



**Comments of Paul Steidler  
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Federal Trade Commission  
Petition for Rulemaking of the U.S. Chamber of Commerce  
FTC-2023-0059**

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The U.S. Chamber of Commerce’s petition requesting that the Federal Trade Commission (FTC) initiate a process to revise the rule regarding disqualification of Commissioners (16 CFR § 4.17) in adjudicative or rulemaking proceedings merits support from the FTC. It is a reasonable, common sense, and non-burdensome proposal that will serve the public good and enhance the reputation of the FTC.

Indeed, this is a proposal that FTC commissioners and staff should welcome and embrace. It will provide more transparency and respect for how decisions are made, thereby lowering costs and reputational harm the FTC would otherwise incur. It will also reduce the likelihood that FTC decisions will be vacated after extensive time and work.

As a general matter, voluntary recusals are a reasonable and good thing that people of integrity are typically glad to make, or at least willing to make. When in doubt, it is better to err on the side of recusal.

This applies to the situations enumerated in the Chamber’s petition: conflicts of interest, bias, prejudgment, and the appearance of bias. In most situations, the potential need for a recusal will be clear before a proceeding begins, thus ensuring the proceeding is not unduly disrupted.

The FTC should not produce partisan, political decisions, but, wherever possible, find common ground so decisions have broad, compelling support, and are able to withstand legal scrutiny outside the FTC. If a recusal does not voluntarily occur, or is not compelled by the other commissioners, having a public record of the FTC Ethics Official’s findings and the reasons for the commissioners’ finding of non-recusal will provide reasonable and necessary transparency on an issue that is central to the proceeding.

Furthermore, when a Commissioner refuses to accept the recusal recommendation of the FTC Ethics Official and the other commissioners accept his or her participation, it raises the obvious question: Why? When this process is generally secretive, as it is now, policymakers, parties before the FTC, and the public have a well-founded basis to be skeptical, and even suspicious, that there has been potentially inappropriate deal-making among commissioners.

Adopting the Chamber's rule will also likely have the practical effect of raising the standards for future Commissioners who are nominated. It will help to weed out those who bring an agenda to the FTC for personal financial gain and/or notoriety. The public is best served when it is assured that the Commissioners bring rigorous and thoughtful backgrounds on the law, and a willingness to look at each case independently and thoroughly.

Furthermore, the Chamber's petition will guard against frivolous motions to remove a Commissioner. First, there is a two-step process: an ethics review followed by a vote by the Commission. During this time, the Commissioner will have ample opportunity to defend and explain why he or she does not believe recusal is warranted.

There is also a related significant consumer protection issue which underscores the need for the revised rule. FTC decisions impact the value of publicly traded companies.

Retail and institutional investors who manage pensions and 401(k)s for hard working Americans take into account proceedings before the FTC when deciding whether to buy, sell, or hold securities. By withholding reasons for a non-recusal, which could subsequently lead to an FTC decision being vacated by a court, investors will be significantly harmed.

As such, the FTC would be violating the spirit, if not the letter, of the consumer protection laws it is designed to uphold and enforce. The FTC would be inflicting harm on consumers, rather than protecting them.

To summarize, the Chamber's proposal is clear and compelling. It facilitates discussion and transparency so that better decisions regarding recusals are made, thereby ensuring better adjudications and rulemaking, and enhanced reputational standing for the FTC.

Thank you for your attention to these matters.