

United States Senate
WASHINGTON, DC 20510

February 20, 2025

VIA EMAIL

Andrew N. Ferguson
Chairman
Federal Trade Commission
600 Pennsylvania Ave NW
Washington, DC 20580

Dear Chairman Ferguson:

I am writing with deep concern that several significant positions you have taken as Chair of the Federal Trade Commission would seriously undermine the independence of the Commission, threaten the fundamental right of legal dissent and minority party representation, and violate Congress's clear intent in establishing the FTC.

On January 23, 2025, in response to a dissenting vote from Commissioner Bedoya, you wrote that you “do not think an officer of the United States can refuse to comply with the President’s lawful order.”¹ This statement was in response to a motion to allow the Chair to end certain administrative programs within the Commission. Regardless of the underlying matter involved, your stated position appears to be that the Constitution allows Commissioners no right to dissent, and that indeed any dissent may violate their oath-of-office. This view represents an alarming break from the longstanding right of Commissioners to disagree with the decisions of the Chair and President.

This chilling precedent would eviscerate any future right of Commissioners to express even slight disagreement with the President or Chair, and invite future Administrations — Democratic or Republican — to fire and threaten the dismissal of any FTC members who decline to rubber stamp their proposals. Congress made expressly clear the importance of debate and dissent under the Federal Trade Commission Act, which requires two Commissioners from minority parties, who are nominated for fixed terms, their removal is permissible only for “inefficiency, neglect of duty, or malfeasance in office.”

¹ Statement of Chairman Andrew N. Ferguson Joined by Commissioner Melissa Holyoak Motion to Delegate Authority to Chairman to Comply with January 2025 Executive Orders on DEI Programs and Associated Guidance Matter Number P859900. https://www.ftc.gov/system/files/ftc_gov/pdf/ferguson-dei-delegation-statement.pdf

Opposing views on the Commission have been essential to inform public debate and litigation, which both Democratic and Republican Commissioners have vigorously embraced. It is also consistent with the practice of appellate bodies — the FTC is partially one — where judges are free to dissent and offer competing interpretations of the law. You plainly did not believe that Commissioners were duty bound to follow Presidential positions when you dissented from actions taken by the Commission that were supported by President Biden, such as rules promulgated during Chair Khan’s tenure concerning non-compete agreements,² unfair or deceptive fees,³ and click-to-cancel — and then advertised fighting President Biden and Chair Khan’s policies while campaigning to be Chair.⁴

Derogation of the longstanding, fundamental right of Commissioners to disagree and dissent from the President’s position has profound implications for Congressional oversight and confirmations, including the pending nomination for a vacant seat on the Commission and for positions beyond the FTC. Under your precedent, the Senate would expect that Commissioners, rather than serving fixed terms, will be removed with each change in Administration. Taken to its extreme, there would be no apparent reason to nominate or confirm minority Commissioners at all, since their service would be at the whim of the President.⁵

A more thorough explanation of your position on the independence of Commissioners is needed for considerations of pending nominations for the FTC, Federal Communications, and other agencies. Please provide detailed answers to the following questions:

- 1.) Do you believe that dissenting votes or statements from Commissioners constitutes grounds for dismissal by the President?
- 2.) If you believe that Commissioners are legally-bound to agree to any rules, enforcement actions, or administrative policies supported by the White House, why did you repeatedly dissent from FTC rules during Chair Khan’s tenure?
- 3.) Please cite any intervening Supreme Court precedent to justify a change in your position on the status of *Humphrey’s Executor* as binding law on you and on the Commission.

² Dissenting Statement of Commissioner Andrew N. Ferguson Joined by Commissioner Melissa Holyoak In the Matter of the Non-Compete Clause Rule Matter Number P201200.

https://www.ftc.gov/system/files/ftc_gov/pdf/ferguson-noncompete-dissent.pdf

³ Dissenting Statement of Commissioner Andrew N. Ferguson Regarding the Unfair or Deceptive Fees Rulemaking Matter Number R207011. https://www.ftc.gov/system/files/ftc_gov/pdf/ferguson-junk-fees-dissent.pdf

⁴ Federal Trade Commission Announces Final “Click-to-Cancel” Rule Making It Easier for Consumers to End Recurring Subscriptions and Memberships. <https://www.ftc.gov/news-events/news/press-releases/2024/10/federal-trade-commission-announces-final-click-cancel-rule-making-it-easier-consumers-end-recurring>

⁵ Scoop: FTC chair endorses Trump's ability to fire commissioners. Axios. <https://www.axios.com/2025/02/14/ftc-chair-ferguson-trump-fire-commissioners>

- 4.) What representations or communications have you, your office, or the FTC General Counsel made regarding your interpretation of the rights of Commissioners to dissent from positions taken by the President?
- 5.) Have you had any conversations or communications with the White House, Department of Justice, or the Department of Government Efficiency about the potential removal of Commissioners Bedoya or Slaughter?

Thank you for your prompt attention to this request. I look forward to your reply no later than March 1, 2025.

Sincerely,



Richard Blumenthal
United States Senate