



**Testimony of
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on

**Transforming the FTC:
Legislation to Modernize Consumer Protection**

**Before the
United States House of Representatives
Committee on Energy and Commerce
Subcommittee on Consumer Protection and Commerce**

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Summary

The Federal Trade Commission (FTC) is the nation's oldest federal consumer protection agency. It is charged with enforcing the laws that prohibit anticompetitive business practices and unfair or deceptive conduct by companies, without impeding legitimate marketplace activity.

As Congress has given more responsibilities to the Commission, it has not, however, expanded the FTC's the authority or given it the resources needed to robustly execute on its mission. The Commission has seen its funding stagnate in nominal terms and its staff cut in half, despite the expanded scope of its investigation and litigation activities.¹ Before us today are legislative proposals to give the Commission the teeth it needs to combat a rapidly-evolving landscape of unfair and deceptive practices. The bills the subcommittee is considering will allow the Commission to initiate rulemakings more efficiently, hold accountable businesses that engage in abusive consumer practices and better protect vulnerable communities.

Consumers need a robust FTC that is empowered to hold wrongdoers to account, not a milquetoast enforcer weighed down by burdensome procedural requirements.

¹ Federal Trade Commission. "Remarks of Commissioner Rebecca Kelly Slaughter" Online: https://www.ftc.gov/system/files/documents/public_statements/1520570/slaughter_hospital_speech_5-14-19.pdf

Introduction

The National Consumers League (“NCL”) appreciates the opportunity to provide the subcommittee with our views about the value of the Federal Trade Commission’s (“FTC” or “Commission”) consumer protection and competition work and provide recommendations on ways to strengthen the FTC’s authority in these areas.

Founded in 1899, the National Consumers League (“NCL”) is the nation’s pioneering consumer and worker advocacy organization. Our non-profit mission is to advocate on behalf of consumers and workers in the United States and abroad.¹ For more than twenty years, NCL has worked, via our Fraud.org campaign, to educate consumers about the warning signs of fraudulent schemes and protect the American public from scams and rip-offs. .

The FTC needs authority commensurate with its responsibilities

The Federal Trade Commission (FTC) is the nation’s oldest federal consumer protection agency. It is charged with enforcing the laws that prohibit anticompetitive business practices and unfair or deceptive conduct by companies, without impeding legitimate marketplace activity. As the universe of threats against consumers has grown in concert with the rapidly expanding digital economy, the Commission’s mission has never been more vital. Today, the FTC is responsible for enforcing or administering more than 70 laws, ranging from labeling of wool products to promoting competition and protecting privacy and data security in a multi-trillion-dollar Big Tech industry.

¹ For more information, visit www.nclnet.org.

Congress has given more responsibilities to the Commission but it has not expanded the FTC's authority or given it the resources needed to robustly execute on its mission. Before us today are legislative proposals to give the Commission the teeth it needs in the fight against an ever-evolving landscape of unfair and deceptive practices. The bills the subcommittee is considering will enable the Commission to initiate rulemakings more efficiently, hold accountable businesses that engage in abusive consumer practices and better protect vulnerable communities.

Congressional action is critical to the FTC's ability to protect consumers. The Supreme Court's recent decision in *AMG Capital Management* removed a key enforcement tool from the FTC's toolbox, making it even more difficult for the Commission to fight corporate misconduct.²

In the aftermath of *AMG Capital Management*, we appreciate that the full House, with leadership from consumer champions like Chairman Pallone, Chairwoman Schakowsky, and Vice Chairman Cardenas recently approved the Consumer Protection and Recovery Act, which will restore the FTC's 13(b) authority.³ Should that bill become law, however, it would simply reestablish the pre-*AMG* status quo, enabling the Commission to recover ill-gotten gains when companies engage in abusive practices. It would not address long-standing statutory deficiencies that hamper the FTC's ability to protect the public from unfair and deceptive acts and practices.

The FTC's case against AMG Capital Management is an example of the Commission using its authority to hold accountable companies that exploit consumers. This predatory lender robbed consumers of over \$1 billion, using deceptive practices

² Federal Trade Commission. "Statement by FTC Acting Chairwoman Rebecca Kelly Slaughter on the U.S. Supreme Court Ruling in AMG Capital Management LLC vs. FTC." Press release. April 22, 2021. Online: <https://www.ftc.gov/news-events/press-releases/2021/04/statement-ftc-acting-chairwoman-rebecca-kelly-slaughter-us>

³ House Committee on Energy & Commerce. "PALLONE AND SCHAKOWSKY ON HOUSE PASSAGE OF LEGISLATION RESTORING FTC'S 13(B) CONSUMER PROTECTION POWERS." Press release. July 20, 2021. Online: <https://energycommerce.house.gov/newsroom/press-releases/pallone-schakowsky-on-house-passage-of-legislation-restoring-ftc-s-13b>

that confused and exploited its victims. Over the course of 16 years, AMG targeted more than 4 million consumers, charging them with triple digit interest rates that skyrocketed to 700 percent.⁶

In another case, the FTC again used its authority to shut down Associated Community Services, a robocall operation masquerading as a charity that defrauded victims of over \$110 million. The scheme targeted 67 million consumers across the country with a litany of fake causes such as children with cancer, homeless veterans and victims of fire. Generous Americans reached into their pockets to help, only to have their money paid to fraudsters. Action by the FTC brought a stop to an operation that often targeted the elderly, seized the assets of the scammers responsible and worked to get refunds to victims.⁷

It was to help victims of schemes like these that NCL joined with consumer colleagues in supporting Congresswoman Castor's 21st Century FTC Act, which would give the Commission Administrative Procedure Act rulemaking authority and first offense civil penalty authority.⁴ We are also pleased to support Chairwoman Schakowsky's FTC Autonomy Act, which would allow the Commission more freedom to seek civil penalties by eliminating burdensome regulations that can delay enforcement activity.⁵

What consumers *do not* need are new statutes that force the Commission to go through more red tape – economic analyses of each and every recommendation, periodic reviews of consent decrees, annual reports on the statuses of investigations, or heightened standards of unfairness – in order to execute on its

⁶ Reuters. "U.S. returns \$505 million to victims of giant payday lending scheme" Online: <https://www.reuters.com/article/us-usa-paydaylending/u-s-returns-505-million-to-victims-of-giant-payday-lending-scheme-idUSKCN1M72BX>

⁷ PC. FTC Shuts Down Massive Robocall Charity Scam. Online: <https://www.pcmag.com/news/ftc-shuts-down-massive-robocall-charity-scam>

⁴ U.S. Representative Kathy Castor. "Rep. Castor Introduces 21st Century FTC Act," Press release. July 16, 2021. Online: <https://castor.house.gov/news/documentsingle.aspx?DocumentID=403667>

⁵ Online: <https://www.congress.gov/bill/117th-congress/house-bill/4488?q=%7B%22search%22%3A%5B%22hr+4488%22%5D%7D&r=1&s=4>

mission. What consumers *do* need in the current fraud threat landscape is a robust Commission that is empowered to go after wrongdoing, not a milquetoast enforcer weighed down by its own burdensome procedural requirements.

The FTC needs more tools to fight online misinformation and disinformation and to protect consumers on online marketplaces

The deluge of misinformation and disinformation online, particularly on social media platforms, is a constant threat to consumers. While most platforms prohibit such disinformation in their terms of service, their willingness to enforce their terms has often been far too lax. This allows fraudulent schemes that cost consumers billions of dollars to proliferate. It fuels vaccine hesitancy that is costing lives every day. And, perhaps most troubling, it enables some of the vilest elements of our society – Holocaust deniers, white supremacists, extremists and other online trolls– who threatened our very democracy on January 6, 2021. Reducing the ability of purveyors of disinformation, falsehoods, and conspiracy theories to abuse social media tools must be a pressing national priority.

The indictments of those that participated in the insurrection have shed light on the harmful effects of the disinformation spreading like wildfire online. Defendants have even pointed to it in defense of their actions on January 6th.⁶ For months, far right extremists were able to coordinate on Facebook and other social media platforms, systematically planning to take over the Capitol and murder top U.S. officials. From the narrative that the election was stolen, to the conspiracy theory that the Capitol

⁶ Klepper, David. “Defense for some Capitol rioters: election misinformation,” Associated Press. May 29, 2021. Online: <https://apnews.com/article/dc-wire-donald-trump-health-coronavirus-pandemic-election-2020-b7e929bb8d49b77d0922eae7ad3794b7>

insurrection was the work of Antifa, the lies spread online have distorted the public's ability to process recent events and determine fact from fiction.⁹

This phenomenon is having a disastrous and deadly effect on the nation's ongoing struggle to defeat COVID-19. As the Delta variant continues to roil its way throughout the U.S., the country is struggling to increase the vaccination rate. Experts are pointing to the way misinformation online is costing lives and prolonging the pandemic. The Kaiser Family Fund survey found that 54% of Americans could not determine whether a common COVID vaccine myth was fact or fiction.¹⁰

The troubling reality is that social media platforms have been too lax in enforcing their own terms of service. This has allowed bad actors to use these platforms to amplify popular anti-vaccine content rather than accurate information. Researchers have concluded that much of anti-vaccine misinformation circulating on line can be traced back to just 12 people.¹¹ The founding director of the Center for Emerging Infectious Diseases at Boston University recently pointed to the outsized role that misinformation on social media is playing in preventing people from getting vaccinated, resulting in more preventable deaths.¹¹

Over the past 16 months, the COVID-19 pandemic has highlighted the critical role that online sales platforms play in connecting consumers to the marketplace. As consumers have flocked to these online marketplaces, the need for these platforms

⁹ West, Darrell. "The role of misinformation in Trump's insurrection," Brookings Institute. January 11, 2021. Online: <https://www.brookings.edu/blog/techtank/2021/01/11/the-role-of-misinformation-in-trumps-insurrection/>

¹⁰ Kaiser Family Fund. "KFF COVID-19 Vaccine Monitor: In Their Own Words, Six Months Later" Online: <https://www.kff.org/coronavirus-covid-19/poll-finding/kff-covid-19-vaccine-monitor-in-their-own-words-six-months-later/>

¹¹ NPR. "Just 12 People Are Behind Most Vaccine Hoaxes On Social Media, Research Shows" Online: <https://www.npr.org/2021/05/13/996570855/disinformation-dozen-test-facebooks-twitters-ability-to-curb-vaccine-hoaxes>

¹¹ CNBC. "Infectious disease expert says Covid vaccine misinformation is 'killing people'" Online: <https://www.cnbc.com/2021/07/16/infectious-disease-expert-says-covid-vaccine-misinformation-is-killing-people.html>

to better address product recalls, counterfeiting, and the policing of third-party sellers has become ever more urgent. Platforms need to be far more aggressive in enforcing their terms of service and blocking access to their sites by scammers and rip-off artists. That requires clear and understandable disclosure of platforms' terms of service and consumer protection policies to help consumers and sellers better understand their rights and responsibilities. However, better disclosure is no substitute for robust enforcement.

The Commission, as the foremost consumer protection agency with authority over these platforms, must have the tools it needs to robustly investigate policies that enable misinformation and disinformation or which otherwise harm consumers and small businesses. Given the size and scale of modern social media and online sales platforms, the FTC's enforcement resources must also be supplemented by state attorneys general and private litigants.

To the extent that current laws, such as Section 230 of the Communications Decency Act, make efforts to protect consumers from misinformation, disinformation and abusive businesses practices by online platforms more difficult, Congress should reform to those laws. We understand that reforms need to be carefully considered, with flexibility built into the effort to ensure platforms not only have clear terms of service but also robustly enforce them. Congress should also take into account the needs of small businesses to ensure that any litigation taken pursuant to legislation is appropriate and not overreaching.

Bills such as Chairwoman Schakowsky's Online Consumer Protection Act⁷ should serve as a catalyst for Congress to engage in a robust debate about new solutions that better protect consumers from the harms outlined above while protecting the vibrancy and value to consumers of the Internet.

⁷ Online: <https://www.congress.gov/bill/117th-congress/house-bill/3067?q=%7B%22search%22%3A%5B%22online+consumer+protection+act%22%5D%7D&r=2&s=5>

Support for H.R. 4483 to address scams targeting vulnerable populations

Consumers are more likely to trust someone who comes from a group with which they identify. Fraudsters know this, and have historically preyed on such trust to run affinity-based scams. By targeting members of a particular racial or ethnic group or members of the military and veterans communities, scammers know their chances of successfully defrauding their victims increase. Given this fact, it makes sense that the FTC should devote particular attention to providing support to those targeted communities through consumer education and stepped up enforcement.

According to the Commission, members of the military community who are victims of fraud reported a median fraud loss of \$500-578, compared to \$311 in median losses for the public at large.⁸ We are therefore pleased to support Representative Rice and Upton's H.R. 4483, bipartisan legislation that would, for the first time, appoint an official within the FTC's Bureau of Consumer Protection with specific responsibility to advise the Commission on how to better protect veterans, active-duty military members, and their families.⁹ Our service members put their lives on the line for us. They should have confidence that their government is doing everything it can to protect them from scammers.

To augment its capacity to fight affinity fraud, the Commission should also give special attention to scams targeting consumers based on their race, ethnicity, religion, sexual identity, or other protected class. For example, while the Commission does ask consumers who file complaints at ReportFraud.FTC.gov about their military status, it does not ask them to identify whether they fall in to another

⁸ Federal Trade Commission. *Consumer Sentinel Data Book 2020*. (pgs. 5, 17) February 2021. Online: https://www.ftc.gov/system/files/documents/reports/consumer-sentinel-network-data-book-2020/csn_annual_data_book_2020.pdf

⁹ Online: <https://www.congress.gov/bill/117th-congress/house-bill/4483?r=2&s=3>

of these protected classes. We believe this could be addressed by an expanded FTC data collection process that would help the Commission better understand who is getting scammed, whether they are in vulnerable groups and how best to address the problem. It for this reason that we strongly support Congresswoman Kelly’s Consumer Equity Protection Act, which would establish a task force to advise the Commission on ways to better protect members of protected classes from unfair and deceptive practices in the marketplace.¹⁰

Non-profit organizations should not be exempted from FTC oversight

The FTC has authority to police unfair and deceptive practices across vast swaths of the American marketplace. However, non-profit organizations are exempt from this oversight. NCL supports ending this exemption, as proposed by Congressman Rush in H.R. 3918.¹¹

As a non-profit organization ourselves, NCL well understands the unique value and richness that non-profits can provide to Americans. However, we also recognize that unscrupulous actors often hide behind the veil of being a “non-profit” to operate money-making schemes that enrich the schemes’ operators at the expense of the Americans they purport to serve. Unfortunately, when the FTC identifies such fraud it must execute costly and time-consuming two-step during litigation. It must prove not only that the entity it is investigating in engaged in an unfair or deceptive practice. It must also prove that the entity is not an actual non-profit organization, and thus exempt from Commission oversight. The non-profit exemption has thus

¹⁰ Congresswoman Robin Kelly. “Congresswoman Robin Kelly Introduces Bill to Protect Consumers from Discrimination.” Press release. July 16, 2021. Online: <https://robinkelly.house.gov/media-center/press-releases/congresswoman-robin-kelly-introduces-bill-to-protect-consumers-from>

¹¹ Online: <https://www.congress.gov/bill/117th-congress/house-bill/3918?q=%7B%22search%22%3A%5B%22hr+3918%22%5D%7D&s=1&r=1>

allowed organizations masquerading as charities or other non-profit entities greater freedom to defraud consumers of hundreds of millions of dollars.¹²

The FTC needs expertise to put it on par with Big Tech

Expecting the FTC to take an ever-larger role in policing unfair and deceptive practices in the technology industry with its current staff resources is akin to bringing a water gun to a thermonuclear war. In today's Big Tech-dominated economic environment, the Commission is being asked to consider extremely detailed regulation and enforcement in the ad tech, privacy, application store, and data security spaces with what can only be described as a skeleton crew of hard-working and talented technology experts. Because of this imbalance of resources and highly trained professionals, the U.S. is effectively ceding control of the global regulatory agenda regarding Big Tech to agencies in Europe and elsewhere.

To reassert America's leadership in overseeing and reining in the tech sector's excesses, such as its failure to adequately police its own platforms, the FTC must have highly qualified expertise on staff to do the detailed analyses necessary to produce effective enforcement and regulatory policies. That is why we are pleased to support Congressman McNerney's Federal Trade Commission Technologists Act of 2021 (H.R. 4530).¹³ This much needed bill would authorize the FTC to establish an Office of Technologists, staffed with more than two dozen experts on information technology, cybersecurity, computer science and related fields.

Conclusion

¹² See, e.g.; Federal Trade Commission. "FTC, 38 States, and D.C. Act to Shut Down Massive Charity Fraud Telefunding Operation." Press release. March 4, 2021. Online: <https://www.ftc.gov/news-events/press-releases/2021/03/ftc-38-states-dc-act-shut-down-massive-charity-fraud-telefunding>

¹³ Online: <https://www.congress.gov/bill/117th-congress/house-bill/4530/text?q=%7B%22search%22%3A%5B%22hr+4530%22%5D%7D&r=1&s=8>

Chairwoman Schakowsky, Chairman Pallone, Vice Chair Cardenas, ranking members McMorris Rogers and Bilirakis, and the members of the subcommittee, we thank you for your continuing work to protect consumers and for holding this hearing. On behalf of the National Consumers League, thank you for including the consumer perspective as you consider these important issues.