No. ____

In the Supreme Court of the United States

Traffic Tech, Inc.; James Antobenedetto; Spencer Buckley; Wade Dossey; Brian Peacock; Dario Aguiniga,

Petitioners,

v.

C.H. Robinson Worldwide, Inc.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Article IV, Section 1 of the U.S. Constitution demands that "Full Faith and Credit" be given by each State "to the public Acts, Records, and judicial Proceedings of every other State." While a State is not required "to substitute for its own statute . . . the statute of another State," a State may not apply "a special rule that discriminates against its sister States." *Franchise Tax Bd. Of Cal. v. Hyatt*, 578 U.S. 171, 179 (2016). In addition, a state "may not abrogate the rights of parties beyond its borders having no relation to anything done or to be done within them." *Home Ins. Co. v. Dick*, 281 U.S. 397, 410 (1930).

California and Minnesota have both enacted Statutes guarantying employees who live and work in the State the exclusive protections of select employment laws of their home State. These "Anti-Waiver Statutes" prohibit out-of-state employers from utilizing contractual choice-of-law provisions to circumvent certain employment rights deemed fundamental within the State. In conducting a choice-of-law analysis below, the Eighth Circuit disregarded entirely California's Anti-Waiver Statute, strictly enforced a contractual choice-of-law provision that is illegal under California law, and thereby deprived California citizens of their California employment rights. The Eighth Circuit's approach is inconsistent with the precedent of this Court and the Constitution.

THE QUESTION PRESENTED IS

Whether the Full Faith and Credit Clause and the Due Process Clause require a State, which has its own Anti-Waiver Statute, to uphold a sister State's Anti-Waiver Statute.

PARTIES TO THE PROCEEDINGS

Petitioners Traffic Tech, Inc., James Antobenedetto, Spencer Buckley, Wade Dossey, Brian Peacock, and Dario Aguiniga were defendants in the district court and the appellees in the Eighth Circuit. Miles Maassen and Iman Dadkhah were initially defendants in the district court, but they were dismissed from the case pursuant to an arbitration agreement. Maassen and Dadkhah were not parties to the Eighth Circuit appeal. They are not parties to this Petition for Writ of Certiorari.

Respondent C.H. Robinson Worldwide, Inc. was the plaintiff in the district court and the appellant in the Eighth Circuit.

CORPORATE DISCLOSURE STATEMENT

Traffic Tech, Inc.'s parent company is Traffic Tech Inc. No publicly held company owns 10% or more of Traffic Tech, Inc.'s or Traffic Tech Inc.'s stock.

STATEMENT OF RELATED PROCEEDINGS

This case arises from the following proceedings:

- C.H. Robinson Worldwide, Inc. v. Traffic Tech, Inc.; James Antobenedetto; Spencer Buckley; Wade Dossey; Brian Peacock; Dario Aguiniga, Nos. 21-3259/21-3825, 60 F.4th 1144, 8th Cir. (Feb. 24, 2023) (reversing grant of summary judgment in part) and (April 10, 2023) (denying petition for hearing en banc and petition for rehearing); and
- C.H. Robinson Worldwide, Inc. v. Traffic Tech, Inc.; James Antobenedetto; Spencer Buckley; Wade Dossey; Brian Peacock; Dario Aguiniga, No. 19-cv-00902, D. Minn. (Sept. 22, 2021) (granting in full petitioners' motion for summary judgment) and (Dec. 7, 2021) (granting petitioners' motion for attorneys' fees and costs).

There are no other proceedings in state or federal trial or appellate courts, or in this Court, directly related to this case under Supreme Court Rule 14.1(b)(iii).

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PETITION FOR A WRIT OF CERTIORARI

Petitioners Traffic Tech, Inc., James Antobenedetto, Spencer Buckley, Wade Dossey, Brian Peacock, and Dario Aguiniga ("Petitioners") respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit.

OPINIONS BELOW

The opinion of the Eighth Circuit reversing summary judgment (App.1a) is reported at 60 F.4th 1144 (8th Cir. 2023). The opinion of the district court granting summary judgment to Petitioners (App.25a) is unreported but available at 2021 WL 4307012. The opinion of the district court granting Petitioners their attorney fees and costs (App.12a) is unreported but available at 2021 WL 5810478.

JURISDICTION

The opinion of the Eighth Circuit affirming the district court's dismissal of C.H. Robinson's claims for tortious interference with prospective economic advantage, reversing the judgment in all other respects, vacating the district court's order awarding attorney fees and costs, and remanding for further proceedings was filed on February 24, 2023. The Eighth Circuit denied Petitioners' timely petition for rehearing *en banc* and for rehearing by the panel on April 10, 2023. This Court has jurisdiction under 28 U.S.C. § 1254(1).

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

The Full Faith and Credit Clause of the United States Constitution provides:

> Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State.

U.S. Const., Art. IV, § 1.

The Due Process Clause of the Fourteenth Amendment to the United States Constitution provides in pertinent part:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law . . . .

U.S. Const., Amend. XIV, § 1.

California Business and Professions Code § 16600 prohibits post-employment restrictive covenants:

> [e]xcept as provided in this chapter, every contract by which anyone is restrained from engaging in a lawful profession, trade, or business of any kind is to that extent void.

Cal. Bus. & Prof. Code § 16600.

California Labor Code § 925 contains an anti-waiver provision:

> (a) An employer shall not require an employee who primarily resides and works in California, as a condition of employment, to agree to a provision that would do either of the following:
>
> (1) Require the employee to adjudicate outside of California a claim arising in California.
>
> (2) Deprive the employee of the substantive protection of California law with respect to a controversy arising in California.
>
> (b) Any provision of a contract that violates subdivision (a) is voidable by the employee, and if a provision is rendered void at the request of the

> employee, the matter shall be adjudicated in California and California law shall govern the dispute.

Cal. Lab. Code § 925 (West 2023).

Finally, Minnesota's recently enacted non-competition statute also contains an Anti-Waiver Provision:

> (a) An employer must not require an employee who primarily resides and works in Minnesota, as a condition of employment, to agree to a provision in an agreement or contract that would do either of the following: (1) require the employee to adjudicate outside of Minnesota a claim arising in Minnesota; or (2) deprive the employee of the substantive protection of Minnesota law with respect to a controversy arising in Minnesota.

Minn. Stat. § 181.988.

INTRODUCTION

The last opinion this Court issued on the Full Faith and Credit Clause was in 2016, over seven years ago. *Franchise Tax Board v. Hyatt*, 578 U.S. 171 (2016). The last constitutional choice-of-law opinion from this Court was issued in 1985. *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797 (1985). And, particularly pertinent for this petition, the last time this Court considered an Anti-Waiver Statute in the context of a choice-of-law analysis was 1939. *Pacific Employers Insurance Company v. Industrial Accident Commission*, 306 U.S. 493 (1939).

Since that time, questions over a State's sovereignty in regulating employment occurring within its borders have erupted, particularly as remote work has expanded exponentially in the post-COVID era.

In recent years, States have enacted an unprecedented number of statutes aimed at enhancing employment rights for their citizens, regardless of whether they are employed by in-state or out-of-state companies. One feature of these newly-enacted protections are Anti-Waiver Statutes, which forbid companies from requiring employees within a State to sign employment contracts containing choice-of-law provisions designating the law of another State to govern the employment relationship. This is, without a doubt, an attempt by States to put an end to the practice of employers circumventing State employment laws through contractual choice-of-law provisions.

In particular, Anti-Waiver Statutes are becoming increasingly common in connection with legislation limiting post-employment restrictive covenants, such as non-competition provisions. Nine (9) States currently have Anti-Waiver protections built into their restrictive covenant statutes. *See* Cal. Labor Code § 925; Colo. Rev. Stat. Ann. § 8-2-113; La. Stat. Ann. § 23:921; Mass. Gen. Laws Ann. Ch. 149, § 24L; Minn. Stat. § 181.988; Mont. Code Ann. § 28-2-708; N.D. Cent. Code Ann. § 9-08-05; Tex. Bus. & Com. Code Ann. § 15.52; Wash. Rev. Code Ann. § 49.62.050. Additional states are considering adding Anti-Waiver protections to their Statutes. *See, e.g.*, Michigan House Bill No. 4399. Moreover, nineteen (19) other States have statutes limiting the use of post-employment restrictive covenants. While those Statutes do not expressly prohibit choice-of-law provisions, these States undoubtedly intend for their statutes to govern their citizens. *See* Ala. Code § 8-1-190 et seq.; Ark. Code Ann. § 4-75-101; D.C. Code Ann. § 32-581.01; Fla. Stat. Ann. § 542.335; Ga. Code Ann. § 13-8-2; Haw. Rev. Stat. Ann. § 480-

4; Idaho Code Ann. § 44-2701; 820 Ill. Comp. Stat. Ann. 90/10; Me. Rev. Stat. tit. 26, § 599-A; Md. Code Ann., Lab. & Empl. § 3-716; Nev. Rev. Stat. Ann. § 613.195; N.H. Rev. Stat. Ann. § 275:70; Okla. Stat. Ann. tit. 15, § 219A; Or. Rev. Stat. Ann. § 653.295; 28 R.I. Gen. Laws Ann. § 28-59-3; S.D. Codified Laws § 53-9-11; Utah Code Ann. § 34-51-201; Va. Code Ann. § 40.1-28.7:8; Wis. Stat. Ann. § 103.465.

The swell of Anti-Waiver Statutes in post-employment restrictive covenant legislation has created a troubling constitutional question. Under the Full Faith and Credit Clause and the Due Process Clause, each State must provide some level of deference to its sister States' statutes. But this Court has never addressed how much deference is required when one State's law calls for the application of the law chosen in the contract, whereas another State's law calls for striking that very choice-of-law provision as illegal. Without any clear guidance from this Court, judicial analysis of Anti-Waiver Statutes has varied from State to State, circuit to circuit, and judge to judge.

The absence of a clear standard threatens comity and has led to a miscarriage of justice. In this case, all five former employees of Respondent C.H. Robinson Worldwide, Inc. ("C.H. Robinson") lived and worked exclusively in the State of California during their employment, where non-competes are void and unenforceable, and where the protections of California law cannot be waived. Yet, the Eighth Circuit below failed to even consider the impact of California's Anti-Waiver Statute in its choice-of-law analysis. Relying on Minnesota's choice-of-law standard, the Eighth Circuit instead performed a perfunctory analysis, featuring a near-automatic adherence to a Minnesota

choice-of-law provision utilized by C.H. Robinson in its form employment agreement that all of its California employees must sign.

The result was a slap in the face to California's sovereign status. That is: an out-of-state employer, C.H. Robinson, was permitted to reap the benefits of employing California citizens, require them to waive un-waivable California rights, haul them into a foreign court (Minnesota), and subject them to a foreign law (Minnesota). And the individual employees—each outmatched in bargaining power by the mammoth C.H. Robinson—now stand to face trial in a foreign jurisdiction, stripped of their rights as citizens of California, for conduct that is perfectly legal within their home State.

This is not the first instance where a corporation has used its superior bargaining power and a one-sided choice-of-law provision to deprive its employees of the rights provided to them by their home State, and it will not be the last. A patchwork of inconsistent decisions on Anti-Waiver Statutes has emerged, with Full Faith and Credit issues lurking in the background. With the Eighth Circuit's decision below, we have reached the tipping point. Accordingly, this case presents an optimal opportunity for the Court to provide much-needed guidance on the contours of the Full Faith and Credit Clause and Due Process Clause of the Constitution as applied to Anti-Waiver Statutes.

STATEMENT

C.H. Robinson requires all of its entry-level employees to sign "Confidentiality and Protection of Business Agreements" ("CPB Agreements") containing post-employment restrictive covenants that are inarguably illegal under California law. (App.2a-3a, 26a-28a.) To avoid California's statutory ban on restrictive covenants, C.H. Robinson includes a contractual choice-of-law provision mandating the application of Minnesota law to the CPB Agreements. (App.3a, 27a-29a.)

The individual Petitioners, each of whom was a citizen of California, were required to sign the CPB Agreements on or around their first day of employment. (App.30a-35a.) The individual Petitioners all continued to live in California and worked for C.H. Robinson exclusively in California. (*Id.*; *see also* App. 45a.) Each of the individual Petitioners subsequently resigned from their employment in order to join Traffic Tech, Inc.—a third-party logistics company incorporated in the state of California. The individuals each worked for Traffic Tech exclusively in California and continued to live there. (App.40a.)

On February 25, 2019, C.H. Robinson sued the individual Petitioners and Traffic Tech in Minnesota state court, asserting that the individuals breached the post-employment restrictive covenants within the CPB Agreements by soliciting customers. (App.3a.) Any alleged solicitations would have occurred in California. (App.40a, 43a.)

Petitioners removed the case to federal court and ultimately moved for summary judgment, arguing that the district court should apply California law to the dispute, and under California law, the post-

employment restrictive covenants in the CPB Agreements are unlawful. Petitioners argued that California law governs based on California's Anti-Waiver Statute, California Labor Code § 925, and in light of the minimal contacts between Minnesota and the causes of action. C.H. Robinson argued for the application of Minnesota law. After analyzing the contractual choice-of-law provision, the relevant state contacts, the difference in the parties' bargaining power, and the public policy of California in enacting the anti-waiver statute, the district court concluded that California law applied and granted summary judgment accordingly. (App.38a-41a.)

CH Robinson appealed to the Eighth Circuit Court of Appeals, and it argued that the district court erred because it should have, but failed to, apply the five-factor choice-of-law test from *Jepson v. General Casualty Co. of Wisconsin*, 513 N.W.2d 467 (Minn. 1994). Petitioners defended the district court's analysis as a proper prediction as to how the Minnesota Supreme Court would analyze a choice-of-law determination when the contract contains a choice-of-law provision that violates another State's Anti-Waiver Statute.

The Eighth Circuit agreed with neither side. Rather than apply the five-factor test advanced by C.H. Robinson or the *Modern Computer* factors advanced by Petitioners, the Eighth Circuit announced: "Minnesota is 'committed to the rule' that parties can agree on the law that governs their contract." (*See* App.7a (quoting *Milliken & Co. v. Eagle Packaging Co.*, 295 N.W.2d 377, 380 n.1 (Minn. 1980).) The Eighth Circuit thus decided that "a contractual choice-of-law provision will govern . . . so long as the parties

acted in good faith and without an intent to evade the law." (App.7a-8a (quoting *St. Jude Med. S.C., Inc. v. Biosense Webster, Inc.*, 818 F.3d 785, 788 (8th Cir. 2016).) The Eighth Circuit then deferred to the Minnesota choice-of-law provision and determined that Minnesota law applies—without even considering the impact of California's Anti-Waiver Statute. The Eighth Circuit's opinion was published and is therefore precedential.

REASONS FOR GRANTING THE PETITION

I. This Court Should Articulate the Constitutional Requirements for a Choice-of-Law Analysis When There Is an Applicable Anti-Waiver Statute.

It is well-understood that "a federal court sitting in diversity borrows the forum State's choice-of-law rule." *Cassirer v. Thyssen-Bornemisza Collection Found.*, 142 S. Ct. 1502, 1509 (2022) (citing *Klaxon Co. v. Stentor Elec. Mfg. Co.*, 313 U.S. 487, 496 (1941)). However, this case addresses a less travelled road: the constitutional limitations of the Full Faith and Credit Clause and the Due Process Clause, specifically as it relates to a State's ability to disregard unwaivable rights of the citizens of another State. This is both an undecided question, and one that invokes profound questions of federalism and comity.

In *Franchise Tax Bd. of California v. Hyatt*, ("*Hyatt II*"), this Court explained that under the Full Faith and Credit Clause, States must maintain a "healthy regard" for a sister States' "sovereign status." 578 U.S. 171, 177 (2016) (quoting *Franchise Tax Bd. of California v. Hyatt*, 538 U.S. 488, 489 (2003)). When a State enacts an Anti-Waiver Statute, it makes a

powerful statement about its sovereign status, by expressly requiring that its laws must apply to the exclusion of all other State laws. Any contract purporting to waive these State protections are deemed void by the State.

For example, for over 150 years, California has prohibited restrictive covenants in employment contracts, as part of California's "settled public policy in favor of open competition." *Edwards v. Arthur Andersen LLP*, 189 P.3d 285, 291 (Cal. 2008); Cal. Bus. and Prof. Code § 16600. *See also Application Group, Inc. v. Hunter Group*, 72 Cal. Rptr. 2d 73, 85 (Cal. Ct. App. 1998) ("It follows that California has a strong interest in protecting the freedom of movement of persons whom California-based employers . . . wish to employ to provide services in California."). In furtherance of its fundamental public policy, California enacted the Anti-Waiver Statute, Cal. Lab. Code § 925, which prohibits employers of California citizens from using choice-of-law provisions to circumvent California's long-standing ban on Non-Compete and Non-Solicitation Provisions. *See* Cal. Labor Code § 925 ("An employer shall not require an employee who primarily resides and works in California, as a condition of employment, to agree to a provision that would . . . [d]eprive the employee of the substantive protection of California law with respect to a controversy arising in California.").

This Court has not yet set forth how a State should address an applicable Anti-Waiver Statute of a sister State, such as Cal. Labor Code § 925. In the 1930s, this Court twice upheld California's decision to apply a California Anti-Waiver Statute to override contractual choice-of-law provisions designating the

law of another State. *See Alaska Packers Association v. Industrial Accident Commission*, 294 U.S. 532 (1935) (holding that California law applied despite choice-of-law provision in employment agreement designating Alaska law); *Pacific Employers Insurance Company v. Industrial Accident Commission*, 306 U.S. 493 (1939) (upholding decision to apply California law despite Massachusetts choice-of-law provision). In each case, this Court recognized that California, as with all States, had a unique interest in legislating the conditions of employment for its citizens. *See Alaska Packers Ass'n*, 294 U.S. at 550 (noting that employee was a citizen of California and was therefore "a member of a class in the protection of which the state has an especial interest"); *Pac. Emps. Ins. Co.*, 306 U.S. at 503 ("Few matters could be deemed more appropriately the concern of the state in which the injury occurs or more completely within its power."). However, this Court has never analyzed the constitutionality of the reverse situation, where a State disregards a sister State's Anti-Waiver Statute in favor of applying its own law to the dispute. Given that Anti-Waiver Statutes set forth fundamental public policies of the originating State and call for courts in other States to defer to their laws in disputes involving their citizens, Anti-Waiver Statutes deserve special consideration under the Full Faith and Credit Clause and the Due Process Clause.

In the absence of constitutional guidance from this Court, a patchwork of conflicting case law is emerging. *See New England Surfaces v. E.I. du Pont de Nemours & Co.*, 546 F.3d 1, 10 (1st Cir. 2008) (noting that the "problem" of Anti-Waiver Statutes has "divided other courts"). Some courts have deferred

to applicable sister States' Anti-Waiver Statutes. *See, e.g.*, *Volvo Const. Equip. N. Am., Inc. v. CLM Equip. Co., Inc.*, 386 F.3d 581 (4th Cir. 2004); *Colt Indus., Inc. v. Fidelco Pump & Compressor Corp.*, 700 F. Supp. 1330, 1333 (D.N.J. 1987), *aff'd*, 844 F.2d 117 (3d Cir. 1988); *Focus Fin. Partners, LLC v. Holsopple*, 241 A.3d 784, 804 (Del. Ch. 2020); *Healy v. Carlson Travel Network Assocs., Inc.*, 227 F. Supp. 2d 1080, 1087 (D. Minn. 2002). Other courts have carefully considered the sister State's Anti-Waiver Statute, but declined to apply it after lengthy consideration of competing policy interests. *See e.g., Mod. Computer Sys., Inc. v. Mod. Banking Sys., Inc.*, 871 F.2d 734, 738 (8th Cir. 1989); *Tele-Save Merch. Co. v. Consumers Distrib. Co.*, 814 F.2d 1120, 1122 (6th Cir. 1987); *Medcor, Inc. v. Garcia*, No. 21 CV 2164, 2022 WL 124163, at *5 (N.D. Ill. Jan. 13, 2022); *Willis Re Inc. v. Herriott*, 550 F. Supp. 3d 68, 95 (S.D.N.Y. 2021); *Downing v. Neurovascular*, No. 1:18-CV-841, 2018 WL 11473724, at *9 (W.D. Mich. Dec. 27, 2018). Finally, some courts have opted to take the approach the Eighth Circuit did here and refuse to even consider the sister State's Anti-Waiver Statute. *See e.g.*, *Westrock Servs., LLC v. Roberts*, No. 1:22-CV-01501-SCJ, 2022 WL 1715964, at *4 (N.D. Ga. May 4, 2022); *Ronnoco Coffee, LLC v. Castagna*, No. 4:21-CV-00071 JAR, 2021 WL 842599, at *6 (E.D. Mo. Mar. 5, 2021); *Howmedica Osteonics Corp. v. Howard*, No. CV-1919254SDWLDW, 2020 WL 1102494, at *3 (D.N.J. Jan. 17, 2020).

The later approach—complete disregard for the Anti-Waiver Statute—does not represent a "healthy regard" for the sister State's "sovereign status." *See Hyatt II*, 578 U.S. at 171.

Moreover, the focal point of constitutional limitations on choice-of-law decisions has traditionally been the expectations of the parties. *See Shutts*, 472 U.S. at 822 ("When considering fairness in this context, an important element is the expectation of the parties."). Although historically courts have expressed few concerns regarding fairness when the parties agree on the governing law via contract, *see Allstate Ins. Co. v. Hague*, 449 U.S. 302, 328 (1981) (Stevens, J., concurring), the same rationale does not hold when there is an applicable Anti-Waiver Statute. Take, for instance, the facts of this case. While the relevant agreements provide for the application of Minnesota law, the employees were each California citizens both before and at the time of hire. They were all hired to work in California, which has enacted a Statute that specifically prohibits the designation of another law in an employment agreement. "They could not reasonably have anticipated that their actions would later be judged by this rule of law." *Hague*, 449 U.S. at 328 (1981) (Stevens, J., concurring) ("The application of an otherwise acceptable rule of law may result in unfairness to the litigants if, in engaging in the activity which is the subject of the litigation, they could not reasonably have anticipated that their actions would later be judged by this rule of law."); *Shutts*, 472 U.S. at 822 ("There is no indication that when the leases involving land and royalty owners outside of Kansas were executed, the parties had any idea that Kansas law would control.").

This issue is not unique to California. Nearly a fifth of the American workforce—approximately 30 million people—is subject to a non-compete agreement. *See* Evan P. Starr et al., *Noncompete Agreements in*

the US Labor Force, 64 J. LAW & ECON. 53, 60, 64 (2021), App.56a; 16 CFR Part 910. Recognizing the growing need to curtail employers from contracting around statutory limitations on post-employment restrictive covenants, nine States have Anti-Waiver Statutes on the books with respect to post-employment restrictive covenants:

- **California**: "An employer shall not require an employee who primarily resides and works in California, as a condition of employment, to agree to a provision that would [d]eprive the employee of the substantive protection of California law with respect to a controversy arising in California." Cal. Labor Code § 925.
- **Colorado**: "Notwithstanding any contractual provision to the contrary, Colorado law governs the enforceability of a covenant not to compete for a worker who, at the time of termination of employment, primarily resided and worked in Colorado." Colo. Rev. Stat. Ann. § 8-2-113.
- **Louisiana**: "The provisions of every employment contract or agreement, or provisions thereof, by which any foreign or domestic employer or any other person or entity includes a choice of forum clause or choice of law clause in an employee's contract of employment or collective bargaining agreement, or attempts to enforce either a choice of forum clause or choice of law clause in any civil or administrative action involving an employee, shall be null and void except where the choice of forum clause or choice of law clause is expressly, knowingly, and

voluntarily agreed to and ratified by the employee after the occurrence of the incident which is the subject of the civil or administrative action." La. Stat. Ann. § 23:921.

- **Massachusetts**: "No choice of law provision that would have the effect of avoiding the requirements of this section will be enforceable if the employee is, and has been for at least 30 days immediately preceding his or her cessation of employment, a resident of or employed in Massachusetts at the time of his or her termination of employment." Mass. Gen. Laws Ann. Ch. 149, § 24L
- **Minnesota**: "An employer must not require an employee who primarily resides and works in Minnesota, as a condition of employment, to agree to a provision in an agreement or contract that would . . . deprive the employee of the substantive protection of Minnesota law with respect to a controversy arising in Minnesota." Minn. Stat. § 181.988.
- **Montana**: "Every stipulation or condition in a contract by which any party to the contract is restricted from enforcing the party's rights under the contract by the usual proceedings in the ordinary tribunals or that limits the time within which the party may enforce the party's rights is void." Mont. Code Ann. § 28-2-708.
- **North Dakota**: "Every stipulation or condition in a contract by which any party thereto is restricted from enforcing that party's rights under the contract by the

usual legal proceedings in the ordinary tribunals or which limits the time within which that party thus may enforce that party's rights is void, except as otherwise specifically permitted by the laws of this state." N.D. Cent. Code Ann. § 9-08-05.

- **Texas**: "The criteria for enforceability of a covenant not to compete provided by Section 15.50 of this code and the procedures and remedies in an action to enforce a covenant not to compete provided by Section 15.51 of this code are exclusive and preempt any other criteria for enforceability of a covenant not to compete or procedures and remedies in an action to enforce a covenant not to compete under common law or otherwise." Tex. Bus. & Com. Code Ann. § 15.52.
- **Washington**: "A provision in a noncompetition covenant signed by an employee or independent contractor who is Washington-based is void and unenforceable . . . [t]o the extent it deprives the employee or independent contractor of the protections or benefits of this chapter." Wash. Rev. Code Ann. § 49.62.050.

More states will likely follow suit. *See* Michigan House Bill No. 4399 (proposed post-employment restrictive covenant legislation that includes provision that, "[a]ll of the following are void and unenforceable: . . . A choice of law provision in an agreement, to the extent that it would negate the requirements of this section.").

Without clear guidance from this Court on the appropriate constitutional analysis for Anti-Waiver

Statutes, the application of such Statutes will continue to plague lower courts and lead to unpredictability in the law. Indeed, this is at least the third petition involving California Labor Code § 925 in the past four years that has come before this Court. However, the two prior petitions (which were denied) sought review of decisions on motions to transfer under 28 U.S.C. § 1404(a). Neither presented the important issue presented by this petition. That is, whether the Full Faith and Credit Clause requires a forum State to defer to its sister State's Anti-Waiver Statute when the forum State, itself, enforces Anti-Waiver Statutes protecting its own citizens.

II. Minnesota's Choice-of-Law Test, as Applied by the Eighth Circuit, Is Unconstitutional.

Almost 100 years ago, choice-of-law cases implicating the Full Faith and Credit and Due Process Clauses dominated this Court's docket, and this Court issued decisions opining on the constitutional limits of choice-of-law decisions with frequent regularity. *See Hyatt II,* 578 U.S. 171, 177 (citing *Bradford Elec. Light Co. v. Clapper*, 286 U.S. 145, 157–159 (1932)). However, the Court ultimately abandoned its complex "balancing-of-interests" approach to conflicts of law under the Full Faith and Credit Clause, in part because that approach led to results that "seemed to differ depending, for example, upon whether the case involved commercial law, a shareholders' action, insurance claims, or workman's compensation states." *Id.* The result has been relatively few Full Faith and Credit decisions since the 1950s. Between the years of 1988 and 2016 (when *Hyatt II* was decided), this Court issued just two decisions addressing the Full Faith and Credit Clause: *Thomas v. General Motors*

Corp., 522 U.S. 222 (1998) and *Franchise Tax Bd. v. Hyatt*, 538 U.S. 488 (2003) ("*Hyatt I*").

Despite the shift away from the "balancing of interests" approach, the Court has recognized that the Full Faith and Credit and Due Process Clauses of the U.S. Constitution still place "modest restrictions" on a State's ability to apply its own law to the exclusion of other potentially applicable laws. *See Shutts*, 472 U.S. at 818. "'[F]or a State's substantive law to be selected in a constitutionally permissible manner, that State must have a significant contact or significant aggregation of contacts, creating state interests, such that choice of its law is neither arbitrary nor fundamentally unfair.'" *Id.* (*quoting Hague*, 449 U.S. at 312-13.). Moreover, in *Hyatt II*, this Court clarified the longstanding rule of law that, in refusing to honor a Statute of a sister State, the forum State cannot exhibit a policy of "hostility" to the public Acts of its sister State. *Id.* at 176-77. Rather, the forum State must evince a "healthy regard for [its sister State's] sovereign status." *Hyatt II*, 578 U.S. at 177.

The Eighth Circuit's decision in this case deviates substantially from *Hyatt II* and *Hague*. Specifically, the Eighth Circuit's abandonment of Minnesota's own legal principles in favor of imposing a harsher rule on California citizens reflects hostility toward the public Acts of a sister State. This case presents an opportunity for the Court to apply the holding of *Hyatt II* outside the governmental immunity context. Additionally, the Eighth Circuit's decision fails to apply the fairness principles articulated in *Hague* and this petition provides the Court with the opportunity to revisit and clarify the "modest restrictions"

imposed on choice-of-law disputes under the Full Faith and Credit Clause and the Due Process Clause of Constitution—issues that have only been infrequently touched by this Court in the last 50 years.

A. Minnesota's Choice-of-Law Standard, as Stated by the Eighth Circuit, Reflects a Policy of Hostility Toward California and Is Unconstitutional Under *Hyatt II*.

Hyatt II has been cited by lower courts mostly in the context of state or governmental immunity. But *Hyatt II's* holding was not so limited. Rather, this Court held that "viewed through a full faith and credit lens, a State that disregards its own legal principles," and instead applies a "discriminatory, special law" to a sister State violates the Full Faith and Credit Clause. *Id.* at 177.

Here, Minnesota's approach to the choice-of-law dispute, as articulated by the Eighth Circuit, evinces hostility to California because Minnesota abandoned its own legal principles in order to apply a "special" rule that is hostile to California and its citizens.

For a century and a half, the state of California has prohibited restrictive covenants in employment contracts as part of the State's "paramount" commitment to a "policy . . . of open competition." *Application Group, Inc. v. Hunter Group*, 61 Cal. App. 4th 881, 900 (1998); *Edwards v. Arthur Andersen LLP*, 189 P.3d 285, 291 (Cal. 2008). *See* Cal. Bus. and Prof. Code § 16600. In an effort to advance this strong public policy, in 2017, California enacted Cal. Labor Code § 925. As the author of §925 explained: "[i]f you're employing Californians who live in California, you should not be able to force all dispute resolution

to take place . . . under the laws of Delaware." (App. 73a-74a.)

Minnesota shares California's concern about out-of-state employers utilizing choice-of-law provisions to circumvent its employee and independent contractor-friendly laws. Minnesota has its own Anti-Waiver Statutes, which require out-of-state companies to adhere to certain Minnesota laws and forbids them from leveraging choice-of-law provisions to do an end-run-around these laws. For instance, the Minnesota Termination of Sales Representative Act, enacted in 1990 and amended in 2014 to add strong anti-waiver language, prohibits a "manufacturer, wholesaler, assembler or importer" from "circumvent[ing] compliance" with the statute by including in a sales representative agreement a term or provision that incudes "an application or choice of law of any other state." Minn. Stat. § 325E.37 subd. 7(1). Even more relevant is Minnesota's recently enacted non-compete legislation, effective July 1, 2023, which prohibits an employer from requiring an employee "who primarily resides and works in Minnesota," to "agree to a provision in an agreement or contract that would . . . deprive the employee of the substantive protection of Minnesota law with respect to a controversy arising in Minnesota."

Up until the Eighth Circuit's published opinion in this case, Minnesota courts and the Eighth Circuit had continually relied on Anti-Waiver Statutes in rejecting contractual choice-of-law provisions. *See Banbury v. Omnitrition Int'l, Inc.*, 533 N.W.2d 876, 880 (Minn. Ct. App. 1995) (declining to enforce choice-of-law clause due to Minnesota anti-waiver statute, noting that "the legislature expressed an intent to

protect its citizens with its own laws by voiding, to some extent, choice-of-law provisions in agreements like this."); *Delaria v. KFC Corp.*, No. CIV. 4-94-116, 1995 WL 17079305, at *6 (D. Minn. Jan. 13, 1995) (striking Kentucky choice-of-law provision based on anti-waiver statute that "clearly demonstrates the Minnesota Legislature's intent to void any attempt to waive application of the Minnesota Franchise Act through choice of law provisions"); *Healy v. Carlson Travel Network Assocs., Inc.*, 227 F. Supp. 2d 1080, 1087 (D. Minn. 2002) (striking Minnesota choice-of-law provision based on anti-waiver provision of Illinois statute); *Apex Tech. Sales, Inc. v. Leviton Mfg., Inc.*, No. CV 17-2019 SRN/HB, 2017 WL 2731312, at *5 (D. Minn. June 26, 2017) (anti-waiver statute "renders null and void the New York choice-of-law provision"); *Hedding o/b/o Hedding Sales & Serv. v. Pneu Fast Co.*, No. CV 18-1233 (JRT/SER), 2019 WL 79006, at *4 (D. Minn. Jan. 2, 2019) (striking Ohio choice-of-law clause because Minnesota had a "clearly-defined policy of protecting its sales representatives from agreements purporting to waive the protections of [the applicable Minnesota statute] by any means"); *HEK, LLC v. Akstrom Imports, Inc.*, No. 20-CV-1881 (NEB/LIB), 2021 WL 679585, at *6 (D. Minn. Feb. 22, 2021) ("If the [Minnesota anti-waiver statute] does indeed apply, its anti-waiver provision would void the Agreement's Quebec choice-of-law provision").

Here, the Eighth Circuit deviated from this deferential approach, which rightfully respects the sovereignty of each State to legislate legal protections for its citizens.

In *Hyatt II*, the state of Nevada set aside its own legal principles in order to apply a harsher rule to

the state of California. The Eighth Circuit, applying Minnesota law, did the same here. It disregarded Minnesota's own anti-waiver legal principles and instead applied a harsher, "intent-to-evade" standard to the California citizens seeking to invoke California's Anti-Waiver Statute. Application of the "intent-to-evade" standard allowed the contractual choice-of-law provision to easily override California's Anti-Waiver Statute, without even considering the impact of that Statute on the choice-of-law analysis. The result is that CH Robinson is permitted to do precisely what out-of-state employers are prohibited from doing in Minnesota—that is, use a choice-of-law contract to circumvent the employment laws of the employee's home state. In essence, the Eighth Circuit allowed Minnesota to do what this Court admonished in *Hyatt II*—*i.e.*, take a discriminatory approach to a sister State.

The language of the Eighth Circuit's decision was not openly hostile to the state of California, but the court's failure to even *acknowledge* Section 925 in its choice-of-law analysis is telling, given that Section 925 was the focal point of the briefing before the Eighth Circuit, before the district court, and is the anchor of the district court's summary judgment decision. The hostility to California is even further evident when the opinion is compared to other Eighth Circuit decisions involving Anti-Waiver Statutes. For instance, in *Engineered Sales, Co. v. Endress + Hauser, Inc.*, 980 F.3d 597, 601 (8th Cir. 2020), the Eighth Circuit applied a Minnesota Anti-Waiver statute to void an Indiana choice-of-law provision in a sales representative agreement. 980 F.3d at 601. While this inconsistency was pointed out in the briefing

below (App.86a-89a), the Eighth Circuit declined to explain the reason California's Anti-Waiver statute was afforded zero deference here. (App.7a).

The implications of the Eighth Circuit's decision will cross state lines. As discussed above, multiple States have Anti-Waiver Statutes and regularly apply those Statutes in their courts to strike contractual choice-of-law provisions. Yet, under the Eighth Circuit's decision, those same States are now permitted to disregard Anti-Waiver Statutes of sister States without providing any justification. To avoid this inconsistency, this Court should grant this petition to provide clarity as to how the Full Faith and Credit Clause impacts one State's deference to a sister State's Anti-Waiver Statute, particularly where the dispute involves citizens of the sister State.

B. The Full Faith and Credit and the Due Process Clauses Do Not Permit a Choice-of-Law Analysis Based Solely on Whether There Is an "Intent to Evade".

A constitutional analysis of Minnesota's intent-to-evade test—which is an outlier choice-of-law test among the States—presents an important opportunity for this Court to expand its jurisprudence with respect to the constitutional requirement of fairness in a choice-of-law analysis, which has not been discussed by this Court since *Shutts* and *Hague* were decided in the 1980s.

Justice Stevens' concurrence in *Hague* aptly observed that "[a] choice–of–law decision that frustrates the justifiable expectations of the parties can be fundamentally unfair. This desire to prevent unfair surprise to a litigant has been the central concern in

this Court's review of choice–of–law decisions under the Due Process Clause." *Hague*, 449 U.S. at 327. The emphasis on the "expectation of the parties" was fully embraced by *Shutts*, where this Court stated that the "expectation of the parties" is a "an important element" of the fairness inquiry under *Hague*. The Court carefully considered whether the facts indicated that "the parties had any idea" that the chosen law would govern their dispute. *Shutts,* 472 U.S. at 822.

In *Shutts*, this Court addressed the constitutionality of Kansas's choice-of-law approach with respect to class action claims asserted against a Phillips Petroleum, a Delaware corporation, for the recovery of royalties based on contracts between the class members and Phillips Petroleum. There, the Supreme Court of Kansas determined that "generally the law of the forum controlled all claims unless 'compelling reasons' existed to apply a different law." *Shutts*, 472 U.S. at 803. Accordingly, "[t]he Kansas courts applied Kansas contract and Kansas equity law to every claim in this case, notwithstanding that over 99% of the gas leases and some 97% of the plaintiffs in the case had no apparent connection to the State of Kansas except for this lawsuit." *Shutts*, 472 U.S. at 814-15.

This Court found that the Kansas "compelling reasons" choice-of-law approach violated the Constitution. Rather, for Kansas law to apply, "Kansas must have a 'significant contact or significant aggregation of contacts' to the claims asserted by each member of the plaintiff class, contacts 'creating state interests,' in order to ensure that the choice of Kansas law is not arbitrary or unfair." *Shutts*, 472 U.S. at 821 (quoting *Hague*, 449 U.S at 312-13). Because Kansas's

approach was not based on a substantive evaluation of the contacts between Kansas, the claims, and Kansas state interests, the "compelling reasons" approach was deemed beyond "constitutional limits." *See id.* at 821-22 ("Kansas 'may not abrogate the rights of parties beyond its borders having no relation to anything done or to be done within them.'") (quoting *Home Ins. Co. v. Dick*, 281 U.S. 397, 410 (1930)).

Notwithstanding *Shutts*, the concept of significant contacts and fairness in the choice-of-law analysis has largely laid dormant. Indeed, circuit courts of appeal pay only cursory attention to these foundational principles of the Constitution. *See, e.g.*, *AT & T Mobility LLC v. AU Optronics Corp.*, 707 F.3d 1106, 1112 (9th Cir. 2013); *Keeton v. Hustler Mag., Inc.*, 828 F.2d 64, 67 (1st Cir. 1987).

As a result, Minnesota has maintained a choice-of-law analysis for over 60 years that is akin to that of the Kansas approach rejected by *Shutts*. Under Minnesota's approach, when there is a contractual choice-of-law provision, that provision "will govern so long as the parties acted in good faith and without an intent to evade the law." *Biosense Webster,* 818 F.3d at 788. This approach derives from *Combined Ins. Co. of Am. v. Bode*, 77 N.W.2d 533, 536 (Minn. 1956) and a footnote in *Milliken & Co. v. Eagle Packaging Co.*, 295 N.W.2d 377, 380n. 1 (Minn. 1980). *See Medtronic, Inc. v. Gibbons*, 684 F.2d 565, 568 (8th Cir. 1982). The Minnesota "intent-to-evade" test allows Minnesota courts to apply Minnesota law even when Minnesota has only "insignificant" connections to the dispute. *But see Hague*, 449 U.S. at 310–11 (explaining that "if a State has only an insignificant contact with

the parties and the occurrence or transaction, application of its law is unconstitutional").

This is precisely what occurred here, leading to the same "unfair surprise" that the *Hague* concurrence Court cautioned against. *Hague*, 449 U.S. at 327 (Stevens, J., concurring). By focusing exclusively on the contractual choice-of-law provision, rather than the parties' justifiable expectations, the Eighth Circuit failed to consider that Minnesota has no significant connection to the underlying dispute and that the former employees had reasonable expectations that California law would govern any employment dispute, particularly in light of California's well-known ban on post-employment restrictive covenants and Anti-Waiver Statute.

The Court should grant this petition to not only correct this grievous constitutional violation, but to expand the Court's jurisprudence regarding the constitutional requirements of fairness in a choice-of-law inquiry.

CONCLUSION

This Court has issued few Full Faith and Credit decisions in recent years and has not directly addressed Anti-Waiver Statutes in almost 100 years. Given the emergence of Anti-Waiver statues, and inconsistent application of those statutes around the country, this case presents the ideal opportunity for this Court to revisit the constitutional limits of a choice-of-law analysis. The Eighth Circuit's approach in this case failed to even consider California's Anti-Waiver Statute, which neglected to respect California's sovereign status. For these reasons, the petition for writ of certiorari should be granted.

Respectfully submitted,

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