

# Supreme Court Narrows State Board Immunity from Federal Antitrust Laws

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In a [ruling](#) that portends changes to how many state regulatory boards and professional associations operate, a divided U.S. Supreme Court agreed with the Federal Trade Commission that the North Carolina State Board of Dental Examiners inappropriately enforced a North Carolina law blocking nondentists from providing teeth-whitening services. The ruling narrows the state action immunity that protects certain state-authorized conduct from federal antitrust laws. According to the Court, if practitioners have a controlling vote on a board that regulates their occupation, then the board will be subject to federal antitrust enforcement unless it is actively supervised by other officials of the state.

In dissent, Justice Alito, joined by Justices Scalia and Thomas, predicted the decision “will create practical problems and is likely to have far-reaching effects on the States’ regulation of professions [because] state medical and dental boards have been staffed by practitioners since they were first created, and there are obvious advantages to this approach.” As a result of the decision, the dissent notes, “States may find it necessary to change the composition of medical, dental, and other boards” within the new test adopted by the Court.

The case is one of two recent rulings by the Court considering how far states can rely upon the doctrine of state-action immunity to avoid federal antitrust enforcement. The Court had previously [narrowed](#) the state action immunity in 2013 by agreeing with the FTC that the state-action doctrine did not immunize the addition of a hospital to the Phoebe Putney Health System in Albany, Georgia. The FTC challenged the deal even though a state-sanctioned health authority had decided to acquire the hospital and lease it to Phoebe. The Court held that the state had not articulated a clear policy to displace the competition when it created the health authority.

The combination of the Court’s two opinions herald much closer scrutiny of the laws and policies that govern state boards and associations, as well the oversight the boards receive. Although the recent cases arose within the healthcare sector, the same principles will apply to other industries and professions regulated by state authorities.

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