Consumer and Worker Protection

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# Remarks as Prepared: DCWP Commissioner Levine Delivers Remarks at the California Law Review Spring 2026 Symposium

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## I. Introduction

Thank you to the student organizers and faculty for convening this symposium, and for inviting me to be a part of it. It's so great to be back at Berkeley. There is nowhere quite like this place – a campus that has long served as both a sanctuary for ideas and a launchpad for change. And today, the need for new ideas and transformative change is greater than ever before. In fact it is urgent.

As many of you know from my time at the FTC and since, I have deep concerns about surveillance pricing and wages – about a society where paychecks are set to the lowest you're willing to accept, and prices to the highest you're willing to pay.

And I have deep concerns that we are already being told to accept this future. That the only way to preserve coupons and loyalty programs is to accept that companies can engage in mass surveillance to set prices. Or that it's okay for employers to monitor workers' keystrokes and mouse movements on or off the job, so long as workers click "I agree."
And this part of a broader trend in society that worries me deeply. As we enter this period of rapid technological and economic change, we are being *told* what our future will look like.

OpenAI recently published what is being called a New Deal for an AI future – one where millions of workers are displaced and moved onto public benefits. As many have pointed out, it's a future where the only productive industries are *theirs*, depriving most of us of the dignity that comes with an honest day's work.

Palantir offers a different kind of future. In its manifesto calling for a "Technological Republic," power flows through a tight nexus of government and a handful of dominant tech firms, with AI – often in military contexts – at the center. It is a vision that elevates technical authority over the messy, pluralistic process of democratic decision-making.

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These visions are distinct, but what they share is a premise that the future will be decided *for* us, rather than *by* us. A future shaped by a handful of tech companies that were not elected, yet have bought their way into the corridors of power in DC – with the federal government bending over backward to not only give AI companies whatever they want, but block states from imposing basic guardrails.

It's no wonder Americans are growing increasingly cynical about AI. Many of us were once excited by the prospect of lifesaving cures and other breakthroughs. But poll after poll reveals the same conclusion: Americans are decidedly pessimistic about AI. Even our youngest adults – the mostly likely to embrace this tech – are skeptical, worried about entering a workforce that AI leaders *themselves* say is primed for collapse.

But here's the good news. Americans are also fighting back – fighting to reclaim agency in their own future. We see burgeoning efforts to ensure working people don't foot the bill for data center expansion. To protect kids and teens from harmful chatbots. To establish – both here in California and back in New York – basic AI safety standards.

And in my view, one of the most important areas we see Americans pushing back is the one we're gathered to discuss.

Today, two dozen states have proposed regulations on surveillance pricing. Superb research by Groundwork Collaborative, Consumer Reports, More Perfect Union, Vanderbilt Policy Accelerator, and others have generated national outrage, and prompted many firms to deny any intent to use surveillance pricing. Leading academics are raising the alarm and proposing interventions. On the same day that my successor at the FTC mocked "surveillance pricing" as a concept Lina Khan made up, the Republican Chair of the House Overnight Committee announced an oversight hearing on the topic.

My friends, we are fighting back, and we are notching wins – not only raising consciousness of these practices but shaping the political debate both in Washington and in states and cities across America.

But it is far too early to declare victory. Because to truly reclaim control of our future, we need to learn the lessons of the past, and ensure our policy and regulatory response to these practices meets the moment.

To that end, today I'll be revisiting how we approached digital regulation over the last quarter-century as a cautionary tale for how we approach surveillance pricing today. I'll then offer an alternative, one that centers working people and democratic control over our economic future. And I'll share some examples of how we working to build that future in New York City.

I know that all of us might feel some sense of defeat or even nihilism given what's happening in Washington and across the world. But I hope this symposium is but one step in a broader movement to reject oligarchy and reclaim agency to shape our economic future.

## II. Failed Web 2.0 Regulation

But before we talk about where we're going, I think it's important to discuss how we got here. Surveillance pricing did not emerge in a vacuum. As Stephanie Nguyen has powerfully explained, the foundation for surveillance pricing is surveillance advertising – built on the same infrastructure, trained on the same insights, peddled by the same players. Tech companies first learned to predict what people wanted. Then they learned how to get them to purchase. And now they are predicting what people will pay.

Today this trajectory might feel inevitable – but it wasn't. Twenty-five years ago, at the dawn of Web 2.0, when Google was an upstart search engine and Amazon was largely selling books, policymakers made a choice.

At the time, the Chairman of the FTC gave an important speech about how the FTC would approach online privacy.

He assured the audience that based on his conversations with tech executives, "industry will continue to make privacy a priority," and praised the fact that a growing number of websites were posting privacy policies. Congress should stay out of the way of this tech revolution, he urged. Another FTC leader echoed this claim – calling for a three-year moratorium on internet regulation, and arguing consumers needed to take responsibility to protect their own privacy.

Yet even as the FTC was extolling the promise of self-regulation, Google was discovering something else entirely: that by tracking people's searches, it could predict behavior and target ads with extraordinary precision. As Shoshana Zuboff documents in her magisterial history, this in many ways was the birth of targeted advertising, and surveillance capitalism.[1]
But the policy response followed the FTC prescription to a tee.

Light touch regulation, focused on "empowering consumers" to read ambiguous privacy policies and click "I accept." A massive explosion in identity theft – with policymakers blaming consumers who don't change their passwords frequently enough. Tools like "Do Not Call" and "Do Not Track" that placed the burden on consumers to protect themselves, without carrying meaningful consequences for firms that ignored them. An explosion of social media that has left a generation of kids scarred and isolated. Weak and myopic merger enforcement that allowed firms to consolidate power, particularly over the ad ecosystem, with minimal scrutiny.

[1] For a detailed discussion of this history, see Shoshana Zuboff, THE AGE OF SURVEILLANCE CAPITALISM (2019), at 63-96

This hands-off approach to privacy and merger control allowed the tech industry to grow so large that meaningful reform became nearly impossible.

By the time Lina Khan arrived at the FTC, Julie Su at the DOL, Rohit Chopra at the CFPB, and Jonathan Kanter at the DOJ, we knew that it would take enormous work to undo the damage. Yet despite major progress, that work is incomplete.

This history is familiar to many of you, but it bears repeating, because I don't want us to make the same mistakes again.

I think we need to reject the idea that the solution to vast power asymmetries is more disclosure or so-called transparency tools.

I don't want to live in a world where every consumer needs an agentic AI assistant to go toe-to-toe against sellers' surveillance pricing algorithm – a future already being marketed to us. Nor do I want to live in a world where workers need tools to simulate productivity while their employers' apps try to outwit them.

No, we should not assume that the answer to bad tech is more tech.

We should not assume that individuals can protect themselves against tools designed to manipulate and outmatch them. We tried that already. It didn't work.

But this does not mean history does not offer a model. I think we just need to look further back.

## III. A History Hidden in Plain Sight

So let's reexamine a different era, a time when we faced similar concentrations of power and responded by implementing bright line, structural rules.

On the eve of our nation's 250th anniversary, it's worth looking back over a century to the acceleration of the Industrial Revolution after the Civil War.

It was an era of rapid technological and economic change, quite like this one, with the locus of power shifting from politics to industry. As thousands of miles of railroad tracks were laid down by immigrant workers, stitching together a fractured country like the seams of a baseball, new possibilities emerged. And so did new forms of abuse.

Of all the anti-competitive practices manufactured by railroad monopolies, one stood out: routinely charging different rates to different customers for the same service—favoring large industrial enterprises while imposing higher relative costs on farmers and small businesses.

These practices were often hidden—negotiated privately, shielded from public view. And they produced predictable results: economic stratification, political resentment, and a growing sense that the market was no longer operating on equal terms.

Yeoman farmers and small businessmen were the most vocal critics of these disparate rail rates. They saw how the railroads gave preferential treatment to those with the means to pay and how power flowed along the contours of economic and racial lines. So what did they do? They organized. They mobilized. They fought for safeguards.

Their pressure campaign on midwestern state legislatures worked, resulting in “Granger” laws regulating freight rates, and, in time, leading to the Interstate Commerce Act of 1887.

The ICA didn’t just establish that railroads had to offer “reasonable and just” transportation rates. It brought price-fixing out of the shadows, banning secret, beneficial rates to certain individuals.

Rates were required to be published so everyone could see them.

It had a cascading effect.

Where haggling was common in the late 1800s, prices still contingent and mercurial, John Wanamaker, a department store owner in Philadelphia, also introduced something radical: the fixed price tag. One product. One price. Visible to all.

It was a technical quirk, yes, but more importantly, it was a democratic one. It created a shared economic reality, reducing information asymmetries and curtailing the ability of sellers to discriminate in the dark.

Congress, moreover, didn’t stop at the Interstate Commerce Act. Three years later, in 1890, Senator John Sherman of Ohio ushered through an Antitrust Act, further curbing railroad monopolies' unilateral latitude to set shipping rates.

I should note that these interventions did not stand alone; they rose alongside a surge of worker power, each reinforcing the other.

As inequality widened, so did the demand for change. Workers, facing grueling conditions and unlivable wages, fought for and won robust protections — from the five-day workweek to the minimum wage. At the same time, a marketplace rife with deception gave way to a new insistence on fairness, as institutions like the Federal Trade Commission were created to curb corporate abuse and elevate the everyday pocketbook concerns of ordinary people.

What did these reforms have in common?

They were built on clear, enforceable rules.

Broad, but not overly complex structural bulwarks.

Responsibility extended to those most able to bear it.

And most importantly: a more sensible balance of economic power, as decision-making was transferred away from the clutch of monopolists to the calloused hands of those traditionally marginalized in the economy — factory workers, farmers, consumers, and small business owners.

## IV. NYC: A Framework and A Model

This all speaks to the need to embrace an older, time-tested approach—ex ante rules that set stable boundaries and allow markets, and our communities, to flourish.

We have the tools, developed over a century, that establish popular, reasonable expectations: minimum wages, truth-in-pricing requirements, prohibitions on unfair and deceptive practices, constraints on price discrimination.

These tools do not require perfect knowledge of every algorithmic input. What they require are clear standards, public accountability, and, critically, vigorous enforcement.

I may be biased, but let me offer New York City as a model for how policymakers can actually deliver material gains for working people.

Consider the experience of delivery workers in New York City. The so-called gig economy has been *the* staging ground for surveillance wages. And many responses have been floated – from third-party apps to help workers find the most lucrative offer, to new transparency and algorithmic accountability measures. And certainly these can be part of the toolkit.

But I think if you asked most delivery workers in New York City the most important reform of the last decade, it's one you won't ever hear proposed by a tech company. It's the minimum pay rate. A concept that goes back more than 100 years. It says that whatever some algorithm might decide, workers are entitled to a minimum pay for all trip time and all time they spend waiting for a trip offer – this year more then $22/hour, and rising every year based on regulations set by our Department.

And when companies flout these regulations, we take action. On one day alone this year, we announced the recovery of nearly $5 million from Uber, Fantuan, and HungryPanda for underpaying their delivery workers, and required Uber to offer reinstatement to workers who were deactivated because Uber's algorithm decided they had cancelled too many trips.

Today, through clear-cut, bright-line rules, delivery work is more predictable. It's more stable. And it's more lucrative. In fact, we've raised workers' wages by billions of dollars. And where apps used to pay workers $0 for time spent on the app waiting for trips, apps must now pay the minimum pay rate for that time.

Minimum pay is not the only example of how New York City is reclaiming an economic future shaped by workers, instead of against them.

Much has been written about how algorithmic scheduling burdens workers and their families. In New York City, in two major industries, we guarantee a fair and predictable schedule – regardless of whether it's set by a boss, or set by bossware. Just last month we announced nearly $2 million back to workers at Taco Bell, Dunkin Donuts, and Theory whose scheduling rights were violated.

Much has been written about workers – especially so-called gig workers – losing their jobs because of the whims of an algorithm.

In New York City, starting this year, we are prohibiting the deactivation of drivers and delivery workers without cause. Every worker deactivated will have a chance to appeal their termination first to the app, which must individually review the circumstances based on objective criteria, and then by appeal to our Department, where actual humans will evaluate whether workers were treated unfairly.

Much has been written about surveillance pricing. But in New York is joining states across the country advancing bills to ban the practice altogether.

Much has been written about small businesses being ripped off by extractive app companies. In New York, we have capped how much these apps can charge restaurants. And just two weeks ago, I was proud to stand alongside Mayor Mamdani and announce the first-ever actions returning money to small businesses – largely immigrant-owned restaurants – that had been overcharged with bogus fees.

These interventions have something in common. They are not based on "empowering" consumers with more disclosures, or developing whiz bang apps to help workers protect themselves. They are basic, fundamental, proactive safeguards – safeguards that would have been recognizable to reformers a century ago, yet are more necessary than ever today.

And the other thing these reforms have in common is that they were not decreed in a tech company manifesto. No – tech companies fought these reforms every step of the way.  Nor did they emerge thanks to market forces that "self corrected" – the FTC's now-infamous excuse for decade of laissez-faire inaction. In fact, they emerged thanks to workers organizing, marshalling political power, and passing historic legislation to raise workers' wages directly – paired with a leader in Mayor Mamdani committed to implementing this legislation fully, and defending it against the industry onslaught.

In New York City we are not indulging the fiction that these problems are too new, too complex, or too technological for existing law. We are using the tools we have right now to set clear rules of the road. And when companies break them, we act.

Our response will not be perfect on every issue. But as in another era of great progress – the New Deal – we are not waiting for perfect answers. Claims that problems are too complex for government are not analysis. They are an excuse for delay. And as we've seen for decades, delay favors those who want no government response at all.

So I am proud of what we are doing in New York City. I am proud that consumers, workers, and small businesses are coming together to fight emerging abuses and secure real gains for working people. And I am proud that we are proving something larger – that democratic government can still meet the moment.

## V. Conclusion

So let me conclude by zooming out. When we are told, again and again, that this future is inevitable, that it is simply the natural result of technological progress, we should pause. We should remind ourselves that have heard this story before.

We heard it at the dawn of Web 2.0, when we were told that tech companies would self-police, that the public should find tools to protect themselves, that mass surveillance increased efficiency, and that innovation required passivity from policymakers. And we know where that led: to concentrated power, pervasive surveillance, and a generation of harms that are proving far harder to unwind than they would have been to prevent.

We should not make that mistake again.

And we should be especially wary of sacrificing democratic control at the altar of efficiency.

Efficiency, I ask, for whom?

Efficiency, I ask, to what end?

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I, for one, do not want to live in a world where every interaction is stripped down to a transaction. Where we are sorted, scored, and steered at every turn, without ever being recognized as people rather than profiles. Where work is parceled out by algorithm, with no conversation, no discretion, no human connection – just a series of silent judgments about what each of us will accept.

That may be efficient. But it is a more austere, lonelier way to live. Because beyond a certain point, efficiency begins to erode something fundamental. It wears down trust. It fragments shared experience. It replaces a common price, a common wage, a common reality, with something individualized, opaque, and ultimately unaccountable.

And that is not just an economic problem. It is a democratic one.

Because democracy depends on fairness that people can see. Rules that people can understand. And a sense that the system is not quietly being finetuned against them.
That is what was at stake a century ago. And it is what is at stake again today.

The lessons from the Gilded Age are not complicated. When power concentrates, we do not ask individuals to fend for themselves. We set rules. We draw lines. And we shift power back.

That is the work ahead of us now. To reject the idea that this future is inevitable. To reject the idea that the only answer to bad technology is more technology. And to insist, clearly and unapologetically, that markets should serve people – not the other way around.

Thank you.