No. 20-794

IN THE

Supreme Court of the United States

SERVOTRONICS, INC.,

Petitioner,

v.

ROLLS-ROYCE PLC, *et al.*,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF OF THE GENERAL AVIATION MANUFACTURERS ASSOCIATION, INC. AND THE AEROSPACE INDUSTRIES ASSOCIATION AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS

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INTERESTS OF AMICI CURIAE[1]

The General Aviation Manufacturers Association (GAMA) is a not-for-profit international trade association representing over one hundred manufacturers of general aviation aircraft, engines, avionics, and components. GAMA's members also are engaged in flight operations, maintenance, and training services. For over fifty years, GAMA's mission has been to foster and advance the welfare, safety, interests, and activities of general aviation and general aviation manufacturers in the United States and abroad. General aviation encompasses all civilian flying except scheduled commercial transport. Examples of general aviation include flight training, business travel, aerial firefighting, crop dusting, pipeline patrol, air ambulance services, and search and rescue.

The Aerospace Industries Association of America, Inc. (AIA) is a not-for-profit trade association representing the interests of the aerospace and defense industry in the United States. Founded in 1913, AIA represents more than 300 of the nation's major aerospace and defense manufacturers and suppliers, producers of products ranging from commercial aircraft, engines, and avionics, to manned and unmanned defense systems and space and satellite communication systems. AIA's united membership improves the safety of air transportation to make America more secure, fuel exploration, drive innovation, and ensure a vibrant industrial base.

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1. No counsel for a party authored this brief in whole or in part, and no such counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than amici curiae, their members, or their counsel made a monetary contribution to its preparation or submission. The parties have consented to the filing of this brief.

Together, GAMA and AIA represent most of the leading aviation and aerospace manufacturers worldwide.[2] This case will impact whether private, contract-based international arbitration will remain an effective dispute resolution choice for aviation and aerospace. Accordingly, GAMA, AIA, and their members have a substantial interest in the outcome of this case and are uniquely positioned to discuss the practical impacts on aviation and aerospace manufacturers and maintainers. Amici provide an important perspective for this Court's consideration as it addresses the application of 28 U.S.C. § 1782(a) to private, contract-based arbitration seated outside of the United States.

SUMMARY OF ARGUMENT

In technology-driven, uncompromising industries like aviation and aerospace, commercial disputes are inevitable. As exemplified by this case, for aviation and aerospace business partners in different countries, private, contract-based arbitration outside of the United States is a popular choice for dispute resolution. Private international arbitration offers several benefits uniquely applicable to disputes between aviation and aerospace companies. Because of the nature of aviation and aerospace and their products, these disputes often involve proprietary and sensitive information. The privacy and confidentiality of private international arbitration, including circumscribed discovery and limited document

2. Boeing Business Jets and Boeing Global Services (business units of The Boeing Company) and Rolls-Royce are GAMA member companies. Rolls-Royce and The Boeing Company are also AIA members.

production, provide important protections for this information. Aviation and aerospace are also very—and increasingly—international industries. In cross-border contracts like those common in aviation and aerospace, the ability to pre-select a convenient and neutral location and the rules and procedures for dispute resolution offers much-needed predictability and efficiencies. Applying 28 U.S.C. § 1782(a) to private, contract-based international arbitration would fundamentally conflict with parties' contractual choices to bargain for these important benefits.

ARGUMENT

I. The misapplication of § 1782(a) to private international arbitration undermines the privacy and confidentiality advantages that are particularly valuable in aviation and aerospace disputes.

One of the primary incentives for parties to contract for private international arbitration is to avoid litigation-like discovery. Private international arbitration generally provides greater privacy and confidentiality protections compared to United States-style court litigation. This can be particularly advantageous in aviation and aerospace business disputes, which frequently involve valuable proprietary and sensitive information.

Disputes in aviation and aerospace often involve the design, development, manufacture, and use of complex technologies. Given the nature of aviation and aerospace products, these disputes regularly implicate sensitive commercial information as well as national security considerations. As industries premised on innovation, intellectual property protections are paramount concerns

for aviation and aerospace companies. Additionally, aviation, aerospace, and associated technologies are heavily regulated, and disputes may involve controlled or classified information. *See, e.g.*, Caroline Simson, *Why Aerospace Cos. Are Forgoing Courts For Int'l Arbitration*, LAW360 (Nov. 9, 2019) [hereinafter Simson] ("In the U.S., a very high percentage of information that's involved in large aerospace industry disputes is controlled by the government."). For example, "Aircraft and Related Articles" is a category of defense articles under the International Traffic in Arms Regulations (ITAR), 22 C.F.R. § 121.1 (The United States Munitions List), and virtually all space-related technologies fall under ITAR.

These commercial and security considerations make the confidential and less intrusive nature of private international arbitration particularly attractive to aviation and aerospace companies. The contractual decision to forgo litigation, and accept limited discovery and document production, provides aviation and aerospace parties with less risk of inadvertent disclosure of proprietary or sensitive information unrelated to the dispute. It limits the ability of parties to conduct "fishing expeditions" for competitors' commercial information. It also protects business reputations and relationships by generally keeping the parties, processes, arguments, and outcomes out of the public record. This can be especially valuable to aviation and aerospace companies given the high-profile nature of these industries.

The misapplication of § 1782(a) to private international arbitration would shoehorn public court filings into disputes previously and purposefully kept private and confidential. It would specifically circumvent the discovery

restrictions that parties bargained for in contracting to privately arbitrate outside of the United States. *See, e.g.*, *Nat'l Broad. Co. v. Bear Stearns & Co.*, 165 F.3d 184, 191 (2d Cir. 1999) ("If the parties to a private international arbitration make no provision for some degree of consensual discovery *inter se* in their agreement to arbitrate, the arbitrators control discovery, and neither party is deprived of its bargained-for efficient process by the other party's tactical use of discovery devices."). Indeed, as the Seventh Circuit correctly noted, if § 1782(a) applied, "litigants in foreign arbitrations would have access to much more expansive discovery than litigants in domestic arbitrations." *Servotronics, Inc. v. Rolls-Royce PLC*, 975 F.3d 689, 695 (7th Cir. 2020), *cert. granted*, 141 S. Ct. 1684 (2021). Further, it would unbalance arbitration by making entities with a presence in the United States uniquely vulnerable to discovery that arbitrators would have little power to control; amici are not aware of any other countries with legislation like § 1782(a) that would enable similar discovery against entities outside of the United States. Accordingly, § 1782(a) would effectively negate the privacy and confidentiality benefits of private international arbitration for which many aviation and aerospace companies select it. *See, e.g.*, *Nat'l Broad. Co.*, 165 F.3d at 191 ("Opening the door to the type of discovery sought . . . in this case likely would undermine one of the significant advantages of arbitration, and thus arguably conflict with the strong federal policy favoring arbitration as an alternative means of dispute resolution.").

II. Section 1782(a) would undermine the predictability and efficiency of private international arbitration essential to highly international industries like aviation and aerospace.

Disputes in aviation and aerospace often involve parties with different nationalities. Aviation and aerospace are highly—and ever more—international industries. *See, e.g.*, Simson ("Once a largely U.S.-century industry with a relatively small pool of key players, the aerospace and defense sector has become increasingly international as it has matured over the last 10 to 20 years . . ."). Aviation and aerospace companies in the United States are increasingly working with international counterparts and customers. "In addition to the manufacture of new aircraft, US manufacturers also produce a variety of parts and components for use in the manufacture, repair, and upkeep of . . . aircraft around the world." PricewaterhouseCoopers, *Contribution of General Aviation to the US Economy in 2018* (Feb. 19, 2020), at 4 [hereinafter *Contribution of GA*]. Overall, the United States civil aircraft manufacturing industry is a net exporter. "U.S. civil aerospace exports in 2019 were valued at $126.5 billion." *2020 Facts & Figures: U.S. Aerospace & Defense*, AIA (2020), at 6 [hereinafter *2020 Facts & Figures*]. Top destinations included France, the United Kingdom, Germany, China, Canada, Japan, Brazil, Singapore, United Arab Emirates, and Mexico. *Id.* at 7.

Further, flying—by design—is a uniquely interstate and international act, transcending jurisdictional boundaries. Aviation and aerospace disputes can involve events occurring all over the world. The very nature of aviation and aerospace businesses, therefore, creates

enormous unpredictability about where, and how, disputes may be resolved.

By contracting to privately arbitrate, aviation and aerospace parties can avoid the uncertainty of being subject to litigation in various jurisdictions with potentially unfamiliar laws. International aviation and aerospace business partners are able to select a single, convenient, and neutral location, with known rules and procedures tailored to their needs. *See also* Gary B. Born, International Commercial Arbitration (2021), at 1 ("The preference which businesses have demonstrated for arbitration, as a means for resolving their international disputes, has become even more pronounced in the past several decades, as international trade and investment have burgeoned."). This provides parties not only with predictability, but also efficiencies. Compared to litigation, arbitration is generally more expeditious and cost-effective. *See, e.g.*, *Allied–Bruce Terminix Cos. v. Dobson*, 513 U.S. 265, 280 (1995) (citing H.R. Rep. No. 97–542 (1982) ("The advantages of arbitration are many: it is usually cheaper and faster than litigation; it can have simpler procedural and evidentiary rules; it normally minimizes hostility and is less disruptive of ongoing and future business dealings among the parties; it is often more flexible in regard to scheduling of times and places of hearings and discovery devices …")).

If § 1782(a) were misapplied to private international arbitrations, aviation and aerospace companies could be subjected to the very thing they contracted to avoid: unpredictable, and inefficient collateral litigation across the United States. This Court has cautioned that § 1782(a) "authorizes, but does not require, a federal district court

to provide judicial assistance to foreign or international tribunals." *Intel Corp. v. Advanced Micro Devices, Inc.*, 542 U.S. 241, 247 (2004). Significantly, however, the discretion afforded to the district courts under § 1782(a) does not redress the conflict § 1782(a) creates with parties' intent to *avoid* litigation through a purely contract-based mechanism. Even though a district court may ultimately reject or constrain § 1782(a) requests, the opposing party still has to litigate. "Discovery and discovery-related judicial proceedings take time, they are expensive, and cost and delay, or threats of cost and delay, can themselves force parties to settle underlying disputes." *Id.* at 268 (J. Breyer, dissenting).

Further, because § 1782(a) permits applicants to file in any district court where witnesses or documents are located, an aviation or aerospace company could face simultaneous litigation in several districts around the United States. This case demonstrates that this is not a hypothetical concern. *See Servotronics,* 975 F.3d at 689 (holding that § 1782(a) does not authorize a district court to provide discovery assistance in private international arbitrations); *Servotronics v. Boeing Co.*, 954 F.3d 209 (4th Cir. 2020) (reversing and remanding the district court's denial of Servotronics's § 1782 application). The striking difference in the outcomes of two § 1782(a) applications involving the same parties and the same facts is a stark illustration of how ancillary litigation undermines the predictability and efficiency of private international arbitration—the very benefits that international industries like aviation and aerospace negotiate and contract to receive. *See, e.g.*, *Republic of Kazakhstan v. Biedermann Int'l*, 168 F.3d 880, 883 (5th Cir. 1999) ("Arbitration is intended as a speedy, economical, and

effective means of dispute resolution. The course of the litigation before us suggests that arbitration's principal advantages may be destroyed if the parties succumb to fighting over burdensome discovery requests far from the place of arbitration.").

III. Strong aviation and aerospace industries are vital to the United States economy and transportation infrastructure.

In the United States in 2018, general aviation alone supported $247 billion in economic output, $128 billion of GDP, and 1.2 million jobs. *Contribution of GA* at 11. In 2019, total aerospace and defense industry sales contributed $396 billion to the United States GDP and aerospace and defense workers represented 1.4% of the American workforce. *2020 Facts & Figures* at 2, 5. And, as discussed above, aviation and aerospace play important roles in international trade.

Healthy aviation and aerospace industries are not only crucial to the United States economy, but also the transportation infrastructure. 2.9 million airline passengers fly in and out of United States airports every day. FAA, *Air Traffic by the Numbers*, *available at* https://www.faa.gov/air_traffic/by_the_numbers/ (last visited June 21, 2021). In locations that are not support by primary commercial service airports, general aviation aircraft connect communities, people, and businesses, and provide specialized services. FAA, *General Aviation Airports: A National Asset* (May 2012), at 2, *available at* https://www.faa.gov/airports/planning_capacity/ga_study/ media/2012AssetReport.pdf. In some remote parts of the country like Alaska—where "82 percent of

the state's communities are not connected to a highway or road system"—general aviation is a lifeline, providing the only means of transportation and critical access to products, supplies, emergency and health-care services. *The Wide Wings and Rotors of General Aviation: The Industry's Economic and Community Impact on the United States* (2015), at 5.

Each year, aviation moves 44.5 billion pounds of freight. *Air Traffic by the Numbers*. Aircraft also are used in environmental aerial survey work; law enforcement; transport of medical patients, organs, blood, and supplies; aerial firefighting; search and rescue; humanitarian relief and charity flights; and treating approximately 127 million acres of crops annually. Nat'l Agricultural Aviation Ass'n, Industry Facts, https://www.agaviation.org/industryfacts (last visited June 24, 2021).

The breadth and reach of aviation and aerospace exemplify the vital role these segments play in the United States economy and transportation infrastructure, and the critical importance of the health of these businesses.

CONCLUSION

For the foregoing reasons, and those set forth in Respondents' briefs, amici respectfully submit that if this Court reaches the merits, it should affirm the judgment of the Seventh Circuit.

Respectfully submitted,

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