



# Deregulation Nation: The Federal Trade Commission

June 3, 2025



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# Agenda

1. The FTC: Where It Stands Now
2. FTC Deregulation
3. Congressional Review Act
4. States and Plaintiffs' Bar



# FTC: Bipartisan No More



**Trump fires both Democratic commissioners at FTC**

By Jody Godoy

**Fired Democratic FTC commissioners are suing Trump**

By Ramishah Maruf, CNN

**US Senate confirms Trump's FTC commissioner pick**

By Jody Godoy

# Current FTC Commissioners



**Andrew N. Ferguson**

Chairman

Former Solicitor General of Virginia



**Melissa Holyoak**

Commissioner

Former Solicitor General with Utah Attorney General's Office



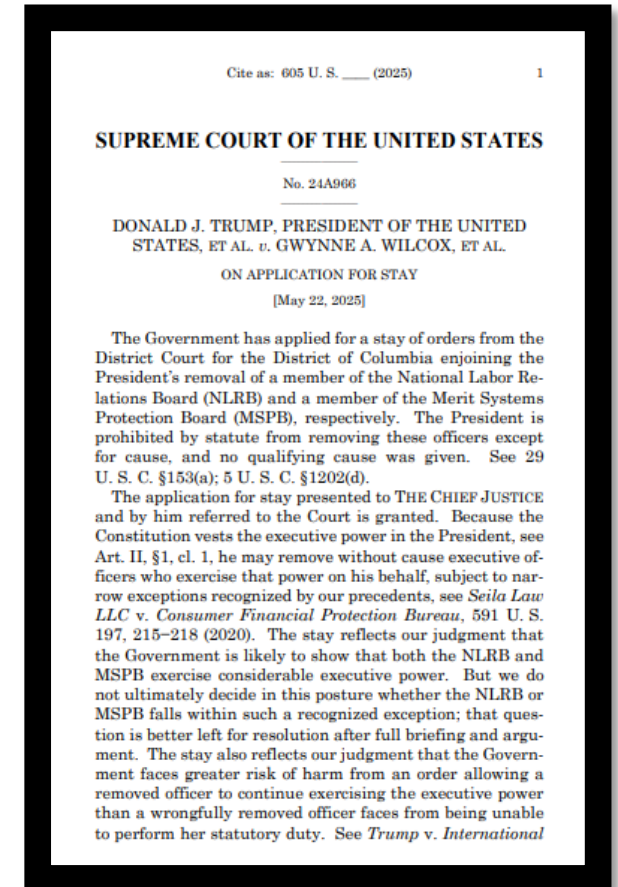
**Mark R. Meador**

Commissioner

Former Deputy Chief Counsel for Antitrust and  
Competition Policy for Sen. Mike Lee

# Humphrey's Executor...on the chopping block?

- Supreme Court ruled 6-3 that President Trump's firing of National Labor Relations Board and Merit System Protection Board members without cause can remain effective while litigation proceeds.
- By statute, NLRB and MSPB members are protected from removal except for cause. President Trump did not give cause when firing Gwynne Wilcox (NLRB) and Cathy Harris (MSPB).
- **"The stay also reflects our judgment that the Government faces greater risk of harm from an order allowing a removed officer to continue exercising the executive power than a wrongfully removed officer faces from being unable to perform her statutory duty."**
- Justice Kagan, dissenting: "the [majority's] order allows the President to overrule *Humphrey's* by fiat. *Humphrey's* undergirds a significant feature of American governance: bipartisan administrative bodies carrying out expertise-based functions with a measure of independence from presidential control...there are many others—among them, the Federal Communications Commission (FCC), Federal Trade Commission (FTC), and Federal Reserve Board....



# FTC Commissioners Litigation: Where It Stands

- Former FTC commissioners Slaughter and Bedoya filed suit, alleging their removals were unlawful.
- Summary judgment briefing is complete.
- Shortly after the Supreme Court's order in the NLRB/MSPB case, defendants stated, "FTC Commissioners exercise considerable executive power that matches or exceeds the power that members of the NLRB and MSPB wield. Accordingly, the Supreme Court's stay counsels against issuance of the relief Plaintiffs seek here."
- In response, plaintiffs argued that "the FTC is not the NLRB or MSPB" and has a "distinct historical tradition" that should weigh in favor of upholding the for-cause removal provision.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA	
REBECCA KELLY SLAUGHTER, in her official and personal capacities, c/o Counsel 2020 Pennsylvania Ave. NW, Suite # 163 Washington D.C. 20006,  and  ALVARO M. BEDOYA, in his official and personal capacities, c/o Counsel 2020 Pennsylvania Ave. NW, Suite # 163 Washington D.C. 20006,  <i>Plaintiffs,</i>	Case No. _____
v.	
DONALD J. TRUMP, in his official capacity as President of the United States, 1600 Pennsylvania Avenue NW Washington, D.C. 20500,  ANDREW N. FERGUSON, in his official capacity as Chair of the Federal Trade Commission, 600 Pennsylvania Avenue NW Washington, D.C. 20580,  MELISSA HOLYOAK, in her official capacity as Commissioner of the Federal Trade Commission, 600 Pennsylvania Avenue NW Washington, D.C. 20580,  and  DAVID B. ROBBINS, in his official capacity as the Executive Director of the Federal Trade Commission, 600 Pennsylvania Avenue NW Washington, D.C. 20580,  <i>Defendants.</i>	COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

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# FTC Deregulation

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# Rulemaking Under Lina Khan

FTC Rule	Status
Negative Option	<a href="#">Final</a> , Challenged in Court
Non-Compete	<a href="#">Final</a> , Set Aside by court after challenge
Combating Auto Retail Scams (CARS)	<a href="#">Final</a> , Stayed by FTC after court challenge
Unfair or Deceptive Fees	<a href="#">Scaled Back</a>
Children's Online Privacy Protection Rule	<a href="#">Final</a>
Energy Labeling	<a href="#">Final</a>
Ophthalmic Practice	<a href="#">Final</a>
Use of Consumer Reviews and Testimonials	<a href="#">Final</a>
Telemarketing Sales Rule: Recordkeeping, B2B	<a href="#">Final</a>
Telemarketing Sales Rule: Technical Support	<a href="#">Final</a>
Deceptive or Unfair Earnings Claims	<a href="#">Proposed</a>
Safeguarding Customer Financial Information	<a href="#">Final</a>



# Rulemaking Under Lina Khan (cont.)

FTC Rule	Status
Risk-Based Pricing	<a href="#">Final</a>
Government and Business Impersonation	<a href="#">Final</a>
Business Opportunity	<a href="#">Proposed</a>
Funeral Industry Practices	<a href="#">Proposed</a>
Power Output Claims for Amplifiers Utilized in Home Entertainment Products	<a href="#">Final</a>
Disclosure Requirements and Prohibitions Concerning Franchising	<a href="#">Final</a>
Commercial Surveillance and Data Security	<a href="#">Proposed</a>
Health Breach Notification	<a href="#">Final</a>
Labeling Requirements for Alternative Fuels and Alternative Fueled Vehicles	<a href="#">Proposed</a>
Care Labeling Rule	<a href="#">Terminated</a>

# FTC Scales Back

## FTC Launches Public Inquiry into Anti-Competitive Regulations

- In response to President Trump's executive order, "Reducing Anti-Competitive Regulatory Barriers," the "Trump-Vance FTC" will identify "unnecessary regulations" that purportedly harm the economy.
- The FTC is seeking public comment on federal regulations, including those that:
  1. Create unnecessary barriers to new market participants
  2. Create or facilitate licensure or accreditation requirements that unduly limit competition
  3. Unnecessarily burden the agency's procurement processes
  4. Otherwise impose anti-competitive restraints or distortions on the operation of the free market

# Chairman Ferguson Testifies Before the House



- On May 15, Chairman Ferguson testified before the House Committee on Appropriations.
- In prepared remarks, Ferguson reported that the FTC is implementing a 10% reduction in its workforce, bringing its headcount to approximately 1,100 employees—the lowest level in a decade.
- At the same time, he highlighted several key consumer protection areas the FTC will prioritize:
  1. Deceptive Fees, Billing, and Cancellation Practices
  2. Robocall Crackdowns
  3. Protecting Elderly, Servicemembers, and Veterans
  4. Health-Related and Financial Misconduct
  5. AI and Energy Tech Oversight
  6. Children's Privacy and Digital Harms
  7. Made in USA Claims
  8. Workers and Small Businesses

# FTC Dismisses Lawsuit Against PepsiCo

- In late May, the FTC dismissed a Robinson-Patman Act lawsuit against Pepsi. The suit had accused Pepsi of engaging in price discrimination.
- Chairman Ferguson and Commissioner Holyoak issued a statement saying that while the RPA is a law that the FTC is obligated to enforce, the then-Democrat majority “marched staff into court with no evidence to support the most important allegations in the Complaint.”
- Commissioner Meador concurred in a separate statement, discussing why the prior FTC misread the RPA’s statutory framework: “A key element of any RPA claim is proving discrimination between competing buyers. Yet the complaint does not mention even a single example of Pepsi refusing to offer comparable terms to other buyers.”

# Temporary Delays for Some Compliance Dates

## 1. Negative Option Rule

- Compliance with the Rule's disclosure, consent, and cancellation requirements moved from May 14 to July 14, 2025.
- The Rule's prohibition on misrepresenting material facts in selling any good or service with a negative-option feature is currently in effect.
- ***“[I]f that enforcement experience exposes problems with the Rule, the Commission is open to amending the Rule to address any such problems.”***

## 2. Telephone Consumer Protection Act

- The Federal Communications Commission (FCC) granted a limited waiver delaying by an additional year the effective date of certain parts of the new Rule to April 11, 2026.
- Specifically, the waiver delays the effective date for the requirement that a caller treat a single reasonable revocation as revocation from all future robocalls from that party on unrelated matters, and to accept that single revocation as applying to all of its business units and entities, which the agency treats as the same “party.”

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# Congressional Review Act

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# What Is the Congressional Review Act (CRA)?

***The Congressional Review Act is a way for Congress to repeal or block agency actions.***

Agency actions subject to the CRA are usually final rules that have gone through the formal rulemaking process, but the CRA is broad in its scope, covering anything “of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy” (5 U.S.C. § 551).

- Exceptions include executive orders, rules affecting agency personnel, and rules affecting how an agency operates that do not affect non-agency parties.

***The CRA is a blunt instrument, applying to final rules in their entirety.*** The CRA cannot be used to block parts of rules.

***Agencies cannot issue a new rule in “substantially the same form” if a CRA resolution is successful.*** What constitutes “substantially the same” is not defined.

***Rules disapproved of under the CRA cease to have effect immediately*** or never go into effect if the CRA resolution becomes law before the rule’s start date.



# The Basic CRA Process

## Agency Rule

Federal agencies must submit rules to Congress and the Government Accountability Office (GAO) and publish them in the *Federal Register*.

## Introduction

Any lawmaker can introduce a joint resolution of disapproval within 60 “continuous session” days of Congress receiving a rule; includes all calendar days except when chamber adjourns for more than three days.

*(Note: The 60-day window is slightly different at the end of a congressional session. See next slides.)*

## Committee

**Senate:** Disapproval resolution can be removed from committee, or discharged, to the floor after 20 calendar days with a petition signed by 30 senators.

**House:** No explicit procedures for committee consideration.

## Floor Action

**Senate:** Any senator can force a vote on a discharged CRA resolution; **only a simple majority is needed for passage, as CRA resolutions cannot be filibustered** (i.e., no 60-vote threshold).

**House:** No explicit procedures for initial floor consideration; can pass resolutions with a simple majority under terms set by Rules Committee at any time.

## President

The president can sign, veto, or take no action on a disapproval resolution.

Two-thirds majority needed in both chambers to override a veto, as with a regular bill.

# Repealed Regulations...More to Come

Resolution	Title	Agency
S.J.Res.11	A joint resolution providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the Bureau of Ocean Energy Management relating to "Protection of Marine Archaeological Resources."	Bureau of Ocean Energy Management
H.J.Res.35	Providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the Environmental Protection Agency relating to "Waste Emissions Charge for Petroleum and Natural Gas Systems: Procedures for Facilitating Compliance, Including Netting and Exemptions."	Environmental Protection Agency
H.J.Res.25	Providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the Internal Revenue Service relating to "Gross Proceeds Reporting by Brokers That Regularly Provide Services Effectuating Digital Asset Sales."	Internal Revenue Service
H.J.Res.75	Providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the Office of Energy Efficiency and Renewable Energy, Department of Energy relating to "Energy Conservation Program: Energy Conservation Standards for Commercial Refrigerators, Freezers, and Refrigerator-Freezers."	Department of Energy
H.J.Res.20	Providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the Department of Energy relating to "Energy Conservation Program: Energy Conservation Standards for Consumer Gas-fired Instantaneous Water Heaters."	Department of Energy
H.J.Res.24	Providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the Department of Energy relating to "Energy Conservation Program: Energy Conservation Standards for Walk-In Coolers and Walk-In Freezers."	Department of Energy
H.J.Res.42	Providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the Department of Energy relating to "Energy Conservation Program for Appliance Standards: Certification Requirements, Labeling Requirements, and Enforcement Provisions for Certain Consumer Products and Commercial Equipment."	Department of Energy
S.J.Res.18	A joint resolution disapproving the rule submitted by the Bureau of Consumer Financial Protection relating to "Overdraft Lending: Very Large Financial Institutions."	Bureau of Consumer Financial Protection

Source: Center for Progressive Reform

# Federal v. State: California Fights Back

- Under the CRA, the Senate voted to overturn a waiver allowing California to set its own air pollution standards for cars that are stricter than national regulations.
- This came after the nonpartisan Government Accountability Office (GAO) and Senate parliamentarian both issued guidance stating that using the CRA to repeal California's waiver was unlawful.
- California Air Resources Board Chair Liane Randolph:
  - *"California profoundly disagrees with today's unconstitutional, illegal and foolish vote attempting to undermine critical clean air protections. It's an assault on states' rights ... These actions are contrary to the text of the Congressional Review Act, as recognized by the nonpartisan U.S. Government Accountability Office and the Senate Parliamentarian. California will pursue every available remedy to challenge these actions and defend our right to protect the public from dangerous air pollution."*



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# States and Plaintiffs' Bar

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# New York Introduces FAIR Business Practices Act

- New York attorney general Letitia James is championing the FAIR Business Practices Act, which would “close loopholes” in New York’s current consumer protection scheme and enhance the enforcement capabilities of the Office of the Attorney General.
- If enacted, the bill would enable the attorney general to pursue civil penalties and restitution for violations of the act, such as:
  1. Companies making it difficult to cancel subscriptions
  2. Student loan services steering borrowers to the most expensive repayment plans
  3. Car dealers refusing to return a customer’s ID until a deal is finalized
  4. Nursing homes suing relatives of deceased residents for unpaid bills
  5. Companies taking advantage of consumers with limited English proficiency
- New York’s current consumer protection law, enacted in 1970, only prohibits “deceptive” business acts and practices. The FAIR Business Practice Act would broaden the scope of the law by adding “unfair and abusive” business practices.



# Class Action Lawsuits and State Regulators: Environmental Advertising

1. *Gyani v. Lululemon Athletica Inc.*, 1:24-cv-22651 (S.D. Fla. 2024)
2. *Lowry v. Proctor & Gamble Co.*, 2:25-cv-00108 (W.D. Wash. 2025)
3. *Dib v. Apple Inc.*, 5:25-cv-02043 (N.D. Cal. 2025)
4. California Greenwashing Task Force
5. New York Attorney General
  - Pepsi
  - JBS
6. District of Columbia Attorney General
  - Exxon



# Class Action Lawsuits: “Junk Fees” and Transparent Pricing

*Thayer v. Teleflora LLC*, 3:25-cv-941 (E.D. Cal. 2025)

- Plaintiff alleges that, on the product listing page, Teleflora did not include information about shipping costs or other fees, or any links to refer a consumer to those policies.

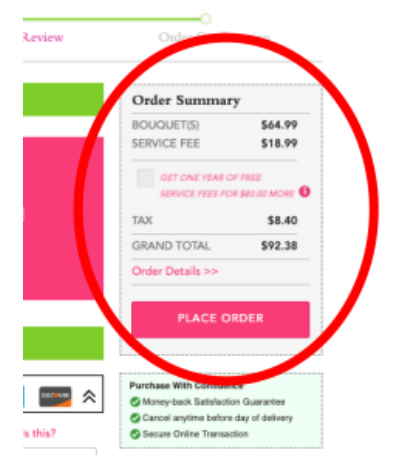
*Robert Berlinger v. Viagogo Inc.*, 1:25-cv-4380 (S.D.N.Y. 2025)

- Allegedly displays lower upfront price for ticketed events and later adds fees and charges as consumers proceed through the checkout process.

**Initial  
Advertised  
Price:**  
\$64.99



**Final Price:**  
\$64.99  
+18.99  
Service Fee  
Total: \$92.38





# Class Action Lawsuits and State Regulators: Autorenewal Programs

1. *Rodriguez v. Go Car Wash Management Corp.*, 5:24-cv-02085 (C.D. Cal. 2025)
2. *Poper v. Fox News Network, LLC*, 5:25-cv-00977 (C.D. Cal. 2025)
3. *Cejudo v. MUBI Inc.*, 5:25-cv-03652 (N.D. Cal. 2025)
4. *Bateman v. Fabletics*, 2:25-cv-02200 (C.D. Cal. 2025)
5. *Lomeli, et al. v. Sea World Parks and Entertainment Inc.*, 37-2023-00008529 (Cal. Super. 2025)

# Class Action Lawsuits: Made in the USA Claims

*Kauffman v. Nordic Ware Inc.*, 0:25-cv-01379 (D. Minn. 2025)

*Banks v. R.C. Bigelow, Inc.*, 2:20-cv-06208 (C.D. Cal. 2020)

*Allen v. Mielle Organics LLC*, 8:25-cv-00342 (C.D. Cal. 2025)

But note: The FTC remains active in this area!

Williams-Sonoma Will Pay Record \$3.17 Million  
Civil Penalty for Violating FTC Made in USA  
Order



## Questions? Contact Us



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# Download These Helpful Resources



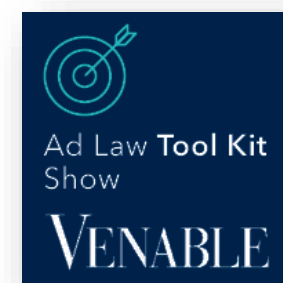
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