IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

NEWSGUARD TECHNOLOGIES, INC.,

Plaintiff,

v.

FEDERAL TRADE COMMISSION and ANDREW FERGUSON, in his official capacity as Chairman of the Federal Trade Commission,

Defendants.

Case No.: 1:26-cv-00353-DLF

Hon. Dabney L. Friedrich

PLAINTIFF'S REPLY IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

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INTRODUCTION

The FTC opposes NewsGuard's Motion for Preliminary Injunction by employing a heads-I-win-tails-you-lose strategy: It claims NewsGuard's case is premature, Defendant's Opposition to Preliminary Injunction Motion (ECF 20, "Opp.") at 32, yet asserts NewsGuard waited too long to bring it. *Id*. at 1, 2, 32–33, 45. The Commission describes its CID process as "cooperative," *id*. at 3, yet claims NewsGuard was engaging in "litigation tactics" by its good faith participation. *Id*. at 33. It asserts NewsGuard lacks standing and has no judicial remedy, *id*. at 35–40, *and* that NewsGuard should be out of court for failing to exhaust its remedies before filing suit. *Id*. at 2, 27, 34, 37–38. And through it all, Chairman Ferguson claims to be defending "free speech" while manipulating regulatory tools to suppress viewpoints he dislikes and promote news sites he favors.

The FTC asks this Court to presume regularity, Opp. at 20, but nothing about this is normal. The presumption of regularity does not apply to a federal agency's retaliatory acts. As numerous judges have recently pointed out, "courts have seen instance after instance of departures from this tradition" of assuming that executive or administrative authority is in service of a good faith application of law. *Fed. Educ. Ass'n. v. Trump*, 795 F. Supp. 3d 74, 88–92 (D.D.C. 2025) (collecting numerous cases), *stay pending appeal denied*, 2025 WL 2738626, at *8 (D.C. Cir. Sept. 25, 2025); *Wilmer Cutler Pickering Hale & Dorr LLP v. Exec. Off. of the President*, 774 F. Supp. 3d 86, 88 (D.D.C. 2025) ("The retaliatory nature of the Executive Order at issue … is clear from its face"). In a case like this, regularity cannot be presumed. *Media Matters for Am. v. Bailey*, 2024 WL 3924573, at *18 (D.D.C. Aug. 23, 2024). Quite the contrary, "the Constitution 'demands that content-based restrictions on speech be presumed invalid ... and that the Government bear the burden of showing their constitutionality.'" *United States v. Alvarez*, 567 U.S. 709, 716–17 (2012) (quoting *Ashcroft v. Am. Civil Liberties Union,* 542 U.S. 656, 660 (2004)).

ARGUMENT

I. This Court Has Jurisdiction to Grant Relief for NewsGuard's Constitutional Claims.

A. Section 1331 Confers Jurisdiction Over NewsGuard's Constitutional Claims.

Under 28 U.S.C. § 1331, district courts "shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." As Justice Gorsuch emphasized in *Axon Enterprise, Inc. v. FTC*, that text "is as clear as statutes get": "Not *may* have jurisdiction, but *shall*. Not *some* civil actions arising under federal law, but *all*." 598 U.S. 175, 205 (2023) (Gorsuch, J., concurring). And when a federal court has jurisdiction, it has a "virtually unflagging obligation" to exercise it. *Mata v. Lynch*, 576 U.S. 143, 150 (2015) (quoting *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 817 (1976)).

Accordingly, this Court has jurisdiction over actions arising under the Constitution, including challenges to unconstitutional action by federal agencies that violate the First Amendment. *Trudeau v. FTC*, 456 F.3d 178, 185–86 (D.C. Cir. 2006). That includes claims for unconstitutional retaliation, *id.* at 190 & n.22 (collecting cases), and challenges to overly broad investigations that intrude on First and Fourth Amendment rights. *See Media Matters for Am. v. Paxton*, 138 F.4th 563, 579 (D.C. Cir. 2025). As the D.C. Circuit has recognized, "[t]he court's power to enjoin unconstitutional acts by the government … is inherent in the Constitution itself." *Hubbard v. U.S. Env't Prot. Agency*, 809 F.2d 1, 11 n.15 (D.C. Cir. 1986) (citing *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803)).

Statutory review schemes do not displace that jurisdiction unless Congress's intent to do so is "fairly discernible" and the claims are "of the type Congress intended to be reviewed within th[e] statutory structure." *Free Enter. Fund v. Pub. Co. Accounting Oversight Bd.*, 561 U.S. 477, 489 (2010) (quoting *Thunder Basin Coal Co. v. Reich*, 510 U.S. 200, 207, 212 (1994)). Because

NewsGuard's challenge arises under the Constitution and its claims are not "of the type" Congress sought to exclusively channel for agency review, this Court retains authority under Section 1331 to issue injunctive relief. And because NewsGuard is suffering present and concrete harm caused by Defendants' conduct, *see infra* Sections II, III, NewsGuard has standing to bring its claims.

B. This Court has Jurisdiction over Retaliatory CIDs.

The FTC Act Does Not Channel Review to the Courts of Appeals. The Supreme Court has found a "fairly discernible" intent to strip district court jurisdiction where a statutory scheme provides "review in a court of appeals following the agency's own review process," so that "[t]he agency effectively fills in for the district court, with the court of appeals providing judicial review." *Axon*, 598 U.S. at 185 (citing *Thunder Basin*, 510 U.S. at 207–12; *Elgin v. Dep't of Treasury*, 567 U.S. 1, 10–15 (2012)). That does not describe the CID enforcement scheme. Under the FTC Act, enforcement of a CID proceeds in district court.[1] *See* 15 U.S.C. § 57b-1(e). As the D.C. Circuit has explained, the question in this context is not one of forum, but of timing. Namely, whether the CID target may "seek relief at this time for the 'here-and-now' First Amendment harms," or whether it must await an enforcement action—"a step that might never happen." *Media Matters for Am. v. FTC*, 2025 WL 2988966, at *5 (D.C. Cir. Oct. 23, 2025) (per curiam) ("*Media Matters* Stay Op.") (quoting *Axon*, 598 U.S. at 191–92, 195).

Thunder Basin ***Does Not Foreclose Review.*** The *Thunder Basin* framework applies where Congress has provided an "alternative" path to judicial review. *Axon*, 598 U.S. at 185. It does not authorize agencies to foreclose judicial review altogether—which, as *Thunder Basin* itself emphasized, would raise serious constitutional concerns. *See Thunder Basin*, 510 U.S. at 215 n.20. Allowing the FTC "to issue sweeping demands that inflict concrete and 'ongoing injuries' that

[1] To be sure, the FTC may consider a CID recipient's petition to quash, *see* 15 U.S.C. § 57b-1(f), but the agency's decision is not directly appealable by the recipient to a court of appeals.

suppress speech and journalism," while at the same time controlling "when, if ever, judicial review can commence" would risk precisely that result. *Media Matters* Stay Op. at *4–5 (citing *Paxton*, 138 F.4th at 583, 585).

Even if the *Thunder Basin* framework applies, this Court has jurisdiction. Under *Thunder Basin*, courts consider whether: (1) precluding district court jurisdiction would foreclose all meaningful judicial review, (2) the claim is wholly collateral to the statute's review provisions, and (3) the claim is outside the agency's expertise. *Axon*, 598 U.S. at 186.

First, meaningful review: If NewsGuard cannot bring this case now, it may never obtain meaningful judicial review for the "here-and-now injury" caused by the CID. *See Axon*, 598 U.S. at 191; Skibinski Decl. ¶¶ 40–49, ECF 11-2. The FTC contends that NewsGuard must wait for the agency to bring an enforcement action. But under that theory, First Amendment rights could be "effectively lost." *See Axon*, 598 U.S. at 192. Authorizing the issuer of a CID to dictate "when, if ever, judicial review can commence" would empower agencies to lock the courthouse doors "as long as the agency chooses not to take additional enforcement steps," *Media Matters* Stay Op. at *4–5, contravening the principle that "Congress rarely allows claims about agency action to escape effective judicial review." *Axon*, 598 U.S. at 186; *see also Paxton*, 138 F.4th at 583 (noting that Media Matters would have no "meaningful redress" for "ongoing injuries due to the campaign of retaliation" absent the ability to challenge the CID in district court).

Second, collateralism: NewsGuard's First Amendment claims do not depend on whatever antitrust theory the FTC may pursue regarding "anticompetitive collusion." Opp. at 7. The collateral inquiry turns on "the nature of the claim." *Axon*, 598 U.S. at 194. Claims that "do not relate to the subject of the enforcement action[]"—whether or not such an action is pending—are collateral. *Id.* at 193–94. NewsGuard's claims do not concern matters the FTC "regularly

adjudicate[s]" and have "nothing to do with" any antitrust charges. *Id.* at 193. Instead, NewsGuard advances "discrete" constitutional claims wholly separate from the subject of any enforcement action. *Id.* at 192–94.

Third, agency expertise: NewsGuard's claims turn on First Amendment limits on government action—questions "outside the Commission's competence and expertise," *Free Enter. Fund*, 561 U.S. at 491, and "detached from 'considerations of agency policy.'" *Axon*, 598 U.S. at 194 (quoting *Free Enter. Fund*, 561 U.S. at 491). Even if the FTC had expertise in this area, there is no benefit to delay, as the FTC has already been "afforded an opportunity to consider the constitutional harms caused by its demand." *Media Matters* Stay Op. at *5; *see* ECF 11-2 ¶ 42. The FTC is not well positioned to adjudicate whether its own actions constitute unlawful retaliation.[2] *Axon*, 598 U.S. at 195–96.

Claire Furnace *Does Not Bar Review*. Defendants invoke *FTC v. Claire Furnace Co.*, 274 U.S. 160 (1927), to argue that district courts categorically lack jurisdiction over pre-enforcement CID challenges. Opp. at 15. But the D.C. Circuit has squarely rejected that contention where a CID inflicts First Amendment injury. In *Media Matters*, for instance, the stay panel held that "when a company challenges a 'sweeping' demand on First Amendment grounds and demonstrates actual and ongoing harm to its constitutional rights, the case is no longer 'simply about a pre-enforcement challenge to a non-self-executing [demand.]'" *Media Matters* Stay Op. at *3 (quoting *Paxton*, 138 F.4th at 569, 579). Where a plaintiff shows "present, concrete, and objective harms" to "newsgathering activities and media business operations" that persist absent further enforcement action, "the demand's lawfulness can be challenged and remedied in district court." *Id.* (quoting

[2] The Supreme Court's decision in *SEC v. Jarkesy* reinforces this court's jurisdiction. The Court cautioned against allowing "Congress to concentrate the roles of prosecutor, judge, and jury in the hands of the Executive Branch." 603 U.S. 109, 140 (2024); *see Media Matters* Stay Op. at *5.

Paxton, 138 F.4th at 579). Those features distinguish this case from *Claire Furnace*, "which did not involve a First Amendment claim or any already-accruing harm."[3] *Id.* NewsGuard alleges and submits evidence of such harm here.[4] ECF 11-2 ¶¶ 40–49.

NewsGuard Possesses a Cause of Action. Defendants contend NewsGuard lacks a cause of action, relying on *Ziglar v. Abbasi*, 582 U.S. 120 (2017), which declined to extend the *Bivens* remedy. *See* Opp. at 18. But *Bivens* actions are suits for *money* damages. NewsGuard seeks prospective injunctive relief, and *Ziglar* itself confirms that federal courts retain "traditional equitable powers" to enjoin unconstitutional conduct. *Ziglar*, 582 U.S. at 133–34. The availability of injunctive relief as an alternative remedy was one reason the Court declined to authorize a *Bivens* action. *See id.* at 142–43, 148.

The same distinction defeats Defendants' reliance on *Hartman v. Moore*, 547 U.S. 250 (2006), for the proposition that a retaliatory investigation claim is not cognizable. Opp. at 27. Like *Ziglar*, *Hartman* involved an individual capacity suit for damages. Its holding—that a plaintiff in a retaliatory prosecution action must plead and prove the absence of probable cause—does not foreclose a litigant from seeking prospective injunctive relief, and *Paxton* confirms such claims are cognizable. The D.C. Circuit held that where a litigant suffers harm as the "specific target[] of

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[3] For similar reasons, *Reisman v. Caplin*, 375 U.S. 440 (1964), does not render NewsGuard's claims nonjusticiable. As the D.C. Circuit has explained, "*Reisman* did not concern First Amendment retaliation" and "does not govern" where a plaintiff is "suffering ongoing injuries due to the campaign of retaliation against them." *Paxton*, 138 F.4th at 583.

[4] Defendants also cite *Claire Furnace* for the proposition that "pre-enforcement injunctions against agency CIDs" were unavailable at equity. Opp. at 19. But that general rule does not control where a CID target faces ongoing injury from a retaliatory investigation. *See Paxton*, 138 F.4th at 583; *Media Matters* Stay Op. at *3. Defendants' own authorities recognize that pre-enforcement relief may be available where a CID target is "exposed to … immediate, irreparable injury." *Belle Fourche Pipeline Co. v. United States*, 751 F.2d 332, 335 (10th Cir. 1984); *see also Wearly v. FTC*, 616 F.2d 662, 666 (3d Cir. 1980) (observing that "preenforcement review" may be "necessary" and that "the FTC Act [does] not proscribe preenforcement suits").

a retaliatory government investigation" and is "not challenging a general government policy," those harms constitute cognizable injuries sufficient to support a claim.[5] *Paxton*, 138 F.4th at 582.

At bottom, "[t]he ability to sue to enjoin unconstitutional actions by … federal officers … reflects a long history of judicial review of illegal executive action, tracing back to England." *Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 327 (2015); *see also Bell v. Hood*, 327 U.S. 678, 684 (1946) ("[I]t is established practice for this Court to sustain the jurisdiction of federal courts to issue injunctions to protect rights safeguarded by the Constitution.").

Finally, Defendants invoke *Armstrong*, 575 U.S. at 327–29, to argue that the FTC Act "impliedly restricts" CID targets from bringing "equitable collateral attacks." Opp. at 19. But *Armstrong* addressed private enforcement of a statutory right under the Medicaid Act, not suits to enjoin unconstitutional government action. 575 U.S. at 328. With respect to constitutional violations, this Court's "power to enjoin unconstitutional acts by the government … is inherent in the Constitution itself." *Hubbard*, 809 F.2d at 11 n.15 (citing *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803)). Nothing in the FTC Act can be fairly read to displace that principle.

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[5] Defendants cite various cases they say "suggest" retaliatory investigation claims should not be recognized. Opp. at 27. But many of the cases address a different question entirely: whether in suits for damages the law was clearly established so as to overcome qualified immunity. Defendants' argument conflates distinct doctrines. Whether a damages remedy lies under *Bivens* or Section 1983 is a separate question from whether a court has power to grant prospective injunctive relief to prevent ongoing retaliatory conduct. And whether a plaintiff can defeat qualified immunity is yet another inquiry, one that often imposes a higher burden on the plaintiff. Bottom line, "the standard for qualified immunity is higher than what is required for preliminary injunctive relief." *Media Matters for Am. v. FTC*, 805 F. Supp. 3d 105, 132 (D.D.C. 2025); *see id.* (noting that "the Ninth Circuit simultaneously held that it is not 'clearly established that a retaliatory investigation per se violates the First Amendment' *and* that 'the scope and manner of the investigation' in *White v. Lee*, 227 F.3d 1214 (9th Cir. 2000), 'violated plaintiffs' First Amendment rights.'") (cleaned up).

C. This Court has Jurisdiction Over NewsGuard's Challenge to Consent Order.

This Court has jurisdiction over NewsGuard's challenge to the Omnicom merger condition for many of the same reasons it has jurisdiction over the retaliatory CID.[6]

15 U.S.C. § 45(c) Does Not Apply. Defendants first contend that 15 U.S.C. § 45(c) channels judicial review exclusively to the courts of appeals. *See* Opp. at 16–18. But that provision provides appellate review only to "[a]ny person, partnership, or corporation required by an order of the Commission to cease and desist." NewsGuard is not a party to the Consent Order; it instead brings suit to vindicate its First Amendment right to be free from censorship through intermediaries. Section 45(c) therefore does not apply.

The government relies on *Consumer Fed'n of Am. v. FTC*, 515 F.2d 367 (D.C. Cir. 1975), for the proposition that only parties subject to cease and desist orders may seek judicial review. *See* Opp. at 36. But that case held that the nonparties were "not entitled to review *under the APA*." *Consumer Fed'n of Am.*, 515 F.2d at 369 (emphasis added). It did not address whether a nonparty may bring a constitutional claim under Section 1331.

Agency Discretion Does Not Include Discretion to Violate the Constitution. Defendants also argue that consent orders reflect discretionary settlement decisions that are not subject to judicial review. *See* Opp. at 37. But an agency's discretion to settle enforcement litigation does not include discretion to violate the Constitution. The D.C. Circuit has repeatedly recognized that "even where agency action is 'committed to agency discretion by law,' review is still available to

[6] Although Defendants do not invoke *Thunder Basin* with respect to the merger condition, its factors again confirm district court jurisdiction. *First*, the FTC's position that nonparties may never challenge consent orders would foreclose any judicial remedy for NewsGuard's constitutional claims. *Second*, NewsGuard's First Amendment claim is independent of the FTC Act's review provisions and is wholly collateral to the Act's statutory scheme. *Third*, adjudicating constitutional retaliation and jawboning claims falls outside the FTC's expertise, and the agency is not well positioned to determine whether its own actions violate the First Amendment.

determine if the Constitution has been violated." *Padula v. Webster*, 822 F.2d 97, 101 (D.C. Cir. 1987); *see also Make The Road New York v. Wolf*, 962 F.3d 612, 632 (D.C. Cir. 2020).

Courts have likewise held that nonreviewability under the APA does not bar judicial review of alleged constitutional violations: "In no event would a finding of nonreviewability on the ground that an action is committed to agency discretion preclude judicial review when constitutional violations have been alleged." *WWHT, Inc. v. FCC*, 656 F.2d 807, 815 n.15 (D.C. Cir. 1981); *see also Swift v. United States*, 649 F. Supp. 596, 601 n.4 (D.D.C. 1986) ("Regardless of whether a given agency action is reviewable under the Administrative Procedure Act or is instead committed to agency discretion, no agency has the discretionary authority to violate constitutional rights."); *Media Matters of Am. v. FTC*, 805 F. Supp. 3d, 105. 127 (2025) ("Courts in this District routinely allow constitutional claims in equity to proceed where relief under the APA is foreclosed.").

Defendants cite *Heckler v. Chaney*, 470 U.S. 821 (1985), and *Schering Corp. v. Heckler*, 779 F.2d 683 (D.C. Cir. 1985), which recognize a presumption of nonreviewability for certain enforcement or nonenforcement decisions under the APA. But that presumption does not extend to constitutional claims. Indeed, *Chaney* itself stressed that "[n]o colorable claim [was] made … that the agency's refusal to institute proceedings violated any constitutional rights of respondents." 470 U.S. at 838. The *Schering* court likewise observed that "[n]o claim has been made that the agency's failure to initiate enforcement action violates any constitutional rights." 779 F.2d at 687.

NewsGuard Has Standing to Challenge the Consent Order. Contrary to Defendants' assertion, Opp. at 38–39, NewsGuard has standing. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992). NewsGuard alleges concrete and ongoing constitutional and economic injury resulting from the merger condition. *See infra* Sections II, III. The Consent Order operates as a government-imposed blacklist prohibiting Omnicom and its affiliates from using NewsGuard's

services, and NewsGuard has already lost customers as a result. *See* ECF 11-2 ¶ 66. That injury is directly traceable to the merger condition and would be redressed by injunctive relief. *See Paxton*, 138 F.4th at 579–80. NewsGuard has standing here for the same reason the NRA had standing to challenge the consent decrees in *Vullo* even though it was not a party to them, Backpage had standing to challenge Sheriff Dart's ultimatums, *see Backpage.com, LLC v. Dart*, 807 F.3d 229 (7th Cir. 2015), and booksellers had standing to challenge the blacklist in *Bantam Books*.[7]

II. NewsGuard is Likely to Prevail in its Challenge to the CID.

A. NewsGuard's Journalism Is Protected Under the First Amendment.

The FTC grudgingly "does not dispute that NewsGuard engages in some protected speech," Opp. at 20, but conceding the obvious is no real concession. NewsGuard's reviews and ratings of news sources for reliability and accuracy is "quintessential First Amendment activit[y]." *Paxton*, 138 F.4th at 584. At bottom, the FTC does not dispute it targeted NewsGuard because, in Chairman Ferguson's view, NewsGuard's reliability ratings reflect bias against conservative news sources. Retaliation on this basis is especially egregious: "At the heart of the First Amendment's Free Speech Clause is the recognition that viewpoint discrimination is uniquely harmful to a free and democratic society." *Nat'l Rifle Ass'n of Am. v. Vullo*, 602 U.S. 175, 187 (2024).

B. The CID Substantially Burdens Speech.

The FTC contends that the sweeping scope of the CID is no indication of retaliatory motive because, it claims, the CID is "wholly typical" and "NewsGuard does not argue otherwise." Opp. at 26. If the FTC's demands for every document ever created or received by NewsGuard for its

[7] Defendants also suggest that NewsGuard failed to exhaust administrative remedies. *See* Opp. at 37–38. But NewsGuard was not a party to an adversarial proceeding regarding the Consent Order that could warrant imposition of an issue-exhaustion requirement. *See Carr v. Saul*, 593 U.S. 83, 89 (2021). Moreover, where Defendants maintain that consent orders are categorically immune from third-party challenge, exhaustion would serve no purpose.

eight-year existence is "typical," it is alarming the FTC believes it has such a free pass to pressure and intimidate entities it targets. And the FTC's continual demands to know the identities of all NewsGuard's customers and to obtain all communications with customers is more alarming still, because the FTC's actions have demonstrated their aim is to find every ad agency or advertiser associated with NewsGuard to target them as well.

NewsGuard objected to the extraordinary scope of the CID, its intrusiveness and infringement of First Amendment rights from day one, but to no avail. The FTC mischaracterizes its CID demands and the outcome of the parties' negotiations. It says now that NewsGuard had complied with 26 of the 31 CID specifications and only a few things remained when NewsGuard filed its petition to quash. *See* Opp. at 11 (January 15 letter "confirm[ed] the narrow demands that remained outstanding"). In fact, the FTC insisted on January 15, 2026 that NewsGuard remained obligated to provide (1) identities of all entities for which NewsGuard ever assigned a reliability rating; (2) all ratings; (3) all methodologies and analyses for each rating; (4) identities of all customers; and (5) all communications with customers.[8] The FTC also added a *new* demand for "internal correspondence" among NewsGuard journalists about how it developed its methodology.

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[8] In an irrelevant diversion, the FTC asserts NewsGuard has no grounds to assert claims under the First or Fourth Amendments because the company has not asserted claims of a First Amendment or reporter's privilege on a "document-by-document basis." Opp. at 30. The issue here is not about procedures for making privilege claims as to specific documents in a production to a federal agency. Rather, the issue is that the FTC's pursuit of NewsGuard—its burdensome CID and intrusive investigation—violates fundamental First and Fourth Amendment principles. When government demands for information would chill speech rights of the targeted party, the First Amendment provides protection. *Perry v. Schwarzenegger*, 591 F.3d 1147, 1160 (9th Cir. 2009). When the government uses compulsory process (*e.g.*, a subpoena, CID, or warrant) to demand materials that could fall under First Amendment protection, Fourth Amendment requirements must also be met, with "scrupulous exactitude." *Zurcher v. Stanford Daily*, 436 U.S. 547, 564 (1978). And, when the government seeks to compel information about associational interests, its actions must satisfy exacting scrutiny. *See Ams. for Prosperity Found. v. Bonta*, 594 U.S. 595, 609-10 (2021).

The FTC asserts its actions have had no chilling effect because NewsGuard has not ceased providing its review and ratings services. *See* Opp. at 28 (claiming "the CID has apparently had *zero* impact on NewsGuard's speech"). But that misunderstands the law. The inquiry is whether the government's retaliatory actions would chill *a person of ordinary firmness* to refrain from or limit speech, not whether the government's coercive actions were successful to block the person from speaking entirely. As the Fourth Circuit said in the case the FTC cites: "We have never held that a plaintiff must prove that the allegedly retaliatory conduct caused her to cease First Amendment activity altogether. The cause of action targets conduct that tends to *chill* such activity, not just conduct that *freezes* it completely." *Constantine v. Rectors & Visitors of George Mason Univ.*, 411 F.3d 474, 500 (4th Cir. 2005). That NewsGuard is resilient and has stood up for First Amendment rights does not mean the FTC's actions have had no chilling effect.

Defendants claim NewsGuard has shown no injuries for having to respond to the CID except that it "would be 'costly' in time and resources and 'intrusive' in that it would require the production of documents." Opp. at 28. But the FTC ignores the facts and NewsGuard's actual arguments, not to mention the applicable legal standard—whether burdens of this magnitude would deter a person of reasonable firmness. Just as in the *Media Matters* cases, it clearly would. NewsGuard has expended over 30% of the revenues from advertising clients just to cover the cost of the CID compliance process and there is no end in sight. ECF 11-2 ¶ 49. Here, the process is the punishment, and the FTC's investigation—dragging NewsGuard through the gauntlet is expensive and intrusive—but more importantly it has infringed First Amendment rights. *Paxton*, 138 F.4th at 585 (burdens of campaign against First Amendment activity impose irreparable harm).

C. Ferguson and the FTC Targeted NewsGuard Based on Viewpoint.

The FTC misstates the law in an effort to frame a lenient standard for the government's retaliatory actions. The FTC claims "NewsGuard must demonstrate at a *minimum* that the CID

'would not have been [issued] absent the retaliatory motive,'" and that the government is entitled to a "presumption of regularity" for any actions it takes. Opp. at 20. For the first point the FTC relies on *Nieves v. Bartlett*, 587 U.S. 391 (2019), which concerned probable cause standards for claims of retaliatory arrests, *id.* at 402, that courts have held are inapplicable in the context of civil cases. *See Bailey*, 2024 WL 3924573, at *12–13. As for affording some "presumption of regularity" to government prosecutorial actions, *see* Opp. at 20 (relying on *Hartman*, 547 U.S. at 263 (concerning criminal charging decisions), that likewise does not override First Amendment protections, because "'it falls on the judiciary to ensure the First Amendment is not reduced to a parchment promise.'" *Bailey*, 2024 WL 3924573, at *18 (quoting *Gonzales v. Trevino*, 60 F.4th 906, 907 (5th Cir. 2023) (Ho, J., dissenting from denial of rehearing *en banc*)).

The FTC contends it targeted NewsGuard for "nonretaliatory reasons," but its arguments are unconvincing and frankly implausible. Opp. at 41. The FTC argues, first, that it must have had a "nonretaliatory" motive because it issued so many CIDs to so many entities (apparently 17 in all) in connection with Chairman Ferguson's accusations about a supposed "censorship industrial complex." Opp. at 21; *see* ECF 11-2 ¶ 32–33 & ECF 11-9. Two other organizations (Media Matters and Disinformation Index) have already sued the FTC, and the complaints in those cases reveal the Commission's strategy of burdensome and intrusive CID demands is the same as here. That the FTC has pursued a dragnet approach against numerous organizations that review and report about online news sources does not dispel the FTC's retaliatory purpose—it confirms it.

The FTC urges that congressional investigations and statements about NewsGuard and other journalistic organizations which address online disinformation confirm the "ample *nonretaliatory* reasons for … issuing a CID to NewsGuard." Opp. at 21. But the congressional committees that examined the issue did not find any evidence there had ever been any collusion or

advertiser boycotts, saying only that this "may have antitrust implications."[9] Opp. at 22. Ferguson's public assertion that "[c]ongressional investigations revealed … NewsGuard … led collusive ad-boycotts," ECF 11-7 at 2, was simply piling his political accusations on top of the unfounded accusations of the committees. But that does not make the FTC's retaliatory actions innocent.

More generally, the FTC contends Chairman Ferguson's many public attacks on NewsGuard were just "unremarkable expression[s] of a legitimate antitrust concern." Opp. at 23. The FTC's characterizations ignore what Ferguson actually said. His comments rang with an ideologically-motivated political slant, *i.e.*, he was going after the "radical left," "progressives," and "Silicon Valley," "everyone who is fighting 'disinformation'"—this is Ferguson's so-called "censorship industrial complex." ECF 11-9; 11-12. And Ferguson went after NewsGuard specifically because of his mistaken view that NewsGuard "seems to give a free pass to … major left-leaning outlets," ECF 11-11, and his constitutionally bankrupt position that the FTC should target "purely private censorship," ECF 11-9, *i.e.*, editorial and journalistic judgments of publishers like NewsGuard. As in *Media Matters v. FTC*, 2025 WL 2378009, at *19, and *Bailey*, 2024 WL 3924573, at *14, the comments of Chairman Ferguson have described the FTC's investigative push and NewsGuard "in ideological terms."

Ferguson's statements and the FTC's actions do not reflect some "unremarkable" neutral investigation for "legitimate antitrust concern[s]." Opp. at 23. They are, rather, a quite remarkable viewpoint-based attack on free speech. When the government targets "particular views taken by speakers on a subject, the violation of the First Amendment is all the more blatant." *Rosenberger v. Rector & Visitors of Univ. of Virginia*, 515 U.S. 819, 829 (1995). The government may not restrict

[9] Interim Staff Report of the H. Comm. on Small Business: Instruments and Casualties of the Censorship-Industrial Complex 59 (Sept. 10, 2024), https://smallbusiness.house.gov/uploadedfiles/house_committee_on_small_business_-_cic_report_september_2024.pdf.

or regulate speech "when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction." *Id.*; *see also Perry Ed. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 46 (1983). Yet that is what the FTC set out to do and has done here.

The FTC takes particular umbrage at NewsGuard's references to Chairman Ferguson's comments during an April 2025 interview in which he explained that government agencies always have the threat that they "potentially can inflict on any marketplace participant, which is, 'We can make your life difficult.' The regulators can show up, they can audit, they can investigate, they can cost you a lot of money, and the path of least resistance is: 'Do what we say.'" ECF 11-15; Opp. at 24. The FTC contends the description of Ferguson's comments in NewsGuard's PI memorandum is "demonstrably misleading" because Ferguson "categorically rejected such coercive tactics." Opp. at 24. But *that* is not what Ferguson said. He was describing what he viewed as the reality of government regulators' powers: "The or else is, 'We have a tremendous array of investigative tools. Those tools are expensive when applied to you even if we don't win at the end of the day, so knuckle under.'" ECF 11-15. And he described it as "naïve" to fail to appreciate the government's powers (or "what happens on a phone between a private company and its regulator"). *Id.*

NewsGuard's point in the PI memorandum was that Ferguson's explanation of tactics and the FTC's powers (formal and informal) turned out to be a playbook for the CID to NewsGuard and the blacklist provision of the Consent Order. However much the government might want to distance itself from Ferguson's statements now, the roadmap he described is in fact what happened.

The FTC claims the timing does not support any inference of retaliatory intent, but cites to a portion of NewsGuard's PI memorandum that doesn't mention timing except to say that the harms from the FTC's actions are current and ongoing. Opp. at 25 (citing ECF 11-1 at 41). The FTC makes largely nonsensical arguments based on irrelevant cases mentioning "'temporal

proximity'" or the "'outer limit" for causation. *Id.* But how the timing of Chairman Ferguson's statements and the FTC's actions reflect viewpoint-based animus and retaliatory motive is clear from the record. In late 2024, before he was named chairman, Ferguson said he would pursue an investigation of media companies—and NewsGuard specifically—to go after the "radical left" and pursue his novel theory of some sort of advertising boycott. ECF 11-2 ¶ 35; ECF 11-12. The FTC did just that, launching its investigation and dragnet CIDs to 17 organizations (NewsGuard among them) in May 2025. While the FTC has not pointed to anything from this effort showing or even suggesting any evidence of any boycott or collusion, it has not given up the cause. And when the proposed Omnicom-IPG merger gave the FTC opportunity to target NewsGuard more directly, that is exactly what it did.

D. The *Media Matters Cases* Are Not "Unique" Outliers.

This Court and the D.C. Circuit have now held in three cases brought by Media Matters across five rulings in those cases that (1) Media Matters stated cognizable First Amendment retaliation claims for intrusive and coercive "investigations" brought by the FTC and two state attorneys general; and (2) Media Matters was entitled to preliminary injunctions to block the investigations; because (3) it is likely to succeed in showing that the governments' acts were retaliatory and designed to chill speech. *See Media Matters v. FTC, Media Matters* Stay Op., 2025 WL 2988966 (denying stay of preliminary injunction pending appeal); *Bailey*, 2024 WL 3924573 (granting preliminary injunction); *Paxton*, 732 F. Supp. 3d at 1 (same); *Paxton*, 138 F.4th at 585 (affirming grant of preliminary injunction).

The FTC contends reliance on the *Media Matters* decisions "is misplaced," claiming "the determinative facts are entirely different." Opp. at 29. It offers no support for this except to note that the D.C. Circuit used the phrase "unique factual circumstances" in its decision denying a stay. *Id.* But this came in the context of the Circuit Court's explanation that the FTC had failed to offer

any evidence that the preliminary injunction against the Media Matters CID could affect any other CID or its overall investigation. 2025 WL 2988966, at *11. The court was not saying that it found the Media Matters CID to be unique, and the FTC conveniently failed to mention its CIDs to other targets in its investigation—such as NewsGuard—were largely carbon copies. The FTC's strained effort to avoid the *Media Matters* cases underscores their applicability and relevance here.

III. NewsGuard is Likely to Prevail in its Challenge to the Omnicom Consent Order.

A. The Consent Order Imposed a Blacklist on NewsGuard.

The FTC's assertion that NewsGuard failed to show its speech prompted the Consent Order condition barring Omnicom's use of services that assess news sites based on "'adherence to journalistic standards or ethics'" is absurd.[10] Opp. at 13. Its statement that "NewsGuard is not named in the consent order" means nothing. *Id*. at 42. The D.C. Circuit flatly rejected such a dodge when it invalidated generic language in a congressional budget resolution barring an extension of any "current" waivers of the FCC's newspaper-broadcast cross-ownership rules. *News America Pub., Inc. v. FCC*, 844 F.2d 800, 814 (D.C. Cir. 1988). The 18-word condition on FCC funding was buried in a 471-page continuing resolution at the end of a 379-word paragraph, but the court found the budget amendment "strikes at [Rupert] Murdoch with the precision of a laser beam." *Id*. To reach that conclusion the court reviewed the context as well as statements of legislators and found the record "reveals but a single focus: whether Rupert Murdoch and News America should be denied the opportunity to seek an extension of his temporary waivers." *Id*. at 810.

The same conclusion applies here. The FTC proposed the merger condition after Commissioner (then Chairman) Ferguson had been railing about "private censorship" for months,

[10] Likewise, NewsGuard did not "ignore[]" that "the Commission as a whole," and not just Chairman Ferguson, was responsible for the merger condition. Opp. at 42. That's why the Commission is named as a Defendant.

calling out NewsGuard specifically, and just one month after the FTC served NewsGuard with the CID. *See* Compl. ¶¶ 83, 111–116; ECF 11-2 ¶¶ 40, 53–55. As Chairman Ferguson announced at the time, "investigating and policing censorship practices that run afoul of the antitrust laws is a top priority of the Trump-Vance FTC" and warned it would "monitor Omnicom's and IPG's compliance," including by imposing "reporting provisions." ECF 11-20 at 6. But even though NewsGuard was a clear target, *see id*. at 5 & n.34, the FTC's original shot missed the mark and the Consent Order had to be adjusted to make sure NewsGuard was hit. ECF 11-2 ¶¶ 54, 63.

Specifically, in line with Ferguson's ongoing narrative that he sought to use his agency to prevent "censorship" of conservative news sites, the draft order would have precluded Omnicom or its agencies from doing business with any news rating service or entity that directs advertising spending "based on the Media Publisher's political or ideological viewpoints, or the political or ideological viewpoints expressed in content that the Media Publisher sells advertising to run alongside of." Proposed Decision & Order, *Omnicom Grp. Inc.*, FTC File No. 251-0049, 2025 WL 2355514 (June 23, 2025). But there was a problem. As NewsGuard had previously demonstrated to congressional committees, its news ratings were based entirely on fully disclosed journalistic criteria, not on "political or ideological viewpoints." *See* Compl. ¶¶ 48–54; ECF 11-2 ¶¶ 27–30. So as originally proposed, the Omnicom consent order would not reach NewsGuard.

Well aware of this, Newsmax and its allies lobbied the FTC to alter the merger conditions specifically so they would apply to NewsGuard. *See* Compl. ¶¶ 83, 111–116; ECF 11-2 ¶¶ 58–63; ECF 11-22; ECF 11-24. They repeatedly named NewsGuard in their communications with the FTC and urged it to add a condition (with compliance monitoring) to prohibit Omnicom from using "any third party media monitoring organization or entity" to "conduct any assessment" of "the reliability of an outlet, or of its publications." *Id*. ECF 11-22 at 13. In response, the FTC modified

its consent order to prohibit the merged companies from entering any agreement with any third-party service used in connection with advertising purchases based on "adherence to journalistic standards or ethics." ECF 11-25 at 2–3. As *everybody* understood, that meant NewsGuard.[11]

Although the FTC characterizes the focus on NewsGuard as a product of Chairman Ferguson's "strong interest in enforcing the antitrust laws" and his concern about what he called "collusive boycotts of disfavored media publishers," Opp. at 41, Defendants' brief demonstrates precisely the *opposite*. The Commission undermines any plausible claim it "acted appropriately to address antitrust concerns" by asserting NewsGuard could not have been the target of the Omnicom merger condition because "it is only a tiny player in that space with '*de minimis*' market share." *Id*. at 42 (quoting Compl. ¶ 97; ECF 11-2 ¶ 44). This is a stark admission of pretext, just as Ferguson's many statements alleging "censorship" of "conservative voices" confess his viewpoint-based motivation. And this is deeply at odds with the basic First Amendment principles that the Free Speech Clause protects private actors against the government, not the other way around, *Manhattan Cmty. Access Corp. v. Halleck*, 587 U.S. 802, 804 (2019), and the government has no legitimate role deciding "what counts as the right balance of private expression" or to "'un-bias' what it thinks [is] biased." *Moody v. NetChoice, LLC*, 603 U.S. 707, 719 (2024).

B. The Merger Condition Substantially Burdens NewsGuard's Speech.

The FTC's scattershot arguments that any alleged harms are "speculative" because NewsGuard "does *not* claim that Omnicom will stop making payments on the IPG contract," Opp. at 38, that NewsGuard has not shown the consent order has "chilled speech," *id*. at 42, and that

[11] The FTC asserts that "Newsmax's comment did not propose the final consent order's prohibition on the use of third-party services that evaluate 'the veracity of news reporting' and 'adherence to journalistic standards.'" Opp. at 41 n.12. But whether or not the FTC adopted Newsmax's exact language, it cannot dispute it modified the Order at Newsmax's behest so that it would blacklist NewsGuard. The FTC also points to other Newsmax suggestions "the Commission did *not* adopt," *id*., but for purposes of this case, what matters are the ones it *did*.

economic loss is not "irreparable harm," *id*. at 45, ignore the record, defy logic, and misunderstand basic First Amendment law.

First, a blacklist is a direct prohibition on speech—the Omnicom merger condition imposes a *freeze* not just a chill. *See Nebraska Press Ass'n v. Stuart*, 427 U.S. 539, 559 (1976). The FTC's assertion that NewsGuard did not show IPG will "stop making payments" ignores that the merger condition the Commission imposed *forbids* IPG from "continuing … maintaining, or attempting to maintain … any agreement" that uses a third-party service that evaluates "adherence to journalistic standards or ethics." ECF 11-25 at 2–3. The order prohibits what is now the world's largest advertising agency and media buying company from doing business with NewsGuard. And, as Chairman Ferguson warned, the FTC will be watching to ensure compliance. ECF 11-20 at 6.

Second, the record amply shows NewsGuard has lost customers because of the Omnicom Consent Order, and imminently stands to lose more if the consent order condition is not enjoined. *See* ECF 11-2 ¶¶ 65–69. The FTC claims NewsGuard failed to disclose sufficient details about its business relationships, but this is just an oblique way for the government to continue prying loose information about NewsGuard's customers—a process that began with the CID.[12]

Third, the FTC's position defies its own logic used in attempting to justify both the CID and merger condition. Chairman Ferguson and others base their entire campaign against news ratings services on the premise that unfavorable ratings may discourage advertising agencies and their clients from placing ads on news sites the government favors, thus causing a loss of business. They call this loss of earning potential intolerable "censorship." Yet, ironically, they see no First

[12] The FTC's claim that NewsGuard cannot show traceability and redressability unless it shows "the client will return if that portion of the order is enjoined," Opp. at 39, simply misunderstands the law. The court rejected this identical argument in *Dart*, 807 F.3d at 238 (Backpage's "only remedy is an injunction against the sheriff's violating its First Amendment rights").

Amendment problem with imposing a government *order* directly prohibiting the world's largest ad agency from doing business with NewsGuard because of its editorial policies. This not only misconstrues the nature of censorship, *Halleck*, 587 U.S. at 804, it turns the First Amendment's commands upside down. *Moody*, 603 U.S. at 719.

Fourth, the FTC's claim that "economic loss does not, in and of itself, constitute irreparable harm" has no application in First Amendment cases. Opp. at 45 (quoting *Wisconsin Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985)). *Wisconsin Gas* involved natural gas regulations that threatened to make contracts more expensive; it had nothing to do with free expression. But loss of First Amendment freedoms is inherently irreparable, *Elrod v. Burns*, 427 U.S. 347, 373 (1976), and the Supreme Court has held that government regulations that impede a media company's business constitutes irreparable harm. The Court permanently enjoined a law that targeted Playboy Television, because it "limited Playboy's market as a penalty for its programming choice." *United States v. Playboy Ent. Grp., Inc.*, 529 U.S. 803, 812 (2000). In the First Amendment context, the "distinction between laws burdening and laws banning speech is but a matter of degree." *Id*. This is precisely the type of penalty the FTC is imposing on NewsGuard.

C. The FTC is Censoring NewsGuard Using Intermediaries.

The FTC has no serious answer to the claim that its intermediary strategy of using the Omnicom Consent Order to suppress NewsGuard's speech violates the holdings of *Vullo*, *Bantam Books,* and *Dart*. It claims *Vullo* depends on alleging specific elements and asserts "NewsGuard does not even allege the existence of *any threatening communication*." Opp. at 43. This is simply wrong—it not only ignores the record in this case, it misunderstands the import of those cases.

As the Court stressed in *Vullo*, "the critical takeaway is that the First Amendment prohibits government officials from wielding their power selectively to punish or suppress speech, directly or (as alleged here) through private intermediaries." 602 U.S. at 198. That is precisely what

happened here. Defendants' claim there is no cause of action because NewsGuard did not allege a "threat" misses the point entirely. *Vullo* explained that the various "multifactor test[s]" used by circuit courts are a "useful, though nonexhaustive guide" but are "just helpful guideposts." *Id*. at 191; *see also id*. at 199 ("Whatever value these 'guideposts serve, they remain 'just' that and nothing more.") (Gorsuch, J., concurring, citing *Axon*, 598 U.S. at 205–07). As the Court concluded, "[u]ltimately, *Bantam Books* stands for the principle that a government official cannot do indirectly what she is barred from doing directly: A government official cannot coerce a private party to punish or suppress disfavored speech on her behalf." *Id*. at 190; *see also id*. at 193 ("whether analyzed as a threat or as an inducement, the conclusion is the same").

Defendants overlook the direct parallels between *Vullo* and this case. In *Vullo*, New York regulators began investigating whether the NRA insurance programs violated state law and made it clear the state opposed the NRA's pro-gun advocacy. Regulators used various means to deliver their message, including in private meetings, press releases, and "guidance letters" that "encouraged" insurance companies to manage risks "that may arise from their dealings with the NRA or similar gun promotion organizations." *Id*. at 184. After issuing the guidance letter and press release, the state entered consent decrees with various insurers in which they "agreed not to provide any NRA-endorsed insurance programs (even if lawful)." *Id*. at 185.

So too here: Chairman Ferguson made statements asserting the FTC "ought to conduct … an investigation," claiming NewsGuard "seems to give a free pass to … left-leaning outlets," and pledging to "[i]nvestigate advertiser boycotts" as well as "'progressives who are targeting disinformation.'" ECF 11-2 ¶¶ 35–36; ECF 11-11; ECF 11-12. The FTC subsequently launched an inquiry asserting social media providers and other "tech platforms" are engaged in "censorship" that is "potentially illegal." *Id*. ¶ 37 & ECF 11-14. And when Omnicom sought merger approval,

the FTC simultaneously unveiled a complaint along with a proposed consent order, while Ferguson issued a statement calling NewsGuard an organization that "ha[s] publicly sought to use the chokepoint of the advertising industry to effect political or ideological goals" and alleging NewsGuard steers "advertising revenue with 'an unavoidable partisan lens.'" *Id.* ¶ 55 & ECF 11-20. Ultimately, the FTC issued a revised consent order permitting the merger *only* on the condition the merged entity would do no business with NewsGuard. *Vullo* fits this scenario like a glove.

IV. Equitable Factors Favor Injunctive Relief.

A. NewsGuard Did Not Delay Seeking Relief.

The FTC misrepresents the sequence of events to suggest incorrectly that NewsGuard engaged in "extraordinary delay in seeking this relief." Opp. at 1. In truth, NewsGuard filed suit less than three weeks after its negotiations with the FTC over the CID broke down despite its good faith efforts to comply. ECF 11-2 ¶ 48 & ECF 11-18. The FTC now seeks to penalize NewsGuard for engaging in those negotiations, designed not to *prolong* litigation but to avoid it altogether.

Despite the FTC holding out its negotiations with NewsGuard as a "cooperative" process, Opp. at 3, the agency did not participate in good faith. In mid-January, it walked back earlier statements confirming NewsGuard's compliance and, despite NewsGuard's efforts to cooperate, FTC staff simply repeated several of the most intrusive, infringing demands the FTC had made from the outset, including identification of all NewsGuard subscribers and communications with its customers. ECF 11-2 ¶ 46.

This persistent, repeated demand that NewsGuard disclose all its customers was particularly troubling. Given Chairman Ferguson's statements that tech and media companies constituted a "censorship cartel," NewsGuard reasonably feared the FTC intended to similarly pressure or coerce its customers as well. So, when FTC staff reasserted this demand and walked back concessions made over the prior seven months of negotiations—combined with the FTC's

issuance of the Consent Order targeting NewsGuard—the magnitude of the FTC's retaliatory campaign became apparent. NewsGuard immediately filed a petition to quash the CID and, just a few weeks later, filed its Complaint in this action and sought preliminary injunctive relief.

This is not, as the FTC contends, an "extraordinary delay" that "preclude[s]" equitable relief. Opp. at 32. Every one of the FTC's cited cases fails to support, and indeed actively undermines, this assertion. *See* Opp. at 32–33 (collecting cases). As these cases confirm, it is only "unreasonable" and "unexcused" delay that, while "not dispositive of the [preliminary injunction] issue," weighs against relief.[13] In *Maldonado*, for instance, this Court denied plaintiffs' motion for injunctive relief where they waited "*nine years* after initiating th[eir] lawsuit" to request relief. 2019 WL 6877913, at *3–4 (emphasis added).

The FTC's assertion that NewsGuard's good faith cooperation regarding the CID somehow cuts against injunctive relief now that the full scale of the FTC's retaliatory campaign is apparent is likewise unsupported. Those eight months of cooperation were not, as the FTC claims, part of any "litigation strategy" of NewsGuard, Opp. at 33, but instead an attempt to *avoid* litigation altogether. It was only when negotiations broke down, it became apparent that trying to work with FTC cooperatively was a futile effort, and the full extent of the government's retaliatory campaign became clear that litigation—and injunctive relief—became necessary.

The FTC's argument that NewsGuard cannot challenge the consent order because it "did not submit a comment during the public comment period" also misrepresents the facts and the

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[13] *Mylan Pharms., Inc. v. Shalala*, 81 F. Supp. 2d 30, 44 (D.D.C. 2000); *see also Kohls v. Ellison*, 2026 WL 350923, at *4 (8th Cir. 2026); *NRDC v. Pena*, 147 F.3d 1012, 1026 (D.C. Cir. 1998); *Fund for Animals v. Frizzell*, 530 F.2d 982, 987 (D.C. Cir. 1975); *Sierra Club v. EPA*, 793 F. Supp. 3d 158, 165 (D.D.C. 2025); *Maldonado v. D.C.*, 2019 WL 6877913, at *3–4 (D.D.C. Dec. 16, 2019); *Open Top Sightseeing USA v. Mr. Sightseeing, LLC*, 48 F. Supp. 3d 87, 90 (D.D.C. 2014); *Newdow v. Bush*, 355 F. Supp. 2d 265, 292 (D.D.C. 2005).

FTC's own actions. As set forth in the Complaint, the only version of the consent order ever subject to public comment *would not have applied to NewsGuard.* ECF 11-2 ¶ 54. Only after Newsmax flagged this did the FTC revise the language to directly target NewsGuard. *Id*. ¶ 58–63 & ECF 11-22; 11-23; 11-24; 11-25. The FTC then adopted the final Consent Order on September 26, 2025, (for the first time including the terms barring Omnicom from using services that rate news sources based on "veracity of reporting" or "adherence to journalistic standards") with no opportunity for NewsGuard (or anyone else) to comment on the revised language. *Id*. ¶ 63 & ECF 11-25. The FTC cannot reasonably fault NewsGuard for failing to comment on a consent order the FTC itself withheld from public comment.

B. Injunctive Relief Should be Granted.

For all the reasons described above, NewsGuard has more than demonstrated that preliminary injunctive relief is proper. Loss of First Amendment freedoms are inherently irreparable. *Elrod*, 427 U.S. at 373. This specifically includes instances where government regulations impede a media company's business. *Playboy Ent. Grp.*, 529 U.S. at 812. Where such First Amendment violations occur, the balance of equities and public interest always favor an injunction. *Paxton*, 138 F.4th at 585. Nor would enjoining the FTC from enforcing its retaliatory CID, or its Consent Order targeting NewsGuard, harm the FTC in any way. And the government does not contend otherwise.

CONCLUSION

For all these reasons, Plaintiff asks that the Court grant its motion for a preliminary injunction.

Dated: February 27, 2026

Respectfully Submitted,

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*Pro hac vice forthcoming
**Pro hac vice pending

Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on February 27, 2026, a true and correct copy of the foregoing document was transmitted via using the CM/ECF system, which automatically sends notice and a copy of the filing to all counsel of record.

/s/ Robert Corn-Revere
Robert Corn-Revere