No. 20-238

IN THE
Supreme Court of the United States

CHANGZHOU SINOTYPE TECHNOLOGY CO., LTD.,

Petitioner,

v.

ROCKEFELLER TECHNOLOGY INVESTMENTS (ASIA) VII,

Respondent.

On Petition for Writ of Certiorari to the United States Supreme Court of California

BRIEF OF *AMICUS CURIAE* LAW PROFESSORS IN SUPPORT OF PETITIONER CHANGZHOU SINOTYPE TECHNOLOGY CO., LTD.

F. ANDREW HESSICK
160 Ridge Road
Chapel Hill, NC 27599
(919) 962-4332

JARED L. HUBBARD
FITCH LAW PARTNERS LLP
One Beacon Street
Boston, MA 02108
(617) 542-5542

RICHARD A. SIMPSON*
Counsel of Record
JOSEPH W. GROSS
WILEY REIN LLP
1776 K Street, N.W.
Washington, D.C. 20006
(202) 719-7314
rsimpson@wiley.law

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INTEREST OF THE *AMICI CURIAE*[1]

Amici curiae listed in the Appendix are law professors and scholars at U.S. law schools who teach, research, and write about international law, both public and private. They share a common view that United States courts must properly apply international treaties to which the United States is a party, thereby adhering to its international legal obligations.

[1] No counsel for a party authored this brief in whole or in part, and no such counsel or any party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than amicus curiae made any monetary contribution to its preparation or submission. Amicus curiae gave notice of their intent to file this brief to all parties in accordance with Rule 37.2. Blanket consents from the parties to the filing of amicus curiae briefs have been filed and docketed.

SUMMARY OF ARGUMENT

The Convention on the Service Abroad of Judicial and Extra Judicial Documents in Civil or Commercial Matters of November 15, 1965, 20 U.S.T. 361, 658 U.N.T.S. 163, provides that a member State may prohibit service of process from parties in another country by mail and require that all service be directed through a central authority. Like many countries, China has exercised its right to require service through its central authority.

Nonetheless, the California Supreme Court held that Respondent Rockefeller Technology Investments (Asia), VII ("Rockefeller") could serve process issued by a California state court in an arbitration confirmation case on Petitioner Changzhou SinoType Technology Co., Ltd. ("SinoType") in China by Federal Express. *Rockefeller Tech. Invs. (Asia) VII v. Changzhou SinoType Tech. Co., Ltd.*, 260 Cal. Rptr. 3d 442, 450 (2020). The California Supreme Court concluded that service by Federal Express was permissible because the parties had agreed to it by contract.

This Court should grant *certiorari* because the California Supreme Court's decision is wrong and implicates a matter of exceptional importance to international commerce and foreign relations.

The California Supreme Court's decision is wrong because the Convention provides the "exclusive" means for serving documents transmitted for service abroad. *See Volkswagenwerk Aktiengesellschaft v. Schlunk*, 486 U.S. 694, 699 (1988). Under the Convention, service by postal channels is permissible only if the Destination State permits postal service. Because China has objected to service from abroad by postal service, the Convention required that Rockefeller serve SinoType through China's central authority.

The California Supreme Court's erroneous interpretation of the Convention has major consequences.

First, the California Supreme Court's decision is inconsistent with the status of treaties under the Supremacy Clause as the supreme law of the land. The California Supreme Court's decision—which permits private parties to waive international treaty obligations—contradicts that supreme status.

Second, the California Supreme Court's decision has the potential to cause needless friction between the United States and its treaty partners. Many countries consider service of process to be an important component of national sovereignty. Allowing private parties to serve documents within an objecting nation's borders in a manner inconsistent

with the Convention may be deemed a violation of that nation's sovereignty and could prompt retaliation.

Third, the California Supreme Court's decision undermines the uniformity and predictability that motivated the adoption of the Convention. That decision suggests that private parties can create their own service procedures in countries that are parties to the Convention. The decision also creates the possibility of significant disruption in litigation, as those countries may refuse to enforce judgments in actions in which documents were not served in accordance with the Convention.

Respect for international law and our country's treaty partners demand compliance with treaty obligations. The United States is entitled to demand that other countries strictly honor its sovereign rights under international law. To do so with any moral or practical authority, the United States must likewise strictly adhere to its treaty obligations.

Accordingly, the Petition for a Writ of *Certiorari* should be granted.

ARGUMENT

The Convention on the Service Abroad of Judicial and Extra Judicial Documents in Civil or Commercial Matters of November 15, 1965, 20 U.S.T. 361, 658 U.N.T.S. 163, regulates the service of legal documents in disputes between parties in different countries. This case presents the issue of whether private parties can circumvent the Convention by entering into a contract prescribing a manner of service abroad not permitted under the Convention.

Under the Convention, a member State may prohibit service by mail and require that all service of process be accomplished by service through a central authority. China, like many other countries, has exercised its unquestionable right to require service to be made through a central authority.

In the decision below, however, the California Supreme Court held that Rockefeller could serve process issued by a California state court on SinoType in China by Federal Express, even though China requires service to be made through China's central authority. The California Supreme Court reasoned that service by Federal Express was permissible because Rockefeller and SinoType had so agreed in a contractual memorandum of understanding. The California Supreme Court thus permitted that private agreement to trump the rules set forth in the Convention.

This Court should grant *certiorari* because the California Supreme Court's decision is wrong and implicates a matter of particular importance to international commerce and foreign relations. Every year, private parties in different countries that are parties to the Convention ("Contracting States") enter into myriad private contacts.[2] Doubtless, many of those contracts have provisions relating to potential litigation between the parties, including provisions regarding service of process.[3] This Court should clarify that those provisions cannot alter the United States' international law obligation to ensure that its courts enforce the Convention's provisions related to methods of service abroad.

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[2] It is, of course, common knowledge that parties in different countries routinely enter into contracts regarding business transactions. In one survey, Professor Cuniberti identified 4,400 international contracts *for which data is available* between 2007 and 2012; he noted that the actual total number is "undoubtedly enormous." Gilles Cuniberti, *The International Market for Contracts: The Most Attractive Contract Laws*, 34 Nw. J. L. and Tech. 455, 460-61 (2014). Although Professor Cuniberti's study was not limited to contracts involving the 78 Contracting States, the number of contracts involving parties in those countries is still undoubtedly large.

[3] *See* John F. Coyle & Christopher R. Drahozal, *An Empirical Study of Dispute Resolution Clauses in International Supply Contracts*, 52 Vand. J. Transnat'l L. 323, 381-82 (2019) (finding that 19.6% of recent international supply agreements filed with the Securities and Exchange Commission contain contact language addressing service of process).

I. The California Supreme Court's decision is wrong.

1. The Convention is a multilateral treaty ratified by the seventy-eight Contracting States, including the United States and China.[4] The purpose of the treaty is to "simplify, standardize, and generally improve the process of serving documents" in litigation between parties in different Contracting States. *Water Splash, Inc. v. Menon*, 137 S. Ct. 1504, 1507 (2017). To that end, the Convention prescribes appropriate methods of service of documents to parties in other countries. It applies "in all cases, in civil or commercial matters, where there is occasion to transmit a judicial or extrajudicial document for service abroad." Convention at art. I. As this Court recognized in *Schlunk*, the Convention provides the exclusive means of service of documents abroad. 486 U.S. at 706. It preempts all state laws relating to service on parties in Contracting States. *Id.* at 710 (Brennan, J. concurring) ("[T]he Convention prescribes the exclusive means for service of process emanating from one contracting nation and culminating in another.").

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[4] *Status Table: Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters*, Hague Conf. on Priv. Int'l Law (July 27, 2020), https://www.hcch.net/en/instruments/conventions/status-table/?cid=17.

Under the Convention, each Contracting State must designate a central authority to receive requests for service coming from parties in other Contracting States. 20 U.S.T. at 362. The treaty further provides that the central authority must serve these documents or arrange for their service in a manner consistent with the State's internal law. *Id.*; *Schlunk*, 486 U.S. at 699.

Although some Contracting States, including the United States, permit service through postal channels,[5] China (like many other countries, including such United States allies as Germany and South Korea) has objected to service in that manner.[6] Instead, China requires that foreign parties seeking to serve documents on parties in China send the documents to China's central authority, which then

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[5] *United States Declaration*, Hague Conf. on Priv. Int'l Law (Jan. 28, 2020), https://www.hcch.net/en/instruments/conventions/status-table/notifications/?csid=428&disp=resdn.

[6] *See People's Republic of China Declaration*, Hague Conf. on Priv. Int'l Law, https://www.hcch.net/en/instruments/conventions/status-table/notifications/?csid=393&disp=resdn (objecting to "the service of documents in the territory of the People's Republic of China by the methods provided by Article 10 of the Convention[,]" including postal channels); *see also Table Reflecting Applicability of Articles 8(2), 10(a)(b) and (c), 15(2), and 16(3) of the Hague Service Convention*, Hague Conf. on Priv. Int'l Law, https://assets.hcch.net/docs/6365f76b-22b3-4bac-82ea-395bf75b2254.pdf (listing objections of other Contracting States).

serves those documents on the parties in a manner consistent with Chinese law. Accordingly, under the Convention, the only way a party in the United States may serve any "judicial or extrajudicial document" on a party in China is by sending that document to the Chinese central authority.[7]

The provisions of the Convention do not apply only to formal complaints aimed at instituting legal proceedings. Rather, they extend to any type of "judicial . . . document" that triggers legal proceedings. *See, e.g.*, Articles 15 & 16 (stating that the service provisions apply to "a writ of summons or an equivalent document").

Moreover, as this Court recently noted in *Water Splash*, the Convention may even extend to the service of other judicial documents delivered after the initiation of a legal action, such as answers and subpoenas. *Water Splash*, 137 S. Ct. at 1510 n.2; *see*

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[7] The fact that States may prohibit service by mail under their domestic law was discussed during the drafting of the Convention. The German delegate in particular opposed the inclusion of service by mail in the Convention on the ground that it would constitute a violation of a State's sovereignty and public order. 3 Actes et Documents de la Dixieme Session (Conference De La Hayes de Droit International Prive) 80, 82 (1964). Other nations' delegates supported incorporation of service by mail. *Id.* at 83. Ultimately, service of process by mail was allowed by the Convention unless a Contracting State expressly objects.

also TracFone Wireless, Inc. v. Does, No. 11-CV-21871-MGC, 2011 WL 4711458, at *4 (S.D. Fla. Oct. 4, 2011) (finding a subpoena was properly served under the Convention, which "is not limited to service of process alone"); *Grupo Mex. SAB de CV v. SAS Asset Recovery, Ltd.*, 821 F.3d 573, 575–76 (5th Cir. 2016) (same); *Aristocrat Leisure Ltd. v. Deutsche Bank Tr. Co. Ams.*, 262 F.R.D. 293, 307 (S.D.N.Y. 2009) (same); *MedImmune, LLC v. PDL Biopharma, Inc.*, No. C08-05590 JF (HRL), 2010 WL 2179154, at *2 (N.D. Cal. May 27, 2010) (same); *see also* Eric Porterfield, *Too Much Process, Not Enough Service*, 86 Temp. L. Rev. 331, 339 n.60 (2014) (noting that signatories to the treaty agree that it covers "*at least* initial service of process") (emphasis added).

Likewise, the Convention's service provisions are not limited to formal judicial proceedings but rather extend broadly to "extrajudicial document[s] for service abroad." Convention at art. 1. As Article 17 of the Convention explains, "extrajudicial documents" include documents "emanating" from various non-judicial governmental authorities, and so include petitions, grievances, and demands for relief arising in agency actions or other non-judicial proceedings. *See Reports on the Work of the Special Commission on the Operation of the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters*, 17 INT'L LEGAL MATERIALS 312, 327 (1978) ("Examples given were demands for payment, notices to quit in connection

with leaseholds, and protests in connection with bills of exchange, but all on the condition that they emanate from an authority or from a process server.").

To be sure, not every document sent abroad is subject to the Convention. As this Court recognized in *Schlunk*, 486 U.S. at 699, the Convention applies only to documents "transmitted for service abroad." Accordingly, for example, private correspondence is not subject to the provisions of the Convention. But the Convention does apply to documents sent abroad to provide official notice of legal proceedings. Because of the legal effect of the delivery of those documents, the delivery constitutes "service." *See id.* at 700 ("Service of process refers to a formal delivery of documents that is legally sufficient to charge the defendant with notice of a pending action"); 1 B. RISTAU, INTERNATIONAL JUDICIAL ASSISTANCE § 4–1–4(2), 112 (1990 rev. ed.) (stating that the English term "service" in the Convention "means the formal delivery of a legal document to the addressee in such a manner as to legally charge him with notice of the institution of a legal proceeding.").

2. Application of these principles to the facts here is simple and clear cut. Rockefeller sought to obtain confirmation by a California state court of an arbitration award against SinoType. To do so, Rockefeller needed to file a petition for confirmation in California state court and serve process on SinoType. Rockefeller served the summons and

petition on SinoType in China via Federal Express, entirely bypassing the Chinese central authority.

As explained above, such service was not in conformity with the Convention. Service by postal channels (presumably including Federal Express) is permissible only if the Destination State permits postal service.[8] China has objected to service on its citizens by postal service. Accordingly, to comply with the Convention, Rockefeller had to send the documents to China's central authority for service and could not accomplish effective service by sending them directly to SinoType. S*ee* John F. Coyle, Robin J. Effron, & Maggie Gardner, *Contracting Around the Hague Service Convention*, 53 U.C. Davis L. Rev. Online 53, 56 (2019).

The California Supreme Court held that Rockefeller did not need to comply with the Convention. It reasoned that the Convention applies only when "formal" service of process is required, and concluded that the parties had, as a matter of California state law, "waived formal service in favor of informal notification through Federal Express[.]" *Rockefeller Tech. Invs. (Asia) VII*, 260 Cal. Rptr. 3d at 450.

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[8] The Convention does not mention service by private courier such as Federal Express. At best, such service would be authorized as falling within the category of service by postal means in Contracting States that do not object to postal service.

To support that conclusion, the California Court pointed to the memorandum of understanding between Rockefeller and SinoType. That memorandum states that the "parties shall provide notice in the English language to each other at the addresses set forth in the Agreement via Federal Express or similar courier, with copies via facsimile or email." *Id.* at 445. It further provides that the parties "consent to" this procedure as constituting "service of process." *Id.*

It is true that state law determines whether a document must be sent abroad for service in a foreign country in order to be effective. Thus, for example, in *Schlunk* this Court considered whether service of process in the United States of a subsidiary of a foreign corporation was sufficient to serve the parent, or whether the Convention applied to the subsidiary's transmission of the served documents to the parent. This Court held that because service on the parent via its subsidiary was valid under state law and consistent with Due Process, there was no need for service abroad and hence the Convention did not apply. *Schlunk*, 486 U.S. at 707–08.

Under the reasoning of *Schlunk*, private parties may be able to appoint a domestic agent for service of process, or perhaps even waive service of process altogether, so long as their agreement is permitted by state law and consistent with Due Process. S*ee* Coyle et al., *Contracting Around the Hague Service*

Convention, 53 U.C. Davis L. Rev. Online at 56–61. Under such an agreement, there would be no need to serve any process abroad.

But the memorandum of understanding did not do that. As the California Supreme Court recognized, although the parties agreed not to follow the "formal" service of process requirements in California, they did not waive service requirements altogether. *Changzhou SinoType Tech. Co., Ltd.,* 260 Cal. Rptr. at 455. Instead, they specified a particular type of service of process by "consent[ing] to service of process" by Federal Express. As the California Supreme Court put it, the parties "intended to supplant any statutory service procedures with their own agreement for notification via Federal Express" to SinoType in China. *Id*. at 454. In other words, under the memorandum of understanding, service of process on SinoType remained necessary to institute a legal proceeding; the memorandum of understanding did nothing more than specify how service could be accomplished—in particular, by sending documents via Federal Express.

Although state law governs whether service abroad is necessary, it does not determine whether the parties' agreement to serve process abroad in a certain way constitutes valid service. Instead, the Convention controls whether the transmission of a document abroad is effective. *See Schlunk*, 486 U.S. at 699 ("By virtue of the Supremacy Clause, U.S.

Const., Art. VI, the Convention pre-empts inconsistent methods of service prescribed by state law in all cases to which it applies."). The Convention does not draw any distinction between "formal" and "informal" service of process. It controls all service of process between parties in different Contracting States. And given the objection by China to service of process via any method other than through that nation's central authority, service by Federal Express is improper under the Convention.

Nor does the parties' agreement in the memorandum displace the Convention's provisions on service. Because it is a validly ratified treaty, the Convention constitutes federal law. The Convention establishes the exclusive methods for service of documents abroad between Contracting States. Parties cannot avoid the requirements for service in the Convention by prescribing in a contract a different method of service not permitted by the Convention. As this Court has long recognized, a contract is void if enforcement of the contract would violate the law. *See Kaiser Steel Corp. v. Mullins*, 455 U.S. 72, 77 (1982); *McMullen v. Hoffman*, 174 U.S. 639 (1899) ("The authorities from the earliest time to the present unanimously hold that no court will lend its assistance in any way towards carrying out the terms of an illegal contract."); *see also* 2 RESTATEMENT (SECOND) OF CONTS. § 178. Accordingly, to serve SinoType in China, Rockefeller had to follow the service procedures permitted under the Convention.

The controlling law is clear cut and the California Supreme Court's error is patent. In order to bring SinoType before the court in its arbitration enforcement action, Rockefeller had to serve SinoType with the petition commencing that action. The memorandum of understanding did not change that requirement. Under the Convention, Rockefeller could serve SinoType in China only by use of the Chinese central authority. As private parties, Rockefeller and SinoType could not change the manner of service mandated by the Convention. Accordingly, Rockefeller's service of process on SinoType in China via Federal Express was invalid.

II. The California Supreme Court's decision implicates a matter of exceptional importance to international commerce and foreign relations.

Although amici are legal scholars, the issue raised here is not purely academic. It has significant practical implications. The California Supreme Court's decision undermines the supremacy of treaties and could create tensions between the United States and its treaty partners. Granting review and reversing the California Supreme Court's decision would not adversely impact private parties' ability to contract freely. To the contrary, it would provide the clarity needed by those doing business across international borders.

1. Under the Supremacy Clause, treaties are the supreme law of the land. U.S. Const., Art. VI; *see also Schlunk*, 486 U.S. at 699 ("By virtue of the Supremacy Clause . . . the Convention pre-empts inconsistent methods of service prescribed by state law in all cases to which it applies."). The possibility of incorrect or conflicting interpretations of treaties by state courts was a driving factor behind the Supremacy Clause. *See The Federalist* No. 22 (Alexander Hamilton) ("The treaties of the United States, under the present [Articles of Confederation], are liable to the infractions of thirteen different legislatures, and as many different courts of final jurisdiction, acting under the authority of those legislatures."). As this Court recognized more than two hundred years ago, "[a] treaty cannot be the Supreme law of the land, that is of all the United States, if any act of a State Legislature can stand in its way." *Ware v. Hylton*, 3 U.S. 199, 236 (1796). To that end, since the Founding, this Court has had the power to overturn state court decisions incorrectly interpreting treaties. *See* Judiciary Act of 1789, § 25, 1 Stat. 73, 85–86; *see also* Tim Wu, *Treaties' Domains*, 93 Va. L. Rev. 571, 584–87 (2007) (collecting examples). Here, allowing the California Supreme Court's erroneous decision to stand threatens the status of treaties as the supreme law of the land and undermines the foundational principle that the federal government—not the states—has the authority to regulate in the realm of international relations.

2. The California Supreme Court's decision also has the potential needlessly to cause friction between the United States and its treaty partners. Service of process is an important component of national sovereignty. Civil law countries in particular consider the service of legally binding documents "a sovereign act, not properly performed by a private citizen." Porterfield, *Too Much Process, Not Enough Service*, 86 Temp. L. Rev. at 337. Attempting service within such a nation's borders but outside of the Convention may be deemed a "violation of their sovereignty," prompting the State to "retaliate by refusing to enforce foreign judgments procured following such violations." Jenny S. Martinez, *Towards an International Judicial System*, 56 Stan. L. Rev. 429, 513 (2003). Treaties like the Hague Service Convention were created "to address these sovereignty concerns and to ensure greater predictability and uniformity of procedure." *Id*.

If the parties to the Convention wanted to allow private parties to opt out, they could have expressly provided for it, as has been done in other treaties. For example, the United Nations Convention on Contracts for the International Sale of Goods (the "CISG") states that it applies by default. *United Nations Convention on Contracts for the International Sale of Goods*, Apr. 11, 1980, S. Treaty Doc. No. 98–9 (1983), 19 I.L.M. 668 (1980), reprinted at 15 U.S.C. app. (entered into force Jan. 1, 1988). However, Article 6 of the CISG states that the parties "may exclude the application of this

Convention[.]" CISG at Art. VI; *see also, e.g.*, *BP Oil Int'l, Ltd. v. Empresa Estatal Petroleos de Ecuador*, 332 F.3d 333, 337 (5th Cir. 2003) (discussing sufficiency of parties' attempt to opt out of CISG); *Asante Techs., Inc. v. PMC-Sierra, Inc.*, 164 F. Supp. 2d 1142, 1147 (N.D. Cal. 2001) (similar).

The parties to the Convention chose *not* to include opt-in or opt-out clauses for private parties. Rather, the Convention allows *Contracting States* to declare that they will not permit the use of certain methods of transmission, including the provision allowing service through postal channels, by making a declaration under Article 21 of the Convention. Here, China has exercised that right. *See supra* note 6.

Under these circumstances, it is not hard to imagine a scenario where China or another Contracting State that has opted out of service through postal channels would view the California Supreme Court's decision as infringing on its rights under international law. A nation taking that view could then retaliate against American litigants.

Russia is illustrative of what can happen. In 2003, Russia's central authority ceased cooperating with requests from American litigants because Russia took issue with a fee the United States' central authority charged to cover the cost of processing service requests. *See* U.S. Dep't of State, *Judicial Assistance Country Information* (Nov. 15, 2013), https://travel.state.gov/content/travel/en/legal/Judicia

l-Assistance-Country-Information/RussianFederation.html. Private litigants continue to be caught in the crossfire, with those litigants facing significant difficulty in serving process on Russian defendants. *See, e.g.*, *Delex Inc. v. Sukhoi Civil Aircraft Co.*, 372 P.3d 797, 802 (Wash. App. 2016) (collecting cases regarding service in Russia with different courts finding different methods to be proper). The resulting uncertainty for litigants fundamentally undermines the Convention's purpose "to provide a simpler way to serve process abroad, to assure that defendants sued in foreign jurisdictions would receive actual and timely notice of suit, and to facilitate proof of service abroad." *Schlunk*, 486 U.S. at 698. If review is not granted in this case, another situation like the one with Russia could easily arise here.

3. Treaties like the Convention were created "to address . . . sovereignty concerns and to ensure greater predictability and uniformity of procedure." Martinez, *Towards an International Judicial System*, 56 Stan. L. Rev. at 513. The California Supreme Court's decision removes that uniformity and predictability. Instead of adhering to the requirements of the Convention, its decision suggests that parties can create their own service procedures in Contracting States. Worse, the decision creates the very real possibility of significant disruption in litigation, as Contracting States may refuse to enforce judgments in actions in which documents were not

served in accordance with the obligations of the Convention. *Id.*

Despite these concerns, the California Supreme Court held that private parties must be able to contract around the Convention to protect their right to contract freely and to conduct international business efficiently. To the contrary, granting review and overturning the decision below best serves that goal.

First, nothing in the Convention stood in the way of Rockefeller attempting to serve its petition on SinoType and seeking confirmation of its arbitration award. Effecting service through the Chinese central authority may not be as quick as Rockefeller might like, but it provides a mechanism by which Rockefeller could accomplish its goal of haling SinoType into court in California. And it is the mechanism to which the United States and China agreed.

Second, the parties to the memorandum of understanding could have reached a different agreement under which service of a legal document abroad would not be necessary and so the Convention would never come into play. As noted above, this Court held in *Schlunk* that service on a domestic subsidiary of a foreign corporation as the foreign corporation's agent was valid and did not implicate the Convention because there was no need to send documents abroad. Because the subsidiary was deemed by state law to be the agent of the parent for

purposes of service of process, the Convention simply did not come into play. 486 U.S. at 707–08; *see also, e.g.*, *Yamaha Motor Co. v. Super. Ct. of Orange Cty.*, 94 Cal. Rptr. 3d 494, 497 (2009) (finding no need to serve a foreign manufacturer in accord with the Convention, where service of process on the foreign manufacturer was validly performed under California law by serving papers on its American subsidiary).

Under the rationale of *Schlunk,* there is no reason that a foreign party to a domestic contract could not voluntarily appoint a domestic agent for service of process. *See* Coyle et al., *Contracting Around the Hague Service Convention*, 53 U.C. Davis L. Rev. Online at 57. Service would be complete upon the agent's receipt of process, and there would then be no need to transmit any documents abroad so as to trigger the Convention. *See, e.g.*, *S.T.R. Indus., Inc. v. Palmer Indus., Inc.*, No. 96 C 4251, 1996 WL 717468, at *4 (N.D. Ill. Dec. 9, 1996) (finding service on domestic agent sufficient under state law and not implicating the Convention); *Pittsburgh Nat'l Bank v. Kassir*, 153 F.R.D. 580 (W.D. Pa. 1994) (finding service on German citizens at an address in the United States designated for such purpose in guaranty agreements was acceptable under Pennsylvania law and did not trigger the Convention). By appointing an agent for service of process in the United States, parties doing business across borders can thus easily contract *around* the Convention, so

there is no reason to allow them to contract *out of* the Convention.

Alternatively, as a matter of U.S. domestic law, the parties could agree by contract to waive service of process altogether. That course certainly carries more risk than appointing an agent for service of process, as that procedure may offend Due Process and courts may not uphold an outright waiver of service. *See* Coyle et al., *Contracting Around the Hague Service Convention*, 53 U.C. Davis L. Rev. Online at 58–61 (discussing the potential pitfalls of waiving service). It is nevertheless another alternative that private parties could consider that would not implicate the Convention since service would not be required in the other country (although in a given case it might not be sufficient under the law of that country).

That the parties could have pursued these other options does not minimize the error of the California Supreme Court's decision. As in the domestic context, the fact that a result could properly be reached does not mean that it is irrelevant what process is followed to reach that result. *Cf. Dep't of Homeland Sec. v. Regents of the Univ. of S. Cal.*, 140 S. Ct. 1891, 1915 (2020) (holding that agency decision to eliminate the Deferred Action for Childhood Arrivals program could not stand because the process by which the decision was reached was arbitrary and capricious, notwithstanding that it was within the agency's power

to eliminate the program if it followed a lawful process).

Respect for international law and our country's treaty partners demand compliance with treaty obligations. The United States is entitled to demand that other countries strictly honor the rights of its citizens under international law. To do so with any moral or practical authority, the United States must likewise strictly adhere to its treaty obligations.

CONCLUSION

The Petition for a Writ of *Certiorari* should be granted.

Respectfully submitted,

F. ANDREW HESSICK
160 Ridge Road
Chapel Hill, NC 27599
(919) 962-4332

JARED L. HUBBARD
FITCH LAW PARTNERS LLP
One Beacon Street
Boston, MA 02108
(617) 542-5542

RICHARD A. SIMPSON*
Counsel of Record
JOSEPH W. GROSS
WILEY REIN LLP
1776 K Street, N.W.
Washington, D.C. 20006
(202) 719-7314
rsimpson@wiley.law

September 23, 2020

APPENDIX A

George A. Bermann,
Gellhorn Professor of Law and Jean Monnet Professor in European Union Law, Columbia Law School

Hannah L. Buxbaum,
Professor of Law and John E. Schiller Chair, Indiana University Maurer School of Law

John F. Coyle,
Reef C. Ivey II Distinguished Professor of Law, University of North Carolina School of Law

Robin Effron,
Professor of Law, Brooklyn Law School

Maggie Gardner,
Associate Professor of Law, Cornell Law School

David P. Stewart,
Professor from Practice, Georgetown University Law Center

Louise Ellen Teitz,
Professor of Law, Roger Williams University School of Law