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# SCOTUS Opinion: Court Permits iPhone Customers To Make Monopoly Claim Against Apple For App Store

**13 May 2019**

Since 2008, Apple Inc. has established its App Store as the only lawful location that iPhone users could purchase apps for their devices. In *Apple, Inc. v. Pepper*, some of those iPhone customers sued Apple, alleging that it was using illegal monopolistic practices to overcharge them for the apps. At the initial stage of the litigation, Apple moved to dismiss those claims, arguing that its customers could not sue because they were not "direct purchasers" as defined in *Illinois Brick Co. v. Illinois*, 431 U.S. 720, 745-46 (1977). The district court found that the iPhone users were indirect purchasers, and so dismissed their complaint. The Ninth Circuit held that the customers were direct purchasers and reversed. The Court, in a 5-4 majority opinion by Justice Kavanaugh, affirmed. Without resolving whether Apple was, indeed, acting as an illegal monopoly under the Sherman Act, the Court held that iPhone users were direct purchasers because they purchased apps directly from Apple, paid the alleged overcharge directly to Apple, and there was no intermediary that severed the connection. The fact that the app developers set the individual app prices was not a factor. Justice Gorsuch, joined by Chief Justice Roberts and Justices Thomas and Alito, dissented, arguing that the rule of *Illinois Brick* was to only permit suits against those who set the plaintiff's price, not those who paid a "pass-on" price, and since the developers set the app prices, not Apple, the iPhone customers should not have been deemed direct purchasers. A link to the opinion is here.

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**TAGGED:** scotus, Sherman Act, SCOTUS opinion, Monopoly, Apple Inc. v. Pepper, direct purchasers, Illinois Brick Co. v. Illinois