No. 18-929

IN THE

# Supreme Court of the United States

MARCUS & MILLICHAP REAL ESTATE INVESTMENT SERVICES, INC. AND MARCUS & MILLICHAP CAPITAL CORPORATION,

*Petitioners,*

*v.*

RAE WEILER,

*Respondent.*

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**ON PETITION FOR A WRIT OF CERTIORARI TO THE CALIFORNIA COURT OF APPEAL, FOURTH APPELLATE DISTRICT**

## MOTION FOR LEAVE TO FILE AND BRIEF *AMICI CURIAE* OF THE CALIFORNIA BUILDING INDUSTRY ASSOCIATION, THE CALIFORNIA BUSINESS PROPERTIES ASSOCIATION, THE CALIFORNIA MANUFACTURERS & TECHNOLOGY ASSOCIATION, CITIZENS AGAINST LAWSUIT ABUSE, AND LION REAL ESTATE GROUP LLC IN SUPPORT OF PETITIONERS

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February 19, 2019

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The California Building Industry Association ("CBIA"), the California Business Properties Association ("CBPA"), the California Manufacturers & Technology Association ("CMTA"), Citizens Against Lawsuit Abuse ("CALA"), and Lion Real Estate Group LLC ("Lion") hereby move, pursuant to Supreme Court Rule 37.2, for leave to file a brief *amici curiae* in support of the petition for writ of *certiorari* to the California Court of Appeal, Fourth Appellate District. CBIA, CBPA, CMTA, CALA, and Lion are filing this motion because Respondent declined to consent to the filing of their brief.* A copy of the proposed brief is attached.

As explained more fully on pages 1 through 3 of the attached brief under "Interest of *Amici Curiae*," proposed amici have a strong interest in this case. CBIA is a statewide non-profit trade association comprised of over 3,000 member companies that are involved in all aspects of the housing and home-building industry throughout California. Collectively, its members employ approximately 100,000 people and are responsible for producing approximately 80 percent of all new homes built and sold annually in California. CBIA's members often employ arbitration agreements in their contracts. CBIA thus has a strong interest in the proper application and enforcement of the Federal Arbitration Act ("FAA").

CBPA is the recognized voice of all aspects of the commercial retail industrial real estate industry in California—representing the largest commercial real

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* Proposed *amici* requested consent from Respondent on February 7, 2019. Respondent had not responded as of February 18, 2019.

estate consortium with over 10,000 industry members. CBPA is a coalition of the Leading companies and professional associations in the commercial, industrial, and retail real estate sector. Established in 1972, CBPA proudly serves as the legislative and regulatory advocate for property owners, tenants, developers, retailers, contractors, land use attorneys, brokers, and other professionals in the industry by representing their interests at the State Capitol and in Washington, DC.

CMTA is an independent not-for-profit business association that works to improve and enhance a strong business climate for California's 30,000 manufacturing, processing, and technology-based companies. CMTA represents 400 businesses from the entire manufacturing community—an economic sector that generates more than $230 billion every year and employs more than 1.2 million Californians. CMTA regularly appears before the courts as an *amicus curiae* in cases of importance to California businesses, including in cases involving the application of the FAA.

CALA is a nonpartisan grassroots movement of concerned citizens and businesses fighting against lawsuit abuse across the United States. CALA serves as a watchdog to challenge abuses within our civil justice system, and engages the public and the media to deliver the message that lawsuit abuse is alive and well, and that all Americans are paying the price. CALA members and supporters represent a broad and diverse cross section of people. They own small retail stores and hotels, manufacturing firms, real estate brokerages, trucking companies, and more. However, the bulk of CALA's supporters are several thousand workers and consumers

concerned about the impacts of lawsuit abuse. CALA and its members believe that arbitration is a pro-consumer alternative to litigation that allows legal disputes to be fairly and efficiently resolved without incurring the cost, stress, and often lengthy ordeal of a lawsuit.

Lion is a multifamily and commercial property investor based in Los Angeles, CA. Since its founding in 2007, Lion has acquired close to 100 properties with a total purchase price of over $400 million and invested over $185 million of equity on behalf of investors. Lion currently owns and operates multifamily and commercial properties in Texas, Tennessee, North Carolina, and California. Lion often includes arbitration clauses in contracts and has a strong interest in ensuring that parties honor—and the courts enforce—these agreements.

Collectively, proposed *amici* have a strong interest in the fair and consistent enforcement of arbitration agreements, as well as in the Court's faithful and consistent application of the FAA and its "equal-footing principle." *Kindred Nursing Ctrs. Ltd. P'ship v. Clark*, 137 S. Ct. 1421, 1428 (2017).

Accordingly, proposed *amici* respectfully request that the Court grant leave to file the attached brief as *amici curiae*.

Respectfully submitted,

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February 19, 2019

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## INTEREST OF *AMICI CURIAE*[1]

The California Building Industry Association ("CBIA") is a statewide non-profit trade association comprised of over 3,000 member companies that are involved in all aspects of the housing and home-building industry throughout California. Collectively, its members employ approximately 100,000 people and are responsible for producing approximately 80 percent of all new homes built and sold annually in California. CBIA's members often employ arbitration agreements in their contracts. CBIA thus has a strong interest in the proper application and enforcement of the Federal Arbitration Act ("FAA").

The California Business Properties Association ("CBPA") is the recognized voice of all aspects of the commercial retail industrial real estate industry in California—representing the largest commercial real estate consortium with over 10,000 industry members. CBPA is the designated legislative advocate for the International Council of Shopping Centers (ICSC), the California Chapters of the Commercial Real Estate Development Association (NAIOP), the Building Owners and Managers Association of California (BOMA), the Retail Industry Leaders Association (RILA), the Institute of Real Estate Management (IREM), and the Association of Commercial Real Estate—Northern and Southern

1. Pursuant to this Court's Rule 37.6, counsel for *amici curiae* certifies that this brief was not authored in whole or in part by counsel for any party and that no person or entity other than *amici curiae*, their members, or their counsel has made a monetary contribution intended to fund the preparation or submission of this brief. All parties received timely notice of *amici curiae*'s intent to file. While Petitioners consented to the filing of this brief, Respondent did not, and this brief is filed pursuant to the preceding motion.

California (ACRE), the National Association of Real Estate Investment Trusts (NAREIT), AIR Commercial Real Estate Association (AIR CRE), and the California Association for Local Economic Development (CALED). CBPA is a coalition of the leading companies and professional associations in the commercial, industrial, and retail real estate sector. Established in 1972, CBPA proudly serves as the legislative and regulatory advocate for property owners, tenants, developers, retailers, contractors, land use attorneys, brokers, and other professionals in the industry by representing their interests at the State Capitol and in Washington, DC.

The California Manufacturers & Technology Association ("CMTA") is an independent not-for-profit business association that works to improve and enhance a strong business climate for California's 30,000 manufacturing, processing, and technology-based companies. CMTA represents 400 businesses from the entire manufacturing community—an economic sector that generates more than $230 billion every year and employs more than 1.2 million Californians. CMTA regularly appears before the courts as an *amicus curiae* in cases of importance to California businesses, including in cases involving the application of the FAA.

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broad and diverse cross section of people. They own small retail stores and hotels, manufacturing firms, real estate brokerages, trucking companies, and more. However, the bulk of CALA's supporters are several thousand workers and consumers concerned about the impacts of lawsuit abuse. CALA and its members believe that arbitration is a pro-consumer alternative to litigation that allows legal disputes to be fairly and efficiently resolved without incurring the cost, stress, and often lengthy ordeal of a lawsuit.

Lion Real Estate Group LLC ("Lion") is a multifamily and commercial property investor based in Los Angeles, CA. Since its founding in 2007, Lion has acquired close to 100 properties with a total purchase price of over $400 million and invested over $185 million of equity on behalf of investors. Lion currently owns and operates multifamily and commercial properties in Texas, Tennessee, North Carolina, and California. Lion often includes arbitration clauses in contracts and has a strong interest in ensuring that parties honor—and the courts enforce—these agreements.

Collectively, *amici* have a strong interest in the fair and consistent enforcement of arbitration agreements, as well as in the Court's faithful and consistent application of the FAA and its "equal-footing principle." *Kindred Nursing Ctrs. Ltd. P'ship v. Clark*, 137 S. Ct. 1421, 1428 (2017).

## INTRODUCTION AND SUMMARY OF ARGUMENT

Congress enacted the Federal Arbitration Act ("FAA") nearly a century ago to override judicial hostility toward arbitration and ensure that parties' agreements to arbitrate would be enforced according to their terms. *See Am. Express Co. v. Italian Colors Rest.*, 570 U.S. 228, 232-33 (2013). The FAA makes written arbitration agreements "valid, irrevocable, and enforceable" as a matter of federal law, 9 U.S.C. § 2, and places them "on equal footing with all other contracts." *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 443 (2006). Accordingly, courts must enforce arbitration agreements according to their terms, except on state-law grounds that are generally applicable to any contract. *See AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 343 (2011). When a court refuses to enforce an arbitration agreement based on the application of a state-law rule or policy that disfavors arbitration agreements, the decision is "inconsonant with, and is therefore preempted by, the federal law." *Doctor's Assocs., Inc. v. Casarotto*, 517 U.S. 681, 688 (1996) (internal quotation marks omitted). This is precisely the issue here.

Respondent and her husband—who have decades of experience in commercial real estate—purchased a restaurant property in Texas, for which Petitioners served as real estate and loan brokers. The parties' purchase contract included a clause obligating all parties to arbitrate any dispute arising from the transaction. Specifically, the arbitration clause stated that "[t]he parties have agreed to submit disputes to mandatory arbitration" and "[e]ach of [the parties] waives the right to commence an action in connection with this Agreement

in any court and expressly agrees to be bound by the decision of the arbitrator…." Pet. Br. 10-11. The clause required arbitration under the Commercial Arbitration Rules of the American Arbitration Association ("AAA"); those rules include a cost-sharing provision, providing that "[t]he expenses of witness for either side shall be paid by the party producing such witnesses. All other expenses of the arbitration, including required travel and other expenses of the arbitrator, AAA representatives, and any witness and the cost of any proof produced at the direct request of the arbitrator, shall be borne equally by the parties[.]" Pet. Br. at 11; *see* AAA Commercial Arbitration Rules, R-54. Notably, AAA rules reserve authority to the arbitrator to reallocate costs in any final award. *Id*.

Respondent's investment was not as successful as she had hoped, and approximately seven years after the purchasing the property, she filed a California state court complaint against Petitioners claiming that "she acquired the Texas property for $2 million above fair market value, based on misrepresentations and other wrongdoing by defendants" and seeking compensatory and punitive damages. Pet. App. 4a. Petitioners responded by moving to compel arbitration. Respondent did not contest that the dispute was properly arbitrable, and the trial court stayed the case and ordered the matter to be arbitrated before AAA. Pet. App. 4a. In January of 2013, Respondent initiated arbitration, advancing a claim for $2.8 million. Pet. App. 4a-5a.

The parties proceeded with arbitration before a three-arbitrator panel for nearly three years before Respondent for the first time complained about the cost-sharing provision in the arbitration clause. Pet. App. 27a. Although

"it is undisputed that [she] could afford the arbitration fees at the time the agreement was entered into," Pet. App. 27a, Respondent filed an action for declaratory relief in California Superior Court, seeking to be excused from her obligation to pay half of the arbitration costs and demanding that the Petitioners either pay the full arbitration costs or lose the right to arbitrate altogether. Pet. App. 6a.

The trial court rejected Respondent's attack on the cost-sharing provision. Pet. App. 29a-30a. The court granted summary judgment for Petitioners, emphasizing that "[n]o authority has been provided by [Respondent] which would authorize this court to interrupt an ongoing arbitration to consider a party's ability to pay arbitration costs," Pet. App. 27a, and noting that arbitrators retain the right to reallocate costs in any final award, Pet. App. 28a; *see* AAA Commercial Arbitration Rules, R-23, R-54.

The California Court of Appeal reversed. Instead of viewing Respondent's challenge to the arbitration agreement as based on unconscionability, the Court of Appeal construed her attack as one grounded in public policy. Paying mere lip service to the FAA, the court stated that "the enforcement of valid arbitration provisions, in some situations … must cede to an even greater, unwavering interest on which our country was founded—justice for all." Pet. App. 2a. And the Court of Appeal remanded the case to the trial court to determine whether Respondent's present circumstances render continued arbitration unaffordable for her and thus "outweigh [Petitioners'] contractual right to arbitrate." Pet. App. 3a, 9a.

This refusal to enforce a routine arbitration clause based on abstract public-policy grounds flouts the FAA in multiple respects: it singles out arbitration agreements for disfavored treatment, *see Kindred Nursing Ctrs. Ltd. P'ship v. Clark*, 137 S. Ct. 1421, 1426 (2017); refuses to "respect and enforce the parties' chosen arbitration procedures," *Epic Sys. Corp. v. Lewis*, 138 S. Ct. 1612, 1621 (2018); and runs contrary to the federal policy in favor of arbitration, *Buckeye Check Cashing, Inc.*, 546 U.S. at 443. Not only is the decision below incorrect, but in refusing to enforce an arbitration agreement on the basis of its hostility to a routine cost-sharing provision, it jeopardizes millions of arbitration agreements that include similar cost-sharing mechanisms.

Sadly, this is not the first time this Court has needed to remind the California courts of these basic precepts of law. *See, e.g.*, *Concepcion*, 563 U.S. 333; *Preston v. Ferrer*, 552 U.S. 346 (2008); *Perry v. Thomas*, 482 U.S. 482 (1987). Indeed, the Court recently admonished the California Court of Appeal that "[t]he Federal Arbitration Act is a law of the United States, and ... the judges of every State must follow it" and "authoritative interpretation[s]" thereof. *DIRECTV, Inc. v. Imburgia*, 136 S. Ct. 463, 468 (2015). Here, again, the Court must step in; summary reversal is warranted given that this case flies in the face of clearly established precedent that no state court can diminish.

## ARGUMENT

### I. The California Court of Appeal Violated The FAA By Refusing To Enforce the Parties' Arbitration Agreement As Written And Singling Out Arbitration For Disfavored Treatment.

In 1925, Congress responded to "centuries of judicial hostility to arbitration agreements," *Scherk v. Alberto-Culver Co.*, 417 U.S. 506, 510-11 (1974), by enacting the FAA, thereby codifying a "national policy favoring arbitration" and "plac[ing] arbitration agreements on an equal footing with all other contracts," *Buckeye Check Cashing, Inc.*, 546 U.S. at 443; *see also Am. Express Co.*, 570 U.S. at 232 ("Congress enacted the FAA in response to widespread judicial hostility to arbitration ….") (citing *Concepcion*, 563 U.S. at 339); *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 24 (1991) ("[The FAA's] purpose was to reverse the longstanding judicial hostility to arbitration agreements that had existed at English common law and had been adopted by American courts, and to place arbitration agreements upon the same footing as other contracts.").

Section 2 is the FAA's centerpiece. *See Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24 (1983). It makes written arbitration agreements "valid, irrevocable, and enforceable" as a matter of federal law, "save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2. The section also "create[s] a body of federal substantive law of arbitrability," *Perry*, 482 U.S. at 489, the central tenet of which is that arbitration agreements must be "enforced according to their terms." *Volt Info. Sciences, Inc.*, 489 U.S. at 479.

In its decision below, the California Court of Appeal violated three fundamental principles of the FAA: (1) the "equal footing" principle that prohibits courts from imposing rules that single out arbitration for disfavored treatment, *Concepcion*, 563 U.S. at 339; (2) the principle that arbitration agreements must be enforced "according to their terms," *Rent-A-Ctr., W., Inc. v. Jackson*, 561 U.S. 63, 68 (2010); and (3) the "liberal federal policy favoring arbitration agreements," *Moses H. Cone Mem'l Hosp.*, 460 U.S. at 24; *see also Concepcion*, 563 U.S. at 345-46 ("[O]ur cases place it beyond dispute that the FAA was designed to promote arbitration.").

### A. The Decision Below Singles Out Arbitration Agreements For Disfavored Treatment In Contravention Of The FAA's Equal-Footing Principle.

Section 2 of the FAA preempts contrary state law, *see Preston*, 552 U.S. at 353, except to the extent preserved by its savings clause. The savings clause preserves state law only if it serves as a ground "for the revocation of any contract." 9 U.S.C. § 2. The "any contract" limitation is a reference to state laws of general applicability. Accordingly, the FAA preempts any state-law rule that "singl[es] out arbitration provision for suspect status." *Doctor's Assocs., Inc.*, 517 U.S. at 687 (1996). For good reason, this rule is sometimes called the "equal-footing principle." *Kindred Nursing Ctrs.*, 137 S. Ct. at 1428.

The equal-footing principle prevents both express and subtle disfavoring of arbitration. This principle thus prohibits states from adopting novel laws or rules that apply only to arbitration. *See Perry*, 482 U.S. at 492 ("A

state-law principle that takes its meaning precisely from the fact that a contract to arbitrate is at issue does not comport with this requirement of § 2.") (citations omitted); *Doctor's Assocs., Inc.*, 517 U.S. at 687 ("Courts may not ... invalidate arbitration agreements under state laws applicable *only* to arbitration provisions."). The principle applies just as forcefully to bar the manipulation of generally applicable contract defenses in a "fashion that disfavors arbitration." *Concepcion*, 563 U.S. at 341.

The lower court violated the FAA in applying a public-policy exception specific to arbitration agreements. The parties agree that the arbitration agreement is enforceable. *See* Pet. App. 16a (noting that the plaintiff did not challenge the enforceability of the agreement). Unsurprisingly then, the court below did not find the agreement unenforceable under California law. *See* Pet. App. 16a. But the court nevertheless refused to enforce the agreement according to its terms.

"This is where the [Respondent's] argument [and the decision below] stumble[]. They don't suggest that [the] arbitration agreement[] w[as] extracted, say, by an act of fraud or duress or in some other unconscionable way that would render *any* contract unenforceable." *Epic Sys. Corp.*, 138 S. Ct. at 1622. Instead, Respondent and the lower court approached the case "from a public policy standpoint" that singled out arbitration for disfavored treatment. Invoking an abstract state policy of "justice for all," Pet. App. 2a, 12a, the court refused to enforce the parties' cost-sharing provision. And it remanded to the trial court, where a finding that continued arbitration is unaffordable to Respondent would force Petitioners to pay all of the arbitration costs or else forego their contractual

right (and release Respondent of her concomitant contractual obligation) to arbitrate. Pet. App. 12a; Pet. App. 16a-17a.

Without even considering the relative costs of traditional litigation, the lower court simply held that "justice for all" may require justice to be had only in court or else by stripping Petitioners of their right to have Respondent share in the costs of arbitration. This ruling has no basis in state contract law and is not generally applicable to other contracts. It is therefore preempted under the FAA. *See Kindred Nursing Ctrs.*, 137 S. Ct. at 1426.

### B. The Decision Below Ignores The Terms Agreed To By The Parties, Violating The Principle That Arbitration Is A Matter Of Consent.

This Court has repeatedly emphasized the "basic precept that arbitration 'is a matter of consent, not coercion,'" *Stolt-Nielsen*, 559 U.S. at 681 (quoting *Volt*, 489 U.S. at 479). Consequently, "parties are 'generally free to structure their arbitration agreements as they see fit." *Id.* at 683 (quoting *Mastrobuono v. Shearson Lehman Hutton, Inc.*, 514 U.S. 52, 57 (1995)). "Just as [parties] may limit by contract the issues which they will arbitrate, so too may they specify by contract the rules under which that arbitration will be conducted." *Volt*, 489 U.S. at 479 (citation omitted). After all, "arbitration is a matter of contract." *Rent-A-Ctr.*, 561 U.S. at 67.

The purpose of enforcing an arbitration agreement's contractual limitations is "to give effect to the intent of the parties." *Stolt-Nielsen*, 559 U.S. at 684. And such

enforcement must be "according to the[] [arbitration agreement's] terms." *Rent-A-Ctr.*, 561 U.S. at 67; *accord Volt*, 489 U.S. at 478.

The California Court of Appeal did not, however, respect the parties' agreement. Instead, the court stated that contractual obligations in a written arbitration agreement are not necessarily to be enforced, but a factor to be balanced against the degree to which Respondent could afford continued arbitration according to the contractually agreed-upon procedures. Pet. App. 12. Even worse, the court reasoned that avoiding a scenario where the costs of arbitration become too "expensive" for one party "far outweighs the interest, however strong, in respecting parties' agreements to arbitrate." Pet. App. 12. According to the Court of Appeal, then, Respondent could be excused from her contractual obligation to pay her share of the arbitration costs, based upon a public policy rationale of ensuring that Respondent would have sufficient economic incentive to continue with the adjudication of her claim. But this is not a legitimate basis for overriding the written terms of an arbitration agreement. *See Am. Express Co.*, 570 U.S. at 235 n.4 (rejecting the idea that a lack of "economically feasible" ways to pursue claims in arbitration is a public policy justification for waiver of agreed-upon procedures). And the flat refusal "to give effect to the intent of the parties," *Stolt-Nielsen*, 559 U.S. at 684, and enforce their agreement "according to [its] terms" is preempted by the FAA, *Rent-A-Ctr.*, 561 U.S. at 67.[2]

2. Respondent's naked assertion that Petitioners engaged in scorched earth tactics during the arbitration does not alter the straightforward FAA preemption analysis. Pet. App. 11a. Not only

### C. The Decision Below Runs Afoul Of The Liberal Federal Policies In Favor Of Arbitration And Arbitration Agreements.

The FAA is meant to promote, not to hinder, arbitration and to favor the enforcement of agreements. *See Concepcion*, 563 U.S. at 345-46; *Moses H. Cone Mem'l Hosp.*, 460 U.S. at 24. The public policy rule applied by the California Court of Appeal contravenes these federal policies. *Concepcion*, 563 U.S. at 344.

"Parties generally favor arbitration precisely because of the economics of dispute resolution." *14 Penn Plaza LLC v. Pyett*, 556 U.S. 247, 257 (2009); *see also Concepcion*, 563 U.S. at 344 ("The point of affording parties discretion in designing arbitration processes is to allow for efficient, streamlined procedures tailored to the type of dispute."). But the lower court's decision allowing a party to circumvent the freely agreed upon cost-sharing arrangement undermines this purpose. This new rule creates uncertainty regarding the enforcement of arbitration agreements and thus uncertainty in the negotiation thereof as well. If left uncorrected, it will inhibit the enforcement of arbitration agreements in California and undermine arbitration more broadly as a dispute-resolution mechanism for businesses and consumers who enter into contracts in California.

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is it without factual support, but AAA rules provide arbitrators with sufficient authority to ensure "a fair, efficient and economical resolution of the case," including by reallocating costs. AAA Commercial Arbitration Rules R-23; *see also id.* R-54.

This case illustrates the point. Arbitration of the underlying dispute has been delayed more than four years by spurious litigation designed entirely to undermine Petitioners' contractual arbitral rights. Pet. App. 27a. If this tactic is permitted to stand, future parties in Petitioners' posture may be coerced into foregoing their contractual right to shared costs rather than be dragged into wasteful, time-consuming subsidiary litigation. And given that cost sharing is often a default rule of arbitration, *see supra* pp. 5, 7, an incalculable number parties may find themselves in this very posture. The Court's intervention is needed to vindicate the liberal federal policies in favor of arbitration and the enforcement of arbitration agreements.

## II. Summary Reversal Is Appropriate.

A state court does not have the power to "nullify this Court's precedents." *Imburgia*, 136 S. Ct. at 468. Indeed, every state court has an "undisputed obligation" to follow them. *Id.* Thus, where the Court has interpreted the Federal Arbitration Act, "a state court may not contradict or fail to implement the rule so established." *Marmet Health v. Brown*, 565 U.S. 530, 531 (2012) (citing U.S. Const., Art. VI, cl. 2).

The decision below is judge-made law in direct contradiction to this Court's precedents. As explained above, it (1) contravenes the "equal footing" principle that prohibits courts from imposing rules that single out arbitration for disfavored treatment, *Concepcion*, 563 U.S. at 339; (2) flouts the principle that arbitration agreements must be enforced "according to their terms," *Rent-A-Ctr.*, 561 U.S. at 68; and (3) disregards the "liberal federal policy favoring arbitration agreements," *Moses H. Cone Mem'l Hosp.*, 460 U.S. at 24.

On top of that, the decision below threatens to blow a massive hole in the FAA. Cost-sharing between the parties is a common feature of arbitration. Indeed, the cost-sharing rule at issue here is a standard AAA rule. *See supra* p. 5. And it is fairly common for the adjudication of any dispute to become economically undesirable for one of the parties at some point during the process. If left uncorrected, the decision below will create an escape hatch from the FAA for parties who have become dissatisfied with the course of arbitration by allowing them to shift costs to their adversary in contravention of their contractual obligations if not negate their arbitral rights entirely.

Summary reversal is appropriate in this case because the law "is well settled and stable, the facts are not in dispute, and the decision below is clearly in error." *Schweiker v. Hansen*, 450 U.S. 785, 791 (1981) (Marshall, J., dissenting). Just this year, this Court prevented a lower court from "engraft[ing its] own exception onto the statutory text" of the FAA. *Henry Schein, Inc.*, 139 S. Ct. at 530. Swift action is necessary to reaffirm this Court's precedents and reinforce the FAA's goals of achieving "streamlined proceedings" and "expeditious results." *Preston*, 552 U.S. at 357 (internal quotation omitted); *see also 14 Penn Plaza LLC*, 556 U.S. at 257 ("Parties generally favor arbitration precisely because of the economics of dispute resolution."); *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105, 122 (2001); *Allied-Bruce Terminix Cos. v. Dobson*, 513 U.S. 265, 280 (1995); *Moses H. Cone Mem'l Hosp.*, 460 U.S. at 22 ("Congress's clear intent, in the Arbitration Act, [is] to move the parties to an arbitrable dispute out of court and into arbitration as quickly and easily as possible."). Finally, summary

reversal is particularly appropriate here, as this is not the first time that the California Court of Appeal has overrun this Court's FAA precedents. *Imburgia*, 136 S. Ct. at 471.

## CONCLUSION

*Amici curiae* respectfully request that the Court grant the petition for certiorari and summarily reverse the judgment of the California Court of Appeal.

Respectfully submitted,

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