

**CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA**

NEIL L. BRADLEY
EXECUTIVE VICE PRESIDENT &
CHIEF POLICY OFFICER

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November 19, 2021

The Honorable Maria Cantwell
Chair
Committee on Commerce, Science,
and Transportation
United States Senate
Washington, DC 20510

The Honorable Frank Pallone Jr.
Chair
Committee on Energy
and Commerce
U.S. House of Representatives
Washington, DC 20515

The Honorable Roger Wicker
Ranking Member
Committee on Commerce, Science,
and Transportation
United States Senate
Washington, DC 20510

The Honorable Cathy McMorris Rodgers
Ranking Member
Committee on Energy
and Commerce
U.S. House of Representatives
Washington, DC 20515

Dear Chair Cantwell, Ranking Member Wicker, Chair Pallone, and Ranking Member McMorris Rodgers:

Today, the U.S. Chamber of Commerce sent letters to the Federal Trade Commission raising our concerns about agency leadership's continued overreach and lack of transparency. This includes counting votes from resigned commissioners, sending blanket enforcement statements to industry without proof of allegations, and consolidating rulemaking authority with little notice to the public.

On a related note, we call your attention to a major problematic shift in policy regarding Federal Trade Commission (FTC) enforcement included in H.R. 5376, the "Build Back Better Act," that is among the many, many reasons for our strong opposition to the House and Senate reconciliation bills.

This deeply flawed provision would dramatically expand the Federal Trade Commission's civil penalty authority without any safeguards. Such a fundamental shift and expansion of FTC authority has no place in the reconciliation package.

This change would massively alter the role Congress has authorized the Commission to play as an enforcer in the market. The Commission's core statute was designed by Congress to be broad and offer sweeping authority to determine on a case-by-case basis what constitutes "unfair and deceptive" or an "unfair method of competition." Because these legal standards are

vague and the process to determine a violation is ex-post, the Congress appropriately gave the FTC limited ability to seek monetary relief, let alone civil penalty authority.

Upending this balance would unfairly erode basic due process rights and would be ripe for abuse and misuse. Such concerns are not trivial given recent actions the Commission has taken to subvert long-standing procedures and norms. Most recently, Commissioner leadership circumvented their Magnuson-Moss rulemaking authority, which is required to create bright line rules. The Commission sent out a blanket letter to industry warning that certain business practices are unlawful, with the hope that this warning might more easily unlock civil penalty authority.

Granting such authority would further be compounded if the Commission were, through reconciliation, to get substantial new funding that would essentially double the FTC's budget to enforce against privacy violations, absent a federal privacy law being in place.

It is for these reasons that we urge Congress to reject the provisions establishing a new privacy bureau and expanding penalty authority.

Sincerely,

A handwritten signature in blue ink, appearing to read "Neil L. Bradley", with a large, stylized flourish at the end.

Neil L. Bradley

cc: Senate Committee on Commerce, Science, and Transportation
cc: House Committee on Energy and Commerce
cc: Senate Committee on the Judiciary
cc: House Committee on the Judiciary