

Opening Statement of Representative Kelly Armstrong
Consumer Protection and Commerce Subcommittee Hearing on
“The Consumer Protection and Recovery Act: Returning Money to
Defrauded Consumers”

As prepared for delivery

Thank you, Madam Chair. As you mentioned, the Supreme Court ruled last week on the Federal Trade Commission’s use of Section 13(b) authorities.

The Court’s unanimous decision, delivered by Justice Stephen Breyer, was clear. Section 13(b) does not authorize the FTC to seek monetary relief. Today, we welcome FTC Acting Chair Rebecca Slaughter. She will advocate her position on how to amend Section 13(b).

Acting Chair Slaughter, in an April 22 statement you stated that quote: “*In AMG, the Supreme Court ruled in favor of scam artists and dishonest corporations...*”. Americans are losing trust in our institutions. Part of the reason is due to unnecessary political rhetoric that villainizes a person or institution.

Perhaps no institution has been subject to such unnecessary rhetoric as the Supreme Court. Reasonable legal scholars across the ideological spectrum could agree that this unanimous Supreme Court decision was the right legal conclusion. It may not be the policy outcome you want. But that is not the Supreme Court’s job.

The Court’s role, as stated in *Marbury v. Madison*, is to say what the law is. I would suggest there are more productive ways to advocate for your policy preferences.

The minority is also concerned about the committee’s process to review Section 13(b). I am troubled that the other FTC commissioners are not here today. Just last week, Senator Cantwell allowed all four current commissioners to testify before the Senate Commerce Committee.

Surely this committee would benefit from the testimony of all the commissioners. This committee will also be denied the opportunity to hear other FTC reform proposals. Six bills by our members were ready and shared with the majority in time to be noticed as part of this hearing. These bills have passed out of this committee in previous forms.

However, all were rejected for consideration today. This is part of a pattern. The minority is told we do not have enough legislation ready for floor consideration. Yet, our bills are never considered during committee process. It is a catch-22 that seems convenient for partisan ends. Similar concerns extend to other parts of the committee process. Despite two panels for this hearing, the minority was allowed only one witness.

The good news is that the minority-invited witness is Professor Howard Beales, who previously led the FTC's Bureau of Consumer Protection. He is widely regarded as an FTC expert. The Supreme Court cited work by him and former FTC Chairman Tim Muris in its decision last week. He also has a history lesson for us. His work cited by the Court states, "*in the 1970s the Commission embarked on a vast enterprise to transform entire industries.*" It continues with "*the Commission issued a rule a month*" over a 15-month period.

This should sound familiar. Advance a few decades and we have a recent announcement on centralizing FTC rulemaking authority within the office of the General Counsel. This would move authority away from the issue experts and the economic analysis that are central to FTC actions.

Interestingly, the statement on the new rulemaking effort tied its purpose to the Supreme Court challenge to 13(b). Beyond the multiple process fouls, we are also bypassing the opportunity for substantive reforms. Senator Wicker rightfully identified last Congress that privacy reform and a 13(b) amendment could be a part of the same legislative fix.

I was pleased to hear Mr. Cardenas, the sponsor of the bill before us, cite the Wicker proposal at our COVID Scams hearing earlier this year. I was also pleased with the bipartisan efforts to move privacy legislation forward during the first half of last Congress. Those efforts were sidelined by COVID. Yet, while we delay, state legislatures are enacting privacy bills.

I know we are not that far apart, and I ask the committee that we finish the job. And in all due respect to the acting chair, it is neither her duty, nor our request, regarding the proper strategy and outcome. This committee must work together to solve this issue.

Let's enact real FTC reform that reflects a bipartisan legislative accomplishment for this committee. The American people deserve a landmark consumer protection bill that meets the needs of the 21st Century. I yield back. Thank you.