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### State Action Immunity and Section 5 of the FTC Act



The state-action immunity doctrine of *Parker v. Brown* immunizes anticompetitive state regulations from preemption by federal antitrust law so long as the state takes conspicuous ownership of its anticompetitive policy. In its 1943 *Parker* decision, the Supreme Court justified this doctrine, observing that no evidence of a congressional will to preempt state law appears in the Sherman Act's legislative history or context. In addition, commentators generally assume that the New Deal court was anxious to avoid re-entangling the federal judiciary in *Lochner*-style substantive due process analysis. The Supreme Court has observed, without deciding, that the Federal Trade Commission might not be bound by the *Parker* doctrine but instead enjoys "superior preemption" authority under Section 5 of the FTC Act. Drawing on the FTC Act's legislative history and its institutional distinctiveness from Sherman Act enforcement, this Article makes an affirmative case for FTC super-preemption power over anticompetitive state laws. [Click here](#) to read the full article.

## Authors