IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, BUSINESS ROUNDTABLE, AMERICAN INVESTMENT COUNCIL, and LONGVIEW CHAMBER OF COMMERCE,

Plaintiffs,

v.

FEDERAL TRADE COMMISSION and ANDREW N. FERGUSON, in his official capacity,

Defendants.

Case No. 6:25-cv-00009-JDK

PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO DISMISS AND TRANSFER

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INTRODUCTION

For the 50 years since Congress enacted the Hart-Scott-Rodino Antitrust Improvements Act, the premerger notification form filed by thousands of parties to mergers and acquisitions each year has required essentially the same limited information about the proposed transaction—enough for the reviewing antitrust agency to conduct a preliminary assessment and determine whether further scrutiny is needed. 97 times out of 100, it is not, and the deal sails through. In the rare instance that the initial screen suggests cause for concern about a transaction, the agency issues a "Second Request," which may seek much more information to determine whether to challenge the transaction. For half a century, that two-step process has worked just as Congress designed: it has given the antitrust agencies enough information to identify the rare transactions that warrant further review, but avoided "deter[ring]" or "imped[ing] consummation of the vast majority of mergers and acquisitions" that are obviously lawful. S. Rep. No. 94-803, at 65.

Late last year, the FTC finalized changes to the HSR Form that massively expand the amount of information and materials that parties must provide with that initial notification form—including at least 20 new categories of documents or information that the FTC has never before required. *Premerger Notification; Reporting and Waiting Period Requirements*, 89 Fed. Reg. 89,216 (Nov. 12, 2024) (Rule). By the agency's own (lowball) estimate, the Rule will *more than quadruple* the average time and expense of preparing the Form for thousands of HSR-reportable transactions each year. Yet it remains true that the vast majority of those deals will receive nothing more than a cursory glance by the government.

Plaintiffs are trade associations that have many member firms that routinely enter into transactions large enough to require filing an HSR Form, and who will therefore be pointlessly burdened by the Rule's drastic expansion of the Form. To advance the interests of those members, Plaintiffs filed this action to set aside the Rule under the Administrative Procedure Act. As they will show, the Rule both exceeds the FTC's statutory authority under the HSR Act and is a textbook example of irrational, arbitrary agency action.

According to the FTC, however, the Court cannot proceed to the merits until it "verif[ies] its subject-matter jurisdiction." Br. 3. Of course that is true. But the FTC contests subject-matter jurisdiction with respect to only one of the four Plaintiffs: the Longview Chamber of Commerce, which resides in this District. The stated goal of that selective attack on only one Plaintiff's standing is to effectuate a transfer of this case from the Eastern District of Texas to the District of Columbia. *See* Br. 13 n.5.

This Court should not go along. Taking the allegations in the Complaint as true, it is obvious that the Longview Chamber meets the requirements for associational standing. The FTC only really disputes the first prong of the three-part test—that at least one Longview Chamber member would have standing in its own right. But the Complaint identifies five such members who "regularly enter into" HSR-reportable transactions as a "feature of their business model[s]" and who, "[c]onsistent with their past levels of deal activity," "plan to engage in HSR-reportable transactions in the forthcoming months." Am. Compl. ¶¶ 22-23. That is more than sufficient. Firms that enter into HSR-reportable transactions are the object of the challenged Rule. And it is black-letter law that a plaintiff "adequately allege[s] an intention to engage in" regulated conduct—here, undertaking at

least one HSR-reportable transaction—"by alleging past [such] actions and an intent to continue to engage in such actions." *Texas* v. *Becerra*, 623 F. Supp. 3d 696, 716 (N.D. Tex. 2022) (collecting cases), *aff'd,* 89 F.4th 529 (5th Cir. 2024).

The FTC ignores that standard and insists that the Longview Chamber must identify a member who is "presently engaged in an HSR-reportable transaction," Br. 15, or at least is about to engage in a "certain, imminent transaction," Br. 17. But as courts have told the government before, its "effort to recast the imminence requirement as one of near certainty does not comport with the law." *Massachusetts* v. *U.S. Dep't of Health & Hum. Servs.*, 923 F.3d 209, 225 (1st Cir. 2019). And as for the FTC's handful of other arguments seeking transfer to its preferred venue, they are even more out of step with precedent.

The FTC's motion should be denied, and this case should proceed to the merits.[1]

BACKGROUND

A. The Midnight Merger Problem and HSR Act Solution

Congress enacted the HSR Act in 1976 to address the so-called "midnight merger" problem, in which companies would merge quickly and in secret before antitrust agencies

[1] On June 5, 2025, after the FTC filed a brief claiming a need for jurisdictional discovery before summary judgment, the Court ordered the parties to meet and confer and then "file a joint proposed scheduling order" with potential "deadlines for limited discovery" regarding Article III standing by June 13. Dkt. 34. Plaintiffs will confer with the FTC pursuant to the Court's order, but Plaintiffs' position is that, contrary to the FTC's arguments, no discovery is necessary under the correct legal framework for assessing standing in this case. Under that framework, Plaintiffs can establish Article III standing at the summary-judgment stage with sworn declarations describing their members' past HSR-reportable activity and those members' plans to continue to engage in such activity going forward. The FTC will have no basis to conduct discovery to test those sworn declarations unless it is prepared to "dispute the[ir] veracity." *Chamber of Com. of United States of Am.* v. *CFPB*, 691 F. Supp. 3d 730, 739 (E.D. Tex. 2023). And the FTC should not be permitted to use discovery to disclose the identity of any of Plaintiffs' members.

could even learn about—let alone analyze and then move to block—the transaction. *See* H.R. Rep. No. 94-1373, at 11; S. Rep. No. 94-803, at 64-65. The HSR Act's framers devised what they saw as the only "effective and realistic remedy" to this problem, H.R. Rep. No. 94-1373, at 8: a mandatory notification and waiting period before any merger, acquisition, or similar transaction of a certain size may be finalized. 15 U.S.C. § 18a. If a transaction exceeds the threshold and thus is "HSR reportable," the buyer and (in almost all cases) the seller must each file a "premerger notification" with the FTC and DOJ. *Id.* The merging companies are then prohibited from closing the transaction until after a 30-day "waiting period." *Id.* § 18a(b)(1)(A)(i). Today, most transactions valued at more than $126.4 million (subject to further annual adjustment, *id.* § 18a(a)(2)) must be reported. *See Revised Jurisdictional Thresholds for Section 7A of the Clayton Act*, 90 Fed. Reg. 7,697, 7,697 (Jan. 22, 2025). That threshold captures thousands of transactions each year. *See* 89 Fed. Reg. at 89,219 (average of 2,500 reported transactions per year from 2018 to 2022).

Congress recognized that requiring these premerger notifications would be a blunt and costly instrument, since the vast majority of reportable mergers and acquisitions would be both perfectly lawful and vital for economic growth. Congress thus sought to balance the "need to detect and prevent illegal mergers and acquisitions prior to consummation" with the imperative to avoid "unduly burdening business[es] with unnecessary paperwork or delays." S. Rep. No. 94-803, at 65. To achieve that balance, Congress divided the process into two steps: an initial screen and what is known as a "Second Request."

The initial screen relies on the "premerger notification" that parties to every reportable transaction must file. 15 U.S.C. § 18a(a). The Act authorizes the FTC to specify

the "documentary material and information" that must be submitted in that "notification." *Id.* § 18a(d)(1). But Congress limited what the agency may demand as part of the screen: only "such documentary material and information . . . as is necessary and appropriate to enable the [FTC and DOJ] to determine whether [the proposed] acquisition may, if consummated, violate the antitrust laws." *Id.* Then, if an agency determines during the 30-day waiting period that a particular transaction requires further scrutiny, the relevant agency may issue a Second Request to the parties to that transaction. *Id.* § 18a(e). In a Second Request, the agency is no longer limited to demanding information that is "necessary and appropriate"; it may more broadly require "additional information or documentary material relevant to the proposed acquisition." *Id.* § 18a(e)(1)(A).

B. The Premerger Regime From 1978-2024

1. The Original HSR Form

From the outset, the FTC understood that its authority to define the "documentary material and information" all reporting parties must provide in the HSR Form was limited. 15 U.S.C. § 18a(d). In its first HSR report to Congress, the FTC explained that the Form required it to "strike what is often a difficult balance between the need of the enforcement agencies" for information "and the cost to the persons who must provide such information." FTC, *HSR Report, Annual Report to Congress for Fiscal Year 1977*, at 3.[2] That original version of the Form required a substantial amount of information about every reportable transaction. *See Premerger Notification; Reporting and Waiting-Period Requirements*, 43 Fed. Reg. 33,450 (July 31, 1978); Am. Compl. ¶ 50 (listing requirements). The FTC

[2] The FTC's annual HSR reports can be found at https://www.ftc.gov/policy/reports/annual-competition-reports.

concluded that these materials were necessary for its "initial evaluation of the potential anticompetitive impact of" each transaction, but clarified that the Form was not "intended to elicit all potentially relevant information." 43 Fed. Reg. at 33,520.

2. The Original Form's Performance

The notification form "largely stayed the same" for the next 46 years. Statement of Chair Lina M. Khan, Comm'r Rebecca Kelly Slaughter, and Comm'r Alvaro M. Bedoya Regarding Proposed Amendments to the Premerger Notification Form and the Hart-Scott-Rodino Rules at 3 (June 27, 2023). That is because it worked. The Form, and the larger premerger-review process it facilitated, was achieving Congress's twin goals: reliably identifying *ex ante* transactions that raised antitrust concerns without harming the economy by jeopardizing the timing or success of lawful, pro-competitive transactions. *See generally* Am. Compl. ¶¶ 52-59 (collecting public comments to that effect).

The FTC and DOJ themselves repeatedly expressed that view. In 2001, those agencies jointly told Congress that "the HSR Act [was] doing what Congress intended," and had been "highly effective" in "giving the government the opportunity to investigate and challenge mergers." FTC and DOJ, HSR Report, *Annual Report to Congress for Fiscal Year 2001*, at 28. The FTC repeated that same sentiment in its annual budget requests, explaining that "[i]n the majority of cases, [it] can make a reasonable judgment within a few days about whether a merger is potentially anticompetitive based on information provided in the HSR filing." FTC, Congressional Budget Justification Fiscal Year 2024, at 55 (Mar. 13, 2023).[3] In 2007, a bipartisan expert commission made up of

[3] https://www.ftc.gov/system/files/ftc_gov/pdf/p859900fy24cbj.pdf.

agency officials, academics, and practitioners similarly concluded that the "the existing pre-merger review system . . . ensure[d] that the agencies [were] aware of nearly every transaction that ha[d] the potential to cause competitive harm." Antitrust Modernization Comm'n, Report and Recommendations 152 (2007).[4] It recommended "[n]o changes" to "the initial filing requirements" of the longstanding HSR Form. *Id.* at 158-159.

Decades of enforcement data (from 1992 to 2020) confirm that Congress was wise to focus on limiting the costs of the premerger-review program for the average transaction. Over that period, only about 3% of HSR-reportable transactions ever triggered a Second Request. *See* Billman & Salop, *Merger Enforcement Statistics: 2001-2020*, 85 Antitrust L.J. 1, 10 (2023). And there were remarkably few false negatives—transactions that did not receive a Second Request that the agencies later sought to unwind. One law-firm commenter put that number at just 5 of the nearly 40,000 reported transactions this millennium. Foley Lardner LLP Comment at 2-3 (Sept. 21, 2023).[5]

If anything, many observers considered the HSR Form to be too burdensome given that its substantial requirements applied to all filers. *See* Am. Compl. ¶¶ 63-66. One practitioner survey estimated that it took nearly 85 hours of work to prepare an HSR filing. *See* U.S. Chamber of Commerce, *HSR/Merger Guides Practitioner Survey* (Sept. 2023).[6] For some transactions, over 100 hours *on each side* was not uncommon. Foley Lardner Comment at 3; Am Compl. ¶ 63.

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4 https://govinfo.library.unt.edu/amc/report_recommendation/chapter2.pdf.

5 https://www.regulations.gov/comment/FTC-2023-0040-0653.

6 https://tinyurl.com/mr3hkyb4.

Even if the 1976 Congress had anticipated that level of effort, it indisputably did not anticipate the number of transactions that would exceed the thresholds and thus require an HSR filing. Congress expected that the new requirements would cover "approximately the largest 150 mergers annually." H.R. Rep. No. 94-1373 at 11. Legislators on all sides agreed that if the Act's requirements applied more broadly than that, "the resulting added reporting burdens might more than offset the decrease in burdensome divestiture trials" the statute was designed to prevent. *Id.* But a combination of inflation, growth in deal sizes, and increase in M&A activity soon made that the reality. *See* Am. Compl. ¶ 65; 89 Fed. Reg. at 89,219 (between 1,600 and 3,000 (or more) reported transactions each year).

3. Congress's Amendments

Out of concern for these unexpectedly substantial burdens on the economy, Congress made its first and only significant amendments to the HSR Act in 2000. Pub. L. No. 106-553, § 630, 114 Stat. 2762. Its goal was to "provide[] significant regulatory and financial relief for businesses." 146 Cong. Rec. 24253 (Nov. 4, 1999) (statement of Sen. Hatch). To that end, Congress raised the HSR filing thresholds and indexed them to economic growth, 15 U.S.C. § 18a(a)(2), and also instructed DOJ and the FTC to find ways to "eliminate unnecessary burden . . . and undue delay" in the "merger review process." Pub. L. No. 106-553, § 630(c). Congress also created additional protections for filers that receive the rare Second Request, requiring both DOJ and the FTC to appoint a disinterested official to "hear any petition" from a Second Request recipient arguing that such request was "unreasonably cumulative, unduly burdensome, or duplicative." 15 U.S.C. § 18a(e)(1)(B)(i). Despite these changes, today the HSR Act still applies to thousands of

transactions every year, or ten times what Congress initially expected, and the overwhelming majority of those transactions are obviously lawful.

C. The FTC's Rulemaking

1. The Proposed Rule

In June 2023, the FTC announced that it would embark on a "comprehensive redesign of the premerger notification process." *Proposed Rulemaking, Premerger Notification; Reporting and Waiting Period Requirements*, 88 Fed. Reg. 42,178, 42,180 (June 29, 2023). In that notice of proposed rulemaking (NPRM), the FTC proposed dozens of additions to the HSR Form, including—by the FTC's count—34 "new requirements and categories of information." 88 Fed. Reg. at 42,185-42,186. Among many other new mandates, the NPRM proposed to require *all* HSR filers to submit: (i) a "narrative that would identify and explain each strategic rationale for the transaction," *id.* at 42,191; (ii) extensive information about the filer's "top 10 customers" and "top 10 suppliers," existing products and services, and planned future products and services, *id.* at 42,196, 42,215; (iii) all *drafts* of transaction-related documents sent to important persons within the filing entity; (iv) a list of past workplace safety or labor violations; (v) detailed information about all officers, directors, and board observers at every subsidiary of the filer; (vi) information about creditors and other supposed "interest holders that may exert influence," *id.* at 42,189; (vii) detailed organizational charts and diagrams of the transaction; and (viii) a list of all communications systems used by either party to transmit business-related information. *See* Am. Compl. ¶ 77 (full list of proposed new requirements).

The FTC recognized that these additions would greatly increase costs for all filers. 88 Fed. Reg. at 42,207. Its effort to project those costs consisted of simply asking its staff

to come up with an estimate. *Id.* Even that unscientific approach produced eye-opening numbers. On average, the FTC's staff estimated, the new requirements would require 107 *additional* hours per filing; but for 45% of filings, they would require approximately 222 additional hours. *Id.* at 42,208. Based on its own assumption of roughly 3,500 reportable transactions per year—and thus roughly 7,000 filings—the FTC estimated that the NPRM would increase direct HSR compliance costs by about $350 million annually. *Id.*

2. The Outcry

Hundreds of commenters from every corner of the business community and antitrust bar urged the FTC to either withdraw the NPRM or completely rewrite it. Many argued that the NPRM far exceeded the agency's authority to require only information that is "necessary and appropriate" for the initial premerger screen. 15 U.S.C. § 18a(d)(1). As the commenters explained, much of the newly requested information was not "necessary" to enable an initial assessment of the legality of the proposed transaction, and requiring such information was not "appropriate" because it would impose a significant cost on all filing parties in return for little if any benefit in helping screen transactions. *E.g.*, American Investment Council Comment at 5-7 (Sept. 27, 2023).[7] Commenters also reiterated what had been the five-decade consensus that "[e]xisting HSR reporting requirements appropriately balance the need for antitrust review and the benefits of economic activity." National Retail Federation (NRF) Comment at 2 (Sept. 27, 2023)[8]. And they noted that the

[7] https://www.regulations.gov/comment/FTC-2023-0040-0705.

[8] https://www.regulations.gov/comment/FTC-2023-0040-0679.

agency had not come close to justifying the massive new burden on *every* HSR-reportable transaction, 97% of which pose zero antitrust concern.

Commenters also explained that the FTC had massively underestimated the costs of its proposed revolution of the HSR process. *See, e.g.*, U.S. Chamber Comment at 1-2 (Sept. 27, 2023).[9] Plaintiff U.S. Chamber, for example, commissioned a survey of antitrust practitioners to analyze those costs. That study concluded that the *average* additional amount of time to prepare the new HSR form would be 242 hours per filer, not the 107 hours projected by the FTC's in-house staff. S.P. Kothari, *The US Antitrust Agencies' NPRM re Additional Information Requirements for HSR Filings* at 18-19 (Sept. 26, 2023).[10] The study also estimated an average hourly cost of $936—more than double the FTC staffers' estimate of $460. *Id.* In total, the study projected an average additional cost per filing of $437,314—nearly *seven times* the FTC's estimate of $66,240 per filing. *Id.* at 20. Assuming the same 3,500 or so HSR-reportable transactions per year, that meant an annual cost of over $2.3 billion, "even before consideration of indirect costs" that the NPRM would impose by "dissuad[ing] potential transactions from occurring." *Id.* at 21, 23.

3. The Final Rule

On October 10, 2024, the FTC adopted a final rule revising the HSR notification form. *See* 89 Fed. Reg. at 89,216. While paring back some of the NPRM's most egregious proposals, the Rule retained many of the most burdensome requirements. The FTC itself candidly described the rule as "reset[ting] the baseline requirement for all filers," noting

[9] https://www.regulations.gov/comment/FTC-2023-0040-0684.

[10] https://www.uschamber.com/assets/documents/20230926-Kothari-Report.pdf.

(with studied understatement) that its "incremental costs" would be "more material" than the agency's prior HSR rulemakings, "which frequently *reduced* the burdens associated with submitting an HSR Form." *Id.* at 89,257, 89,260 (emphasis added).

a. Depending on how one counts, the FTC retained with some modifications roughly 20 of the 34 new information and document mandates proposed in the NPRM. *See id.* at 89,264. The Rule requires, for example, that every HSR filer submit as part of the initial "notification": (i) a narrative describing the rationale for the transaction; (ii) certain plans and reports produced in the ordinary course of business that were shared with a CEO or any board member; (iii) drafts of all transaction-related documents that were shared with any board member; (iv) a description of all products or services that overlap with the other party; (v) a description of the filer's relationships with certain suppliers; and (vi) for the buyer, information regarding certain officers and directors at the filing entity and at certain subsidiaries. *See* Am. Compl. ¶¶ 99-114 (detailing final requirements).

Each of these new requirements makes sweeping and onerous demands for information that *all* reporting filers must submit as part of the initial screen. The Supply Relationships Description, for example, requires the filer to "describe each product, service, or asset" that the filer has "sold, licensed, or otherwise supplied" at over $10 million in revenue in the last year to either the other party or "*any other business*" that "uses" those products or services "to compete with" the other party's "products or services, or as input for a product or service that competes or is intended to compete with" the other party's "products or services." *Id.* at 89,372, 89,387 (emphasis added); *see* Am. Compl. ¶ 110. Then, for each product or service, the filer must provide: (i) "the sales (in dollars)," (ii) the

"top 10 customers," and (iii) for each such customer, "a description of" the supply agreement. *Id.* Then the filer must provide the *reverse* of that information—a description of all products, services, or assets that the filer uses as an input in its business and has obtained from (i) the other party, or (ii) any other business that competes with the other party. *Id.* at 89,372, 89,388. And again, for each such product or service, the filer must provide: (i) the "purchased amount (in dollars)," (ii) "the top 10 suppliers," and, (iii) for each such supplier, "a description of" the purchasing agreement. *Id.* And all of that is for just *one* of the Rule's 20 entirely new additions to the premerger "notification" form.

b. The Rule offered responses to the many critical comments the FTC had received on the NPRM. Relevant here, the FTC explained that it had revised its cost estimates based on "a new survey of Agency staff." 89 Fed. Reg. at 89,332. The FTC staff now estimated that it would take filers on average 68 more hours to prepare an HSR filing, with nearly half of transactions requiring 121 more hours of review. *Id.* at 89,332-89,333. Those numbers represent a more than four-fold increase from the FTC's estimate of the burden of the prior HSR Form, which took a total of 37 hours on average. 88 Fed. Reg. at 42,208. The FTC also upped its estimate of the average hourly cost to complete the Form from $460 to $583. 89 Fed. Reg. at 89,334. Again, these increased burdens must be borne by virtually every HSR filer, notwithstanding that well over 90% of the transactions would raise no conceivable antitrust issue whatsoever.

D. Procedural History

In light of the substantially increased costs the Rule imposes on their members, Plaintiffs the U.S. Chamber, Business Roundtable, American Investment Council (AIC), and Longview Chamber filed this suit to challenge the Rule. In a nutshell, Plaintiffs

contend that the Rule must be set aside because it (i) exceeds the statutory limits Congress placed on the FTC's authority to demand information and documents about all HSR-reportable transactions as part of the initial screen; (ii) cannot be justified by any rational cost-benefit analysis, since the Rule quadruples the costs of filing for thousands of concededly harmless transactions a year without any showing that the longstanding prior version of the Form was letting harmful transactions slip through; and (iii) lacks any reasoned explanation for why, even if there were any problems with the prior Form, the FTC could not have addressed those problems with any of a slate of far less burdensome alternatives. *See* Am. Compl. ¶¶ 54-92.

The Rule went into effect on February 10, 2025. Am. Compl. ¶ 124. After the FTC moved to dismiss the original complaint on the ground that the Longview Chamber lacks Article III standing, Dkt. 23, Plaintiffs filed the operative Amended Complaint, Dkt. 27, adding additional factual allegations relevant to standing. The FTC then moved again to dismiss the Amended Complaint, raising the same objections to the Longview Chamber's standing and asking the Court to transfer this case to the District of Columbia. Dkt. 30.

STATEMENT OF THE ISSUES

1. Whether the Longview Chamber has pleaded Article III standing.

2. Whether the Court should transfer this case to the District of Columbia.

ARGUMENT

Under the Article III framework applicable to this case, the Longview Chamber has standing and it is not a close call. The Rule drastically increases the costs in money and time for virtually every buyer and seller who engages in an HSR-reportable transaction, of which there are at least several thousand every year. The Amended Complaint alleges that

the Longview Chamber has numerous members that "regularly enter into" such transactions as a "feature of their business model[s]" and that, "[c]onsistent with their past levels of deal activity," "plan to engage in HSR-reportable transactions in the forthcoming months." Am. Compl. ¶¶ 22-23. The Longview Chamber identifies and describes five such members. *Id.* The Court must "take all of [these] factual allegations as true and draw all reasonable inferences in [the Longview Chamber's] favor when assessing" whether those allegations are sufficient to plead standing. *National Infusion Ctr. Ass'n* v. *Becerra*, 116 F.4th 488, 498 n.7 (5th Cir. 2024). They plainly are, because they establish that these firms are the very objects of the Rule who will bear its admittedly increased costs. Under settled associational standing principles, the Longview Chamber can sue on their behalf.

In seeking to avoid defending the Rule in this Court, the FTC misapprehends basic standing law, ignores analogous precedent, and relies instead on inapposite cases involving the likelihood of harm from environmental injuries or government surveillance. But the analysis of those cases has little to say when the object of a regulation seeks to bring a facial challenge to that regulation. Similarly, the FTC's grab bag of other arguments in favor of dismissal or transfer all fly in the face of decades of binding precedent. This Court should deny the FTC's motion.

I. THE LONGVIEW CHAMBER HAS ASSOCIATIONAL STANDING.

An association has standing to sue "on behalf of its members when (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Hunt*

v. *Washington State Apple Advert. Comm'n*, 432 U.S. 333, 343 (1977). The Longview Chamber plainly alleges facts sufficient to satisfy each of those requirements.

A. The Longview Chamber Has Identified Members With Standing In Their Own Right.

1. To begin, the Longview Chamber has "identif[ied] at least one member that has suffered or will suffer harm" from the Rule. See *National Infusion*, 116 F.4th at 497. As described above, the Rule significantly increases the amount of information and documentation that parties to HSR-reportable transactions must file with the initial premerger notification Form. The FTC itself admitted in the Rule that those changes substantially increase the costs of preparing and filing an HSR Form. The Longview Chamber identified *five* of its members that will be harmed by those increased costs when they next enter into an HSR-reportable transaction.[11] An "increased regulatory burden typically satisfies the injury in fact requirement," and Plaintiffs have plausibly pleaded that the identified Longview Chamber members "will encounter th[at]" burden "because they intend to participate in [HSR-reportable transactions] in the future." *Contender Farms, LLP* v. *U.S. Dep't of Agric.*, 779 F.3d 258, 266, 268 (5th Cir. 2015). In short, as the direct "object[s] of the action . . . at issue," there is "little question" that the Rule harms the

[11] As the FTC acknowledges (at 16 n.6), the Longview Chamber may "identif[y]" its injured members by pseudonyms in order to meet its burden to plead standing. *See National Infusion*, 116 F.4th at 497 n.5 ("Alleging that a specific member exists does not require naming that member."). In this context, it is wholly unsurprising that the Longview Chamber's members wish to remain anonymous. Public disclosure of information about those members' near- and medium-term plans to engage in HSR-reportable transactions could have a significant impact on their businesses in general as well as on actual transactions they may be considering.

identified Longview Chamber members, "and that a judgment" setting aside the Rule "will redress" those harms. *Lujan* v. *Defs. of Wildlife*, 504 U.S. 555, 562 (1992).

The FTC nevertheless urges this Court to "depart from the ordinary rule that . . . objects of [a] Regulation . . . may challenge it," *Contender Farms*, 779 F.3d at 266, on the ground that the Longview Chamber has not identified a member who is "presently engaged in an HSR-reportable transaction," Br. 15, or at least about to enter into a "certain, imminent transaction," Br. 17. But both the Supreme Court and the Fifth Circuit have repeatedly explained that "imminence is . . . a somewhat elastic concept," and its purpose is not to demand literal immediacy, but merely "to ensure that the alleged injury is not too speculative for Article III purposes." *Umphress* v. *Hall*, 133 F.4th 455, 463 (5th Cir. 2025) (quoting *Clapper* v. *Amnesty Int'l USA*, 568 U.S. 398, 409 (2013)). Accordingly, "[f]or a threatened future injury to satisfy the imminence requirement," a plaintiff must show only that there is "at least a 'substantial risk' that the injury will occur"—not that the injury is presently happening or literally about to happen. *Stringer* v. *Whitley*, 942 F.3d 715, 721 (5th Cir. 2019) (quoting *Susan B. Anthony List* v. *Driehaus*, 573 U.S. 149, 158 (2014)); *see Umphress*, 133 F.4th at 364 ("[A]lleged future injuries are generally imminent—and thus confer standing—when they are certainly impending *or* there is a substantial risk that the harm will occur.") (emphasis added) (internal quotation marks omitted); *National Press Photographers Ass'n* v. *McCraw*, 90 F.4th 770, 782 (5th Cir. 2024) (same); *see also National Infusion*, 116 F.4th at 498 n.7 (finding standing based on inference that plaintiff would be injured at some point during "the first four years of the [challenged] program").

Sidestepping this case law, the FTC relies almost entirely on *Clapper* for the proposition that "possible future injury [is] not sufficient." 568 U.S. at 409. But the Fifth Circuit has not been ignoring *Clapper*; the case simply does not go so far as the FTC suggests. For one thing, the FTC overreads the decision. *Clapper* itself explained that the Supreme Court's "cases do not uniformly require plaintiffs to demonstrate that it is literally certain that the harms they identify will come about," and that "in some instances, [the Court] ha[s] found standing based on a 'substantial risk.'" 568 U.S. at 414 n.5.

At any rate, to the extent *Clapper* sets a higher bar to plead Article III standing, it does so only for the kinds of indirect and inherently speculative standing theories at issue in that case—worlds apart from this one. The *Clapper* plaintiffs sought to challenge a government surveillance program and alleged that, due to their email and telephone communications with persons located abroad, there was an "objectively reasonable likelihood that their communications [would] be acquired" by the government. 568 U.S. at 401. The Court found two critical flaws with this theory of harm. First, it "relie[d] on a highly attenuated chain of possibilities"—a chain with no fewer than five "highly speculative" links. *Id.* at 410-411. Second, several of those links "require[d] guesswork as to how independent decisionmakers" other than the plaintiffs would act, leading the Court to adhere to its "usual reluctance to endorse standing theories that rest on speculation about the decision of independent actors." *Id.* at 413-414. Neither of these concerns is relevant in a case like this one, where the plaintiffs are the direct objects of the challenged regulation, and the only question is whether they have plausibly alleged that they will engage in the conduct that triggers the regulation in the foreseeable future. There is only

one step in the causal chain to injury: the plaintiffs take the action that subjects them to the regulation. And no one need speculate "about the decisions of independent actors," *id.*, because only the plaintiffs' decisions matter.

In this kind of case, where the plaintiff's own actions will determine whether it will be subjected to the challenged regulation, courts in this Circuit and elsewhere have consistently held that the plaintiff need only "demonstrate a substantial risk that [it] will take" some "action in the future" that will trigger the regulation (and ensuing harm). *Stringer*, 942 F.3d at 722. And the plaintiff can satisfy that burden by showing (i) "that [it] has taken [that] action in the past" and (ii) "that the plaintiff intends to take the action again." *Id.*; *see Becerra*, 623 F. Supp. 3d at 716 ("This requirement is typically satisfied by alleging past actions and an intent to continue to engage in such actions."); *Book People, Inc.* v. *Wong*, 91 F.4th 318, 329 (5th Cir. 2024) (finding standing where plaintiffs "alleged that they have sold books to public schools and that they intend to continue doing so"); *Contender Farms*, 779 F.3d at 268 (finding plaintiffs would likely "encounter" harms caused by regulation of horse shows "because they intend to participate in these events in the future" and were past "participants in Tennessee walking horse events"); *see also Columbia Gulf Transmission, LLC* v. *FERC*, 106 F.4th 1220, 1229 (D.C. Cir. 2024) (risk of future gas curtailments was "cognizable" as "injur[y] in fact" where plaintiffs had shown "substantial risk that [such] harm would occur" by pointing to two curtailments over past several years). Such allegations are more than sufficient to ensure that the alleged injury "is not too speculative for Article III purposes." *Clapper*, 568 U.S. at 409.

2. Under these precedents, the Longview Chamber's allegations, taken as true, undeniably satisfy Article III. The Amended Complaint alleges that several Longview Chamber members have engaged in "multiple HSR-reportable transactions" in the past and "plan[] to continue to engage in a similar level of HSR-reportable activity this year and in future years." Am. Compl. ¶ 23. Several other members "regularly engage[] in HSR-reportable transactions as part of [their] business model[s] and plan[] to engage in at least one HSR-reportable transaction in the foreseeable future." *Id.* Plaintiffs have thus identified multiple Longview Chamber members who point to both relevant "past actions and an intent to continue to engage in such actions," *Becerra*, 623 F. Supp. 3d at 716, and support those allegations with further member-specific information. No more is needed to establish Article III standing at this stage.

A recent decision by another court in this District is directly on point. In *Associated Builders & Contractors of Southeast Texas, Inc.* v. *Su*, several associations of contractors challenged a rule that would impose certain new requirements on federal construction contracts. 2025 WL 900682, at *12 (E.D. Tex. Mar. 19, 2025). The associations' complaint identified several member businesses, alleged that those businesses previously "participate[d] in federal and federally assisted construction . . . projects," and alleged that they "plan[ned] to continue participating in construction projects subject" to the challenged regulation. Am. Compl. ¶ 20, *Associated Builders & Contractors of Se. Texas, Inc.* v. *Su*, No. 1:23-cv-396 (E.D. Tex. Feb. 21, 2024). Making the exact same argument the FTC does here, the government moved to dismiss on standing grounds, arguing that the plaintiffs had not pled imminent injury because they had "not explain[ed]" "which, if any, of [their]

members are working or are likely to work on [covered] contracts" and had "not identified any particular projects" or "worksites" at issue. 2025 WL 900682, at *12. The court had little trouble rejecting that argument, explaining that it was enough that the associations had "allege[d] that their members have been awarded covered contracts in the past and will pursue them in the future." *Id.*

3. Again echoing arguments previously made and rejected, the FTC also relies on even older Supreme Court decisions in two environmental injury cases, *Lujan* and *Summers* v. *Earth Island Institute*, 555 U.S. 488 (2009). But neither of those cases provides any support for the agency's standing arguments either.

First, the FTC perplexingly claims that the Longview Chamber is "embrac[ing] the 'statistical probability' theory of standing" rejected by *Summers*. Br. 15. That is obviously wrong: the Longview Chamber has not relied on (or even mentioned) statistics, and has no need to do so. In *Summers*, the plaintiff associations relied on a single affidavit that established "a chance, but . . . hardly a likelihood," that the member would visit a forest that would be affected by the challenged agency action. 555 U.S. at 495-496. The Sierra Club then tried to argue that this small "chance" could be aggregated across its "700,000 members nationwide" to establish a substantial risk of injury as a matter of probability. *Id.* at 497. That was the "statistical" argument the Court rejected: it explained that it would not "engage in an assessment of [the] statistical probabilities that one of the" many Sierra Club members "would be adversely affected," but would rather insist that the association identify at last one specific member that himself had a "likelihood of concrete harm." *Id.* at 495, 497. Here, the Longview Chamber need not rely on statistical probabilities to plead

likely harm, because it alleges that it has members who in fact plan to engage in the covered conduct—thus triggering the Rule—in the near future.

The FTC also tries to analogize this case to *Lujan*, but that comparison falls flat as well. For one thing, *Lujan* came to the Supreme Court at the summary judgment stage. *See* 504 U.S. at 559. The Court made clear that "[a]t the pleading stage," more "general factual allegations of injury . . . may suffice, for on a motion to dismiss we presume that general allegations embrace those specific facts that are necessary to support the claim." *Id.* at 561 (citation omitted). In any event, the Court's concern in *Lujan* was ruling out the "possibility of deciding a case in which no injury would have occurred at all." *Id.* at 564 n.2. That concern was driven by the declarant's admission she "had no current plans" to travel to Sri Lanka because of a "civil war going on," and that she would not even go by some time "next year." *Id.* at 564. Moreover, even if she ever returned, her injury still depended on her being "more fortunate in spotting" the endangered species than she had been on her last trip a decade prior. *Id.* at 563. By contrast, here, the Complaint alleges that several Longview Chamber members *currently* "plan[] to continue to engage" in HSR-reportable transactions, as they have repeatedly done in the past and is inherent in their respective business models. Am. Compl. ¶¶ 22-23. And no further "fortunate" happenstance is needed for those plans to result in injury—when these members engage in HSR transactions, they will indisputably be injured by the challenged Rule.

Courts have distinguished *Lujan* on exactly these grounds when the government has made this argument in similar cases. In *Ghedi* v. *Mayorkas*, the Fifth Circuit addressed a challenge by an "international businessman" to his placement on an air-travel watchlist.

16 F.4th 456, 459 (2021). The government argued that Mr. Ghedi had failed to plead imminent injury under *Lujan* because he had not "alleged any concrete travel plans." *Id.* at 465. The Fifth Circuit disagreed, explaining that the "*Lujan* conservationists neither alleged a professional need for habitual travel nor that they were injured each time they flew." *Id.* Mr. Ghedi, by contrast, was "president of a company operating internationally," and the court could "reasonably infer" that he would fly internationally in the foreseeable future despite lacking a plane ticket at that specific point in time. *Id.* The same logic applies here on both fronts. Given the identified members' regular participation in HSR-reportable transactions "as part of [their] business model[s]" and history of engaging in such transactions, Am. Compl. ¶¶ 22-23, their stated plans to continue that behavior going forward are more than sufficient at this stage. And just as Mr. Ghedi would be injured every time he flew, the Longview Chamber's members will be injured every time they prepare the new HSR Form. The D.C. Circuit has also applied the same logic in a similar case. *See Jibril* v. *Mayorkas*, 20 F.4th 804, 814-815 (D.C. Cir. 2021) (plaintiffs' "history of traveling to Jordan every two years," "combined with their professed desire to continue that pattern," created the "reasonable inference that [they] will soon travel again.").

4. For the same reasons that the FTC's challenge to the Longview Chamber members' standing falls short, the FTC's half-hearted ripeness argument fails too. As the Fifth Circuit has explained, the "ripeness and standing analyses are closely related," *Contender Farms,* 779 F.3d at 267 (applying same "substantial risk" test for future-injury standing to ripeness inquiry), and it is "unclear whether [a court] can reject a claim as unripe once plaintiffs have established Article III standing." *Braidwood Mgmt., Inc.*

v. *EEOC*, 70 F.4th 914, 930 n.28 (5th Cir. 2023). Indeed, the FTC essentially admits as much, contending (at 22) that this case is "unripe for many of the same reasons that Longview Chamber lacks standing."

The FTC cites no case dismissing on ripeness grounds where, as here, a plaintiff credibly intends to engage in conduct that would subject it to the challenged regulation and seeks to bring a facial challenge to that regulation. In such circumstances, contrary to the FTC's suggestion, there are no "factual components" that need to be "fleshed out" or any possibility that the court will "entangl[e] [itself] in [an] abstract disagreement over administrative policies" or "an administrative decision" that has not yet "been formalized." *National Park Hospitality Ass'n* v. *Dep't of Interior*, 538 U.S. 803, 807, 808 (2003). If and when the Longview Chamber's members engage in an HSR-reportable transaction, the Rule will apply to them and force them to submit an unreasonably burdensome and costly HSR Form. Plaintiffs' claims that the FTC violated the APA by imposing those increased costs are perfectly ripe for consideration.

B. The Suit Is Germane To The Longview Chamber's Mission.

Turning to the second associational standing element, the FTC next disputes the Longview Chamber's allegations that this litigation is germane to the Longview Chamber's purposes. Germaneness is "undemanding" and requires only "mere pertinence between the litigation at issue and the organization's purpose." *Association of Am. Physicians Surgeons, Inc.* v. *Texas Med. Bd.*, 627 F.3d 547, 550 n.2 (5th Cir. 2010) (citation omitted). Plaintiffs' allegations easily clear that "low bar," *Chamber of Com.* v. *CFPB*, 767 F. Supp. 3d 357, 363 (N.D. Tex. 2024), and the FTC's attempts to dispute the Longview Chamber's understanding of its organizational purpose and interests should be rejected.

As set forth in the complaint, the Longview Chamber's purpose is "to advocate for policies that promote economic development and job creation in the Longview Trade Area" and "the interconnected economic region, which includes the Dallas, Houston, and Shreveport metropolitan areas." Am. Compl. ¶ 21. To advance that mission, the "Longview Chamber routinely advocates in federal courts on matters of federal competition, free markets, and antitrust enforcement, including filing lawsuits challenging anti-business laws and regulatory actions." *Id.* The Longview Chamber challenges the Rule because it imposes massive additional costs on parties engaging in HSR-reportable transactions, including many that either directly involve or indirectly affect companies operating in the Longview Trade Area and interconnected economic region. *See id.* ¶ 23 (alleging that Members A, B, C, D, and E all have either entered into HSR-reportable transactions directly involving companies in the region or themselves have substantial operations in the region); *id.* ¶¶ 24-28. The Longview Chamber's institutional view—and the view its members expect it to advance, as core to its underlying mission—is that the Rule's significant interference in the market for mergers and acquisitions will directly harm thousands of businesses, employees, and customers in the Longview Trade Area and interconnected economic region. *See id.* ¶¶ 21, 24-28. There is thus a direct relationship between the Longview Chamber's mission and purpose and this lawsuit.

Against this clear articulation of the Longview Chamber's organizational interests, the FTC offers its own assessment that this suit "runs contrary to the likely interests of members of the Longview Chamber." Br. 20. But the FTC cannot claim to know the interests of an association's members better than the association itself. Indeed, the last

time the federal government contested associational standing on the ground that a lawsuit "might reflect the views of only a bare majority—or even an influential minority—of [an association's] full membership," the Supreme Court rejected that argument, finding that the "very forces that cause individuals to band together in an association . . . provide some guarantee that the association will work to promote their interests." *Int'l Union, United Auto., Aerospace & Agr. Implement Workers of Am.* v. *Brock*, 477 U.S. 274, 289, 290 (1986).

C. The Longview Chamber's Members Do Not Need To Participate.

Finally, the third associational-standing requirement is satisfied here because the Longview Chamber's members do not need to participate in this challenge to the Rule. An association may bring a claim without the participation of individual members if "resolution of the claim[] benefits the association's members and the claim[] can be proven . . . without a fact-intensive-individual inquiry." *Association of Am. Physicians*, 627 F.3d at 552. Claims benefit an association's members "when an association seeks prospective or injunctive relief for its members." *United Food & Com. Workers Union Local 751* v. *Brown Grp., Inc.*, 517 U.S. 544, 546 (1996). And claims can be proven without a fact-intensive inquiry when they "raise[] a pure question of law." *Brock*, 477 U.S. at 287. All of that is true here: Plaintiffs seek vacatur and injunctive relief rather than damages, so the scope of relief does not depend on facts about the individual members, and Plaintiffs raise purely legal APA claims.

In response, the FTC argues the Court cannot be sure of its "jurisdiction without knowing details about individual members and their proposed transactions," since the challenged Rule does not apply to all mergers and acquisitions. Br. 20-21. That makes no sense. The Complaint's allegations focus on the Longview Chamber members' history of

engaging and plans to engage in the near-term future in "*HSR-reportable* transactions." Am. Compl. ¶ 22 (emphasis added). As explained above, those allegations plausibly demonstrate a substantial risk of injury to those members from the Rule. Nothing more is required to establish the Court's jurisdiction.

D. The FTC's Broadside Against The Very Concept Of Associational Standing Is Foreclosed By Precedent.

The FTC briefly argues that the longstanding three-factor *Hunt* test for associational standing must be abandoned because it is in "tension with other areas of law." Br. 21-22. These arguments, of course, are squarely foreclosed by decades of binding precedent reaffirming the propriety of associational standing and the three elements for invoking it. The FTC can cite only a handful of academic articles and a solo concurrence by Justice Thomas that acknowledges that the *Hunt* test is settled law and that the Supreme Court "consistently applies the doctrine" of associational standing, *FDA* v. *Alliance for Hippocratic Med.*, 602 U.S. 367, 405 (2024) (Thomas, J., concurring). This Court should not and cannot jettison settled Supreme Court precedent.

II. THIS CASE SHOULD NOT BE TRANSFERRED.

Finally, the FTC asks this Court to decline to hear this case and instead transfer it to the District of Columbia. This request is based first on its contention that the Longview Chamber lacks standing, but as shown above, that contention is clearly meritless.

The FTC also briefly argues (at 26) that even if the Longview Chamber has standing, the Court "can" still transfer this case to the District of Columbia under 28 U.S.C. § 1404(a), which permits transfer "for the convenience of the parties and witnesses, in the interests of

justice." According to the FTC (at 27), this case should be transferred because it "has no legitimate connection to the Eastern District of Texas."

That argument is also wrong. The FTC simply omits to state—let alone attempt to satisfy—the governing legal standard. Because the statutory text of Section 1404(a) focuses on the "convenience of the parties and witnesses," the party "who seeks the transfer must . . . . demonstrate that its chosen venue is clearly more convenient," indeed, that the "gain in convenience will be *significant*." *Chamber of Com.*, 105 F.4th at 304 ("It is the movant's burden—and the movant's alone—to adduce evidence and arguments" supporting transfer.). The court "must consider four private-interest factors and four public-interest factors," including "the cost of attendance for willing witnesses," "the administrative difficulties flowing from court congestion," and "the familiarity of the forum with the law that will govern the case." *Id.* The FTC says nothing about any of these factors and makes no attempt to show that the District of Columbia is clearly more convenient than the Eastern District of Texas. Nor could it make that showing in this APA case. *See id.* at 307 ("If Congress wants to enshrine D.D.C. as a venue for APA challenges or cases where a federal agency . . . is the defendant, it can easily do so. But it hasn't.").

More broadly, the FTC's argument simply repackages its foreclosed attack on the basic concept of associational standing. The agency claims that this case has no "legitimate connection to the Eastern District of Texas," but all but ignores that a *plaintiff*—the Longview Chamber—resides here. *See* 28 U.S.C. § 1391(e)(1) (civil actions against federal agencies may be brought where a "plaintiff resides if no real property is involved in the action"). So the FTC instead seeks to disregard Longview Chamber's residency on the

ground that the Complaint does not allege that an affected *member* of the Longview Chamber resides here, Br. 26-27. But in a case the FTC cites just one page earlier in its brief, the Fifth Circuit explained that it is the "location of [the] trade association," not that of its members, that matters. *American Newspaper Pubs. Ass'ns* v. *U.S. Postal Serv.*, 789 F.2d 1090, 1092 (5th Cir. 1986). That is because, of course, the trade association is the party. The Longview Chamber filed this lawsuit, along with the other Plaintiffs, to advance both "the interests of [its] members *and [its] overall mission*" of "promot[ing] economic development and job creation in both the Longview Trade Area" and "the interconnected economic region." Am. Compl. ¶¶ 21, 24 (emphasis added). According to Congress, that gives this action a "legitimate connection" to this District. "This case is not one where [Eastern District of Texas] citizens have a lesser stake in the litigation than D.C. citizens." *Chamber of Com.*, 105 F.4th at 309.

"[W]hen the transferee venue is not clearly more convenient than the venue chosen by the plaintiff, the plaintiff's choice should be respected." *In re Volkswagen of Am., Inc.*, 545 F.3d 304, 315 (5th Cir. 2008) (en banc). The FTC does not even try to show that the District of Columbia is "clearly more convenient," *id.*, so there is no basis to override Plaintiffs' "venue choice." *Chamber of Commerce*, 105 F.4th at 302.

CONCLUSION

For the foregoing reasons, the Court should deny the FTC's motion to dismiss and transfer.

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Respectfully submitted,

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