

Supreme Court denies Epic's request to open up App Store payments during appeals

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The Supreme Court Wednesday ruled that a federal judge's injunction against Apple would not be allowed to take effect immediately, rather than waiting for Apple's own Supreme Court appeal. That means *Fortnite*-maker Epic Games and other developers in Apple's App Store will still be barred from pointing customers to outside purchase points to avoid Apple's commission.

Justice Elena Kagan, who handles emergency petitions for California and other states, turned down Epic's request, as seen on the case's Supreme Court page (and initially reported by Reuters, among others). Epic's application stems from a complex series of rulings related to Epic's initial 2020 lawsuit. Apple had largely won in decisions from a district court in 2022, and then the 9th Circuit Court of Appeals in April. Those decisions found that Apple's policies that iOS apps only be available through its App Store, and those apps only use its own in-app payment systems, did not violate

antitrust rules.

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The 9th Circuit court did, however, affirm a lower-court decision that there was anti-steering language in Apple's developer agreement. Prohibiting developers from pointing to outside purchase methods violated California's Unfair Competition Law, the courts ruled. The 9th Circuit allowed an injunction prohibiting Apple from enforcing its anti-steering language to remain in place but put a stay on it until a potential Apple appeal to the Supreme Court had run its course.

That injunction is what Epic sought to push forward, but Kagan denied Wednesday, in a "shadow docket" ruling that offered no further writing than "Application (23A78) denied by Justice Kagan." Epic had argued to the Supreme Court that allowing Apple's App Store rules to stand would "injure not only Epic but innumerable consumers and other app developers for a significant period of time." Apple has 90 days from the 9th Circuit's July 17 ruling to have its appeal on the outside payment ruling taken up by the Supreme Court or else the 9th Circuit ruling could stand.

More than 30 states' attorneys general filed amicus briefs with the 9th Circuit siding with Epic. Epic Games' tentpole title, *Fortnite*, eventually found its way back onto iOS through Microsoft's cloud gaming offerings. Since the lawsuit's filing, Apple has changed its policies, at least for apps providing audio, video, and reading, to allow in-app links to alternative payment options.

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