

IN THE SUPREME COURT OF THE UNITED STATES

No. 17-204

APPLE INC., PETITIONER

v.

ROBERT PEPPER, ET AL.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MOTION OF THE UNITED STATES FOR LEAVE
TO PARTICIPATE IN ORAL ARGUMENT AS AMICUS CURIAE
AND FOR DIVIDED ARGUMENT

Pursuant to Rules 28.4 and 28.7 of the Rules of this Court, the Solicitor General, on behalf of the United States, respectfully moves that the United States be granted leave to participate in oral argument in this case as amicus curiae supporting petitioner and that the United States be allowed ten minutes of argument time. Petitioner has consented to the allocation of ten minutes of argument time to the United States.

This case concerns the question whether respondent consumers can seek treble damages under Section 4 of the Clayton Act, 15 U.S.C.

15, based on their claim that Apple has monopolized the distribution of iPhone apps. The United States has filed a brief as amicus curiae supporting petitioner, arguing that respondents cannot bring such a damages action. Under this Court's decisions, Section 4 relief is not available to a plaintiff who relies on a "pass-on theory" of injury, i.e., an allegation that a third party responded to an alleged overcharge imposed upon it by increasing the price it charged to the plaintiff. See, e.g., Illinois Brick Co. v. Illinois, 431 U.S. 720, 736 (1977). The United States' brief argues that respondents' claim of injury is predicated on such an allegation and that they therefore lack a cause of action under Section 4.

The United States has a substantial interest in the resolution of this case. The Department of Justice has responsibility for enforcing federal competition laws and a strong interest in their correct application. The United States also has an interest in promoting sound private antitrust enforcement, which is an important supplement to the government's own antitrust enforcement efforts. At the Court's invitation, the United States filed a brief as amicus curiae at the petition stage of this case.

The United States has participated in oral argument as amicus curiae in prior cases involving interpretation of the federal antitrust laws, e.g., Ohio v. American Express Co., 138 S. Ct. 2274 (2018); American Needle, Inc. v. Nat'l Football League, 560 U.S. 183 (2010); Leegin Creative Leather Prods., Inc. v. PSKS, Inc., 551 U.S.

877 (2007), including prior cases involving the availability of pass-on damages claims under Section 4, e.g., Kansas v. UtiliCorp United Inc., 497 U.S. 199 (1990); Illinois Brick, 431 U.S. at 722. Oral presentation of the views of the United States is therefore likely to be of material assistance to the Court.

Respectfully submitted.

NOEL J. FRANCISCO
Solicitor General
Counsel of Record

SEPTEMBER 2018