**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, BUSINESS ROUNDTABLE, AMERICAN INVESTMENT COUNCIL, and LONGVIEW CHAMBER OF COMMERCE,

Plaintiffs,

v.

FEDERAL TRADE COMMISSION and ANDREW N. FERGUSON, in his official capacity,

Defendants.

Case No. 6:25-cv-00009-JDK

**PLAINTIFFS' STATUS REPORT AND
PROPOSAL FOR SCHEDULING ORDER**

Plaintiffs hereby submit this status report in response to the Court's June 5, 2025 Order.[1] As the parties have advised the Court several times since that Order, they have fundamental disagreements about the scope of any appropriate discovery in this Administrative Procedure Act case. Those disagreements have regrettably prevented the parties from reaching agreement on a proposed schedule or even on immediate next steps. The Commission has proposed to move directly into a full discovery schedule that will take at least three months and will result in a mountain of effort and litigation that may be

[1] Plaintiffs and the Commission were unable to agree on a joint filing. Plaintiffs understand that the Commission will be filing its own status report.

entirely unnecessary given the parties' core *legal* disputes over whether the Commission is entitled to such discovery. As explained below, the far simpler and more efficient course for teeing up those disputes is to move the case into the summary-judgment stage now. That is also the path forward contemplated by Fed. R. Civ. P. 56(d). Accordingly, the Court should issue an order permitting Plaintiffs to file their motion for summary judgment, and reject the Commission's competing proposal for next steps in this case.

1. The Court's June 5 Order denied Plaintiffs' motion to establish a combined briefing schedule for the Commission's motion to dismiss and Plaintiffs' forthcoming motion for summary judgment. Dkt. 34. Noting that the Commission had opposed a combined schedule in part based on its view that "limited discovery is needed to address factual questions concerning standing, venue and remedies," the Court ordered the parties to meet and confer to discuss a schedule for "limited discovery and summary judgment briefing" and to "file a joint proposed scheduling order with these agreed-upon deadlines." *Id.* at 1.

The parties met and conferred multiple times over the past few weeks. To facilitate that process, Plaintiffs voluntarily provided the Commission with a draft declaration by Longview Chamber of Commerce President Kelly Hall that Plaintiffs are prepared to file to support the Longview Chamber's standing at summary judgment. Ex. A. The Commission responded with a list of eight requests for specific additional information the Commission believes it needs in discovery. Ex. B. As the parties jointly explained to the Court last week, they considered it "unlikely that they [would] be able to fully resolve ongoing disagreements," but continued to engage in "consultations and discussions" with each other with that goal in mind. Dkt. 39 at 2.

Unfortunately, the meet-and-confer process has failed to materially narrow the parties' disputes because the Commission's purportedly "limited" discovery requests are entirely unreasonable. For one thing, the proposed discovery is not "limited" at all: the Commission apparently intends to take every form of discovery known to civil litigation under a proposed schedule that would occupy more than three months even if Plaintiffs did not raise a single objection. More fundamentally, the vast majority of the Commission's requests are wholly without legal foundation, and seem designed more to force Plaintiffs into dropping this suit (or acquiescing in a transfer to the District of Columbia) than to address legally relevant issues. For example, the Commission insists on a list of "all members of each plaintiff organization"—a requirement that courts have explained would "completely erase associational standing." *National Ass'n for Gun Rights* v. *Garland*, 741 F. Supp. 3d 568, 592 n.74 (N.D. Tex. 2024). The Commission also asks Plaintiffs to "provide details of [Ms. Hall's] consultation" with the Longview Chamber's members regarding this lawsuit, including members' "responses" on specified topics. Ex. B. Beyond being irrelevant, that request is a direct attack on the "First Amendment privilege" enjoyed by membership associations, which plainly includes "confidential internal trade association communications." *Bright Response, LLC* v. *Google Inc.*, 2009 WL 10741629, at *1 (E.D. Tex. Sept. 29, 2009) (collecting cases).

Plaintiffs ultimately informed the Commission that, although they were willing to provide more information in response to one request that is reasonable,[2] they were not

[2] In particular, the Commission asked when each member of the Longview Chamber that is identified in the draft Hall Declaration joined the Longview Chamber. Ex. B.

willing to provide additional information for the other seven requests. In response, the Commission has maintained its position that it needs discovery into the areas covered by its requests before summary-judgment briefing can begin. The Commission thus has proposed an extended scheduled for wide-ranging jurisdictional discovery that does not build in any time for the Court to resolve what the Commission knows are core disputes about its legal entitlement to most of that discovery in the first place.

2. The Court should reject the Commission's proposal, which is neither the most efficient way to resolve the parties' legal disputes nor the one anticipated by the Federal Rules. Instead, following the procedure set out by Fed. R. Civ. P. 56, Plaintiffs should be permitted to move for summary judgment now, supporting that motion with evidence Plaintiffs believe meets their summary-judgment burden. The Commission's demand for jurisdictional discovery can then be assessed against that existing summary-judgment record, and the Court can rule on the appropriateness of discovery in this APA case—a purely legal question—before significant resources are expended on a discovery process that Plaintiffs will argue is entirely unnecessary.

As this Court has recognized, Fed. R. Civ. P. "56(b) provides that 'a party may file a motion for summary-judgment *at any time* until'" shortly before trial. *Lifenet, Inc.* v. *U.S. Dep't of Health and Hum. Servs.,* No. 6:22-cv-00162, Dkt. 25 (E.D. Tex. May 13, 2022) (emphasis in original). Plaintiffs intend to file a summary-judgment motion that will

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Plaintiffs agreed to provide additional information in response to that request. The members referred to in the draft Hall Declaration as Member A and Member E joined the Longview Chamber prior to the filing of the original complaint in this action. The members referred to as Member B, Member C, and Member D joined prior to the filing of the operative amended complaint.

establish that there is no genuine issue of material fact and that they are entitled to judgment as a matter of law on Article III standing and the merits of the Rule at issue. *See* Fed. R. Civ. P. 56(a). The Commission is of course entitled to argue otherwise in its opposition. And to the extent the Commission believes it needs discovery to oppose the motion, Rule 56(d) directly addresses that circumstance: if the nonmovant "shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition," the court may deny or defer the motion for summary judgment and "allow time to . . . take discovery." Indeed, the Commission itself invoked Rule 56(d) in support of its professed need for "discovery of facts about plaintiffs' individual members and their proposed transactions." Dkt. 33 at 6.

This established procedure is the appropriate mechanism for the Commission to put forward its argument that discovery is the "only way to ensure the absence of any genuine dispute of material fact" regarding Article III standing or venue, *id.* at 5. Under Rule 56(d), the Commission must submit an "affidavit or declaration" that "show[s] how the additional discovery" they seek "will defeat the summary judgment motion, that is, will create a genuine dispute as to a material fact." *Smith* v. *BP Expl. & Prod., Inc.*, 2024 WL 3842571, at *2-3 (5th Cir. Aug. 16, 2024). The Commission has not done that. After it does, the Court can then consider the parties' arguments and determine whether the Commission has made the required showing, or instead whether the existing summary-judgment "record shows that the requested discovery is not likely to" create any material factual dispute. *American Fam. Life Assur. Co. of Columbus* v. *Biles*, 714 F.3d 887, 894 (5th Cir. 2013). The Court can most efficiently make that determination *after* considering both the summary-judgment record compiled by Plaintiffs and the parties' competing arguments regarding the applicable legal standards.

As Plaintiffs intend to explain in full briefing at the appropriate time, the Commission's Rule 56(d) arguments will fall short. Again, as noted above, many of the Commission's requests are foreclosed by longstanding precedent. The meet-and-confer process has also made clear that there are no *factual* disputes between the parties as to the Longview Chamber's standing that would preclude a decision either way on summary judgment. The draft Hall Declaration contains specific factual assertions supporting the Longview Chamber's standing, and the Commission does not appear to contest the veracity of any of those assertions. Instead, the Commission's position is that the assertions in the draft Hall Declaration are *legally* insufficient to satisfy Plaintiffs' burden to establish Article III standing. The Commission does not need any discovery to make the legal argument that Plaintiffs have not met their burden, which is plainly ripe for summary-judgment resolution. That point alone should be dispositive at this stage.[3]

3. In pushing for their proposed discovery schedule, the Commission has suggested that the Court already concluded, in its June 5 Order, that the Commission is entitled to seek whatever discovery they want now, before Plaintiffs may move for summary judgment. Plaintiffs respectfully disagree with that reading of the Court's Order, which merely directed the parties to confer and then provide additional information to inform the

[3] To a significant extent, the parties' disagreements over discovery simply recapitulate their basic dispute over the appropriate legal standard for assessing Article III standing in this case, as set forth in the briefing on the motion to dismiss, which is now ripe for resolution. *See* Dkts. 30, 35, 38.

Court's decision on the appropriateness of discovery in this case. In reading the Order to give them *carte blanche* to proceed with any discovery they wish, the Commission ignores that (i) the Order did not resolve a discovery motion, but rather a motion to combine briefing; (ii) the Commission only vaguely described just some of the extensive discovery it now intends to seek, *see* Dkt. 33 at 5; (iii) Plaintiffs had no opportunity to respond or brief the issue of discovery; and (iv) the Commission's only citations were to two concurring opinions arguing that the Supreme Court should one day reconsider its *current* precedents—precedents that are obviously binding on this Court. Given the parties' fundamental disagreement about whether any discovery is warranted here, both parties should have the opportunity to fully brief the relevant issues.

Again, however, the Court need not delve into the substance of the parties' discovery disputes now. Rather, the Court can and should instead resolve those disputes at the summary-judgment stage. That is both the way it usually works under Rule 56 and the far more efficient path forward. The Court should therefore issue an order stating that Plaintiffs are entitled to move for summary judgment and that the Commission is entitled to respond by invoking Rule 56(d). Plaintiffs can then meet and confer with the Commission and propose a schedule for those filings.

July 11, 2025

Respectfully submitted,

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* *Pro hac vice*

Exhibit A

**IN THE UNITED STATES DISTRICT COURT
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**[JUNE 24, 2025 DRAFT FOR DISCUSSION PURPOSES]
DECLARATION OF KELLY HALL, PRESIDENT AND CEO OF
PLAINTIFF LONGVIEW CHAMBER OF COMMERCE**

Pursuant to 28 U.S.C. § 1746, I, Kelly Hall, hereby declare as follows:

1. I am the President and CEO of the Longview Chamber of Commerce. In that capacity, I oversee all of the Longview Chamber's operations. My business address is 410 N Center Street, Longview, TX 75601.

2. I am over 18 years old. This Declaration is based upon my personal knowledge and belief and/or upon my review of business records of the Longview Chamber. If called as a witness, I could and would testify competently thereto.

3. The Longview Chamber of Commerce represents over 1,000 businesses and professional organizations. We routinely advocate in federal courts on matters of competition, free markets, and antitrust enforcement, including filing lawsuits challenging anti-business laws and regulatory actions. The Longview Chamber's mission is to advocate for policies that promote economic development and job creation both in the Longview Trade Area, which includes Gregg County and 11 surrounding counties, and in the interconnected economic region, which includes the Dallas, Houston, and Shreveport metropolitan areas. To further its mission and the interests of its members, the Longview Chamber regularly files litigation challenging harmful and misguided federal regulations. *See, e.g.*, *Ryan LLC* v. *FTC*, No. 24-10951 (5th Cir. 2024); *Minnesota Telecom Alliance* v. *FCC*, No. 24-1179 (8th Cir. 2024); *Longview Chamber of Commerce* v. *CFPB*, No. 24-915 (D.D.C. 2024); *Longview Chamber of Commerce* v. *OSHA*, No. 24-271 (E.D. Tex. 2024); *Longview Chamber of Commerce* v. *NLRB*, No. 24-40331 (E.D. Tex. 2024).

4. On November 12, 2024, the Federal Trade Commission adopted a rule that amends the premerger notification form required under the Hart-Scott-Rodino Antitrust

Improvements Act of 1976 (HSR Act), 15 U.S.C. § 18a. *Premerger Notification; Reporting and Waiting Period Requirements*, 89 Fed. Reg. at 89,216 (Nov. 12, 2024). The Final Rule massively expands the amount of documentary material and information that must be included in the initial premerger notification form for all HSR-reportable transactions. Even under the agency's conservative estimate, the Rule's changes to the notification form will more than quadruple the average time and expense of preparing many HSR filings.

5. The Longview Chamber has members that regularly enter into merger, acquisition, or other transactions that meet or exceed the size thresholds for filing a premerger notification form under the HSR Act, including members for which M&A activity is a regular and consistent feature of their business model. Longview Chamber members have already engaged in HSR-reportable transactions this year. In addition, consistent with their past levels of deal activity, members of the Longview Chamber also plan to engage in HSR-reportable transactions in the forthcoming months. These members have been or will be subject to the requirements of the Rule, and thus have incurred or will incur the substantially increased burden and expense necessary to complete the revised HSR notification form.

6. Information about our members' HSR-reportable activity is highly sensitive. Public disclosure of members' near- and medium-term plans to engage in HSR-reportable activity could have a significant impact on the members' businesses, on potential transactions they are considering, and in some cases on public securities markets. Moreover, many of our members deal frequently with federal regulators, including the FTC in the context of HSR review, and are concerned that being identified in this suit could

result in additional and unwarranted regulatory scrutiny. Accordingly, our members have asked me not to reveal their identities and to avoid providing unnecessary details that could be used to identify them, which I understand is not required under applicable law. Nevertheless, certain members have authorized disclosure of the following information to demonstrate that they will enter into HSR-reportable transactions and thus be harmed by the Rule.

7. Member A engages in M&A activity as part of its business model. Member A has engaged in multiple HSR-reportable transactions over the past ten years, including transactions involving companies with a presence in the Longview Trade Area and the surrounding economic region. Indeed, Member A has already engaged in at least one HSR-reportable transaction this year. Member A plans to continue to engage in a similar level of HSR-reportable activity going forward and intends to engage in at least one more HSR reportable transaction this year.

8. Member B is a global telecom company with over 2,000 employees and 2,000,000 customers in Texas. Member B regularly engages in M&A transactions, including HSR-reportable transactions, as part of its business model. Since 2015, Member B has engaged in more than 25 HSR-reportable transactions as well as many other transactions below the HSR reporting threshold. Consistent with its business model and historic level of activity, Member B plans to continue to engage in HSR-reportable transactions in the foreseeable future.

9. Member C is a private capital firm with an office in Dallas. Member C has at least 10 portfolio companies with a presence in Texas as well as subsidiaries of several

other companies; together these companies provide over 2,400 jobs in Texas. Member C has looked at over 1,200 opportunities in Texas in the past 5 years. A number of these portfolio companies operate in the Longview Chamber's larger economic region. Member C engages in regular M&A activity as part of its business model. Since January 2020, Member C has engaged in 19 HSR-reportable transactions, along with a number of other M&A transactions that did not meet the reporting threshold. Going forward, Member C plans to continue to engage in a similar level of HSR-reportable activity and expects to enter into several HSR-reportable transactions in the next 12 months, including at least one by the end of 2025.

10. Member D is a large company with significant operations in Texas and often engages in HSR-reportable transactions. Consistent with its historic level of activity, Member D plans to continue to engage in HSR-reportable transactions in the foreseeable future.

11. Member E is a company in the financial sector that has a number of business locations in Texas and provides services to companies with a presence in the Longview Trade Area and the surrounding economic region. Member E regularly engages in M&A activity as part of its business model and plans to engage in at least one HSR-reportable transaction in the foreseeable future. Member E is therefore directly regulated and harmed by the Rule. In addition, Member E regularly provides lending and other services in connection with HSR-reportable transactions and plans to continue to do so. Because the Rule dramatically increases the costs associated with HSR-reportable transactions, Member E expects that the Rule will affect its business by deterring M&A activity that

would otherwise have taken place, affecting the market for Member E's services and causing transactions for which Member E could have provided those services not to be consummated.

12. These and other Longview Chamber members are harmed by the Rule, and that harm would be redressed by an order vacating the Rule and/or enjoining the FTC from requiring parties to HSR-reportable transactions to comply with it. The FTC's massive expansion of the information and material required in the premerger notification form, which both the buyer and seller in virtually every HSR-reportable transaction must file, will make it far more costly for Longview Chamber members to consummate such deals. The FTC itself estimates that the average time for all filers to complete the revised premerger notification form will nearly triple, from 37 hours to complete the existing form to 105 hours to complete the new form. 89 Fed. Reg. at 89,332. For half of all reportable transactions, the FTC estimates that the time for the buyer to complete the form will increase to 158 hours, a 427% increase over the status quo. *Id.* When Longview Chamber members enter into HSR-reportable transactions, they will experience these increased costs as a result of being subject to the Rule.

13. Beyond these direct compliance costs, the Rule inflicts significant indirect costs on Longview Chamber members who enter into, or are even considering entering into, HSR-reportable transactions. For example, the need to collect, review, analyze, and prepare the additional information required by the Rule will significantly extend and delay deal timelines. Such delays may hamper the transacting parties' ability to obtain financing, increase the risk that news of a non-public deal will leak, and generally impede if not prevent

consummation of the transaction. The Rule also imposes a significant opportunity cost to businesses, which must divert valuable director, officer, and employee time to preparing the premerger notification form instead of running the company. The Rule will therefore likely deprive certain Longview Chamber members of the additional resources, talent, efficiencies, and economies of scale that are gained through productive M&A activity. As a result, the Rule will also limit the ability of certain Longview Chamber members to bring new and better products to more consumers and more markets.

14. The FTC's expansion of the premerger notification form will harm the communities that make up the Longview Trade Area and interconnected economic region. Larger businesses utilize M&A to unlock efficiencies, enhance innovation, and expand operations. Smaller companies, entrepreneurs, and early-stage investors benefit from opportunities for capital formation, liquidity, and growth, as well as the possibility of a future exit. By facilitating the continued growth and development of all kinds of businesses, pro-competitive mergers and acquisitions benefit not only the relevant companies involved in the deal, but also their employees, their investors, their local communities, and ultimately the American consumers whom the antitrust laws are designed to protect. The Rule will delay and prevent lawful HSR-reportable transactions, depriving the Longview Trade Area and interconnected economic region of the benefits of these pro-competitive mergers.

15. In light of the above effects of the Rule, and based on consultation with the members of the Longview Chamber, the Longview Chamber directly advances its mission and the interests of our members by bringing this lawsuit to challenge the Rule. As mentioned above, the Longview Chamber's mission is to promote economic development

and job creation both in the Longview Trade Area and the larger, interconnected economic region. The Longview Chamber fulfills that mission by taking action to ensure that businesses large and small are fully able to compete, grow, create jobs, and innovate through deals that do not pose competitive concern. Such actions help our members to better serve our communities. The Longview Chamber also directly advances the interests of its members by taking action to decrease the direct and indirect costs imposed on our members by local, state, and federal regulations—especially where, as with the Rule, those costs are disproportionate to any regulatory benefit.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on [DATE], 2025, at 410 N Center St., Longview, TX 75601.

[DRAFT OF JUNE 24, 2025]

Kelly R. Hall

Exhibit B

Further information the Commission needs after reviewing the draft declaration from the Longview Chamber of Commerce:

1. The identities of members A-E in the draft declaration, as well as the identities of any other members of the plaintiff associations that plaintiffs intend to use to demonstrate standing.
    a. Going forward, we will refer collectively to members A-E and any other members of the plaintiff associations that plaintiffs intend to use to demonstrate standing as "anticipated reporting parties."
2. Where each anticipated reporting party resides.
3. For each anticipated reporting party, the date they joined each of the four plaintiff organizations. If they belong to only one of the four organizations, then only one date is necessary. If they belong to two, then two dates are necessary, and so on. If any anticipated reporting parties were previously a member of a plaintiff association but no longer is, then the date that their membership terminated. If an anticipated reporting party joined or quit a plaintiff organization before the Commission announced the Rule on October 10, 2024, it is sufficient to note that their membership or termination predates the Rule, and we do not need the specific date.
4. Details related to the future transactions that any declarant will reference, including information necessary to confirm the timing, reportability, and potential for harm to the relevant members, such as:
    a. The timing of any forthcoming transaction(s) on which Plaintiffs intend to rely. That timing should include an anticipated closing date and the basis for the expected timing. For instance, if an anticipated reporting party testifies that they plan to engage in an HSR-reportable transaction in the "foreseeable future," the declaration should include what they understand that term to mean and why they believe that future transaction will take place.
    b. How far along in negotiations the anticipated reporting party is for any forthcoming transaction(s) on which Plaintiffs intend to rely – what stage are they in negotiations? Have they begun to gather materials under the Rule?
    c. The details necessary to support the assertion that any future transactions will be HSR eligible. This will likely include the size of the transaction, and may include information about the nature of the assets acquired, the annual net sales or total assets of the acquiror and acquiree, and any other information that establishes that the transaction must be reported under 15 U.S.C. § 18a and the Rule.
        i. *Note*: We are not presently requesting the name or industry of the counterparty to any transaction, though as stated above we may need information about that party related to revenues, sales, assets, etc. We reserve the right to seek that information at a later time if it becomes relevant to standing, venue, or remedies.

   d. Confirmation that no exceptions are likely to apply, and the anticipated reporting parties are not going to assert exceptions that would render the transaction non-reportable.

5. For Member E:

   a. Whether Member E is aware of any transaction that would have taken place but for the Rule where the parties would have used Member E's lending and other services in connection with the transaction. If Member E testifies that it is aware of such a transaction, then any facts supporting the basis for that testimony, including the names of the parties to the failed transaction, whether Member E had been retained, and what evidence Member E has that the reason the transaction failed is because of the additional requirements of the Rule versus the old rule.

6. For Kelly Hall: The declaration refers to "consultation with the members of the Longview Chamber." Please provide details of that consultation—how many members were consulted, when were they consulted, how were they consulted, and what were their responses? How many members were not consulted, why were they not consulted, and did any members express any reservations or concerns about the litigation?

7. Similarly, the amended complaint alleges that "[e]ach Plaintiff has extensively consulted with its members to confirm that this suit furthers those members' interests." We have the same questions about that consultation for the U.S. Chamber, the Business Roundtable, and AIC.

8. A list of all members of each plaintiff organization and the residency of each member.

   a. Because #8 is relevant to remedies, we are open to deferring the response to that request. We would be willing to bifurcate summary judgment on standing and venue into phase 1 and merits and remedies into phase 2, with remedies discovery following phase 1 and potentially occurring simultaneously with the briefing schedule for phase 2. If you are open to that approach, we would agree to defer #8 until that time.