



Office of Commissioner  
Andrew N. Ferguson

UNITED STATES OF AMERICA  
**Federal Trade Commission**  
WASHINGTON, D.C. 20580

**Dissenting Statement of Commissioner Andrew N. Ferguson  
Regarding the Unfair or Deceptive Fees Rulemaking  
Matter Number R207011**

December 17, 2024

I dissent from this rulemaking on grounds having nothing to do with the merits of the Final Rule, or with its compliance with the requirements of Sections 5 and 18 of the Federal Trade Commission Act.<sup>1</sup> I dissent only on the ground that the time for rulemaking by the Biden-Harris FTC is over.<sup>2</sup> The Democratic majority's four-year regulatory assault on American businesses has hindered economic growth and increased costs to the American consumer.<sup>3</sup> The American people resoundingly rejected this approach at the ballot box in November. This lame-duck Commission should give its regulatory pen a much-needed rest, focus on routine law-enforcement, and prepare for an orderly transition. It is particularly inappropriate for the Biden-Harris FTC to adopt a major new rule that it will never enforce, as the Final Rule will not take effect until many months after President Trump takes his oath of office.<sup>4</sup> His incoming Administration should have the opportunity to decide whether to adopt rules that it, not the Biden-Harris FTC, will be called upon to enforce. The precedent set today is unfortunate, but it is certainly a precedent by which future Commission majorities will abide.

My vote, however, should not be understood to state my position on the Final Rule's merits, or on whether the Commission under President Trump should enforce the Final Rule. On the merits, Commissioner Holyoak correctly points out that the Final Rule bears little resemblance to the flagrantly unlawful version of the rule the Commission proposed more than a year ago.<sup>5</sup> The Final Rule addresses practices and industries for which the Commission has some evidence of prevalence as Section 18 requires.<sup>6</sup> It is therefore a significant improvement over what the Commission originally threatened to inflict on the American economy.

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<sup>1</sup> 15 U.S.C. §§ 45, 57a.

<sup>2</sup> See Dissenting Statement of Comm'r Andrew N. Ferguson, Regarding the Telemarketing Sales Rule, Matter No. R411001, at 1 (November 27, 2024) (hereinafter "Ferguson Telemarketing Sales Rule Dissent"); Dissenting Statement of Comm'r Andrew N. Ferguson, Regarding the Withdrawal of the Antitrust Guidelines for Collaborations Among Competitors, Matter No. V250000 (Dec. 11, 2024).

<sup>3</sup> Majority Staff of H. Comm. on Oversight and Accountability, 118th Cong., *Death by a Thousand Regulations: The Biden-Harris Administration's Campaign to Bury America in Red Tape* (Sept. 25, 2024) (finding the Biden-Harris Administration has imposed an estimated \$1.7 trillion in cumulative regulatory costs on the economy).

<sup>4</sup> FTC, 16 CFR Part 464, Rule on Unfair or Deceptive Fees, Statement of Basis and Purpose, 1 (December 17, 2024).

<sup>5</sup> Notice of Proposed Rulemaking; Request for Public Comment: Trade Regulation Rule on Unfair or Deceptive Fees ("NPRM"), 88 Fed. Reg. 77420 (Nov. 9, 2023).

<sup>6</sup> See Statement of Commissioner Melissa Holyoak, Regarding the Trade Regulation Rule on Unfair or Deceptive Fees, Matter No. R207011 (December 17, 2024); 15 U.S.C. § 57a(a)(1)(B).