No.

IN THE SUPREME COURT OF THE UNITED STATES

ROLLS-ROYCE PLC, APPLICANT

v.

SERVOTRONICS, INC.

APPLICATION FOR A STAY OF THE U.S. DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA'S ORDER PURSUANT TO 28 U.S.C. § 1782 TO TAKE DISCOVERY FOR USE IN A FOREIGN PROCEEDING, AND REQUEST FOR AN IMMEDIATE ADMINISTRATIVE STAY

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CORPORATE DISCLOSURE STATEMENT

Applicant Rolls-Royce PLC is a wholly owned subsidiary of Rolls-Royce Holdings PLC and Rolls-Royce Group Ltd. Rolls-Royce Holdings PLC and Rolls-Royce Group Ltd. hold 100% of the stock of Rolls-Royce PLC.

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On March 22, 2021, this Court granted a petition for writ of certiorari by petitioner Servotronics, Inc. ("Servotronics") to review a decision of the Seventh Circuit holding that 28 U.S.C. § 1782(a) does not authorize discovery in aid of a private, contract-based foreign arbitration. Servotronics, Inc. v. Rolls-Royce PLC, et al., No. 20-794. The Court's decision will determine whether Servotronics can employ the U.S. court system to obtain deposition testimony and documents from the Boeing Company ("Boeing") for use in a pending arbitration in London between Servotronics and applicant Rolls-Royce PLC ("Rolls-Royce").

At the same time as Servotronics has sought this Court's resolution of that question, Servotronics has urged other courts to immediately authorize subpoenas so that Servotronics can obtain and attempt to use deposition testimony in the London arbitration before this Court rules whether section 1782(a) is even available to Servotronics. Servotronics enlisted a district court in the Fourth Circuit in its quest to obtain U.S.-based witness testimony; unlike the Seventh Circuit, the Fourth Circuit held that section 1782(a) authorizes discovery in aid of foreign private arbitration.

Three days before this Court granted Servotronics' petition for writ of certiorari, Servotronics sought a writ of mandamus from the Fourth Circuit to compel the district court to rule one way or another on Servotronics' request for deposition subpoenas

to current and former Boeing employees. Servotronics seeks to use that testimony in the exact same London-based private arbitration at issue in the case now pending before this Court.

The Fourth Circuit asked the district court to respond, App. 21a-22a, and on April 14, 2021, the district court stayed proceedings pending this Court's decision, reasoning that "it would be imprudent to resolve an issue while that exact same issue, in the exact same case, is pending before the United States Supreme Court." App. 28a. The court added: "Since it was Servotronics who petitioned for certiorari, asking the Supreme Court to weigh in on an outcome-determinative issue for its applications, it could be seen that Servotronics is the author of its own demise." App. 31a.

On April 15, 2021, the Fourth Circuit granted the mandamus petition. The Fourth Circuit stated that although this Court had granted review of the Seventh Circuit's decision presenting the exact same issue with respect to other discovery Servotronics sought for the exact same London arbitration, the Fourth Circuit's "mandate remains in force until the Supreme Court rules otherwise." App. 22a. The Fourth Circuit then awarded relief Servotronics did not seek by ordering the district court to issue the subpoenas "without delay" and to take the testimony for use in Servotronics' private arbitration. App. 22a-23a. On April 16, 2021, the dis-

trict court implemented that writ by revoking its stay and authorizing issuance of the subpoenas. App. 1a, 19a. The witness depositions are presently scheduled for May 3 and May 5, 2021.

Pursuant to 28 U.S.C. § 1651(a) and Supreme Court Rule 23, Rolls-Royce now applies to stay the district court's order authorizing issuance of the subpoenas pending this Court's resolution of No. 20-794. A stay is necessary to preserve the status quo while this Court considers the underlying legal issue in the parties' dispute over the scope of section 1782(a), and to prevent irreparable harm. Ordering the very discovery at issue in the case pending before this Court will forever negate Rolls-Royce's bargained-for right to resolve the dispute with Servotronics in private arbitration outside the U.S. court system. A stay will prevent that harm while ensuring that the parties and the courts do not waste time and resources litigating over discovery that the arbitral panel already deemed inessential to the merits of the arbitration proceeding (which remains set for May 10, 2021).

In addition, applicant respectfully requests an immediate administrative stay of the district court's order pending the Court's consideration of this application. Depositions are now set for May 3 and May 5, and an administrative stay is warranted to preserve the status quo and prevent unnecessary squandering of resources pending a ruling on the stay application.

STATEMENT

1. This case stems from a fire that occurred during ground testing of an aircraft engine in January 2016. Rolls-Royce manufactured the engine, which was installed on a Boeing aircraft in production. Boeing sought compensation for the resulting damage from Rolls-Royce, which settled the claim with participation from its insurers. Rolls-Royce sought reimbursement from Servotronics, which had supplied the defective piece pursuant to a supply agreement with Rolls-Royce.

Following unsuccessful negotiations, Servotronics and Rolls-Royce entered into a private arbitration in the United Kingdom, as their supply agreement required. Since then, Servotronics has filed multiple section 1782(a) applications in multiple U.S. courts, seeking to obtain multiple orders compelling document production or witness testimony.

1. **Fourth Circuit proceedings.** On October 26, 2018, Servotronics filed in the U. S. District Court for the District of South Carolina an ex parte application under 28 U.S.C. § 1782(a), which provides that district courts "may order [a person] to give his testimony or statement or to produce a document or other thing for use in a proceeding in a foreign or international tribunal."

Servotronics' application sought to serve deposition subpoenas on current and former Boeing employees, purportedly for use in the private U.K. arbitration between Servotronics and Rolls-Royce.

The district court denied the application on the ground that a foreign private arbitration is not a "foreign or international tribunal" within the meaning of § 1782(a). See In re Servotronics, Inc., No. 2:18-mc-00364-DCN, 2018 WL 5810109, at *4 (D.S.C. Nov. 6, 2018).

On March 30, 2020, the Fourth Circuit reversed, "conclud[ing] that the UK arbitral panel convened to address the dispute between Servotronics and Rolls-Royce is a 'foreign or international tribunal' under § 1782(a)." Servotronics, Inc. v. Boeing Co., 954 F.3d 209, 216 (4th Cir. 2020). The Fourth Circuit remanded for the district court to determine whether to exercise its discretion to grant the subpoenas and, if so, on what terms. Id.

2. **Seventh Circuit proceedings.** On October 26, 2018 -- the same day Servotronics filed its application in the District of South Carolina -- Servotronics filed a separate ex parte application seeking document discovery from Boeing in the United States District Court for the Northern District of Illinois for use in the very same private U.K. arbitration with Rolls-Royce. The Illinois district court denied the requested discovery. In re Servotronics, Inc., No. 18-cv-7187, 2019 WL 9698535 (N.D. Ill. Apr. 22, 2019).

On September 22, 2020, the Seventh Circuit affirmed, 975 F.3d. 689. The Seventh Circuit disagreed with the Fourth Circuit's ruling and held that "§ 1782(a) does not authorize the district

court to compel discovery for use in a private foreign arbitration," id. at 690. The court thus rejected Servotronics' efforts to obtain document discovery from Boeing in Illinois.

On December 7, 2020, Servotronics filed a petition for writ of certiorari, citing the conflict between the Fourth and Seventh Circuits over whether section 1782(a) allows Servotronics to enlist U.S. courts to obtain testimony for the same private arbitration with Rolls-Royce in London. On March 22, 2021, this Court granted review to determine "[w]hether the discretion granted to district courts in 28 U.S.C. § 1782(a) to render assistance in gathering evidence for use in 'a foreign or international tribunal' encompasses private commercial arbitral tribunals." Pet. for a Writ of Certiorari at i, Servotronics, Inc. v. Rolls-Royce PLC, No. 20-794 (Dec. 7, 2020).

3. **District of Minnesota proceedings.** On December 1, 2020, Servotronics filed yet another ex parte section 1782(a) application, this time in the District of Minnesota, seeking an order to subpoena Terrance Shifley, a Boeing employee previously located in South Carolina who had since relocated. App. 33a-34a.

On April 1, 2021, the District of Minnesota stayed that application in light of this Court's grant of review, reasoning that "[t]he matter before the Supreme Court is this case, albeit involving a different subpoena," and that "staying this matter until

the Supreme Court answers the critical issue would be more efficient and practical." App. 37a.

4. **Fourth Circuit remand, district court stay, and mandamus.** After issuing its March 2020 opinion, the Fourth Circuit remanded the case to the U.S. District Court for the District of South Carolina to address whether granting Servotronics' section 1782(a) application would be a proper exercise of judicial discretion.

The district court repeatedly ordered supplemental briefing in light of ensuing developments, including Mr. Shifley's relocation to Minnesota; the court's questions about its jurisdiction over the other two witnesses and their present locations; and questions about how Servotronics planned to use this testimony in the foreign private arbitral proceedings. Supplemental briefing extended through March 12, 2021. App. 3a-4a.

On March 19, 2021 -- the last business day before this Court granted certiorari -- Servotronics filed a petition for a writ of mandamus in the Fourth Circuit, asking that court to "direct the district court to promptly rule" on Servotronics' post-remand, renewed application for § 1782(a) discovery. App. 21a. After the Fourth Circuit received briefing from Rolls-Royce and Boeing, the Fourth Circuit "communicated with the district court to afford it the opportunity to rule before [the court] considered Servotronics' petition." Id.

On April 14, 2021, the district court responded by ordering proceedings stayed pending this Court's decision in Servotronics, Inc. v. Rolls-Royce PLC, No. 20-794. The court concluded "that it would be imprudent to resolve an issue while that exact same issue, in the exact same case, is pending before the United States Supreme Court." App. 28a. The court added: "A hasty decision by this court may very well be contrary to a subsequent decision from the Supreme Court." App. 30a.

The district court further observed that Servotronics had portrayed its request to compel testimony as a "now-or-never proposition," in light of the private arbitral panel's plans to hold a hearing on May 10, 2021. But, the court noted, the arbitral panel already had rejected Servotronics' request to delay those proceedings to obtain this testimony, reasoning that such testimony was unnecessary to ensure a fair proceeding. App. 31a. The court concluded: "Since it was Servotronics who petitioned for certiorari, asking the Supreme Court to weigh in on an outcome-determinative issue for its applications, it could be seen that Servotronics is the author of its own demise." Id.

On April 15, 2021, the Fourth Circuit granted Servotronics' mandamus petition. The court "recognize[d] that the Supreme Court has determined to review the Seventh Circuit's decision on the same issue that [the Fourth Circuit] addressed in [its] earlier decision." App. 22a. But the Fourth Circuit concluded that its

mandate from the earlier decision "remains in force until the Supreme Court rules otherwise." Id. The Fourth Circuit added that "to stay proceedings, as the district court seeks to do, could render moot our decision, as the UK arbitration remains scheduled to begin on May 10, 2021." Id.

Rather than simply granting Servotronics' request for a prompt ruling, one way or another, from the district court, the Fourth Circuit "direct[ed] the district court to issue, without delay, the subpoenas to the witnesses within its jurisdiction and take their testimony for use in the UK Arbitration." App. 22a-23a.

On April 16, 2021, the district court implemented the Fourth Circuit's instructions, granted Servotronics' application, revoked its prior stay, and authorized Servotronics to serve the requested subpoenas to former and current Boeing employees. The district court deemed this result a proper exercise of its discretion under section 1782(a), App. 5a-6a, 19a, but also relied on "the Fourth Circuit's writ" as "undermin[ing]" Rolls-Royce's and Boeing's position. The district court noted that the Fourth Circuit had "directed the court to resolve Servotronics' application 'without delay,' out of a concern that the application may be mooted by the approaching arbitration hearing." App. 19a.[1] Servotronics issued

[1] Applicant has accordingly exhausted all avenues for relief under Supreme Court Rule 23(3). The district court granted a stay; the

the subpoenas on April 16, and the two depositions are scheduled for May 3 and May 5, 2021.

5. **The arbitration proceeding.** The arbitration hearing remains set for May 10, 2021. On January 20, 2021, Servotronics asked the arbitral panel to adjourn that hearing, arguing, inter alia, that the final hearing should occur "with the benefit of any evidence" that Servotronics "obtained from Boeing pursuant to . . . applications under 28 USC §1782" before U.S. courts. App. 39a. But in March 1, 2021 submissions, Servotronics confirmed: "It is not [Servotronics'] submission that any evidence from the Illinois and South Carolina Proceedings must be obtained before the substantive hearing of this arbitration can take place." App. 71a.

On March 9, 2021, the arbitral panel denied Servotronics' request for a continuance, concluding that "the possibility that an adjourned hearing might benefit from further evidence received in the §1782 proceedings . . . is not a compelling reason for an

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Fourth Circuit rejected the grounds for that stay and instead granted Servotronics' petition for writ of mandamus, lifted the stay, and ordered the immediate issuance of subpoenas; and the district court implemented the Fourth Circuit's order by vacating its stay and issuing those subpoenas. Given that the Fourth Circuit on April 15 already expressly rejected a stay pending this Court's resolution of the question presented, seeking further relief from the Fourth Circuit would be futile.

adjournment," especially since the matters in dispute in the arbitration "are primarily matters for expert evidence," not the factual evidence at issue. App. 43a, 45a. In light of the Fourth Circuit's writ of mandamus, Servotronics on April 14, 2021, sought another adjournment; Rolls-Royce submitted its opposition to the panel on April 19, 2021.

ARGUMENT

The district court's order implementing the Fourth Circuit's writ of mandamus compels discovery that Servotronics should have no right to obtain. The district court's authorization of the subpoenas upends the status quo that would have prevailed while this Court considered the pure legal question regarding the scope of section 1782(a). To prevent that irreparable harm, the Court should stay the district court's order pending this Court's resolution of the underlying legal dispute in No. 20-794.

All of the Court's traditional stay factors counsel in favor of a stay. See San Diegans for the Mt. Soledad Nat'l War Mem'l v. Paulson, 548 U.S. 1301, 1302 (2006) (Kennedy, J., in chambers); Hilton v. Braunskill, 481 U.S. 770, 776 (1987). The Court has already granted certiorari to resolve the legal issue that formed the basis for the district court's and Fourth Circuit's misguided decision to compel discovery. Applicant is likely to succeed in defending the merits of the Seventh Circuit's holding that section 1782(a) does not apply to private foreign arbitrations. Applicant

also faces irreparable harm if the district court's order authorizing issuance of the subpoenas remains in effect. Servotronics will obtain access to, and will attempt to deploy, the very same discovery that applicant has argued in the underlying merits case that section 1782(a) does not permit. For similar reasons, the equities favor applicant: the arbitral panel has already determined (and Servotronics has conceded) that this evidence is unnecessary to ensure a fair proceeding. This Court should therefore stay the district court's order authorizing Servotronics to issue the subpoenas.

I. THERE IS A SIGNIFICANT POSSIBILITY THAT THIS COURT WILL AFFIRM THE SEVENTH CIRCUIT'S DECISION AND OVERRULE THE FOURTH CIRCUIT'S DECISION

The district court's authorization of the subpoenas -- and the Fourth Circuit writ of mandamus that the district court implemented -- rest on a deeply flawed premise: that § 1782(a) permits parties to a private commercial arbitration abroad to enlist American courts in obtaining discovery for that private arbitral proceeding. There is a significant possibility -- indeed, a high likelihood -- that this Court will disagree with that incorrect interpretation.

A. To begin, the Fourth Circuit's interpretation contradicts the text of section 1782(a). When Congress amended the statute in 1964 and introduced the phrase "foreign or international tribunal," the word "tribunal" predominantly referred either to

the seat of a judge or an adjudicatory body acting with governmental authority. See, e.g., Webster's New International Dictionary of the English Language 2707 (2d ed. 1955) (defining "tribunal" as "the seat of a judge" or "a court or forum of justice"); Black's Law Dictionary 1677 (4th ed. 1951) ("[t]he seat of a judge" or "[t]he whole body of judges who compose a jurisdiction; a judicial court"). The ordinary meaning of a "tribunal" thus excludes private arbitration, which derives its authority from the contractual consent of the parties and is not imbued with governmental powers.

Statutory context supports that interpretation. As the Seventh Circuit noted in the decision under review in No. 20-794, the identical phrase "foreign or international tribunal" appears in both section 1782(a) and two related statutes: 28 U.S.C. §§ 1696 and 1781. Those statutes govern district courts' provision of judicial assistance in international contexts. See Pet. App. 12a. Section 1696 addresses service of process in foreign litigation, and Section 1781 addresses letters rogatory, both of which "are matters of comity between governments." Pet. App. 12a–13a. "Identical words or phrases used in different parts of the same statute (or related statutes) are presumed to have the same meaning." Pet. App. 12a (citing Merrill Lynch, Pierce, Fenner & Smith Inc. v. Dabit, 547 U.S. 71, 86 (2006)). Accordingly, sections 1696 and 1781 "suggest[] that the phrase 'foreign or international tribu-

nal' as used in this statutory scheme means state-sponsored tribunals and does not include private arbitration panels." Pet. App. 13a.

Neighboring language in section 1782(a) bolsters this interpretation. Several sentences after the phrase authorizing the district court to order discovery "for use in a proceeding in a foreign or international tribunal," the same subsection provides that a district court issuing a discovery order "may prescribe the practice and procedure, which may be in whole or part the practice and procedure of the foreign country or the international tribunal, for taking the testimony or statement or producing the document or other thing." 28 U.S.C. § 1782(a) (emphasis added). By referring to "foreign countr[ies]," Congress underscored that section 1782(a) extends only to foreign governmental entities, not private arbitral bodies abroad.

B. The Fourth Circuit's interpretation also conflicts with the Federal Arbitration Act ("FAA"). Section 7 of the FAA authorizes arbitrators -- not litigants -- to summon witnesses before the panel to testify and produce documents and to petition the district court to enforce the summons. 9 U.S.C. § 7. FAA-authorized discovery is more limited than section 1782(a) discovery in three ways.

First, "while [an] arbitration panel may subpoena documents and witnesses, litigants have no comparable privilege." St. Mary's

Med. Ctr. of Evansville, Inc. v. Disco Aluminum Prods. Co., 969 F.2d 585, 591 (7th Cir. 1992).

Second, section 7 "explicitly confers enforcement authority only upon the 'district court for the district in which such arbitrators, or a majority of them, are sitting.'" Nat'l Broad. Co. v. Bear Stearns & Co., 165 F.3d 184, 188 (2d Cir. 1999) (quoting 9 U.S.C. § 7). Section 1782(a), by contrast, authorizes district court discovery assistance anywhere "a person resides or is found" -- a broad grant of authority that Servotronics sought to leverage by launching discovery actions in Illinois and South Carolina, and later, in Minnesota.

Third, "[n]owhere does the FAA grant an arbitrator the authority to order non-parties to appear at depositions, or the authority to demand that non-parties provide the litigating parties with documents during prehearing discovery." COMSAT Corp. v. Nat'l Sci. Found., 190 F.3d 269, 275 (4th Cir. 1999).

As the Seventh Circuit noted, "[i]f [Section] 1782(a) were construed to permit federal courts to provide discovery assistance in private foreign arbitrations, then litigants in foreign arbitrations would have access to much more expansive discovery than litigants in domestic arbitrations." Pet. App. 14a. That result would be particularly untenable given the large number of "foreign or international" arbitrations that are subject to the FAA. See Nat'l Broad. Co., 165 F.3d at 187 (the FAA "applies to private

commercial arbitration conducted in this country" and "also to arbitrations in certain foreign countries by virtue of legislation implementing the Convention on the Recognition and Enforcement of Foreign Arbitral Awards and the Inter-American Convention on International Commercial Arbitration"). Reading section 1782(a) broadly to apply to all private foreign arbitrations thus "creates a direct conflict with the Act for this subset of foreign arbitrations." Pet. App. 15a.

In short, the Seventh Circuit correctly recognized that there is no basis for transforming section 1782(a) into a mechanism for parties to enlist American courts in document-production questions in the service of overseas private commercial arbitral forums. Applicant is likely to succeed in defending the Seventh Circuit's decision on the merits in No. 20-794, in which case this Court would overrule the contrary Fourth Circuit holding underpinning the Fourth Circuit's mandamus order and the district court's ensuing order authorizing the subpoenas.

II. ABSENT A STAY, APPLICANT WILL SUFFER IRREPARABLE HARM

If Servotronics succeeds in compelling testimony from former and current Boeing employees, applicant will suffer irreparable harm. Whether Servotronics can enlist the U.S. court system to obtain testimony and documents for use in the private U.K. arbitration proceeding is the crux of the dispute between the parties before this Court, and is the question that Servotronics asked

this Court to resolve. Without a stay, Servotronics will be able to claim at least partial victory on that issue even before this Court weighs in on the merits. Applicant will lose the ability to prevent Servotronics from obtaining witness deposition testimony that multiple courts have held Servotronics has no right to obtain, including the Seventh Circuit in the decision under review.

Moreover, the harm to applicant cannot be fully remedied if this Court later concludes -- which, as set forth above, it very likely will -- that Servotronics cannot use § 1782(a) to seek discovery for use in a private foreign arbitration. Applicant's fundamental submission is that U.S. discovery has no place in the private arbitration proceedings between Servotronics and Rolls-Royce. Section 1782's protections would become a dead letter if section 1782(a) applicants could force their opponents in arbitration to bear the expense and burden of intrusive discovery just to vindicate the right to be free of that same discovery.

The nature of the discovery at issue magnifies the harm to applicant. Although Servotronics has characterized the deposition testimony that it seeks as "some of the most important testimony in the Arbitration," Mandamus Pet. 6, the arbitral panel has already disagreed. The panel explained that the factual events that the testimony in question would address are "well-documented," limiting the need for testimony from percipient witnesses. App. 43a. Further, the arbitral panel concluded that many of the issues

Servotronics intends to dispute during the arbitral hearing "are primarily matters of expert evidence," not proper subjects for the testimony of fact witnesses. App. 43a. And Servotronics' last-minute attempt to obtain this deposition testimony risks unfairly prejudicing the arbitral hearing, which has long been scheduled for May 10. Surprise depositions on May 3 and May 5 undermine preparations for that proceeding.

In any event, one of the witnesses at issue, Scott Walston, has already submitted a witness statement in the arbitration. He will also be providing testimony before the arbitral panel at the hearing scheduled for May 10, 2021, where Servotronics will have the opportunity to cross-examine him.

In sum, there is no reason why Servotronics should receive an earlier bite at the apple from a U.S. deposition. The district court disagreed in its most recent order, reasoning that "deposition testimony has considerably more evidentiary value than written statements" and that "Servotronics should be able to build its case with the evidence that it deems most helpful." App. 14a. But as the district court observed in its stay order, the arbitral panel already concluded that this testimony would be unnecessary to fair proceedings -- which is one reason why the panel refused Servotronics' request to delay arbitration. App. 31a.

III. THE EQUITIES FAVOR A STAY

Finally, the equities weigh heavily in favor of a stay of the district court's order authorizing the subpoenas. Servotronics' original application to adjourn the arbitration expressly disavowed the suggestion that the deposition testimony it seeks is essential to a fair hearing. And, as noted, the arbitral panel has already concluded that the benefit of any further evidence that Servotronics might obtain from U.S. discovery was "not a compelling reason for an adjournment." App. 31a. Proceeding without U.S. deposition testimony will not harm Servotronics, especially considering the magnitude of the countervailing harms to applicant.

The public interest also favors a stay of proceedings. When this Court grants certiorari to decide whether a party is entitled to certain relief, lower courts should stay their hands in doling out relief until this Court rules. The public interest suffers when parties burden the court and the public by continuing to litigate the merits of a discovery dispute while this Court decides whether discovery should even be conducted in the first instance. A stay is warranted to prevent squandering resources on discovery that will ultimately be held inappropriate if and when this Court confirms that section 1782(a) does not authorize parties in private foreign arbitral proceedings to conduct fishing expeditions in U.S. courts.

CONCLUSION

For the foregoing reasons, the Court should issue a stay of the district court's order authorizing the subpoenas pending its resolution of case No. 20-794. In addition, the Court should issue an immediate administrative stay of the district court's order pending the Court's consideration of this application.

Respectfully submitted,

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