



March 18, 2024

The video can be viewed here. [https://www.youtube.com/watch?v=8Qo\\_wQubigo](https://www.youtube.com/watch?v=8Qo_wQubigo)

## A Discussion with Ashley Baker on the FTC's New Commissioners

**Paul Steidler:** Good afternoon. I'm Paul Steidler with the Lexington Institute, and I'm joined by Ashley Baker director of Public Policy at the Committee for Justice. We're going to briefly talk about one of Washington's most disruptive and impactful federal agencies in recent years the Federal Trade Commission, which is about to undergo some changes.

On March 7th, the US Senate confirmed Melissa Holyoak and Andrew Ferguson as new commissioners giving the FTC a full slate of five commissioners. Ashley is a nationally renowned expert on issues at the intersection of the courts, regulation and technology including antitrust and administrative law.

She's the founder of the Alliance on Antitrust Coalition, has testified before the US Senate on antitrust law and has worked closely on efforts to confirm three Supreme Court nominees. You can follow Ashley on X, formerly Twitter at andashleysays. That's A-N-D-A-S-H-L-E-Y-S-A-Y-S.

Ashley, welcome. The FTC's chair, Lina Kahn, has an ambitious and controversial agenda. How do the two new commissioners impact Chair Kahn's ability to drive that agenda?

**Ashley Baker:** Well, the confirmation of the two new commissioners will certainly impact Lina Kahn's agenda, given that it balances out what has been an all-Democratic agency for nearly a year. It restores the full slate of commissioners for the first time for almost a year and a half at this point.

So, the two new Republican commissioners will not necessarily impact there being a Democratic majority-only commission. There are still three Democrat-appointed commissioners, but they will vote on all enforcement and policy recommendations that require commission approval. And since we've had a 3-0 commission, we haven't seen any dissenting opinions whatsoever. So, you can see a lot of dissents potentially being written here in the future.

**Paul Steidler:** Chair Kahn and two other commissioners, Rebecca Slaughter and Alvaro Bedoya, as you mentioned, tend to vote the same way. Why are the expected dissents important?

**Ashley Baker:** Since the three commissioners do tend to, as you pointed out, tend to vote in lockstep, then dissents are important. They're important both to the public and they're important in courts as well. So, you can expect to see statements from the new commissioners questioning some of these more novel legal theories that are being used by today's FTC, and also raising some public concerns about some of the more novel interpretations of the law that we see under Lina Kahn.

So, these dissents can be used to shed light on the policy priorities and these legal theories that are being used by the FTC. And also at the same time, they can use these dissents to lay up the more appropriate boundaries and criteria for the FTC's enforcement authority.

Then additionally, the second purpose is dissents can lay out a really clear framework for challenges to these new proposals and enforcement actions. They can be very helpful in court and they can be very helpful to future litigants because a well-written dissent by a sitting commissioner can provide sort of a roadmap for these challenges.

Also, it can be more persuasive to judges than the typical industry and appellate advocates when you have a sitting commissioner writing about the FTC's authority and giving that sort of context and defining what exactly the FTC can and cannot do and what those legal boundaries are.

**Paul Steidler:** And will the public be better served by these confirmations? Ultimately, that seems to be what's most important here.

**Ashley Baker:** Ultimately, yes. I mean, although, like I pointed out, we will still see the Democratic majority being able to successfully get through their proposals.

I think in general, regardless of the party or the nominees, that the public is best served by a full commission of five commissioners, because then that forces the commission to undergo the deliberative process of at least trying to get the two who are in the minority on board. But whether or not they're successful, there's a possibility of dissent.

And then there's also the possibility of the two newly appointed commissioners reaching some sort of more consensus, more of a middle ground that will both protect consumers while at the same time, not unduly restrict business activity.

**Paul Steidler:** Okay. Thank you. We've been speaking with Ashley Baker, director of public policy at the Committee for Justice. I'm Paul Steidler with the Lexington Institute. Appreciate you joining us.

**Ashley Baker:** Thank you.