

February 16, 2024

The Honorable Chuck Schumer
Majority Leader
United States Senate
322 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Hakeem Jeffries
Minority Leader
U.S. House of Representatives
H-204, U.S. Capitol
Washington DC 20515

The Honorable Patty Murray
Chair
Senate Appropriations Committee
Room S-128, U.S. Capitol
Washington, D.C. 20510

The Honorable Rosa DeLauro
Ranking Member
Committee on Appropriations
1036 Longworth House Building
Washington, DC 20515

Leader Schumer, Leader Jeffries, Chair Murray, and Ranking Member DeLauro:

The undersigned groups write in firm support of the steps taken by President Biden to foster competition across the American economy. **As Congress considers Fiscal Year 2024 (FY24) Appropriations legislation, we urge you to reject any poison pill provision that was included or debated in the House versions of these bills when they were considered in 2023 that would stifle the administration’s historic antimonopoly agenda.** For decades, our agencies and enforcers have been asleep at the wheel, allowing the largest corporations to massively expand their market power at the expense of consumers, workers, and small businesses.¹ We have seen the impact of a fragile supply chain across vertically integrated industries, stagnant wages, frozen economic mobility in labor markets, and significant barriers to entry and market access for small businesses.²

From technology to agriculture, many sectors of the American economy are more consolidated than ever before, leading to fewer options and higher costs for consumers.³ We commend the administration’s bold “whole of government” approach to enforcing our antitrust laws; holding megacorporations engaging in alleged anticompetitive conduct such as price gouging on gas,

¹ Gustavo Grullon, et. al., “Are US Industries Becoming More Concentrated?,” *Review of Finance*, Volume 23, Issue 4, (July 2019) <https://doi.org/10.1093/rof/rfz007>.

² Federal Reserve Bank of San Francisco, “Supply Chain Disruptions, Trade Costs, and Labor Markets” (January 2023) <https://www.frbsf.org/research-and-insights/publications/economic-letter/2023/01/supply-chain-disruptions-trade-costs-and-labor-markets/>; Tania Babina et. al., “Antitrust Enforcement Increases Economic Activity,” National Bureau of Economic Research (Aug. 2023) <https://www.nber.org/papers/w31597>; Open Markets Institute Statement for Antitrust Subcomm. Hearing on “Online Platforms and Market Power, Part 2: Innovation and Entrepreneurship,” (July 2019) <https://www.congress.gov/116/meeting/house/109793/documents/HHRG-116-JU05-20190716-SD017.pdf>.

³ Mary K. Hendrickson, et. al., “The Food System: Concentration and Its Impacts,” *Farm Action* (May 2021) https://farmaction.us/wp-content/uploads/2021/05/Hendrickson-et-al.-2020.-Concentration-and-Its-Impacts_FINAL_Addended.pdf; Library of Congress, H.Prt.8, 117th Cong. (2024), <https://www.congress.gov/committee-print/117th-congress/house-committee-print/47832>.

groceries, bank fees, and prescription drug prices accountable; and restoring the promise of a competitive economy for all.⁴ Americans across the political spectrum strongly oppose abusive monopolies and support enforcement of our antitrust laws.⁵ So far, this approach has paid dividends, with our regulators and enforcers securing important victories month after month.⁶

It is critical that Congress not stand in the way of President Biden’s historic work to revitalize competition across the American economy and lower costs for consumers. As Congress reconsiders FY24 Appropriations legislation, we expect opponents of President Biden’s competition agenda to once again attempt to include dangerous policy riders and unacceptable funding levels in these must-pass pieces of legislation. However, should any of these bills move under suspension of the rules in the House, Democrats have a unique opportunity to prevent any harmful language from being passed into law. **We urge you to ensure that none of the below provisions, which were either heavily discussed or included in either base text, amendments, or report language of the FY24 Appropriations bills considered by the House of Representatives in 2023, are included in any new legislation.**

FY 2024 Agriculture, Rural Development, Federal Drug Administration, and Related Agencies (Agriculture) Appropriations:

- **Policy Rider in Base Text - Prevents Additional Work on Packers and Stockyards Act Rulemaking.**⁷ In 2021, Secretary Tom Vilsack’s United States Department of Agriculture (USDA), announced a series of rulemakings to revitalize the Packers and Stockyards Act.⁸ This legislation is one of the most powerful tools in our government’s arsenal to fight anticompetitive conduct in our food system and foster competition across our agriculture industry. While there are concerns with USDA’s pace in finalizing the most important rules in this series, they are critical to reigning in rampant illegal activity among our highly consolidated livestock industry.⁹ Similar attempts to strengthen the Packers and Stockyards Act were undermined through Congressional appropriations during the Obama administration.¹⁰

⁴ Exec. Order No. 14,036 3 C.F.R., “Executive Order on Promoting Competition in the American Economy,” (July 2021) [Executive Order on Promoting Competition in the American Economy | The White House](#).

⁵ Taylor Orth, “Most Americans oppose monopolies and support Antitrust Laws,” YouGov (Nov. 2023) [Most Americans oppose monopolies and support antitrust laws | YouGov](#).

⁶ American Economic Liberties Project, “Antitrust Enforcers Win Big Ahead of the Holidays,” (Dec. 2023) [Antitrust Enforcers Win Big Ahead of the Holidays](#).

⁷ H.R.4664, “Financial Services and General Government Appropriations Act,” 2024, 118th Cong. (2023), <https://www.congress.gov/bill/118th-congress/house-bill/4664/text?s=5&r=2&q=%7B%22search%22%3A%22H.R.4664%22%7D>.

⁸ United States Dept. of Ag., “USDA to Begin Work to Strengthen Enforcement of the Packers and Stockyards Act,” (June, 2021) [USDA to Begin Work to Strengthen Enforcement of the Packers and Stockyards Act](#).

⁹ Farm Action, “62 Groups to Biden: Swift Completion of Packers and Stockyards Act Rules Needed to Protect Historic Competition Advances,” (Dec. 2023) [62 Groups to Biden: Swift Completion of Packers and Stockyards Act Rules Needed to Protect Historic Competition Advances | Farm Action](#).

¹⁰ Lina Khan, “Obama’s Game of Chicken,” The Washington Monthly (Nov. 2009) [Obama's Game of Chicken | Washington Monthly](#)

- **Policy Rider in Base Text - Institutes Hiring Freeze at Packers and Stockyards Division.**¹¹ The version of the FY24 Agriculture Appropriations legislation introduced in 2023 includes a rider that will freeze hiring at the Agricultural Marketing Service’s Packers and Stockyards Division, significantly impeding their ability to advance rules and continue their excellent work in bringing cases against companies in violation of the Packers and Stockyards Act.¹²
- **Report Language - Includes Congressional Support for “Harm to Competition” Standard in Packers and Stockyards Enforcement.**¹³ The report accompanying last year’s FY24 Agriculture Appropriations legislation includes dangerous language in direct opposition to long-standing USDA policy and interpretation that would grant Congressional support to the so-called “harm to competition” standard for enforcement of the Packers and Stockyards Act, potentially making future antitrust enforcement more difficult across the economy.¹⁴ Over the last fifty years, unelected judges established this standard. Granting it Congressional support would only make robust antitrust enforcement more challenging and give cover to judges hostile to the Biden Administration’s approach.

FY 2024 Commerce, Justice, and Science (CJS) Appropriations:

- **Funding Level in Base Text - Dramatically Underfunds Department of Justice (DOJ)’s Antitrust Division and Circumvents Merger Filing Fees Modernization Act.**¹⁵ In 2022, Congress implemented the first major change to our antitrust laws in decades by passing the Merger Filing Fees Modernization Act (MFFMA).¹⁶ The MFFMA lowered costs for smaller deals and increased them for larger mergers, directing additional resources to the Department of Justice (DOJ)’s Antitrust division, which has been historically underfunded for decades.¹⁷ This funding will be critical in allowing the

¹¹ H.R.4368, “Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act,” 2024, 118th Cong. (2023) <https://www.congress.gov/bill/118th-congress/house-bill/4368>.

¹² Department of Justice, “Justice Department Files Lawsuit and Proposed Consent Decree to Prohibit Koch Foods from Imposing Unfair and Anticompetitive Termination Penalties in Contracts with Chicken Growers” (Nov. 2023) <https://www.justice.gov/opa/pr/justice-department-files-lawsuit-and-proposed-consent-decree-prohibit-koch-foods-imposing>.

¹³ House Ag. Approps. Comm., “Committee Report on Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act,” 2024, 118th Cong. (2023) <https://docs.house.gov/meetings/AP/AP00/20230614/115870/HMKP-118-AP00-20230614-SD003.pdf>

¹⁴ Exec. Order No. 14,036 3 C.F.R., “Executive Order on Promoting Competition in the American Economy,” (July 2021) [Executive Order on Promoting Competition in the American Economy | The White House](https://www.whitehouse.gov/presidential-actions/2021/07/01/executive-order-on-promoting-competition-in-the-american-economy/).

¹⁵ H.R.5893, “Commerce, Justice, Science, and Related Agencies Appropriations Act,” 2024, 118th Cong. (2023), <https://www.congress.gov/bill/118th-congress/house-bill/5893>.

¹⁶Denton, Jake. “Merger Filing Fee Modernization Act Is a Strong Step toward Big Tech Accountability.” The Heritage Foundation, 30 Sept. 2022, www.heritage.org/technology/commentary/merger-filing-fee-modernization-act-strong-step-toward-big-tech

¹⁷ Klar, Rebecca. “Congress Urged to Increase DOJ Funds to Take on Tech Giants’ Power.” The Hill, 19 Jan. 2024, thehill.com/policy/technology/4416700-congress-doj-funding-investigate-tech-giants/.

DOJ to make good on its promise of aggressive and robust antitrust enforcement.¹⁸ However, last year's CJS Appropriations legislation undermines this legislation by failing to direct additional revenue from merger filing fees to the Antitrust Division. Additionally, while the Senate version of the FY24 CJS Appropriations includes a very minor increase in funding for DOJ's Antitrust Division, it does not adequately direct additional funding derived from increased merger filing fees and should not be used as a model for FY24 funding.¹⁹

- **Policy Rider in Base Text - Institutes Hiring freeze at the DOJ's Antitrust Division.**²⁰ The 2023 version of the FY24 CJS Appropriations bill includes language preventing the DOJ from bringing on any additional staff, except to replace a departing staffer, and significantly impeding their ability to bring cases against potentially illegal mergers.

FY 2024 Financial Services and General Government (FSGG) Appropriations:

- **Funding Level in Base Text - Dramatically Underfunds the Federal Trade Commission (FTC).**²¹ The Federal Trade Commission, led by Chair Lina Khan, has worked to put President Biden's aggressive antitrust agenda in action by bringing important cases against harmful mergers, policing anticompetitive conduct, and developing strong rules to rein in monopoly power.²² However, the FY24 FSGG Appropriations legislation introduced in 2023 provides hundreds of millions of dollars less to the Commission than was requested by President Biden. The FTC requires significantly more funding to continue pursuing this important agenda, and hamstringing it will seriously jeopardize the success of important enforcement actions and rulemakings.
- **Funding Level in Base Text - Dramatically Underfunds FTC's Bureau of Competition.** The Bureau of Competition leads the FTC's work in enforcing the antitrust laws, policing anticompetitive mergers, addressing violations of the law, and assisting in the development of competition policy. Curtailing the Bureau's funding will stymie the administration's important work across the board.

¹⁸Assistant Attorney General Jonathan Kanter Delivers Opening Statement Before the Subcommittee on the Administrative State, Regulatory Reform, and Antitrust of the House Committee on the Judiciary. (November 2023) [Assistant Attorney General Jonathan Kanter Delivers Opening Statement Before the Subcommittee on the Administrative State, Regulatory Reform, and Antitrust of the House Committee on the Judiciary](#)

¹⁹ Rebecca Klar, "Congress urged to increase DOJ funds to take on tech giants' power," The Hill (Jan. 2024). <https://techoversight.org/wp-content/uploads/2024/01/TOP-DOJ-Antitrust-Funding-Letter.pdf>.

²⁰ H.R.5893, "Commerce, Justice, Science, and Related Agencies Appropriations Act," 2024, 118th Cong. (2023), <https://www.congress.gov/bill/118th-congress/house-bill/5893>.

²¹ H.R.4664, "Financial Services and General Government Appropriations Act," 2024, 118th Cong. (2023), <https://www.congress.gov/bill/118th-congress/house-bill/4664/text?s=5&r=2&q=%7B%22search%22%3A%22H.R.4664%22%7D>.

²²"Different Set of Rules': How FTC Head Lina Khan Is Fighting Tech Giants Such as Amazon." The Guardian, Guardian News and Media, 27 Sept. 2023, www.theguardian.com/technology/2023/sep/27/ftc-head-lina-khans-fight-against-amazon-has-been-years-in-the-making.

- **Policy Rider in Base Text - Prevents Enforcement of FTC’s Statement on “Use of Prior Approval Provisions in Merger Orders.”**²³ In 2021, the Commission voted to overturn a 1995 Policy Statement that limited use of prior approval provisions in settlement agreements.²⁴ Since then, FTC has made effective use of these provisions, which put increased pressure on acquisitive corporations to justify potentially anticompetitive deals and reduce burdens on our enforcers. Prohibiting the FTC from including prior approval provisions will give the green light to companies with a history of pursuing questionable deals to engage in potentially harmful acquisitions.
- **Failed Floor Amendment - Prevents FTC from issuing Unfair Competition rulemakings.**²⁵ FTC has the authority to promulgate rules indicating that certain practices are unfair methods of competition and therefore illegal. For example, the “Non-Compete Clause Rulemaking” is predicated on the FTC’s authority to establish unfair methods of competition.²⁶ Including this language would remove one of FTC’s most powerful tools to protect consumers, workers, and competition across our economy.
- **Failed Floor Amendment - Prevents FTC from making updates to Hart-Scott-Rodino premerger filing forms (HSR forms).**²⁷ In June 2023, the FTC and DOJ proposed long overdue updates to HSR forms, which merging parties are required to provide to enforcers when announcing a proposed deal.²⁸ These forms have not been updated in more than 40 years, and because of missing information often require enforcers to file additional requests for information to understand the scope of a potential merger.²⁹ These updates will save our enforcers significant time and resources, allowing them to more effectively enforce antitrust laws.

²³ H.R.4664, “Financial Services and General Government Appropriations Act,” 2024, 118th Cong. (2023), <https://www.congress.gov/bill/118th-congress/house-bill/4664/text?s=5&r=2&q=%7B%22search%22%3A%22H.R.4664%22%7D>.

²⁴ Federal Trade Commission, “Statement of the Commission on Use of Prior Approval Provisions in Merger Orders,” (July 2021) https://www.ftc.gov/system/files/documents/public_statements/1597894/p859900priorapprovalstatement.pdf.

²⁵ Rep. Scott Fitzgerald Amendment #39 to H.R.4664, “Financial Services and General Government Appropriations Act,” 2024, 118th Cong. (2023), https://amendments-rules.house.gov/amendments/Fitzgerald%20FY24%20FSGG%20Unfair%20Competition%20Rules%20Amendment231027133629726.pdf?_gl=1*r0saij*_ga*MjEwODc1MzczOS4xNzA2MDQwMDA5*_ga_N4RTI5D08B*MTcwNzQzMDU1MS4xLjEuMTcwNzQzMDg0Ni4wLjAuMA.

²⁶ Federal Trade Commission, “FTC Proposes Rule to Ban Noncompete Clauses, Which Hurt Workers and Harm Competition,” (June 2023) https://www.ftc.gov/system/files/ftc_gov/pdf/noncompete_nprm_fact_sheet.pdf.

²⁷ Rep. Scott Fitzgerald Amendment #40 to H.R.4664, “Financial Services and General Government Appropriations Act,” 2024, 118th Cong. (2023), https://amendments-rules.house.gov/amendments/Fitzgerald%20FY24%20FSGG%20HSR%20Amendments%20Amendment%20-%20REVISED231106134942054.pdf?_gl=1*13w03fu*_ga*MjEwODc1MzczOS4xNzA2MDQwMDA5*_ga_N4RTI5D08B*MTcwNzQzMDU1MS4xLjAuMTcwNzQzMDU1MS4wLjAuMA.

²⁸ Federal Trade Commission, “FTC and DOJ Propose Changes to HSR Form for More Effective, Efficient Merger Review,” (June 2023) <https://www.ftc.gov/news-events/news/press-releases/2023/06/ftc-doj-propose-changes-hsr-form-more-effective-efficient-merger-review>.

²⁹ Farm Action, “Comment on Premerger Notification Rules” (September 2023) <https://farmaction.us/2023/09/28/farm-action-applauds-ftcs-proposal-to-strengthen-premerger-rules/>.

- **Failed Floor Amendment - Restricts the FTC’s “unfair methods of competition” authority.**³⁰ In November 2022, the FTC released a Policy Statement detailing their position on the scope of their authority to address unfair methods of competition.³¹ This statement establishes that the FTC Act goes beyond both the Clayton and Sherman Acts and signals to the public, the courts and corporations that the FTC has broad authority to address conduct that could constitute an unfair method of competition.
- **Report Language - Requires Unreasonable Oversight of FTC’s “Unfair or Deceptive Acts or Practices (UDAP)” Authority.** Section 5(a) of the FTC Act grants the Commission the authority to police potential “unfair or deceptive acts or practices,” a powerful tool granted exclusively to the FTC. This language would require that FTC include in its budget request extensive details about each enforcement action using this authority, placing an unreasonable burden on the agency and creating a potential disincentive to pursue violations of misconduct.

FY 2024 Transportation, Housing, and Urban Development (THUD) Appropriations:

- **Failed Floor Amendment - Strips Department of Transportation (DOT) of Authority to Review Proposed Mergers.**³² The Department of Transportation plays an important role in evaluating the legality of potential mergers in the transportation sector. They have the legal authority to analyze and review mergers, and to challenge a deal should DOT determine it would harm consumers, workers, and the economy.³³ Secretary Pete Buttigieg made history this year, for the first time committing DOT to opposing an airline merger, the acquisition of Spirit Airlines by JetBlue, which was fortunately blocked by a successful challenge from DOJ’s Antitrust Division in January.³⁴

³⁰ Rep. Scott Fitzgerald Amendment #42 to H.R.4664, “Financial Services and General Government Appropriations Act,” 2024, 118th Cong. (2023),

https://amendments-rules.house.gov/amendments/Fitzgerald%20FY24%20FSGG%20Sec%205%20Amendment231027134210217.pdf?_gl=1*hljsjos*_ga*MjEwODc1MzczOS4xNzA2MDQwMDA5*_ga_N4RTJ5D08B*MTcwNzQzMDU1MS4xLjEuMTcwNzQzMjY0Ni4wLjAuMA.

³¹ Federal Trade Commission, “Policy Statement Regarding the Scope of Unfair Methods of Competition Under Section 5 of the Federal Trade Commission Act” (Nov. 2022)

https://www.ftc.gov/system/files/ftc_gov/pdf/p221202sec5enforcementpolicystatement_002.pdf.

³² Rep. Thomas Massie Amendment #166 to H.R.4820, “Financial Services and General Government Appropriations Act,” 2024, 118th Cong. (2023),

https://amendments-rules.house.gov/amendments/MASSIE_060_xml231030090902734.pdf?_gl=1*tn9dhk*_ga*MjEwODc1MzczOS4xNzA2MDQwMDA5*_ga_N4RTJ5D08B*MTcwNzQzMDU1MS4xLjEuMTcwNzQzMjY0Ni4wLjAuMA..

³³ Department of Transportation, “Mergers and Acquisitions,” (Feb. 2015)

<https://www.transportation.gov/policy/aviation-policy/competition-data-analysis/mergers-acquisitions>

³⁴ Nate Raymond, David Shepardson and Rajesh Kumar Singh, “US judge blocks JetBlue from acquiring Spirit Airlines,” Reuters (Jan. 2024)

<https://www.reuters.com/markets/deals/us-judge-blocks-jetblue-acquiring-spirit-airlines-2024-01-16/>; American Economic Liberties “Fact Sheet: How a JetBlue-Spirit Merger Will Hurt Travelers, Working People, and Local Communities,” (Oct. 2023)

<https://www.economicliberties.us/our-work/fact-sheet-how-a-jetblue-spirit-merger-will-hurt-travelers-working-people-and-local-communities/>.

The Biden Administration has made important steps towards reining in monopoly power and holding accountable corporations jacking up the prices consumers are forced to pay for gas, groceries, healthcare, and other necessary services. However, there is still more to do, and it is imperative that Congress not stand in the way of this critical work. **We urge you to use any leverage available to prevent these harmful provisions, any new language or attack on the Biden competition agenda not attempted in 2023, or any other poison-pill rider from being included in any FY24 appropriations legislation or accompanying reports.** Thank you for your commitment to a strong, vibrant, competitive economy. We appreciate your hard work on behalf of the American people.

Sincerely,

20/20 Vision

American Economic Liberties Project

Consumer Reports

Campaign for Family Farms and the Environment

Demand Progress

Economic Security Project

Farm Action Fund

Food & Water Watch

HEAL (Health, Environment, Agriculture, Labor) Food Alliance

Indivisible

National Farmers Union

Open Markets Institute

P Street

People's Action

Public Citizen

Rural Advancement Foundation International

The Tech Oversight Project