No. 21-86

In The

Supreme Court of the United States

AXON ENTERPRISE, INC.,

Petitioner,

v.

FEDERAL TRADE COMMISSION, ET AL.,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF OF ATLANTIC LEGAL FOUNDATION AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

LAWRENCE S. EBNER
Counsel of Record
ATLANTIC LEGAL FOUNDATION
1701 Pennsylvania Ave., NW
Washington, DC 20006
(202) 729-6337
lawrence.ebner@atlanticlegal.org

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INTEREST OF THE *AMICUS CURIAE* [1]

Established in 1977, the Atlantic Legal Foundation is a national, nonprofit, nonpartisan, public interest law firm whose mission is to advance the rule of law and civil justice by advocating for individual liberty, free enterprise, property rights, limited and efficient government, sound science in judicial and regulatory proceedings, and school choice. With the benefit of guidance from the distinguished legal scholars, corporate legal officers, private practitioners, business executives, and prominent scientists who serve on its Board of Directors and Advisory Council, the Foundation pursues its mission by participating as *amicus curiae* in carefully selected appeals before the Supreme Court, federal courts of appeals, and state supreme courts. *See* atlanticlegal.org.

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The Atlantic Legal Foundation is filing this brief because the question presented—whether Congress has impliedly stripped district courts of federal question jurisdiction over constitutional challenges to the structure of the Federal Trade Commission's administrative enforcement process—is exceptionally important. The issue of where and when such

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[1] Both Petitioner's and Respondents' counsel of record have lodged blanket consents for the filing of amicus briefs. In accordance with Supreme Court Rule 37.6, the Atlantic Legal Foundation certifies that no counsel for a party authored this brief in whole or part, and that no party or counsel other than the Atlantic Legal Foundation or its counsel made a monetary contribution intended to fund preparation or submission of this brief.

structural constitutional claims not only can be heard by an Article III court, but also afforded meaningful judicial review, goes to the heart of due process, civil justice, and the rule of law. It is a question of whether justice delayed is justice denied.

The issue is important also because it implicates the *modus operandi* of one of the most powerful and aggressive, indeed intimidating, independent regulatory agencies in the federal administrative state. Congress vested the Federal Trade Commission (FTC) with broad authority "to prevent persons, partnerships, or corporations . . . from using unfair methods of competition [and] unfair or deceptive acts or practices," 15 U.S.C. § 45(a)(2). The question of whether the FTC carries out this expansive mandate in a constitutionally infirm manner is an issue that implicates free enterprise and limited government. It potentially affects myriad American businesses and industries, and in turn, the U.S. economy and the public interest.

SUMMARY OF ARGUMENT

"[J]ustice delayed is justice denied" is "one of the basic principles of our legal system." *Deitrich v. The Boeing Co.*, 14 F.4th 1089, 1095 (9th Cir. 2021). But here, a divided Ninth Circuit panel relegated justice to the back burner. The panel majority held that an FTC civil enforcement target such as Petitioner Axon Enterprise, Inc. must suffer the litigation costs and burdens, business disruption, reputational harm, and adverse outcome of a fully adjudicated FTC administrative enforcement proceeding before seeking judicial review of wholly collateral, *threshold* claims concerning the entire proceeding's constitutional

legitimacy. As Axon has explained to the Court, these structural constitutional claims include (i) the opaque "clearance process" by which the FTC and the Justice Department's Antitrust Division allocate antitrust enforcement matters between themselves; (ii) the all-in-one administrative process by which the FTC investigates, prosecutes, and adjudicates antitrust (and consumer protection) enforcement matters, and then hears, in the first instance, appeals challenging its own cease-and-desist orders; and (iii) the dual-layer, for-cause-only removal protection afforded to the FTC's sole administrative law judge ("ALJ"). *See* Br. of Pet. at 7-10.

In the panel majority's own words, Axon has raised "*serious concerns* about how the FTC operates," including "*substantial questions* about whether the FTC's dual-layered for-cause protection for ALJs violates the President's removal powers under Article II." Pet. App. 25 (emphasis added) (citing *Free Enter. Fund v. Pub. Co. Acct. Oversight Bd.*, 561 U.S. 477, 484 (2010); *Lucia v. SEC*, 138 S. Ct. 2044 (2018); *Seila Law LLC v. CFPB*, 140 S. Ct. 2183, 2192 (2020)). The majority also agreed that "Axon raises *legitimate questions* about whether the FTC has stacked the deck in its favor in its administrative proceedings" due to "the fact that the FTC combines investigatory, prosecutorial, adjudicative, and appellate functions within a single agency." Pet. App. 11, 26 (emphasis added). According to the majority, "Axon can have its day in court—but *only after* it first completes the FTC administrative hearing." Pet. App. 26 (emphasis added). Yet, the majority's strikingly ambivalent, almost apologetic opinion acknowledges that "it makes

little sense to force a party to undergo a burdensome administrative proceeding to raise a constitutional challenge against the agency's structure before it can seek review from the court of appeals." Pet. App. 18. In other words, compelling Axon to suffer, as a prerequisite to judicial review, the very same constitutional injuries that it seeks to avoid defies common sense, as well as this Court's precedents.

Neither the FTC Act's judicial review provision, 15 U.S.C. § 45(c), which expressly limits court of appeals review to FTC cease-and-desist orders, nor any other statute, impliedly strips district courts of § 1331 federal question jurisdiction to hear threshold constitutional challenges to the FTC's administrative enforcement process. In *Free Enterprise Fund*, this Court reaffirmed that courts should "presume that Congress does not intend to limit [district court] jurisdiction if 'a finding of preclusion could foreclose all meaningful judicial review'; if the suit is 'wholly collateral to a statute's review provisions'; and if the claims are 'outside the agency's expertise.'" 561 U.S. at 489 (quoting *Thunder Basin Coal Co. v. Reich*, 510 U.S. 200, 212-13 (1994)). As Axon has demonstrated, each of these *Free Enterprise Fund/Thunder Basin* factors is satisfied here. *See* Br. of Pet. at 39-45.

This amicus brief focuses on the need for meaningful judicial review of structural constitutional claims. Meaningful review of such claims is not some sort of jurisdictional tin can that Congress intended to kick down the judicial road for as long as possible: Meaningful judicial review is not possible if an FTC enforcement target first must subject itself—on the FTC's own tilted playing field—to the very same

harms that it contends render the FTC's administrative process structurally unconstitutional. Nor can judicial review of structural constitutional claims be meaningful if a court of appeals, following a fully adjudicated FTC administrative enforcement proceeding, lacks statutory authority under § 45(c) to consider and/or redress structural constitutional flaws.

Further, judicial review cannot be meaningful if it is not even available. As a practical matter, the FTC vigorously adheres to its well-entrenched "culture of consent," *i.e.*, its extensive, coercive, and sometimes abusive use of consent decrees to rack up self-publicized enforcement victories through "negotiated" settlements with hapless corporate or individual respondents. The FTC's incessant pursuit of consent agreements, coupled with the formidable fact "that FTC has not lost a single case in the past quarter-century," Pet. App. 26, sharply reduces the number of administrative complaints that FTC enforcement respondents such as Axon are able or willing to litigate in an adjudicatory proceeding conducted by the FTC's own ALJ under the FTC's own procedural rules. As a result, to the extent, if any, that courts of appeals have authority under § 45(c) to review and rectify constitutional flaws in the structure of the FTC's administrative enforcement process, the opportunities for obtaining such review are few and far between. This is another reason why precluding district courts from exercising federal question jurisdiction over structural constitutional claims would foreclose meaningful judicial review.

The Court should hold that federal district courts have jurisdiction to consider, in the first instance, whether there are constitutional infirmities that infect the FTC administrative enforcement process. Such a ruling by this Court, followed by district court review of threshold constitutional claims like those raised and pressed by Axon here, would help to make administrative adjudication of FTC enforcement complaints a more viable option for businesses and individuals caught in the FTC's crosshairs. The alternative—emboldening the FTC by continuing to leave the vast majority of its enforcement targets little choice other than acceding to the onerous terms of FTC staff-dictated consent orders (such as the FTC's unreasonable demand that Axon create a competitor clone and supply it with Axon's intellectual property and proprietary technology) would be deleterious to the public interest.

ARGUMENT

Constitutional Claims That Challenge The Structure Of The FTC's Administrative Enforcement Process Are Entitled To Meaningful Judicial Review In District Courts

A. Delayed judicial review of threshold structural constitutional claims cannot be meaningful

This Court repeatedly has emphasized that district courts are not impliedly stripped of subject-matter jurisdiction "where a finding of preclusion could foreclose all meaningful judicial review." *Thunder Basin*, 510 U.S. at 212-13; *see, e.g.*, *Free Enter. Fund*,

561 U.S. at 489 (summarizing the presumption against preclusion); *Elgin v. Dep't of the Treasury*, 567 U.S. 1, 15 (2012) (same); *see also Cochran v. SEC*, 20 F.4th 194, 201-06 (5th Cir. 2021) (en banc), *petition for cert. filed* (U.S. Mar. 11, 2022) (No. 21-1239) (discussing *Thunder Basin*, *Free Enterprise,* and *Elgin*); *Bennett v. SEC*, 844 F.3d 174, 183 n.7 (4th Cir. 2016) (agreeing with other circuits that "meaningful judicial review is the most important factor in the *Thunder Basin* analysis"); *see generally* Linda D. Jellum, *The SEC's Fight to Stop District Courts from Declaring Its Hearings Unconstitutional* (Jan. 1, 2022), Tex. L. Rev. (forthcoming) (manuscript at 13-16) (discussing "*Thunder Basin*'s Meaningful Review Step").[2]

Free Enterprise Fund is the most apt precedent in the *Thunder Basin* line of implied preclusion cases. *See Cochran*, 20 F.4th at 208 (distinguishing *Free Enterprise Fund*, where the plaintiffs sought "structural relief," from *Thunder Basin* and *Elgin*, where the plaintiffs sought "substantive relief"). The Court held in *Free Enterprise Fund* that the Securities Exchange Act's judicial review provision, 15 U.S.C. § 78y, did not impliedly strip a district court of an accounting firm's structural constitutional challenge to the SEC-supervised Public Company Accounting Oversight Board (PCOAB). 561 U.S. at 489-91; *see also* Pet. App. 10 (noting that the FTC Act's judicial review provision, 15 U.S.C. § 45(c), "is almost identical to the statutory review provision in the SEC Act").

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[2] Available at https://tinyurl.com/ywjzyejh.

"Like the accounting firm in *Free Enterprise Fund*, [Axon] is challenging the constitutional authority of [its] adjudicator." *Cochran*, 20 F.4th at 209. "The nature of [its] challenge is structural—it does not depend on the validity of any substantive aspect of the [FTC Act], nor of any [FTC] rule, regulation, or order. Indeed, [Axon] is challenging the [FTC Act's] statutory-review scheme itself." *Id.* at 207. As Circuit Judge Bumatay noted in his dissenting opinion here, "[w]inning on the antitrust merits does nothing to remedy Axon's independent injury of being subject to an unconstitutional structure or procedure. . . . 'a separation-of-powers violation may create a "here-and-now" injury' that is *independent* on the agency's merits determinations." Pet. App. 37 n.3 (Bumatay, J., concurring in the judgment in part and dissenting in part) (quoting *Free Enter. Fund*, 561 U.S. at 513)).

Citing *Thunder Basin*, the Court explained in *Free Enterprise Fund*, 561 U.S. at 490, that it did "not see how petitioners could meaningfully pursue their constitutional claims under the Government's theory," which would have required them to incur an SEC-affirmed PCAOB sanction and then initiate court of appeals review under 15 U.S.C. § 78y. *See* 561 U.S. at 490-91. Squarely rejecting this delayed judicial review approach, the Court explained that because the petitioners would suffer "severe punishment should [their constitutional] challenge fail . . . we do not consider this a 'meaningful' avenue of relief." *Id.*

Thus, "[w]hen it comes to the 'meaningful judicial review' factor . . . we need look no further than *Free Enterprise* itself to understand that being forced to undergo an allegedly unconstitutional proceeding may

play into the analysis of whether judicial review is 'meaningful.'" *Tilton v. SEC*, 824 F.3d 276, 299 (2d Cir. 2016) (Droney, J., dissenting). Along the same lines, Judge Bumatay explained in his dissenting opinion that

> [b]y forcing Axon's claims into the FTC administrative process, we *effectively shut the courtroom doors* to a party seeking relief from alleged constitutional infringements. Now, Axon's only recourse is to antagonize the FTC into prosecuting the enforcement proceeding against it and then lose in that forum—all the while, *further subjecting the company to the harm it seeks to avoid*. The FTC Act does not mandate this unfortunate result.

Pet. App. 46 (emphasis added); *see also Tilton*, 824 F.3d at 298 (Droney, J., dissenting) ("Forcing the appellants to await a final Commission order before they may assert their constitutional claim in a federal court means that by the time the day for judicial review comes, they will *already have suffered the injury that they are attempting to prevent*. . . . [W]hile there may be review, *it cannot be considered truly 'meaningful'* at that point.") (emphasis added).

Further, the Court in *Free Enterprise Fund* cast substantial doubt on whether the petitioners' structural constitutional claims were encompassed by the express limitations on court of appeals review under § 78y. *See Free Enter. Fund*, 561 U.S. at 490 ("Section 78y provides only for judicial review of *Commission* action, and not every Board action is encapsulated in a final Commission order or rule.").

Similarly, Judge Bumatay explained that "adequate relief is a hallmark of meaningful review. Here, even if Axon's claim reaches a court, the only relief afforded under the FTC Act is modification or setting aside of an FTC cease-and-desist order. . . . Axon *could not obtain necessary relief* under the Act." Pet. App. 38 (emphasis added).

Thus, under this Court's precedents, there is no implied preclusion of district court federal question jurisdiction where, as in the case of the FTC Act, the administrative scheme does not provide for meaningful judicial review of such claims. *See* Jellum, *supra* at 16 ("Meaningful judicial review is available when (1) the administrative scheme offers meaningful judicial review, (2) the claim is not wholly collateral to the issues raised in the administrative hearing, and (3) the claim is within the agency's expertise to resolve.").

In determining whether preclusion of district court jurisdiction would foreclose meaningful judicial review, the Court also should take into account the real-world costs that Axon or similarly situated FTC antitrust enforcement targets would have to incur to obtain their day in court—albeit only after fully participating in a futile FTC adjudicatory process claimed to be constitutionally unsound, and then, only in a court of appeals with statutorily limited appellate jurisdiction.

- There is the substantial financial cost of mounting a defense to complex antitrust allegations in an adjudicatory hearing conducted by the FTC's ALJ under FTC's own procedural rules and then futilely

appealing to the Commission itself. *See* 15 U.S.C. § 45(b) & 16 C.F.R. Part 3; *see generally AMG Cap. Mgmt., LLC v. FTC*, 141 S. Ct. 1341, 1346 (2021) (describing FTC adjudicatory scheme); Joshua D. Wright, *Remarks at the [FTC] Symposium on Section 5 of the FTC Act* (Feb. 25, 2015), at 6 (noting that "in 100 percent of cases where the administrative law judge ruled in favor of the FTC staff, the Commission affirmed liability; and in 100 percent of the cases in which the administrative law judge . . . found no liability, the Commission reversed. This is a strong sign of an unhealthy and biased institutional process. . . .").[3]

- There is the significant business disruption cost, *i.e.*, the diversion of financial and human resources necessitated by participation in ongoing enforcement proceedings. Such disruption is particularly harmful to companies like Axon, which compete through innovation and serve the public interest.

- There is the cost of reputational harm, especially for a publicly traded company such as Axon. The FTC is not bashful about publicizing its enforcement activities. *See, e.g.*, FTC Press Release, *FTC Challenges Consummated Merger of Companies that Market Body-Worn Camera Systems to Large Metropolitan Police Departments* (Jan. 3, 2020).[4] Reputational harm, which often is irreparable, can

[3] Available at https://tinyurl.com/3ubckwyh.

[4] Available at https://tinyurl.com/srvybp56.

interfere with existing and prospective business relationships. Further, FTC enforcement proceedings need to be disclosed to shareholders, and also to federal and state corporate regulators.

- And there is the cost of the final, adverse, FTC administrative enforcement action that the Ninth Circuit majority opinion contends must be imposed before an FTC enforcement respondent can obtain judicial review of its threshold constitutional claims.

These unavoidable costs are an additional reason why, as a practical matter, stripping district courts of federal question jurisdiction over threshold constitutional claims that attack the structure of FTC's administrative enforcement process would foreclose the availability of meaningful judicial review.

B. The FTC's "culture of consent" heightens the need for district court review of structural constitutional claims

1. The FTC's extensive use of consent orders severely limits the availability of court of appeals review

Judicial review cannot be meaningful if it is not available. The FTC's "culture of consent" is another reason why this Court should not look to court of appeals review of FTC cease-and-desist orders under § 45(c) as a readily available source of meaningful judicial review for structural constitutional claims.

"Over the last 35 years, the United States Federal Trade Commission and the Antitrust Division of the Department of Justice have shifted dramatically

toward greater reliance upon consent decrees than upon litigation to resolve antitrust disputes." Joshua D. Wright & Douglas H. Ginsburg, *The Economic Analysis of Antitrust Consents*, 46 Eur. J. of L. and Econ. 245 (2018). Former FTC Commissioner Wright and D.C. Circuit Senior Judge Ginsburg have described this heavy reliance on enforcing the antitrust laws through imposition of consent decrees (also commonly referred to as consent orders or consent agreements) as a "culture of consent." *Id.* at 247; *see* Douglas H. Ginsburg & Joshua D. Wright, *Antitrust Settlement: The Culture of Consents*, 1 William E. Kovacic: An Antitrust Tribute 177 (Charbit et al. eds., 2013). "The culture of consent . . . has had an untoward effect upon the [FTC's] selection of cases to bring and, more certainly, upon the remedies [it] obtain[s] in settlement agreements." *Id.*

The FTC's current, increasingly aggressive, antitrust enforcement activities have reinvigorated the agency's ingrained culture of consent. For example—

> During fiscal year 2020, the [FTC] brought 28 merger enforcement challenges, the highest number of FTC merger enforcement actions in a single year since fiscal year 2001 when Congress raised the filing thresholds. Ten of these matters resulted in a final consent order requiring divestitures, and another eleven were abandoned or restructured as a result of antitrust concerns raised during the investigation. . . . The Commission also initiated two administrative proceedings

> [one of which was against Axon] to undo consummated mergers.

FTC Bur. of Competition & Dep't of Justice Antitrust Div., *Hart-Scott-Rodino Annual Rep.*, FY 2020 at 2;[5] *see also* Michael R. Bernstein et al. (Arnold & Porter), *What To Expect In 2022 Merger Enforcement: Trends and Developments From 2021* (2022) at 19 ("In 2021, as in other years, the majority of DOJ and FTC concerns regarding potential transactions are resolved by a consent decree negotiated by the parties and the antitrust authority reviewing the deal.").[6]

FTC regulations provide that "[e]very agreement in settlement of a Commission complaint . . . shall waive . . . all rights to seek judicial review or otherwise to challenge or contest the validity of the [consent] order." 16 C.F.R. § 2.32. As a result, when a company or individual enters into a consent agreement with the FTC to resolve an enforcement matter, any opportunity to seek judicial review of structural constitutional claims under 15 U.S.C. § 45(c) ends. *See*, *e.g.*, Pet. App. 37 (Bumatay, J.) (noting that if Axon settles, it "still will have been injured by the clearance process but have no cease-and-desist order to appeal its claim.").

2. District court review would help mitigate the deleterious effects of the FTC's "culture of consent"

A holding that district courts are free to exercise their federal question jurisdiction over constitutional

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[5] Available at https://tinyurl.com/5n7azhuv.

[6] Available at https://tinyurl.com/yp699sns.

challenges to the structure of the FTC's administrative enforcement process may result in foundational, operational, and substantive improvements that make participation in FTC adjudicatory hearings a viable alternative to signing, under duress, an overly aggressive FTC consent agreement that is untethered to sound economic analysis. This in turn would help mitigate the adverse jurisprudential, regulatory, and consumer welfare costs attendant to the FTC's inordinate reliance on consent orders as its principal method of antitrust enforcement.

"Consent decrees create potential for an enforcement agency to extract from parties under investigation commitments well beyond what the agency could obtain in litigation—commitments that may impair rather than improve competition and thereby harm consumers." Ginsburg & Wright (2013), *supra* at 177. "[T]he agency might well seek to settle upon terms that serve its bureaucratic interests. These include broadening the agency's goals and responsibilities, a vector well-expressed by the phrase 'mission creep,' benefitting a politically influential interest group, and accumulating power over the regulated community in general and over the consenting firms in particular." *Id.* at 180; *see also* Wright, Remarks (2015), *supra* at 7 ("Significantly, the combination of institutional and procedural advantages with the vague nature of the Commission's Section 5 [§ 45(a)] authority gives the agency the ability, in some cases, to elicit a settlement even though the conduct in question very likely may not be anticompetitive."). Such settlements are

"directly counter to the goals of antitrust law" and are "'abuses' of power." Ginsburg & Wright (2013), *supra* at 178. "Another consequence of an agency bringing cases primarily with an eye to settlement is to change the agency's case selection criteria. In addition and to some extent in lieu of the criteria that would otherwise make a case attractive, such as the benefit to consumers from terminating an anticompetitive business practice, the probability and ease with which the case will settle become part of the mix." *Id.* at 181.

Former FTC Commissioner Wright and Judge Ginsburg long have criticized the FTC's (and the Justice Department's) "overreliance on consent decrees in antitrust cases." Wright & Ginsburg (2018), *supra* at 248. They argue that "[i]n order most effectively to pursue the policy goal of maximizing consumer welfare, agencies [such as the FTC] must strike a balance between litigation and settlement." *Id.* Wright and Ginsburg explain that "[t]he costs of consent decrees come in five main forms":

> First, consent decrees tend to stunt the development of the law. Second, resolving antitrust cases through consent decrees may exclude agency economists whose economic analysis could improve case outcomes. Third, too great a focus upon remedial conditions as opposed to the underlying harms to consumers caused by the challenged conduct may lead agencies to extract inappropriate settlement terms. Fourth, the reduced transparency and predictability inherent in consent decrees relative to litigation creates uncertainty

> for third parties. Finally, departures from the objective of protecting consumer welfare in consent decrees may signal to other competition authorities that pursuing noncompetition policy goals is appropriate.

Id. at 248-49.

The FTC claims, for example, that its Bureau of Economics "helps the FTC evaluate the economic impact of its actions by providing economic analysis for competition and consumer protection investigation."[7] Yet, the FTC enforcement staff's imposition (with the Commissioners' blessing) of freewheeling consent decrees that regulate alleged antitrust violators with an axe rather than a scalpel, and thus fail to reflect the agency's finely tuned economic expertise, is contrary to the Commission's congressionally delegated mission. This is especially the case where a consent decree imposes "interventions that are not relevant to enhancing competition, or that may even tend to frustrate it, notwithstanding their appearance of aiding consumers." Ginsburg & Wright (2013), *supra* at 181; *see also* Joshua D. Wright & Angela M. Diveley, *Do expert agencies outperform generalist judges? Some preliminary evidence from the Federal Trade Commission*, J. of Antitrust Enf't 1, 22 (2012) ("Inability of an agency to translate its expertise into high-quality decision-making renders it at best ineffective and at worst costly to society, and

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[7] *See* FTC, About the Bureau of Economics, https://www.ftc.gov/about-ftc/bureaus-offices/bureau-economics (last visited May 12, 2022).

institutional design has the potential to hinder the flow of information from an agency's staff to its decision-makers.").

"The effect of increased settlement upon the development—and the potential distortion—of competition law presents the greatest concern." Wright & Ginsburg (2018), *supra* at 249. "An agency-wide culture of consent results in less litigation of important issues that would stimulate the healthy development of antitrust jurisprudence." *Id.* More specifically, "[t]he litigation process affords many benefits to the development of antitrust law that are not attainable through settlements alone. One such benefit is the ability of courts to create substantive legal rules that provide the parties with some degree of certainty about the boundaries of lawful business conduct." *Id.* at 250. Judicial decisions about unlawful conduct also inure to the benefit of non-party firms since "[t]he lesser transparency of settlements adds uncertainty to business decision making for companies that are not parties to prior consent decrees. This, in turn, can chill procompetitive behavior or mistakenly allow anticompetitive practices to continue." *Id.* at 254.

Although "[t]here are several benefits associated with settling antitrust cases through consent decrees" (e.g., convenience, efficiency, and remedial precision), these consent order benefits must be weighed against their jurisprudential and other significant costs "when determining the appropriate balance between litigation and settlement." *Id.* at 255.

The FTC's consent order culture perpetuates the deleterious effects of the current, pronounced,

imbalance between litigation and settlement of antitrust complaints. A holding that FTC enforcement respondents such as Axon have a readily available pathway for meaningful, district court review of structural constitutional claims will help achieve a better balance between settlement and litigation by encouraging more administrative adjudication of unproven FTC antitrust allegations.

CONCLUSION

The Court should reverse the Ninth Circuit and hold that the FTC Act's judicial review provision, 15 U.S.C. § 45(c), does not strip district courts of federal question jurisdiction over constitutional challenges to the structure of the FTC's administrative enforcement process.

Respectfully submitted,

LAWRENCE S. EBNER
Counsel of Record
ATLANTIC LEGAL FOUNDATION
1701 Pennsylvania Ave., NW
Washington, D.C. 20006
(202) 729-6337
lawrence.ebner@atlanticlegal.org

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