



**U.S. SENATE COMMITTEE ON  
COMMERCE, SCIENCE & TRANSPORTATION**  
*Senator Maria Cantwell, Chair*

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**U.S. Senator Maria Cantwell**

**Senate Committee on Commerce, Science, and Transportation  
Nomination Hearing: Federal Trade Commission and Consumer Product Safety  
Commission**

**September 20, 2023**

**Opening Statement**  
**[VIDEO](#)**

**CANTWELL:** 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.

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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 anticompetitive business practices. The FTC's role has never mattered more.

In 2022, American consumers reported losing over \$8.8 billion to fraud, a 30% 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.

**Question and Answer**  
**VIDEO**

**Nominees:**

**Rebecca Kelly Slaughter to be a Commissioner of the Federal Trade Commission**

**Melissa Holyoak to be a Commissioner of the Federal Trade Commission**

**Andrew Ferguson to be a Commissioner of the Federal Trade Commission**

**Douglas Dziak to be a Commissioner of the Consumer Product Safety  
Commission**

**CANTWELL:** I want to start with the 13b authority that is so important to giving consumers refunds.

Do you each of you, on the FTC nominations, do you support reestablishing 13b and without limitations? Or if you believe in limitations, explain what limitations that you think we need?

**SLAUGHTER:** Yeah, that 13b authority is critical for our ability to help injured consumers be whole. So, I strongly support restoring it.

**CANTWELL:** Mr. Ferguson?

**FERGUSON:** I agree with Commissioner Slaughter. This is critical. That what they thought was the 13b authority was a critical component of the FTC's enforcement toolkit and I support restoring something that looks very much like it.

**HOLYOAK:** And I agree. Before the AMG case, the decade before that, the FTC recovered \$10 billion dollars for consumers. It's a very important tool for enforcers.

**CANTWELL:** 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 disgorgements for consumers.

**SLAUGHTER:** That's correct.

**FERGUSON:** I certainly wouldn't want a standard so high it never gets disgorgements. Although, of course, the appropriate balance to strike here is Congress's call.

**HOLYOAK:** I agree with that. And I'm happy to continue that dialogue with you to ensure that authority is restored.

**CANTWELL:** Well, I would just say that you are likely, if you're successful in your nominations, I guarantee you we will be back to this very specific question. And so we're trying to get an intent here. And I think I have it. Consumers deserve to get these

refunds without great hampering, and I think that's really important. So if anybody has anything else to say on that.

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?

**SLAUGHTER:** Yes.

**FERGUSON:** The PBM market is very complicated. I really look forward to the results of the 6b study that the FTC is conducting. And, you know, I think it'd be very important that whatever the FTC does in this space is a) based on what the 6b study reveals and b) consistent with its existing authority or whatever additional authority Congress confers.

**CANTWELL:** Do you think that applying the unfair and deceptive practices to PBMs is a key issue for the FTC?

**FERGUSON:** I certainly think that if the 6b study reveals that PBMs are engaged in unfair and deceptive acts or practices, the FTC should act. Health care costs have gone higher and higher and higher over the last 15 years. They're 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'm really, really interested to see what the 6b study reveals.

**CANTWELL:** Or manipulative practices? I would think Senator Grassley and I here 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've 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 and deceptive?

**FERGUSON:** Absolutely. I've looked at the bill. I'm more than happy to continue discussing that with you and your staff.

**CANTWELL:** I will ask for the record your thoughts on whether those kinds of things being given to the FTC, do you think that means that unfair, deceptive and manipulative?

Okay, Ms. Holyoak?

**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 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 those who are working on that 6b study, to understand these practices, and understand if we have the tools now to go after them. I think there could be both 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 dialogue on your legislation.

**CANTWELL:** Thank you.

Mr. Dziak, I'm 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're trying to get important information, like on strollers, or elevators, and things of that nature. Do you support reforming this provision? And so we'll take that for the record.