

Parsing The Latest Signals On FTC Section 5 Enforcement

By **Richard Dagen, Matthew Levinton and William Davis** (October 15, 2026)

On Sept. 14, Federal Trade Commissioner Mark Meador spoke at George Washington University Law School's Bill Kovacic Antitrust Salon.[1] He began his speech by posing what he framed as a question that "many have been asking since the Supreme Court's decision in *Trump v. Slaughter*: What is the future of the FTC?"

The Republican commissioner proceeded to answer his own question, declaring that moving forward "begins with and centers on restoring Section 5's independent function."

In other words, the FTC's future, following the U.S. Supreme Court's June 29 decision in *Trump v. Slaughter*, [2] should prominently feature stand-alone Section 5 cases — cases brought under Section 5 of the FTC Act without any counts alleged in parallel under the Sherman Act or Clayton Act.

With Meador's call for a deepening commitment to the FTC's authority to attack unfair methods of competition, the Trump FTC continues to move further away from the Section 5 skepticism traditionally expressed by Republican commissioners.

In his speech, Meador argued that "Congress entrusted the FTC with enforcing [Section 5's] broader mandate ... to identify and stop conduct that threatened competitive conditions, including practices the antitrust laws had not adequately captured."

He also said that Congress "expected Section 5 to serve a dynamic function" and that the FTC is positioned to "reassess conduct as economic understanding evolved."

According to Meador, Section 5 thus empowers the FTC to pursue enforcement against alleged offenses the Sherman and Clayton Acts did not or could not contemplate when those statutes were adopted.

Specifically, the FTC is empowered by Section 5(b) to seek injunctions against unfair methods of competition — often referred to as the FTC's UMC authority.[3]

Such a "uniquely broad competition mandate," Meador argued, indicates that the FTC must use Section 5 "to pursue all 'unfair methods of competition,' not just those that overlap with the [other] federal antitrust laws." [4]

Meador's September remarks rejected the positions of several prior Republican-appointed commissioners, including the views previously articulated by Maureen Ohlhausen (who is also a former acting chair of the commission) and Joshua Wright, and seemed directionally to agree with the 2022 Section 5 policy statement adopted under then-Chair Lina Khan.[5]

While this convergence is unstated — indeed, the 2022 statement was not mentioned by Meador — the philosophical overlap is discernable, thus continuing the trend of Trump-era



Richard Dagen



Matthew Levinton



William Davis

commissioners finding common cause, at least to some degree, with prior enforcers from the opposite side of the aisle.[6]

The One Agency Act Could Completely Eliminate the Section 5 Pendulum

While Meador's recent remarks were not the first time he has expressed his view that Section 5 provides the FTC with broad enforcement powers,[7] the commissioner's recent call for a vigorous use of Section 5 was offered in a unique setting — not only the post-Slaughter context, but also the context of an FTC threatened more now than ever by legislative efforts seeking to strip it of its antitrust enforcement responsibilities.

With the leadership of both the FTC and the U.S. Department of Justice now directly answerable to the president, some have argued Slaughter may facilitate passage of the One Agency Act, which would transfer all antitrust enforcement from the FTC to the Antitrust Division of the DOJ.[8]

Critically, the Senate bill, which was introduced in 2025, would not only move antitrust enforcement away from the FTC, it would also eliminate UMC authority entirely.[9] The effect would be to leave Section 5 of the FTC Act focused solely on consumer protection enforcement following implementation of the act.[10]

Insofar as the current bills would transfer authority to conduct market studies to the DOJ,[11] and the commission would no longer be trying complaints before a body of experts,[12] UMC authority is the apparent singular point of distinction between the status quo and a hypothetical "one agency world."

For those opposed to the act, establishing that the FTC's UMC power is critical to antitrust enforcement may be key to convincing Congress not to strip the FTC of its antitrust authority.

Looking Backward to Glimpse the Future of UMC Enforcement

What might Meador's vision for a post-Slaughter FTC that seeks "to develop [Section 5] through enforcement" mean for market participants? Highlights from the history of stand-alone Section 5 enforcement may provide some guidance, especially since Meador framed his September remarks as a call for a return to what "Congress originally envisioned when it created the FTC." [13]

When dissatisfaction with the Sherman Act eventually prompted the drafting of the FTC Act,[14] those behind the new statute determined, as the Supreme Court described in its 1920 decision in *FTC v. Gratz*, that it "would be better to put in a general provision condemning unfair competition than to attempt to define the numerous unfair practices." [15]

A bipartisan commission serving as an expert body[16] was left with the task of developing a common UMC law[17] through administrative adjudication.[18]

In 1972, the Supreme Court decided *FTC v. Sperry & Hutchinson Co.*, holding that Section 5 empowers the commission to reach practices beyond the "letter or spirit" of the antitrust laws.[19] More than 50 years later, it remains uncertain what exactly that spirit entails.

Fearing the potentially unworkable breadth of Sperry's standard, courts following Sperry urged caution and endorsed limiting principles for Section 5.[20]

In the 1980s, courts frequently rejected the FTC's use of Section 5 but did not categorically reject theories that went beyond the Sherman Act,[21] with the Supreme Court's 1986 holding in *FTC v. Indiana Federation of Dentists* again underscoring the breadth of Section 5.[22]

The 1990s witnessed strategic deployment of UMC authority, generally with administrative (rather than federal district court) complaints, as the commission used a gap-filling approach to address conduct that did not meet the precise elements of collusion or monopolization but nonetheless threatened substantial competitive harm while promising little procompetitive benefit.[23]

Section 5 enforcement actions against invitations to collude had bipartisan support during this period.[24] From the mid-90s into the 2000s, the commission also deployed Section 5 to police alleged abuses of the standard-setting process, challenging how members of standard-setting organizations took advantage of the process through deceptive conduct that might not implicate the Sherman Act.[25]

Finally, the 1990s ushered in what continues to be the common method of resolution for Section 5 matters — resolution by consent decree rather than litigated judgment, which has had the effect of limiting precedential guidance.

In the early 2000s, the commission relied on Section 5 to challenge minimum advertised price programs adopted unilaterally, but in parallel, by the five major music distributors.[26] The FTC targeted the practice as a UMC, alleging the restrictions would allow distributors to monitor the pricing of their competitors.[27]

Eventually, the commission tried its hand at guidelines. In 2015, after a long debate, the commission adopted a policy statement placing some vague limitations on Section 5's reach beyond established violations of the Sherman and Clayton Acts.[28] Ohlhausen's dissent argued the policy failed to rein in an "unbounded interpretation" of UMC.[29]

In his September remarks, Meador directly criticized certain Republican appointees who claimed the 2015 statement did not sufficiently cabin Section 5. Meador maintained that "to argue that Section 5 [should] be strictly limited to traditional antitrust claims and used on only very rare occasions" is contrary to "Supreme Court precedent." [30]

Under a new Section 5 policy statement adopted by the Biden administration's FTC in 2022, the FTC revoked the 2015 statement and characterized a broad range of conduct as potentially "coercive, exploitative, collusive, abusive, deceptive, [and] predatory," and therefore violative of Section 5.[31]

Christine Wilson, the lone Republican commissioner at the time, criticized the statement as overbroad.[32] Despite such criticism, stand-alone Section 5 enforcement has maintained its aggressive stance under the FTC's current, Republican-appointed leadership.

For example, the FTC's current leadership maintained the Khan FTC's stand-alone Section 5 action[33] against three major pharmacy benefit managers in *In the Matter of Caremark Rx*, [34] rather than dismissing the matter along with other Biden-era enforcements the commission voted to set aside.[35]

The commission has since entered consent decrees with Express Scripts and CVS Caremark, with the matter pulled from adjudication as a settlement with Optum Rx is presumably

finalized. No decisions were reached regarding the merits of the Section 5 claims.[36]

The FTC's enforcements against noncompete agreements further illustrate a continuity between the Biden-era and the Trump-era FTCs. Although the current FTC has abandoned the Khan-era rule banning most noncompete agreements, it continues to pursue enforcement against noncompetes under Section 5 through a case-by-case strategy.

In an action involving a pet cremation services provider, Gateway Services Inc., resolved in 2025, the FTC alleged that postemployment noncompete clauses constituted unfair methods of competition, even absent a traditional Sherman Act theory.[37] The commission did not allege collusion or any other traditional antitrust offense but instead framed the conduct as unfairly limiting worker options and lowering wages, reflecting a broad view of competitive harm.

Meador's recent remarks suggest the FTC's willingness to pursue stand-alone Section 5 claims is likely to continue. However, competing FTC objectives may hinder the commissioner's vision, as FTC Chairman Andrew Ferguson recently announced that the FTC will no longer pursue merger or conduct cases in the FTC's administrative court.[38]

Any effort to heed Meador's call for vigorous Section 5 enforcement may therefore need to rely on the Article III courts, rather than the "expert" body of adjudicators imagined by the drafters of the FTC Act.

This may place future stand-alone actions on a collision course with Section 13(b)'s terms, which establish that the FTC may only obtain a permanent injunction from an Article III court in so-called "proper cases." [39] What constitutes a proper case is itself subject to debate.[40]

As a result, the FTC may exercise restraint when alleging novel theories under Section 5 in federal district court to avoid a replay of the 1980s defeats that left Section 5 proponents searching for moral victories.

Takeaways

History reveals that even decades after the FTC's creation, divining the reach of Section 5 remains challenging. But one thing is clear today — recent FTC cases and Meador's statements indicate areas of potential focus for stand-alone UMC enforcement. In addition to continued enforcement involving invitations to collude, more novel subjects may be the targets of such efforts, as discussed below.

Industries Related To the Cost of Living

According to Meador's comments in a speech in March, "when core goods — such as housing, healthcare, energy, and food — become more expensive in ways that cannot be explained by innovation or genuine improvements in quality, that tells us something about whether competition is working." [41] The current commission's willingness to maintain the Caremark lawsuit [42] suggests the commission may seek other opportunities to use Section 5 — untethered to the Sherman Act — to challenge alleged high prices that are not necessarily attributable to conspiracy or monopolization.

Big Tech Platforms

The FTC's leadership has maintained a UMC count brought against Amazon during the Biden era that alleges an unlawful course of conduct stemming from conditions placed on sellers' access to Prime eligibility.[43] Section 5 may be a vehicle for novel claims against prominent tech platform providers.

Labor

As noted, while it has abandoned the Khan-era rule banning most noncompete agreements,[44] the FTC has expressed commitment to pursuing UMC theories against noncompetes on a case-by-case basis[45] and has called for the "public to shine a light on unfair and anticompetitive agreements." [46] Although a substantial departure from the near-blanket prohibition of the prior FTC, the current approach still requires employers to remain vigilant where plausible harm to workers exists, even in the absence of agreements not to poach or compete with competitors.

"Acquire Hires" or Other Novel Transaction Structures

Meador has said the FTC should "look past formal transaction structure" to capture acquisitions of talent not otherwise reportable under the HSR Act.[47]

Conclusion

As shown by Meador's statements over the course of his FTC tenure, commissioners of both parties have found justification for Section 5's UMC authority in targeted contexts. Businesses should expect continued enforcement of Section 5 against conduct that falls outside the strict scope of the Sherman and Clayton Acts and should continue to place emphasis on related risk assessment and proactive compliance planning.

Richard Dagen is a partner at Axinn LLP. From 1990 to 2014, he served at the FTC in several roles, including counsel to the director of the Bureau of Competition and assistant director of the Anticompetitive Practices Division.

Matthew Levinton is an associate at Axinn.

William Davis is an associate at the firm.

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[1] Mark R. Meador, The Model, Mission, and Future of the Federal Trade Commission - September 14, 2026 (Sep. 14, 2026), https://www.ftc.gov/system/files/ftc_gov/pdf/Meador-The-Model-The-Mission-FTC.pdf.

[2] Trump v. Slaughter, 609 U.S. — (2026).

[3] 15 U.S. Code § 45.

[4] Mark R. Meador, The Model, Mission, and Future of the Federal Trade Commission - September 14, 2026 (Sep. 14, 2026) at 4, https://www.ftc.gov/system/files/ftc_gov/pdf/Meador-The-Model-The-Mission-FTC.pdf.

[5] Press Release, Fed. Trade Comm'n, Policy Statement Regarding the Scope of Unfair Methods of Competition Under Section 5 of the Federal Trade Commission Act (Nov. 10, 2022), https://www.ftc.gov/system/files/ftc_gov/pdf/P221202Section5PolicyStatement.pdf. Notably, the current leadership of the FTC has not acted to overturn the 2022 Statement.

[6] Ferguson, too, has expressed his "agree[ment] that Section 5 proscribes conduct beyond what the Sherman Act proscribes," though he has stated that "the 2022 policy statement's incredible breadth" raises "constitutional concerns." See Andrew N. Ferguson, Statement of Commissioner Andrew N. Ferguson Concurring in Part and Dissenting in Part In the Matter of Grubhub, Inc. (Dec. 17, 2024). Prior Republican Commissioners directly opposed the 2022 statement. See Dissenting Statement of Commissioner Christine S. Wilson Regarding the "Policy Statement Regarding the Scope of Unfair Methods of Competition Under Section 5 of the Federal Trade Commission Act," FTC File No. P221202 (Nov. 10, 2022), https://www.ftc.gov/system/files/ftc_gov/pdf/P221202Section5PolicyWilsonDissentStmnt.pdf. The conventional Republican attitude toward standalone Section 5 actions has been one of skepticism, with Republican-appointed commissioners arguing only for its very limited usage. See Maureen K. Ohlhausen, Section 5: Principles of Navigation (July 25, 2013), https://www.ftc.gov/sites/default/files/documents/public_statements/section-5-principles-navigation/130725section5speech.pdf. ". . . I believe that Section 5 (properly interpreted) should not play a significant role in the FTC's competition enforcement efforts. . . ." (Ohlhausen is also former acting chair of the commission).

[7] Mark R. Meador, Statement of Commissioner Mark R. Meador In the Matter of Non-Compete Clauses (Sep. 5, 2025) at 2, https://www.ftc.gov/system/files/ftc_gov/pdf/meador-statement-noncompete-agreements-9.5.25.pdf. In his statement, Commissioner Meador notes that actions under the FTC's Section 5 authority do not require "traditional showings of market power or structural harms" and can reach conduct not otherwise unlawful under the other antitrust laws.

[8] PaRR, FTC dropping administrative route likely to lengthen litigation, reopen 'one agency' question (Aug. 26, 2026), https://app.parr-global.com/intelligence/view/intelcms-hgcsdh?utm_source=Notifications&utm_medium=Email&utm_campaign=Alert&utm_term=69df775e12681e01c71cd11a&ssoid=0C80091C-8BDD-460C-A7B3-FB479B6DFA7B.

[9] See One Agency Act, S. 1059, 119th Cong. (2025-26), <https://www.congress.gov/bill/119th-congress/senate-bill/1059/text>. In contrast, the current version of the Act pending before the House, as written, would not eliminate the UMC power but would transfer that authority to the DOJ. See H.R. 384, 119th Cong. (2025-26), <https://www.congress.gov/bill/119th-congress/house-bill/384/text>.

[10] See One Agency Act, S. 1059, 119th Cong. (2025-26), <https://www.congress.gov/bill/119th-congress/senate-bill/1059/text>.

[11] Under the Senate version, FTC would retain 6(b) power but only for market studies concerning consumer protection concerns. See One Agency Act, S. 1059, 119th Cong. (2025-26), § 6(d)(2); One Agency Act, H.R. 384, 119th Cong. (2025-26), § 4(a)(5)(A)(i-ii)-(B).

[12] Kushita Vasant, US FTC to no longer bring antitrust cases under Part 3 proceedings, chair says, MLex (Sep. 15, 2026), <https://www.law360.com/mllex/data-privacy-security/articles/2525625/us-ftc-to-no-longer-bring-antitrust-cases-under-part-3-proceedings-chair-says>. See William E. Kovacic & Marc Winerman, "Competition Policy and the Application of Section 5 of the Federal Trade Commission Act," 76 Antitrust L.J. 929, 930-31 (2010), https://www.ftc.gov/sites/default/files/documents/public_statements/competition-policy-and-application-section-5-ftc-act-marc-winerman/2010kovacicwinermanpolicyapp.pdf ("Section 5 would be applied by an expert administrative tribunal which had power to impose prospective equitable relief (not damages or criminal sanctions) ... that could adjust the boundaries of acceptable business conduct in light of evolving business practices and developments in economic and legal understanding.").

[13] Mark R. Meador, The Model, Mission, and Future of the Federal Trade Commission - September 14, 2026 (Sep. 14, 2026) at 6, https://www.ftc.gov/system/files/ftc_gov/pdf/Meador-The-Model-The-Mission-FTC.pdf.

[14] Mark R. Meador, The Model, Mission, and Future of the Federal Trade Commission - September 14, 2026 (Sep. 14, 2026) at 6, https://www.ftc.gov/system/files/ftc_gov/pdf/Meador-The-Model-The-Mission-FTC.pdf.

[15] FTC v. Gratz, 253 U.S. 421 (1920).

[16] 51 Cong. Rec. 14,932 (1914) (quoting Charles Prouty, Chairman of the Interstate Commerce Committee).

[17] 51 Cong. Rec. 12,454 (1914) (quoting Rep. Harry Covington).

[18] The FTC only received authority to initiate enforcement suits in Article III courts in 1973, through the FTC Improvements Act, which amended § 13 of the FTC Act by adding subsection 13(b).

[19] FTC v. Sperry & Hutchinson Co., 405 U.S. 233, 245-46, 250 (1972).

[20] See e.g., Boise Cascade Corp. v. FTC, 637 F.2d 573 (9th Cir. 1980); Official Airline Guides, Inc. v. FTC, 630 F.2d 920 (2d Cir. 1980) ("[W]e think enforcement of the FTC's order here would give the FTC too much power. . . ."); and E.I. du Pont de Nemours & Co. v. FTC (Ethyl), 729 F.2d 128 (2d Cir. 1984).

[21] For example, when the Second Circuit in the 1984 Ethyl decision set aside a Section 5-based final order, it observed that, "as the Commission moves away from attacking conduct that is either a violation of the antitrust laws or collusive, coercive, predatory, restrictive or deceitful, and seeks to break new ground by enjoining otherwise legitimate practices, the closer must be our scrutiny upon judicial review." E.I. du Pont de Nemours & Co. v. FTC (Ethyl), 729 F.2d 128, 137 (2d Cir. 1984).

[22] FTC v. Indiana Fed'n of Dentists, 476 U.S. 447 (1986). "The standard of 'unfairness' under the FTC Act is, by necessity, an elusive one, encompassing not only practices that violate the Sherman Act and the other antitrust laws, but also practices that the Commission determines are against public policy for other reasons." (internal citations omitted).

[23] See generally Richard Dagen, "Rambus, Innovation Efficiency, and Section 5 of the FTC

Act," 90 B.U. L. Rev. 1479 (2010) (discussing bases for 90s cases), <https://www.bu.edu/law/journals-archive/bulr/documents/dagen.pdf>.

[24] See, e.g., *Mead Johnson; YKK (U.S.A.) Inc.*, 116 FTC 628 (1993); *AE Clevite Inc.*, 116 FTC 389 (1993); *In re Precision Moulding Co.*, 122 FTC 104 (1996); *Stone Container Co.*, 125 FTC 853 (1998).

[25] See, e.g., *In re Negotiated Data Solutions LLC (N-Data)*, No. 051-0094 (Jan. 2008); *In re Rambus Inc.*, No. 9302 (2006); *In re Union Oil Co. of Cal. (Unocal)*, No. 9305 (July 2005); *In re Dell Computer Corp.*, 121 FTC 616 (1996). Note: Rambus was not a pure standalone Section 5 case as it also concerned Section 2 claims under the Sherman Act.

[26] Richard Dagen, *Rambus, Innovation Efficiency, and Section 5 of the FTC Act*, 90 B.U. L. Rev. 1479, 1516 (2010), <https://www.bu.edu/law/journals-archive/bulr/documents/dagen.pdf>.

[27] See *Capitol Records, Inc.*, No. C-3975, 2000 WL 1257795 FTC (Aug. 30, 2000); *Universal Music & Video Distrib'n Corp.*, No. C-3974, 2000 WL 1257798 FTC (Aug. 30, 2000); *BMG Music*, No. C-3973, 2000 WL 1257794 FTC (Aug. 30, 2000); *Time Warner Inc.*, No. C-3972, 2000 WL 1257797 FTC (Aug. 30, 2000); *Sony Music Entm't, Inc.*, No. C-3971, 2000 WL 1257796 FTC (Aug. 30, 2000); Richard Dagen, "Rambus, Innovation Efficiency, and Section 5 of the FTC Act," 90 B.U. L. Rev. 1479, 1516 (2010), <https://www.bu.edu/law/journals-archive/bulr/documents/dagen.pdf>.

[28] Press Release, Fed. Trade Comm'n, Statement of Enforcement Principles Regarding "Unfair Methods of Competition" Under Section 5 of the FTC Act (August 13, 2015), https://www.ftc.gov/system/files/documents/public_statements/735201/150813section5enforcement.pdf; the vote was 4-1, with then-Commissioner Maureen K. Ohlhausen dissenting over concern that the statement was undermined by an "embrace of . . . an unbounded interpretation of UMC." See Dissenting Statement of Maureen K. Ohlhausen Regarding FTC Act Section 5 Policy Statement (Aug. 13, 2015), https://www.ftc.gov/system/files/documents/public_statements/735371/150813ohlhausendissentfinal.pdf.

[29] Dissenting Statement of Maureen K. Ohlhausen Regarding FTC Act Section 5 Policy Statement (Aug. 13, 2015), https://www.ftc.gov/system/files/documents/public_statements/735371/150813ohlhausendissentfinal.pdf.

[30] Commissioner Meador's remarks specifically took aim at articles published by Maureen Ohlhausen and Joshua Wright in 2013.

[31] Press Release, Fed. Trade Comm'n, Policy Statement Regarding the Scope of Unfair Methods of Competition Under Section 5 of the Federal Trade Commission Act (Nov. 10, 2022) at 9, https://www.ftc.gov/system/files/ftc_gov/pdf/P221202Section5PolicyStatement.pdf; See also Pl.'s Opp'n to Defs.' Mot. to Dismiss, *FTC v. Syngenta Crop Prot. AG*, No. 1:22-cv-00828 (M.D.N.C. Feb. 10, 2023), https://www.ftc.gov/system/files/ftc_gov/pdf/0150-2023-10-05-Lesser-Redacted-Plaintiffs%27-Opp-to-MTDs-%28PursuanttoSept28Order148%29.pdf. In its opposition brief, the Commission invoked the principles of the 2022 policy statement, arguing "[t]he FTC Act was designed to supplement and bolster the Sherman Act and the Clayton Act." (internal quotation marks omitted).

[32] See Dissenting Statement of Commissioner Christine S. Wilson Regarding the "Policy Statement Regarding the Scope of Unfair Methods of Competition Under Section 5 of the Federal Trade Commission Act," FTC File No. P221202 (Nov. 10, 2022), https://www.ftc.gov/system/files/ftc_gov/pdf/P221202Section5PolicyWilsonDissentStmnt.pdf.

[33] Under Chair Khan, the FTC directly invoked the language of the 2022 statement, describing the targeted conduct as "coercive, exploitative and restrictive" in the Commission's Complaint. See *In re Caremark Rx, LLC, et al.*, No. 9437, Complaint (F.T.C. Sept. 20, 2024) at 42, https://www.ftc.gov/system/files/ftc_gov/pdf/612314.2024.11.26_part_3_administrative_complaint_-_revised_public_redacted_version.pdf.

[34] *In re Caremark Rx, LLC, et al.*, No. 9437, Complaint FTC (Sept. 20, 2024), https://www.ftc.gov/system/files/ftc_gov/pdf/612314.2024.11.26_part_3_administrative_complaint_-_revised_public_redacted_version.pdf.

[35] See, e.g., Press Release, Fed. Trade Comm'n, FTC Dismisses Lawsuit Against PepsiCo, (May 22, 2025), <https://www.ftc.gov/news-events/news/press-releases/2025/05/ftc-dismisses-lawsuit-against-pepsico>; Press Release, Fed. Trade Comm'n, FTC Reopens and Sets Aside Exxon-Pioneer Final Order, (July 17, 2025), <https://www.ftc.gov/news-events/news/press-releases/2025/07/ftc-reopens-sets-aside-exxon-pioneer-final-order>; Fed. Trade Comm'n, "FTC Reopens and Sets Aside Chevron-Hess Final Order," (July 17, 2025), <https://www.ftc.gov/news-events/news/press-releases/2025/07/ftc-reopens-sets-aside-chevron-hess-final-order>.

[36] Press Release, Fed. Trade Comm'n, FTC Secures Landmark Settlement with Express Scripts to Lower Drug Costs for American Patients (Feb. 4, 2026), <https://www.ftc.gov/news-events/news/press-releases/2026/02/ftc-secures-landmark-settlement-express-scripts-lower-drug-costs-american-patients>; Press Release, Fed. Trade Comm'n, FTC Secures Major Settlement with Caremark, Resolving Antitrust Case Against Second Drug Middleman, (July 14, 2026), <https://www.ftc.gov/news-events/news/press-releases/2026/07/ftc-secures-major-settlement-caremark-resolving-antitrust-case-against-second-drug-middleman>; Settlement with Respondent OptumRX is pending as the matter was withdrawn from adjudication on June 12, 2026 but a consent agreement has not been announced.

[37] See *In re Gateway Services*, Complaint (Nov. 25, 2025), https://www.ftc.gov/system/files/ftc_gov/pdf/gateway_complaint.pdf.

[38] Kushita Vasant, US FTC to no longer bring antitrust cases under Part 3 proceedings, chair says, MLex (Sep. 15, 2026), <https://www.law360.com/mllex/data-privacy-security/articles/2525625/us-ftc-to-no-longer-bring-antitrust-cases-under-part-3-proceedings-chair-says>.

[39] 15 U.S.C. § 53(b). "[I]n proper cases the Commission may seek, and after proper proof, the court may issue, a permanent injunction."

[40] The Supreme Court held in *AMG Capital Management, LLC v. FTC*, 593 U.S. 67 (2021) that § 13(b) does not authorize the FTC to obtain equitable monetary relief directly from a federal court, thus requiring that for an FTC action brought in an Article III court to be proper, the FTC may seek only injunctive relief. The holding does not address the propriety

of claims brought under the Sherman and Clayton Acts as compared to under Section 5. See, e.g., *FTC v. Amazon.com, Inc.*, No. 2:23-cv-01495-JHC (W.D. Wash 2023) (Sealed Order on Defendant's Motion to Dismiss & Plaintiffs' Motion to Bifurcate (Sep. 30, 2024) (post-AMG decision finding the FTC's UMC count proper where the court believed it could determine whether Amazon's conduct was unfair without having to rely on the FTC's own interpretation of the FTC Act).

[41] Mark R. Meador, *America First Antitrust* (Mar. 19, 2026) at 5, https://www.ftc.gov/system/files/ftc_gov/pdf/meador-america-first-antitrust.pdf.

[42] *In re Caremark Rx, LLC, et al.*, No. 9437, Complaint FTC (Sept. 20, 2024), https://www.ftc.gov/system/files/ftc_gov/pdf/612314.2024.11.26_part_3_administrative_complaint_-_revised_public_redacted_version.pdf.

[43] *FTC v. Amazon.com, Inc.*, No. 2:23-cv-01495-JHC (W.D. Wash 2023); See Second Amended Complaint (October 31, 2024).

[44] Statement of Chairman Andrew N. Ferguson Joined by Commissioner Melissa Holyoak Regarding *Ryan, LLC v. FTC* (Sep. 5, 2025), https://www.ftc.gov/system/files/ftc_gov/pdf/ferguson-holyoak-statement-re-noncompete-acceding-vacatur.pdf.

[45] Press Release, Fed. Trade Comm'n, *FTC Continues Enforcement Action Streak Against Anticompetitive No-Hire Agreements* (Dec. 19, 2025), <https://www.ftc.gov/news-events/news/press-releases/2025/12/ftc-continues-enforcement-action-streak-against-anticompetitive-no-hire-agreements>; Statement of Chairman Andrew N. Ferguson Joined by Commissioner Melissa Holyoak Regarding *Ryan, LLC v. FTC* (Sep. 5, 2025), https://www.ftc.gov/system/files/ftc_gov/pdf/ferguson-holyoak-statement-re-noncompete-acceding-vacatur.pdf.

[46] Press Release, Fed. Trade Comm'n, *FTC Issues Request for Information on Employee Noncompete Agreements* (Sep. 4, 2025), <https://www.ftc.gov/news-events/news/press-releases/2025/09/federal-trade-commission-issues-request-information-employee-noncompete-agreements>.

[47] See Mark R. Meador, *Keynote Address at The Tech Antitrust Conference, Concurrences* (Jan. 15, 2026), https://www.ftc.gov/system/files/ftc_gov/pdf/meador-concurrences-keynote.pdf.