No. 20-700

SUPREME COURT OF THE UNITED STATES

Addie Smith,

Petitioner,

vs.

SyHadley, L.L.C.,

Respondent.

ORIGINAL

On Petition for a Writ of Certiorari to
the United States Washington State Court of Appeals
Division I

PETITION FOR A WRIT OF CERTIORARI

Addie Smith
Pro Se
2601 76th Ave SE
Apt 502
Mercer Island, WA 98040
Email: absmith27@icloud.com

(425) 399-3331

Friend of the Court

I. Question Presented

The trial court, WA State Court of Appeals, and WA State Supreme Court have attempted to invalidate the parties' arbitration agreement with state law, in whole, even though both parties agreed to arbitrate our disputes.

King County Board of Health Chairman, Joe McDermott, declared racism a public health crisis. In a statement, King County Executive Dow Constantine committed the County and its public health authority to implementing a racially equitable response to racism, centering on community. He went on to acknowledge the County's past and present complicity "in maintaining and perpetuating structural racism," and said that "as an institution we must be a vital player in dismantling oppressive systems that are grounded in White supremacy."

"Washington State Court of Appeals, Washington State Supreme Court and the King County Superior Court have refused to rule on the Petitioner's Motion to Compel Arbitration. Congress adopted the [Federal] Arbitration Act in 1925" because "courts were unduly hostile to arbitration." Epic Sys. Corp. v. Lewis, *138 S. Ct. 1612, 1621 (*2018).

Many years later, "judicial antagonism toward arbitration" continues to "manifest *[]* itself in a great variety of devices and formulas." Id. At 1623 (internal quotation marks omitted). "Under the Supremacy Clause, from which our preemption doctrine is derived, any state law, however clearly within a State's acknowledged power, which interferes with or is contrary to federal law, must yield." Dean Witter Reynolds Inc. v. Byrd, 470 U.S. 213, 219-220 (1985)

The United States Supreme Court, in a 7-1 decision, Justice Kagan writing for the majority, reiterated that "the FAA preempts any state law that discriminates against arbitration on its face," and also held that the "FAA preempts any [state] rule that covertly accomplishes the same objective by disfavoring contracts that (oh so coincidentally) have the defining features of arbitration agreements". Kindred Nursing Centers L.P. v. Clark, 2017 U.S. Lexis 2948.

"[P]re-emption doctrine is derived" from the Supremacy Clause, which makes federal law the "supreme Law of the Land." Whether a particular federal statute preempts a particular state law, thus rendering the state law unenforceable, depends on the congressional intent. The Supreme Court held Southland Corp. v. Keating that section 2 applies in the state court and preempts conflicting state laws.

The Petitioner, Ms. Smith, Pro Se, was employed by the Respondents, SyHadley, LLC., (also Legacy Partners Residential, Inc., and Legacy Partners, LLC). Ms. Smith was provided an apartment, as part of her salary. Ms. Smith is a hate crime survivor. Both parties signed a binding arbitration agreement. Ms. Smith requested arbitration on September 16, 2019. To date there has not been any arbitration whatsoever. Ms. Smith filed a timely Motion to Compel Arbitration, on November 20, 2019, in trial court. To date the trial court has refused to rule on the motion. It is still sitting in trial court without a decision. Ms. Smith filed a Motion to Compel Arbitration in the Court of Appeals on January 3, 2020, months after appealing the trial court's decision granting the Respondent's Unlawful Detainer. The Court of Appeals then ordered the Respondents to get a ruling from the trial court on a Supersedeas Bond. Still no ruling on the Motion to Compel Arbitration. The rationale of the decision indicates the court's desire to enforce conflicting state laws. It singles out arbitration agreements for different treatment than other contracts. The Respondents, the Trial Court, the Court of Appeals and Washington State Supreme Court have so far successfully upheld Ms. Smith's contract lease agreement and the state's "at-will" employment in the unlawful detainer.

The questions presented are:

1. Whether the Federal Arbitration Act preempts state Supersedeas law? Does this state law conflict with the FAA?
2. Whether the Federal Arbitration Act standard of the rule is satisfied when the courts violate Petitioner's right to arbitrate by enforcing conflicting state laws.
3. Whether the Petitioner should have been granted Motion for Discretionary Review based on the Federal Arbitration Agreement?
4. Based on the decisions of other Washington State cases, granting Motion for Discretionary Review by the Washington State Supreme Court regarding similar arbitration agreements, should the Petitioner also have been granted Discretionary Review?
5. The King County Division I Court of Appeals denied Petitioner's Motion to Compel Arbitration. Should the Motion to Compel Arbitration been granted based on the Federal Arbitration Act?
6. Whether, based on the FAA, the Washington State Supreme Court and the Washington State Court of Appeals should have ended the Petitioner's Stay pending the outcome of the ruling?

7. Should employees and employers be allowed to agree that any disputes between them will be resolved through one-on-one arbitration? Or should employees always be permitted to bring their claims in class or collective actions, no matter what they agreed with their employers?
8. Should Ms. Smith be granted a Stay pending the outcome of this case?

II. Table of Contents

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IV. Petition for Writ of Certiorari

Addie Smith, Pro Se respectfully petitions this court for a writ of certiorari to review the judgment of the Washington State Supreme Court and the Washington State Division I Court of Appeals.

V. Opinions Below

The decision by the Washington State Division I Court of Appeals and Washington State Supreme court denying Ms. Smith's Motion to Compel Arbitration and Motion for Discretionary Review are reported as SyHadley, LLC. v. Addie Smith, 80780-3-I (Court of Appeals) and 98196-5 (Washington State Supreme Court) respectively. The Court of Appeals denied Ms. Smith's Motion to Compel Arbitration on February 20, 2020. The Washington State Supreme Court denied Ms. Smith's Motion for Discretionary Review on July 8, 2020. In 2012, a former employee, Lorena Nelsen filed a Putative Class Action lawsuit against the Respondents. Nelsen v. Legacy Partners Residential, LLC., 207 Cal.App.4th 1115 (2012) 144 Cal. Rptr. 3d 198 No. A132927. The King County Resolution 20.08.2 declaring racism a public health crisis. Those orders and opinions are attached at Appendix ("App.").

VI. Jurisdiction

Ms. Smith's petition for hearing to the Washington State Supreme Court was denied on July 8, 2020. Ms. Smith invokes this Court's jurisdiction under 28 U.S.C. § 1257 and U.S.C. § 2101(e)(f), having timely filed this petition for a writ of certiorari within ninety days of the Washington State Supreme Court's judgment.

VII. Constitutional Provisions Involved

United States Constitution, Section 2 of the Federal Arbitration Act provides that both pre-dispute and post-dispute arbitration agreements within its scope "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 (2000) United States Constitution, Article I, Section 2 requires that "similarly situated persons received similar treatment under the law". Harmon v. McNutt, 91 Wn.2d 126, 130, 587 P.2d 537 (1978).

Pursuant to the Federal Arbitration Act 9 U.S.C., §3 requires this court to stay the Washington State action. In order to give effect to this policy, courts must entertain presumptions "in favor of arbitration, whether the problem at hand is the construction of the language itself or an allegation of waiver, delay or a like defense to arbitrability." Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 24 (1983).

VIII. Statement of the Case

Congress adopted the Arbitration Act in 1925 in response to a perception that courts were unduly hostile to arbitration. No doubt there was much to that perception.

Before 1925, English and American common law courts routinely refused to enforce agreements to arbitrate disputes. Scherk v. Alberto-Culver Co., 417 U. S. 506, 510, n. 4 (1974). But in Congress's judgment arbitration had more to offer than courts recognized—not least the promise of quicker, more informal, and often cheaper resolutions for everyone involved. Id., at 511. So Congress directed courts to abandon their hostility and instead treat arbitration agreements as "valid, irrevocable, and enforceable." 9 U. S. C. §2. The Act, this Court has said, establishes "a liberal federal policy favoring arbitration agreements." Moses H. Cone Memorial Hospital v. Mercury Constr. Corp., 460 U. S. 1, 24 (1983) (citing Prima Paint Corp. v. Flood & Conklin Mfg. Co., 388 U. S. 395 (1967)); see id., at 404 (discussing "the plain meaning of the statute" and "the unmistakably clear congressional purpose that the arbitration procedure, when selected by the parties to a contract, be speedy and not subject to delay and obstruction in the courts"). Not only did Congress require courts to respect and enforce agreements to arbitrate; it also specifically directed them to respect and

enforce the parties' chosen arbitration procedures. See §3 (providing for a stay of litigation pending arbitration "in accordance with the terms of the agreement"); §4 (providing for "an order directing that . . . arbitration proceed in the manner provided for in such agreement").

Indeed, we have often observed that the Arbitration Act requires courts "rigorously" to "enforce arbitration agreements according to their terms, including terms that specify with whom the parties choose to arbitrate their disputes and the rules under which that arbitration will be conducted." American Express Co. v. Italian Colors Restaurant, 570 U. S. 228, 233 (2013).

In a 7-1 Supreme Court decision, Justice Kagan writing for the majority reiterated that the Federal Arbitration Act preempts any state law that discriminated against arbitration on its face, and also held that the FAA preempts, "any [state] rule that covertly accomplishes the same objective by disfavoring contracts that (oh so coincidentally) have the defining features of arbitration agreements". Kindred Nursing Centers v. Clark, 2017 U.S. Lexis 2948.

Recently the Washington State Supreme Court granted the Employer Discretionary Review on Steve Burnett, et al... Respondents, v. Pagliacci Pizza, Inc., Petitioner 451 P.3d 332 (2019) and No. 97429-2. Department II

of the Court, composed of Chief Justice Fairhurst and Justices Madsen, Stephens, González and Yu, considered at its November 5, 2019, Motion Calendar whether review should be granted pursuant to RAP 13.4(b) and unanimously agreed that the following order be entered,

"That the petition for review is granted. Any party may serve and file a supplemental brief within 30 days of the date of this order, see RAP 13.7(d). The Respondents' motion to strike the Petitioner's reply is granted to the extent that the portion of the reply that goes beyond the contingent issue raised in the answer to the petition for review is stricken."

Meanwhile, Ms. Smith, an Employee, and a Pro Se litigant's Discretionary Review was denied by Commissioner Michael E. Johnston. Ms. Smith's Fourteenth Amendment rights were violated by this court. Under Article I Section 2 "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor deny to any person within its jurisdiction the equal protection of the laws."

Also recently, the Washington State Supreme Court has ruled on Steve Burnett, et al... Respondents, v. Pagliacci Pizza, Inc., Petitioner. Judge Madsen stated, "At issue on interlocutory review is whether the trial court sustainably denied the employer's motion to compel arbitration. The Court

of Appeals affirmed, determining that the mandatory arbitration policy contained in the employee handbook, which was provided to the named plaintiff after he signed the employment handbook, which was provided to the named plaintiff after he signed the employment relationship agreement, was procedurally and substantively unconscionable and, thus, unenforceable... we affirm the denial of the motion to compel arbitration."

Ms. Smith was employed by the Respondents and is exempt from RLTA 59.12 and 59.18 pursuant to RCA 59.18.40 (8) Occupancy by an employee of a landlord whose right to occupy is conditioned upon employment in or about the premises.

This case presents the question of whether the Federal Arbitration Act standard of the rule is satisfied when the courts violate Petitioner's right to arbitrate by enforcing conflicting state laws.

1. Ms. Smith Requested Arbitration on September 16, 2019

Ms. Smith was employed by the Respondents, SyHadley LLC., as the community manager of Hadley Apartments in May, 2019. As part of her salary, she was provided an apartment onsite. By June of 2019, Ms. Smith began reporting hate crimes to her former employers.

The harassment, stalking, threats, and attacks continued from June, 2019 through February 2020. On August 7, 2019, the Respondents terminated Ms. Smith. It was over the phone, on a mental health day, after being attacked for 10 hours straight by racists who were allowed to continue to live in the building Ms. Smith was hired to manage.

On September 16, 2019, Ms. Smith requested arbitration. The Respondents retaliated with an eviction notice two days later, on September 18, 2019. Despite the fact that the eviction notice was improperly served, despite the retaliation, despite the Arbitration Agreement that was signed by both parties, despite Washington State Residential Landlord Tenant Act (RLTA) 59.18 and 59.12. Ms. Smith is a former employee.

The trial court granted an unlawful detainer for the Respondents on November 19, 2019, and ordered the clerk to issue a writ of restitution.

She is exempt pursuant to 59.18.40(8) Landa v. Holiday Appelwick, J. No. 74406-2-I

Despite Ms. Smith's exemption; despite the improper service; despite the arbitration agreement, King County Superior Court granted the Respondents an eviction. The King County Superior Court presiding judge still hasn't ruled on Ms. Smith's timely filed Motion to Compel Arbitration on November 20, 2019. As the case now stands there is a real risk that Ms.

Smith will be evicted during a pandemic and unemployed. Ms. Smith is the mother of a teenaged daughter whom also lives in the home. Federal Arbitration Act 9 U.S.C. §§ 1-16 Under the strong national Policy favoring arbitration is "so integral to modern dispute resolution that the FAA preempts conflicting state law." § 2 of the FAA mandates arbitration because employment relationships are considered related to interstate commerce and are therefore governed by the FAA. § 3 of the FAA requires this court to stay the Washington state action while arbitration is pending. Ms. Smith is the mother of a teenaged daughter whom also lives in the home.

The Respondents also lied to obtain orders of protection, from a district court judge, against Ms. Smith. On appeal, those fraudulent orders have been reversed, and canceled.

2. Direct Appeal

On direct appeal of the eviction, Ms. Smith renewed her argument that her Motion to Compel Arbitration had not been ruled upon in trial court. Ms. Smith filed her direct appeal with the Court of Appeals on November 20, 2019. Ms. Smith filed her Motion to Compel Arbitration in the Court of Appeals on January 3, 2020. From the Court of Appeals, Commissioner Mary Neel issued a ruling on December 19, 2019, The Court of Appeals

acknowledged the parties' arbitration agreement stating,

> "In her emergency motion for stay, Smith has raised issues that appear to go beyond the dispute over possession. She argues that the unlawful detainer statutes do not apply here because her occupancy of the apartment was part of her employment, citing RCW 59.18.040(8) (the following living arrangements are not intended to be governed by the provisions of this chapter: occupancy of an employee of a landlord whose right to occupy is conditioned upon employment in or about the premises). At this point Syhadley has not addressed Smith's argument that the unlawful detainer procedure is unavailable. Smith also argues that as part of her employment she signed an arbitration agreement and that the dispute must go to arbitration. Again Syhadley has not yet addressed this argument."
>
> Commissioner Mary Neel

Ms. Smith filed a Motion to Compel Arbitration in both the trial court and the court of appeals. Despite the parties' binding arbitration agreement and despite the acknowledgement of Ms. Smith's employment and citing the RCW exempting her from the Residential Landlord Tenant Act, the Court of Appeals then ruled that a decision on a Supersedeas Bond must be made from the trial court.

King County Superior Court Judge Bill Bowman, now a Court of Appeals Division I Judge, ruled in favor of a Supersedeas Bond, despite the fact that Ms. Smith is exempt from the Residential Landlord Tenant Act (RLTA) 59.12 and 59.18. Despite the fact that the trial court, and now the Court of Appeals refused to rule on the parties' arbitration agreement. Judge Bowman granted the Respondents a supersedeas bond in the amount of

$53,631.85. Ms. Smith filed a Motion for Reconsideration and an Objection to the Ruling on January 27, 2020. This is not a straightforward landlord tenant matter. Both courts have violated Ms. Smith's right to arbitrate by enforcing conflicting state laws. Although Ms. Smith was employed by the Respondents, and exempt from the Residential Landlord Tenant Act, in Otis Housing Association v. Ha, 165 Wn.2d 582, 201 P.3d 309 (2009), "the court, in a 5-4 decision, held that an optionee under a lease agreement waived the right to arbitration claims because of a failure to assert the claims during an unlawful detainer action."

This is not the case with Ms. Smith. She has informed the court and the Respondents in the trial court, Court of Appeals, and the Washington State Supreme Court. Ms. Smith filed Motions to Modify Commissioner Mary Neel's rulings on December 19, 2019, January 31, 2020 and February 5, 2020 rulings.

On February 20, 2020, the Court of Appeals denied Ms. Smith's Motion to Compel Arbitration and Motions to Modify. The Court of Appeals denied Ms. Smith's Motion to Compel Arbitration as

> "Smith's motion to compel arbitration goes to the merits of her appeals and is denied as premature."

On February 24, 2020, Ms. Smith, Petitioner, filed her Motion for Discretionary Review and Motion for Accelerated Consideration and Emergency Motion for Stay. Commissioner Michael Johnston denied Ms. Smith Motion for Discretionary Review on April 9, 2020. Ms. Smith filed a Motion to Modify the commissioner's ruling. On July 8, 2020, Department I of the Washington State Supreme Court, composed of Chief Justice Stephens and Justices Johnson, Owens, Gordon McCloud and Montoya-Lewis unanimously agreed,

> "That the Petitioner's motion to modify the Commissioner's ruling is denied. The Respondent's motion for an order requiring the Appellant to provide a transcript of the oral argument before the Commissioner is also denied. Further, the stay imposed in the Supreme Court Commissioner's April 9, 2020, ruling is now lifted. DATED at Olympia, Washington, this 8th day of July, 2020."

IX. REASONS FOR GRANTING THE WRIT

A. To avoid erroneous deprivations of the right to Compel Arbitration, this Court should determine whether the standard under the FAA preempts conflicting state laws, such as the supersedeas bond, for employees whom have lived where they worked.

"The Supreme Court holds the responsibility to say what a federal statute means, and once the Court has spoken, it is the duty of the other courts to respect that understanding of the governing rule of law." Nitro-Lift Tech, LLC v. Howard, ---U.S.----,133 S.Ct. 500, 503, 184 L.Ed.2d 328 (2012).

"Arbitration is meant to streamline the proceedings, lower costs, and conserve private and judicial resources, and it furthers none of those purposes when a party actively litigates a case for an extended period only to blatantly assert that the dispute should have been arbitrated, not litigated, in the first place." Nino v. Jewelry Exch., Inc., 609 F.3d at 209 (3rd Cir.2010).

The King County Supreme Court intentionally ignored the Arbitration Agreement signed by both parties when they granted the Respondents and eviction pursuant to RLTA 59.18. The Arbitration Agreement is binding. The Respondents have a history of violating the law. In Nelsen v. Legacy Partners Residential, Inc., 207 Cal.App.4th 1115 (2012) 144 Cal. Rptr. 3d 198. Lorena Nelson filed a Putative Class Action lawsuit against our former

employers, Legacy Partners Residential (SyHadley, LLC), for multiple violations of the Labor Code. Lorena Nelson also signed an Arbitration Agreement. When she sued, the Respondents filed a Motion to Compel Arbitration. The Respondent's Motion to Compel Arbitration was granted. Ms. Smith has been requesting Arbitration since September 16, 2019. To date the Respondents have refused to arbitrate, instead abusing state laws with the help of the trial, appeal and supreme court. Federal preemption occurs when a validly enacted federal law supersedes inconsistent state laws. As a result, where federal and state laws are in conflict, the state law is generally supplanted, leaving it void and without effect. See Maryland v. Louisiana, 451 U.S. 725, 746 (1981) (finding state laws that conflict with federal law are "without effect."); Wickard v. Filburn, 317 U.S. 111, 124, (1942) ("[N]]o form of state activity can constitutionally thwart the regulatory power granted by the commerce clause to Congress.").

Ms. Smith informed the trial court judge that her family's right to peaceful enjoyment was breached by the Respondents, and residents living in the building.

Ms. Smith was terminated, over the phone, on a mental health day, after complaining about horrible working conditions, hate crimes, and horrible living conditions. Ms. Smith timely filed a counterclaim of breach of

peaceful enjoyment, and a Motion to Compel Arbitration.

The decision by the Court of Appeals is plainly incorrect, as it both contradicts the Federal Arbitration Act and the express purpose of the rule. In a July 12, 2019 ruling, Judge John McHale of the King County Superior Court found that the state law disallowing arbitration is preempted by the FAA. Logan v. Lithia Motors, et. al., No. 18-2-19068-1 SEA. The rationale of the decision indicates the court's desire to enforce conflicting state laws. It singles out arbitration agreements for different treatment than other contracts. The Arbitration Agreement signed by both parties' states,

> "I further agree and acknowledge that Legacy Partners and I will use binding arbitration to resolve all disputes that may arise out of the employment context. Both Legacy Partners and I agree that any claim, dispute, and/or controversy that either I may have against Legacy Partners (or its owners, directors, officers, managers, employees, agents, and parties affiliated with its employee benefit health plan) or Legacy Partners may have against me, arising from, related to, or having any relationship or connection whatsoever with my seeking employment with, employment by, or other association with Legacy Partners shall be submitted to and determined exclusively by binding arbitration under the Federal Arbitration Act (Cal. Code Civ. Proc. Sec. 1280 et seq., including section 1283.05 and all of the Act's other mandatory and permissive rights to discovery). Included within the scope of this Agreement are all disputes, whether based on tort, contract, statute (including but not limited to, any claims of discrimination and harassment, whether they be based on the California Fair Employment and Housing Act, Title VII of the Civil Rights Act of 1964, as amended, or any other state or federal law or regulation), equitable law, or otherwise, with exception of claims arising under the National Labor Relations Act which are brought before the National Labor Relations Board, claims for medical and disability benefits under the California Workers'

> medical and disability benefits under the California Workers' Compensation Act, Employment Development Department claims, or as otherwise required by state or federal law."

What States may not do is decide that a contract is fair enough to enforce all its basic terms (price, service, credit), but not fair enough to enforce its arbitration clause. The Act makes any such state policy unlawful, for that kind of policy would place arbitration clauses on unequal "footing," directly contrary to the Act's language and Congress' intent. 513 U.S. 265, 281 (1995).

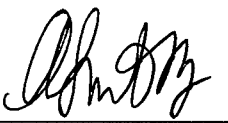
This case presents this Court with an opportunity to clarify the preemption standard in the face of supersedeas bond actions that conflict with the Federal Arbitration Act. Absent intervention by this Court, the Washington State Supreme Court and Court of Appeals rulings will work to undermine the safeguards that this Court has spent the past 50 years developing.

X. CONCLUSION

For the foregoing reasons, Ms. Smith respectfully requests that this Court issue a writ of certiorari to review the judgment of the Washington State Supreme Court and Court of Appeals.

DATED this 30th day of October, 2020.

Respectfully submitted,



Addie Smith
Petitioner, PRO SE

2601 76th Ave SE, Unit 502
Mercer Island, WA 98040
(425) 399-3331
Email: absmith27@icloud.com