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OPINION | REVIEW & OUTLOOK

## *A 9-0 Defeat for the FTC*

The Supreme Court crushes the agency for abusing the law.

By [The Editorial Board](#)

April 23, 2021 6:37 pm ET



The Federal Trade Commission building in Washington.

PHOTO: ALEX BRANDON/ASSOCIATED PRESS



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Justice Stephen Breyer in a recent speech challenged the media’s partisan characterization of the Supreme Court. On Thursday the Court underscored his point with a 9-0 smackdown of the Federal Trade Commission for rewriting the law to aggrandize its power.

At issue in *AMG Capital Management v. FTC* was a provision of the Federal Trade Commission Act that lets the agency seek a permanent injunction in federal court for “unfair or deceptive” business practices, however it defines them. The FTC argued that this provision also enabled it to demand monetary relief from alleged offenders.

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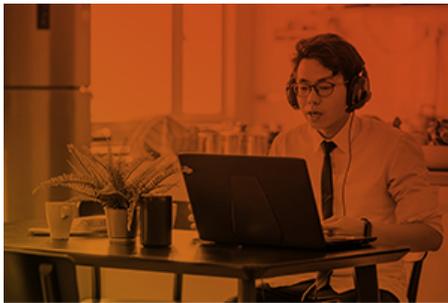


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But as Justice Breyer explained for the Court, “an ‘injunction’ is not the same as an award of equitable monetary relief.” A separate provision of the law allows the FTC to obtain monetary relief, but only if a business has violated a commission cease-and-desist order or rule-making. So a business can’t get dunned for doing something that it doesn’t know is wrong.



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Yet the FTC has increasingly ignored the law’s restrictions on its power. “The Commission tells us that ‘the agency [now] brings dozens of [§13(b)] cases every year seeking a permanent injunction and the return of illegally obtained funds,’” Justice Breyer noted.

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While the FTC claimed Congress had acquiesced to its revision of the law, Justice Breyer shot down this argument as well as four others. The FTC's construction of the law "would allow a small statutory tail to wag a very large dog," he explained.

The 9-0 ruling is an embarrassment to the agency, and FTC Acting Chair Rebecca Kelly Slaughter didn't take the defeat well. The Supreme Court "ruled in favor of scam artists and dishonest corporations, leaving average Americans to pay for illegal behavior," she said, in a remarkable display demonstrating why the administrative state needs reining in. "With this ruling, the court has deprived the FTC of the strongest tool we had to help consumers when they need it most."

No, the Court has simply told the FTC to pursue scam artists within the confines of the law or ask Congress to change the law if it wants more power. Administrative agencies can't rewrite the law as they wish, and the FTC needed this unanimous brushback.

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