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⇒ Navigate

MISSISSIPPI ATTORNE... (<HTTPS://WWW.AGO.STATE.MS.US>)> > AG Hood Praises...
/ PRESS RELEASES (<HTTPS://WWW.AGO.STATE.MS.US/PRESS-RELEASES/>)

AG HOOD PRAISES SCOTUS RULING AGAINST BIG TECH

May 14, 2019

In a win for consumers against big tech, the United States Supreme Court ruled Monday that iPhone users are direct purchasers of apps from Apple, allowing consumers to seek damages from a company under federal law. Attorney General Jim Hood joined 30 other attorneys general in an amicus brief supporting the plaintiffs in this case, *Apple v. Pepper*, arguing that the consumers should be able to sue Apple and that the Court should overturn *Illinois Brick*. Apple argued their customers buy apps from third-party developers, not directly from their company.

Many consumers found that Apple charges too much for apps (including a 30% “agency fee” that they add.) A group of consumers filed suit in *Apple v. Pepper* and argued, in particular, that Apple has monopolized the retail market for the sale of apps and has unlawfully used its monopolistic power to charge consumers higher-than competitive prices. The district court dismissed the damages claim at the

pleadings stage under Illinois Brick, stating that the consumers did not have standing under federal antitrust law because they were not direct purchasers of the apps. The Ninth Circuit reversed. The U.S. Supreme Court agreed to consider the argument.

“While the Supreme Court did not completely overrule Illinois Brick, I’m glad to see the Court agreed with 31 attorneys general that large tech companies should be subject to antitrust law, which gives the citizens a right to fight back,” General Hood said. “As the Court stated, Apple’s interpretation would put form over substance, and ‘if the retailer’s unlawful monopolistic conduct caused a consumer to pay the retailer a higher-than-competitive price, the consumer is entitled to sue the retailer under the antitrust laws.’”

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