

Statement of Commissioner Andrew N. Ferguson

Federal Trade Commission

**Before the House Energy and Commerce Committee, Subcommittee on Innovation, Data,
and Commerce**

“The Fiscal Year 2025 Federal Trade Commission Budget”

July 9, 2024

Chairman Bilirakis, Ranking Member Schakowsky, and members of the Subcommittee, thank you for this opportunity to discuss the important work of the Federal Trade Commission. The Commission serves a critical role in the American economy. It ensures that the free-enterprise system works for everyone—not just the rich and powerful—by enforcing our competition laws and protecting consumers from fraud and unfair practices.

What I have learned in my three months at the Commission is that our most valuable asset, and our most important tool in fulfilling our important mission, is our people. Our lawyers, economists, and professional staffers are the lifeblood of the agency. They are consummate professionals dedicated to the vigorous enforcement of our competition and consumer-protection laws, protecting our free-enterprise system. Every win the agency claims on behalf of the American people is, ultimately, a victory won by the hardworking staff.

The vast majority of our work is bipartisan and unanimous. I have joined my fellow Commissioners in supporting a number of important competition and consumer-protection matters.¹ The agency is at its best when we are working together. I am not naïve, however, and recognize that Congress has created a Commission run by both Democrats and Republicans. We will not always agree.

¹ See e.g., In the Matter of Tapestry, Inc. / Capri Holdings Limited, FTC Matter No. 213 0133 (Apr. 22, 2024); In the Matter of Tempur Sealy International, Inc. and Mattress Firm Group Inc., FTC Matter No. 231 0016 (July 2, 2024).

I have not hesitated to oppose my colleagues when I believe they are leading the Commission in the wrong direction.² That is particularly true for rulemaking. The Supreme Court has been steadily clawing back the power of the administrative state. It recently discarded the *Chevron* doctrine that required courts to defer to agency regulations.³ But the Commission is going in the opposite direction, undertaking a rash of major rulemakings in the last eighteen months,⁴ including the Non-Compete Clause Rule.⁵ I dissented from that rule,⁶ and it has since been preliminarily enjoined by the U.S. District Court for the Northern District of Texas.⁷ I will continue to speak out when I think the Commission has overreached its authority.

The Commission confronts many important challenges. For example, the last time I testified before Congress, I told the Senate that confronting Big Tech is the fundamental competition question of our day. This is even more true today than it was last year. The Supreme Court has recently expressed skepticism about state efforts to regulate Big Tech.⁸ And Section 230 of the Communications Decency Act forecloses many of the efforts of private parties and state officials to provide much needed accountability.⁹ Antitrust and consumer-protection laws are therefore one of our last available avenues to address the many challenges posed by Big Tech. For example, I agree with my friend Commissioner Holyoak that the Commission should examine whether social-

² See e.g., Andrew N. Ferguson and Melissa Holyoak, Commr's., Fed. Trade Comm'n, Joint Dissenting Statement In the Matter of ExxonMobil Corporation, Commission File No. 241-0004 (May 2, 2024); Melissa Holyoak, Comm'r, joined by Andrew N. Ferguson, Comm'r, Fed. Trade Comm'n, Statement regarding Health Breach Notification Rule, File No. P205405 (April 26, 2024).

³ *Loper Bright Enter. v. Raimondo*, No. 22–451, slip op. (U.S., June 28, 2024).

⁴ See e.g., Health Breach Notification Rule, 89 Fed. Reg. 47,028 (May 30, 2024); Non-Compete Clause Rule, 89 Fed. Reg. 38,342 (May 7, 2024); Trade Regulation Rule on Impersonation of Government and Business, 89 Fed. Reg. 15,017 (March 1, 2024).

⁵ Non-Compete Clause Rule, 89 Fed. Reg. 38,342 (May 7, 2024).

⁶ Andrew N. Ferguson, Comm'r, Fed. Trade Comm'n, Joint by Melissa Holyoak, Comm'r, Fed. Trade Comm'n, Dissenting Statement In the Matter of the Non-Compete Clause Rule, Matter Number P201200 (June 28, 2024), https://www.ftc.gov/system/files/ftc_gov/pdf/ferguson-noncompete-dissent.pdf.

⁷ *Ryan LLC v. FTC*, No. 3:24-CV-00986-E, slip op. at 32 (N.D. Tex., July 3, 2024).

⁸ See *Moody v. Netchoice LLC*, No. 22-277, slip op. (U.S., July 1, 2024); *Murthy v. Missouri*, No. 23-411, slip op. (U.S., June 26, 2024).

⁹ 47 U.S.C. § 230.

media platforms were knowingly violating their terms of services when they deplatformed customers in 2020. And although it lies outside of our jurisdiction, the practice of de-banking by large U.S. banks cries out for regulatory and congressional scrutiny for the same reason.

Similarly, the House Judiciary Committee recently released a report describing alleged collusion among large asset-management firms intended to drive up the prices of fossil fuels in order to meet emissions targets set by those firms.¹⁰ At least some European countries are becoming more permissive than the United States regarding exemptions for anticompetitive behavior so long as that behavior has some connection to the environment. In America, we have rightfully rejected excusing anticompetitive behavior to further other social goals. Plainly anticompetitive conduct in the form of horizontal restraints of trade—i.e., agreements between competitors to drive down output or drive up prices—is illegal no matter the reason for it. The collusion alleged by the Judiciary Committee similarly should be the subject of scrutiny by the Commission.

We cannot confront these challenges without the ability to retain our talented staff and to hire more like them. As the Congress weighs how to fund the Commission, I hope it will keep in mind the importance of the Commission’s mission in protecting the American economy from monopolists and fraudsters, and that we cannot fulfill this mission without our hardworking and devoted staff.

I look forward to your questions.

¹⁰ Interim Staff Report of the Committee on the Judiciary, U.S. House of Representatives, *Climate Control: Exposing The Decarbonization Collusion in Environmental, Social, and Governance (ESG) Investing* (June 11, 2024), [https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/2024-06-11/%20Climate%20Control%20-%20Exposing%20the%20Decarbonization%20Collusion%20in%20Environmental%20C%20Social%20and%20Governance%20\(ESG\)%20Investing.pdf](https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/2024-06-11/%20Climate%20Control%20-%20Exposing%20the%20Decarbonization%20Collusion%20in%20Environmental%20C%20Social%20and%20Governance%20(ESG)%20Investing.pdf).