

Congress of the United States
Washington, DC 20510

June 15, 2020

The Honorable Joseph Simons
Chairman
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Dear Chairman Simons:

We write regarding President Trump's unconstitutional and coercive executive order attacking social media platforms in retaliation for their fact checking of misinformation and labeling incitement to violence. The Federal Trade Commission (FTC) is not an arm of the Presidency, and it cannot be pressed into service to retaliate against Donald Trump's political rivals or to stifle critical speech. Appropriately, the FTC has been focused on fighting consumer fraud, scams and other criminal activities during the COVID-19 pandemic. Any diversion of resources to advance the President's political agenda would erode the independence of the FTC, sabotage future antitrust and privacy cases against Big Tech, and harm the American people as fraudulent activity would go unchecked.

On May 28th, after being fact-checked for false tweets about mail-in voting, President Trump signed the "Executive Order on Preventing Online Censorship," which directs Federal agencies to investigate and retaliate against online platforms over imagined political bias. The President's executive order is a transparently unconstitutional scheme to coerce private companies for political purposes, and has no interest in freedom of expression or consumer protection. As the Ranking Member of the Senate's Subcommittee on Manufacturing, Trade, and Consumer Protection and the Chair of the House's Subcommittee on Consumer Protection and Commerce, the subcommittees responsible for oversight over the FTC, we are alarmed that the President seeks to enlist the FTC in the assault codified within the executive order.

We are concerned that the President's demands distract from the FTC's essential mission to protect consumers and competition, especially during this national crisis. Since the onset of the Coronavirus pandemic, consumers have faced an onslaught of fraud, malware, and other financial crime. The FTC has taken steps to inform the public about scams, warn of violations, and cooperate with other law enforcement agencies — however, substantially more enforcement is urgently needed to deter violations of our consumer protection laws during this pandemic. Instead, the executive order sends the FTC 16,000 complaints collected from a dubious "Tech Bias Reporting tool" and requires the Commission to consider bringing cases for allegations of biased moderation under an untested and questionable use of its "unfair and deceptive acts and

practices” authority. Any personnel or resources redirected to chasing the President’s ghosts means more senior citizens victimized by fraud and cash-strapped families defrauded by identity theft.

We are also concerned that the executive order threatens the FTC’s ability to bring legitimate and urgently needed cases for real violations of the law. The Federal Trade Commission was established by Congress as an independent agency to ensure it is insulated from political interference by the President or other elected officials. While the pandemic has stopped business across the country, it has not curbed Big Tech’s anticompetitive appetite, drawing a heightened need for vigorous antitrust review of several concerning acquisitions. Action against the real harms caused to consumers and competition is overdue.

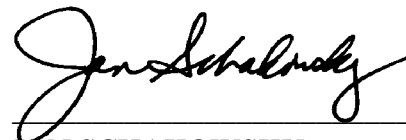
Troublingly, the executive order requires the Commission to consider reports of bias in unrelated legal complaints, such as for violations of competition laws. The President’s order could create the impression that the FTC’s enforcement actions had hidden political motivations. Facebook, named in the executive order and currently the subject of an antitrust investigation, could point to the executive order to argue that the FTC was acting at the behest of the President and based on his political animus toward the company. The Commission should clearly assert its independence from the President to protect its ability to enforce the law.

The Federal Trade Commission now faces a profound threat to its credibility and the perception of the fairness. We urge you to show leadership against the President’s attempts to undermine its independence and act to defend the FTC’s consumer protection and competition mission.

Sincerely,



RICHARD BLUMENTHAL
United States Senator
Ranking Member
Subcommittee on Manufacturing,
Trade, and Consumer Protection



JAN SCHAKOWSKY
Member of Congress
Chair
Subcommittee on Consumer
Protection and Commerce