franchise contracts and franchisors’ association with franchisee employees. If confirmed, would you agree that the FTC should proceed with caution and not create any rules or obligations that would unravel or threaten the franchise model in the United States and the survival of the 800,000 franchise businesses and their workers across America?

Answer. The franchise business model provides Americans important economic opportunities, particularly for small businesses which make up the backbone of our economy. Any regulation should carefully consider burdens that could decrease such opportunities. If confirmed, I will review the record relating to the Request for Information, consider the public comments, and solicit the views of the FTC staff and my fellow Commissioners on these issues before making a decision.

*Question 2.* As you know, I am one of the authors of the TRACED Act that was passed into law in 2019, creating, among other things the registered traceback consortium. We’ve seen some progress since then, including a decline in illegal and fraudulent robocalls. If confirmed, will you commit to continue to prioritize FTC efforts to stop illegal robocalls?

Answer. Yes.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JERRY MORAN TO  
MELISSA HOLYOAK

**1. Data Privacy: FTC Acting Without Congress**

Last year, the U.S. Supreme Court in *West Virginia v. EPA* reaffirmed the principle that Federal agencies must operate within their statutory boundaries, emphasizing the need for a clear grant of authority under the “major questions doctrine” for rulemaking. Since that decision was issued, the FTC has pursued rulemaking on a number of issues, including data privacy.

How should the FTC apply the *West Virginia v. EPA* decision when considering rulemaking projects? Can significant rulemaking projects be undertaken, even if the FTC has no clear grant of authority from Congress to pursue the rulemaking?

Answer. In *West Virginia v. EPA*, the Supreme Court held that an agency must point to “clear congressional authorization” when it claims the authority to make decisions of vast “economic and political significance.” 142 S. Ct. 2587, 2608–09 (2022). If confirmed, I will faithfully follow Supreme Court precedent and respect the limits of the statutory authority vested by Congress.

### **2. Data Privacy: Preemption of State Laws**

What are the potential consequences to small businesses if a Federal comprehensive data privacy law does not preempt the patchwork of state data privacy laws? Do you believe a Federal comprehensive data privacy law should preempt state laws? Why or why not?

Answer. In determining the preemptive reach of comprehensive privacy legislation, Congress must balance the interests of businesses seeking to comply with multiple statutory frameworks with the interests of the states in providing additional protections or continued experimentation in addressing these issues. If confirmed, I would discuss these important questions with my fellow Commissioners, FTC staff, and Members of Congress.

### **3. FTC “Zombie” Votes**

Last November, Politico reported that Commissioner Chopra submitted as many as 20 votes on his last day at the FTC that, thanks to the FTC voting rules, would allow those votes to be used for Commission business for up to 60 days.

Allowing Commissioners’ votes to count after they depart their post seems counter to common sense and good governance principles. This is why I introduced the FTC Integrity Act, which would ensure this practice would not continue. An amendment version of this bill received unanimous support in this Committee last Congress.

Regardless of whether Commissioner Chopra’s votes comported with the Commission’s rules at the time, do you believe that Commissioners should be able to vote after leaving the FTC?

Answer. As the FTC grapples with some of the most complex and challenging issues facing the country, there is tremendous value in having the different perspectives of the sitting Commissioners. A Commissioner may change her vote on a motion at any time before all votes have been registered. If the votes of a departing Commissioner are counted, those votes cannot be changed after her departure, undermining the Commission’s important deliberative process.

### **4. Staff Morale at the FTC**

An April 2023 study found that staff morale at the FTC has decreased dramatically since 2020, when the Commission was the highest-ranking Federal agency in terms of employee satisfaction. Particularly concerning are scores pertaining to FTC employee satisfaction with Commission leadership, which fell from 84.3 in 2020 to 46.6 in 2022.

In general, what factors contribute to high employee satisfaction? How can organization leaders impact the morale of staff?

Answer. Employees are more satisfied when they feel that the work they are doing is valued. Leaders can significantly impact employee satisfaction by clearly conveying Commission priorities and communicating to employees why their work is important to achieving those priorities.

If confirmed by the Senate, how would you work to increase employee satisfaction at the Commission?

Answer. I look forward to getting to know the FTC staff right away, if confirmed. I would seek to meet with the various Bureaus and Offices, listen to staff concerns and needs, and understand how I can best support them.

### **5. Motor Vehicle Dealers Trade Regulation Rule**

Last summer, the FTC noticed the Motor Vehicle Dealers Trade Regulation Rule, which would add requirements for dealerships to follow and change the way Americans purchase vehicles. I understand the FTC did not pursue an Advanced Notice of Proposed Rulemaking in this case, which would have given stakeholders an additional opportunity to provide the FTC information on the car buying process.

Generally speaking, do you believe the FTC should pursue all available information-gathering avenues and conduct thorough cost-benefit analyses before acting to implement a significant rule, like the Motor Vehicle Dealers Rule?

Answer. Generally, it is important to fully develop the record in rulemaking proceedings as comments may provide new data, perspectives, or policy arguments that can direct the Commission to revise or terminate the proposed rule.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. CYNTHIA LUMMIS TO  
MELISSA HOLYOAK

1) Last year, the FTC issued an Advanced Notice of Proposed Rulemaking (ANPR) for the Trade Regulation Rule on Commercial Surveillance and Data Security. I expressed my concerns in a letter that this rulemaking would only add to the regulatory uncertainty that businesses face when complying with data privacy regulation and potentially increase costs. I additionally voiced my concerns that the FTC was exceeding its authority by proposing a broad rulemaking action that would have large-scale impacts on the U.S. economy.

a) Do you believe that the FTC overstepped its authority in issuing the ANPR for the Trade Regulation Rule on Commercial Surveillance and Data Security?

Answer. This ANPR is still active at the Commission and if confirmed, I would seek to understand the views of the FTC staff and my fellow Commissioners regarding the ANPR, including the authority for its issuance.

b) Do you believe that the FTC should wait for Congress to enact comprehensive data privacy regulation before issuing rules on data privacy?

Answer. I generally support delaying formulation and publication of proposed data privacy rules given that Congress may take up comprehensive privacy legislation and such legislation would likely require revisions to any proposed rules. However, before making a decision on a draft rule, I would review the text of the draft rule, consider the administrative record including the public comments, and speak with the FTC career staff and my colleagues on the Commission.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARIA CANTWELL TO  
DOUGLAS DZIAK

If confirmed as a Commissioner on the Consumer Products Safety Commission (“CPSC”), you will have to exercise judgment that will save people’s lives by regulating or banning hazardous products.

*Question 1.* What do you believe is the right balance between the interests of consumers and those of businesses?

Answer. The consumer’s safety is primary to the CPSC’s mission. In exercising CPSC’s regulatory authority, which includes issuing mandatory rules and banning products in certain circumstances, I will follow the Consumer Product Safety Act as the first principle in my decision-making.

Businesses, like all CPSC stakeholders, provide valuable input to the Commission, be it in the development of voluntary or mandatory standards or other regulatory activities. I am committed to reviewing the CPSC staff findings, and the comments of all stakeholders, and then applying the law to the facts and circumstances.

If confirmed, I intend to have an open-door policy with stakeholders, including safety advocacy groups, affected families, and businesses.

Section 6(b) of the Consumer Products Safety Act prevents the disclosure of certain information to consumers without express permission from the company about which the information pertains, which can delay providing potentially life-saving information to consumers.

*Question 2.* Do you support reforming Section 6(b)? If yes, what reforms would you support. If no, how can the CPSC ensure that consumers have critical safety information in a timely manner?

Answer. On February 17, 2023, CPSC published a Supplemental Notice of Proposed Rulemaking on information disclosure under Section 6(b) of the Consumer Product Safety Act (CPSA). This rulemaking, which contemplates updates to the agency’s regulation interpreting Section 6(b), is currently pending before the Commission. I cannot prejudge a matter on which I may participate, should I be confirmed.

In general, Section 6(b) sets forth the congressionally-mandated process to share critical safety information with consumers. With a health and safety finding, Section 6(b) allows the Commission to issue a safety notice, known as a unilateral, on an expedited basis. CPSA also places an affirmative obligation on a company, via Section 15(b), to report possible safety issues immediately. If a company fails to provide such reports, the Commission may pursue civil and criminal penalties. Section 6(b)

also functions as a safeguard to ensure the information obtained under CPSA that the Commission may share is accurate and fair in the circumstances.

As CPSC Chair Hoehn-Saric has stated, unilateral safety notices are now a regular part of the Commission's toolkit to keep consumers informed. The Commission, since the beginning of the Chair's tenure, has issued over 30 such notices. This significant increase in unilaterals demonstrates that the Commission may act under 6(b) to warn the public about product hazards.

Whether or not to amend the statutory provisions of Section 6(b) is a question for Congress and the President. If confirmed, I will work with you and your staff and to provide technical drafting assistance on legislation where appropriate.

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RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. TAMMY DUCKWORTH TO  
DOUGLAS DZIAK

**Topic: Youth Poisoning Protection Act:**

Mr. Dziak, I have been increasingly concerned about the ability of young children and teenagers to access harmful substances through e-commerce sites and occasionally, even in retail stores. If they buy them over the internet, children and teenagers can often get harmful substances delivered directly to their doorstep with very little oversight. In September, Senator Vance and I introduced the bipartisan Youth Poisoning Protection Act, which would ensure dangerous substances like high concentration sodium nitrite are not available for consumers to purchase.

*Question.* Mr. Dziak, are you concerned about hazardous substances, like high concentration sodium nitrate, falling into the hands of children and teenagers and will you commit to working with me on the Youth Poisoning Protection Act?

*Answer.* Yes. I share your concern about children and teenagers easily obtaining high-concentration sodium nitrate. I commit to working with you and your office on the Youth Poisoning Protection Act and to providing technical drafting assistance on your legislation where appropriate.

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RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. BEN RAY LUJÁN TO  
DOUGLAS DZIAK

*Question.* The current consumer recall response rate is 16 percent. What does the CPSC need to do to increase consumer responsiveness to recalls, particularly within tribal communities and non-English language communities?

*Answer.* I share your concern regarding the CPSC's recall response rate. If confirmed, I am committed to work with my colleagues to improve recall effectiveness. Direct notice to consumers is the most efficient way to maximize recall effectiveness. The Commission and recalling firms should work to improve the quality of the outreach to reflect cultural competency and bridge language barriers.

For example, in June, the Commission began posting all recalls in Spanish. In addition, the Commission is in the process of implementing the GAO's November 2020 recommendations regarding recall effectiveness, with four of five recommendations fully implemented. If confirmed, I am committed to working with my colleagues to fully implement the GAO's recommendations and continuing to work to improve recall effectiveness, if confirmed.

With respect to tribal outreach, CPSC initiated targeted safety messaging to tribal communities in ten states, including New Mexico. This campaign includes billboards and radio ads, which reflects the challenges tribal communities face, including limited Internet connectivity. If confirmed, I commit to working with you and your staff, as well as tribal communities, to continue these efforts and to provide timely recall information in an accessible format.

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RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. JOHN HICKENLOOPER TO  
DOUGLAS DZIAK

*Product Safety Standards Development.* Voluntary standard organizations establish product safety standards to protect consumers who use or purchase a wide variety of products. In some cases, the CPSC issues mandatory standards through the rulemaking process that either fill a gap or expand on an existing voluntary standard.

*Question.* In your view, how should the CPSC decide when to issue mandatory standards for products where voluntary standards already exist or are in the process of being developed?

Answer. The Consumer Product Safety Act (CPSA) establishes CPSC's authority to promulgate mandatory safety standards for consumer products.

CPSC works with organizations that promulgate voluntary safety standards. Under the CPSA, the Commission must conduct an analysis to determine if an existing voluntary standard is likely to eliminate or adequately reduce the risk of injury. If so, CPSC must also determine the likelihood of industry's substantial compliance with the voluntary standard.

If the voluntary standard does not adequately reduce the risk of injury or substantial compliance is unlikely, the CPSC may proceed to promulgate a mandatory safety standard.

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RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. TED CRUZ TO  
DOUGLAS DZIAK

The Consumer Product Safety Act (CPSA) sets a statutory civil penalty amount for the CPSC to pursue against violators. Some have argued that the penalty level is too low and that Congress should raise it.

*Question.* What are your thoughts on the current statutory civil penalty level and what factors should Congress consider when setting a statutory civil penalty amount?

Answer. CPSC's maximum civil penalty amount is established in statute. The current maximum penalty is \$17,150,000. The statute sets forth the factors the Commission must consider when assessing civil penalties.

One purpose of civil penalties is to deter bad conduct. The Commission has assessed civil penalties on multi-billion-dollar firms. In such instances, the deterrent effect of the current maximum civil penalty is likely limited.

Should Congress seek to raise the current statutory civil penalty, if confirmed, I commit to working with your office and to provide technical assistance where appropriate.

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RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. JOHN THUNE TO  
DOUGLAS DZIAK

*Question.* In 2014, the CPSC proposed a rulemaking implementing safety standards for Recreational Off-Highway Vehicles (ROVs). Since that time, that particular rulemaking has been the subject of much debate and no further action has been taken by the CPSC to finalize the rules. If confirmed, do you believe the CPSC should terminate that particular rulemaking?

Answer. CPSC published its ROV rulemaking almost 9 years ago. Such a lengthy pendency for any rulemaking prolongs uncertainty for all stakeholders.

For a number of years since its publication, the ROV rulemaking has been subject to an appropriations requirement that CPSC await a National Academy of Sciences report regarding these products before proceeding. I am committed to following the law.

While Commissioners have moved on multiple occasions to terminate the rulemaking, to date, the Commission has not adopted such a termination. Should I be confirmed, I am committed to working with my colleagues on this issue.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JERRY MORAN TO  
DOUGLAS DZIAK

### 1. CPSC Authority

There has been significant furor over the CPSC's review of gas stoves this year, which many in Congress view as an agency working beyond the scope of authority granted to it by Congress. Can you explain your philosophy when it comes to scoping the authority of agencies, and what that means for your work at the CPSC, if confirmed?

Answer. The Consumer Product Safety Act defines the scope of the Commission's authority. Under the Act, two central purposes of the Commission include protecting the public against unreasonable risks of injury associated with consumer products and developing uniform safety standards.

If confirmed, I will follow the law. I believe in CPSC's safety mission, and these tenets would guide my approach each day as I work with my colleagues.

**2. CPSC Act Section 6(b)**

Do you believe Section 6(b) helps or hinders the execution of the CPSC's mission to protect consumers? Please explain.

Answer. On February 17, 2023, CPSC published a Supplemental Notice of Proposed Rulemaking on information disclosure under Section 6(b) of the Consumer Product Safety Act (CPSA). This rulemaking, which contemplates updates to the agency's regulation interpreting Section 6(b), is currently pending before the Commission. I cannot prejudge a matter on which I may participate, should I be confirmed.

In general, Section 6(b) sets forth the congressionally-mandated process to share critical safety information with consumers. With a health and safety finding, Section 6(b) allows the Commission to issue a safety notice, known as a unilateral, on an expedited basis. CPSA also places an affirmative obligation on a company, via Section 15(b), to report possible safety issues immediately. If a company fails to provide such reports, the Commission may pursue civil and criminal penalties. Section 6(b) also functions as a safeguard to ensure the information obtained under CPSA that the Commission may share is accurate and fair in the circumstances.

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