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6 FISCAL YEAR 2024

7 FEDERAL TRADE COMMISSION BUDGET

8 TUESDAY, APRIL 18, 2023

9 House of Representatives,

10 Subcommittee on Innovation, Data, and Commerce,

11 Committee on Energy and Commerce,

12 Washington, D.C.

13

14

15 The subcommittee met, pursuant to call, at 10:03 a.m. in
16 Room 2123, Rayburn House Office Building, Hon. Gus Bilirakis
17 [chairman of the subcommittee] presiding.

18

19

20 Present: Representatives Bilirakis, Bucshon, Walberg,
21 Duncan, Dunn, Lesko, Pence, Armstrong, Allen, Fulcher,
22 Harshbarger, Cammack, Rodgers (ex officio); Schakowsky,

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23 Castor, Dingell, Kelly, Blunt Rochester, Soto, Trahan,
24 Clarke, and Pallone (ex officio).

25

26 Also Present: Representatives Carter and Joyce.

27

28 Staff Present: Michael Cameron, Professional Staff
29 Member, Jessica Herron, Clerk; Tara Hupman, Chief Counsel;
30 Peter Kielty, General Counsel; Emily King, Member Services
31 Director; Tim Kurth, Chief Counsel; Brannon Rams,
32 Professional Staff Member; Lacey Strahm, Fellow; Teddy
33 Tanzer, Senior Counsel; Hannah Anton, Minority Policy
34 Analyst; Ian Barlow, Minority FTC Detailee; Waverly Gordon,
35 Minority Deputy Staff Director and General Counsel; Daniel
36 Greene, Minority Professional Staff Member; Tiffany
37 Guarascio, Minority Staff Director; Lisa Hone, Minority Chief
38 Counsel, Innovation, Data, and Commerce; Joe Orlando,
39 Minority Professional Staff Member; and C.J. Young, Minority
40 Deputy Communications Director.

41

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42 *Mr. Bilirakis. The subcommittee will come to order.

43 The chair recognizes himself for an opening statement.

44 Good morning, everybody. I want to thank the Chair of
45 the -- and the Commissioners of the FTC for being here today.
46 Thank you so much for being here.

47 The last time the FTC Commissioners were before this
48 Committee was for a single combined legislative and oversight
49 hearing in July of 2021. Given that, there will be no
50 shortage of questions today I'm sure, from both sides.

51 Sadly, we have no Republican commissioners on the panel
52 to provide balanced views on what the FTC is doing in its
53 current actions. That's regrettable. I'm sure you are not
54 surprised, of course, that I would lead into that.

55 But no FTC watcher can look at what has gone over over
56 the last two years at the Commission and conclude that things
57 are on the right track. The stretching of authorities and
58 resources has led some to question what authorities should be
59 stripped or whether it should even exist.

60 I am not in that camp. I wanted -- I want this to be
61 the most respected protector of our children, our seniors,
62 and, of course, the ultimate enforcer of our privacy and data
63 security. However, it has become clear that these things are

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64 on the wrong course as, again, the priorities are diverted
65 down a path of progressive pursuits that has led to career
66 employees leaving the institution. That's unacceptable.

67 So let me be clear, it is time that you focus on the
68 authority that Congress has provided you. You have a laundry
69 list of distractions from this mission with the many new
70 rulemakings and requests for information. 6(b) studies that
71 have begun and never concluded, all while continuing to lose
72 constantly in federal court.

73 This is not what success looks like when you are tasked
74 with protecting consumers from harms, especially at a time
75 when your Commission released findings showing consumers
76 reportedly lost almost nine billion dollars to scams in 2022,
77 a 30 percent increase from previous -- the previous year.
78 That includes over half a billion in dollars lost in my state
79 alone, the great State of Florida.

80 Maybe instead of carrying out President Biden's leftist
81 crusade, unsuccessfully, you could instead prioritize
82 resources we give you to help vulnerable Americans.

83 Sadly, we have raised these concerns before. I have
84 continually been troubled by the FTC's unwillingness to
85 provide substantive answers to questions from this committee

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86 regarding its decision-making process on this and other
87 matters. You attempt to block us out like you did to your
88 former Republican Commissioners, one of whom resigned in a
89 showing of contempt of your management and lack of due
90 process.

91 At the same time, you have asked for a budget increase.
92 How does one justify this when we hear how staff has been
93 diverted from mission critical functions and pulled from
94 bureaus to focus on merger reviews?

95 In fact, there has been such a mass exodus of career
96 staff at the agency, you seem to be squandering away the
97 resources that we currently give you in favor of pursuing
98 unprecedented progressive legal theories. I'm submitting for
99 the record an article from Bloomberg Law on March 16 titled,
100 "FTC Lawyers Leave at Fastest Rate in Years as Khan Sets New
101 Tone.' '

102 Without objection, so ordered.

103 [The information follows:]

104

105 *****COMMITTEE INSERT*****

106

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107 *Mr. Bilirakis. Perhaps the nowhere more -- it's
108 nowhere more evident that there's a drain on the consumer
109 protection mission is that, of course, the lengths the FTC
110 has gone to block Illumina's reacquisition of GRAIL. The
111 FTC, in an unprecedented move, overturned an earlier decision
112 by the agency's chief administrator law judge which allowed
113 the merger to move forward. This decision could literally
114 delay new and lifesaving screening technology from getting to
115 consumer -- to cancer patients. I am submitting for the
116 record an editorial regarding that decision from the Wall
117 Street Journal on April 3rd titled, "The FTC's Unholy
118 Grail."

119 Without objection, so ordered.

120 [The information follows:]

121

122 *****COMMITTEE INSERT*****

123

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124 *Mr. Bilirakis. In closing, I implore you to please get
125 back to what you can do best, which is to support and protect
126 consumers. That's the goal. That's the mission. To do
127 that, you must work within the constraints that Congress has
128 set, rather than abusing the authorities we have provided. I
129 look forward to our conversation and any follow up. Thank
130 you.

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

132

133 *****COMMITTEE INSERT*****

134

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135 *Mr. Bilirakis. And now I recognize the gentlelady from
136 Illinois, Ms. Schakowsky, for five minutes for her opening
137 statement, our ranking member.

138 *Ms. Schakowsky. Thank you so much, Mr. Chairman. I
139 want to warmly welcome the Federal Trade Commission Chair,
140 Lina Khan, and the Commissioners Slaughter and Bedoya to be
141 here. I think we're going to have a very different opinion
142 of what the FTC has accomplished and the direction that it is
143 going on in. We know that two of the Republicans, you
144 mentioned that there weren't any now, both retired before
145 their terms expired.

146 And we know that the Federal Trade Commission for a
147 hundred years has been protecting consumers, and that has not
148 stopped now. The agency has accomplished a number of very
149 important achievements. In the past two years -- in the past
150 two years alone, the FTC protected consumers in a number of
151 ways.

152 One, returned over 670 million dollars to defrauded
153 consumers and behind the -- let me see -- defrauded
154 Americans. Began four sectoral investigations, including
155 into Big Tech, which we know needs to happen. And every
156 dollar that the -- that is returned -- that the FTC was able

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157 to get as returned in dividends for American consumers.

158 In just one example, the FTC protected millions of app
159 users by -- I'm sorry -- by prohibiting the sharing of secret
160 -- of sensitive information. Last year, the FTC -- help me
161 out -- the -- last year, the FTC fined Epic Games 520 million
162 dollars for violating the children's privacy laws. We know
163 that the agency returned more than 64 million dollars to the
164 patients of pharmacy benefit managers and health companies.
165 So one after another we're seeing how the FTC is putting
166 money back into people's pockets.

167 Consumer privacy rights has been a big issue, of course,
168 for Americans, and the FTC has taken notice. Last year, the
169 agency proposed rules to protect consumer's privacy and
170 security. However, the FTC needs additional authorities and
171 resources in order to provide the consumers what they
172 actually need.

173 We know that, Mr. Chairman, you and I were able to pass
174 the INFORM Consumer Act, which absolutely was helpful in
175 making -- in giving the FTC a tool to ensure that trustworthy
176 online marketplaces are thriving. And I plan to reintroduce
177 legislation, the Online Consumer Protection Act, which will
178 give the FTC tools to hold tech companies and platforms

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179 accountable, and I'm also going to introduce the FTC
180 Whistleblower Act, which will protect whistleblowers.

181 And finally, the 21st Century FTC Act introduced by
182 Representative Castor and my FTC Autonomy Act will give the
183 FTC -- will give the Commission rulemaking and civil penalty
184 authorities.

185 So let me just end with this having reached my time. I
186 just want to say that Big Tech has been fighting back against
187 efforts to rein them in, and one of the ways that they've
188 been doing it is to target with the Chairwoman herself, which
189 I resent deeply. Chair Khan and the FTC is standing for
190 working families, for small businesses, and is holding the
191 corporate wrongdoers accountable. This is exactly what we
192 need, and I appreciate the work of the current Federal Trade
193 Commission.

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

195

196 *****COMMITTEE INSERT*****

197

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198 *Ms. Schakowsky. I yield back.

199 *Mr. Bilirakis. The gentlelady yields back. Thank you.

200 I know recognize The Chair of the full committee, Mrs.

201 Rodgers, for her five minutes. Thank you.

202 *The Chair. Good morning.

203 *Mr. Bilirakis. Good morning.

204 *The Chair. I'd like to start by welcoming the

205 Commissioners. As you all know, the FTC has historically

206 been a very bipartisan agency for solutions around consumer

207 protection, data privacy, and antitrust law. Unfortunately,

208 this tradition is currently under attack.

209 Chair Khan, under your tenure as chair, the integrity

210 and effectiveness of this independent agency has been

211 repeatedly questioned. You've suffered many losses in court

212 at all federal levels of the judiciary branch. You've

213 drastically reduced transparency and accountability by

214 cutting out key voices at the agency.

215 Both Republican Commissioners have resigned during your

216 tenure. Senior staff have quit in record numbers with

217 reports in the New York Post describing you as abusive and a

218 tyrant. There's been a 34 percent decline in employee

219 confidence in senior leadership's respect for them and

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220 motivation at work. Former Commissioner Christine Wilson
221 cited your disregard for the law, for the rule of law, as one
222 of the reasons for her resignation.

223 Time and time again you prioritized a personal and
224 political agenda over the integrity of the FTC and the
225 interest of Americans. Despite numerous letters of concern
226 from this committee, you've continued to ignore these in a
227 dangerous and misguided consolidation of power.

228 When you appeared before us in July of 2021, I asked
229 about your decision to remove "without unduly burdening
230 legitimate business activity" from the FTC Mission
231 Statement. It was a longstanding bipartisan tradition at the
232 FTC to include this in the mission to protect Americans and
233 businesses. Eliminating this guardrail, which prevents
234 government overreach, was even more startling given the
235 timing.

236 People across the country were working to reopen their
237 businesses after the COVID-19 lockdown. This meant bringing
238 their employees back to work so that they could make a living
239 and provide for their families. Instead, they faced
240 intimidation from the federal government. This was not a
241 one-off situation. The FTC is still sending hundreds of

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242 penalty notice letters to businesses even when they've done
243 nothing wrong. This violation of due process will not be
244 tolerated.

245 Regarding the FTC's budget request, the concerns raised
246 by current and former employees at your agency do not
247 reassure us that you'll put the American people first.
248 Leadership matters. Before I even entertain any additional
249 funds or authority for the FTC, first you need to convince us
250 that the mission of protecting Americans isn't taking a
251 backseat to the Biden Administration's radical agenda.

252 We want you to be the preeminent data protection agency
253 in the world, and that must be your focus, at the direction
254 of Congress. And given these abuses of power, what is
255 clearly needed before Congress considers any new authorities
256 or funding are reforms, more guardrails and increased
257 transparency to ensure that you're accountable to the
258 American people.

259 This includes for how the FTC will protect the privacy
260 and data security of the American people. The single best
261 way we can protect Americans in today's digital ecosystem is
262 a national standard. In August last year, this committee
263 voted overwhelmingly to advance the American Data Privacy and

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264 Protection Act. Shortly after, your Commission voted on
265 partisan lines to act unilaterally on your own rules.

266 I want to be clear. Our goal continues to be for
267 Congress to enact a national standard with the expectation
268 the FTC, with guardrails, will play a critical role in this
269 effort. Establishing a national data privacy and data
270 security standard is bigger and more important than any one
271 person or any single agency to act unilaterally and risk
272 losing people's trust. More than 80 percent of Americans say
273 they're looking for Congress to act. It is a top priority
274 for their own privacy, for their kid's privacy, and to rein
275 in Big Tech.

276 We, the people's representatives, take this
277 responsibility seriously because we're accountable to them.
278 We're accountable to the people, and we have no intention of
279 losing sight of that.

280 I want to thank former Commissioners Phillips and Wilson
281 for their service to the country and the American people.
282 I'm saddened that they're no longer at the Commission. Chair
283 Khan, Commissioner Slaughter and Bedoya, thank you for being
284 with us here today. I look forward to your testimony.

285 [The prepared statement of The Chair follows:]

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286

287 *****COMMITTEE INSERT*****

288

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289 *The Chair. And I yield back.

290 *Mr. Bilirakis. The gentlelady yields back. And now I
291 recognize the ranking member of the full committee for his
292 five minutes, opening statement, the gentleman from New
293 Jersey. You're recognized, sir.

294 *Mr. Pallone. Thank you, Mr. Chair. Let me start by
295 expressing my support for Chair Khan. I don't agree with
296 Chair Rodgers' criticism of her. The problem is that the GOP
297 doesn't like the FTC enforcement role. They would simply gut
298 the FTC at the expense of consumers.

299 The Federal Trade Commission has one of the broadest
300 purviews of any federal agency: fighting deceptive and
301 unfair business practices and anti-competitive conduct across
302 the entire economy. Managing this portfolio with less than
303 1,400 employees is no small feat. And in order to ensure the
304 FTC can continue its important work, Congress must approve
305 its requested budget to further support much needed staffing.

306 It's clear the Republicans don't like when the -- what
307 the FTC does, they don't seek to protect consumers. Whenever
308 the Republicans are in charge in Congress or at the
309 administration level, they seek to cut the legs of the FTC.
310 And that's unfortunate because the FTC brings enforcement

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311 actions to prevent companies from misusing consumer's
312 personal information, failing to properly protect consumer
313 data, and profiting from deceptive advertising and other
314 telemarketing schemes. This important work comes at a time
315 when the FTC is facing coordinated attacks from Big Tech
316 aimed at evading the FTC's challenges to its business model.
317 For years, Big Tech has been putting profits ahead of
318 consumer privacy, and the opportunity to maximize advertising
319 revenue ahead of our children's safety and well-being.

320 The FTC is also committed to protecting seniors,
321 veterans, communities of color, and non-English speakers who
322 have all historically been targets for fraudsters and
323 deceptive businesses.

324 The FTC also protects consumers during some of the most
325 important times of their lives, often when they are at their
326 most vulnerable. The Funeral Rule protects grieving family
327 members from predatory pricing. The Mortgage Assistance
328 Relief Rule protects consumers who are seeking services to
329 avoid foreclosure. And the Used Car Rule requires that used
330 car dealers display essential information on the window of
331 every car they're selling.

332 The FTC does all of this with fewer employees than it

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333 had 45 years ago when the American economy was smaller and
334 simpler. Back then, a deceptive advertising case often
335 focused on a single print or TV ad. Today, the FTC needs
336 even more resources in a complex economy where targeted
337 advertising presents consumers with different ads and prices
338 based on personal characteristics.

339 In addition to making sure the FTC is properly staffed,
340 we should restore the FTC's full legal authority. Last
341 Congress, this subcommittee led legislation that passed the
342 House to restore the FTC's authority to go to court to seek
343 to have money returned to consumers. Unfortunately, that
344 legislation never passed the Senate.

345 We must also resume our historic work on bipartisan,
346 comprehensive privacy legislation, as Chair Rodgers
347 mentioned, which could help the FTC give consumers
348 substantive data privacy protections beyond the current
349 notice and consent regime.

350 And finally, given the frequency of Big Tech's repeat
351 violations, we should also consider providing the FTC with
352 additional tools to fight repeat corporate offenders. Just
353 months after Twitter's second settlement with the FTC for
354 privacy violations, media reporting suggested that Twitter

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355 may be violating that settlement by having engineers, rather
356 than high-level officers, certify compliance and privacy
357 controls.

358 And Twitter isn't the only Big Tech repeat offender. In
359 2019, the FTC obtained a five billion dollar civil penalty
360 from Facebook for violating a 2012 Consent Order governing
361 Facebook's privacy practices. The FTC has also brought five
362 consumer protection enforcement actions against Google since
363 2011.

364 Now based on Big Tech's past performance, we should not
365 do anything to undermine the FTC's enforcement against Big
366 Tech. I am concerned by false claims that the FTC's Twitter
367 compliance investigation is partisan. In truth, it would be
368 a dereliction of duty if the FTC did not thoroughly
369 investigate Twitter's compliance.

370 I also urge skepticism about coordinated partisan calls
371 for Chair Khan's recusal based on her prior academic views.
372 We shouldn't forget that this was well known by the 69
373 Senators, including 20 Republicans, who voted to confirm her
374 and lauded her for being tough on social media platforms and
375 other Big Tech companies.

376 Unsurprisingly, within weeks of Chair Khan's

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377 confirmation, Amazon and Facebook campaigned to undermine her
378 enforcement efforts, in part by calling for her recusal. In
379 October, a federal judge rejected such a motion, and
380 independently of Chair Khan, the Commission did the same in
381 February.

382 So I look forward to hearing from the Chair and the
383 Commissioners today, but before yielding, I want to recognize
384 that Commission Slaughter has joined us wearing a mask
385 because she was ill earlier this week. The Republicans
386 pushed a rule that prevents witnesses from appearing
387 remotely. Rather than taking advantage of the technological
388 tools that allows us to engage as Americans wherever they
389 are, this rule requires her to choose between appearing in
390 person or not appearing at all. I think this rule should be
391 reconsidered because it limits participation by witnesses.

392 [The prepared statement of Mr. Pallone follows:]

393

394 *****COMMITTEE INSERT*****

395

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396 *Mr. Pallone. And with that, I yield back, Mr.

397 Chairman.

398 *Mr. Bilirakis. The gentleman yields back. So we'll
399 get started with the witnesses now for their testimony. Our
400 first witness is the Honorable Lina Khan, Chairman of the
401 FTC. You're recognized for five minutes.

402

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403 STATEMENT OF THE HON. LINA KHAN, CHAIRMAN, FEDERAL TRADE
404 COMMISSION; THE HON. REBECCA SLAUGHTER, COMMISSIONER, FEDERAL
405 TRADE COMMISSION; AND THE HON. ALVARO BEDOYA, COMMISSIONER,
406 FEDERAL TRADE COMMISSION

407

408 STATEMENT OF THE HON. LINA KHAN

409

410 *Ms. Khan. Thank you. Chairman Bilirakis, Ranking
411 Member Schakowsky, and members of the subcommittee, thank you
412 for inviting me to testify. It's an honor to be here with
413 you alongside my colleagues, Commissioners Slaughter and
414 Bedoya.

415 I'd like to take a few minutes to share some of the
416 Commission's accomplishments during this last year. None of
417 this work would have been possible without the extraordinary
418 efforts of the FTC staff who day after day fight for the
419 American people, even when it means taking on some of the
420 most powerful corporations in our economy. Although this
421 oral testimony is mine alone, I know I speak for all of us
422 when I say how lucky we are to work with the talented,
423 dedicated professionals of the Federal Trade Commission.

424 The FTC is firing on all cylinders to fully execute on

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425 our mandate to promote fair competition and protect Americans
426 from unfair or deceptive practices. We are re-doubling our
427 efforts in traditional areas of enforcement like protecting
428 American's privacy and combatting fraud while also activating
429 additional authorities that Congress has given us. In the
430 last year alone, we've broken ground by bringing actions in a
431 number of areas, including our first action under the Opioid
432 Addiction Recovery Fraud Prevention Act, our first action
433 under the Health Breach Notification Rule, our first action
434 under the Military Lending Act, and our first action under
435 the Made in USA Rule.

436 In the meantime, we've also been racking up record
437 monetary judgments, including the largest ever judgment to
438 protect kid's privacy, the largest monetary judgment in a
439 fair lending case, and the largest administrative judgment
440 ever.

441 Privacy and data security remain a major focus for the
442 FTC, and I applaud this committee's continued efforts to
443 enact comprehensive federal privacy legislation. For our
444 part, Commission staff have brought critical actions to
445 protect American's data, including kid's data and sensitive
446 information like health data.

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447 We brought an action against Fortnite, the maker of Epic
448 Games, for undermining children's privacy. We secured a
449 record-breaking fine for the company's violation of the
450 Children's Online Privacy Protection Act while also securing
451 important changes in the company's privacy practices. We
452 also published a policy statement to put market participants
453 on notice that we will vigorously protect children's privacy
454 in the educational technology world, and we have followed up
455 through our enforcement work, including through a recent
456 action against Chegg, an Ed Tech company.

457 The Commission also recently brought two seminal health
458 privacy actions against BetterHelp and GoodRx, two online
459 healthcare providers that we found had committed to keeping
460 user's sensitive health information private but ended up
461 making it available for firms to use for advertising. In the
462 settlement resolving these actions, staff negotiated outright
463 bans prohibiting these companies from disclosing health data
464 to third parties for advertising.

465 Finally, Commission staff are currently litigating a
466 privacy case against Kochava, a location data broker that was
467 selling user's sensitive location data, including information
468 that could be used to identify whether people were going to

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469 addiction facilities, visiting reproductive health clinics,
470 or going to religious services.

471 Another major effort at the Commission this year has
472 been stopping the scourge of junk fees or the unwanted
473 charges that can drain American's pocketbooks. The FTC
474 brought enforcement actions against companies that trick
475 consumers into spending money that they didn't intend or want
476 to spend, including through manipulative online interfaces.
477 We also sued car dealers for sneaking on junk fees for made-
478 up or unwanted services.

479 And we brought enforcement actions against companies
480 that have trapped consumers into renewing payment plans
481 through making cancellation intentionally difficult. Our
482 hundred million dollar settlement with the internet phone
483 provider Vonage, which we claim was creating obstacles for
484 consumers and small businesses trying to cancel their
485 services, is a key example of this work.

486 Beyond these enforcement actions, the Commission has
487 also begun several rulemaking proceedings to address these --
488 this conduct more systematically. This does include through
489 seeking comment on proposed junk fees rulemaking and
490 proposing our Click to Cancel rule which would require that

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491 companies make it as easy to cancel a subscription as they do
492 to sign up for one.

493 The FTC has also been working to preserve the integrity
494 of the Made in USA label by halting companies from making
495 false Made in USA claims. In 2021, the Commission finalized
496 a rule that prohibits misuse of the Made in America label
497 triggering stiff civil penalties, injunctive relief, and
498 other remedies for those who violate it. The Commission is
499 already taking action to enforce this rule, and these actions
500 help protect honest businesses and true domestic
501 manufacturers while ensuring the consumers can trust the Made
502 in USA label.

503 Consumers and independent businesses have also
504 benefitted from the Commission staff working to defend
505 American's right to repair. The FTC has targeted unlawful
506 repair restrictions which could make consumer products more
507 difficult to fix and can close off the market to independent
508 repair shops. Since issuing our 2021 policy statement
509 committing the agency to this work, we've brought three major
510 actions against companies for imposing unlawful repair
511 restrictions and required them to eliminate restrictive
512 warranty terms.

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513 Our fraud enforcement efforts also remain a critical
514 part of our work. Over the last year, we've been
515 particularly focused on fraud that harms veterans, service
516 members, and older Americans. For example, our first action
517 under the Military Lending Act, which we brought together
518 with 18 states, required a national retailer to pay over 10
519 million dollars in refunds for cheating military families
520 with illegal financing and sale tactics.

521 We've also been very active in preventing and
522 remediating fraud against elder Americans, and this remains a
523 core part of our work. Many of these successes reflect years
524 or work by Commission staff and I'm honored to call them
525 colleagues.

526 Thank you so much for the opportunity to testify, and I
527 look forward to your questions.

528 [The prepared statement of the FTC follows:]

529

530 *****COMMITTEE INSERT*****

531

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532 *Mr. Bilirakis. I thank the Chair.

533 Our next witness is the Honorable Rebecca Slaughter,

534 Commissioner of the FTC, and we appreciate you appearing

535 today, and you're recognized for five minutes.

536

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537 STATEMENT OF THE HON. REBECCA SLAUGHTER

538

539 *Ms. Slaughter. Thank you, Chairman Bilirakis, Ranking
540 Member Schakowsky, Chair McMorris Rodgers, and Ranking Member
541 Pallone, and members of the subcommittee. I'm grateful for
542 your invitation to testify today about the vital work of the
543 Federal Trade Commission.

544 As you know, I'm somewhat under the weather, but I'm
545 committed to being here, if I could, because of the value I
546 place on the oversight work of this committee.

547 The two themes I will emphasize today are resources and
548 authorities. Our talented staff have extremely full plates
549 policing everything from dark patterns and data abuses in
550 novel digital markets to old school deceptive advertising and
551 hardcore fraud across nearly the entire economy.

552 I meet regularly with our staff, and the top concern I
553 hear from them is that we lack adequate resources to do the
554 job. This has been true in each and every year of my
555 service, especially as we take on the biggest and richest
556 firms on behalf of the American people. One salient data
557 point. We had 50 percent more employees at the beginning of
558 the Reagan Administration than we do today.

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559 But today, I have a new message about FTC resources.
560 Thank you. Thank you, Congress, for investing in the
561 Commission's work, enabling us to retain expert staff,
562 conduct complex investigations, deepen our market expertise,
563 and even have a more fair shot in litigation against some of
564 the wealthiest companies in the world. The appropriation
565 authorized at the end of last year gave this Commission a
566 significant budget increase for which we are deeply grateful.
567 This wise investment is a crucial downpayment on empowering
568 the FTC to police modern markets, but yes, more is needed.

569 Just consider that our division of privacy and identity
570 protection has around 50 staff; whereas, for example, the
571 information commissioner's office in the UK boasts a staff of
572 nearly 1,000. That's about 20 times as many staff in a
573 nation with about a fifth of our population. So thank you
574 and please continue to invest in the FTC. Americans deserve
575 no less.

576 In addition to more resources, more robust authorities
577 are necessary for the FTC to effectively protect American
578 consumers. I will touch on two that are well-known to this
579 subcommittee. The first is the opportunity before you to
580 pass a comprehensive national privacy law. Thank you for

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581 your hard work on this project, which included passing a bill
582 out of the full committee on a bipartisan basis during the
583 last Congress. I continue to believe that the passage of
584 such a bill represents the best possible path for protecting
585 Americans from data abuses.

586 As you know, last year we launched an advanced notice of
587 proposed rulemaking on commercial surveillance and lax data
588 security under Section 18 of the FTC Act. The record we
589 develop in that process may allow us to promulgate rules to
590 address prevalent practices that violate the FTC Act. This
591 is more than we've been able to do through one-off
592 enforcement actions, but substantially less than Congress
593 could do with a new bill.

594 I heartily recommend to you and your staff the large
595 comment record our rulemaking has already developed as an
596 important historic purpose in the privacy field. And I know
597 that as our work continues, we stand ready and willing to
598 support your efforts to enact a comprehensive national
599 privacy law.

600 Even as we look forward to the day when Americans are
601 better protected from the novel harms of the 21st Century's
602 data-driven economy, we must not lose sight of the urgent

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603 need to restore one of the 20th Century's best tools for
604 protecting consumers, Section 13(b) of the FTC Act. As you
605 know, for more than 40 years under bipartisan administrations
606 and with the blessings of eight circuit courts, the FTC
607 brought actions in federal court to return money to consumers
608 from whom it was unlawfully taken.

609 Unfortunately, two years ago the Supreme Court decided
610 in *AMG Capital Management*, that Section 13(b) does not
611 authorize equitable monetary relief. I am grateful to this
612 subcommittee for your urgent work to fix Section 13(b) to
613 make explicit that courts can order law violators to return
614 the money they wrongfully took.

615 While Congress continues to work on this issue, the
616 Commission is using every available tool to deliver justice
617 to harmed consumers. We are partnering wherever possible
618 with state enforcers who have redress authority. We are
619 exploring new rulemakings which can enable consumer redress,
620 and we are bringing actions under Section 19 which allows
621 limited redress.

622 I applaud these heroic efforts of our aggressive and
623 creative staff and terrific enforcement partners, but make no
624 mistake, it is not enough. We need a Section 13(b) fix, so I

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625 implore you to keep at it. Your constituents deserve to be
626 made whole when they get ripped off.

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

628 [The prepared statement of the FTC follows:]

629

630 *****COMMITTEE INSERT*****

631

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632 *Mr. Bilirakis. I thank the Commissioner.

633 And now our final witness is the Honorable Alvaro

634 Bedoya, again a commissioner of the FTC. You're recognized,

635 sir, for five minutes.

636

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637 STATEMENT OF THE HON. ALVARO BEDOYA

638

639 *Mr. Bedoya. Thank you. Mr. Chairman, Ranking Member
640 Schakowsky, Chair Rodgers, Ranking Member Pallone, members of
641 the subcommittee, good morning. I'm really grateful for the
642 chance to appear before you, particularly alongside my
643 colleagues, Chair Khan and Commissioner Slaughter.

644 I want to echo first of all their gratitude to you for
645 your support of our mission, and I want to echo their
646 gratitude for our staff. All that work you're going to hear
647 about today, that's staff work, career staff, nonpartisan
648 staff working overtime despite some pretty substantial
649 ongoing resource constraints to protect the American public.

650 I'd love to focus on one priority that is front of mind
651 for parents across the country, and that's the teen mental
652 health crisis, and specifically the role of social media in
653 that crisis. This is a bipartisan priority for members of
654 the subcommittee and the full committee. You are leading
655 many of the key efforts to address it, and so I want to tell
656 you about the work we're doing at the Commission on that
657 front.

658 The first thing we're doing is digging deep into the

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659 research. Just this last week, staff and I met with leaders
660 at the National Institute of Health to discuss that research,
661 the existing findings. We've also met with the top
662 psychologists in the field to learn from them. We've met
663 with leaders at the American Psychological Association,
664 American Academy of Pediatrics. And here is what I've
665 learned. There is evidence that some uses of social media
666 do, in fact, hurt certain groups of children and teenagers.
667 Now, yes, there's important nuances and more targeted
668 research is necessary, but this is not [indiscernible] panic.
669 There is a there there.

670 The second thing we're doing is building our expert
671 capacity on this issue. One of the many reasons I was proud
672 to support the bipartisan comprehensive privacy bill put
673 forward by your committee, Mr. Chairman, was because it
674 called on the Commission to create a division, focused on
675 youth privacy and marketing, and also directed the Commission
676 to hire psychologists to study precisely this issue. And I
677 want to get that done now. And so I'm pleased to share that
678 it is now part of the Commission's strategic plan to explore
679 hiring psychologists on staff, and we are actively working on
680 doing that.

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681 I've also started conversations with regulators in the
682 United Kingdom, and the Netherlands, and elsewhere to
683 understand how they are enforcing their own laws in the area
684 and how they use psychologists in their own work.

685 Third, we are bringing cases against companies we allege
686 are exacerbating this crisis. Research has shown that one of
687 the drivers of the teen mental health crisis online is the
688 harassment and verbal abuse they experience online. Chair
689 Khan mentioned the Commission's landmark case against the
690 makers of Fortnite, and in that case we allege that Fortnite
691 preset its privacy settings in a way that allowed adults to
692 harass kids and teens. And our actions shut that down and
693 sent a message, a clear message in my view, to all companies
694 that that is not okay.

695 If the members of the committee and subcommittee are
696 able to pass a comprehensive privacy bill which includes
697 additional protections for kids and teens, that will
698 strengthen our hand and we will use every bit of that
699 authority. In the meantime, I'll just say that I personally
700 believe that we do have substantial authority to sue
701 companies who are designing their products in a way that
702 harms kids and teens' mental health.

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703 Until that day, I want to say unequivocally to any
704 company that makes money by tracking where people go to the
705 doctor, where they go for counseling, the medicine they take,
706 or for that matter where they worship, or where they go for
707 addiction treatment, the Commission is watching, and has
708 brought several recent actions against companies that we
709 alleged broke the law by making money off of this sensitive
710 data.

711 That's most of what I wanted to share. I'll end on
712 another note. I was just sharing with some of the members of
713 the subcommittee before we started that we spend a lot of
714 time with our family in Louisiana, and so one thing I've
715 tried to as a commissioner is prioritize getting out of the
716 beltway and to visit small business leaders in rural America.
717 In the last year, I met with grocers in South Dakota, in
718 Utah, pharmacists in West Virginia, corn growers and
719 cattlemen in Iowa.

720 I am personally profoundly worried about what's
721 happening to grocery, pharmacy, and agriculture in small-town
722 America, and I'm trying to do everything I can to understand
723 and to help. That's why I was proud to support our study
724 into pharmacy benefit managers, our recent action against

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725 pesticide manufacturers, and our recent right to repair
726 cases. And that's why I feel strongly that we should
727 reinitiate enforcement of laws intended to provide a level
728 playing field for small-town retailers.

729 Thank you for the opportunity to appear before you
730 today. I'm looking forward to your questions and -- on these
731 or any other subjects. Thank you, Mr. Chairman.

732 [The prepared statement of the FTC follows:]

733

734 *****COMMITTEE INSERT*****

735

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736 *Mr. Bilirakis. Thanks so much. Now I'll begin the
737 questioning, and I recognize myself for five minutes.

738 Chair Khan, we have been troubled by the redirection of
739 FTC resources away from consumer protection, such as from
740 consumer -- again, such as a focus on fraud and scams to
741 competition rulemakings, merger reviews, and suits that do
742 not appear to be very successful. The statistics back this
743 up as FTC data shows U.S. consumers have suffered billions of
744 dollars in losses due to fraud.

745 By your own numbers, Madam Chair, a staggering 8.8
746 billion dollars in losses last year, which is 30 percent --
747 it's a 30 percent increase over the previous year. The
748 resources for your policy agenda are eating up valuable
749 career staff time and energy that could otherwise be used on
750 protecting consumers.

751 Why are -- the question is why are you wasting away the
752 resources we give you with new rulemakings and will you
753 instead commit to work with your colleagues, and hopefully
754 your future Republican colleagues, to move away from your
755 current direction of progressive legal theories and focus
756 back on the fraud program at the FTC in bringing down this
757 sad statistic? So that's the first question, please.

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758 *Ms. Khan. Chairman, addressing and taking on fraud
759 remains a core part of the FTC's work. Since I joined the
760 Commission, we've brought over 60 law enforcement actions
761 targeting scams and frauds across the economy, be it pyramid
762 schemes, healthcare fraud, Made in USA fraud. This remains a
763 core part of our work.

764 As you know, given the setback that we received in the
765 Supreme Court, it is much more difficult for us to return
766 money back to consumers when they have been defrauded. Our
767 staff has been working heroically to activate other
768 authorities to make sure that we have hooks to get money back
769 in people's pockets. But there's no doubt that that was a
770 big setback in the courts, but we continue to focus on our
771 frauds -- addressing frauds and combatting frauds, and this
772 is going to continue to be a part of our work.

773 One change that we've also pursued is to be able to --

774 *Mr. Bilirakis. Well, thank you for very much. Let me
775 go ahead and move on because you mentioned the 13(b) issue.
776 We both believe there should be a fix to ensure that
777 defrauded consumers should get money returned to them.
778 Obviously, we both agree on that. And you had mentioned the
779 Supreme Court case.

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780 After all, I led the only bipartisan effort in the
781 committee process last Congress to provide FTC with the
782 authority under 13(b) to seek monetary relief. I know you
783 remember that. This effort, though, was ultimately rejected
784 by the majority at the time and the rules committee, surely
785 at the behest of Speaker Pelosi.

786 Based on how the agency has abused other existing
787 statutory authorities, there's no doubt we must provide
788 crystal clear guidelines on how the FTC pursues monetary
789 relief in its consumer protection cases. That kind of
790 clarity will go a long way in furthering the 13(b) dialogue.

791 So the question is will you commit to pursuing a
792 sensible policy here that works in unison with standards of
793 your other statutes and the history of cases previously
794 chairs have pursued? Yes or no, please.

795 *Ms. Khan. I would be thrilled to work with Congress to
796 get a fix to 13(b), and I know our staffs have been working
797 with your teams.

798 *Mr. Bilirakis. Okay. Will you commit to working with
799 the Bureau of Economics to issue a monetary policy statement
800 to shed more light on how the FTC calculates monetary relief
801 and civil penalties in consumer protection matters? Yes or

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802 no, please.

803 *Ms. Khan. There is a set of legal considerations that
804 we take into account.

805 *Mr. Bilirakis. Can you please answer yes or no?

806 *Ms. Khan. We're happy to provide more information
807 about how we go about making those calculations. This is
808 anchored in law. We have to follow the law when we're making
809 these calculations.

810 *Mr. Bilirakis. Well, I want to work with you on this,
811 but we've got to get it done. Will you commit to ensuring
812 procedural due process with this policy and with all other
813 enforcement actions your agency takes? Yes or no, please.

814 *Ms. Khan. Of course, due process is critical, and the
815 FTC vigorously follows due process.

816 *Mr. Bilirakis. All right, let me go ahead and answer -
817 - ask you one more question since I have the time. Chair
818 Khan, last year the Office of Inspector General conducted an
819 audit of the FTC's unpaid consultant and expert program.
820 Unfortunately -- and I know you're aware of this and the
821 entire Commission is. Unfortunately, it found that there
822 were limited controls in place to mitigate the risk involved
823 in the program and that these unpaid academics were doing

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824 essential government functions which should only be reserved
825 for federal employees under law. I think you know that, too.

826 OIG put three significant recommendations in its report,
827 all of which are still considered open. Why is that, and
828 what are you doing to address the independent watchdog's
829 concerns? Have you addressed this? Are you in the process
830 of addressing this? Please, because we need an answer.

831 *Ms. Khan. Yes, Congressman, we've addressed all of the
832 process improvements that the IG had identified. As you
833 know, we have -- we followed longstanding government
834 authorities to bring on outside experts to pursue critical
835 work, including work relating to AI, work relating to
836 children's privacy. These experts are a critical part of
837 being able to make sure we have the technical expertise in
838 key areas.

839 *Mr. Bilirakis. Well, I would like for you to -- I'd
840 like additional questioning with regard to that because,
841 again, as you know, not being federal employees, they don't
842 really have the right to do -- I think they're overreaching.
843 So we do need to address this issue even more, and I
844 understand it's considered open.

845 So let me go ahead and conclude. I'll yield back, and

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846 I'll recognize the ranking member of the subcommittee, Ms.
847 Schakowsky, for her five minutes, please.

848 *Ms. Schakowsky. Thank you so much. I wanted to ask
849 Chair Khan this question. The issue of privacy --
850 comprehensive privacy legislation has come up and you do have
851 some -- have engaged in some rulemaking on that. What I
852 wanted to ask you, why do you think it's important, despite
853 the role of the FTC, for us to have comprehensive privacy
854 legislation, and how would it fit with what the FTC does to
855 protect consumer privacy?

856 *Ms. Khan. There's no question that Congress passing
857 strong, comprehensive federal privacy legislation is the best
858 option here. We, through our work, see day after day that
859 the cost of privacy violations are real, they're serious,
860 they lead to stalking, stigmatization, people's sensitive
861 information being exposed, huge hacks. And so action in this
862 area is critical.

863 Of course, what that legislation ended up looking like
864 the details would matter in terms of our subsequent work, but
865 we would -- we stand ready to enforce any privacy law that
866 Congress passes and would be happy to continue working with
867 you all on that.

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868 *Ms. Schakowsky. Thank you.

869 Commissioner Slaughter, you were talking about 13(b),
870 and you heard from the chair that we are very concerned about
871 the fact that now consumers can't be made whole in any way.
872 Do you have any estimate of how much money would actually be
873 returned to consumers, I don't know, with any particular
874 period that you could cite, if 13(b) did not prevent that
875 from happening?

876 *Ms. Slaughter. Thank you. I can give you one data
877 point, which is that in the 10 years prior to AMG, the
878 Commission returned about 10 billion dollars to consumers in
879 redress. It's very difficult to calculate what we are
880 missing now, in part because of our creative efforts to fill
881 the gap, and in part because in addition to making it harder
882 to get money back to consumers, the lack of 13(b) authority
883 actually makes it harder for us to get companies to enter
884 into settlement because there isn't a monetary cost to them
885 for violating the law if they're only subject to injunctive
886 relief.

887 So it's hard to make a prospective number, but the data
888 from the past indicates that we were able to return many,
889 many, many times the agency's annual budget to consumers

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890 every year.

891 *Ms. Schakowsky. 10 billion dollars that now
892 fraudsters, you know, that -- that there's no help for
893 consumers. This is really, I think, an urgent situation.

894 I also wanted to ask about FTC whistleblowers. Any one
895 of you could answer. I am interested in passing legislation
896 that would protect whistleblowers. I don't know if --

897 *Ms. Khan. I'm happy to --

898 *Ms. Schakowsky. -- Mr. Bedoya would want to or
899 Chairman Khan.

900 *Ms. Khan. I'll just say briefly, whistleblowers play
901 an incredibly important function, shedding light on
902 wrongdoing. Oftentimes, at great personal expense. And so
903 giving the FTC the ability to grant protections to
904 whistleblowers would be really important.

905 *Ms. Schakowsky. Also, Chair Khan, can you describe
906 some of the recent FTC privacy cases and protections that
907 you've been involved in?

908 *Ms. Khan. Yeah, I'd be happy to. So one of the key
909 areas of focus for us has been protecting American's privacy
910 when it comes to sensitive information. That can include
911 sensitive health information, it can include sensitive

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912 geolocation information. One of the companies that we sued
913 last year was Kochava, a data broker that was allowing others
914 to buy information that identified in granular detail where
915 people were going, whether Americans were going to addiction
916 facilities, whether they were going to church, and this was
917 information that was pretty easily available for sale. So we
918 took a law enforcement action; we're still litigating that
919 case, basically alleging that that was an unfair practice.

920 We've also recently brought actions against two
921 healthcare companies, GoodRx and BetterHelp. These were
922 companies that collected sensitive health information from
923 consumers on the pretext of using it for providing health-
924 related services but then ended up turning around and
925 actually making it available for advertising, and effectively
926 making it easy to monetize that sensitive information. So
927 that was another area where we've been bringing actions, and
928 we remain devoted to fully protecting American's privacy.

929 *Ms. Schakowsky. Thank you so much. And my time is up,
930 I yield back.

931 *Mr. Bilirakis. I thank the ranking member, and now I
932 recognize the chairwoman of the full committee, Ms. Rodgers,
933 for her five minutes.

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934 *The Chair. Thank you, Mr. Chair and Chair Khan. As
935 you know, Ranking Member Pallone and I have been working on
936 privacy data security legislation. Last year I expressed to
937 you my concerns on your so-called commercial surveillance
938 rulemaking on data privacy. It was announced just weeks
939 after this committee had passed the bill 53 to 2.

940 I wanted to ask, once we've enacted our legislation, it
941 is a top priority for this Congress, do we have your
942 commitment that you will suspend this proceeding and focus
943 FTC's resources on implementing the laws enacted as well as
944 stick to the narrow contours of the rulemaking authority that
945 we prescribe? Yes or no.

946 *Ms. Khan. Congresswoman, absolutely.

947 *The Chair. Thank you.

948 *Ms. Khan. We stand ready to enforce any privacy
949 legislation that Congress passes.

950 *The Chair. Thank you.

951 Commissioner Slaughter and Bedoya, do we -- do you
952 agree? Yes or no.

953 *Ms. Slaughter. Yes.

954 *The Chair. Thank you.

955 *Mr. Bedoya. Yes.

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956 *The Chair. Thank you.

957 Chair Khan, I'd like to pivot to ethics, which are
958 essential to maintaining public trust in government officials
959 like yourself. Do you recall the senate questionnaire you
960 filled out for the position you're in now? Yes or no.

961 *Ms. Khan. Yes.

962 *The Chair. Within that document, you recall a
963 referendum -- or a reference to a commitment on seeking
964 advice from the FTC's "Designated Agency Ethics Official
965 known as DAEO," yes or no?

966 *Ms. Khan. Yes.

967 *The Chair. Do you recall the nature of what that
968 commitment would be?

969 *Ms. Khan. Sorry, could you repeat --

970 *The Chair. Do you recall the nature of what that
971 commitment would be?

972 *Ms. Khan. Consulting with the ethics official, yes.

973 *The Chair. Can you confirm that it relates to
974 conflicts of interest?

975 *Ms. Khan. Yes.

976 *The Chair. Are there any instances where you've not
977 followed DAEO's advice? Yes or no, and could you list any?

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978 *Ms. Khan. No, I've -- in instances where companies
979 like Facebook or Amazon petition for my recusal, I have
980 consulted with the DAEO and have taken actions that are
981 consistent with the legal statements that the DAEO has made.

982 *The Chair. Thank you.

983 Commissioner Slaughter, and I'd like to -- you to
984 respond each to these questions as well, Commissioner Bedoya.
985 Would you have concerns with an FTC commissioner not
986 following the recommendations of DAEO? Yes or no.

987 *Ms. Slaughter. Thank you, Congresswoman. I think our
988 job in all instances is to consult with our expert staff,
989 including the DAEO, study the underlying law, the underlying
990 ethics rules, and come to our own conclusions.

991 *The Chair. Would you have concerns? I guess my --
992 going back to my question, would you have concerns with an
993 FTC commissioner not following the recommendations of DAEO?

994 *Ms. Slaughter. I would have huge concerns with an FTC
995 commissioner not following the requirements of the law --

996 *The Chair. Okay.

997 *Ms. Slaughter. -- and the requirements of the ethics
998 rules.

999 *The Chair. Thank you. I'm just going to reclaim my

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1000 time because I got a lot to get through here. Bedoya --

1001 Commissioner Bedoya?

1002 *Mr. Bedoya. Thank you, Chair Rodgers. As Commissioner
1003 Slaughter said, I'd have concerns if someone didn't consult
1004 with ethics officials, and it's my understanding and belief
1005 that Chair Khan did, in fact -- has, in fact, complied with
1006 her ethics obligations.

1007 *The Chair. Okay, thank you. Again, to both of the
1008 other commissioners. When voting for a redaction on a
1009 recommendation for a recusal issue, are you aware that
1010 Congress can act -- ask for that unredacted version? Yes or
1011 no.

1012 *Ms. Slaughter. Yes.

1013 *The Chair. Bedoya? Okay.

1014 *Mr. Bedoya. Yes.

1015 *The Chair. Okay. You were both senior congressional
1016 staffers, and I appreciate your work on the Hill. How would
1017 you have advised your boss to respond to reports that a
1018 senior political appointee was ignoring ethics guidance from
1019 an ethics official of an agency she or he led? Commissioner
1020 Slaughter.

1021 *Ms. Slaughter. Well, I think the oversight work of

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1022 this committee and all congressional committees is really
1023 vital to ensuring that agencies are acting properly, so any
1024 time Congress hears of a concern, I think it's appropriate
1025 for Congress to look into it.

1026 *The Chair. Okay, thank you. Commissioner Bedoya.

1027 *Mr. Bedoya. Same, Chair Rodgers. I would urge them to
1028 ask questions.

1029 *The Chair. Okay, thank you.

1030 Chair Khan, you've told me how "congressional oversight
1031 is incredibly important," so we certainly agree on that.
1032 And in your Senate confirmation questionnaire, you include
1033 your own congressional oversight experience. On Page 18 of
1034 that questionnaire you said that you would "ensure that your
1035 department complies with deadlines for information set by
1036 congressional committees" and that your department
1037 "endeavors to timely comply with requests for information
1038 from individual members of Congress."

1039 Do you feel like you have upheld this commitment to
1040 Congress? Yes or no.

1041 *Ms. Khan. Yes, I do.

1042 *The Chair. I and members of this committee and other
1043 committees have asked you on multiple occasions for detailed

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1044 answers to your -- to our questions. Yes or no, do you
1045 believe that you've sufficiently answered these requests?

1046 *Ms. Khan. Yes. I know those conversations are
1047 ongoing, but we have been engaging in good faith and already
1048 provided significant information.

1049 *The Chair. That seems inconsistent with the letters
1050 that you've sent back to us. For instance, in a letter that
1051 this committee sent to you on December 8, 2021, the committee
1052 asked you why you proposed deleting without unduly burdening
1053 legitimate business activity from the FTC's Mission
1054 Statement, the guardrail that has existed under both
1055 Republican and Democrat administrations.

1056 When the committee asked about the consultation you had
1057 with other commissioners to reach this consensus, you
1058 responded with, "The agency is currently considering the
1059 comments received on the draft strategic plan, including some
1060 comments that raise questions about the elimination.'" You
1061 go on to say, "The Commission will consider these comments
1062 carefully when it votes on the strategic plan.'"

1063 You know, it seems to me that you had -- you've already
1064 made up your mind, irrespective of the concerns that are
1065 shared. And this is just one example of vague or misleading

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1066 answers that do not tell the whole story, and I just urge you
1067 to be responsive to the people's House. This committee in
1068 particular. We are the representatives of the people.

1069 I yield back, Mr. Chairman.

1070 *Mr. Bilirakis. The Chairwoman yields back. Now I'll
1071 recognize the ranking member of the full committee, Mr.
1072 Pallone, for his five minutes of questioning.

1073 *Mr. Pallone. Thank you, Chairman Bilirakis.

1074 Last Congress, our subcommittee made historic progress
1075 on a comprehensive data privacy bill, and that legislation
1076 focused on data minimization, rather than notice and consent,
1077 as the best way to protect consumer's privacy, and it passed
1078 out of our committee on a 53 to 2 bipartisan basis. The
1079 FTC's written testimony acknowledges that the traditional
1080 notice and consent framework for protecting consumer privacy
1081 is insufficient.

1082 So let me ask, Chair Khan, do you agree that data
1083 minimization is an important bedrock principle for ensuring
1084 consumers have meaningful privacy protections in the modern
1085 online economy?

1086 *Ms. Khan. Absolutely. I think time and time again
1087 we've seen how minimizing the data the companies are

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1088 collecting on the front end is critical to ensuring the
1089 consumer's privacy is protected and also has huge benefits
1090 for data security because if there's less data collecting --
1091 they are collecting on the front end, that means there is
1092 less opportunity for major hacks that would expose
1093 significant data.

1094 *Mr. Pallone. Thank you. Now I understand that in the
1095 absence of a comprehensive federal privacy statute the FTC
1096 has historically protected consumer data privacy using the
1097 FTC's general authority to enforce against unfair and
1098 deceptive business practices. But my question is, can you
1099 discuss what challenges the FTC faces using that unfair and
1100 deceptive practice as authority to protect consumer privacy?

1101 *Ms. Khan. Yeah. First of all, I'll say, I mean, any
1102 instance in which Congress is providing greater
1103 specification, including through bright-line rules and clear
1104 restrictions, that's always the best course. For us, we have
1105 been using our unfair and deceptive acts or practices
1106 authority for some time with great success. Of course, in
1107 the wake of the Supreme Court's decision to say we can no
1108 longer get monetary equitable relief through Section 13(b) of
1109 the FTC Act, it means that our opportunities for remedies are

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1110 quite limited, and so that would be one area where I think we
1111 see significant shortfalls.

1112 *Mr. Pallone. Thank you. Now let me say that I
1113 appreciate the breadth and importance of the FTC's consumer
1114 protection work. And in your written testimony, you estimate
1115 that for fiscal year 2022 every dollar of the FTC's cost
1116 returned an estimated thirty dollars in FTC provided benefits
1117 to consumers. So let me ask you that question. Can you
1118 please elaborate on your return on investment analysis, and
1119 what sorts of benefits do consumers receive from the FTC's
1120 consumer protection work?

1121 *Ms. Khan. Yeah, absolutely. I mean, we really are a
1122 small agency, but we punch above our weight. I think those
1123 numbers really speak for themselves. And despite set --
1124 getting the setback that we did, our staff have been able to
1125 activate other authorities to make sure that if companies
1126 are, for example, scamming the American people, or trapping
1127 them into unwanted subscriptions, or engaging in Made in USA
1128 fraud, these are all the types of instances in which we can
1129 actually get money back in people's pockets, and so these are
1130 all important areas of our work.

1131 *Mr. Pallone. Okay. Now how will the increase in

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1132 funding and staff that you're requesting help expand the
1133 Commission's consumer protection work?

1134 *Ms. Khan. So this is something we've been thinking
1135 about quite significantly, especially in light of the
1136 additional funds that we were very grateful to receive this
1137 time around. There are a few areas that we're really focused
1138 on. One is making sure that we have in house the expertise
1139 needed to fully understand how these technologies are
1140 working, fully grasping really the inners of how these tools
1141 are functioning. And to that end, we were really thrilled to
1142 be able to launch an Office of Technology earlier this year.

1143 We've already doubled the number of technologists that
1144 we've had in-house. As my colleague mentioned, Commissioner
1145 Bedoya, we're also thinking about other types of expertise
1146 that we need to be bringing onboard alongside our terrific
1147 lawyers and our terrific economists, and, of course, growing
1148 their ranks, as my fellow commissioner, Commissioner
1149 Slaughter, noted including in the context of our privacy and
1150 security work, that would be a key priority for us in this
1151 area was well.

1152 *Mr. Pallone. Thank you. I'm just going to go back
1153 because I have another minute. If either of the other

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1154 commissioners could discuss my previous question about
1155 challenges the FTC faces using unfair and deceptive practices
1156 authority to protect consumer privacy. Probably only have
1157 time for one of you to answer. Who wants to answer?

1158 *Ms. Slaughter. I'm happy to answer. So, as you know,
1159 the FTC Act lays out a prohibition on unfair and deceptive
1160 acts and practices and says that for an act to be unfair it
1161 must cause substantial injury that's not reasonably
1162 avoidable, and not offset by countervailing benefits. That's
1163 an important test, and it's one that allows us to reach some
1164 problematic data practices, but not all of them.

1165 And we cannot by rule -- I think it's really important
1166 to remember this, we cannot by rulemaking address practices
1167 that are not prohibited under the FTC Act. So we can't do a
1168 rule that would target something that we can't target through
1169 an independent enforcement action.

1170 What you, this committee, did with your privacy bill
1171 last Congress was attack a whole -- a much broader swath of
1172 problematic practices than we might likely be able to reach
1173 under the FTC Act's prohibitions, and that's really
1174 important. So we have seen our rulemaking effort as an
1175 important way to do more than we could do before and provide

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1176 clarity to markets, and especially the small businesses and
1177 honest businesses who want to know what the law prohibits,
1178 but it is not nearly what you can achieve in terms of passing
1179 a law.

1180 *Mr. Pallone. Thank you.

1181 Thank you, Mr. Chairman.

1182 *Mr. Bilirakis. All right, thank you. The gentleman
1183 yields back. Now I'll recognize Dr. Bucshon for his five
1184 minutes of questioning.

1185 *Mr. Bucshon. Thank you, Chairman Bilirakis, for
1186 calling today's hearing.

1187 When this committee last spoke with the Federal Trade
1188 Commissioners two years ago, I asked Commissioner Chopra
1189 about rebate walls and other practices that stunt innovation
1190 and competition. Maybe perhaps I should have asked about the
1191 FTC's policies on zombie votes by a departed commissioner,
1192 gag orders on staff, or sidelining of the minority
1193 commissioners, since we don't have any. For all of the
1194 statements being made and the rulemaking in the name of
1195 ensuring competition, it seems like the FTC, within its own
1196 ranks, have prioritized sidelining ideological competition to
1197 the progressive views of the current commissioners.

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1198 I also want to say this, that fraud against seniors is
1199 out of control in this country. My -- I know this. My
1200 father passed away. About six months later I recognized my
1201 mother could not manage her finances, and when I -- it took
1202 me two years to unravel it, and the amount of fraud that she
1203 had committed against her financially and otherwise was
1204 unbelievable. It's out of control, and whatever, you know,
1205 we can do about it is important.

1206 The FTC obviously has done a lot of positive things, but
1207 let me focus on some of the concerns that I have, okay?
1208 Chair Khan, last September I cosigned a letter for you
1209 expressing -- to you expressing support for the renewal of
1210 the FTC's Franchise Rule in its current form, as franchises
1211 create a path to -- pathway to entrepreneurship for my
1212 constituents, especially among women and people of color. On
1213 March 10th the FTC put out a request for information on the
1214 business practices of franchises in relation to the rule
1215 amidst growing concern around unfair and deceptive practices
1216 in the franchise industry.

1217 First, I'll note the franchise -- franchising is a
1218 business model not an industry. More importantly, what are
1219 the specific unfair and deceptive franchising practices this

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1220 refers to?

1221 *Ms. Khan. Thanks, Congressman. So we have been
1222 hearing for over a year now from franchises about a set of
1223 practices that are quite troubling. Month after month
1224 franchises come to our open Commission meetings where they
1225 can speak directly to commissioners and raise issues of
1226 concerns.

1227 And so we thought it was important not just to be
1228 collecting this information anecdotally but to actually do a
1229 systematic look at what's really going on here, what is the
1230 relationship between the franchisees and the franchisors?
1231 Are there types of practices that we should be taking a
1232 closer look at? Are there practices that may be unlawful?

1233 And so that's why we issued the RFI. We've already
1234 started getting some submissions and really look forward to
1235 taking a close look at whatever comes in.

1236 *Mr. Bucshon. Okay. Do you plan on pursuing a rule
1237 governing the franchise relationship with the -- this RFI as
1238 a basis?

1239 *Ms. Khan. So as you know, we already have the
1240 Franchise Rule in place --

1241 *Mr. Bucshon. Right.

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1242 *Ms. Khan. -- which governs the disclosures the
1243 franchisor --

1244 *Mr. Bucshon. Well, you're -- you want to change it.
1245 So I understand --

1246 *Ms. Khan. Well, we have a --

1247 *Mr. Bucshon. So you're going to use the RFI to justify
1248 changing that, right?

1249 *Ms. Khan. No, these are separate procedures. And one
1250 reason why we launched the RFI is because there were issues
1251 we were hearing about that are not governed by the Franchise
1252 Rule. So it was really in order to make sure that if we need
1253 to do subsequent enforcement activity separate from what's
1254 covered by the Franchise Rule, that we have the information
1255 we need.

1256 *Mr. Bucshon. Okay. And I think, I mean, if we're
1257 honest with ourselves, I mean, obviously I have a certain
1258 viewpoint but, I mean, this is about organized labor wanting
1259 to organize all the employees at franchisees across the
1260 country. We all know that. I mean, it's about -- yeah,
1261 there are -- there might be some problems, but what it's
1262 about is taking a large organization that has non-corporate
1263 restaurants that are franchised restaurants and the Democrat

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1264 party and the organized labor are unhappy that they can't
1265 organize all these people say at Company X because one place
1266 may have 40 employees, 50 employees, and put it under one
1267 corporate -- force it under one corporate head so they have
1268 25,000 employees that can be organized by organized labor.

1269 I mean, this -- I bet -- this has been an issue for
1270 years and years and years. And if that's the goal, you know,
1271 then using a federal agency to assist organized labor in this
1272 effort is wrong.

1273 *Ms. Khan. Congressman, respectfully, this is about
1274 small business owners. The types of people that we are
1275 hearing from are hotel owners, owners of fast food
1276 franchises. This is really about the potentially abusive
1277 practices that they've been suffering. It really is not
1278 connected to the some of the issues --

1279 *Mr. Bucshon. Well, the ones I talk to, it -- they want
1280 -- they're concerned that they want to have three or four
1281 different worker unions within their local McDonald's. And
1282 look, I've said for years and years publicly that if we want
1283 to spend twenty-five dollars for a hamburger, and fries, and
1284 Coke at McDonald's, then I'm all -- I'm -- go ahead, because
1285 that's what's going to happen if you use the FTC to force

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1286 organized labor's agenda. I yield back.

1287 *Mr. Bilirakis. The gentleman yields back. Now I'll
1288 recognize Representative Kelly for her five minutes of
1289 questioning.

1290 *Ms. Kelly. Thank you, Chair Bilirakis and Ranking
1291 Member Schakowsky for holding this very important hearing. I
1292 also want to commend and thank our three witnesses for your
1293 service at our nations' chief consumer protection agency as
1294 well as your staff.

1295 Last Congress when F -- the FTC testified before the
1296 committee, we discussed several challenges the agency was
1297 facing, notably the uptick in consumer complaints to the
1298 agency about a broad range of pandemic-related marketplace
1299 abuses. I found this dialogue particularly concerning
1300 because I often heard from constituents, many of them seniors
1301 living in my district, about how the pandemic put a squeeze
1302 on their finances, as my colleague just talked about.

1303 At a time when seniors had so much to worry about, I
1304 felt moved to introduce legislation to help stop our
1305 vulnerable populations from falling victim to scam callers.
1306 That led me to introduce the Protecting Seniors From
1307 Emergency Scams Act, which requires your agency to report on

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1308 an increased awareness regarding scams targeting older
1309 adults.

1310 Chair Khan, do you think it would be beneficial to
1311 consumers if there was a known centralized location to
1312 receive current information about scams and contact
1313 information for law enforcement and adult protective services
1314 agencies?

1315 *Ms. Khan. Thanks, Congresswoman. There's no doubt
1316 that whenever you make it easier for consumers to access that
1317 type of information that's a benefit for consumers but also
1318 to us from an enforcement perspective.

1319 *Ms. Kelly. Thank you for your response. I find these
1320 scams troubling and am looking forward to reintroducing this
1321 bill this Congress so the House may once again pass it out of
1322 the chamber.

1323 Now I would like to shift focus to another FTC-related
1324 bill that I introduced last Congress, the Consumer Equity
1325 Protection Act, which would establish a federal task force to
1326 advise the FTC on issues of equity impacting consumers of
1327 protected classes. This bill is important because we know
1328 that many times folks are targeted based on their identity as
1329 a member of a certain protected class like age, race,

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1330 religion, sexual orientation, or disability, which I can
1331 relate to now.

1332 Chair Khan, I'm aware that over the years the FTC has
1333 released a few reports, notably the Serving Communities of
1334 Color and Combatting Fraud in African American and Latino
1335 Community reports that detailed fraud and consumer issues
1336 that have a disproportionate negative impact on communities
1337 of color. And last Congress, when you and then Commissioner
1338 Chopra testified, you all acknowledged the method of
1339 discrimination has become more sophisticated and subtle as
1340 technological tools are enabling discrimination in targeting
1341 of individuals belonging to protected classes.

1342 So given this growing threat, how would creating a task
1343 force help the FTC to protect minorities from fraud and
1344 abuse?

1345 *Ms. Khan. This is absolutely a big area of concern.
1346 One thing that we do as part of our Every Community
1347 Initiative is actually do some data analysis to see what are
1348 the consumer complaints coming in and are those mapping onto
1349 greater abuse or greater fraud being targeted at particular
1350 communities, and we absolutely see that those trends
1351 continue.

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1352 We've been able to pursue enforcement actions in this
1353 area. Last year we brought our action involving Passport,
1354 this auto dealer that had been charging higher fees to Black
1355 consumers, to Latino consumers, and raising costs for them as
1356 well as attaching all sorts of junk fees. So we're taking
1357 enforcement actions in this area as well as continuing to
1358 identify trends.

1359 You're absolutely right that the growing digitization of
1360 our economy is creating all sorts of additional covert ways
1361 that companies can be engaging in discrimination. As we
1362 bring on additional expertise, including technologic --
1363 technologists, this is an additional area that we're hoping
1364 to dig more into.

1365 *Ms. Kelly. So it's funny you brought up the Passport
1366 Auto case because I was going to ask you about that and what
1367 you intend to do to further emphasize the -- this application
1368 of unfairness doctrine and why this is important.

1369 *Ms. Khan. Yeah, absolutely. In this case, we saw that
1370 there was substantial injury stemming from the fact that
1371 Black and Latino consumers were being charged more fees than
1372 their white counterparts, and that this was not reasonably
1373 avoidable, and that there were no accounting vailing benefits

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1374 to this discrimination. So we thought it was important to
1375 put the market on notice that we viewed this as an unfair
1376 practice and this is absolutely an area that we're going to
1377 continue to be looking at.

1378 *Ms. Kelly. Thank you. And I yield back.

1379 *Mr. Bilirakis. Thank you, I appreciate that. And now
1380 I'll recognize the vice chairman of the subcommittee, Mr.
1381 Walberg, from the great State of Michigan for five minutes of
1382 questioning.

1383 *Mr. Walberg. Thank you, Mr. Chairman. And thanks to
1384 the Commission members for being here and appreciate some of
1385 your updates on some of the successes you had. I think
1386 successes, to some degree, we could agree with.

1387 Commissioner Khan, you and I talked about child online
1388 data security and my concerns with that, and I appreciate
1389 efforts there. Consumer subscription cancellations and
1390 concerns that are there. And other things. We certainly
1391 would expect you to give us some wins.

1392 But here in the committee we're going to be talking
1393 about what we think are losses and some concerns that we've
1394 received not only from businesses and consumers but even from
1395 staff -- former staff members and commissioners of the FTC.

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1396 So with that acknowledgement of the filter that we have, I'd
1397 -- I want to ask some pointed questions.

1398 Chairwoman Khan, I want to follow up on some things that
1399 Chair Rodgers referenced earlier regarding your decision to
1400 strike those words in the FTC's Mission Statement, namely
1401 without unduly burdening legitimate business activity. The
1402 message that I believe that that sent to an already
1403 challenged American private sector struggling to rebound from
1404 COVID-19 shutdowns was quite simply, and these would be my
1405 words, consider yourself guilty of accusations from the FTC
1406 unless you can prove otherwise.

1407 That's a concern. If that isn't a reality, it's still
1408 an assumption that many could make. Legitimate businesses
1409 shouldn't have to worry about receiving a letter from the FTC
1410 warning them of significant fines because you are not
1411 properly dedicating resources to go after a specific bad
1412 actor. On multiple occasions now, the FTC has sent in bulk
1413 over 700 letters to companies, including just last week,
1414 putting them into the interrogation spotlight as they
1415 perceive and potentially imitating -- intimidating them into
1416 submission.

1417 Now I don't think this is the best way to protect

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1418 consumers, and it may have even caused more harm than good.
1419 Some could even say it's becoming evident that the present
1420 mission statement is not to protect consumers but rather to
1421 advance a radical, woke, progressive Biden Administration
1422 scheme to make every sector in our economy, and to punish the
1423 private sector, when the law does not allow for such
1424 punishment. You have used process to make legal activity
1425 difficult to achieve and a means of punishment.

1426 Not surprisingly, this bulk mail approach to the private
1427 sector has now led to scammers making the most of the FTC's
1428 new unorthodox practice. Last week, the FTC tweeted out a
1429 warning to be on lookout for -- from -- fake letters from Sam
1430 Levine, Director of the FTC's Bureau of Consumer Protection,
1431 threatening to take action against them. One should wonder,
1432 was this threat to America's private sector created by the
1433 Commission's own actions?

1434 And so, Chair Khan, this apparent attempt to become the
1435 national overlord has caused more harm than good. Do you
1436 plan to extend or end these actions?

1437 *Ms. Khan. Congressman, first of all, I'll just say on
1438 our strategic plan, that phrase that you mentioned, remains
1439 in our strategic plan. It was really a question of the

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1440 Mission Statement, what is the term -- you know, what is a
1441 statement that best represents the essence of what the FTC
1442 does.

1443 There was a really terrific cross-agency working group
1444 made up of staff. They really spent a lot of time thinking
1445 about that question and determined that we really wanted to
1446 focus on who were the communities that we're focused on
1447 protecting, what are the legal authorities we're enforcing.

1448 On the second issue, Section 5(m)(1)(B) of the FTC Act
1449 gives us the authority to put companies on notice when
1450 there's a particular practice that the FTC has determined is
1451 unlawful and issued a cease and desist order. So if by many
1452 measures, to my mind, this is a good government practice
1453 because we're putting market participants on notice about --

1454 *Mr. Walberg. But if I could jump in here and say the
1455 fact that, you know, the aggressive approach has not been
1456 effective to the point that you have not won on a number of
1457 those cases, and that's one of the biggest concerns that we
1458 address. As you've perceived, this is your purpose; yet,
1459 underlying it are failures at that level. Let's --

1460 *Ms. Khan. Congressman, respectfully, we haven't
1461 actually lost any litigations relating to a notice of penalty

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1462 offense authority.

1463 *Mr. Walberg. But many losses because of the perception
1464 of the aggressive nature that you've taken that's been
1465 outside of what your purpose is, and especially when you
1466 attempted to take those phrases -- that phrase out of your
1467 Mission Statement.

1468 I wish we could go on, but I see my time has ended, so I
1469 yield back.

1470 *Mr. Bilirakis. The gentleman yields back. I'll
1471 recognize Representative Castor from the great State of
1472 Florida for her five minutes of questioning.

1473 *Ms. Castor. Well, thank you, Mr. Chairman, and thank
1474 you to our FTC Commissioners for being here today.

1475 Members, it is urgent that the Congress pass a
1476 comprehensive data privacy law that protects the personal
1477 privacy of Americans, especially our kids. Luckily, we have
1478 a bipartisan bill to do just that, the American Data Privacy
1479 and Protection Act, and I urge Chair Rodgers and Ranking
1480 Member Pallone to introduce a markup of the ADPPA as soon as
1481 possible.

1482 Congress is late to the game here. Other countries have
1483 acted. We are behind. But, fortunately, the FTC has used

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1484 its powers to protect Americans from unfair trade practices
1485 in this area.

1486 But I'm particularly concerned about the impact on
1487 children, and I know you are, too, based upon what you've
1488 done. For many years, I've called attention to the ways in
1489 which Big Tech platforms are surveilling, tracking, and
1490 collecting our most private information in pursuit of
1491 profits. This is especially concerning for children.

1492 I've raised the alarm again and again about how these
1493 surveillance practices harm kids and teens, and how Big Tech
1494 platforms use the manipulative design to addict kids to their
1495 products and funnel them towards harmful content. That's why
1496 I'm planning on reintroducing the Kids Privacy Act to ensure
1497 tech platforms build in privacy and safety in kid-directed
1498 products during their design. The FTC is also working to
1499 protect children online, and thank you for that, but you need
1500 to do more.

1501 Chair Khan, could you please give us an update on the
1502 Childrens Online Privacy Protection Act rule review and the
1503 6(b) investigations the FTC is conducting into social media
1504 and video streaming services?

1505 *Ms. Khan. Thanks, Congressman, and thanks for your

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1506 leadership on this issue.

1507 So both of these are currently ongoing. When we
1508 initiated the rule review, we ended up getting over 170,000
1509 comments as part of our public record, so our staff has been
1510 diligently reviewing those comments and identifying what
1511 potential revisions to the rule could look like. Of course,
1512 that hasn't stopped us from continuing to enforce COPPA, and
1513 we've been really thrilled to be able to see strong
1514 enforcement actions on that front.

1515 In terms of the 6(b), that work also continues. As you
1516 know, these orders went out to several large companies that
1517 have significant resources to try to thwart the FTC from
1518 getting the information that we need, so we've been engaged
1519 in various back and forth there but hope we'll be able to
1520 show progress publicly in short order.

1521 *Ms. Castor. And last year, the FTC published a policy
1522 statement on education technology and COPPA. The statement
1523 described how the Commission intends to scrutinize compliance
1524 with the full breadth of the substantive prohibitions and
1525 requirements of the COPPA rule and statutory language. I'm
1526 very heartened by this approach. The statement specifically
1527 discusses COPPA's prohibition against mandatory collection,

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1528 use prohibitions, retention prohibitions, and security
1529 requirements.

1530 Chair Khan, please discuss how those prohibitions
1531 currently in COPPA are informing the Commission's strategy
1532 and enforcement actions.

1533 *Ms. Khan. Yeah, this policy statement really laid out
1534 what are the key provisions of COPPA that go beyond the
1535 notice and consent framework and actually identify
1536 substantive limitations on what companies can do. And so
1537 that includes, as you mentioned, you know, what they can do
1538 in terms of retention, what they can do in terms of
1539 collecting data in the first place.

1540 One of the things that the policy statement highlighted
1541 was Section 3127 of COPPA, which basically says that covered
1542 companies cannot condition access to their technologies on
1543 people having to surrender to endless data collection. And
1544 we thought that especially in an era where kids are having to
1545 do their homework online, right, during the pandemic, that it
1546 was especially important for Ed Tech providers to be on
1547 notice about that, so these are all provisions that we're
1548 fully committed to enforcing.

1549 *Ms. Castor. Thank you very much.

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1550 And, Commission Slaughter, you've also been active in
1551 this area. What do you have to add on this -- on the COPPA
1552 rule?

1553 *Ms. Slaughter. Well, thank you. I think of these
1554 issues not just as an FTC commissioner but as a parent of
1555 four young kids who, candidly, are probably responsible for
1556 the fact that I am sick today. And I think I see how hard I
1557 as a parent struggle and my kids struggle with managing their
1558 interactions with technology, so I think it is really
1559 important.

1560 COPPA was a groundbreaking, revolutionary statute when
1561 it was passed, but as you yourself has -- have noted, its
1562 primary provisions, which are putting parents in the driver's
1563 seat and operating on a notice and consent framework, are
1564 pretty outdated when it comes to today's economy. So we
1565 really are grateful for the work that you and your colleagues
1566 are doing to update this really important law and make sure
1567 it's fit for purpose in the 21st Century.

1568 *Ms. Castor. Thank you. It's overdue, and I look
1569 forward to action by this committee and the Congress. Thank
1570 you. I yield back.

1571 *Mr. Bilirakis. The gentlelady yields back. Now I'll

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1572 recognize Mr. Duncan from the great State of South Carolina.
1573 Thank you, you're recognized for five minutes of questioning,
1574 sir.

1575 *Mr. Duncan. Thank you. Chair Khan, I wrote a letter
1576 last month urging Secretary Raimondo and Ambassador Tai to
1577 deter foreign governments from pursuing policies or actions
1578 that target U.S. businesses and industries where the United
1579 States is a global leader. I ask unanimous consent to put
1580 that letter in the record.

1581 *Mr. Bilirakis. Without objection, so ordered.

1582 [The information follows:]

1583

1584 *****COMMITTEE INSERT*****

1585

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1586 *Mr. Duncan. The EU Digital Marking Act is designed to
1587 harm U.S. tech companies and ultimately help Chinese
1588 companies take their place within the European market. The
1589 EU has done a terrible job overregulating their own companies
1590 into oblivion, and now they seek to harm the U.S. companies
1591 who have filled that void to the benefit of Chinese market
1592 entrance. This is a March 30, 2023, press release from the
1593 FTC which seems to brag about the Commission's cooperation
1594 with the European Union's implementation of the deeply
1595 problematic DMA. I ask unanimous consent to enter that in
1596 the record.

1597 *Mr. Bilirakis. Yes, without objection, so ordered.

1598 [The information follows:]

1599

1600 *****COMMITTEE INSERT*****

1601

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1602 *Mr. Duncan. We cannot allow foreign jurisdictions to
1603 harm U.S. companies under the guise of competition policy.
1604 But in an interview you gave back in 2021, you stated, I
1605 think it's no doubt the U.S. has been behind the curve,
1606 especially with regards to the European Commission. And you
1607 noted that you were in close -- you were close to -- in close
1608 touch with both folks at the CMA and European Commission on
1609 competition matters.

1610 Chair Khan, under what legal authority do you send staff
1611 to implement the DMA, which is not antitrust law from the
1612 U.S. but regulations targeting U.S. companies?

1613 *Ms. Khan. Congressman, I'm proud of the international
1614 cooperation that the FTC has long pursued under many, many
1615 chairs far preceding me. This has been a core part of the
1616 FTC's work to make sure that we are able to share with other
1617 jurisdictions the work that we are doing and also able to
1618 understand the different paths that other jurisdictions are
1619 taking.

1620 *Mr. Duncan. I get that.

1621 *Ms. Khan. That type of information makes us --

1622 *Mr. Duncan. You've also sought to undermine U.S.
1623 companies in the current negotiating round of the Indo-

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1624 Pacific Economic Framework. The IPEF is used -- has used a
1625 U.S. MCA as the basis no-go negotiations.

1626 Yes or no, Chair Khan, did you and Jonathan Cantor of
1627 the Department of Justice send a letter to Ambassador Tai
1628 objecting to the competition chapter and the digital trade
1629 chapter and demand a seat at the negotiating table for future
1630 rounds?

1631 *Ms. Khan. We have been engaged with USTR about that
1632 agreement. We've all seen how these trade --

1633 *Mr. Duncan. Did you all send a letter?

1634 *Ms. Khan. Yes. We've all seen how --

1635 *Mr. Duncan. Can I get a copy of that, please?

1636 *Ms. Khan. I'm happy to engage with your staff to see
1637 what we can share with you.

1638 *Mr. Duncan. Thank you. Your actions from the EU DMA
1639 to the IPEF negotiations really run contrary to U.S.
1640 interests. Were these actions cleared by the State
1641 Department, Department of Commerce, the NSC, or the NEC?

1642 *Ms. Khan. As you know, there are extensive inter-
1643 agency processes in place, and we work through them as
1644 appropriate.

1645 *Mr. Duncan. Wow. Why should we increase your budget

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1646 while you're sending staff to Europe to harm U.S. companies
1647 and directly benefit China? You don't have to answer that,
1648 but why would you help the EU undermine U.S. law and U.S.
1649 companies?

1650 *Ms. Khan. Congressman, details back and forth from our
1651 agency to other agencies, from other agencies to our agencies
1652 have long been a key FTC practice extending back decades, and
1653 we've been pleased to continue that tradition.

1654 *Mr. Duncan. Is it appropriate for you, the head of the
1655 FTC, to lobby foreign agencies to block transactions when
1656 U.S. companies or -- and other companies overseas, especially
1657 when these reviews are happening without the oversight of the
1658 U.S. federal court?

1659 *Ms. Khan. Congressman, we make our own independent
1660 judgments with regards to our own enforcement authorities.
1661 We have some information sharing agreements in place with
1662 other jurisdictions, but as it concerns our enforcement
1663 actions, we use our independent judgment and look at the
1664 facts as applied -- look at the law as applied to the facts
1665 before us.

1666 *Mr. Duncan. These policies are problematic, and I
1667 think what it's going to do is hurt U.S. companies from

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1668 operating in Europe, from consolidating operations, and it
1669 will be to the benefit of Chinese companies, such as Alibaba,
1670 to enter European markets when Amazon or companies like that
1671 are kicked out.

1672 So, Chair Khan, will you assure me the FTC will not urge
1673 Europe, the UK, China, or other foreign jurisdictions to
1674 block transactions or encourage those jurisdictions to
1675 extract any remedies for competition from U.S. companies?

1676 *Ms. Khan. Congressman, again, we make our independent
1677 assessments with regards to how the U.S. law applies to the
1678 facts before us. We have some information sharing agreements
1679 in place, but every jurisdiction makes its own determinations
1680 using its independent judgment.

1681 *Mr. Duncan. So you're not cooperating with the
1682 Europeans on blocking U.S. Companies operating in Europe, or
1683 the DMA, or the CMA with regard to the UK?

1684 *Ms. Khan. Again, we have information sharing
1685 agreements in place, but each jurisdiction has to follow the
1686 laws of its -- of that country, and that's what each --

1687 *Mr. Duncan. With the encouragement of the U.S. or the
1688 disapproval of the U.S.?

1689 *Ms. Khan. Again, you know, there are many examples in

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1690 which these jurisdictions are coming to different examples.
1691 I think it's good government for us to be sharing information
1692 and cooperating to get to consistent outcomes where possible.
1693 And again, these types of international processes have been
1694 in place at the FTC for a long time. We have a stellar
1695 Office of International Affairs that is widely respected
1696 around the world, in part because of the leadership that we
1697 have been able to show, both on the antitrust front as well
1698 as consumer protection.

1699 *Mr. Duncan. Thank you. And I look forward to you
1700 delivering that letter. Thank you.

1701 *Mr. Bilirakis. The gentleman yields back. Now we'll
1702 recognize Representative Blunt Rochester for her five minutes
1703 of questioning.

1704 *Ms. Blunt Rochester. Thank you, Mr. Chairman, and
1705 thank you to the witnesses for joining us today, and
1706 especially for your service to our country.

1707 The work the FTC undertakes is some of the most
1708 impactful on the every day lives of Americans and affects the
1709 economic health of our entire country. Chair Khan, your
1710 bipartisan confirmation demonstrated that Americans on both
1711 sides of the aisle are concerned about our personal data

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1712 harmed by widespread fraud and scams, and ultimately
1713 concerned about the power large corporations have over our
1714 everyday lives. So again, thank you for your willingness to
1715 testify before the committee.

1716 Chair Khan, for years, companies like GoodRx and
1717 BetterHelp deceptively shared private health information with
1718 social media companies so that they could make more money
1719 from user's health ailments, even information about user's
1720 mental health. These companies broke their public promises
1721 to keep the data private. The FTC rightly took enforcement
1722 actions on these two companies for breaking the law.

1723 My question is the allegations against BetterHelp note
1724 that these practices continued from 2013 until 2020. Chair
1725 Khan, can you explain how companies are able to hide their
1726 deception for so long and how the FTC was able to pursue
1727 enforcement in this case?

1728 *Ms. Khan. Thanks, Congressman. Yeah, we were really
1729 thrilled to be able to move forward with enforcement on both
1730 of those areas, especially since we saw how during the
1731 pandemic a lot more health services switched online and
1732 people became much more reliant on these apps to be able to
1733 access key health services, be it, you know, counseling

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1734 services, therapy services.

1735 You're absolutely right that oftentimes the
1736 innerworkings of these companies can be somewhat of a black
1737 box to us, especially in digital markets, and we were really
1738 thrilled and proud of the FTC's work to uncover these
1739 practices that had been going on for so long. Again, we have
1740 our lawyers looking at this, we have our technologists
1741 increasingly on board that are also trying to unpack what's
1742 happening there.

1743 *Ms. Blunt Rochester. Thank you. I'll note that the
1744 FTC under your leadership has taken a balanced approach to
1745 regulating this new emerging healthcare mobile app industry.
1746 In addition to taking punitive actions, the FTC has also
1747 updated the business guidance for health data. Does updating
1748 this guidance suggest that GoodRx and BetterHelp are not
1749 outliers, and should Congress be taking more concerted action
1750 to protect American's health information?

1751 *Ms. Khan. Absolutely. As you know, Americans health
1752 information is some of the most sensitive data that there is.
1753 People feel extremely exposed when this information is out
1754 there and misused, and so I think this is an especially
1755 critical area where we need action.

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1756 *Ms. Blunt Rochester. Chair Khan, I think Americans
1757 will be pleased and encouraged to learn about your proposed
1758 Click to Cancel rule. My colleagues, like Ms. Clarke of New
1759 York, have been pushing to make it easier for Americans to
1760 cancel subscriptions, but as you noted, businesses often
1761 trick consumers into these subscriptions and then make it
1762 extremely difficult to get out of them.

1763 While you are taking important action to remedy these
1764 predatory practices, I want to ask you about preventative
1765 measures. As you know, I intend to reintroduce the DETOUR
1766 Act, which aims to crack down on deceptive practices that
1767 undermine the ability for Americans to make informed choices,
1768 practices also known as dark patterns. How pervasive of a
1769 problem are dark patterns, and what kind of impact do they
1770 have on American families?

1771 *Ms. Khan. Based on our work, including a deep study
1772 that the FTC staff did that was published last year, dark
1773 patterns can be quite extensive across the economy and across
1774 digital markets. Unfortunately, what we've seen is that in
1775 practice, dark -- these dark patterns can end up tricking
1776 consumers into signing up for services that they didn't want,
1777 into leading them to situations where they're incurring fees

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1778 for charges or services that they don't want. And so I think
1779 we see a lot of deception that can stem from these types of
1780 dark patterns.

1781 *Ms. Blunt Rochester. And do you support legislation
1782 that bans the use of intentionally manipulative design
1783 techniques that trick users into giving up their personal
1784 information? And I will ask all of the commissioners.

1785 *Ms. Khan. Yes.

1786 *Mr. Bedoya. Yes.

1787 *Ms. Slaughter. Yes.

1788 *Ms. Blunt Rochester. At this point, I cannot believe I
1789 am actually ahead of schedule. I've got more questions, but
1790 I will put them for the record. But again, thank you so much
1791 for your service, especially now. We know that so many
1792 Americans have been tricked just looking at a app or a
1793 website, and they can't even find the little X to cancel out
1794 because it is deceptively the same color as the add or the
1795 page. And so, again, your work to protect us from abuse,
1796 scams, fraud, we really appreciate it.

1797 And I thank you, Mr. Chairman, and I yield back.

1798 *Mr. Bilirakis. I thank the gentlelady. Appreciate it.
1799 She yields back. And now I'll recognize Dr. Dunn from

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1800 Florida. We're really well represented on this committee
1801 from the great State of Florida. We appreciate that.

1802 *Mr. Dunn. Thank you.

1803 *Mr. Bilirakis. So I'll recognize you for five minutes.

1804 *Mr. Dunn. Thank you very much, Mr. Chairman.

1805 Chair Khan, thank you for appearing before this panel
1806 today. Congressional oversight of the FTC is an important
1807 part of the American political process. Small and medium
1808 size businesses are the backbone that rural communities
1809 throughout America, including Florida's Second Congressional
1810 District, these include regional and local grocery stores and
1811 convenience stores, which are typically the only source of
1812 essential groceries and other consumer goods in many small
1813 towns in my district.

1814 Last year, as our nation faced broken supply chains and
1815 rising prices, I sent a letter to the FTC asking the
1816 Commission to use its existing authority to study conduct
1817 that could violate laws under its purview. My primary
1818 concern is when rural stores are taken advantage of in such
1819 unstable times. Many towns and small rural communities have
1820 become food deserts after their local grocery stores went out
1821 of business.

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1822 In addition, many of these businesses are family owned
1823 and provide the only viable option for individuals who don't
1824 have access to adequate transportation to travel to larger
1825 chain stores, which may be hours away.

1826 The independent, small, and medium size grocers are
1827 telling me that big box star -- stores are forcing them out
1828 of business. So, Chair Khan, Section 6(b) of the FTC Act
1829 empowers the FTC to require companies to respond to questions
1830 about business practices. Where are you currently in the
1831 6(b) process on independent grocers and food supply chains,
1832 and have you formally inquired about monopolistic practices
1833 harming independent and regional grocers?

1834 *Ms. Khan. Thanks for that question, Congressman. I
1835 couldn't agree more that these are especially troubling
1836 concerns that we're hearing from independent retailers,
1837 especially independent grocers. One 6(b) that we launched
1838 early in my tenure was to understand whether the supply chain
1839 disruptions that we had seen were being exacerbated by
1840 asymmetries of power that we may see between the small
1841 independent stores and the big chain stores. We had --

1842 *Mr. Dunn. So my question, though, have you actually
1843 formally started that 6(b) process --

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1844 *Ms. Khan. Yes.

1845 *Mr. Dunn. -- for inquiry?

1846 *Ms. Khan. Yes, we have.

1847 *Mr. Dunn. Excellent, excellent. So last Congress, the
1848 then Ranking Members Rodgers and Bilirakis sent a letter to
1849 Secretary of Commerce Raimondo, we mentioned that earlier
1850 today, requesting that the Secretary work with stakeholders
1851 across the federal government to prevent supply chain
1852 disruptions in -- throughout Americans (sic), but especially
1853 in rural areas. Have you been working with the Department of
1854 Commerce on that particular effort?

1855 *Ms. Khan. I'm not sure if we're working with them on
1856 this specific issue, but generally we try to take a whole of
1857 government approach to these issues in general.

1858 *Mr. Dunn. All right, then. So I'd like to recognize
1859 and actually commend the Commission's bipartisan May 2021
1860 report called Nix (sic) the Fix. It was an FTC report to
1861 Congress regarding restrictions on repairs on various
1862 products. The vote was four to zero on that ruling in 2021.
1863 This congressionally-directed report highlighted the
1864 unsustainable rise in cost of vehicle maintenance and repair,
1865 and it prompted the need for Bill -- my Bill H.R. 906, the

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1866 REPAIR Act, which seeks to restore consumer choice and
1867 competition in the vehicle repair sector.

1868 The Nixing the Fix report highlights the important ways
1869 in which bipartisanship at the FTC can result in positive
1870 legislative actions afterwards. So after all, you know,
1871 Congress did create the FTC, and we're glad that on passage
1872 of that bill, vehicle owners will be able to repair their own
1873 property and repair shops can continue operating without fear
1874 of being put out of business.

1875 Unfortunately, bipartisanship does not seem to be the
1876 order of the day currently at the FTC. Ms. Khan, I find it
1877 striking that the FTC Commission -- or that Commissioner
1878 Christine Wilson resigned in protest of your partisan conduct
1879 as Chair.

1880 Chairman Bilirakis, I'd like to submit this February 14,
1881 2023, Wall Street Journal article, "Why I am Resigning as an
1882 FTC Commissioner," for the record.

1883 *Mr. Bilirakis. Without objection, so ordered.

1884 [The information follows:]

1885

1886 *****COMMITTEE INSERT*****

1887

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1888 *Mr. Dunn. Thank you very much.

1889 Chair Khan, Commissioner Wilson's scathing review of
1890 your agency cited, first, your violation of due process,
1891 given your failure to recuse yourself from a Meta acquisition
1892 case despite clear legal precedent requiring you to do so.
1893 Second, your colleagues and staff's excessive redactions to
1894 her written objections and dissent you -- in order to protect
1895 you. And third, a staggering 49 percent, less than half of
1896 the FTC employees recently polled believe that senior FTC
1897 agency officials maintain high standards of honesty and
1898 integrity. For comparison, in 2020, just prior to your
1899 appointment, 87 percent thought FTC officials had high
1900 honesty and integrity standards.

1901 Do you have an answer to that question, Chair Khan?

1902 *Ms. Khan. Thanks, Congressmen. I'll just say I'm
1903 incredible proud of the FTC staff who day after day are on
1904 the front lines of protecting Americans from unlawful
1905 business practices. There's no doubt that early in my tenure
1906 there were things we could have done better or differently,
1907 but since then we've been taking these survey results
1908 seriously and taking steps to make sure we're fully
1909 understanding what was the source of these declines, and

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1910 identifying what changes we can put in place, and I think --

1911 *Mr. Dunn. My time has expired, and I yield back to the
1912 Chair. I'll submit the -- or my questions for --

1913 *Mr. Bilirakis. The gentleman yields back. Thank you,
1914 Doctor. Now we'll recognize my friend, again from the State
1915 of Florida, Mr. Soto, for his five minutes of questioning.

1916 *Mr. Soto. Thank you, Chairman. This committee is
1917 charged with broad jurisdiction, and overseeing the FTC is
1918 one of our great responsibilities. Thank you, Chairwoman and
1919 Commissioners, for being here.

1920 We've been through a lot together. COVID-19 scams, like
1921 in Florida, where fake cures, paycheck protection program
1922 scams, stimulus check scams ran abound. I appreciate the
1923 FTC's work to rein those in. We faced challenges with social
1924 media, and we did have some victories, like a bipartisan
1925 robocall reform, which I know everybody around here
1926 appreciates. You all testified your work to combat opioid
1927 fraud, fraud against our military, and others.

1928 You know, I find it pretty sad that both Republicans,
1929 Wilson and Phillips, both resigned. They took their toys and
1930 went home. I guess they couldn't hold on for one more day,
1931 right? And now we face major challenges, like restoring the

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1932 restitution power recently struck down by the courts.
1933 Combatting potential fraud related to the Inflation Reduction
1934 Act. A privacy standard that we're hoping this committee
1935 could get out and passed. In the meantime, you all have
1936 stepped up in the vacuum. We appreciate you doing that.

1937 Chair Khan, we saw Grant Bae, a fraudster company from
1938 Lake City, Florida, preying on minority small business owners
1939 seeking pandemic relief, specifically African American
1940 business owners with false promises of easy access to
1941 guaranteed grant funding. And I commend the Commission for
1942 stepping up to shut them down.

1943 With new laws now rolling out, like the Inflation
1944 Reduction Act, can you speak to FTC's role in preventing
1945 future predatory business practices with a lot of the tax
1946 credits and other opportunities coming out of both that, the
1947 infrastructure law, and other laws coming out?

1948 *Ms. Khan. Yeah, absolutely. There are a few ways in
1949 which our work intersects with some of this new legislation.
1950 One is making sure that in areas where the government is
1951 trying to prioritize Made in USA, that we are protecting the
1952 integrity of Made in USA labels. I think all too often we've
1953 seen that companies can play fast and loose with that label.

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1954 They put it on, but actually their products were manufactured
1955 elsewhere.

1956 In 2021, we finalized a rule that allows us to go after
1957 Made in USA fraudsters and get civil penalties, and so that's
1958 an area we'll be -- where we will be continuing to do this
1959 work.

1960 More generally, any time you have benefits from the
1961 government or credit from the government that's going out,
1962 there's always a heightened risk of fraud that can attach to
1963 that. We saw that during COVID, and I think we have to be
1964 vigilant at this moment as well.

1965 *Mr. Soto. And how important is restoring your
1966 restitution power to protecting consumers with these future
1967 scams?

1968 *Ms. Khan. It's critical. You know, absent that, we
1969 saw billions of dollars basically evaporate that could have
1970 gone back into consumer's pockets that were not able to get
1971 back to them.

1972 *Mr. Soto. Commission Slaughter, the FTC recently
1973 launched a new Office of Technology which would hire
1974 technical staff to inform the Commission's investigations.
1975 How would this in house technical expertise help further the

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1976 Commission's work in areas like you just worked on with Epic
1977 Games in helping our -- protect our children from predators
1978 online?

1979 *Ms. Slaughter. Having a fully-staffed Office of
1980 Technology is critical to make sure we can keep up with 21st
1981 Century problems in the markets. It's the kind of expertise
1982 we need to really understand the business practices that are
1983 most hurting Americans in digital markets. And to be fair,
1984 today, almost every market has some sort of a digital element
1985 to it. Almost every case we have has some sort of a
1986 technological element on it.

1987 We have, for a very long time, put economists on every
1988 case that we bring, and that is enormously valuable, but the
1989 technological expertise is also really valuable. So I want
1990 to commend the Chair for standing up that office, and I'm
1991 really excited for the work it's already producing.

1992 *Mr. Soto. Commission Bedoya, we saw the Commission
1993 work to help put a consent order for Google Pixel 4's
1994 deceptive product claims in Spanish radio ads. If the
1995 Commission were provided additional resources, what actions -
1996 - additional actions could the Commission take to prevent
1997 predatory business practices in Espanol?

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1998 *Mr. Bedoya. Thank for that question, Congressman.

1999 I'll point to one recent example that I think gives you a
2000 sense of what more could be done.

2001 The Commission actually has a great track record for
2002 decades providing information in Spanish and English, but
2003 recently, as of February, we've been able to start providing
2004 advice to spot frauds, identify them, how to report them in
2005 12 languages in addition to English. When you add English
2006 in, we can reach 99 percent of the American population in the
2007 comfortable they're most -- in the language they're most
2008 comfortable in. And that's a great initiative from the Ever
2009 Community Initiative, and there's more where that came from,
2010 and with resources, we could do even more of that work.

2011 *Mr. Soto. Thank you. And my time's expired.

2012 *Mr. Bilirakis. Thank you, appreciate that. Now we'll
2013 recognize Representative Allen for his five minutes of
2014 questioning.

2015 *Mr. Allen. Thank you, Chair Bilirakis, and for
2016 convening this hearing, and thank you to our Commissioners
2017 for being here today. I want to start immediately with
2018 questions, and if you could give quick answers because I've
2019 got a lot to get to.

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2020 Chair Khan, during your nomination confirmation process,
2021 you noted that you would take a two-year unpaid leave of
2022 absence from your faculty position at Columbia University
2023 School of Law. Two years will have passed in June of this
2024 year since you were sworn in on June 15, 2021. Have you
2025 asked Columbia University for an extension to your leave of
2026 absence?

2027 *Ms. Khan. Not officially, but those discussions are
2028 ongoing since I intend to continue to serve in this position.

2029 *Mr. Allen. So you have spoken to administration
2030 officials about serving -- continuing to serve in the
2031 Administration?

2032 *Ms. Khan. My term goes until -- through 2024, and I
2033 fully intend to continue serving, yes.

2034 *Mr. Allen. Thank you. Members from rural districts
2035 have been tracking the status of the American Farm Bureau,
2036 John Deer MOU, and other related actions on farmer's repair
2037 facilities having access to farm equipment repair data. To
2038 date, there has not been any similar industry action or
2039 agreement between the automakers and industry partners:
2040 repair shops, car rental companies, aftermarket parts
2041 manufacturers, distributors.

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2042 With the FTC's Nixing the Fix report in 2021, and the
2043 Administrations' interest in repair data access, does FTC
2044 have a strategy or plan to address the light-duty vehicle
2045 data access issue that owners of vehicles and their repair
2046 facilities face? And I will ask who would be most able to
2047 reply to my question?

2048 *Mr. Bedoya. I'd be glad to say, Congressman, that the
2049 Commission's work under Chair Khan's leadership has been
2050 terrific on this. I took a meeting with Commissioner
2051 Phillips in Iowa with a group of corn growers and cattlemen,
2052 and one of the things they kept on coming back to was I used
2053 to be able to fix my tractor; now I can't, now I have to go
2054 three hours to the special shop. They're not open, they
2055 don't answer their phones. And this is really big issue, and
2056 this is something the Commission is taking very seriously and
2057 started under bipartisan action of the Chair.

2058 *Mr. Allen. Okay, good. Well, thank you, I'm glad
2059 you're on that.

2060 Chair Khan sent a letter to then Chair Cicillini and
2061 Ranking Member Buck on September 28, 2021, about antitrust
2062 and the American worker. I seek unanimous consent to have
2063 this letter included in the record, Mr. Chairman.

This is an unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker.

2064 *Mr. Bilirakis. Without objection, so ordered.

2065 [The information follows:]

2066

2067 *****COMMITTEE INSERT*****

2068

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2069 *Mr. Allen. Towards the end of the letter, Chair Khan
2070 explained that legislation clarifying that labor organizing
2071 by workers regarding the terms and conditions of their work
2072 is outside the scope of the federal antitrust statutes,
2073 regardless of whether the worker is classified as an
2074 employee, would remove the threat of the antitrust liability
2075 resulting from such coordination. Chair Khan went on to say
2076 that this clarification would allow for expansion of this
2077 concept to the gig economy.

2078 Commissioner Bedoya, you recently gave a speech in Utah
2079 saying that Congress has made it clear that work
2080 organizations and collective bargaining are violations of
2081 antitrust laws. An article detailing your speech also stated
2082 that you said independent contractors such as those who work
2083 at gig economy companies like Uber, Lyft, and DoorDash aren't
2084 barred from collectively bargaining under antitrust law.

2085 Commissioner Bedoya, how can you definitely assert that
2086 under antitrust law independent contractors have the
2087 authority to collectively bargain when your colleague has
2088 written to the Judiciary Committee seeking legislative action
2089 to clarify this as current law?

2090 *Mr. Bedoya. Thank you for that question. Let me just

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2091 state that some of the headlines around that speech don't
2092 reflect what was in that speech. I can tell you, however,
2093 that I do think if you look at what Senator John Sherman said
2094 on the floor of the Senate in 1890 -- 1889, if you look at
2095 what members of Congress said in 1914, if you look at what,
2096 you know, Fiorella LaGuardia said on the floor of this House
2097 in 1932, every single instance they wanted to make clear that
2098 if you're a working person, they do not want antitrust law to
2099 be used to stop you organizing for better wages, better
2100 working conditions, things like that.

2101 I read Chair Khan's letter from -- the letter you just
2102 mentioned to be squarely in line with my own beliefs and
2103 remarks. My clarification in federal law be useful either
2104 through an amendment to the antitrust laws or through
2105 something like the PRO Act. I personally think it very much
2106 would, and I read that to be in line with what Chair Khan
2107 said.

2108 *Mr. Allen. So I -- if I understand what you're saying
2109 --

2110 *Mr. Bedoya. Yes, sir.

2111 *Mr. Allen. -- what she said, you did not say?

2112 *Mr. Bedoya. Respectfully, some of the headlines were

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2113 not from what my remarks said, although I do think there is a
2114 strong argument that a lot of people who have been classified
2115 or misclassified as independent contractors should benefit
2116 from the ability to organize, yes.

2117 *Mr. Allen. Okay, thank you.

2118 Mr. Chairman, I yield back.

2119 *Mr. Bilirakis. The time of the gentleman has expired.
2120 Thank you, appreciate it. And now we'll recognize
2121 Representative Clarke who was my classmate, I believe, and
2122 I'll recognize her for five minutes.

2123 *Ms. Clarke. Thank you, Mr. Chairman. And I thank our
2124 Commissioners and Chairperson for your present today and
2125 their forthcoming responses to the member's questioning.

2126 Chairwoman Khan, as you know, automated critical
2127 decision making processes like algorithms can produce
2128 discriminatory outcomes on the basis of race, sex, or other
2129 characteristics. I'm encouraged by the steps the Commission
2130 is taking toward addressing discriminatory algorithms through
2131 both its 6(b) investigation into social media companies,
2132 which I hope will be completed soon, and it's ANPRM on
2133 commercial surveillance.

2134 The American Data Privacy Protection Act passed by this

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2135 committee last Congress would prohibit companies from
2136 collecting, processing, or transferring covered data in a
2137 discriminatory manner and requires algorithmic impact
2138 assessments. While this committee continues to work towards
2139 passage of a comprehensive privacy bill, can you commit to
2140 addressing algorithmic discrimination in your commercial
2141 surveillance rulemaking?

2142 *Ms. Khan. Thanks, Congresswoman. As you know, this
2143 rulemaking proceeding is underway. We have received
2144 thousands of comments that our staff is reviewing now to
2145 determine next steps, but it's a big area of interest for all
2146 of us, and so we're looking closely to see if we may be able
2147 to move forward to address these practices.

2148 I think you're absolutely right, given the digitization
2149 across our economy, the ability for firms to be able to
2150 algorithmically discriminate is a huge concern.

2151 *Ms. Clarke. Thank you. I'm concerned about with the
2152 ability of new generation AI tools to be used not only to
2153 spread misinformation and disinformation online but to
2154 generate new and more sophisticated scams. We've seen recent
2155 reports from scammers using ChatGPT to generate phishing
2156 attacks and deep fake audio scams.

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2157 Chair Khan, could you discuss how the FTC is working to
2158 combat unfair or deceptive practices that result from
2159 advances in new technology? I know the Commission recently
2160 formed the Office of Technology, and how will that office
2161 work across the agency to ensure the FTC is able to fulfill
2162 its mission to adequately protect consumers from unfair
2163 deceptive practices?

2164 *Ms. Khan. Thanks, Congresswoman. Making sure that
2165 we're able to enforce the laws, even as underlying
2166 technologies shift, is core to the FTC, and we have a host of
2167 tools available to make sure we can do that. I think you're
2168 absolutely right that AI provides -- presents a whole set of
2169 opportunities but also presents a whole set of risks, and I
2170 think we've already seen ways in which it could be used to
2171 turbocharge fraud and scams.

2172 We have been putting market participants on notice that
2173 instances in which AI tools are effectively being designed to
2174 deceive people can place them on the hook for FTC action.
2175 Our technologists are embedding across our agency's work,
2176 both on the consumer protection side and on the competition
2177 side to make sure that we're issue spotting for this because
2178 I think the turbocharging of fraud and scams that could be

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2179 enabled by these tools is a serious concern.

2180 *Ms. Clarke. Commissioner Slaughter and Bedoya,
2181 anything to add there?

2182 *Ms. Slaughter. Well, I think this is an area, you
2183 know, throughout the FTC's history, we have had to adapt our
2184 enforcement to changing technology. There's a lot of noise
2185 around AI right now, and it's important because it is a
2186 revolutionary technology in some ways, but our obligation is
2187 to do what we've always done, which is apply the tools we
2188 have to these changing technologies, make sure that we have
2189 the expertise to do that effectively, but to not be scared
2190 off by the idea that this is new revolutionary technology and
2191 dig right in on protecting people.

2192 *Ms. Clarke. Very well.

2193 *Mr. Bedoya. Congresswoman, thank you for your
2194 leadership on this. Let me add, I'm really proud of how
2195 staff in the Division of Privacy Identity Protection and the
2196 Division of Advertising Practices have been consistently
2197 sending signals to industry that there is law. A lot of
2198 folks in the industry are saying, this is unregulated, we
2199 need to regulate this. Our staff has been consistently
2200 saying our unfair and deceptive practices authority applies,

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2201 our civil rights laws, fair credit, Equal Credit Opportunity
2202 Act, those apply.

2203 The other point I'm really glad that they have stressed
2204 is it is not okay to say your algorithm is a black box, and
2205 you don't understand it, so you're not responsible for it.
2206 Some of these laws demand expandability. And so I'm proud
2207 that the Commission has been staying up to date through the
2208 Office of Technology, through the career staff at DPIIP and
2209 DIP to make clear that there is law and companies will need
2210 to abide by it.

2211 *Ms. Clarke. Very well. Thank you so much.

2212 And, Mr. Chairman, I yield back.

2213 *Mr. Bilirakis. Thank you. The gentlelady yields back,
2214 and I'll recognize Representative Fulcher for his five
2215 minutes of questioning.

2216 *Mr. Fulcher. Thank you, Mr. Chairman, and thank you to
2217 those on the panel for being here and contributing today.

2218 This is addressed to Chair Khan, please. The proposed
2219 Motor Vehicle Dealers Trade Regulation Rule is something that
2220 FTC claims will save consumers 31 billion dollars while only
2221 imposing 1.4 billion in regulatory costs. The entirety of
2222 these savings is based on FTC's claim that consumers will

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2223 spend three fewer hours shopping for a vehicle, and the
2224 Commission arrives at that apparently by taking the number of
2225 vehicles transacted in 2019, which is about 62.1 million,
2226 multiplying that by three, then multiplying that sum by
2227 22.20, which is the value non-work time hours for the average
2228 U.S. worker. That's my understanding where that came from.

2229 The three hours of savings is based on the Commission's
2230 assumption that the proposed rule will save three consumer
2231 hours. Can I just ask, Ms. Khan, what sources or
2232 documentation does the Commission have for making that kind
2233 of an assumption?

2234 *Ms. Khan. Congressman, our proposed rule lays out
2235 extensive documentation for how we have come up with some of
2236 these estimates, and we'd be happy to engage with your team
2237 to share --

2238 *Mr. Fulcher. And why won't those sources, though -- I
2239 understand why you may not be able to recite them here, but
2240 why weren't those sources listed in the documentation in the
2241 rule -- or in the notice of proposed rulemaking or NPRM,
2242 because it was not --

2243 *Ms. Khan. I know as a general matter our staff tries
2244 to make sure that they're citing whatever empirical evidence

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2245 underlies their assessments and analysis. Again, happy to
2246 engage with your team to see if there's more --

2247 *Mr. Fulcher. It's my understanding that that was
2248 simply not there. That rule also mandates up to four new
2249 disclosures for car buyers to sign related to add-on
2250 products. We all know that takes time, burdening consumers
2251 with more government paperwork and so on.

2252 Did your assumption factor in your own rule and what
2253 that will cost consumers in terms of time in the showroom?

2254 *Ms. Khan. Congressman, our work here is based in part
2255 through our enforcement actions, which have shown that
2256 unfortunately the car buying experience remains unfriendly to
2257 consumers.

2258 *Mr. Fulcher. So we take that as a no, it did not
2259 factor that in. That's how -- that's what I'm understanding.

2260 *Ms. Khan. Factor what in?

2261 *Mr. Fulcher. The time that it takes to put your own
2262 rule in place. Burdening consumers with that paperwork for
2263 add-on product disclosures.

2264 *Ms. Khan. When we do this rulemaking, we have to
2265 engage in a cost benefit type of analysis, so those
2266 considerations were definitely done here.

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2267 *Mr. Fulcher. Using the Commission's calculation of the
2268 value of consumer's non-work time, can you provide an
2269 estimate of how much the added paperwork mandated under the
2270 proposed rule will cost consumers?

2271 *Ms. Khan. We're happy to be in touch with your team if
2272 we can provide any --

2273 *Mr. Fulcher. These are things that are important when
2274 you go about the process of this rulemaking, and that's the
2275 point of this discussion here.

2276 In a response to a question for the record, and I think
2277 it was to Senator Cruz last year, you made a quote, you said,
2278 "For a recent and exceptionally well-done example of an
2279 economic analysis that FTC economists played a leading role
2280 in formulating, I recommend to you the notice of proposed
2281 rulemaking concerning a Motor Vehicle Dealers Trade
2282 Regulation Rule. The billion dollar plus regulatory cost of
2283 this rule is real.'"

2284 So those are your words, that's my understanding. So is
2285 this what passes in the FTC now for exceptionally well-done
2286 example of an economic analysis, an analysis based on
2287 inflated data and assumption but not supported by, what we
2288 can tell, any economic data?

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2289 *Ms. Khan. Congressman, our economists do superb work.
2290 The analysis that they do is undergirded by close assessment
2291 of the available empirical evidence, and I have no doubt that
2292 that's true here as well.

2293 *Mr. Fulcher. Ms. Khan, I -- well, it's -- the data
2294 doesn't seem to back that up.

2295 Section 110 of the FTC's Procedural Rules states, prior
2296 to the commencement of any trade regulization (sic) rule
2297 proceeding, the Commission must publish in the Federal
2298 Register an advanced notice of such proposed proceeding.
2299 Since the proposed Motor Vehicle Dealers Trade Regulation
2300 Rule is a trade regulation and rule, why didn't the FTC first
2301 issue an announced notice of proposed rulemaking, or ANPRM?

2302 *Ms. Khan. Congressman, this rule was issued pursuant
2303 to Dodd-Frank, which is separate from Section 18 of the FTC
2304 Act which does require publication of an ANPR. Pursuant to
2305 Dodd-Frank, we're able to do this under the Administrative
2306 Procedure Act.

2307 *Mr. Fulcher. And my understanding is is that you still
2308 have that requirement, regardless of how this is submitted.

2309 *Ms. Khan. My understanding is that this is not under
2310 the APA. The APA permits us to begin by publishing a notice

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2311 of proposed rulemaking.

2312 *Mr. Fulcher. Ms. Khan, I thank you for your responses,
2313 but at the same time, I hope you understand the concern here.
2314 I've got a group of car dealers that are very difficult to
2315 upset in many ways, but you figured out a way to do that.
2316 And so our urging is to make sure that you follow that
2317 process moving forward. It's there for a reason.

2318 Mr. Chairman, I yield back.

2319 *Mr. Bilirakis. Thank you. The gentleman yields back,
2320 and I'll recognize Representative Dingell for her five
2321 minutes of questioning.

2322 *Mrs. Dingell. Thank you, Mr. Chairman. I'm biting my
2323 tongue because I -- I'm not old, but I'm seasoned, and the
2324 auto industry has for many a year not always loved the FTC.
2325 But anyway, I'm going to behave.

2326 Thank you, Chairman and Ranking Member Schakowsky, for
2327 holding this important hearing and to all of you for sitting
2328 through all of this.

2329 The FTC provides a critical service promoting fair
2330 competition and protecting consumers from fraud and deceptive
2331 business practices to robocalls and exploitative, predatory
2332 marketing. The FTC's mandate is expansive and it's

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2333 continuing to grow with an increasingly diverse and
2334 innovative market place.

2335 This committee is also considering granting the FTC
2336 additional specific authorities to regulate Big Tech and
2337 data privacy through comprehensive data privacy legislation.
2338 And I want to make this point to all of my colleagues. If we
2339 can seriously expect the FTC to enforce these critical
2340 protections among its many responsibilities, we are going to
2341 have to make sure that you've got adequate funding and
2342 staffing to do so.

2343 I would like to focus now my questions in some of the
2344 crucial efforts that you are currently engaged in to protect
2345 consumers. In March, we heard from TikTok CEO about the
2346 company's collection of location data, and it gave me great
2347 concern. In the face of that information, I'm very pleased
2348 to talk about the FTC's latest geolocation data case against
2349 the data broker Kochava.

2350 My understanding is that in Kochava, the FTC has alleged
2351 that the defendant collected consumer's precise geolocation
2352 data, including locations that revealed consumer's visits to
2353 reproductive health clinics, houses of worship, temporary
2354 shelters for domestic violence survivors, and addiction

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2355 treatment centers, and then sold that data to third parties.
2356 All without the knowledge of the consumers whose data was
2357 being collected and sold.

2358 I know that this case is in litigation in federal court
2359 now, so you're going to be somewhat limited in what you can
2360 say, but I -- these are issues that really matter personally
2361 to me and to the victims I try to help, to those that are
2362 trying to get treatment, who are -- those who are scared that
2363 they'll be persecuted for where they're worshipping.

2364 So I'd like to ask each of the Commissioners, setting
2365 aside technical legal standards for unfairness under the FTC
2366 Act, do you believe the average consumer would agree it is
2367 unfair for a data broker they've never had contact with to
2368 sell data about their visits to sensitive locations? Just
2369 yes or no. Chairman Khan -- Chairwoman Khan?

2370 *Ms. Khan. As a general matter, yes, I think most
2371 Americans would be quite surprised.

2372 *Mrs. Dingell. Commissioner Bedoya.

2373 *Mr. Bedoya. Yes. I'll just add this was a bipartisan
2374 case of the Commission.

2375 *Mrs. Dingell. Commissioner Slaughter.

2376 *Ms. Slaughter. Yes.

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2377 *Mrs. Dingell. Chairwoman Khan, in this case, is the
2378 FTC seeking any financial recovery from the defendants, and
2379 if not, explain why not?

2380 *Ms. Khan. Thanks, Congresswoman. So in this case we
2381 are alleging that the practice was unfair under Section 5 of
2382 the FTC Act. In light of the Supreme Court's decision in
2383 *AMG*, we are not able in federal court to get back monetary
2384 equitable relief, including money back for consumers, under
2385 Section 5 in federal court. So, unfortunately, we are
2386 hampered in that way.

2387 *Mrs. Dingell. So, Commissioner Slaughter, would
2388 allowing the FTC to seek civil penalties to help deter this
2389 type of conduct in the continued sale of precise geolocation
2390 data revealing sensitive information?

2391 *Ms. Slaughter. Yeah, civil penalties play a very
2392 important deterrent effect, and we can only activate them
2393 either where we have an existing order, or where we have an
2394 existing rule, or where Congress has given us specific
2395 authority, and that would make a big difference here.

2396 *Mrs. Dingell. And for any of the three of you, is
2397 there another -- other authority Congress could provide to
2398 the FTC that would help enforcement in these type of privacy

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2399 cases? Chairman Khan.

2400 *Ms. Khan. I think as a general matter, any more
2401 specific bright-line rules of prohibitions that Congress is
2402 able to legislate would certainly make our jobs easier.

2403 *Mrs. Dingell. Thank you. I'm going to quickly try to
2404 do -- I'd like to talk about one type of technology that some
2405 data brokers use to collect data, software development kits
2406 or SDKs. Data brokers that consumers have likely never heard
2407 of entice app developers to install these SDKs in their apps,
2408 which collect geolocation data and feed it directly to the
2409 data brokers who then resell it to advertisers, other
2410 brokers, and anyone else they chose. And even the app
2411 developers often don't know where the consumer's data will
2412 end up.

2413 To all consumer -- Commissions, yes or no, putting aside
2414 the statutory requirements for an unfairness claim, do you
2415 think consumers would think this type of data collection is
2416 unfair? Yes or no. Just go down the --

2417 *Ms. Khan. Yes.

2418 *Mr. Bedoya. Yes.

2419 *Ms. Slaughter. Yes.

2420 *Mrs. Dingell. And, Chairman Khan, in four seconds, do

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2421 you know any good reason why Apple and Google continue to let
2422 app developers use SDKs and applications offered on their
2423 mobile application platforms? Do SDKs warrant significant
2424 concern?

2425 *Ms. Khan. I think they warrant scrutiny, yes.

2426 *Mrs. Dingell. Thank you.

2427 Thank you, Mr. Chairman. I'm just -- people don't
2428 understand what's happening. I went in to do my financial
2429 disclosure this week and went in to look up the value of
2430 something, and within two minutes of my having done that, I
2431 was getting investment advice. Which people don't know how
2432 we're being traced. I had to make that point. Thank you,
2433 Mr. Chairman, yield back.

2434 *Mr. Bilirakis. I appreciate it very much, thank you.
2435 The gentlelady yields back, and now I'll recognize
2436 Representative Harshbarger for five minutes of questioning.
2437 Thank you.

2438 *Mrs. Harshbarger. Thank you, Mr. Chair.

2439 I want to thank you all for looking at the unfair and
2440 deceptive business practices of pharmacy benefit managers,
2441 and I know it's -- that study was initiated a year ago, but I
2442 hope you look at vertical integration and how that is really

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2443 making it impossible for small independent businesses to
2444 survive.

2445 And with that being said, Chair Khan, I'd like to
2446 discuss the gig economy. Specifically, I'd like to discuss
2447 the FTC's policy statement related to gig work, which was
2448 rammed through on a 3-2 vote. The policy statement complains
2449 about a power imbalance between gig companies and workers
2450 which may leave gig workers exposed to harms from unfair,
2451 deceptive, and anti-competitive practices, and is likely to
2452 amplify such harms when they occur.

2453 Chair Khan, just a mere power imbalance in a commercial
2454 distribution change does not violate American antitrust or
2455 consumer protection law, unless it's accompanied by a
2456 specific bad conduct which harms consumers. Chair Khan, you
2457 have a specific amount of legal authority that Congress has
2458 authorized, and it does not include addressing power
2459 imbalances. Why are you deviating -- in a short answer, why
2460 are you deviating from your authorized role?

2461 *Ms. Khan. Thanks, Congressman. We're actually
2462 following existing precedent, including work that was started
2463 under my Republican predecessor, Joe Simons, to address
2464 instances in which gig companies are engaging in illegal

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2465 practices, including with regards to their workers. One of
2466 the enforcement actions that preceded my time at the
2467 Commission involved instances in which Amazon was deceptively
2468 withholding tips from gig workers, from its drivers.

2469 *Mrs. Harshbarger. That's --

2470 *Ms. Khan. So again, there's nothing really unusual
2471 about this work.

2472 *Mrs. Harshbarger. Okay, that's good enough for me.
2473 But there's another interesting component of the policy
2474 statement, and it's around gig workers. It seems natural to
2475 me to call these people workers not consumers, because
2476 generally, in a lot of -- if you look at Lyft or Uber
2477 drivers, for example, they're contract workers or 1099s.
2478 They can leave anytime they want.

2479 But the FTC seems to have invented a new term called
2480 working consumers. Am I getting the phrase right? Yes or
2481 no. Working consumers?

2482 *Ms. Khan. I'm not specifically familiar with that
2483 phrase. I will say our statute prohibits unfair or deceptive
2484 acts or practices as they could affect any market
2485 participant, be it a consumer, be it a worker, be it a small
2486 business.

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2487 *Mrs. Harshbarger. Well, if it's called working
2488 consumers, it's an oxymoron because the next thing we're
2489 going to have are manufacturing consumers or we're going to
2490 have selling consumers. And it's alarming because the FTC
2491 seems to think that it can regulate just about anyone if you
2492 label them as a consumer. And the wording is especially
2493 concerning given the FTC's agreement with the National Labor
2494 Relations Board. The Federal Trade Commission does not have
2495 the authority to promote the unionization of workers.

2496 And answer -- you can answer this very shortly. How
2497 does the FTC NLRB Memorandum of Understanding affect the
2498 FTC's review of the gig economy?

2499 *Ms. Khan. So this is an MOU that we're really pleased
2500 to be entering because there are ways in which our staff can
2501 be exchanging information and sharing information that can
2502 allow each agency to better do its job. It's absolutely true
2503 that our authorities differ from those of the NLRB, but
2504 through having these partnerships, through having training of
2505 staff, we can make sure each of us is best positioned to do
2506 our job.

2507 *Mrs. Harshbarger. Okay. I have two more, and I've got
2508 a limited amount of time. I will tell you this, I'm troubled

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2509 by the actions taken by the FTC to unwind the Illumina/GRAIL
2510 merger. And Illumina reacted -- or reacquired GRAIL in 2021.
2511 It's a company which has developed a transformational test to
2512 detect cancer, and with a single blood test, that gallery
2513 test can screen asymptomatic patients for more than 50 types
2514 of cancer, many of which have no other form of screening and
2515 are often caught too late to treat effectively.

2516 And I can go on and on about that, but why does the FTC
2517 insist on blocking the merger in the name of competition when
2518 there are no other companies that are even close to having a
2519 test on the market for several years? Why is that?

2520 *Ms. Khan. Congresswoman, I'm limited in what I can say
2521 here given that this case remains pending in our
2522 administrative proceeding. I will note that the Commission
2523 recently published an opinion stating out our views and our
2524 legal analysis as applied to the facts here.

2525 *Mrs. Harshbarger. Okay, okay. And I do have another
2526 comment. We can all agree that competition law isn't
2527 supposed to protect an industry's dominant player, do you
2528 agree?

2529 *Ms. Khan. Sorry, could you say that again?

2530 *Mrs. Harshbarger. I say we can all agree that

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2531 competition law isn't supposed to protect an industry's
2532 dominant player.

2533 *Ms. Khan. Correct.

2534 *Mrs. Harshbarger. In light of that, I find it curious
2535 that the FTC is taking action to protect Sony, which has 68
2536 percent of the global market for high-end video gaming
2537 consoles, from competitive -- or competition attempted to
2538 block Microsoft's proposal -- or their proposed acquisition
2539 of Activision Blizzard King. As you know, Sony's been the
2540 most vocal opponent of that deal, and remarkably, the FTC has
2541 sided with Tony -- Sony. Can you explain why that seems to
2542 be a good idea?

2543 *Ms. Khan. This case also has been voted out and is in
2544 administrative proceeding, so I'll let the complaint speak
2545 for itself. I will say as a general matter, we always really
2546 benefit from hearing market participants across the board,
2547 including big players, but at the end of the day, we always
2548 make our own independent judgments based on the law and the
2549 facts.

2550 *Mrs. Harshbarger. Okay. I know my time is about up,
2551 and so with that, I yield back.

2552 *Mr. Bilirakis. Thank you. The gentlelady yields back,

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2553 and now we'll recognize Representative Trahan for her five
2554 minutes of questioning.

2555 *Mrs. Trahan. Well, thank you, Mr. Chairman. Thank you
2556 Ranking Member Schakowsky.

2557 It's worth reminding that a strong FTC is good for
2558 consumers, it's good for small businesses, certainly good for
2559 our economy. You simply cannot be pro privacy and support a
2560 weak FTC. And you can't be pro competition and support an
2561 understaffed Commission.

2562 The issues before us, whether we're talking about anti-
2563 competitive monopolies or online harms are just too big. And
2564 we need federal enforcers like the FTC to have the resources
2565 and the personnel necessary to tackle them.

2566 Commissioner Bedoya, as you know, an overwhelming
2567 majority of my colleagues on both sides on the dais here
2568 today support comprehensive privacy protections, particularly
2569 for our children. I share Representative Castor's concern
2570 about privacy violations in education technology, and I'm
2571 encouraged by your answers on improving COPPA enforcement and
2572 the COPPA rule. I'm particularly worried that parents and
2573 students don't have any choice or control over the
2574 technologies that students are required to use.

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2575 Could you expand on what the FTC is doing to investigate
2576 privacy abuses and expand consumer choice and education
2577 technology, and what options do parents have if they have
2578 concerns about the technology that children are mandated to
2579 use in their classrooms?

2580 *Mr. Bedoya. Thank you for that question. I think one
2581 of the great first steps the Commission has taken recently in
2582 pushing against precisely this issue is making clear that
2583 parents legally have to have a choice. The policy statement
2584 made clear that in the rule it says you can't force kids to
2585 surrender their privacy in order to do their homework, so you
2586 can't require them to surrender all this information to do
2587 their homework. It also reminded people that they needed to
2588 give industry, they need to give parents a choice about
2589 deleting that data.

2590 And so the first thing is sending very clear signals
2591 that there is law here. And for years, COPPA, by folks
2592 outside of the Commission, was caricatured as a notice and
2593 choice rule when it's not, it's much more than that.

2594 Secondly, alongside the rule review, there have been
2595 some very aggressive cases brought. The one that comes most
2596 to mind is the Chegg case. This involved data that was

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2597 stored in plain text, weak encryption, that resulted in the
2598 breach of 40 million students data, including information
2599 about disability and sexual orientation, and the Commission
2600 was able to bring a strong case there.

2601 And so between the Office of Technology, the policy
2602 statement, and enforcement from the Division of Privacy
2603 Identity Protection, we're moving on a number of fronts on
2604 this.

2605 *Mrs. Trahan. Thank you, Commissioner Bedoya. And the
2606 -- that's the level of attention that our parents and our
2607 students, frankly, deserve.

2608 When we talk about harms to privacy and potential
2609 digital discrimination, those are what I would call systemic
2610 risks. And while it's heartening to see you tackling them in
2611 Ed Tech, we know harms exist across the online economy.
2612 Systemic risks are things we can all agree on: illegal
2613 activity and content online, digital discrimination, and
2614 risks to our democracy and to the health and well-being of
2615 consumers.

2616 That list includes public security. And the recent leak
2617 of classified information by an attention seeker on Discord
2618 showed that our country is prone to public security risks

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2619 inherent in the use of online platforms. Last Congress I
2620 introduced the Digital Services Oversight and Safety Act
2621 which would require the largest tech companies to
2622 comprehensively assess and report systemic risks.

2623 So, Chair Khan, do you believe that large online
2624 platforms adequately assess systemic risks around digital
2625 discrimination, illegal content or activity, public security,
2626 and/or health and well-being of their users, and do you
2627 believe a failure to assess these risks could potentially be
2628 unfair under Section 5 of the FTC Act?

2629 *Ms. Khan. Thanks for that question. I worry that
2630 there is a lot more work here to be done. I think we've all
2631 seen time and time again how the business models of these
2632 platforms can really incentivize practices that are not
2633 aligned with what's best for their users or consumers, and so
2634 I definitely think that there is a much more need for us to
2635 be looking closely to understand what types of practices are
2636 happening, is there discrimination, and how can we be better
2637 targeting those.

2638 *Mrs. Trahan. And if you were to enforce against
2639 companies for failing to properly consider systemic risks,
2640 could you accomplish that if there wasn't a standardized way

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2641 to measure and qualify those risks?

2642 *Ms. Khan. It would certainly be challenging. I'll say
2643 in our data security work, we've been able to identify what
2644 constitutes best practices and then enforce the law based on
2645 what should be required for best practices for data security.
2646 I imagine we could try to do something here but, of course,
2647 clear word from Congress about how to do that would be most
2648 helpful.

2649 *Mrs. Trahan. Thank you. I understand those
2650 challenges, and that's why I've been proposing and much for a
2651 national framework like the one outlined in the Digital
2652 Services Oversight and Safety Act to assess those risks and
2653 those mitigations. Thank you so much for your time. I yield
2654 back.

2655 *Mr. Bilirakis. I thank the gentlelady. I'll recognize
2656 Representative Armstrong for his five minutes of questioning.

2657 *Mr. Armstrong. Thank you, Mr. Chairman. The fiscal
2658 year 2024 FTC budget request is a substantial increase
2659 compared to previous years. The request is for 590 million
2660 dollars, which is a 160-million increase from last year's
2661 enacted level and a 2,000 -- or 213-million increase from the
2662 fiscal year 2022 enacted level.

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2663 The budget explains that the increase is accounted for
2664 by adding 310 full-time staff along with an anticipated 5.2
2665 percent pay increase for said staff. And there is a single
2666 line that briefly mentions inflationary adjustments to
2667 account for what I -- the four-decade high inflation data
2668 that exceeds nine percent comparing 2022 to 2021. And much
2669 of the proposed budget is to help the FTC in pursuing your
2670 mission in regards to competition enforcement.

2671 Commission's testimony states that the FTC has been
2672 reassessing how we can enforce antitrust laws to maximize our
2673 efficacy. Considering the Commission's record in competition
2674 cases in recent years, we conclude that the -- we could
2675 conclude that the record is neither effective nor efficient.
2676 And that may be largely due to the Commission's advancing of
2677 novel legal theories as opposed to enforcing conduct that is
2678 violative of current law. Former Commissioner Wilson
2679 referenced this as defiance of legal precedent.

2680 The Commission recently abandoned an effort to prevent
2681 Meta from purchasing a fitness startup after losing in
2682 district court on an actual potential competition claim, a
2683 theory that was entertained by the district court but
2684 rejected on the facts. The Commission lost the suit before

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2685 the ALJ to reverse the acquisition of GRAIL by Illumina, the
2686 first decision since the Commission dropped its support of
2687 the 2020 Vertical Merger Guidelines, which acknowledged that
2688 vertical mergers generally create efficiencies.

2689 Undeterred, the Commission ordered Illumina to divest
2690 GRAIL this month. I fear this may also be the case with
2691 Microsoft Activision, but we'll get to that in a second. The
2692 motive is clear. The Commission's goal is to advance its
2693 novel legal theories. Winning cases seems to be secondary.
2694 But you still have to win cases.

2695 Referring to the Commission's recent record, former
2696 Commissioner Kovacic simply said, "Ultimately you need
2697 litigated victories.'" And this perceived budgetary
2698 inefficiency and advancement of policy goals isn't limited to
2699 litigation. After the last U.S./EU joint tech compliance
2700 dialogue, the Commission announced it would send personnel to
2701 assist with the implementation of the Digital Markets Act, an
2702 EU passed law that is in conflict with U.S. competition.

2703 So I'm left to wonder, as someone who co-sponsored a
2704 bill to increase merger filing fees to support the
2705 Commission's enforcement efforts, why should Congress grant
2706 such a substantial budget increase to the Commission?

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2707 With regards to Sony and -- Sony controls about two-
2708 thirds of the global gaming market and has vocally opposed
2709 Microsoft's acquisition of Activision. The FTC's position
2710 aligns with Sony, the dominant market leader, despite Xbox's
2711 position as the third place gaming console manufacturer with
2712 a near non-existent mobile gaming market share and multiple
2713 public comments to ensure that Call of Duty is open to
2714 competitor consoles. While the FTC complaint mentions that
2715 Microsoft competes with independent studios to offer games
2716 like Call of Duty, this is really another challenge of a
2717 vertical merger.

2718 I previously mentioned the FTC's administration court
2719 loss in the GRAIL/Illumina, but the DOJ's failure to block
2720 the vertical merger between UnitedHealth/Change Healthcare is
2721 also [indiscernible]. I understand that the Commission may
2722 be limited in what they can say regarding ongoing limita --
2723 ongoing litigation. Without speaking to the facts of that
2724 matter, Chairwoman Khan, do you agree with the statement that
2725 anti-trust law -- trust laws exists to protect consumers not
2726 individual competitors?

2727 *Ms. Khan. Thanks, Congressman. The -- we follow the
2728 competition laws as written by Congress. The Sherman Act

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2729 says, you know, restraints of trade or practices that
2730 undermine competition are illegal. We also look closely at
2731 Section 5 of the FTC Act which prohibits unfair methods of
2732 competition. So we are fully committed to following the text
2733 of the statutes.

2734 *Mr. Armstrong. And you have previously stated that
2735 reforming FTC merger policies should be more deeply rooted in
2736 the text of our statutes and bringing anti-law -- antitrust
2737 more squarely within the rule of law. Yet the FTC now
2738 demands decade-long prior approval provisions in consent
2739 orders and merging -- merger matters. Former Commissioners
2740 Phillips and Wilson have called this policy an end run around
2741 the Hart-Scott-Rodino premerger notification framework that
2742 Congress established in 1976.

2743 What is the specific statutory text that grant FTC
2744 authority?

2745 *Ms. Khan. So these prior approvals are obtained in
2746 settlements with parties when we're taking action. I should
2747 note that pursuing prior approval was actually a longstanding
2748 FTC practice through the mid-90s, and so the changes that
2749 we've made are actually putting us back into alignment with
2750 longstanding FTC practice.

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2751 *Mr. Armstrong. And then I would ask unanimous consent
2752 to enter into the record a letter Senator Cramer sent --

2753 *Mr. Bilirakis. Yeah, without objection, so ordered.

2754 [The information follows:]

2755

2756 *****COMMITTEE INSERT*****

2757

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2758 *Mr. Armstrong. Thank you. I yield back.

2759 *Mr. Bilirakis. Thank you. And I don't see anyone on
2760 the Democrat side, so I'll recognize my good friend from
2761 Gainesville, Florida, home of the Fighting Gators, Ms.
2762 Cammack. Please, you're recognized for five minutes.

2763 *Mrs. Cammack. Thank you, Mr. Chairman. Go Gators.

2764 [Laughter.]

2765 *Mrs. Cammack. All right. Mr. Chairman, I would like
2766 to start out by submitting two letters for the record written
2767 by FTC alumni expressing concerns about the integrity and
2768 fairness of the FTC and its departure from the agency's
2769 traditional norms and bounds.

2770 *Mr. Bilirakis. Without objection, so ordered.

2771 [The information follows:]

2772

2773 *****COMMITTEE INSERT*****

2774

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2775 *Mrs. Cammack. Thank you. As I mentioned, these
2776 letters are both signed by prominent former officials of the
2777 FTC, and I would say that when FTC alumni are questioning the
2778 direction and integrity of the FTC, I certainly think that we
2779 here in Congress should as well. I would also like the
2780 record to reflect that neither of these letters have been
2781 responded to by you or your office.

2782 Additionally, Mr. Chairman, I'd like to submit the
2783 August 1, 2022, FTC Inspector General's Report titled, "Audit
2784 of the Federal Trade Commission's Unpaid Consultant and
2785 Expert Programs," for the record.

2786 *Mr. Bilirakis. Without objection, so ordered.

2787 [The information follows:]

2788

2789 *****COMMITTEE INSERT*****

2790

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2791 *Mrs. Cammack. Thank you, Mr. Chairman.

2792 Chair Khan, according to the Inspector General's report,
2793 you expanded the agency's use of unpaid consultants and
2794 experts, correct?

2795 *Ms. Khan. We made use of government authorities that
2796 allow us to bring on experts, yes.

2797 *Mrs. Cammack. How many consultants were added to the
2798 FTC after your confirmation?

2799 *Ms. Khan. I don't have those numbers top of mind, but
2800 we're happy to get those to you.

2801 *Mrs. Cammack. Thank you. Did they receive training?

2802 *Ms. Khan. They received ethics training and ensuring
2803 that they were in compliance with all FTC's rules and ethics
2804 rules.

2805 *Mrs. Cammack. Okay, perfect. According to your
2806 agency's press statement on the IG's audit, you defended the
2807 agency's use of unpaid consultants and experts by claiming
2808 that they fill "subject matter gaps.'" What gaps have
2809 existed during your tenure?

2810 *Ms. Khan. Yeah, this is a great question. And I
2811 should note that there are existing authorities that allow us
2812 to bring on these experts for precisely this function. A lot

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2813 of our work can get quite technical. It can require deep
2814 industry expertise. Especially as we're doing our work in
2815 digital markets, it can require expertise to understand how
2816 these technologies are working. And so we were able to bring
2817 on, for example, experts in AI technologies to help us make
2818 sure that our work in this area was fully informed by the
2819 latest best practices and the latest industry knowledge.

2820 *Mrs. Cammack. Perfect, thank you. Who did these
2821 consultants and experts report to and how frequently?

2822 *Ms. Khan. So it would depend on where they were
2823 brought on within the agency. We had some experts that were
2824 brought on within the Office of Policy Planning, and so they
2825 would report to the director of that office. We had some
2826 experts brought onto the Bureau of Consumer Protection, and
2827 so they would be reporting to the respective managers there.

2828 *Mrs. Cammack. And did your staff keep you informed
2829 about the work of these consultants and experts that were
2830 doing work on behalf of the agency?

2831 *Ms. Khan. Yeah, as a general matter, these consultants
2832 were being plugged into existing work streams, and so as that
2833 work was coming up to the Commission, we would see their
2834 contributions there.

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2835 *Mrs. Cammack. So I would like to get copies of the
2836 communications from these consultants to you and your office
2837 and your staff. Could you provide that to us?

2838 *Ms. Khan. We're happy to work with your team to see
2839 what we can make available.

2840 *Mrs. Cammack. I would hope all of it would be made
2841 available. Now under your helm, how did the agency define
2842 consultant and expert, specifically, what criteria did the
2843 agency use in recruiting these consultants and experts?

2844 *Ms. Khan. As a general matter, when we're looking to
2845 bring on experts, we're doing so because there is a specific
2846 function for which we need their expertise, and so the
2847 criteria would depend on whether we were looking to bring on
2848 people who had particular expertise in AI, in particular its
2849 forms of digital markets, in particular was areas of
2850 antitrust where we felt we didn't have the requisite
2851 expertise internally and so it needed to go outside.

2852 *Mrs. Cammack. So that doesn't really answer my
2853 question of how you define a consultant or an expert, but I
2854 guess --

2855 *Ms. Khan. I believe those terms are probably defined
2856 under the regulations, so we would follow those definitions.

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2857 *Mrs. Cammack. So you advertised this to members of the
2858 public?

2859 *Ms. Khan. As a general matter, we have the authority
2860 to identify specific experts that we want to bring on board.
2861 There are no requirements --

2862 *Mrs. Cammack. So that's no.

2863 *Ms. Khan. There are no requirements under the
2864 regulation --

2865 *Mrs. Cammack. So you did not publicly advertise these
2866 unpaid consultant positions to the public.

2867 *Ms. Khan. Correct.

2868 *Mrs. Cammack. You did not, okay. Why?

2869 *Ms. Khan. We followed the underlying regulations that
2870 permit government agencies to bring on outside experts and
2871 consultants. Given that the function for which we're doing
2872 this is to fill specific niche needs, we thought it would be
2873 most efficient to actually identify directly the people we
2874 needed. And again, we followed the regulations and what they
2875 require.

2876 *Mrs. Cammack. So you don't publicly advertise these
2877 positions for these experts. Who initiates contact?

2878 *Ms. Khan. As a general matter, I would think the

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2879 agency would have initiated contact since these were specific
2880 needs that we were looking to fill and so we would know what
2881 our needs were.

2882 *Mrs. Cammack. It seems like it's a -- it's ripe for an
2883 opportunity for fraud, or corruption, or finding people who
2884 are willing to execute on a political agenda. But did you
2885 receive approval from the FTC's Office of General Counsel
2886 ethics team to do this?

2887 *Ms. Khan. Yes, the ethics teams is always involved
2888 anytime we bring new people on board at the Commission.

2889 *Mrs. Cammack. And you will be willing to provide the
2890 written approval to this committee?

2891 *Ms. Khan. We're happy to provide you whatever
2892 materials we have available in this area.

2893 *Mrs. Cammack. My time has expired, Mr. Chairman.
2894 Thank you, Chair Khan, for being here.

2895 *Mr. Bilirakis. The gentlelady yields back, and now
2896 I'll recognize my good friend from the State of Indiana, Mr.
2897 Pence, for five minutes of questioning.

2898 *Mr. Pence. Thank you, Chairman Bilirakis and Ranking
2899 Member Schakowsky for holding this hearing, and thank you to
2900 the Commissioners for being here with us today.

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2901 As we discussed today, the FTC plays a critical role
2902 protecting consumers from fraudulent schemes and deceptive
2903 trade practices. You know, years ago, many years ago, I had
2904 to get involved in mergers that occurred across the country,
2905 and that doesn't seem to be something anybody gets involved
2906 in anymore. And the consolidation, especially in Big Tech,
2907 which is something I focus on, has just gone unchecked.

2908 But that's not part of what I want to say today. In the
2909 past year alone, the FTC has returned over 25 million to
2910 Hoosiers that have fallen victim to the deceptive scams and
2911 frauds. However, I echo the concerns of my colleagues
2912 regarding the direction of the FTC under Chairwoman Khan's
2913 leadership.

2914 During the Chairwoman's tenure, the FTC has routinely
2915 overstepped congressional-directed jurisdiction to target
2916 American companies. Meanwhile, the Chair has disregarded the
2917 other commissioners and consolidated authorities of the FTC
2918 within her own office. Chairwoman Khan has even gone as far
2919 as to allow a former commissioner to vote on a substantial
2920 merger policy.

2921 In a recent and notable overreach, the FTC issued
2922 initial violation notices through their unprecedented penalty

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2923 offense authority rule to over 700 companies before the final
2924 order was issued. Since the Commission does not have
2925 authority to issue civil penalties for initial violations for
2926 most unfair or deceptive practices, the FTC is setting a new
2927 and dangerous precedent that could threaten Hoosier
2928 businesses operating in the U.S. economy. This has left
2929 businesses in my state in the dark about how they're allowed
2930 to do business and continues this Administration's find and
2931 find approach instead of collaboration in partnership to meet
2932 common goals and protect consumers.

2933 In 2004, we had the same problem in the State of Indiana
2934 where it was fine and fine -- find and fine, and we got that
2935 changed and, of course, the State of Indiana has a fabulously
2936 balanced budget and our economy is growing.

2937 The FTC has continued their overreach with a proposed
2938 rule seeking to ban non-compete clauses in its partnership
2939 with the National Labor Relations Board. This rule rejects
2940 American free market ideals and disregards state laws that
2941 already serve to protect employees in their communities. I
2942 had a conversation just a little while ago with a friend of
2943 mine sitting in the back, a surgeon, about what if I went to
2944 work for a hospital that paid off my debt, would I -- could I

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2945 not have a non-compete. That's not my question, okay.

2946 As a result of the FTC's concerning overreaches, the
2947 remaining Republican commissioners have all resigned. Before
2948 this committee considers any sort of additional authority,
2949 it's imperative that we gain a better understanding as to how
2950 the FTC can more appropriately utilize the resources they
2951 have at hand.

2952 Chair Khan, former Commissioner Wilson, who resigned
2953 just a few weeks ago, brought important private sector
2954 experience to the FTC. Can you describe your experience
2955 working in the private sector?

2956 *Ms. Khan. Thanks, Congressman. I have not worked in
2957 the private sector. I did work for Columbia University, but
2958 that's, I believe, you know, organized as a non-profit.

2959 *Mr. Pence. I'm not downplaying your private -- your
2960 academic experience, but my view of the FTC, which is very
2961 positive back in my business experience all my life,
2962 understanding how business actually operates is pretty
2963 important. Do you believe the lack of business experience
2964 among FTC commissioners inhibits your ability to regulate
2965 private sector entities effectively?

2966 *Ms. Khan. Congressman, there's no doubt that diversity

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2967 of experience among commissioners greatly benefits our work,
2968 and I really look forward to new commissioners that the
2969 President would nominate and the Senate would confirm, and
2970 we'll look forward to that.

2971 *Mr. Pence. So I hope you lead that. I'd like to yield
2972 the balance of my time to Mr. Armstrong.

2973 *Mr. Armstrong. Thank you.

2974 *Mr. Bilirakis. You're recognized.

2975 *Mr. Armstrong. Chair Khan, earlier you expressed
2976 concerns about data brokers selling sensitive location data,
2977 and I share that concern. Anybody who's noticed me
2978 testifying in just about any entire hearing my entire time
2979 here, I think this is one of the largest conversations we
2980 have moving forward. This might be an unfair question, but
2981 I'm going to ask it anyway because we forget about the true
2982 elephant in the room.

2983 Do you have any thoughts on the federal government
2984 purchasing that same data from third-party data brokers?

2985 *Ms. Khan. It's an interesting question. For us, our
2986 work looks at private entities for the most part, and so
2987 that's where our area is -- of attention is. As a general
2988 matter, I think it's no coincidence that those who have

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2989 traditionally been skeptical of concentrations of power,
2990 including in government, are now also extending those
2991 concerns to the private sector. I think any time we see, you
2992 know, deep concentrations of economic power, that can create
2993 concern. And so be it data collected by, you know, big
2994 business or big government, I think a lot of people have
2995 concerns about that.

2996 *Mr. Armstrong. Thank you. And I yield back.

2997 *Mr. Pence. Thank you, Mr. Chair. I yield back.

2998 *Mr. Bilirakis. Mr. Pence yields back. Now we'll
2999 recognize Ms. Lesko from the great State of Arizona. You're
3000 recognized for five minutes of questioning.

3001 *Mrs. Lesko. Thank you, Mr. Chair.

3002 Thank you, Chair Khan. My question for you, Chair Khan,
3003 is in 2020, 87 percent of responding FTC employees affirmed
3004 that senior leaders maintain high standards of honesty and
3005 integrity. That number plummeted to 49 percent in 2022.
3006 This is quite alarming. How do you respond to those that say
3007 your leadership style is responsible for such a large drop in
3008 employee confidence?

3009 *Ms. Khan. Thanks, Congresswoman. I'm incredibly proud
3010 of the staff of the FTC who day in and day out are protecting

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3011 the interests of the American public, and I take those
3012 results very seriously. After seeing those declines, my team
3013 and I sprung into action to make sure we were understanding
3014 what was the source of the decline and what changes we could
3015 put in place to turn that around.

3016 *Mrs. Lesko. Thank you. Who at the FTC has authority
3017 to initiate an investigation on a business?

3018 *Ms. Khan. So as a general matter, any time there is
3019 issuance of compulsory process, or a CID, that has to go
3020 through a particular commissioner.

3021 *Mrs. Lesko. Do commissioners have to vote to initiate
3022 an investigation on a business?

3023 *Ms. Khan. It depends what type of investigation is
3024 being done. Traditionally, on the consumer protection side,
3025 we had what was known as the omnibus authority which
3026 streamlined the ability to send out CIDs to make sure we
3027 could do our work more efficiently. More recently, we've
3028 also adopted that on the competition side, so in a whole host
3029 of areas, be it --

3030 *Mrs. Lesko. All right, let me ask you more specific.
3031 Do commissioners have to vote to seek a court order against a
3032 business?

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3033 *Ms. Khan. As a general matter, yes.

3034 *Mrs. Lesko. Okay. Third question. In response to
3035 Elon Musk's Twitter acquisition and public commitment to
3036 protecting free speech on a social media platform, it appears
3037 the FTC began an intense investigation into the company
3038 citing user data privacy as the reason behind it. FTC made
3039 over 350 demands of Twitter, including information on
3040 journalists that interacted with Twitter, specifically those
3041 that produced the Twitter files. On what authority did the
3042 FTC make this demand?

3043 *Ms. Khan. Thanks, Congresswoman. As you know, Twitter
3044 has long been under FTC scrutiny, extending back a decade
3045 when it was found that lax data privacy and security
3046 practices had allowed hackers to take over all sorts of
3047 accounts, including the account of Fox News. At that point,
3048 there was a consent order that was entered into.

3049 Last year, we found that base -- that Twitter had been
3050 violating that consent order, entered into a new one. And
3051 inasmuch as we read public reporting suggesting that third
3052 parties may have been granted unauthorized access to
3053 Twitter's internal systems and be violating the new consent
3054 decree, that's absolutely something that we have an

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3055 obligation to look at closely.

3056 *Mrs. Lesko. But I fail to understand how you say it's
3057 due to data privacy when you're asking about specific names
3058 and communications, and you're specifically asking for the
3059 emails and all communications with Elon Musk within the
3060 employee network. How does that have to deal with data
3061 privacy?

3062 *Ms. Khan. We want to know who is making some of these
3063 decisions, what type of responsibility are senior level
3064 executives potentially carrying, and so we try to be
3065 comprehensive in how we're looking at these issues.

3066 *Mrs. Lesko. Thank you. And I yield back.

3067 *Mr. Bilirakis. Okay, now I'll save Representative
3068 Carter some time and say he is from the home State of
3069 Georgia, home of the national champion Georgia Bulldogs.
3070 You're recognized, sir, for --

3071 *Mr. Carter. Twice in row.

3072 *Mr. Bilirakis. Now you can stick to the second matter.

3073 *Mr. Carter. Two years in a row, Mr. Chairman.

3074 *Mr. Bilirakis. Thank you.

3075 *Mr. Carter. Go Dogs. Thank you, Mr. Chairman, and
3076 thank you for allowing me to waive onto this committee.

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3077 Thank you, Chair Khan. Thank you, Commissioners, for
3078 being here, I appreciate it.

3079 Let me preface my remarks by saying this. I became a
3080 member of Congress eight years ago. The first thing I did
3081 when I got here was to go straight to the FTC and ask them to
3082 look at the vertical integration that exists in the drug
3083 pricing chain.

3084 I'm a pharmacist. I've been in retail pharmacy. I've
3085 practiced over four decades. I started when I was 10, so
3086 anyway.

3087 But seriously, this is something that I've witnessed
3088 over the years. And again, eight years ago, this was the
3089 first thing I did when I got to Congress, go to the FTC.
3090 Asked you to look at how the insurance company owns the
3091 pharmacy benefit managers, the PBMs, that owns the pharmacy,
3092 and in some cases, that employs the providers.

3093 Finally, last summer you agreed to do that, and I know
3094 you're doing it, and I want to thank you for that because
3095 this is what the problem is right here. You've seen it
3096 throughout the country. You've seen what's happened in
3097 states like Ohio where the Attorney General just recently
3098 referred to PBMs as gangsters. And they are. And they are

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3099 the reason why the price of prescription drugs are so high.

3100 There was a study done a little over a year ago by the
3101 Berkeley Group out in California that showed that only 63
3102 percent of the price of a drug goes to the PBM. Only 37
3103 percent goes to the drug manufacturer. Now I'm not trying to
3104 take up for drug manufacturers; they need to do a better job,
3105 too. But tell me what they are doing with that 63 percent.
3106 Do you think that they are passing those savings onto the --
3107 the discounts that they get onto the patient? I can tell you
3108 they're not.

3109 You're familiar with it, Chairman Khan, I know you are,
3110 with spread pricing, with DIR fees that are putting retail
3111 pharmacies -- independent retail pharmacies out of business
3112 to the tune of about four percent every year. The most
3113 accessible healthcare professionals in America are
3114 pharmacists. 95 percent of all Americans live within five
3115 miles of a pharmacy.

3116 We want -- everyone, Republicans and Democrats, want the
3117 same thing in healthcare. We want accessibility,
3118 affordability, and quality. That's what we all want. You do
3119 away with that accessibility by doing away with independent
3120 retail pharmacies, and you're going to decrease

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3121 accessibility, and we don't need that.

3122 Chair Khan, can you bring me up to date of where the FTC
3123 is now? I know you can only say so much publicly, but can
3124 you bring me up to date where you're at in this process of
3125 looking at this study? I believe that you call it a 6(b)
3126 study?

3127 *Ms. Khan. That's right. And, Congressman, early on in
3128 my tenure we started hearing an enormous amount from
3129 independent pharmacies about potentially abusive practices by
3130 PBMs. We took those reports enormously seriously and that's
3131 why we've launched this study.

3132 We've been collecting information, collecting the data
3133 that was requested and are in the process of reviewing it.
3134 We're hoping that we'll be able to, you know, share something
3135 on that with your office in short order, but this is work
3136 that is underway.

3137 I couldn't agree more that independent pharmacies play a
3138 critical role. One thing that we saw during the pandemic in
3139 particular was that states that have legislation protecting
3140 their independent pharmacies were actually able to have
3141 better outcomes in terms of distribution of key medicines.
3142 And so I think we've seen how on key metrics independent

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3143 pharmacies are outperforming, and so we need to make sure
3144 that unfair methods of competition are not squeezing them
3145 out.

3146 *Mr. Carter. I know that you're looking at, I believe,
3147 it's six PBMs total. You know, there are three PBMs that
3148 control 80 percent of the market. 80 percent of the market.
3149 That's -- there is no reason -- there ought to be a law that
3150 a PBM cannot own a pharmacy. You know that there's patient
3151 steering going on.

3152 You know, when the insurance company owns the PBM that
3153 owns the pharmacy, they're steering their patients toward
3154 their own pharmacy. We see it every day. That's happening.

3155 *Ms. Khan. I think you're absolutely right that when
3156 you have vertical integration coupled with significant
3157 industry concentration, the ability for that structure to
3158 create conflicts of interest become very, very real, and
3159 those conflicts of interest can be a serious concern when
3160 they're leading to those types of practices.

3161 *Mr. Carter. I mentioned the lawsuit that was -- that's
3162 recently been filed by the Ohio Attorney General that alleges
3163 that PBMs, through their subsidiaries, collude to fix
3164 reimbursement prices and share competitively sensitive

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3165 information to enable coordinated negotiations. Is the FTC
3166 investigating this same conduct?

3167 *Ms. Khan. Congressman, some of that information is
3168 non-public, but as a general matter, those issues are on our
3169 radar. We also early on in my tenure issued a policy
3170 statement noting that potentially illegal kickbacks or
3171 commercial bribery that might be occurring through the rebate
3172 system is on our radar as well.

3173 *Mr. Carter. Well, I'm out of time. Again, this is the
3174 first thing I did eight years ago. Thank you for doing this.
3175 This is extremely important. Republican, Democrat. I never
3176 went to the counter and asked a patient are you a Republican
3177 or Democrat. All I tried to do was to help the patients, as
3178 all pharmacies are trying to do.

3179 Thank you, and I yield back.

3180 *Mr. Bilirakis. Thank you, sir. The gentleman yields
3181 back. And now we'll recognize -- no one on the Democrat
3182 side, so we'll go ahead and recognize Dr. Joyce from the
3183 State of Pennsylvania. Thank you -- thanks for your
3184 patience, sir.

3185 *Mr. Joyce. Thank you for yielding, Mr. Chairman. And
3186 I would further like to thank both you and Ranking Member for

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3187 allowing me to waive onto this panel for this important
3188 hearing.

3189 Chair Khan, last fall I, along with 67 of my colleagues,
3190 sent you a bipartisan letter in support of the FTC Franchise
3191 Rule which highlighted the importance that this rule has to
3192 the business community at large. And I would like to ask
3193 unanimous consent to enter this letter into the record.

3194 *Mr. Bilirakis. Without objection, so ordered. Thank
3195 you.

3196 [The information follows:]

3197

3198 *****COMMITTEE INSERT*****

3199

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3200 *Mr. Joyce. Chair Khan, is the FRI -- is the RFI
3201 announced in March of this year part of the FTC Franchise
3202 Rule review?

3203 *Ms. Khan. No, it's a separate effort.

3204 *Mr. Joyce. If this is not part of the FTC Franchise
3205 Rule review, do you agree that there would be benefits of
3206 including the RFI as part of the franchise review -- rule
3207 review?

3208 *Ms. Khan. It certainly could be. The Franchise Rule
3209 itself, as it stands, covers a narrower set of issues, so we
3210 wanted to have the separate process to make sure we were
3211 getting a 360 view of what the issues here might be. If we
3212 learn things that are relevant for how we should be enforcing
3213 the Franchise Rule or do any amendments, of course we would
3214 take that into account.

3215 *Mr. Joyce. And I agree with you. I think that it --
3216 including that as part of the franchise review, including the
3217 RFI would be important. Thank you for acknowledging that.

3218 How does the FTC NLRB Memorandum of Understanding affect
3219 the FTC's review of franchise issues, particularly at a time
3220 when the NLRB is finalizing a rule that will upend the
3221 franchise relationship?

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3222 *Ms. Khan. As a general matter, we entered into this
3223 MOU to make sure that we were able to share information that
3224 might be relevant to each other. We each have different
3225 authorities, and so if one of us is spotting conduct that
3226 we're not able to act on but might be unlawful under their
3227 authorities, we can refer that and vice versa. So that's the
3228 main way we're --

3229 *Mr. Joyce. And I think it's important that you
3230 acknowledge, just as you did, that there are different
3231 authorities involved here. Do you believe that the
3232 Commission has the authority to grant a private right of
3233 action to franchisees under the FTC Act?

3234 *Ms. Khan. No, the FTC Act, Section 5 does not have the
3235 private right of action.

3236 *Mr. Joyce. I think that this is an important message
3237 that we take with us, that that private right of action is
3238 not included. And I would also like to add that the
3239 franchise system here in the United States is incredibly
3240 uniquely American, and it has allowed hundreds of thousands
3241 of small businesses to thrive and employ what we estimate are
3242 millions of people.

3243 Today, in America, we must ensure that this system

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3244 continues and the economic growth is not interrupted in a
3245 partisan manner, or by an anti-business implementation of
3246 rule that are outside the intent of the law. Small
3247 businesses rely and thrive on that ability to have that
3248 integral action of working right here in America.

3249 I thank you, Mr. Chairman, for allowing me to waive on,
3250 and I yield back the balance of my time.

3251 *Mr. Bilirakis. Thank you. And I -- the gentleman
3252 yields back. I ask unanimous consent to insert in the record
3253 the documents included on the staff hearing documents list.

3254 Without objection, that will be the order.

3255 [The information follows:]

3256

3257 *****COMMITTEE INSERT*****

3258

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3259 *Mr. Bilirakis. I'd like to ask the ranking member if
3260 she had any comments. I really appreciate the testimony
3261 today, and your ability to answer the questions, and I
3262 appreciate your patience. And I'll yield to the gentlelady,
3263 the ranking member of the subcommittee, Ms. Schakowsky, for
3264 any comments she might have.

3265 *Ms. Schakowsky. I just want to give a big thank you to
3266 the Chairman and the Commissioners for not only being here
3267 today but for all the work that you do to -- every single day
3268 to protect consumers. Your efforts to go as far as you can
3269 to make sure that all the fraudsters and the people who are
3270 trying to hurt our consumers are addressed, and I think
3271 you're doing a great job. I wanted to thank you for
3272 answering all of the many questions that you had and for
3273 being there every day along with your staff. Thank you.

3274 *Mr. Bilirakis. I appreciate you giving us your time.
3275 Members, that they have ten business days to submit
3276 questions for the record. And I ask the witnesses to respond
3277 to the questions promptly. Members should submit their
3278 questions by the close of business day on May 2nd.

3279 Without objection, the subcommittee is adjourned.

3280 [Whereupon, at 12:52 p.m., the subcommittee was

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3281 adjourned.]