

**Congress of the United States**  
Washington, DC 20515

May 12, 2025

The Honorable Andrew Ferguson, Chairman  
The Honorable Melissa Holyoak, Commissioner  
The Honorable Mark Meador, Commissioner  
Federal Trade Commission  
600 Pennsylvania Avenue N.W.  
Washington, DC 20580

Dear Chairman Ferguson, Commissioner Holyoak, and Commissioner Meador:

On April 11, 2025, the Federal Trade Commission (FTC) issued requests for public comment on whether the Commission should set aside two final consent orders governing: (1) Exxon Mobil Corporation's acquisition of Pioneer Natural Resources, and (2) Chevron Corporation's acquisition of Hess Corporation.<sup>1</sup> We write to express serious concerns about these consent orders and the arguments on which they are based.

On January 17, 2025, a mere three days before President Trump's inauguration, then-Chair Lina Khan and former Democrat Commissioners Rebecca Slaughter and Alvaro Bedoya finalized two consent orders barring certain executives from Pioneer and Hess from joining the board of directors of Exxon Mobil and Chevron, respectively.<sup>2</sup> These consent orders rely on an unprecedented, legally questionable use of the FTC's authority under Section 7 of the Clayton Act and unsupported claims of anticompetitive conduct by the two executives.<sup>3</sup> Because these consent orders constitute an overreach of the FTC's antitrust enforcement authority, the FTC ought to set aside and vacate both orders in their entirety.

**The FTC Rushed to Finalize the Consent Orders Before the Trump Administration Took Office**

In October 2023, Exxon Mobil announced a proposed merger with Pioneer Natural Resources.<sup>4</sup> In May 2024, Chair Khan and Democrat Commissioners Slaughter and Bedoya issued a complaint and consent order banning Pioneer's founder and former CEO, Scott

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<sup>1</sup> Press Release, Federal Trade Commission, FTC Seeks Public Comment on Petition to Modify Exxon-Pioneer Final Order (Apr. 11, 2025); Press Release, Federal Trade Commission, FTC Seeks Public Comment on Petition to Modify Chevron-Hess Final Order (Apr. 11, 2025).

<sup>2</sup> Press Release, Federal Trade Commission, FTC Approves Final Order in Exxon-Pioneer Deal (Jan. 17, 2025); Press Release, Federal Trade Commission, FTC Approves Final Order in Chevron-Hess Deal (Jan. 17, 2025).

<sup>3</sup> See generally Complaint, *In re Exxon Mobil Corp.*, No. 241-0004 (May 1, 2024); See also Complaint, *In re Chevron Corp. and Hess Corp.*, No. 241-0008 (Sept. 26, 2024).

<sup>4</sup> Press Release, ExxonMobil, ExxonMobil announces merger with Pioneer Natural Resources in an all-stock transaction (Oct. 11, 2023).

The Honorable Andrew Ferguson, Chairman  
The Honorable Melissa Holyoak, Commissioner  
The Honorable Mark Meador, Commissioner  
May 12, 2025  
Page 2

Sheffield, from joining the board of directors of Exxon Mobil.<sup>5</sup> The FTC based its complaint and consent order on concerns that Mr. Sheffield's inclusion on Exxon Mobil's board could potentially increase the risk of coordination within the oil-and-gas industry.<sup>6</sup> Specifically, the FTC accused Mr. Sheffield of using public statements and private communications to threaten rivals who increased oil production and coordinate production cuts with OPEC and OPEC+.<sup>7</sup> Based on these allegations, Chair Khan and Democrat Commissioners Slaughter and Bedoya argued that the consummation of the merger would violate Section 7 of the Clayton Act.<sup>8</sup> Commissioner Melissa Holyoak and Commissioner Andrew Ferguson both voted against the consent order, issuing a joint dissent.<sup>9</sup>

A few months later, in September 2024, Chair Khan and the Democrat Commissioners used the same playbook to issue a complaint and consent order regarding Chevron's acquisition of Hess.<sup>10</sup> Once again, the consent order barred a single individual—Hess CEO John B. Hess—from joining Chevron's board of directors based on an accusation that Mr. Hess had previously used public and private statements to push for greater coordination within the oil-and-gas industry.<sup>11</sup> Commissioner Holyoak and Commissioner Ferguson both dissented from the issuance of this consent order as well.<sup>12</sup>

After months of inaction on both consent orders, Chair Khan and the Democrat Commissioners finally approved the orders just 72 hours before President Trump's inauguration.<sup>13</sup> Once again, Commissioner Holyoak and Commissioner Ferguson both dissented from the final approval of these orders.<sup>14</sup>

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<sup>5</sup> Press Release, Federal Trade Commission, FTC Order Bans Former Pioneer CEO from Exxon Mobil Board Seat in Exxon Mobil-Pioneer Deal (May 2, 2024).

<sup>6</sup> See generally Complaint, *In re Exxon Mobil Corp.*, No. 241-0004 (May 1, 2024).

<sup>7</sup> *Id.* See also The Editorial Board, *Hang the Oil and Gas CEOs – Chuck Schumer and Senate Democrats call for prosecuting fossil fuel executives*, THE WALL STREET JOURNAL (May 31, 2024); See also The Editorial Board, *The FTC Smears Scott Sheffield – Lina Khan's agency trashes an oil executive on dubious evidence*, THE WALL STREET JOURNAL (May 9, 2024).

<sup>8</sup> *Supra* note 6.

<sup>9</sup> Federal Trade Commission, *Joint Dissenting Statement of Commissioner Melissa Holyoak and Commissioner Andrew N. Ferguson In the Matter of ExxonMobil Corporation Commission File No. 241-0004* (May 2, 2024) [hereinafter "Joint Exxon Dissent"].

<sup>10</sup> Press Release, Federal Trade Commission, FTC Order Bans Hess CEO from Chevron Board in Chevron-Hess Deal (Sept. 30, 2024); See also Complaint, *In re Chevron Corp. and Hess Corp.*, No. 241-0008 (Sept. 26, 2024).

<sup>11</sup> *Id.*

<sup>12</sup> Federal Trade Commission, *Dissenting Statement of Commissioner Melissa Holyoak In the Matter of Chevron Corporation & Hess Corporation Commission File No. 241-0008* (Sept. 30, 2024) [hereinafter "Holyoak Chevron Dissent"]; Federal Trade Commission, *Dissenting Statement of Commissioner Andrew N. Ferguson In the Matter of Chevron Corporation and Hess Corporation Commission File No. 241-0008* (Sept. 30, 2024) [hereinafter "Ferguson Chevron Dissent"].

<sup>13</sup> *Supra* note 2.

<sup>14</sup> *Id.*

## The Consent Orders Are Legally Defective

Section 7 of the Clayton Act prohibits mergers whose effect “may be substantially to lessen competition, or to tend to create a monopoly.”<sup>15</sup> Yet, in its two consent orders, the FTC did not allege—much less establish—that the challenged transactions satisfied that standard.<sup>16</sup> In the case of Chevron and Hess, the combined firm has approximately two percent of the world market for oil and natural gas.<sup>17</sup> As Commissioner Holyoak noted, “if it were litigated, the complaint would not survive a motion to dismiss.”<sup>18</sup>

In the Exxon Mobil and Pioneer merger, Chair Khan and the Democrat Commissioners do not even discuss the market share that Exxon Mobil and Pioneer would allegedly control following the acquisition.<sup>19</sup> Even the “aggressive” 2023 Merger Guidelines, adopted by the Democrat Commissioners and the Biden-Harris Administration, presume competitive harm only when a firm’s share exceeds thirty percent.<sup>20</sup> Yet the market share that would result from either transaction falls far below that threshold.<sup>21</sup>

Notably, even under the Democrat Commissioners’ own framework, in evaluating a potential merger, the FTC is supposed to look at whether there is: (1) a highly concentrated market, (2) prior actual or attempted coordination by firms possessing *substantial shares*, and (3) the elimination of a so-called maverick—or a smaller rival that disrupts the market and vigorously competes with larger firms to the benefit of consumers.<sup>22</sup> Yet as Commissioner Holyoak stated in her dissent to the Chevron and Hess order, “[t]he complaint alleges none of these factors,” much less provides the evidence necessary to prove that they have been met.<sup>23</sup> Instead, the FTC’s theory in these cases “rests on a series of implausible and unsupported assumptions that fall well short of pleading a violation of the Clayton Act.”<sup>24</sup>

Unable to allege a traditional Section 7 violation, the Democrat Commissioners assert that adding a single executive to a twelve-member board of a company with an exceedingly low

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<sup>15</sup> 15 U.S.C. § 18.

<sup>16</sup> See generally Ferguson Chevron Dissent, *supra* note 12; See generally Holyoak Chevron Dissent, *supra* note 12; See generally Joint Exxon Dissent, *supra* note 9.

<sup>17</sup> See Holyoak Chevron Dissent, *supra* note 12, at 2; See Ferguson Chevron Dissent, *supra* note 12, at 1 (“The Complaint does not plead a traditional Section 7 theory because the Commission has none. Chevron and Hess together have a two percent share of the relevant market.”).

<sup>18</sup> *Id.*

<sup>19</sup> See Joint Exxon Dissent, *supra* note 9, at 2 (“Importantly, [the complaint] does not allege the merging parties’ market shares at all. As such, it fails to allege that either Exxon or Pioneer represents part of any “substantial share” of the market, and for good reason: the post-merger firm’s share in the alleged market will not be substantial.”).

<sup>20</sup> See Ferguson Chevron Dissent, *supra* note 12, at 1 (citing U.S. Dept. of Just. & Fed. Trade Comm’n, *Horizontal Merger Guidelines*, § 2.1 (Dec. 18, 2023)).

<sup>21</sup> *Supra* note 17.

<sup>22</sup> U.S. Dept. of Just. & Fed. Trade Comm’n, *Horizontal Merger Guidelines*, § 2.3.A (Dec. 18, 2023) (emphasis added).

<sup>23</sup> See Holyoak Chevron Dissent, *supra* note 12, at 4.

<sup>24</sup> See Ferguson Chevron Dissent, *supra* note 12, at 2.

market share would somehow amplify the risk of tacit collusion within that market.<sup>25</sup> As Commissioner Holyoak rightfully stated, “[i]t strains credulity to argue that Mr. Hess will have more power or ability to orchestrate coordination while serving as one of twelve board members than he had while serving as a CEO for the last several decades.”<sup>26</sup>

These legal infirmities described would have been exposed in court if the FTC had decided to litigate these decisions. Instead, the FTC leveraged its burdensome merger process authority to obtain concessions that the Commission knew—or should have known—it could not obtain from a court of law.<sup>27</sup> The Democrat Commissioners effectively transformed merger review into a “pay-for-peace racket,” forcing the companies to “pay a toll to pass through the Hart-Scott-Rodino gate” and extracting behavioral remedies from companies that faced the prospect of months of delay and millions of dollars in litigation costs.<sup>28</sup> This approach “does not vindicate the rule of law,” but “is instead a sort of tax on mergers.”<sup>29</sup>

### **The FTC’s Consent Orders Were Intended to Advance Far-left Political Goals**

The FTC first issued the consent orders at the same time that congressional Democrats were amplifying rhetoric about supposed “corporate avarice” as a way to deflect attention from the Biden-Harris Administration’s inability to control inflation and soaring fuel costs.<sup>30</sup> In November 2023, then-Senate Majority Leader Chuck Schumer and 22 other Senate Democrats wrote to Chair Khan, urging her to block both the Exxon-Pioneer and Chevron-Hess deals.<sup>31</sup> In May 2024, congressional Democrats renewed their campaign—urging the Department of Justice to pursue criminal charges against oil-company executives, specifically naming both Mr. Sheffield and Pioneer.<sup>32</sup> In short, the FTC’s actions coincided with, and appear to be responsive to, a coordinated political push that framed ordinary market transactions as evidence of price-gouging.

Notably, as Commissioner Holyoak pointed out in her dissent to the Chevron consent decree, the FTC’s order had a specific exception that “allow[ed] Mr. Hess to consult with Chevron on projects that align with the climate agenda of the political left.”<sup>33</sup> These orders appear to be nothing more than an attempt to “satisfy a constituency important to the

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<sup>25</sup> *Supra* note 16.

<sup>26</sup> *See* Holyoak Chevron Dissent, *supra* note 12, at 3.

<sup>27</sup> *See* Ferguson Chevron Dissent, *supra* note 12, at 5-6.

<sup>28</sup> *See* Ferguson Chevron Dissent, *supra* note 12, at 6-7.

<sup>29</sup> *See* Ferguson Chevron Dissent, *supra* note 12, at 6.

<sup>30</sup> Letter from Charles E. Schumer, Senate Majority Leader, United States Senate, to The Honorable Merrick Garland, Attorney General, U.S. Dept. of Justice, and The Honorable Jonathan Kanter, Asst. Attorney General Antitrust Division, U.S. Dept. of Justice (May 30, 2024).

<sup>31</sup> Letter from Charles E. Schumer, Senate Majority Leader, United States Senate, to The Honorable Lina Khan, Chair, Federal Trade Commission (Nov. 1, 2023).

<sup>32</sup> *Supra* note 30.

<sup>33</sup> *See* Holyoak Chevron Dissent, *supra* note 12, at 4.

The Honorable Andrew Ferguson, Chairman  
The Honorable Melissa Holyoak, Commissioner  
The Honorable Mark Meador, Commissioner  
May 12, 2025  
Page 5

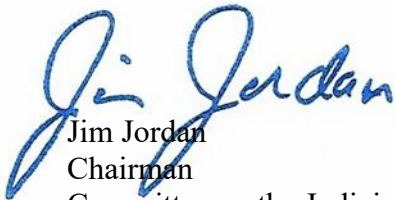
Commission majority—Democratic politicians who have repeatedly and publicly urged the Commission to block th[ese] merger[s] in order to advance their climate agenda.”<sup>34</sup>

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The FTC’s consent decrees in these cases were inappropriate and legally deficient at the time then-Chair Khan and the Democrat Commissioners issued and approved them and remain wrong to this day. We respectfully urge the FTC to set aside and vacate both orders in their entirety.

Pursuant to Rule X of the House of Representatives and Rule XXV of the Rules of the Senate, the Committees are authorized to conduct oversight of and legislate on matters relating to the “[p]rotection of trade and commerce against unlawful restraints and monopolies.”<sup>35</sup> If you have questions about this matter, please contact Committee staff at (202) 225-6906. Thank you for your attention to this matter.

Sincerely,



Jim Jordan  
Chairman  
Committee on the Judiciary  
U.S. House of Representatives



Scott Fitzgerald  
Chairman  
Subcommittee on the Administrative  
State, Regulatory Reform, and  
Antitrust  
U.S. House of Representatives



Mike Lee  
Chairman  
Subcommittee on Antitrust,  
Competition Policy, and Consumer Rights  
U.S. Senate

cc: The Honorable Jamie Raskin, Ranking Member, Committee on the Judiciary, U.S. House of Representatives

The Honorable Jerrold Nadler, Ranking Member, Subcommittee on the Administrative State, Regulatory Reform, and Antitrust, U.S. House of Representatives

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<sup>34</sup> See Ferguson Chevron Dissent, *supra* note 12, at 2.

<sup>35</sup> Rules of the House of Representatives R. X (2025); Rules of the Senate R. XXV (2024).

The Honorable Andrew Ferguson, Chairman  
The Honorable Melissa Holyoak, Commissioner  
The Honorable Mark Meador, Commissioner  
May 12, 2025  
Page 6

The Honorable Cory Booker, Ranking Member, Subcommittee on Antitrust, Competition  
Policy, and Consumer Rights, U.S. Senate