UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
TYLER DIVISION

CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, *et al.*, Plaintiffs, v. FEDERAL TRADE COMMISSION, *et al.*, Defendants.	Case No. 6:25-cv-00009-JDK

DEFENDANTS FEDERAL TRADE COMMISSION ET AL.'S REPLY IN SUPPORT OF MOTION TO DISMISS OR TRANSFER

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INTRODUCTION

This case should be dismissed or transferred because the Longview Chamber of Commerce lacks standing, and this Court is an improper venue. To satisfy Article III, a plaintiff organization must allege that one or more of its members is injured by the defendants' actions. Longview Chamber cannot clear that bar.

Plaintiffs' constant pleas that there is nothing to see here cannot obscure the many critical points that plaintiffs do *not* dispute. They do not say that any member of the Longview Chamber is presently engaged in, or imminently will engage in, an HSR-reportable transaction. Nor do plaintiffs deny that their suit is likely contrary to the interest of some—perhaps many—of their own members. And most remarkably, plaintiffs do not contest the Commission's assertion that this case is blatant forum shopping. Instead, Longview Chamber seeks refuge in distinguishable cases, carefully worded evasions about any potential injury, and bluster. Those responses are insufficient. Longview Chamber lacks standing, any potential dispute is unripe, and this case should proceed in the District of Columbia, where all defendants and three of the four plaintiffs are located.

ARGUMENT

I. Longview Chamber Lacks Standing.

1. Plaintiffs' opposition confirms that no Longview Chamber member has suffered or imminently will suffer a constitutionally cognizable injury. As we previously explained, "Longview Chamber does not allege that any of" the "five members" pseudonymously identified in the complaint "is presently engaged in an HSR-reportable transaction," and is instead relying on "vague plans" to plead an injury. Mot. (Dkt. 30) 14-15. Plaintiffs do not dispute any of that. Instead, they contend that their allegations about vague plans to someday, at some unstated time, enter into an M&A transaction that requires HSR reporting somehow transforms this policy dispute between the government and four nonprofit associations into a live case or controversy under Article III. Plaintiffs are mistaken.

It is black-letter law that standing requires an "actual or imminent, not conjectural or hypothetical" injury. Mot. 12 (quoting *Friends of the Earth, Inc. v. Laidlaw Env't Servs.*, 528 U.S. 167, 180 (2000)). Both the Supreme Court and the Fifth Circuit have emphasized that this requirement means that, when a plaintiff is relying on an injury not yet suffered, "[t]he threat of future injury must be 'certainly impending'" and "mere allegations of possible future injury will not suffice." *James v. Hegar*, 86 F.4th 1076, 1081 (5th Cir. 2023) (quoting *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 409 (2013)).

Under this standard, plaintiffs who allege "only an injury at some indefinite future time" lack standing. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 564 n.2 (1992); Mot. 17. Plaintiffs cannot hide behind vague language about uncertain plans in the "foreseeable future" (Am. Compl. 11-12 (Dkt. 27 ¶ 23)) that fails to allege actual, imminent, impending injury. The Rule has been in effect for five months and hundreds of parties have filed the new HSR form, but apparently none are members of the Longview Chamber who disagree with the Rule. *Id.*[1]

[1] *See also Premerger Notification Program*, Federal Trade Commission (June 14, 2025), https://www.ftc.gov/enforcement/premerger-notification-program (showing HSR transactions per month).

Plaintiffs have two primary responses. First, they say that the Commission is "urg[ing] the Court to depart from the ordinary rule that … objects of a Regulation … may challenge it." Opp. (Dkt. 35) 17 (quoting *Contender Farms, LLP* v. *U.S. Dep't of Agric.*, 779 F.3d 258, 266 (5th Cir. 2015)). But plaintiffs' members are not objects of the regulation. The updated HSR Rule is triggered only by a fraction of the M&A transactions occurring in the United States. Mot. 5-6. Thus, American businesses—even those that have previously filed an HSR form—are unaffected by the Rule unless they have a new HSR-reportable transaction. *See* Mot. 5-6.[2] That makes this case unlike a case like *Contender Farms*, *see* Opp. 17, where "*[a]ll* participants" had to "agree to be bound" by a process that the regulation at issue dictated. 779 F.3d at 265-66.

Second, plaintiffs argue that this Court can disregard the imminence requirement for Article III injury in favor of a less stringent theory of a "substantial risk" that their alleged injury will occur. Opp. 17-18.[3] But "increased-risk harms" must still "be actual or imminent." *Shrimpers & Fishermen of RGV v. Texas Comm'n*

[2] One of the reasons plaintiffs cannot offer any certainty about future plans that may require an updated HSR Form is that any such plans will necessarily turn on conduct of third parties not before the Court (the counterparty to any transaction). Courts are loathe to "endorse standing theories that rest on speculation about the decisions of independent actors." *Id.* at 414; *see also id.* at 414 n.5.

[3] *Clapper* did not suggest that alleging a "substantial risk" of injury is a substitute for certainly impending or imminent injury. The previous cases that "found standing based on a 'substantial risk' that the harm will occur" required plaintiffs "to reasonably incur costs to mitigate or avoid that harm." *Clapper*, 568 U.S. at 414 n.5. Plaintiffs here have alleged no mitigation or avoidance costs.

on Env't Quality, 968 F.3d 419, 424 (5th Cir. 2020).[4]

Plaintiffs also try to limit *Clapper* to its facts. Mot. 18. But *Clapper* was not an ad hoc decision; it was a seminal standing case that lower courts have cited more than 1,000 times. *E.g.*, *James*, 86 F.4th at 1081 ("The threat of future injury must be '*certainly* impending'; mere allegations of possible future injury will not suffice." (quoting *Clapper*, 568 U.S. at 409)). And *Clapper* hardly treaded new ground. Its holding stems from decades of Supreme Court precedent. *See City of Los Angeles v. Lyons*, 461 U.S. 95, 101-02 (1983) (collecting cases). For similar reasons, plaintiffs' attempt to limit the relevance of *Lujan* and *Summers* because they are "old[] Supreme Court decisions in two environmental injury cases," Opp. 4, is unpersuasive. Both decisions are frequently cited across a range of subject areas for the uncontested rules they set forth on standing. *See, e.g.*, *Kovac v. Wray*, 109 F.4th 331, 340 (5th Cir. 2024); *E.T. v. Paxton*, 41 F.4th 709, 716 (5th Cir. 2022).

Courts have accordingly continued to demand that plaintiffs show imminent harm. *See Machete Prods., L.L.C. v. Page*, 809 F.3d 281, 288 (5th Cir. 2015) (film production company could not challenge incentive program because it had "failed to show any imminent plans to produce another film"). Plaintiffs rely on a definition of

[4] As the Fifth Circuit explained, "[i]ncreased risk claims—even when particularized—often cannot satisfy the 'actual or imminent' requirement." And "there is 'a powerful argument that increased-risk-of-harm claims ... fail to meet the constitutional requirement" for standing, and therefore could "drain" that "requirement of meaning" and "expand the proper—and properly limited—constitutional role of the Judicial Branch beyond deciding actual cases or controversies." *Shrimpers & Fishermen*, 968 F.3d at 424 (cleaned up) (quoting *Pub. Citizen, Inc. v. NHTSA*, 489 F.3d 1279, 1294 (D.C. Cir. 2007) (Kavanaugh, J.)).

imminence that depends on its status as "a somewhat elastic concept," Opp. 17 (internal quotations omitted), but they disregard the Court's bottom line: the requirement "that the injury is *certainly* impending." *Clapper*, 568 U.S. at 409. The Fifth Circuit has cautioned that while "imminence is a somewhat elastic concept … it has been stretched beyond its breaking point where … the plaintiff alleges only an injury at some indefinite future time." *E.T.*, 41 F.4th at 716 (quoting *Lujan*, 504 U.S. at 564 n.2). Here, Longview Chamber has not alleged any concrete plans of any member to engage in an HSR-reportable transaction and is instead hoping that vague "plans to engage" in such transactions at some unstated time suffice. Opp. 25-27. Article III requires more concrete allegations.

The cases plaintiffs cite are not to the contrary. Opp. 19. In *Contender Farms*, there was no question of imminence or substantial risk, and it was seemingly undisputed that the challengers would engage in the proscribed conduct. 779 F.3d at 265. Plaintiffs also cite a case where the Fifth Circuit applied a different standard because the plaintiff had alleged a First Amendment violation. *Book People, Inc. v. Wong*, 91 F.4th 318, 330 (5th Cir. 2024) ("Plaintiffs must only prove that the conduct they intend to engage in is arguably affected with a constitutional interest" (quotation omitted)). In another, the Fifth Circuit concluded the plaintiff lacked standing, so the Court did not determine precisely what evidence could have shown future injury. *Stringer v. Whitley*, 942 F.3d 715, 722-23 (5th Cir. 2019). Plaintiffs also cite a D.C. Circuit case where the plaintiffs alleged "ongoing injuries." *Columbia Gulf Transmission, LLC v. FERC*, 106 F.4th 1220, 1229 (D.C. Cir. 2024.

And last, plaintiffs cite a district court case where the organization's doctor members alleged that they "regularly" engaged in the proscribed conduct and faced an "increased regulatory burden." *Texas v. Becerra*, 623 F. Supp. 3d 696, 714 (N.D. Tex. 2022). None of these cases found standing on allegations as vague and thin as Longview Chamber's here.

2. Plaintiffs are also wrong that their allegations clear the second and third prongs of associational standing. Longview Chamber insists that this lawsuit is germane to the organization's interests, Opp. 24-25, but it conspicuously does not refute the Commission's concern that some Longview Chamber members "may *oppose* this litigation" because of the effect it could have on both contemplated transactions and competitive markets, Mot. 19-20. The best Longview Chamber can offer is to note that the Supreme Court has held that an association may litigate on behalf of some, but not all, members. Opp. 25-26. That is a far cry from an association litigating *against* the interests of some of its members.

Longview Chamber is also wrong that this case will not require participation of individual members. *See* Mot. 20-21; Opp. 26-27. Longview Chamber acknowledges that it will introduce declarations from members. *See id.* at 3 n.1. That need for facts from members relevant to injury proves the point. And "resolution of the claims" will not necessarily "benefit[] the association's members." *Ass'n of Am. Physicians & Surgeons, Inc. v. Texas Med. Bd.*, 627 F.3d 547, 552 (5th Cir. 2010). There are likely Longview Chamber members who will never file an HSR form, and others who compete with parties to HSR-eligible transactions and would prefer those competitors file the new form. The Court will not be able to tailor relief without participation of Longview Chamber members—a constituency over 1,000. Am. Compl. ¶ 21.

3. Plaintiffs also misunderstand the Commission's broader arguments about associational standing. The Commission is not, of course, asking this Court to overrule the Supreme Court and hold that associations always lack standing. But the tension associational standing creates with both the Constitution and other areas of law provide reason to approach Longview Chamber's claim with caution. *Cf. Ass'n of Am. Physicians & Surgeons v. FDA*, 13 F.4th 531, 537 (6th Cir. 2021) (explaining that associational standing lacks historical roots in the Constitution or common law). And Longview Chamber never denies this tension. For instance, Longview Chamber never disputes that it "is trying to subvert the class-action mechanism." Mot. 21 (cleaned up). Nor does Longview Chamber rebut the Commission's concern that there is no real-party-in-interest in this case *Id.* at 21-22. These concerns provide all the more reason to demand more concrete allegations than Longview Chamber has offered.

4. Even if Longview Chamber had standing, this case would still be unripe. The ripeness doctrine exists "to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements over administrative policies, and also to protect the agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties." *Nat'l Park Hospitality Ass'n v. Dep't of Interior,* 538 U.S. 803, 807-08 (2003). Even assuming that Longview Chamber has members facing a substantial risk of one day filing the updated HSR form, this dispute will remain an abstract policy disagreement with no concrete effect on any party until a Longview Chamber member actually needs to file the new HSR form.

In response, plaintiffs first suggest that if they have standing, then their challenge must be ripe. Opp. 23-24. If that were true, then the ripeness doctrine would not exist. Second, plaintiffs contend that "[t]he FTC cites no case dismissing on ripeness grounds where, as here, a plaintiff credibly intends to engage in conduct that would subject it to the challenged regulation and seeks to bring a facial challenge to that regulation." Opp. 24. But even if plaintiffs can or are bringing a facial challenge, "pre-enforcement review is still subject to the constraints of the ripeness test." *Texas Indep. Producers & Royalty Owners Ass'n v. EPA*, 413 F.3d 479, 482 (5th Cir. 2005) (holding facial challenge to regulation was unripe). Plaintiffs argue that the Rule will "force [their members] to submit an unreasonably burdensome and costly HSR Form" and that the "FTC violated the APA by imposing those increased costs." Opp. 24. But none of their members has incurred any of these increased costs because none have filed or begun to prepare the new HSR form. That means the rule's "effects" have not been "felt in a concrete way by the challenging parties," and their claim is therefore unripe. *Nat'l Park Hospitality Ass'n,* 538 U.S. at 807-08.

II. Venue in This District Is Improper.

Plaintiffs do not disagree, nor can they, that if Longview Chamber lacks standing then this case does not belong in this District and should be transferred to the District Court for the District of Columbia. *See* Mot. 24-25. As a result, the parties are seemingly in agreement about what the Court should do if it agrees with the Commission that Longview Chamber has not adequately pleaded standing.

But this Court can and should transfer the case whether or not Longview Chamber has standing. In fact, the Court can avoid the constitutional question of Longview Chamber's standing by transferring for prudential reasons alone. *See* Mot. 26. This case does not belong in this Court. The Commission characterized this case as "textbook forum shopping," Mot. 27, and—remarkably—plaintiffs do not disagree. Their opposition makes plain that this case has no connection to plaintiffs' selected venue. Of the six parties in this case, five reside in Washington, D.C., and the only remaining party is an association located in this District but without any member in this District who has any interest in this litigation. Indeed, plaintiffs appear to concede that none of Longview Chamber's pseudonymous members even reside in this District. *See* Mot. 27.

Instead, plaintiffs argue that the Court should not look beyond the place of business of the Longview Chamber itself. Opp. 28-29. That cannot be right. Plaintiffs claim only associational standing, which allows organizations "to bring suit on behalf of [their] members" by "assert[ing] the rights of … individual" members "in a representational capacity." *Hunt v. Wash. State Apple Advert. Comm'n*, 432 U.S. 333, 343, 346 (1977). If the individual members have no right to sue in this District, however, then neither does the association. A contrary approach would allow the blatant forum shopping evident here, as any company anywhere in the United States could choose its venue for a suit against the government by merely joining the local chamber of commerce in its desired forum.

The Fifth Circuit has recognized that "the location of a trade association member" cannot be "be imputed to the association for venue purposes." *Am. Newspaper Pubs. Ass'ns v. USPS*, 789 F.2d 1090, 1092 (5th Cir. 1986). That is, Longview Chamber cannot sue in a venue where it does not reside. But the court did not hold that an organization can assert associational standing in a venue where no member with standing resides. *Cf.* Opp. 29. And in fact, the Fifth Circuit emphasized that there was "simply no basis to conclude that Congress intended to endow membership corporations with a choice of venue unavailable to other petitioners" and that doing so would "sanction unlimited forum-shopping by membership corporations, a practice we are loathe to encourage." *American Newspaper*, 789 F.2d at 1092. That is exactly the problem here: No member of Longview Chamber could sue here because none has even attempted to show it has both standing and venue to do so. For these reasons, this Court can and should transfer this case in the interests of justice.[5] *See* Mot. 26.

CONCLUSION

This case should be transferred to the District of Columbia, either in the interests of justice or because Longview Chamber lacks standing.

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[5] Plaintiffs also complain that the Commission has not met the standard for transfer under § 1404(a). But the moving party must show that the action "might have been brought" in the transferee forum, and that there is "good cause" for transferring the action. *In re Volkswagen of Am. Inc.*, 545 F.3d 304, 312, 315 (5th Cir. 2008) (en banc). There is no dispute that this case could have been brought in the District of Columbia, where all defendants reside, or that forum-shopping can constitute good cause for transfer. In any event, the transferee forum would inherently be significantly more convenient than this venue because Plaintiffs have shown zero connection between this litigation and a single resident of this venue.

Respectfully submitted,

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