

Communications Daily

'Laundry List' of Clients

New FTC Consumer Protection Chief Has Many Potential Conflicts, Agency Documents Show

TOP NEWS | 20 Jul 2018 | Ref: 1807190040

FTC Consumer Protection Bureau Director Andrew Smith worked with 54 clients that could trigger his recusal, including Equifax, PayPal and Uber, according to agency records we obtained through a Freedom of Information Act request. The clients paid Smith \$5,000 or more in a given year dating back two years from his May 21 appointment. By signing President Donald Trump's ethics pledge, Smith for two years after his appointment can't participate "in any particular matter involving specific parties that is directly and substantially related to [a] former employer or former clients, including regulations and contracts."

Experts who reviewed the FOIA results at our request said the breadth of recusals for Smith is unusual. He was appointed with party line support (see personals section of the May 18 publication), with the two new FTC Democrats voicing conflict concerns. His "list of conflicts of interest raises many questions," wrote dissenting Commissioner Rohit Chopra. "He may be unable to participate in some of the FTC's high-profile and consequential matters of intense public interest." Commissioner Rebecca Kelly Slaughter was concerned that a chief of the consumer bureau "barred from leading on data privacy and security matters" that "implicate such key areas of the law potentially undermines the public's confidence in the Commission's ability to fulfill its mission." The agency has continued to defend him.

Even the slightest amount of work with a client would trigger recusal, Smith told us in May (see 1805170066). "Recusal rules are very bright-line, and they are very broad-line, meaning they cast a broad net." Smith, who couldn't be reached to comment for this article, said then that bureau chief recusals aren't unusual. Chairman Joe Simons acknowledged investigations and previous settlements with Facebook (see 1806190077), Equifax (see 1710020021), Uber (see 1804120056 and 1708150010) and PayPal (see 1805240049) before House Commerce Committee lawmakers Wednesday (see 1807180051).

Smith's clients include others that have had business with the FTC, among them Amazon, Bank of America, Credit Karma and MoneyGram. Smith represented Microsoft and LinkedIn, which Microsoft acquired. Amazon has frequently been on the agency's radar, with antitrust advocates urging the FTC to break it and other big tech companies up (see 1805230053). To end an FTC probe, Amazon last year refunded in-app purchases made by children.

An FTC spokesman emailed that Smith is “widely respected as one of our country’s best and most experienced consumer protection lawyers.” Career staff in Smith’s office develop cases and prepare enforcement recommendations, he said. “Pursuant to the agency’s well-established processes, the staff take on additional responsibility when a political appointee is recused on a particular matter.”

Project on Government Oversight General Counsel Scott Amey said it’s troubling that someone who could potentially recuse himself from a “laundry list” of FTC items is tasked with setting the bureau’s enforcement agenda. “He could be sitting on the sidelines for a lot of the work the job demands,” he said, questioning whether there were other candidates without conflicts and with better records of consumer advocacy. “It’s a fairly long list of companies that could potentially be called before the FTC, and that raises red flags on his ability to function in his job.” Though he described it as an extensive list, Amey said he has seen longer lists of clients, including Trump’s, which was hundreds of pages long. Smith’s report is 16 pages long. Many other groups declined to review Smith’s documents.

FTC compliance and defense attorney Richard Newman, of Hinch Newman, who worked with Smith in the past, said the new Consumer Protection Bureau chief is more than capable of fulfilling his duties to consumers: “All this criticism is much ado about nothing and ignores the fact that Mr. Smith’s practical knowledge of the inner workings of advertising and marketing companies will likely provide the FTC with an uncommon insight beneficial to consumers.”

Public Citizen Counsel-Civil Justice and Consumer Rights Remington Gregg said when he scanned the disclosure list, which he separately obtained through his own FOIA, he expected to see a handful of companies, not a list of more than 50. “Are you telling me there is no one else you think is qualified to take this job?” he asked. Smith’s hire is particularly troubling given the increasing number of data breach cases, Gregg said, questioning whether Smith will have the mindset to fully protect consumers, given his motivations in protecting corporate interests previously. “He has very much become a hired gun for a lot of these companies that are in this firing line, of Congress and of the public, who are very angry about their practices.”

Committee for Justice Director-Public Policy Ashley Baker called Smith “an excellent addition to FTC leadership.” His experience at the intersection of compliance, privacy, data regulation and competition policy make him “uniquely qualified,” she emailed. “Projecting certain specific actions of companies or clients onto Smith’s qualification to serve in his new role on the FTC only prioritizes political posturing over much-needed experience.” The group, a “leading conservative voice on judicial appointments,” seeks to address “constitutional questions involving innovative technologies,” it says.

written by Karl Herchenroeder

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