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FEDERAL TRADE COMMISSION PRACTICES:

A DISCUSSION ON PAST VERSUS PRESENT

THURSDAY, SEPTEMBER 19, 2024

House of Representatives,

Subcommittee on Innovation, Data, and Commerce,

Committee on Energy and Commerce,

Washington, D.C.

The subcommittee met, pursuant to call, at 10:32 a.m., in Room 2322, Rayburn House Office Building, Hon. Gus Bilirakis [chairman of the subcommittee] presiding.

Present: Representatives Bilirakis, Walberg, Bucshon, Obernolte, Rodgers (ex officio), Schakowsky, Castor, Kelly, Soto, Trahan, Clarke, and Pallone (ex officio).

Staff Present: Sarah Burke, Deputy Staff Director; Nick Crocker, Senior Advisor and Director of Coalitions; Sydney Greene, Director of Operations; Nate Hodson, Staff Director; Tara Hupman, Chief Counsel; Alex Khlopin, Clerk; Emily King, Member Services Director; Tim Kurth, Chief Counsel; Brannon Rains, Professional Staff Member; Lacy Strahm, Professional Staff Member; Teddy Tanzer, Senior Counsel; Hannah Anton,

Minority Policy Analyst; Keegan Cardman, Minority Staff Assistant; Daniel Greene, Minority Professional Staff Member; Tiffany Guarascio, Minority Staff Director; Lisa Hone, Minority Chief Counsel, Innovation, Data, and Commerce; and Phoebe Rouge, Minority FTC Detailee.

Mr. Bilirakis. The committee will come to order.

Let me turn my microphone on. Good morning, everyone, and welcome to today's hearing entitled, Federal Trade Commission Practices: A Discussion on Past Versus Present.

I want to thank the witnesses for your expertise and testimony this morning.

A couple months ago, our subcommittee welcomed the five commissioners of the Federal Trade Commission to examine the current state of the agency, the specific focus of that hearing being to examine how Chairman Khan is using the budget that Congress has afforded the Commission to carry out its mission.

During that hearing, I spoke about the bipartisan concern of Chair Khan's priorities, intended or not, which has torn down the historic norms, practices, and reputation of the FTC as a consumer protection agency.

The precedent now being set matters, and we should discuss what this means for the future of the FTC's trust with both consumers and business.

Over the last few years, we have seen staff morale plummet, unfortunately. Despite being an independent agency, career staff no longer have independence they used to have, particularly in educating consumers about avoiding scams. Staff hours and resources that could have been spent protecting seniors in my State and other States from scams, were shifted to press releases and expansive rulemakings and competition issues.

Meanwhile, our constituents continue to be defrauded on a daily basis. It just sends the wrong message when, for decades, under both Republican and Democrat administrations, career experts were able to work with our economist counterparts to assess the cost and benefit of a proposal. Instead, sadly that once commonplace approach was upended and powers consolidated under the chair's general counsel office.

This kind of approach isolates the commissioners from their value and expertise within the agency and further ups the ante on partisanship rather than faithfully executing the law.

The whole process gets corrupted this way as too often left out of FTC proposals is important economic analysis and thorough stakeholder collaboration, and of course what impact may be had on the backbone of our economy, otherwise known as legitimate businesses.

This shift of actively seeking civil penalties and sending warning letters to have the judicial standing to seek them is appropriate -- in my opinion, it is inappropriate and predatory and must be abandoned.

The FTC should seek to encourage compliance of their policies, not bank on enforcement. We cannot allow this FTC to continue to ruin its prior reputation as the premier consumer protection agency for the country. Their task to protect consumers from fraud and scams is too important to dedicate resources on legal theories and gotcha schemes.

My words may be harsh. I may be upsetting some of my colleagues, but every day my constituents are plagued by scams. Examples: such as bad actors stealing seniors' hard-earned money by pretending to be a loved one in search of help, or claiming the government agency warning of impending legal trouble that only a \$500 gift card could solve.

This happens on a daily basis, folks, all over the country. And in this economy, according to reports, my State of Florida ranked third in most scams reported by residents -- 1,393 per 100,000 residents.

This hearing serves to take a fresh eye to all the reform proposals to start thinking about new ones and get the FTC back to its tried-and-true approaches and its essential

consumer protection role.

Americans every day are getting ripped off. I know each of us want the FTC to have the tools they need to go after these bad actors. And we must be responsible when legislating to prevent history from repeating itself from when much earlier iterations of the FTC tried to enact expansive rulemakings.

Let us use this discussion today to learn what we can do to reform the FTC and turn it back into an agency each of us on both sides of the aisle would be willing to go to bat for.

So with that, I will yield back, and I will recognize the ranking member of the subcommittee, Ms. Schakowsky, for her 5 minutes for an opening statement.

[The prepared statement of Mr. Bilirakis follows:]

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Ms. Schakowsky. Mr. Chairman, my friend, I couldn't disagree more. I am so proud of Chairwoman Khan and the Federal Trade Commission.

And by the way, the complaints that you say that there were from some of the staff, that was a couple years ago. It is not happening now. And the agency, if you ask the American people and you look at the list of what the FTC is doing, they say, hooray, keep going to protect our rights.

And so I just want to say that what we need to do is to work with the Federal Trade Commission that is doing a fantastic job and stop the criticisms.

So I have introduced legislation, along with Congresswoman [sic] Cardenas, the Consumer Protection and Recovery Act. And this would be, I think, a really important first step.

When we had our hearing with all of the commissioners at the FTC and talked to them about section 13(b) at the FTC, which absolutely would allow the returning of the lost items and money that happened, and for 40 years, that is how it was at the FTC, that if there was an example of, you know, cheating on consumers, that they were to be made whole. But that was changed, unfortunately, by the Supreme Court, a very bad decision.

So when we went down the line, I asked every one of the members if 130 -- no -- 13(b) should be restored, each one of them said, yes, yes, yes, yes, and yes.

And so we have an opportunity right now to restore the money that has been defrauded from consumers if we just listen to what the FTC has promoted and that we should support.

The other issue I wanted to mention, I had also -- what is the other bill -- the FTC Autonomy Act. That is right. You know I have trouble reading, but I am going to get to it. And that legislation would make sure that the FTC would be able to impose a penalty -- am I over the time? Okay -- the FTC would be able to -- where is -- I just want

to find it -- can fine wrongdoers the first time that they do it, not have to wait for another action that is wrong. And so let's get legislation like that done.

We have so many things, and things, Mr. Chairman, that we agree on, that we need to get done, things like the TICKET Act. We want to pass that, but the FTC is also working on that issue.

So we should see them as an ally and not as some agency that has gone astray. I support the Federal Trade Commission.

And I yield back.

[The prepared statement of Ms. Schakowsky follows:]

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Mr. Bilirakis. I thank the gentlelady.

And, also, I have a proposal that provided 13(b) restitution that was bipartisan.

So we will continue to work on that.

And now I will recognize the chair of the full committee, my good friend,

Mrs. Rodgers, for 5 minutes for an opening statement.

The Chair. Thank you, Chair Bilirakis.

And thank you to our distinguished witnesses who are here today to discuss the current state of an agency we all want to be there for us when we have been defrauded or deceived.

The FTC's core mission is to be at the forefront of protecting Americans, making it critical that they earn and keep the public's trust and respect. I have been clear from the start of this Congress about my concern that the current FTC is headed in the wrong direction.

Prior to the Biden-Harris administration, the FTC always worked to build consensus and champion bipartisanship. Certainly there were differences of opinion. Not every decision ended in a 5-0 vote. However, at that time, commissioners and staff embraced a culture where they could freely exchange ideas and feel heard. These open and honest discussions allowed the FTC to act in the American people's best interest and garner public trust.

Disappointingly, this 40-year tradition and culture has been lost. The FTC has long acted as the cop on the beat, not as a sector-specific regulator in the way the FDA is, for instance. Unfortunately, the Commission has assumed more power and become a heavy-handed, economywide regulator. This change in direction has led to many contentious and expensive court battles.

I worry about the time spent in courtrooms, defending departures from past

practices, is undermining the FTC's core mission and overall success.

And I am not alone in this view. The Supreme Court has concluded in unanimous decisions that the FTC's historically commonly used tools that have been expanded to become controversial and exceed their statutory authority -- most notably, we have seen a breakdown in norms and practices that were considered commonplace in previous Democratic and Republican administrations.

By removing, quote, "without unduly burdening legitimate business activity" from its mission statement, the Commission has sent a clear message that it wants to be feared instead of being a good-faith regulator.

Job creators across the country now live in fear of receiving a letter out of the blue threatening them on behavior that they may not even be engaged in.

Additionally, FTC commissioners' rights have been steadily eroded and access to important FTC business has been shielded.

More than ever, the Commission must take simple steps to start correcting course. For example, a cost-benefit analysis should be done for all rules, 6(b) reports and enforcement actions, and commissioners and staff should have direct access to economists working on it.

I am hopeful that with a full set of commissioners, such access to the econ bureau and its specialists will again become the norm.

Sadly, many career staff have chosen to leave or retire due to the decline of the agency's culture and disregard to its true mission. Respected surveys have shown employee morale and confidence in senior Commission leadership has steeply declined.

Prior to Chair Khan's appointment to the FTC, 87 percent of surveyed FTC employees agreed that senior agency officials maintained high standards of honesty and integrity. That number quickly dropped to 53 percent just after 1 year and then down to

47 percent a year later.

It is also alarming that full-time positions that Congress authorized for the FTC's fraud prevention mission have been retasked to other areas. This is wrong and a clear attempt to bypass Congress and utilize the EU to impose more influence over U.S. companies since the Biden-Harris administration couldn't find consensus here at home.

Congress must assert its Article I authority and act to stop this ongoing erosion of norms and longstanding Commission practices and restore the once strong processes of the FTC.

While we have proposed legislation in the past, some of it has quickly become dated. I look forward to hearing from the experts here today on what Congress can do to put the FTC back on track and set the Commission up for success.

I know these are shared goals, and I look forward to working together to achieve them.

Thank you, and I yield back.

[The prepared statement of Chair Rodgers follows:]

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Mr. Bilirakis. I thank the chairwoman and now recognize the ranking member of the full committee, Mr. Pallone, for 5 minutes for an opening statement.

Mr. Pallone. Thank you, Mr. Chairman.

I have to say that Democrats feel very differently about the FTC than Republicans, and that is clear today. I am going to praise the FTC, unlike the GOP, and I don't want to reduce their authority. I think under the leadership of Chair Lina Khan, they have been taking important and bold steps to protect Americans from deceptive and unfair acts and practices.

The FTC has consistently been a champion for everyday Americans, fighting against bad actors who seek to scam senior citizens out of their hard-earned savings, take advantage of grieving families, and expose children's data to foreign adversaries just to turn a profit from advertising. And the FTC has taken on Big Tech with actions against companies that put profits over consumer privacy and unlawfully shared sensitive health, biometric, geolocation, and browsing data.

Today the FTC is releasing a groundbreaking staff report that examines the data collection and use practices of major social media and video streaming services. It confirms what we all know, that Big Tech is engaged in vast surveillance of consumers in order to monetize their personal information, while failing to adequately protect users online, especially children.

Indeed, protecting children has been a particular focus of the Commission, bringing actions against companies like TikTok, Amazon, and Epic Games, for violating children's privacy, and in some instances, putting children in harm's way.

The FTC is also using its tools to protect seniors and other consumers from abusive and illegal robocalls and text scams. The Commission leads a task force with partners from all 50 States that have collected more than \$394 million in 2023 alone from

scammers, much of which was returned to victims of those scams.

I also applaud the FTC's antitrust work under Chair Khan, including its diligent attention to oil company mergers that could raise the prices everyday American families pay at the gas pump and elsewhere. As part of one of these investigations, the FTC uncovered evidence that a former Big Oil CEO had colluded with OPEC to limit crude oil production and increase prices on hardworking American families.

And it has been over 3 months since I requested that Chair Rodgers hold a hearing on these allegations, and still there has been no action from the Republican majority.

Instead of investigating these allegations, Republicans are seeking to call into question the excellent work of the FTC. And, unfortunately, it is House Republicans who are undermining the FTC's ability to fulfill its mission, passing a 8.5 percent cut to the agency, which would be nothing short of devastating.

The FTC goes up against companies with billion-dollar budgets in an ever more complex and evolving economy, all with fewer employees than it had 45 years ago. A budget shortfall of this magnitude would gut the FTC at the expense of consumers.

In addition to resources, Congress must provide the FTC with additional strong statutory authority. It is critical that we enact a strong, comprehensive privacy legislation, such as the American Privacy Rights Act that I worked on with Chair Rodgers, and that bill gives the FTC the enforcement and rulemaking authority it needs to protect all Americans' privacy and data security.

It is also critical that we restore the FTC's authority to seek redress in Federal court for consumers who have lost money to telemarketing scams, pyramid schemes, work-with-home fraud, and other violations of the FTC Act.

And the FTC does all it can to fulfill its mission with the tools it has been given, but without robust authority, it is working with one hand tied behind its back. And that is

not right. Vulnerable consumers who have been defrauded by scammers deserve an enforcer with a fulsome toolbox to protect them.

However, committee Republicans would rather spend valuable time raising claims about an agency that fights every day in the best interest of their constituents. But this kind of anti-consumer behavior is not surprising. It is reflected again in Trump's Project 2025, a blueprint for the future of the Republican Party that would consolidate power in the White House, gut checks and balances, and eliminate the independence of Federal agencies like the FTC. And Trump's Project 2025 threatens to eradicate the FTC altogether, making it clear that Republicans stand on the side of scammers and unregulated corporate greed, not everyday Americans. It is the wrong approach.

House Democrats are committed to defending American consumers from the extremist Republican agenda and Trump's Project 2025, and that includes fighting for a strong and well-funded FTC, equipped with the authority it needs to protect Americans from scammers and bad actors.

With that, Mr. Chairman, I yield back the balance of my time.

[The prepared statement of Mr. Pallone follows:]

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Mr. Bilirakis. I thank the gentleman.

Our witnesses today are Dr. J. Howard Beales, III, emeritus professor of Strategic Management and Public Policy at George Washington School of Business.

So we will recognize you, sir, for 5 minutes for your testimony.

**STATEMENTS OF DR. J. HOWARD BEALES III, EMERITUS PROFESSOR OF STRATEGIC MANAGEMENT AND PUBLIC POLICY, GEORGE WASHINGTON SCHOOL OF BUSINESS; MR. JOHN DAVISSON, DIRECTOR OF LITIGATION, ELECTRONIC PRIVACY INFORMATION CENTER; MS. SHANE TEWS, NON-RESIDENT SENIOR SCHOLAR, AMERICAN ENTERPRISE INSTITUTE; AND MR. NEIL CHILSON, HEAD OF AI POLICY, ABUNDANCE INSTITUTE**

**STATEMENT OF DR. J. HOWARD BEALES III**

Dr. Beales. Thank you very much, Mr. Chairman and Ranking Member Schakowsky, for the opportunity to testify today.

I am Howard Beales, emeritus professor of Strategic Management and Public Policy in the George Washington School of Business. Since starting my professional career at the FTC in 1977, I have written extensively about the agency and held a variety of positions there, most recently as director of the Bureau of Consumer Protection from 2001 to 2004.

Former Chairman Tim Muris and I recently published a study of the first 34 months of three eras of transformative change at the FTC following Presidential elections in 1968, 1980, and 2020. That study is the primary basis for my testimony today.

In 1972, the transformation of the FTC that began in 1970 appeared triumphant. The agency was reorganized, the staff was remade, it abandoned trivia and widely criticized anti-consumer cases and reshaped advertising regulation. Unfortunately, later in the 1970s, the Commission succumbed to the temptation to become the second most powerful legislature in Washington, seeking to use its rulemaking authority to reshape the American economy. The resulting political backlash nearly destroyed the agency,

and change was again in order.

Reagan administration Chairman Jim Miller embarked on a new course in 1981. He reorganized the Bureau of Consumer Protection, a major focus of concerns about the Commission. He also pushed successfully to clarify the FTC's statutory authority and launched a successful fraud program.

Despite considerable rancor between the chairman and his predecessor, the foundations had been laid for what became a long bipartisan consensus about competition and consumer protection policies.

The FTC's global reputation grew. It was the only competition agency ranked as a five-star elite agency in each of the first 20 years of this century.

This was the FTC that Lina Khan inherited. The new administration was, of course, free to abandon the longstanding bipartisanship, yet it did so under conditions starkly different than previous change eras. Most important, there was no widespread consensus that an internationally respected agency needed to change.

The FTC's experienced, highly regarded career staff was key to its reputation. The Biden team, echoing concerns over the deep state, viewed that staff with extraordinary hostility. Early on, even routine public appearances by staffers were cancelled, and staffers were told to provide misleading reasons.

In less than a year, staff's strong agreement that senior leadership maintained high standards of honesty and integrity fell by almost half, as did the level of respect for senior leadership. Staff also voted with their feet, with a quarter of those in leadership positions leaving in 2021.

There has been some rebound in the most recent surveys, but it is to the levels of 2021, not the levels of 2020.

The Khan administration also faced a hostile judiciary that had developed the

consumer welfare standard at the heart of modern antitrust but that the appointees opposed. Past change agents used careful strategies to change the law. For example, the FTC changed the way courts analyze hospital mergers by starting with a careful empirical study of the adverse effect of past mergers, followed by public discussions and administrative test cases that were blessed by the circuit courts.

By contrast, the current FTC has plowed ahead, seemingly more interested in headlines than in results. If there is a coherent strategy, it is well concealed.

In rulemaking, the Commission's new procedures have gutted Congress' effort to require procedures that assure ample public participation in reasoned, fact-based decisionmaking. In two controversial rulemakings, the Commission declared that there were no disputed issues of material fact, using a summary judgment standard that was a complete surprise when it was first adopted.

Moreover, only the Commission has access to the full rulemaking record at the time when parties are expected to apply the standard.

The Commission has also diminished the statutory role of presiding officers, limiting their independence and limiting their recommended decisions to the disputed issues, rather than considering all relevant and material evidence as the law plainly requires.

Without doubt, the new FTC has succeeded in one area -- its impressive campaign of norm-busting. Norms of dealing with outsiders, with minority commissioners, with Congress, and even with ethics questions have all been broken. But to what end? Whatever self-satisfaction the norm breakers gained from besting those with whom they disagreed has surely come at the price of increasing the intensity of opposition. The benefits hardly seem worth the costs.

Thank you again for the opportunity to testify, and I look forward to your

questions.

[The prepared statement of Dr. Beales follows:]

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Mr. Bilirakis. I appreciate it very much, sir. Thank you.

Next is Mr. John Davisson, director of litigation for the Electronic Privacy Information Center. I hope I pronounced the name right.

Mr. Davisson. Davisson.

Mr. Bilirakis. Oh, Davisson, sorry. Okay. You are recognized, sir.

**STATEMENT OF MR. JOHN DAVISSON**

Mr. Davisson. Good morning, Mr. Chairman, Ranking Member Schakowsky, and members of the subcommittee. Thank you for the opportunity to testify today about the past, present, and future of the Federal Trade Commission's consumer and data protection work.

My name is John Davisson. I am director of litigation at the Electronic Privacy Information Center, or EPIC. EPIC is an independent nonprofit research organization in Washington, established in 1994 to protect privacy, freedom of expression, and democratic values in the information age. For 30 years, EPIC has been one of the foremost advocates for privacy rights in both the public and private sectors.

Today's hearing explores how the FTC's approach to protecting consumers has changed in recent years. As a leading and long-time proponent of FTC action to safeguard consumer privacy, EPIC agrees that the Commission's approach has changed and that it has changed for the better. Too often since the internet rose to prominence in the 1990s, the FTC has failed to keep pace with dramatic shifts in technology and data-driven business practices. This has left consumers exposed to routine privacy violations and other unfair data practices.

The data protection crisis we face today is a systemic failure, bigger than any one agency, but missed opportunities by the FTC and a regrettable tendency toward notice and choice and self-regulation has enabled that crisis to swell for years.

Today's Commission has begun to turn the tide. Under recent leadership, the FTC has stepped up enforcement against abusive data practices, unfair algorithmic systems, and numerous other sources of harm to consumers. It has undertaken sorely

needed rulemakings to establish clear rules of the road for industry. It has employed new remedies to meet the moment in its consent decrees with businesses. It has built deeper technical expertise to inform its rulemaking and enforcement work. It has redoubled its focus on the real-world harm suffered by consumers from unscrupulous business practices, and it has brought greater transparency and public engagement to its proceedings. It has done all of these things with far fewer resources than peer regulators in other democracies and far less funding than the public deserves.

For consumers anxious about their privacy in the online era, as many of us are, the recent shifts in the FTC's data and consumer protection work are a welcome sight. But in a way they are also a return to form. The FTC boasts a long history of evolving regulatory strategies. Since the FTC's founding over a century ago, Congress has entrusted the Commission with expansive powers and given it the flexibility to respond to novel risks to consumers as they emerge. Throughout that history, the Commission has used its toolkit to fashion new regulatory approaches to new regulatory problems -- from cigarettes to deceptive green marketing, to information privacy. The FTC's latest efforts to make privacy and civil rights protections a reality for consumers represent the next chapter in that history.

Of course, establishing meaningful protections for personal data across a \$28 trillion economy is an immense challenge, and that work is far from done. Some key pillars of the FTC's data protection agenda, including its rulemaking on commercial surveillance and data security, are still in progress. The news abounds with reports of data breaches, invasive tracking practices, and dubious AI systems that put consumers at risk, underscoring the continued importance of vigorous FTC enforcement. And the need for Congress to enact comprehensive privacy legislation is greater than ever.

The FTC's ability to safeguard consumer privacy would be dramatically

strengthened by the passage of a Federal privacy law backed by robust enforcement resources. Like all 5 members of the Commission, EPIC supports the committee's ongoing bipartisan efforts to enact such legislation.

Until then, it will fall to the FTC to confront harmful, commercial data practices with the tools at its disposal. To fulfill its consumer protection mandate, the Commission must continually adapt its regulatory strategies to respond to technological and economic change. Mechanical adherence to the ways of the past will not protect consumers from the hazards of the present and the future. EPIC is pleased that today's FTC has taken that lesson to heart and recommitted itself to delivering real results for consumers.

I look forward to your questions today and to discussing the way that today's FTC serves consumers and how Congress can support that mission. Thank you.

[The prepared statement of Mr. Davisson follows:]

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Mr. Bilirakis. Thanks so very much.

And next we have Ms. Shane Tews, who is the nonresident senior scholar at the American Enterprise Institute. You are recognized.

#### **STATEMENT OF MS. SHANE TEWS**

Ms. Tews. Thank you, Chairman Bilirakis and Ranking Member Schakowsky, and the distinguished subcommittee members. I am grateful for the privilege to appear before you today offering my insights on the evolution of the Federal Trade Commission's practices.

As noted, I am Shane Tews, a nonresident senior fellow at the American Enterprise Institute. I am before you -- I am here before you today in my role as a tech governance policy expert in my time in the private sector. I spent over two decades watching the digital economy grow into our overall economy.

One area which I have seen recent growth in the tech governance is in the role of the Federal Trade Commission. I believe the FTC plays a pivotal role in safeguarding consumers' interests while fostering innovation and economic growth.

My primary recommendation to the committee is that the FTC should return to an approach that maximizes consumer welfare.

The idea of technical innovations and their positive market effects have hit a wall of government interference. The current regulators ignore the economic efficiencies that have facilitated the digital transformation of our societies and economies.

I have watched the growing European influence over the thinking of our administration officials and regulatory agencies. I am very concerned in their keen interest in regulating everything digital. I am concerned that regulators are taking an

overly government-driven approach by introducing restrictive policies before fully understanding the benefits and complexities of the digital markets.

The precautionary stance risks shifting innovation and disruption from the natural evolution of technologies and business models. It also spreads distrust in digital markets by devaluing with regulation to address the perceived issues that hamper progress and potentially deprive society of valuable advancements. A more market-driven approach that fosters innovation while addressing legitimate consumer concerns could lead to a better outcome for all stakeholders.

The regulatory landscape for digital economy is currently being driven by the European mindset of regulate first. With their new European laws, the Digital Markets Act, the Digital Service Act, and the continued implementation of the General Data Protection Regulation, this has caught the attention of U.S. policymakers at the FTC and the Department of Justice which aim to promote competition through regulation.

This is counter to what happened earlier in the administration when the Department of Commerce Secretary Gina Raimondo stated to the European Commissioner for Competition, Margrethe Vestager, that the EU needs to refrain from using the Technology and Trade Council as a tool for targeting U.S. companies. This shift in regulation approach presents a constant challenge between cultivating competition and avoiding stifling innovation through excessive government intervention.

As for positive ideas for the Federal Trade Commission's role in protecting consumers in the digital economy, I am going to quickly summarize my written testimony, noting the importance of these key issues: maintaining transparency and accountability in FTC practices, preserving the role of expert staff and economic analysis in the FTC's decisionmaking process which addresses the reported brain drain of experienced personnel from the FTC, encouraging Congress and your leadership to pass a data

collection and privacy law that develop a clear data collection and privacy regulations that are based on transparency and accountability, providing clear guidance for business on regulatory boundaries, implementing cost-benefit analysis and consumer protection efforts, preserving the FTC's ability to conduct market studies and inform policy decisions, ensuring due process in the rule of law and the FTC enforcement actions, and maintaining a focus on consumer welfare in the antitrust and competition policies.

Thank you for your attention. I welcome any questions from the committee.

[The prepared statement of Ms. Tews follows:]

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Mr. Bilirakis. I appreciate it very much. Thanks for your testimony.

Next we have Mr. Neil Chilson, head of the AI policy at Abundance Institute. You are recognized, sir, for 5 minutes.

#### **STATEMENT OF MR. NEIL CHILSON**

Mr. Chilson. Good morning. Good morning, subcommittee Chair Bilirakis and Ranking Member Schakowsky, and members of this committee. Thank you for inviting me to speak about the practices of the Federal Trade Commission.

I am Neil Chilson, the head of AI policy at the Abundance Institute, and I am here today because I served at the FTC for over 4 years, including as chief technologist. I have seen firsthand how the FTC operates, or at least how it used to operate.

The FTC plays a vital role in protecting consumers and promoting competition. When executed well, these dual missions support entrepreneurship, prevent fraud, and expand prosperity. But to execute well, the FTC needs more than just good policy. It needs a strong foundation of standards and norms. Standards are the formal rules that govern the FTC's processes. They ensure consistency, accountability, and transparency.

But today I want to focus on norms -- the unwritten rules that guide behavior within the agency.

During my time at the FTC, I observed three key norms. First, respect. Staff at all levels respected every commissioner, regardless of party. Commissioners respected each other, the staff, and the parties before the agency. This culture of respect fostered trust and cooperation.

Second, openness. Information flowed freely. Staff answered questions thoroughly. Commissioners had access to case files. Parties could request meetings

and often got them, and this openness led to better decision making.

And third, objectivity. For every case presented to the Commission by BC or BCP, the Bureau of Economics offered independent analysis and recommendations, staff-grounded policy reports, and empirical evidence. Cases were identified through bottom-up, staff-driven following of facts, not top-down by leadership chasing specific targets.

These norms were not perfect, and they weren't perfectly followed, but they were powerful. They created an environment where ideas could be challenged and improved, where staff felt valued and engaged, where the public could trust the agency's integrity, where even the companies under investigation felt like they could get a fair shake, where FTC hearings were almost boringly bipartisan.

But today these norms appear to be eroding. Minority commissioners report being left out of important matters. The Bureau of Economics is shunted to the side. We have parties that have less opportunities to meet with leadership, and staff morale has plummeted, as we have heard.

Now, some might argue that breaking norms is necessary to achieve more if you are ambitious, but the numbers don't back that up. Case counts in this administration are similar to or lower than previous administrations. Meanwhile, the costs are clear. According to the Best Places to Work in the Federal Government Survey, from 2020 to 2021, the FTC fell from second to 22nd in employee satisfaction among midsized Federal agencies. It has only recovered to the middle of the pack in that survey. But for 3 years running, the FTC staff have given senior leadership at the FTC the lowest effective leadership score since tracking began in the early 2000s.

The FTC's vital mission deserves better, its dedicated staff deserve better, and the American people need better.

Standards and norms aren't just bureaucratic niceties. They are the foundation of good governance. They ensure that the FTC can fulfill its mission effectively and fairly no matter who is in charge. Disregarding norms won't land anyone in court, but I do worry that it will keep fraudsters and other bad actors out of it if the FTC can't do its job well.

I am glad this committee is taking a chance to look beyond policy disagreements to focus on rebuilding the norms that have long made the FTC an effective, trusted institution. I wish I could sit here and recommend a series of easy legislative fixes for these broken norms, and there are some things Congress can do: require a public comment period for changes to FTC rules of practice, revise the FTC recusal process, reinforce the Bureau of Economics' role.

But, ultimately, rebuilding norms isn't easy. It is not just about reinstating old practices. It is about convincing everyone, from leadership to staff, to the bar, to companies, to believe in those norms again. That is a matter of trust. Trust takes time and it takes leaders with a desire to rebuild it.

Thank you, and I look forward to your questions.

[The prepared statement of Mr. Chilson follows:]

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Mr. Bilirakis. I thank the gentleman. I appreciate it.

And before I begin questioning, I want to thank Mr. Davisson for working with us on the comprehensive privacy legislation. We appreciate that cooperation. Thank you.

Okay. Next we have -- so I am going to go ahead and recognize myself for questioning.

Dr. Beales, this question is for you. The FTC usually changes from administration to administration, but historically it has been an agency where both Republican and Democratic administrations work to avoid major overhaul due to the agency's longstanding bipartisan history.

You recently published an article with former FTC Chairman Tim Muris, called Achieving Change at the FTC. And I would like to enter that into the record, that particular article.

Without objection.

Ms. Schakowsky. No objection.

Mr. Bilirakis. No objection. So ordered.

[The information follows:]

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Mr. Bilirakis. Thank you.

Dr. Beales, this question is for you, of course. What is different about the significant shift in staffing that occurred around the time that Commissioner Chopra was serving and when Ms. Khan became chair versus FTC overhauls in the past? And then, what are the internal costs to this kind of change in career staff?

And, again, for Mr. Beales.

Dr. Beales. Well --

Mr. Bilirakis. Dr. Beales. Excuse me.

Dr. Beales. -- I think the major difference is the extent of recognition of the need for change. In 1970, there had been two reports issued in 1969 by the American Bar Association Antitrust Law section and by Nader's Raiders, and both of them recognized the very limited competence of the FTC staff.

There was one FTC-er at the time who told the bar association commission that he only hired people who weren't very good because they would stick around.

So there was clearly a need for a major change in the staff, and Caspar Weinberger, when he became chair in 1970, initiated that process. In 1981, the staff was bifurcated. It was mostly people who Weinberger and his successors had hired, who were committed to the mission of the agency as Weinberger and its successors had envisioned it. But there was also a substantial contingent who had been hired by Chairman Pertschuk in the Carter administration, who was committed to an aggressive rulemaking agenda to remake the economy.

Miller used reorganization and consumer protection, and Weinberger used it for the whole agency, to separate the people who were willing to work in the new direction, to work for a new agenda, from those who weren't and were committed to the old way of doing things.

When Khan took office, the FTC staff was really widely respected. It was a key strength of the agency. The staff was proud of its role in a bipartisan agency. But Chopra and Khan had a view that the staff had produced essentially a failed agency. And that doesn't square very well with the FTC being the only five-star, internationally recognized agency, but that was the way they saw the career staff, and that was reflected in a great deal of hostility.

The costs of that are substantial. You lose experienced leadership. And from the perspective of, if you like the changes, you lose a real opportunity to get some talented people to help. Because what you need is skills and a willingness to pursue the agenda that may not have been true of all of the staffers, but there was no attempt to figure out who was who. It was just -- it was the hostility --

Mr. Bilirakis. Doctor, let me get to the second question.

Dr. Beales. Sorry.

Mr. Bilirakis. But I really appreciate that very much, but I want to stick to the timeframe, and I don't know, maybe we can have a second round, depending.

All right. Mr. Chilson, following up on Dr. Beales' points, I have heard a grave number of concerns from stakeholders over the past few years that the FTC no longer follows the historical norms of the agency. Could you walk us through what some of those norms are and why changing them drastically impairs the FTC's mission, especially protecting from fraud and deceptive scammers? And can you put it into context from some of your, again, some of your personal experiences?

Mr. Chilson. Sure. So I will offer a quick example that is small but it is extremely relevant, because it just happened this morning, and I will try to tie it to fraud.

Mr. Bilirakis. Okay.

Mr. Chilson. So this morning, the FTC released a 6(b) study on social media and

streaming platforms. That is a result of a investigation that is been going on since the Trump administration. The press release for this report says that it was a 5-0 vote and notes that each of the commissioners have separate statements.

Two of those separate statements are actually partially dissenting statements. It is very strange that in the press release, there is no mention that there is partially dissenting statements in this.

And when I was at the Commission, that would have been mentioned. And I think that goes back to one of the -- or two of the norms that I talked about, which are objectivity and respect.

And the reason this affects the Commission's business is because, if the commissioners cannot trust the chair to properly represent to the public what their positions are, they are much less likely to negotiate. They are much more likely to engage in writing dissents, and rather than -- and slowing down the process, rather than pursuing the types of fraud that protect consumers.

Mr. Bilirakis. Okay. Thank you very much. I appreciate that.

I will yield back, and I will recognize the ranking member of the subcommittee, Ms. Schakowsky, for her questioning.

Ms. Schakowsky. Thank you.

First, I would want to say that I totally agree that -- and I think most people on this committee agree -- that we need to have comprehensive privacy legislation. It is about time for the unite -- and that is not something that has partisan disagreements about.

So, Mr. Davisson, though, I do want to go back to what the Supreme Court had done that does put a hamstring on the ability to reimburse consumers for what they deserve. And so I wanted to ask you what you think the real consequences have been of the elimination of 13(b) and the right to reimburse.

Mr. Davisson. Thank you for the question.

As you say, 13(b) was a tremendously powerful tool in the FTC's toolkit. You know, paper promises, regulations, and precedents set through enforcement are only as good as the enforcement tools that can be brought to bear to enforce them to subsequent actors. And I think 13(b), the ability to recover refunds and restitution for consumers, was an exceptionally good example of a tool that could do that.

And I think one -- you know, it has been a significant loss for the agency. It has, in part, led to resources being committed to rulemaking so that there can be first-line authority based on established -- clearly established rules and regulations defining unfair deceptive trade practices.

I think that is -- I am encouraged by the FTC's attention to rulemaking, and I think it is an important vehicle for their work, but I think having lost 13(b), again, was a significant loss for the Commission. I know it is something that we appreciate the committee's, you know, support in restoring.

Ms. Schakowsky. Thank you.

The chairman of the full committee, Chairman Rodgers, said that the Supreme Court has had to somehow reign in the FTC. We were looking up to see if there was anything other than 13(b), but I don't know what that refers to.

But anyway, right now, the Federal Trade Commission is looking at junk fees. And that is important to us and to, you know -- for example, like the TICKET Act. And my question to you is that, you know, what can we expect, or what should we want to do to protect consumers from junk fees?

Mr. Davisson. Thank you again for the question.

I think we have been encouraged to see the FTC's attention to junk fees, these, you know, hidden and bogus fees that can harm consumers and undercut honest

business and erode trust in the economic system, and make it more difficult for consumers to trust that the price they are paying is actually a fair one.

You know, these fees cost tens of billions of dollars a year for consumers. Businesses, unfortunately at alarming rates, use bait-and-switch tactics and misrepresent or fail to adequately disclose the basis for prices and fees.

So I think that rulemaking, the junk fee rulemaking, will unlock new enforcement authority for the FTC to impose fines on the first offense, when a company or a player in business, you know, applies junk fees or tries to fleece consumers by introducing hidden or bogus fees.

Ms. Schakowsky. So, of course, we are trying to do that legislatively in our committee, but I see what the FTC is doing as a partnership that will help advance the benefits for consumers who are being defrauded all the time.

So I thank you very much for your testimony, and I yield back.

Mr. Bilirakis. I thank the gentlelady for yielding back, and now recognize the chairwoman for the full committee, Mrs. Rodgers, for her 5 minutes of questioning.

And, man, we are going to miss you. We really are. You have done an outstanding job. We appreciate everything you have done over the years. And I tell you, you have really made a difference. You have. And we appreciate you so much, on both sides of the aisle, I believe. Thank you.

I will recognize you for 5 minutes, please.

Ms. Schakowsky. I would agree with what you said.

The Chair. Aw, thank you, thank you all. We are going to finish strong, though. We still have some more bills to get across the finish line and work to do. Thank you. It means a lot.

And thank you to our witnesses for your testimony.

Right now, the FTC is struggling to restore its reputation and integrity, which hopefully will begin to change now that there is a full slate of commissioners. However, we have a responsibility to do our oversight and advance necessary reforms, and I think using this hearing to build out a game plan for that was going to be beneficial in the future.

Dr. Beales, thank you for your service at the FTC. I wanted to follow up on a few points that you made to Chair Bilirakis.

The Commission adopted substantially new rulemaking processes, and it did so without advice or consent from Congress or any input from people in businesses it regulates. It seems the FTC has some parallels with the commissions of the 1970s by regulating through its policies.

Can you speak to the changes the FTC has made and how they have circumvented procedures and requirements and how this not only sends the wrong message to businesses and consumers, but the longevity of the Commission's authority?

Dr. Beales. Well, Congress, when it gave the FTC rulemaking authority, was concerned about the breadth of what might be an unfair or deceptive practice, and to try to curb that discretion and make sure it was well used, it established special procedures for FTC rulemaking.

Those procedures were designed to assure fact-based decision making with lots of opportunity for public participation. The rule revisions that the Commission adopted shortly after Chair Khan arrived undermined that goal substantially, much less emphasis on facts. And as I mentioned in these two controversial rules -- junk fees and negative options -- the FTC says there are no factual issues, which is a little hard to believe.

They also undermined something that Congress tried to codify. The Commission, at the end of the 1970s, had recognized that the staff was sometimes too committed to

regulatory proposals that they had worked on for a long time, and the Commission should rely more on presiding officers.

The Chair. Thank you.

Dr. Beales. The Congress codified that by making -- by a requirement that presiding officers be independent --

The Chair. Yep.

Dr. Beales. -- and a requirement that they make a recommended decision based on all the facts in the record.

The FTC's rules changes removed independence, and they tried to limit the presiding officer's report to just the disputed issues and not all the facts.

The Chair. Thank you.

Mr. Chilson, do you have anything to add?

Mr. Chilson. Just really quickly, that the FTC's primary mission and capability is ex-post law enforcement, not ex anti-rulemaking. And if you are wondering why the FTC has gotten more political, the rulemaking agenda of the current Commission is part of that.

Economywide rules are inherently political because they trade off interests among many different interest groups rather -- and enforcement actions, because they deal with one party, are much less political.

The more the FTC does rulemaking, the more politicized it will become. And the more politicized it becomes, the harder it is to do the type of law enforcement, including fraud enforcement that it is supposed to do, and that is bad for consumers.

The Chair. Thank you.

Ms. Tews and then Mr. Chilson again, can you speak to the issue of cost-benefit analysis a little and the importance of the FTC to be engaging with the Bureau

of Economics for rules and decisions that impact businesses, and what can Congress do to ensure that the bureau is not continually sidelined but instead actively aids in the Commission's decisions?

Ms. Tews. Absolutely. Cost-benefit analysis is something we all do every day as individuals, and we -- whether we think about it or not. I think as an agency, one of the things that is very important about it is that you can -- once you see the transparency in it, you can understand the responses of what is coming forward.

So clarity in the decision making process is very important. Having the cost-benefit analysis allows you to see the monetization of the understanding of it -- where are we making the tradeoffs or are we making the tradeoffs, are the consumers gaining from the discussion that is taking place.

The Chair. Thank you.

Mr. Chilson. I would just add that good economic reasoning is crucial to effective policymaking because it tests good policy intentions against reality. And it is particularly important for rulemaking which affects entire swaths of the economy. So the FTC needs to get better at cost-benefit analysis in rulemaking.

One thing I will just add really quickly is that, having the Bureau of Economics involved in consumer protection matters helps harmonize the two missions of the agency. It helps make sure that the consumer protection actions that the Commission takes do not undercut competition, which is a possibility if you are not involving economists into that thinking.

The Chair. Okay. Well, I appreciate you all being here. We will continue to work on this.

I yield back.

Mr. Bilirakis. The gentlelady yields back.

Now I will recognize the ranking member of the full committee, Mr. Pallone, for his 5 minutes of questioning.

Mr. Pallone. Thank you, Chairman Bilirakis. Even though this might be our last E&C hearing for the session, I am reluctant to say my good-byes to Chair Rodgers today --

The Chair. Well, yeah, this is not good-bye today.

Mr. Pallone. -- because I know we have got a lot to do between now and the end of this session. So I am just going to move on.

The Chair. Yes.

Mr. Pallone. Anyway, House Republicans supported a 8.5 percent cut to an already underfunded Federal Trade Commission, and a cut of that magnitude, I think, is going to have serious consequences for consumers.

So let me go to Mr. Davisson. How would the budget shortfall supported by House Republicans impact the FTC's ability to enforce the law and put a stop to bad actors, including those that prioritize profits over consumers' privacy, if you will?

Mr. Davisson. Thank you for the question.

Protecting consumers in a \$28 trillion economy is an enormously complex undertaking, and doing it well is resource-intensive. And the agency already operates on too small a budget for what Congress has charged it with doing. So an 8 percent cut, or really any cut, to the existing FTC budget is going to be devastating.

I mean, it is going to cut into the ability of FTC to undertake enforcement actions on data protection, protecting people from scams, going after junk fees, going after negative options, all of the priorities that the FTC has focused on in recent years and on behalf of consumers. And I think it will also undercut the ability of the Commission to develop the technical expertise that it needs to effectively regulate a data-driven economy, and it would undercut rulemaking efforts as well to establish clarity and

consistency across the economy.

Mr. Pallone. Well, thank you.

Now, the FTC has proven its commitment to safeguarding children's and adults' data privacy and security, providing relief to seniors and other consumers who are defrauded by scammers, and fighting against companies that put profits over the safety and well-being of everyday Americans.

So, Mr. Davisson, can you speak to some of the ways that the FTC is currently using its authority to protect Americans?

Mr. Davisson. Sure. Well, speaking of scams, scams cause financial harm, of course, but they also erode consumer trust in businesses, and they make it harder for a relationship of trust to exist between consumers and the businesses they want to interact with. We have all encountered these before. We know the effects. Some of us may have fallen prey to them as well.

And the problem has intensified. AI voice-cloning technology, you know, readily available personal data from brokers and websites, and through breaches, facilitate increasingly these tailor-made, personalized scams.

So we are encouraged to see the FTC updating its strategies for attacking the scourge of scams, including through the telemarketing sales rule, including through the impersonation rule.

And, of course, on the data protection front, as I laid out in my testimony, that the Commission has been -- has updated its enforcement strategies and undertaken a number of quite important enforcement cases targeting things like geolocation, data misuse, health data misuse, browsing data misuse, and using its authority to protect particularly vulnerable and marginalized consumers, and thinking -- you know, taking enforcement actions against unfair algorithmic and AI systems.

And then finally, using its rulemaking authority increasingly. As I mentioned a couple of the scam-related rules, but also the commercial surveillance rulemaking that the Commission has undertaken to enact data protection and privacy standards using its unfair and deceptive authority.

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[11:31 a.m.]

Mr. Pallone. Well, let me just -- not a lot of time left -- but let me just look to the future. Are there any specific legislative actions you think Congress should prioritize for the FTC? Are there any emerging threats that you would like to see and what -- that you are afraid that might be on the horizon? And what steps can Congress take to empower the FTC to stay ahead of these sophisticated frauds or scams, look into the future?

Mr. Davisson. Well, I think the concerns of the future are in many ways the concerns of the present. We face an unresolved data protection crisis. We face rising deployment of unfair, untested, inaccurate AI and automated decisionmaking systems. If that continues unabated, that is going to be the challenge of consumer protection for a long time to come.

And I think some of the particular steps that the Commission could take include, as we have talked about, passing comprehensive data protection legislation with civil rights protections, data minimization, algorithmic decisionmaking safeguards and sufficient resources for enforcement of that statute; increasing generally funding and resources for the Commission; restoring 13(b) authority to obtain refunds and restitution for consumers; simplifying the trade rulemaking process, bringing it in line with APA rulemaking used in other work parts of the FTC's work and other agencies; and then considering first find -- finding authority, rather, for first violations of Section 5.

Mr. Pallone. Well, that is a tall order, but we will try. Thank you.

Thank you, Mr. Chairman.

Mr. Bilirakis. The gentleman yields back.

Now I will recognize Dr. Bucshon for his 5 minutes of questioning.

Mr. Bucshon. Thank you, Mr. Chairman.

I think we all kind of agree that we do need a national data privacy law.

Thank you for calling the hearing.

I have been deeply concerned with the way that the Federal Trade Commission has operated for multiple years under the stewardship of the current chair. I am troubled by the posturing at the Commission to drastically change the franchise rule, for example, in ways that will disrupt small businesses across Indiana. I am troubled by the Commission's overriding the rulings of its own administrative law judges, and objecting to certain times of mergers that it has little history of doing so previously.

I was troubled by the Commission issuing gag orders to staff, generally sidelining its minority commissioners and allowing an already departed commissioner to take, quote/unquote, zombie votes for measures after they had departed.

Scams cost Americans billions of dollars every year, and the FTC should focus on reducing fraud rather than acting politically. This is unacceptable when so many American consumers rely on the FTC to protect them from deceptive and harmful behaviors.

Ms. Tews, another break in the FTC precedent was Chair Khan's documented refusal to follow the FTC ethics officials' recommendations to recuse on the Commission's review of the Meta/Within merger, and subsequent, in my view, of misleading testimony about that decision. Commissioner Wilson resigned in protest of this and other abuses of the process last year.

Several groups have petitioned the FTC to strengthen its recusal rule to address these concerns. Should the FTC make reforms to its recusal rule?

Dr. Beales. I think that would be useful. I have followed the controversy over Khan's recusal, but I have not studied the rules in detail. But a clearer rule with a clearer

standard would be useful.

Mr. Bucshon. Ms. Tews?

Ms. Tews. Yes, I agree. And if you look at what came after that, the redaction of the commissioner's comments that weren't -- were factual, and they just weren't put on the record. It just didn't really make any sense.

Mr. Bucshon. Yeah, I mean, if we are ever going to regain the confidence of the American people, then we have to do these things, right.

Mr. Chilson, recent reports indicate that the FTC influenced the U.S.' position in digital trade negotiations in the Indo-Pacific economic partnership. Should the FTC be involved in USTR's trade negotiations.

Mr. Chilson. So the FTC has a long history of working together with people internationally, with enforcers internationally. And this has been very helpful in things like fraud that crossed borders, especially in a digital age when that type of fraud can cross borders. But it needs to stay within its role. It is not at the U.S. Trade Representative. And it should not interfere in trade negotiations. It can inform, perhaps, the, you know, Department of State who does have that role, but it should not subsume that role.

Mr. Bucshon. Thank you.

Mr. Beales, in your testimony, you highlight how the FTC has changed procedures within the Commission to fit its own needs. In the wake of Chevron being overturned by the Supreme Court, do you think that many of the FTC's actions in recent years will stand up to judicial scrutiny?

Dr. Beales. I think a lot of the rulemaking decisions are exceedingly vulnerable on procedural grounds. There is things in the procedures that are just not consistent with the plain language of the statute.

Mr. Bucshon. I think that has already happened, right.

With that, Mr. Chairman, I will yield back.

Mr. Bilirakis. All right. Very good. Thank you.

All right. Next, we have my friend from the great State of Florida, fellow Floridian and partner in a lot of these issues. And, Kathy Castor, you are recognized for 5 minutes.

Ms. Castor. Well, thank you, Chair Bilirakis and Ranking Member Schakowsky, for holding the hearing today.

The Federal Trade Commission simply has a vital role in protecting our neighbors back home from scam artists and fraudsters. I recently had a telephone townhall meeting and asked a lot of my neighbors across the Tampa Bay area to share their recent stories. And I had someone from the FTC on the line too.

And it is just amazing how these scam artists are becoming more sophisticated using our personal data, using the AI, tricking -- and you don't have to be a senior citizen. This is happening across the board.

So I was heartened to see the FTC issue their report this morning that highlighted some of this. And they also talked about how so many businesses, I think they used this term, bury their heads in the sand when it comes to children online.

So I am particularly heartened that Chair Bilirakis is here, because he helped lead the way on the Children's Online Safety Act that we passed out of committee yesterday. And Representative Walberg is here, who helped lead the effort on Children's Online Protection Act. That is a very important update.

But, Mr. Davisson, the FTC has a vital role in protecting kids online. I mean, COPPA has been on the books since 1998. It hasn't been updated, but at least we have had the Federal Trade Commission and kind of the cops on the beat out there protecting

kids' privacy, standing up to the businesses and social media companies that track and surveil them.

What do you say about the role when it comes to -- first, Federal Trade Commission's a funny name, but it has kind of been the cop on the beat when it comes to what big business monopolies do on gathering our data. What has their role been on protecting kids online? And then, what can you say about the growing sophistication of the fraudsters and scam artists out there when it comes to technology.

Mr. Davisson. Thank you for the question.

As you say, the FTC has a quite extensive role in the protection of children's privacy and is charged with enforcement of the Children's Online Privacy Protection Act. It periodically updates the rule that implements COPPA, and it is in the process of doing exactly that right now to upgrade the rule to provide greater protections for children's privacy and make it more difficult to monetize the data of children and direct targeted advertising at children in ways that would violate their privacy.

We have seen a number of recent enforcement actions on children's privacy that I think elucidate what the Commission's role is when it comes to enforcement of children's privacy. You know, taking action against Amazon for retaining voice recordings of children's voices captured by Alexa.

Ms. Castor. Yeah.

Mr. Davisson. Going after Epic Games for using -- or having the default always on chat settings that were, you know, risk to putting kids in touch with strangers and risk their -- put their data at risk. And then a recent enforcement action against Microsoft as well involving the collection of children's biometric data that wasn't consented to by parents.

And I think, you know, there are other steps that we have asked the Commission

to take. One of the notable ones is establishing additional protections for minors through the pending commercial surveillance rulemaking.

You asked also about AI scams, AI-enabled scams, and those are an increasing scourge. They are, as you say, getting scarily effective in terms of how well they can replicate someone you know or may know, or convince the person called that it is -- you know, the scammer, he is in a position of authority or works for a particular business. And I think, again, it has been encouraging to see the FTC try to cut into that through a telemarketing sales rule and through the impersonation rule.

Ms. Castor. So these cops on the beat are vital to protect consumers and go after the scam artists. That is why it is so disheartening to see kind of this full-frontal assault on the Federal Trade Commission through what is going on here in Congress, through very harsh cuts to their budget that are being proposed by my GOP colleagues. And then we are having to deal with the threat of the far right Project 2025, which one group, the Technology Oversight Project, said, look out, hefty handouts to big business. And a report from Bloomberg found that sections of it were written by people who had worked and lobbied for Meta, and other monopolies and undisclosed bitcoin operations. It really appears that they want to take the cops off the beat at a time when we really need these folks who are protecting consumers across the country.

So let everyone -- buyer beware. Let everyone be warned. If you value your personal privacy, if you value your pocketbook against big monopolies that have been gouging you, you really want to support the Federal Trade Commission in their mission.

So thank you all for being here, and I yield back.

Mr. Bilirakis. The gentlelady yields back.

I now recognize Mr. Walberg from the great State of Michigan, vice chairman of the subcommittee. You are recognized for 5 minutes of questioning.

Mr. Walberg. Thank you, Mr. Chairman. And thanks to the panel for being here.

And I want to make it clear that I am not an enemy of the FTC. There is a place for the FTC. But this FTC has seemingly taken some unprecedented steps to extend its power beyond what we have ever seen at what should be an independent commission meant to protect American consumers.

From the very beginning when the Biden-Harris administration pulled a fast one -- my terminology -- and elevated Lina Khan to be chair after she was voted on solely as a commissioner, we have seen a dramatic shift in how the FTC operates. Actions by the FTC have significant impacts on our economy, and I fear the actions by this FTC will have a long-term consequence for economic security as well.

Ms. Tews, thanks for being here. This FTC has acted in an unprecedented manner by coordinating an aggressive attack on American companies with foreign nations. What impact does this coordination have on U.S. innovation and job creation?

Ms. Tews. Congressman, we have deferred to other countries to take our positions for us. And so that means that we show up with a me-too card rather than really having a point of view and understanding that when there is regulatory uncertainty, businesses will cabin their resources. And so it means that they are worried about not being able to hire people. They make decisions back home by watching what is going on there. And having foreigners make those decisions for us is the wrong place.

We should have the Federal Trade Commission, as well as -- you know, doing the exceptional work they do on consumers, realize that businesses need them to be a leader as well in this area.

Mr. Walberg. Yeah, that changes the equilibrium very much so. Thank you.

Mr. Chilson, we are in an ever-growing technology competition with China. Do

these actions from the FTC jeopardize American leadership in fostering some of the world's most innovative businesses?

Mr. Chilson. I think they can. And it is telling that the earliest reactions to post-ChatGPT release of this amazing new, fastest adopted technology app that has ever been released, from the FTC was -- I think the first blog post was, does this raise competition problems? They looked at this brandnew space from a accompany that nobody had heard of, you know, 5 years ago, and they said, hey, maybe there is competition problems now, rather than trying to look at, you know, how they could support an American company and an American innovator. And that trend has continued.

They joined hands with European competition regulators to say, hey, let's all get together and maybe investigate these leaders in AI, which the Europeans are happy to do because most of those are American companies. But I don't understand why a law enforcement agency in the U.S. should be singling out one of the most innovative sectors of the U.S. at a time when we need desperately to stay ahead of the race against China here.

Mr. Walberg. Absolutely. Stay ahead of the race and keep both a fingerprint or a thumbprint on what is happening and do it in a moral way as well. So thank you.

According to reports and letters from the House Small Business Committee, on multiple occasions, the FTC has underestimated the costs and impacts of their proposed rules on small businesses. For example, the committee cites that the FTC has failed to consider that banning noncompete agreements could make it more challenging for small businesses to prevent their workers from being poached by large corporations with more resources.

Ms. Tews, how has this FTC handled the Regulatory Flexibility Act in small

businesses?

Ms. Tews. It hasn't been helpful. So the idea of when you take a job you have to look at the landscape and what is available to you. If somebody puts a noncompetitor in front of you, it is probably because you have a level of expertise that they want to make sure that they are going to keep you around for a while, and they want that to be a two-sided equation.

It is not allowing people to realize their potential in a way that is going to -- allow them to garner a higher salary as well. If they know that everybody is going to be out on the market at any point in time, they are then a good flight risk. And we are seeing it right now with artificial intelligence. You know, they are willing to go. There are challenges as to where, you know, the information flow is going to go. Then as a company, you worry about sharing your intellectual property with people like this.

Mr. Walberg. Yeah, yeah. The bottom line becomes the bottom for too many people there. Thank you.

My time is almost expired. I yield back.

Mr. Bilirakis. Thank you, sir. I appreciate that very much. The gentleman yields back.

Now we will recognize Mr. Soto from the great State of Florida for his 5 minutes of questioning.

Mr. Soto. And, Mr. Chair, what a great State it is, right?

Mr. Bilirakis. That is right. It certainly is.

Mr. Soto. Thank you so much.

You know, the interstate is vast and cell phones are everywhere, and so we see so many opportunities for scams, fraud, and injuries to continue to crop up. Especially, I worry about our seniors. We put together a Do Not Disturb package, led by Ranking

Member Pallone. And I was proud to have one of my bills included in that package, the Roboblock Act, which directs providers to offer robocall blocking services for free of charge, or at least we need to make sure it is affordable enough for seniors.

We know the FTC has done some of their work through Operation Stop Scam Calls. This follows the lead of some of the bills we passed a few years ago on targeting illegal telemarketers and shady companies that are using deceptive practices to collect information.

Mr. Davisson, what do you think the lay of the land is right now with the FTC and the ability to stop scam calls, and where do we have more work to be done?

Mr. Davisson. Thank you for the question.

As you say, telemarketing calls and robocalls are the bane of many consumers' existence. They are deeply irritating and disruptive and violate our privacy. And that is why, as you say, FTC and FCC efforts on the subject are so critical. And it is also one of the reasons why the Do Not Call Registry is arguably the best known enforcement mechanism that the FTC uses.

We were pleased to see that the FTC announced a rule affirming the telemarketing -- an update to the rule rather -- affirming that the telemarketing sales rule prohibits voice-cloning technology. As I have mentioned earlier, voice cloning and AI-facilitated impersonation are an increasingly significant problem and facilitates scams at large scale.

I think the two pieces of legislation you mentioned, the Do Not Disturb Act and the Roboblock Act, are both ones that the committee and Congress should take up and enact because I think those would strengthen both the FTC and the FTC's hand.

Mr. Soto. Thank you, Mr. Davisson.

I also have a bill, the Consumer Safety Technology Act. It passed out of the

House already. It does allow the Consumer Product Safety Commission to explore how you use AI, but we also want to expand it eventually to give the FTC some authority to use AI to help uncover fraud, injuries, scams on the internet.

Dr. Beales, it is always great to see a fellow GW friend here. I went to the law school there. Do you think AI might be helpful to help the FTC with some of the core responsibilities like fraud and injuries that may take place through online scams?

Dr. Beales. I would think it would. I mean, one of the things the Commission has done very successfully over the years is to build a database of consumer complaints with descriptions of the problems. That has always been used for case targeting. It certainly was used for that when I was there. And I think AI is something that has the potential to enhance the ability to spot scams early and stop them in their tracks.

Mr. Soto. And, Mr. Davisson, it would be great to get your take on it too. You know, the crooks already are using AI, and so we believe the cops on the beat need to be able to use it too.

Where do you think AI can be used to help with core functions like detecting fraud and scams and protecting against injury?

Mr. Davisson. I think it may play a role in detecting fraud and scams, and especially, you know, telephone-based fraud and scams. I think it is important that any application of a system like that in a law enforcement context where, you know, the equities are quite serious, that there would need to be certainty that this technology is accurate and that it is transparent, that it is explainable, that it is nondiscriminatory. But with those strict safeguards, there may be a rule for the use of AI in fraud detention.

Mr. Soto. Sure. It would be more for detecting and trying to identify alleged fraud. And then we do need, you know, the good people at FTC to actually help make some of these discretionary calls. But as we are monitoring a whole vast internet in all

these different scams that come up, it helps to expand the awareness of potential frauds online. So I appreciate your opinions.

And I yield back, Mr. Chairman.

Mr. Bilirakis. I thank the gentleman for yielding back.

Now we will recognize -- no one on the Republican side, so I will recognize Ms. Clarke for her 5 minutes of questioning.

Ms. Clarke. Good morning. And thank you to our Chairman Bilirakis and Ranking Member Schakowsky for holding this hearing today.

I would also like to thank our witnesses for being here to testify.

In this discussion on past versus present, we must consider that the FTC has accomplished and considered how we can build upon its accomplishments in the digital age. The fundamental consumer protection mandate of the FTC is to protect consumers against unfair and deceptive acts or practices.

Over the years, we have regularly given the FTC additional statutory authority on a wide array of consumer protection issues, including to prevent fraudulent and abusive telemarketing practices, protect children's online privacy, and enforce the Fair Credit Reporting Act.

Though some on the other side of the aisle may lament the excessive regulation and red tape, they must be blind to the online and offline reality faced by all Americans, but especially to members of our most vulnerable populations. For example, the financial scams targeting our seniors and their hard-earned money and the unfettered collection and sale of our data, including our children's data.

I would remind critics of the FTC that it was this very regulatory body that played a critical role in securing the consumer protections our communities rely on today for a safer internet experience.

I commend the FTC for their efforts to improve consumer protections by tackling deceptive practices across social media platforms. For example, beginning on October 1, the FTC will begin cracking down on businesses that inflate follower counts, fake reviews, and use paid-to-hire bots for likes on social media posts.

Mr. Beales, in your testimony, you have alleged that Chairman Khan and her team have broken various norms of the FTC, including failure to consult with career staff and minority commissioners and to share information with Congress. You also lament that the FTC has changed its rulemaking process. However, you served under Republican Chair Muris at the FTC. And it is well documented that when Tim Muris became chair of the Commission, he made changes to the process through which mergers reviewed by either the FTC or the DOJ.

Before publicly announcing the changes to the merger's guidelines, Chair Muris consulted with antitrust experts outside of the agency but not with career staff, did not consult with any minority commissioner at the time, Commissioner Mozelle Thompson, about the significant change. And by his own admission, Chair Muris chose not to consult Congress for the simple reason that we believe Senator Hollings would likely object. And he was right. Senator Hollings did object quite vociferously, as did Commissioner Thompson. And the result was funding uncertainty for the FTC because of Senator Hollings' role on the Appropriations Committee.

I respectfully suggest that you and Chair Muris, your former boss and frequent co-author of the FTC-related articles, are playing a version of what is good for me, but not for thee when you cast dispersions at Chair Khan.

Dr. Beales. Congresswoman, I would just note that Chairman Muris changed that agreement, abandoned that agreement. We have returned to an environment that they were trying to fix of where they fight.

Ms. Clarke. Understood. Understood.

Dr. Beales. Chair Khan does not think that --

Ms. Clarke. I am reclaiming my time.

Mr. Davisson, can you explain to us how policies like this crackdown on artificial online engagement furthered the mission of the FTC to protect the public from deceptive or unfair businesses practices and from unfair methods of competition through law enforcement, advocacy, research, and education?

Mr. Davisson. Thank you for the question.

You know, like scams, fake reviews erode consumer trust in our economic system and in our businesses. They make it difficult to understand whether the product or service that you are considering is worth buying. They set us up for disappointment and financial loss when products turn out to be not of the high quality that they were advertised as. And then they make it harder for businesses with high-quality products to cut through the noise and reach consumers.

So we were encouraged to see the fake reviews rule, which will be effective soon, enacted by the FTC that prohibits businesses from creating, selling, or knowingly buying fake reviews by someone who doesn't exist because they are fabricated, because the review is AI-generated, or the reviewer does not actually have experience with the product or service.

Ms. Clarke. Well, thank you, Mr. Davisson.

My time has elapsed, and I thank the chairman and yield back.

Mr. Bilirakis. I thank the gentlelady.

Now I will recognize Ms. Kelly for her 5 minutes of questioning.

Ms. Kelly. Thank you, Chair Bilirakis and Ranking Member Schakowsky, for holding this hearing. I also want to thank the witnesses for your testimony.

Just a few weeks ago when the FTC commissioners testified before this subcommittee, I raised my concerns with the uptick in fraudsters and scammers, particularly because it is estimated that impersonation scams cost consumers more than a billion dollars over the cost of just last year.

Mr. Davisson, please address why it is important that we ensure the FTC is empowered and has the necessary tools and resources to continue combatting scams through initiatives like Operation Stop Scam Calls which returned almost \$400 million to victims of robocall scams. Excuse my voice.

Mr. Davisson. Thank you for the question.

You know, scams, particularly telephone scams, are annoying, disruptive, financially harmful, and as I said, erode trust in the economic system and in each other. And they are a very tangible negative consumer experience that many consumers have their own experiences with or their family and friends have been -- fallen victim to scammers.

And so given that, like, tangible impact on consumers, it is especially important that the Commission be empowered with the adequate, you know, enforcement tools and rulemaking authority and resources to carry out effective enforcement against scammers.

Ms. Kelly. Thank you so much.

Malicious actors are already using AI, as you know, to increase the scale and sophistication of existing scams which underscores the importance of the FTC as an agile and robust law enforcement agency.

Former President Trump's Project 2025 eliminates law enforcement work at independent agencies like the FTC, and even goes so far as to question whether the FTC should exist at all.

Mr. Davisson, what would be the impact on consumers, especially senior citizens and other vulnerable communities, if the FTC is significantly weakened or even eliminated in corporations and fraudsters are allowed to operate in unfair and deceptive ways with fear of prosecution -- or without fear of prosecution?

Mr. Davisson. I think it is difficult to overstate what the implications of that would be. We may take for granted the work that the FTC does to prevent scams and fraud and misuse of our personal data and all manner of other consumer harms. And taking a meat cleaver to that budget, to that work that FTC does would really remove an ally of the consumer in Federal Government and be really a tragic development, I think, for consumer protection.

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

Mr. Bilirakis. Thank you. I appreciate very much.

All right. Next, we have Ms. -- yes.

Ms. Schakowsky. Can I ask if she can yield just a couple of minutes?

Ms. Kelly. Yes.

Mr. Bilirakis. Okay. She does the have the time to yield. Okay.

Ms. Schakowsky. I just wanted to say about digital trade, which I think is so important. And then we certainly want the Federal Trade Commission to work alongside our trade representative to make sure that we protect our right to be able to pass things locally or here in the United States and not have Big Tech decide about what are the rules of the road, if we want to do a comprehensive bill. We could be deprived of those opportunities if we aren't watchful about the international trade.

So I just wanted to say that is important, I think, for that partnership with the Federal Trade Commission and our trade representative.

And I yield back. I am sorry. Thank you.

Mr. Bilirakis. Oh, that is okay. Thank you. And Ms. Kelly yields back.

And I want to interject that, just for the record, that President Trump has not endorsed Project 2025.

Okay. Next we will have Mrs. Trahan. You are recognized for 5 minutes of questioning.

Mrs. Trahan. Thank you, Mr. Chairman. It is great to be here. Thanks for all your testimony. Thanks for holding this hearing.

So under this administration, the FTC has made the most of its limited budget and statutory constraints, which I strongly urge my colleagues to work with us to improve, to hold corporations accountable for price gouging, anti-consumer consolidation, and fraud. And they have done so to protect hardworking Americans, whether they are in the grocery store, the pharmacy, or logged online.

In fact, I would argue that this FTC has worked harder than under any prior administration to live up to its obligation to the American people to be a cop on the beat, protecting against unfair and deceptive acts, as well as anti-competition business practices that deprive consumers of choices in the marketplace.

That is why it is disappointing to hear arguments from some of our colleagues who believe that giant corporations deserve more protections from the FTC's enforcement, even when they have caused significant, often devastating, financial harm to millions of Americans.

Take, for example, algorithmic rent-fixing companies, which contribute to inflated rent prices across the country, as many corporate landlords use the same software to artificially inflate prices and collude to keep them high.

Companies like RealPage, which was just sued again by the DOJ, profit by enabling implicit and explicit coordination in rent prices among many landlords who otherwise

should be competing for their tenants. This is a per se violation of the antitrust laws. And it is just another example of corporate price gouging that is driving up housing costs for families across America and driving inflation over the past 2 years.

Mr. Davisson, how can algorithms be used to drive up cost for American families, and what should regulators and policymakers be looking out for to ensure that corporations don't abuse algorithms to illegally price fix?

Mr. Davisson. Thank you for the question.

I think the use of algorithms in setting rents and their use in price fixing highlights one of the biggest concerns with algorithmic systems, generally, which is that they are opaque. And that this -- in this case the price fixing is happening completely out of view of the people who are affected. And we are talking about a basic necessity, like housing in this case. And that is why policymakers, lawmakers in Congress, and the regulators of the FTC need to put rules in place that impose transparency requirements; ensure that AI systems are not being used in discriminatory ways or harmful ways, as in price fixing; that the systems are explainable, they are based on known factors, they are demonstrated to be accurate; and that there is human review of the decisions being made.

And it has been encouraging to see the FTC focused on that through its surge pricing work, its 6(b) study on surveillance pricing, the guidance that it has put out on price fixing generally. And I think it was a blog post at the FTC that said algorithmic price fixing is still price fixing. And I think that is a really important message. I am glad it is one that the FTC has stood behind.

Mrs. Trahan. Absolutely. And just to follow up, how do recent FTC initiatives such as the establishment of the Office of Technology help the FTC address those harms?

Mr. Davisson. I think to regulate a thing, you need to understand the thing. And that is increasingly difficult in a technological and data-driven world. And making

sure that the Commission has the technical expertise on staff is vital to being able to carry out its mission of consumer protection.

So I think deepening that technical expertise, hiring smart, dedicated technologists, being also -- you know, communicating with the public about the technological expertise and research that the Commission is doing, all of those are valuable contributions. And I think it is very encouraging that the FTC has baked that into its enforcement work.

Mrs. Trahan. Which requires resources.

I want to thank you. I completely agree.

And I want to just point something notable out here. The FTC issued clear business guidance outlining the potential ways that algorithms could be used to violate the law. It did so because the FTC has been aggressively examining ways that technology can be used to violate the law. And rather than immediately springing lawsuits, the agency tried to give corporations, like RealPage, time to adjust to updated guidance. And then years after that guidance was issued, the DOJ sued RealPage for ignoring this guidance and instead doubling down on its illegal algorithmic scheme to coordinate ransom on landlords in clear violation of antitrust laws.

I am sure all of us hear from our constituents that we need to be focusing on taking on Big Tech, protecting Americans' privacy, and addressing inflation every way we can. And while I understand why giant corporations don't want the FTC to function, because it means they can break the law and exploit consumers without consequence, I don't understand why some of my colleagues on the other side of the aisle are not giving the FTC to fight back.

Thank you. I will yield back.

Mr. Bilirakis. I thank the gentlelady.

All right. And I want to commend the panel for their excellent testimony today, and, of course, the members' good questions.

I ask unanimous consent that the documents on the staff document list be submitted for the record.

Without objection.

Ms. Schakowsky. No objection.

[The information follows:]

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

Mr. Bilirakis. No objection. So ordered.

And I want to remind the members that they have 10 business days to submit questions for the record. And I ask the witnesses to respond to the questions promptly. Members should submit their questions by the close of business day October 3.

And, also, before the hearing ends, I just want to give a quick shout-out to Lacy Strahm on the subcommittee staff whose birthday was yesterday. What a way to spend your birthday with a 12-hour markup, something like that. So we appreciate her service. And she worked on a lot of these bills. KOSA, and many, many more.

So I am not going to sing, Lacy. I don't think I can sing happy birthday. But happy birthday, belated birthday, and thank you for all your good work on this committee.

Ms. Schakowsky. Ditto.

Mr. Bilirakis. Good luck in the future. Thank you.

Okay. So members should, as I said, by October 1 and -- October 3, excuse.

And what we are going to do now is we are going to adjourn the subcommittee. Thank you so very much.

[Whereupon, at 12:09 p.m., the subcommittee was adjourned.]