

Tuesday, May 10, 2022

Senator Maria Cantwell
Chair
Committee on Commerce, Science, and
Transportation
United States Senate
Washington, DC 20510

Senator Roger Wicker
Ranking Member
Committee on Commerce, Science, and
Transportation
United States Senate
Washington, DC 20510

Re: Consumer Protection Remedies Act of 2022

Dear Chair Cantwell and Ranking Member Wicker,

The undersigned consumer protection organizations write in support of S. 4145, the Consumer Protection Remedies Act of 2022. This bill would restore the Federal Trade Commission’s (FTC) authority to stop misconduct in the marketplace, and critically, to provide timely refunds and equitable relief to victims of consumer fraud and deception.

For more than 40 years, the FTC relied on §13(b) of the FTC Act to hold fraudsters and wrongdoers accountable for violating the law—both by stopping wrongdoers from profiting from their fraudulent acts, and by ensuring that bad actors repay the consumers and small businesses they harm. However, the Supreme Court’s 2021 holding in *AMG Capital Management, LLC, et al. v. Federal Trade Commission*—that §13(b) does not give the FTC the authority to get such monetary relief, and that Congress would need to restore the FTC’s ability to refund harmed consumers—severely diminished the value of this crucial law enforcement tool.

Without § 13(b) authority, the FTC can no longer effectively strip the ill-gotten earnings from payday lenders that trick some of the most vulnerable consumers with hidden fees, or send adequate refunds to small business owners who had money illegally withdrawn from their accounts by lenders. And this also seriously undermines the FTC’s ability to combat practices of big tech companies that have taken advantage of their market power to crowd out small businesses and exploit consumers’ personal data.

Between October 2016 and the Supreme Court’s holding in April 2021, the FTC refunded more than \$11 billion to at least 12 million wronged consumers across the country.¹ And while the FTC retains authority under §5 and §19 to obtain restitution for consumers, these approaches are structurally arduous and slow, risking not only the agency’s ability to ultimately ensure that wronged consumers are indeed repaid, but that victims’ funds are restored in a timely manner. In an economic moment where 35% of adults would have trouble covering a \$400 emergency

¹FTC, “FTC Refunds to Consumers” FY 2017-2021, online at: https://public.tableau.com/app/profile/federal.trade.commission/viz/Refunds_15797958402020/RefundsbyDate

expense, where consumers nationwide are feeling the pocketbook effects of inflation and price hikes, consumers cannot afford to wait.²

Importantly, this bill permits the §13(b) authorities for equitable remedies to all violations of the FTC Act, without artificial delineations of the types of illegal acts that should qualify. The FTC has authority to enforce against unfair and deceptive acts and practices, as well as unfair methods of competition. It should have authority to seek equitable remedies – disgorgement of ill-gotten gains, and restitution for consumer losses – in all cases under its jurisdiction. Requiring the disgorgement of illegally acquired gains is not punitive, but purely a matter of making sure that entities defrauding and deceiving consumers nationwide do not get to retain the profits gained by their illegal acts. Simply: if a business makes money from violating the FTC Act, it should not be able to keep that money.

Restoring the FTC’s §13(b) disgorgement and restitution authority is crucial to ensuring swift repayment to defrauded consumers. The signatories to this letter would also urge the Committee to consider going further in both authority and funding. Consumers deserve an FTC empowered with the tools and resources to proactively deter bad actors and keep industries honest. One such tool would be the authority to obtain civil penalties against the worst actors at the earliest possible instance, which would provide real teeth to enforcement that would create a needed deterrent for would-be bad actors. Allowing companies to engage in and profit from harmful behavior without threat of penalty does not provide sufficient disincentive to prevent fraud and other ills to consumers. And civil penalty authority would help in part because unscrupulous actors know there is a relatively low chance of enforcement at present because the FTC has such tightly limited staff and capacity. Right now, the FTC receives a paltry \$431 million dollars annually to keep consumers safe across the \$25 trillion dollar economy.³ Congress also needs to provide the FTC with the funding necessary to empower it to accomplish its sweeping consumer protection and competition missions.

As a starting point, the FTC must have the authority to obtain monetary and other equitable relief from those who would harm seniors, veterans, small businesses, and all vulnerable consumers; and must be able to seek injunctions to stop scams as they occur to prevent further harms to these same communities. We urge the Committee to refrain from imposing additional burdensome requirements, such as unduly restricting the statute of limitations period or requiring a higher standard of proof of wrongdoing. These unnecessary

² Federal Reserve, “Report on the Economic Well-Being of U.S. Households in 2020 - May 2021” (May 19, 2021) online at: <https://www.federalreserve.gov/publications/2021-economic-well-being-of-us-households-in-2020-dealing-with-unexpected-expenses.htm>, Consumer Reports, “How to Save Money as Consumer Prices Keep Rising” (April 12, 2022) online at: <https://www.consumerreports.org/inflation-prices/how-inflation-is-affecting-consumers-a1015624367/>, New York Times, “Pandemic’s Economic Impact Is Easing, but Aftershocks May Linger” (February 19, 2022) online at: <https://www.nytimes.com/2022/02/19/business/covid-economy.html>.

³ Federal Spending — Federal Trade Commission (FTC) FY 2022 Summary, online at: <https://www.usaspending.gov/agency/federal-trade-commission?fy=2022>

hurdles would undermine the Commission, making its good work more costly and taxing to achieve, and depriving scam victims of rightful remedies.

Congress must act to ensure that the FTC can effectively pursue timely remedies for consumers and discourage predatory scammers and bad actors. We strongly support the Consumer Protection Remedies Act of 2022, and urge the Committee to pass it swiftly. Thank you for acting to protect consumers.

Sincerely,

20/20 Vision

Americans for Financial Reform

Center for Digital Democracy

Consumer Action

Consumer Federation of America

Consumer Reports

National Association of Consumer Advocates

National Consumer Law Center (on behalf of its low-income clients)

Texas Appleseed

Truth in Advertising

Tzedek DC

UC Berkeley Center for Consumer Law & Economic Justice

US PIRG