

Patman Returns ... and Retreats Again

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When agency enforcement of the Robinson-Patman Act (RPA) was revived near the end of the Biden administration, it was met with mixed reactions. Given the Republican Commissioners' disapproval of the complaints, it came as no surprise that the Trump FTC has taken steps to push it back into the shadows. In a move that the Commission has been telegraphing for months, the FTC voted in a 3-0 decision on May 22, 2025 to dismiss without prejudice one of the FTC's lawsuits for alleged price discrimination.

Although the RPA remains good law and has remained a subject of private enforcement over the years, neither the FTC nor the DOJ has enforced the RPA for decades, the DOJ staying off the field for almost 50 years. In the last two months of the Biden administration, the FTC filed two RPA complaints, which were the first cases it had brought under the RPA in nearly 25 years. The second of these complaints, filed in the Southern District of New York in January 2025, alleged that PepsiCo gave benefits and advantages, including promotional allowances and services, to a large big-box retailer (widely understood to be Walmart) that it did not offer to smaller retailers.

At the time the complaint was filed, then-Commissioner, now-Chair Ferguson and Commissioner Holyoak both issued dissenting statements describing the complaint as "deficient." Ferguson explained that "the Democratic majority elected to devote almost no

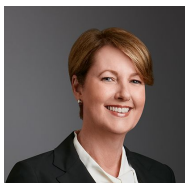
resources to this investigation” and used the majority of his dissent to condemn the Commission’s management of resources and staff.

With the Trump leadership firmly installed at the FTC, Chair Ferguson made good on his dissent, issuing a two-page [statement](#) maintaining his position that the FTC’s decision to sue was “purely political” and the Commission had “no evidence to support the most important allegations.” Commissioner Meador issued a 3-page concurring [statement](#) noting that the complaint did not meet the threshold requirements for a meritorious RPA case; he described the complaint as a “reckless and irresponsible use of antitrust enforcement resources” by former Chair Lina Khan and the former Commissioners.

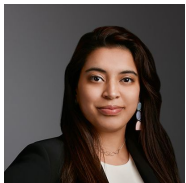
The FTC has another active RPA [complaint](#) in the United States District Court for the Central District of California against liquor wholesaler Southern Glazer’s Wine and Spirits LLC. The fate of that complaint remains to be seen, although Commissioners [Ferguson](#) and [Holyoak](#) issued similar dissenting statements at the time that complaint was filed.

Robinson-Patman fans need not lose hope for ongoing enforcement. Private plaintiffs continue to pursue price discrimination claims consistently, including the [ongoing 5-Hour Energy litigation](#). And even harsh critics of the RPA, like Commissioners Ferguson and Holyoak, have indicated the Commission is “constitutionally obliged to enforce” the RPA, but should do so only after a “thorough investigation” assures the Commission that the Defendant violated the Act. So, while the current docket of FTC RPA cases may fade into the background, we have likely not seen the end of Robinson-Patman.

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