Cahill Brief Plays Key Role in Supreme Court Opinion

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External Link: Cahill's Amici Brief in Amex for Profs. Evans and Schmalensee

An amicus curiae brief submitted by Cahill played a significant role in *Ohio v. American Express*, an important antitrust decision handed down on June 25, 2018, by the Supreme Court of the United States. The Court ruled that American Express's contractual provisions prohibiting merchants from steering customers to use other cards do not violate antitrust law. We submitted an amicus brief in support of American Express on behalf of two leading economists, Professors David S. Evans and Richard Schmalensee, who literally wrote the book on the kinds of two-sided markets at issue in this case. Their work is cited repeatedly throughout the opinion and our proposed approach to defining relevant markets in two-sided cases was adopted by the Court.

In this antitrust case, the U.S. Department of Justice and several states challenged terms in American Express's non-discrimination agreements that prohibit merchants from steering their customers to other credit cards. Evans and Schmalensee are two of the world's most distinguished economists in the field of "two-sided platforms," businesses that facilitate interaction between participants (e.g., PayPal, OpenTable, Uber, credit cards). The question before the Court was whether courts should define a market to include "both sides" of a two-sided platform and consider competitive effects on merchants as well as cardholders in applying the rule of reason under Section 1 of the Sherman Act. The Second Circuit had answered that question in the affirmative and ruled in favor of American Express, reversing the district court. Cahill's brief on behalf of Evans and Schmalensee persuasively urged the Court to reject a restrictive approach that would require courts to look at only one side of a two-sided platform and asked the Court to affirm the Second Circuit's ruling, particularly in light of a lack of evidence that the non-discrimination provisions at issue reduced the output of credit card transactions consumed jointly by both sides of the platform.

Attorney

- Landis C. Best