

# United States Senate

WASHINGTON, DC 20510-2509

December 20, 2023

The Honorable Mitch McConnell  
Minority Leader  
U.S. Senate  
Washington, D.C. 20510

Dear Leader McConnell:

I write today regarding the expected year-end nominations package and my specific concerns with two of your own recommended nominees.

The expected nominations package will likely include dozens of nominees that have been recommended by Senate Democrats. Many of these Biden nominees will no doubt advance policies and values antithetical to those held by members of the Republican Conference. By agreeing to such a negotiated package in exchange for just a few Republican appointees you have personally deemed a priority, I believe we risk giving away too much.

In particular, two of the nominees you have sought to include in this package need more time for careful evaluation by our own Conference, especially by non-Committee members. If Republicans are planning to install dozens of Biden nominees for positions across the federal government—without a vote—in exchange for just a handful of our own selections, I want to be sure that we get our nominees right. For example, Andrew Ferguson, nominated to be a Commissioner of the Federal Trade Commission (FTC), should answer additional questions on his philosophy concerning Big Tech, given the importance of that issue to our Conference. I also believe that Todd Inman, who is under consideration for the National Transportation Safety Board (NTSB), should be asked to further articulate his views on various transportation policies, including rail safety and autonomous vehicles.

I have appended written questions below that I have for each of these two nominees. As you are aware, I am currently withholding my consent for these nominees to be confirmed without a floor vote—as is any senator’s right to do—until I and others can evaluate satisfactory responses to these important policy questions.

I would like to meet with the nominees to discuss these questions.

Sincerely,



Josh Hawley  
US Senator

**Questions for Andrew Ferguson, to be Commissioner of the Federal Trade Commission (FTC)**

1. Please describe your philosophy of antitrust law.
2. When did you develop your philosophy of antitrust law?
3. What were the most important sources and authorities that contributed to the development of your philosophy of antitrust law?
4. How do you understand the relationship between textualism, as a theory of statutory interpretation, and broadly-worded antitrust statutes such as the Sherman and Clayton Acts?
5. Viewing the last 50 years broadly, do you believe the antitrust laws have been enforced too often, about the right amount, or not often enough?
6. Do you believe the consumer welfare standard is consistent with the legislative purpose underlying American antitrust authorities, including the Sherman, Clayton, and FTC Acts?
7. Do you believe the consumer welfare standard, understood as entailing principally the consideration of price effects, wholly encompasses the concerns of American antitrust law?
  - a. If not, what issues are not captured by the consumer welfare standard?
8. If a potential merger will unquestionably reduce prices for consumers, can that merger still violate American antitrust law?
  - a. If it can, what factors could cause such a merger to violate the law?
9. Please explain your understanding of how the new FTC merger guidelines change scrutiny of vertical mergers.
10. The FTC's new merger guidelines also address competition between and within platforms. How would you evaluate the market power of an entity that controls multiple sides of a platform?
11. How would you evaluate the market power of a platform with respect to a competing platform?
12. Please explain your position on how regulators should examine potential harms to workers and unions from potential mergers.
13. New developments in artificial intelligence models present novel concerns regarding concentration of market power in the entities that control these models. Do you believe the development and licensing of AI models by a small number of companies could have anticompetitive effects?
14. Do you believe that development of AI models by companies with large amounts of preexisting consumer and user data could have anticompetitive effects?
15. Do you believe that technology companies' use of bulk consumer and user data can give rise to anticompetitive network effects?
16. If multiple companies in one industry use the same algorithm or AI model to guide their decision-making, could that produce anticompetitive effects?
17. How would you evaluate the potential anticompetitive effects of multiple companies independently using the same algorithm to guide their decision-making? Assume they are not consciously colluding.
18. What if the companies are intentionally using the same algorithm without expressly coordinating their actions?

19. How do you believe regulators, including the FTC, could prevent anticompetitive effects stemming from such algorithmic collusion?
20. How do you believe regulators, including the FTC, should police the use of such algorithms or AI models?

### **Questions for J. Todd Inman, to be Member of the National Transportation Safety Board**

1. Do you support the *Railway Safety Act of 2023*? If not, please explain with particularity what parts you find objectionable.
2. In your opinion, did the NTSB respond appropriately to the tragedy in East Palestine, Ohio, earlier this year?
3. If not, would you have changed anything with respect to the agency's response?
4. Following the tragedy in Missouri at Table Rock Lake in 2018 where a duck boat sank with 31 people on board, leaving 17 dead, do you think the NTSB responded appropriately?
5. If not, would have changed anything with respect to the agency's response?
6. What is your view of the NTSB's recommendations following the Table Rock Lake incident?
7. Do you believe further regulation on amphibious passenger vessels (DUKW) is merited?
8. Do you support the additional regulations on amphibious passenger vessels that that were enacted as part of the Coast Guard reauthorization in the *FY23 National Defense Authorization Act*?
9. If confirmed, will you advocate for swift implementation of the provisions concerning duck boats in the *FY23 National Defense Authorization Act*?
10. If confirmed, will you support efforts to ensure that recommendations of the NTSB are enacted into law?
11. Did you support the tentative agreement from December 2022 between rail companies and unions?
12. In your personal opinion, how many sick days do you believe rail workers should be entitled to per year?
13. What is your familiarity or background with artificial intelligence and the transportation industry?
14. Do you have concerns about transportation safety as artificial intelligence models gain more prominence?
15. What is your policy view on autonomous vehicles in the United States?
16. What role, if any, do you think the NTSB has to play in regulating the use of artificial intelligence in the transportation industry?
17. What role, if any, do you believe the NTSB should play in promoting or advocating for electric vehicles?
18. What are your policy views on personal privacy protections for those traveling on railways, planes, and cars?