

This copy is for your personal, non-commercial use only. Distribution and use of this material are governed by our Subscriber Agreement and by copyright law. For non-personal use or to order multiple copies, please contact Dow Jones Reprints at 1-800-843-0008 or visit [www.djreprints.com](http://www.djreprints.com).

<https://www.wsj.com/articles/why-im-resigning-from-the-ftc-commissioner-ftc-lina-khan-regulation-rule-violation-antitrust-339f115d>

OPINIONCOMMENTARY [Follow](#)

## *Why I'm Resigning as an FTC Commissioner*

Lina Khan's disregard for the rule of law and due process make it impossible for me to continue serving.

Wilson

:08 pm ET



FTC Chairman Lina Khan speaks on Capitol Hill, April 21, 2021.

PHOTO: GRAEME JENNINGS/ASSOCIATED PRESS

Much ink has been spilled about Lina Khan's attempts to remake federal antitrust law as chairman of the Federal Trade Commission. Less has been said about her disregard for the rule of law and due process and the way senior FTC officials enable her. I have failed repeatedly to persuade Ms. Khan and her enablers to do the right thing, and I refuse to give their endeavor any further hint of legitimacy by remaining. Accordingly, I will soon resign as an FTC commissioner.

Since Ms. Khan's confirmation in 2021, my staff and I have spent countless hours seeking to uncover her abuses of government power. That task has become increasingly difficult as she has consolidated power within the Office of the Chairman, breaking decades of bipartisan precedent and undermining the commission structure that Congress wrote into law. I have sought to provide transparency and facilitate accountability through speeches and

statements, but I face constraints on the information I can disclose—many legitimate, but some manufactured by Ms. Khan and the Democratic majority to avoid embarrassment.

Consider the FTC's challenge to Meta's acquisition of Within, a virtual-reality gaming company. Before joining the FTC, Ms. Khan argued that Meta should be blocked from making any future acquisitions and wrote a report on the same issues as a congressional staffer. She would now sit as a purportedly impartial judge and decide whether Meta can acquire Within. Spurning due-process considerations and federal ethics obligations, my Democratic colleagues on the commission affirmed Ms. Khan's decision not to recuse herself.

I dissented on due-process grounds, which require those sitting in a judicial capacity to avoid even the appearance of unfairness. The law is clear. In one case, a federal appeals court ruled that an FTC chairman who investigated the same company, conduct, lines of business and facts as a committee staffer on Capitol Hill couldn't then sit as a judge at the FTC and rule on those issues. In two other decisions, appellate courts held that an FTC chairman couldn't adjudicate a case after making statements suggesting he prejudged its outcome. The statements at issue were far milder than Ms. Khan's definitive pronouncement that all Meta acquisitions should be blocked. These cases, with their uncannily similar facts, confirm that Ms. Khan's participation would deny the merging parties their due-process rights.

I also disagreed with my colleagues on federal ethics grounds. To facilitate transparency and accountability, I detailed my concerns in my dissent—but Ms. Khan's allies ensured the public wouldn't learn of them. Despite previous disclosures of analogous information, Commissioners Rebecca Slaughter and Alvaro Bedoya imposed heavy redactions on my dissent. Commission opinions commonly use redactions to prevent disclosure of confidential business information, but my opinion contained no such information. The redactions served no purpose but to protect Ms. Khan from embarrassment.

I am not alone in harboring concerns about the honesty and integrity of Ms. Khan and her senior FTC leadership. Hundreds of FTC employees respond annually to the Federal Employee Viewpoint Survey. In 2020, the last year under Trump appointees, 87% of surveyed FTC employees agreed that senior agency officials maintain high standards of honesty and integrity. Today that share stands at 49%.

Many FTC staffers agree with Ms. Khan on antitrust policy, so these survey results don't necessarily reflect disagreement with her ends. Instead, the data convey the staffers' discomfort with her means, which involve dishonesty and subterfuge to pursue her agenda. I disagree with Ms. Khan's policy goals but understand that elections have consequences. My

fundamental concern with her leadership of the commission pertains to her willful disregard of congressionally imposed limits on agency jurisdiction, her defiance of legal precedent, and her abuse of power to achieve desired outcomes.

Three additional examples are illustrative. In November 2022, the commission issued an antitrust enforcement policy statement asserting that the FTC could ignore decades of court rulings and condemn essentially any business conduct that three unelected commissioners find distasteful. If conduct can be labeled with a nefarious adjective—“coercive,” “exploitative,” “abusive,” “restrictive”—it may violate the FTC Act of 1914. But the new policy contains no descriptions or definitions of these terms, many of which also lack context in the law. The commission also candidly explained that its analysis under the new policy may depart from prior antitrust precedent, and identified previously lawful conduct as now suspect. In other words, the new policy adopts an “I know it when I see it” approach. But due process demands that the lines between lawful and unlawful conduct be clearly drawn, to guide businesses before they face a lawsuit.

In January 2023, the commission launched a rulemaking that would ban nearly all noncompete clauses in employee contracts, affecting roughly one-fifth of employment contracts in the U.S. This proposed rule defies the Supreme Court’s decision in *West Virginia v. EPA* (2022), which held that an agency can’t claim “to discover in a long-extant statute an unheralded power representing a transformative expansion in its regulatory authority.”

Under President Biden, FTC leadership has abused the merger review process to impose a tax on all mergers, not only those that hinder competition. Progressives tried but failed to enact a legislative moratorium on mergers in early 2020 and to pass other restrictions since. Ms. Khan now does so by fiat. Abuse of regulatory authority now substitutes for unfulfilled legislative desires.

We all know the simple rule: If you see something, say something. As an antitrust lawyer, I counseled clients to avoid trouble by knowing when to object and how to exit. When my clients attended trade association gatherings, I advised them to leave quickly if discussions with competitors took a wrong turn and raised alarm bells about price fixing or other illegal activity. Make a noisy exit—say, spill a pitcher of water—so that attendees remember that you objected and that you left. Although serving as an FTC commissioner has been the highest honor of my professional career, I must follow my own advice and resign in the face of continuing lawlessness. Consider this my noisy exit.

*Mrs. Wilson is a Republican-appointed commissioner at the Federal Trade Commission.*

