23-271

ORIGINAL

In The

Supreme Court of the United States

RYAN LYNCH,

Petitioner,

v.

CONDOMINIUMS OF BUENA VISTA, INC.,

Respondent.

On Petition For A Writ Of Certiorari To The Minnesota State Court Of Appeals

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

(1) When state courts misconstrue or ignore a written agreement controlling an arbitrability clause governed by the FAA, if the provisions under §2 and §4 mandate the arbitration be retried in accordance with the controlling terms previously agreed upon.

(2) Whether this case presents the opportunity to clarify the requirements for invoking protections under 9 U.S.C. §10 and §11 by any court, within the intent of congress, in order to vacate, reverse, or modify an arbitration award as unconscionable after an arbitrator clearly exceeded the terms agreed as limiting the arbitration clause.

(3) When a district judge compels arbitration but includes a "persuasive" advisory opinion instead of a mandatory stay in contravention to FAA §3, if that interference with litigant procedural rights on its own is grounds for appeal and retrial, or if litigants must endure the cost and time of a tainted arbitration to a final decision before they can rightfully appeal.

RELATED PROCEEDINGS

Multi-plaintiff complaint 55-CV-19-3142 filed on May 3, 2019 in the third District Court of Olmsted County, Minnesota. Settlement agreement was finalized on July 7, 2020.

Complaint 55-CV-20-6939 filed by petitioner on December 7, 2020 with Minnesota State District Court, third judicial district.

Appeal #A22-0864 with the State of Minnesota Court of Appeals, opinion distributed on February 27, 2023. Petition For Review was filed with Minnesota Supreme Court on March 29, 2023 and denied June 20, 2023 with no explanation.

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District court opinion denying to vacate the award, again refusing to hear plaintiff motion on the merits and falsely claiming it was a request to reconsider. (App. 14)

District court order to compel arbitration including unwarranted advisory opinion. (App. 30)

Deny of PFR by the MN Supreme Court with no explanation. (App. 44)

*Case dockets in Minnesota are publicly available from: mncourts.gov/Access-Case-Records.aspx

JURISDICTION

This petition for writ of certiorari is timely filed within 90 days of June 20, 2023, the date PFR was denied from the Minnesota Supreme Court. Jurisdiction is invoked under 28 U.S.C. § 1254(1) "By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree."

INTRODUCTION

Plaintiff was involved in a multi-party complaint which was settled through mediation, with the mediator acting as arbitrator for clarifying the terms of the settlement agreement. Prior to settlement finalization plaintiffs twice clarified limitations governing the arbitration clause and scope. This prior multi-party complaint also never mentioned individual damages from disclosure fraud during the purchase of petitioner's real property. The fraud related to damages which had not yet been assessed and could not have been sought in the prior lawsuit without a conflict of interest from other plaintiffs.

During the recent complaint with new counts over a new contract, the district court compelled arbitration with an advisory opinion that the arbitrator included in his new order and called "persuasive", dismissing plaintiff's claims under an interpretation of the settlement agreement that expressly contradicted the arbitrator's previous and binding determination regarding the scope of the releases therein.

After arbitration, plaintiff's motion to vacate the arbitration award was denied by the district court despite the arbitrator clearly ruling beyond the scope of the prior agreed limiting terms. The state appellate court then completely disregarded the evidence of the controlling terms, ruling instead, in contravention to this Court, that all arbitration under the FAA is completely "unreviewable" including the terms governing an arbitration clause.

STATEMENT OF THE CASE

A. Statutory Background

Sections §1 et seq. of the FAA, 9 U.S.C. and caselaw including *Southland Corp. v. Keating*, 465 U.S. 1, 2 (1984), held that the FAA "creates a body of federal substantive law that is applicable in both state and federal courts." As Justice Alito explains in *Stolt-Nielsen v. Animalfeeds*, 559 U.S. 662, 682 (2010)[1]:

> Under the FAA, a party to an arbitration agreement may petition a United States [appellate] court for an order directing that "arbitration proceed in the manner provided for in such agreement." §4. Consistent with these provisions, we have said on numerous occasions that the central or "primary" purpose of the FAA is to ensure that "private agreements to arbitrate are enforced according to their terms." *Volt, supra, at 479; Mastrobuono v. Shearson Lehman Hutton, Inc., 514 U.S. 52, 57, 58 (1995); see also Doctor's Associates, Inc. v. Casarotto, 517 U.S. 681, 688 (1996).* See generally 9 U.S.C. §4."

Justice Breyer explains federal preemption of the FAA on constitutional grounds in *Directv v. Imburgia*, 577 U.S. ___ (2015):

> Supremacy Clause forbids state courts to dissociate themselves from federal law because of disagreement with its content or a refusal to recognize the superior authority of its

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[1] See also *Rent-A-Center, West, Inc. v. Jackson*, 561 U.S. 63, 68 (2010).

> source. The Federal Arbitration Act is a law of the United States, and *Concepcion* is an authoritative interpretation of that Act. Consequently, the judges of every State must follow it. U.S. Const., Art. VI, cl. 2 ("[T]he Judges in every State shall be bound" by "the Laws of the United States"). (citations omitted)[2]

Per Curiam, *Marmet Health Care Center, Inc. v. Brown*, 565 U.S. 530, 530 (2012) further defines the importance of state judicial enforcement of the FAA:

> State and federal courts must enforce the Federal Arbitration Act (FAA), 9 U. S. C. §1 et seq., with respect to all arbitration agreements covered by that statute. Here, the Supreme Court of Appeals of West Virginia, by misreading and disregarding the precedents of this Court interpreting the FAA, did not follow controlling federal law implementing that basic principle. . . . The decision of the state court found the FAA's coverage to be more limited than mandated by this Court's previous cases. The decision of the State Supreme Court of Appeals must be vacated. When this

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[2] See also U.S. Constitution Article III Section 1.6.4; Article III Section 1.7.2.2; Article III Section 2.Cl2.5; *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 341, 343, 352 (2011); *Clafin v. Houseman*, 93 U.S. 130, 136-137 (1876); *Doctor's Associates, Inc. v Casarotto*, 517 U.S. 681, 688 (1996); *DIRECTV v. Imburgia*, 577 U.S. ___ (*slip op., at* 5) (2015); *Lamps Plus v. Varela* 587 U.S. ___ (*slip op., at* 6) (2019); *Marmet Health Care Center, Inc. v. Brown*, 565 U.S. 530, 532-534 (2012); *M'Culloch v. State*, 17 U.S. 316, 405, 427, 436 (1819); *Southland Corp. v. Keating*, 465 U.S. 1, 3, 6, 10, 12, 16 (1984); *Volt Information Sciences, Inc. v. Board of Trustees of Leland Stanford Junior Univ.*, 489 U.S. 468, 473, 478 (1989).

Court has fulfilled its duty to interpret federal law, a state court may not contradict or fail to implement the rule so established.

B. Prior Proceedings

1. Arbitration Compelled with Advisory Opinion Instead of a Mandatory Stay

Petitioner's filing of a new lawsuit was based on fraud from HOA failure to disclose known maintenance and repairs totaling well over $2,960,000. This was assessed to an HOA of seniors and vulnerable adults without following the governing documents, with petitioner being individually assessed upwards of $87,989.75. After filing, the district court unscheduled plaintiff's injunction motion and refused to hear it. Defendant moved to compel arbitration, and plaintiff challenged that the settlement agreement included an agreement to arbitrate any future claims. The district judge then asked the arbitrator to opine on arbitrability, to which he declined. The district court order following (App. 30) alleges several false facts before improperly compelling arbitration by ignoring the intent of the parties from the prior settlement – including importantly that individual disclosure fraud was never mentioned in the prior multi-party suit and could not have been without creating a conflict of interest with the other plaintiffs.

The district court then further tainted the arbitration with a lengthy biased[3] advisory opinion to the arbitrator in lieu of the mandatory stay required in state law and under FAA §3.[4] This advisory opinion from the district court was later quoted and described in the arbitrator's September 27, 2021 award as "persuasive" and relied upon as justification in his dismissing all counts. Compelled arbitration is not appealable under state and federal laws until finalized. As plaintiff noted in his October 21, 2022 appellate reply brief, "If it is permissible for a court to provide an advisory opinion and then compel arbitration, why compel arbitration at all?"

2. Arbitration

After being compelled, the arbitrator proceeded producing an award far outside the limitations of his arbitrability scope twice defined in written terms prior to the settlement finalization, as described to the courts in detail and quoted in section 3 below. Such actions by an arbitrator are protected against under the definition of manifest disregard, fraud, and unconscionability necessitating a motion to vacate.

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[3] It is noteworthy that questionable judicial conflicts of interest were later discovered showing district court Judge Stevens' ties with defendant's general counsel firm Dunlap & Seeger including direct prior employment.

[4] Justice Brennan in *Volt, supra*, at 489 details applicability in state courts, "[W]e have stated that state courts, as much as federal courts, are obliged to grant stays of litigation under §3 of the Arbitration Act."

Manifest disregard is defined by Justice Alito in *Stolt-Nielsen, supra*, at 672 as, "requir[ing] a showing that the arbitrators "knew of the relevant [legal] principle, appreciated that this principle controlled the outcome of the disputed issue, and nonetheless willfully flouted the governing law by refusing to apply it."[5] And *Epic Systems, supra* (*slip op., at* 2), explained unconscionability as directed within the Act's saving clause, holding:

> The Act's saving clause – which allows courts to refuse to enforce arbitration agreements "upon such grounds as exist at law or in equity for the revocation of any contract," §2 – recognizes . . . "'generally applicable contract defenses, such as fraud, duress, or unconscionability,'" *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 339

3. Motion in district court to vacate award on grounds of fraud, mistake in applying his own theory, and clearly exceeding his powers by ignoring the prior defined limitations

The district court judge's order to confirm the award on May 12, 2022 (App. 14) ignored the clear facts and excluding provisions discussed during the February 11, 2022 oral arguments and detailed within petitioner's January 28, 2022 motion in opposition to

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[5] See also *Commonwealth Coatings v. Continental Casualty Co.*, 393 U.S. 145, 148 (1968); *Rent-A-Center, West, Inc. v. Jackson*, 561 U.S. 63, 67 (2010).

confirming the arbitration award, quoted in part below:

> Importantly, during the negotiation and finalization of the mediated Settlement Agreement, mediator Mark Heley made clear to the parties that the restrictions contained in paragraph 9 of the Settlement Agreement applied only to contracts in place as of the time of executing the Settlement Agreement, stating:
>
> > As we discussed, my decision as an arbitrator as to the final language of the settlement is final and any request to reconsider that decision would be denied. **I also advised you that the language of paragraph 9, as revised, applies to contracts in place as of the effective date of the agreement.** The paragraph as presented is also silent as to Benike. I believe the paragraph as finally determined reflects the agreement of the parties.
>
> Mr. Heley further explained this distinction by clearly stating in a decision rendered on June 26, 2020 that paragraph 9 would not preclude the plaintiffs from asserting claims relating to any subsequent contracts or amendments entered into by the Association. (emphasis in original, citations omitted)

The district court's following order by Judge Stevens included three substantial factual errors. The first was, being the arguments to vacate were similar

to petitioner's earlier motion opposing arbitration, they were falsely branded by the district judge as a 'request to reconsider'. (App. 19-22) This err was presented despite different controlling statutes and circumstances necessitating a motion to vacate. Therein, Judge Stevens again refused to hear the merits of plaintiff's motion, claiming "[plaintiff] should have brought a motion to reconsider" (App. 22) followed by the concerningly false assertion that "No new arguments were advanced . . . " and " . . . offers no additional facts . . . " which was again contradicted by her own statement with, " . . . [plaintiff] attempts to clarify the exceeded his powers claim with new information." (App. 23)

The arguments advanced by plaintiff clearly showed the limiting terms and intent of the parties – relied on prior to the settlement finalization – as grounds to vacate. Justice Alito in *Stolt-Nielsen*, *supra*, at 682, explains, "Whether enforcing an agreement to arbitrate or construing an arbitration clause, courts and arbitrators must give effect to the contractual rights and expectations of the parties. In this endeavor, as with any other contract, the parties' intentions control." (citations and quotation marks omitted).

The second substantial factual error is that plaintiff's only course of action was to resubmit the case to the compelled arbitrator. This is not required of litigants and would be both in contravention of state law §572B.23(a) and the FAA §10 and §11, beyond initial regulation according to terms under §§2, 3, 4; all presumably written to define procedure and protect

litigants within this very situation. (App. 19) Judges may also seek clarification, and as it was argued, "shall not confirm, but must vacate the award" when evidence is presented showing it was outside of the scope of the arbitrator's authority or without agreement to arbitrate. Similarly, in *Rent-A-Center, West, Inc. v. Jackson*, 561 U.S. 63, 71 (2010), Justice Scalia writes this Court has recognized that, "To immunize an arbitration agreement from judicial challenge on the ground of fraud in the inducement would be to elevate it over other forms of contract." The district court's opinion of resubmitting as the only viable path was again contradicted by her own acknowledgment that, "there is no evidence in the record that supports the arbitrator did not consider the statement. After all, he wrote the email [and order] and was aware of it." (App. 27)

The third substantial error is the district court initially began a point of analysis stating that, "The only question for the court is whether the issues decided by the arbitrator were within his authority to decide."[6] (App. 11) Despite that, Judge Stevens still failed to

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[6] While vacating remains justifiable under manifest disregard and unconscionability, the district judge's own basis here supports a ruling that the arbitrator decided arbitrability by awarding beyond his scope and in-so-doing overstepped his delegated power. – See supporting caselaw in *AT&T Technologies, Inc. v. Communications Workers*, 475 U.S. 643, 648-649, 652 (1986); *First Options v. Kaplan*, 514 U.S. 938, 947 (1995); *Granite Rock Co. v. Teamsters*, 561 U.S. 287, 298-300 (2010); *Lamps Plus v. Varela*, 587 U.S. ___ (*slip op., at* 9) (2019); *Oxford Health v. Sutter*, 569 U.S. 564, 569 (2013); *Rent-A-Center, West, Inc. v. Jackson*, 561 U.S. 63, 71 (2010); *Stolt-Nielsen v. Animalfeeds*, 559 U.S. 662, 680 (2010).

issue a ruling in accordance within the arbitrator's defined limited authority. Here again Judge Stevens cites caselaw where the governing qualifier is in contradiction to her ruling, "It is well settled that an arbitrator, **in the absence of an agreement limiting his authority**, is the final judge . . . **in the absence of fraud, mistake in applying his own theory**, misconduct, or other disregard of duty." (bold emphasis added) (App. 26) The evidence before the court as referenced above, clearly and undeniably proved the arbitrator fraudulently misapplied his own theory and vastly exceeded the agreed upon scope of the arbitration clause by awarding outside the limiting terms of the agreement.

Justice Alito in *Stolt-Nielsen*, *supra*, at 684 writes to the core of this point with, "[A]rbitration is simply a matter of contract *between the parties*; it is a way to resolve those disputes – **but only those disputes** – that the *parties* have agreed to submit to arbitration". (bold emphasis added).[7]

Significant caselaw has further set the stage by elaborating on specificity under the FAA. Chief Justice Roberts explained, "[T]he first principle that underscores all of our arbitration decisions is that [a]rbitration is strictly a matter of consent. . . . We have emphasized that foundational FAA principle many

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[7] See also *Volt Information Sciences, Inc. v. Board of Trustees of Leland Stanford Junior Univ.*, 489 U.S. 468, 478 (1989); *Granite Rock Co. v. Teamsters*, 561 U.S. 287, 299 (2010); *First Options of Chicago Inc. v. Kaplan*, 514 U.S. 938, 943 (1995).

times." (internal citations and quotations omitted) and continues with, "Consent is essential under the FAA because arbitrators wield only the authority they are given. That is, they derive their "powers from the parties' agreement . . . "[8] As such caselaw pertains to both state and federal arbitration under the FAA, the award should have been vacated to a proper trial before going into appeals.

4. Appeal Filed with State Appellate Court

Petitioner's appeal and reply submitted these same arguments along with a proper appeal of the advisory opinion. During oral arguments on November 29, 2022, defense counsel repeatedly claimed there was no evidence that the arbitrator misconstrued his own theory to which plaintiff counsel again read the limiting clarifications cited above from the brief. As the crux of the appeal the evidence of these governing clarifications unquestionably detail the intent and scope of the prior settlement, including that it specifically precluded the arbitrator from any such future authority. Regardless of petitioner repeating these crucial points the appellate panel's opinion glossed over it with a single out of place sentence that received no analysis. (App. 5) This comment completely failed to address petitioner's challenge to the arbitration clause and

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[8] See *Lamps Plus v. Varela*, 587 U.S. ___ (*slip op., at* 7-8, 11-12) (2019). See also *Stolt-Nielsen v. Animalfeeds*, 559 U.S. 662, 683-684 (2010); *Volt Information Sciences, Inc. v. Board of Trustees of Leland Stanford Junior Univ.*, 489 U.S. 468, 479 (1989); *Granite Rock Co. v. Teamsters*, 561 U.S. 287, 298-300 (2010).

limitations over any future arbitration, ignoring petitioner's rights[9] under both state and federal statutory law.

Instead the appellate opinion continued relying on several grossly misconstrued facts. Two of the "facts" written in as "undisputed" incorrectly allege (1) the relevant terms limiting the arbitration scope as agreed with the arbitrator for settlement, (2) that the individual plaintiffs were 'paid', when in reality the multiparty settlement only received reimbursement for legal expenses, as anticipated in accordance with the HOA governing documents for any aggrieved owners.

The appellate panel erroneously claimed in a footnote that petitioner's argument against the advisory opinion, as put forth in the appeal brief on September 7, 2022 and reply, cited no caselaw and was forfeit from de novo review by the panel. (App. 10)

Judge Bryan's Decision (App. 7) begins with, "Because [petitioner's] claims arise out of and involve the terms of the settlement agreement, they are within the scope of the arbitration clause." Which immediately contradicts the limiting arbitrability terms as clarified in the arbitrator's own order and email. As Justice Thomas explains in *Granite Rock Co. v. Teamsters*, 561 U.S. 287, 301 (2010) the FAA requires "that courts treat an arbitration clause as severable from the contract in which it appears and enforce it according to its

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[9] Section 1 of Constitution Amendment XIV due process clause arguably protects against such an unreasonable and final arbitrary conclusion that ignores crucial facts of the case.

terms . . . " Expanding on the importance duly afforded to the controlling terms of an agreement, Justice Rehnquist from *Volt*, *supra*, at 468 and 472 construes:

> "[T]he FAA's principal purpose is to ensure that private arbitration agreements are enforced according to their terms . . . Arbitration under the Act in a matter of consent, not coercion, and the parties are generally free to structure their arbitration agreements as they see fit. Just as they may limit by contract the issues which they will arbitrate, so too may they specify by contract the rules under which the arbitration will be conducted."[10] (citations omitted)
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> . . .
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> "The court reasoned that the purpose of the FAA was "'not [to] mandate the arbitration of all claims, **but merely the enforcement . . . of privately negotiated arbitration agreements.**'""

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[10] See also *American Express Co. v. Italian Colors Restaurant*, 570 U.S. 228, 233, 238 (2013); *AT&T v. Concepcion*, 563 U.S. 333, 339, 344, 347 (2011); *DIRECTV v. Imburgia*, 577 U.S. ___ (*slip op., at* 5) (2015); *Doctor's v Casarotto*, 517 U.S. 681, 688 (1996); *Epic Systems v Lewis*, 584 U.S. ___ (*slip op., at* 2, 5, 24) (2018); *First Options v. Kaplan*, 514 U.S. 938, 947 (1995); *Granite Rock Co. v. Teamsters*, 561 U.S. 287, 301-302 (2010); *Mastrobuono v. Shearson Lehman Hutton, Inc.*, 514 U.S. 52, 54, 57-58 (1995); *Rent-A-Center, West, Inc. v. Jackson*, 561 U.S. 63, 67 (2010); *Stolt-Nielsen v. Animalfeeds*, 559 U.S. 662, 682 (2010); *Volt Information Sciences, Inc. v. Board of Trustees of Leland Stanford Junior Univ.*, 489 U.S. 468, 472, 476, 478-479 (1989).

Broader context of such agreement specification within the FAA is provided by Justice Breyer in *DIRECTV, supra* (*slip op., at* 6) with, "In principle, they might choose to have portions of their contract governed by the law of Tibet [or] the law of pre-revolutionary Russia . . . " While Justice Gorsuch removes any remaining doubts of the FAA's central purpose in *Epic Systems, supra* (*slip op., at* 5), "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." Justice Gorsuch concludes, "Given so much precedent pointing so strongly in one direction, we do not see how we might faithfully turn the other way here."

Judge Bryan then discusses another pivotal aspect of the FAA that should have decided the case in opposite to his opinion with, "arbitrability is to be determined by ascertaining the intention of the parties . . . " (App. 8) Similar caselaw agreeing with what this Court has previously established includes, "[T]he FAA's proarbitration policy does not operate without regard to the wishes of the contract parties",[11] and in *Mastrobuono, supra*, at 57, Justice Stevens clarifies, " . . . courts are bound to interpret contracts in

[11] See *Granite Rock Co. v. Teamsters*, 561 U.S. 287, 296-297, 302 (2010). See also *Mastrobuono v. Shearson Lehman Hutton, Inc.*, 514 U.S. 52, 57, 59 (1995); *Stolt-Nielsen v. Animalfeeds*, 559 U.S. 662, 676 (2010); *Volt Information Sciences, Inc. v. Board of Trustees of Leland Stanford Junior Univ.*, 489 U.S. 468, 475, 479 (1989).

accordance with the expressed intentions of the parties-**even if the effect of those intentions is to limit arbitration.**" (emphasis added). Yet, the appellate opinion's conclusion is in opposite the obvious intent shown in the limiting clarifications, instead claiming that the arbitrator was given full authority to fluidly alter his own scope and release terms for any future dispute. Such a conclusion could only be reached by entirely ignoring the evidence presented by petitioner.

The appellate opinion continues on, acknowledging and referencing FAA regulation as preemptive over state courts and this case:

> We note, however, that "Minnesota courts must apply the FAA to transactions that affect interstate commerce." *Onvoy, Inc. v. SHAL, LLC*, 669 N.W.2d 344, 351 (Minn. 2003); see *Allied-Bruce* (describing the FAA's reach "expansively as coinciding with that of the Commerce Clause"). "[R]egardless of whether the plaintiff asserts federal or state law claims, [the FAA] preempts conflicting state law."

In the final paragraphs of his opinion (App. 12) Judge Bryan added another citation in support of his decision being based on the absolute controlling authority of the FAA over this case:

> Nothing we say in this opinion should be taken to reflect any agreement with the arbitrator's contract interpretation. . . . All we say is that convincing a court of an arbitrator's

> error – even [an arbitrator's] grave error – is not enough. So long as the arbitrator was arguably construing the contract – which this one was – a court may not correct [the arbitrator's] mistakes under § 10(a)(4) [of the FAA]. The potential for those mistakes is the price of agreeing to arbitration. As we have held before, we hold again: It is the arbitrator's construction of the contract which was bargained for; and so far as the arbitrator's decision concerns construction of the contract, the courts have no business overruling [the arbitrator] because their interpretation of the contract is different from [the arbitrator's]. The arbitrator's construction holds, however good, bad, or ugly.
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> *Oxford Health Plans LLC v. Sutter*, 569 U.S. 564, 572-73 (2013) (quotations and citations omitted).
>
> Given this caselaw, we cannot conclude that the arbitrator erred in interpreting the scope of the release language in the settlement agreement. Even if this panel disagreed with the arbitrator's interpretation of the release language, "[t]he arbitrator's construction holds, however good, bad, or ugly." Id. at 573. Because this court cannot interpret the settlement agreement or review the merits of the arbitrator's interpretation, we affirm the district court's decision to confirm the arbitration award.

Unfortunately the state appellate panel erred by misunderstanding *Oxford Health*'s inapplicability to the present case – by (1) ignoring the terms of the

agreement governing the scope of this case's arbitrability clause, (2) the intent and foundational purpose of the FAA in enforcing those terms, and (3) an appellate court's actual authority over deciding arbitrability de novo, as contradicted from Judge Bryan's own cited caselaw, "Determining whether a party has agreed to arbitrate a particular dispute is a matter of contract interpretation that we review de novo." (App. 8).[12] In reading more relevant sections of *Oxford Health, supra*, at 571, Justice Kagan explains:

> The contrast with this case is stark. In *Stolt-Nielsen*, the arbitrators did not construe the parties' contract . . . So in setting aside the arbitrators' decision, we found not that they had misinterpreted the contract, but that they had abandoned their interpretive role.
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> . . .
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> Those questions – which "include certain gateway matters, such as whether parties have a valid arbitration agreement at all or whether a concededly binding arbitration clause applies to a certain type of controversy" – are presumptively for courts to decide. A court may therefore review an arbitrator's determination of such a matter de novo absent "clear[] and unmistakabl[e]" evidence that the parties wanted an arbitrator to resolve the dispute. (citations omitted)

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[12] See related *First Options v. Kaplan*, 514 U.S. 938, 947-948 (1995).

In this case no such "clear and unmistakable" evidence exists because it has been shown herein to be diametrically opposite to the parties' intent. Focusing then on the issue of the arbitrability scope,[13] as acknowledged within the opinion with, "(2) whether the dispute falls within the scope of the arbitration agreement." (App. 8 and 11) Despite this awareness, Judge Bryan's analysis erred in applying the rule under the actual provisions of the FAA, disregarding petitioner's clear challenge to the arbitrability scope and clause. The facts of this case are not even close to reaching the required bar that arbitrability had been explicitly handed over to the arbitrator. Even setting aside the fact that the terms specifically limit any future arbitration authority – in *Lamps Plus*, *supra* (*slip op., at* 9), Chief Justice Roberts explains the requirement to be met as, "Neither silence nor ambiguity provides a sufficient basis for concluding that parties to an arbitration agreement agreed to undermine the central benefits of arbitration itself."

Judge Bryan's false opinion was further expressed while presiding during oral discussions on November 28, 2022 when he stated his belief that arbitration under the FAA is completely "unreviewable", even including the agreed upon terms of the arbitration clause. Carried into the written opinion, this false claim is plainly stated with, "[Petitioner] next argues that the district court erred by confirming the arbitration award because the arbitrator erroneously interpreted the scope of the release language in the settlement

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[13] *Supra*, footnote 6.

agreement. We affirm the district court's decision because courts do not review an arbitrator's interpretation of a contract." (App. 11) This, which is repeated again in the final paragraph (App. 12), impermissibly ignores the rulings defining arbitrability by this Court under the FAA as intended by Congress.

5. Minnesota Supreme Court

The Petition For Review (PFR) submitted to the MN Supreme Court was denied on June 20, 2023, well beyond of the response time limits under MN §480A.10 and without explanation. (App. 44)

REASONS FOR GRANTING THE PETITION

I. Congressional statutes and this Court mandates compliance with proceedings governed by the FAA.

The provisions of the FAA and rulings from this Court must be followed by the state judiciary to comply with Constitutional and statutory rights.[14] Granting petition to correct such error is provided under sections §§2, 3, 4, 10 and 11 notably stated with:

> Under the FAA, a party to an arbitration agreement may petition a United States [appellate] court for an order directing that "arbitration proceed in the manner provided for in such agreement." §4. Consistent with

[14] *Supra*, footnote 9.

> these provisions, we have said on numerous occasions that the central or "primary" purpose of the FAA is to ensure that "private agreements to arbitrate are enforced according to their terms." *Stolt-Nielsen, supra*, at 682

Through expectations defined by horizontal stare decisis, the rulings of this Court are established as persuasive authority supporting this petition. Over a dozen cases have authored opinions all showing beyond a doubt the well-defined intent and absolute requirement that arbitration is to be upheld according to the governing terms.[15] Following established stare decisis is the "preferred course because it promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process." explained by Justice Kagan in *Kimble et al. v. Marvel Entertainment LLC* 576 U.S. 446, ___ (2015), who continues as is especially relevant here, "What is more, *stare decisis* carries enhanced force when a decision . . . interprets a statute." Alexander Hamilton also vigilantly observed this as an exercise where "an arbitrary discretion in the courts" is restrained. The Federalist No. 78, p. 471 (C. Rossiter ed. 1961).

Upholding mandates naturally follows to stop individual states from stifling crucially important federal laws, without which would otherwise impair litigants the vindication of their rights and privately

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[15] *Supra*, footnote 10.

bargained agreement. Allowing the state court to flout this Court's rulings would erode and render the FAA's bedrock principles arbitrarily meaningless, generating a basis for confusion among the states and litigants.

II. The decision of the court of appeals is erroneous and warrants this Court's review to clarify the presented questions. The issues are important and will recur prior to resolution.

Arbitration is an act of consent, as repeatedly confirmed by this high Court.[16] 9 U.S.C. §1 et seq. is intended to uphold the terms of negotiated agreements and does not permit arbitrators to have any power beyond what was explicitly given to them by the parties. Yet, the improper adjudication thereof has been shown, quoted in the state court's own erroneous explanations and rulings, which resoundingly reject the authority of this Court.

With glaring factual errors the lower courts ignore judicial responsibility toward federal arbitrability law and fail to observe a proper motion to vacate vindicating petitioner's rights. The decision of the state appellate displays a concerning and detrimental application of the core focus of the FAA, delivering rulings that stand as an obstacle to the accomplishment and execution of the objectives of Congress. In *Marmet, supra*, at 530 it was agreed *per curiam* that,

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[16] *Supra*, footnote 8.

> "State and federal courts must enforce the Federal Arbitration Act (FAA), 9 U. S. C. §1 et seq., with respect to all arbitration agreements covered by that statute. . . . When this Court has fulfilled its duty to interpret federal law, a state court may not contradict or fail to implement the rule so established. See U.S. Const., Art. VI, cl. 2."

Whatever the claimed reasoning, the state court judiciary was not justified in tainting nearly every provision of the FAA – from improperly ordering arbitration with an advisory opinion, to ignoring the written terms of a private arbitration agreement, to refusing to vacate when the terms of an arbitrability clause had been exceeded to an unconscionable degree – all protected under federal law. The rulings of these state judges must be corrected and any confusion clarified concerning the limits to arbitration under the FAA.

Petitioner prays that this high Court bears witness to the glaring errors being perpetuated on federal mandates and moves to resolve them under the authority of the Act of Congress and Supremacy Clause.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted by,

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