No. 25-1311

In the Supreme Court of the United States

APPLE INC.,
Petitioner,
v.
EPIC GAMES, INC.,
Respondent.

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

BRIEF OF LITTLE TECH ASSOCIATION AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENT

H. HUNTER BRUTON
Counsel of Record
PETER VOGEL
NOEL F. HUDSON
SMITH, ANDERSON, BLOUNT, DORSETT, MITCHELL & JERNIGAN, LLP
150 Fayetteville Street
Suite 2800
Raleigh, NC 27601
hbruton@smithlaw.com
pvogel@smithlaw.com
nhudson@smithlaw.com
(919) 821-1220

Counsel for Amicus Curiae

TABLE OF CONTENTS

TABLE OF AUTHORITIES III

INTEREST OF AMICUS CURIAE 1

INTRODUCTION AND SUMMARY OF ARGUMENT 1

ARGUMENT 3

I. Crippling Courts' Ability to Enforce Injunctions Through Civil Contempt Will Harm Little Tech, Suppress Innovation, and Disserve Consumers. 3

A. Without Robust Civil Contempt Powers, Courts and Plaintiffs Will be Unable to Enforce Injunctions Against Big Tech 4

B. Enforceable Injunctions are Particularly Necessary for App Developers. 12

C. Without Enforceable Injunctions, Otherwise Promising Little Tech Companies Will Flounder. 14

D. Making Injunctions Easier to Evade Will Stifle Innovation and Harm Consumers. 18

CONCLUSION 20

TABLE OF AUTHORITIES

Page(s)

Cases

Bell Atl. Corp. v. Twombly,
550 U.S. 544 (2007) 9

Gompers v. Buck's Stove & Range Co.,
221 U.S. 418 (1911) 10

Hecht Co. v. Bowles,
321 U.S. 321 (1944) 11

Inst. of Cetacean Rsch. v. Sea Shepherd Conservation Soc'y,
774 F.3d 935 (9th Cir. 2014).....11

Jien v. Perdue Farms, Inc.,
2025 WL 3725489 (D. Md. June 5, 2025).....8, 9

McComb v. Jacksonville Paper Co.,
336 U.S. 187 (1949) 6, 10

N. Pac. Ry. Co. v. United States,
356 U.S. 1 (1958) 20

N.L.R.B. v. Deena Artware,
361 U.S. 398 (1960) 11

Ray v. NCAA,
2026 WL 1298135 (E.D. Cal. May 11, 2026).....8

Regal Knitwear Co. v. N.L.R.B.,
324 U.S. 9 (1945) 6

Schering Corp. v. Ill. Antibiotics Co.,
62 F.3d 903 (7th Cir. 1995).....5

Rules

Federal Rule of Civil Procedure 65(d) 10

Other Authorities

Colleen Chien, *Startups and Patent Trolls*,
17 STAN. TECH. L. Rev. 461 (2014).....7, 14

Michal S. Gal & Nicolas Petit, *Radical Restorative Remedies for Digital Markets*,
36 BERKELEY TECH. L.J. 617 (2021) 13, 18, 20

Marc Galanter, *Why the "Haves" Come Out Ahead: Speculations on the Limits of Legal Change*,
9 Law & Soc'y Rev. 95 (1974) 9

Nikolas Guggenberger, *Essential Platforms*,
24 STAN. TECH. L. REV. 237 (2021).... 12, 13, 17, 18, 19

Erik Hovenkamp & Steven C. Salop, *Litigation with Inalienable Judgments*,
52 J. LEGAL STUD. 1 (2023).....5

Craig Peters, *Apple and Google App Stores v. Developers*,
22 WASH. U. GLOBAL STUD. L. Rev. 87 (2023).....13

Steven C. Salop, *Dominant Digital Platforms: Is Antitrust Up to the Task?*,
130 Yale L.J. F. 563 (2021).....5, 13

Steven C. Salop & Lawrence J. White, *Economic Analysis of Private Antitrust Litigation*,
74 Geo. L.J. 1001 (1986) 15

INTEREST OF AMICUS CURIAE[1]

Amicus Little Tech Association ("LTA") is a non-profit business organization dedicated to advocating for founders, startups, and growth-stage tech companies—the proverbial Davids among Silicon Valley's Goliaths. LTA's members lack dominant market power in their industries, so LTA works to make it easier to start, build, and grow in the digital economy and champions open and competitive markets where products have the chance to win market share based on their merit, rather than their size.

Amicus submits this brief in support of Respondent to urge this Court to consider the real-world harms to little tech companies, innovation, and consumers that will inevitably follow from a ruling hobbling courts' ability to enforce injunctions through civil contempt.

INTRODUCTION AND SUMMARY OF ARGUMENT

Whether federal courts can effectively enforce their own injunctions is not an abstract question. For the startups and growth-stage companies that make up

[1] Pursuant to this Court's Rule 37.6, *Amicus* states that this brief was not authored in whole or in part by counsel for any party, and no person or entity, aside from *Amicus* and its counsel, made a monetary contribution intended to fund this brief's preparation or submission. Given concerns over retaliation by dominant incumbents with whom startups and growing tech companies have no choice but to engage, many of the specific statements contained herein have been anonymized to protect the identities of the companies and founders.

LTA's membership, it determines whether a hard-won judgment restoring fair competition means anything at all. At bottom, Petitioner's proposed rule would make it easier for Big Tech to evade injunctions, and so poses a grave threat to little technology companies.

Courts and smaller tech companies alike are at a structural disadvantage with Big Tech when it comes to crafting and enforcing effective injunctions against anticompetitive conduct. *Infra* Part I.A. Petitioner's approach to civil contempt would compound this disadvantage, allowing the deepest pockets in Silicon Valley to circumvent court orders designed to restore fair competition. Nothing in equity's history or in precedent requires this outcome.

Effective enforcement of injunctions is particularly needed in the app development space in which a significant number of LTA's members operate. *Infra* Part I.B. App developers seeking to reach consumers on mobile devices have essentially two options—Apple's App Store for iPhones and Google's Google Play for Android devices—and significant network effects make it functionally impossible for challengers to displace those options. Given this concentration, app developers and similar startups do not have the economic bargaining power they need to address anticompetitive behavior without the helping hand of the law.

Even promising small tech companies will flounder if they are faced with onerous gatekeeping behavior by incumbents unchecked by enforceable injunctions. *Infra* Part I.C. To get off the ground, startups need more than a good idea. They need the money and runway to

compete against entrenched rivals. If startups are forced to plow exorbitant resources into litigation, or to pursue suboptimal business strategies in the shadow of unchecked anticompetitive behavior, their chances of success quickly shrink to zero.

The anticipated harm to little tech companies discussed in Part I.C would cascade through the broader economy, hampering innovation and disadvantaging consumers. *Infra* Part I.D. Making injunctions enforcing competition law easier to evade will harm innovation by depriving startups and growing tech companies—which have strong incentives to innovate—of the capital they need to drive dynamic change in their industries. And reducing competition in tech markets will harm consumers by increasing prices and decreasing product quality.

ARGUMENT

I. Crippling Courts' Ability to Enforce Injunctions Through Civil Contempt Will Harm Little Tech, Suppress Innovation, and Disserve Consumers.

Every day, in every district, Article III judges are called upon to provide effective relief for violations of the law and to ensure that the relief they order is not evaded. That task is no different when a court enjoins unfair or anticompetitive conduct. As set forth below, a "four corners" rule under which defendants can only be held in contempt for engaging in conduct precisely spelled out in an injunction is inconsistent with this Court's precedent and would leave courts unable to provide effective relief—a problem that is especially acute

where, as here, the enjoined party has every incentive and ability to engineer workarounds.

Worse yet, adopting a "four corners" rule would render laws protecting competition a dead letter for the tech sector. And from that death, many harms would flow. Without the ability to enforce injunctions blocking anticompetitive behavior, virtually any tech company aside from deeply entrenched and well-capitalized incumbents—but particularly early-stage companies—would be ill-positioned to grow and succeed, with negative ramifications for consumers and innovation.

A. Without Robust Civil Contempt Powers, Courts and Plaintiffs Will be Unable to Enforce Injunctions Against Big Tech

If it were easy to craft an injunction capable of binding well-resourced defendants hesitant to yield their market power, this dispute would not be before the Court. In reality, such injunctions are exceedingly difficult to craft due to a basic asymmetry in incentives and information between dominant-player defendants on one hand and courts and less well-resourced plaintiffs on the other. This enforcement problem cannot realistically be solved through saddling cash-strapped startups with the burden of bringing repeated enforcement actions, but can be addressed through the federal district courts' equitable powers, including civil contempt, which permits courts to hold defendants accountable for circumventing the injunctions they enter.

i. Defendants in Competition Cases Have Greater Incentives and Information with Which to Evade Injunctions than Courts and Plaintiffs Have to Enforce Them.

"[B]ecause it is more profitable to preserve monopoly power than to invigorate competition," defendants in competition cases often devote greater resources to evading adverse court rulings than plaintiffs will devote to enforcing them. *See* Erik Hovenkamp & Steven C. Salop, *Litigation with Inalienable Judgments*, 52 J. LEGAL STUD. 1, 7 (2023).

Such defendants will also have more success in evading court orders than courts will have in enforcing them because of their asymmetric access to information about their industries. "[G]eneralist court[s]" are not subject-matter experts in the industries litigants operate in, and so will struggle "to design and enforce" prospective injunctions able to tackle "the twin problems of loopholes and market evolution." *See* Steven C. Salop, *Dominant Digital Platforms: Is Antitrust Up to the Task?*, 130 Yale L.J. F. 563, 568 (2021); *see also Schering Corp. v. Ill. Antibiotics Co.*, 62 F.3d 903, 906 (7th Cir. 1995) (Posner, J.) ("If narrow literalism is the rule of interpretation, injunctions will spring loopholes[.]").

Dominant players have a similar information advantage over smaller rivals, who are unable to foresee each future workaround to injunctions that dominant market players can design based on their access to proprietary information concerning, for example, technical architecture, user behavior, and pricing, which far exceeds what is available to courts and plaintiffs. *See* Jay L. Himes, Jason Nieh & Ron Schnell, *Antitrust*

Enforcement and Big Tech: After the Remedy Is Ordered, 1 STAN. COMPUTATIONAL ANTITRUST 64, 77–78 (2021) ("[T]he company invariably understands its operations better and, just as important, has future plans in mind that are unknown to the enforcers."). In light of these incentives and information asymmetries, Petitioner's "four corners" rule is out of sync with commercial realities.

The "four corners" rule is also out of sync with the common-law tradition inherited by the federal courts and this Court's precedent. Under the common law, defendants were forbidden from "nullify[ing] a decree by carrying out prohibited acts," through loopholes, such as by acting "through aiders and abettors." *See Regal Knitwear Co. v. N.L.R.B.*, 324 U.S. 9, 14 (1945). In light of this general common law prohibition on evading injunctions through neat tricks, this Court has long held that a party bound by an injunction cannot escape contempt simply by adopting a new method of accomplishing what the injunction forbids. Enjoined defendants may not claim "an immunity from civil contempt because the plan or scheme which they adopted was not specifically enjoined," because "[s]uch a rule would give tremendous impetus to the program of experimentation with disobedience of the law." *McComb v. Jacksonville Paper Co.*, 336 U.S. 187, 192 (1949). Petitioner's rule would invert that principle, placing the risk of omitting minutiae from an injunction on the two actors—courts and plaintiffs—who are least equipped to bear it, thus guaranteeing that injunctions can be evaded.

This case illustrates the point. Petitioner was enjoined from enforcing its then-existing anti-steering rules, which prevented developers from directing users

to purchasing options outside the App Store. Rather than honor the injunction, Petitioner devised new practices that steer consumers just as effectively as the practices they replaced. That is circumvention, pure and simple. If a defendant can escape contempt so long as its new mechanism is not word-for-word the one the court enjoined, no injunction will ever provide effective relief against a sophisticated, well-resourced party.

ii. Little Tech Plaintiffs Cannot Bring Serial Enforcement Actions to Force Compliance with Injunctions.

In theory, a victorious plaintiff, judgment in hand, could overcome the incentive and information asymmetries discussed above by bringing repeated enforcement actions against defendants to compel compliance with injunctions. In reality, repeated litigation is not feasible for startups and growth-stage tech companies with scarce resources, and so cannot substitute for civil contempt as a mechanism to enforce court rulings.

"[S]tartups are often cash-poor," Colleen Chien, *Startups and Patent Trolls*, 17 STAN. TECH. L. REV. 461, 473 (2014), and what little cash they have is generally reserved for immediate needs, such as product development, engineering, hiring, customer acquisition, and regulatory compliance. Repeated enforcement litigation competes directly with those uses and also consumes founder and executive attention that cannot be replaced simply by paying outside counsel. *See id.* at 472 (noting the unique dangers litigation poses to the "survival of entrepreneurial companies," who can little afford the diversion of "scarce money and founder time").

The burdens that private competition litigation places on growing tech companies are reflected in the results of a recent, private survey of over 900 startups and growing tech companies (the "Startup Survey"). The Startup Survey solicited feedback on whether the U.S. legal system provides such companies with adequate protection from anticompetitive practices. "No," replied one founder, noting that dominant incumbents "can still use the broken court system to bury you in legal fees." This blunt assessment encapsulates the outlook of the vast majority of startups and growth-stage tech companies. Among those surveyed, fewer than one in five replied that "Yes," the present legal system provided them with adequate protection.

This marathon litigation and other recent antitrust cases further demonstrate how expensive competition litigation can be for plaintiffs. It has been enormously expensive for Epic Games, and most of LTA's members are far smaller and less profitable than Respondent. Likewise, in *Ray v. NCAA*, an antitrust case challenging wage-fixing practices affecting college coaches, plaintiffs' counsel recently incurred approximately $26.7 million in attorneys' fees (based on 35,622 hours of work) and $3.6 million in litigation expenses, most of which was spent on economic experts. *See Ray v. NCAA*, 2026 WL 1298135, at *8–9, *14–15 (E.D. Cal. May 11, 2026). Similarly, in *Jien v. Perdue Farms, Inc.*, an antitrust case challenging wage suppression by poultry producers, plaintiffs' counsel devoted approximately 91,826 hours to the litigation, representing $63.9 million in attorneys' fees, and incurred $5.4 million in litigation expenses. *See Jien v. Perdue Farms, Inc.*, 2025 WL 3725489, at *3 (D. Md. June 5, 2025). These

examples illustrate the enormous resources required to pursue complex competition claims. Other features of such litigation compound these costs. The prospect of treble damages gives defendants every incentive to contest each claim to the bitter end, and the sheer burden of discovery and expert-intensive proceedings can pressure smaller parties to abandon meritorious claims or settle on unfavorable terms. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 558–59 (2007) (discussing the significant costs imposed by antitrust discovery). Although plaintiffs' firms often advance litigation expenses and work on a contingency basis, doing so requires a substantial investment of time and capital, with no guarantee of recovery. Not every meritorious case can attract counsel willing and able to assume that risk.

Importantly, these burdens of litigation are *not* shared equally by Big Tech. Big Tech defendants enjoy a "repeat-player" advantage over "one shotter[]" plaintiffs, *see* Marc Galanter, *Why the "Haves" Come Out Ahead: Speculations on the Limits of Legal Change*, 9 Law & Soc'y Rev. 95, 97 (1974), and can spread compliance and legal costs over a large, existing business. This makes repeated rounds of enforcement a competitive advantage for Big Tech and turns the courtroom into just another forum in which they can throw their weight around.

Considering these practical constraints on relying on plaintiffs to enforce injunctions through repeated enforcement actions, Petitioner's "four corners" rule threatens to render injunctions protecting competition functionally unenforceable against deep-pocketed incumbents able to maneuver around court rulings and exhaust their adversaries' limited litigation budgets.

iii. Effective Civil Contempt Helps Solve the Enforcement Problem.

Fortunately, the law supplies a ready answer to the problem of enforcing injunctions against Big Tech defendants that have more resources and information than courts and plaintiffs: courts' traditional equitable powers, including a robust civil contempt power, through which defendants can be held accountable for evading injunctions, even if the injunctions themselves do not explicitly spell out every mechanism of evasion defendants may later attempt. Such civil contempt orders sit comfortably within the equitable powers of the judiciary. As this Court has long recognized, the contempt power "is absolutely essential to the performance of the duties imposed on [courts] by law." *Gompers v. Buck's Stove & Range Co.*, 221 U.S. 418, 450 (1911). "Without it they are mere boards of arbitration, whose judgments and decrees would be only advisory." *Id.*

To be clear, holding a defendant in contempt for circumventing an injunction does not mean courts are exercising an improper, freewheeling power divorced from the historically rooted powers of courts of equity, which the Constitution endowed Article III courts with. Nor does it require courts to issue vague injunctions. Whether an injunction is sufficiently specific under Federal Rule of Civil Procedure 65(d) is a separate question from whether a party bound by an injunction may be held in contempt for evading it.

McComb illustrates the distinction. There, the decree enjoined the employer from violating the Fair Labor Standards Act in three specified respects. *See* 336 U.S. at 189–93. The employer then adopted new

practices that were not among those enumerated—and this Court nonetheless held that civil contempt was appropriate, rejecting the argument that contempt was unavailable "because the plan or scheme . . . adopted was not specifically enjoined." *Id.* at 192. This ruling naturally followed from courts' traditional understanding of their equitable powers, under which every attempt to "frustrate[]" the court's "power to effectuate enforcement" is improper, *N.L.R.B. v. Deena Artware*, 361 U.S. 398, 414 (1960) (Frankfurter, J., concurring), and "every affirmative order in equity carries with it the implicit command to refrain from action designed to defeat it," *Inst. of Cetacean Rsch. v. Sea Shepherd Conservation Soc'y*, 774 F.3d 935, 948 (9th Cir. 2014) (internal quotation marks omitted). As these decisions show, a party bound by a specific injunction cannot avoid contempt by devising a new means of achieving the very result the injunction prohibits.

An injunction's force thus does not depend on the enjoined party's having anticipated and enumerated every possible workaround. After all, "[t]he essence of equity jurisdiction has been the power of the Chancellor to do equity and to mould each decree to the necessities of the particular case. Flexibility rather than rigidity has distinguished it." *Hecht Co. v. Bowles*, 321 U.S. 321, 329 (1944).

Rejecting Petitioner's approach thus protects the judiciary's historically rooted power to prevent parties from circumventing its decrees and upholds equity's tradition of ensuring that court-ordered relief is effective in practice, not merely on paper. As discussed below, hollowing out that authority will render the vast majority of tech companies, and most acutely early-stage and

growing tech companies – i.e. "Little Tech" – unable to compete against Big Tech, to the detriment of innovation and consumers.

B. Enforceable Injunctions are Particularly Necessary for App Developers.

The danger to effective enforcement posed by Petitioner's narrow view of civil contempt is particularly acute for app developers in the United States because, as a practical matter, they have only two options for distributing their apps to consumers, which confers unequal bargaining power on the two dominant platforms. In light of this unequal bargaining power, they need effective remedies for anticompetitive conduct.

Virtually all software apps in the United States are downloaded from the App Store or Google Play. *See* Nikolas Guggenberger, *Essential Platforms*, 24 STAN. TECH. L. REV. 237, 261 (2021). This concentration is not a transitory bug in today's industry, but rather a permanent feature of an industry shaped by "extreme network effects" that give app developers and consumers little opportunity to experiment with utilizing other platforms. *Id.* at 243–44. As this litigation illustrates, the platforms can then further cement the advantages conferred on them by network effects through restrictive conduct. "The resulting enormous barriers to entry for nascent competitors isolates incumbent platforms from competitive forces that normally constrain market power." *Id.*[2]

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[2] *See also* Salop, *supra* at 569 (discussing the inability of markets to self-correct when dominant players "raise[] artificial barriers to

Given that the App Store and Google Play do not face serious competition from other platforms, they "have immense leverage in their dealings with developers" and need not "meet the[m] halfway in their terms of service." Craig Peters, *Apple and Google App Stores v. Developers*, 22 WASH. U. GLOBAL STUD. L. REV. 87, 87 (2023).[3]

As a result of this upper hand over app developers, the app stores have long charged app developers above-market fees (as high as 30%) for all purchases made on or through their apps. *See* Guggenberger, *supra* at 266 ("In addition to foreclosing markets, Apple and Google presumably also extract monopoly rents."). While some companies can presumably afford to shoulder these high fees, many others—such as Respondent and many in LTA's membership—find themselves in the tricky position of needing to reach their consumers through the dominant platforms but suffering serious economic harm from doing so. Said one startup founder who participated in the Startup Survey: "The fees charged by Apple on the App Store are absurd. Larger players like Amazon [and] Netflix… are able to sidestep

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entry"); Michal S. Gal & Nicolas Petit, *Radical Restorative Remedies for Digital Markets,* 36 BERKELEY TECH. L.J. 617, 627 (2021) ("In digital markets, equally or more efficient entrants with otherwise better products or services might . . . not be able to challenge and win the market.").

[3] The record here illustrates how even a fairly large "medium tech" company like Epic Games can be bullied by one of the dominant platforms. LTA's member organizations—the little of the little in tech—have far less power than Epic and often get an even shorter end of the stick as a result.

them and move payments to the web. Smaller startups cannot afford to lose revenue by making such a change."

As discussed further below, small app developers and other little tech companies will be particularly harmed if remedies protecting competition—like court injunctions—are made less effective.

C. Without Enforceable Injunctions, Otherwise Promising Little Tech Companies Will Flounder.

Even promising little tech companies will flounder without the assistance of effective competition remedies, including enforceable court-issued injunctions. Curtailing the effectiveness of those remedies, as by adopting Petitioner's "four corners" rule, will harm startups by: (1) reducing investor funding; (2) weakening their negotiation leverage; and (3) delaying their ability to grow.

First, any reduction in the efficacy of competition remedies will impair the ability of startups and other small tech companies to raise the funds they need to operate, either by consigning them to endless and costly litigation to enforce their rights, or else by dooming them to suffer what they must at the hands of dominant platform operators.

If app developers and other emerging organizations decide to challenge anticompetitive conduct by platforms, they risk scaring off potential investors who are generally loath to allocate their scarce dollars to small companies engaged in litigation. *See* Chien, *supra* at 474 ("[N]o one wants to invest in a company where founder time and investor money is going to be [spent

on litigation].”). And investors will be particularly reluctant to finance startups engaged in competition litigation which—with its huge stakes, legal and econometric complexity, frequent appeals and enforcement fights—is far costlier than most litigation. *See, e.g.*, Steven C. Salop & Lawrence J. White, *Economic Analysis of Private Antitrust Litigation*, 74 Geo. L.J. 1001, 1015 (1986) (finding that the average antitrust case was many times more expensive to litigate than the average civil case).

This reluctance by investors to finance startups engaged in competition litigation will only deepen if investors become concerned that even prevailing plaintiffs will win only Pyrrhic, unenforceable victories in court. Imagine a startup whose business model depends on purchases made in apps downloaded from the dominant app stores. If those app stores engage in anticompetitive behavior that the small company challenges, its investors will need to consider the risk not only that litigation fails outright, but also that it succeeds (at great cost) only to have the defendant immediately find a workaround that keeps the core of its anticompetitive conduct in place. This added business risk to funding small players in concentrated industries will further disincentivize investment.

Meanwhile, if funding startups engaged in competition litigation is unpalatable to investors, the alternative is arguably worse: funding businesses that submit to the draconian terms dictated to them by the dominant players in their industry. Imagine, again, a startup app developer that has a fundamentally sound business plan but whose access to market is mediated by a dominant gatekeeper. If investors believe that the

company will be forced to pass along a significant share of its potential profits to rent-seeking platforms gobbling up supracompetitive profits, that otherwise profitable startup becomes fundamentally un-investable. This is the equally significant, but largely unseen upstream danger: Early-stage investors, crucial to seeding successful startups, but aware of how incumbent gatekeeping distorts the economics of particular sectors, simply steer their capital elsewhere, creating investment "dead zones" wherein otherwise promising, innovative products and entrepreneurs suffocate for lack of resources. Said one founder in the Startup Survey: "In future ventures I will avoid certain markets because they are dominated by monopolistic players."

Second, curtailing the effectiveness of competition remedies will harm startups in their commercial and legal negotiations with dominant players. All negotiations occur in the shadow of the law, and if dominant players have nothing serious to fear from a lawsuit, they will drive exceedingly hard bargains with less powerful market participants. That change will affect the business decisions for a wide range of startups and growth-stage companies, both before and after they decide whether to pursue litigation. For example, in deciding whether to challenge exclusionary conduct or whether to enter a platform-dependent market at all, startups will have to weigh the serious risk that any action they pursue would result in an injunction in their favor that they could not effectively enforce. Likewise, when and if litigation does commence, these companies will need to make litigation decisions—e.g., what resources to devote to litigation, whether to settle, and on what

terms—informed by the risk of winning an unenforceable judgment that defendants can work around.

While this pernicious dynamic of unequal bargaining power between Big Tech and the rest of the industry is already firmly in place, it will only get worse if civil contempt recedes as an effective tool for enforcing compliance with injunctions. *See, e.g.*, Guggenberger, *supra* at 245 (lamenting that "app developers [who] depend on these [platform] ecosystems [already] have little choice but to swallow the bitter pill[s]" the platforms force upon them).

Third, reducing the effectiveness of competition remedies, as by making injunctions easier to evade, will harm startups by prolonging litigation, potentially closing the narrow window in time that startups have to take flight. For most startups, an *eventual* remedy for anticompetitive conduct—perhaps after years of litigation through trial, appeals, and then iterative enforcement actions—is of little use. With rare exception they lack the financial runway to operate for years without sustained and substantial growth. In many cases, consumer-focused startups must meet customer acquisition goals to achieve funding milestones. They also tend to compete against other startups with similar ideas and goals, putting a premium on moving quickly to market. All these forces make delays in enforcing their rights more harmful for startups than for more established plaintiffs. Moreover, delays particularly harm app developers because the longer they must wait to disrupt dominant competitors, the more dominant those competitors will become, thanks to the network effects discussed above. *See, e.g.*, Gal & Petit, *supra* at 627.

In sum, making competition injunctions easier to evade will seriously harm startups and growth-stage tech organizations because they face more acute time and resource constraints than their more established peers, as well as more pronounced power imbalances when negotiating with incumbent gatekeepers. As discussed below, if Petitioner's "four corners" rule is adopted, these harms to Little Tech will reverberate through the larger economy, stunting innovation and harming consumers.

D. Making Injunctions Easier to Evade Will Stifle Innovation and Harm Consumers.

The harm to Little Tech if court-ordered injunctions can be easily sidestepped matters to the broader economy. Without a healthy little tech sector, digital companies will innovate less and consumers will suffer higher prices and reduced quality.

Start with innovation. While dominant platforms have huge incentives to innovate *before* they capture control of their markets, those incentives largely evaporate once market share becomes determined primarily by network effects rather than by providing favorable terms to vendors and quality products to consumers. *See* Guggenberger, *supra* at 283–84. Accordingly, most innovation on highly concentrated platforms will come—if at all—from vendors, like app developers.

Even within the parameters of concentrated platforms, incentives exist for app developers to innovate. These incentives can be increased or decreased by the operative legal regime, including, crucially, by "access to and the procedures of the court system." *Id.* at 310. Put

differently, courts have the power to encourage or dissuade digital innovation.

The negative impact that platform dominance has on innovation, and how that has grown worse over time, was aptly captured by one developer responding to the Startup Survey. "They have a chokehold on the platform such that new innovation is incredibly difficult." "They build special APIs [Application Programming Interfaces] for themselves and then only trickle them out to [developers]. … In 2005 I could build a website with broad distribution and AOL / Comcast / etc. couldn't filter me. We need the same for apps."

Here, protecting the ability of lower courts to enforce their injunctions through civil contempt would promote innovation by making it easier for smaller tech organizations to enforce their legal rights, raise startup capital, and negotiate commercially reasonable terms with platforms. Little Tech can then take the extra savings and profits it generates from these activities and invest them in making new and better products.

Meanwhile, any reduction in competition and innovation in the tech sector caused by making injunctions protecting competition less enforceable will lead to increased prices and "lower quality [and] lower privacy protections" for consumers. *See* Gal & Petit, *supra* at 628 n.49 (internal quotations omitted).[4] This Court has long recognized as much. After all, federal competition

[4] *See also* Guggenberger, *supra* at 244 ("In short, [failure to remedy] the platforms' chokehold on the digital economy suffocates competition, forecloses markets, stifles innovation, and, ultimately, harms consumers.").

policy "rests on the premise that the unrestrained interaction of competitive forces will yield the best allocation of our economic resources, the lowest prices, the highest quality and the greatest material progress." *See N. Pac. Ry. Co. v. United States*, 356 U.S. 1, 4 (1958). In the Startup Survey, the founder of one tech company put it succinctly: "Forcing apps to use app store billing (and paying 30% commission) is a massive drain on our business and hurts consumers."

CONCLUSION

In considering the proper scope of the civil contempt power, it is critical not to lose sight of the practical consequences that will follow from making it easier for Big Tech to evade or work around injunctions. Courts and plaintiffs are already on their back feet in trying to constrain the anticompetitive conduct of Big Tech. A ruling in Petitioner's favor would only further disadvantage them, making court-ordered remedies for anticompetitive conduct all but unenforceable against the most powerful actors in our economy, to the detriment of startups, growing tech companies, innovation, and consumer welfare. Nothing in equity's history or this Court's precedent requires that unfortunate outcome.

For these reasons, the judgment below should be affirmed.

November 19, 2026.

Respectfully submitted,

H. HUNTER BRUTON
Counsel of Record
PETER VOGEL
NOEL F. HUDSON
SMITH, ANDERSON, BLOUNT, DORSETT, MITCHELL & JERNIGAN, LLP
150 Fayetteville Street
Suite 2800
Raleigh, NC 27601
hbruton@smithlaw.com
pvogel@smithlaw.com
nhudson@smithlaw.com
(919) 821-1220

Counsel for Amicus Curiae