

Some fireworks at Bedoya's Senate confirmation hearing, but confirmation still seems likely

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On November 17, the Senate Commerce Committee held its eagerly-awaited hearing on the nomination of Alvaro Bedoya, a data privacy academic from Georgetown Law, to be FTC Commissioner. Bedoya is slated to replace Rohit Chopra, who departed the agency last month to become Director of the CFPB, and Bedoya's appointment would once again give the Democrats a voting majority. In the run-up to his hearing, some have wondered – Can we expect Bedoya to provide Chair Khan with a reliable third vote for her agenda, or will he bring a more bipartisan approach to the agency? From his answers and demeanor at the hearing, the answer is probably... both.

First, a little table-setting: Bedoya's nomination was considered along with three others – Jessica Rosenworcel for FCC Chair and two nominees for the Department of Commerce. The hearing was well-attended by Committee members, who directed the majority of their questions to Rosenworcel. (Yes, net neutrality, broadband access, and the "homework gap" all got more attention than privacy.) All four current FTC Commissioners attended the hearing in person, in a bipartisan show of support for Bedoya, though Bedoya attended remotely due to a recent exposure to COVID.

Here are some takeaways from Bedoya's portion of the hearing.

- **He appears likely to be confirmed, even if largely along party lines.** Although Senator Wicker made a reference to Bedoya's "strident" views and Senators Lee, Cruz, and Sullivan slammed his "extremist" tweets (see below), most of the questions (from 18 Senators!) related to Bedoya's area of expertise (privacy), where there is more alignment between the parties than in other areas. He handled the questions well, and repeatedly expressed support for collaboration and bipartisanship (e.g., specifically mentioning that he wants to work closely with Commissioner Wilson on privacy). Democrats have the votes (in the Committee and on the Senate floor), even if they ultimately have to call in V.P. Harris to break a tie.
- **He spoke about his nomination and the issues in personal and emotional terms.** Bedoya highlighted that he and his family were welcomed into this country 34 years ago. He talked about his experience as a Senate staffer, learning about the terror and harm caused by stalking apps from a shelter for battered women. He realized then and believes now that "privacy is not just about data, it's about people." His goal as a Commissioner would be to make sure the FTC protects people, and to help both consumers and businesses manage the multiple crises facing the country – a COVID crisis, a privacy crisis, and a small business crisis.
- **He appears likely to vote with the majority on many (or most) issues.** No big surprise here, but when asked his views about various issues, he consistently supported positions that

Khan, Slaughter, and (his predecessor) Chopra have supported – federal privacy legislation, Magnuson-Moss privacy rulemaking if Congress doesn't act, pushing back against the “unprecedented consolidation” that is forcing small businesses to close, streamlining the FTC's rulemaking and subpoena processes, reducing the power of the platforms, and reining in tracking technologies like facial recognition. As to the latter, he said he would *not* support banning facial recognition technologies altogether, since some applications assist with benefits like public safety and healthcare. However, he *would* support banning facial recognition technologies that are hidden, that lack consent, or that collect, use, and share data without limits.

- **He's a real-live privacy expert.** He clearly has the credentials, starting with his work as a Senate staffer and continuing through his years at Georgetown Law as a professor and head of a privacy think tank. But he also quickly and confidently answered all questions related to privacy – from the need for privacy legislation generally, to his views on Senator Schatz's “duty of loyalty” and Senator Markey's proposal to amend COPPA, to the lines he would draw on facial recognition (see above).
- **He wrote some controversial tweets, and a number of Republicans seem poised to vote “no” on his confirmation.** Senator Sullivan cited a tweet from Bedoya calling the 2016 Republican convention a “White Supremacist rally.” Cruz cited tweets about ICE as a “domestic surveillance agency” and a retweet involving critical race theory and white supremacy. He also called Bedoya a “left wing activist, bomb thrower, extremist, and provocateur.” Lee ran through a series of supposedly “yes or no” questions in rapid succession, and accused Bedoya of being evasive when he tried to qualify his responses. And Wicker referred to Bedoya's “strident” views, as noted above. As to the tweets, Bedoya apologized, saying that it was “rhetoric” and that he would put aside any partisan views if he became Commissioner. However, these Senators (and perhaps other Republicans) seem poised to vote “no” on Bedoya's confirmation, and some have said they plan to place a “hold” on the process, which could slow it down.
- **If confirmed, he could help reduce tensions at the Commission.** With acrimony among the Commissioners currently at unprecedented levels (see our recent post [here](#)), adding Bedoya to the mix could help reduce the tensions (despite the tweets). He's known to be collegial, he worked across the aisle as a Senate staffer, he repeatedly invoked bipartisanship at the hearing, and all of the sitting Commissioners (Democrats and Republicans) showed up at the hearing to support him. That augurs well for the dynamics at the Commission, even if the votes remain split along party lines.

We will continue to monitor progress on Bedoya's nomination and post updates as they occur.



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