No. 18-956

IN THE

Supreme Court of the United States

GOOGLE LLC,

Petitioner,

v.

ORACLE AMERICA, INC.,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

BRIEF OF CONSUMERS' RESEARCH AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENT

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STATEMENT OF INTEREST[1]

Amicus Consumers' Research is an independent educational 501(c)(3) nonprofit organization whose mission is to increase the knowledge and understanding of issues, policies, products, and services of concern to consumers and to promote the freedom to act on that knowledge and understanding. Consumers' Research believes that the cost, quality, availability, and variety of goods and services used or desired by American consumers—from both the private and public sectors—are improved by greater consumer knowledge and freedom. To that end, Consumers' Research engages in research, policy advocacy, and public engagement initiatives. Consumers' Research has extensive experience studying consumer-related issues involving technology companies.

INTRODUCTION AND SUMMARY OF ARGUMENT

This case is about Google's unauthorized copying of more than eleven thousand lines of Oracle's original and creative Java SE computer code into Google's competing software platform—Android. Amicus Consumers' Research agrees with Oracle that its computer code is copyrightable under the Copyright Act and that Google's unauthorized copying

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[1] No counsel for a party authored this brief in whole or in part. No person or entity other than amicus, its members, or its counsel made a monetary contribution intended to fund the preparation or submission of this brief. All parties have consented to the filing of this brief.

thereof is not excusable under the fair-use doctrine. Brief for Respondent ("Resp. Br.") at 20-54.

More specifically, amicus agrees with Oracle (Resp. Br. at 54-58) that Java SE's popularity and dynamic functionality are illegitimate reasons to excuse Google's unauthorized copying of the Java SE code. *See Harper & Row Publishers, Inc. v. Nation Enterprises*, 471 U.S. 539, 559 (1985) ("It is fundamentally at odds with the scheme of copyright to accord lesser rights in those works that are of greatest importance to the public."); *see also* Resp. Br. at 57 ("No company will make the enormous investment required to launch a groundbreaking work like Java SE if this Court declares that a competitor may copy it precisely because it has become so popular, or because it is functional—like all computer code.").

Google argues that its unauthorized copying benefitted the public by making Java SE more widely available to more consumers, thereby furthering innovation. But as Oracle correctly explains, "[r]eleasing a pirated copy of Adobe Photoshop would unleash innovation [just the same]. Yet no one would consider that fair use." Resp. Br. at 54.

Similarly, amicus agrees that Google cannot excuse its unauthorized copying of Oracle's Java SE computer code on the basis of unsupported assertions that Oracle might otherwise engage in anticompetitive conduct. Resp. Br. at 51-52.

Amicus writes separately to make two points. First, Google's claim that its unauthorized copying of Oracle's computer code should be excused because the public has seemingly benefitted from that pirated

work improperly divorces the economic-incentive rationale for copyright protection from the natural rights foundation of copyright that led the Founders to enact the Copyright Clause of the Constitution. The original history of the Copyright Clause shows that the Founders' conception of copyright was not just utilitarian; rather, a copyright was also seen as a core *property* right that entitled the holder to the fruits of his or her labor. Moreover, Google is wrong that copyright in any way decreases innovation. As this Court held in *Harper & Row Publishers, Inc.*, "the Framers intended copyright itself to be the engine of free expression. By establishing a marketable right to the use of one's expression, copyright supplies the economic incentive to create and disseminate ideas." 471 U.S. at 558.

Second, Google's naked assertions that Oracle (and other software companies) may engage in anticompetitive conduct if Google's copyright infringement is not excused ring hollow in light of Google's long history of anticompetitive conduct—both in regards to its Android platform and more broadly. As explained below, regulators both in the United States and abroad have repeatedly investigated and sanctioned Google for a long litany of anticompetitive practices that span multiple aspects of its business. Given Google's well-documented history of anticompetitive acts, this Court should view with skepticism any contention that Google needs to prevail in this case in order to protect consumers or promote competition.

ARGUMENT

I. The Copyright Clause Secures to Authors the Property Rights Inherent in Their Own Labor and Serves to Incentivize Productive Activity to Advance the Public Good.

Google asserts that its copying of Oracle's computer code has advanced the public good by "unleash[ing] enormous innovation and creativity by enabling developers to use their existing knowledge of the free and open Java language to create innovative programs that can run on new platforms such as Android." Pet. Br. at 40. Setting aside the fact that "[e]xpression at the *expense* of markets for the original is not the sort of creativity which th[e] law is designed to foster," Resp. Br. at 54, Google advances a theory of copyright that focuses *solely* on the alleged economic benefits to the public. But this neglects the fact that the Copyright Clause is not simply an exercise in economic incentives; instead, both the text and the historical background of the clause evidence a natural rights theory of copyrights as well. Founding-era history is clear that the economic-incentives rationale of copyright is inherently intertwined with the goal of securing the preexisting natural right of authors to the fruits of their labor.[2]

The Text of the Copyright Clause. Article I, section 8 of the Constitution grants Congress authority "[t]o promote the Progress of Science … , by

[2] Google's position is also incorrect. As discussed above, the Supreme Court has explicitly held that copyright advances economic incentives.

securing for limited Times to Authors … the exclusive Right to their respective Writings." The text of the Copyright Clause reveals a natural-rights view of intellectual property in that it does not create new rights but rather "secur[es]" a *preexisting* right to "Authors." U.S. Const., art. I, §8. At the same time, the text extols an economic philosophy of encouraging creative efforts by individuals to serve the public good. Importantly, the text ties these two concepts together, recognizing that protection of this natural right belonging to authors is necessary "to promote the Progress of Science."[3] *Id.* James Madison emphasized both textual bases for the Copyright Clause in Federalist 43, describing the "copyright of authors" as a preexisting "right" and underscoring that "[t]he public good fully coincides in both cases with the claims of individuals." Federalist No. 43 at 268 (J. Madison) (Clinton Rossiter ed. 1961).

There was little discussion over the Copyright Clause during the Constitutional Convention and little mention of it during the ratification debates, perhaps because (as Madison recognized) "[t]he utility of this power will scarcely be questioned." *Id*. Indeed, Madison devoted only a paragraph to it in a discussion of "miscellaneous powers." *Id.* Accordingly, one must look to the historical background of this preexisting right to understand the original meaning of the Copyright Clause. *See District of Columbia v. Heller*,

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[3] "Congress' copyright authority is tied to the progress of science; its patent authority, to the progress of the useful arts. The 'Progress of Science,' … refers broadly to 'the creation and spread of knowledge and learning.'" *Golan v. Holder*, 565 U.S. 302, 324 (2012) (citations omitted).

554 U.S. 570, 592 (2008) (recognizing that when the Constitution "codifie[s] a preexisting right" it is appropriate to consider the "historical background" of that right when construing the meaning of the clause at issue).

The Historical Background of the Copyright Clause. The theoretical underpinnings of copyright law are rooted heavily in the work of John Locke, "one of the thinkers who most influenced the framers." *Gundy v. United States*, 139 S. Ct. 2116, 2133 (2019) (Gorsuch, J., dissenting); *see also Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 428 n.55 (2010) (Stevens, J., concurring in part) (recognizing that the Framers drew on the writings of Locke).

Locke began with the foundational premise that all people have a property right in their own bodies. From there, Locke reasoned that people own the labor of their bodies and, by extension, the fruits of that labor. *See* J. Locke, The Second Treatise Of Civil Government § 27, in Two Treatises Of Government (1698) (P. Laslett ed. 1970). That is, "[o]ur handiwork becomes our property because our hands—and the energy, consciousness, and control that fuel their labor—are our property." Justin Hughes, *The Philosophy of Intellectual Property*, 77 Geo. L.J. 287, 302 (1988). In one of Locke's famous examples, when a person picks an apple from a wild apple tree, that apple becomes his property because it would not have been picked without his efforts.

The same reasoning applies foursquare to copyrights. An author holds property to her works

because those works would not exist but for her efforts in creating them. *See* Alfred C. Yen, *Restoring the Natural Law: Copyright as Labor and Possession*, 51 Ohio St. L.J. 517, 524 (1990) ("[A] person rightfully claims ownership in her works to the extent that her labor resulted in their existence.")

Indeed, legal scholars have recognized that, if anything, intellectual property is even *more worthy of protection* than physical property under Locke's reasoning. *See, e.g.*, Hughes, 77 Geo. L.J. at 300-02. Land and natural resources are extant and finite, and an individual's picking of an apple from an apple tree may reduce that available to others. But there is no problem of depleting the "common" in the area of tangible expressions. The field of creative works is infinite; an author's production of ideas does not involve the depletion of other ideas or otherwise devalue the "common." *Id.* It is unsurprising then, that Locke himself described literary publications as "property." *See* Justin Hughes, *Copyright and Incomplete Historiographies: Of Piracy, Propertization, and Thomas Jefferson*, 79 S. Cal. L. Rev. 993, 1012 (2006) (citing 1 Lord Peter King, *The Life of John Locke* 375, 387 (London, Henry Colburn, 1830)).

This Lockean view of copyright was not lost on the American Founders. For example, Thomas Paine emphasized in a 1782 pamphlet that "the works of an author are his legal property" and argued that it was critical for the nation to "prevent depredation of literary property." 8 Life and Writings of Thomas Paine, 180, 182 (Daniel Wheeler ed. 1908).

The Founders thus "legislated in an environment where copyrights were commonly understood to protect 'property,' 'legal property,' or literary property.'" Hughes, 79 S. Cal. L. Rev. at 1008. More to the point, the Continental Congress and the States expressly sought to protect property rights in the works of authors.

For example, in March of 1783, Massachusetts enacted a statute "for the purpose of securing to authors the exclusive right and benefit of publishing their literary productions, for twenty-one years." *See* Mass. Act of Mar. 17, 1783, reprinted in *Copyright Enactments of the United States, 1783-1906*, Copyright Office Bulletin No. 3, at 14 (1906). Its preamble provided that "the legal security of the fruits of their study and industry … is one of the natural rights of all men, there being no property more peculiarly a man's own than that which is produced by the labour of his mind." *Id.* The text went on to explain that the securing of copyrights would "encourage learned and ingenious persons to write useful books for the benefit of mankind." *Id.*

For its part, while lacking authority to adopt a nationwide copyright regime, the Continental Congress strongly encouraged the States to enact legislation guaranteeing the rights of authors in their works. In May 1783, a committee of the Continental Congress issued a report concluding that "nothing is more properly a man's own than the fruit of his study," and that "protection and security of literary property would greatly tend to encourage genius." 24 Journals of the Continental Congress 326-27 (1783).

The States took up the cause, following Massachusetts' lead in securing copyright protection for authors. And in doing so, they too stood upon the Lockean conception of copyright, at the same time recognizing that doing so would serve the public good. For example, New Hampshire enacted a copyright statute that closely tracked the Massachusetts statute. *See* N.H. Act of Nov. 7, 1783, reprinted in *Copyright Enactments of the United States, 1783-1906*, Copyright Office Bulletin No. 3, at 18 (1906) ("[T]he legal security of the fruits of their study and industry … is one of the natural rights of all men, there being no property more peculiarly a man's own than that which is produced by the labour of his mind."). Rhode Island's copyright statute, enacted in December of that year, included the exact same language in a nearly identical preamble. *See id.* at 19. And so did North Carolina's, enacted in 1785. *See id.* at 25 ("[N]othing is more strictly a man's own that the fruit of his study."). Other States did similarly. *See* Yen, *supra*, at 528 n.79 (collecting examples).

This background history of the Copyright Clause illustrates that the Framers of our Constitution understood copyright protection to be a natural right of authors, the protection of which would, in turn, encourage productive ingenuity for the benefit of the public. As Professor Ginsburg put it, "[i]f U.S. copyright's exponents sought to promote the progress of knowledge, they also recognized that the author's labors are due their own reward." Jane C. Ginsburg, *A Tale of Two Copyrights: Literary Property in Revolutionary France and America*, 64 Tul. L. Rev. 991, 1023 (1990).

This history thus confirms what the text of the Copyright Clause states expressly: the clause secures a preexisting natural right to authors—a copyright in their works—and the protection of that right is necessary to advance the public good through progress in the sciences. Google's argument is thus incomplete to the extent it focuses solely on economic incentives or utilitarian rationales for copyright protection. To the Founders, copyrights were not just a way to encourage innovation, but also to protect people's inherent rights in the fruits of their labor. Any conception of copyright that ignores the latter is both incomplete and inconsistent with the original understanding of the Copyright Clause.

II. Google's Claims that its Unauthorized Copying of Oracle's Computer Code Should be Permitted to Prevent Anticompetitive Harm Ring Hollow in Light of Google's Own Troubling History of Anticompetitive Conduct.

Google maintains that its unauthorized copying of Oracle's computer code should be excused in order to prevent anticompetitive harms. Pet. Br. at 40-41. More specifically, Google claims that affording Oracle copyright protection for its original and creative Java SE code might allow Oracle to "accrue market power via copyright" and create "barriers to entry." Cert. Pet. at 27-28. In other words, Google contends that a win for Oracle would allow copyright owners to "deter competition" and "monopolize the market," thereby harming consumer welfare. Pet. Br. at 40.

These claims ring hollow given Google's long and well-documented history of anticompetitive practices. In recent years, the European Union (EU) has found Google guilty of anticompetitive practices and has imposed record-breaking sanctions on the company. In addition, the EU continues to investigate Google, as do the United States Congress, Department of Justice (DOJ), Federal Trade Commission (FTC), 48 States, D.C., and Puerto Rico. All are investigating Google over concerns that it has "accumulated market power" and "acted to reduce competition" to the detriment of the consumer public. Steve Lohr, *New Google and Facebook Inquiries Show Big Tech Scrutiny Is Rare Bipartisan Act*, N.Y. Times (Sept. 6, 2019), nyti.ms/320iIx1. In short, nearly every jurisdiction with authority to regulate anticompetitive practices either is currently investigating Google concerning allegations of anticompetitive practices or has already found Google guilty of anticompetitive conduct.

These investigations make sense since competition plays such a critical role for consumers and for the U.S. economy. After all, "[c]ompetition in the marketplace is good for consumers and good for business." *FTC Fact Sheet: How Competition Works*, bit.ly/324tLFA. When businesses fairly compete, "consumers get the best possible prices, quantity, and quality of goods and services." *Id.* When businesses do not compete fairly, however, consumers suffer.

EU findings and sanctions. The EU's completed investigations are particularly damning. Over the last several years, the EU has conducted numerous extensive antitrust investigations,

resulting in record-breaking fines for Google. *See* Lohr, *New Google and Facebook Inquiries Show Big Tech Scrutiny Is Rare Bipartisan Act*, *supra*; Gary Reback, *You should be outraged at Google's anti-competitive behavior*, Wash. Post (July 7, 2017), wapo.st/2uOCOhz. In total, Google has been ordered to pay more than $8 billion in fines for violating European antitrust laws. *See id.*

After receiving dozens of complaints claiming that Google "abused its search market dominance to give its Google Shopping service an advantage over other retailers and create a monopoly over consumers," the EU Competition Commission launched a seven-year investigation. Karen Gilchrist & Anita Balakrishnan, *EU hits Google with a record antitrust fine of $2.7 billion*, CNBC (June 27, 2017), cnb.cx/3bJRuPZ. In 2017, the EU fined Google $2.7 billion for "giving favored treatment" to its own comparison shopping service—Google Shopping. Lauren Hirsch, *Google antitrust probe expands as bipartisan state AGs beef up staff and resources*, CNBC (Feb. 7, 2020), cnb.cx/39DeNZw. That fine is the largest the EU has ever issued for monopoly abuse. Gilchrist & Balakrishnan, *supra.*

EU Competition Commissioner Margrethe Vestager emphasized that the "purpose [of the investigation] is to ensure competition and innovation for the benefit of European consumers." *Id.* She did not mince words about the results of the investigation, stating that "Google has abused its dominance as a search engine by giving illegal advantages to another Google product, its shopping comparison service." *Id.* She condemned Google's conduct, stating that

"Google's strategy for its comparison shopping service wasn't just about attracting customers. It wasn't just about making its product better than its rivals. Google has abused its market dominance in its search engine by promoting its own shopping comparison site in its search results and demoting its competitors." *Id.*

Then, in 2018, the EU fined Google an additional $5 billion for antitrust abuses involving Android—the very Google offering at issue in this case. *See* Hirsch, *supra*. Officials determined that Alphabet (Google's parent company) "unfairly favored its own services by forcing smartphone makers to pre-install Google apps Chrome and Search in a bundle with its app store, Play. It also said Google violated competition rules by paying phone makers to exclusively pre-install Google search on their devices and preventing them from selling phones that run other modified, or 'forked,' versions of Android." Jillian D'Onfro & Ryan Browne, *EU fines Google $5 billion over Android antitrust abuse*, CNBC (July 18, 2018), cnb.cx/2vCO3Kk. The Commission again noted that its "ruling was issued to protect European consumers." *Id.*

If those findings and sanctions were not enough, Google may face additional antitrust investigations by the EU in the near future over its vacation rental service. Forty competitors from around the world, including Expedia and Tripadvisor, claim that Google is employing its search engine to favor Google's own rental service. *See* Foo Yun Chee, *Google's holiday rental service under fire as 40 rivals urge EU antitrust action*, Reuters (Feb. 10, 2020), reut.rs/2HmaZ31. In a letter to Commissioner

Vestager, the companies called the Commission's attention to "strong indications of a competitive strategy for Google to reduce [them] and [the] industry to mere content providers for the 'one-stop-shop' of Google's new product." *Id.* They identified "Google's prominent display of its product at the top of its general search results pages, jazzed up with pictures, a map review, ratings and prices." *Id.* They further explained that those features drive more clicks than is possible for competitors to accumulate "even if these are more relevant for the user's search query." *Id.*

Congressional investigations. The United States Congress is currently conducting investigations into Google's practices. The Senate has held hearings, "press[ing] top antitrust regulators" to "aggressively investigate the power" of Google and other big tech companies. David McCabe, *Lawmakers Urge Aggressive Action From Regulators on Big Tech,* N.Y. Times (Sept. 17, 2019), nyti.ms/2uIXFDd. The Senate's Antitrust Subcommittee also held a hearing about Google's and other big tech companies' ability to stifle nascent competition. *See Subcomm. on Antitrust, Competition Policy, and Consumer Rights of the S. Comm. on the Judiciary, Competition in Digital Technology Markets: Examining Acquisitions of Nascent or Potential Competitors by Digital Platforms* (Sept. 24, 2019). Bruce Hoffman, Director of the Bureau of Competition at the Federal Trade Commission testified about the problem of "acquisitions of nascent or potential competitors by dominant firms"—a maneuver Google has been accused of using. Hoffman called such acquisitions "a

completely viable theory of anticompetitive harm" because "buying a rival is one way of killing a rival." *Id.* at 37:33-37:49.

The House Subcommittee on Antitrust has similarly held five hearings concerning the market power of Google and other big tech. *See, e.g.*, *Subcomm. on Antitrust, Commercial, and Administrative Law of the H. Comm. on the Judiciary, Field Hearing: Online Platforms and Market Power, Part 5: Competitors in the Digital Economy* (Jan. 17, 2020), bit.ly/2uShtE6. These hearings covered a range of issues, including hearing testimony from Google's competitors. The latest hearing included testimony from Patrick Spence, the CEO of Sonos, Inc., a high-end audio company, which has recently sued Google for patent infringement. At the hearing, Spence testified that "Google has gone so far as to dictate what features [Sonos] can have in [their] products" due to Google's market dominance. *Id.* at 4-5 (statement of Patrick Spence). Because of that dominance, Spence stated, "[n]ew ideas are being suppressed and we're losing innovation." *Id.* at 4. For example, Sonos developed "voice concurrency" or the "technical ability to host multiple voice assistants on its smart speakers simultaneously." *Id.* Sonos developed this program specifically because it was "a feature that consumers told [Sonos] they wanted." *Id.* But as a condition of using Google's voice assistant in that product, Google demanded that Sonos "never allow concurrency with another general voice assistant." *Id.* at 5. This forced Sonos to restrict certain features, which, in turn, was "bad for consumers." *Id.* Spence also testified that Google was

"[u]sing their role … to tilt the playing field in favor of their own products." *Id.*

DOJ & FTC investigations. The Department of Justice and the Federal Trade Commission are conducting their own investigations of Google's anticompetitive practices. Both agencies share authority in the antitrust space, and both consider "tech-sector competition issues ... a priority." Brent Kendall, *Justice Department to Open Broad, New Antitrust Review of Big Tech Companies*, Wall St. J. (July 23, 2019), on.wsj.com/37uDxC3. Last year the Department of Justice opened a "broad antitrust review into whether dominant technology firms" like Google "are unlawfully stifling competition." *Id.* Makan Delrahim, DOJ's top antitrust official, stated that the impetus for the investigation was to protect consumers. "Without the discipline of meaningful market-based competition," he said in a statement, "digital platforms may act in ways that are not responsive to consumer demands." *Id.*

Recently, the DOJ has focused on Google's online advertisement tools. *See* Keach Hagey & Rob Copeland, *Justice Department Ramps Up Google Probe, With Heavy Focus on Ad Tool*s, Wall St. J. (Feb. 5, 2020), on.wsj.com/2UV0nQy; Daniel Carnahan, *The DOJ's antitrust probe into Google is honing in on its third-party advertising business*, Business Insider (Feb. 7, 2020), bit.ly/2uAWfup. The Department is concerned about "how Google's third-party advertising business interacts with publishers and advertisers," especially since Google acquired DoubleClick, an ad-tech company, in 2008. Hagey & Copeland, *supra.*

Specifically, the Justice Department is looking into two actions: 1) "Google's integration of its ad server, the leading tool for websites to put ad space up for sale, with its ad exchange, the industry's largest digital ad marketplace"; and 2) Google's "decision to require advertisers to use its own tools to buy ad space on YouTube." *Id.* "Google's ad-tech business consists of software used to buy and sell ads on sites across the web. The company owns the dominant tool at every link in the complex chain between online publishers and advertisers, giving it unique power over the monetization of digital content. Many publishers and advertising rivals have charged that it has tied these tools together and to its owned-and-operated properties such as search and YouTube in anticompetitive ways." *Id.*

Additionally, just this month, Justice Department officials attended a major conference in Silicon Valley to inquire whether Google and other big-tech companies are "using dominant market positions to suppress competition" and to crush venture-capital investment in startup companies. Brent Kendall, *The State of Startups: Tech Experts, DOJ Officials Weigh In*, Wall St. J. (Feb. 13, 2020), on.wsj.com/2OUSCWO.

The FTC similarly launched its own investigation of Google. Just this month, a unanimous FTC announced that it intends to examine Alphabet (Google) and all acquisitions and mergers it has consummated in the last decade. Lauren Feiner, *FTC will examine prior acquisitions by Alphabet, Amazon, Apple, Facebook and Microsoft*, CNBC (Feb. 11, 2020), cnb.cx/2vCTMPW. Google will have to turn over

information about those acquisitions and mergers that were small enough to escape antitrust review in order "to determine whether they bought up fledgling firms to remove them as potential future competitors." Kendall, *The State of Startups: Tech Experts, DOJ Officials Weigh In*, *supra*. Ultimately, the FTC is "seeking to determine whether [Google and others] acquired smaller rivals in ways that harmed competition, hurt consumers and evaded regulatory scrutiny." John D. McKinnon & Deepa Seetharaman, *FTC Expands Antitrust Investigation Into Big Tech*, Wall S. J. (Feb. 11, 2020), on.wsj.com/323jcCM.

Officials and big-tech watchers alike have underscored the importance of this move. "Google didn't invent YouTube," FTC Commissioner Rohit Chopra lamented, explaining "why [he] voted to order Google … to hand over a decade or records about their buying binge." Rohit Chopra, Twitter (Feb. 11, 2020), bit.ly/3bCB0ZH. Google and others, he continued "are convinced that their dominance is due to their genius and innovation. But the truth is that so many can get big by swallowing up or shutting down potential threats. They don't need to invent killer apps if they can stay on top through killer acquisitions." *Id.* And tech-watchers have noted that "[p]utting all the tiny little puzzle pieces of the picture together may, in fact, be devastating, especially if it yields important conclusions about strategy, about how a big company can stifle and mothball competition and, yes, what was said in the rooms where it all happened." Kara Swisher, *Big Tech's Takeovers Finally Get Scrutiny*, N.Y. Times (Feb. 14, 2020), nyti.ms/39wV65C.

State Attorney General Investigations. Adding "investigative muscle and political momentum to the intensifying scrutiny of the tech giants by federal watchdog agencies and Congress," a bipartisan group of state attorneys general from nearly every state in the country launched an antitrust investigation into Google at the end of last year. Steve Lohr, *Google Antitrust Investigation Outlined by State Attorneys General*, N.Y. Times (Sept. 9, 2019), nyti.ms/326fUyJ. The States are targeting Google's use of its own "technology and power to squeeze out the competition and favor its own products" as well as issues surrounding the Android, Google's advertising practices, and its search businesses. Hirsch, *supra*. Texas Attorney General Ken Paxton was concerned in particular about "Google's business practices [which] may have undermined consumer choice, stifled innovation, violated users' privacy and put Google in control of the flow and dissemination of online information." Lohr, *Google Antitrust Investigation Outlined by State Attorneys General*, *supra*. Not only is this a high priority for the 48 States, D.C., and Puerto Rico, but the bipartisan coalition is committing a growing abundance of resources to investigation. Hirsch, *supra*.

Notably, Google has sought to thwart this bipartisan effort through gamesmanship. General Paxton explained that Google is "pushing us towards a fight" by trying to stall the investigation. Ylan Mui, *Texas AG accuses Google of delaying antitrust investigation and 'pushing us towards a fight'*, CNBC (Feb. 5, 2020), cnb.cx/2uCWntq. Paxton further

explained that Google has attempted to delay the investigation by trying to prevent the States from hiring certain outside consultants. *Id.*

* * *

In sum, any effort by Google to portray itself as a defender of competition or consumers rings hollow in light of its long and detailed history of abusing its dominant position to the detriment of a competitive marketplace. This Court should accordingly view with significant skepticism any of Google's claims that a ruling in its favor is needed to protect consumers or ensure a competitive marketplace.

CONCLUSION

The Court should affirm the decision below.

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