

Congress of the United States

Washington, DC 20515

January 28, 2026

The Honorable Andrew N. Ferguson
Chairman
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, D.C. 20580

Dear Chairman Ferguson:

Based on our review of recently unredacted materials, we are concerned that the Federal Trade Commission (FTC) lacked substantive grounds for dismissing its *Robinson-Patman Act* (RPA) lawsuit against PepsiCo (Pepsi).¹ This lawsuit alleged that Pepsi engaged in discriminatory pricing practices by charging small retailers higher prices than Walmart,² and the newly unredacted complaint suggests that the FTC's allegations against Pepsi were extensive and meritorious.³ We are seeking answers regarding whether the FTC's decision to dismiss the lawsuit was politically motivated, and we urge the FTC to reconsider its decision to abandon the lawsuit.⁴ President Trump ran on a promise to lower prices "on Day One",⁵ and yet under your leadership, it appears the FTC is letting companies off the hook when they collude to raise grocery prices.

On January 17, 2025, the FTC, under the leadership of former Chair Lina Khan, sued Pepsi under the RPA, a law that prohibits sellers from engaging in anticompetitive and discriminatory pricing practices.⁶ The lawsuit alleged that Pepsi violated the RPA by extending unfair pricing advantages to a big box retail customer – later revealed to be Walmart⁷ – that Pepsi did not offer

¹ *Federal Trade Commission v. PepsiCo*, No. 25-cv-664-JMF (S.D.N.Y. 2025),

<https://www.courtlistener.com/docket/69570369/federal-trade-commission-v-pepsico-inc/inc/>.

² Complaint for Permanent Injunction, *Federal Trade Commission v. PepsiCo*, No. 25-cv-664-JMF, ECF No. 68 (December 11, 2025) ("Complaint"), pp. 1-2,

<https://storage.courtlistener.com/recap/gov.uscourts.nysd.635565/gov.uscourts.nysd.635565.68.0.pdf>.

³ Institute for Local Self-Reliance, "Newly unsealed FTC filing accuses PepsiCo of favoring Walmart while artificially inflating prices for local grocers and consumers," Reggie Rucker and Stacy Mitchell, December 12, 2025, <https://ilsr.org/article/independent-business/new-details-of-pepsi-predatory-business-practices-favoring-walmart/>; Complaint for Permanent Injunction, *Federal Trade Commission v. PepsiCo, Inc.*, No. 25-cv-664-JMF, ECF No. 68 (December 11, 2025) ("Complaint"),

<https://storage.courtlistener.com/recap/gov.uscourts.nysd.635565/gov.uscourts.nysd.635565.68.0.pdf>.

⁴ Federal Trade Commission, "FTC Dismisses Lawsuit Against PepsiCo," press release, May 22, 2025,

<https://www.ftc.gov/news-events/news/press-releases/2025/05/ftc-dismisses-lawsuit-against-pepsico>.

⁵ CNN, "Trump just said groceries will be more affordable 'very soon.' He's also said that might be very hard to achieve," Elizabeth Buchwald, December 12, 2024, <https://www.cnn.com/2024/12/12/economy/grocery-prices-inflation-trump-interview/index.html>.

⁶ Federal Trade Commission, "FTC Sues PepsiCo for Rigging Soft Drink Competition," January 17, 2025, <https://www.ftc.gov/news-events/news/press-releases/2025/01/ftc-sues-pepsico-rigging-soft-drink-competition>.

⁷ Institute for Local Self-Reliance, "New Details Emerge in Accusation of Pepsi's Predatory Business Practices Favoring Walmart," Reggie Rucker and Stacy Mitchell, December 12, 2025, <https://ilsr.org/article/independent-business/new-details-of-pepsi-predatory-business-practices-favoring-walmart/>.

to other customers.⁸ Although the complaint was filed with heavy redactions (as is customary in antitrust cases), the FTC noted its intention to “swiftly seek to lift the redactions in order to show the ways in which Pepsi violated the RPA on behalf their preferred customer and how those violations raised prices for Pepsi products for competing retailers.”⁹

On May 22, 2025, just before Pepsi’s court-ordered deadline to justify the redactions,¹⁰ and just months after you replaced Chair Khan,¹¹ the FTC voluntarily dismissed without prejudice its complaint against Pepsi.¹² Because President Trump illegally fired the other two commissioners who voted to authorize the complaint, there were no dissents.¹³ In a statement, you and Commissioner Melissa Holyoak criticized the complaint as “weak” and “nakedly political,” asserting that the “then-Democrat majority” had “no evidence to support the most important allegations in the Complaint.”¹⁴ Commissioner Mark Meador went even further, launching *ad hominem* attacks against the former commissioners for seeking “cheap headlines” and engaging in “political gamesmanship.”¹⁵

Notably, the public could not evaluate the merits of these criticisms because you dismissed the complaint before the judge could decide whether to unredact it. To allow the public to “judge the fairness and integrity” of the lawsuit for itself, the Institute for Local Self-Reliance (ILSR) filed a motion to unseal the FTC’s complaint against Pepsi.¹⁶ The court granted ILSR’s motion, and a largely unredacted version of the complaint was finally unsealed on December 11, 2025.¹⁷

⁸ Federal Trade Commission, “FTC Sues PepsiCo for Rigging Soft Drink Competition,” January 17, 2025, <https://www.ftc.gov/news-events/news/press-releases/2025/01/ftc-sues-pepsico-rigging-soft-drink-competition>.

⁹ *Id.*

¹⁰ Order, *Federal Trade Commission v. PepsiCo*, No. 25-cv-664-JMF, ECF No. 9 (January 24, 2025) (“Order”), <https://www.courtlistener.com/docket/69570369/9/federal-trade-commission-v-pepsico-inc/>; Order Granting Letter Motion for Extension of Time, *Federal Trade Commission v. PepsiCo*, No. 25-cv-664-JMF, ECF No. 41 (May 7, 2025) (“Order”), <https://www.courtlistener.com/docket/69570369/41/federal-trade-commission-v-pepsico-inc/>.

¹¹ Federal Trade Commission, “Andrew N. Ferguson Takes Over as FTC Chairman,” press release, January 22, 2025, <https://www.ftc.gov/news-events/news/press-releases/2025/01/andrew-n-ferguson-takes-over-ftc-chairman>.

¹² Federal Trade Commission, “FTC Dismisses Lawsuit Against PepsiCo,” press release, May 22, 2025, <https://www.ftc.gov/news-events/news/press-releases/2025/05/ftc-dismisses-lawsuit-against-pepsico>.

¹³ Letter from Senator Warren to President Donald J. Trump, March 26, 2025, https://www.warren.senate.gov/imo/media/doc/letter_to_trump_re_ftc_commissioner_firings_and_ongoing_work_p
[df](https://www.warren.senate.gov/imo/media/doc/letter_to_trump_re_ftc_commissioner_firings_and_ongoing_work_p); Federal Trade Commission, “FTC Sues PepsiCo for Rigging Soft Drink Competition,” January 17, 2025, <https://www.ftc.gov/news-events/news/press-releases/2025/01/ftc-sues-pepsico-rigging-soft-drink-competition>; Federal Trade Commission, “FTC Dismisses Lawsuit Against PepsiCo,” press release, May 22, 2025, <https://www.ftc.gov/news-events/news/press-releases/2025/05/ftc-dismisses-lawsuit-against-pepsico>.

¹⁴ Statement of Chairman Andrew N. Ferguson and Commissioner Melissa Holyoak, “In the Matter of Non-Alcoholic Beverages Price Discrimination Investigation Matter Number 2210158,” May 22, 2025, https://www.ftc.gov/system/files/ftc_gov/pdf/Pepsi-Dismissal-Ferguson-Statement-05-22-2025.pdf.

¹⁵ Statement of Commissioner Mark Meador, “In the Matter of Non-Alcoholic Beverages Price Discrimination Investigation Matter Number 2210158,” May 22, 2025, pp. 1-2, https://www.ftc.gov/system/files/ftc_gov/pdf/Meador-Pepsi-Statement-05-22-2025.pdf.

¹⁶ Institute for Local Self-Reliance, “ILSR Files Motion to Unseal FTC Antitrust Complaint Against PepsiCo Alleging Illegal Price Discrimination Scheme,” Reggie Rucker and Stacy Mitchell, August 5, 2025, <https://ilsr.org/article/independent-business/ilsr-files-motion-to-unseal-ftc-antitrust-complaint-against-pepsico/>.

¹⁷ Complaint for Permanent Injunction, *Federal Trade Commission v. PepsiCo, Inc.*, No. 25-cv-664-JMF, ECF No. 68 (December 11, 2025) (“Complaint”), <https://storage.courtlistener.com/recap/gov.uscourts.nysd.635565/gov.uscourts.nysd.635565.68.0.pdf>.

The unredacted complaint is full of direct quotes from internal Pepsi communications and documents that directly undermine your description of the complaint as “weak” and lacking evidence. The complaint alleges that Pepsi provides Walmart — one of the biggest public retailers in the world¹⁸ and, according to the FTC, one that Pepsi recognizes as its “most important customer” — with unique promotional payments and services to create a retail “price gap” between Walmart and its competitors, aimed at preventing Walmart’s competitors from undercutting it on price.¹⁹ Indeed, Pepsi emails and documents state that the company has a “foundational commitment” to provide Walmart with the price gap, and that “stay[ing] focused on our price gap . . . is how we win with Walmart.”²⁰ In simple terms, Pepsi was colluding with Walmart to ensure that customers paid higher prices at other stores than at Walmart. Internal emails revealed that Pepsi continuously monitors Walmart’s prices as compared to “rest of market” or “ROM” to ensure that Walmart retains an “advantaged price gap.”²¹

Pepsi further enforces this price gap by eliminating promotional allowances for, and raising wholesale prices on, other retailers. As an internal Pepsi email described one example of such practices, “The cost increase, which is already in effect in rest of market, has not been passed on to Walmart.”²² In another example, when Food Lion – which Pepsi described as the “worst offender” for “beating [Walmart] in price” – lowered its retail prices and threatened Walmart’s price gap, Pepsi reduced promotional allowances – effectively increasing wholesale costs – for Food Lion in an effort to “CLOSE the gap” with Walmart.²³ By raising prices for non-Walmart retailers, Pepsi prevents those retailers from competing fairly with Walmart and driving down prices for consumers. As the FTC put it, Pepsi’s favoritism toward Walmart has “the effect of *raising* prices for customers of competing retailers.”²⁴

The FTC alleged that Pepsi’s provision of special promotional payments and allowances to Walmart, in return for preferential advertising and shelf placement, violated Section 2(d) of the RPA.²⁵ Section 2(d) of the RPA makes it unlawful for a supplier to provide payments to a customer, as consideration for services or facilities provided by that customer, unless such payments are made “available on proportionally equal terms to all other customers.”²⁶ The FTC also alleged that Pepsi’s monitoring and enforcement of Walmart’s “price gap” violated Section 2(e) of the RPA,²⁷ which makes it unlawful for a supplier to discriminate in favor of one

¹⁸ Forbes, “The Global 2000,” Andrea Murphy and Matt Schiffrin, June 12, 2025, <https://www.forbes.com/lists/global2000/>.

¹⁹ Complaint for Permanent Injunction, *Federal Trade Commission v. PepsiCo, Inc.*, No. 25-cv-664-JMF, ECF No. 68 (December 11, 2025) (“Complaint”), p. 2, <https://storage.courtlistener.com/recap/gov.uscourts.nysd.635565/govf.uscourts.nysd.635565.68.0.pdf>.

²⁰ *Id.*

²¹ *Id.*, p. 12.

²² *Id.*, p. 6.

²³ *Id.*, pp. 18-19.

²⁴ *Id.*, p. 6.

²⁵ *Id.*, pp. 3, 4, and 22.

²⁶ 15 U.S.C. 13(d).

²⁷ Complaint for Permanent Injunction, *Federal Trade Commission v. PepsiCo, Inc.*, No. 25-cv-664-JMF, ECF No. 68 (December 11, 2025) (“Complaint”), pp. 22–23, <https://storage.courtlistener.com/recap/gov.uscourts.nysd.635565/gov.uscourts.nysd.635565.68.0.pdf>.

purchaser by providing services “upon terms not accorded to all purchasers on proportionally equal terms.”²⁸

The evidence cited in the complaint from Pepsi’s own communications and documents provides ample support for these allegations and raises questions regarding the FTC’s motivations for abandoning the lawsuit. Based on the timing of the FTC’s decision to drop the lawsuit – shortly before the court would have decided whether to unseal the complaint – we are concerned that the FTC may have been seeking to shield Pepsi’s alleged discriminatory pricing scheme from public scrutiny. Indeed, the FTC dropped the lawsuit just over a couple of months after Pepsi hired a well-known corporate antitrust lobbyist,²⁹ and just months after Pepsi donated \$500,000 to President Trump’s inauguration.³⁰ The public deserves to know whether the FTC’s decision to drop the lawsuit was driven by political motives, and why the agency chose to act so abruptly in order to prevent these documents regarding Pepsi’s behavior from being released to the public.

As food prices remain sky-high, the FTC should be enforcing the RPA to promote fair competition in the food industry, rather than giving dominant retailers and suppliers a free pass to continue discriminatory pricing practices that reduce consumer choices and raise prices. Accordingly, we urge the FTC to reopen its lawsuit against Pepsi and vigorously enforce the RPA against other suppliers and retailers engaging in similar practices. In addition, to address our concerns about the motivations behind the FTC’s dismissal of the lawsuit, we ask that you answer the following questions by February 11, 2026:

1. Why did the FTC dismiss the complaint before the court decided whether to unredact it?
2. Why did the FTC dismiss the complaint before Pepsi even responded to the court’s order to justify the redactions in the complaint?
3. Please explain how your May 22, 2025 assertion that the complaint had “no evidence” is consistent with the internal Pepsi communications and documents cited in the complaint that illustrate (1) Pepsi’s “foundational commitment” to maintain a “price gap” for Walmart; (2) Pepsi’s financial support for Walmart “Rollbacks” to “combat[] the price gap challenge”;³¹ and (3) Pepsi’s stated goal to “keep Walmart advantaged through extremely advantaged costs”?³²
4. Did you or any other FTC commissioners or staff members discuss the lawsuit against Pepsi with any lobbyists or other representatives hired by Pepsi? If so, please provide the dates, participants, and summary of these discussions.
5. Did you or any other FTC commissioners or staff members discuss the lawsuit against Pepsi with President Trump or anyone in the White House or the Presidential transition team? If so, please provide the dates, participants, and summary of these discussions.

²⁸ 15 U.S.C. 13(e).

²⁹ Politico, “Pepsi hires an antitrust lobbyist,” Caitlin Oprysko, April 9, 2025, <https://www.politico.com/newsletters/politico-influence/2025/04/09/pepsi-hires-an-antitrust-lobbyist-00282762>.

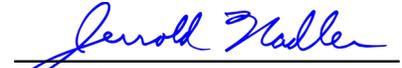
³⁰ Public Citizen, “Trump’s Inauguration Donor Pool Includes \$50 Million in Contributions from Corporations Under Investigation or Facing Federal Enforcement,” April 21, 2025, <https://www.citizen.org/news/trumps-corporate-inauguration-donor-pool-littered-with-federal-investigations-enforcement-lawsuits/>.

³¹ Complaint for Permanent Injunction, *Federal Trade Commission v. PepsiCo, Inc.*, No. 25-cv-664-JMF, ECF No. 68 (December 11, 2025) (“Complaint”), pp. 3-5, <https://storage.courtlistener.com/recap/gov.uscourts.nysd.635565/gov.uscourts.nysd.635565.68.0.pdf>.

³² *Id.*, p. 6.

Sincerely,


Elizabeth Warren
United States Senator

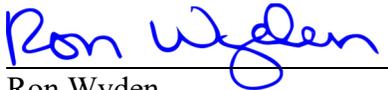

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