



AMERICAN PRINCIPLES PROJECT

August 17, 2022

Senator Mitch McConnell
317 Russell Senate Office Building
Washington, DC 20510

Dear Leader McConnell:

News broke last week that Commissioner Noah Phillips will be leaving his post at the Federal Trade Commission (FTC) in the coming months. As a result, you will have an exciting opportunity to choose a new commissioner to fill the Republican vacancy. We the undersigned groups hope you will consider selecting a nominee who has demonstrated throughout their career a willingness to take on the unchecked power of the most powerful Big Tech companies, especially given how these companies have weaponized their combined market power to directly interfere in our free and fair elections.

Over the past decade, the FTC has become the federal agency with the broadest oversight over Big Tech's business model. Its dual law enforcement mission to protect consumers and promote competition makes the agency the cop on the beat when it comes to Big Tech's consumer privacy and data security practices, its mergers and acquisitions, and its anti-competitive conduct within the marketplace. In the privacy realm, the agency bears a particular responsibility to protect our children's privacy online. Across all of these policy silos, the FTC has often failed in this law enforcement mission on several fronts, resulting in economic and non-economic harm to America's consumers, including our children.

To illustrate by example, a brief survey of the FTC's failure to police Big Tech's mergers and acquisitions is instructive. In 2020, President Trump's FTC launched an inquiry into Big Tech's acquisitions of start-ups – many of whom were competitors to Big Tech – between 2010 and 2019. The FTC found that, in total, Big Tech platforms completed more than 600 transactions of smaller companies during the relevant timeframe. Most of these transactions were no doubt benign from an antitrust enforcement standpoint, but many were not. Included in this latter category were Facebook's "buy or bury" acquisitions of both Instagram and WhatsApp. These acquisitions were given a perfunctory antitrust review by the Obama FTC and, in time, cemented Facebook's dominance over social networking for another decade.

Also in the 2010s, President Obama's FTC pulled its punches when it closed its monopolization investigation into Google in January 2013. At the time, few Republicans understood the power Google's monopoly search engine held over election outcomes, but academic research has since documented this malign influence on our democracy. In 2019, Dr. Robert Epstein, who himself voted for Hillary Clinton in 2016, testified to Congress that his research demonstrated that biased Google search results likely impacted undecided voters in a way that delivered 2.6 million voters to Hillary Clinton in the 2016 election. Dr. Epstein backed up this conclusion with data from controlled experiments and extensive research, leading him to conclude that, "Google has likely been determining the outcomes of the national elections worldwide since at least 2015." We will likely never know what role Google's interference played in the 2012 Presidential election, but we do know that the Obama FTC closed its investigation into the company within weeks of Americans going to the polls to vote in it.

The Trump Administration made significant progress in challenging Big Tech's economic power under our nation's century-old antitrust laws. First, President Trump's Department of Justice challenged Google's search monopoly in district court – something the FTC failed to do in 2013. Second, Trump's FTC revisited its earlier decisions to clear Facebook's Instagram and WhatsApp acquisitions when it filed a complaint alleging these acquisitions had cemented Facebook's monopoly and foreclosed meaningful competition to the platform a decade later. Significantly, only one Republican commissioner, the then-FTC Chairman, voted to support the complaint. The remaining two Republican commissioners voted against the complaint without explaining their reasoning in public. These commissioners voted in favor of Facebook even though under the FTC's rules they merely needed "reason to believe" that Facebook had a case to answer in open court before an independent judge.

The bipartisan FTC cabal that has emboldened Big Tech for over a decade must be broken. An important step in the right direction will be to nominate to the FTC qualified and seasoned conservatives with proven track records in law enforcement. Furthermore, the FTC is also likely to serve an important role as an enforcer for future policy decisions made by this Congress, especially as it relates to Big Tech. For that reason, we suggest nominating someone who has experience working on these issues in Congress, which would provide the agency with an understanding of the legislative process and which would help bring a holistic perspective on competition issues to the table – with policy, law enforcement and litigation experience.

Candidates who meet this description should be prioritized because, as recent events demonstrate, Big Tech monopolies will stop at nothing to protect their gatekeeper over commerce, speech, and even democracy itself.

In his farewell speech to the Nation in 1961, President Eisenhower warned Americans about the negative impact of the Military Industrial Complex and the risk that public policy would become captured by a "scientific-technological elite." Today, this complex is embodied by Big Tech. It is time for the Congress and our government to fight back against this elite on behalf of the American people.

Thank you for your consideration.

Sincerely,

Terry Schilling
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American Principles Project

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