

U.S. Senate Committee on Commerce, Science, and Transportation

Nominations Hearing of Mr. Christopher Coes

October 20, 2021

Questions for the Record – Minority

Ranking Member Roger Wicker

Question 1: The Office of Transportation Policy plays an important role at the Department of Transportation in reviewing new regulations and setting policy for benefit-cost analysis of proposed infrastructure projects. Would you commit to giving sufficient consideration to the burdens imposed by new regulations? Would you commit to giving sufficient consideration to the economic benefits of discretionary grants for infrastructure in smaller cities and rural areas across the entire United States?

Response: I agree that it is important to consider the burdens that might be imposed by a regulatory action. Under the Department’s recently updated procedures on rulemaking, such actions undertaken by DOT and its Operating Administrations are required to include an assessment of the potential benefits, costs, and other important impacts of the regulatory action, as well as any significant distributional impacts, in accordance with the requirements of Executive Order 12866 and OMB Circular A-4.

As you note, the Office of Transportation Policy at DOT is also responsible for setting policy for benefit-cost analyses of proposed infrastructure projects under our discretionary grant programs. While the context and specific solutions may be very different in certain areas, we believe that all Americans want a transportation system that is safe, efficient, and enhances their quality of life and access to economic opportunity, and our guidance on quantifying the benefits of transportation investments reflects those values. In our experience, we have found that projects aimed at addressing the real infrastructure challenges faced by rural America are often some of the strongest candidates when considering their expected benefits and costs.

Senator Roy Blunt

Question 1: Mr. Coes, I’d like to raise with you an important project that I have long supported and recently received a Port Infrastructure Development Program (PIDP) grant through the Maritime Administration (MARAD). In October of last year, the Kansas City Port Authority received a \$10 million PIDP grant for the Missouri River Terminal Project. The grant will be used to provide regional access to the marine river network, rail, and highway transportation network. This project includes advanced project planning and redevelopment activities of the Missouri River Terminal site such as preventative flooding maintenance, environmental remediation efforts, site design, land acquisition, and limited pavement and rail access development. Since one year has passed since the original award announcement, can you provide a status update on this project and how soon will MARAD will finalize a grant agreement with

the Kansas City Port Authority? Given the length of time that has transpired, the applicant has accrued costs associated with the project. What flexibilities are there for reimbursement of certain costs for the project prior to the grant agreement being finalized? If confirmed, will you commit to work with me and the Port on finalizing this grant agreement as quickly as possible?

Response: If confirmed, I commit to working with you, MARAD, and the Port Authority of Kansas City to finalize the grant agreement as expeditiously as possible so that the grantee can begin work on the project. In October 2020, the Port Authority of Kansas City received a \$9,880,000 Port Infrastructure Development Program (PIDP) grant for the Missouri River Terminal Intermodal Facility project. MARAD staff and Port Authority representatives have been working diligently since awards were announced last October.

The program's Notice of Funding Opportunity (NOFO) identified the flexibilities for reimbursement of costs incurred prior to a grant agreement being finalized. In general, costs need to comply with the Federal requirements in the NOFO (for example, the provisions in 2 CFR part 200, Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards) and be identified in advance and be accounted for in the final grant agreement. Port Authority and MARAD staff are working to address this as part of the grant agreement development process.

Senator Mike Lee

Question 1: If confirmed, what will be your key priorities?

Response: President Biden and Secretary Buttigieg have highlighted key priorities, including combating COVID-19, creating high-quality American jobs, fixing our crumbling infrastructure, promoting safety for all Americans, reconnecting long divided communities, and combating climate change. If confirmed, it would be an honor to continue to work with Congress on these efforts.

Question 2: Conducting cost-benefit analyses for proposed regulations has been a practice undertaken by agencies under both Democrat and Republican Administrations.

- Please explain your views on the use of cost-benefit analysis when considering proposed regulations. Should all DOT regulations be considered with a cost-benefit analysis?
- If regulatory costs outweigh the benefits, should that be a determining factor that prevents DOT from moving forward with a proposed regulation?

Response: Under the Department's recently updated procedures on rulemaking, regulatory actions undertaken by DOT and its Operating Administrations are required to include an assessment of the potential benefits, costs, and other important impacts of the action, as well as any significant distributional impacts, in accordance with the requirements of Executive Order 12866 and OMB Circular A-4. When metrics and outcomes in the public interest have been identified, the economic analysis should characterize any identified impacts. If quantification is

not possible, impacts should be described qualitatively. Under Executive Orders 12866 and 13563, to the extent permitted by law, DOT and other agencies must only propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs, recognizing that some benefits and costs are difficult to quantify.

Question 3: When considering regulatory proposal, should DOT prioritize policies that allow market participants to freely compete with DOT regulatory action or is the market more successful when the DOT actively guides the market through regulatory action?

Response: DOT's top priority is safety, and we strive to provide a regulatory framework with enforceable, performance-based requirements that allow flexibility and competition in achieving the desired safety outcomes. In conducting rulemaking activities, DOT adheres to the principles articulated in the President's Executive Order on "Promoting Competition in the American Economy," issued on July 9, 2021. In that Executive Order, the President set forth the Administration's policy for a fair, open and competitive marketplace. The Executive Order also directs the Secretary to take actions to protect consumers and improve competition, as appropriate and consistent with applicable law. If confirmed, I commit to supporting this effort.

Question 4: I would like to learn more about your views on the use of the DOT's rulemaking power:

- Should the DOT promulgate rules if the rulemaking power is not expressly granted by Congress?

Response: DOT prescribes rules in accordance with the procedural requirements of the Administrative Procedure Act and the Department's statutory authorities.

- Can the DOT use its rulemaking power to circumvent legal precedents with which it disagrees?

Response: DOT will not initiate a rulemaking action for which there is insufficient legal basis.

- Can the rules passed by the DOT insulate market incumbents from competition?

Response: DOT issues regulations to ensure the United States transportation system is the safest in the world and addresses other urgent challenges facing the Nation, including the coronavirus disease 2019 (COVID-19) pandemic, job creation, equity, and climate change. We strive to provide a regulatory framework with enforceable, performance-based requirements that allow flexibility and competition in achieving the desired safety outcomes. In conducting rulemaking activities, DOT adheres to the principles articulated in the President's Executive Order on "Promoting Competition in the American Economy," issued on July 9, 2021.

Question 5 and 6: Has the federal government overextended itself in funding infrastructure projects? Should we expand or reduce the scope of the federal government in funding infrastructure projects?

What is the appropriate role of the states, and what is the appropriate role of the federal government regarding infrastructure projects?

Response: This Administration is committed to addressing the infrastructure needs of all communities, and we know that our Nation's challenges will take an all-of-government approach. DOT's current grant and federal aid programs are not able to provide the sufficient funds to address our Nation's infrastructure backlog. Many states are also facing budgetary constraints that prevent them from funding essential infrastructure projects. This has been reflected in the strong demand that the Department continues to receive from applicants to each of our discretionary grant programs for transportation infrastructure.

It is also why DOT is already laying the groundwork to support the new funding levels contained in the IJA that will allow DOT to successfully partner with state, local, and Tribal governments across the Nation and pool sufficient resources to plan, design, and construct the needed infrastructure to create jobs, help communities, and support our economy.

In anticipation of IJA's enactment, DOT is planning and identifying the resources required to implement IJA and provide technical assistance and guidance to state, local, and Federal governments who each have important and necessary roles in solving our Nation's infrastructure challenge

Question 7: How would you describe the current financial state of the Highway Trust Fund? Can we continue to afford spending more out of the Highway Trust Fund than we are taking in?

Response: In October, the Department reported to Congress that the Highway Account of the Highway Trust Fund probably will not need an additional transfer from general revenues until summer 2022 at current spending rates and estimated tax receipt levels. There has also been a slowdown in spending in the Mass Transit Account. While a continued slowdown in spending due to a slowdown in construction in colder states is expected over the next few months, without additional funding, the Trust Fund will continue to head towards insolvency starting in March 2022. This introduces unnecessary uncertainty into local, state, and regional planning and we need to do better to help us recover. We need to find a path towards a more sustainable, resilient transportation system – and the funding to make that possible. If confirmed, I look forward to working with the Committee and Congress to address our long-standing Highway Trust Fund challenges.

Question 8: Do you support the raising of the federal gas tax or other tax increases in order to fund the Highway Trust Fund shortfall?

Response: Since 2008, we have seen an ongoing and growing imbalance between Highway Trust Fund spending and receipts. We need to find a path towards a more sustainable, resilient transportation system – and the funding to make that possible. The Biden-Harris administration has also made clear that it will not raise taxes for individuals making less than \$400,000.

I look forward to working with the Committee and the Congress to address our long-standing funding challenges.

Question 9: The CDC’s COVID-19 mask mandate currently requires masks to be worn on public transportation conveyances and on the premises of transportation hubs, including airports and on airplanes. The CDC has also said that vaccinated individuals do not need to wear masks in public. Is the CDC’s requirement that vaccinated individuals must continue to wear masks in airports and on public transportation consistent with the agency’s own policy and research?

Response: DOT has, and will continue to, rely on the science and public health determinations made by interagency partners and experts in infectious disease. The Department will continue to support CDC, TSA, and other interagency partners in applying the public transportation mask mandate, which remains in effect, and sharing resources and messaging with stakeholders across all forms of transportation on the benefits and need for vaccination throughout the community.

Question 10: If confirmed, would you advocate or support a federal requirement that Americans must be vaccinated for COVID-19 as a prerequisite for interstate travel, transportation, or movement?

Response: If confirmed, I commit to continue to support DOT’s Federal partners as well as health officials at all levels of government to encourage vaccinations and safe travel to the extent that is practicable and within the power of the Federal government. Examples include the public transportation mask mandate and the President’s recent announcements to safely resume global travel with vaccination and testing requirements for international travelers entering the U.S.

Senator Ron Johnson

Question 1: There are over 3.5 million truck drivers in the U.S. and 1.1 million truck drivers are needed in the next decade. Reports indicate that the extended hours at the west coast ports are largely unutilized due to the shortage of drivers. Reports also indicate that less than 50 percent of truck drivers are vaccinated.

- Do you believe that President Biden’s vaccine mandate will result in the loss of critical transportation workers like truck drivers?
- Do you believe there should be exemptions to vaccine mandates for individuals that can demonstrate natural immunity from a prior-COVID infection?

- Do you believe a vaccine mandate will worsen the labor shortage in the transportation sector?

Response: The Administration is fully committed to ensuring our Nation’s transportation networks are safe and fully able to meet the needs of the American people. A robust, well-trained, dependable transportation workforce pipeline is critical to delivering on this commitment. We need to keep these networks moving, and believe vaccinations are a critical measure to maintaining network continuity and protecting the health and safety of their vital transportation workers. It is our hope that transportation workers, and for that matter all Americans, regardless of past vaccination or COVID-19 infection status, follow recommendations and requirements to get vaccinations – which remain the most effective tool in combatting COVID-19 – so that U.S. transportation and other sectors can avoid any labor shortage impacts.

Question 2: If confirmed as Assistant Secretary, will you commit to reviewing regulations that slow or prevent innovation and development in the transportation sector?

Response: Mobility has transformed dramatically over the last 20 years and we need to anticipate and adapt to these advancements. Well intended rules written over a generation ago may necessitate different approaches today. It’s on the Department, working with our stakeholders, to understand new innovations and to potentially shape programs and regulatory frameworks appropriately. Ultimately, the Department’s policies must keep pace with innovation and we need to be mindful of the implications—on safety and security, the environment, racial equity, workforce and global competitiveness — as we shape these areas. If confirmed, I commit to reviewing regulations that slow or prevent deployment of innovations within the transportation sector.

Senator Shelley Moore Capito

Statement: Thank you for sharing your heartbreaking story about your mother, but she raised a selfless and dutiful son. Should you be confirmed, I look forward to working with you on curbing the impacts of drunk driving.

Question 1: The Senate has already done its work in passing the Infrastructure Investment and Jobs Act (IIJA). This bipartisan legislation will address our nation’s core infrastructure needs and will make significant investments across the nation, especially in West Virginia. In the legislation, close to \$1.2 trillion will be allocated to core infrastructure projects, with a significant portion of that funding going to the Department of Transportation. I appreciate you mentioning the importance of both urban and rural infrastructure investment, especially for broadband investment.

- How do you plan on prioritizing both the needs of the current programs at the Department while also standing up these new programs?

- If confirmed, do you commit to ensuring urban and rural infrastructure investments are given equal focus?

Response: Thank you Senator for your kind words about my mother – family means everything to me. If confirmed, I look forward to working you and your staff on this issue.

With regards to your question, I understand that rural communities and small towns have unique needs, including resource challenges and extensive unmet maintenance. I also know that infrastructure investments in rural America are key to supporting economic growth and to ensuring that residents have access to jobs, education, and essential basic services like health care. This Administration has placed a high priority on addressing our nation's historic underinvestment in infrastructure as demonstrated by the President's priorities, in both urban and rural areas.

I am also looking for ways to streamline our grant application processes, both to enable the Department to more efficiently run the suite of new and existing programs, but more importantly to make the process of applying for DOT discretionary grants less of a burden for our state and local partners. I am well aware of the challenges that smaller or rural local governments face in assembling grant applications that convey their needs, and I want to find the simplest ways for them to do so while ensuring that we have the information we need to make the best decisions on allocating our taxpayer dollars to meet their transportation needs.

In anticipation of IJIA enactment, DOT currently is planning and identifying the resources required to implement IJIA and provide technical assistance and guidance to communities, particularly our small towns, rural counties, Tribes, and other disadvantage communities. If confirmed, I will commit to ensuring that the Department appropriately balances the needs of both urban and rural communities, including in our discretionary grant and credit assistance programs.

Question 2: You understand firsthand the challenges and unmet transportation needs that rural communities face. Communities like yours in Georgia – and like many in my home state of West Virginia. You have outlined potential solution to improve transportation access and connectivity, such as Transit-Oriented Development and other multi-modal initiatives.

- How will you ensure that these initiatives, and others that you have described, are not overly prescriptive so that rural communities would have the flexibility to pursue solutions they feel will best address their unique transportation needs – such as roadway construction and expansion and bridge projects?
- Are you committed to ensuring that the policies and initiatives of the Department do not disadvantage rural communities by restricting the solutions they can deploy to address their unique transportation needs?

Response: I agree that rural communities have different needs from urban ones, and our programs will reflect that. If confirmed, I will ensure that our programs help rural communities

make their roads safer, revitalize their main streets, improve their accessibility to opportunity, and meet their future transportation and mobility needs. The fact is that despite regional transit authorities stretching every dollar, rural communities often still lack access to public transportation and affordable transportation options on evenings and weekends to everyday destinations and cash-strapped towns struggle to maintain their roads. Both urban and rural transportation projects need to be supported so regional equity can truly be addressed. In order to support this, DOT is taking a look at flexibilities that could be adopted long term.

I am absolutely committed to ensuring that rural communities will not be disadvantaged by the policies and initiatives of the Department. Our rural strategy will ensure that all relevant grant and finance programs incorporate rural considerations so that rural communities can access the funding and financing they need to address their unique transportation needs.

Senator Rick Scott

Question 1: How would you address the fact that the Highway Trust Fund (HTF) is going insolvent, and do you believe we need to increase the federal gas tax?

Response: The Biden-Harris administration has made clear that it will not raise taxes for individuals making less than \$400,000. In a bipartisan agreement, IIJA included pay-fors that upholds the Administration's commitment and would keep the Highway Trust Fund solvent at expected spending levels until approximately 2026. If confirmed, I look forward to working with the Committee and Congress, in a bipartisan manner, as we work together to ensure sustainable and reliable revenues to support a cleaner, more environmentally sustainable and equitable transportation future.

Question 2: How would you use your position to solve the current port congestion and supply chain crisis?

Response: The Biden-Harris Administration recognizes the impact of port congestion and supply chain issues on the U.S. economy and is focused on bringing the resources of the Federal government to bear in finding and implementing solutions in both the near term and long term. The President launched the Supply Chain Disruptions Task Force in June, including the Department of Transportation, which included a focus on transportation and logistics bottlenecks to the U.S. economic recovery. After meeting with local government leaders and companies to diagnose the problems and identify solutions, Port Envoy John Porcari was appointed in August to help drive coordination between the many private firms who control the transportation and logistics supply chain. The DOT team is working closely with the task force and Envoy Porcari to ensure our supply chains meet historic demand as the economy recovers under President Biden.

In October, the Administration convened business leaders, port leaders, and union leaders to discuss the challenges at ports across the country and actions each partner can take to address the delays and congestion across the transportation supply chain. The President met with the

leadership from the Ports of Los Angeles and Long Beach and the International Longshore and Warehouse Union (ILWU) to discuss the actions they are each taking to address these challenges in Southern California. These leaders announced a series of public and private commitments to move more goods faster, and strengthen the resiliency of our supply chains, by moving towards 24/7 operations at the Ports of Los Angeles and Long Beach. The companies committing to act include Walmart, UPS, FedEx, Samsung, and Home Depot.

These announcements build on previous actions by the Department to address supply chain challenges, including supporting states in issuing more commercial drivers' licenses (CDLs); supporting the swift flow of goods and assistance during the recovery from the pandemic; and offering grants to strengthen multimodal supply chains and support rail connections.

I am committed to working with the DOT team and the Administration to build on these efforts. The Department is conducting an assessment of the Nation's freight and logistics sector in response to President Biden's Executive Order 14017: "America's Supply Chains," which will provide specific recommendations to address our supply chain challenges. In developing this report, DOT has been engaged with stakeholders across the spectrum, and we received a robust response to our recent Request for Information on this topic. The supply chain assessment is expected to be completed by early next year, and I look forward to working with the Committee and Congress on actions we can take together to improve the resilience of America's supply chains. Finally, the passage of IIJA would provide historic investments – including \$17 billion in our nation's ports, and billions more for our freight systems – that my office would work to coordinate and implement effectively.

Question 3: Some in the Biden Administration believe that the supply chain crisis our nation is currently facing is a "high class problem". Do you believe that is accurate?

Response: As our economy has strongly recovered coming out of the pandemic, our supply chains have been stretched by unprecedented levels of consumer demand. Some of these global supply chain issues have been decades in the making, and both households and business across the entire country are feeling the effects today. We are working closely within DOT, across the Administration in the supply chain disruption task force, and with Port Envoy Porcari to address supply chain challenges – and have made progress, for example, with the announcement of moving toward 24/7 operations at the Ports of Los Angeles and Long Beach in October. Going forward, the IIJA legislation would provide significant investment to modernize our transportation infrastructure and improve the resiliency of the system, while addressing major freight bottlenecks. I look forward to working with the Committee and Congress on addressing these supply chain challenges and helping to ensure our freight systems remain safe and efficient.