IN THE
SUPREME COURT OF THE UNITED STATES

No. 19A335

THE RAMS FOOTBALL COMPANY, LLC and
E. STANLEY KROENKE,

Applicants,

v.

ST. LOUIS REGIONAL CONVENTION AND SPORTS COMPLEX AUTHORITY, et al.,

Respondents.

RESPONDENTS' RESPONSE TO THE RAMS FOOTBALL COMPANY, LLC'S APPLICATION FOR STAY OF MANDATE OF THE MISSOURI COURT OF APPEALS PENDING DISPOSITION OF A PETITION FOR WRIT OF CERTIORARI

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TO THE HONORABLE NEIL M. GORSUCH, ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE EIGHTH CIRCUIT:

I. INTRODUCTION

All that is before the Court is Applicants' Application for Stay pending the disposition of a petition for a writ of certiorari challenging the Missouri Court of Appeals' interpretation and application of Missouri law. The stay application expounds at length on a wide variety of matters ranging from baseless presumptions of political bias in Missouri, to the history of the Federal Arbitration Act ("FAA"), 9 U.S.C. §§1, *et seq.*, and arbitration policies, to assertions of how other courts across the country interpret Missouri law—practically everything but what Applicants are asking the Court to decide. The only issue before the Court is whether to stay the progress of this two-and-a-half-year-old case so that Applicants can file a petition for writ of certiorari to the Missouri Court of Appeals based on that court's interpretation of state law and contractual intent. Nothing about this case warrants such an extraordinary action.

Applicants challenge an intermediate state appellate court's resolution of two questions of state law: (1) that a contract did not include a delegation provision or any other clear and unmistakable evidence the parties' specifically agreed to delegate the question of arbitrability; and (2) that an arbitration provision in a 24 year-old lease did not apply to the parties' current dispute which has nothing to do with the lease or the rights or obligations therein. This case presents no significant unresolved or controverted federal question. There is no dispute over an interpretation of a federal statute or the proper federal standard. There is no established conflict among

United States Courts of Appeals or state courts of last resort, or even a *decision* of a United States Court of Appeals or a state court of last resort to be reviewed. There is no blatant disregard for this Court's precedents. A state intermediate appellate court applied the well-established legal principles announced by this Court and interpreted a contract under state law. The state's highest court—after asking the Court of Appeals to ensure it considered all necessary federal and state precedent and after over two years of litigation within all levels of the Missouri courts—declined review.

Applicants now ask this Court to stay the proceedings while they file a petition for a writ of certiorari. Such a petition will have no merit. As clearly broadcast in the stay application, that petition will do nothing more than ask this Court to "correct" the Missouri Court of Appeals' state-law determination that the parties to the 1995 lease agreement did not agree to submit questions of arbitrability to an arbitrator. The Missouri Court of Appeals applied Missouri law and the well-established principles from this Court's cases in a straight-forward manner, and the dispute has little to no significance for anyone outside these parties. Given this, Applicants cannot show a reasonable probability that such a petition would be granted, and even less so that the Missouri Court of Appeals decision would be reversed. A stay would serve only to delay this case further. Applicants have fought to avoid answering these claims in open court for over two-and-a-half years, and they have received careful review and consideration by every level of the Missouri court system along the way. No more is due or warranted. Although Applicants are

entitled to file an improbable petition for certiorari review, there is no reason to stay the trial court proceedings while they do so. Applicants' request for a stay should be denied.

II. STATEMENT OF THE CASE

Applicants would like this case to be about a clear agreement to arbitrate and a state court's hostility towards that agreement and Applicants themselves—it is not. It is about Applicants' attempt to invoke an arbitration provision in an unrelated lease agreement, and the Missouri Court of Appeals' reasonable conclusion, under Missouri law, that: (1) the court can decide questions of arbitrability because the parties did not specifically agree to arbitrate that gateway question and there is no indisputable evidence indicating a contrary intent, and (2) the lease agreement's arbitration provision does not apply to this dispute.

Although Applicants invoke an arbitration provision from a lease entered in connection with the Rams's 1995 move to St. Louis, this case is not about that move or Applicants' stadium desires at the time or the now-expired lease agreement—it is about the Rams's move from St. Louis to Los Angeles in 2016 and the failure of Applicants to comply with the binding rules in the NFL's Relocation Policy. Specifically, Respondents have alleged the following facts in support of their claims: For years leading up to Applicants' departure from St. Louis, Applicants assured Respondents that the team intended to remain in St. Louis and would negotiate in good faith as required by the Policy, all while privately planning to seek relocation as soon as possible. In 2016, after refusing to put forth any credible effort to work with

Respondents to stay in St. Louis, Applicants petitioned the NFL under its Relocation Policy for permission to relocate to Los Angeles. This process was mandated by the NFL Policy, and Applicants have admitted that they could not have relocated without receiving League approval. The NFL teams and owners voted on Applicants' petition multiple times: initially denying permission to relocate, and then, after a significant lobbying effort, approving the petition, even though the conditions for relocation were not satisfied. Respondents' claims are based on these breaches of the contractual obligations in the NFL's Relocation Policy and on Applicants' fraudulent statements throughout the process.

Contrary to Applicants' assertion, the parties did *not* enter an arbitration agreement to arbitrate "virtually any dispute between them." Application at 1. Rather, the only arbitration agreement relied on by Applicants here was contained in the 1995 lease agreement, which provided Applicants with the use of a publicly-funded stadium and established the terms governing its use.[1] The agreement also indicated that "[a]ny controversy, dispute or claim between or among any of the parties . . . to this Amended Lease, *related to this Amended Lease*, including, without limitation, any claim arising out of, in connection with, or in relation to *the interpretation, performance or breach of this Amended Lease* shall be settled by arbitration." (emphasis added). Thus, the parties to the Lease agreed to arbitrate

[1] Applicant Kroenke was not a signatory to the 1995 Lease, and Respondents have maintained throughout this litigation that he cannot invoke the arbitration provision in an agreement he did not sign. The Missouri courts did not need to address that argument as they held, correctly, that the arbitration provision does not apply to this dispute at all. *See, e.g.* Appendix at 23a (Mo. Ct. App. April 16, 2019).

disputes related to the Lease, including issues connected with the interpretation, performance, or breach of that agreement.

The old stadium and the corresponding 1995 Lease are irrelevant to the issues in dispute. In this lawsuit, there is no suggestion of any breach of that lease, no reliance on any right or performance pursuant thereto, and no need to interpret the 1995 contract. Rather, this dispute rests solely on the fact that the NFL teams and owners, Applicants included, agreed to be bound by the terms of the NFL's Relocation Policy and agreed that the Policy governed any request for Relocation. Respondents have alleged that Applicants and the rest of the NFL violated those terms in the conduct leading up to Applicants' relocation petition and in the consideration and vote on relocation in 2016. There is nothing in the 1995 Lease that can answer for or in any way impact the resolution of those claims.

Even so, Applicants have vigorously litigated their purported right to arbitrate under the 1995 Lease for the last two-and-a-half years. Applicants have yet to engage in even the initial stages of this litigation while they have litigated, appealed, and sought further review of this arbitration issue multiple times from various Missouri courts. Indeed, as demonstrated by the Appendix to the Application for Stay, Applicants have asked a Missouri court for some sort of action or review of this single issue on eight separate occasions. Throughout this process, the Missouri courts have carefully considered Applicants' arguments, applied the appropriate standards, and consistently rejected Applicants' interpretation of Missouri law to the contract at issue in this case.

As relevant here, the Missouri Court of Appeals rejected Applicants' argument that an arbitrator must decide whether the 1995 Lease's arbitration provision applies to this dispute even though the agreement contained no such delegation clause. *See* Appendix Ex. D. (Mo. Ct. App. April 16, 2019). Following case law from this Court and instruction from the Missouri Supreme Court, the Missouri Court of Appeals considered whether there was "clear and unmistakable" evidence of the parties' affirmative contractual intent for an arbitrator to decide arbitrability, as determined by state law. Appx. 14a-16a (citing *State ex rel. Pinkerton v. Fahnestock*, 531 S.W.3d 36, 43 (Mo. banc 2017), and *Rent-A-Center, West, Inc. v. Jackson*, 561 U.S. 63, 69 n.1 (2010)). The Court of Appeals explained that "the language chosen must unambiguously establish the 'parties' manifestation of intent' to withdraw from courts the authority to resolve issues of arbitrability." *Id.* at 16a (quoting *Rent-A-Center*, 561 U.S. at 69 n.1). The Court then analyzed Missouri law and determined that the "clear and unmistakable" evidence standard requires a clear expression of such an intent "measured 'at the time the parties signed the underlying agreement.'" *Id.* (quoting *State ex rel. Pinkerton v. Fahnestock*, 531 S.W.3d 36, 45 n.2 (Mo. banc 2017). Accordingly, the Missouri Court of Appeals considered whether there was unambiguous evidence the parties to the Lease intended, when the agreement was entered in 1995, for an arbitrator to determine questions of arbitrability. The Court concluded there was none: The contract language expressed no such intent, and the incorporated AAA rules did not provide for delegation at the time the contract was entered.

As they do in their Application for Stay, Applicants argued before the Missouri courts that under Missouri law, the incorporation of the AAA rules allowed for the application of future rules and that, therefore, the 2003 rule providing for delegation of questions of arbitrability should apply. The Missouri Court of Appeals acknowledged that the unambiguous evidence of contractual intent could be expressed through the incorporation of a rule providing for delegation. *Id.* at 16a. The Court noted, however, that the incorporation must include a clear reference measured at the time of contracting. *Id.* (citing *Pinkerton*, 531 S.W.3d at 45 n.2). The Court then concluded that the parties' general acceptance of potential and unknown future rules did not provide clear and unmistakable evidence that the parties intended, at the time of contracting, for an arbitrator to decide questions of arbitrability. *Id.* at 9a, 18a-19a. Specifically, the Court concluded that "an AAA arbitration rule first appearing in 2003 could not provide 'clear and unmistakable' evidence of the parties' affirmative contractual intent in 1995 for an arbitrator to have exclusive jurisdiction to decide arbitrability" as required under Missouri law. *Id.* at 9a.

Having determined that the court must resolve the gateway question of arbitrability, the Missouri Court of Appeals then rejected Applicants' argument that the 1995 Lease's arbitration provision applies to this dispute. The Court noted that a party "cannot be required to arbitrate a dispute they have not agreed to submit to arbitration," and concluded that the parties did not agree to arbitrate disputes over the obligations in the NFL's Relocation Policy. *Id.* at 19a (citing *Granite Rock Co. v.*

Int'l Bhd of Teamsters, 561 U.S. 287, 297 (2010)). The Missouri Court of Appeals further explained that the claims at issue are wholly independent of the 1995 Lease and do not require reference to or construction of the Lease and that, therefore, the Lease agreement did not apply to this dispute. *Id.* at 19a-23a. Finally, the Court found that the language of the arbitration provision indicates the parties intended to arbitrate claims related to the interpretation, performance, or breach of the Lease and that Respondents' claims do not fall within the scope of that language. *Id.* The Missouri Court of Appeals then denied Applicants' motion to stay that court's mandate pending the filing and disposition of a petition for a writ of certiorari. *Id.* at Ex. A.

III. THE APPLICATION FOR STAY OF THE MANDATE OF THE MISSOURI COURT OF APPEALS SHOULD BE DENIED

An applicant for a stay pending the filing and disposition of a petition for writ of certiorari must show: "(1) a reasonable probability that four Justices will consider the issue sufficiently meritorious to grant certiorari; (2) a fair prospect that a majority of the Court will vote to reverse the judgment below; and (3) a likelihood that irreparable harm will result from the denial of a stay." *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010). "In close cases the Circuit Justice or the Court will balance the equities and weigh the relative harms to the applicant and to the respondent." *Id.* (citations omitted).

Applicants have not, and cannot, make the requisite showing of any of the three mandatory factors. First, after all of the hyperbole and distraction is set aside, Applicants simply ask this Court to correct a perceived error by the Missouri Court

of Appeals in applying this Court's well-established legal principles and interpreting contract formation under Missouri law. They have identified no significant federal question, no conflict which requires this Court's attention, and no disregard of this Court's precedent. Given this, there is no reasonable probability of this Court granting such a petition for a writ of certiorari. Sup. Ct. R. 10. ("A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law."). Second, the Missouri Court of Appeals' application of this Court's principles and Missouri law was wholly proper and reasonable and, therefore, Applicants cannot show a "fair prospect" of this Court reversing on the merits. Third, Applicants already have received a full and fair review of their arbitration claim through all levels of the Missouri courts and, given the posture of this case, face no risk of any irreparable harm. The application for a stay of the mandate of the Missouri Court of Appeals should be denied.

A. Applicants Cannot Show a Reasonable Probability That This Court Will Grant Certiorari.

1. The Missouri Court of Appeals' decision did not decide any significant question of federal law and does not conflict with this Court's precedents.

The Application for Stay tries to skirt the fact that there is no important federal question at stake in this dispute. At its essence, the Application argues the Missouri Court of Appeals incorrectly interpreted Missouri law and erred in finding both that the 1995 Lease did not contain clear and unmistakable evidence of an antecedent agreement to delegate questions of arbitrability and that the Lease's arbitration provision did not apply to this dispute. Thus, Applicants' petition for writ of certiorari

would not ask this Court to determine or explain an applicable federal standard or interpret a federal statutory or Constitutional provision. Indeed, the only federal law identified in the Application is the FAA, but the applicable principles under that statute are well-established, and Applicants do not even suggest this dispute implicates any unresolved statutory question. Instead, Applicants indicate they simply will ask this Court to correct the so-called error of the Missouri Court of Appeals in applying this Court's "clear and unmistakable" evidence standard and in interpreting contractual intent under Missouri law. As discussed below, there was no error, but, regardless, this fact-dependent request for error-correction of the interpretation and application of state law is not appropriate for this Court's review.

Applicants do not deny the state-law nature of this case with any earnest, but they attempt to conjure up a federal issue by suggesting that the Missouri Court of Appeals' application of Missouri law evinces "judicial hostility" to agreements to arbitrate gateway questions of arbitrability. Specifically, Applicants argue that the Missouri Court of Appeals singled out such agreements for disfavored treatment by requiring heightened proof, beyond standard contract principles, to manifest contractual intent to arbitrate arbitrability. Application at 26. The Missouri Court of Appeals' approach, however, stems directly from this Court's cases. Under this Court's explicit and oft-repeated principles, a court is to determine questions of arbitrability unless there is clear and unmistakable evidence the parties agreed to arbitrate those issues, as determined by state law. *Rent-A-Center, West, Inc. v. Jackson*, 561 U.S. 63, 69 n.1 (2010)*; First Options of Chicago, Inc. v. Kaplan*, 514 U.S.

938, 943-45 (1995); *AT&T Tech., Inc. v. Communications Workers*, 475 U.S. 643, 649 (1986).

This Court itself has described this rule as an "important qualification" and a "caveat" to the principle that ordinary state-law rules of contract interpretation apply. *First Options*, 514 U.S. at 944; *Rent-A-Center*, 561 U.S. at 69 n.1. The question of who decides arbitrability is treated somewhat differently than other questions of contractual formation and requires heightened proof that the parties agreed to arbitrate that gateway question. *First Options*, 514 U.S. at 944 (explaining that there is an "important qualification" which applies when courts decide whether a party has agreed that arbitrators decide questions of arbitrability and stating that there must be "clear and unmistakable" evidence of such an antecedent agreement); *Rent-A-Center*, 561 U.S. at 69 n.1 (describing the "caveat" applicable to the question of who determines arbitrability and explaining that courts should apply a "heightened standard" in determining whether the parties agreed to arbitrate arbitrability). As this Court has explained, the critical inquiry is whether the parties agreed to submit questions of arbitrability to an arbitrator, and, given the importance and nature of that question, this Court requires that the intent to enter such an agreement be unambiguously expressed. *First Options*, 514 U.S. at 945. This heightened standard is necessary to avoid forcing parties to arbitrate an issue (arbitrability) they did not agree to submit:

> On the other hand, the former question — the 'who (primarily) should decide arbitrability' question — is rather arcane. A party often might not focus on that question or upon the significance of having arbitrators decide the scope of their own power. And, given the principle that a

> party can be forced to arbitrate only those issues it specifically agreed to submit to arbitration, one can understand why courts might hesitate to interpret silence or ambiguity on the 'who should decide arbitrability' point as giving the arbitrators that power, for doing so might too often force unwilling parties to arbitrate a matter they reasonably would have thought a judge, not an arbitrator, would decide.

Id. (citations omitted).

Here, the Missouri Court of Appeals faithfully followed this approach and considered whether there was indisputable evidence the parties considered the question of who determines arbitrability and specifically agreed to delegate that issue to an arbitrator. The Court's conclusion that a rule adopted in 2003 did not express an agreement to arbitrate arbitrability in 1995 is not hostile to arbitration agreements or contrary to this Court's precedents.

For the same reason, Applicants' exaggerated suggestions that the Missouri Court of Appeals' decision makes it "all but impossible" to delegate questions of arbitrability to an arbitrator or to incorporate evolving rules in arbitration agreements fall flat. Nothing in the intermediate appellate court's decision prevents the enforcement of clearly expressed agreements to arbitrate gateway questions of arbitrability or the incorporation of evolving rules to govern the conduct of arbitrations. As noted above, the Missouri Court of Appeals simply applied the well-established rules of this Court and Missouri law for determining whether questions of arbitrability are for the court or for the arbitrator. If, at the time of contracting, the parties intended to delegate such questions and clearly expressed that intent through either contractual language or the clear incorporation of such a rule, nothing in the Court of Appeals decision would stand in the way of enforcing that intent. The

parties to the 1995 Lease simply did not do so. Likewise, the parties are free to incorporate procedural rules to govern the conduct of an arbitration—and are free to recognize that those rules may change in the future.

But neither of those undisputed principles, regarding clear delegations or incorporation generally, are relevant to the question decided by the Missouri Court of Appeals. As noted, the parties did *not* include unambiguous evidence of an agreement to arbitrate questions of arbitrability in 1995, and there is no evidence the prospect of arbitrating arbitrability was even considered at the time the parties entered into the Lease. *Cf. First Options*, 514 U.S. at 945 (noting that a heightened standard is called for because "'who should determine arbitrability'" is an "arcane" question the parties could easily overlook). Moreover, the Missouri Court of Appeals was not asked to determine what rules govern the conduct of the arbitration generally; it was asked to determine whether the parties agreed in 1995 to arbitrate gateway questions of arbitrability. This Court has singled out that question as requiring clear and unmistakable evidence of an intent to delegate so as not to force parties to arbitrate what they did not agree to submit to arbitration. *Id.* Far from evincing "judicial hostility," the Missouri Court of Appeals' decision was a reasonable and proper application of that standard and Missouri law.

2. Applicants have not identified a relevant conflict regarding federal law or any conflict among United States Courts of Appeals or state courts of last resort.

Applicants also try to distract by pointing to a supposed conflict among lower courts regarding whether incorporation of AAA rules can constitute clear and

unmistakable evidence of an antecedent agreement to arbitrate arbitrability if the contract was entered before the AAA rules provided for delegation. There is no conflict warranting this Court's attention. First, and critically, Applicants cannot escape the fact that the purported conflict involves an issue of state law. *First Options*, 514 U.S. at 944 (determination of whether parties agreed to arbitrate arbitrability is based on state law); *Bell v. Cendant Corp.*, 293 F.3d 563, 566 (2nd Cir. 2002) (courts must determine if there is clear and unmistakable evidence from the agreement, as construed by state law, that parties agreed to arbitrate arbitrability). Applicants complain that the Missouri Court of Appeals' interpretation of Missouri law conflicts with other courts' interpretation of Missouri law and note that some courts have reached contradictory conclusions under the laws of various states. Application at 22-31. Disagreement over Missouri law—or any state's law, however, is not the type of conflict justifying this Court's jurisdiction and consideration. *See, e.g.*, *Int'l Longshoremen's Ass'n v. Davis*, 476 U.S. 380, 387 (1986) ("[W]e have no authority to review state determinations of purely state law . . . .").

Second, the decision below is not an opinion of a United States Court of Appeals or a state court of last resort. As noted in the Supreme Court Rules, the conflicts which typically may warrant certiorari and this Court's resolution are conflicts involving decisions of the United States Court of Appeals and state courts of last resort. Sup. Ct. R. 10. Those decisions frequently present the effective final word on an issue for a significant geographic area, and this Court may be called upon to reconcile inconsistent interpretations of federal law applicable in different areas of

the country. The same is not true for decisions of state intermediate appellate courts. *Cf., e.g.*, *Huber v. New Jersey Dept. of Envtl. Prot.*, 131 S. Ct. 1308 (2011) (the Chief Justice, Scalia, Thomas and ALITO, JJ., statement respecting denial of certiorari) ("[B]ecause this case comes to us on review of a decision by a state intermediate appellate court, I agree that today's denial of certiorari is appropriate."). Intermediate appellate court decisions often have a narrower reach and can be corrected or amended, if necessary, by the state court of last resort. This is particularly significant when, as here, the decision encompasses substantial and pervasive state-law issues. It is a state's highest court which has the right and responsibility to definitively interpret the contours of state law. *See, e.g.*, *Montana v. Wyoming*, 563 U.S. 368, 377 n.5 (2011) ("The highest court of each State, of course, remains 'the final arbiter of what is state law.'") (quoting *West v. AT&T Co.*, 311 U.S. 223, 236 (1940)). The Missouri Court of Appeals, below, simply interpreted the contract before it; it did not purport to establish a generally applicable rule under Missouri law, and its decision will not have the effect of doing so.

Finally, even when phrased in its most general terms, the issue raised in the application for stay has little national or continuing significance. Applicants have identified only a handful of cases over the last 15 years which address the issue in its broadest form. *See* Application at 22-31 (citing and discussing cases). The AAA rules were amended 16 years ago to provide for delegation of arbitrability questions. Therefore, only contracts which were entered before 2003 and which incorporate the AAA rules have the potential to create the ambiguity at issue here. Not surprisingly,

the only cases Applicants cite addressing this issue within the last eight years are the two cases which involve this particular arbitration agreement: the Missouri Court of Appeals decision below and *McAllister v. The St. Louis Rams, LLC*, No. 16-cv-172 (E.D. Mo. Nov. 17, 2017).[2] In short, this state law issue has never engendered widespread interest, and it is, at best, of declining significance and unlikely to recur with any frequency.

Applicants' reliance on *Henry Schein, Inc. v. Archer & White Sales, Inc.* 138 S. Ct. 1185 (2018) (granting stay); 139 S. Ct. 524 (2019) (resolving merits), does not suggest differently and, in fact, serves to highlight why a stay is not necessary here. Applicants refer this Court to *Schein* as an example of a case in which this Court granted a stay pending the filing and disposition of a petition for a writ of certiorari in the arbitration context. *See, e.g.*, Application at 5. This case, however, is nothing like *Schein*; in fact, in many ways it is nearly the opposite. The petition in *Schein* sought review of a decision of the United States Court of Appeals for the Fifth Circuit which had applied a categorical rule allowing courts to ignore a clearly expressed delegation provision if the court found the request for arbitration wholly groundless. In so doing, the Fifth Circuit's decision had resolved a recurring question of whether courts could apply an exception to the mandate of the Federal Arbitration Act, even though the exception was not included in the statutory text. *See generally Schein*,

[2] Applicants also discuss *Wells Fargo Advisors, LLC v. Sappington*, 884 F.3d 392 (2nd Cir. 2018). The arbitration provisions in *Wells Fargo*, however, were signed between 2011 and 2014, after the AAA rules were amended to delegate questions of arbitrability to the arbitrator. Therefore, the facts of that case did not present the same issue addressed by the Missouri Court of Appeals below.

139 S. Ct. 524. In addition, the Fifth Circuit's decision was part of an established split among at least six circuits of the United States Court of Appeals, with many of the decisions issued within the last few years. *Id.* at 528-29. Thus, *Schein* asked this Court to resolve a clear conflict among the United States Courts of Appeals regarding an important federal question which likely would arise again throughout the country.

Here, on the other hand, Applicants challenge the decision of an intermediate state appellate court which applied settled legal principles and state law to conclude the parties did not agree at the time of contracting to arbitrate either the antecedent question of arbitrability or the issues in dispute. As noted above, there is no significant federal question, no conflict among the United States Courts of Appeals, and little chance of this issue arising with any frequency in other cases. Applicants' incantation of general arbitration policy and presumption of "judicial hostility" does not transform this state-law contract-formation dispute into one worthy of certiorari review.

B. Applicants Have Not Demonstrated a Fair Chance That This Court Would Reverse the Missouri Court of Appeals' Decision on the Merits.

A stay is not appropriate here for the additional reason that Applicants cannot demonstrate a fair chance that the Missouri Court of Appeals' decision would be reversed. The Missouri Court of Appeals correctly concluded that the parties did not agree in 1995 to arbitrate gateway questions of arbitrability and that the amendment to the AAA rules eight years later did not retroactively create the requisite contractual intent for such an antecedent agreement. Further, the Court of Appeals

properly interpreted, under Missouri law, that the 1995 Lease had no application to this dispute and that, therefore, the arbitration provision does not apply.

1. The Missouri Court of Appeals properly decided arbitrability.

The threshold question before interpreting the scope of any arbitration provision is who—the court or an arbitrator—decides whether that arbitration provision applies. It is "undeniabl[e]" that that question traditionally has been for the court, and it still is presumed courts will make that determination. *AT&T Tech., Inc v. Communications Workers*, 475 U.S. 643, 649 (1986). This Court has recognized, however, that parties may agree to have an arbitrator resolve any disputes over the scope of an arbitration provision. *Id.* at 648-49. As discussed above, the Court further recognized that such an antecedent agreement altering the traditional presumption must be unambiguously expressed. *Id.*; *First Options*, 514 U.S. at 943-45. The parties must specifically intend to delegate resolution of arbitrability away from the court to an arbitrator, and that intent must be clearly and unmistakably evidenced in the parties' contract. *First Options*, 514 U.S. at 943-45. There can be no ambiguity or question. This is to ensure parties are not forced to arbitrate an issue they did not agree to submit to arbitration. *Id.*

The Missouri Court of Appeals properly applied these principles to the facts of this case. As discussed, Applicants' complaint is with the Missouri Court of Appeals' interpretation of contractual intent under Missouri law, which does not present a federal question for this Court's review. But even leaving aside the state-law nature of the issue, there is no error to correct. The Missouri Court of Appeals held that,

under Missouri law, the parties to the 1995 Lease did not clearly express an intent, at the time of contracting, to have an arbitrator determine questions of arbitrability. It is uncontroverted that the Lease includes no express delegation provision, and the incorporated AAA rules did not provide for delegation to an arbitrator in 1995. The Missouri Court of Appeals did not err in holding, under Missouri law, that the incorporation of a set of rules which did not provide for delegation at the time of contracting did not clearly and unmistakably express an intent to have an arbitrator determine arbitrability.

The approach, advocated by Applicants and some of the cases they cite, which looks solely at determining what rules govern the conduct of the arbitration misses the critical point of the inquiry. The question is not about the procedural or governing rules at all. The issue is solely about the parties' intent regarding questions of arbitrability at the time the contract was entered. The parties must have agreed to have an arbitrator determine arbitrability instead of the court, and that agreement must be unambiguously expressed. Here, there was no such agreement. The Lease does not expressly address who should determine questions of arbitrability, and there was no rule that delegated arbitrability to an arbitrator in 1995. Even if the parties agreed the rules governing the conduct of the arbitration could change in the future, the parties had no way of knowing in 1995 that eight years later those rules would delegate questions of arbitrability to an arbitrator. A subsequent rule change cannot force parties to arbitrate a dispute they did not agree to submit to arbitration, and even if they had agreed to accept amendments to the governing rules generally, that

does not come close to clearly and unmistakably expressing an intent to delegate questions of arbitrability in 1995. The Missouri Court of Appeals properly concluded, under Missouri law, that the 1995 Lease does not express an antecedent agreement rejecting the traditional presumption that a court determines arbitrability.

2. The arbitration provision in the 1995 Lease is irrelevant to this dispute.

The Application for Stay also suggests that the Missouri Court of Appeals erred in finding that the arbitration provision does not apply to this dispute, but that decision is amply supported and eminently reasonable. In August 2018, the Missouri Court of Appeals determined that the 1995 Lease, and its arbitration provision, is irrelevant to this dispute, and the Court of Appeals reaffirmed that determination in April 2019. *See* Appendix Ex. G (Mo. Ct. App. Aug. 21, 2018); Ex. D. (Mo. Ct. App. April 16, 2019). In both decisions, the Court of Appeals explained that the court may order arbitration of a particular dispute only if the parties agreed to arbitrate *that* dispute. *Id.* at 19a, 39a (citing *Granite Rock Co. v. Int'l Bhd of Teamsters*, 561 U.S. 287, 297 (2010)). The Court then concluded that the parties never agreed to arbitrate disputes related to the NFL's Relocation Policy. *Id.* at 21a, 40a. The Court noted that there are no allegations that the 1995 Lease was violated and found that resolution of the claims in Respondents' petition does not require reference to or construction of the Lease and does not implicate any rights, obligations, or performance under the Lease. *Id.* at 22a-23a, 40a-41a. The Court did not err in conducting this straight-forward and common-sense application of state law and traditional canons of contract interpretation.

C. A Stay Is Not Necessary to Protect the Rams's Rights.

Applicants will not be harmed by allowing this case to move forward. Even in arbitration, the parties are entitled to discovery, including depositions, document production, and expert discovery. In short, Applicants would be facing comparable discovery obligations over the next few months regardless of whether the case proceeds in court or in arbitration. Therefore, allowing discovery finally to begin while Applicants file their improbable petition for certiorari review will not result in any inefficiencies or wasted expense.

Applicants have fully vindicated their right to seek arbitration of Respondents' claims. Applicants argue that this Court should stay the Missouri Court of Appeals' mandate because courts have recognized the need for stays to preserve the benefits of contracted-for arbitration. For support, Applicants cite only to authorizations of an immediate appeal from orders denying a motion to compel arbitration and a number of cases discussing the importance of staying lower court proceedings while such a direct appeal is pursued. *See* Application at 33-35 (citing Mo. Rev. Stat. §§ 435.355.4, 435.440.2, R.S. Mo.; 9 U.S.C. §16(a)(1)(A) – (C); *Levin v. Alms & Assoc., Inc.*, 634 F.3d 260, 264 (4th Cir. 2011); *Blinco v. Green Tree Servicing, LLC*, 366 F.3d 1249, 1251 (11th Cir. 2004); *Bradford-Scott Data Corp. v. Physician Comp. Network, Inc.*, 128 F.3d 504, 505 (7th Cir. 1997); *Alascom, Inc. v. ITT N. Elec. Co.*, 727 F.2d 1419, 1422 (9th Cir. 1984); *McCauley v. Halliburton Energy Servs., Inc.*, 413 F.3d 1158, 1162 (10th Cir. 2005)). These cases do not help Applicants here. Applicants had their immediate appeal to the Missouri Court of Appeals—along with two

attempts at the Missouri Supreme Court, and another decision by the Missouri Court of Appeals confirming that the denial of arbitration is consistent with Missouri and federal law. They have received all that their own cases say is necessary to protect their right to arbitration. It is time to give effect to Missouri courts' determination and allow the case to proceed in court.

CONCLUSION

For the foregoing reasons, Respondents respectfully request that this Court deny the Application for a Stay of the mandate of the Missouri Court of Appeals pending the timely filing and disposition of a petition for a writ of certiorari.

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Respectfully submitted,

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