

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

Full Committee  
Wednesday, September 20, 2023, at 10:00 A.M.

**REPUBLICAN QUESTIONS FOR THE RECORD**

**COVER PAGE**  
**Melissa Holyoak**

## **RANKING MEMBER TED CRUZ (R-TX)**

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.

### **1. What did you mean by that?**

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.

## **SENATOR JOHN THUNE (R-SD)**

**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?

**Response:**

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?

**Response:**

Yes.

## **SENATOR JERRY MORAN (R-KS)**

### **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?

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?

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?

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?

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?

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?

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.



## SENATOR CYNTHIA LUMMIS (R-WY)

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?

**Response:**

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?

**Response:**

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.