No. 19-508

IN THE

Supreme Court of the United States

AMG CAPITAL MANAGEMENT, LLC, ET AL.,

Petitioners,

v.

FEDERAL TRADE COMMISSION,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF AMICUS CURIAE PUBLIC CITIZEN IN SUPPORT OF RESPONDENT

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INTEREST OF AMICUS CURIAE[1]

Public Citizen, a consumer-advocacy organization with members and supporters nationwide, works before Congress, administrative agencies, and courts for the enactment and enforcement of laws protecting consumers and the public. Public Citizen has appeared as amicus curiae to advocate for increased consumer protections and stronger regulatory authority across a variety of industries, including in cases involving the Federal Trade Commission (FTC). *See*, *e.g.*, *N.C. Bd. of Dental Examiners v. FTC*, 574 U.S. 494 (2015) (amicus curiae supporting FTC action alleging that dental licensing board engaged in anticompetitive conduct and was not entitled to state action immunity).

In this case, petitioners' argument, if accepted, would upset the nearly uniform, decades-old recognition that Congress empowered federal district courts, in enforcement actions brought by the FTC under § 13(b) of the Federal Trade Commission Act (FTC Act), 15 U.S.C. § 53(b), to compel defendants found to have violated § 5 of the FTC Act, 15 U.S.C. § 45, to return unlawfully obtained funds. Petitioners' argument would significantly curtail the FTC's ability to prevent unfair methods of competition and unfair or deceptive acts or practices—conduct that § 5 declares unlawful. Because the FTC Act does not provide a private right of action for victims of § 5 violations, FTC enforcement actions are critical to

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[1] This brief was not written in whole or in part by counsel for a party. No one other than amicus curiae or its counsel made a monetary contribution to the preparation or submission of this brief. Counsel for the parties have filed with the Court blanket consents to the filing of amicus briefs.

fulfilling Congress's objective of ensuring that anti-competitive, unfair, and deceptive acts or practices have no place in the American economy. If, as petitioners contend, federal courts lack the authority to award complete relief in a § 13 action, and may only halt unlawful conduct prospectively, scam artists and other wrongdoers will have a green light to engage in prohibited conduct that harms consumers, secure in the knowledge that they are likely to retain the economic fruits of their unlawful ventures. The end result will be to increase the financial harms experienced by American consumers, while curtailing the relief that consumers may obtain after unlawful actors are caught. Public Citizen submits this brief to explain that the FTC Act does not compel that unsound result.

SUMMARY OF ARGUMENT

In 1973, Congress amended the FTC Act to authorize the FTC to seek, and district courts to award, permanent injunctions to enforce the Act's prohibitions on unfair methods of competition and unfair and deceptive acts or practices. In doing so, Congress incorporated into the FTC Act the principles set out in this Court's opinions in *Porter v. Warner Holding Co.,* 328 U.S. 395 (1946), and *Mitchell v. Robert DeMario Jewelry, Inc.,* 361 U.S. 288 (1960), which recognize the authority of district courts in regulatory enforcement actions to craft injunctions to provide complete relief, including restorative relief.

I. *Porter* and *Mitchell* confirm that district courts possess the authority to award restorative relief when a statute authorizes the government to bring an action to enjoin a violation of a statutory prohibition. In *Porter*, this Court concluded that a district court could

award restitution of unlawfully collected rental payments under a statute authorizing orders to enjoin acts or practices violating the statute. The Court emphasized that such a statute invokes the courts' equitable powers. Those powers, particularly in cases implicating the public interest, include the power to restore the status quo by ordering the return of funds that rightfully belong to the victims of the unlawful activity. *Porter* made clear, moreover, that courts have inherent authority to order complete relief absent a clear and valid legislative command to the contrary.

In *Mitchell*, the Court reiterated that the principles articulated in *Porter* extend to federal statutes that do not expressly authorize the specific restorative relief sought by the government. *Mitchell* upheld district courts' authority to order reimbursement of lost wages where the court was authorized to "restrain violations" of the statute. Echoing *Porter*, *Mitchell* emphasized "the enforcement of prohibitions contained in a regulatory enactment" carries with it "the historic power of equity to provide complete relief." *Mitchell*, 361 U.S. at 291–92.

II. Before the FTC Act was amended in 1973, the FTC's authority to enforce the prohibition in § 5 of the FTC Act against "[u]nfair methods of competition" and "unfair or deceptive acts or practices" was limited. The FTC could conduct administrative proceedings that culminated in a cease-and-desist order. It lacked, however, the power to halt potentially unlawful conduct pending completion of cease-and-desist proceedings. In addition, the FTC could not obtain judicial enforcement of a cease-and-desist order (unless the order was affirmed on judicial review); rather, a final cease-and-desist order could be

enforced only through an action for a civil penalty brought by the Attorney General.

Incorporating the principle set out in *Porter* and *Mitchell*, Congress amended the FTC Act in 1973 to create a judicial enforcement mechanism separate from the FTC's traditional cease-and-desist authority. On the administrative front, the 1973 amendment authorized the FTC to pursue, in its own name, civil penalties for violations of its cease-and-desist orders, and authorized courts in such proceedings to exercise their equitable authority to enforce such orders. The 1973 amendment also added § 13(b) of the FTC Act, which does two things. First, that section authorizes the FTC to obtain a preliminary injunction from a court to halt potentially unlawful conduct pending final disposition of administrative proceedings. In addition, § 13(b) established an entirely judicial mechanism for adjudicating violations of the FTC Act and authorized courts to grant the FTC a "permanent injunction" if a violation is established. Thus, the 1973 amendment gave the FTC the ability to seek a variety of remedies: It can pursue an administrative remedy through a process that it manages but that could not (at the time) result in restorative relief for past victims of the conduct; or it can initiate a judicial process, in which the court makes the critical legal and factual determinations, and that, under *Porter* and *Mitchell*, may result in redress for victims injured by a violation.

Petitioners' contention that a district court's authority under § 13(b) is confined to awarding prospective relief muddles the distinction between these two remedial paths. Under petitioners' reading of the 1973 amendment, § 13(b) merely duplicated the prospective-only remedy that the FTC could already

obtain through the cease-and-desist process. Petitioners proffer no reason why Congress would have created such a redundant enforcement mechanism in the 1973 amendment. Petitioners instead emphasize textual differences between § 13(b) and the civil penalty provisions in § 5(*l*) of the FTC Act. But although the language differs, so does the context. Unlike § 13(b), § 5(*l*) is principally a civil penalty statute, which is not the type of statute to which *Porter* and *Mitchell* speak. In that context, it made sense for Congress to spell out in greater detail the types of remedies that a district court could provide. Because § 13(b) concerns only the courts' equitable authority, the principles of *Porter* and *Mitchell* govern.

Petitioners fare no better in their reliance on the 1975 amendment to the FTC Act. Nothing in the 1975 amendment is incompatible with the district courts' exercise of equitable authority under § 13(b) to order restorative relief in connection with a permanent injunction. Moreover, the 1975 amendment does not impliedly repeal or amend § 13(b) so as to cabin the district courts' authority to prospective relief only. Rather, the 1975 amendment does not substantively address § 13; it does not deal with the judicial pathway at all, but focuses exclusively on remedies when an FTC rule is violated or the FTC has issued a cease-and-desist order. Petitioners' contention that § 13(b) is incompatible with the procedural requirements in the consumer redress provisions of the 1975 amendment, reflected in § 19 of the FTC Act, is particularly unpersuasive, not only because the savings clause in § 19 precludes such incompatibility, but also because § 13 and § 19 address distinct pathways for obtaining consumer redress.

The 1975 amendment also cannot inform this Court's interpretation of § 13(b) without producing anomalous results. The 1975 amendment addresses only FTC actions to implement the § 5 prohibition on unfair or deceptive acts or practices. Section 13(b), by contrast, applies whenever the FTC seeks a permanent injunction relating to any provision of law enforced by the agency, such as the prohibition on unfair methods of competition. If the 1975 amendment affected the scope of courts' authority under § 13(b), that effect could logically extend only to cases involving unfair or deceptive acts or practices. But nothing in the text, structure, history, or purpose of the statute supports splicing § 13(b) in that manner. The 1975 amendment, in short, has no relevance to the question presented in this case.

ARGUMENT

In 1973, Congress amended § 13 of the FTC Act to authorize courts to issue permanent injunctions in actions brought by the FTC to enforce the statutory prohibition against unfair and deceptive trade practice and unfair methods of competition. 15 U.S.C. § 53(b). In doing so, Congress acted against the backdrop of this Court's decisions in *Porter v. Warner Holding Co.,* 328 U.S. 395 (1946), and *Mitchell v. Robert DeMario Jewelry, Inc.*, 361 U.S. 288 (1960), which had established district courts' authority in regulatory enforcement actions under statutes authorizing injunctive relief to exercise "the historic power of equity to provide complete relief in light of the statutory purposes," *Mitchell*, 361 U.S. at 292. Because *Porter* and *Mitchell* set forth the prevailing equitable principles that would define the scope of the district courts' authority to issue permanent injunc-

tions under the FTC Act, Congress could not have intended that courts exercising that authority would be limited only to prospective relief. Indeed, the 1973 amendment contained other enhancements to the FTC's cease-and-desist authority that accomplished the goal of preventing violations going forward. Congress's decision to create a separate judicial remedy for violations of the FTC Act has significance precisely because courts, unlike the FTC, possess the unique, historic power to provide complete relief for violations of law by "restoring the status quo and ordering the return of that which rightfully belongs to the" victims of the violation. *Porter*, 328 U.S. at 402.

I. *Porter* and *Mitchell* establish a district court's authority to award restorative relief in regulatory enforcement actions.

A. In *Porter*, this Court considered "the power of a federal court, in an enforcement proceeding under § 205(a) of the Emergency Price Control Act of 1942, to order restitution of rents collected by a landlord in excess of the permissible maximums." *Id.* at 396 (footnote reference omitted). The lower courts had declined to order restitution, believing that "there was no jurisdiction under the statute" to do so. *Id.* at 397. This Court reversed, concluding that the statutory authorization of orders enjoining violations authorized exercise of the full extent of a district court's equitable jurisdiction. A court exercising such equitable jurisdiction, this Court held, has the power "'to do equity,'" to "'mould each decree to the necessities of the particular case,'" and "to accord full justice to all the real parties in interest." *Id.* at 398 (quoting *Hecht Co. v. Bowles*, 321 U.S. 321, 329 (1944)). Moreover, "since the public interest is involved …, those equitable powers assume an even broader and more

flexible character than when only a private controversy is at stake." *Id.* The "recognized power" of equity, the Court held, includes the authority "to act in the public interest by restoring the status quo and ordering the return of that which rightfully belongs to the purchaser or tenant." *Id.* at 402.

Porter explains that "the comprehensiveness of this equitable jurisdiction is not to be denied or limited in the absence of a clear and valid legislative command." *Id.* at 398. Therefore, "[u]nless a statute in so many words, or by a necessary and inescapable inference, restricts the court's jurisdiction in equity, the full scope of that jurisdiction is to be recognized and applied." *Id.* The Court concluded that the Emergency Price Control Act did not restrict the courts' equitable authority, but, rather, "expressly authorize[d] the District Court, upon a proper showing, to grant 'a permanent or temporary injunction, restraining order, or other order.'" *Id.* at 399 (quoting 50 U.S.C. App. § 925(a) (1946)). Accordingly, the Court held that "a decree compelling one to disgorge profits, rents or property acquired in violation of the Emergency Price Control Act may properly be entered by a District Court once its equity jurisdiction has been invoked under § 205(a)." *Id.* at 398–99.

B. In *Mitchell*, this Court confirmed that the breadth of the district court's equitable authority in a public enforcement action does not depend on an express authorization from Congress to award the specific type of equitable relief sought by the government. *Mitchell* concerned the Fair Labor Standards Act of 1938, which made it unlawful for a covered employer to discharge an employee for filing a complaint or instituting a proceeding under the

statute, 361 U.S. at 289, and authorized district courts, in an action brought by the Secretary of Labor, "to restrain … violations" of that prohibition, *id.* (quoting 29 U.S.C. § 217 (1958)). Thus, as in *Porter*, the statute did not expressly grant authority to issue all forms of equitable relief, but explicitly authorized actions to enjoin violations. *See id.*

The court of appeals had concluded that the district court "lacked jurisdiction to order reimbursement of lost wages resulting from an unlawful discharge." *Id.* at 290. This Court reversed, concluding that the equitable principles set forth in *Porter* were not confined to "wartime statute[s]" or statutes containing an "affirmative confirmation of the power to order reimbursement." *Id.* at 291. Rather, the Court held that "[w]hen Congress entrusts to an equity court the enforcement of prohibitions contained in a regulatory enactment, it must be taken to have acted cognizant of the historic power of equity to provide complete relief in light of the statutory purposes." *Id.* at 291–92. "In this context," where "effective enforcement could … only be expected if employees felt free to approach officials with their grievances," the Court observed that "the significance of reimbursement of lost wages becomes apparent." *Id.* at 292.

II. The 1973 amendment to the FTC Act authorizes district courts to award restorative relief in FTC enforcement actions under § 13(b).

Section 5 of the FTC Act declares unlawful "[u]nfair methods of competition" and "unfair or deceptive acts or practices." 15 U.S.C. § 45(a). The FTC has had the authority to issue cease-and-desist orders to prevent violations of the FTC Act since the

statute's enactment in 1914. Federal Trade Commission Act, ch. 311, § 5, 38 Stat. 717, 719–20.[2] In 1973, Congress created an entirely separate mechanism for enforcing the FTC Act in which the FTC could seek, and a district court could issue, a permanent injunction to remedy a § 5 violation. 15 U.S.C. § 53(b). That separate, exclusively judicial enforcement mechanism had value precisely because it did not duplicate the prospective redress that the FTC could obtain through its administrative procedures, but enabled the FTC to obtain restorative relief for the victims of the unfair methods of competition or the unfair or deceptive acts or practices outlawed under § 5.

A. Before the 1973 amendment, the FTC possessed limited authority to enforce the prohibitions in § 5. The FTC Act "empowered and directed" the FTC "to prevent persons, partnerships, or corporations … from using unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce." 15 U.S.C. § 45(a)(6) (1970). The statute authorized the FTC to issue an administrative complaint and conduct an administrative proceeding "[w]henever the [FTC] shall have reason to believe that any such person, partnership, or corporation has been or is using any unfair method of competition or unfair or deceptive act or practice" and to "make a report in writing in which it shall state its findings as to the facts and shall issue … an order requiring such person, partnership, or corporation to cease and desist from using such

[2] The prohibition on unfair or deceptive acts or practices was enacted in 1938. Wheeler-Lea Act of 1938, ch. 49, § 3, 52 Stat. 111.

method of competition or such act or practice." 15 U.S.C. § 45(b) (1970).

The FTC lacked, however, statutory authority to prevent potentially unlawful conduct from continuing during the pendency of administrative proceedings and any judicial review thereof, and the statute did not authorize the award of restorative relief for violations of § 5. Once the FTC issued a cease-and-desist order, judicial enforcement of the order could occur in one of two ways. First, if the party subject to the cease-and-desist order petitioned for review in the courts of appeals and the court later affirmed the FTC's order, it would then "issue its own order commanding obedience to the terms of" the cease-and-desist order. 15 U.S.C. § 45(c) (1970). Second, although the FTC Act did not empower the FTC to bring enforcement actions directly in court, the statute directed the agency to "certify the facts to the Attorney General" whenever it had "reason to believe" that a person may be liable for a civil penalty in an action under § 5(*l*). 15 U.S.C. § 56 (1970). Under that section, the United States could bring an action for a civil penalty against any "person, partnership, or corporation who violates an order of the Commission to cease and desist after it has become final and while such order is in effect." 15 U.S.C. § 45(*l*) (1970).

B. The 1973 amendment strengthened the FTC's cease-and-desist authority and crafted a new judicial remedy for violations of § 5. To begin with, to strengthen the FTC's administrative authority, Congress ended the FTC's reliance on the Attorney General to enforce cease-and-desist orders through civil penalty actions. The 1973 amendment added § 5(m) to the FTC Act, which authorized the FTC "to appear in its own name" in civil proceedings, including

those in which it would be "represented therein by the Attorney General," after providing the Attorney General 10 days' opportunity "to take the action proposed by the [FTC]." Trans-Alaska Pipeline Authorization Act, Pub. L. No. 93-153, title IV, § 408(d), 87 Stat. 576, 592 (1973); *see also id.* § 408(g), 87 Stat at 592 (amending § 16 of the FTC Act, 15 U.S.C. § 56, to authorize the FTC to bring an enforcement action under § 5(*l*)). The 1973 amendment also enhanced the remedies that a court could award in a § 5(*l*) civil penalty action. Along with increasing the civil penalty amount, the 1973 amendment authorized courts to "grant mandatory injunctions and such other and further equitable relief as they may deem appropriate in the enforcement of such final orders of the Commission." *Id.* § 408(c), 87 Stat. at 591.

In addition, to address the problem of continuing harm pending the finality of administrative proceedings, the 1973 amendment added new § 13(b) to the FTC Act, which authorized the agency to obtain a "temporary restraining order or a preliminary injunction" to enjoin a violation "pending the issuance of [an administrative] complaint." *Id.* § 408(f), 87 Stat. at 591, *codified as amended at* 15 U.S.C. § 53(b). District courts could grant such relief "[u]pon a proper showing that, weighing the equities and considering the [FTC's] likelihood of ultimate success, such action would be in the public interest." *Id.* If the court granted preliminary relief, the FTC was required to file its administrative complaint within 20 days, or such earlier time as the court specified. *Id.* The 1973 amendment contemplates that such relief would stay in effect "until such complaint is dismissed by the [FTC] or set aside by the court on review, or until the

order of the Commission made thereon has become final." *Id.*

Along with augmenting the FTC's administrative orders, the 1973 amendment created a means of direct judicial enforcement of the FTC Act by providing that, "in proper cases, the [FTC] may seek, and after proper proof, the court may issue, a permanent injunction" through an action filed under section 13(b). *Id.* By authorizing district courts to issue permanent injunctions in enforcement actions brought by the FTC, Congress necessarily understood that the federal courts would act as the finder of fact, make an independent determination as to whether the conduct at issue constituted an unfair method of competition or an unfair or deceptive act or practice under § 5, and would exercise their own judicial authority and discretion in fashioning a remedy for unlawful conduct.

Thus, the 1973 amendment allowed the FTC to seek a variety of remedies for § 5 violations. If the FTC chooses to use the cease-and-desist process, it could seek preliminary relief from the courts under § 13(b), conduct a cease-and-desist proceeding, make its own findings of fact that would be "conclusive" on judicial review (15 U.S.C. § 45(c)), define the nature of conduct that constituted an unfair method of competition or an unfair or deceptive act or practice, set the terms of its cease-and-desist order, and enforce final orders through actions under § 5(*l*) for civil penalties and equitable relief. 15 U.S.C. § 45(b), (*l*). The cease-and-desist process after the 1973 amendment, however, afforded the FTC no mechanism for obtaining redress for victims of unlawful conduct occurring before a cease-and-desist order becomes final.

Alternatively, the FTC may elect to enforce § 5 violations through the judicial process authorized by § 13(b). By choosing this route, the FTC loses the administrative control and procedural benefits it enjoyed under the cease-and-desist procedure. The advantage for the FTC, however, is that a federal court may award relief that the FTC cannot: Under the principles set forth in *Porter* and *Mitchell*, the court can exercise its equitable powers, invoked by the statutory authorization to issue injunctive relief, to award restorative relief to victims harmed by § 5 violations.

C. Petitioners' argument that a district court's authority under § 13(b) is confined to injunctions that afford only prospective relief muddles the distinction that Congress drew in the 1973 amendment between administrative and judicial remedies for violations of the FTC Act. Petitioners proffer no reason why Congress in 1973 would have authorized courts to issue permanent injunctions that merely duplicated the relief that the FTC had the power to grant administratively through cease-and-desist orders. Congress made preliminary relief available to the FTC regardless of whether it chooses to pursue administrative or judicial remedies. And the 1973 amendment assures that the FTC can pursue enforcement actions in court in its own name, ending the FTC's traditional reliance on the Attorney General for enforcement of cease-and-desist orders. In other material respects, the cease-and-desist process is advantageous to the FTC because it enables the agency to exercise greater control over the process and the implementation of the FTC Act, and provides an avenue for obtaining civil penalties against recalcitrant violators. But because a district court, unlike an agency, possesses "the

historic power of equity to provide complete relief" of *both* a prospective and restorative nature when authorized by statute to award injunctive relief, the judicial enforcement procedure in § 13(b) represents an attractive and meaningful option for the FTC to pursue. *See Mitchell*, 361 U.S. at 92. That is the trade-off Congress established through the 1973 amendment. Petitioners' reading, by contrast, fails to give § 13(b)'s judicial process any meaningful work to do.

Nonetheless, Petitioners argue that Congress must have rejected an interpretation of § 13(b) that follows *Porter* and *Mitchell* because § 13(b)'s text differs from § 5(*l*), which authorized courts to "grant mandatory injunctions and such other and further equitable relief as they deem appropriate" in actions to enforce cease-and-desist orders. *See* Pet. Br. 20–21. But the difference in language is explained by the difference in context. *See Sebelius v. Auburn Reg'l Med. Ctr.*, 568 U.S. 145, 156 (2013) (describing the negative-implication canon as a "rule of thumb") (internal quotation marks and brackets omitted); *Norfolk & W. Ry. Co. v. Am. Train Dispatchers Ass'n*, 499 U.S. 117, 129 (1991) (concluding that a canon of construction "does not control … when the whole context dictates a different conclusion"). Before 1973, § 5(*l*) authorized civil penalties for violations of a final cease-and-desist order in actions brought by the Attorney General. Although Congress strengthened § 5(*l*) in 1973, the amended statute still only authorized actions for civil penalties; the government could not, for example, bring an action for equitable relief under § 5(*l*) without seeking a civil penalty. *See* § 408(c), 87 Stat. at 591 (authorizing equitable relief "[i]n such actions," *i.e.*, an action for a civil penalty). Because *Porter* and *Mitchell* do not address a district court's equitable authority in

civil penalty actions, *see Porter*, 328 U.S. at 402 (distinguishing "restitution" from "damages and penalties"), it made sense for Congress to spell out the scope of a district court's authority in an action under § 5(*l*).

That concern is not present in § 13(b), which invokes the district court's equitable authority only. In these circumstances, Congress would have understood that the district court's equitable authority under § 13(b) would have extended to restorative relief in light of *Porter* and *Mitchell*, even absent an "affirmative confirmation of the power to order reimbursement." *Mitchell*, 361 U.S. at 291. "Congress is understood to legislate against a background of common-law adjudicatory principles." *Astoria Fed. Sav. & Loan Assn. v. Solimino*, 501 U.S. 104, 108 (1991). And the prevailing equitable principles in 1973, reflected in *Porter* and *Mitchell*, compel the conclusion that § 13(b) authorizes district courts to award both prospective and restorative relief.

D. Petitioners focus much of their attention on the supposed incompatibility between restorative relief that can be awarded in judicial proceedings under § 13(b) and the amendment to the FTC Act that Congress enacted in 1975. *See* Pet'rs Br. 25–32. The 1975 amendment granted the FTC, for the first time, the authority to promulgate rules to implement § 5's prohibition on unfair and deceptive acts or practices. Magnuson-Moss Warranty—Federal Trade Commission Improvement Act, Pub. L. No. 93-637, title II, § 202, 88 Stat. 2183, 2193 (1975), *codified as amended at* 15 U.S.C. § 57a. The amendment also added § 19 to the FTC Act, 15 U.S.C. § 57b, authorizing the FTC to seek consumer redress for violations of such rules, as

well as for unfair or deceptive acts or practices that are identified in a cease-and-desist order and that "a reasonable man would have known under the circumstances [were] dishonest or fraudulent." § 206, 88 Stat. at 2201–02. Under § 19, a court may "grant such relief as the court finds necessary to redress injury to consumers," including "rescission or reformation of contracts, the refund of money or return of property, the payment of damages, and public notification respecting the rule violation or the unfair or deceptive act or practice." *Id.*

The 1975 amendment also enhanced the FTC's authority to obtain civil penalties. New § 5(m) authorized the FTC to pursue civil penalties against those who knowingly engage in unfair or deceptive acts or practices that either violate an FTC rule or are described in a final cease-and-desist order. *Id.* § 205, 88 Stat. at 2200–01. These new civil penalty provisions operate alongside § 5(*l*), which continues to authorize civil penalties and equitable relief for direct violations of cease-and-desist orders by persons subject to them. *See also id.* § 204, 88 Stat. at 2199 (amending 15 U.S.C. § 56, which allows the FTC to bring actions to enforce the FTC Act that the Attorney General may bring).

The FTC has explained why the 1975 amendment is compatible with § 13(b)'s grant of authority to district courts to award restorative relief when issuing permanent injunctions. *See* FTC Br. 37–47. That explanation is sufficient basis for rejecting petitioners' attempt to use the 1975 amendment to cabin district courts' authority under § 13(b) to prospective relief only. This brief makes two additional points.

First, as explained above, the best interpretation of the 1973 amendment is that Congress intended to confer on district courts the equitable authority that this Court recognized in *Porter* and *Mitchell*. If this Court agrees, then the 1975 amendment does not inform the question presented unless it can be interpreted to scale back the equitable authority that Congress granted district courts in 1973. No such revision appears on the face of the 1975 amendment. And because "repeals by implication are not favored," the Court will not presume that Congress repealed or amended a law unless the intent to do so is "clear and manifest" or two provisions are "irreconcilable." *Maine Cmty. Health Options v. United States*, 140 S. Ct. 1308, 1323 (2020) (cleaned up); *see also Nat'l Ass'n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 664 n.8 (2007) ("implied amendments are no more favored than implied repeals").

Petitioners have not identified anything in the 1975 amendment that satisfies the high threshold for concluding that Congress implicitly altered district courts' equitable authority under § 13(b). The 1975 amendment affected ten provisions of the FTC Act, but left § 13 untouched. Indeed, the 1975 amendment mentioned § 13 only once, when it gave the FTC exclusive authority to litigate § 13 actions. *See* § 204, 88 Stat. at 2199 (amending 15 U.S.C. § 56(a)(2)).

Moreover, the 1975 amendment does not speak to the subject matter of § 13(b). The civil penalty provisions of the 1975 amendment address violations of FTC rules or FTC cease-and-desist orders and authorize relief for such violations that goes far beyond equitable remedies. *See* § 205, 88 Stat. at 2200–01. The consumer redress provisions of the 1975 amendment likewise address situations in which an

FTC rule has been violated, or the FTC has issued a cease-and-desist order for certain unfair or deceptive acts or practices, and provide for relief (including damages) for such violations that is not limited by courts' equitable powers. *See* 15 U.S.C. §§ 57b(a), (b). None of these provisions address the equitable relief that courts may award when a defendant violates § 5 of the FTC Act but the FTC has not issued a rule or a cease-and-desist order covering the unlawful conduct.

Petitioners complain that authorizing restorative relief under § 13(b) would render the "knowledge and notice" requirements for obtaining consumer redress under § 19 "meaningless." Pet'rs Br. 28. Section 19 provides an especially poor foundation for concluding that the 1975 amendment implicitly modified § 13(b), however, because such a reading would be inconsistent with § 19's savings clause, as the FTC has explained. *See* FTC Br. 45–47 (citing 15 U.S.C. § 57b(e)). But even putting aside the savings clause, petitioners have not shown that § 13 and § 19 are "irreconcilable," *Maine Cmty. Health Options*, 140 S. Ct. at 1323 (cleaned up), such that § 19 should limit courts' authority under § 13. And in fact, the two provisions are far from irreconcilable. Section 19's elements reflect the more central role the FTC plays in defining unlawful conduct. *See* 15 U.S.C. § 57b(c)(1) (generally treating FTC's findings in cease-and-desist proceedings as "conclusive"). Congress could reasonably have determined that no such detail is needed for judicial proceedings. *See* FTC Br. 44. Moreover, petitioners' argument that monetary relief under § 13(b) must be cabined by equitable principles, *see* Pets. Br. 44–48, cannot be reconciled with its view that restorative relief under § 13 would make § 19 "meaningless," *id.* at 28, because the relief available

under § 19 is manifestly not cabined by equitable principles. *See* 15 U.S.C. § 57b(b) (authorizing "such relief as the court finds necessary to redress injury to consumers," including "the payment of damages.").

Second, reading the 1975 amendment to limit the scope of a district court's authority under § 13(b) would produce anomalous results. Section 13(b) extends the district court's remedial authority to actions involving "any provision of law enforced by the [FTC]." 15 U.S.C. § 53(b)(1). One such provision is § 5's prohibition on "[u]nfair methods of competition"—which hales from the original 1914 enactment of the FTC Act. 15 U.S.C. § 45(a). The relevant provisions of the 1975 amendment, by contrast, speak only to procedures and remedies relating to § 5's prohibition on unfair or deceptive acts or practices. Petitioners do not attempt to explain how Congress in 1975, by augmenting the FTC's authority specifically to police unfair or deceptive acts or practices, *sub silencio* modified district courts' equitable authority under § 13 with respect to *all* violations of law enforceable by the FTC. Nor do petitioners contend that the 1975 amendment modified the scope of district courts' § 13(b) authority only in cases involving unfair or deceptive acts or practice, as such a splicing of § 13(b) would no support in the text, structure, history, or purpose of the statute.

For these reasons, the 1975 amendment cannot rationally inform inquiry into the intent of Congress when it passed the 1973 amendment authorizing actions for permanent injunctions under § 13(b). Petitioners' arguments grounded in the 1975 amendment, while incorrect for the reasons explained by the FTC, are also irrelevant to this Court's determination of the question presented.

CONCLUSION

The Court should affirm the judgment of the court of appeals.

Respectfully submitted,

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