

PREPARED STATEMENT OF THE FEDERAL TRADE COMMISSION:

THE URGENT NEED TO FIX2 0 62 72 reW*BTF1 12 Tf1 0 0 1 7 67.2 Tm0 GW72 reW*BTF1

I. INTRODUCTION

Chair Schakowsky, Ranking Member Bilirakis, and Members of the Subcommittee, I am Rebecca Kelly Slaughter, Acting Chairwoman of the Federal Trade Commission, and I am pleased to appear before you today. In this testimony, we express our gratitude for the introduction of H.R. 2668 and explain why legislation is so urgently needed to address legal challenges to critical authority that enables the FTC to do its job of protecting consumers and competition.

House bill 2668, which Congressman Cárdenas introduced last week, addresses the two significant judicial limitations to Section 13(b) of the FTC Act. First, late last week, the Supreme Court ruled that courts can no longer award refunds to consumers in FTC cases brought under 13(b), reversing four decades of case law that the Commission has used to provide billions of dollars of refunds to harmed consumers. Second, some courts recently have ruled that the Commission cannot seek injunctive relief under 13(b) in cases where the unlawful conduct is no longer occurring, even if there is a reasonable likelihood that it will re-occ

others.² More recently, in the wake of the pandemic, the FTC has used Section 13(b) to take action against entities operating COVID-related scams.³ Section 13(b) enforcement cases have resulted in the return of billions of dollars to consumers targeted by a wide variety of illegal scams and anticompetitive practices, including \$11.2 billion in refunds to consumers during just the past five years.⁴ Section 13(b) is a critical tool in support of our enforcement missions, but its effectiveness has been substantially curtailed by recent judicial decisions, which have

its intent to enable the FTC to obtain monetary remedies when it expanded the venues available

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Recent judicial rulings, however, indicate a dramatic shift in how courts are interpreting and applying Section 13(b) in FTC cases. For example, in 2019, the Seventh Circuit, in *FTC v. Credit Bureau Center, LLC*,⁷ overruled its three decades of precedent and held that Section 13(b) no longer allows the FTC to obtain monetary relief. The *Credit Bureau Center* opinion held that

restitution or disgorgement is not authorized by the text of Section 13(b).⁹ That is why we call on you to fix our statute to clarify .

III. LEGISLATION IS ALSO NEEDED TO ENSURE THAT THE FTC CAN KEEP HARMFUL CONDUCT FROM RE-OCCURRING

In addition to the decisions that to return money to consumers, two other recent Third Circuit decisions reinterpreting Section 13(b) jeopardize

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future. The efficiently. Targets of FTC
investigations now routinely argue that they are immune from suit in federal court because they are no longer violating the law, despite a likelihood of re-occurrence, and they make these arguments even when they stopped violating the law only after learning that the FTC was investigating them.

Overall, these recent decisions have significantly limited most effective tool for providing refunds to harmed consumers, and, if Congress does not act promptly, the FTC will be far less effective in its ability to protect consumers and execute its law enforcement mission.

IV. CONCLUSION

We respectfully request that Congress act to clarify Section 13(b) of the FTC Act and revive enjoin illegal conduct and return to consumers money they have lost, which will greatly assist our efforts to protect consumers.

We look forward to continuing to work with the Subcommittee, Committee, and Congress, and we would be happy to answer your questions.