No. 25-521

In the
Supreme Court of the United States

GOOGLE LLC, ET AL.,
Petitioners,

v.

EPIC GAMES, INC.,
Respondent.

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

BRIEF OF TECHNET AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

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INTEREST OF *AMICUS CURIAE*[1]

TechNet is a national, bipartisan network of technology CEOs and senior executives that promotes the growth of the innovation economy by advocating a targeted policy agenda at the federal and 50-state level. TechNet's diverse membership includes more than 100 dynamic American companies ranging from startups to the most iconic companies on the planet. Those companies represent more than 5 million employees and countless customers in the fields of information technology, AI, e-commerce, the sharing and gig economies, advanced energy, cybersecurity, venture capital, and finance. TechNet advances public policies that foster a climate of innovation and competition, and which ensure that the United States remains the world leader in technology innovation. TechNet therefore has a great interest in ensuring that court-ordered antitrust remedies do not inadvertently undermine the innovation and competition that power the American technology industry.

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[1] No counsel for any party has authored this brief in whole or in part, and no entity or person, aside from *Amicus* or its counsel, made any monetary contribution intended to fund the preparation or submission of this brief. Filed more than ten days prior to the deadline to file, this brief provides timely notice of *Amicus*'s intent to file.

SUMMARY OF THE ARGUMENT

In the proceedings below, the Ninth Circuit blessed an antitrust injunction that affects over a hundred million consumers and alters the way that Petitioner Google interacts with hundreds of thousands of app developers and app-store owners, ostensibly to remedy antitrust violations alleged by a single, private plaintiff. That relief extends well beyond the parties involved and the specific injury alleged, thereby forcing market-wide changes at the behest of a single market participant.

The Ninth Circuit viewed the scope of relief as a merits question, but that's wrong. Relief is tied to redressability, meaning that a plaintiff lacks standing to obtain relief beyond what is necessary to remedy its proven injury. A single participant therefore ordinarily lacks standing to obtain market-wide injunctive relief, but the Ninth Circuit brushed aside those jurisdictional concerns. If allowed to stand, the precedent below threatens serious harm to modern innovation and competition, replacing courts' constitutionally limited power to redress particular plaintiffs' injuries with sweeping authority to direct industry-wide changes in private antitrust suits that could fundamentally reshape important sectors of the modern digital economy.

Amicus TechNet accordingly submits this brief to raise two important points in support of the petition for writ of certiorari.

First, overbroad judicial relief poses serious threats to fast-moving industries, like mobile and digital technology, in which innovation drives competition. Overbroad antitrust injunctions, in particular, risk chilling incentives for innovation, which in turn can lead to stagnation, eroding America's competitive edge and throttling a key engine of the Nation's economic growth.

Second, Respondent lacked standing to obtain the broad relief imposed by the injunction here. Article III requires that standing be shown for each form of relief sought, and thereby limits federal courts to issuing relief to redress a plaintiff's *particular* injuries. Antitrust law and equitable considerations reinforce these limits. The Ninth Circuit eschewed these principles, incorrectly concluding that the scope of relief was a question of merits, not jurisdiction. Left uncorrected, the decision below creates a dangerous loophole in standing doctrine in the Nation's largest circuit—and home to many tech companies—allowing a single plaintiff to obtain sweeping, industry-wide relief without showing that relief is necessary to redress the plaintiff's particular injury.

For these reasons, and those explained in the petition, this Court should grant the petition and reverse.

ARGUMENT

I. Overbroad Judicial Relief Undermines Innovation and Harms Competition in the American Tech Industry.

Innovation is the driving force behind the success and global leadership of the American technology industry. From the invention of the integrated circuit to the rise of artificial intelligence, continuous innovation has allowed U.S. companies to set the pace for technological progress worldwide. *See How Tech is Strengthening America's Competitive Edge*, TechNet (Mar. 14, 2025), https://www.technet.org/media/how-tech-is-strengthening-americas-competitive-edge/.

Nowhere are the effects of innovation more apparent than in the mobile and digital technology spaces. Over the last two decades, breakthroughs in smartphone technology, cloud computing, and mobile internet connectivity have enabled faster, more powerful devices and continuous access to digital services. These, in turn, have given rise to entirely new industries and business models, from mobile banking and telehealth to social media and (relevant here) mobile gaming. These new industries spur additional innovation, fuel economic growth, and help maintain America's competitive edge in the global marketplace. *See generally* Joakim Bergström et al., *The History of Mobile Internet: The Technology Transformation That Changed The Lives of Billions*, Ericsson Tech. Rev. (Feb. 9, 2024), https://www.ericsson.com/en/reports-and-papers/ericsson-technology-review/articles/mobile-miracles.

In rapidly evolving industries like mobile and digital technologies, innovation also drives competition. The Federal Trade Commission has observed that "[i]nnovation is a central aspect of rivalries among technology firms, and the markets are dynamic: new ideas topple formerly dominant technologies and consumers line up to buy products that are smaller, faster, and better." FTC, *Competition in the Technology Marketplace*, https://www.ftc.gov/advice-guidance/competition-guidance/industry-guidance/competition-technology-marketplace (last visited Nov. 6, 2025).

In mobile and digital technologies, consumers respond to products that offer improved performance and user experience. Businesses seek services that enhance security and efficiency. Companies are therefore incentivized to invest in developing more capable and intuitive products than those offered by their rivals to maintain or grow market share. In many digital markets in particular, barriers to entry are low and redesign times short, inviting beneficial innovation by new entrants. A transformative idea—coupled with coding skills and access to the necessary software—can launch a company that ultimately attains global reach.

The result is a virtuous cycle in which innovation drives competition, and competition, in turn, drives greater innovation. This beneficial cycle has been central to the success of the American tech industry, making it one of the most dynamic segments of the American economy over the last decades. And it

promises to be key to the industry's continued vitality throughout the twenty-first century.

Overbroad judicial relief like injunctions that extend beyond the injury established by the plaintiff threaten to disrupt this cycle, stifling competition by undermining incentives for innovation and penalizing otherwise lawful conduct that is beneficial, and sometimes essential, to technological progress and economic growth. The incentive for firms to "engage[] in the risks and expenses of research and development" could be "vitiated" if companies are prevented by court order from realizing the return on their investment. *Berkey Photo, Inc. v. Eastman Kodak Co.*, 603 F.2d 263, 281 (2d Cir. 1979). Such relief "risk[s] reducing the incentive … to innovate, invest, and expand" and so impairs, rather than promotes, the competitive objectives of antitrust law. *Novell, Inc. v. Microsoft Corp.*, 731 F.3d 1064, 1073 (10th Cir. 2013).

This is, in part, why this Court has advised caution when fashioning antitrust remedies, directing judges to remain "sensitive to the possibility that" court-mandated interventions "could wind up impairing rather than enhancing competition," *Nat'l Collegiate Athletic Ass'n v. Alston*, 594 U.S. 69, 102 (2021), and to the reality that courts are generally "ill suited" to "act as central planners," *Verizon Commc'ns Inc. v. Law Offs. of Curtis V. Trinko, LLP*, 540 U.S. 398, 408 (2021). "[M]arkets are often more effective than the heavy hand of judicial power when it comes to enhancing consumer welfare." *Alston*, 594 U.S. at 106.

This means that "mistaken condemnations of legitimate business arrangements" can be "especially costly, because they chill the very procompetitive conduct the antitrust laws are designed to protect." *Id.* at 99 (cleaned up).

The concern is particularly acute in fast-evolving marketplaces and industries, where inappropriately tailored remedies can inadvertently "lessen the incentive … to invest in … economically beneficial" activities like research and development, and so hamper, rather than advance, competition. *Trinko*, 540 U.S. at 407–08.

This applies with full force to the American mobile and digital technology industries. Antitrust injunctions that are not tailored to the injuries established can have collateral effects that lessen the incentives for innovation that have driven competition, progress, and growth in these markets. This, in turn, increases the risk of technological stagnation, which, in fast-moving industries, could be crippling. Such stagnation risks throttling a key engine of the Nation's economic growth, eroding America's competitive edge and diminishing its influence over the future of mobile and digital infrastructure and global technology policy.

II. Respondent Lacks Standing to Obtain the Broad Relief Imposed by the Injunction Here.

Providing judicial relief only as necessary to remedy a proven harm is not just good for

innovation—it is also required by Article III standing principles. Redressability, which is part of the standing analysis, requires that the relief granted be tailored to remedy the particular injury established by the plaintiff, not to direct benefits industry-wide. The Ninth Circuit's failure to so limit the relief here has ramifications that could extend beyond this litigation, inviting private plaintiffs in the Nation's largest circuit to become private attorneys general who obtain relief far beyond their own alleged injuries.

One of the most fundamental constraints on a federal court's remedial authority derives from Article III of the Constitution, which limits federal courts to resolving specific "Cases" and "Controversies." U.S. Const. art. III, § 2. From that principle, it follows that ordinarily "a litigant must assert his or her own legal rights and interests," and cannot seek "relief on the legal rights or interests of third parties." *Powers v. Ohio*, 499 U.S. 400, 410 (1991). Federal courts, in turn, may only issue relief that is "tailored to redress the plaintiff's particular injury." *Gill v. Whitford*, 585 U.S. 48, 73 (2018).

In other words, a plaintiff must demonstrate *standing* for each form of relief it seeks. *See DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 353 (2006). And the "remedy must of course be limited to the inadequacy that produced the injury in fact that the plaintiff has established." *Id.* (quoting *Lewis v. Casey*, 518 U.S. 343, 357 (1996)).

In private antitrust litigation, this constitutional requirement is reinforced by the text of Section 16 of

the Clayton Act, which governs the scope of injunctive relief available in those actions. That provision authorizes "injunctive relief … against *threatened loss or damage*" of the plaintiff. 15 U.S.C. § 26 (emphasis added). This means that a "private litigant … must have standing" and "must prove 'threatened loss or damage' to his own interests in order to obtain relief." *California v. Am. Stores Co.*, 495 U.S. 271, 295–96 (1990) (quoting 15 U.S.C. § 26).

The Ninth Circuit brushed aside concerns over the district court's (lack of) broad remedial authority by concluding that "the scope of the injunction" was a "merits determination," not "a jurisdictional issue." Pet.App.64a–65a. But as explained above, relief is inherently tied to redressability, and so to the plaintiff's standing and the court's jurisdiction in the first place. *See Spokeo, Inc. v. Robins*, 578 U.S. 330, 337–38 (2016). The Ninth Circuit therefore erred by failing to require Respondent to "separately" demonstrate standing for each aspect of the expansive relief that it sought, *DaimlerChrysler*, 547 U.S. at 352–53, despite Respondent's burden to do so at every stage of the litigation, *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992).

That error was prejudicial. From the perspective of redressability and standing, two aspects of the affirmed injunction are particularly concerning. *First*, the "catalog sharing" provision requires that Google "permit third-party Android app stores to access the Google Play Store's catalog of apps." Pet.App.10a. This requires Google to "create a mechanism to give

Play's catalog of millions of apps to competitor app stores." Pet.3. *Second*, the "app-store distribution" provision requires that Google "allow 'the distribution of third-party Android app distribution platforms or stores through the Google Play Store.'" Pet.App.10a. This requires Google "to distribute competitor app stores through the Play store." Pet.3. These provisions thus force Google to promote and distribute nonparty app-store rivals and overhaul its Play store to facilitate associations between those rivals and hundreds of thousands of nonparty app developers.

But as even the courts below acknowledged, "this is not a case in which a refusal to deal with a rival was the basis of [antitrust] liability." Pet.App.92a. Nor was conduct precluding Respondent or others from "distributing or creating third-party app stores … at issue in the … litigation." Pet.App.16a. The catalog sharing and app-store distribution provisions, in particular, are therefore not "tailored to redress [Respondent's] particular injury," but designed to vindicate the rights and interests of countless nonparties who have no affiliation with Respondent or this litigation—and on whose behalf Respondent has no standing to pursue such relief. *Gill*, 585 U.S. at 73.

This Court's recent clarification of the limits of federal courts' equitable authority in *Trump v. CASA, Inc.*, 606 U.S. 831 (2025), underscores that the affirmed injunction is untenably broad. In that case, this Court explained that traditional principles of equity bar a court from granting "requests for relief that extend[] beyond the parties." *Id.* at 843. Although

"party-specific injunctions" that may "incidentally" "'advantag[e] nonparties'" are permissible, a federal court's relief must be directed "*to the plaintiffs before [it].*" *Id.* at 851–52 (emphasis in original). The catalog sharing and app-store distribution provisions, however, do not "incidentally" benefit nonparties, but are directed primarily to them. The provisions therefore exceed the court's equitable authority.

The Ninth Circuit attempted to distinguish *CASA* by characterizing the case as merely "about district courts' authority under the Judiciary Act of 1789" and concluding that the case had "no bearing" on the scope of the district court's equitable powers under Section 16 of the Clayton Act. Pet.App.64a. But this Court explained that the Judiciary Act of 1789 is coextensive with the traditional equitable authority available in the federal courts at the time of the Founding. *CASA*, 606 U.S. at 856. And courts' remedial power in private antitrust actions under Section 16 "invokes" those very same "traditional principles of equity." *Zenith Radio Corp. v. Hazeltine Rsch., Inc.*, 395 U.S. 100, 130 (1969); *see also Am. Stores Co.*, 495 U.S. at 281 (Section 16's "language indicates Congress' intention that traditional principles of equity govern the grant of injunctive relief") (citation omitted). The "party-specific principles that permeate the … understanding of equity" this Court underscored in *CASA* therefore apply equally in private antitrust suits. 606 U.S. at 844.

For all these reasons, Respondent lacked standing to obtain the broad judicial relief imposed by the district court and affirmed by the Ninth Circuit.

* * *

Left unchecked, the authority claimed by the courts below risks serious consequences to America's technology industry. Overbroad injunctions can undermine incentives for innovation and penalize the robust, lawful competition that has been essential to American technological progress and growth over the last three decades. They also permit a single market participant to leverage antitrust law to force market-wide changes that could fundamentally reshape important sectors of the modern digital economy.

The potential harm that could result from the Ninth Circuit's refusal to apply fundamental standing principles and enforce bedrock constitutional constraints on federal courts' power is not limited to this litigation. The Ninth Circuit's disregard of the limits on courts' remedial authority invites private plaintiffs in the Nation's largest circuit—and home to many tech companies—to act as private attorneys general, reshaping entire markets merely by *requesting* relief beyond the injuries alleged, without demonstrating that relief redresses *its own particular injury*.

These results cannot be squared with Article III's limits on federal courts' authority to grant injunctive relief.

CONCLUSION

For the foregoing reasons, *amicus* TechNet urges this Court to grant the petition and reverse.

Respectfully submitted,

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