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HOUSE JOINT RESOLUTION NO. 578

Offered January 12, 2011

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Memorializing the Congress of the United States to refrain from granting expanded rulemaking authority to the Federal Trade Commission.

Patrons—O'Bannon, Athey, Bell, Richard P., Cole, Cox, J.A., Crockett-Stark, Lingamfelter, Oder, Pogge and Sherwood

Referred to Committee on Rules

WHEREAS, the process of government should be open, transparent, and maintain the separation of powers as detailed by the authors of the United States Constitution; and

WHEREAS, the Federal Trade Commission (FTC) is currently seeking to greatly expand its authority, in contradiction with established separation of powers and federalist principles, by petitioning Congress to expand its rulemaking authority; and

WHEREAS, the expressed purpose of this new authority is to create new restrictions on currently accepted business practices that the FTC alone deems "unfair," including advertising and other longstanding retailer relationships that deliver free services to consumers; and

WHEREAS, this expanded authority would move away from the traditional rulemaking procedure that allows for enhanced stakeholder participation, requires a detailed evidentiary record before the FTC can create new rules, and enables courts to scrutinize rulemakings as a valuable check to ensure proper process and evidentiary support; and

WHEREAS, the current process through which the FTC promulgates rules is a proven and effective vehicle for the regulation of business by the FTC and provides the FTC with the authority to punish businesses that act in a deceptive manner; and

WHEREAS, Congress already provides the FTC with "streamlined rulemaking authority" to implement laws on an expedited basis, as the FTC has done with such laws as CAN-SPAM and the Children's Online Privacy Protection Act of 1998; and

WHEREAS, granting additional streamlined rulemaking authority to the FTC is unnecessary, could harm legitimate and successful business practices, and would usurp the state and federal legislative roles; and

WHEREAS, no evidence has been presented to support the claim that further expansion of the FTC's authority is necessary to protect consumers; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the Congress of the United States be urged to refrain from granting expanded rulemaking authority to the Federal Trade Commission; and, be it

RESOLVED FURTHER, That the Clerk of the House of Delegates transmit copies of this resolution to the Speaker of the United States House of Representatives, the President of the United States Senate, and the members of the Virginia Congressional Delegation so that they may be apprised of the sense of the General Assembly of Virginia in this matter.

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