

**November 10, 2022**

Lina M. Khan, Esq., Chair  
U.S. Federal Trade Commission  
1400 Independence Ave SW  
Washington, DC 20250

Dear Chair Khan:

We are disturbed to see the announcement that only days after his final day as a Federal Trade Commissioner, former Commissioner Noah Joshua Phillips has resumed practicing corporate law as a leader of the antitrust practice at one of this country's top corporate law firms – namely, Cravath, Swaine & Moore LLP. Mr. Phillips will now be responsible for defending the interests of clients like [Facebook](#), [Google](#) and [Amazon](#) in antitrust matters – when only days ago he was responsible for enforcing antitrust law among those same companies.

From Cravath's own [press release](#): “Mr. Phillips will co-chair Cravath's Antitrust Practice and advise clients across a range of antitrust issues, including mergers, business conduct and compliance, litigation and investigations.”

FTC commissioners are accountable to the American people, not to their friends in the leadership of corporate monopolies and of the law firms that work to shield them from regulation. And make no mistake: monopolists like the Big Tech companies represent a structural threat to American freedom and to our economic health. They force prices upward across the economy through anticompetitive practices. They market our personal information to generate hundreds of billions of dollars a year in advertising and product revenue. And the Biden administration has made it a priority to address the broad social problems they cause.

The President described the situation plainly in his 2021 [Executive Order on Promoting Competition in the American Economy](#): “Excessive market concentration threatens basic economic liberties, democratic accountability, and the welfare of workers, farmers, small businesses, startups, and consumers.” He specifically called out the technology industry as one with substantial overconcentration of market power, [saying that](#) “We have to get back to an economy that grows from the bottom up and the middle out.”

In this new regulatory environment, investigations and enforcement actions by the FTC (alongside parallel work at the Department of Justice's Antitrust Division) have

increased significantly under your tenure, which we wholeheartedly support. The sunlight you have shone on market concentration through last fall's [FTC report](#) on corporate acquisitions that technology companies have kept secret illustrates the scope of the problem. With the situation so dire, it's extremely disturbing to see an influential and connected lawyer like Mr. Phillips carry his Commission connections and insider knowledge back to Cravath, where he will be directly responsible for advising corporate actors on how to evade, forestall, delay, and weaken the consequences of anticompetitive behavior. Those corporations have deep pockets, and they want to win.

And when they win, Americans lose.

The revolving door into the private sector enables former regulatory appointees like Mr. Phillips to make millions of dollars a year by working *against* the public interest. Cravath's antitrust group already [includes](#) a former FTC commissioner, two former SEC commissioners, a former FDIC chair, a former director of the U.S. Patent and Trademark Office, and deputy and assistant deputy U.S. Attorneys General. These are people who understand how the federal government works, and what kinds of legal, political, and practical tactics will help companies circumvent the laws and regulations that protect the public against corporate power.

Concerningly, outside groups had no notice or opportunity to investigate Cravath's dealings with the FTC for potential conflicts of interest ahead of Mr. Phillips joining the firm. Mr. Phillips first announced his planned departure in [August](#) of this year; the Revolving Door Project submitted FOIA requests seeking the name of prospective employers with whom Phillips was negotiating with through October. But in responding documents, the FTC shielded the name of his future employer, citing Phillip's "right to privacy." The public's right to know where public officials are next working trump any official's right to privacy of what corporate entity will soon issue a press release bragging about their highly connected new addition. And unfortunately, [recent news stories](#) have made clear that the current ethics program has not safeguarded against a conflict-free FTC, furthering the need for public accountability.

Already, Mr. Phillips is on the record as objecting to the FTC's very authority to regulate the technology industry. When the President called on the FTC to step up its investigation of market concentration in Big Tech, [he said](#), "I don't think we have the authority to do it and I don't think it's a good idea."

Mr. Phillips is [skeptical](#) of the value of breaking up Facebook, and [permissive](#) toward Big Tech acquisitions. He has expressed [opposition to data privacy regulations](#) such as

California's Consumer Privacy Act. And while at the FTC, he [voted against](#) opening a privacy study into major tech platforms like Facebook and Amazon, argued against the FTC's authority [to make competition rules](#) and [data privacy regulations](#), and [objected](#) to rules requiring that data breaches be disclosed.

These are the attitudes he will bring to his work on behalf of Big Tech and other corporate monopolies. And that work to undermine strong regulation will run directly contrary to the FTC's mission.

We ask that you publish any documents in the possession of the Commission regarding Mr. Phillips' past relationship with Cravath and its clients, including which may have impacted Mr. Phillips actions or decisions on regulatory issues that came before commissioners during his tenure. We further ask that you issue or re-issue guidelines to all FTC personnel regarding conflict of interest and guidelines for recusal, as well as clarify disclosure procedures for outgoing FTC personnel who may be job-seeking in the corporate sector. And we implore you to redouble your efforts to investigate violations of the letter and spirit of U.S. anti-monopoly and fair trade regulations, and enforce the relevant laws and regulations with diligence and urgency against even the most deep-pocketed offenders. We cannot allow coziness between former regulatory appointees on the one hand, and corporate leaders on the other, to derail your work to advance the public interest.

Thank you for your attention to this matter.

Sincerely,

Revolving Door Project  
Good Jobs First  
American Principles Project  
Freedom Righteous Organizing Collaborative  
Athena Coalition  
Demand Progress Education Fund  
People's Parity Project  
Institute for Local Self-Reliance