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6 TRANSFORMING THE FTC:

7 LEGISLATION TO MODERNIZE CONSUMER PROTECTION

8 WEDNESDAY, JULY 28, 2021

9 House of Representatives,

10 Subcommittee on Consumer Protection and Commerce,

11 Committee on Energy and Commerce,

12 Washington, D.C.

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16 The subcommittee met, pursuant to call, at 10:33 a.m.,  
17 in Room 2123, Rayburn House Office Building, Hon. Jan  
18 Schakowsky, [chairwoman of the subcommittee] presiding.

19 Present: Representatives Schakowsky, Rush, Castor,  
20 Trahan, McNerney, Clarke, Cardenas, Dingell, Kelly, Soto,  
21 Rice, Craig, Fletcher, Pallone (ex officio); Bilirakis,  
22 Upton, Latta, Guthrie, Bucshon, Dunn, Pence, Lesko,  
23 Armstrong, and Rodgers (ex officio).

24 Also present: Representative Burgess.

25

26 Staff Present: Jeff Carroll, Staff Director; Katherine  
27 Durkin, Policy Coordinator; Lisa Goldman, Senior Counsel;

28 Waverly Gordon, General Counsel; Tiffany Guarascio, Deputy  
29 Staff Director; Ed Kaczmariski, Policy Analyst; Zach Kahan,  
30 Deputy Director Outreach and Member Service; Mackenzie Kuhl,  
31 Press Assistant; David Miller, Counsel; Kaitlyn Peel, Digital  
32 Director; Chloe Rodriguez, Deputy Chief Clerk; Andrew  
33 Souvall, Director of Communications, Outreach, and Member  
34 Services; Caroline Wood, Staff Assistant; Anna Yu,  
35 Professional Staff Member; Sarah Burke, Minority Deputy Staff  
36 Director; Michael Cameron, Minority Policy Analyst, CPC,  
37 Energy, Environment; Nate Hodson, Minority Staff Director;  
38 Peter Kielty, Minority General Counsel; Emily King, Minority  
39 Member Services Director; Tim Kurth, Minority Chief Counsel,  
40 CPC; Brannon Rains, Minority Policy Analyst, CPC, Energy,  
41 Environment; Michael Taggart, Minority Policy Director  
42

43           \*Ms. Schakowsky. Welcome, everyone. The Subcommittee  
44 on Consumer Protection and Commerce will now come to order.

45           Today we will be holding a hearing entitled,  
46 "Transforming the FTC," the Federal Trade Commission,  
47 "Legislation to Modernize Consumer Protection."

48           Due to the COVID-19 public health emergency, members can  
49 participate in today's hearing, either in person or remotely.

50           The online -- via video conference. Members are -- and  
51 witnesses who are participating in person -- these are the  
52 new guidelines -- must wear a mask, and members and witnesses  
53 who are not vaccinated must also be socially distant. Such  
54 members and witnesses may remove their masks when they are  
55 under recognition, and speakers from -- and speaking from a  
56 microphone. Staff and press who are present in the committee  
57 room must wear a mask at all times, and staff and press who  
58 are not vaccinated must be socially distant.

59           Too bad that we had to move to different guidelines, I  
60 might say, but here we are.

61           To be clear, mask wearing is now required, regardless of  
62 vaccination status.

63           For members participating remotely, your microphones  
64 will be set on mute for the purpose of eliminating  
65 inadvertent background noise. Members participating remotely  
66 will need to mute yourselves, and your microphones, when you  
67 are -- each time that you wish to speak.

68           Please note that, once you unmask, that once you unmute  
69 your microphone, anything that is said in Webex will be heard  
70 over the loudspeaker in the committee room, and subject to be  
71 heard by the live stream and C-SPAN. So, you know, watch  
72 what you are saying into the microphone if you are not muted.

73           Since members are participating from different locations  
74 at today's hearing, all recognition of members, such as for  
75 questions, will be in the order of the subcommittee  
76 seniority.

77           Documents for the record can be sent to Ed Kaczmarek at  
78 the email address that we have provided to staff. All  
79 documents will be entered into the record at the conclusion  
80 of the hearing.

81           So the chair now recognizes herself for five minutes.

82           We -- today we are considering 16 pieces of legislation  
83 intended to modernize the Federal Trade Commission's ability  
84 to pursue the -- its consumer protection mission.

85           For over 100 years the FTC has been the premier Federal  
86 consumer protection agency. But despite its broad mandate to  
87 protect consumers, and to promote competition, the Commission  
88 has been sorely under-resourced for decades now. Today it  
89 has a smaller staff and fewer resources than other consumer  
90 protection regulators. And -- however, it is a new era for  
91 the Federal Trade Commission now.

92           In a breath of fresh air, the Commission held two open

93 meetings this month. These public, accessible meetings  
94 increased transparency and public input on important topics,  
95 like the Made in USA Rule and Right to Repair. It is time to  
96 recommit to restoring the cultural -- the culture and the --  
97 of the FTC to put consumers first.

98         Many of the 16 bills that we are considering today will  
99 help them to accomplish this mission. These include the  
100 Online Consumer Protection Act, which I have introduced, and  
101 -- with Representative Castor. This legislation will hold  
102 technology platforms accountable for failure to live up to  
103 the promises that they made with their -- made to consumers  
104 in their terms of service.

105         The 21st Century FTC Act, sponsored by Representative  
106 Castor, and my own FTC Autonomy Act, will provide the  
107 Commission with additional enforcement tools, including  
108 rulemaking, civic -- civil penalties, and independent  
109 litigation authority.

110         Legislation from our colleagues, Representatives Rush  
111 and McNerney, will give the Commission authority over  
112 consumer protection violations by nonprofit organizations and  
113 telecommunications communications carriers.

114         A few of the bills that are being considered today will  
115 also -- will allow the FTC to more efficiently -- scams that  
116 target vulnerable groups. This includes bipartisan  
117 legislation from Representatives Rice and Upton focusing on

118 fraud affecting military veterans and service members.

119 And legislation from Representative Kelly would  
120 establish a task force to bolster the communications work --  
121 the Commission's work on equity issues, and would inform the  
122 public about scams targeted specifically to other groups.

123 Representative McNerney has legislation that would  
124 create the office of technologists to provide additional  
125 technical assistance to the Commission, and update in --  
126 every technology consideration.

127 Today these bills will force -- will forge a new path  
128 forward for the Federal Trade Commission.

129 I am going to ask my ranking member for permission to go  
130 over time. As you can see, I do have some reading issues  
131 that are hampering me in some ways. It is a physical thing  
132 that I have got. Okay, thank you very much.

133 So today these bills will forge a new path forward for  
134 the Federal Trade Commission. They strengthen the  
135 Commission's consumer protection capacity, and provide the  
136 tools necessary to guide today's increased innovation and  
137 dynamic marketplace. It is essential that the Commission  
138 have the tools it needs to hold technology platforms  
139 accountable.

140 The era of self-regulation is over. Self-regulation has  
141 threatened our democracy, and now threatens our health and  
142 our very lives, as vaccine misinformation continues to spread

143 across social media. Consent decrees and fines have proven  
144 ineffective in improving the behavior of technology  
145 companies. Violation after violation underscores that  
146 stronger enforcement today -- enforcement tools are urgently  
147 needed.

148         The American people deserve a 21st-century consumer  
149 protection agency that meets 21st-century threats, and I am  
150 looking forward to hearing from the witnesses that are here  
151 today on how more -- how modernizing the Federal Trade  
152 Commission and protecting consumers can happen.

153         [The prepared statement of Ms. Schakowsky follows:]

154

155         \*\*\*\*\*COMMITTEE INSERT\*\*\*\*\*

156

157           \*Ms. Schakowsky. I want to say a special thank you to  
158 our witnesses. I am so grateful to the commissioners who are  
159 all here today: three virtually and two in person. Thank  
160 you so much.

161           And also from our experts that we will hear -- for the  
162 second panel.

163           The chair -- thanks for the indulgence. I am practicing  
164 on how to use my new disability to speak more properly. But  
165 here we are.

166           And the chairman now recognizes Mr. Bilirakis, the  
167 ranking member of our subcommittee, for five minutes.

168           \*Mr. Bilirakis. Thank you so much, Madam Chair. I  
169 appreciate it. Thank you for holding this important hearing.  
170 And to both panels appearing today, we really appreciate it  
171 very much. I would like to welcome all five of our FTC  
172 commissioners -- I guess three virtually, and two in person  
173 -- in front of our subcommittee, where we can not only  
174 examine the legislation before us, but also conduct overdue  
175 -- oversight of the commission.

176           Chair Khan, congratulations on your recent confirmation  
177 as commissioner and chair of the FTC. This is a very  
178 important agency, as you know, and I am eager to learn how  
179 you will continue leading on its important work, especially  
180 in the protection of our constituents from fraud and scams,  
181 and how you can enforce a national privacy standard we want



182 to enact. It is critical we get the ball rolling on that  
183 effort.

184 I am also interested in learning how the FTC can assist  
185 with protecting Americans from ransomware and other cyber  
186 attacks. I recently introduced H.R. 4551, The RANSOMWARE  
187 Act, which would amend the Safe Web Act to focus on such  
188 attacks. The FTC can play an important role in securing our  
189 nation from ransomware. So I hope today's conversation may  
190 assist in fine-tuning my legislation to best accomplish this  
191 goal.

192 Given the majority scheduled this as an oversight  
193 hearing, as well, I would be remiss if I did not inquire  
194 about recent changes at the FTC.

195 Chair Khan, I understand that change comes when a new  
196 team is in charge, and we will have our policy differences  
197 here in D.C., but that should not stop you from working with  
198 your fellow commissioners in a collegial manner. So you must  
199 understand why I am concerned when we hear reports of  
200 individuals inside the FTC being silenced, and your other  
201 commissioners being shut out of the process. We must take  
202 these allegations extremely seriously. It is concerning, the  
203 recent changes in FTC processes took place without  
204 acknowledging the consideration of all commissioners and of  
205 FTC experts, some of whom have lifetimes of experience within  
206 the subject matter.

207           To those staff, I hope you are watching today, so you  
208 may know this commission cares -- again, this committee  
209 definitely cares about the FTC process remaining open and  
210 transparent, and that your voice and expertise play an  
211 important role. We will begin a process to review these  
212 allegations. And with that, I would like to announce for the  
213 FTC staff listening that, if you have any issues, we have  
214 created a whistleblower email. It is  
215 [ecgop.whistleblower@mail.house.gov](mailto:ecgop.whistleblower@mail.house.gov). Again,  
216 [ecgop.whistleblower@mail.house.gov](mailto:ecgop.whistleblower@mail.house.gov).

217           As you are aware, with other bills on the docket,  
218 Republican members of this committee introduced legislation  
219 to ensure guardrails are included in any FTC decision-making  
220 process. I am glad to see these bills are on the docket, and  
221 I appreciate it, Madam Chair, that you placed them on the  
222 docket. Thanks for following through. They will bring much  
223 needed transparency, in my opinion, require proper notice and  
224 input from key experts at the FTC, like from the Bureau of  
225 Economics, something I wish was included in H.R. 2668, the  
226 legislation that expands section 13(b).

227           As I have said before, Republicans support providing the  
228 FTC with the tools they need to pursue bad actors, and to  
229 sufficiently enforce privacy standards. So I ask that the  
230 Democrat -- Democratic proposals in front of us be considered  
231 in that context. I hope my Democratic colleagues' engagement

232 on these issues will also mean seriously engaging on putting  
233 in place a national privacy standard.

234       Madam Chair, thank you again for holding this hearing.  
235 We have a lot to get through today, so I wanted to be as  
236 brief as I could. I am eager to learn how we, as the  
237 committee of jurisdiction, can bring much-needed transparency  
238 to the FTC, and how the legislation before us may do just  
239 that. And I thank you very much, and I yield back.

240       [The prepared statement of Mr. Bilirakis follows:]

241

242       \*\*\*\*\*COMMITTEE INSERT\*\*\*\*\*

243

244           \*Ms. Schakowsky. The gentleman yields back, and the  
245 chairman now recognizes Mr. Pallone, chairman of the full  
246 committee, for five minutes.

247           \*The Chairman. Thank you, Chairwoman Schakowsky. Today  
248 we are continuing this committee's important work on putting  
249 consumers first.

250           For the past few months, this subcommittee, and then the  
251 full committee, pushed forward the Consumer Protection and  
252 Recovery Act to restore the FTC's basic authority to get  
253 stolen money back to consumers. That urgently-needed  
254 legislation passed the House last week, and I urge the Senate  
255 to take up the bill without delay.

256           With House passage of the Consumer Protection and  
257 Recovery Act, we must take the next step, not just fixing  
258 what was broken, but improving the nation's foremost consumer  
259 protection agency, and putting consumers first. The FTC  
260 initially addressed only unfair competition, which led to  
261 unjust results for consumers. But then, in 1938, Congress  
262 met the moment, enacting the FTC's now core section 5  
263 authority to enforce against unfair or deceptive acts or  
264 practices. By granting the power to stop consumer harms, the  
265 FTC's consumer protection mission was born at that time.

266           And over time, the FTC needed more authority to execute  
267 its mission. In 1973 Congress met that moment by granting  
268 the FTC the authority to go into Federal court and seek

269 relief for consumers, including under Section 13(b) of the  
270 FTC Act. And these changes led to billions in relief for  
271 consumers, and a more efficient way to deter illegal conduct.  
272 And the legislation that passed the House last week would  
273 restore this critical authority after it had been seriously  
274 undermined earlier this year by the Supreme Court.

275         We are now facing another seminal moment for consumer  
276 protection. The digital age has fundamentally changed the  
277 consumer experience, but the FTC's mission to protect  
278 consumers and honest businesses remains the same. Congress  
279 must meet the moment again. It is time to bring the FTC into  
280 the modern era, to give it the tools and resources to keep up  
281 with changes in the market. And much of the legislation  
282 before us today would do just that.

283         The legislation that would improve general rulemaking  
284 authority under the Administrative Procedures Act would  
285 remove uniquely onerous burdens, so the FTC can more  
286 efficiently provide clear rules of the road to businesses and  
287 consumers. Legislative proposals would also give the FTC  
288 civil penalty authority, which is critical to impose  
289 meaningful consequences on wrongdoers, and deter other bad  
290 actors. Those reforms help industry and individuals, and are  
291 essential to maximize the FTC's limited resources.

292         There is also legislation that ends exemptions on  
293 nonprofits and telecommunications common carriers from FTC

294 jurisdiction that also helps consumers and businesses.

295 Consumer protection enforcement should be based on the  
296 activity, not the entity.

297 Unfortunately, on the other hand, some proposals before  
298 us today would hinder the FTC, and ultimately harm consumers.  
299 I am concerned by the proposals that would burden staff and  
300 drain resources with needless processing reports that,  
301 effectively, obstruct information exchanges between the FTC  
302 and other regulators and lawmakers. The bills that I am  
303 talking about would undermine the FTC's ability to prevent  
304 potential harms or react top unusual, unfair, and deceptive  
305 practices.

306 Some of these bills would hurt companies by potentially  
307 forcing the FTC to reveal confidential investigations before  
308 the FTC has determined whether illegal acts have taken place,  
309 or whether it will take action against the subjects of the  
310 investigations. And I believe these proposals would put the  
311 FTC on the wrong track.

312 Now, my Republican committee colleagues have routinely  
313 emphasized the need for comprehensive consumer privacy  
314 legislation, and I agree, and that is why the committee  
315 remains hard at work on privacy. But at the same time, the  
316 legislation would effectively gut the FTC's ability to  
317 protect consumer privacy. And I believe that, across the  
318 board, deregulation and a strong Federal privacy regime

319 cannot coexist.

320 [The prepared statement of The Chairman follows:]

321

322 \*\*\*\*\*COMMITTEE INSERT\*\*\*\*\*

323

324           \*The Chairman. So I thank all five commissioners for  
325 appearing before us. I also look forward to hearing from our  
326 expert witnesses, and I yield the balance of my time to the  
327 gentlewoman from Florida, Ms. Castor.

328           \*Ms. Castor. Well, thank you, Chair Pallone. This is a  
329 critical hearing, because the Federal Trade Commission is  
330 absolutely vital to protecting our neighbors back home,  
331 protecting consumers, and then fostering competition across  
332 the economy. We have got to give the FTC all of the tools it  
333 needs to help protect consumers from fraudsters, and scam  
334 artists, predatory companies.

335           My neighbors back home in Florida, which just is rife  
336 with, unfortunately, with scam artists, they really need the  
337 FTC at work, at full force. They have got -- the FTC -- a  
338 lot of folks don't really understand.

339           You all help recoup money. You help hold these fly-by-  
340 night operations accountable. You, in essence, restore the  
341 dignity to folks who have been scammed, and you penalize  
342 these bad actors. So welcome, Chair Khan, welcome,  
343 Commissioners. We look forward to working with you, and look  
344 forward to hearing you today, along with our expert panel.

345           And I really appreciate, Chair Schakowsky, you including  
346 my 21st Century FTC Act in this hearing today.

347           So thank you, I yield back my time.

348           \*Ms. Schakowsky. The gentleman has yielded back his



349 time. And now let me recognize Mrs. Rodgers, the ranking  
350 member of the full committee, for her five minutes for an  
351 opening statement.

352 \*Mrs. Rodgers. Thank you, Madam Chair. Welcome, Chair  
353 Khan, our distinguished members of the Federal Trade  
354 Commission, as well as our second panel of experts.

355 This past year has been difficult. COVID-19 has not  
356 only altered our daily lives, it has refocused the way we  
357 conduct our business in Congress. Over the past year it has  
358 been essential that we work together in a bipartisan way to  
359 protect seniors and other vulnerable populations. Thanks to  
360 our work with Chair Schakowsky, we have been able to expand  
361 the FTC's authority to go after COVID-19 fraudsters and  
362 scammers.

363 Yet I am concerned today that we are now prioritizing  
364 politics over protecting Americans. Just last week we saw a  
365 very partisan 13(b) legislation narrowly pass the House  
366 floor. What makes this worse is that, just a couple of weeks  
367 prior, during a committee markup, Representative Bilirakis  
368 introduced an amendment to this bill that received bipartisan  
369 support. But it was shut out by the majority, once the bill  
370 moved to the floor. A colloquy on the House floor between  
371 committee Democrats tried to clarify the intent of the  
372 underlying bill. The concerns raised during the colloquy  
373 would have been clearly addressed by Bilirakis's compromise.

374           This begs the question: If our compromise amendment was  
375 considered on the floor, would it have passed? I believe  
376 that the answer is yes.

377           Sadly, the partisan process for 13(b) was also a missed  
378 opportunity to enact a national Federal privacy standard,  
379 something we desperately need to ensure that people's  
380 personal information is protected online. America's data and  
381 personal information does not end with state lines. Neither  
382 should privacy protections, considering proposals on the  
383 agenda today were part of the bipartisan privacy negotiations  
384 last Congress.

385           I will be listening for ways that these bills being  
386 considered can be adapted into a national privacy standard,  
387 which would be a landmark achievement for this committee and  
388 for the protection of America's data. I certainly hope they  
389 don't move alone -- stand alone.

390           In the past, even when we disagreed on certain  
391 approaches to policy-making, we were able to come together  
392 and work in a bipartisan manner. This was the case when  
393 Chairman Pallone led on attacking robocalls, and enacted the  
394 landmark TRACED Act. That was Congress at its best, and I  
395 hope that we return to that, because what we have now is a  
396 set of really bad examples for agencies and departments under  
397 our oversight.

398           We have heard reports on shifts at the FTC to shorten

399 notice of actions, limit consultation, and reduced economic  
400 analysis. This trend is crippling the thoughtful process at  
401 the FTC, and jeopardizing fraud protections for Americans who  
402 need them. It is a disservice to Americans.

403         Your mission is to protect. By neglecting your duty to  
404 follow a process that allows for proper deliberation and  
405 import -- input from experts is a disservice. I implore you  
406 to resist the urge to take your focus off of consumer  
407 protections. Engage with the public to find out what alarms  
408 them most. Listen to people at regional workshops about  
409 their top concerns. I would be surprised if you didn't hear  
410 stories about unwanted calls for scam real estate leads, car  
411 warranties, even fake IRS bills. These are the kinds of  
412 things that should guide your efforts. The FTC is an  
413 independent agency that should not have your agenda dictated  
414 by the White House.

415         The time to establish a strong and uniform data  
416 protection for all Americans is now, and I look forward to  
417 hearing from you.

418         [The prepared statement of Mrs. Rodgers follows:]

419

420 \*\*\*\*\*COMMITTEE INSERT\*\*\*\*\*

421

422 \*Mrs. Rodgers. I yield back, Madam Chair.

423 \*Ms. Schakowsky. The gentlelady yields back.

424 The chair would like to remind members that, pursuant to  
425 committee rules, all members' written opening statements  
426 shall be made part of the record.

427 I now would like to introduce our witnesses for our  
428 first -- from our first panel at today's hearing: the  
429 Honorable Lina Khan, chairwoman -- chairman of the Federal  
430 Trade Commission; the Honorable Noah -- we have them on --  
431 okay -- the Honorable Noah Joseph Phillips, commissioner with  
432 the Federal Trade Commission; the Honorable Rohit Chopra,  
433 commissioner, the FTC; the Honorable Rebecca K. Slaughter,  
434 commissioner at the FTC; and the Honorable Christina Wilson  
435 -- I am sorry, it is Christine, excuse me, Wilson, the  
436 commissioner at the FTC.

437 At this time the chair will recognize each witness for  
438 five minutes to provide their opening statement.

439 Before I do, I think most of you are already familiar  
440 with the lights, but let me explain that system. In front of  
441 our witnesses is a series of lights. The lights will  
442 initially be green. The light will turn yellow when there is  
443 one minute left. And please begin to wrap up at that point.  
444 The light will turn red when the five minutes have expired.

445 So Chair Khan, it is a pleasure to welcome you, and to  
446 recognize you for five minutes.

447

448 STATEMENT OF LINA KHAN, CHAIR, FEDERAL TRADE COMMISSION; NOAH  
449 JOSHUA PHILLIPS, COMMISSIONER, FEDERAL TRADE COMMISSION;  
450 ROHIT CHOPRA, COMMISSIONER, FEDERAL TRADE COMMISSION; REBECCA  
451 K. SLAUGHTER, COMMISSIONER, FEDERAL TRADE COMMISSION; AND  
452 CHRISTINE S. WILSON, COMMISSIONER, FEDERAL TRADE COMMISSION

453

454 STATEMENT OF LINA KHAN

455

456 \*Ms. Khan. Thanks so much, Chair Schakowsky, Ranking  
457 Member Bilirakis, and members of the subcommittee. I am  
458 pleased to appear before you today to discuss the 16 bills  
459 under consideration by the subcommittee. Thank you for this  
460 important work, and I look forward to working with you all.

461 My testimony today will identify several key issues  
462 currently facing the Commission, and share initial views on  
463 some of the bills currently being considered.

464 Congress created the Federal Trade Commission to serve  
465 as a guardian for fair competition, and to protect consumers,  
466 workers, and honest businesses from unfair or deceptive trade  
467 practices. This statutory charge has never been more  
468 important, yet the Commission faces today notable challenges  
469 in carrying out its mission. I will briefly describe three  
470 problems that are currently shaping the agency's work.

471 First, as this subcommittee is well aware, the Supreme  
472 Court's decision last year in AMG dealt a serious blow to the

473 FTC's ability to seek refunds for defrauded victims, and to  
474 discourage ill-gotten gains. Across the Commission's work,  
475 the loss of section 13(b) is leading to windfalls for  
476 lawbreakers.

477 For example, after a major pharmaceutical company  
478 engaged in a multi-year scheme to keep drug prices high by  
479 choking off generics, a court ordered it to return \$448  
480 million to victims. The Supreme Court's interpretation of  
481 section 13(b) has meant that the pharmaceutical company was  
482 later, instead, allowed to pocket these illegal profits. All  
483 together, AMG has jeopardized over \$2 billion in potential  
484 relief to victims in pending cases.

485 Beyond monetary relief, the FTC now also faces  
486 challenges in seeking an injunction to halt wrongdoing,  
487 curtailing the Commission's ability to challenge past abuses.

488 I am committed to using the full range of the FTC's  
489 tools to crack down on unlawful conduct. But restoring our  
490 full section 13(b) authority is critical, and I am grateful  
491 that the full House has already acted on Congressman  
492 Cardenas's bill to re-arm the Commission against these  
493 growing threats.

494 Second, Americans have been subjected to a massive  
495 increase in fraud over the last year, with the number of  
496 complaints up more than 20 percent. While the FTC has  
497 focused on shutting down COVID-related schemes, from bogus

498 treatments to government imposters, fraud has continued to  
499 surge. One reason is that fraud today is supercharged by  
500 digital platforms, where this conduct is tolerated, and even  
501 promoted, by some of the world's largest companies. Business  
502 models singularly focused on skill and engagement, coupled  
503 with micro-targeting, have allowed these platforms to become  
504 finely-tuned instruments for bad actors, who often target the  
505 most vulnerable.

506         Although digital platforms profit off of the tools that  
507 are being weaponized against Americans, these companies often  
508 claim special immunity under the law. The Commission will  
509 continue to aggressively pursue those that exploit this  
510 crisis to target American families. But ultimately,  
511 systematically rooting out fraudulent schemes will require  
512 focusing on the warped incentives and legal privileges that  
513 allow major firms to profit from predation.

514         Third, even as the agency tackles the proliferation of  
515 unfair or deceptive practices, the current merger boom  
516 threatens to make them worse. Significant market  
517 consolidation deprives consumers, workers, and independent  
518 businesses of choice, further enabling dominant firms to  
519 engage in unfair practices. As the wave of privacy abuses in  
520 recent years has shown, market dominance often allows  
521 companies to renege on commitments, evade the law, and  
522 repeatedly violate Commission orders. We are seeing rapid

523 consolidation across industries. Through the first three  
524 quarters of this fiscal year, antitrust agencies have  
525 processed over 2,400 merger filings, a level of activity that  
526 is already the highest in 2 decades.

527         Although the FTC is working to review many of these  
528 deals, the sheer volume of transactions is significantly  
529 straining Commission resources. I am deeply concerned that  
530 the current merger boom will further exacerbate deep  
531 asymmetries of power across our economy, further enabling  
532 abuses.

533         This subcommittee is considering several bills that  
534 would boost the Commission's ability to confront these  
535 challenges. Both the FTC Autonomy Act and the 21st Century  
536 FTC Act would help the Commission seek civil penalties  
537 against lawbreakers. This would mark an important change,  
538 guaranteeing the public greater protections.

539         Those that would end special protections for select  
540 industries would also strengthen our law enforcement. For  
541 example, the online Consumer Protection Act would clarify  
542 that platforms cannot claim special privileges when facing an  
543 FTC enforcement action. Meanwhile, the Protecting Consumers  
544 and Commerce Act and Removing Nonprofit Exemption Act would  
545 allow the FTC to challenge abuses by common carriers and  
546 nonprofit entities.

547         Finally, several bills focus efforts on communities that



548 are offering particular targets of predation, including older  
549 Americans, service members, and consumers. These bills are a  
550 critical reminder of the importance of the FTC's work in  
551 ensuring that our government works for all Americans.

552 I look forward to working with the subcommittee to meet  
553 the challenges that we face, and I welcome the opportunity to  
554 answer any questions.

555 [The prepared statement of Ms. Khan follows:]

556

557 \*\*\*\*\*COMMITTEE INSERT\*\*\*\*\*

558

559           \*Ms. Schakowsky. Thank you very much.

560           And now, Commissioner Phillips, you are recognized for  
561 five minutes.

562

563 STATEMENT OF NOAH JOSHUA PHILLIPS

564

565 \*Mr. Phillips. Thank you, Madam Chair. Chair  
566 Schakowsky, Ranking Member Bilirakis, members of the  
567 subcommittee, thank you for the opportunity to appear before  
568 you. I am honored to testify with my fellow commissioners  
569 about the important work we do at the FTC. I am glad the  
570 subcommittee has decided to solicit a range of views on  
571 agency reform.

572 I would also like to take a moment to thank the staff at  
573 the Edgartown Public Library, for providing me with a  
574 private, quiet place to testify. I will be masked, in  
575 adherence to library policy.

576 The thoughtful proposals members have made on agency  
577 reform deserve attention. In particular, those designed to  
578 increase transparency into the Commission, like the FTC  
579 Reports Act, sponsored by Congressman Bilirakis, and Mr.  
580 Guthrie's FTC Transparency Act.

581 In the last few weeks, the Commission has repeatedly  
582 changed policy directions without giving the public any real  
583 notice or right to be heard, and, without serious  
584 consideration, removed guidance from the public and business  
585 community alike. And by removing Commission oversight from  
586 antitrust and other investigations, as we recently did, we  
587 have reduced transparency within the agency. We must do

588 better.

589           As you consider agency reforms, I urge you to think  
590 about the other ways in which the agency is changing course.

591           The first change is the Commission pivoting, without  
592 Congress, to regulate a great deal of the economy. Over the  
593 last few years, my colleagues have called for a bevy of new  
594 rules, mostly under authorities that we have. The  
595 President's recent executive order contemplates our issuing  
596 major regulations concerning, among other things,  
597 pharmaceuticals, technology, labor, retail, and devices. Not  
598 all of the proposals in the executive order are bad, to be  
599 clear. But much of it would replace consumer-driven market  
600 forces with government-supervised regulation, the opposite of  
601 competition. And much of that appears to be based on  
602 authority we simply do not possess.

603           The Commission, however, is in a hurry to regulate. For  
604 example, on July 1st, without input from the public, we  
605 adopted rules to enable us to promulgate regulations with  
606 less objectivity, less oversight, and less public input. The  
607 Commission majority is reducing what it calls red tape on the  
608 Commission, to impose more real red tape on American  
609 businesses, large and small.

610           Well-crafted regulations can help consumers and  
611 businesses, but poor regulatory design can raise prices,  
612 stifle innovation, and reduce consumer choice. This was a

613 lesson America learned the hard way decades ago.

614           And when it comes to policy questions of great economic  
615 and political importance, my basic philosophy is that  
616 Congress, not the FTC, is the place to answer them. I  
617 believe the law reflects that fact. Privacy is a good  
618 example, and I commend Committee Ranking Member Rodgers and  
619 subcommittee member -- Ranking Member Bilirakis on their  
620 recent letter calling for privacy legislation, and for the  
621 Administration to make it a priority.

622           In adopting regulations, I hope we address clearly-  
623 defined problems, fashion rules designed to address them, and  
624 minimize unintended consequences. I hope we base our  
625 decisions on empirical evidence and input from all  
626 stakeholders, which is why I also support the goals of the  
627 RECS Act, introduced by Congressman Bucshon, to ensure that  
628 we approach Congress with analytical rigor.

629           Another change, I fear, is moving away from the  
630 Commission's historical commitment to combating fraud. Just  
631 a few weeks ago, this subcommittee considered amendments to  
632 section 13(b), following the Supreme Court's AMG decision.  
633 As we detailed in testimony, a fraud program has, for  
634 decades, done essential work to return money to victims of  
635 fraud. Companies large and small that engage in fraud can  
636 cost consumers their life savings. In the past five years we  
637 have returned \$11.2 billion in refunds to consumers who are

638 victims of fraud. I am heartened that Congress has  
639 appropriated funds and passed laws to strengthen the fraud  
640 program, and count me among those who believe that a well-  
641 crafted amendment to 13(b), with guardrails, will help serve  
642 consumers.

643         Of late, some of my colleagues have made comments to  
644 suggest that we should focus only on large companies. The  
645 fact is that many of the frauds we see are not perpetrated by  
646 those kinds of companies, and I hope these comments do not  
647 indicate a desire to turn away from the fraud program. Where  
648 big corporations violate the law, we absolutely should hold  
649 them to account. But some of the wrongdoers that hurt  
650 Americans the most happen not to be large corporations. We  
651 should focus on harm to consumers, not the identities of  
652 defendants.

653         While enforcement against robocallers, COVID-19  
654 scammers, and others may not generate as many headlines, it  
655 generates results for consumers. While section 19 is not a  
656 perfect tool, it enables us to turn -- return money to them.  
657 We should continue to commit resources to combating practices  
658 like fraud that cause the most harm, and I welcome  
659 legislation like updating 13(b) that will help with that.

660         Thank you, and I look forward to your questions.

661

662

663 [The prepared statement of Mr. Phillips follows:]

664

665 \*\*\*\*\*COMMITTEE INSERT\*\*\*\*\*

666

667           \*Ms. Schakowsky. Thank you.

668           And now, Commissioner Chopra, you are recognized for  
669 five minutes.

670



671 STATEMENT OF ROHIT CHOPRA

672

673 \*Mr. Chopra. Chair Schakowsky, Ranking Member  
674 Bilirakis, and members of the subcommittee, thank you for  
675 holding this hearing today. My name is Rohit Chopra, and it  
676 is an honor to be here with you and my fellow commissioners.

677 The pandemic created the conditions for a wide range of  
678 market abuses that harmed so many Americans, including  
679 millions of small businesses. Many small businesses in  
680 America didn't just find their financial futures in peril;  
681 they also found themselves completely under siege against --  
682 by unfair, deceptive, and anti-competitive practices by --  
683 firms.

684 Local restaurant owners were worried about food delivery  
685 apps that coerced them into paying extraordinary fees. Local  
686 franchisees faced new onerous requirements that franchisors  
687 were imposing on them, even as they struggled to stay afloat.  
688 Independent pharmacists, who played a critical role in the  
689 response to the pandemic, found themselves at the mercy of  
690 middlemen using tactics that are driving many of these  
691 independent clinics out of business. And the same goes with  
692 small retailers and small banks, and the list goes on and on  
693 and on. It was crystal clear that small businesses across  
694 the country needed the FTC's help, but many felt completely  
695 ignored.

696 I appreciate your work to increase the effectiveness of  
697 the Federal Trade Commission. And as you pursue these  
698 efforts, I would also encourage you to consider other reforms  
699 to ensure that the FTC is more responsive to small  
700 businesses, and less slanted in the favor of larger ones. We  
701 need to look at laws related to ethics, and financial  
702 conflicts of interest, and more. Small businesses have  
703 expressed concern that the FTC routinely gives favorable  
704 treatment to large, powerful firms, such as big tech and big  
705 pharma giants, while ignoring pleas for action to address  
706 practices harming small players.

707 When big tech companies egregiously violate privacy and  
708 the law, the FTC has shown across multiple administrations  
709 that it is more than willing to be lax and forgiving. But  
710 when small businesses violate these laws, the FTC brings down  
711 the hammer on them, wiping out revenues, and often shutting  
712 them down. This two-tier approach does not make sense.

713 Congress should explore whether our laws need to be  
714 amended to reduce favoritism toward these dominant players,  
715 crack down on financial conflicts of interest, and increase  
716 responsiveness to local businesses and upstarts.

717 First, Congress should examine whether to revisit laws  
718 regarding post-employment restrictions for senior FTC  
719 officials. While senior officials cannot immediately  
720 represent clients in front of the agency, many are able to

721 work quietly behind the scenes, leveraging their intimate  
722 knowledge of non-public agency deliberations on law and  
723 policy. This gives them an enormous advantage on how to help  
724 large firms escape meaningful accountability when they break  
725 the law, and how to advise them on how to get the FTC to take  
726 specific actions. Small businesses don't have the resources  
727 or the ability to hire former FTC commissioners and bureau  
728 directors who regularly appear before the agency on behalf of  
729 dominant firms. This creates an un-level playing field for  
730 small businesses engaging with the FTC, seeking action or a  
731 fair resolution.

732         Congress should also assess whether existing post-  
733 employment restrictions and other standards regarding  
734 financial conflicts of interest in our laws are adequate.  
735 While some argue that tougher restrictions will deter some  
736 from considering government service, our experience at the  
737 FTC reveals a different story, with many of our most talented  
738 officials devoting the vast majority of their career to  
739 working in public service.

740         In addition, Congress should also determine whether  
741 existing law regarding so-called sponsored travel needs to be  
742 updated. Under existing law, senior government officials can  
743 be sponsored by non-Federal sources to travel to conferences  
744 and retreats, largely attended by and indirectly paid for by  
745 those representing dominant firms, especially big tech.

746 These events sometimes include closed-door panel discussions  
747 that are not open to the media or the public, giving  
748 conference organizers and their patrons a chance to gather  
749 intelligence about emerging policies and priorities.

750 This non-public information can be exploited by  
751 investment funds that trade on this information. Small  
752 businesses and the general public can't easily access these  
753 private panel junkets, and don't have the resources to  
754 organize them on their own. To ensure equal access and  
755 fairness, it will be important to examine whether laws and  
756 regulations need to be amended to guard against real or  
757 perceived conflicts of interest when it comes to sponsored  
758 travel by non-Federal sources.

759 In closing, it is clear that honest businesses need the  
760 FTC more than ever. I am confident that we can work together  
761 to fairly administer the law and promote a marketplace free  
762 of fraud and anti-competitive abuses.

763 Thank you, and I look forward to your questions.

764 [The prepared statement of Mr. Chopra follows:]

765

766 \*\*\*\*\*COMMITTEE INSERT\*\*\*\*\*

767

768           \*Ms. Schakowsky. Thank you, Commissioner.

769           And now I recognize Commissioner Slaughter for five  
770 minutes for an opening statement.

771

772 STATEMENT OF REBECCA K. SLAUGHTER

773

774 \*Ms. Slaughter. Thank you, Chair Schakowsky, Ranking  
775 Member Bilirakis, and members of this subcommittee. I am  
776 pleased to appear before you today, and I appreciate the  
777 opportunity to appear remotely. With four children too young  
778 to be vaccinated at home, I am being extra cautious about  
779 COVID exposure.

780 I want to start by thanking this committee for its  
781 incredibly hard work to pass the Consumer Protection Recovery  
782 Act, what we refer to as the 13(b) fix, through the House  
783 earlier this month. I am grateful for your appreciation of  
784 the challenges the recent Supreme Court decision posed for  
785 the Commission, for your hard work to arm us with the tools  
786 we need to protect your constituents. I am eager for us to  
787 continue to partner with Congress and this committee.

788 While I am happy to discuss the bills before the  
789 committee today, I also want to encourage you to continue  
790 work on a meaningful, comprehensive, legislative approach to  
791 data abuses. Yesterday the FTC held its sixth annual  
792 PrivacyCon conference, with presenters covering topics  
793 including algorithmic bias, issues around consent,  
794 misinformation during the pandemic, and special concerns  
795 related to kids and teens. That broad agenda reflected our  
796 understanding that data issues have moved past the narrow

797 framework of who has access to your personal data.

798         This understanding is why I prefer the term "data  
799 abuses'" to the narrower language of "privacy.'" Thinking in  
800 terms of abuses reflects the fact that rampant data  
801 collection, sharing, and exploitation harms consumers and  
802 competition in ways that affect nearly every aspect of our  
803 lives.

804         I know this topic is front of mind for members of this  
805 committee, and that you are actively considering how best to  
806 craft legislation to address -- to directly address the harms  
807 faced by consumers, workers, and small businesses in our  
808 data-driven economy.

809         I also understand that doing this well takes time and  
810 thought, and I encourage you to focus on approaches that not  
811 only address the full panoply of harms that stem from  
812 indiscriminate data collection, including civil rights  
813 violations, abuse of market power, economic exclusion, and  
814 exploitation of children, but also provide meaningful  
815 solutions that root out damaging and dangerous business  
816 models and market practices.

817         When it comes to questions about personal data, I  
818 respectfully suggest we move past outdated notice and content  
819 models that put untenable burdens on users. Instead, we  
820 should turn our focus to changing the underlying incentives  
821 that fuel data-driven business models, such as behavioral

822 advertising.

823           One approach to consider is data minimization, a  
824 principle that would ensure companies can collect only the  
825 information necessary to provide consumers with the service  
826 on offer, and use the data they collect only to provide that  
827 service. That minimization could be coupled with further  
828 use, purpose, sharing, and security requirements to ensure  
829 that the information companies collect isn't used to build  
830 tools or services that imperil people's civil rights,  
831 economic opportunities, and personal autonomy, or facilitate  
832 corporate self-dealing. We have to recognize that, as long  
833 as key digital markets are controlled by just a few large,  
834 data-hungry, online platforms, both consumers and prospective  
835 entrants are at their mercy.

836           As Congress continues to debate these issues, I believe  
837 it is incumbent upon the Commission to act within the full  
838 scope of our existing authority to target pernicious data  
839 practices with both aggressive enforcement and rulemaking.

840           A quick note about rulemaking, which I know can generate  
841 big reactions. Congress specifically delegated to the FTC  
842 the authority, albeit with a burdensome process, to write  
843 rules that prohibit or regulate any unfair or deceptive act  
844 or practice that is prevalent in interstate commerce. In  
845 other words, if we can already sue someone for committing an  
846 unfair or deceptive practice in violation of section 5 of the



847 FTC Act, and that practice is prevalent, then we can also  
848 write a rule that clarifies for the markets that the conduct  
849 is prohibited.

850 That means rulemaking can only target conduct that is  
851 already illegal. Rules are developed using a participatory  
852 process with substantial stakeholder engagement and, when  
853 finalized, provide notice and certainty to the market about  
854 what conduct is outside the scope of our 100-year-old  
855 statute.

856 As I said before, I believe it is past time for the FTC  
857 to begin a rulemaking process on data abuses. Among other  
858 benefits, this process can have a clarifying effect for the  
859 congressional debate, as well. Participating in the  
860 rulemaking process means businesses, advocates, consumers,  
861 workers, researchers, and other interested parties all have  
862 the opportunity to make their opinions known, out in the  
863 open, and with specificity in the public record. An open  
864 record can provide substantiation of the types of consumer  
865 protection and competition harms people are experiencing in  
866 digital markets, and illuminate how we can act decisively to  
867 stamp out these abuses.

868 I look forward to working with my fellow commissioners  
869 and with Congress to advance these efforts, and I welcome  
870 your questions.

871

872 [The prepared statement of Ms. Slaughter follows:]

873

874 \*\*\*\*\*COMMITTEE INSERT\*\*\*\*\*

875

876           \*Ms. Schakowsky. Thank you.

877           And Commissioner Wilson, you are now recognized.

878

879 STATEMENT OF CHRISTINE S. WILSON

880

881 \*Ms. Wilson. Thank you. Chairman Pallone, Ranking  
882 Member McMorris Rodgers, Chair Schakowsky, Ranking Member  
883 Bilirakis, and distinguished members of the subcommittee,  
884 thank you for the opportunity to testify. In my remarks I  
885 will address section 13(b), Federal privacy legislation, and  
886 process issues that have arisen recently at the Commission  
887 because those process issues impact my view of the 16 bills  
888 we will discuss today.

889 I am blessed to be serving my third stint at the Federal  
890 Trade Commission. I have great respect for the agency's  
891 devoted personnel, and I remain amazed at how much we  
892 accomplish in so many different industry sectors, despite our  
893 small budget. And I am proud of our agency's history of  
894 collegiality and bipartisanship.

895 I understand that elections have consequences. The  
896 Biden Administration may choose to pursue different policies  
897 than its predecessors, but the process used to implement  
898 those changes matters. Congressman Pallone stated in 2016  
899 during a hearing on FTC legislation, "I am a big proponent of  
900 regular order. That means engaging in real deliberation, not  
901 just checking the boxes.'" I agree with that sentiment, and  
902 I believe it applies equally to the Federal Trade Commission.

903 As a political appointee nominated by the White House

904 and confirmed by the Senate, I am obligated to exercise due  
905 oversight of Commission business. FTC actions traditionally  
906 have been the product of robust dialogue and analysis,  
907 supported by briefings and staff memoranda. These procedures  
908 facilitate a healthy flow of information among commissioners  
909 and staff, and enable us to arrive at reasoned conclusions.  
910 When we adhere to these traditions, I am able to fulfill my  
911 oversight function.

912 But in recent weeks, longstanding norms and procedures  
913 have been jettisoned. Practitioners, academics, and former  
914 enforcers across the political spectrum have expressed  
915 concern about the agency's abrupt departure from regular  
916 order. I share these concerns, and they impact my view of  
917 the bills we will discuss today.

918 Some bills establish additional procedural safeguards  
919 and augmented oversight. Given the shift away from regular  
920 order, those bills are more important now than ever. Other  
921 bills give the FTC additional authority. Given the FTC's  
922 conduct in the 1970s, I have long been concerned about the  
923 possibility of agency overreach, and recent actions by  
924 Commission leadership have deepened those concerns. I am  
925 wary of more power without appropriate guardrails.

926 Turning to section 13(b), I appreciate this committee's  
927 attention to this issue. I support Commission authority to  
928 seek equitable monetary relief in appropriate cases, and to

929 challenge conduct that wrongdoers have halted. But I  
930 understand the concerns that have been raised.

931 Some are concerned about disgorgement in antitrust  
932 cases. Guiding principles on when the FTC will seek  
933 disgorgement, like those in the FTC's 2003 disgorgement  
934 policy statement, would provide appropriate guardrails.

935 Others are concerned about using 13(b) in consumer  
936 protection cases that involve, not fraud, but legitimate  
937 companies selling legitimate products, albeit with deceptive  
938 claims. Congress can include a framework in 13(b) under  
939 which courts must evaluate the value consumers have retained  
940 from the product or service, despite the deception.

941 The bottom line, with proper guardrails, legitimate  
942 concerns can be addressed, while also enabling the FTC to  
943 pursue wrongdoers in appropriate cases.

944 And finally, I would like to address Federal privacy  
945 legislation. Businesses need clarity regarding the rules of  
946 the road in this important area. But more importantly,  
947 consumers need clarity regarding how their data is collected,  
948 shared, and monetized. Without this information, consumers  
949 cannot make informed choices about the costs and benefits of  
950 using various websites, apps, and devices.

951 The events of the last 18 months have exacerbated  
952 privacy concerns, but they have also underscored that our  
953 civil liberties, including Fourth Amendment protections, are

954 at stake, and the FTC's existing jurisdiction and tools are  
955 limited. I thank the members of this committee, in  
956 particular, Ranking Member McMorris Rodgers and Ranking  
957 Member Bilirakis, for their recognition of this important  
958 issue. And I encourage the committee to continue working on  
959 privacy legislation. As the elected representatives of the  
960 American people, you are best situated to make the important  
961 value judgments inherent in privacy legislation.

962         President Biden's recent EO asked the FTC to consider a  
963 privacy rulemaking. I recently have become more receptive to  
964 a privacy rulemaking as a stopgap measure until Congress  
965 could act. But the Commission recently voted along party  
966 lines to erase procedural safeguards and limit opportunities  
967 for public input during our rulemakings. Consequently, I am  
968 now much less receptive to an FTC rulemaking. Federal  
969 privacy legislation remains the optimal solution, so I  
970 encourage you to act.

971         In closing, I thank this committee for your time and  
972 support of the FTC's mission. I am happy to answer any  
973 questions you may have.

974         [The prepared statement of Ms. Wilson follows:]

975

976 \*\*\*\*\*COMMITTEE INSERT\*\*\*\*\*

977

978           \*Ms. Schakowsky. Thank you. We have concluded  
979 witnesses' opening statements, and at this time we will move  
980 to -- I am sorry? Oh, I am sorry, there is a vote on the  
981 floor, so we are going to recess.

982           How many votes are there? Just one. Can we have people  
983 just vote? Do we have to recess? We have to recess?

984           Okay, yes, since the time of voting actually has gotten  
985 pretty strict, we are going to recess. But come back as soon  
986 as you can, so that we can get to our question period. And I  
987 -- not exactly apologize to the witnesses, this is our life  
988 here, but we will be back as soon as we can to get to  
989 questions. Thank you.

990           [Recess.]

991           \*Ms. Schakowsky. Okay, we are going to come back to  
992 order. Thank you. And once again, these are situations  
993 beyond our control, and I appreciate your patience.

994           So we are going to begin with the questions from our  
995 members, and I want to begin with five minutes of  
996 questioning.

997           I want to talk about holding big tech accountability  
998 online, consumer protection, et cetera, and there is no doubt  
999 that, especially during this pandemic, that more and more  
1000 Americans are increasingly online, and the importance of  
1001 holding the technology companies accountable is more and more  
1002 important, I believe.



1003           And there is absolutely no reason for Internet platforms  
1004 to not hold to the same accountability standards as -- for  
1005 harming consumers as offline businesses. And so, you know,  
1006 what is illegal offline ought to be, in my view, illegal  
1007 online, as well.

1008           So let me start with you, Chairman, Chair Khan. I am  
1009 going to assume that the -- you believe that the FTC can do  
1010 more to protect consumers from online harms, right?

1011           \*Ms. Khan. Yes, Congresswoman.

1012           \*Ms. Schakowsky. Thank you. In your view, is it unfair  
1013 or deceptive when social media platforms or online platforms  
1014 fail to follow their own terms of service?

1015           \*Ms. Khan. Chairwoman, I would say, as a general  
1016 matter, there is a lot of concern around the opacity of their  
1017 policies and procedures. And so sometimes it can be  
1018 difficult to know when they are or are not following their  
1019 own policies because of that opacity. And so I think those  
1020 information asymmetries create -- can create a lot of  
1021 problems.

1022           \*Ms. Schakowsky. So are the -- just say are -- do you  
1023 think that the FTC existing authority is sufficient to  
1024 enforce against violations that we see to absolutely deter  
1025 further violations?

1026           \*Ms. Khan. Congresswoman, I think there is certainly  
1027 more we could be doing under our existing authority. I do

1028 think that there areas where the courts have scaled back our  
1029 authority. There are cases where the platforms are able to  
1030 claim particular privileges under the law that can create  
1031 defenses that we have to then argue against. So I think  
1032 there is room for more work, but there are certainly  
1033 challenges, as well.

1034 \*Ms. Schakowsky. Well, if you could talk a little bit  
1035 about that, and I want to ask Commissioner Chopra the same  
1036 thing. What are the kinds of things that you envision?

1037 And the other commissioners would be welcome after those  
1038 two.

1039 Go ahead.

1040 \*Ms. Khan. So I think some of the types of provisions  
1041 that you have proposed, including, you know, civil penalty  
1042 authority, specifically for some of these types of == being  
1043 able to go after some of these types of practices, enabling  
1044 other enforcers to also be enforcing some of these  
1045 provisions, like the state AGs, I think that could also help  
1046 with deterrence.

1047 But overall, I think figuring out how we create some of  
1048 that parity between online and offline is going to be very  
1049 important.

1050 \*Ms. Schakowsky. Now, also, Commissioner Chopra, if you  
1051 could also talk about resources, whether or not, even if you  
1052 want to, what capabilities do the -- does the Commission

1053 have, not having enough resources?

1054 \*Mr. Chopra. Yes, I think this is a huge issue right  
1055 now. Right now we are facing a massive merger surge. It is  
1056 stretching capacity to the limit, and the rubber band is  
1057 snapping.

1058 And at the same time, in order to prosecute certain  
1059 cases, we have to go up against well-financed defendants who  
1060 can claim section 230 immunity with impunity. They use it  
1061 for almost every single thing when it comes to platform-  
1062 related conduct. This immunity is abused, and Congress  
1063 absolutely needs to fix it, because it is an impediment to  
1064 protecting consumers and small businesses online.

1065 \*Ms. Schakowsky. So, you know, we have had bipartisan  
1066 discussions about 230, and one of the bills that has been  
1067 introduced also would begin to address the 230. I am just  
1068 wondering if any of the other commissioners -- are you still  
1069 here, by the way -- would want to comment on -- what can the  
1070 and should the Commission be doing to protect consumers and  
1071 -- more efficiently?

1072 \*Ms. Slaughter. I am happy to jump in, Madam Chair, and  
1073 thank you for the question. I want to echo the comments that  
1074 my colleagues have offered, in thanking you for your  
1075 leadership in calling attention to some of the problems that  
1076 230, in particular, has posed for enforcement. I am  
1077 especially worried about the areas where 230 provides

1078 protection for platforms for illegal conduct, and the way  
1079 that they

1080 [Audio malfunction.]

1081 \*Ms. Slaughter. -- or facilitate illegal conduct on  
1082 their platforms.

1083 I also think the resource question can't be overstated.  
1084 Not only do we have to go into litigation, we have to go into  
1085 litigation with companies that are not willing to make  
1086 meaningful changes that will actually get to the root of the  
1087 problems in the settlement. So we are forced to sue, and  
1088 that is expensive and it is time consuming. So figuring out  
1089 how to fix those asymmetries, as the chair said, would be  
1090 very helpful.

1091 \*Ms. Schakowsky. Thank you so much. My time is  
1092 expired. And now I call on the ranking member for five  
1093 minutes of questions.

1094 \*Mr. Bilirakis. Thank you, Madam Chair, I appreciate it  
1095 very much.

1096 During Joseph Simons' confirmation hearing to be FTC  
1097 chair, Senators had the opportunity to ask him whether he  
1098 would commit to running the FTC in a bipartisan manner. He,  
1099 of course, agreed. Considering one of your colleagues is  
1100 expected to be confirmed to another position, the FTC may  
1101 soon be in a two-two split. And so it would be even more  
1102 imperative that the FTC proceeds on a consensus bipartisan

1103 approach.

1104           So Chair Khan, since the Senate did not have the  
1105 opportunity to ask you will you run the FTC -- again, will  
1106 you commit to doing it in a bipartisan fashion, where you  
1107 will consult and coordinate with all commissioners, and  
1108 ensure they have the resources of the Commission available to  
1109 them on all pending business? Please answer yes or no.

1110           \*Ms. Khan. Certainly, Congressman, I think this is a  
1111 really fascinating moment for a new emerging bipartisan  
1112 consensus, especially around some of the concerns relating to  
1113 concentration of economic power in the digital markets. And  
1114 I am always keen to find areas of shared agreement with my  
1115 colleagues.

1116           \*Mr. Bilirakis. Thank you. Our committee has worked  
1117 extensively in a bipartisan manner to protect consumers from  
1118 fraud and scams. Mr. Carter's Combating Pandemic Scams Act  
1119 was enacted at the beginning of the year, thanks to all of  
1120 our leadership here. Representative Blunt Rochester's Fraud  
1121 and Scam Reduction Act, as well as Representative Kelly's  
1122 Protecting Seniors from Emergency Scams Act both cleared our  
1123 Chamber with bipartisan support this year. My bill, H.R.  
1124 2672, the FTC Reports Act, would require the FTC to report on  
1125 fraud against our seniors.

1126           Commissioner Phillips, how important is the work the FTC  
1127 staff does to protect Americans from scams?

1128           \*Mr. Phillips.  Congressman, thank you for your  
1129 question.  The work we do to protect American consumers  
1130 against frauds and scams is our bread and butter, as an  
1131 agency.  There is no work that makes me feel better, as a  
1132 commissioner, than we watch our ability to find bad guys who  
1133 are taking money from American consumers, dipping into their  
1134 life savings, and get that money back to them.

1135           So the work that you have done on the committee to  
1136 provide funding and to provide tools for us to go after scam  
1137 artists is critical, and I think that needs to continue at  
1138 the agency.

1139           \*Mr. Bilirakis.  Thank you.

1140           And Chair Khan, again, as you pursue other initiatives,  
1141 will any staff and resources be shifted away from the fraud  
1142 program, which is so essential in preventing bad actors from  
1143 harming our constituents?  That is the question, please.

1144           \*Ms. Khan.  Sorry, could you repeat the question?  Using  
1145 -- when should resources -

1146           \*Mr. Bilirakis.  Yes, of course.  As you pursue other  
1147 initiatives, will any staff and resources be shifted away  
1148 from your fraud program, which is so essential in preventing  
1149 bad actors from harming our constituents?

1150           \*Ms. Khan.  Well, of course, we are always limited by  
1151 the appropriations bills when it comes to thinking through  
1152 how we are delegating resources across the agency.  In

1153 certain instances I think there are exigent needs that can  
1154 arise in certain aspects -

1155 \*Mr. Bilirakis. But you don't anticipate moving money  
1156 from the fraud program, is that correct?

1157 \*Ms. Khan. Not especially. I mean, I think overall we  
1158 are trying to look through the prism of managerial  
1159 efficiency, and trying to understand how we can best use our  
1160 resources, especially given some of the exigent  
1161 circumstances. And so we will be continuing to make those  
1162 determinations.

1163 \*Mr. Bilirakis. I suggest that you not, because this is  
1164 such a very important program.

1165 Commissioner Wilson, can you elaborate on why the FTC  
1166 Reports Act would also prove beneficial to increasing much-  
1167 needed transparency, and the flow of information within the  
1168 Commission?

1169 \*Ms. Wilson. Thank you very much for the question --

1170 \*Mr. Bilirakis. Thank you.

1171 \*Ms. Wilson. -- Ranking member Bilirakis. As I  
1172 explained in my opening remarks, there have been significant  
1173 concerns regarding procedural irregularities and  
1174 abnormalities in recent weeks. These are abnormalities that  
1175 we did not experience under Republican Chair Joe Simons, or  
1176 under Democrat Acting Chair Rebecca Slaughter. We can agree  
1177 to disagree. We can disagree without being disagreeable.

1178 But process matters.

1179 And so, to the extent there are ongoing procedural  
1180 irregularities at the Federal Trade Commission, I think that  
1181 even more transparency will enable Congress to exercise its  
1182 even more important oversight now, regarding the actions of  
1183 the agency.

1184 \*Ms. Schakowsky. Guess what? There is a vote, another  
1185 motion to adjourn. I don't know what to say. I know that  
1186 Commissioner Slaughter has a hard stop, and I don't know  
1187 about the rest of you.

1188 I think we need to vote, and then come back as quickly  
1189 as we can. If you are here, we will appreciate it. This is  
1190 very frustrating.

1191 Did you want to say something?

1192 \*Ms. Khan. We are happy to stay.

1193 \*Ms. Schakowsky. All right, we are going to go vote.

1194 [Recess.]

1195 \*Ms. Schakowsky. Okay. Next for questions is  
1196 Congresswoman Castor.

1197 You are recognized for five minutes of questions.

1198 \*Ms. Castor. Well, thank you, Chair Schakowsky, for  
1199 calling this hearing, and for following through on working  
1200 with me on a bill to give FTC APA rulemaking authority, and  
1201 first offense civil penalty authority in our -- in my 21st  
1202 Century FTC Act. It is H.R. 4447.



1203           But before I ask questions -- a question on that bill, I  
1204 would like to first discuss a top priority for me, and that  
1205 is children's online privacy. On July 9th President Biden  
1206 issued an executive order that directed the FTC to use its  
1207 statutory rulemaking authority to address unfair data  
1208 collection and surveillance practices that may damage  
1209 competition, consumer autonomy, and consumer privacy.

1210           The FTC should follow through. They should follow  
1211 through on President Biden's direction to use its powers to  
1212 protect consumers' privacy. But while doing so, it should  
1213 make protecting children's privacy a priority. And it is not  
1214 just me that believes this should be a priority. I helped  
1215 secure language in the financial services appropriations bill  
1216 we are voting on this week that urges the FTC to prioritize  
1217 investigations into potential violations of the COPPA Rule,  
1218 as well as requiring the FTC to submit a report on its  
1219 enforcement of the COPPA Rule.

1220           So, Chair Khan, will you commit to prioritizing  
1221 enforcement of the COPPA Rule, and submitting this report in  
1222 a timely fashion?

1223           \*Ms. Khan. Thank you, Congresswoman. I think ensuring  
1224 robust privacy protections for children, in particular, is  
1225 paramount, and I certainly hope the agency will be able to  
1226 commit its resources to focus on this important issue,  
1227 especially during the pandemic, when so many children have

1228 become even more reliant on EdTech services.

1229 \*Ms. Castor. So can you give us an update on the status  
1230 of the COPPA Rule?

1231 \*Ms. Khan. Of the COPPA Rule?

1232 \*Ms. Castor. Yes.

1233 \*Ms. Khan. I understand a review has been initiated. I  
1234 am not precisely sure where we are, exactly, in that process.  
1235 I know there have been concerns relating to whether any  
1236 revision would be stronger than what we already have in  
1237 place, as opposed to weakening it.

1238 From my perspective, I think COPPA needs to be the  
1239 floor, not the ceiling, and we need to question whether the  
1240 type of notice and consent framework that informs them of the  
1241 prior privacy rules are still adequate, especially when  
1242 parents don't really have a choice as to whether their  
1243 children are even using some of these technologies.

1244 But I am happy to follow up with your office on the  
1245 specific -- where we are in the process.

1246 \*Ms. Castor. Thank you very much. And Commissioner  
1247 Chopra, you have been a leader here on -- when it comes to  
1248 children's online privacy. What is your view for the agency,  
1249 going forward?

1250 \*Mr. Chopra. Yes, it is very clear that many of these  
1251 firms, whether it be TikTok or YouTube, are wanting the data  
1252 of teenagers and children desperately, so that they can

1253 monetize them and target them for the rest of their lives.

1254 I think the Commission learned a hard lesson in its  
1255 YouTube settlement, which essentially allowed YouTube to pay  
1256 a fine, but to keep the algorithms that were illegally  
1257 enhanced by their spying on children, and essentially, did  
1258 nothing to fix the underlying business model that YouTube  
1259 relies on to, essentially, target children.

1260 So we need to look, as Chair Khan said, at the  
1261 underlying business model that is promoting so much of these  
1262 privacy abuses. And I really agree with what you said, it  
1263 has to be a priority. And we also need our state attorneys  
1264 general joining with us to prosecute more of these cases.

1265 \*Ms. Castor. And stay tuned. I think the Congress is  
1266 poised to have more legislation to consider very soon.

1267 So switching to my 21st Century FTC Act, which gives the  
1268 FTC APA rulemaking authority and first defense civil penalty  
1269 authority, I would like to ask two quick yes-or-no questions  
1270 to each of you.

1271 One, should the FTC have more statutory authority to  
1272 pursue civil penalties, yes or no?

1273 \*Ms. Khan. Yes, Congresswoman. I think it can help  
1274 with deterrence, significantly.

1275 \*Mr. Chopra. Yes.

1276 \*Ms. Castor. And number two, should the FTC have more  
1277 -- a more streamlined and less cumbersome rulemaking process?

1278           \*Ms. Khan. Yes.

1279           \*Mr. Chopra. Yes, that would be more equivalent to  
1280 almost every other agency that polices against these abuses.

1281           \*Ms. Castor. I think that is important for my  
1282 colleagues to understand, that the FTC is different.

1283           Who -- I am going to ask one other follow-up question,  
1284 Chair Khan. Who wouldn't want the FTC to have this kind of  
1285 first offense civil penalty authority?

1286           \*Ms. Khan. Frankly, it would be the law-breakers who  
1287 would not be disincentivized to not pursue these actions in  
1288 the first place.

1289           \*Ms. Castor. Do you agree, Commissioner Chopra?

1290           \*Mr. Chopra. Yes. I think a big problem with the FTC,  
1291 as it currently is composed, is that we cannot penalize some  
1292 of this egregious conduct. We just, hopefully, can get money  
1293 back. But there has to be a disincentive to do that  
1294 misconduct in the first -

1295           \*Ms. Castor. In the first place.

1296           \*Mr. Phillips. Congresswoman, could I add something?

1297           \*Ms. Castor. Thank you very much. I have run out of  
1298 time, so I yield back. Thank you.

1299           \*Ms. Schakowsky. I just want to remind members that  
1300 there are other commissioners, I think, that are still on,  
1301 virtually, with us, I hope.

1302           And now let me call on Representative Latta for his five

1303 minutes of questioning.

1304           \*Mr. Latta. Well, thank you very much, Madam Chair, and  
1305 thanks to the commissioners for being with us today.

1306           You know, in recent weeks the FTC has held two open  
1307 meetings. While I am glad to see that the FTC intends to  
1308 increase transparency, the reality has fallen short. Any  
1309 change in policy should not be rushed. It should be well  
1310 communicated in advance to the public and ensure input is  
1311 sought and considered ahead of any Commission votes. Most  
1312 importantly, having open, transparent meetings will allow the  
1313 FTC to better serve the public interest.

1314           Similarly, in 2017, Chairman Pai increased the  
1315 transparency of the FCC by publicly releasing documents weeks  
1316 in advance of the open meetings, and Acting Chair Rosenworcel  
1317 has continued this practice.

1318           Chairwoman Khan, will you agree to conduct future  
1319 meetings and policy deliberations in a truly transparent  
1320 manner?

1321           \*Ms. Khan. Thanks for the question, Congressman. Let  
1322 me just say up front I am so thrilled that we have been able  
1323 to really start opening up our Commission meetings. I think  
1324 it can really help with democratizing the agency, and  
1325 enhancing public participation. And I am so grateful both to  
1326 the agency staff that have enabled us to do this in quick  
1327 order, and my fellow commissioners.

1328           Of course, you know, we are still very early in the  
1329 process, and so are always thinking about ways that we can  
1330 improve our processes going forward.

1331           \*Mr. Latta. So you -- but you will make sure that they  
1332 are open process, and there is transparency.

1333           \*Ms. Khan. Certainly, I think --

1334           \*Mr. Latta. I am going to take that as a yes.

1335           \*Ms. Khan. Certainly, yes. We --

1336           \*Mr. Latta. Thank you, thank you.

1337           \*Ms. Khan. -- want to focus on clear notice for all  
1338 market participants and the public.

1339           \*Mr. Latta. Thank you.

1340           Commissioner Phillips, the FTC recently voted along  
1341 party lines to rescind two policy statements that have been  
1342 relied on under previous administrations of both parties.  
1343 Were you consulted by the chair prior to the notice of the  
1344 open meetings on this, or what could go into their place  
1345 [sic]?

1346           \*Mr. Phillips. Thank you for the question, Congressman.  
1347 I would say the level of consultation was as low as I have  
1348 seen at the agency, and it is important to note that, in  
1349 terms of transparency, we didn't make transparent what our  
1350 policies would be.

1351           I think Congressman Guthrie's act, putting out the  
1352 policies 30 days in advance, giving the public a real

1353 opportunity for input, is a very important thing that could -  
1354 - you know, to follow on the words of the chair -- really  
1355 democratize the process. Let the public know what we are  
1356 going to do, allow for consultation with the public, allow  
1357 for consultation within the Commission. That is how you have  
1358 a thoughtful process.

1359 \*Mr. Latta. Thank you.

1360 Chairman Wilson, same question.

1361 \*Ms. Wilson. I completely agree with the comments of my  
1362 colleague, Commissioner Phillips, and I would note that, in  
1363 terms of transparency and democratization, we actually -- the  
1364 Republicans on the Commission offered motions that would  
1365 require the rescission of these important policy statements to  
1366 be put out for notice and comment, so that we could receive  
1367 the input of all stakeholders before these important policy  
1368 statements were rescinded. And in fact, the three Democrats  
1369 voted against the -- against receiving input from the public  
1370 on these important issues.

1371 Moreover, I would note that, while it is wonderful to  
1372 hear from the public in these new open Commission meetings,  
1373 we are hearing from them after votes are taken. And so they  
1374 are not actually having an opportunity to weigh in on the  
1375 proposals that we are considering.

1376 \*Mr. Latta. Well, thank you.

1377 Madam Chair, I would like to enter into the record the

1378 July 9 dissenting statement from Commissioners Phillips and  
1379 Wilson regarding unfair methods of competition.

1380 \*Ms. Schakowsky. Without objection.

1381 [The information follows:]

1382

1383 \*\*\*\*\*COMMITTEE INSERT\*\*\*\*\*

1384



1385           \*Mr. Latta. Thank you, Madam Chair.

1386           Commissioner Wilson, it goes without saying that our  
1387 nation needs a privacy law. The longer Congress waits to  
1388 enact bipartisan legislation, the more states decide to  
1389 create their own laws. I am concerned about this patchwork  
1390 of state laws that breeds confusion and leaves gaps in  
1391 consumer protection.

1392           It is clear to me that we need a Federal privacy  
1393 standard to better protect consumers and streamline  
1394 compliance. It is not realistic for small and mid-sized  
1395 companies to follow 50 different, obviously, laws. It might  
1396 also be unconstitutional.

1397           Would you expound on why it is important for Congress to  
1398 create a national privacy standard?

1399           \*Ms. Wilson. Absolutely. I think this is an incredibly  
1400 important issue, and one that all of us at the Commission  
1401 have spent a great deal of time talking about it. And I  
1402 know, in fact, this is an area of bipartisan consensus at the  
1403 Commission, and Commissioners Slaughter and Chopra and I have  
1404 had extensive discussions about the need for Federal privacy  
1405 legislation.

1406           It is very difficult for businesses to understand the  
1407 rules of the road, operating in 50 different jurisdictions,  
1408 with 50 different state laws, not to mention all of the  
1409 international regimes.

1410           And with respect to citizens, privacy rights and  
1411 transmission of data doesn't stop at state boundaries, let  
1412 alone national boundaries. And so I would love to see the  
1413 U.S. step up to the plate, take a seat at the table  
1414 internationally, by enacting Federal privacy legislation that  
1415 provides not just privacy for our consumers here at home, but  
1416 also protection for important civil rights that are being  
1417 eroded as we speak.

1418           \*Mr. Latta. Well, thank you very much.

1419           And Madam Chair, my time has expired, and I yield back.

1420           \*Ms. Schakowsky. I now recognize the chairman of the  
1421 full committee, Mr. Pallone.

1422           \*The Chairman. I thank the chairwoman. I wanted to ask  
1423 Chairwoman Khan about enforcement.

1424           Why is it so essential that Congress update the FTC's  
1425 enforcement tools to maximize the Commission's limited  
1426 resources?

1427           \*Ms. Khan. Thank you. Thank you, Chairman Pallone.  
1428 The agency is severely under-resourced. There -- we have  
1429 less staff than we did back in 1980. Of course, the size of  
1430 the economy has dramatically expanded since then, and we  
1431 simply have not been able to keep pace.

1432           As I mentioned in my opening remarks, we are currently  
1433 living through a huge wave of mergers and acquisitions. And  
1434 I think there is a particular concern that, unless we are

1435 able to closely scrutinized these deals, that our economy  
1436 could end up becoming even more concentrated than it  
1437 currently has, and -- harming consumers, workers, honest  
1438 businesses.

1439       \*The Chairman. And then we have heard concerns from  
1440 some on the other side of the aisle that providing the FTC  
1441 with new authorities and tools, such as civil penalty  
1442 authority, APA rulemaking might result in overreach that  
1443 would put well-intended businesses at risk of unfair  
1444 enforcement actions.

1445       But I wanted to you -- to give you a chance to respond  
1446 to that concern. And particularly, do you believe that a  
1447 more flexible and dynamic FTC actually benefits honest  
1448 businesses, and how so?

1449       \*Ms. Khan. Absolutely. You know, there are ways in  
1450 which rules can provide additional clarity for businesses.  
1451 The Commission recently voted out Made in USA rules that  
1452 would enable the FTC to penalize companies that are lying  
1453 about their products being made in the USA. That is an  
1454 example of a rule that is not imposing any new burdens, but  
1455 is simply creating clarity, and ensuring that the FTC can  
1456 deter this type of conduct.

1457       \*The Chairman. All right, thank you. And then let me  
1458 ask Commissioner Slaughter -- I think you said everybody is  
1459 still here, right? Okay.

1460           Commissioner Slaughter, we have heard many times from  
1461 the minority -- I should say from the Republicans -- that we  
1462 need to move quickly to enact a Federal consumer privacy  
1463 standard with the FTC in charge of enforcement. That -- in  
1464 my view, some of the bills that Republican members are  
1465 proposing today would actually hinder the FTC's privacy  
1466 enforcement.

1467           So my two questions, do you believe that any of the  
1468 bills under consideration today, like the TIME Act or the  
1469 SURE Act, would hinder the Commission's efforts on privacy  
1470 and data security? And if so, how?

1471           And then, secondly, what changes to the FTC authority do  
1472 you believe are critical to ensure consumer privacy is  
1473 effectively protected, if you will?

1474           \*Ms. Slaughter. Thank you, Mr. Chairman. Yes, I agree  
1475 with the principle that we need to be on top of this  
1476 important area of the economy, and I really appreciate this  
1477 committee's attention to making sure we are adequately  
1478 resourced, both funding and authority to do that work.

1479           I also share the view that some of the bills before  
1480 consideration, while well-intentioned -- before this  
1481 committee for consideration, while well-intentioned, may have  
1482 some problematic, unintended consequences, in terms of  
1483 ensuring our enforcement can be effective.

1484           So, for example, I was concerned about limitations on

1485 the duration of our consent decrees. I think we need to make  
1486 sure that we are tailoring case-specific resolutions that  
1487 really ensure violations do not recur, and that we are doing  
1488 that with the flexibility so that we can revisit those  
1489 orders, as circumstances require.

1490 I am also concerned, for example, about the SURE Act  
1491 that might embolden large companies engaged in abuses to  
1492 argue that any perceived injury from, for example, a free  
1493 service cannot be unfair, or that it might encourage judges  
1494 to take an overly narrow view of unfairness. Our enforcement  
1495 burden to demonstrate unfairness is already extraordinarily  
1496 high, and the cost to consumers and -- from that is felt  
1497 every day.

1498 And then the last point I will make is that I am very  
1499 sympathetic to the calls for transparency, for example, with  
1500 reports. But I actually very much worry that any reporting  
1501 requirement that isn't coupled with additional resourcing  
1502 means that we are taking energy away from, and staff  
1503 attention away from protecting your constituents, and putting  
1504 it instead into paperwork.

1505 And so, in terms of what tools we need, I absolutely  
1506 agree with my colleagues that APA rulemaking authority would  
1507 be helpful, civil penalty authority would be helpful. And I  
1508 think fixing 13(b) would be very important, and adequately  
1509 resourcing the agency to make sure that we can keep pace with

1510 the large companies across the table from us is critically  
1511 important.

1512 \*The Chairman. Thank you so much.

1513 I yield back, Madam Chair.

1514 \*Ms. Schakowsky. I now recognize the ranking member of  
1515 the full committee, Mrs. Rodgers, for five minutes.

1516 \*Mrs. Rodgers. Thank you, Madam Chair. I recognize it  
1517 has been a long day. I appreciate you all sticking with us,  
1518 and believe that this is a very important hearing today, as  
1519 we think through the FTC and the many issues before the FTC.

1520 Last month we saw that the FTC went through some  
1521 dramatic changes, including when it recently voted on a  
1522 three-two party-line vote for structural change in its  
1523 compulsory process. And this will provide de facto control  
1524 by one person to issue subpoenas in competition cases without  
1525 consultation with other FTC commissioners or bureaus. I  
1526 don't believe that that is a new era to celebrate.

1527 These changes seem to be a clear attempt by the new  
1528 chair in the Biden-Harris Administration to consolidate power  
1529 in order to pursue an agenda that will completely reshape our  
1530 economy.

1531 I continue to hear that the FTC needs additional  
1532 funding, staff, authorities. Some of the bills have been  
1533 proposed today by the majority. But if decisions are being  
1534 made behind the scenes unilaterally, it really makes it hard

1535 to justify such a request.

1536 So I wanted to start with Commissioner Phillips. Should  
1537 this compulsory process be at the discretion of one person?

1538 And can you briefly explain why it is important to have  
1539 collaboration with experts and commissioners when issuing a  
1540 subpoena under this authority?

1541 \*Mr. Phillips. Thank you, Congresswoman. So we do use  
1542 single-commissioner-authorized compulsory process for a lot  
1543 of the kind of bread and butter scams and frauds. But for  
1544 the larger investigations, the antitrust investigations, all  
1545 commissioners have -- until just weeks ago, had the  
1546 opportunity to look at what was going on, to ask staff  
1547 questions, to try to make sure that the resources that we ask  
1548 for from Congress are being used in a sound way.

1549 \*Mrs. Rodgers. Thank you.

1550 \*Mr. Phillips. These investigations are very costly.

1551 \*Mrs. Rodgers. Thank you --

1552 \*Mr. Phillips. Yes.

1553 \*Mrs. Rodgers. Thank you, Commissioner. I am trying to  
1554 get through a lot here.

1555 Commissioner Wilson, would you briefly elaborate on it?

1556 \*Ms. Wilson. I completely agree with Commissioner  
1557 Phillips. The issue here is that there is a consolidation of  
1558 power that removes authority from the other commissioners to  
1559 weigh in on important investigations, including the theories

1560 of harm being pursued, and the scope of those investigations.

1561 At the same time, we have removed a lot of -- we have  
1562 lost a window into what staff is doing. And so, because we  
1563 are no longer getting compulsory process memos, we are unable  
1564 to understand the --

1565 \*Mrs. Rodgers. Okay.

1566 \*Ms. Wilson. -- theories of harm being pursued in  
1567 investigations.

1568 \*Mrs. Rodgers. Great, okay, thank you.

1569 So Chair Khan, I just would -- I know you have expressed  
1570 that the change of policy was to increase efficiency, but it  
1571 seems communication and collaboration are lost in this  
1572 efficiency. And the greatest effect is going to be the  
1573 consolidation of power in your office.

1574 Can you commit to sharing all information related to the  
1575 FTC compulsory process with your Republican commissioners?

1576 \*Ms. Khan. Thank you for the question, Congresswoman.  
1577 I should note that these types of omnibus resolutions have  
1578 been routinely used on the consumer protection side for  
1579 investigations into diet pills, or massive privacy  
1580 violations. And so we really were creating some symmetry  
1581 between what is routinely done on the consumer protection  
1582 side with the competition side.

1583 \*Mrs. Rodgers. Well, what about --

1584 \*Ms. Khan. And I think this type of empowering staff



1585 can really make sure we are able to move forward on full  
1586 gears and full speed.

1587 \*Mrs. Rodgers. What about communication with other  
1588 commissioners?

1589 \*Ms. Khan. Oh, absolutely, Congresswoman. Staff is  
1590 always available to commissioners to provide analysis and  
1591 assessment. And commissioners are routinely requesting that  
1592 type of analysis and assessment from staff, and staff is  
1593 providing it.

1594 So from that perspective, I think we are, you know,  
1595 doing the best we can to make sure that information is  
1596 available, while dealing seriously with the severe -

1597 \*Mrs. Rodgers. Okay, thank you.

1598 \*Ms. Khan. -- resource limits we have.

1599 \*Mrs. Rodgers. You are the chair. You are the chair.  
1600 You set the tone. And it appears that there is an effort to  
1601 consolidate power and decision-making into your hands. That  
1602 is not the way that it has worked in the past, and I don't  
1603 believe that that is the way that is going to lead to the  
1604 best outcomes.

1605 I do want to ask you on privacy, because I believe it is  
1606 so important that we move forward on a national privacy  
1607 standard, and we have seen how big tech can trample  
1608 protections for all Americans. So to the chair, Chair Khan,  
1609 would you be willing to support a privacy proposal from

1610 Congress that includes APA rulemaking authority, sufficient  
1611 enforcement, continued coordination with state AGs, and  
1612 additional staff and resources that is preemptive?

1613 \*Ms. Khan. Congresswoman, certainly, I think we need  
1614 robust privacy protections, and I think direction from  
1615 Congress on this front would be helpful.

1616 I think, on the preemption question, there are always  
1617 tradeoffs, depending on the specific context. I know, in  
1618 some cases, we want to ensure that, insofar as states are  
1619 providing additional protections, we always want to be wary  
1620 of the Federal Government stepping in and overriding states'  
1621 efforts to protect their own constituency. So I think we  
1622 want to keep some of those considerations in mind, as well.

1623 \*Mrs. Rodgers. I look forward to further conversations  
1624 with you, because I am concerned about rumors of the FTC  
1625 acting outside of Congress, and issuing a rule on privacy.

1626 And with that I will yield back.

1627 \*Ms. Schakowsky. Did she say she yields back?

1628 Oh, Congresswoman Trahan, it is your five minutes.

1629 \*Mrs. Trahan. Thank you, Madam Chair, and Chair Khan,  
1630 fellow commissioners, thank you for your patience, and for  
1631 being here today to discuss how an essential agency can  
1632 better protect our consumers.

1633 President Biden's most recent executive order promoting  
1634 competition in the American economy encouraged the Commission

1635 to exercise the FTC's statutory rulemaking authority in  
1636 regards to -- and I quote -- "unfair data collection and  
1637 surveillance practices that may damage competition, consumer  
1638 autonomy, and consumer privacy.''

1639 Now, in October 2020, Google Ads updated its policy to  
1640 restrict the serving of high fat, sugar, salt food and/or  
1641 non-alcoholic beverages advertising for minors under 18 in  
1642 the United Kingdom and in the European Union, but has refused  
1643 to make similar changes here, in the United States. A recent  
1644 policy change by Facebook is a step in the right direction,  
1645 but it is far from perfect, when you consider that a May 2021  
1646 study by the Tech Transparency Project found that Facebook  
1647 allows advertisers to target ads for electronic cigarettes,  
1648 pill parties, and extreme weight loss products to children as  
1649 young as 13 across the U.S.

1650 Plainly, Facebook and Google are using troves of  
1651 personal data belonging to teens and adults to target harmful  
1652 advertisements in ways that are not transparent to users. So  
1653 Chair Khan, would you consider these examples of the types of  
1654 surveillance practices that may damage consumer autonomy and  
1655 consumer privacy?

1656 \*Ms. Khan. Absolutely, Congresswoman.

1657 \*Mrs. Trahan. Thank you for that.

1658 And Commissioner Slaughter, if the Commission were to  
1659 begin rulemaking today to protect consumers, including our

1660 children, from surveillance advertising, what would be the  
1661 process under the Commission's existing Mag-Moss authority?

1662 And would the Commission face difficulties? If you  
1663 could speak to that, it would be great.

1664 \*Ms. Slaughter. Thank you, Congressman. It is a great  
1665 question. And I want to start by responding to suggestions  
1666 from the ranking member of the committee that the Commission  
1667 might act without Congress, or outside of congressionally-  
1668 delegated authority. I want to be very clear. The  
1669 Commission cannot, should not, and will not, with my support,  
1670 act outside of congressionally-delegated authority.

1671 But we absolutely should look at the authority Congress  
1672 has delegated to us, and it has specifically delegated to us  
1673 rulemaking authority under section 18 of the FTC Act, which  
1674 is referred to as Mag-Moss, to promulgate rules to -- unfair  
1675 and deceptive acts or practices that are prevalent in  
1676 interstate commerce. And so data abuses fall very much into  
1677 that category.

1678 To rulemaking under section 18, to answer your question  
1679 briefly, looks like APA rulemaking, but with much, much more  
1680 process. So we can't begin with a notice of proposed  
1681 rulemaking. We have to begin with an advance notice of  
1682 proposed rulemaking that asks questions about the issues that  
1683 we will consider. We have to notify Congress before we do  
1684 that. We have to then, in a notice of proposed rulemaking,

1685 identify any issues of material fact that are disputed and,  
1686 again, notify Congress. And if there are issues of material  
1687 fact, the statute requires us to have an informal hearing to  
1688 adjudicate them.

1689         So it is a very process-intensive statute that requires  
1690 lots of -- and provides opportunity for lots of  
1691 participation. It is absolutely burdensome to the Commission  
1692 to do it. I think it is worth it for us to try, but we  
1693 should make no mistake that it would not be a quick or fast  
1694 effort.

1695         \*Mrs. Trahan. I appreciate that. And it is -- you  
1696 know, to note, it is unique to the FTC.

1697         If Congress were to provide the FTC with rulemaking  
1698 authority under Administrative Procedure Act, how would that  
1699 change the Commission's ability to protect consumers from  
1700 harms associated with the surveillance advertising business  
1701 model?

1702         \*Ms. Slaughter. Well, what it would not change is it  
1703 would not prevent participation in the rulemaking process.  
1704 It would not allow the Commission to act outside the scope of  
1705 the law, as congressionally designated, any statute. So if  
1706 it is just FTC Act law, we would still have to be looking at  
1707 rules that target practices that are unfair or deceptive. We  
1708 could not promulgate a rule that made illegal conduct that  
1709 wasn't otherwise illegal, but we could do it with much more

1710 efficiency, and fewer burdens, so that we can really get to  
1711 material harms that are affecting people throughout our  
1712 economy.

1713 Focused on children, that is an issue that is near and  
1714 dear to my heart, but it is not just kids, it is competition,  
1715 it is small businesses, it is civil rights issues, which  
1716 Commissioner Wilson mentioned. So I think it is a really,  
1717 really important area for attention.

1718 \*Mrs. Trahan. Okay --

1719 \*Ms. Slaughter. And the last point that I will make is  
1720 that rules also provide clarity to businesses about what is  
1721 prohibited. That allows and facilitates compliance. It  
1722 doesn't prohibit it.

1723 \*Mrs. Trahan. Thank you for that.

1724 I yield back.

1725 \*Ms. Schakowsky. Mr. Guthrie, you are recognized for  
1726 five minutes.

1727 \*Mr. Guthrie. Thank you, Madam Chair, and I thank  
1728 Ranking Member Bilirakis for holding this meeting, and thanks  
1729 to the chair and all the commissioners for being with us  
1730 today.

1731 The Federal Trade Commission has a commitment to protect  
1732 the American public from unfair and deceptive practices, and  
1733 unfair methods of competition. With that responsibility  
1734 comes proper oversight and adequate transparency. However,

1735 recent activity by the FTC did not permit for adequate time  
1736 for vetting and input from consumers.

1737         Before us today are two bills that I introduced, H.R.  
1738 4564, the FTC Transparency Act, and H.R. 2690, the CLEAR Act,  
1739 both which would allow for more transparency and  
1740 accountability at the FTC.

1741         Some of this was brought up by my colleague, Mr. Latta,  
1742 and answered by Commissioner Phillips, but Commissioner  
1743 Phillips, I want to talk specifically about my bill. My  
1744 bill, the FTC Transparency Act, would require the FTC to  
1745 publicly publish documents to be considered by the Commission  
1746 on the Federal agencies website at least 30 days before a  
1747 vote.

1748         In your experience, Commissioner Phillips, how would a  
1749 30-day notice be helpful to your daily work and productivity  
1750 amongst your colleagues at monthly Commission meetings?

1751         And in your experience, how would a 30-day notice  
1752 increase accountability and transparency at the FTC for  
1753 American consumers?

1754         \*Mr. Phillips. Congressman, thank you for your  
1755 question, and thank you for your leadership on this issue.

1756         A 30-day time period, where the public could see what we  
1757 are doing, and we could hear from the public, from the  
1758 consumers that are affected, by the harms from the businesses  
1759 that have to work under the potential regulation, we can hear

1760 about the impact of the policies. It would inform what we  
1761 are doing, and require us to take into account what we are  
1762 hearing from the public, both the business community and  
1763 consumers.

1764 That will create accountability. We are forced to  
1765 listen to what people have to say, and take into account what  
1766 they say. So I think that would be an essential reform.

1767 \*Mr. Guthrie. Okay, thank you. And I would ask -- like  
1768 to ask each -- the chair and each commissioner, would you --  
1769 do you support the language, my language in the bill, to  
1770 bring transparency to the FTC?

1771 \*Ms. Khan. Congressman --

1772 \*Mr. Phillips. I do.

1773 \*Ms. Khan. -- certainly, we want to be thinking through  
1774 how we can increase transparency and public participation,  
1775 and I am so glad we have been able to do that.

1776 We will still -- we are still early in our thinking of  
1777 how to continue doing that, but always happy to take  
1778 feedback, and continue improving our processes.

1779 \*Mr. Guthrie. So you like -- the bill, you are for the  
1780 bill, or -- the language of the bill?

1781 \*Ms. Khan. Well, I want to make sure that it is not  
1782 conflicting with other statutory obligations. For example,  
1783 some of those outlined in the Sunshine Act. And happy to  
1784 follow up with you on -



1785           \*Mr. Guthrie. But you don't have a philosophical issue  
1786 with the 30-day requirement, then.

1787           \*Ms. Khan. I think with the general idea of providing  
1788 notice, that is great, and we are happy to continue thinking  
1789 about how to do that.

1790           \*Mr. Guthrie. Thanks. So then I guess I got another  
1791 question. I will just -- oh, if the others would -- the  
1792 other commissioners would just state their support, or -

1793           \*Mr. Chopra. Sure. I totally appreciate, you know, the  
1794 philosophical part of this, because the FTC, for too long,  
1795 has been notoriously secretive. Most of what the Commission  
1796 does is it votes in secret by email, you know, not even  
1797 consulting anybody. That has been standard practice under  
1798 Republicans and Democrats, and it has to stop.

1799           We need to actually be listening to people, rather than  
1800 just gathering in private and making secret decisions. I am  
1801 so glad we have moved to an open meeting concept. I think it  
1802 is an important reform. And I think other reforms too, to  
1803 make us more transparent and accountable, are worthwhile. I  
1804 am happy to look more at your bill, and talk --

1805           \*Mr. Guthrie. Okay, thank you. I am going to have to  
1806 move on so I can get to the next question. Thank you for  
1807 those comments.

1808           And then, Chair Khan, in light of the FTC's recent vote  
1809 on the revised section 18, which altered FTC's approach to

1810 prescribing new rules for unfair or deceptive business  
1811 practices, how can you ensure that increasing efficiency by  
1812 streamlining the rulemaking process will not result in a  
1813 reduction of sharing information, transparency, oversight,  
1814 and input from pertinent experts?

1815       \*Ms. Khan. Congressman, the current procedures that  
1816 govern those rules go, as Commissioner Slaughter mentioned,  
1817 far above and beyond what is traditionally required under the  
1818 Administrative Procedure Act. So, even under the more  
1819 streamlined procedures, there would be ample opportunity for  
1820 notice and comment, and for us to make sure we are really  
1821 doing our homework before we issue any rules.

1822       \*Mr. Chopra. And Congressman, the proceedings are  
1823 public.

1824       \*Mr. Guthrie. So you are -- you think these -- the  
1825 increasing efficiencies is going -- that you are looking for  
1826 is going to ensure people have access to the information -

1827       \*Mr. Chopra. So the procedures that are currently in  
1828 place continue to require extensive public input, and  
1829 including public proceedings.

1830       \*Mr. Guthrie. Okay, thank you. And I am running low on  
1831 time, so I will just leave it there.

1832       So, Chair Schakowsky, I have a -- I would like to submit  
1833 for the record Commissioners Phillips's and Wilson's  
1834 dissenting statement on the adoption of a revised section 18

1835 rulemaking procedures.

1836 \*Ms. Schakowsky. Without objection, so ordered.

1837 [The information follows:]

1838

1839 \*\*\*\*\*COMMITTEE INSERT\*\*\*\*\*

1840

1841 \*Mr. Guthrie. Thank you, and I yield back. Thank you.

1842 \*Ms. Schakowsky. I understand my colleague, Mr. Rush,  
1843 is online.

1844 And you are now recognized for five minutes.

1845 \*Mr. Rush. Thank you, Madam Chair, for convening this  
1846 extraordinary hearing. You --

1847 \*Ms. Schakowsky. Bobby, if you could speak up, that  
1848 would be helpful.

1849 \*Mr. Rush. You, along with the ranking member, I want  
1850 to thank you for convening this extraordinary hearing.

1851 Commissioner Chopra, as you know, earlier in this year  
1852 the FTC, along with 38 states and the District of Columbia,  
1853 shut down a massive fraudulent charity operation that bilked  
1854 over \$100 million from the American consumer.

1855 Under current law, the FTC must prove an organization is  
1856 a fraudulent entity before being able to engage in  
1857 enforcement actions. My bill, H.R. 3918 will make it easier  
1858 for the FTC to go after these fake charities by finally  
1859 giving you the authority over all 501(c)(3), tax-exempt  
1860 organizations.

1861 If my bill becomes law, how will this benefit consumers?

1862 \*Mr. Chopra. So, Congressman, there is no question that  
1863 we have so many bad actors parading as nonprofits organized  
1864 as 501(c)(3)s. They take in money, and the principals of  
1865 these nonprofits siphon them away. But they can block FTC

1866 enforcement by saying that they are organized as a 501(c)(3).  
1867 For years and years, commissioners of both parties have  
1868 supported a change to the FTC Act that would eliminate the  
1869 nonprofit exemption, so that we can go after this with more  
1870 clarity, and also address other anti-competitive practices by  
1871 nonprofits.

1872 \*Mr. Rush. Do you foresee any -- that may be a  
1873 hindrance to those not-for-profits who don't have the  
1874 sophistication and the finances to negotiate your oversight  
1875 authorities in the FTC? How would you deal with that  
1876 problem?

1877 \*Mr. Chopra. Well, I think where the issue is is when  
1878 the nonprofit is engaged in egregious fraud.

1879 \*Mr. Rush. Right.

1880 \*Mr. Chopra. It is pretty clear that they have engaged  
1881 sometimes in even criminal activities.

1882 \*Mr. Rush. Right.

1883 \*Mr. Chopra. So, you know, with respect to those  
1884 fraudsters, I don't think many nonprofits are going to have a  
1885 tough time complying with that, because most nonprofits are  
1886 trying to do the right thing.

1887 So I am happy to have further discussions on this, but I  
1888 do believe that, when we allow a nonprofit exemption, we  
1889 create a loophole for bad actors to be able to figure out a  
1890 way around law enforcement. And it is something that is just

1891 not good for an honest marketplace out there.

1892 \*Mr. Rush. Yes, I am particularly interested in the --  
1893 whether or not this will have a chilling effect. I know it  
1894 is needed. This is a necessary action, and we need to give  
1895 the FTC the power. But I am also -- understand that in the  
1896 real world that we live in, that this may have a chilling  
1897 effect on faith-based not-for-profits, and other not-for-  
1898 profits. So I want to work with you to make sure that we  
1899 send the right kind of signal, that this is not going to be  
1900 onerous to those not-for-profits who are doing good, honest,  
1901 much-needed work -- well-being of our citizens.

1902 Chair Khan, the FTC recently released a report and  
1903 subsequent policy statement supporting legislation that would  
1904 enable consumers to access -- generated by their motor  
1905 vehicles for repair and maintenance purposes. Restriction on  
1906 this access places a financial burden on too many hard-  
1907 working Americans. And as the FTC report notes, this is  
1908 particularly true for communities of color, such as in my  
1909 district. I am --

1910 [Audio malfunction.]

1911 \*Mr. Chopra. Congressman, we lost your audio.

1912 [Pause.]

1913 \*Ms. Schakowsky. We can't hear you now, right this  
1914 second, Bobby.

1915 \*Mr. Rush. All right. I am -- can you hear me now?

1916           \*Ms. Schakowsky. Yes.

1917           \*Mr. Rush. I am pleased to report that I am currently  
1918 drafting legislation to address this very problem, by  
1919 requiring that vehicle owners have access to their repair and  
1920 maintenance -- allowing them to choose how and where they  
1921 want to repair their cars.

1922           Can you discuss why legislation like this is needed, and  
1923 what limitations does the FTC currently place under section 5  
1924 authority under the FTC Act?

1925           \*Ms. Khan. Thanks so much for the question,  
1926 Congressman.

1927           Certainly, undue restrictions on repair have a very  
1928 harmful effect on communities of color and marginalized  
1929 communities, in particular. And I think the type of  
1930 legislation that you are talking about could go a long way in  
1931 ensuring that manufacturers are not able to unduly control  
1932 the data in ways that limit our ability to repair our own  
1933 cars. And I would be happy and eager to work with your  
1934 office in thinking through what that type of legislation  
1935 could look like.

1936           \*Ms. Schakowsky. The gentleman's time has expired. And  
1937 now I call on Congressman Bucshon for his five minutes.

1938           \*Mr. Bucshon. Thank you, Madam Chairwoman.

1939           Commissioners, thank you for taking the time to be here  
1940 before the committee today.

1941           Commissioner Chopra, you have been appointed as the head  
1942 of the Consumer Financial Protection Bureau, or CFPB.  
1943 Senator Toomey and the ranking member of the Senate Finance  
1944 Committee has sent you a letter, which I don't think you have  
1945 answered to this point, asking for details on the recent  
1946 personnel changes at the organization.

1947           And so I am going to take the opportunity to ask you  
1948 some of those questions. And now that you are in front of  
1949 the committee, would you want to have the opportunity to  
1950 answer these?

1951           Maybe -- are you aware of whether the CFPB has taken any  
1952 steps between January 20th, 2021 and the present to push out,  
1953 replace, or encourage any career CFPB employees to leave  
1954 their positions?

1955           \*Mr. Chopra. Senator, I -- or Congressman, I have  
1956 absolutely no involvement. I am not aware, did not direct,  
1957 and have no participation with respect to activities related  
1958 to the CFPB. I am currently an FTC commissioner with a busy  
1959 docket.

1960           As I understand, the CFPB has replied to those letters  
1961 to explain that I have not been involved. Those are  
1962 decisions that involve human resources issues subject to very  
1963 significant Privacy Act and other requirements. But I am  
1964 currently full time at the FTC, until, if I am so fortunate  
1965 to be confirmed as director of the CFPB.



1966           \*Mr. Bucshon. Fair enough. I won't ask you the  
1967 remaining questions, then. I will just point out -- I will  
1968 just say that there are reliable information that people have  
1969 been offered substantial separation packages. People have  
1970 been put under investigation to try to force them out. And  
1971 also that people have been put on administrative leave if  
1972 they are not in the correct political party. And, you know,  
1973 at Federal agencies these are people who are career people.  
1974 All our Federal agency people work very hard, regardless of  
1975 their political leanings. And I would hope that the things  
1976 that Senator Toomey is concerned about are not true.

1977           So I am going to ask you this, then. While still --  
1978 while you are at the FTC, you have raised concerns about  
1979 rebate walls, and other conduct acting as barriers to  
1980 effective competition, stunting the cost savings and  
1981 innovation expected in an unconstrained marketplace. In a  
1982 statement you warned that rebate bundling is, undoubtedly, a  
1983 fixture of the competitive environment in immunology, that  
1984 such practices are suspicious, and might act as a barrier to  
1985 entry and expansion for drug makers with less bargaining  
1986 leverage. Could you comment on that?

1987           \*Mr. Chopra. Yes. I am very concerned that drug makers  
1988 often engage in complex rebating strategies in ways that  
1989 prevent new drug makers from entering and challenging their  
1990 dominance. The net effect of this is that we could have less

1991 innovation and less competition for lifesaving drugs.

1992 I am worried that these rebate walls may also constitute  
1993 violations of the law in certain circumstances, and I think  
1994 it is important, not just for the FTC, but also state  
1995 attorneys general and others to really look at this.

1996 The Trump Administration also sought certain policies to  
1997 crack down on this, and it is one we have to really take  
1998 seriously, if we want there to be affordable drugs.

1999 \*Mr. Bucshon. Sure. As the -- and again, sorry to  
2000 focus just on you -- as the FTC continues to monitor for  
2001 anti-competitive practices that make lifesaving biosimilars  
2002 more expensive for people from Indiana, Hoosiers, it would  
2003 make sense to perform a cost benefit analysis on FTC  
2004 recommendations to project impacts on markets.

2005 Would you support performing a cost benefit analysis of  
2006 measures to address this important issue, to ensure that  
2007 policy changes will accomplish what they are designed to do?

2008 \*Mr. Chopra. So during the past three years at the FTC,  
2009 I have been a strong advocate for more analytical rigor. I  
2010 am very concerned that the quality of rigor that is used to  
2011 make decisions across the government is far too low. We  
2012 should be incorporating information from the life sciences  
2013 industry, quantitative information, and qualitative  
2014 information from our pharmacists and others in the medical  
2015 supply chain.

2016           So being -- having that full range of evidence, and  
2017 being rigorous -- of course, economics is one part of that,  
2018 but we can't -- we need a full range of data and evidence to  
2019 make sure that anything we do actually benefits competition,  
2020 and doesn't make things worse off for patients.

2021           \*Mr. Bucshon. Fair enough. Thank you.

2022           So I have introduced H.R. 2676, which would require  
2023 FTC's Bureau of Economics to conduct a cost benefit analysis  
2024 for any legislative, regulatory, or enforcement  
2025 recommendations, including a rationale for the FTC's  
2026 determination that private markets or public institutions  
2027 could not adequately address the issue that is the subject of  
2028 the recommendation.

2029           So my feeling is, if we let the market work, most of the  
2030 time it does. But occasionally, we do need the Federal  
2031 Government, like the FTC, to make sure that that is  
2032 happening.

2033           So thank you for your answers, and I yield back.

2034           \*Ms. Schakowsky. Mr. McNerney?

2035           \*Mr. Bucshon. Madam Chairman, can I -- I forgot to --  
2036 can I ask unanimous consent to introduce Senator Toomey's  
2037 letter into the record?

2038           \*Ms. Schakowsky. Without objection.

2039

2040

2041 [The information follows:]

2042

2043 \*\*\*\*\*COMMITTEE INSERT\*\*\*\*\*

2044

2045 \*Mr. Bucshon. Sorry about that. Thank you very much.

2046 \*Ms. Schakowsky. Mr. McNerney, you are recognized for  
2047 five minutes.

2048 \*Mr. McNerney. Well, I thank the chair for recognizing  
2049 me, and I thank the Commission for testifying today. And  
2050 congratulations, Chair Khan.

2051 One of the bills --

2052 \*Ms. Schakowsky. If I could just interrupt for a  
2053 second, I just want to inform everyone that Commissioner  
2054 Slaughter did have to leave. The others are here.

2055 \*Ms. Slaughter. I was just -- yes, I was just going to  
2056 say I really am so sorry, and I thank you for your time, and  
2057 would be happy to answer any questions the committee has,  
2058 promptly, in writing. So I appreciate your indulgence.

2059 \*Ms. Schakowsky. Thank you.

2060 Excuse me, Mr. McNerney. Go ahead.

2061 \*Mr. McNerney. Thank you. One of the bills we are  
2062 considered today is H.R. 4530, legislation that I authored,  
2063 which would establish an office of technologists at the FTC.  
2064 As an engineer, I think it is critically important that the  
2065 agency has that sort of expertise.

2066 Chair Khan, can you discuss the importance of having  
2067 technologists at the agency, and how having more technology  
2068 on staff can help you carry out your mission?

2069 I know you are going to follow up on what Commissioner

2070 Chopra just said, but thank you.

2071           \*Ms. Khan. Thanks so much for raising this,  
2072 Congressman. It is imperative that the agency be fully  
2073 equipped with a whole range of skill sets. I think ensuring  
2074 that we have technologists on board is paramount, especially  
2075 as we confront all types of new business practices and  
2076 digital markets.

2077           I am so thrilled that I was recently able to announce a  
2078 chief technologist at the agency, and she is helping oversee  
2079 our expansion on this front. So I definitely plan to bring  
2080 on more technologists.

2081           \*Mr. McNerney. Very good.

2082           Commissioner Chopra, following up on that question, how  
2083 would this legislation be helpful for the agency in carrying  
2084 out its work, as it relates to artificial intelligence and  
2085 how that is impacting consumers?

2086           \*Mr. Chopra. Yes, so artificial intelligence is really  
2087 changing the way so many different types of businesses  
2088 operate, in terms of making decisions when it comes to  
2089 offering products or services.

2090           And one of the things we have to worry about is who is  
2091 accountable when those AI machines break the law. How do we  
2092 audit them? How do we know what is actually behind that?

2093           And without technologists, and people with real skills  
2094 related to data, data aggregation and analysis, we won't be

2095 able to do it. And I think this is critical that we muscle  
2096 up when it comes to tech talent.

2097 \*Mr. McNerney. Very good. What about privacy and data  
2098 security?

2099 \*Mr. Chopra. Yes, I mean, the recent breaches that we  
2100 have been seeing, as well as ransomware attacks, are really a  
2101 reminder that the FTC is behind the eight ball when it comes  
2102 to catching up and making sure that we are securing the  
2103 infrastructure of our country. This is not just about  
2104 protecting consumers, it is about protecting our national  
2105 security, as well. And we need engineers and experts who can  
2106 help us inform the right types of interventions and policies.

2107 \*Mr. McNerney. Thank you. And lastly, what about  
2108 protecting consumers against the new kinds of scams that are  
2109 happening online?

2110 \*Mr. Chopra. Yes, you know, Chair Khan mentioned that a  
2111 lot of the scams and frauds are being amplified by big tech  
2112 platforms, algorithmically targeting individuals who are  
2113 likely to be susceptible. If we are not able to dig in and  
2114 understand how that targeting works, how those algorithms  
2115 work, we will not be able to hold them accountable when they  
2116 are amplifying fraud. We must -- we can't just go after  
2117 fraudsters one by one, we need to look at the gatekeepers and  
2118 those who profit from amplifying them, as well.

2119 \*Mr. McNerney. Thank you. I also authored H.R. 4475,

2120 Protecting Consumers in Commerce Act. This bill would give  
2121 the FTC authority over certain common carriers.

2122 Commissioner Chopra, if enacted, would this legislation  
2123 -- what would this mean for consumers, especially in a  
2124 district like mine, which is an economically hard hit  
2125 district?

2126 \*Mr. Chopra. Yes, you know, when it comes to  
2127 telecommunications common carriers, they are completely  
2128 exempt, in many ways, from the FTC's jurisdiction. That  
2129 makes it harder to go after robocallers. That makes it  
2130 harder to go after some of the ways in which companies target  
2131 the elderly.

2132 We have tried to do our best when it comes to going  
2133 after voice-over IP providers and others, but the big  
2134 carriers have a big role in all of these issues, and there is  
2135 an uneven playing field when they are completely exempt.

2136 \*Mr. McNerney. Thank you.

2137 Chair Khan, do you have anything to add to that?

2138 \*Ms. Khan. I would echo that, and note that I think  
2139 that type of exemption would really ensure that we can  
2140 robustly enforce in a more symmetrical way across industries.

2141 \*Mr. McNerney. Thank you. Chair Khan, I also am co-  
2142 chair of the House Artificial Intelligence Caucus. And a key  
2143 priority for me is to develop policies that help promote  
2144 opportunities in artificial intelligence, while tamping down



2145 the -- whatever problems might arise as a result of  
2146 artificial intelligence.

2147 What potential risks are you concerned about, with  
2148 respect to artificial intelligence, and what steps do you  
2149 think the FTC should be taking?

2150 \*Ms. Khan. Well, I think there are a whole range of  
2151 opportunities, but also potential risks as this technology  
2152 becomes more widely adopted. I know there have been a whole  
2153 set of civil rights groups that have raised concerns about  
2154 how this technology could exacerbate discrimination.

2155 For the FTC, I think, foremost, the FTC needs to be  
2156 making sure that we are fully understanding this technology.  
2157 Congress really designed the agency to be a watchdog across  
2158 the economy, and closely study new business practices, new  
2159 technologies to make sure we can keep pace. And I very much  
2160 hope that we will be doing that in this area.

2161 \*Mr. McNerney. And that goes back to my H.R. 4530, to  
2162 create an office of technologists. Thank you.

2163 I yield back.

2164 \*Ms. Schakowsky. Now I am happy to call on and  
2165 recognize the always-here congressman, Congresswoman Lesko.

2166 \*Mrs. Lesko. Thank you, Madam Chairman, and thank you  
2167 to all of the witnesses, whether here in person or virtually.

2168 I am going to read a couple statements from the  
2169 dissenting statement of Commissioner Christine Wilson on the

2170 open Commission meeting on July 1st, and then just ask a  
2171 couple of questions related to it. So it is just excerpts  
2172 from that. She said, "I only learned last Thursday of the  
2173 chair's intention to hold this meeting. At the same time, I  
2174 was informed of her intention to hold votes to rescind the  
2175 section 5 policy statement, and to pass several omnibus  
2176 resolutions that would remove from Commission oversight large  
2177 swaths of Commission business.'"

2178 Chairman Khan, the decision to hold open meetings can  
2179 only be applauded if people know about it in advance, so it  
2180 gives them enough time to prepare and actually show up to the  
2181 meetings. So it was concerning to me that it seemed like  
2182 there was not a lot of advance notice on the July 1st  
2183 meeting, and that people couldn't prepare that -- why did you  
2184 do that?

2185 And what do you plan on doing in the future, so that the  
2186 public has sufficient time to prepare for the FTC open  
2187 meetings, and can have public input, because don't we want  
2188 public input?

2189 \*Ms. Khan. Absolutely, Congresswoman, and I am so  
2190 thrilled that we have been able to switch to this open  
2191 Commission format to provide more accountability and insight  
2192 into the Commission's work. This is new for the agency.

2193 As my colleague mentioned, we have a history of doing  
2194 all of this behind closed doors. And so, as we adapt to this

2195 new format, we will be thinking through how we can  
2196 continuously improve our processes, and always appreciate  
2197 feedback on that front, as well.

2198       \*Mrs. Lesko. Well, and thank you for that answer,  
2199 although it seems in contrast to what one of your other  
2200 commissioners is saying. Again, I am going to read excerpts  
2201 from Commissioner Wilson. And then, if I have time, give her  
2202 an opportunity to speak. It says, "Unfortunately, the format  
2203 the chair has chosen for this meeting omits our knowledgeable  
2204 staff, and precludes a dialogue among the commissioners.'"

2205       And then, in another portion, in another page, it says,  
2206 "Following our rulemaking spree in the 1970s, the FTC was  
2207 stripped of funding, stripped of legal authorities, and  
2208 required to institute new and substantial rulemaking steps to  
2209 foster public trust on our trade rules. Recognizing that  
2210 this agency was on the brink of being shuttered, our rules of  
2211 practice adopted a number of rulemaking procedures that  
2212 provided for additional public comment periods, publication  
2213 of a staff report, and multiple opportunities for the public  
2214 to weigh in on disputed issues of material fact.'"

2215       And she goes on to say that, "The FTC has built  
2216 transparency into our rules of practice by requiring that  
2217 rulemaking staff publish a staff report containing that --  
2218 their analysis of the rulemaking record, and recommendations  
2219 as to the form of the final rule. But the new rules

2220 eliminate the staff report requirement.'

2221 So my second question to you, Chairwoman Khan, is  
2222 actually a question she put in here, and it says, "In what  
2223 ways will the public's understanding of any final rules  
2224 suffer because the Commission will no longer publish a report  
2225 from an expert FTC staff highlighting key issues and  
2226 formulating recommendations based on the record?'"

2227 Why would you change this longstanding -- staff being  
2228 able to do this staff report?

2229 \*Ms. Khan. Well, Congresswoman, staff analyses and  
2230 input is embedded throughout our various processes. There  
2231 have been instances, frankly, when the Commission has  
2232 handicapped itself by imposing on itself procedures and  
2233 processes that Congress did not require.

2234 And so, frankly, some of our initial efforts have been  
2235 to ensure that the FTC is abiding by instructions received  
2236 from Congress, and make sure we are in close alignment with  
2237 the instructions that we are receiving -

2238 \*Mrs. Lesko. And with the last 31 seconds left,  
2239 Commissioner Wilson, would you like to respond?

2240 \*Ms. Wilson. Thank you very much, Congresswoman, yes.  
2241 I think it is important to recognize that the FTC is set  
2242 apart from other Federal agencies with respect to the  
2243 Magnuson-Moss Act and these special rulemaking requirements,  
2244 but it is set apart precisely because of the breadth of our

2245 jurisdiction and the discretion that we have.

2246 We have authority to regulate across the entire economy.  
2247 We are a generalist agency. We are not like the EPA, or the  
2248 Department of Transportation that has relatively narrow  
2249 authority for a single sector. And with that broad power and  
2250 that broad discretion, we need to have sufficient guardrails  
2251 to ensure that we are receiving input, that we understand  
2252 what the evidence is with respect to impacts and possible  
2253 unintended consequences of our actions.

2254 And so the safeguards in rulemaking that were abolished  
2255 by the majority at the Commission, unfortunately, are going  
2256 to diminish the quality of that decision-making and, I am  
2257 afraid, stifle innovation, harm competition, and hurt  
2258 consumers.

2259 \*Mrs. Lesko. Thank you, and I yield back.

2260 \*Ms. Schakowsky. I recognize now Congresswoman Dingell  
2261 for five minutes.

2262 \*Mrs. Dingell. Thank you, Madam Chair, for holding this  
2263 hearing, and to all of you who are testifying today. And I  
2264 am sorry you are all still having to be here in the craziness  
2265 of our day on Capitol Hill.

2266 First off, there has been some discussion regarding  
2267 process concerns at the FTC. Commissioner Chopra, when  
2268 Democrats were in the minority, did you have access to all  
2269 the information you wanted access to?

2270           \*Mr. Chopra. No. I was routinely denied the ability to  
2271 participate in major decisions around second requests on  
2272 mergers, the scope of subpoenas for major privacy  
2273 investigations. This -- these functions are -- were  
2274 routinely denied to me.

2275           \*Mrs. Dingell. Thank you, Chairwoman Khan, in my view,  
2276 a number of bills we are discussing today could have  
2277 detrimental effects on the FTC's ability to carry out its  
2278 essential consumer protection mission, which is what the job  
2279 of the FTC is supposed to be, to protect consumers.

2280           H.R. 2702, the SURE Act, codifies select portions of the  
2281 FTC's statement on unfairness. The bill focuses on portions  
2282 of the statement that discuss substantial injury, but ignores  
2283 other portions of the statement, including a discussion of  
2284 circumstances in which public policy concerns will  
2285 independently support action by the FTC.

2286           Chairman Khan, can you tell us about some cases in which  
2287 the Commission relied on the public policy standard?

2288           \*Ms. Khan. Congresswoman, thanks for the question. I  
2289 think, as a general matter, ensuring that we are able to take  
2290 into account some of those public policy considerations is  
2291 always important, especially when we are encountering new  
2292 contexts and new fact patterns.

2293           I think, with that bill in particular, there is some  
2294 concern that importing that substantial harm standard could

2295 make it more difficult for us to go after companies that are  
2296 enabling data breaches, that are engaging in privacy  
2297 violations. In those types of cases it can be many years,  
2298 sometimes, before which that harm is concretized. And so I  
2299 think we want to be mindful about some of those potential  
2300 tradeoffs, as well.

2301 \*Mrs. Dingell. So I am going to ask you for a short  
2302 answer, because I want to get to another bill. But if this  
2303 bill becomes law, could the Commission be able to bring those  
2304 types of cases in the future?

2305 \*Ms. Khan. I think it would make it significantly more  
2306 difficult.

2307 \*Mrs. Dingell. Thank you. Another bill I want to  
2308 address is H.R. 2677, the TIME Act, which would limit consent  
2309 orders to 8 years, and require review and termination of  
2310 consent decrees after 5 years in some circumstances. Instead  
2311 of the company proving that a consent decree is no longer  
2312 necessary, the burden would be on the FTC to prove that it is  
2313 still necessary.

2314 Chairman Khan, how long are consent orders usually in  
2315 place for, and why is that the case?

2316 \*Ms. Khan. There is a range, depending on the consent  
2317 decree. In some cases it has been, you know, somewhere  
2318 between a decade to two decades. I will say, overall, you  
2319 know, there have been cases where firms have violated consent

2320 decrees well over a decade after we entered into them. And  
2321 so I think, from that perspective, there would be serious  
2322 concerns about reducing the default length of some of these  
2323 decrees.

2324 \*Mrs. Dingell. I have heard concerns that the five-year  
2325 requirement in this bill would effectively limit consent  
2326 decrees to five years. Is it possible that this bill would  
2327 force inappropriately short consent orders?

2328 \*Ms. Khan. I think that is certainly a significant  
2329 concern.

2330 \*Mrs. Dingell. In most cases the FTC can only collect  
2331 civil penalties and entities that are under order. Can you  
2332 talk about how this bill could insulate repeat offenders from  
2333 having to pay fines for wrongdoing?

2334 \*Ms. Khan. Certainly, the agency has, in several cases,  
2335 encountered recidivism, and has had a difficult time ensuring  
2336 that actors that are violating the law are deterred from  
2337 doing so again. And so I think, with any type of reform, we  
2338 want to be mindful about that dynamic.

2339 \*Mrs. Dingell. Okay, I am going to go to another bill.  
2340 H.R. 261, the SHIELD Act, prohibits the FTC from taking  
2341 enforcement action based on non-compliance with agency-issued  
2342 guidance. Chairwoman Khan, does the FTC do that now?

2343 Are enforcement actions brought based on a company's  
2344 failure to follow guidance?



2345           \*Ms. Khan. No, Congresswoman, guidance does not carry  
2346 the force of law. And so we are not permitted to do that.

2347           \*Mrs. Dingell. But, in contrast, under the SHIELD Act,  
2348 companies can use adherence to agency guidance to prove that  
2349 they did not commit an unfair or deceptive act or practice.

2350           Chairman Khan, what if the guidance was outdated?

2351           How could this bill make it harder for the Commission to  
2352 bring cases against bad actors?

2353           And would this add another burden on the FTC by  
2354 requiring it to prove why the guidance isn't relevant?

2355           \*Ms. Khan. Certainly, I think there would be some  
2356 concerns around that, especially if we are in a world where  
2357 guidance cannot be used as a basis for finding legal  
2358 violations.

2359           But then, if it is instead being used as a way to shield  
2360 companies from legal violations, I do think that there would  
2361 be an asymmetry there that would be a little bit difficult to  
2362 make sense of. So I think we would want to be consistent  
2363 across the board there.

2364           \*Mrs. Dingell. Thank you, Chairman Khan. I am out of  
2365 time, so I yield back.

2366           \*Ms. Schakowsky. I now recognize Mr. Pence for five  
2367 minutes.

2368           \*Mr. Pence. Well, thank you, Chairman Schakowsky and  
2369 Ranking Member Bilirakis, for holding this hearing. Thank

2370 you to the commissioners for being here today.

2371 My question is going to focus on the ownership of  
2372 telematic, or equipment-produced information -- that is my  
2373 word, not a technical word. I will use one example to define  
2374 my concern. While this is a specific example, I believe that  
2375 it represents an enormous and growing IP ownership issue.  
2376 And let me begin.

2377 As the crossroads of America, Indiana plays an important  
2378 role in the transportation industry. Our interstate highways  
2379 connect regional hubs that are critical to the delivery of  
2380 goods across the Midwest and the rest of the country.  
2381 Leading the -- transportation companies such as Honda,  
2382 Toyota, and Cummins Engine Company have footprints in my  
2383 district to take advantage of local manufacturing expertise.

2384 Considering the president -- the presence of the auto  
2385 industry, I have a particular interest in the Commission's  
2386 recent actions on the alleged repair restrictions -- and I  
2387 say alleged -- that may be imposed by original equipment  
2388 manufacturers, or OEMs. I have heard from several Hoosiers,  
2389 both repair shops and OEMs, regarding access to repairs for  
2390 telematic data and software on next-generation vehicles, and  
2391 I think this may apply to any type of relationship between  
2392 the owner of a piece of equipment and the manufacturer.

2393 I understand the concerns of manufacturers, the need to  
2394 protect the privacy of drivers, and mitigate cybersecurity

2395 vulnerabilities of the vehicle. I also understand the  
2396 concerns of auto repair shops that provide a valuable service  
2397 to an industry out in the local economy. The auto repair  
2398 industry itself supports over 17 [sic] jobs in my district,  
2399 and 7.5 billion in economic activity every year.

2400 Our rural Hoosiers that live prohibitively far from  
2401 dealerships have to use third-party repair shops. That may  
2402 be their only option, especially if the vehicle breaks down  
2403 and they can't get to, say, the dealership, if you will.

2404 Chairman Khan, I understand that your Commission  
2405 recently issued a policy statement that seeks to address  
2406 potential concerns with limiting or restricting third-party  
2407 access to telematic information. Can you walk us through the  
2408 process that you use, that the Commission uses, to determine  
2409 that this policy statement was necessary?

2410 And where are you really kind of going with this, as it  
2411 would apply to much more than dealerships and auto repair  
2412 shops?

2413 \*Ms. Khan. Certainly, Congressman. So this policy  
2414 statement followed a whole range of work that the Commission  
2415 had been pursuing in this area. The Commission held a  
2416 workshop on some of these repair restrictions and, under my  
2417 predecessor, Acting Chairwoman Slaughter, issued a report  
2418 identifying its findings and, as a general matter, noting  
2419 that, in many cases, some of these repair restrictions are

2420 over broad, and are being used in ways that harm individuals  
2421 who are owning products, harming independent businesses that  
2422 might otherwise have opportunity in these repair markets, and  
2423 that the FTC really needs to scrutinize some of these  
2424 practices more closely.

2425 I was pleased that we were able to adopt a policy  
2426 statement unanimously at our last open Commission meeting,  
2427 with an eye to addressing some of these restrictions using a  
2428 whole range of tools, including our Mag-Moss authority,  
2429 looking at them under the unfair and deceptive acts or  
2430 practices provision, as well as scrutinizing these for  
2431 potential antitrust violations.

2432 So that is the path forward that we have laid out, with  
2433 a commitment to really devoting more enforcement in this  
2434 area.

2435 \*Mr. Chopra. If I can just add, Congressman, the -

2436 \*Mr. Pence. Sure.

2437 \*Mr. Chopra. -- the existing law that has been on the  
2438 books for about 40 years restricts the ability for  
2439 manufacturers and sellers to condition a warranty based on  
2440 using certain types of repair services, or there is an anti-  
2441 tying provision.

2442 \*Mr. Pence. Right.

2443 \*Mr. Chopra. So I think there is a perception that  
2444 maybe we have not allocated enough enforcement resources to

2445 address those. It is becoming very difficult for many people  
2446 to repair phones, tractors, so many other things which may be  
2447 covered by that warranty. That is existing law that Congress  
2448 passed. It is one of many laws that the FTC just hasn't  
2449 really enforced that Congress has told us to. And I think it  
2450 is appropriate that, if Congress has told us to enforce a  
2451 law, that we do it.

2452 \*Mr. Pence. So -- and I will kind of get a lot more  
2453 into this as time goes by. But, you know, when I -- let's  
2454 say when I buy a car -- and my time is running short -- I  
2455 sign away that information back to the manufacturer. And  
2456 there is many things that we click on, and we give somebody  
2457 else our information. And then, when we need it -- repair or  
2458 whatever -- we don't have that information.

2459 So if you would kind of keep looking at that, and find  
2460 an equitable way to protect the customer in that area, thank  
2461 you.

2462 Madam Chair, I yield back.

2463 \*Ms. Schakowsky. Congresswoman Kelly, you are  
2464 recognized for five minutes.

2465 \*Ms. Kelly. Thank you to Chair Khan and all of the  
2466 commissioners for testifying today before the committee. I  
2467 know that this past year has been particularly trying for the  
2468 Federal Trade Commission.

2469 I also want to thank Chair Schakowsky and Ranking Member

2470 Bilirakis for holding this legislative hearing, and for  
2471 including my bill, H.R. 4460, the Consumer Equity Protection  
2472 Act.

2473         This bill would establish a task force within the  
2474 Federal Trade Commission to advise on issues in the  
2475 protection of consumers, and to prevent unfair and deceptive  
2476 practices targeted -- targeting consumers on the basis of  
2477 race, color, religion, and other protected characteristics.

2478         This legislation is urgently needed, since minority  
2479 communities are disproportionately found to be victims of  
2480 fraud. For example, African Americans are three times more  
2481 likely to experience debt-related fraud than non-Hispanic,  
2482 White. Often this is the result of information not reaching  
2483 vulnerable communities, or victims not knowing how to prevent  
2484 being victims of fraud or abuse.

2485         Chair Khan, how would forming a task force within the  
2486 FTC assist you with protecting minorities in America from  
2487 fraud and abuse?

2488         \*Ms. Khan. Congresswoman, let me say up front I am just  
2489 so glad and grateful to you for drawing attention to this  
2490 issue. The FTC has confronted numerous instances in which  
2491 companies have been violating civil right protections like  
2492 ECOA. And I worry that the methods of discrimination are  
2493 becoming even more sophisticated and subtle, as some of these  
2494 technological tools are enabling discrimination and

2495 targeting. So I think this type of focus, and bringing this  
2496 lens to our work, is going to be imperative.

2497 \*Ms. Kelly. Thank you. Commissioner Chopra, do you  
2498 have anything else to add?

2499 \*Mr. Chopra. No. I would just add, Congresswoman  
2500 Kelly, that, you know, we had a previous question from Mr.  
2501 McNerney about artificial intelligence and algorithms. You  
2502 know, the more and more that large firms, especially the tech  
2503 platforms, can systematically engage in, essentially, biased  
2504 practices -- Secretary Carson, when he was HUD Secretary,  
2505 issued a complaint against Facebook regarding its practices  
2506 on discriminating in housing. And I think we have to really  
2507 wake up to the fact that a lot of these subtle forms of  
2508 discrimination are done algorithmically, and they must be  
2509 held accountable, particularly when it comes to the largest  
2510 and most powerful tech firms.

2511 \*Ms. Kelly. Yes, my former colleague, Will Hurd, and I  
2512 did a year's study on artificial intelligence, and that was  
2513 one of the things that we looked at.

2514 In 2016 the FTC released the "Combating Fraud in African  
2515 American and Latino Communities: the FTC's Comprehensive  
2516 Strategic Plan." In the report it highlighted that the FTC  
2517 would work to build networks with community organizations,  
2518 and visit areas with low rates of consumer fraud reporting.

2519 Chair Khan, how do you plan to improve communicating

2520 consumer protection issues to hard-to-reach communities?

2521 \*Ms. Khan. Congresswoman, this is such an essential  
2522 issue, and I think we need to think hard about how we can  
2523 improve on this front.

2524 One priority for me is really focusing on building out  
2525 our regional presence. We already have a whole set of  
2526 regional offices, and I think they can provide a really great  
2527 way to directly connect with communities that might otherwise  
2528 not be directly hearing the work, and listening to the work  
2529 that we are doing. And so I think it is incumbent on us to  
2530 make sure we are directly reaching out to those communities,  
2531 and making sure that we are helping all Americans.

2532 \*Ms. Kelly. Thank you. I think that all of us here  
2533 would agree that the FTC is under-resourced, and the role of  
2534 the FTC is only likely to increase in coming years. So Chair  
2535 Khan, do you think more resources are needed for the  
2536 technology enforcement division, given the public's attention  
2537 on competition, generally?

2538 How would you utilize additional resources for  
2539 addressing privacy and data security?

2540 \*Ms. Khan. Certainly, I think more resources would be  
2541 important for our ability to be able to do this work in a  
2542 more comprehensive and effective way.

2543 In terms of where the specific needs are, I think hiring  
2544 more technologists, hiring more data analysts, hiring more



2545 financial analysts, really making sure that we are equipped  
2546 with the skill sets and tools that are allowing us to, at the  
2547 very least, understand these business practices is going to  
2548 be imperative.

2549         And so I think that will be an important step forward,  
2550 as we figure out how we can make our enforcement in these  
2551 markets more effective.

2552         \*Ms. Kelly. Thank you much.

2553         And Madam Chair, I will yield back 10 seconds.

2554         \*Ms. Schakowsky. Mr. Armstrong, I recognize you for  
2555 five minutes.

2556         \*Mr. Armstrong. Thank you, Madam Chair.

2557         Commissioner Phillips, you and I have previously  
2558 discussed your hesitation in using data privacy indicators  
2559 during an antitrust analysis. Yet, as we know, the consumer  
2560 welfare standard -- and that might be a little up in the air  
2561 right now, which, if I get time at the end, I would like to  
2562 ask a question -- is not solely about price.

2563         In fact, we -- I mean, often times when you see some of  
2564 the large tech companies' attorneys testify, they dance  
2565 around this question pretty well. We were lucky enough to  
2566 have the CEOs in this committee testifying, and they were a  
2567 little more brutally honest, which I appreciated. But it is  
2568 not solely about price. It can be applied to non-price  
2569 determinants like quality, variety, and innovation, although

2570 it is more difficult to assign any kind of quantitative value  
2571 to those indicators.

2572 That is a challenging aspect of the current antitrust  
2573 scrutiny on large technology firms, many of which provide  
2574 services free to their users. And this is assuming we apply  
2575 the consumer welfare standard to the user of the tech  
2576 service. It is even more complex when we understand that the  
2577 user is almost always not the customer. The user is the  
2578 product; or, alternatively, their data is the product.

2579 So ultimately, Mr. Phillips, who -- I mean, who is the  
2580 consumer in this analysis, or is it both, and you have price  
2581 and non-price price competition coexist?

2582 [Pause.]

2583 \*Mr. Armstrong. Did we lose him?

2584 \*Voice. Noah, are you on mute?

2585 \*Mr. Phillips. Forgive me, Congressman. Sorry about  
2586 that. I was saying --

2587 \*Mr. Armstrong. No problem.

2588 \*Mr. Phillips. I appreciate it.

2589 \*Mr. Armstrong. I am sure it was really, really smart.

2590 \*Mr. Phillips. I don't know about that. I think you  
2591 hit on two really important areas of complexity.

2592 So one area has to do with what consumer we are looking  
2593 out for. And where you have two-sided markets -- let's say I  
2594 provide you a free, online product, and I make my money on

2595 the other side, selling ads to companies that want to sell  
2596 ads. We, under certain circumstances, are compelled to take  
2597 into account both -- just in the initial part of the case  
2598 that is under prevailing law today. But at the end of the  
2599 day, we absolutely do need to think about the costs and the  
2600 benefits of the conduct in question.

2601 With respect to privacy and consumer welfare, privacy  
2602 can be an aspect of competition, and the consumer welfare  
2603 standard absolutely can reach it. But privacy is a little  
2604 more complicated for two reasons, in particular.

2605 The first is that people have different tastes for  
2606 privacy. If you walk by a Starbucks and get an ad -- because  
2607 you are physically close to Starbucks -- for a latte, you  
2608 might respond and say, "Wow, that is creepy. They knew I was  
2609 here." Or you might say, "Hey, great, I got this ad." And  
2610 because different people assimilate that experience  
2611 differently, we have to look with more of a fine-tooth comb  
2612 to understand how the consumer is being affected.

2613 The second thing has to do with the fact that there are  
2614 things that consumers absolutely do prefer. They do prefer a  
2615 lower price, for example. They do prefer more choice. I  
2616 mean, I just think we have to look with a great deal of care.

2617 \*Mr. Armstrong. I think there is a couple other issues  
2618 with privacy, maybe a little more fundamental, which, in my  
2619 experience, is every time one of these companies increases

2620 your privacy, which I think we all appreciate, it often has  
2621 the benefit of increasing their market share, as well. And  
2622 those -- and, listen, we have had these conversations a lot.  
2623 That is the difference between Energy and Commerce sometimes,  
2624 and antitrust. Sometimes what we are trying to do on one  
2625 level is not always going to be consistent with the other  
2626 level.

2627         So -- and I think that is particularly true with the  
2628 consumer welfare standard. I have concerns about the 2015  
2629 removal -- policy statement that articulated antitrust  
2630 principles that guided the Commission's authority, which  
2631 included the 2015 -- which included the consumer welfare  
2632 standard, which has been established as jurisprudence for  
2633 decades, and the rule of reason, which has been established  
2634 for over a century.

2635         And I will admit, and I think I -- I am guessing you  
2636 will all agree with me, that some of the tech platform issues  
2637 that we face in these areas are very, very unique. And part  
2638 of the reason is who is the consumer, who is the customer.

2639         But are -- I am concerned by the fact that the  
2640 Commission did not replace the 2015 statement with a new  
2641 policy that would at least provide notice on the Commission's  
2642 plan, and antitrust enforcement action. And without such a  
2643 replacement policy, what restrictions, if any, are placed on  
2644 the consumers antitrust enforcement practice right now?

2645           But my question for Mr. Phillips, and then, if we have  
2646 time for one more -- and this will probably be my last one,  
2647 because I am rambling -- do we have concerns about antitrust  
2648 legislation that looks different for certain economic  
2649 sectors?

2650           \*Mr. Phillips. Thank you, Congressman.

2651           \*Mr. Armstrong. Do you think there is challenges to  
2652 platforms that are different than other areas of antitrust?

2653           \*Mr. Phillips. There sometimes are. Some of the  
2654 platforms have network effects that are a kind of efficiency,  
2655 if you will. But basically, the more people use it, the more  
2656 popular it is for the users. And they can have indirect  
2657 network effects. The more popular it is for me, as the user,  
2658 the better it is for you, as an advertiser.

2659           And there are some aspects of these markets that are a  
2660 little bit different. On the other hand, they are hardly the  
2661 first markets like these. So telephone networks, railroads,  
2662 these are just a couple of examples in American history where  
2663 we have seen these effects.

2664           But I think your point, that sometimes when people do  
2665 things in the name of privacy it can hurt competition,  
2666 underscores the point that it is not as simple as saying,  
2667 "This conduct increases privacy, ergo it is good.'" When we  
2668 are doing competition law, what we need to look at is what is  
2669 the effect on competition.

2670           \*Mr. Chopra. Congressman, could I just add? I think  
2671 the -- you raised concerns -- yes, the Commission did rescind  
2672 the Obama FTC's policy. The Obama FTC policy statement was  
2673 unmoored from what Congress specified in the law, and has  
2674 essentially rendered it dead letter. I think the Obama FTC  
2675 policy statement has undermined our ability to scrutinize  
2676 some of these tech platform issues.

2677           And you are right, we need to be able to communicate how  
2678 that will be applied. And I know, as the chair has said in  
2679 the past, we will be doing so in the future. But we cannot  
2680 just relegate that policy statement to, essentially, veto the  
2681 law. It is not the Federal Trade Commission's ability -- we  
2682 are not supposed to veto or repeal laws. That is what you  
2683 guys do.

2684           \*Mr. Armstrong. The order in which you communicate and  
2685 regulate gets important. Thank you both.

2686           I am sorry for going over.

2687           \*Ms. Schakowsky. Congresswoman Rice, I am recognizing  
2688 you for five minutes.

2689           \*Miss Rice. Thank you, Madam Chair. The FTC has a long  
2690 history of protecting our military veterans and service  
2691 members from fraud. That is partly because protecting  
2692 vulnerable consumers is the FTC's main mission, but also  
2693 because military veterans and service members, despite making  
2694 the biggest sacrifice for our country, also have a long

2695 history of being targets of fraud and scams.

2696           To assist the FTC with its mission, and to protect our  
2697 military veterans and service members, I introduced the  
2698 Veterans and Service Member Consumer Protection Act of 2021  
2699 with my friend, Congressman Fred Upton. The bill would  
2700 establish a coordinator within the FTC to educate military  
2701 veterans and service members on schemes particularly targeted  
2702 at them, and teach them how to react to and report these  
2703 schemes to the FTC.

2704           It would also require the coordinator to maintain a  
2705 public-facing website with resources for military veterans  
2706 and service members, and establish a procedure for receiving  
2707 complaints made by military veterans and service members at  
2708 the FTC.

2709           So I would ask all three of the witnesses who are left,  
2710 if you could talk about the importance of having a  
2711 coordinator for military veterans and service members, and  
2712 why would centralizing this position be helpful.

2713           \*Mr. Chopra. So, Congresswoman, you are totally right.  
2714 Service members and veterans actually report, for example,  
2715 identity theft at a much higher rate than the general public.  
2716 There is a whole host of schemes that target the military  
2717 community.

2718           You know, I have been disappointed. I think the  
2719 Commission -- Congress gave us jurisdiction to enforce the

2720 Military Lending Act of 2013. We have not brought a single  
2721 action. I think that needs to change, and we need to sharpen  
2722 our focus on how we work with, for example, the  
2723 Undersecretary for Personnel and Readiness at the Pentagon,  
2724 who helps, you know, broadcast where people should be on  
2725 alert.

2726         So just as we have an elder justice coordinator, I think  
2727 you are right, that we need to really make sure we are  
2728 focusing and centralizing some of our work when it comes to  
2729 policing against abuses targeting service members and  
2730 veterans.

2731         \*Miss Rice. Chair Khan?

2732         \*Ms. Khan. I would echo that and note that, you know,  
2733 as you stated up front, we have seen in our work that  
2734 military members and service members are particularly  
2735 targeted, including by for-profit schools and payday lenders.  
2736 And so making sure that we are squarely focused on these  
2737 harms to some of the most vulnerable members in society is  
2738 imperative.

2739         \*Miss Rice. And is Mr. Phillips, who is --

2740         \*Mr. Phillips. Congresswoman, yes, it is.

2741         \*Miss Rice. Thanks.

2742         \*Mr. Phillips. And thank you for your leadership on  
2743 this issue. I think it is really important.

2744         I think having a coordinator not only helps to focus us,



2745 but it puts a lot of emphasis on something that you  
2746 mentioned, and that is the consumer education that we --  
2747 teaching service members and their families how to deal with  
2748 some of the scams that they see.

2749         There is a lot of important work that we do enforcing  
2750 the law, and in penalizing those who violate it. But  
2751 teaching people how to fend for themselves is a very  
2752 important complement to that. So I really appreciate your  
2753 leadership on this, and your focus on that critical area.

2754         \*Miss Rice. Great. I was glad to see that President  
2755 Biden's recent executive order on economic competition urged  
2756 the FTC to ban or limit non-compete agreements. This action  
2757 will go a long way to help workers. Today it is estimated  
2758 that 1 in 5 workers without a college degree are subject to  
2759 non-compete agreements, and 30 to 40 percent are not asked to  
2760 sign these agreements until after they have accepted the  
2761 position.

2762         But we have seen that competition and labor markets  
2763 actually empowers workers to demand higher wages, and can  
2764 increase innovation, as well. So I am very supportive of my  
2765 colleague from San Diego, and a member of this committee,  
2766 Congressman Scott Peters' bill, the Workforce Mobility Act,  
2767 which would place strong limits on non-compete agreements.

2768         So I would put this to Chair Khan. To what extent would  
2769 a clear expression of congressional intent, such as the

2770 passage of the Workforce Mobility Act, help to shape the  
2771 FTC's policy and enforcement agenda with regard to non-  
2772 compete reform?

2773 \*Ms. Khan. Congresswoman, I think clarifications from  
2774 Congress are always helpful, especially in cases where we  
2775 would be using, say, certain types of rulemaking authorities  
2776 that the agency has neglected over recent decades. And so  
2777 those types of express authority are always a helpful way to  
2778 boost our work.

2779 \*Miss Rice. Would you agree, Mr. Chopra?

2780 \*Mr. Chopra. Yes. I think these non-compete  
2781 agreements, it is not just low-wage workers, it is even  
2782 doctors and medical providers who are trapped, and are being  
2783 essentially forced to move to entirely different metropolitan  
2784 area to continue their profession. This is bad for economic  
2785 growth. It is bad for our society. And we need to take a  
2786 close look. And I am glad Congress is looking, too.

2787 \*Miss Rice. Thank you, and I am out of time, so I don't  
2788 think I am going to get to Mr. Phillips, unless the chair  
2789 will let him respond. Thank you.

2790 \*Mr. Phillips. Thank you, Congresswoman. Two points.  
2791 The first is I do think, when it comes to rulemaking, it is  
2792 very important that we have a congressional directive. I  
2793 think that the focus on labor mobility in the EO, the  
2794 executive order from the President, on non-competes, on

2795 occupational licensing is a great focus.

2796           Allowing people to move around gives them bargaining  
2797 leverage in their job, and helps allocate labor resources in  
2798 a way that also helps businesses.

2799           \*Ms. Wilson. And this is Commissioner Wilson. I am  
2800 still on, as well. And for the sake of time, I will just  
2801 echo the remarks that Commissioner Phillips made.

2802           \*Ms. Schakowsky. Now I recognize Congressman Soto for  
2803 five minutes.

2804           \*Mr. Soto. Thank you so much, Madam Chair. And to our  
2805 FTC commissioners, thank you for your patience. We have been  
2806 through a bunch of unnecessary motions to adjourn today, and  
2807 we respect your time, so I wish things were a little  
2808 smoother. Thank you for sticking with us.

2809           We know we just passed a key bill to help out with  
2810 restoring your restitution authority, the Consumer Protection  
2811 and Recovery Act, and allowing the FTC to get fraudsters -  
2812 allowing you to get ill-gotten gains from con artists and --  
2813 even though a recent Supreme Court case sadly took it away.

2814           We know COVID has only increased the scams throughout  
2815 this pandemic. I mean, everything from stimulus check scams,  
2816 to paycheck protection loan scams, to vaccine scams. In  
2817 Florida we even had a miracle mineral solution scam to sell a  
2818 solution primarily made up of bleach out of Miami, Florida.  
2819 They sold tens of thousands of bottles, and made over a

2820 million dollars.

2821           It is critical that we give you all the tools you can  
2822 use to handle this. And the 10-year statute of limitations  
2823 is an important clarification, with the compromise. And we  
2824 applaud you on some major victories, including the Volkswagen  
2825 and DeVry cases that would have exceeded the five-year  
2826 statute of limitations, if that was what we ended up getting.

2827           So to our commissioners -- and it would be great to hear  
2828 from each of you -- does the current budget give you enough  
2829 resources to be able to enforce the Consumer Protection  
2830 Recovery Act when it becomes law?

2831           \*Ms. Khan. Thanks --

2832           \*Mr. Soto. We will start with -- yes, please continue.

2833           \*Ms. Khan. Thanks, Congressman. As a general matter,  
2834 the agency is significantly under-resourced, and additional  
2835 resources to be able to boost our enforcement across these  
2836 areas is essential.

2837           I think there are questions about how we can be more  
2838 effective in our enforcement, especially when it comes to the  
2839 types of frauds and scams that you mentioned. So this is  
2840 certainly something that we will be thinking about.

2841           \*Mr. Soto. And Commissioner Phillips?

2842           \*Mr. Phillips. Thank you, Congressman. I would just  
2843 start with the fact that, when I began, our budget was about  
2844 309 million, I think something like that, and the latest

2845 congressional budget justification has us at 389. So there  
2846 has been a substantial increase in the ask, including some  
2847 funding from Congress. So I think it is important to track  
2848 how those resources are used, but I do think we can do more  
2849 with more. That is certainly a true thing. But I think it  
2850 is important to take care on how we spend what we have.

2851 \*Mr. Soto. Thank you.

2852 Commissioner Chopra?

2853 \*Mr. Chopra. Sir, I think I know every agency says that  
2854 they need more resources, but just looking at the data, we  
2855 are stretched completely to capacity, and the rubber band is  
2856 snapping. And if we need to effectively enforce the law, we  
2857 need the resources.

2858 There are so many laws that Congress has recently  
2859 passed, whether it relates to opioids or so many other  
2860 topics, that the FTC has not brought a single law enforcement  
2861 action on. That is not just resources, that is also  
2862 commissioner accountability. But resources will certainly  
2863 help.

2864 \*Mr. Soto. Commissioner Slaughter?

2865 \*Ms. Wilson. So Commissioner Slaughter had to leave,  
2866 but Commissioner Wilson is here.

2867 \*Mr. Soto. Okay, Commissioner Wilson.

2868 \*Ms. Wilson. And I would say that our hard-working  
2869 staff have been even harder-working during the last 18

2870 months. They are teleworking, but they are working  
2871 incredibly hard to stay on top of the increase in mergers, as  
2872 well as the increase in COVID scams.

2873         And I agree with Commissioner Philips, it is important  
2874 to understand how we are spending additional appropriations,  
2875 but I also know that there are many different areas of the  
2876 economy where Congress has expressed interest in our being  
2877 very active and aggressive, and it is difficult to do that  
2878 unless we have the appropriate resources to do that.

2879         \*Mr. Soto. Thank you, Commissioner. And as a  
2880 practicing civil law attorney for many years, I know how  
2881 important restitution can be to make victims whole. So this  
2882 is a fundamental function that we need to restore and make  
2883 sure there is ample statutory authority.

2884         I want to end with a question to Chair Khan. We have  
2885 the Blockchain Innovation Act that recently passed the House,  
2886 going to the Senate, that would have you all do reports on  
2887 cryptocurrency, and the importance of consumer protections.  
2888 Is that something that you all are prepared to be able to  
2889 report on?

2890         \*Ms. Khan. Thanks, Congressman. I think any time we  
2891 are, you know, given another slice of the economy to be  
2892 looking at and studying, we want to make sure that we have  
2893 the resources to be able to do that faithfully, and discharge  
2894 our statutory obligations. But certainly, the Commission was

2895 designed by Congress to be a watchdog across the economy, and  
2896 stay up to date on different economic trends and business  
2897 practices.

2898         So, you know, I think there is always a question about  
2899 which regulator or which enforcement body is best positioned  
2900 to oversee particular areas, so those types of considerations  
2901 always need to be top of mind. But of course, if Congress  
2902 asks us to do something, we are obliged to do so.

2903         \*Mr. Soto. Sure. Thank you so much, and my time has  
2904 expired.

2905         \*Ms. Schakowsky. Congresswoman Fletcher, you are  
2906 recognized for five minutes, and I believe that is the last  
2907 questioner.

2908         \*Mrs. Fletcher. Terrific. Well, thank you so much,  
2909 Chairwoman Schakowsky, and thanks to you and Ranking Member  
2910 Bilirakis for today's hearing. Thank you so much to our FTC  
2911 commissioners here and virtually, and Chair Khan, for the  
2912 time that you have spent with us today. It has been a long  
2913 day. I join my colleagues in apologizing for the  
2914 interruptions, but this has been really important and useful  
2915 information for us. So I appreciate you sticking with us,  
2916 and your insights on the issues facing the agency and the  
2917 country at this time.

2918         There has been a lot of useful discussion about how to  
2919 modernize the consumer protection capabilities, how to

2920 address funding and resources and tools to protect consumers  
2921 in what is, clearly, a complex and ever-changing marketplace.  
2922 Mr. Soto was just talking about blockchain, and his  
2923 legislation related to that. There is so much coming at us  
2924 so quickly right now. And I think, you know, what is clear  
2925 from this hearing is that you all need the resources, and  
2926 more resources to accomplish the many, many tasks we have put  
2927 before you.

2928 In my district we talk all the time about wanting  
2929 government to be efficient, effective, and ethical. And  
2930 certainly, we know how effective the FTC can be and has been.  
2931 But we need to make sure that we are giving you the resources  
2932 and the tools that you need to be able to do that absolutely  
2933 vital and effective work. And that was one of the reasons I  
2934 was really glad to cosponsor the legislation to restore the  
2935 FTC's 13(b) authority, and to see it pass the House. Like  
2936 Mr. Soto, I was also a lawyer in private practice, and know  
2937 how important it is to have those remedies available to you.  
2938 And so we are working very hard to continue to respond and  
2939 move that forward as quickly as possible.

2940 I do want to take the -- about three minutes I have left  
2941 to put -- follow up on one issue, and then maybe, since I am  
2942 the last person, put it out for any other questions that --  
2943 or any other things that you didn't get to share.

2944 But Mr. McNerney was talking earlier about ransomware



2945 and other cyber-related attacks. And, you know, in my home  
2946 state of Texas, we saw, just in 2019 alone, there were 22  
2947 different municipalities that were hit with ransomware  
2948 attacks, and really crippled core government services for  
2949 days. Certainly, the entire country was following, as -- the  
2950 Colonial Pipeline incident a couple of months ago. And we  
2951 have really seen the challenges that these ransomware attacks  
2952 present to people across every sector, whether it is, you  
2953 know, companies, schools, and local governments, hospitals,  
2954 critical infrastructure. It really needs to be a concern to  
2955 all of us.

2956         So, Chair Khan, can you explain the FTC's role in  
2957 protecting consumers and small businesses -- and really, all  
2958 businesses -- against ransomware attacks?

2959         And then, rather than taking a break to answer the  
2960 question, I will also ask you to tell us whether the FTC has  
2961 sufficient resources to follow up on all the ransomware  
2962 complaints it receives. How more resources can be helpful?

2963         And any thoughts you may have on H.R. 4551, requiring  
2964 reporting to Congress with kind of the time we have left.

2965         \*Ms. Khan. Thanks so much, Congresswoman. I think it  
2966 is difficult to overstate the importance of addressing, head  
2967 on, some of these really predatory practices, and the kind of  
2968 ransomware attacks that we have seen that have really  
2969 crippled our critical infrastructure, as well as targeting

2970 businesses both big and small.

2971           With regards to the FTC, we, of course, do use our  
2972 unfair or deceptive acts or practices authority to scrutinize  
2973 data security practices. And I think it is incumbent on us  
2974 to make sure that companies are not being reckless, and are  
2975 really doing their due diligence when it comes to protecting  
2976 consumers and protecting businesses from these types of  
2977 attacks.

2978           I think there are also really interesting questions to  
2979 be asked about the ways in which consolidation and  
2980 concentration of data also render certain companies more  
2981 susceptible to these types of attacks. It means that these  
2982 types of attacks have cascading effects, in terms of exposing  
2983 millions and millions of consumers, millions and millions of  
2984 businesses to these types of breaches.

2985           So I think, both on the consumer protection side and  
2986 also, frankly, on the competition side, we need to be  
2987 thinking about how some of these incentives are working.

2988           \*Mrs. Fletcher. That is really helpful. If I can just  
2989 follow up on that with a question, and then I have a couple  
2990 more questions I will for the record at the conclusion of the  
2991 hearing.

2992

2993

2994

2995 [The information follows:]

2996

2997 \*\*\*\*\*COMMITTEE INSERT\*\*\*\*\*

2998

2999           \*Mrs. Fletcher. But you know, there is a bill -- I  
3000 think it is part of this hearing -- requiring the FTC to  
3001 report to Congress on a recurring basis about cross-border  
3002 incidents that involve ransomware and other cyber attacks, to  
3003 make recommendations both for legislation to us, and also  
3004 best practices.

3005           Does the FTC have the resources to do this, and does it  
3006 have the information or have the ability to get the  
3007 information that we are asking for?

3008           \*Ms. Khan. Certainly, these types of information  
3009 asymmetries are vast, and sometimes it is hugely burdensome  
3010 on the agency to be able to do these types of regular follow-  
3011 ups. So I think additional resources on that front are  
3012 always very helpful.

3013           \*Mr. Chopra. Congresswoman, if I could just add with  
3014 respect to ransomware attacks, and -- you know, you mentioned  
3015 being in Houston, an energy area. There is -- energy  
3016 infrastructure is -- obviously, Colonial Pipeline was a  
3017 reminder of this, about how these are just unbelievable  
3018 targets by state and non-state actors.

3019           In 2005 George W. Bush signed into law, with a  
3020 bipartisan majority in Congress, the ability for the FTC to  
3021 put in some data safeguards when it comes to energy and  
3022 utilities. You know, commissioners of both parties declined  
3023 to actually implement what Congress asked.

3024           So part of what we also have to do is look at all the  
3025 authorities you have previously given us, see where they  
3026 might solve some of the problems, and ask for resources to  
3027 actually do them. But we have to just stop ignoring these  
3028 authorities that you are giving us.

3029           \*Mrs. Fletcher. Terrific. Thank you so much,  
3030 Commissioner Chopra.

3031           I see I went over my time. I appreciate the chairwoman  
3032 permitting me to get those complete answers. And again, I  
3033 thank you all for your time today, and for all the work you  
3034 are doing on behalf of people across the country. Thank you  
3035 so much.

3036           And I will yield back.

3037           \*Ms. Schakowsky. Well, that does conclude our first  
3038 panel. I know that you had planned to be here until 20 to  
3039 4:00 in the afternoon, anyway, but I really want to thank you  
3040 for your patience. It was -- this conclusion is a long time  
3041 in coming, but thank you so much for those of you who are  
3042 here, our members that are here, as well, online or in  
3043 person, but especially the commissioners for being here.

3044           And we look forward -- the subcommittee looks forward to  
3045 working with you on many issues in a bipartisan way, as time  
3046 goes on. So thank you very, very much. I appreciate you.

3047           \*Mr. Phillips. Thank you, Madam Chair.

3048           \*Ms. Schakowsky. I am going to --

3049           \*Mr. Bilirakis. Thank you so much.

3050           \*Ms. Schakowsky. Okay.

3051           \*Voice. We need a couple of minutes.

3052           \*Ms. Schakowsky. Yes, we are going to need just about  
3053 two minutes or so to set up for our next panel. And I will  
3054 then introduce them. Thank you.

3055           \*Ms. Wilson. Thank you, Madam Chair.

3056           [Pause.]

3057           \*Ms. Schakowsky. Before I introduce the panelists for  
3058 panel two, I just want to thank you so much. I know this has  
3059 been such a long day, and you are still here, and I  
3060 appreciate it.

3061           And you know, we may not have too many members, but I  
3062 want you to know -- and you, I think, all do know -- that  
3063 everything is on the record, and we will be here forever, and  
3064 so we just appreciate that. And I am sure others will show  
3065 up online, as well.

3066           So I am happy to introduce the witnesses today. We have  
3067 David Vladeck, professor of law at Georgetown University Law  
3068 Center. We have -- Graham Dufault -- am I saying it  
3069 correctly? Yes? Oh, good -- who is the senior director for  
3070 public policy at the App Association. And Sally Greenberg,  
3071 who is the executive director of the National Consumers  
3072 League.

3073           And at this time, the chair will recognize each of the

3074 witnesses for five minutes.

3075           I know that you are probably pretty familiar with this,  
3076 but I will just say it, because it is in my notes to say.  
3077 Make sure that you remember that you have got the series of  
3078 lights. Green will remain until -- for four minutes, and  
3079 then yellow will show up for the one-minute sign. And red  
3080 means that we hope you will be able to conclude.

3081           So, Mr. Vladeck, you are now recognized for five  
3082 minutes.

3083

3084 STATEMENT OF DAVID VLADECK, PROFESSOR OF LAW, GEORGETOWN  
3085 UNIVERSITY LAW CENTER; GRAHAM DUFAULT, SENIOR DIRECTOR FOR  
3086 PUBLIC POLICY, ACT, THE APP ASSOCIATION, WASHINGTON, D.C.;  
3087 AND SALLY GREENBERG, EXECUTIVE DIRECTOR, NATIONAL CONSUMERS  
3088 LEAGUE

3089

3090 STATEMENT OF DAVID VLADECK

3091

3092 \*Mr. Vladeck. Well, thank you, Chair Schakowsky,  
3093 Ranking Member Bilirakis, and members of the subcommittee.  
3094 Thank you for your invitation to come before you today to  
3095 give you my views on the 16 FTC bills pending before the  
3096 subcommittee. What I would like to do is highlight two  
3097 proposals that I think are of paramount importance to the  
3098 FTC.

3099 First, I think it is imperative that Congress enact H.R.  
3100 4447, the 21st Century Act, and restore to the FTC the  
3101 standard rulemaking authority that it had prior to  
3102 [inaudible]. This should not be a heavy lift. Virtually  
3103 every other agency has this power.

3104 Now, restoration of FTC rulemaking would authorize the  
3105 Commission to set clear and specific rules on what acts and  
3106 practices are deceptive and unfair. Doing so would provide  
3107 the certainty the business community claims it wants, and  
3108 enable the FTC to develop binding, enforceable norms that



3109 will both deter violations, and permit efficient and  
3110 effective enforcement.

3111         And with rulemaking, the FTC would no longer have to  
3112 rely on the archaic and resource-wasting enforcement regime  
3113 that exists today. We bring cookie-cutter cases, one by one,  
3114 shutting down one scam, and then moving on to the next,  
3115 essentially, identical scam. That is what the FTC had to do  
3116 during the tsunami of debt relief scams at the beginning of  
3117 2019. We brought a lot of cases, but we didn't make much  
3118 headway. Once the FTC promulgated a regulation using its  
3119 authority under the Telemarketing and Consumer Fraud and  
3120 Abuse Act, we were able to chase out all of the bad actors.  
3121 Why? Because they were all in violation of the new rule, and  
3122 they were worried about redress and civil penalties. With  
3123 rulemaking, the FTC could replicate this success many times  
3124 over, and make enforcement so much more efficient.

3125         Now, the only argument against restoring rulemaking  
3126 authority is the old canard that the FTC might abuse it. Of  
3127 course, that could be said of every agency. And here there  
3128 are strong safeguards in place to guard against that.

3129         First, the bipartisan nature of the Commission is a real  
3130 bulwark against overreaching. Why? Because if the agency --  
3131 if the Commission breaks three to two, a reviewing court is  
3132 going to be skeptical that this is a really good rule.

3133         There is also some judicial review. And if there is a

3134 real -- you know, if the FTC does overreach, then there is  
3135 the Congressional Review Act. So there are lots of  
3136 guardrails that already exist.

3137         In addition, the FTC should ensure that the -- Congress  
3138 should ensure that the FTC has jurisdiction over the  
3139 telecommunication common carriers and nonprofit entities.  
3140 The rationale for the common carrier exemption, namely that  
3141 the FCC comprehensively regulates all activities of  
3142 monopolist carriers, no longer exists. The line between  
3143 common carriers and the other telecommunications services has  
3144 been obliterated, and consumers face real risks of things  
3145 like bill cramming, throttling of service, false claims about  
3146 Internet speed, and other unfair, deceptive acts by the  
3147 carriers. There is nothing that the Federal --  
3148 communications can do to keep consumers safe in this space.

3149         And Congress ought to repeal the carve-out for nonprofit  
3150 entities. Too often fraudulent charities, bogus insurers,  
3151 and fake health care providers hide behind the veil of  
3152 nonprofit status. Piercing that veil is always difficult,  
3153 and at times impossible, leaving consumers unprotected.

3154         So those are the things that I would urge this  
3155 subcommittee to take on, along with the point that everyone  
3156 has made all day, which is the FTC is resource-scarce. The  
3157 SEC has four times the number of employees, and a \$2 billion  
3158 budget; the CFPB has 500 more employees than the FTC does,

3159 and a substantially greater budget. It is time that the FTC  
3160 got its reasonable share. Thanks so much.

3161 [The prepared statement of Mr. Vladeck follows:]

3162

3163 \*\*\*\*\*COMMITTEE INSERT\*\*\*\*\*

3164

3165           \*Ms. Schakowsky. Thank you so much.

3166           And now, Mr. Dufault, you are recognized for five

3167 minutes.

3168

3169 STATEMENT OF GRAHAM DUFAULT

3170

3171 \*Mr. Dufault. Thank you, Chairwoman Schakowsky, Ranking  
3172 Member Bilirakis, and members of the subcommittee. My name  
3173 is Graham Default, and I am senior director for public policy  
3174 at the App Association. The App Association is the leading  
3175 trade group representing small, connected device and mobile  
3176 software companies in the app economy. It is a \$1.7 trillion  
3177 sector that is global, and that supports 5.9 million jobs in  
3178 the U.S. I am here to share the perspectives of App  
3179 Association members, many of which are in your districts, on  
3180 the several measures you consider today to modernize the FTC.

3181 In the Chicago area Tom Gorczynski co-founded Devscale,  
3182 a custom app development company focused on a transparent  
3183 development cycle. In the Tampa area Ann and Jon Adair  
3184 founded Thinkamingo, an app that helps students develop  
3185 writing skills. A narrow focus on how many billions of  
3186 dollars a fine needs to be to deter social media giants from  
3187 privacy violations ignores the impacts of FTC reform on our  
3188 member companies. Our hope is that the subcommittee just  
3189 carefully considers any proposal's impact on companies like  
3190 Thinkamingo and Devscale, even though the primary impetus  
3191 might involve much larger companies.

3192 The last time Congress reauthorized the FTC was in 1996,  
3193 so the subcommittee is right to consider updating the

3194 statute. Some argue that the FTC must be more transparent in  
3195 its processes, and accountable to Congress and constituents.  
3196 Others point to the inadequacy of FTC authority to pursue  
3197 consumer protection harms. There is merit to both views, and  
3198 we applaud the subcommittee for its review of legislation to  
3199 better equip the FTC and to improve clarity around its  
3200 authority.

3201 The proposals you consider today fall into three related  
3202 categories.

3203 Number one, expanding the FTC's enforcement and  
3204 regulatory capabilities. We agree with the intent behind  
3205 these measures to enhance the FTC's ability to punish and  
3206 deter consumer protection harms. However, we recommend that  
3207 rulemaking authority and civil penalties be tied to clearly-  
3208 defined privacy and data security requirements. Congress  
3209 needs to set guardrails in order to avoid 180-degree shifts  
3210 from administration to administration, and to ensure the  
3211 agency carries out Congress's intent.

3212 Number two, clarifying the contours of FTC authority.  
3213 The SURE Act, for example, would codify more of the FTC's own  
3214 unfairness statement, and require the Bureau of Economics to  
3215 be consulted in cases brought under the FTC's unfairness  
3216 prong, although economic considerations are never the only  
3217 relevant ones that are important, especially for small  
3218 companies with small compliance and legal budgets.

3219           The CLEAR act would also help covered entities better  
3220 understand what the FTC views as legal conduct under an  
3221 otherwise intentionally vague statute.

3222           Bills like these should be coupled with more authority  
3223 to better -- and better enforcement tools for the FTC to  
3224 pursue privacy and data security harms, with direction from  
3225 Congress.

3226           Number three, reporting and transparency requirements.  
3227 Many of these are welcome measures to enhance the  
3228 subcommittee's oversight efforts and the FTC's own  
3229 enforcement planning. The Consumer Equity Protection Act  
3230 would help ensure the Commission develops a meaningful record  
3231 on harmful activities targeting protected characteristics  
3232 like sexual orientation, race, disability, and others. FTC  
3233 reports would also give the subcommittee a better sense of  
3234 the Commission's plans, and would help the Commission make  
3235 informed decisions on how to prioritize enforcement acts  
3236 against schemes targeting older Americans.

3237           The subcommittee should provide more resources for the  
3238 FTC to fund these reporting and transparency requirements.

3239           On the competition side of the FTC, withdrawal of the  
3240 unfair methods of competition statement has sparked  
3241 understandable concerns. There is an opportunity for the  
3242 Commission to clarify the applicability of its UMC authority  
3243 to standard essential patents, or SEPs. Anti-competitive SEP

3244 abuse harms consumers and competition, alike. This is an  
3245 example of where FTC guidance can help.

3246 On the consumer protection side of the FTC, establishing  
3247 strong national privacy rules is especially important to App  
3248 Association members. We want to help Congress work toward a  
3249 bipartisan agreement. In February we sent a letter to this  
3250 committee urging action on privacy in the wake of the FTC  
3251 settlement with Flo, a fertility and period tracking app.  
3252 The settlement highlighted the lack of available tools at the  
3253 FTC's disposal to stop and prevent privacy harms.

3254 As the creation and transfer of health data outside the  
3255 HIPAA umbrella proliferates, the FTC needs better privacy  
3256 tools, based on the risks data processing activities pose to  
3257 consumers. In doing so, Congress should set forth the  
3258 overarching purposes, and specify the limits of FTC rules.

3259 We hope the discussion today helps carve a path toward a  
3260 modernized FTC that can better meet the challenges of the  
3261 21st century. Thank you for the opportunity to share our  
3262 views, and I look forward to your questions.

3263 [The prepared statement of Mr. Dufault follows:]

3264

3265 \*\*\*\*\*COMMITTEE INSERT\*\*\*\*\*

3266



3267           \*Ms. Schakowsky. Thank you, Mr. Dufault, and now I  
3268 welcome Ms. Greenberg for five minutes.

3269           [Pause.]

3270           \*Ms. Schakowsky. Your microphone.

3271           \*Ms. Greenberg. Oh, sorry.

3272

3273 STATEMENT OF SALLY GREENBERG

3274

3275           \*Ms. Greenberg. Good afternoon, Chairwoman Schakowsky,  
3276 Ranking Member Bilirakis, and members of the subcommittee.  
3277 My name is Sally Greenberg. I am executive director of the  
3278 National Consumers League, which was founded in 1899, and is  
3279 America's pioneering consumer and worker advocacy  
3280 organization.

3281           Today NCL works, via our fraud.org campaign, to educate  
3282 consumers about scams and rip-offs. For more than a century,  
3283 the FTC has enforced laws that protect competition and  
3284 prohibit unfair or deceptive practices.

3285           The Commission is responsible for enforcing or  
3286 administering more than 70 laws, ranging from labeling of  
3287 wool products to protecting online privacy and data security.  
3288 It is with this unique consumer protection charge in mind  
3289 that I am pleased to offer NCL's support for many of the FTC  
3290 reform bills currently before the subcommittee. While my  
3291 remarks won't cover all of the proposed bills, I would like  
3292 to discuss why we are supporting the proposals that would  
3293 give the FTC what it needs most: more authority and more  
3294 capacity to execute on its broad mandate to protect  
3295 consumers.

3296           First, authority. Faced with an onslaught of fraud and  
3297 misinformation threats, consumers need a nimble FTC that can

3298 address new industry uses and hold wrongdoers accountable.  
3299 If we want the threat of enforcement to truly deter criminals  
3300 in the marketplace, we need an FTC that can do more than  
3301 simply try to recover ill-gotten gains, as important as that  
3302 authority is. Even this central function of the agency was  
3303 significantly hamstrung by the Supreme Court's recent  
3304 decision in AMG Capital Management.

3305         It is for these reasons that NCL strongly supports  
3306 Congresswoman Castor's 21st Century FTC Act, which would give  
3307 the Commission Administrative Procedure Act rulemaking  
3308 authority, and first offense civil penalty authority.

3309         We are also pleased to support Chairwoman Schakowsky's  
3310 FTC Autonomy Act, which would allow the Commission more  
3311 freedom to seek civil penalties by eliminating burdensome  
3312 regulations that can delay enforcement activity.

3313         I would like to turn now to the reforms needed to expand  
3314 the Commission's capacity. Expecting the FTC to adequately  
3315 police the technology industry with its current staff  
3316 resources is akin to bringing a water gun to a thermonuclear  
3317 war. The Commission is being asked to consider extremely  
3318 detailed regulation and enforcement in the ad tech, privacy,  
3319 application store, and data security spaces with what can  
3320 only be described as a skeleton crew.

3321         To oversee and rein in the tech sector's refusal to  
3322 police its own platforms, the FTC must have highly-qualified

3323 expertise on staff to do the detailed analysis necessary to  
3324 produce effective enforcement and regulatory policies.

3325 That is why we are pleased to support Congressman  
3326 McNerney's Federal Trade Commission Technologists Act. This  
3327 much-needed bill would authorize the FTC to establish an  
3328 office of technologists, staffed with more than two dozen  
3329 experts on information technology, cybersecurity, computer  
3330 science, and related fields.

3331 I also want to address the need for more FTC action to  
3332 combat disinformation. The deluge of misinformation and  
3333 disinformation online, particularly on social media  
3334 platforms, is a constant threat to consumers. While most  
3335 platforms prohibit such disinformation in their terms of  
3336 service, their willingness to enforce their terms has often  
3337 been far too lax. This allows fraudulent schemes that cost  
3338 consumers billions of dollars to proliferate. It fuels  
3339 vaccine hesitancy that is costing lives every day. And  
3340 perhaps most troubling, it enables some of the vilest  
3341 elements of our society, Holocaust deniers, White  
3342 supremacists, extremists, and other online trolls who  
3343 threatened our very democracy on January 6th, to proliferate.

3344 Reducing the ability of purveyors of disinformation,  
3345 falsehoods, and conspiracy theories to abuse social media  
3346 tools must be a pressing national priority. To the extent  
3347 that current laws make it hard to protect consumers for

3348 disinformation online, Congress should consider reforming  
3349 those laws. The Online Consumer Protection Act should serve  
3350 as a catalyst for Congress to engage in more robust debate.

3351 In conclusion, my remarks have focused on specific  
3352 proposals that would help the Commission better protect  
3353 consumers. Consumers do not need new laws that burden the  
3354 Commission with needless red tape. What consumers need today  
3355 is, instead, a robust Commission, empowered to go after truly  
3356 bad actors in the marketplace.

3357 Chairwoman Schakowsky, Ranking Member Bilirakis, and  
3358 members of the subcommittee, thank you for including the  
3359 consumer perspective in today's hearing.

3360 [The prepared statement of Ms. Greenberg follows:]

3361

3362 \*\*\*\*\*COMMITTEE INSERT\*\*\*\*\*

3363

3364           \*Ms. Schakowsky. I thank our witnesses so much, and we  
3365 have concluded with the witness opening statements now.

3366           And at this time we will move to member questions. Each  
3367 member will have five minutes to ask questions of our  
3368 witnesses, and I will recognize myself at this time.

3369           So we have heard a lot about ways that the FTC can  
3370 update the authorities that it has, the resources that it has  
3371 in order to do the job to protect consumers that we expect.  
3372 And that is why I introduced the FTC Autonomy Act. And that  
3373 bill would allow the FTC to bring enforcement actions seeking  
3374 civil penalties, without having to first consult with the  
3375 Department of Justice.

3376           Professor Vladeck, how would independent litigation  
3377 authorities for the FTC benefit consumers?

3378           \*Mr. Vladeck. Well, you know, it would shorten the time  
3379 that the FTC has in order to get a civil penalty from a  
3380 defendant that has already been found to be a violator, has  
3381 violated a rule.

3382           And so the current practice is that the FTC has to make  
3383 a referral to the Department of Justice. The Department of  
3384 Justice must agree to take the referral. The FTC does most  
3385 of the drafting of the legal documents that need to be filed  
3386 in court. But ultimately, the Justice Department will do  
3387 that. And so in cases, for example, that need to go to  
3388 trial, there is an enormous duplication of work. Lawyers do

3389 the first cut, then the Justice Department lawyers review it.  
3390 It is just an incredible waste of resources on both the FTC's  
3391 part and the Department of Justice's part.

3392 But there is another concern, which is the FTC was  
3393 designed to be an independent agency, bipartisan, not  
3394 beholden to the President through the executive branch. But  
3395 if the FTC has to rely on the Justice Department to enforce  
3396 its own orders, well, that independence sometimes can be  
3397 compromised. And so I think this is an important step  
3398 forward. The FTC has long asked Congress to give us that  
3399 kind of independent litigation authority. And I would urge  
3400 that the subcommittee focus this bill -

3401 \*Ms. Schakowsky. Thank you so much. I wanted to ask  
3402 the same -- around the same question, so we know -- to Ms.  
3403 Greenberg.

3404 And we know that some stakeholders are critical of the  
3405 idea that we are talking about now, of giving the FTC this  
3406 authority -- you said you support the legislation -- arguing  
3407 that it could lead to the FTC -- the FTC to overreach and  
3408 unfairly harm businesses. And I am wondering how you would  
3409 respond to those concerns that have been raised, because it  
3410 seems to me that we want to empower the FTC in the ways that  
3411 we just heard the professor mention.

3412 \*Ms. Greenberg. Yes, and the FTC is a critically  
3413 important consumer protection agency. I think it punches

3414 above its weight. We need to give it the power and the  
3415 authority it needs to hold bad actors accountable, and the  
3416 authority that it would provide the FTC in your legislation,  
3417 I think, will be ultimately more protective of consumers.

3418 And the FTC, unfortunately, is hamstrung by the  
3419 processes and procedures which other agencies do not have to  
3420 confront.

3421 \*Ms. Schakowsky. How would you respond to the critics,  
3422 Professor Vladeck?

3423 \*Mr. Vladeck. I -- the criticism doesn't make any  
3424 sense. The court is going to do the right thing, and it is  
3425 going to base its decision on the facts and on the law. The  
3426 fact that the Department of Justice lawyer is standing before  
3427 the court, or an FTC lawyer is standing before the court  
3428 doesn't really matter.

3429 And to be clear, it is rare that the Department of  
3430 Justice disagrees with the FTC. It is not a question that  
3431 there is a clash between the two enforcement agencies. It is  
3432 just an incredible duplication of effort by under-resourced  
3433 organizations. It just doesn't make any sense.

3434 \*Ms. Schakowsky. Thank you. I am going to state my  
3435 last question, but I think I am going to have to get it for  
3436 the record.

3437 The theme of today's hearing is ensuring that the FTC  
3438 has the tools that it needs to protect consumers in the



3439 modern marketplace, and into the future and practice. This  
3440 often means adapting our online, interconnected world.

3441           What I am going to ask -- and put -- submit for the  
3442 record -- is how has this shift to online commerce, the  
3443 proliferation of social media, and the general dependence on  
3444 the Internet changed consumers' expectations?

3445           I think this is a really important area for us to  
3446 explore.

3447           [The information follows:]

3448

3449 \*\*\*\*\*COMMITTEE INSERT\*\*\*\*\*

3450

3451           \*Ms. Schakowsky. But I will yield back, and recognize  
3452 Mr. Bilirakis, the ranking member of the subcommittee.

3453           \*Mr. Bilirakis. Thank you, Madam Chair. Madam Chair, I  
3454 don't mind if the witnesses want to answer that question. I  
3455 know how important it is, but I know we are running a little  
3456 late today. So whatever you feel, but --

3457           \*Ms. Schakowsky. Well, if -- you know, brief answers,  
3458 or at least outlines, and then we can get more in writing, as  
3459 well.

3460           \*Ms. Greenberg. Well, I think we have seen an uptick in  
3461 our fraud center over the last several years, about -- with  
3462 cases of fraud through social media platforms and Internet  
3463 fraud. And it has resulted in, at the FTC, needing more  
3464 resources to go after these fraudsters. And we really need  
3465 to properly resource this agency, because consumers rely on  
3466 it.

3467           And we have heard several witnesses say it is under-  
3468 resourced, is under-resourced now. And we -- they are -- far  
3469 fewer employees than they need to address the, really,  
3470 explosion of consumer fraud and bad actors out there.

3471           \*Ms. Schakowsky. And I think the technologists will  
3472 also be very helpful among the things that we need to add.

3473           \*Ms. Greenberg. Yes, we really need to ramp up the  
3474 technology side, because, certainly, the industry is very  
3475 well equipped to, on their end, to defend against concerns

3476 about fraud and disinformation and misinformation on the --  
3477 on platforms.

3478 \*Ms. Schakowsky. Thank you. And thank you, Mr. Ranking  
3479 Member.

3480 \*Mr. Bilirakis. I appreciate it. Very good, thank you.

3481 Well, first of all, thank you. I want to thank the  
3482 witnesses for their testimony today. And I want to thank you  
3483 for your patience.

3484 So according to a paper published by the Regulatory  
3485 Transparency Project, state and local data privacy laws run  
3486 into constitutional problems in at least three ways: first,  
3487 the dormant commerce clause; second, the First Amendment; and  
3488 third, conflicts with existing Federal law. The article goes  
3489 on to say that policymakers should carefully consider  
3490 consequences of a patchwork of state laws.

3491 So the first question for Mr. Dufault, can you speak to  
3492 this growing patchwork of state laws, and how they may be  
3493 impacting the dormant commerce clause?

3494 \*Mr. Dufault. Thank you, Congressman Bilirakis. That  
3495 is right. I think that the dormant commerce clause really  
3496 just upholds that, even where Congress has not legislated,  
3497 that there is an area of regulation, or an area of government  
3498 activity that is sort of reserved for the Federal Government,  
3499 rather than for the states. And what the courts usually look  
3500 at is whether or not a state law unduly burdens interstate

3501 commerce, or whether it discriminates against a business or  
3502 commercial activity that occurs in other states.

3503         And so, in this context, what you would look at is  
3504 whether or not the law enacted in California -- or let's say  
3505 there was a privacy law enacted in Florida -- unreasonably  
3506 discriminates against commerce that is occurring in other  
3507 states. And so that is an open question, and I think it is  
3508 going to be a question of growing importance, as more and  
3509 more states jump in.

3510         You have got a law in California that has been already  
3511 amended. You have got -- you have also got a law, general  
3512 applicability, general privacy law now in Colorado, and in  
3513 Virginia. It was a close call also in Florida and  
3514 Connecticut. And so more and more states are going to be  
3515 legislating in the coming years.

3516         And so, unless we have a single set of Federal privacy  
3517 requirements that preempt state laws, while avoiding  
3518 preempting, necessarily, laws that just deal with consumer  
3519 protection generally, like many FTC Acts -- I don't think  
3520 necessarily that is what we are looking for.

3521         But just to your point, you know, that is going to be a  
3522 question, going forward, and it does leave open the question  
3523 whether or not some of those state laws could run into that  
3524 constitutional question.

3525         \*Mr. Bilirakis. Thank you very much. I know it is a

3526 real concern.

3527 Mr. Vladeck, do you believe multiple state laws are at  
3528 risk of the dormant commerce clause?

3529 \*Mr. Vladeck. I do. I think it is a fair concern. I  
3530 don't think we are quite there yet, given the absence of a  
3531 Federal law. The dormant commerce clause really looks not  
3532 just to the factors Mr. Dufault mentioned, but to the  
3533 question about whether these acts are so different that  
3534 compliance with multiple laws would be possible. I don't  
3535 think we are there yet.

3536 And I think Mr. Dufault made the point that, as new  
3537 states enact new laws that may be very different from the  
3538 California law, yes, I think the possibility of a Federal  
3539 court invalidating state privacy laws will grow. And I think  
3540 that is one of many good reasons Congress ought to finally  
3541 enact a comprehensive privacy and data security -

3542 \*Mr. Bilirakis. Agreed. Mr. Dufault, the next  
3543 question, in your testimony you referred to H.R. 4447, the  
3544 21st Century FTC Act, which would authorize the FTC to issue  
3545 APA rulings, and enable the Commission to seek civil  
3546 penalties for first-time offenses of any provision of the FTC  
3547 Act. I have very serious concerns about granting unchecked  
3548 powers to the FTC, something my colleagues, some of my  
3549 colleagues, seem to agree with.

3550 What are the consequences that may arise, as a result of

3551 passing this legislation? Specifically, I am concerned about  
3552 our honest small businesses. If you could elaborate on that,  
3553 I would appreciate it.

3554 \*Mr. Dufault. Congressman Bilirakis, the problem that  
3555 we see with general APA rulemaking authority, and the general  
3556 ability to seek civil penalties for first-time offenses of  
3557 unfair or deceptive acts or practices is just that the law is  
3558 intentionally very broad, and it is an intentional --  
3559 intentionally fairly ambiguous. What is an unfair or  
3560 deceptive act or practice in X, Y, or Z case?

3561 Because the FTC has such broad jurisdiction, I think  
3562 that is probably why the Congress initially made the decision  
3563 not to give the Commission first-time civil penalty offense  
3564 authority. And you don't -- what we don't want to see is a  
3565 situation that invites innovations on new theories of  
3566 liability, along with civil penalty, which can have the  
3567 effect of having a, I think, a chilling effect on innovation  
3568 in the market, because now small businesses are wondering  
3569 whether or not and to what extent they are going to be liable  
3570 for up to \$44,000 per violation, per person civil penalties,  
3571 when they are considering going into something that is  
3572 somewhat novel, because now they are sort of building that  
3573 into their budgets, and that causes -- whether they have  
3574 investors, or just the company leadership, as they are  
3575 looking at their 18-month plan, setting aside a lot more

3576 money for compliance and legal liability, and probably paying  
3577 more in business insurance, rather than looking at going into  
3578 new markets, or expanding and hiring new people.

3579       \*Mr. Bilirakis. Thank you very much.

3580       Madam Chair, I have introduced H.R. 2672, the FTC  
3581 Reports Act. I am going to submit my questions for the  
3582 record, but I would like to hear from the -- not right now,  
3583 but if you could answer my questions to elaborate, and give  
3584 me your opinion on this particular bill.

3585       [The information follows:]

3586

3587       \*\*\*\*\*COMMITTEE INSERT\*\*\*\*\*

3588

3589           \*Mr. Bilirakis. Again, FTC Reports Act, H.R. 2672, has  
3590 to do with protecting our elders.

3591           And I will yield back, Madam Chair, thank you.

3592           \*Ms. Schakowsky. Congresswoman Castor, you are  
3593 recognized for five minutes.

3594           \*Ms. Castor. Well, thank you, Madam Chair, and thanks  
3595 to our witnesses for lending your opinions and expertise on  
3596 these legislative proposals.

3597           Professor Vladeck and Ms. Greenberg, you have examined  
3598 and testified in support of my bill, H.R. 4447, the 21st  
3599 Century FTC Act. You say that it will benefit consumers by  
3600 giving the FTC APA rulemaking authority and first offense  
3601 civil penalty authority, really help the FTC hold back -- bad  
3602 actors accountable.

3603           And Professor, you have -- in your testimony today you  
3604 said this bill is imperative. I just heard my good friend  
3605 from Florida say that this would allow -- that APA rulemaking  
3606 would promote unchecked powers. Do you agree with that?

3607           Everything I know about the very detailed APA  
3608 rulemaking, that doesn't jive with me. What about you?

3609           \*Mr. Vladeck. That is just not correct. APA rulemaking  
3610 is a very deliberative process. The agency has to promulgate  
3611 a proposed regulation, it has have notice and comment.

3612           In response to Mr. Dufault's point, there are -- small  
3613 businesses may be affected. SBREFA, the Federal Small



3614 Business Act, requires all sorts of additional protections  
3615 before an agency can finalize a rule. Once a rule is adopted  
3616 by an agency, it is often subject to intense judicial review.  
3617 If a Commission were divided on the -- of a regulation, that  
3618 would be a signal to a court to look at the regulation very  
3619 carefully.

3620         So, you know, the business community has long argued  
3621 that the FTC fails to give it adequate guidance so they have  
3622 clear and specific standards. Well, that is what rulemaking  
3623 does. But it is a transparent, open process. Every record  
3624 that is used by the agency in formulating the rule has to be  
3625 available. And so there is no more clear and transparent  
3626 process in formulating policy that is binding than our APA  
3627 rulemaking.

3628         \*Ms. Castor. And Professor, you cited an example today  
3629 when you went through the bill. Can you provide a little  
3630 more detail on that case, or maybe some other examples to  
3631 really help us understand what this would mean for the  
3632 consumer, and carrying out the FTC's mission?

3633         \*Mr. Vladeck. Sure. So take robocalls. I mean, it is  
3634 a violation of an FTC rule for a telemarketer to call someone  
3635 whose phone number is listed on the national registry. That  
3636 person risks a civil penalty. Why? Because the rulemaking  
3637 is public, the rule is crystal clear, and violators are  
3638 subject to a very substantial civil penalty.

3639           The fact of the matter is all FTC rules are enforceable  
3640 by civil penalties. So there is nothing new about that  
3641 aspect of your proposal. That is just the way things work.  
3642 The rulemaking is that, if you care about transparency,  
3643 public participation, judicial review, scrutiny, and real  
3644 attention to the needs of small business, rulemaking is your  
3645 best option.

3646           \*Ms. Castor. Ms. Greenberg, who would oppose this? Who  
3647 would oppose the FTC -- 21st Century FTC Act to give them the  
3648 ABA rulemaking authority and first offense civil penalty  
3649 authority?

3650           \*Ms. Greenberg. The example of legislation last year,  
3651 the COVID-19 Consumer Protection Act, really laid the  
3652 groundwork, I think, very nicely for APA rulemaking  
3653 authority, and first offense civil penalty authority for the  
3654 -- and it worked beautifully, and it wasn't abused, I think,  
3655 or wasn't an overreach by Commission.

3656           Who would oppose? I suppose those who don't want to see  
3657 the Commission be a strong consumer protection agency.

3658           \*Ms. Castor. So the scam artists of the world?

3659           \*Ms. Greenberg. I am sure the scam artists of the world  
3660 would be right up there --

3661           \*Ms. Castor. The fraudsters of the world?

3662           \*Ms. Greenberg. -- as opposing --

3663           \*Ms. Castor. Those telemarketers that the professor

3664 referenced?

3665           \*Ms. Greenberg. Yes. And, you know, the vast majority  
3666 of businesses are honest, but there are those who are not,  
3667 and they do not want to get in the crosshairs of the FTC.

3668           \*Ms. Castor. Thank you very much.

3669           Madam Chair, I yield back.

3670           \*Ms. Schakowsky. We have the vice chair of the full  
3671 committee, and I recognize -- I mean the -- not vice chair,  
3672 the ranking member of full committee, and now I recognize the  
3673 ranking member for five minutes, Mrs. Rodgers.

3674           \*Mrs. Rodgers. Thank you, Madam Chair.

3675           Mr. Vladeck, you have significant historic knowledge on  
3676 the Commission. How important is it for the FTC  
3677 commissioners to engage with staff, and seek their input,  
3678 especially from the Commission bureaus?

3679           \*Mr. Vladeck. When I was a bureau director, there was a  
3680 robust discussion within the Commission, including staff of  
3681 BE, the Bureau of Economics, on any policy issue. And the  
3682 discussion was robust. And a lot of it bubbled up from the  
3683 staff, not top down, but bottom up.

3684           \*Mrs. Rodgers. Thank you. Ms. Greenberg, have you been  
3685 able to work with all the commissioner offices, and do you  
3686 believe it is important for the FTC to work in a bipartisan  
3687 manner?

3688           \*Ms. Greenberg. Yes, I think one of the hallmarks of

3689 the FTC has been its bipartisan working relationships among  
3690 commissioners. And yes, we do go talk with all the  
3691 commissioners over time about consumer protection issues.

3692 \*Mrs. Rodgers. Great. Mr. Dufault, as you know,  
3693 Republicans are very committed to enacting a Federal privacy  
3694 framework this Congress. Would you speak to how important,  
3695 and just explain what a national framework would mean for  
3696 small businesses?

3697 \*Mr. Dufault. Absolutely, Congresswoman. A national  
3698 framework should be very strong, and should have -- it should  
3699 contain consumer rights, so the rights to access correction  
3700 and deletion of information about themselves. There should  
3701 be data minimization provisions, and it should be a single  
3702 set of strong national rules. And that is really important  
3703 for our member companies, because they are trying to figure  
3704 out how to comply with privacy requirements simultaneously  
3705 across several different states, and a growing number of  
3706 states.

3707 The State of Washington considered privacy legislation  
3708 in the last couple of legislative sessions in the state, in  
3709 the State of Florida, as well, and now multiple other states  
3710 are really considering jumping in and regulating privacy,  
3711 generally.

3712 And so, for our member companies, what they want to be  
3713 able to do is comply with a strong set of requirements. And

3714 I always think of the one example one of our member companies  
3715 described coming into compliance with GDPR. It cost them  
3716 about \$100,000 to come into compliance. They were able to  
3717 compete in Europe. What sets GDPR apart from the situation  
3718 in the United States is that GDPR applies across the  
3719 continent. Here in the United States, it is unclear what the  
3720 new privacy requirements are going to be with each year that  
3721 passes right now, in the current environment.

3722         And so compliance is not necessarily just a matter of  
3723 paying \$100,000 to come up into compliance. It is just  
3724 unclear how much it will cost in the coming years.

3725         \*Mrs. Rodgers. If -- thank you.

3726         \*Mr. Dufault. Yes.

3727         \*Mrs. Rodgers. If Congress fails to pass a privacy law,  
3728 would you elaborate on what impact data privacy rules solely  
3729 offered by the FTC would mean for small businesses, and their  
3730 ability to comply with such rules?

3731         \*Mr. Dufault. Yes, Congresswoman. So if the FTC went  
3732 ahead and conducted a rulemaking on privacy on its own, I  
3733 think the concern for us would just be that, with each  
3734 administration, you might see a completely different  
3735 approach. So you might see all of the rules sort of  
3736 scrapped.

3737         I know that there is judicial review for changes that  
3738 the new administration would make to those rules. But we

3739 would feel a little bit better if there were guardrails from  
3740 Congress that the -- would make those rules that come from  
3741 the FTC, frankly, stronger, because they have the statutory  
3742 backing, and they would have -- they would be less mutable,  
3743 from -- depending on who inhabits the FTC.

3744 \*Mrs. Rodgers. One of the reasons I think a national  
3745 privacy standard is so important is because it would --  
3746 otherwise, there is confusion by a patchwork of laws that are  
3747 being developed at the state level. There is confusion for  
3748 consumers and for businesses. Obviously, they need the  
3749 certainty across state lines.

3750 If -- would you speak to the potential of FTC writing a  
3751 rule, and how much they would be able to address?

3752 How much -- do you -- how much would they be able to  
3753 accomplish, versus what Congress would be able to do?

3754 \*Mr. Dufault. Yes, Congresswoman, there would be a  
3755 number of things that the FTC could try to accomplish on its  
3756 own. Using Magnuson-Moss rulemaking authority, it would take  
3757 a little bit longer. I think it would take longer than if  
3758 they had APA rulemaking authority granted by Congress. And  
3759 that is why we were supportive of measures that would also  
3760 authorize the FTC to make use of APA rulemaking procedures in  
3761 narrow circumstances.

3762 You know, to the extent that Congress can set  
3763 guardrails, and specify exactly what they want the Commission

3764 to accomplish, the better off we are going to be. And it  
3765 leaves less of the question to the courts. As we saw with  
3766 the AMG decision, there is some risk that the courts will go  
3767 a little bit too far in removing the authority of the FTC,  
3768 and we would rather have Congress imbue the FTC with that  
3769 authority.

3770 \*Mrs. Rodgers. Thank you all. I yield back.

3771 \*Ms. Schakowsky. The gentlewoman yields back. And now  
3772 I recognize Mr. McNerney for five minutes.

3773 \*Mr. McNerney. I thank the chairwoman, and I thank the  
3774 panelists for being here today, and being patient.

3775 As I noted in the last panel, one of the bills we are  
3776 considering today is H.R. 4530, legislation that I authored,  
3777 which would establish an office of technologists at the  
3778 Commission. As an engineer, I think this is critically  
3779 important. Ms. Greenberg already voiced support of that  
3780 bill.

3781 Professor Vladeck, would you agree that empowering the  
3782 agency with the necessary technical expertise, and having  
3783 more technologists on staff would help the agency carry out  
3784 its mission?

3785 \*Mr. Vladeck. Well, it is essential. And, you know, I  
3786 hired the first technologists in the FTC in 2009. We did not  
3787 have a single one on staff.

3788 And, you know, there -- let me just make two quick

3789 points: one is we need more technologists; the other is we  
3790 need to be able to retain them.

3791 And one of the problems is there is just enormous  
3792 competition for, you know, top-of-the-line technologists.  
3793 And one of the things I would urge this committee to think  
3794 about is whether there should be different GS scales for  
3795 paying technologists. Attracting, you know, top-tier  
3796 technologists to the FTC would be a challenge. And so I  
3797 applaud your bill. I hope it is enacted, and I hope it is  
3798 authorized, the money is appropriated for it.

3799 But there is a broader problem in government, in terms  
3800 of attracting and keeping top-line technologists, and I think  
3801 that is an issue that needs to be really addressed.

3802 \*Mr. McNerney. Well, thank you, Professor.

3803 Ms. Greenberg, in your testimony you discuss why this  
3804 legislation is important with respect to our role, as a  
3805 nation, in driving the global regulatory agenda. Could you  
3806 explain that a little?

3807 \*Ms. Greenberg. I am sorry, your question was about  
3808 the -

3809 \*Mr. McNerney. The --

3810 \*Ms. Greenberg. Would you mind repeating the question?

3811 \*Mr. McNerney. The office of technologists at the  
3812 Commission -

3813 \*Ms. Greenberg. In terms of -- yes, well, we made the



3814 observation that we need to compete globally, as well as with  
3815 companies that are based here, in the United States. And we  
3816 need to really ramp up our level of expertise in the  
3817 technology area.

3818         And, as Professor Vladeck pointed out, we need to figure  
3819 out how to not just hire technologists, but retain them, as  
3820 well. Though I do think there is a certain personality type  
3821 that likes public service, and we can probably never compete  
3822 with some of the salaries that we are going to see at the big  
3823 tech companies, but I think a competitive salary and an  
3824 opportunity to do -- to go toe-to-toe with some of these  
3825 companies is a very attractive job possibility for people  
3826 with expertise.

3827         But we just can't -- now we cannot compete. So I think  
3828 your bill is essential, and it is essential for our ability  
3829 to compete globally, as well as across the United States.

3830         \*Mr. McNerney. Thank you. Again, Professor Vladeck,  
3831 what potential risks do you see with respect to artificial  
3832 intelligence, and what can be -- what steps can be taken at  
3833 the agency to help address these risks?

3834         \*Mr. Vladeck. Oh, the risks are enormous. You know,  
3835 there are risks of algorithmic bias. There are pricing  
3836 decisions that may be based on personal characteristics.  
3837 And, you know, the FTC has been looking at this issue since  
3838 2010.

3839           But it is -- you know, there are challenges. And part  
3840 of the challenges are that the FTC does not have the --  
3841 technology. And so, you know, unless your legislation gets  
3842 through, we may be behind the curve in trying to figure out  
3843 how to harness all the good things that algorithms and AI  
3844 bring us, but not really understand some of the risks that  
3845 are attached to it.

3846           And there are just enormous strides being made at MIT  
3847 and Caltech about the use of algorithms in government  
3848 regulation, not just outside the government. And so we  
3849 really need to get the resources to understand the benefits  
3850 and the risks of AI, and I am not sure we are anywhere near  
3851 there.

3852           \*Mr. McNerney. Well, thank you, I am going to yield  
3853 back at this point.

3854           \*Ms. Schakowsky. The gentleman yields back. And Mr.  
3855 Armstrong, your staying power pays off, and I recognize you  
3856 for five minutes.

3857           \*Mr. Armstrong. Thank you, Chair Schakowsky.

3858           I recently introduced H.R. 2671, the SHIELD Act. And  
3859 the bill essentially contains two provisions. The first  
3860 provision prohibits the FTC from relying on guidelines for  
3861 similar documents to prove a violation of law. This is  
3862 simple. The Commission should only bring enforcement actions  
3863 for violations of law.

3864           Now, Mr. Vladeck, I know you have some concerns with the  
3865 second portion of this bill, but your testimony generally  
3866 agrees with the first provision, which, essentially,  
3867 reaffirms that the FTC guidance on provisions of law do not  
3868 carry the force of law, correct?

3869           \*Mr. Vladeck. That is correct.

3870           \*Mr. Armstrong. Now, the second --

3871           \*Mr. Vladeck. Sorry, I didn't --

3872           \*Mr. Armstrong. Okay, thank you, thank you. The second  
3873 provision clarifies that a defendant may offer, as evidence  
3874 of compliance with a provision of law, any guidelines,  
3875 general statements of policy, et cetera. And your objection  
3876 to this -- you do object to this provision in your testimony.  
3877 You raise concerns that a guidance document -- offered as  
3878 evidence of compliance with the law, even though it is  
3879 outdated or superseded.

3880           If a guidance is outdated or superseded, it would no  
3881 longer be useful. And I would argue that the burden should  
3882 be on the Commission to remove outdated or superseded  
3883 guidance to provide the public with relevant information. Is  
3884 there anything that prevents the Commission from removing  
3885 outdated or superseding -- superseded guidance?

3886           \*Mr. Vladeck. Yes, there is a tremendous amount. I  
3887 mean, a guidance document under the law is almost anything  
3888 anyone at the FTC says, assuming that they are a reasonably

3889 senior person. So a tweet is a guidance document. A speech  
3890 taking a position is a guidance document. And in order to --  
3891 for the Commission to sort of pull back on guidance, they  
3892 would have to really just sort of rewrite its own history by  
3893 deleting speeches, tweets, you know, other --

3894 \*Mr. Armstrong. Well, statements from a commissioner  
3895 and guidance from the Commission aren't the same thing.  
3896 Like, the defendant may offer as evidence of compliance these  
3897 types of guidance documents. The bill doesn't provide that  
3898 offering these guidance documents is an affirmative defense,  
3899 which would negate a defendant's liability. The defendant  
3900 would have to demonstrate that the guidance supports its  
3901 compliance with the provision of law.

3902 Your concern that pointing to any guidance document is  
3903 arguably exculpatory might be sufficient as a defense. That  
3904 is not how evidence works, and it is not what the bill says.  
3905 The defendants can't simply claim a document provides  
3906 absolution. A guidance document is only useful as evidence  
3907 of compliance when it tends to prove that there is a matter  
3908 asserted.

3909 Mr. Dufault, is there any objection to allowing a  
3910 defendant to simply offer Commission guidance as evidence of  
3911 compliance with the provision of a law enforced by the  
3912 Commission?

3913 \*Mr. Dufault. No, it seems to us to be a reasonable

3914 provision, that it simply completes the circle when it comes  
3915 to -- you know, this is a statement as to the Commission's  
3916 understanding of its own determination as to what is legal  
3917 under its broad purview over unfair or deceptive acts or  
3918 practices. And so that interpretation is meant to be relied  
3919 upon.

3920         So this is just a statement that says, if you are  
3921 relying upon that guidance, then it is evidence. And like  
3922 you said, it is not definitive. And there are different  
3923 weights that you can assign to evidence, right? And so that  
3924 -- merely having it be evidence does not negate liability, as  
3925 you said.

3926         \*Mr. Armstrong. And I think I can give a little real-  
3927 world relevant example of how outdated or superseded language  
3928 isn't always very persuasive. There is a 2015 version of  
3929 this bill that, while similar, had some cumbersome and  
3930 ambiguous language.

3931         And Mr. Vladeck, you testified against that bill, and  
3932 raised similar objections in 2016. The problem is, your  
3933 testimony today quotes the 2015 bill language that was  
3934 amended prior to the introduction of H.R. 2617.

3935         And with that, I will yield back.

3936         \*Ms. Schakowsky. The gentleman yields back, and now I  
3937 yield five minutes to Mr. Soto.

3938         \*Mr. Soto. Thank you, Madam Chair. You know, last term

3939 we had put forward a working draft for privacy, something  
3940 that I applaud you, Madam Chairwoman, for starting the ball  
3941 rolling on. Sadly, here we are, a year or two later, because  
3942 of partisan bickering over this stuff. And we still see  
3943 another year or two wasted, gone by, where we could be  
3944 protecting privacy.

3945         And so I am committing to you, Madam Chair, that we will  
3946 keep up the fight together, and try to bridge gaps with my --  
3947 our colleagues across the aisle, including the great ranking  
3948 member here, my dear friend, Representative Bilirakis, my  
3949 fellow Floridian, who I get to work with all the time on a  
3950 lot of these issues.

3951         You know, the American people rely on the FTC to protect  
3952 them from fraud, scams, false advertising, and unfair and  
3953 deceptive trade practices, often without even knowing the  
3954 agency exists. In the first panel we heard from  
3955 commissioners about just some of the things the FTC is doing  
3956 on behalf of American consumers. But we also heard about  
3957 some of the constraints and need for resources to improve the  
3958 FTC's ability to protect consumers.

3959         Ms. Greenberg, would you agree that the FTC faces unique  
3960 burdens that other consumer protection agencies do not?

3961         \*Ms. Greenberg. Yes, Congressman. I -- the FTC is  
3962 hampered by onerous obstacles that it must jump through to do  
3963 its really important work of protecting consumers.

3964           \*Mr. Soto. And for years we have advocated for giving  
3965 the FTC certain authorities such as civil penalty authority  
3966 and APA rulemaking. Ms. Greenberg, how would these tools  
3967 improve the FTC's ability to fulfill its consumer protection  
3968 mission?

3969           \*Ms. Greenberg. Well, APA rulemaking is a transparent  
3970 process that -- it is a very democratic process, because it  
3971 opens up the rulemaking process to comment, notice and  
3972 comment, and final rules, and a final rules can be  
3973 challenged, judicially. But it is an open process. It is  
3974 somewhat time consuming process. But it does take in all  
3975 perspectives, and certainly civil penalties are really  
3976 important deterrents to the bad guys, the bad actors in the -  
3977 - in our marketplace. And I think you just improve the  
3978 agency's ability to protect consumers by providing both of  
3979 those, so civil penalty and APA rulemaking authority.

3980           \*Mr. Soto. Thank you, Ms. Greenberg.

3981           Mr. Vladeck, we know technology has increased the ways  
3982 for scams to happen. Internet, cell phones, social media all  
3983 provide new opportunities for scammers. I know privacy is a  
3984 key concern for both you and I and others on the committee.  
3985 What role can artificial intelligence assist in spotting  
3986 scams and protecting privacy, if used by the FTC?

3987           \*Mr. Vladeck. So there is a lot of work being done by  
3988 technologists, academic technologists, on exactly that

3989 question. And, you know, my hope is that AI will help  
3990 control the boundaries of the Internet, and alert agencies  
3991 like the FTC, law enforcement agencies, when there is  
3992 something that looks like a scam that is afoot, so we can get  
3993 -- you know, we can sort of get an enforcement case, move  
3994 quickly, before too many people are injured. So I think AI,  
3995 as a tool, may, you know, be a great bolster for law  
3996 enforcement agencies for just detection. And that is an  
3997 important aspect of this.

3998         So I do have expectations that, within this Commission,  
3999 you will start seeing these kinds of tools, as there are  
4000 tools for content moderation.

4001         \*Mr. Soto. And when we are talking about all the  
4002 commerce on the Internet, all the information and different  
4003 transactions conducted, really, would you argue that  
4004 artificial intelligence is essential, in order to accurately  
4005 be able to identify scams on the Internet?

4006         \*Mr. Vladeck. Yes. I mean, the Internet is the crook's  
4007 best friend. It is the best thing that ever happened to scam  
4008 artists. And, you know, the volume of -- you know, simply  
4009 the sheer volume of what is going on on the Internet makes it  
4010 impossible for individuals to control, which is why AI is  
4011 going to be a key tool to law enforcement, I hope, soon,  
4012 because it is really needed.

4013         \*Mr. Soto. Well, thank you, Mr. Vladeck. With deep



4014 fakes, with using code words, with going into the dark web,  
4015 among so many other abilities to push for scams, we are going  
4016 to have to also use technology to help out the good guys at  
4017 the FTC.

4018 And I yield back, Madam Chair.

4019 \*Ms. Schakowsky. The gentleman yields back, and now I  
4020 just want to thank our witnesses. And I really, really  
4021 appreciate all -- the three of you being here, but especially  
4022 the two that were here pretty much all day.

4023 Professor, you, as well. I don't know if you were  
4024 waiting around for us, but I just want to thank you so much  
4025 for your participation.

4026 And are there -- there are? Okay, so now I -- well, let  
4027 me first see if you want to say anything.

4028 \*Mr. Bilirakis. I don't want to delay things. We got  
4029 it done, and I appreciate your patience, the witnesses'  
4030 patience, and the members, and particularly our chair. So  
4031 thank you very much for a very informative hearing.

4032 \*Ms. Schakowsky. I want to remind the witnesses -- and  
4033 we will convey that also -- oh, before we adjourn, I request  
4034 unanimous consent to enter the following documents into the  
4035 record.

4036 But I -- actually, let me say to the witnesses that the  
4037 members will have 10 business days to submit additional  
4038 questions for the record, and we are asking you to respond in

4039 a timely way to that.

4040 [The information follows:]

4041

4042 \*\*\*\*\*COMMITTEE INSERT\*\*\*\*\*

4043

4044           \*Ms. Schakowsky. I wanted to say that before I read all  
4045 this, because I think it is fair enough to say that you don't  
4046 have to stick around for this. But I am going to read all  
4047 the communications that we received. So thank you so very  
4048 much.

4049           We have a letter from Senator Toomey to Commissioner  
4050 Chopra, dated June 17, 2001 [sic]; a letter from Senator  
4051 Toomey to Commissioner Chopra dated July 13th, 2021; a -- I  
4052 don't know what this --

4053           \*Voice. A dissenting statement.

4054           \*Ms. Schakowsky. Oh, a dissenting statement from  
4055 Commissioner Phillips and Wilson regarding withdrawing of  
4056 section 5; a statement of enforcement principles; we have a  
4057 dissenting statement of Commissioner Phillips and Wilson  
4058 regarding revision -- no, revised section 18; a letter from  
4059 Secretary -- no, I am sorry, from Security Industry  
4060 Association; a letter from the Committee for Justice; and a  
4061 letter from the Chamber of Commerce.

4062           That wraps it up.

4063           [The information follows:]

4064

4065           \*\*\*\*\*COMMITTEE INSERT\*\*\*\*\*

4066

4067           \*Ms. Schakowsky. So with that, the Subcommittee on  
4068 Consumer Protection is adjourned.

4069           [Whereupon, at 4:49 p.m., the subcommittee was  
4070 adjourned.]