

The FTC's Evolution During Trump's Second Term

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The election of President Donald Trump to a second term immediately raised speculation about his approach to regulation. Central to this was the direction of the Federal Trade Commission (FTC), the government's primary consumer protection and antitrust enforcement agency.

Given Trump's strong anti-regulation posture, observers questioned whether the FTC would soften its rulemaking and enforcement efforts in alignment with broader deregulation. As the administration approaches the 100-day mark, several moves by the FTC provide insight into the agency's evolution.

While campaigning, Trump promised less regulation for businesses. In the ordinary course, one could expect this to mean less consumer protection enforcement. Likewise, during Trump's first term, many predicted a sharp decline in consumer protection enforcement. That expectation, however, proved to only be partially accurate.

In his first term, the FTC continued to enforce consumer protection against both large and



U.S. Federal Trade Commission building in Washington, D.C.

small businesses, focusing on areas like health claims, "Made in America" claims, fintech, small business scams, payment processors, rent-to-own schemes, debt collection abuse, and debt settlement practices. The Trump-era FTC positioned itself as a practical enforcer, focusing less on sweeping reform and more on curbing clear-cut deceptive practices.

The Biden administration, under FTC Chair Lina Kahn, brought a different vision, prioritizing high-profile enforcement and extensive rulemaking, in both the antitrust and consumer protection spaces, some of which was designed to recapture the FTC's ability to obtain monetary relief to combat traditional consumer fraud.

With Trump's return to office and Andrew Ferguson's appointment as FTC Chair, some believed the FTC might return to the approach of the first term. Ferguson appeared to reinforce this idea, describing the FTC's role as "cop on the beat," committed to enforcing—not expanding—the law. However, the early days of the second Trump term paint a more complex picture.

Although the FTC may continue to position itself as the "cop on the beat," the agency's priorities have shifted as the Commission has undergone a strategic reorientation in its approach to antitrust and consumer protection.

One of the most consequential and controversial developments has been Trump's dismissal of Democratic FTC commissioners Rebecca Kelly Slaughter and Alvaro Bedoya. The removal has triggered political and legal backlash. The two fired commissioners have filed lawsuits alleging that the President does not have the power to fire them without cause.

In response to the firings, FTC Chair Ferguson supported Trump's move, asserting that Trump "is the chief executive and is vested with all the executive power in our government... Such powers granted by the Constitution are a necessity to ensure democratic accountability."

To secure a Republican majority at the FTC, Trump nominated and the Senate confirmed Mark Meador to serve as a commissioner, giving the Republicans a working majority. Although the dismissal challenges of the two Democratic commissioners are not yet settled, with the confirmation of Commissioner Meador and no Democratic Commissioners, the FTC is poised to pursue a Trump-aligned agenda.

There have also been some interesting developments with the FTC's rulemaking. Although Chair Ferguson had signaled an intention to limit new rulemaking, the FTC has indicated that several significant rules that were finalized under Chair Khan's leadership will move forward. For example, under the Kahn led FTC, the Commission overhauled the outdated Negative Option Rule, now known as the Rule Concerning Recurring Subscriptions and Other Negative Option Programs.

Although FTC Chair Ferguson (at the time, Commissioner Ferguson) dissented from the FTC's approval of the final rule, the FTC has not indicated that there will be a delay or change in the rule's effective date, with the majority of the provisions going into effect in May 2025.

The Rule remains the subject of legal challenges. However, instead of capitulating to these challenges, the FTC continues to defend the Rule, including in a brief filed in March of this year. Therein, the FTC defended the Rule against the plaintiff's claims that the FTC is permitted to adopt regulations across "multiple industries" or "sectors of the economy," asserting that Congress gave the FTC broad discretion to issue such rules and that the Rule is consistent with the FTC's "long history of cross-industry rulemaking."

Further, the FTC asserted that if the Court determines that any part of the Rule is unlawful, the Court should limit its remedy to those unlawful provisions and allow the balance of the Rule to stand. For now, the FTC appears poised to allow the remaining provisions to go into effect.

Another rule that Commissioner Ferguson dissented against, the Rule on Unfair or Deceptive Fees, is also set to go into effect in May 2025. Like the Rule Concerning Recurring Subscriptions and Other Negative Option Programs, there has been no indication the FTC intends to pause the effective date of the rule.

The decision to proceed with implementing these rules—despite internal dissent—suggests the FTC may be seeking to maintain a level of institutional continuity. Some practitioners have also indicated that such action leaves the door open for selective enforcement that aligns with the current Commission’s policy leanings.

In addition to the change in personnel and approach to rulemaking, the FTC Chair Ferguson, unilaterally acted to restrict the FTC’s relationship with the American Bar Association (“ABA”). Ferguson issued a staff letter banning FTC political appointees from

holding leadership positions in the ABA, participating in or attending ABA events, or renewing existing ABA memberships. As justification, he cited the “ABA’s long history of leftist advocacy and its recent attack on the Trump-Vance Administration’s governing agenda.” This break with the ABA marks a broader attempt to redefine the FTC’s identity, aligning it more closely with the Trump administration’s ideological stance.

Trump’s second term incorporates elements of his first term. However, Trump’s second administration is departing from certain norms at the FTC in an effort to recalibrate the position and function of the agency. The FTC has not abandoned enforcement efforts, but these efforts may be redirected to challenging practices contrary to its political agenda.

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