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 AMICI CURIAE CHRISTINE BARTHOLOMEW ET AL., SCHOLARS OF REMEDIES AND CIVIL PROCEDURE IN SUPPORT OF RESPONDENT

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BRIEF OF *AMICUS CURIAE*[1]

INTEREST OF THE *AMICUS*

Amici curiae are law professors at universities across the United States who teach and write on civil procedure and/or remedies. They submit this brief in their individual academic capacities. Their institutions take no position on this litigation and are provided only for identification purposes. A complete list of *amici* and their institutional affiliations appear in the Appendix.

Amici share a scholarly interest in how courts enforce remedies. This case asks how a court decides whether an enjoined party has violated an injunction. The answer depends on how the court reads the injunction: by its words alone, or by its words together with the findings that produced them. It also depends on the weight a court of appeals gives the issuing court's reading. *Amici* examine the interplay between a remedy and the wrong it addresses as well as the equitable tradition that gives the courts the power to meaningfully correct adjudicated wrongs.

Amici submit this brief because every court that enters an injunction will face this question when evaluating potential civil contempt. This Court's decision will shape how district courts draft injunctions and how courts of appeals review contempt findings. Amici have deep knowledge of how the lower federal courts read injunctions and can help the Court see how the circuits already approach the question, how the

[1] *Amici curiae* certifies that no party or party's counsel authored this brief in whole or in part and that no party or party's counsel made a monetary contribution intended to fund the preparation or submission of this brief.

contempt power's history informs it, and why litigated injunctions differ from consent decrees.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

A court enforcing an injunction does not choose between its text and its spirit. It reads the text in light of the wrong the court adjudicated and the resultant harms. Equity has always worked this way, and the contempt power gives this method its force.

The courts of appeals agree by applying a text-plus-context approach. They label the "context" as the order's circumstances, purpose, thrust, or spirit. Each reads the words together with the adjudicated wrong. That reading prevents evasion, as this Court recognized in *McComb v. Jacksonville Paper Co.*, 336 U.S. 187, 192-93 (1949). The circuits give weight to the issuing judge's reading because it rests on the record she developed. And that reading gives sufficient due process notice because a party that litigated the case is aware of the findings that identify the wrong.

An injunction is equitable relief. Equity's flexibility lets a court shape a remedy to the wrong it found. The threat of contempt deters evasion of that remedy. The contempt power predates the Constitution. A rule that lets a party escape by changing the means of achieving the wrong strips the injunction of its force. Two limits tie contempt to notice. First, Federal Rule of Civil Procedure 65(d) requires an order to state its terms and its reasons. Second, civil contempt lies only where "no fair ground of doubt" exists that the injunction barred the conduct. *Taggart v. Lorenzen*, 587 U.S. 554, 557 (2019) (emphasis omitted).

Apple concedes that courts read text in context but insists on a text-minus rule—an approach even

stricter than textualism. Apple argues that an injunction may never reach conduct it does not name; context may only be used by courts to narrow the meaning of an injunction's terms. It relies largely on consent decree decisions. In *United States v. Armour & Co.*, 402 U.S. 673, 681-82 (1971), this Court confined a consent decree to its terms because such decrees are bargained for agreements between the parties. Consent decrees are not predicated on finding of facts. In contrast, a litigated injunction is a judgment. The judgment's findings identify adjudicated wrongdoing and supply the context for reading an injunction's text.

The adjudicated wrong here is anti-steering. The injunction forbids Apple from "prohibiting" developers from including links and other calls to action. "Prohibit" means to "severely hinder." The district court found two harms: the loss of informed choice and the loss of substitution: meaning users' ability to complete their purchases outside Apple's in-app purchase system. Apple's newly imposed rules, including a scare screen and an economically unviable commission, leave both harms in place. No developer has used Apple's new, punitive links to market its products. Apple's reading thus vitiates the injunction. It constricts the injunction's reach to a single method of anti-steering and drops the court's finding on substitution.

This Court need not choose between text and spirit. The courts of appeals already agree that the scope of an injunction should be determined by construing its express terms in the context of the adjudicated wrong and the resulting harms. This Court can affirm by confirming the validity of that text-plus-context approach. "Spirit of the injunction" is the traditional language of equity, and courts use it as one

label for a text-plus-context interpretation. If the Court finds that label inapt, it can say so while retaining the text-plus-context methodology. Under either label, a party cannot employ creative machinations to perpetuate adjudicated wrongdoing.

ARGUMENT

I. A VIOLATION OF AN INJUNCTION'S WORDS ARE READ IN CONTEXT OF THE UNDERLYING WRONGDOING JUSTIFIES CONTEMPT

The question presented asks whether a court may hold a party in contempt for violating an injunction's "spirit" when the injunction is silent on the specific method of misconduct, or only for violating an order that "clearly and unambiguously" proscribes each precise form of that misconduct. That question presents a false dichotomy. Circuit courts already read the text of injunctions in light of the wrong and the harm the injunction was entered to remedy.

History helps explain why. Contempt is an equitable power essential to deterrence, with longstanding historical roots. Since equity demands flexibility, the adjudicated wrong and resultant harms shape the text and scope of an injunction. A court writes a prohibition to remedy the wrong it found and prevent a continuation of the harms it identified. An injunction's words address how the party engaged in unlawful conduct. The court's stated reasons for the injunction give the text its scope and context. Federal Rule of Civil Procedure 65(d)(1)(A) requires the court to state why the order was issued, and the required findings explain why the defendant committed a wrong that requires an appropriate remedy. The Northern District Court of California did so in the findings that accompanied its order. JA-376-77. That order informed

Apple of the injunction's prohibitions and the reasons for granting the injunction, thus providing fair notice of what was prohibited and why.

Three rationales support reading an injunction in the context of the defendant's underlying misconduct. First, a context-based interpretation affords appropriate deference to the trial court, which heard the evidence, found the wrong, and drafted the remedy. The issuing court is best situated to know what the terms of the injunction cover, and equity has long given courts such latitude. Second, that interpretive approach prevents complex schemes to evade by an enjoined party. A court cannot list every imaginable method by which a party might seek to repeat its wrong. If the injunction reaches only the specific methods the court could foresee, a party could easily elude it by choosing another unnamed but equally injurious technical workaround. Third, this interpretive framework ensures fair notice while maintaining the injunction's efficacy.

Together, these rationales explain why contempt is proper when the injunction's text, read in context with the adjudicated wrong and resultant harms, leaves "no fair ground of doubt as to whether the injunction barred the [party's] conduct." *Taggart*, 587 U.S. at 557 (emphasis omitted).

A. Contempt Power Deters Wrongdoing

An injunction works only if courts can enforce it. Enforcement works only if courts read the injunction's text in light of the wrongs it was meant to remedy. Two features of the law support that reading. First, Article III gives courts both equitable and contempt powers that predate the Constitution. Those powers give courts appropriate latitude to mold an injunction

to remedy adjudicated wrongs. Second, the threat of contempt gives an injunction its deterrent force. If contempt does not reach a party who circumvents an injunction by changing its method of wrongdoing, the injunction fails to deter.

Courts therefore read an injunction against the wrongs it addresses. Federal Rule of Civil Procedure 65(d) and the fair ground of doubt standard limit contempt power by requiring reasonable notice of the injunction's scope. Reading an injunction in light of the adjudicated wrong and resulting harms ensures fair notice of what it forbids through its text.

1. History and Article III Give Courts Flexibility and Power to Enforce Equitable Relief

Injunctions inherit the flexibility of equity. The Constitution extended judicial power to "all Cases, in Law and Equity." *Missouri v. Jenkins*, 515 U.S. 70, 124 (1995) (Thomas, J., concurring) (quoting U.S. Const. art. III, §§ 1, 2). The Framers did not debate this point. *See* Riley T. Keenan, *Functional Federal Equity*, 74 Ala. L. Rev. 879, 888-89 (2023) (quoting *The Federalist No. 83*, at 438 (Alexander Hamilton)). In equity, the chancellor's defining power was to mold each remedy to the needs of the particular case, and "[f]lexibility rather than rigidity has distinguished" equity from law. *Hecht Co. v. Bowles*, 321 U.S. 321, 329-30 (1944). That flexibility survives in the federal courts because "breadth and flexibility are inherent in equitable remedies." *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 15 (1971).

The power of contempt gives that flexibility its necessary force. Contempt power originates from English practice, and American courts recognized contempt as

an inherent power of the judiciary before the Constitution was drafted and ratified. *Michaelson v. United States ex rel. Chi., St. Paul & Omaha Ry. Co.*, 266 U.S. 42, 65-66 (1924); *Chambers v. NASCO, Inc.*, 501 U.S. 32, 44-46 (1991); *Ex parte Fisk*, 113 U.S. 713, 718 (1885). The First Congress expressly recognized the judicial power of contempt in the Judiciary Act of 1789, which authorized courts to punish "all contempts of authority in any cause or hearing before the same." Act of Sept. 24, 1789, ch. 20, § 17, 1 Stat. at Large, 83. Later enactments, including Rule 70(e), regulate the contempt power while recognizing its essential role. *See, e.g.*, Fed. R. Civ. P. 70(e).

Contempt also protects judicial independence. A court has no enforcement arm of its own. If it could punish disobedience only by asking the executive to prosecute, the executive would decide which judicial orders carry meaningful consequences. The inherent judicial power of contempt removes that dependence. *See Young v. United States ex rel. Vuitton et Fils S.A.*, 481 U.S. 787, 796 (1987); *Gompers v. Buck's Stove & Range Co.*, 221 U.S. 418, 450-51 (1911). Congress may regulate the contempt power, but it may not abrogate the attributes "'inseparable'" from its effective operation. *Young*, 481 U.S. at 799 (quoting *Michaelson*, 266 U.S. at 66).

2. The Threat of Contempt Is What Makes an Injunction Deter

Disobeying an injunction provides well-settled grounds for holding a party in contempt. *See Gompers*, 221 U.S. at 451-52. Enforcement power makes an injunction an instrument of effective deterrence. An injunction "directs the conduct of a party, and does so with the backing of [the judiciary's] full coercive powers." *Nken v. Holder*, 556 U.S. 418, 428 (2009). It

"compel[s] obedience under the threat of contempt." *Int'l Longshoremen's Ass'n, Loc. 1291 v. Phila. Marine Trade Ass'n*, 389 U.S. 64, 75 (1967). An injunction without a credible threat of enforcement deters no one.

Deterrence explains why equity affords district courts latitude in shaping relief. The law therefore refuses to confine equitable remedies to fixed formulas:

> The flexibility inherent in equitable procedure enables courts to meet new situations that demand equitable intervention, and to accord all the relief necessary to correct . . . particular injustices. Such courts exercise judgment in light of prior precedent, but with awareness of the fact that specific circumstances, often hard to predict in advance, could warrant special treatment in an appropriate case.

Holland v. Florida, 560 U.S. 631, 650 (2010) (cleaned up).

A rule that requires an injunction to name every potential violative practice before contempt can apply would remove that essential latitude. A party could escape the injunction by changing the means of effectuating the same wrong. Courts have rejected that result for well over a century. *See Regal Knitwear Co. v. NLRB*, 324 U.S. 9, 15 (1945) ("whether one brings himself in contempt as a 'successor or assign' depends on an appraisal of his relations and behavior and not upon mere construction of terms of the order."); *Bate Refrigerating Co. v. Gillett*, 30 F. 683, 684 (C.C.D.N.J. 1887) (holding enjoined infringers in contempt for "doing, indirectly, what they have been commanded not to do").

3. *Rule 65(d) and the Fair Ground of Doubt Standard Ensure Contempt Rests on Notice*

When a party has notice of what an order forbids, holding the party in contempt for a violation of that order is a legitimate exercise of judicial power. Inherent judicial powers of enforcement should be exercised "in a manner consistent with our history and traditions." *Jenkins*, 515 U.S. at 124 (Thomas, J., concurring). The court enforces a command it has already issued to a specific party or parties. When a court holds a party in contempt for conduct it did not enjoin, it risks a potential separation of powers concern. Legislatures, not courts, write laws. Courts apply existing laws to past conduct. An injunction is an order that binds the parties from the day of issuance. Enforcing an injunction also applies a legal or equitable rule that existed when the party acted. Punishing conduct the injunction did not forbid would instead announce the rule after the fact. Thus, when an injunction satisfies notice requirements, it ensures a court is interpretating law, not creating it. Stated differently, notice tempers separation of powers concerns. Two existing duties provide that notice requirement with meaningful content and effect.

First, Rule 65(d) requires a court "state [the injunction's] terms specifically," describe the restrained acts "in reasonable detail—and not by referring to the complaint or other document," and "state the reasons why it [was] issued." Fed. R. Civ. P. 65(d)(1)(A)-(C). The "reasons" requirement tells the restrained party, and any court subsequently asked to enforce the injunction, the nature of the wrong the injunction is remedying. The rule aims "to prevent uncertainty and confusion on the part of those faced with injunctive

orders." *Schmidt v. Lessard*, 414 U.S. 473, 476 (1974). However, an injunction is not "vague, unclear, [or] imprecise" just because it does not itemize every potential circumvention. *N. Alamo Water Supply Corp. v. City of San Juan*, 90 F.3d 910, 917 (5th Cir. 1996), *overruled on other grounds by Green Valley Special Util. Dist. v. City of Schertz, Texas*, 969 F.3d 460 (5th Cir. 2020).

The Rule's equitable roots explain why. Rule 65 incorporates longstanding equity practice. *See Ferrero v. Associated Materials Inc.*, 923 F.2d 1441, 1448 (11th Cir. 1991). Flexibility is an essential feature of equity practice. *Holland*, 560 U.S. at 650 ("The flexibility inherent in equitable procedure enables courts to meet new situations that demand equitable intervention, and to accord all the relief necessary to correct particular injustices." (cleaned up)). Reading Rule 65(d) to require an injunction list every possible violative practice leaves no room for equitable flexibility. Moreover, it would place district courts in an impossible bind. A court cannot enjoin a party simply to obey the law. *NLRB v. Express Publ'g Co.*, 312 U.S. 426, 435-36 (1941). It must frame relief that is "no broader than required by the precise facts." *Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc.*, 528 U.S. 167, 193 (2000) (cleaned up). Reading an injunction's text in light of the adjudicated wrongs removes that bind. The underlying wrongs establish the order's scope. This approach keeps relief no broader than the facts require while still preventing enjoined parties from using new methods to achieve the same wrongs. The court's findings tell the enjoined party what the order covers, which is the notice Rule 65(d) requires.

Second, civil contempt is proper "only if there is no fair ground of doubt as to whether the injunction

barred the [party's] conduct." *Taggart*, 587 U.S. at 557 (emphasis omitted). *Taggart* drew on "the 'old soil' that has long governed how courts enforce injunctions," *id.* at 560, including *California Artificial Stone Paving Co. v. Molitor*, which refused contempt where "a fair ground of doubt as to the wrongfulness of the defendant's conduct" existed. 113 U.S. 609, 618 (1885). The "fair ground of doubt" standard follows from the severity of the sanction. *Taggart*, 587 U.S. at 561 (calling civil contempt a "severe remedy"). It applies to every injunction.

These notice requirements are not so stringent, though, as to tie a court's hands when a party knowingly or recklessly violates an injunction. It is well established that "[e]very affirmative order in equity carries with it the implicit command to refrain from action designed to defeat it." *N.L.R.B. v. Deena Artware, Inc.*, 361 U.S. 398, 413 (1960) (Frankfurter, J., concurring). Generally, a party's belief that it is in compliance with a court order must be objectively reasonable to avoid contempt. *See Taggart*, 587 U.S. at 561-62. Similarly, a party's choice to violate a court order is evidence of "bad faith" that makes a party's action "more likely to be objectively unreasonable." *Hyde v. Irish*, 962 F.3d 1306, 1310 (11th Cir. 2020). Stated differently, a knowing or reckless violation of an injunction is likely to be objectively unreasonable. *United States ex rel. Schutte v. Supervalu Inc.,* 598 U.S. 739, 755 (2023).

The "reasons" and "fair ground of doubt" requirements ensure fair notice to enjoined parties. Federal Rule of Civil Procedure 65(d) encapsulates what an injunction order must contain. The "fair ground of doubt" standard asks whether that order left

reasonable doubt. But neither requirement tells a court how to read the injunction that supplies fair notice.

B. Courts Interpret Injunctions Through Text-Plus-Context

Interpreting an injunction starts with its words, but those words lose meaning without understanding what inspired them. Therefore, the terms of an injunction must be read in light of the wrongdoing that prompted its creation. Wrongdoing is revealed through the adjudication of unlawful conduct and its resultant harm. Once the underlying wrongdoing has been identified, the court crafts an injunction to remedy and deter that conduct. *See Hecht Co.*, 321 U.S. at 329-30.

The text-plus-context framework ensures that the court's injunction actually deters future violations of that order. Courts define an injunction's parameters by two variables: (1) the text of the injunction itself; and (2) the adjudicated wrongdoing.

A simple analogy confirms the logic of this approach. A landowner fences off the only path to his neighbor's well, hoping to force the neighbor to buy water from him. A court finds that the fence unlawfully cut the neighbor off from water. It enjoins the landowner from prohibiting the neighbor from using the path to reach the well. The landowner removes the fence. He then digs a trench across the path, deep enough to deter crossing. The injunction does not mention trenches, and the landowner has not forbidden the neighbor from using the path, but he has still made using it impossible. The trench does what the fence did, and the neighbor is again cut off from his water. A contempt order should follow. Read with the

findings, the injunction leaves no fair ground of doubt that the landowner has done what the court told him not to do. Otherwise, the same wrong would remain unremedied, and the injunction would deter no one.

It is undisputed that courts read an injunction's words in context. Pet. Br. 28. (accepting that "text should be read in context"). The text need not list every possible way a party's conduct has achieved or cold achieve a wrong. Thus, while the question on appeal asks in part whether contempt is appropriate when a party does not violate the specific words of an injunction, both parties agree that the answer is clearly yes.

Furthermore, circuit courts across the nation read the express terms of injunctions together with their context. They only differ on their nomenclature, referring to context as the injunction's "spirit,"[2] "thrust,"[3] "purpose,"[4] or targeted "mischief."[5]

Some courts mix and match these descriptions of context. For example, the Third Circuit reads an

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[2] *Inst. of Cetacean Rsch. v. Sea Shepherd Conservation Soc'y*, 774 F.3d 935, 949 (9th Cir. 2014) ("spirit"). The term "spirit" traces at least as far back as the late 1800s, well before modern debates over textualism versus purposivism arose. 2 James L. High, *A Treatise on the Law of Injunctions* § 14464 (4th ed. 1905) (High); *see, e.g.*, *Campbell v. Tarbell*, 55 Vt. 455, 460 (1883) ("[T]he violation of the spirit of an injunction, even though its strict letter may not have been disregarded, is a breach of the mandate of the court.").

[3] *In re Arthur Treacher's Franchisee Litig.*, 689 F.2d 1150, 1156 (3d Cir. 1982) ("thrust").

[4] *Riccard v. Prudential Ins. Co.*, 307 F.3d 1277, 1297 (11th Cir. 2002) ("purpose").

[5] *United States v. Sup. Ct. of New Mexico*, 839 F.3d 888, 929 (10th Cir. 2016) ("mischief").

injunction "in the light of the *circumstances* surrounding its entry: the relief sought by the moving party, the evidence produced at the hearing on the injunction, and the *mischief* that the injunction seeks to prevent." *United States v. Christie Indus. Inc.*, 465 F.2d 1002, 1007 (3d Cir. 1972) (emphasis added). The Second Circuit determines contempt by whether a party "violated the *spirit* of the injunction and defeated its *purpose . . . .*" *John B. Stetson Co. v. Stephen L. Stetson Co.*, 128 F.2d 981, 983 (2d Cir. 1942) (emphasis added).[6]

In this case, the district court held that Apple's anti-steering provisions were unfair conduct under California law. JA-377; 379. That unfair conduct was the adjudicated wrong. Apple's guidelines deprived iOS users of their right to make an "informed choice" and prevented developers from using substitute transaction platforms. JA-376-77. Those injuries were the resultant harms.

The court must start with the text of the injunction and read its terms in light of both the adjudicated wrong and the resultant harms. Both contextual factors delineate the outer boundaries of the injunction's reach. The injunction cannot be read so broadly as to reach every possible unfair practice, such as mislabeling, but does reach all methods designed to create anti-steering harms. The injunction's scope is defined by the adjudicated wrong and the resulting harms, and those factors also act as limitations on the injunction's potential reach. In this case, Apple's new anti-

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[6] *See also, e.g.*, *Common Cause v. Nuclear Regul. Comm'n*, 674 F.2d 921, 927 (D.C. Cir. 1982) ("mischief" and "circumstances"); *Alley v. U.S. Dep't of Health & Hum. Servs.*, 590 F.3d 1195, 1206 (11th Cir. 2009) ("mischief" and "circumstances").

steering guidelines, which are designed to produce the same type of harms as Apple's previously enjoined unfair conduct, are plainly and fairly included in the injunction's scope, based on a text-plus-context reading.

1. The Text-Plus-Context Approach Limits Attempts to Evade the Injunction and the Judiciary's Contempt Power

First, text-plus-context prevents evasion. A contrary approach lets parties "slip the restraints" of an injunction. *Alley*, 590 F.3d at 1205. If an injunction reaches only the specific means the court named, the enjoined party can commit the same wrong using other means. Modification is available, but an injunction amended after each new means of evasion only chases the means of a wrong the court has already adjudicated and enjoined. Meanwhile, the adjudicated wrong goes unremedied. Consequently, focusing only on the explicit text would cause injunctions to "spring loopholes" and force the injured party to seek new court orders "in an effort to plug [the] loopholes." *Minn. Mining & Mfg. Co. v. Pribyl*, 259 F.3d 587, 598 (7th Cir. 2001) (internal quotations omitted).

The earliest equity treatises confirm a text-plus-context approach for exercising the contempt power. A defendant who accomplishes "through subterfuge" what the injunction sought to prevent violates the injunction, even if the specific type of "subterfuge" is "not in terms a violation." Edward M. Dangel, 1 *Contempt* § 243, at 127 (1939).[7]

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[7] *See also* John D. Lawson, *Rights, Remedies, & Practice* § 3703, at 5783 (1890) ("[N]o mere subterfuge . . . will be permitted in excuse of the violation of an injunction."); Charles Fisk Beach Jr., *Commentaries on the Law of Injunctions* § 258, at 269 (1895) ("[A]ny scheme, however skillfully devised, to thwart its orders, will be treated by the court as a violation.").

This Court confronted and rebuked a comparable cat-and-mouse game in *McComb v. Jacksonville Paper Co.*, 336 U.S. 187 (1949). There, the district court enjoined an employer from engaging in practices that violated specified "minimum wage, overtime, and record-keeping provisions" of the Fair Labor Standards Act. *Id.* at 189. The employer responded by adopting alternative pay arrangements that produced similar violations but were not explicitly named in the injunction. The employer argued that it could not be held in contempt, but the Court strongly disagreed: "It does not lie in [the defendants'] mouths to say that they have an immunity from civil contempt because the plan or scheme which they adopted was not specifically enjoined. Such a rule would give tremendous impetus to the program of experimentation with disobedience of the law." *Id.* at 192. The Court went on to warn of the great dangers that would result if an injunction's scope were determined without reference to its context and purpose:

> The instant case is an excellent illustration of how it could operate to prevent accountability for persistent contumacy. Civil contempt is avoided today by showing that the specific plan adopted by defendants was not enjoined. Hence a new decree is entered enjoining that particular plan. Thereafter the defendants work out a plan that was not specifically enjoined. Immunity [from contempt] is once more obtained because the new plan was not specifically enjoined. And so a whole series of wrongs is perpetrated and a decree of enforcement goes for naught.

Id. at 192-93.

2. Deference and Efficiency Support a Text-Plus-Context Approach

Second, text-plus-context honors the deference owed the issuing court. The judge who entered an injunction is best positioned to know what it covers. She heard the evidence and made the findings. She wrote the injunction to remedy the wrong those findings describe. When she says what the injunction forbids, she draws on that wrong. A contrary approach would have the court of appeals read the injunction by disregarding the record that makes her reading reliable.

It is therefore unsurprising that appellate courts have generally deferred to the issuing judges' interpretations of the scope of their injunction. *E.g.*, *Anderson v. Stephens*, 875 F.2d 76, 80 n.8 (4th Cir. 1989) ("We are, of course, mindful of the inherent deference due a district court when it construes its own order."); *Ala. Nursing Home Ass'n v. Harris*, 617 F.2d 385, 388 (5th Cir. 1980) ("Great deference is due the interpretation placed on the terms of an injunctive order by the court who issued and must enforce it."); *Alley*, 590 F.3d at 1202 (same); *Amado v. Microsoft Corp.*, 517 F.3d 1353, 1358 (Fed. Cir. 2008) ("A district court's interpretation of its order is entitled to deference unless the interpretation is unreasonable or is otherwise an abuse of discretion."); *In re Xonics, Inc.*, 813 F.2d 127, 130 (7th Cir. 1987); *Potter v. District of Columbia*, 126 F.4th 720, 723-24 (D.C. Cir. 2025); *Michigan v. City of Allen Park*, 954 F.2d 1201, 1213 (6th Cir. 1992). Justices Scalia and Breyer supported the granting of such deference. *See Salazar v. Buono*, 559 U.S. 700, 762 (2010) (Breyer, J., dissenting) ("[C]onstruction given to an 'injunction by the issuing judge . . . is entitled to great weight.'" (quoting *Madsen v. Women's Health*

Center, Inc., 512 U.S. 753, 795 (1994) (Scalia, J., concurring in judgment in part and dissenting in part)).[8]

Deference also serves the efficiency that Federal Rule of Civil Procedure 1 demands. The Federal Rules "should be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding." Fed. R. Civ. P. 1. This Court has recognized deference supports the broader goal of judicial efficiency. "Deference to the determination of courts on the front lines of litigation will enhance these courts' ability to control the litigants before them," and it will "discourage litigants from pursuing marginal appeals, thus reducing the amount of satellite litigation." *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 405 (1990). Though *Cooter* arose under Federal Rule of Civil Procedure 11, its logic applies here. A contrary rule would fail to deter litigants from testing the boundaries of injunctions and would encourage continued litigation over those boundaries. Each attempted evasion would trigger new motions, new findings, and (potentially) a modified injunction. Each modified injunction would invite further litigation over its scope.

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[8] This deference tracks the nature of the question. Discretionary review fits questions that are "multifarious" and resist "useful generalization." *Koon v. United States*, 518 U.S. 81, 100 (1996). It fits when the district court "is better positioned" to make a decision. *Pierce v. Underwood*, 487 U.S. 552, 559-60 (1988). Reading an injunction with context meets both tests because the court "determine[s] the meaning of its own order." *Next Invs., LLC v. Bank of China*, 12 F.4th 119, 128 (2d Cir. 2021) (cleaned up).

3. The Text-Plus-Context Approach Comports with Due Process

Third, text-plus-context provides the fair notice that contempt requires. A contempt proceeding is not a challenge to the injunction. *See TiVo Inc. v. EchoStar Corp.*, 646 F.3d 869, 889 (Fed. Cir. 2011) ("The time to appeal the scope of an injunction is when it is handed down, not when a party is later found to be in contempt.") (citing *Maggio v. Zeitz*, 333 U.S. 56, 69 (1948)). The injunction stands as entered, with its terms and its stated reasons as required by Federal Rule of Civil Procedure 65(d)(1)(A). Contempt asks a narrower question: whether the enjoined party had a fair ground of doubt about whether the injunction order barred its conduct. *Taggart*, 587 U.S. at 557.

That question turns on what the reasonable, enjoined party knew or should have known. A party that litigated through final adjudication of an injunction has heard the evidence and read the findings. It knows what wrong and harms the court found, and the order states that wrong and delineates those harms. A party that nonetheless adopts a new means of committing the same wrong and creating the same harms cannot claim a fair ground of doubt. Intent to perpetuate the underlying wrong and to inflict the same harms through different means is evidence of bad faith that makes the party's conduct "more likely to be objectively unreasonable." *Hyde*, 962 F.3d at 1310.

An injunction's silence about a particular prohibited means of evading the injunction does not create a fair ground of doubt. A court "need not anticipate every action to be taken in response to its order, nor spell out in detail the means in which its order must be effectuated." *Am. Airlines, Inc. v. Allied Pilots*

Ass'n, 228 F.3d 574, 578 (5th Cir. 2000). An injunction that "does not choreograph every step, leap, turn, and bow of the transition ballet" still "specifies the end results expected and allows the parties the flexibility to accomplish those results." *N. Alamo Water Supply Corp.*, 90 F.3d at 917. An injunction's context identifies the specific wrong and the resulting harms the court found. When a party chooses a means the injunction does not name, the question is whether that means produces the same wrong and the same harms that the injunction was designed to prevent. A court need not supply "a cookbook on the specifics of complying with [an] injunction," because a party handed one would "squawk that the injunction was too overbearing." *In re Google Play Store Antitrust Litig.*, 147 F.4th 917, 953 (9th Cir. 2025).

The fair ground of doubt standard protects a party who reads the order in good faith and reaches a reasonable interpretation of the conduct forbidden by the injunction. It does not protect one who treats the order's silence as an opening. As Professor Samuel Bray explained in commenting on this dispute, an injunction must give notice of what it prohibits, but insisting "only on the 'letter' of the injunction would be an overcorrection." Samuel Bray, *A Summary Reversal in Apple v. Epic Games?*, Divided Argument (June 18, 2026), https://blog.dividedargument.com/p/a-summary-reversal-in-apple-v-epic. Thus, contempt is available when parties "try to opportunistically subvert a court's power to resolve a case and see it through." *Id.*

II. APPLE'S POST-INJUNCTION CONDUCT PRODUCED THE SAME WRONG AND THE SAME HARMS THE INJUNCTION WAS DESIGNED TO PREVENT

With the test clarified, "there [can be] no fair ground of doubt" that the district court enjoined Apple's conduct. *Taggart*, 587 U.S. at 557 (emphasis omitted). Apple's arguments to the contrary are based on a misreading of inapplicable authorities.

A. The Relevant Context Is Anti-Steering

Read in context, the injunction was directed at ending Apple's anti-steering conduct. It provides:

> Apple Inc. and its officers, agents, servants, employees, and any person in active concert or participation with them ("Apple"), are hereby permanently restrained and enjoined from prohibiting developers from (i) including in their apps and their metadata buttons, external links, or other calls to action that direct customers to purchasing mechanisms, in addition to In-App Purchasing and (ii) communicating with customers through points of contact obtained voluntarily from customers through account registration within the app.

Pet. App. 166a.

An objectively reasonable reading of the injunction's terms forbids Apple from the act of "prohibiting" developers from marketing their products to customers through alternative channels. Pet. App. 166a. "Prohibit" means "[t]o *prevent*, preclude, or *severely hinder*." *Prohibit*, *Black's Law Dictionary* (12th ed. 2024) (emphasis added). "Prevent" in turn means "[t]o stop from happening; to hinder or impede." *Prevent*, *Black's Law Dictionary* (12th ed. 2024). Therefore, the

injunction prohibits Apple from any conduct that "severely hinders" developers' ability "to direct customers to alternative purchasing mechanisms." *See* Pet. App. 166a.

Context confirms that reading. The district court found that Apple's anti-steering rules caused two distinct harms: preventing "informed choice among users of the iOS platform," and preventing "substitution among platforms for transactions" where users could complete their purchases from developers. *Epic Games, Inc. v. Apple Inc.*, 559 F. Supp. 3d 898, 1055-56 (N.D. Cal. 2021); JA-376-77. Suppression of price competition links the two identified harms. Developers "cannot communicate lower prices on other platforms," and restrictions on price information "reduce the incentive to price competitively." *Id.* at 1055 (quotation omitted). Information about lower prices does nothing if users cannot act on it. Thus, a remedy for these resultant harms must do more than technically permit alternative purchasing mechanisms; it must reach any barriers that "severely hinder" the feasibility of these alternatives. Only then will competition, transparency, and consumer choice and information be restored. *See* J.A. 405.

Yet, Apple contends the only harm at issue was an "informational harm." Pet. App. 34a note 9. If "prohibit" addresses only the informational harm, Apple could comply with the injunction while its rules continued to suppress substitution among purchasing platforms. Such a construction is not objectively reasonable. A court does not find a harm and then enter an order that leaves it untouched. "Prohibit" therefore reaches restrictions that constrain the ability of developers to use substitute marketing channels as well as restrictions that block information.

Apple's interpretation subverts the court's remedy by perpetuating both resultant harms. Apple technically permitted developers to offer marketing links to their customers but undermined their feasibility. It imposed five design restrictions, including a "scare screen," which severely hindered an iOS user's ability to choose substitute purchasing platforms. It also imposed an economically unviable commission on developers, which thwarted their financial ability to offer substitute marketing channels. Pet. App. 51a-52a. In combination, Apple's severe restrictions frustrated both informed choice and substitute channels for software purchases. They were an attempt to retain supracompetitive pricing and profits at the expense of competition, transparency, and consumer choice. J.A. 374 ("the evidence presented showed anticompetitive effects and excessive operating margins under any normative measure. The lack of competition has resulted in decrease information which also results in decreased innovation relative to the profits being made.").

The practical impact of Apple's newly-imposed restrictions shows why its reading is objectively unreasonable. The district court found "no evidence that any developer chose to direct customers to their own purchasing mechanisms" under Apple's new rules. Pet. App. 20a. A link that no developer uses informs no one, so the information harm persists on Apple's narrow reading. Further, the same link provides no opportunity for purchases through substitute channels. Apple's claim that the injunction allows its new rules that leave both harms in place is not objectively reasonable. *Cf. Taggart*, 587 U.S. at 561-62.

Return to the earlier landowner hypothetical to consider this impact. The landowner fenced the path;

Apple's anti-steering rules fenced in developers. A trial court enjoined the landowner from prohibiting the neighbor's use of the path. The district court enjoined Apple from prohibiting developers from including links and other calls to action that would inform customers of the developers' alternative marketing channels. The landowner removed the fence—but dug a trench. Apple removed the rules that proscribed links—but imposed a scare screen, other design restrictions, and a commission that makes purchases through substitute channels economically unviable. Both the landowner and Apple achieved the adjudicated wrongdoing through new means. Just as the neighbor is again deprived from his water, developers are deprived of their ability to sell products to potential customers without using Apple's platform. Pet. App. 20a.

Apple's argument mirrors the landowner's too. The landowner says the injunction forbade him to prohibit use of the path; that he now permits use; and, that the injunction never mentions trenches. Apple contends the injunction forbade it to prohibit links; that it now permits links; and, that the injunction never mentioned commissions or scare screens. Pet. Br. 32-33, 42-43. Both arguments read the injunction's words to reach only the specific form of the wrong as it occurred before trial. On that reading, the Apple injunction forbids only that one form of the wrong and nothing else.

Apple thus proposes an approach even narrower than formalistic textualism. *See* Tara Leigh Grove, *Which Textualism?*, 134 Harv. L. Rev. 265, 270-71 (2020) (differentiating formalistic and modern textualism). It urges what amounts to a text-minus reading, which relies on context to narrow the literalistic meanings of the words of an injunction. It asks

the Court to read the injunction's text to mean less than it says by: (1) narrowing the verb "prohibiting"; (2) restricting the scope of the wrongdoing; and (3) minimizing the adjudicated findings.

First, Apple describes the injunction as "preventing Apple from *barring* 'buttons, external links, or other calls to action.'" Reply Br. 8 (emphasis added). However, the district court explicitly wrote "prohibiting." Apple's use of the term "barring" is inconsistent with even the generally accepted textual meaning of the word "prohibiting" as used in the injunction. True, "prohibiting" is a synonym to "barring." *Bar (v.)*, *Oxford English Dictionary 1.6* (2024) ("To hinder, exclude, keep back, prevent, prohibit"). However, "prohibit" also means "to severely hinder." Thus, to "prohibit" is broader than to "bar." Apple's construction reads "severely hinder" out of the definition. The district court consciously chose the broader word, and Apple should not be able to narrow the order by misconstruing it. *Cf. McComb*, 336 U.S. at 192.

Second, Apple demands an injunction that articulates all possible means of engaging in the underlying wrongdoing, by arguing a court must itemize the "precise conduct" prohibited. Pet. Br. 23-24 (internal citation omitted). A district court cannot foretell all the means of evasion a party may engage in after issuing an injunction. The district court could not possibly have foreseen or named all possible alternative means of anti-steering that did not exist when it ruled. After all, when it comes to harming competition, "[t]he methods and techniques of manipulation are limited only by the ingenuity of man." *Cargill, Inc. v. Hardin*, 452 F.2d 1154, 1163 (8th Cir. 1970).

Federal Rule of Civil Procedure 65(d)(1) does not change the analysis. It requires reasonable detail so

the enjoined party has fair notice of what it must not do. The Apple injunction supplies that notice by forbidding the type of wrongdoing that Apple has perpetuated with its newly imposed terms: Apple may not prohibit developers' ability to direct customers to alternative purchasing mechanisms. Newly imposed restrictions that produce that same type of harms clearly fall within the injunction's terms under any objectively reasonable interpretation.

Third, Apple's interpretation reads out half of the Court's finding of resultant harm. The district court found two harms. Apple collapses and oversimplifies these findings, reducing them solely to a mere "informational harm." Pet. App. 34a n.9. After recasting the Court's findings of harm so narrowly, Apple points to its new guidelines as curing this informational deficiency. Pet. Br. 33 (contending "Apple remedied the informational harm"). However, this contention drops the district court's specific finding of harm based on Apple's suppression of substitute purchasing channels. Pet. Br. 37-38 ("The efficacy of such purchasing mechanisms is a separate issue, and the relative costs and benefits of actually establishing external purchasing mechanisms are beyond the injunction's scope."). If "prohibit" required Apple only to permit disclosure, Apple could comply while continuing to suppress all substitute purchasing channels, and the Court's second finding of harm would go unaddressed. Accordingly, Apple's interpretation of the scope of the injunction is objectively unreasonable and provides no basis for challenging the validity of the district court's contempt order.

B. Apple's Interpretation Rests on a Misreading of the Law

Apple's approach also builds on a faulty foundation. It primarily cites negotiated consent decrees. Pet. Br. 23 (citing *United States v. Armour & Co.*, 402 U.S. 673, 682 (1971)). Petitioner relies on *Perez v. Danbury Hospital* for the rule that courts "must abide by the express terms of a consent decree." Pet. Br. 23 (quoting 347 F.3d 419, 424 (2d Cir. 2003)). Such reliance is misplaced, as negotiated consent decrees are entirely different from adjudicated injunctions.

A consent decree is a hybrid of contract and judgment. *Loc. No. 93, Int'l Ass'n of Firefighters v. City of Cleveland*, 478 U.S. 501, 519 (1986). "[I]n exchange for the saving of cost and elimination of risk, the parties each give up something they might have won had they proceeded with the litigation." *Armour*, 402 U.S. at 681; Timothy Stoltzfus Jost, *From* Swift *to* Stotts *and Beyond: Modification of Injunctions in the Federal Courts*, 64 Tex. L. Rev. 1101, 1103 (1986) ("Consent decrees are not only judicial decrees, but also long-term contracts, the products of bargaining between the parties."). There are no adjudicated findings for a consent decree, nor does the Court decide what wrong the decree's terms address. *See generally* Note, *Requests by the Government for Modification of Consent Decrees*, 75 Yale L.J. 657 (1966) (noting how, like a binding settlement, a decree resolves a dispute without a full trial). The bargain between the parties is the only source of the obligations, so the bargain defines the obligations. "[T]he decree itself cannot be said to have a purpose; rather the parties have purposes." *Armour*, 402 U.S. at 681 (emphasis omitted).

A court that reads a purpose into a consent decree gives one side what it did not win at the table. Consequently, the instrument "must be construed as it is written, and not as it might have been written had the

plaintiff established his factual claims and legal theories in litigation." *Id.* A textual read for a consent decree thus upholds the negotiated bargain to which the parties agreed.

Unlike consent decrees, however, injunctions are not bargained for nor contractual in nature. They are judgments entered after the parties have litigated their disputes. In this case, the district court entered the injunction against Apple after hearing extensive evidence and making detailed factual findings. The court wrote the terms of the injunction to remedy the wrong and redress the harms that it found. There was no bargain the court had to protect in drafting the injunction. Thus, there is no justification for interpreting the Apple injunction based on the text alone, devoid of the context of the litigated disputes that gave rise to that injunction.

CONCLUSION

Enjoined parties are already protected against unwarranted findings of contempt by the clear-notice requirements and the principle that ambiguities must be resolved in their favor to prevent unfair surprise. *Robin Woods Inc. v. Woods*, 28 F.3d 396, 399 (3d Cir. 1994). To go a step further and confine interpretation of an injunction to its explicit terms, without regard to its surrounding context, would unnecessarily expand those protections, undermine effective judicial enforcement, and deny meaningful remedies for injured parties.

Such an approach would incentivize defendants who have been enjoined from wrongdoing to challenge contempt findings by exploiting perceived textual ambiguities, knowing that appellate courts would interpret the injunction in isolation from the litigation that

gave rise to it. To avoid such a result, this Court should adopt a text-plus-context interpretation of the injunction against Apple.

Respectfully submitted,

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