

# Fact Versus Fiction: The Federal Trade Commission's Legitimate Investigation of Twitter

## EXECUTIVE SUMMARY

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Twitter is a serial lawbreaker. It broke the law as a relatively new firm in 2010, it broke the law in 2022 before Elon Musk took over, and it is being investigated now because it is likely breaking the law again. Twitter is a global platform with 300 million users engaged in discussions over important, political, economic, and civic matters. While not one of the biggest tech firms, Twitter is not small, and when a powerful firm like Twitter agrees to a consent decree with the government because it deceived its customers, it must stop doing so. FTC orders are not suggestions.<sup>1</sup>

Leaders from both sides of the aisle are rightfully skeptical of the power embedded in dominant communications platforms, as well as concerned over privacy matters. The FTC has responded to these concerns with an aggressive agenda that includes far more than an investigation of Twitter. The Commission has a pending antitrust case against Facebook, brought first under the Trump administration, and an investigation into Amazon's practices involving retailing and cloud computing. The commission has resolved violations of a similar nature with Epic Games, GoodRx, BetterHelp, Drizly, Kochava, CarePress, and many others.<sup>2</sup>

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<sup>1</sup> Internal commission memo by FTC Commissioner Rohit Chopra, May 14, 2018  
[https://www.ftc.gov/system/files/documents/public\\_statements/1378225/chopra\\_-\\_repeat\\_offenders\\_memo\\_5-14-18.pdf](https://www.ftc.gov/system/files/documents/public_statements/1378225/chopra_-_repeat_offenders_memo_5-14-18.pdf)

<sup>2</sup> FTC Enforcement Action to Bar GoodRx from Sharing Consumers' Sensitive Health Info for Advertising, Feb 1, 2023  
(<https://www.ftc.gov/news-events/news/press-releases/2023/02/ftc-enforcement-action-bar-goodrx-sharing-consumers-sensitive-health-info-advertising>), FTC to Ban BetterHelp from Revealing Consumers' Data, Including Sensitive Mental Health Information, to Facebook and Others for Targeted Advertising, March 2, 2023  
(<https://www.ftc.gov/news-events/news/press-releases/2023/03/ftc-ban-betterhelp-revealing-consumers->

The response to government enforcers attempting to rein in what nearly everyone agrees is a sector with too much power should be unalloyed praise. After a significant whistleblower in September told the Senate of lawlessness at Twitter, and after the resignation of employees in charge of a key data governance committee established by the consent decree, the Federal Trade Commission began investigating the social media firm to see if it is maintaining its commitment to privacy.<sup>3</sup> This is exactly what one would hope for from an enforcement agency.

Yet, instead, over the past three days, the Republican-led subcommittee on the “Weaponization of the Federal Government,” has made a startling series of unsupported claims about the enforcers charged with policing large technology firms over their use of data and promises to consumers.<sup>4</sup> The thesis is that the FTC’s investigation of Twitter is in fact a pretext to “harass” Twitter-owner Elon Musk over his refusal to sanction conservative views. There is no actual proof for any of these claims. Indeed, several key claims are laughable on their face, and many others fall apart when subjected to the slightest bit of scrutiny.

The truth is likely more prosaic; libertarian Republicans are likely attempting to distract from the unpopular personal view that antitrust action and consumer protection enforcement are inappropriate uses of government power. Policy disputes are one thing. However, this attack on the enforcers is not a policy dispute but a reckless attack on the rule of law itself.

This memo is a summary of Twitter’s longstanding history as a lawbreaker, a description of the claims made by the committee, as well as rebuttals for each key point.

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[data-including-sensitive-mental-health-information-facebook](https://www.ftc.gov/news-events/news/press-releases/2023/01/ftc-finalizes-order-online-alcohol-marketplace-drizly-for-security-failures-that-exposed-personal-data-of-25-million)), FTC Finalizes Order with Online Alcohol Marketplace Drizly for Security Failures that Exposed Personal Data of 2.5 million, January 10, 2023 (<https://www.ftc.gov/news-events/news/press-releases/2023/01/ftc-finalizes-order-online-alcohol-marketplace-security-failures-exposed-personal-data-25-million>), People, Fortnite Video Game Maker Epic Games to Pay More Than Half a Billion Dollars over FTC Allegations of Privacy Violations and Unwanted Charges, December 19, 2022 (<https://www.ftc.gov/news-events/news/press-releases/2022/12/fornite-video-game-maker-epic-games-pay-more-half-billion-dollars-over-ftc-allegations>), FTC Sues Kochava for Selling Data that Tracks People at Reproductive Health Clinics, Places of Worship, and Other Sensitive Locations, August 29, 2022 (<https://www.ftc.gov/news-events/news/press-releases/2022/08/ftc-sues-kochava-selling-data-tracks-people-reproductive-health-clinics-places-worship-other>), FTC Finalizes Action Against CafePress for Covering Up Data Breach, Lax Security, FTC Takes Action Against Company Formerly Known as Weight Watchers for Illegally Collecting Kids’ Sensitive Health Data, June 24, 2022 (<https://www.ftc.gov/news-events/news/press-releases/2022/06/ftc-finalizes-action-against-cafepress-covering-data-breach-lax-security-0>)

<sup>3</sup> Twitter’s content moderation head quits as departures alarm the FTC, *Washington Post*. November 10, 2022 <https://www.washingtonpost.com/technology/2022/11/10/twitter-security-resignations/>

<sup>4</sup> “The Weaponization of the Federal Trade Commission (FTC): An Agency’s Overreach to Harass Elon Musk’s Twitter.” Interim Staff Report of the Committee on the Judiciary and the Select Subcommittee on the Weaponization of the Federal Government U.S. House of Representatives, March 7, 2023. [https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/Weaponization\\_Select\\_Subcommittee\\_Report\\_on\\_FTC\\_Harrassment\\_of\\_Twitter\\_3.7.2023.pdf](https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/Weaponization_Select_Subcommittee_Report_on_FTC_Harrassment_of_Twitter_3.7.2023.pdf)

## THE BACKSTORY

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Twitter is a firm with a long history of violating laws against unfair methods of competition.<sup>5</sup> It was the first social networking service to ever face FTC sanction. In 2010, the firm settled charges that it “deceived consumers and put their privacy at risk by failing to safeguard their personal information.” The firm did not take reasonable steps to make sure employees were safeguarding both user passwords and broader administrative access to Twitter accounts. As a result, there were multiple security incidents, the most prominent being when a hacker gained administrative access to Twitter by guessing a “weak, lowercase, common dictionary word,” and then sent phony tweets from nine user accounts, including that of then-President elect Barack Obama.<sup>6</sup> Twitter committed to a comprehensive information security program, as well as no longer misleading consumers about its security practices.

Despite this serious infraction, on May 25, 2022, Twitter was fined \$150 million for violating the terms of this very consent decree.<sup>7</sup> The firm had asked users for telephone numbers and emails, ostensibly for security purposes, but was using that data to engage in targeted advertising. More than 140 million people gave their personal information to Twitter under false pretenses. Aside from paying monetary damages, Twitter committed to a series of internal reforms, including:

- The prohibition of using illegally obtained data to serve ads;
- Notification of consumers about its deception;
- Better security options for consumers;
- Clear data access policies for internal databases;
- Enhanced internal privacy and information security programs, including annual training and the buy-in and participation of senior leaders;
- Safeguards for the use of consumer data when launching *any* new or modified product or service, and
- A comprehensive privacy review for the launch or modification of *any* product using consumer data.

Then, in April 2022, Musk made an unsolicited offer to purchase Twitter, which the board ultimately accepted.<sup>8</sup> There was substantial left-wing political opposition to Musk’s acquisition

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<sup>5</sup> Section 5 of the Federal Trade Commission Act. (FTC Act) (15 USC 45)

<sup>6</sup> Twitter Settles Charges that it Failed to Protect Consumers' Personal Information; Company Will Establish Independently Audited Information Security Program, June 24, 2010, FTC (<https://www.ftc.gov/news-events/news/press-releases/2010/06/twitter-settles-charges-it-failed-protect-consumers-personal-information-company-will-establish>)

<sup>7</sup> Twitter to pay \$150 million penalty for allegedly breaking its privacy promises – again, FTC. May 25, 2022 (<https://www.ftc.gov/business-guidance/blog/2022/05/twitter-pay-150-million-penalty-allegedly-breaking-its-privacy-promises-again>)

<sup>8</sup> Elon Musk to Acquire Twitter (provided by Twitter, Inc.), PR NEWSWIRE (Apr. 25, 2022), <https://www.prnewswire.com/news-releases/elon-musk-to-acquire-twitter-301532245.html>; see Elon Musk (@elonmusk), TWITTER (Apr. 25, 2022, 3:43 PM), <https://twitter.com/elonmusk/status/1518677066325053441?lang=en>

of Twitter, and pressure on the FTC to block the deal.<sup>9</sup> The Clayton Act's prohibition on mergers implicates only deals that "may substantially lessen competition." However, given Musk's lack of market power in the social networking space, there was no legal violation at hand. The FTC allowed the deal to move forward. In July, Musk announced he would terminate his offer, alleging the firm had deceived him about the number of bots using the service. In September, former Twitter security officer Peiter Zatkó testified to the Senate that the firm's leadership was engaged in weak security practices, "misleading the public, lawmakers, regulators and even its own board of directors."<sup>10</sup> Nevertheless, Musk was ultimately forced to follow through with the acquisition in October of 2022.<sup>11</sup>

Upon taking over Twitter, Musk immediately made significant changes to the service. He pledged a change to Twitter's verification service, launched a subscription product called Twitter Blue, shifted the algorithm underlying the service, and enacted mass layoffs, including within the executive suite.<sup>12</sup> Key executives in charge of data security, such as Chief Information Security Officer Lea Kissner, resigned.<sup>13</sup> According to the Washington Post, three of the resignations were by members of a "data governance committee established in the FTC deal." It was at this point that the FTC issued a public warning to Musk, noting "deep concern."<sup>14</sup>

Musk banned users from linking to rival social networks, before retracting the policy. He changed content moderation policies.<sup>15</sup> Some of these changes immediately led to consumer deception.<sup>16</sup> Starting in December, journalists published a series of revelations titled "the Twitter Files," using internal documents to describe the relationship between Twitter and government actors during the 2020 elections, as well as a series of controversial content moderation decisions.<sup>17</sup>

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<sup>9</sup> Stop The Deal: Nonprofit Coalition Launches Campaign Against Elon Musk's Twitter Takeover, ACCOUNTABLE TECH (June 3, 2022),

<https://accountabletech.org/media/stop-the-deal-nonprofit-coalition-launches-campaignagainst-elon-musk-s-twitter-takeover/>; see also Letter from Accountable Tech and others to Twitters' Advertisers (May 3, 2022)

<sup>10</sup> Whistleblower: China, India had agents working for Twitter, *The Hill*. September 13, 2022.

<https://thehill.com/homenews/ap/ap-business/ap-twitter-whistleblower-brings-his-critiques-to-congress/>

<sup>11</sup> Billy Perrigo, Elon Musk Finalizes Deal to Buy Twitter, *TIME* (Oct. 27, 2022).

<sup>12</sup> Twitter Announces the Re-Launch of its Paid Verification Plan, with a Price Increase on iOS, *Social Media Today*. December 10, 2022

<https://www.socialmediatoday.com/news/Twitter-Announces-Re-Launch-of-Paid-Verification-Plan/638481/>  
<https://twitter.com/elonmusk/status/1603985491505795072>

<sup>13</sup> Twitter's content moderation head quits as departures alarm the FTC, *Washington Post*. November 10, 2022

<https://www.washingtonpost.com/technology/2022/11/10/twitter-security-resignations/>

<sup>14</sup> Twitter's content moderation head quits as departures alarm the FTC, *Washington Post*. November 10, 2022

<https://www.washingtonpost.com/technology/2022/11/10/twitter-security-resignations/>

<sup>15</sup> Twitter Implements New Rules Banning Links to Other Social Platforms, *Social Media Today*. Dec. 18, 2022

<https://www.socialmediatoday.com/news/twitter-implements-new-rules-banning-links-to-other-social-platforms/639047/>

<sup>16</sup> Here are 17 of the most outrageous impersonations to come from Elon Musk's Twitter Blue rollout blunder, *Business Insider*, November 12, 2022.

<https://www.businessinsider.com/elon-musk-twitter-blue-most-shocking-verified-account-impersonations-2022-11>

<sup>17</sup> Matt Taibbi (@mtaibbi), TWITTER (Dec. 2, 2022, 6:34 PM),

<https://twitter.com/mtaibbi/status/1598822959866683394>

Regardless of the goals of these changes, many if not all implicated the 2010 consent decree and soon-to-be-implemented 2022 consent decree. Twitter Blue, for instance, is a new product, and as such would require a comprehensive privacy assessment to ensure compliance. The firing of senior executives may have required the appointment of new compliance officers to oversee the decree. Mass layoffs indicate that data security programs might be at risk.

Since Twitter is a serial lawbreaker, the FTC sought to investigate compliance with its new consent decree and sent a series of demand letters.<sup>18</sup> Indeed, Congressman Jim Jordan conceded that, “because of its consent decree with Twitter, the FTC has the authority to monitor how Twitter is protecting users’ private information, such as their phone numbers and email addresses.”<sup>19</sup>

## THE SUBCOMMITTEE CLAIMS AGAINST THE FTC

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The Committee on the Judiciary and the Select Subcommittee on the Weaponization of the Federal Government released an Interim Staff Report on March 7, 2023, asserting that the FTC was using a consent order investigation as a pretext to “harass” Elon Musk over his content moderation choices.<sup>20</sup>

According to the report, the FTC is “orchestrating an aggressive campaign to harass Twitter and deluge it with demands about its personnel decisions in each of the company’s departments, every internal communication relating to Elon Musk, and even Twitter’s interactions with journalists.” This includes 350 specific demands for information, and an insinuation that the aggressive “timing, scope, and frequency” of the FTC’s requests suggest a “partisan” motivation. The report claims that the FTC’s actions are a “result of loud voices on the left” seeking to quash Musk’s “self-described ‘absolutist’ commitment to free expression in the digital town square.”

The report used a series of cherry-picked quotes from FTC demand letters to make a series of supporting claims that the FTC asked for information with “little to no nexus to users’ privacy and information.” The subcommittee made four specific claims, and none of them hold any water. The subcommittee presents no evidence of anything except that the FTC is investigating Twitter for violating its consent decree, which it is legally mandated to do.

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<sup>18</sup> <https://twitter.com/DouglasLFarrar/status/1633530622613266433>

<sup>19</sup> The Weaponization of the Federal Trade Commission (FTC): An Agency’s Overreach to Harass Elon Musk’s Twitter.” Interim Staff Report of the Committee on the Judiciary and the Select Subcommittee on the Weaponization of the Federal Government U.S. House of Representatives, March 7, 2023.

[https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/Weaponization\\_Select\\_Subcommittee\\_Report\\_on\\_FTC\\_Harrassment\\_of\\_Twitter\\_3.7.2023.pdf](https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/Weaponization_Select_Subcommittee_Report_on_FTC_Harrassment_of_Twitter_3.7.2023.pdf)

<sup>20</sup> The Weaponization of the Federal Trade Commission (FTC): An Agency’s Overreach to Harass Elon Musk’s Twitter.” Interim Staff Report of the Committee on the Judiciary and the Select Subcommittee on the Weaponization of the Federal Government U.S. House of Representatives, March 7, 2023.

[https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/Weaponization\\_Select\\_Subcommittee\\_Report\\_on\\_FTC\\_Harrassment\\_of\\_Twitter\\_3.7.2023.pdf](https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/Weaponization_Select_Subcommittee_Report_on_FTC_Harrassment_of_Twitter_3.7.2023.pdf)

- 1) **CLAIM ONE:** The FTC demanded information about which journalists accessed corporate information after the release of the Twitter Files. “There is no reason the FTC needs to know every journalist with whom Twitter was engaging. Even more troubling than the burden on the company, the FTC’s demand represents a government inquiry into First Amendment-protected activity. It is an agency of the federal government demanding that a private company reveal the names of the journalists who are engaged in reporting about matters of public interest, including potential government misconduct.”<sup>21</sup>

**REBUTTAL:** There are two reasons for the FTC to ask for information about journalists given access to internal Twitter operations. The first is to find out whether journalists were able to access consumer data, which would be a clear violation of the consent decree. The second pertains to whether information that Twitter maintains as confidential is in fact privileged for the purposes of the FTC investigation. The firm has a due process right to withhold legally privileged information from government investigators, but this privilege is contingent upon that information in fact being privileged. If Twitter is sharing information with journalists or other third parties, it waives its rights to prevent the FTC from seeing those operational and legal details.

- 2) **CLAIM TWO:** The FTC demanded information about the launch of Twitter Blue and firm revenue streams, creating a burden for the firm. “Some of the FTC’s demands about Twitter Blue—such as when the service was “first conceived”—appear to serve little purpose other than to pile on to the already burdensome requests.”

**REBUTTAL:** The FTC has a clear interest in understanding the Twitter Blue product. First, Twitter Blue is a new product, and as such, falls under the consent decree’s mandate to conduct a “privacy review and produce a written report for each such new or modified product, service, or practice.”<sup>22</sup> The requirements under this section are voluminous, and this requirement, plus Musk’s ever-changing dictates are likely why the FTC asked for so much information.

- 3) **CLAIM THREE:** The FTC demanded information about Elon Musk, further burdening Twitter. “In total, the FTC has now sent Twitter well over a dozen demand letters since Musk acquired the company. These letters include demands for both written narratives and document productions. In one 10-week stretch, the FTC averaged one new letter and 35 new requests per week. In addition to their frequency, the breadth of many of these demands make them particularly—perhaps intentionally—burdensome.”<sup>23</sup>

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<sup>21</sup> The Weaponization of the Federal Trade Commission (FTC): An Agency’s Overreach to Harass Elon Musk’s Twitter.” Interim Staff Report of the Committee on the Judiciary and the Select Subcommittee on the Weaponization of the Federal Government U.S. House of Representatives, March 7, 2023.

[https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/Weaponization\\_Select\\_Subcommittee\\_Report\\_on\\_FTC\\_Harrassment\\_of\\_Twitter\\_3.7.2023.pdf](https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/Weaponization_Select_Subcommittee_Report_on_FTC_Harrassment_of_Twitter_3.7.2023.pdf), p. 7

<sup>22</sup> Modified Twitter order between Twitter Inc. and the Federal Trade Commission, May 26, 2022.

[https://www.ftc.gov/system/files/ftc\\_gov/pdf/2023062C4316TwitterModifiedOrder.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/2023062C4316TwitterModifiedOrder.pdf), p. 5

<sup>23</sup> The Weaponization of the Federal Trade Commission (FTC): An Agency’s Overreach to Harass Elon Musk’s Twitter.” Interim Staff Report of the Committee on the Judiciary and the Select Subcommittee on the Weaponization of the Federal Government U.S. House of Representatives, March 7, 2023.

[https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/Weaponization\\_Select\\_Subcommittee\\_Report\\_on\\_FTC\\_Harrassment\\_of\\_Twitter\\_3.7.2023.pdf](https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/Weaponization_Select_Subcommittee_Report_on_FTC_Harrassment_of_Twitter_3.7.2023.pdf), p. 10

**REBUTTAL:** Consent decrees bind senior officers, including Elon Musk.<sup>24</sup> Given the chaotic management style of Musk, the exit of multiple senior officers in charge of consent decree compliance, and internal confusion about whether Twitter employees were laid off, FTC's focus on the key individual making all firm decisions is not only reasonable, but necessary.

- 4) **CLAIM FOUR:** The FTC's reliance on its consent decree is a pretext to harass Twitter at the behest of left-wing advocacy groups and politicians. "In response to the acquisition, key voices on the left called for the federal government to intervene to "block" the purchase. Some groups, including the organization where FTC Chair Khan once worked, urged the FTC to use the existing consent decree with Twitter as a vehicle to attempt to thwart Musk's efforts to reorient the company. As this report shows, the FTC did just that."<sup>25</sup>

**REBUTTAL:** The subcommittee noted that left-wing advocacy groups and politicians made two demands. First, they requested that the FTC block the Twitter acquisition. The FTC did not. It is odd that the subcommittee shows evidence that the FTC refused to follow through on demands from left-wing groups as evidence of some sort of partisan conspiracy.

Second, these groups asked for an investigation over violations of the consent decree. The FTC is engaged in an investigation. There is no reason to assume the FTC is doing this under pretextual purposes when other more obvious explanations – such as Twitter's longstanding track record of lawbreaking and whistleblowers and managerial chaos at Twitter – suffice. To make that claim stick, it should require evidence, and the GOP report lacks any.

Given the flimsy nature of the charges, it seems clear that there is an ulterior agenda at work. The broader political agenda at hand seems to be an attempt to destroy the agency meant to police big business over unfair methods of competition. The FTC is being attacked not because it isn't doing its job, but precisely because it is. In response to FTC's June 2022 actions on pharmaceutical middlemen, for instance, Eli Lilly recently reduced the list price of insulin by 76%. Corporate mergers that raise consumer prices and reduce jobs are down by 76% in 2023. Multiple dominant tech firms are under antitrust investigation or have pending antitrust cases, and the FTC has promulgated a proposed rule to eliminate non-compete agreements, with more than 100 trade associations led by the U.S. Chamber of Commerce in opposition. There is significant dissatisfaction on Wall Street over the FTC's policy framework. It is ultimately these actions that appear to have incurred the wrath of this Republican subcommittee, and not an eminently reasonable investigation of Twitter.

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<sup>24</sup> <https://twitter.com/DouglasLFarrar/status/1633530632314691584>

<sup>25</sup> The Weaponization of the Federal Trade Commission (FTC): An Agency's Overreach to Harass Elon Musk's Twitter." Interim Staff Report of the Committee on the Judiciary and the Select Subcommittee on the Weaponization of the Federal Government U.S. House of Representatives, March 7, 2023.

[https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/Weaponization\\_Select\\_Subcommittee\\_Report\\_on\\_FTC\\_Harrasment\\_of\\_Twitter\\_3.7.2023.pdf](https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/Weaponization_Select_Subcommittee_Report_on_FTC_Harrasment_of_Twitter_3.7.2023.pdf), p. 14