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CHAIR

FRANK PALLONE, JR., NEW JERSEY
RANKING MEMBER

ONE HUNDRED EIGHTEENTH CONGRESS
Congress of the United States

House of Representatives
COMMITTEE ON ENERGY AND COMMERCE

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February 28, 2023

The Honorable Lina M. Khan
Chair
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, D.C. 20580

Chair Khan:

Pursuant to Rules X and XI of the U.S. House of Representatives, we request information and documents from the Federal Trade Commission (FTC) related to allegations referenced in a February 14, 2023, Wall Street Journal op-ed by FTC Commissioner Christine Wilson explaining her resignation as the sole Republican representative at the FTC.¹ Commissioner Wilson's allegations concern the potential loss of integrity of the FTC, the jeopardizing of the independence and collegiality essential to the functioning of the FTC, and the increased risk of the public losing confidence in the FTC.

During your tenure as Chair, the FTC has seen a precipitous decline in staff approval and the early departure of both Republican commissioners.² Despite numerous letters of concern, from myself and other Republican Members of Congress, you have continued to ignore the concerns of other commissioners in a dangerous and misguided consolidation of power.

The continued decline in staff confidence and approval is evidence of your disregard for concerns raised by Congress. In 2020, before you joined the Commission, 87 percent of surveyed FTC employees agreed that senior agency officials maintained high standards of honesty and

¹ Christine Wilson, *Why I'm Resigning as an FTC Commissioner: Lina Khan's disregard for the rule of law and due process make it impossible for me to continue serving*, Wall Street Journal (Feb. 14, 2023), <https://www.wsj.com/articles/why-im-resigning-from-the-ftc-commissioner-ftc-lina-khan-regulation-rule-violation-antitrust-339f115d>.

² Cat Zakrzewski, *Sinking FTC Workplace Rankings Threaten Chair Lina Khan's Agenda*, Washington Post (July 13, 2022), <https://www.washingtonpost.com/technology/2022/07/13/ftc-lina-khan-rankings/>; Note from Commissioner Noah Joshua Philips to FTC Employees (Oct. 14, 2022), https://www.ftc.gov/system/files/ftc_gov/pdf/phillips-resignation-statement.pdf; *Id.*

integrity.³ In 2021, that number plummeted to 53 percent,⁴ and to 47 percent in 2022.⁵ This dissatisfaction is not a statistical anomaly – in 2022, of the FTC’s 1,123 full time employees, 765 completed the survey. Recognizing this issue, political leadership took action to try to ease staff concerns by lifting the staff gag order, which limited public and private appearances by FTC staff, and took “concrete steps to address staff feedback,”⁶ including a shift in senior leadership.⁷ Even after making these changes, staff confidence in your leadership has continued to decline.⁸

This continued decline in staff confidence at the Federal Trade Commission should prompt self-reflection as the leader of your organization – yet you have not changed course after providing assurances to Members of this Committee.

During a July 28, 2021, Committee on Energy and Commerce hearing on FTC reform, multiple Republicans expressed concerns with the procedural changes you were making to consolidate power within your office and eliminate Republican Commissioner input. Republican members asked for your commitment to chair the FTC in a transparent manner. Throughout the hearing, you said that you were “always keen to find areas of shared agreement with colleagues” and “doing the best [you] can to make sure that information is available,” and you were “always thinking about ways that we can improve our processes going forward.”⁹ Additionally, when asked to commit to communicating with other Commissioners, you replied “Oh, absolutely Congresswoman. Staff is always available to Commissioners to provide analysis and assessment.” It is disappointing that you were unable to commit to communicate directly with Democrat and Republican Commissioners.

Unfortunately, in the 18-months since you made these commitments both Republican commissioners have resigned in protest. Senior staff have quit in record numbers, describing you as “abusive” and a “tyrant.”¹⁰ According to information obtained under the Freedom of Information Act, 127 employees left the FTC from June 15, 2021 to May 2, 2022.¹¹ Daniel Kaufman, a 24-year FTC veteran and former Acting Director of the Bureau of Consumer Protection, said “[w]e’re not talking about political people leaving; we’re talking about career

³ Office of Personnel Management, *2020 Federal Employee Viewpoint Survey: Report by Agency*.

<https://www.opm.gov/fevs/reports/data-reports/data-reports/report-by-agency/2020/2020-a-agency-report.pdf>.

⁴ Office of Personnel Management, *2021 Federal Employee Viewpoint Survey: Report by Agency*.

<https://www.opm.gov/fevs/reports/data-reports/data-reports/report-by-agency/2021/2021-a-agency-report.pdf>.

⁵ Office of Personnel Management, *2022 Federal Employee Viewpoint Survey: Report by Agency*.

<https://www.opm.gov/fevs/reports/data-reports/data-reports/report-by-agency/2022/2022-a-agency-report.pdf>.

⁶ Theo Wayt and Josh Kosman, *FTC faces staff exodus, anger over Biden-appointed Big Tech foe’s leadership*, New York Post (June 12, 2022) <https://nypost.com/2022/06/12/ftc-faces-staff-exodus-anger-over-biden-appointed-big-tech-foes-leadership/>.

⁷ David Dayen *Anti-monopoly Reformer Joins Department of Transportation*, The American Prospect (January 18, 2023). <https://prospect.org/infrastructure/transportation/2023-01-18-anti-monopoly-reformer-jen-howard/>.

⁸ Wayt and Kosman.

⁹ U.S. House of Representatives, Subcommittee on Consumer Protection and Commerce of the House Committee on Energy and Commerce, Transcript: *Transforming the FTC: Legislation to Modernize Consumer Protection* (July 28, 2021). <https://docs.house.gov/meetings/IF/IF17/20210728/113972/HHRG-117-IF17-Transcript-20210728.pdf>

¹⁰ Wayt and Kosman.

¹¹ Mike Swift, Kathleen Murphy, and Michael Acton, *Under Khan’s leadership, staffers air frustrations in wake of survey*, mLex (June 6, 2022). <https://mlexmarketinsight.com/news-hub/editors-picks/area-of-expertise/antitrust/under-khans-leadership-staffers-air-frustrations-in-wake-of-survey>.

staff.”¹² Your decisions have led to departures of seasoned staff, who have irreplaceable institutional knowledge when making enforcement decisions.

On July 29, 2021, I, along with then Ranking Members Comer and Jordan, wrote to the FTC expressing concern about your partisan actions to “consolidate power, unilaterally assert and expand regulatory authority, and abandon bipartisan and open process.”¹³ The letter outlines the ways Republican commissioners repeatedly rejected your efforts to unleash unchecked regulatory powers on the American economy. Instead of working with your counterparts, you dismissed their concerns in favor of a “new approach.”¹⁴

Your claims of a new, non-partisan approach fall flat when one considers President Biden’s July 9, 2021, Executive Order encouraging you to pursue more vigorous enforcement.¹⁵ Instead of listening to the concerns of the Republican Commissioners, you turned what was a collegial, independent agency into an extension of the administration – doing President Biden’s radical, progressive bidding.

On December 8, 2021, we wrote a second letter regarding your partisan leadership. We specifically asked about conflicts of interest and *ex parte* communications.¹⁶ In your response on December 20, 2021, you stated that “in the event that an actual or potential conflict of interest arises during my appointment, I will consult with an agency ethics official and take the measures necessary to resolve the conflict.”¹⁷

On February 14, 2023, Commissioner Christine Wilson published an article in the Wall Street Journal indicating her intent to resign in protest of your actions.¹⁸ Her allegations in the

¹² Theo Wayt and Josh Kosman, *FTC faces staff exodus, anger over Biden-appointed Big Tech foe’s leadership*, New York Post (June 12, 2022) <https://nypost.com/2022/06/12/ftc-faces-staff-exodus-anger-over-biden-appointed-big-tech-foes-leadership/>.

¹³ Letter from Rep. Jordan, Rep. Comer, Rep. McMorris Rodgers, to Lina M. Khan., Chair, Federal Trade Commission (July 29, 2021)

https://d1dth6e84htgma.cloudfront.net/7_29_21_FTC_Oversight_b93c24432a.pdf?updated_at=2023-01-30T16:05:19.962Z.

¹⁴ Letter from Lina M. Khan., Chair, Federal Trade Commission to Ranking Member McMorris Rodgers (September 2, 2021)

https://d1dth6e84htgma.cloudfront.net/2021_09_02_Letter_from_Chair_Khan_to_Ranking_Member_Mc_Morris_Rodgers_08b727e34b.pdf?updated_at=2023-02-16T21:44:11.004Z.

¹⁵ Executive Order 14036, *Promoting Competition in the American Economy* (July 9, 2021).

<https://www.whitehouse.gov/briefing-room/presidential-actions/2021/07/09/executive-order-on-promoting-competition-in-the-american-economy/>.

¹⁶ Letter from Rep. McMorris Rodgers and Rep. Bilirakis to Lina M. Khan., Chair, Federal Trade Commission (December 8, 2021)

https://d1dth6e84htgma.cloudfront.net/2021_12_08_Letter_to_the_FTC_Chairwoman_Khan_on_FTC_trajectory_f775982920.pdf?updated_at=2023-02-16T21:44:10.927Z.

¹⁷ Letter from Lina M. Khan., Chair, Federal Trade Commission to Ranking Member McMorris Rodgers (December 20, 2021)

https://d1dth6e84htgma.cloudfront.net/12_20_21_Letter_from_the_FTC_to_Ranking_Member_Mc_Morris_Rodgers_re_Recent_Actions_at_the_FTC_13325df04d.pdf?updated_at=2023-02-16T21:44:11.005Z.

¹⁸ Christine Wilson, *Why I’m Resigning as an FTC Commissioner: Lina Khan’s disregard for the rule of law and due process make it impossible for me to continue serving*, Wall Street Journal (February 14, 2023).

article detailed the ways you have centralized power, undermined the Commission's structure, and broken decades of bipartisan precedent. Further, Commissioner Wilson noted that federal courts have repeatedly ruled against FTC Chairs for similar conflicts of interest.

As we note above, when testifying before the Committee in 2021, you were asked if you supported bringing increased transparency to the FTC. You responded "certainly, we want to be thinking through how we can increase transparency."¹⁹ According to Commissioner Wilson, instead of increasing transparency at the FTC, you have steamrolled dissents and inappropriately redacted comments – perhaps to hide conflicts of interest.

Following the resignation of Commissioner Wilson, you will no longer be able to claim you are taking a non-partisan approach. Given this new reality, please answer the following questions and provide requested documentation no later than March 14, 2023.

1. Following the resignation of all Republican commissioners and in light of your commitment at the July 2021 hearing, how will you seek bipartisan input and consensus since no such perspectives are now represented?
2. Please provide the Committee with Commissioner Wilson's unredacted dissent referenced in the February 14, 2023, Wall Street Journal op-ed.
3. All documents (including but not limited to, notes, text messages, emails, documents, memorandums, call logs) related to the decision to redact Commissioner Wilson's dissent mentioned in the February 14, 2023, Wall Street Journal.
4. All documents, including with the White House or other executive branch agencies (including but not limited to notes, text messages, emails, documents, memorandums, call logs), conclusions, and determinations related to your consultation with an FTC ethics official regarding your involvement or potential recusal in reported lawsuits.
5. All documents (including but not limited to notes, text messages, emails, documents, memorandums, call logs) related to the measures you took to resolve the conflicts of interests related to lawsuits.
6. All documents related to Chair Khan's justification for participating in FTC cases where a potential conflict of interest issue was identified but resulted in no recusal.
7. Now that there are only three Commissioners, all from the same party, how do you plan to comply with Sunshine Act Requirements?

<https://www.wsj.com/articles/why-im-resigning-from-the-ftc-commissioner-ftc-lina-khan-regulation-rule-violation-antitrust-339f115d>.

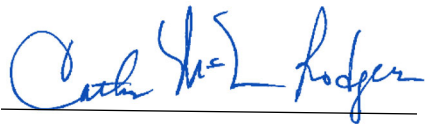
¹⁹ U.S. House of Representatives, Subcommittee on Consumer Protection and Commerce of the House Committee on Energy and Commerce, Transcript: *Transforming the FTC: Legislation to Modernize Consumer Protection* (July 28, 2021). <https://docs.house.gov/meetings/IF/IF17/20210728/113972/HHRG-117-IF17-Transcript-20210728.pdf>.

Letter to the Honorable Lina M. Khan

- a. Will compliance be carried out in the same manner as when Commissioner Wilson participated in the recusal matter that resulted in her resignation?
8. Starting with 2018, for each year, please provide the total number of FTC employees who have resigned, retired, or left the agency for other reasons.

To ask any follow-up or related questions, please contact Tim Kurth at the Committee on Energy and Commerce staff at 202-225-3641.

Sincerely,



Cathy McMorris Rodgers
Chair
House Committee on Energy and Commerce



Gus M. Bilirakis
Chair
Subcommittee on Innovation,
Data, and Commerce