

February 24, 2026

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

Dear Chairman Ferguson,

On behalf of our nearly 5,000 member hospitals, health systems, and other health care organizations, our clinical partners – including more than 270,000 affiliated physicians, 2 million nurses and other caregivers – and the 43,000 health care leaders who belong to our professional membership groups, the American Hospital Association writes to commend you on your recent remarks at the George Mason Law Review 29th Annual Antitrust Symposium.¹

For years, the AHA has taken the position that the Federal Trade Commission should bring its merger challenges directly in federal court, rather than through the agency’s in-house adjudicatory process. See *e.g.*, Br. of Am. Hosp. Ass’n as *Amicus Curiae* in Support of Petitioners, *Illumina, Inc. v. FTC*, No. 23-60167 (5th Cir. June 12, 2023). We were therefore gratified by your February 20, 2026, remarks, in which you generally supported this position. In particular, we strongly endorse your view that “no man ought to sit in judgment of his own case,” and that bringing merger challenges in Article III courts would lend credibility to the FTC’s merger enforcement by adhering to that bedrock principle.

Likewise, the AHA was encouraged by your statement that “[m]y view is we ought to just litigate this in federal court, both to avoid the constitutional challenges every time you bring a merger case ... and to align with the standard that the Department of Justice has to comply with in order to get an injunction of a merger.” This alignment concern is especially important for America’s hospitals because the FTC has traditionally handled hospital mergers, whereas the Department of Justice has traditionally handled mergers for health insurers and other parties in the health care system. Whatever one thinks

¹ FTC Chair Ferguson on Competition & Mergers (Feb. 20, 2026), at <https://www.c-span.org/program/public-affairs-event/ftc-chair-ferguson-on-competition-mergers/673704>.



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about the wisdom of that distribution of labor, we can all agree that competition within the health care system should be regulated under the same processes and procedures.

Like you, we believe the “healthiest” approach is to require the FTC to bring its merger challenges in Article III courts. And we share your view that the best long-term way to achieve this alignment is through an amendment to the FTC Act. But in the meantime, the FTC can achieve the same result by amending its own regulations to codify this approach. A new regulation, enacted through notice-and-comment rulemaking, not only would be consistent with your preferred practice, but it would bind future Administrations. Because, as you said, “it’s basically how the merger cases have been going” in this Administration, and because we too do not see “any other reason why we ought not to do it now,” we urge the FTC to promulgate such a rule.

We appreciate your consideration of this proposal and for your thoughtful remarks last week. Please contact me if you have any questions.

Sincerely,

/s/

Chad Golder
General Counsel & Secretary