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Record/FILE ON DEMAND

No. 20-6159

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

Nelson L. Bruce, *Petitioner,*

v.

PENTAGON FEDERAL CREDIT UNION (PENFED), *Respondent.*

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE UNITED STATES TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT CASE NO. 20-1183

PETITION FOR A WRIT OF CERTIORARI

Nelson L. Bruce, Propria Persona, Sui Juris
c/o 144 Pavilion Street
Summerville, South Carolina 29483
843-437-7901

QUESTIONS PRESENTED

1. Whether the agreement/contract presented before the court evidences an "arbitration clause" (**See...Doc. 75... Exhibits/Evidence Set - C- U.S. District Court Case No.: 2:17-cv-02170-BHH**)?
2. Whether the lower court and the appeals court erred by overriding the agreement/contract by claiming "there is no valid arbitration clause" and by ignoring the delegation clause incorporated under the "Arbitration Clause" **(See...Section III of the agreement/contract filed on the record in district court Doc. 75, Exhibits/Evidence Set - C)** simply by stating "there is no applicable arbitration clause" to deny the petitioner, the aggrieved party his right to compel arbitration and seek redress of grievance?
3. Whether the lower court and appeals court erred by completely and willfully ignoring the Federal Arbitration Act (FAA) as written, **9 U.S.C. § 2** which permits an agreement in writing to be valid and enforceable when it involves commerce in fact and has a provision delegating an arbitrator to settle by arbitration any controversy thereafter arising out of such agreement/contract in writing, to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal as the agreement/contract clearly evidences **(See...Section III of the agreement/contract filed on the record in district court Doc. 75, Exhibits/Evidence Set - C)**? Also whether congress has already passed a private law which they decided evidenced by their findings in **section 2** of private bill No.: **S -112/private law 114-31 (December 3, 2016)** that agreements such as the one presented by the petitioner **(See...Doc. 75... Petitioners Motion to compel Arbitration, page 2 -3 and Exhibits/Evidence Set - C- U.S. District Court Case No.: 2:17-cv-02170-BHH)** is valid, binding on the parties, contained an alternative dispute resolution clause that provided for arbitration as the exclusive remedy for relief to the Parties, and the parties consented to arbitration?
4. Whether the lower court erred by denying Petitioner, Nelson L. Bruce his right to redress of grievance by denying his motion to compel arbitration by failing to apply the law as written, the FAA and recently confirmed by this U.S. Supreme court, a higher court, in their recent decision which states, a court has no business weighing in on the merits of the grievance' by denying a party their **right to redress of grievance**, right to arbitration when the petitioner has dully exercised his right to redress of grievance, right to arbitration when the agreement is to submit all grievances to arbitration as the exclusive remedy, any and all disputes, any controversy or claim arising out of or relating in any way to this Agreement or with regard to its formation, interpretation or breach, and any issues of substantive or procedural arbitrability **(See...Doc. 75... Exhibits/Evidence Set - C- U.S. District Court Case No.: 2:17-cv-02170-BHH)**?
5. Whether the lower courts can override the U.S. Supreme court's unanimous decisions, which determined in 2019 that a court has no business determining whether the parties entered into an agreement/contract in writing or if the agreement/contract is valid or not when the agreement delegates these questions to an arbitrator evidenced by the "Arbitration Clause" and is an arbitral issue and raises an arbitrability question, ***"Henry Schein, Inc. v. Archer and White Sales, Inc., No. 17-1272 (U.S. Sup. Ct. Jan. 8, 2019)"***?
6. Whether jurisdiction once challenged must be proven on the record otherwise any judgments or orders placed their after is void for want of jurisdiction?

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner, **Nelson L. Bruce** respectfully prays that a writ of certiorari issue to review and reverse the judgment below as it conflicts with the recent U.S. Supreme Court's Unanimous decision in ***Henry Schein, Inc. v. Archer and White Sales, Inc., No. 17-1272 (U.S. Sup. Ct. Jan. 8, 2019)***.

OPINION BELOW

The opinion of the **U.S. Appeals Court for the Fourth Circuit** appears at **Appendix – A** to this petition. The court's opinion is an unpublished opinion reaffirmed and decided on **May 22, 2020**.

JURISDICTION

The judgment of the court of appeals was decided on **May 22, 2020,** and denied **June 23, 2020** when the "rehearing en banc" was denied with a formal mandate issued and effective as of **July 1, 2020**. The jurisdiction of this Court is invoked under **28 U.S.C. 1254(1).**

STATUTORY PROVISION INVOLVED

Section 2 of the **Federal Arbitration Act, 9 U.S.C. 2**, provides:

A written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal, shall be valid, irrevocable, and enforceable, save upon

such grounds as exist at law or in equity for the revocation of any contract.

STATEMENT

7. This case presents a recognized and vitally important circuit conflict concerning the interpretation of the **Federal Arbitration Act (FAA)**. Under the **FAA**, "parties can agree to arbitrate 'gateway' questions of 'arbitrability,' such as whether the parties have agreed to arbitrate or whether their agreement covers a particular controversy." **Rent-A-Center, West, Inc. v. Jackson, 561 U.S. 63, 68-69 (2010).** This Court has held that "[a]n agreement to arbitrate a gateway issue is simply an additional, antecedent agreement the party seeking arbitration asks the federal court to enforce, and the **FAA** operates on this additional arbitration agreement just as it does on any other." **Id. at 70**. The questions presented are: **(1)** Whether the **FAA** permits a court to decline to enforce an agreement delegating questions of arbitrability to an arbitrator which in part states "any controversy or claim arising out of or relating in any way to the Agreement or with regard to its formation, interpretation or breach, and any issues of substantive or procedural arbitrability shall be settled by arbitration"; **(2)** Whether the **FAA** permits a court to completely override the **"ARBITRATION CLAUSE"** in a written agreement/contract its terms and provisions by stating in their own opinion, "there is no applicable arbitration clause", when the referenced agreement/contract clearly evidences an applicable **Arbitration Clause**; **(3)** Whether the lower court applied the FAA as written when denying the petitioners his right to redress of grievance, his right to arbitration; **(4)** Whether the lower courts can override the U.S. Supreme court's unanimous decisions, which they determined in 2019 that a court has no business determining whether the parties entered into an agreement/contract in writing or if the agreement/contract is valid or not when the agreement "delegates" (the delegation clause

of the contract) these questions to an arbitrator evidenced by the "Arbitration Clause" and is an arbitral issue and raises an arbitrability question, ***"Henry Schein, Inc. v. Archer and White Sales, Inc., No. 17-1272 (U.S. Sup. Ct. Jan. 8, 2019)";*** (5) Whether jurisdiction once challenged must be proven on the record otherwise any judgments or orders placed their after are void for want of jurisdiction.

Respondent has a relationship and duty to respond to the petitioner which they have agreed to by default. Respondents are in default and in breach of the agreement which invoked tacit acquiescence, their consent to the agreement/contract, its terms and provisions and to arbitration which is only applicable upon a parties (the respondents) default and their conduct (a failure to respond with specificities and facts and conclusions of common law, and or to provide the requested information and documentation that is necessary and in support of the agreement shall constitute a failure and a deliberate and intentional refusal to respond and as a result thereby and or therein, expressing the defaulting party's consent and agreement to said facts) of remaining silent (tacit acquiescence) which is a performance of a provision of the contract, which there is evidence of (**See...Doc. 75... Exhibits/Evidence Set – C and D, U.S. District Court Case No.: 2:17-cv-02170-BHH**). The agreement required the Petitioner to arbitrate any controversy or claim arising out of or relating in any way to the Agreement or with regard to its formation, interpretation or breach, and any issues of substantive or procedural arbitrability. United States Federal District Court for the district of South Carolina, Charleston Division, ignored and violated all petitioners' rights to arbitration, and provided an unauthorized judicial interference with the arbitration agreement, an override of the performance agreement/contract.

A. BACKGROUND

Petitioner originally filed a complaint in U.S. District Court for the District of South Carolina, Charleston Division (**2:17-cv-02170-BHH Bruce v. Pentagon Federal Credit Union**), which was dismissed with prejudice on 9/19/2018. On 9/26/2018 Petitioner filed a notice of appeal. On or about 4/23/2019, the appeal was denied. While the case was in appeal status, the petitioner presented an counter offer/offer to the respondents (the defendant) and other parties with a conditional acceptance for the value agreement, conditionally accepting their offer and claims upon proof of claim to avoid any further controversy in regards to that current appealed case to in good faith try to resolve this matter. The respondents entered into this performance agreement/contract whereby the respondents admitted to the proofs of claims and averments presented in the agreement/contract by their default as they hold a duty to the Petitioner to respond. Petitioner simultaneously move the court with a motion to vacate/Motion to set aside judgment and Petition to compel arbitration/stay the proceedings as it related to that agreement/contract based off of this newly admitted information, citing the provisions in the parties' arbitration agreements delegating questions of arbitrability to an arbitrator. On 5/1/2019 Petitioner filed a motion to vacate/Set Aside Judgment/Order along with new evidence and a motion to compel arbitration. On 5/3/2019, District Court placed an order denying the motion to vacate/set aside judgment/order and the motion to compel. On 5/13/2019 Petitioner filed a Notice of Appeal. On July 18, 2019 the Appeals court for the fourth circuit denied petitioners appeal and rehearing en banc on August 26, 2019 affirming the district court's decision. On 12/16/2019, petitioner filed a Motion to Vacate Judgment/Order in U.S. District Court for the District of South Carolina based off of void judgment and the district courts abuse of power. On 1/29/2020 District Court denied petitioners motion to Vacate Judgment/Order ***(See Appendix – B)***. On 2/19/2020

petitioner filed a notice of appeal. On 5/22/2020, the appeal was denied and on 6/23/2020 the rehearing en banc was denied affirming the U.S. District Courts decision. The court of appeals' decision and the U.S. Federal District Court decisions conflicts with this courts recent unanimous decision by the **U.S. Supreme Court** in ***Henry Schein, Inc. v. Archer and White Sales, Inc., No. 17-1272 (U.S. Sup. Ct. Jan. 8, 2019)*** and these courts continue to neglect the plain statute of the FAA's text or with its "primary purpose": namely, to "ensure that private agreements to arbitrate are enforced according to their terms." ***Stolt-Nielsen S.A.* v. *AnimalFeeds Int'l Corp.*, 559 U.S. 662, 682 (2010) (internal quotation marks and citations omitted).** As it has in many other recent cases, this Court should grant certiorari to correct the lower courts' and the appeal court for the fourth circuit unpublished opinion, neglect and plain ignorance of the FAA and the United States Supreme Courts precedent and reaffirm the "emphatic United States Supreme Court unanimous precedent and federal policy in favor of arbitral dispute resolution." ***Henry Schein, Inc. v. Archer and White Sales, Inc., No. 17-1272 (*U.S. Sup. Ct. Jan. 8, 2019*)* and *Mitsubishi Motors Corp.* v. *Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 631 (1985).**

B. Other Background

Congress enacted the FAA almost a century ago to "reverse the longstanding judicial hostility to arbitration agreements." ***Gilmer* v. *Interstate/Johnson Lane Corp.*, 500 U.S. 20, 24 (1991).** **Section 2** of the **FAA**—the Act's "primary substantive provision," ***Moses H. Cone Memorial Hospital* v. *Mercury Construction*, 460 U.S. 1, 24 (1983)**—guarantees that "[a] written provision in a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter rising out of such contract shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any

contract." **9 U.S.C. 2. Section 2** reflects "both a liberal federal policy favoring arbitration and the fundamental principle that arbitration is a matter of contract." ***AT&T Mobility LLC* v. *Concepcion*, 563 U.S. 333, 339 (2011). Section 2** of the **FAA** requires courts to "place arbitration agreements on an equal footing with other contracts and enforce them according to their terms." ***Rent-A-Center*, 561 U.S. at 67**. The **FAA's** command that courts rigorously enforce agreements to arbitrate according to their terms applies in disputes over "gateway" issues, such as whether a particular claim falls within the scope of the arbitration provision or whether a non-signatory to the agreement is required to participate in arbitration. ***Id.* at 69**. And it applies to disputes over an equally important antecedent question: who decides such gateway issues, the court or the arbitrator? See **First Options of Chicago, Inc. v. Kaplan, 514 U.S. 938, 943-944 (1995)**. Although courts, not arbitrators, **presumptively** resolve gateway disputes, **parties may supersede that general rule by "clearly and unmistakably"** agreeing to "arbitrate arbitrability." ***First Options*, 514 U.S. at 943**. One way for parties to accomplish that result is by including a so-called **"delegation provision"** in their arbitration agreement as is the case here. A delegation provision is "simply an additional, antecedent agreement the party seeking arbitration asks the federal court to enforce, and the **FAA** operates on this additional arbitration agreement just as it does on any other." ***Rent-A-Center*, 561 U.S. at 70**. When parties include such a provision in their arbitration agreement, **the delegation of authority to the arbitrator applies to virtually all gateway disputes**, including disputes over "whether their agreement covers a particular controversy." ***Id.* at 68-69; see *BG Group, PLC* v. *Republic of Argentina*, 134 S. Ct. 1198, 1206 (2014).**

A contract need not contain an express delegation provision to "clearly and unmistakably" delegate arbitrability questions to an arbitrator. As every court of appeals to consider the

question has held, an agreement incorporating rules that themselves delegate arbitrability to the arbitrator, like the rules of the **American Arbitration Association (AAA),** provides the requisite clear and unmistakable delegation. **See, *e.g.*, *Belnap* v. *Iasis Healthcare*, 844 F.3d 1272, 1283-1284 (10th Cir. 2017).**

C. Facts And Procedural History

1. In 2017, Petitioner filed a verified complaint/petition in the United States District Court for the District of South Carolina, before any new agreements with an arbitration clause was presented. The original complaint sought "hundreds of thousands of dollars" in damages stemming from petitioners' claims for damages against the respondent for violating the law and trying to deprive the petitioner from his property rights without consideration, for willfully concealing fraud and failing to fully disclose the full nature of the alleged loan to the Petitioner.

2. On or about September 19, 2018 the United States District Court for the District of South Carolina dismissed the petitioner's complaint with prejudice whereby the petitioner filed an appeal. While this appeal was pending before the United States Appeal Court for the Fourth Circuit, petitioner presented the respondents with an offer in the form of a conditional acceptance for the value self-executing performance agreement which has an arbitration clause which the respondents entered into by their performance/conduct, their documented default, tacit acquiescence in accords with the agreements terms and provisions for their failure to respond and reject the offer within the 10-20 calendar day rejection period as they have and hold a duty to respond and willfully chose not to respond thereby expressing their implied consent and acceptance to the agreement, its

terms and provisions as the respondents had the opportunity to reject this offer but have failed to do so and they have no evidence that shows otherwise.

3. Petitioners moved to vacate the judgment and to compel arbitration/stay the proceedings and the already admitted to claims by the respondent as they relate to the agreement; see **9 U.S.C. 4.** Petitioners' motions were based on respondent's agreements referencing an **arbitration clause**, and delegated all claims and controversies for the arbitrator to decide, not the court, **See...Doc. 74 and 75... U.S. District Court Case No.: 2:17-cv-02170-BHH**.

4. On **May 3, 2019**, the district court denied the motions stating that "the Rule 60 motion is rambling an incoherent, and has no basis in fact, that the parties have not entered into the agreement/contract and addendum that Plaintiff represents, and there is no applicable arbitration clause" improperly entered by Judge Bruce Howe Hendricks. Explicitly interpreting the "[s]cope of [the] [a]rbitration [c]lause and whether the parties entered into an agreement which is a controversy that has been delegated to an arbitrator to decide, not the court which is an arbitrable issue which is an exception authorized under the **FAA statute section 2**. The judge on behalf of the court ignores the statute as written and supported by this courts, the United States Supreme Court precedent in ***Henry Schein, Inc. v. Archer and White Sales, Inc., No. 17-1272 (U.S. Sup. Ct. Jan. 8, 2019)*** thereby failing to abide by the law as written and violating the petitioners rights to redress of grievance, to arbitrate the matter as it relates to the agreement.

5. Petitioners filed an appeal against the judges' denial, and the court of appeals affirmed in an unpublished opinion which are not a binding precedent on August 26, 2019. The court of appeals based its decision solely on the judge's improper opinions in regards to **Rule 60(b)** only. The Appeals court did not specifically address the petitioner's motion to

compel/motion to stay proceedings but claims they affirm the decision by the district court in ***Bruce v. Pentagon Fed. Credit Union, No. 2:17-cv-02170-BHH*** **(D.S.C. May 3, 2019)** but not addressing the issue of arbitrability to the arbitrator." The court of appeals never considered whether to compel arbitration based on the existence of a delegation provision in the parties' arbitration agreement. In this case, petitioners argued to the court of appeals that Specifically, As prescribed by law and supported by this U.S. Supreme Court, a contract is valid and enforceable when it involves commerce in fact, has an arbitration clause which delegates the validity of the agreement/contract, any and all disputes, claims and controversies as it relates to the agreement/contract for an arbitrator to decide which is the case here and the courts have no business in the matter', ***Henry Schein, Inc. v. Archer and White Sales, Inc.*****, No. 17-1272 (U.S. Sup. Ct. Jan. 8, 2019)**, "and that courts must respect the parties' decision in their agreement/contracts to delegate the arbitrability question to the arbitration panel." But the lower court rejected that argument and the appeals court affirmed the district court's May 3, 2019 decision. The district court went on to determine, based on its own interpretation of "the four corners of the agreement/contract with an text order," ***(See Appendix – C)***, stating that "the parties did not enter into an agreement and there is no applicable arbitration clause" and the appeals court affirmed. The District Court and Court of Appeals reached that conclusion despite the unanimous decision and precedent of this court in ***Henry Schein, Inc. v. Archer and White Sales, Inc.*****, No. 17-1272 (U.S. Sup. Ct. Jan. 8, 2019).**

6. It has also been decided by the opinion of ***Justice GORSUCH*** who stated that as a matter of law the answer is clear. In the Federal Arbitration Act, Congress has instructed federal courts to enforce arbitration agreements according to their terms. ***(U.S. Supreme Court, EPIC SYSTEMS CORP. v. LEWIS, 2017).*** The FAA will apply – regardless of whether

you proceed in state or federal court – so long as the underlying contract providing for arbitration evidences a transaction involving interstate commerce. ***Advantage Assets, Inc. II v. Howell*, 190 N.C. App. 443, 445–46, 663 S.E.2d 8, 9–10 (2008); *see Choice Hotels Int'l, Inc. v. Chewl's Hospitality, Inc.*, 91 F. App'x 810, 814 (4th Cir. Dec. 17, 2003).**

7. ***In Long v. Silver, 248 F.3d 309*** (4th Cir. 2001), a claim falls within the scope of an arbitration clause if it is encompassed by the language of the clause or if a "significant relationship" exists between the claim and the contract which is the case here.
8. There is no evidence produced by the respondents that evidences a rejection of the offer and or that they do not accept the offer, the performance agreement/contract, its terms and provisions. Respondents have not rejected the offer, the agreement/contract in the 10-20 calendar day rejection period incorporated in the contract under the arbitration clause. The Respondents in this action agreed to mediate (arbitrate) by failing to properly notify (respond) of their lack of acceptance ... that the language in the performance contract indicated a change in the terms was an offer... which was accepted by the opposing parties performance/conduct/tacit acquiescence which constituted acceptance of the agreement/contract, see..." ***Tick-Anen v. Harris & Harris, Ltd., 461 F.Supp.2d 863, 867,868 (E.D. Wis. 2006).*** Therefore the unilateral performance agreement/contract is valid and enforceable as the FAA prescribes as it involves commerce in fact (9 U.S.C. § 2), which is a decision delegated for an arbitrator to decide not the courts. The respondents in this case have had sufficient "reasonable notice" of the offer, its terms and provision contained within the offer, the performance agreement/contract and have failed to reject it within the 10-20 calendar days allowed which would have imply non-acceptance, thereby there is now implied acceptance to the agreement, its terms and

provisions, and therefore the arbitration agreement is valid and enforceable as it involves commerce in fact. ***See...Hidalgo v. Amateur Athletic Union of the United States, Inc., No. 1:19-cv-10545 (S.D.N.Y. June 16, 2020).*** The respondents did not even claim they did not understand the offer and therefore they understood its terms and provisions and have accepted them.

9. Silence or inaction generally does not constitute acceptance of an offer, unless the circumstances indicate that such an inference of assent is warranted. ***Smith v. Murray, 311 S.W.2d 591, 595 (Tenn.1958).*** In this instance the acceptance, the doctrine of Estoppel is in accordance with the terms of the agreement i.e. indicated in the terms of the offer. The respondent's actual conduct and performance constituted acceptance of the petitioners offer as the respondents were given a reasonable opportunity to respond and reject/disaffirm the agreement and failed to do so in the 10-20 calendar day rejection period as they were given an additional 3 days (72 hours) Notice with a notice of fault opportunity to cure and notice that they would be in default as the law requires (**See... Exhibits/Evidence Set – C and D filed on the record in district court Doc. 75)** and the contract requires and respondents still failed to reject the offer thereby expressing the defaulting party's implied consent and agreement to the contract, its terms an provisions as expressed under the "Arbitration Clause" of the contract.

10. Under the FAA, an arbitration clause is separable from the contract in which it is embedded and the issue of its validity is distinct from the substantive validity of the contract as a whole. ***Prima Paint Corp. v. Flood & Conklin Mfg. Co., 388 U.S. 395 (1967).*** The U.S. Supreme Court has held, since ***Prima Paint Corp. v. Flood & Conklin Mfg. Co., 388 U.S. 395 (1967),*** that courts must enforce arbitration clauses within contracts, even if the entire contract is invalid or unenforceable. The arbitration clause

clearly and unmistakably delegated questions of validity and any and all disputes relating to the agreement/contract to an arbitrator. Two courts recently had an opportunity to remind litigants of the severability doctrine. In ***Rogers v. Swepi LP, 2018 WL 6444014 (6th Cir. Dec. 10, 2018),*** the Sixth Circuit reversed a district court judge who failed to apply the severability doctrine. These two doctrines—the separability doctrine and the delegation doctrine—operated together as Justice Antonin Scalia wrote for the majority, uniting them in the case of ***Rent-A-Center, West v. Jackson, 561 U.S. 63 (2010).*** In ***Cipolla v. Team Enterprises, LLC*, No. 19-15964 (9th Cir. June 24, 2020)** - Ninth Circuit Remands Order Denying Motion to Compel Arbitration That Failed to Address the Effect of Delegation Clause in Parties' Arbitration Agreement.

D. REASONS FOR GRANTING THE PETITION

This case presents a straightforward conflict among the courts and courts of appeals on an important and frequently recurring question involving the FAA which has already been recently decided unanimously by the united states supreme court in ***Henry Schein, Inc. v. Archer and White Sales, Inc.*, No. 17-1272 (U.S. Sup. Ct. Jan. 8, 2019)** but the courts fail to apply and looks to be overruling. There is an entrenched conflict on the question whether the FAA permits a court to decline to enforce an agreement delegating questions of arbitrability to an arbitrator if the court concludes the claim of arbitrability as it relates to the agreement/contract, the arbitration clause being inapplicable and whether the parties entered into the agreement. The Court's precedents, disputes about arbitrability must be decided by an arbitrator whenever the parties have delegated that issue to an arbitrator, regardless of the court's views about the merits of the arbitrability issue. The lower court is assuming they have the authority to overrule what the U.S. Supreme has already decided by failing to apply the decision in ***"Henry Schein, Inc. v. Archer and White Sales, Inc., No. 17-1272 (U.S.***

Sup. Ct. Jan. 8, 2019)" and the U.S. Court of Appeals for the Fourth Circuit is Affirming their improper actions. The case also presents a straightforward conflict among the courts and court of appeals frequently recurring question involving a courts abuse of power continuously overruling the FAA as written and the above U.S. Supreme Court unanimous recent decisions, that jurisdiction once challenged must be proven on the record otherwise any judgments or orders placed their after are void for want of jurisdiction. The petition for a writ of certiorari should therefore be granted.

E. The lower court's Decisions Conflicts with the Decisions Of United States Supreme Court

The district court and the court of appeals' decisions is a conflict which has already been recently decided unanimously by the united states supreme court in ***Henry Schein, Inc. v. Archer and White Sales, Inc., No. 17-1272*** **(U.S. Sup. Ct. Jan. 8, 2019).**

11. The petitioner moved to compel arbitration and to stay the litigation, citing an arbitration provision in the parties' agreement concerning which affect any and all pending litigations. The district court had erred in believing that it had the authority to rule on the arbitrability questions and controversies of the parties' agreement itself which has been delegated to the chosen arbitrator/arbitration association as provided by the Arbitration Clause. **(See...Doc. 75... Exhibits/Evidence Set - C- U.S. District Court Case No.: 2:17-cv-02170-BHH)**. The Federal Circuit had no power to override the agreement/contract and decide the arbitrability under the parties' agreement." The Plaintiff sought to compel arbitration based on a provision requiring arbitration of "[a]ny controversy and/or claim arising out of th[e] agreement." **See...Doc. 75... Exhibits/Evidence Set - C- U.S. District Court Case No.: 2:17-cv-02170-BHH**. The district court denied the Plaintiff's' motion, and the Fourth Circuit affirmed.

See...Appendix A. The arbitrability of the claims related to the party's arbitration agreement was expressly delegated to an arbitrator, not the court. This delegation applies only to claims that are at least *arguably* covered by the agreement. The Supreme Court precedent" holds that, "in deciding whether the parties have agreed to submit a particular grievance to arbitration, a court is not to rule on the potential merits of the underlying claims." **(quoting *AT&T Technologies, Inc.* v. *Communications Workers of America*, 475 U.S. 643, 649 (1986))**.

12. The preceding decisions of the District Court and the Appeal Court Fourth Circuit, conflicts with the FAA and the decisions of the precedent of the United States Supreme Court. In ***Henry Schein, Inc. v. Archer and White Sales, Inc., No. 17-1272*** **(U.S. Sup. Ct. Jan. 8, 2019)**, the U.S. Supreme Court vacated the Appeals Court judgment and remanded the case for further proceedings consistent with the court's opinion. See ***JUSTICE Kavanaugh J.*** *Opinion delivered* **January 8, 2019 in *Henry Schein, Inc. v. Archer and White Sales, Inc., No. 17-1272.*** The plaintiff "urge[d]" the District Court and Appeals Court to reconsider their opinions based off of the above unanimous decision by the Supreme Court but the courts continued to ignore these facts and overrule this court's decision and further denied the Plaintiff his rights to redress of grievance, his rights to arbitrate the matter before an arbitrator/arbitration association. The Supreme Court's arbitration decisions— in particular, with the Court's express instruction that when parties have agreed to submit an issue to arbitration, courts must compel that issue to arbitration without regard to its merits." *Ibid.* Reviewing this Court's decisions, the Supreme Court explained that the Court had "made clear that when parties agree to submit an issue to arbitration, courts are bound to effectuate the parties' intent by compelling arbitration—no matter what the court thinks about the merits of the issue."

The District Court and Appeals Courts decisions "runs against the Supreme Court's unambiguous instruction that lower courts may not 'delve into the merits of the dispute.' (**quoting *Douglas, 757 F.3d at 468*** (Dennis, J., dissenting)). The U.S. Supreme Court observed that enforcing delegation provisions without regard to the merits of the underlying dispute was "altogether consonant with the FAA's 'liberal federal policy favoring arbitration agreements' " and its "overarching purpose" of "ensur[ing] the enforcement of arbitration agreements according to their terms." (quoting ***Moses H. Cone, 460 U.S. at 24***, and ***AT&T Mobility, 563 U.S. at 344***).

13. There can be little doubt that there is a substantial circuit conflict on the questions presented, or that the questions is ripe for the Court's review. Unanimous Decisions recently decided from the U.S. Supreme Court have fully developed the relevant arguments on both sides of the question. And given the depth of the conflict, there is no realistic prospect that it will resolve itself without the Court's intervention. Further review is therefore warranted.

F. The lower court's Decisions Conflicts with the Decisions Of Other courts

The law requires proof of jurisdiction to appear on the record of the administrative agency and all administrative proceedings." ***Hagans v Lavine, 415 U. S. 533***. "A court cannot confer jurisdiction where none existed and cannot make a void proceeding valid. It is clear and well established law that a void order can be challenged in any court" ***OLD WAYNE MUT. L. ASSOC. v. McDONOUGH, 204 U. S. 8, 27 S. Ct. 236 (1907).*** "There is no discretion to ignore lack of jurisdiction." ***Joyce v. U.S. 474 2D 21.***"Court must prove on the record, all jurisdiction facts related to the jurisdiction asserted." ***Latana v. Hopper, 102 F. 2d 188; Chicago v. New York 37 F Supp. 150.*** "The law provides that once State and

Federal Jurisdiction has been challenged, it must be proven." ***Main v. Thiboutot, 100S. Ct. 2502 (1980).*** "Jurisdiction can be challenged at any time." and "Jurisdiction, once challenged, cannot be assumed and must be decided." ***Basso v. Utah Power & Light Co. 495 F 2d 906, 910.*** "Defense of lack of jurisdiction over the subject matter may be raised at any time, even on appeal." ***Hill Top Developers v. Holiday Pines Service Corp. 478 So. 2d. 368 (Fla 2nd DCA 1985).*** "Once challenged, jurisdiction cannot be assumed, it must be proved to exist." ***Stuck v. Medical Examiners 94 Ca 2d 751. 211 P2d 389.*** "There is no discretion to ignore that lack of jurisdiction." ***Joyce v. US, 474 F2d 215.*** "The burden shifts to the court to prove jurisdiction." ***Rosemond v. Lambert, 469 F2d 416.*** "Jurisdiction is fundamental and a judgment rendered by a court that does not have jurisdiction to hear is void ab initio." ***In Re Application of Wyatt, 300 P. 132; Re Cavitt, 118 P2d 846.*** "Thus, where a judicial tribunal has no jurisdiction of the subject matter on which it assumes to act, its proceedings are absolutely void in the fullest sense of the term." ***Dillon v. Dillon, 187 P 27.*** "A court has no jurisdiction to determine its own jurisdiction, for a basic issue in any case before a tribunal is its power to act, and a court must have the authority to decide that question in the first instance." ***Rescue Army v. Municipal Court of Los Angeles, 171 P2d 8; 331 US 549, 91 L. ed. 1666, 67 S.Ct. 1409.*** Where a court failed to observe safeguards, it amounts to denial of due process of law, court is deprived of juris." ***Merritt v. Hunter, C.A. Kansas 170 F2d 739.*** "A departure by a court from those recognized and established requirements of law, however close apparent adherence to mere form in method of procedure, which has the effect of depriving one of a constitutional right, is an excess of jurisdiction." ***Wuest v. Wuest, 127 P2d 934, 937.***

G. The Decision Below Is Incorrect

The Courts has repeatedly instructed lower courts to enforce arbitration agreements according to their terms. See, ***e.g., American Express Co. v. Italian Colors Restaurant,* 570 U.S. 228, 233 (2013)**; ***CompuCredit Corp.* v. *Greenwood*, 565 U.S. 95, 98 (2012)**; ***AT&T Mobility*, 563 U.S. at 339**; ***Rent-A-Center*, 561 U.S. at 67, *d.*** The district court ignored and overruled that emphatic instruction and the appeals court affirmed and decided the gateway questions of arbitrability themselves, even when the parties have delegated the resolution of arbitrability disputes to an arbitrator. The lower court and appeals court assumed jurisdiction even though petitioner challenged jurisdiction. The petitioner has raised jurisdictional challenges in appeals to the District Court and Appeals Court who lacked jurisdiction and never proved jurisdiction on the record and courts have stated, "The law provides that once State and Federal Jurisdiction has been challenged, it must be proven." ***Main v. Thiboutot, 100S. Ct. 2502 (1980).*** "Jurisdiction can be challenged at any time." and "Jurisdiction, once challenged, cannot be assumed and must be decided." ***Basso v. Utah Power & Light Co. 495 F 2d 906, 910.*** "Defense of lack of jurisdiction over the subject matter may be raised at any time, even on appeal." ***Hill Top Developers v. Holiday Pines Service Corp. 478 So. 2d. 368 (Fla 2nd DCA 1985).*** That holding cannot stand.

14. "[A]rbitration is simply a matter of contract between the parties." ***First Options*, 514 U.S. at 943**. Consistent with that principle, parties may "agree to arbitrate 'gateway' questions of 'arbitrability,' such as whether the parties have agreed to arbitrate, whether the parties have entered into an agreement by default or whether their agreement covers a particular dispute claim or controversy." ***Rent-A-Center*, 561 U.S. at 68-69.** "Just as the arbitrability of the merits of a dispute depends upon whether the parties agreed to

arbitrate that dispute, so the question 'who has the primary power to decide arbitrability' turns upon what the parties agreed about *that* matter." ***First Options***, 514 U.S. at 943. And if the parties agree to arbitrate arbitrability, that agreement must be enforced according to its terms under the FAA. See ***Rent-A-Center***, 561 U.S. at 70. In addition, this Court has mandated that an arbitration agreement should be strictly enforced regardless of a court's views of the merits of the claim made by the party seeking to compel arbitration. For example, in *AT&T Technologies, Inc.* v. *Communications Workers of America*, 475 U.S. 643 (1986), the Court explained that the requirement to compel arbitration under valid agreements applies "whether the claims of the party seeking arbitration are "'arguable' or not, indeed even if it appears to the court to be frivolous." *Id.* at 649-650. Whatever the merits of the movant's claim, "[t]he courts have no business weighing the merits of the grievance," because "[t]he agreement is to submit all grievances to arbitration, not merely those which the court will deem meritorious." *Id.* at 650.

15. Despite this Court's clear holdings that parties are free to delegate threshold disputes of arbitrability to arbitrators, the district court and the court of appeals refused to enforce the delegation provision at issue in this case and deciding the arbitrability question by stating that "there was no agreement between the respondents and the petitioner and there was no applicable arbitration clause." See...Appendix – C. That holding cannot be reconciled with the FAA or with this court's recent U.S. Supreme Court's decision applying it.

a) First and foremost, the district court and the court of appeals' decision finds no basis in the text of the FAA. Section 2 of the FAA establishes that arbitration agreements "shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." **9 U.S.C. § 2**. That provision does not authorize judicial interference with arbitration agreements; rather, it simply "places arbitration agreements on equal footing with all other contracts." ***Buckeye Check Cashing, Inc.* v. *Cardegna*, 546 U.S. 440, 443 (2006).** And it is undisputed that one

party's belief that another party's claims that the parties have not entered into an agreement and that there is no applicable arbitration clause under a contract when there clearly is an "Arbitration Clause", there exists current arbitrable issues, is not a valid basis for overriding the contract entirely. To the contrary, as explained above, the FAA directs courts to enforce a party's claim for arbitration "even if it appears to the court to be frivolous." ***AT&T Technologies*, 475 U.S. at 649-650**. Under that rule, "if a court determines that there is clear and unmistakable evidence that the parties agreed to arbitrate arbitrability but nevertheless believes that an underlying claim is almost certainly not subject to arbitration, the court must still order the parties to arbitrate arbitrability." ***Douglas*, 757 F.3d at 468 (Dennis, J., dissenting).** Because the U.S. Supreme Court has already answered most of these questions and assigned responsibility for resolving arbitrability disputes to the arbitrator, there was no need for the district court and the court of appeals to render the decisions they made. The court did so anyway, thereby conflicting with the FAA as written and the U.S. Supreme Court unanimous decision in ***Henry Schein, Inc. v. Archer and White Sales, Inc., No. 17-1272* (U.S. Sup. Ct. Jan. 8, 2019).** The district court and the court of appeals thereby violated the general principle that, "in deciding whether the parties have agreed to submit a particular grievance to arbitration, a court is not to rule on the potential merits of the underlying claims." ***AT&T Technologies*, 475 U.S. at 649.** It cannot seriously be disputed that this is exactly what the district court and court of appeals did; That is exactly what lower courts should avoid doing in cases in which the parties have agreed to arbitrate.

b) The district court and the court of appeals decisions are also inconsistent with the "liberal federal policy favoring arbitration agreements" embodied in the FAA. ***Moses H. Cone*, 460 U.S. at 24**. "By its terms, the [FAA] Statute leaves no place for the exercise of discretion by a district court or any court, but instead mandates that district courts or any court *shall* direct the parties to proceed to arbitration on issues as to which an arbitration agreement exists and delegates any and all arbitrability question in relation to the arbitration agreement to be decided by an arbitrator, not the court." ***Henry Schein, Inc. v. Archer and White Sales, Inc., No. 17-1272* (U.S. Sup. Ct. Jan. 8, 2019).** The district court and the court of appeals did not acknowledged that policy in the decisions below, yet decided to "override the clear intent of the parties, or reach a result inconsistent with the plain text of the contract, the FAA and U.S. Supreme Court unanimous decisions." But again, under the parties' agreements, assessing intent and deciding what is or is not such as rather the parties entered into an agreement by default and tacit acquiescence, performance, its terms, provisions referencing an Arbitration Clause is "inconsistent with the plain text of the contract" are tasks for the arbitrator. The district court and the court of appeals usurped that authority, elevating its own views over the parties' actual intent as documented in their agreements to arbitrate arbitrability. To be sure, cases may arise in which a party seeks to compel arbitration for reasons that consistent with the terms and provisions of an unilateral performance agreement in writing which incorporates an arbitration clause which all parties to the agreement have been notified of. Courts must presume that arbitrators can be trusted faithfully to analyze the scope of the disputed provision and to refuse to allow arbitration of claims that fall outside it. In any event, courts "cannot rely on judicial policy concern[s]" to refuse to honor arbitration agreements. ***14 Penn Plaza LLC* v. *Pyett*, 556 U.S. 247, 270 (2009).** A party that proves the

existence of a valid arbitration agreement is entitled to "an order directing that such arbitration proceed *in the manner provided for in such agreement.*" **9 U.S.C. 4** (emphasis added). And that is true despite the possibility that a court might later disagree with the arbitrator's assessment of arbitrability. When the parties have clearly and unmistakably delegated the question of arbitrability to an arbitrator as is the case here, the initial decision is the arbitrator's—and the arbitrator's alone—to make. See...***Dean Witter Reynolds*, 470 U.S. at 217** and ***Henry Schein, Inc. v. Archer and White Sales, Inc., No. 17-1272* (U.S. Sup. Ct. Jan. 8, 2019).**

H. The Questions Presented Are Important And A Recurring One That Warrants The Court's Review In This Case

The questions presented in this case is a recurring one of substantial legal and practical importance. The Court's intervention is necessary to safeguard the FAA's commitment to the enforceability of arbitration agreements according to their terms and to provide clarity and uniformity in the law.

16. As demonstrated by this Court's frequent grants of review in cases involving the FAA, arbitration is a critical part of our Nation's legal system. Among other valuable benefits, arbitration agreements allow private parties to resolve a broad range of disputes while avoiding the costs associated with traditional litigation in a much shorter time. Parties frequently seek to maximize those efficiencies by delegating questions of arbitrability to the arbitrator as well. A court has "'no business weighing the merits of the grievance'" because the "'agreement is to submit all grievances to arbitration, not merely those which the court will deem meritorious.'" **Id., at 650** (quoting **Steelworkers v. American Mfg. Co., 363 U. S. 564, 568 (1960)**). That **AT&T Technologies** principle applies with equal force to the threshold issue of arbitrability. Just as a court may not decide a merits question that the parties' have delegated to an arbitrator, a court may not decide an arbitrability question that the parties have delegated to an arbitrator. This Court has consistently held that parties may delegate threshold arbitrability questions to the arbitrator, so long as the parties' agreement does so by "clear and unmistakable"

evidence. **First Options, 514 U. S., at 944** (alterations omitted); see also **Rent-A-Center, 561 U. S., at 69, n. 1.** To be sure, before referring a dispute or controvery to an arbitrator, the court determines whether a valid arbitration agreement exists under **9 U. S. C. § 2.** But if an agreement delegates the arbitrability issue of that question to an arbitrator, a court may not decide the arbitrability issue. Here a valid performance agreement exists that involves commerce in fact, has an arbitration clause which delegates any disputes, claims and controversies in relation to the agreement to an arbitrator chosen by the petitioner, the non-defaulting party which makes it arbitrable, an arbitrability question for the arbitrator to decide, not the court. A court may not determine the arbitrability questions that has been delegated to an arbitrator to decide, in an agreement in writing based on its own interpretation and ignorance of the arbitration provision and overriding the agreement by stating, "that there is no applicable arbitration clause and that the parties did not enter into an agreement," these are arbitrable disputes, claims and controversies delegated to an arbitrator/arbitration association. This case well illustrates that concern.

Petitioners first moved to compel arbitration in 2019. Yet the courts are still attempting to conflict with the threshold question of who should decide arbitrability when this court has already made that decision. The District Court and the court of appeals' decision has thus effectively nullified the very efficiencies that led the parties to agree to arbitration in the first place. Absent this Court's intervention, more parties who seek to arbitrate will similarly be forced to expend significant time and money simply to enforce their arbitration clauses as written. The deepening circuit conflict on this question has also upended parties' settled expectations regarding the enforceability of arbitration agreements. Numerous commentators have recognized this court's unanimous opinion in

Henry Schein, Inc. v. Archer and White Sales, Inc., No. 17-1272 **(U.S. Sup. Ct. Jan. 8, 2019)**. The facts of this case are again instructive: the judge expressly found that there was a plausible construction of the parties' agreement that required arbitration of respondent's claims, but the district court and the court of appeals reached the opposite conclusion on the same record. Unless this Court acts, parties who are similarly situated who have bargained for arbitration agreements that include delegation provisions may have their rights violated by lower courts abuse of power who refuse to abide by a higher courts decision, this court's decision. That result is contrary to the FAA's "principal purpose" of "ensur[ing] that private arbitration agreements are enforced according to their terms." ***AT&T Mobility*****, 563 U.S. at 344.** As matters currently stand, indisputably valid delegation provisions in arbitration agreements are always enforceable as an established nationwide standard for the enforcement of arbitration agreements in circuits. Indeed, this Court routinely grants certiorari even where a circuit conflict is shallow (or non-existent) when the question presented concerns the interpretation of the FAA. **See *New Prime Inc.* v. *Oliveira*, cert. granted, No. 17-340 (Feb. 26, 2018); *Italian Colors*, 570 U.S. at 228; *AT&T Mobility*, *supra*; *Stolt-Nielsen S.A.*, 559 U.S. at 662.** In light of that practice, this case, which presents a clear and important conflict involving district court and the fourth circuit appeals court, cries out for the Court's review.

17. This case is an important vehicle in which to inform the district courts, any other circuit appeals courts about the FAA statute and agreements delegating arbitrable questions of arbitrability to be decided by an arbitrator, even validity of the contract and the arbitration clause. As such, there is no threshold obstacle to reviewing and resolving that questions in this case. In addition, the courts of appeals have comprehensively analyzed the arguments for and against the existence of a Delegation clause in an agreement in

writting to arbitrability. Accordingly, this case provides the Court with an excellent opportunity to inform these courts and resolve the questions presented. There is no basis in law or logic for imposing on the FAA and the FAA provides no exceptions to make claims based off their own opinions when the agreement delegates questions of arbitrability such as disputes, claims, and controversies related to the agreement to an arbitrator. The district court and the fourth circuit court of appeals' contrary decision was erroneous, and the Court should grant the petition for certiorari to correct that error and resolve a circuit conflict that is affecting similarly situated parties arbitration agreements across the country.

This case is an important vehicle in which to inform the district courts and courts of appeals that once jurisdiction is challenged it must be proven on the record or any orders thereafter are void for want of jurisdiction.

REMEDY SOUGHT:

Reversal of the District Courts **January 29, 2020** text order (**Doc. 95**) and appeals court May 22, 2020 unpublished opinion affirming district court's order denying the Appellants MOTION TO VACATE JUDGMENT/ORDER (**Doc. 89**), with an order directing the district court to reopen the case, and to compel arbitration to the arbitration association specified in Appellants Motion to Compel and to place a stay of the proceedings for this matter until arbitration has been completed and they have received a copy of the findings of the arbitrator.

CONCLUSION

For the reasons specified above, the petition for a writ of certiorari should be granted.

Respectfully Presented,

"Without Prejudice"

Nelson L. Bruce 9-17-2020

Nelson L. Bruce, Propria Persona, Sui Juris
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