



Office of the Chair

UNITED STATES OF AMERICA
Federal Trade Commission
WASHINGTON, D.C. 20580

**Remarks of Chair Lina M. Khan
American Constitution Society
2024 Annual National Convention Keynote**

June 7, 2024

Good morning, everyone. Thank you, Adam, for the introduction. And thank you to ACS for inviting me to speak at this year's convention.

ACS has long been a leader in paving the way for progressive legal reform. Today, you've brought together a vibrant coalition—of law students, attorneys, judges, advocates, and scholars—committed to strengthening the rule of law.

When I first attended an ACS meeting in my 1L year, questions of monopoly and market structure were not a big part of our legal discussions. Most people were not talking about the dangers of unchecked corporate power, or the relationship between monopoly power and other values that we hold so dear, like democracy and freedom.

Today, I want to make the case that these issues are not just interrelated. They are inextricable. Questions of market structure—like whether a single gatekeeper controls a market, or whether we have vigorous competition—shape the way Americans experience freedom and exercise their rights each day.

This idea has been a fundamental part of the progressive tradition in America, going back to the very beginning.

Thomas Jefferson wanted to restrict monopolies in the Bill of Rights. He proposed it in a letter to James Madison, in the same sentence where he mentioned freedom of religion and the press.¹

Madison agreed, writing back: “Monopolies are sacrifices of the many to the few.”²

One hundred and fifty years later, Franklin D. Roosevelt spoke to the Democratic National Convention about America's long history of fighting for freedom against the powerful and the need for a new revolution against the economic tyrants that had consolidated control over Americans' property, their money, their labor, and their lives.

¹ Letter from Thomas Jefferson to James Madison (Dec. 20, 1787), <https://constitutioncenter.org/the-constitution/historic-document-library/detail/thomas-jefferson-and-james-madison-correspondence-on-a-bill-of-rights>.

² Letter from James Madison to Thomas Jefferson (Oct. 17, 1788), <https://founders.archives.gov/documents/Jefferson/01-14-02-0018>.

“Political equality,” he said, is “meaningless in the face of economic inequality.”³

Today we have a president who embraces this tradition. President Biden has made taking on unchecked corporate power a core pillar of his economic agenda because he understands what progressive leaders have understood for the last 250 years: that economic liberty is the foundation for so many of the other values we hold dear.

Questions of economic power directly implicate our First Amendment rights, like freedom of speech and the press. They implicate workers’ rights, like freedom from coercion and the right to organize. And they implicate the right to privacy, like the freedom to live our lives without undue government surveillance or intrusion.

Let’s begin with the First Amendment. Freedom of speech and of the press are two of the most foundational rights in America: the right to express yourself and the right to speak truth to power.

But too often, market consolidation means people become afraid to speak out. When your livelihood is dependent on a single company—be it as a small business owner, a worker, or a farmer—that economic dependence can infringe on your political rights. That fear is front and center for people across the country. The FTC has heard from anonymous franchise owners, for example, who won’t tell us their names or where they work, because they live in fear of retaliation.

One owner told us that, when they suggested changes to make their business run more smoothly, they were threatened with an “incompliance fee…” also known as a “keep your mouth shut fee.”⁴

And the threat to the First Amendment isn’t limited to the workplace. Just take social media, which some describe as our modern-day public square. These public squares are privately owned—and the more power they consolidate, without free and fair competition, the more they shut out other platforms where users can speak freely and where reporters can freely share their stories.

As tech companies consolidate, a handful of billionaires in Silicon Valley are amassing the power to shape public discourse by picking and choosing which voices get heard. Users from across the political spectrum are being shadow-banned or having their accounts disabled with no recourse—perhaps to block them from saying things the tech moguls or their friends don’t want to hear. It’s a slippery slope from consolidation to censorship—and freedom of speech hangs in the balance.

³ Franklin D. Roosevelt, Acceptance Speech for the Renomination for the Presidency, Philadelphia, Pa. (June 27, 1936), <https://www.presidency.ucsb.edu/documents/acceptance-speech-for-the-renomination-for-the-presidency-philadelphia-pa>.

⁴ Comment Submitted by Anonymous, Solicitation for Public Comments on Provisions of Franchise Agreements and Franchisor Business Practices, *Regulations.gov* (June 26, 2023), <https://www.regulations.gov/comment/FTC-2023-0026-1690>.

This lack of real competition is part of why the FTC is suing Meta for antitrust violations. Our lawsuit charges that, by acquiring WhatsApp and Instagram, Meta unlawfully monopolized parts of the social media market.⁵ Our case seeks to open that market back up, giving people more places to be heard and giving writers and reporters more channels to distribute their stories.

We've seen similar consolidation in the ad-tech and media industries. As one T.V. writer told us: "This tiny group of companies control what we as creators are allowed to say... and what messages the public has access to."⁶ He requested that, when we review mergers, we ask ourselves: "Whose voices will this merger silence? Whose stories will the public never get to see?"⁷

The freedom of the press is threatened further by the mass layoffs of journalists we are seeing across the industry. More than 20,000 media workers lost their jobs last year, many of them due to consolidation.⁸

This brings me to the next group of freedoms: worker's rights, which ensure that employees are treated fairly, paid properly, and protected from exploitation.

We are living in a golden era of labor organizing. Over the last few years, workers have made monumental strides—from auto factories in the Midwest,⁹ to writers' rooms in Hollywood.¹⁰

Workers build power by collectively bargaining for better wages and conditions and by having free mobility in the labor market, which lets them decide for themselves which job is the best fit.

As Chair of the FTC, I've been reminded over and over about how much questions of market structure and competition can affect the ability of working people to build power and earn an honest living.

For example, non-compete clauses lock millions of workers into jobs and block them from taking better ones. They prevent workers from advancing in the industries they know best. When the FTC was looking into this issue, we heard from over 25,000 people from across the

⁵ Press Release, Fed. Trade Comm'n, *FTC Alleges Facebook Resorted to Illegal Buy-or-Bury Scheme to Crush Competition After String of Failed Attempts to Innovate* (Aug. 19, 2021), <https://www.ftc.gov/news-events/news/press-releases/2021/08/ftc-alleges-facebook-resorted-illegal-buy-or-bury-scheme-crush-competition-after-string-failed>.

⁶ Fed. Trade Comm'n, *FTC-DOJ Merger Guidelines Listening Forum on Media and Entertainment* (Apr. 27, 2022) (transcript available at https://www.ftc.gov/system/files/ftc_gov/pdf/Listening-Forum-Media-and-Entertainment-Transcript-April-27th-2022.pdf).

⁷ *Id.*

⁸ Brad Adgate, *Media Companies Have Slashed Over 20,000 Jobs in 2023*, FORBES (Dec. 21, 2023), <https://www.forbes.com/sites/bradadgate/2023/12/19/media-companies-have-slashed-over-20000-jobs-in-2023/>.

⁹ Nick Niedzwiadek, *UAW Formally Claims Contract Wins at Big Tree*, POLITICO (Nov. 20, 2023), <https://www.politico.com/news/2023/11/20/uaw-contract-wins-big-three-00128041>.

¹⁰ Alissa Wilkinson & Emily Stewart, *The Hollywood Writers' Strike is Over—And They Won Big*, VOX (Sept. 28, 2023), <https://www.vox.com/culture/2023/9/24/23888673/wga-strike-end-sag-aftra-contract>.

country and across walks of life, about how non-competes had forced them to uproot their families, forgo better opportunities, or face financial ruin.

Hundreds of healthcare workers told us how non-competes forced them to leave their communities and abandon their patients, sometimes depriving rural areas of critical care. Aspiring entrepreneurs told us how non-competes blocked them from jumping into the market, depriving customers of a better product at a better price.¹¹

In response, the FTC issued a rule that bans non-compete clauses for the vast majority of workers—because a market where workers are captive to a single company is not a free market at all.¹²

As the team at the National Labor Relations Board noted last year, non-competes can even chill workers’ right to organize.¹³ It’s much harder to go on strike if you know you don’t have other employment options.

Consolidation plays a part here, too. When two competing companies suddenly become one big one, unions can’t play employers off of one another to secure better terms.

That’s one reason why the FTC sued to block a merger between two of the largest grocery stores in America, Kroger and Albertsons.¹⁴ As alleged in the complaint, the Commission believed that the merger would prevent thousands of employees from securing higher wages, better benefits, and improved working conditions.

Finally, we should recognize the ways that unchecked corporate power threatens our right to privacy. The Constitution gives us the right to live our lives freely without being snooped on by the government. In practice, that means we should be protected from undue surveillance—whether it’s tracking by the state or by a corporation.

Commercial surveillance presents a major challenge. Too often, businesses are vacuuming up Americans’ most sensitive data and sometimes even sharing that data with all sorts of third parties, including foreign governments.

¹¹ See, e.g., Comment Submitted by Sean O’Connor, Notice of Proposed Rulemaking on the Non-Compete Clause Rule, *Regulations.gov* (Jan. 10, 2023), <https://www.regulations.gov/comment/FTC-2023-0007-0026>; Comment Submitted by Connor Duffy, Notice of Proposed Rulemaking on the Non-Compete Clause Rule, *Regulations.gov* (Jan. 10, 2023), <https://www.regulations.gov/comment/FTC-2023-0007-0198>; Comment Submitted by Adam DeBosier, Notice of Proposed Rulemaking on the Non-Compete Clause Rule, *Regulations.gov* (Jan. 12, 2023), <https://www.regulations.gov/comment/FTC-2023-0007-0760>.

¹² Press Release, Fed. Trade Comm’n, FTC Announces Rule Banning Noncompetes (Apr. 23, 2024), <https://www.ftc.gov/news-events/news/press-releases/2024/04/ftc-announces-rule-banning-noncompetes>.

¹³ Press Release, Nat’l Lab. Rels. Bd., NLRB General Counsel Issues Memo on Non-competes Violating the National Labor Relations Act (May 30, 2023), <https://www.nlr.gov/news-outreach/news-story/nlr-general-counsel-issues-memo-on-non-competes-violating-the-national>.

¹⁴ Press Release, Fed. Trade Comm’n, FTC Challenges Kroger’s Acquisition of Albertsons (Feb. 26, 2024), <https://www.ftc.gov/news-events/news/press-releases/2024/02/ftc-challenges-krogers-acquisition-albertsons>.

This means that a corporate executive somewhere can, without much effort, quietly find out where you live, where you worship, whether you're participating in a political protest, and what kind of healthcare treatments you're getting.

For example, if you are a woman visiting a reproductive health clinic, a company that owns an app you installed on your phone might be able to figure out if you've had, or even if you've considered having, a sensitive medical procedure, like an abortion or in vitro fertilization.

What's worse, many of these companies collect your data and then sell it to the highest bidder. Sometimes, that bidder is the government—undermining people's right to privacy and sometimes putting them at risk.

Companies can just as easily see if you've gone to church recently, or to a mosque or a synagogue, and use that information to discriminate against you. A California county could buy location data to track churchgoers during the COVID lockdown.¹⁵ Law enforcement agencies could do the same to spy on Americans exercising their right to protest.¹⁶ That data can also include visits to domestic violence shelters and addiction recovery facilities, which could seriously endanger people if it got into the wrong hands.

Two years ago, the FTC filed a lawsuit against a data broker, Kochava. Our team found that Kochava was selling sensitive geolocation data it had harvested from hundreds of millions of phones, in hundreds of millions of pockets.¹⁷

This data was precise. It showed people's exact location, time-stamped with coordinates. Names, phone numbers, and email addresses were all attached. The company was literally tracking your every move.

Of course, businesses are trafficking in more than just geolocation data. Social media platforms have been found selling kids' personal data, making them less safe online. Digital healthcare platforms have been found sharing sensitive medical information, like health conditions and prescriptions. Across these fact patterns, the FTC has taken action to protect Americans' privacy.

Last year, we learned that Rite-Aid was using facial surveillance technology that incorrectly identified certain customers as shoplifters, mostly women and people of color. These innocent people were followed around and asked to leave the store. Some of them even had the

¹⁵ Jorja Siemons, *Church Sues California County Over Alleged Covid-19 Geofencing*, BLOOMBERG LAW (Aug. 23, 2023), <https://news.bloomberglaw.com/privacy-and-data-security/church-sues-california-county-over-alleged-covid-19-geofencing>.

¹⁶ Ivey Dyson, José Guillermo Gutiérrez & Yeshi Milner, *Records Show DC and Federal Law Enforcement Sharing Surveillance Info on Racial Justice Protests*, BRENNAN CTR. FOR JUSTICE (May 15, 2024), <https://www.brennancenter.org/our-work/analysis-opinion/records-show-dc-and-federal-law-enforcement-sharing-surveillance-info>.

¹⁷ Press Release, Fed. Trade Comm'n, *FTC Sues Kochava for Selling Data that Tracks People at Reproductive Health Clinics, Places of Worship, and Other Sensitive Locations* (Aug. 29, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/08/ftc-sues-kochava-selling-data-tracks-people-reproductive-health-clinics-places-worship-other>.

police called on them—including an 11-year-old girl. So the FTC stepped in, and we successfully banned Rite-Aid from using the technology for five years.¹⁸

This kind of enforcement will only become more important as AI turbocharges surveillance technology and gives businesses new and more efficient ways to track consumers and workers alike.

As President Roosevelt noted: when a small group of companies hold all the power, “liberty is no longer real.”¹⁹

“Equal opportunity in the market place,” he said, is the foundation of democracy itself.²⁰ It is the foundation of so many of our rights and freedoms—only some of which I have touched on today.

We will soon hear from leaders and luminaries, across many areas of law, who are fighting for those rights. By taking on private economic power, the antimonopoly movement is doing that, too.

So, I will end with a request. If you are interested in democracy and freedom—and if you’re here at the ACS Convention, I know that you are—consider joining us at the FTC. We’re looking for competition and consumer protection attorneys to join the agency in the fight against monopoly power.

The Federal Trade Commission was created to give people a chance to enjoy real economic freedom—as consumers, as workers, as businesspeople, and ultimately, as citizens. This mission was never part of the traditional partisan framework, and it still isn’t.

Just last week, the Wall Street Journal ran an editorial about the importance of protecting AI from being monopolized by tech giants. It was written by Bill Barr, the former Trump Administration Attorney General. In a time of deep partisan division, it’s important to remember that there are still issues where progressives and conservatives agree.

So as you embark on your legal careers, I encourage you to look for opportunities to work with people across the political spectrum. You may find allies you never knew you had.

And when you go back to your law schools, and your law firms, and your chambers, and your think tanks—when you get back to the hard work of fighting for democracy and freedom—remember the threat that unchecked corporate power poses.

¹⁸ Press Release, Fed. Trade Comm’n, Rite Aid Banned from Using AI Facial Recognition After FTC Says Retailer Deployed Technology Without Reasonable Safeguards (Dec. 19, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/12/rite-aid-banned-using-ai-facial-recognition-after-ftc-says-retailer-deployed-technology-without>.

¹⁹ Franklin D. Roosevelt, *supra* note 3.

²⁰ *Id.*

Remember that antimonopoly has been a cornerstone of the progressive movement in America for centuries. And remember that, when you defend economic liberty, you are helping to defend so many of the freedoms that we hold dear.

Thank you.

* * *