

Senator Kohl's Follow-Up Question for Tony West

Question: I am troubled by the fact that, unlike other independent agencies like the SEC, the FTC cannot obtain civil penalties either administratively or in cases it brings in federal court independently of the Justice Department. In circumstances where quick action is needed to stop a fraud and prevent further harm to consumers, the FTC has to choose between going directly and quickly into court for immediate relief – and forgoing civil penalties -- or first going to Justice Department and getting the DOJ to bring the case. The FTC must gain the approval of the Justice Department, and the process can take 45 days and require time for DOJ counsel to gear up. Would you support legislation enabling the FTC to seek civil penalties in court independently?

Response: I recognize your concern about preserving the ability to take quick action when needed. Toward that end, if confirmed, I will reach out to the FTC and the career attorneys in the Civil Division for suggestions on how we can prevent the 45-day review period from becoming an impediment to timely action on civil penalties. I also recognize that the Attorney General has had long-standing authority to supervise litigation conducted on behalf of, and in the interests of, the United States Government; therefore, any legislation seeking to alter this fundamental authority is something I would evaluate with caution and in consultation with my colleagues at the Department of Justice.