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July 31, 2026

Via regulations.gov

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

Re: Federal Trade Commission's Proposed Policy Statement Concerning the
Suppression of Accuracy in Artificial Intelligence Systems
(Docket No. FTC-2026-0859)

Mr. Chairman:

Washington Legal Foundation (WLF) appreciates the opportunity to comment on the Commission's proposed policy targeting "undisclosed ideological objectives" in AI systems.¹ WLF is a public-interest law firm and policy center promoting free enterprise, individual rights, limited government, and the rule of law. As part of that mission, WLF regularly files comments with federal agencies² and amicus briefs in the Nation's courts³ to counsel against government action that violates the First Amendment.

The Proposed Statement, if enacted, would be such a measure. At core, it rests on a dangerous proposition: that an ideological valence brings an AI product within the meaning of 15 U.S.C. § 45, which bars "unfair or deceptive acts or practices in or affecting commerce." This understanding rests on an unstated assumption that there's a natural and easily determinable distinction between fact and opinion, and government power can safely ensure the former keeps to the code.⁴

¹ FTC, *Proposed Policy Statement Concerning the Suppression of Accuracy in Artificial Intelligence Systems* 1 (July 1, 2026) (Proposed Statement).

² WLF Comment, *Proposed Rule: Front-of-Package Nutrition Information*, Docket No. FDA-2024-N-2910 (July 15, 2025).

³ *Moody v. NetChoice*, 603 U.S. 707 (2024); *Nat'l Ass'n of Wheat Growers v. Bonta*, 85 F.4th 1263 (9th Cir. 2023); *Massachusetts v. Meta*, 277 N.E.3d 166 (Mass. 2026).

⁴ Proposed Statement at 7 ("A company could be tempted, for example, to abuse consumer trust by training a model surreptitiously to produce ideologically motivated distortions in a response to a factual question, such as to correct what the developer believes are 'historical injustices' in the facts").

That policy runs into an ancient (and obvious) problem. Government is a poor arbiter at sorting ideological disputes into truthful and non-truthful buckets. Governments that try tend to have body counts. And so the Framers wisely precluded any federal actor from dictating a state orthodoxy about politics, history, the good life, or the teleological ends of mankind.⁵

Those matters—the stuff of ideology—are left to “the sphere of intellect and spirit which it is the purpose of the First Amendment to our Constitution to reserve from *all* official control.”⁶ The Constitution recoils at any effort, no matter how well-intended, to place a federal watchman on the walls of the Nation’s civic conversation or give the “government authority to compile a list of subjects about which false statements are punishable.”⁷

There are lots of reasons why. One is that the ostensibly sharp distinction between facts and opinion that undergirds the Proposed Statement “dissolve[s] in practical application.”⁸ Ohio used to have a law banning the making of false political statements during an election campaign.⁹ One of the reasons that law was ultimately jettisoned was that state-sponsored line-drawing between truth and falsity in areas of argument is a fool’s errand.¹⁰

Think about it this way. Identifying who was the fortieth President of the United States is easy: Ronald Reagan. Identifying *why* Reagan was elected President is tough sledding. Was it stagflation? A weak incumbent? The power of personal charisma? Reagan’s answer to Carter’s attack on the Californian’s Medicare record—the source of the famous “there you go again” soundbite? The lack of resolution to the Iran hostage crisis—or just the failure of Operation Eagle Claw? A tax code that was precluding investment capital from being put to productive use? The Soviet invasion of Afghanistan? Ted Kennedy’s primary bid? The impromptu decision of President Ford to invite Reagan to address the 1976 Republican convention—which convinced

⁵ *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 72–73 (1963) (Douglas, J., concurring) (“The Bill of Rights was designed to fence in the government and make its intrusions on liberty difficult and its interference with freedom of expression well-nigh impossible”) (capitalization altered).

⁶ *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943) (emphasis supplied).

⁷ *United States v. Alvarez*, 567 U.S. 709, 723 (2012).

⁸ *Buckley v. Valeo*, 424 U.S. 1, 42 (1976) (per curiam).

⁹ *Susan B. Anthony List v. Driehaus*, 814 F.3d 466, 476 (6th Cir. 2016).

¹⁰ See *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 163 (2014) (“SBA’s insistence that the allegations in its press release were true did not prevent the Commission panel from finding probable cause to believe that SBA had violated the law the first time around”).

delegates, power brokers in attendance, and those watching at home that the GOP nominated the wrong man that year? All of the above? (It's hardly an exclusive list.) If so, how much weight should be assigned to which variable?

More importantly, which answers reveal evidence of ideological bias—and which do not?

That's just the problem with one question that has an implicit ideological cast—not, well, literally any other question that a user might ask an AI system for help with. (And that's also putting aside the fact that programmers can't always confidently predict how a sophisticated AI model will use its training data and internal guardrails to answer any given question.)

But even if the fact/opinion distinction were easily resolvable—for all cases, in advance—that still wouldn't counsel in favor of proceeding with the Commission's new direction. After all, the FTC isn't the Nation's sole regulator of unfair and deceptive trade practices. The States do that too. Even if the FTC could answer ideological questions with terminological exactitude (and easily deliver those truths down to the tech companies for easy implementation in their AI platforms), you can bet that state employees enforcing the California deceptive practices laws might have a different take.

The Proposed Statement seems aware of this problem, given its criticism of a Colorado law regulating AI for so-called disparate impact.¹¹ But the answer to a State effort to secure a monopoly on the truth isn't to see that effort and raise it. It's for the federal government to join First Amendment lawsuits against those pernicious practices, as it did in xAI's challenge to the original version of Colorado's statute.¹² Not for the agency to force companies into an impossible choice of finding harmony between the federal government's take and fifty different sovereign shades of the truth.¹³

This gets to yet another reason why the First Amendment precludes the Commission's initiative. Even if *this* FTC could be trusted to scrupulously wield that power circumspectly and cautiously (and no offense, but we don't think so), there's no reason to believe tomorrow's FTC will do likewise. The Commission should not fashion a weapon for a future administration that genuinely believes “reality has a

¹¹ Proposed Statement at 7–8 (“Or a company could be pressured by a state law to alter its technology's outputs”).

¹² *X.AI v. Weiser*, Case No. 26-1515 (D. Colo. 2026).

¹³ The Proposed Statement correctly notes that where it's impossible to comply with federal and state law, federal law prevails. *PLIVA, Inc. v. Mensing*, 564 U.S. 604, 618 (2011). But until those cases are litigated, companies can't avoid this pentekonta-lemma.

socialist bias” and punishes AI outputs that emphasize the importance of voluntary exchange, free markets, and the economic downsides of central planning.

And that’s assuming a future Commission is staffed by well-meaning people of an anti-capitalist disposition. But that’s no guarantee either. Men aren’t angels,¹⁴ and we should expect the power the FTC claims today will be abused—sharpshooting systems created by politically disfavored companies or used to impose a binding federal viewpoint on a sharply contested question.

The Proposed Statement attempts to skirt this concern by suggesting that targeted companies can avoid prosecution by displaying disclaimers revealing that “its systems are designed to produce outputs that prioritize certain objectives over what users request and otherwise expect.”¹⁵ But the Commission can’t safe-harbor unconstitutional law enforcement by compelling speech. Forced speech imposes a separate and independent First Amendment harm.¹⁶

Besides, there are other issues with the agency’s counsel. First, the Commission clearly has no idea what form such a disclosure would take. Its guidance amounts to nothing other than musing that “[t]he more that the disclosure cuts against the reasonable expectations that users would take away from other contexts, the more persistent and prominent it would need to be.”¹⁷ In short, the Commission and users will know if the disclaimer works when they see it.

That kind of hazy mandate “offers no security for free discussion” because it relies on an impermissible intents-and-effects test, leaving a company “wholly at the mercy of the varied understanding[s] of” its users (and the Commission) whether its disclaimers successfully inoculated the company.¹⁸

Unable to predictably secure their systems from FTC enforcement by slapping on boilerplate, the rational play for industry will be to sharply curtail the informational output of their programs to the blandest of beiges, even if a user wants to hear a company’s “dangerous” or “provocative” takes. That infringes on the constitutional right of Americans to receive information—the basis for the first

¹⁴ The Federalist, No. 51.

¹⁵ Proposed Statement at 9.

¹⁶ *Wooley v. Maynard*, 430 U.S. 705, 714 (1977) (First Amendment shields “the right to refrain from speaking”).

¹⁷ Proposed Statement at 9.

¹⁸ *Thomas v. Collins*, 323 U.S. 516, 535 (1945).

Supreme Court decision that struck down a federal law for violating the First Amendment.¹⁹

Nor may the Commission sidestep either First Amendment problem (compelled-speech or vagueness) by modifying its proposed truth-in-ideology policy to cover only “algorithms [that] just present automatically to each user whatever the algorithm thinks the user will like,” under the theory that AI-managed information distribution is of no “constitutional significance.”²⁰ The right-to-receive crumbles that claim. The First Amendment doesn’t just protect speakers, it provides *for* audiences—“the protection afforded is to the communication, to its source and to its recipients both.”²¹ As Frederick Douglass famously put it, curtailing “free speech is a double wrong. It violates the rights of the hearer as well as those of the speaker.”²²

Second, even if the Commission could provide disclaimers that *aren’t* hopelessly vague, it’s still unconstitutional to compel speech to correct for any “alleged misperception” that may come “combined with the advocacy and dissemination of information.”²³ Yet “the advocacy and dissemination of information”—AI output that may reflect an underlying political message—is exactly what the Proposed Statement targets. And the FTC can’t avoid the First Amendment by claiming it’s “merely” regulating commercial speech. The Constitution forbids the government from mandating disclaimers designed to correct a corporation’s framing of contested, ideologically laced topics.²⁴

Third, even if a mandatory disclaimer could be practically designed and wasn’t unconstitutional, it just wouldn’t work to separate truthful sheep from lying goats. Companies producing AI systems will herd—as sellers in California have with Prop 65 cancer-warning disclaimers—toward slapping the safe-harbor disclaimer on everything, just to delete any enforcement risk.

¹⁹ *Lamont v. Postmaster Gen’l of the U.S.*, 381 U.S. 301, 307 (1965) (striking down statute forcing recipient to affirmatively ask the government to deliver communist propaganda material “in order to receive” it as “at war with the ‘uninhibited, robust, and wide-open’ debate and discussion . . . contemplated by the First Amendment”) (quoting *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964)); *id.* at 307–310 (Brennan, J., concurring) (discussing general importance of First Amendment right-to-receive).

²⁰ *Moody*, 603 U.S. at 746 (Barrett, J., concurring) (tense altered).

²¹ *Va. State Bd. of Pharm. v. Va. Citizens Consumer Council, Inc.*, 425 U.S. 748, 756 (1976).

²² Frederick Douglass, *A Plea for Free Speech in Boston* (Dec. 9, 1860).

²³ *Riley v. Nat’l Fed’n of the Blind of N.C., Inc.*, 487 U.S. 781, 798 (1988).

²⁴ *Nat’l Inst. of Family & Life Advocates v. Becerra*, 585 U.S. 755, 768–69 (2018).

That means consumers will navigate a field of AI systems, all of which conspicuously disclose that their products won't just make mistakes, but may serve a hidden agenda. Eventually, consumers will either tune out the disclaimer (as most Californians have since virtually every merchant advised that they sold a product "known to the State of California to cause cancer") or, if they believe it, stop using AI systems altogether.

The former outcome makes the disclaimer useless, the latter undoes the administration's agenda of encouraging rapid AI advancement by reducing consumer demand—the money that these companies need to level up at scale. It may be true that "human beings will never create a society which is free of contradictions,"²⁵ but that's no excuse for adopting a policy so full of them.

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"Our constitutional tradition stands against the idea that we need Oceania's Ministry of Truth."²⁶ Yet the Proposed Statement would transmogrify the Federal Trade Commission into the Federal Truth Commission. The Proposed Statement should be withdrawn.

Respectfully submitted,

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²⁵ Leo Strauss & Joseph Cropsey, eds., *History of Political Philosophy* 934 (Univ. of Chi. Press 1987) (internal quotation marks omitted).

²⁶ *Alvarez*, 567 U.S. at 723.