



TO: Biden Transition

DATE: November 12, 2020

RE: Establishing a White House Office for Consumer Protection and Access to Justice

We urge President-elect Biden to establish a White House Office for Consumer Protection and Access to Justice (Office). The Office would be responsible for developing policies that protect consumers and working with Congress and across the administration to strengthen the civil justice system.

Why a White House Office?

Robust enforcement of consumer protection laws is impossible without a strong civil justice system. Over the past several decades, however, Congress and the Supreme Court, often with the encouragement of the Executive Branch, have chipped away at people's ability to seek redress in court for violations of their rights. As a result, today, corporations are effectively immune from accountability for wrongdoing in a range of areas. Individuals, therefore, have limited recourse for compensation.

Moreover, without robust access to the civil justice system, society lacks a key deterrent of bad behavior, resulting in more harm to more people. And as we continue grappling with systemic inequality in society, ensuring that we have criminal (and civil) justice systems work for all is essential. (Black and Brown people are more likely to be low-income earners with few options or knowledge of navigating the civil justice system.¹) And access to the civil justice system will become even more critical in years to come as individuals fight in court to stave off evictions and repossessions due to the COVID crisis.

Likewise, for more than a decade, courts have weakened consumer protection statutes, and government enforcement against corporate wrongdoers has been timid. While several different federal agencies have a consumer protection role, most of these agencies have close relationships with the industries they regulate. Indeed, many of the agencies tasked with some aspect of protecting consumers have leadership and senior staff who either worked in the relevant industry or worked at law firms representing industry clients.

¹ Center for American Progress, *Making Justice Equal*, Rebecca Buckwalter-Poza (Dec. 8, 2016), <https://www.americanprogress.org/issues/criminal-justice/reports/2016/12/08/294479/making-justice-equal/>.

Notably, President Johnson both appointed a Special Assistant to the President for Consumer Affairs and formed a Committee on Consumer Interests. Similarly, President Carter had a Special Assistant to the President for Consumer Affairs in the White House. For both Presidents, the advisor served as a consumer spokesperson and advocate on the Presidents' staff and as an advisor on consumer-related matters. The advisor had responsibility for advancing the presidents' agenda on consumer issues and for voicing the consumers' perspective in the policymaking process—ranging from consumer contracts, to hazardous products, to mutual funds.

Although corporate power, in society and on Capitol Hill, has only grown in the years since, the White House has not had a dedicated consumer advocate since 1980. As a result, the last six presidents have lacked an advisor focused on, and committed to, consumer interests.

A White House Office devoted to consumer protection, broadly defined, is critical to ensuring an even playing field and ensuring that consumers' interests and perspectives are fully accounted for as the country begins the process of rebuilding systems of corporate enforcement and consumer protection that have been so greatly undermined in recent years. Additionally, placing this team in the White House will signal that the Biden-Harris administration understands the importance of consumer interests and the crucial role of the civil justice system in protecting those interests.

Responsibilities of the Office

The primary responsibilities of the office would include:

- Proposing executive actions to protect consumers and increase access to justice for all.²
- Working with the Department of Justice to eliminate barriers to consumers' access to the civil justice system and to expand access for low-income people and marginalized communities.
- Working with Congress to increase individuals' access to the civil justice system, such as by increasing the budget for the Legal Services Corporation, and providing policy expertise to pass legislation that impacts consumers and access to the courts (such as the Forced Arbitration Injustice Repeal (FAIR) Act).
- Serving as an innovation hub to address cross-sectional and cross-cutting issues that impact consumers.
- Serving as a resource to assist the President in choosing individuals with a strong record of consumer advocacy for positions empowered to protect consumers.

² The Access to Justice Memo to the Transition, which lays out a proposed agenda for expanding access to the civil justice system, is attached.

Conclusion

With strong leadership, the Biden-Harris administration can make consumer protection issues a centerpiece of their commitment to protecting workers and consumers. Establishing the White House Consumer Protection and Access to Justice Office would be a down payment on President-elect Biden's commitment to putting workers and consumers first—protecting consumers from predatory corporate actions, creating a system that provides meaningful redress for individuals, and expanding access to the civil justice system to right these wrongs.