AMERICAN ECONOMIC LIBERTIES PROJECT

MEMORANDUM

DATE: September 23, 2026
TO: U.S. Senate Committee on the Judiciary
RE: Antitrust Enforcement in Adam Candeub's Antitrust Division

Adam Candeub, currently General Counsel of the Federal Communications Commission (FCC), has been nominated by President Trump to be Assistant Attorney General for the Antitrust Division at the Department of Justice (DOJ). The Senate Judiciary Committee (Committee) held its hearing on his nomination on August 5. This memo is prepared in advance of the Judiciary Committee markup on Mr. Candeub's nomination, which is scheduled for September 24. This memo examines Mr. Candeub's professional background, his testimony before the Committee, academic and policy writings, and his career at the FCC to determine how he is likely to lead the DOJ's Antitrust Division.

If confirmed, Mr. Candeub will almost certainly contribute to the current rule of law crisis while continuing the Trump administration's current approach to antitrust enforcement. That is, antitrust law will be used primarily to censor and coerce President Trump's enemies and to benefit the President's allies. There will be no separation between the Department of Justice and the President, and the law and its enforcement will be entirely untethered from what Congress enacted. In those few instances where Candeub is not carrying out the President's will, he is likely to defer to corporate interests and business lobbyists under the guise of the "consumer welfare standard." At the FCC, Candeub has been at the agency most aggressively and effectively censoring the President's enemies, and there is no reason to believe this approach to governance will change once given different legal tools. Antitrust under the current administration must be understood as an extension of the President's personal wishes where the decisions of subordinates only matter in areas of little consequence. These dynamics will not change if Mr. Candeub is confirmed to lead the Antitrust Division. A vote in favor of Mr. Candeub should be viewed as a vote for the status quo of pay-to-play non-enforcement.

I. Adam Candeub's Background

Mr. Candeub earned degrees from Yale University and the University of Pennsylvania Law School.[1] He served as a law clerk immediately after law school for the Ninth Circuit,[2] then worked in private practice for four years before joining the FCC as an Attorney Advisor.[3] Candeub stayed with the FCC until 2004, when he joined Michigan State University's law school as an Associate Professor.[4] He remained on the law school faculty until 2020, when he began

[1] Questionnaire for Nominee to be Assistant Attorney General, Antitrust Division, U.S. Department of Justice, from Adam Candeub, S. Comm. on the Judiciary, Educational History (Aug. 2026), https://www.judiciary.senate.gov/imo/media/doc/candeub_sjq.pdf [hereinafter Candeub SJQ], at 1.
[2] *Id.* at 2.
[3] *Id.*
[4] *Id.*

serving in President Trump's first administration.[5] Mr. Candeub initially worked in the National Telecommunications and Information Administration (NTIA), holding the title of Deputy Assistant Secretary of Commerce for Communications and Information, and eventually served as Acting Assistant Secretary and NTIA Administrator.[6] In the waning days of President Trump's administration, Candeub was made Deputy Associate Attorney General of the DOJ, a role he held until the end of the President's term.[7] After President Trump's first term, Mr. Candeub returned to Michigan State and began his own firm—Coriolanus Consulting—while taking a Senior Fellow position at the Center for Renewing America.[8]

Most prominently, in 2024, Mr. Candeub authored the chapter of the Heritage Foundation's Project 2025 on the Federal Trade Commission.[9] This chapter, along with other actions Mr. Candeub has taken, leave in question his commitment to the current structure of antitrust enforcement and the separation of powers in general. Under his Project 2025 sub-section titled "NEEDED REFORMS," Mr. Candeub begins with "Should the FTC Enforce Antitrust—or Even Continue to Exist?"[10] Although he never mentions the One Agency Act by name, he writes that the FTC's continued independence provides strong reasons—both constitutional and prudential—to dissolve the Commission and consolidate its authority under the DOJ.[11]

These arguments reflect a likely support for the unitary executive theory—the belief that the President should have ultimate and complete control over all federal agencies and actors.[12] It is unclear whether his thoughts on the agency have changed after the Court ruled that the President had the power to fire independent commissioners of the FTC in *Trump v. Slaughter*. Candeub's deference to the Executive seems to pair with a disregard for Congress. Despite remaining unconfirmed, he has been reported to be working inside DOJ headquarters and participating in high-level briefings for the past several weeks.[13] He has also advocated for using the government to advance a conservative agenda, writing,

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[5] *Id.*
[6] *Id.*
[7] *Id.*
[8] *Id.*
[9] Adam Candeub, "Federal Trade Commission," *Project 2025 Presidential Transition Project*, The Heritage Foundation, accessed August 26, 2026, https://static.heritage.org/project2025/2025_MandateForLeadership_FULL.pdf [hereinafter Candeub, Project 2025].
[10] *Id*. at 872.
[11] *Id.* at 872–73.
[12] Keith S. Brown & Adam Candeub, *Independent Agencies and the Unitary Executive Debate: An Empirical Critique*, MSU Legal Studies Research Paper No. 06-04 (2008), https://ssrn.com/abstract=1100125 (concluding, based on an empirical analysis of Federal Communications Commission voting records, that critics of independent agencies "underestimate the extent to which independent agencies frustrate democratic accountability").
[13] Ben Remaly, Anna Langlois & Mark Taylor, *Candeub Working at DOJ Prior to Senate Confirmation*, Global Competition Review (Sept. 3, 2026) (reporting that Mr. Candeub "has been working inside department headquarters for weeks and participated in several antitrust-related briefings, according to sources familiar with the matter").

> "[C]onservatives cannot unilaterally disarm and fail to use the power of government to further a conservative agenda … Unless conservatives take a firm hand to the bureaucracy and marshal its power to defend a freedom-promoting agenda, nothing will stop the bureaucracy's anti-free market, leftist march."[14]

This worldview is concerning for a nominee to lead the Antitrust Division, which is entrusted to enforce the law without fear or favor.

Mr. Candeub's other writings, actions, and affiliations are less notable, but they generally reflect his history of working for and protecting corporate power. Two years ago, Candeub wrote a white paper titled, "Algorithmic Rental Pricing Programs Further Market Efficiency and Cannot Restrain Trade in Violation of the Antitrust Laws."[15] The paper is not publicly available, nor has Mr. Candeub disclosed it to the Committee during this process. Yet based on the title alone, Mr. Candeub was defending the algorithmic pricing of goods—a process that is swiftly becoming one of the most common and coercive ways for dominant firms to extract wealth from consumers.[16] Moreover, Mr. Candeub admits to having served as a faculty member at the Society of Utility and Regulatory Financial Analysts (SURFA).[17] SURFA is an organization widely reported to help drive utility costs nationwide by training the experts on both sides of utility rate cases—including the experts for the consumer advocates that are supposed to challenge excessive rate hikes—to use the same flawed models and assumptions.[18] The models promoted by SURFA were even banned by the Federal Energy Regulatory Commission for being "circular" and "defying general financial logic."[19]

In his most substantial role in government—serving as General Counsel to the FCC—Mr. Candeub has helped assist and defend the agency as it has censored and prosecuted several of the administration's political enemies and critics.[20] During his tenure, the agency has selectively

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[14] Candeub, Project 2025, *supra* note 9, at 873.
[15] Candeub SJQ, *supra* note 1, at 5.
[16] *See* Press Release, U.S. Dep't of Justice, Justice Department Sues RealPage for Algorithmic Pricing Scheme that Harms Millions of American Renters (Aug. 23, 2024), https://www.justice.gov/archives/opa/pr/justice-department-sues-realpage-algorithmic-pricing-scheme-harms-millions-american-renters (alleging that RealPage's algorithmic pricing software enabled landlords to "share confidential, competitively sensitive information and align their rents," and describing the scheme as "a modern way to violate a century-old law through systematic coordination of rental housing prices").
[17] Candeub SJQ, *supra* note 1, at 4.
[18] David Dayen, "The Secret Society Raising Your Electricity Bills," *Am. Prospect* (Feb. 21, 2025), https://prospect.org/2025/02/21/2025-02-21-secret-society-raising-your-electricity-bills/ (reporting that SURFA-affiliated consultants are retained both by utilities seeking rate increases and by the "independent" consumer and public advocates who are charged with scrutinizing those rate requests); Mark Ellis, *Rate of Return Equals Cost of Capital: A Simple, Fair Formula to Stop Investor-Owned Utilities from Overcharging the Public*, Am. Econ. Liberties Project (Jan. 2025), https://www.economicliberties.us/wp-content/uploads/2025/01/20250102-aelp-ror-v5.pdf.
[19] *Id*. (reporting that the Federal Energy Regulatory Commission has rejected SURFA-promoted rate-of-return models as "circular" and as "defying general financial logic").
[20] *See infra* Part V (detailing the Federal Communications Commission's role, during Mr. Candeub's tenure as General Counsel, in threatening broadcast licenses and pressuring networks to cancel programming based on the content of on-air speech).

reviewed the broadcast licenses of disfavored networks, attempted to have various television shows cancelled, and occasionally abrogated the authority of Congress.[21] This has coincided with the FCC declining to prevent increasing consolidation in the broadcast and telecommunications industries, and with the Commission either allowing deals to go through immediately, or conditioning the deals' approval on the removal of company policies or guidelines that promote diversity, equity, and inclusion.[22] At his confirmation hearing Candeub refused to defend or take accountability for the FCC's actions during his tenure as General Counsel acts, giving no insight into his legal rationale for signing off on the agency's actions. His record at the FCC's demonstrates that Mr. Candeub is unlikely to resist or prevent the unlawful use of the law to achieve partisan ends.[23]

II. Mr. Candeub Defends Failed Approaches to Antitrust Enforcement Before Judiciary Committee

In Mr. Candeub's confirmation hearing he avoided giving detailed plans or explanations of his planned antitrust enforcement priorities. But in his few substantive interactions with the members of the Committee, Mr. Candeub made clear that he would use antitrust enforcement tools sparingly and that large, monopolistic firms would be given the benefit of the doubt under his leadership of the Antitrust Division. In one exchange with Senator Lee, Mr. Candeub was asked to sketch out his broad philosophy: "Antitrust is a very blunt instrument. It can do a lot of damage as well as a lot of good. But I think that, if I am confirmed, I will—I will be very cautious."[24] Applying this to market size, he said, "Bigness, in and of itself, is not necessarily indicative of any antitrust harm. In fact, bigness often provides efficiencies that are valuable to the American people."[25]

The exchange continued, and Senator Lee began to press him on the particulars:

> "[T]here are those who [are] more skeptics of our antitrust laws who like to say: 'I believe in the free market. I want the free market to take care of this. Government shouldn't intervene in antitrust law.' What's your best response to that?"[26]

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[21] *See infra* notes 72–77 and accompanying text (discussing the FCC's role in the cancellation of *Jimmy Kimmel Live!* and *The Late Show with Stephen Colbert* and its review of ABC's broadcast licenses following on-air criticism of the administration).
[22] *See infra* notes 63–71 and accompanying text (discussing the FCC's approval of the Nexstar-Tegna, Charter-Cox, Verizon-Frontier, and T-Mobile–U.S. Cellular transactions, several of which were conditioned on the parties' abandonment of diversity, equity, and inclusion policies).
[23] *See infra* notes 78–80 and accompanying text (quoting Mr. Candeub's testimony that his approach as General Counsel was simply to "follow the law" in "good faith," and that the "public interest" standard governing FCC broadcast regulation is ultimately defined by "the judgment of the FCC").
[24] Transcript of Nomination Hearing of Adam Candeub to be Assistant Attorney General, Antitrust Division, U.S. Department of Justice, Before the S. Comm. on the Judiciary, 119th Cong. (Aug. 5, 2026) (transcript via Bloomberg Government), at 57.
[25] *Id.*
[26] *Id.*

Mr. Candeub replied succinctly,

> "I would say they are right … [W]hat has been so wonderful about American antitrust enforcement is that … it has recognized that markets can adjust. Often, antitrust settlements cannot. And, therefore, for the government to introduce into the economy its own vision of what is the right outcome is very dangerous."

When asked by Senator Lee if he was completely averse to antitrust enforcement, he reiterated his preference for caution: "I would—I would be on the 'Let's do so but the evidence must be strong.' As I said, it's a blunt instrument. It can do harm. But when the evidence is there, I am—I'd just enforce the law if I am so confirmed."[27]

Earlier in the hearing, Mr. Candeub made statements that were less deferential to large corporations. For example, when prompted by Senator Grassley, he said that antitrust enforcement in agriculture and healthcare would be a "top priority,"[28] making explicit reference to pharmacy benefit manager (PBM) consolidation and market pressures on small farmers.[29] Senator Hawley followed a similar line of questioning, asking Mr. Candeub whether the mere fact that a good was priced at zero (i.e., social media and tech products) would prevent a company from escaping antitrust enforcement and scrutiny. Mr. Candeub began his answer hesitantly, describing zero-priced goods as an "interesting" and "puzzling" challenge to economists and antitrust enforcers. [30] After leading and probing questions by Senator Hawley, he finally agreed that "simply because something is zero-price" does not guarantee that it would escape antitrust scrutiny.[31]

III. Corruption and the Consumer Welfare Standard

Despite these assurances, Mr. Candeub's answers repeatedly demonstrated that he prefers the cautious and deferential approach to antitrust enforcement that has failed over the past several decades under both Republican and Democratic administrations. He told the Committee that when assessing market harms he would do so by "using the traditional tests of market power."[32] Explaining himself further, he stated: "The only coherent standard that ensures in any antitrust decision you are benefiting all Americans is the consumer welfare standard."[33] And, in

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[27] *Id.* at 57–58.
[28] *Id.* at 35.
[29] *Id.* at 35 (Sen. Grassley voicing continued concern about "PBM consolidation, drug pricing steering favoritism and hidden competition," and Mr. Candeub responding that "it is the need to treat farmers correctly and to protect them from anti-competitive abuses [that] was one of the motivations and the genesis of the Sherman Act").
[30] *Id.* at 48 ("Zero-pricing goods like social media present a very interesting and puzzling sometimes to economists challenge in how to value that. However, I do not believe at all that simply because something is zero-price that it necessarily escapes antitrust scrutiny.").
[31] *Id*.
[32] *Id.* at 47.
[33] *Id.* at 58.

his exchange with Senator Hawley, firmly remarked that he was "not at all interested in abandoning [it]."[34]

This should be especially troubling to advocates for a freer and more competitive economy, since the "consumer welfare standard" has historically been a price-focused and barely administrable set of rules to determine if an action violates our antitrust laws.[35] In practice, it often meant antitrust enforcers adopted a permissive attitude to harmful business conduct and delegated their decision making authority and judgment to economists, private lobbyists, defense lawyers, and large firms.[36] These practices, while inconsistent with the text and purpose of the Sherman and Clayton Acts,[37] are most worrisome because they can be—and have been—fluidly applied to weigh in favor of approving the overwhelming majority of mergers, acquisitions, and in opposition to enforcement against anticompetitive conduct.[38]

The effects have been astonishing: Since 1993, the number of prime defense contractors has shrunk from 51 to 5.[39] Half of all U.S. metro areas have only one or two hospitals providing inpatient care.[40] In the late 1970s and early 1980s, the "Big Four" meatpackers controlled 17-34% of the markets in beef, pork, and poultry; their market share is now 55-85%.[41] Amazon

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[34] *Id*. at 47.

[35] Lina M. Khan, Amazon's Antitrust Paradox, 126 *Yale L.J.* 710, 720–21 (2017) (explaining that under the modern consumer welfare framework, "showing antitrust injury requires showing harm to consumer welfare, generally in the form of price increases and output restrictions"); https://www.justice.gov/archives/opa/speech/assistant-attorney-general-jonathan-kanter-delivers-remarks-new-york-city-bar-association ("A variety of sometimes-conflicting approaches using the label "consumer welfare standard" have become a distraction. To its defenders, the "consumer welfare standard" is a remarkably flexible term. With every criticism, we get a new definition of consumer welfare that carries the term further from the meaning of the actual words "consumer" and "welfare." At the end of the day, if you ask five antitrust experts what the consumer welfare standard means, you will often get six different answers. To me consumer welfare is a catch phrase, not a standard."

[36] *Id*. at 716–19, 737–39 (arguing that the modern consumer welfare framework confines antitrust analysis to narrow, economics-driven price and output effects and rests on assumptions about market self-correction that tend to favor incumbent firms over new entrants).

[37] *Id.* at 739–40 (arguing that the premise that "Congress designed the Sherman Act as a 'consumer welfare prescription'" is inconsistent with the statute's legislative history and its original purpose of curbing the economic and political power of industrial trusts).

[38] *Id.* at 738 (explaining that a framework focused narrowly on price and output "undermines effective antitrust enforcement by delaying intervention until market power is being actively exercised").

[39] Rodrigo Carril & Mark Duggan, *The Impact of Industry Consolidation on Government Procurement: Evidence from Department of Defense Contracting*, NBER Working Paper No. 25160 (Oct. 2018), https://www.nber.org/papers/w25160 (finding that the number of "prime" defense contractors fell from 51 to 5 since the 1990s amid a wave of industry mergers); see also Noah Robertson, *The Pentagon Wants Industry to Transform Again to Meet Demand. Can It?*, Defense News (Feb. 20, 2024), https://www.defensenews.com/industry/2024/02/20/the-pentagon-wants-industry-to-transform-again-to-meet-demand-can-it/ (reporting that, following a Pentagon dinner in the fall of 1993 later dubbed the "Last Supper," "the number of large prime contractors plummeted from 51 to five" within a decade).

[40] *Nearly Half of Metro Areas Have Only One or Two Hospitals or Health Systems Providing Inpatient Care*, KFF (Oct. 1, 2024), https://www.kff.org/health-costs/nearly-half-of-metro-areas-have-only-one-or-two-hospitals-or-health-systems-providing-inpatient-care/.

[41] The White House, *Fact Sheet: Executive Order on Promoting Competition in the American Economy* (July 9, 2021), https://bidenwhitehouse.archives.gov/briefing-room/statements-releases/2021/07/09/fact-sheet-executive-order-on-promoting-competition-in-the-american-economy/ ("In beef, poultry, and pork processing, the top four

alone accounts for 79% of large-warehouse employment,[42] and three PBMs control 80% of the pharmaceutical benefit industry.[43]

This immense concentration has been felt in every aspect of American life. The average economic commuting zone has less than three recruiting employers per occupation.[44] 50% of U.S. metro areas have only one or two hospitals providing all necessary inpatient care.[45] Workers' share of GDP has declined 12% since 1980—the lowest amount since recording began—while corporate profits have doubled.[46] American households have suffered similarly, losing an estimated $5,000 per year in purchasing power to industry consolidation.[47]

These economic harms were initiated and sustained by the deliberate refusal of federal authorities to enforce the antitrust laws; and the second Trump administration has eagerly returned to this abandonment of law enforcement: Of the several hundred mergers worth $1 billion or more during the current administration, only 68 have received any form of agency action.[48] That includes the $110 billion merger between Paramount and Warner Bros., Capital

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firms control 55 to 85 percent of the market . . . ."); James M. MacDonald, *Concentration in U.S. Meatpacking Industry and How It Affects Competition and Cattle Prices*, Econ. Rsch. Serv., U.S. Dep't of Agric., Amber Waves (Jan. 25, 2024), https://www.ers.usda.gov/amber-waves/2024/january/concentration-in-u-s-meatpacking-industry-and-how-it-affects-competition-and-cattle-prices (finding that the four largest beef packers' share of steer and heifer purchases rose from 36% in 1980 to 81% by 1995 and 85% by 2019, and that the four largest pork packers' share rose from 34% in 1980 to 67% by 2019); *The Foodprint of Chicken*, FoodPrint (last visited Sept. 23, 2026), https://foodprint.org/reports/the-foodprint-of-chicken/ (finding that the four largest poultry companies' share of the broiler market rose from 17% in 1977 to more than 60% in 2022).

[42] *Amazon's Outsized Role: The Injury Crisis in U.S. Warehouses and a Policy Roadmap to Protect Workers*, Nat'l Emp't L. Project (May 1, 2024), https://www.nelp.org/app/uploads/2024/04/Amazons-Outsized-Role-5-1-24.pdf (finding that Amazon accounts for 79% of employment at large warehouse facilities nationwide, but 86% of injuries at such facilities).

[43] Fed. Trade Comm'n, *Pharmacy Benefit Managers: The Powerful Middlemen Inflating Drug Costs and Squeezing Main Street Pharmacies* (July 9, 2024), https://www.ftc.gov/system/files/ftc_gov/pdf/pharmacy-benefit-managers-staff-report.pdf (finding that the three largest pharmacy benefit managers—CVS Caremark, Express Scripts, and OptumRx—process roughly 80% of prescription drug claims nationwide).

[44] José Azar, Ioana Marinescu & Marshall I. Steinbaum, *Labor Market Concentration*, 57 J. Hum. Resources S167 (2022) (finding that the average commuting-zone-level labor market has fewer than three employers recruiting per occupation, a level that would be considered "highly concentrated" under federal antitrust merger guidelines).

[45] KFF, *supra* note 40.

[46] Greg Ip, *The Record Divide Between Corporate Profits and Worker Pay*, Wall St. J. (May 28, 2026), https://www.wsj.com/finance/stocks/the-record-divide-between-corporate-profits-and-worker-pay-ea4c75bc (reporting that labor's share of gross domestic income has fallen more than 12% since 1980 to its lowest level since records began in 1947, while the share flowing to corporate profits has more than doubled over the same period).

[47] Thomas Philippon, *The Great Reversal: How America Gave Up on Free Markets* 6 (2019) (estimating that reduced competition costs the average American household approximately $5,000 per year in the form of higher prices and lower wages).

[48] American Economic Liberties Project, *Trump Era Mergers and Settlements*, https://www.economicliberties.us/data-tools/merger-boom-tracker/ (last updated Aug. 2026) (tracking, in a "Trump Merger Boom Tracker," every proposed or completed merger valued at $1 billion or more since the start of the current administration, and, in a companion "Trump Merger 'Enforcement' Tracker," every instance in which an antitrust or other regulatory agency has taken action on a pending deal); see also Am. Econ. Liberties Project, *The Good, the Bad, and the Ugly of Trump Antitrust and Consumer Protection* 1 (Feb. 2026), https://www.economicliberties.us/wp-content/uploads/2026/02/The-Good-the-Bad-and-the-Ugly-of-Trump-Antitrust-02.26_v4.pdf ("[T]he Antitrust Division . . . hasn't blocked a single deal, and the FTC . . . has challenged

One's $35 billion acquisition of Discover, and Omnicom's $13.5 billion purchase of Interpublic Group, which CNBC's Jim Cramer elatedly described as "so monopolistic and anti-competitive I can't even believe it."[49] And of the mergers which did receive federal oversight, not a single investigation resulted in the Trump administration issuing a second request for further disclosure and fact-finding.[50] In fact, of the 68 mergers examined by the administration, 55 received expedited fast-track merger approval.[51] Six were settled, three were explicitly condoned, and none have been litigated.[52]

This administration is not simply stepping back from enforcement. Reportedly, DOJ political appointees—including some without any antitrust experience—have overruled Antitrust Division staff to thwart enforcement efforts or broker weak settlements despite having strong cases on the merits. Such incidents have been accompanied by serious allegations of corruption. The Department's suit against Live Nation was just one week into trial when, reportedly, the President directed the DOJ to "settle it" before the case began in earnest.[53] Without informing the presiding judge, any of the 40 states the Department was co-plaintiffs with, or even its own trial team, the Department immediately settled the case, receiving far less substantive concessions than those it had recommended earlier in the negotiations. [54] A similar sequence of events played

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just three combinations, each valued under a billion dollars."). Of the 354 mergers valued at $1 billion or more listed on the tracker as of September 2026, only 68 also appear on the companion Enforcement Tracker as having received any recorded agency action.

[49] *See* American Economic Liberties Project, *Paramount-Warner Bros. Discovery FAQ: What You Need to Know* (Mar. 18, 2026), https://www.economicliberties.us/our-work/paramount-warner-bros-discovery-faq-what-you-need-to-know/ (discussing Warner Bros. Discovery's acceptance of Paramount's $31-per-share, approximately $110 billion offer); Press Release, American Economic Liberties Project, *DOJ Approval of Capital One-Discover Would Be a Shocking Wall Street Giveaway* (Apr. 3, 2025), https://www.economicliberties.us/press-release/doj-approval-of-capital-one-discover-would-be-a-shocking-wall-street-giveaway/ (statement of Morgan Harper) (criticizing the Department of Justice Antitrust Division's decision not to challenge Capital One's $35 billion acquisition of Discover Financial Services); Press Release, American Economic Liberties Project, *The FTC Is Now Abusing Merger Policy to Funnel Money to Elon Musk* (June 23, 2025), https://www.economicliberties.us/press-release/the-ftc-is-now-abusing-merger-policy-to-funnel-money-to-elon-musk/ (reporting that "CNBC's Jim Cramer called the deal 'so monopolistic and anti-competitive I can't even believe it,'" and quoting Matt Stoller, Research Director at the American Economic Liberties Project, criticizing the FTC's settlement clearing Omnicom's acquisition of Interpublic Group for requiring "no meaningful divestitures" and "no remedies to protect competition in the broader ad market").

[50] Note that Capital One-Discover was exempt from the Hart-Scott-Rodino merger process and that Omnicom-Interpublic *did* receive a second request, but the request was issued by the Biden Administration.

[51] *Supra* note 49, (recording 54 of the 68 actioned mergers as receiving "Early Termination" under the Hart-Scott-Rodino Act and one additional merger as "Early Termination, Approved").

[52] *Id.* (recording six of the 68 actioned mergers as "Settlement" and none as litigated or blocked).

[53] Rebecca Ballhaus et al., *The Trump Intervention That Got the DOJ Off Live Nation's Back*, Wall St. J. (Aug. 23, 2026), https://www.wsj.com/business/media/trump-live-nation-antitrust-doj-f82b2c55 (reporting that President Trump told a senior Justice Department official, "Settle it," days before the settlement was finalized).

[54] Alanna Durkin Richer & Larry Neumeister, *Justice Department and Live Nation Reach Settlement over Ticketmaster Illegal Monopoly Case*, PBS News (Mar. 9, 2026), https://www.pbs.org/newshour/nation/justice-department-and-live-nation-reach-settlement-over-ticketmaster-illegal-monopoly-case (reporting that Judge Arun Subramanian called it "entirely unacceptable" that no one informed him of the tentative settlement until the night before it was announced, roughly a week after the trial began, and that a coalition of states declined to join the deal and continued the case without the Department); *Judge Scolds Live Nation and Justice Department for Blindsiding Trial Team*, CNN (Mar. 10, 2026) (reporting that the presiding judge called it "mind boggling" that the Department's

out during the administration's suit to block HPE's acquisition of Juniper, leading to nearly a year of extra litigation evaluating the validity of the settlement, the eventual resignation of Chad Mizelle—the DOJ Chief of Staff, the firing of Roger Alford and William Rinner—two senior Justice Department officials, and calls for federal investigation into exactly how and why the settlement occurred.[55]

IV. Candeub Favors Antitrust Enforcement to Police Disfavored Speech

By defending the consumer welfare standard and the status quo, Mr. Candeub is committing to the Trump administration's unlawful, pro-concentration approach to antitrust enforcement, where litigation is rare and settling with large firms and special interests is common. His only explicit exceptions to this approach to governance and to the consumer welfare standard—what he called the "traditional tests"—were when our "civil rights, *particularly* free speech, can be an issue … [I]n those situations, the division should act to protect Americans."[56] Candeub made this modification of the consumer welfare standard explicit several times. Later in the hearing he was asked if the consumer welfare standard was purely an evaluation of price. He responded, "Absolutely not. It can include things such as privacy, or, I would say, constitutional rights issues like free speech."[57] In his section of Project 2025, he wrote that "Antitrust law can combat dominant firms' baleful effects on democratic institutions such as free speech, the marketplace of ideas, shareholder control, and managerial accountability[.]"[58] As

own trial attorneys had not been told of the settlement in advance).; Dave Clark, *State AGs Say DOJ's Live Nation Settlement Could Make Ticketmaster More Powerful*, TicketNews (Sept. 16, 2026), https://www.ticketnews.com/2026/09/state-ags-live-nation-settlement-ticketmaster-entrench/ (reporting that Live Nation proposed a settlement to the Department in September 2025, that the Department countered with tougher terms in January 2026, and that a September 4, 2026 Tunney Act filing by seventeen state attorneys general and the District of Columbia asks the court to compel disclosure of what changed between the Department's January counteroffer and the final settlement reached in March 2026).

[55] Press Release, U.S. Dep't of Justice, *Justice Department Requires Divestitures and Licensing Commitments in HPE's Acquisition of Juniper Networks* (June 28, 2025), https://www.justice.gov/opa/pr/justice-department-requires-divestitures-and-licensing-commitments-hpes-acquisition-juniper; *13 State Attorneys General File Motion to Intervene in HPE-Juniper Merger Challenge*, Duane Morris LLP (Oct. 24, 2025), https://www.duanemorris.com/alerts/13_state_attorneys_general_file_motion_intervene_federal_review_doj_settlement_allowing_1025.html (reporting that the Antitrust Division sued to block the $14 billion HPE/Juniper merger on January 30, 2025, then settled roughly two weeks before the scheduled trial, and that the settlement was subsequently contested by a coalition of thirteen state attorneys general who moved to intervene in October 2025). DOJ Chief of Staff Chad Mizelle, who had publicly praised the settlement, resigned in September 2025 following months of controversy over the deal, though press reports differ on how much responsibility the settlement bears for his departure. *Compare* Attorney General's Chief of Staff to Depart Justice Department Following Tumultuous Few Months, CNN (Sept. 23, 2025), https://www.cnn.com/2025/09/23/politics/chad-mizelle-pam-bondi-doj (attributing the resignation primarily to fallout over the Department's handling of the Jeffrey Epstein files and to personal reasons), *with* Matt Stoller, BIG (Sept. 24, 2025) (linking the resignation to the HPE/Juniper controversy). See also *Court Should Reject HPE-Juniper Merger: Former DOJ Antitrust Deputy*, Yahoo Fin. (Aug. 19, 2025), https://finance.yahoo.com/news/court-should-reject-hpe-juniper-merger-former-doj-antitrust-deputy-143943005.html (quoting former DOJ Antitrust Deputy Roger Alford's statement that "it is my opinion that in the HPE/Juniper merger scandal[,] Chad Mizelle and Stanley Woodward perverted justice").

[56] Transcript of Nomination Hearing, *supra* note 24, at 47 (emphasis added).

[57] *Id.* at 59.

[58] Candeub, Project 2025, *supra* note 9, at 870.

examples of these private practices that are undermining democracy, he listed Environmental, Social, and Governance (ESG) requirements, powerful internet firms meddling in online discourse, and the "de-banking"[59] of industries and individuals.[60]

Further along in the Section, he urged the FTC to start an "ESG/DEI" task force to investigate powerful firms.[61] Mr. Candeub even went so far as to claim that corporations including these considerations in their behavior violate the Sherman Antitrust Act: "Managers who insert their own values into underwriting agreements, contracts for professional services, or other business transactions coopt shareholder value for their own personal utility. This is an unfair trade practice[.]"[62] Extending this argument out, he says that powerful firms who refuse to service an individual for their social or political views are replacing the government's voice with their own, and that these decisions, while still receiving some measure of deference, cannot be ignored by the government in an age of "highly partisan, ideologically divided America."[63]

V. Candeub's Tenure at the FCC is a Blueprint for Weaponizing DOJ Antitrust

These statements would be worrisome from any nominee, but they must be taken even more seriously given Mr. Candeub's tenure at the Federal Communications Commission. Candeub has served as the FCC's General Counsel since February 2025, acting as the chief legal advisor to the agency and its bureaus. As a result, nearly every enforcement action taken or declined by the FCC in President Trump's second term has come across his desk. Recent decisions and priorities of the Federal Communications Commission illustrate how Mr. Candeub is likely to wield antitrust enforcement if confirmed.

In March of this year, the FCC approved a merger between Nexstar and Tegna that resulted in Nexstar's controlling broadcast licenses that reach over 80% of U.S. households.[64]

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[59] Rabihah Butler, "Debanking in the Digital Age: Balancing Risk Management with Financial Inclusion," Thomson Reuters Institute (Oct. 9, 2025), https://www.thomsonreuters.com/en/institute/articles/debanking-in-the-digital-age; Ryan Cooper, "Elon Musk and Friends Propose Defunding the Fraud Police," *Am. Prospect* (Nov. 29, 2024), https://prospect.org/2024/11/29/2024-11-29-elon-musk-marc-andreessen-cfpb/.

[60] Candeub, Project 2025, *supra* note 9, at 871 ("Practices such as Environmental, Social, and Governance (ESG) requirements on publicly traded corporations and their inclusion in business agreements, the so-called 'de-banking' of industries and individuals, and the interference of large internet firms with democratic political discourse undermine liberal democracy, a truly open society, and, indeed, rule of law.").

[61] *Id.* at 872–74 (proposing that the FTC scrutinize "ESG Practices as a Cover for Anticompetitive Activity and Possible Unfair Trade Practices," on the theory that "corporate social advocacy on issues ranging from 'Diversity, Equity, and Inclusion' (DEI) to the 'environmental, social, and governance' (ESG) movement also serves to launder corporate reputation and perhaps obtain favorable treatment from government actors").

[62] *Id.* at 874.

[63] *Id.* (explaining that a business's decision to refuse service based on its "political or social views" ordinarily "would and should receive deference," but that "this presumption is harder to make in a highly partisan, ideologically divided America," particularly where the business "enjoys certain government privileges or relationships and/or market power" and "should not replace democratic decision-making with their own judgment on controversial matters").

[64] Daisuke Wakabayashi, "F.C.C. Approves Nexstar's Acquisition of a Local TV Rival," *N.Y. Times*, May 19, 2026, https://www.nytimes.com/2026/05/19/business/fcc-nexstar-tegna-deal-approved.html.

The statutory limit enacted by Congress is 39%.[65] Just last month, the FCC eliminated the statutory limit entirely,[66] despite concerns from Senator Cruz and other members of Congress who believe the FCC cannot abrogate congressional enactments at will.[67]

These have not been one-off events for Candeub and Carr's FCC. In February, Charter Communications was permitted to create the largest existing U.S. cable television and broadband provider when it acquired Cox for $34.5 billion.[68] 2025 saw consolidation all across the wireless market: Verizon acquired Frontier Communications for $9.6 billion; T-Mobile's acquisition of U.S. Cellular went through for $4.4 billion; and the FCC even helped facilitate Dish's exit from the wireless market, forcing Dish to sell its holdings to AT&T and SpaceX.[69]

Notable in all these deals is how the merging parties have escaped agency scrutiny of the competition issues posed. T-Mobile's deal was approved in exchange for ending all DEI-related policies.[70] Verizon's acquisition worked similarly, with its deal going through as it ended its workforce diversity goals and guidelines.[71] Many of these transactions have been so flagrantly corrupt and anti-consumer that other arms of the Trump administration have publicly voiced their dissent. After T-Mobile acquired U.S. Cellular, Gail Slater—then head of the Antitrust Division—released a statement meticulously documenting the high level of concentration in the wireless industry and the need to protect what little competition remained in the market.[72]

Mr. Candeub's pro-concentration approach is especially dangerous because his record and statements reveal a nominee most interested in using the threat of legal action to control the behavior of others rather than enforce the law and protect competition. The most blatant examples of this were the FCC's attempts to silence Stephen Colbert and Jimmy Kimmel for

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65 *Id.*
66 *Amendment of Section 73.3555(e) of the Commission's Rules, National Television Multiple Ownership Rule*, MB Docket No. 17-318, Report and Order, FCC 26-53 (adopted Aug. 6, 2026).
67 Allison Mollenkamp, "Cruz, Democrats push back on FCC move to lift ownership cap," *Roll Call*, July 16, 2026, https://rollcall.com/2026/07/16/cruz-democrats-push-back-on-fcc-move-to-lift-ownership-cap/.
68 David Shepardson, "FCC approves Charter Communications' $34.5 billion deal to buy Cox," Reuters, Feb. 27, 2026, https://www.reuters.com/world/us-agency-approves-charter-communications-345-billion-deal-buy-cox-2026-02-27/.
69 David Shepardson, "FCC approves Verizon deal to acquire Frontier after DEI changes," Reuters, May 16, 2025, https://www.reuters.com/sustainability/society-equity/verizon-ending-dei-programs-it-seeks-us-approval-frontier-deal-2025-05-16/; Kelcee Griffis, "FCC Greenlights T-Mobile's $4.4 Billion US Cellular Acquisition," Bloomberg, July 11, 2025, https://www.bloomberg.com/news/articles/2025-07-11/fcc-greenlights-t-mobile-s-4-4-billion-us-cellular-acquisition; Harold Feld, "That Escalated Quickly. Chairman Carr Completely Restructures the Wireless Market into an Oligopoly," Public Knowledge, Oct. 8, 2025, https://publicknowledge.org/chairman-carr-completely-restructures-the-wireless-market/.
70 "US FCC approves two T-Mobile deals after wireless carrier drops DEI programs," Reuters, July 11, 2025, https://www.reuters.com/sustainability/society-equity/fcc-approves-two-t-mobile-deals-after-wireless-carrier-drops-dei-programs-2025-07-11/.
71 Shepardson, *supra* note 68 (Verizon-Frontier).
72 Press Release, U.S. Department of Justice, Antitrust Division, Statement of the Department of Justice Antitrust Division on the Closing of Its Investigation of the Merger of T-Mobile and USCellular (July 10, 2025), https://www.justice.gov/opa/pr/statement-department-justice-antitrust-division-closing-its-investigation-merger-t-mobile.

mocking conservatives and President Trump's agenda. After the murder of Charlie Kirk, Jimmy Kimmel joked about the situation, leading the FCC to threaten ABC's broadcast licenses based purely on the content of Kimmel's speech.[73]

These acts were not isolated incidents. They accompanied a deliberate and steady series of attempts to weaponize the FCC for censorious ends. In reaction to Jimmy Kimmel joking about Melania Trump, the FCC decided to prematurely review ABC's broadcaster license.[74] Denying these allegations, the FCC instead responded that its early review was simply a necessary reaction to Disney's DEI policies.[75] And after President Trump complained about ABC and NBC not airing his primetime speeches, the FCC swiftly announced that its review of ABC broadcast license would take into account deciding to air the President's speech.[76] Responding to these measures, FCC Commissioner Anna Gomez wrote that the agency was "increasingly using the weight of government power to suppress lawful expression."[77] Later, she bluntly described her own Commission's behavior as "unprecedented, unlawful, and going nowhere."[78]

In Mr. Candeub's nomination hearing he was frequently given the chance to either display his independence and neutrality, or to defend and explain the actions of his and Mr. Carr's FCC. But Mr. Candeub offered no coherent defense or legal theory for the actions of himself or his superiors. When pressed by Senator Kennedy on the matter, Mr. Candeub only replied, "[A]s general counsel to the Federal Communications Commission, it's my job to follow the law. I will do so in good faith, carefully studying precedent and applying the law to the facts."[79] And in an earlier exchange, when asked whether the FCC had the power to regulate freedom of speech, Candeub effectively accepted the premise, saying that the FCC has the power

[73] Brian Stelter, "How Brendan Carr, the attack-dog FCC chair, helped take down Jimmy Kimmel with words, not actions," CNN Business, Sept. 18, 2025, https://www.cnn.com/2025/09/18/media/brendan-carr-jimmy-kimmel-fcc-first-amendment.
[74] Todd Spangler, "Ted Cruz Rips FCC Over ABC Broadcast License Review Following Kimmel Joke: 'It Is Not Government's Job to Censor Speech,'" *Variety*, Apr. 29, 2026, https://variety.com/2026/tv/news/ted-cruz-fcc-abc-broadcast-license-review-kimmel-censor-speech-1236733070/.
[75] *Id.*
[76] Helen Coster, "Trump threatens to revoke licenses of US networks for not carrying primetime speech," Reuters, July 16, 2026, https://www.reuters.com/legal/government/us-networks-face-dilemma-over-whether-air-trumps-election-security-speech-2026-07-16/; Todd Spangler, "FCC Chair Says ABC's Decision to Not Broadcast Trump Speech Live Will Be Part of Agency's Review of Station Licenses," *Variety*, July 22, 2026, https://variety.com/2026/tv/news/fcc-abc-trump-speech-review-station-licenses-1236818342/.
[77] "ABC Yanks Jimmy Kimmel's Show 'Indefinitely' After Threat From Trump's FCC Chair Brendan Carr," *CNN Bus.* (Sept. 17, 2025), https://www.cnn.com/2025/09/17/media/jimmy-kimmel-charlie-kirk-trump-fcc-brendan-carr (quoting FCC Commissioner Anna Gomez's dissent that the agency was "increasingly using the weight of government power to suppress lawful expression").
[78] Scott Nover, "FCC Orders Review of Disney's Licenses After Trump's Kimmel Criticism," *Wash. Post* (Apr. 28, 2026), https://www.washingtonpost.com/business/2026/04/28/fcc-orders-review-disneys-licenses-after-trumps-kimmel-criticism/ (quoting Commissioner Gomez describing the Commission's conduct as "unprecedented, unlawful, and going nowhere").
[79] Transcript of Nomination Hearing, *supra* note 24, at 42.

to regulate broadcasters "pursuant to the public interest,"[80] with the public interest being decided by "the judgment of the FCC."[81]

When requested to explain his views on the separation of powers and the rule of law one final time, Candeub replied in puzzling fashion—asked what he would do if the President demanded he execute an illegal order, he said he didn't think the President would do something like that.[82] Asked if he would prosecute the President's enemies, aid the President's allies, or commit any number of crimes, Candeub's only response was to reject the hypothetical and decline to answer.[83] And when asked how he'd respond to directives from the President for particular enforcement actions, Candeub appealed one last time to the unitary executive theory, saying, "Article II of the Constitution gives the President the Executive power, making him the head of the Executive branch. The Department of Justice is part of the Executive branch."[84]

These comments of Candeub's, combined with his record, make it highly probable that confirming him would continue the weaponization of the DOJ under President Trump's administration. His interpretations of the law have repeatedly allowed the government near *carte blanche* to bully and coerce firms with impunity. Nor can we assume that Mr. Candeub will resist illegal or improper orders, since he has failed to protest, reject, or in any sense disclaim the unlawful actions taken by the FCC during his tenure. In fact, Mr. Candeub's previously mentioned writings from Project 2025—namely those arguing for a "freedom-promoting" use of the administrative state[85]—indicate that Mr. Candeub would be a willing, able, and active contributor to the Department's further weaponization.

V. Conclusion

Mr. Candeub's written statements, his actions at the FCC, and his testimony before the Committee reveal a nominee whose view of antitrust enforcement favors the interests of entrenched corporate power and weaponizes enforcement tools to protect President Trump and

[80] *Id.*
[81] *Id.*
[82] Questions for the Record for Adam Candeub, Nominee to be Assistant Attorney General, Antitrust Division, U.S. Department of Justice, S. Comm. on the Judiciary (Aug. 13, 2026), https://www.judiciary.senate.gov/imo/media/doc/d0bc1877-df62-7813-7012-ca290e4c8b48/2026-08-05_QFR-Responses_Candeub_1eb96491-7eda-4bbd-8824-a8aa9c32b991.pdf [hereinafter Candeub QFR Responses] (response to Sen. Sheldon Whitehouse, Question 3) (asking, "If Donald Trump asks you to do something illegal, will you do it?" to which Mr. Candeub responded, "This is a hypothetical that I do not believe will occur. If I thought this was a possibility, I would not have accepted the nomination.").
[83] *Id.* (response to Sen. Sheldon Whitehouse, Questions 4–5) (asking, respectively, whether Mr. Candeub would investigate the President's political enemies "as retribution" absent evidence of wrongdoing, and whether he would forgo investigating the President's political allies despite "clear evidence" of an antitrust violation, to each of which Mr. Candeub responded only, "Please see my response to Question 3.").
[84] Candeub QFR Responses, *supra* note 81 (response to Sen. Christopher Coons, Question 14, Aug. 19, 2026) (Mr. Candeub responding, "If confirmed, the Antitrust Division will make decisions regarding investigations and prosecutions based on the facts and the law. Article II of the Constitution gives the President the Executive power, making him the head of the Executive branch. The Department of Justice is part of the Executive branch.").
[85] Candeub, Project 2025, *supra* note 9, at 873.

punish perceived enemies. His Antitrust Division would attempt to reverse the new bipartisan consensus, forged partially during the first Trump Administration, on promoting competition, instead deferring to large firms and powerful interests while allowing concentration to increase in most industries.

Most critically, Mr. Candeub has demonstrated he cannot be trusted to act in service to the American people and the rule of law. He will be a potent and willing enforcer of the President's will, with all other considerations or concerns being second to the President's demands. Neither of these flaws can be tolerated in the head of the Antitrust Division, especially at a time when the Department of Justice is struggling to act in a nonpartisan and neutral manner. If Mr. Candeub is confirmed, he should be subject to exhaustive oversight by Congress to ensure that he enforces the law dutifully and properly.