No. 24-____

IN THE

Supreme Court of the United States

COINBASE, INC. AND COINBASE GLOBAL, INC.,

Petitioners,

v.

DARREN KRAMER, MANISH AGGARWAL, ET AL.,

Respondents.

On Petition for a Writ of Certiorari to the California Court of Appeal, First Appellate District

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Under the Federal Arbitration Act (FAA), arbitration agreements are "valid, irrevocable, and enforceable." 9 U.S.C. § 2. The FAA's "saving clause" contemplates exceptions only "upon such grounds as exist at law or in equity for the revocation of any contract." *Id.* But the FAA preempts even such grounds if they interfere with "fundamental attribute[s] of arbitration." *Epic Sys. Corp.* v. *Lewis*, 584 U.S. 497, 508 (2018).

In *McGill* v. *Citibank, N.A.*, the California Supreme Court ruled that an arbitration provision is unenforceable if it precludes a plaintiff from seeking "public injunctive relief." 393 P.3d 85, 94 (Cal. 2017). California courts have since held that a plaintiff can invoke the *McGill* rule and invalidate an arbitration agreement by merely requesting an injunction on behalf of similarly situated consumers under any of California's several consumer-protection statutes. The Ninth Circuit disagrees and has held that this approach is preempted by the FAA.

The question presented is:

Whether, or to what extent, the FAA preempts a state-law rule allowing a plaintiff to evade arbitration by pleading a request for "public injunctive relief," even if the relief sought would benefit only consumers of a particular product or service.

PARTIES TO THE PROCEEDING

Petitioners Coinbase, Inc. and Coinbase Global, Inc. were the defendants-appellants below.

Respondents Darren Kramer, Manish Aggarwal, Amish Shah, and Mostafa El Bermawy were the plaintiffs-respondents below.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, Coinbase, Inc. hereby states that it is a wholly-owned subsidiary of Coinbase Global, Inc. No publicly held corporation owns 10% or more of the stock of Coinbase Global, Inc.

RELATED PROCEEDINGS

Supreme Court of California:

- *Kramer* v. *Coinbase, Inc.*, No. S287507 (Dec. 31, 2024) (denying petition for review)

California Court of Appeal, First Appellate District:

- *Kramer* v. *Coinbase, Inc.*, No. A167779 (Sept. 12, 2024) (affirming denial of Coinbase's motion to compel arbitration)
- *Kramer* v. *Coinbase, Inc.*, No. A167779 (Oct. 4, 2024) (certifying publication)

Superior Court of California, San Francisco County:

- *Kramer* v. *Coinbase, Inc.*, No. CGC-23-604357 (Mar. 28, 2023) (denying Coinbase's motion to compel arbitration)

TABLE OF CONTENTS

TABLE OF CONTENTS—Continued

TABLE OF AUTHORITIES

Page(s)

CASES:

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

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Coinbase, Inc. and Coinbase Global, Inc. respectfully petition for a writ of certiorari to review the judgment of the California Court of Appeal, First Appellate District, in this case.

OPINIONS BELOW

The California Court of Appeal's opinion is available at 326 Cal. Rptr. 3d 217. *See* Pet. App. 1a-23a. The California Superior Court's order denying arbitration is unreported, but is available at 2023 WL 11970136. *See* Pet. App. 26a-29a.

JURISDICTION

The California Court of Appeal issued its decision on September 12, 2024, *see* Pet. App. 1a-23a, and certified the decision for publication on October 4, 2024, *see* Pet. App. 24a-25a. The California Supreme Court denied Coinbase's petition for review on December 31, 2024. *See* Pet. App. 30a. On March 6, 2025, this Court extended the deadline to petition for a writ of certiorari to April 30, 2025. On April 11, 2025, this Court further extended the deadline to petition for a writ of certiorari to May 30, 2025. This Court's jurisdiction is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Supremacy Clause of the United States Constitution, article VI, clause 2, provides:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

U.S. Const. art. VI, cl. 2.

Section 2 of the Federal Arbitration Act, 9 U.S.C. § 2, provides:

> A written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to

> perform the whole or any part thereof, or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal, shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract or as otherwise provided in chapter 4.

INTRODUCTION

The Federal Arbitration Act (FAA) requires courts to enforce an arbitration agreement unless the agreement is invalid "upon such grounds as exist at law or in equity for the revocation of *any* contract." 9 U.S.C. § 2 (emphasis added). *Any* means *any*: If a state-law rule is tailor-made specifically to invalidate *arbitration* contracts, and *only* arbitration contracts, it is preempted.

This case concerns just such a state-law rule. California's *McGill* rule provides that an arbitration agreement is not "enforceable insofar as it purports to waive [the] right to seek public injunctive relief in any forum." *McGill* v. *Citibank, N.A.*, 393 P.3d 85, 90 (Cal. 2017). "Public injunctive relief" is a form of relief unique to California, typically applied in its consumer-protection laws. Even when such an injunction would protect only a small fraction of the public—customers purchasing a particular product—California state courts consider that requested relief sufficiently "public" to trigger the *McGill* rule. Moreover, to trigger that rule, a plaintiff need only *allege* that he is seeking such an injunction, as opposed to *proving* that the injunction would in fact benefit the "public" rather than primarily the plaintiff.

Thus, in California, a plaintiff may invalidate an arbitration agreement simply by claiming to seek an injunction on behalf of consumers of a particular product or service.

Whether the FAA preempts the *McGill* rule has divided federal and state courts. The California courts have consistently held that the *McGill* rule is not preempted. *See, e.g.*, *Ramsey* v. *Comcast Cable Commc'ns, Inc.*, 317 Cal. Rptr. 3d 561, 563-565, 573 (Ct. App. 2023), *cert. denied*, 145 S. Ct. 1050 (2025) (mem.). The Ninth Circuit, in contrast, has held that, although the *McGill* rule *is not* preempted insofar as it applies to a request for an injunction on behalf of the general public, it *is* preempted when a plaintiff seeks an injunction that would primarily benefit only a specific class of consumers. *See, e.g.*, *Hodges* v. *Comcast Cable Commc'ns, LLC*, 21 F.4th 535, 547-548 (9th Cir. 2021). Each side has acknowledged the other's position. But neither side has blinked.

The resulting federal-state split invites gamesmanship by plaintiffs. This case is a perfect example. This petition follows Plaintiffs' *third* attempt to avoid arbitration with Coinbase. Plaintiffs initially sued Coinbase in federal court. After Coinbase moved to compel arbitration—a motion the federal court granted—Plaintiffs tried their luck in state court. The same plaintiffs filed the same suit based on the same allegations—the only differences were that, this time, they exclusively sought a public injunction for relief and they filed in state court. Coinbase removed this action to federal court, but before Coinbase could move (again) to compel arbitration, Plaintiffs voluntarily dismissed it. Plaintiffs then recruited a California plaintiff to join

their effort and filed a new action in state court—where, now, the new California plaintiff stopped Coinbase from removing the suit to federal court. Coinbase moved to compel arbitration in the state court and got the opposite ruling than it got in federal court: Because California state courts—unlike the federal courts—broadly apply the *McGill* to invalidate arbitration agreements waiving the right to seek non-individualized relief, the state court denied Coinbase's motion to compel arbitration on the same factual allegations that had resulted in a federal court order to arbitrate the dispute.

This Court's intervention is needed to eliminate such gamesmanship. The issue is ripe for review. The federal-state split has matured since prior petitions came to this Court challenging *McGill*. The state and federal courts have now considered and rejected one another's positions. And the decision below confirms that the *McGill* rule is a pleading game. Plaintiffs invoke *McGill* solely to avoid arbitration. It serves no other purpose. Only a negligible number of cases—two—where the *McGill* rule has been used to block arbitration have actually resulted in a public injunction.

Eight years of jurisprudential development have revealed *McGill* for what it is: a state-law rule tailor-made to invalidate arbitration contracts, and *only* arbitration contracts. Such a rule is preempted by the FAA. The time has come for this Court to intervene and grant review.

STATEMENT

A. Legal Background

1. The Federal Arbitration Act. Congress enacted the FAA in 1925 "in response to judicial hostility to arbitration." *Viking River Cruises, Inc.* v. *Moriana*, 596 U.S. 639, 649 (2022). Arbitration, Congress recognized, "had more to offer" than critics realized, including "quicker, more informal, and often cheaper resolutions for everyone involved." *Epic Sys. Corp.* v. *Lewis*, 584 U.S. 497, 505 (2018).

Congress thus directed that arbitration agreements be treated as "valid, irrevocable, and enforceable." 9 U.S.C. § 2. This provision reflects "both a liberal federal policy favoring arbitration * * * and the fundamental principle that arbitration is a matter of contract." *AT&T Mobility LLC* v. *Concepcion*, 563 U.S. 333, 339 (2011) (quotation marks omitted).

Congress further required that courts "respect and enforce the parties' chosen arbitration procedures." *Epic*, 584 U.S. at 506 (citing 9 U.S.C. §§ 3, 4). Indeed, the Court has emphasized "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 S.A.* v. *AnimalFeeds Int'l Corp.*, 559 U.S. 662, 682 (2010) (citations omitted).

The FAA's "enforcement mandate" is subject to a narrow exception. *Viking River Cruises*, 596 U.S. at 650. Section 2 allows courts to invalidate arbitration clauses "upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2. This portion of Section 2, referred to in the case law as a "saving clause," permits courts to invalidate

arbitration agreements based on "generally applicable contract defenses, such as fraud, duress, or unconscionability"—that is, defenses that would apply to the enforcement of "any" contract. *Concepcion*, 563 U.S. at 339 (quotation marks omitted). It thus establishes an "'equal-treatment' rule for arbitration contracts." *Epic*, 584 U.S. at 507 (citation omitted).

But the saving clause does not allow courts to invalidate arbitration agreements based on "defenses that apply only to arbitration or that derive their meaning from the fact that an agreement to arbitrate is at issue." *Concepcion*, 563 U.S. at 339. Thus, Section 2 "does not save defenses that target arbitration either by name or by more subtle methods, such as by 'interfering with fundamental attributes of arbitration.'" *Epic*, 584 U.S. at 508 (brackets and citation omitted). Under the Supremacy Clause, such state-law defenses are preempted by the FAA. *See Viking River Cruises*, 584 U.S. at 650-651.

2. The *McGill* Rule. The California Supreme Court allows plaintiffs to seek what it calls "public injunctive relief," meaning "injunctive relief that has the primary purpose and effect of prohibiting unlawful acts that threaten future injury to the general public." *McGill*, 393 P.3d at 87. This sort of relief contrasts with a private injunction, which "resolve[s] a private dispute" and "rectif[ies] individual wrongs." *Id.* at 89 (quotation marks omitted).[1] A "public injunction" covers relief on behalf

[1] This division between public and private injunctions is unique to California; no other State has a similar practice. And it is a relatively recent creation. The California Supreme Court did not

of both the general public and any discrete class of a company's current and future customers. *See Ramsey*, 317 Cal. Rptr. 3d at 568. Public injunctive relief is typically sought under California's consumer-protection statutes, including the Consumer Legal Remedies Act (CLRA), Unfair Competition Law (UCL), and false-advertising law.

In *McGill*, the California Supreme Court held that "insofar as [an] arbitration provision * * * purports to waive [an individual's] right to request in any forum * * * public injunctive relief, it is invalid and unenforceable under California law." 393 P.3d at 94. The court located this rule in California Civil Code § 3513, a "maxim of jurisprudence" enacted in 1872 stating that "[a]ny one may waive the advantage of a law intended solely for their benefit. But a law established for a public reason cannot be contravened by a private agreement." Cal. Civ. Code § 3513. *McGill* held that this "contract defense" is "generally applicable" and thus not preempted by the FAA. 393 P.3d at 94.

Because most modern arbitration agreements require that all of the parties' claims be arbitrated and that any relief awarded be individualized, the upshot of the *McGill* rule is this: A plaintiff can defeat a motion to compel arbitration solely by alleging he is seeking an injunction on behalf of the general public or similarly situated consumers under any of California's several consumer-protection statutes. *See, e.g.*, *Mejia* v. *DACM Inc.*, 268 Cal. Rptr. 3d 642 (Ct. App. 2020); *Maldonado* v. *Fast Auto Loans, Inc.*,

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distinguish between these injunctions until 1999. *See Broughton* v. *Cigna Healthplans of Cal.*, 988 P.2d 67 (Cal. 1999).

275 Cal. Rptr. 3d 82 (Ct. App. 2021); *Ramsey*, 317 Cal. Rptr. 3d 561; Pet. App. 11a-12a.

B. Factual Background

Coinbase "operates a platform for buying, selling, and transferring cryptocurrencies." Pet. App. 2a. To buy and sell cryptocurrency on the platform, users create accounts. *Id.* A user may create an account only after first accepting the Coinbase User Agreement. *Id.*

The Coinbase User Agreement includes an arbitration agreement. *See id.* As relevant here, this agreement requires the arbitration of "any dispute" between the user and Coinbase. *See id.* The agreement also contains a "waiver of class and other non-individualized relief," which provides, among other things, that "only individual relief is available" in the agreed-upon arbitration. *See* Coinbase User Agreement—Appendix 5: Arbitration Agreement § 1.3 (filed as Ex. 15 to Declaration of Tony Jankowski, No. CGC-23-604357 (Cal. Super. Ct., S.F. Cnty., Mar. 1, 2023)) (capitalization normalized).

Plaintiffs Darren Kramer, Manish Aggarwal, Mostafa El Bermawy, and Amish Shah are Coinbase users.[2] Each of them accepted the terms of the User

[2] Kramer, Aggarwal, and El Bermawy voluntarily dismissed their claims against Coinbase while Coinbase's appeal to the California Court of Appeal was pending. *See* Pet. App. 2a n.1. They did not however, "request[] dismissal of th[e] appeal," and the Court of Appeal treated them as full parties to the appeal, even as it took "judicial notice" of their trial-court dismissals. *Id.* They also remain listed as plaintiffs-respondents on the Court of Appeals docket, and there is no docket entry identifying Kramer, Aggarwal, and El Bermawy as having been formally dismissed

Agreement in 2022. Pet. App. 2a. Plaintiffs filed suit against Coinbase alleging that third-party thieves stole their cryptocurrency from their Coinbase accounts. In a series of lawsuits, they alleged that Coinbase violated several California consumer-protection statutes by misleadingly marketing its platform as secure.[3]

C. Procedural History

Between 2022 and 2023, Plaintiffs filed three suits in quick succession against Coinbase.

1. Aggarwal and El Bermawy filed the first suit in federal court in August 2022. *See Aggarwal* v. *Coinbase, Inc.*, 685 F. Supp. 3d 867, 874 (N.D. Cal. 2023) ("*Aggarwal I*").

Aggarwal and El Bermawy's putative class-action complaint against Coinbase asserted various statutory and common-law claims, including false advertising and violations of the CLRA and the UCL. Pet. App. 3a. They sought public injunctive relief, in addition to other remedies, including compensatory, statutory, and punitive damages. *See id.*

Coinbase moved to compel arbitration. *See Aggarwal I*, 685 F. Supp. 3d at 874. The district court granted that motion. *See id.* at 882.

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from the appeal. They are accordingly properly considered Respondents under Supreme Court Rule 12.6.

[3] Coinbase disputes these claims. Plaintiffs did not allege that Coinbase played a role in the third-party thieves obtaining Plaintiffs' credentials. Instead, Plaintiffs allege that "Coinbase failed to protect the[ir] accounts, mitigate their losses, or provide support following the thefts." Pet. App. 3a. Coinbase disagrees. Coinbase employs extensive security measures and its marketing is truthful and accurate.

2. While Coinbase's motion to compel arbitration was pending, Aggarwal and El Bermawy, now joined by Shah, filed a second suit, this time in California state court. *See* Complaint, *Aggarwal* v. *Coinbase, Inc.*, No. CGC-23-603871 (Cal. Super. Ct., S.F. Cnty. Jan. 6, 2023) ("*Aggarwal II*"). They filed this second suit in January 2023, on the same day that they filed their opposition to Coinbase's motion to compel arbitration in *Aggarwal I*.

The new suit was functionally identical to *Aggarwal I*. *See* Exhibit B to Notice of Removal, *Aggarwal* v. *Coinbase, Inc.*, No. 3:23-cv-00371 (N.D. Cal. Jan. 25, 2023), ECF No. 1-1. But this time, Plaintiffs exclusively sought "public injunctive relief." *See id.* at 42.

Coinbase removed *Aggarwal II* to federal court based on diversity jurisdiction. *See* Notice of Removal, *Aggarwal*, No. 3:23-cv-00371 (N.D. Cal. Jan. 25, 2023), ECF No. 1. The next day, Plaintiffs voluntarily dismissed their complaint. *See* Notice of Voluntary Dismissal, *Aggarwal*, No. 3:23-cv-00371 (N.D. Cal. Jan. 26, 2023), ECF No. 10.

3. A few days after the voluntary dismissal, Aggarwal, El Bermawy, and Shah filed a third suit, now joined by an additional plaintiff, Kramer. This suit was filed in California state court.

The only difference between the voluntarily dismissed *Aggarwal II* complaint and the new complaint was the addition of Kramer as a plaintiff. *See* Pet. App. 4a n.2. Because Kramer is a California resident, adding him to the complaint as a plaintiff meant Coinbase could not remove the case to federal court.

Shortly after filing their new state-court complaint, Plaintiffs moved for a preliminary injunction. *See* Motion for Preliminary Injunction, No. CGC-23-604357 (Cal. Super. Ct., S.F. Cnty., Feb. 27, 2023). They asked the court to enjoin Coinbase from using "the term 'bank-level security' to describe any service or product provided by Coinbase," as well as from making any "representations" regarding Coinbase's industry-leading security features, its security notifications, and its live-support options. *Id.*

As it had in federal court, Coinbase moved to compel arbitration. *See* Pet. App. 4a. Unlike in federal court, however, the state court denied that motion. The state court, applying the *McGill* rule, held the User Agreement's arbitration agreement was unenforceable because "the complaint plainly shows that plaintiffs are only seeking public injunctive relief." Pet. App. 28a. In the court's view, the fact that "[t]he charging allegations and prayer only seek 'public injunctive relief'" rendered the parties' arbitration agreement unenforceable. *Id.*

The California Court of Appeal affirmed. Applying three earlier Court of Appeal cases—*Mejia*, *Maldonado*, and *Ramsey*—the court held that any "injunction that seeks to prohibit a business from engaging in unfair or deceptive practices" falls within *McGill*'s scope. Pet. App. 12a (quoting *Ramsey*, 317 Cal. Rptr. 3d at 568); *see also* Pet. App. 10a. This includes "an injunction benefiting existing and potential customers." Pet. App. 15a-16a (citing *Ramsey*); *see also* Pet. App. 10a-11a. The court then concluded that the *McGill* rule applied because Plaintiffs "allege[d] violations of the CLRA, UCL, and"

the false-advertising law, and "exclusively [sought] public injunctive relief." Pet. App. 11a.

The court disclaimed that it mattered whether the relief sought would benefit only current and future Coinbase users, rather than the general public, as an argument California courts had repeatedly "considered and rejected." Pet. App. 15a-16a (citing in part *Mejia* and *Ramsey*). The court further rejected Coinbase's argument that Plaintiffs had failed to carry their burden that the *McGill* rule applied, holding that, under *McGill*, the rule's application turns solely on "the complaint's allegations and requests for relief." Pet. App. 18a-19a (quotation marks omitted). In the court's view, unlike other contract defenses, like "fraud," a plaintiff seeking to avoid arbitration under *McGill* need not produce "additional evidence." Pet. App. 20a.

Finally, the Court of Appeal held "that the FAA does not preempt *McGill*." Pet. App. 22a n.8. And it rejected that applying *McGill* here raises "procedural complexit[ies]" that would render it preempted under Ninth Circuit precedent. *Id.* (quotation marks omitted).

Coinbase filed a timely petition for review with the California Supreme Court. Coinbase urged the court to grant review and hold that the FAA preempts the *McGill* rule. *See* Pet. App. 53a-65a. The California Supreme Court denied Coinbase's petition on December 31, 2024, in an order without an opinion. *See* Pet. App. 30a.

This petition follows.

REASONS FOR GRANTING THE PETITION

I. THIS COURT'S REVIEW IS NECESSARY TO RESOLVE AN ENTRENCHED SPLIT.

The Ninth Circuit and California courts disagree on whether the FAA preempts the *McGill* rule. The Ninth Circuit holds that the *McGill* rule is largely preempted. California courts, in stark contrast, reject this Ninth Circuit precedent and have held that the *McGill* rule is not preempted in the same circumstances. Each side has acknowledged and rejected the other's position. This Court should grant review to resolve this entrenched split between the country's most populous State and its most populous regional circuit, and determine whether or the extent to which the *McGill* rule is preempted by the FAA.[4]

1. The California courts have repeatedly held that "the FAA does *not* preempt the *McGill* rule." *Mejia*, 268 Cal. Rptr. 3d at 653 (quotation marks omitted). Thus, wherever a plaintiff's complaint merely requests an "injunction that seeks to prohibit a business from engaging in unfair or deceptive practices and marketing" or "requires it to comply with our consumer protection laws," the California courts will decline to enforce an otherwise valid arbitration agreement. *Ramsey,* 317 Cal. Rptr. 3d at 568.

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[4] Indeed, this court routinely grants petitions addressing whether California state law is preempted by the FAA even where there is *no* split. *See, e.g.*, *Viking River Cruises*, 596 U.S. 639 (2022); *Concepcion*, 563 U.S. 333 (2011); *Preston* v. *Ferrer*, 552 U.S. 346 (2008); *Volt Info. Scis., Inc.* v. *Bd. of Trs. of Leland Stanford Junior Univ.*, 489 U.S. 468 (1989); *Perry* v. *Thomas*, 482 U.S. 483 (1987); *see also Kindred Nursing Centers Ltd. P'ship* v. *Clark*, 581 U.S. 246 (2017) (no split on Kentucky law).

In *Mejia*, for example, the California Court of Appeal declined to compel arbitration where a customer sought an injunction against a motorcycle dealership's failure "to provide its customers with a single document setting forth all the financing terms" for motorcycles purchased "with a conditional sale contract." 268 Cal. Rptr. 3d at 644-645. Although the defendant pointed out that the requested injunction would "benefit only" the "narrow group" of individuals who "would buy a motorcycle" with a conditional sale contract, the California court held that this relief "encompass[ed] consumers generally." *Id.* at 650-651 (quotation marks omitted). The court therefore held that the parties' arbitration agreement was unenforceable under *McGill*. *Id.* The court further held that the FAA does not preempt the *McGill* rule. *Id.* at 653. The California Supreme Court denied review.

Similarly, in *Maldonado*, the California Court of Appeal declined to compel arbitration where a putative class of loan recipients sought an injunction under the CLRA and UCL to, among other things, reduce the interest charged by a lender on loans over $2,500. 275 Cal. Rptr. 3d at 86. The lender argued that *McGill* should not apply because this case would "at best, benefit * * * [only] individuals who would borrow money from" the lender. *Id.* at 89-90 (quotation marks omitted). Although the court "agree[d]" that "not all members of the public will become customers of" the defendant, the court stated the injunction "will nevertheless offer benefits to the general public." *Id.* at 91 (quotation marks omitted). The court accordingly concluded that the parties' arbitration agreement was unenforceable under *McGill*. *Id.* at 91, 93. Like *Mejia*, the court held that

the FAA did not preempt the *McGill* rule. *See id.* at 93. The California Supreme Court denied review.

2. The Ninth Circuit, in stark contrast, has held that the FAA largely preempts the *McGill* rule. In particular, "the broader version of the *McGill* rule embraced in *Mejia* and *Maldonado*"—"namely, that *any* injunction against future illegal conduct constitutes non-waivable public injunctive relief"—"is preempted by the FAA." *Hodges,* 21 F.4th at 547.

In *Hodges*, the Ninth Circuit compelled arbitration even though a putative class of cable subscribers sought an injunction under the UCL that would have required the defendant cable provider to notify cable subscribers of how long the company retained subscriber data. *Id.* at 538. The plaintiff contended that its request for a public injunction defeated Comcast's motion to compel arbitration under *McGill*. *See id.* at 538-539. But the Ninth Circuit explained that, to survive preemption, *McGill* must be "limited to" injunctive relief that "primarily benefit[ted] the general public as a more diffuse whole"—"as opposed to a particular class of persons," such as "cable subscribers"—"and that do so without the need to consider the individual claims of a non-party." *Id.* at 542, 549. The court therefore concluded that the arbitration agreement between the cable subscriber and cable provider was enforceable, notwithstanding the *McGill* rule. *See id.* at 548-549.

3. The Ninth Circuit and California courts have acknowledged the split.

In *Hodges*, the Ninth Circuit explicitly disagreed with *Mejia*'s and *Maldonado*'s preemption analysis. 21 F.4th at 544-549. The "truncated analysis" in those cases "effectively shear[ed] off the limiting elements"

of what constitutes public injunctive relief as articulated in *McGill* and rendered those cases "plainly incorrect." *Id.* at 545. In particular, the requested injunction in *Mejia* revising conditional sale contracts would not "primarily benefit" the general public—it sought relief for a "class of persons who actually purchased motorcycles." *Id.* And the requested injunction in *Maldonado* against excessive interest rates would "only benefit[ ] those who actually sign lending agreements, and not the public more generally." *Id*. This sort of injunctive relief, the Ninth Circuit emphasized, is properly considered "private injunctive relief"; it would benefit "a discrete class of persons" or "require[s] consideration of the private rights and obligations of individual non-parties." *Id.* at 543, 545-546.

The Ninth Circuit held that "*Mejia*'s and *Maldonado*'s * * * expansion of the *McGill* rule is preempted by the FAA." *Id.* at 547. As the court explained, "the broader *Mejia–Maldonado* rule forbids waiving claims for prospective injunctive relief against unlawful conduct even if, for example, the implementation of such an injunction would require evaluation of the individual claims of numerous non-parties." *Id.* The court cited as an example the injunctions "sought in *Mejia* and *Maldonado* themselves—namely, injunctions regulating the drafting and substantive terms of actual contracts with innumerable different persons." *Id.* The Ninth Circuit concluded that "[i]mplementing such relief would require a level of procedural complexity that is inherently incompatible 'with the informal, bilateral nature of traditional consumer arbitration,' and with

the 'efficient, streamlined procedures' that the FAA seeks to protect." *Id.* (citations omitted).[5]

The California courts have consistently disagreed with *Hodges*. Two years after *Hodges*, the California Court of Appeal "decline[d] to follow *Hodges*," stating that it found *Mejia* and *Maldonado* more "persuasive." *Ramsey*, 317 Cal. Rptr. 3d at 569. In *Ramsey*, the California Court of Appeal declined to compel arbitration where the plaintiff sought an injunction stopping Comcast's business practice of offering its customers who had promotional rates an extension of those rates when they sought to cancel their subscription. 317 Cal. Rptr. 3d at 564-565. In so holding, the court explicitly reaffirmed the central premise of *Mejia* and *Maldonado*—the FAA does not preempt even a broad reading of *McGill* to cover a requested injunction said to protect a class of consumers and members of the public who might someday consider joining that class of consumers. *Id.* at 568-569.

II. THIS COURT'S INTERVENTION IS NECESSARY NOW.

A. This Case Is An Excellent Vehicle.

This case is the ideal vehicle to resolve the division of authority between the Ninth Circuit and the California state courts. This case directly implicates the split. Plaintiffs' gamesmanship demonstrates the

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[5] The Ninth Circuit also predicted—incorrectly—that the California Supreme Court would reject the version of the *McGill* rule articulated in *Mejia* and *Maldonado*. *Id.* at 544-547. But the California Supreme Court has yet to put any brakes on lower California courts' expansive interpretations of the *McGill* rule.

split's real-world implications. And Coinbase preserved the question presented at every stage.

1. In the decision below, the California Court of Appeal applied the exact approach to the *McGill* rule that the Ninth Circuit held is preempted by the FAA to affirm the trial court's denial of Coinbase's motion to compel arbitration. Pet. App. 11a ("We find the reasoning in *Meija*, *Maldonado*, and *Ramsey* equally applicable here."). And the decision below turned on the view—rejected by the Ninth Circuit—that an injunction need "not benefit the entire public as a 'diffuse whole' " as long as it also benefits "potential users[ ] of [the Coinbase] platform." Pet. App. 10a-11a, 15a-16a (quoting *Ramsey*, 317 Cal. Rptr. 3d at 571-572).

In a footnote, the Court of Appeal stated that "the 'procedural complexity' concerns raised in *Hodges* * * * are not present here" because, in the court's view, "[t]his case involves alleged misrepresentations regarding the security of its platform as generally asserted by Coinbase to the public." Pet. App. 22a n.8. But "the public" here is only "existing and potential customers" of Coinbase. Pet. App. 15a. Such a class-based injunction is the kind of application of *McGill* that *Hodges* held is preempted.

Moreover, Plaintiffs' requested injunction raises the "procedural complexity" issues *Hodges* held warranted preemption. The requested injunction would prohibit Coinbase from making *any* "representation[ ] that describe[s] Coinbase's security features as the best among alternative cryptocurrency exchanges or platforms." Motion for Preliminary Injunction, *supra* p. 11. Crafting, monitoring, and administering this injunction will necessitate

examining all of Coinbase's varied communications with its present and future users. *See Hodges*, 21 F.4th at 548 ("injunctions are not simply words on a page, and their compatibility with bilateral arbitration must be evaluated in light of how they would actually be *implemented*"). Such an injunction will be, at a minimum, costly, slow, and complicated. This case thus raises the exact "procedural complexity" concerns about which *Hodges* warned.

The Court of Appeal's effort to narrow the preemption effect of *Hodges* only underscores the need for this Court's intervention. California courts are not bound by the Ninth Circuit's holding that *McGill* is largely preempted by the FAA. And the California Supreme Court has repeatedly denied petitions for review seeking clarity concerning the scope and validity of the *McGill* rule. In so doing, the California Supreme Court has tacitly endorsed the California Court of Appeal's decisions expanding *McGill* to defeat arbitration wherever a plaintiff alleges a violation of a consumer-protection act. Only this Court can conclusively determine whether all, some, or none of *McGill* is preempted by the FAA.

2. This case not only implicates the split—it arises out of unchecked gamesmanship that demonstrates the troubling real-world consequences of this split.

Plaintiffs initially pursued their claims against Coinbase in federal court. But when Coinbase moved to compel that case to arbitration, Plaintiffs reacted by filing a separate state-court suit engineered to trigger *McGill*. After Coinbase successfully removed that case to federal court, Plaintiffs voluntarily dismissed that case and re-filed in state court—this time with a diversity-thwarting plaintiff. Plaintiffs'

gambit worked: Although the federal court granted Coinbase's motion to compel arbitration in the original case, the state court below denied Coinbase's similar motion. *See supra* pp. 10-13.

The decision below lays out a roadmap for any plaintiff seeking to evade an otherwise-valid arbitration agreement with a California company: enlist a California plaintiff, sue in California state court, and allege that the defendant's conduct affects the public, or at least future customers of the defendant. Allowing such blatant gamesmanship would uniquely prejudice arbitration agreements and is thus untenable. The FAA's reach should not depend on whether plaintiffs file in federal court or across the street in state court.

3. The question presented was pressed and passed upon below. In the Court of Appeal, Coinbase urged the court to avoid preemption by rejecting California's maximalist *McGill* rule and adopting the Ninth Circuit's more-measured stance. The Court of Appeal held "that the FAA does not preempt *McGill*." *See* Pet. App. 22a n.8. Coinbase then petitioned the California Supreme Court to address whether the FAA preempts the *McGill* rule, in part because the decision below "deepen[ed] the split of authority between the California Courts of Appeal and the Ninth Circuit." Pet. App. 37a, 62a-63a. Coinbase thus preserved the question presented at every stage.

B. This Petition Is Unlike Previous Petitions Seeking Review Of The *McGill* Rule.

This petition is markedly different from other recent petitions asking this Court to overturn *McGill*, for three reasons.

First, this is the first petition that asks this Court to resolve the split between California's expansive application of the *McGill* rule and the Ninth Circuit's holding that the *McGill* rule is largely preempted. Nearly all previous petitions were filed before *Hodges*, at which time there was no split.[6] The one exception is the petition arising out of *Ramsey*. *See Comcast Cable Commc'ns, LLC* v. *Ramsey*, No. 24-365 (U.S. Sept. 27, 2024). But that petition asked the Court to consider "[w]hether the FAA preempts California's *McGill* rule." *Comcast* Pet. i. And as respondents in that case consistently observed, "[t]here is no division of authority on that question." *Comcast* BIO 8. This petition, in stark contrast, focuses on the specific, acknowledged federal-state split. This petition, unlike others, asks this Court to decide whether the rule that "*any* injunction against future illegal conduct constitutes non-waivable public injunctive relief" is, as the Ninth Circuit has held, "preempted by the FAA," *Hodges,* 21 F.4th at 547, or whether the more permissive view of the California courts, which have "decline[d] to follow *Hodges*," *Ramsey*, 317 Cal. Rptr. 3d at 569, should be the law of the land.

Second, the decision below significantly expands the *McGill* rule. The court below held that plaintiffs in California can invalidate arbitration agreements anytime they plead a request for an injunction that extends beyond the specific plaintiffs in the case to similarly situated individuals. *See* Pet. App. 18a-21a.

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[6] *See AT&T Mobility LLC* v. *McArdle*, 140 S. Ct. 2827 (2020) (mem.) (predating *Hodges*); *Comcast Corp.* v. *Tillage*, 140 S. Ct. 2827 (2020) (mem.) (predating *Hodges*); *Fast Auto Loans, Inc.* v. *Maldonado*, 142 S. Ct. 708 (2021) (mem.) (cert petition filed before *Hodges*).

That a "public injunction" can be invoked—and an arbitration agreement invalidated—by mere allegation is in contrast to other contract defenses, like fraud, which the party resisting arbitration must establish by a preponderance of the evidence. *See* Pet. App. 20a. To the extent this was already a feature of the *McGill* rule—as the Court of Appeal concluded—the decision below only confirms that the *McGill* rule is engineered to thwart arbitration. *See infra* pp. 26-30. And on a practical level, this approach incentivizes plaintiffs subject to otherwise-valid arbitration agreements to append a request for a "public" injunction to their complaint and thereby avoid arbitration. This Court should not countenance such a blatant anti-arbitration device.

Third, this case confirms the California Supreme Court's aversion to enforcing the FAA. In *Hodges*, the Ninth Circuit predicted that the California Supreme Court would reject *Mejia* and *Maldonado*. *See* 21 F.4th at 544-547. That prediction was wrong. The California Supreme Court has now twice denied petitions asking it to reconsider *McGill* in light of the disagreement between the Ninth Circuit and the California courts. *See* Pet. App. 31a-65a (Coinbase's petition for review to California Supreme Court); *Comcast* Pet. App. 111a-125a, No. 24-365 (U.S. Sept. 27, 2024) (Comcast's petition for review to California Supreme Court in *Ramsey*). It is clear beyond cavil that the California courts and the Ninth Circuit are at odds with one another over the *McGill* rule.

C. The Question Presented Is Important.

Under the *McGill* rule, arbitration agreements that prohibit public injunctive relief will not be enforced. The ease with which this ostensibly Californian rule

can be invoked is kneecapping consumer arbitration across the country as companies like Coinbase often use the same arbitration agreement nationally. Companies that operate and advertise nationally typically do not apply different policies and procedures to customers based in different States, just as they generally do not apply different prices or grant different privileges based on the location of their customers.

California's consumer-protection statutes have tremendous reach. The UCL, for instance, "covers a wide range of conduct." *Korea Supply Co.* v. *Lockheed Martin Corp.*, 63 P.3d 937, 943 (Cal. 2003). This includes conduct that is not "specifically proscribed" under statutory law, *Feitelberg* v. *Credit Suisse First Bos., LLC*, 36 Cal. Rptr. 3d 592, 1009 (Ct. App. 2005) (quotation marks omitted), and conduct violating a federal statute "that does not itself provide for a private right of action," *Rose* v. *Bank of Am., N.A.*, 304 P.3d 181, 184 & n.5 (Cal. 2013). Put simply, just about any legal violation can serve as a predicate for a UCL public injunction claim.

It takes almost nothing for a plaintiff to add such an arbitration-negating claim to a suit. As the decision below demonstrates, plaintiffs need only allege that they seek a "public" injunction and add a few untested supporting allegations, even if they seek relief only for a class of consumers under a consumer-protection statute. That is akin to what triggered the California rule this Court held preempted in *Concepcion*. *See* 563 U.S. at 347 (observing that the requirement that "the consumer allege a scheme to cheat consumers" had "no limiting effect" because all that was required "[was] an allegation"). Here, as in that case, the fact

that California's rule is not in practice contained by any real limitation should ring alarm bells. Even more troubling, because so many contracts are formed in California, that State's law often applies in other States. This means that *McGill* does, too. *E.g.*, *In re StockX Customer Data Sec. Breach Litig.*, No. 19-12441, 2021 WL 2434169 (E.D. Mich. June 15, 2021) (applying *McGill* to deny motion to compel arbitration); *but see Swanson* v. *H&R Block, Inc.*, 475 F. Supp. 3d 967, 970, 975-978 (W.D. Mo. 2020) (holding that California law applies but that *McGill* is preempted). After all, it is only after Coinbase removed this case to federal court that a California plaintiff appeared in this case at all.

And this rule is having its intended effect: Plaintiffs can easily back out of arbitration agreements. Litigants have invoked *McGill* in *hundreds* of cases to avoid otherwise enforceable arbitration agreements and force defendants into more costly and less streamlined litigation. Even more troubling, across all of these cases, Coinbase is aware of *only two* post-*McGill* cases where a court ordered any public injunctive relief to a private plaintiff under the UCL, the CRLA, or the false-advertising law. *See Loy* v. *Kenney*, 301 Cal. Rptr. 3d 352, 360-361 (Ct. App. 2022); *Drivetime Car Sales Co.* v. *Hubert*, No. B327337, 2024 WL 4997885 (Cal. Ct. App. Dec. 5, 2024). The disconnect between the relief claimed and the relief received confirms that *McGill* serves primarily as a vehicle for litigants to evade otherwise enforceable arbitration agreements.

McGill's green light to evade arbitration is bad for plaintiffs and defendants alike. One recent study found that consumer plaintiffs were more likely to

prevail in arbitration than in litigation by over ten percentage points (41.7% to 29.3%). *See* Nam D. Pham & Mary Donovan, Fairer, Faster, Better, III: An Empirical Assessment of Consumer and Employment Arbitration 4, 5 tbl. 1 (Mar. 2022).[7] That study also found that arbitration is, on average, about 100 days shorter than litigation, and that consumers, on average, win roughly $8,000 more in arbitration than in litigation. *See id.* As for defendants, individualized arbitration is, among other things, more predictable and less expensive. *E.g.*, *Concepcion*, 563 U.S. at 344-345. Arbitration also reduces the need for expansive discovery—which can account for as much as 90 percent of litigation costs in some cases[8]—and allows for confidential proceedings, *Stolt–Nielsen*, 559 U.S. at 686. And arbitration's lower stakes reduces the costs of a potential error, which allows parties to "forgo the procedural rigor and appellate review of the courts." *Id.* at 685.

III. THE DECISION BELOW IS WRONG.

Adhering to California state precedent, the decision below held that the *McGill* rule is not preempted by the FAA. *See* Pet. App. 22a n.8. That is wrong. The FAA preempts contract defenses that are not generally applicable or that interfere with fundamental aspects of arbitration. The *McGill* rule violates both of these strictures. At the least, the maximalist version of the *McGill* rule embraced by the California courts and rejected by the Ninth Circuit so

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[7] *Available at* https://perma.cc/Z6BC-PDL9.

[8] Memorandum from Paul V. Niemeyer, Chair, Advisory Comm. on Civil Rules, to Hon. Anthony J. Scirica, Chair, Comm. on Rules of Practice and Procedure (May 11, 1999), 192 F.R.D. 340, 357 (2000).

interferes with arbitration's traditionally informal and streamlined procedures that this version of the rule is preempted. Either way, this Court should grant the petition and reverse.

A. The *McGill* Rule Is Not A Generally Applicable Contract Defense.

In *Concepcion*, this Court held that the FAA preempts "defenses that apply only to arbitration or that derive their meaning from the fact that an agreement to arbitrate is at issue." 563 U.S. at 339 (quotation marks omitted). *McGill* articulates just such a rule.

First, the *McGill* rule expressly targets arbitration agreements. The *McGill* rule provides that "the waiver *in a predispute arbitration agreement* of the right to seek public injunctive relief * * * is invalid and unenforceable under California law." *McGill*, 393 P.3d at 94 (emphasis added); *accord id.* at 87. By limiting the rule to "arbitration agreement[s]," the rule impermissibly targets "arbitration * * * by name." *Epic*, 584 U.S. at 508.

Second, the *McGill* rule is not a generally applicable contract defense. The California Supreme Court purported to glean the *McGill* rule from a statutory maxim enacted in 1872 providing that "a law established for a public reason cannot be contravened by a private agreement." 393 P.3d at 93 (quoting Cal. Civ. Code § 3513). But Civil Code § 3513 does not establish a generally applicable contract defense. It articulates an interpretive canon for statutes. *See* Cal. Civ. Code § 3509 ("The maxims of jurisprudence hereinafter set forth are intended not to qualify any of the foregoing provisions of this code, but to aid in their just application."). *McGill* did not cite any case where

a California court invalidated a contract because it purported to waive a non-waivable right in violation of Section 3513.[9] One year after *McGill*, the California Supreme Court conceded that Section 3531 "is an interpretative canon for construing statutes, not a means for invalidating them." *National Shooting Sports Found.* v. *State*, 420 P.3d 870, 873 (Cal. 2018). Insofar as Section 3513 has any meaning in the contract context, *McGill* derived it "from the fact that an agreement to arbitrate is at issue." *Concepcion*, 563 U.S. at 339.[10]

To the extent Civil Code § 3513 articulates a contract defense, the decision below makes clear that the California courts apply that rule "in a fashion that disfavors arbitration." *Concepcion*, 563 U.S. at 341. In California, if the party opposing a motion to compel

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[9] *McGill* concluded that Section 3513 states "a ground under California law for revoking any contract" because in *Little* v. *Auto Stiegler, Inc.*, 63 P.3d 979, 989 (Cal. 2003), the California Supreme Court observed that one "long-standing ground for refusing to enforce a contractual term is that it would force a party to forgo unwaivable public rights." *McGill*, 393 P.3d at 94. But *Little* invoked Section 3513 to hold that the arbitration of particular employment claims must account for certain "unwaivable rights," not to revoke a contract. 63 P.3d at 987-990. And the case *Little* cited to support its observation about California's history of refusing to enforce such contracts relied on a *different* statutory maxim to invalidate a contract, not Section 3513. *See Baker Pac. Corp.* v. *Suttles*, 269 Cal. Rptr. 709, 714 (Ct. App. 1990) (invoking Cal. Civ. Code § 1668). *McGill* is "turtles all the way down." *Rapanos* v. *United States*, 547 U.S. 715, 754 & n.14 (2006) (plurality op.).

[10] This is confirmed by the fact that, if Section 3513 establishes a nonwaivable right, then a party suing under a consumer-protection statute could not enter a settlement disposing of all potential claims, including a claim for public injunctive relief, against the defendant.

arbitration raises a contract defense—such as fraud—"that party bears the burden of producing evidence of, and proving by a preponderance of the evidence, any fact necessary to the defense." *Rosenthal* v. *Great W. Fin. Sec. Corp.*, 926 P.2d 1061, 1072 (Cal. 1996); *accord Green Tree Fin. Corp.-Ala.* v. *Randolph*, 531 U.S. 79, 91 (2000) ("[T]he party resisting arbitration bears the burden of proving that the claims at issue are unsuitable for arbitration."). Not so with the *McGill* rule: A plaintiff invoking *McGill* can simply *allege* that he is seeking a public injunction. *See* Pet. App. 18a-20a. That flouts the FAA's "equal-treatment principle." *Kindred Nursing Ctrs.*, 581 U.S. at 252.

Third, *McGill*'s history confirms that it is "tailor-made to arbitration agreements" and thus preempted. *Id.* The *McGill* rule is an outgrowth of what was known as the *Broughton-Cruz* rule. *See Cruz* v. *PacifiCare Health Sys., Inc.*, 66 P.3d 1157 (Cal. 2003); *Broughton* v. *Cigna Heathplans of Cal.*, 988 P.2d 67 (Cal. 1999). That rule targeted arbitration agreements by name, providing that "[a]greements to arbitrate claims for public injunctive relief under the CLRA, the UCL, or the false advertising law are not enforceable in California." *McGill*, 393 P.3d at 90. The Ninth Circuit eventually held that the FAA preempted this rule. *See Ferguson* v. *Corinthian Colls., Inc.*, 733 F.3d 928, 934 (9th Cir. 2013).

Enter *McGill*. The California Supreme Court in that case had granted review to address whether the FAA preempted the *Broughton–Cruz* rule. *See* 393 P.3d at 90. But the court grabbed hold of the plaintiff's late-breaking argument that the arbitration agreement barred plaintiffs "from seeking public injunctive relief *in any forum*." *Id.* This argument seized on typical

features of arbitration agreements: They require that all claims be arbitrated, and they preclude arbitrators from awarding relief for or against non-parties. *See supra* p. 8. The court thus reframed the question presented and handed down the *McGill* rule.

What's going on is plain: Faced with the collapse of the *Broughton–Cruz* rule, the California Supreme Court attempted to salvage it using neutral language in *McGill*. This maneuver is exactly what this Court "must be alert to:" the application of a new "device[ ] and formula[ ]" that disfavors arbitration. *Epic*, 584 U.S. at 509. California has done this before. *DIRECTV, Inc.* v. *Imburgia*, 577 U.S. 47, 51-52 (2015) (finding preempted a California rule that effectively resurrected the rule this Court held preempted in *Concepcion*).[11] As in that case, this Court should find that California's anti-arbitration rule is preempted by the FAA.

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[11] *DIRECTV* is part of a pattern. This Court has held that several California state-law defenses to arbitration, as well as various state laws governing arbitration, are preempted. *See, e.g.*, *Viking River Cruises*, 596 U.S. at 662 (finding preempted rule precluding division of Private Attorney General Act "actions into individual and non-individual claims through an agreement to arbitrate"); *Lamps Plus, Inc.* v. *Varela*, 587 U.S. 176, 188 (2019) (finding that FAA preempted California's rule construing ambiguities in arbitration agreements to defeat arbitration); *Concepcion*, 563 U.S. at 339; *Preston*, 552 U.S. at 349-350 (finding preempted statute requiring certain disputes to be heard initially by administrative agency); *Perry*, 482 U.S. at 488 (finding preempted a California Labor Code provision that displaced arbitration). *See Hohenshelt* v. *Superior Ct.*, 318 Cal. Rptr. 3d 475, 480-481 (Ct. App. 2024) (Wiley, J., dissenting) (remarking upon this pattern), *review granted*, 549 P.3d 143 (Cal. 2024).

B. The *McGill* Rule, And Especially Its Prohibition On Waiving Requests For Injunctions Favoring Certain Consumers, Interferes With Fundamental Aspects Of Arbitration.

Even if the *McGill* rule is nominally generally applicable, it so interferes with traditional aspects of arbitration that it is preempted by the FAA. This is especially true to the extent that the *McGill* rule prevents the waiver of a claim for "public" injunctive relief for current and future consumers of a specific product, as opposed to injunctions benefitting the general public. *See, e.g.*, *Woody* v. *Coinbase Glob., Inc.*, No. 23-CV-00190-JD, 2023 WL 6882750, at *4 (N.D. Cal. Oct. 17, 2023), *vacated in part on other grounds*, No. 23-3584, 2024 WL 4532909 (9th Cir. Oct. 21, 2024) (compelling arbitration and rejecting plaintiffs' attempt to rely on the *McGill* rule because "[t]hey seek damages and equitable relief on behalf of a putative class of Coinbase customers, as well as an injunction * * * which would also affect only Coinbase customers").

In *Epic*, this Court reaffirmed that "rule[s] seeking to declare individualized arbitrations off limits" are preempted by the FAA. 584 U.S. at 509. That is what the *McGill* rule does. A claim for a public injunction is, definitionally, not individualized. What makes a public injunction public is that it does not "redress[ ] or prevent[ ] injury to the individual plaintiff." *McGill*, 393 P.3d at 90. To be clear, a plaintiff seeking a public injunction is not acting as a "representative" for the claims of "absent principals" and thus within the scope of traditional "bilateral arbitration." *Viking River Cruises*, 569 U.S. at 656-658. As the *McGill*

court explained, a request for a public injunction "does not constitute the pursuit of representative claims or relief on behalf of others." 393 P.3d at 93. Instead, the plaintiff is asserting claims "for the benefit of the general public", meaning, as shown above, any consumer subset of the general population. *Broughton*, 988 P.2d at 78; *supra* pp. 14-16, 18.

Much like class-action claims, addressing public injunction claims require procedures that "interfere[ ] with fundamental attributes of arbitration." *Concepcion*, 563 U.S. at 344. For one thing, administering a public injunction is "patently incompatible with the procedural simplicity envisioned by bilateral arbitration." *Hodges*, 21 F.4th at 549. Arbitrators, as the California Supreme Court itself has recognized, "lack[ ] the institutional continuity and the appropriate jurisdiction to sufficiently enforce and, if needed, modify a public injunction." *Cruz*, 66 P.3d at 1162 (quoting *Broughton*, 988 P.2d at 77). In that court's view, the "continuing supervision" of a public injunction can be "a matter of considerable complexity" and involve "quasi-executive functions of public administration that expand far beyond the resolution of private disputes." *Broughton*, 988 P.2d at 77. That is why the California Supreme Court barred the arbitration of such claims in the first place. *See Cruz*, 66 P.3d at 1161-64; *Broughton*, 988 P.2d at 78.

The *McGill* rule's incompatibility with arbitration's simplified procedures is especially apparent to the extent that the rule prevents the waiver of a claim for injunctive relief for current and future consumers of a specific product. As the Ninth Circuit has explained, implementing product- or service-specific injunctions

"would involve administrative complexity that is inconsistent with bilateral arbitration." *Hodges*, 21 F.4th at 548. Indeed, a request for an injunction favoring a particular class of consumers will often "require evaluation of the individual claims of numerous non-parties." *Id.* at 547. For example, the injunctions sought in *Mejia* and *Maldonado* involved "the drafting and substantive terms of actual contracts with innumerable different persons." *Id.*

And here, crafting Plaintiffs' multifaceted injunction would require evaluating every one of Coinbase's communications with its present and future subscribers and determining whether a particular phrase conveys that Coinbase's "security features" are "the best among alternative cryptocurrency exchanges or platforms." Motion for Preliminary Injunction, *supra* p. 11; *see also supra* pp. 19-20. Because Coinbase communicates with current and future users through many different channels, implementing and enforcing such an injunction stands to be even more complicated. At the least, then, the aspect of the *McGill* rule barring the waiver of product- or service-specific injunctions is preempted.

More generally, claims for public injunctions can also require wide-ranging discovery. Plaintiffs seeking a public injunction "are entitled to introduce evidence not only of practices which affect them individually, but also similar practices involving other members of the public who are not parties to the action." *Cisneros* v. *U.D. Registry, Inc.*, 46 Cal. Rptr. 2d 233, 244 (Ct. App. 1995). After all, public injunctions "should not be exercised 'in the absence of any evidence that the acts are likely to be repeated in

the future.'" *Id.* at 250 (citation omitted). Thus, much as with class proceedings, "before an arbitrator may decide the merits of a claim" for a public injunction, "he must first decide" how discovery "should be conducted." *Concepcion*, 563 U.S. at 348. At a minimum, determining the scope of discovery will slow arbitration down and increase its costs. *See Epic*, 584 U.S. at 508-509.

Worse yet, "[a]rbitration is poorly suited to the higher stakes" of class-like public injunction claims. *Concepcion*, 563 U.S. at 350. Public injunctions aim to fundamentally change a company's business practices. Such injunctions can have tremendous financial and reputational consequences—as this case illustrates. Plaintiffs' multi-faceted and far-reaching proposed injunction will interfere with Coinbase's ability to provide security that equals or exceeds that provided by its competitors. And unlike in litigation, should an arbitration panel issue such an injunction, Coinbase has "no effective means of review." *Id.* at 351. The scope of available relief and the risk of error attendant to the "absence of multilayered review," raises the same threat of "'in terrorem' settlements" this Court has invoked to reject California's rule barring class-action waivers. *Id.* at 350 (citation omitted). As with class-action claims, Congress surely did not intend "to allow state courts to force" defendants to either "bet the company" in such arbitrations, or forego their right to arbitrate altogether. *Id.* at 351; *see also Viking River Cruises*, 596 U.S. at 656 (explaining that "[l]itigation risks are relevant to" the preemption inquiry "because one way in which state law may coerce parties into forgoing their right to arbitrate is by conditioning that right on

the use of a procedural format that makes arbitration artificially unattractive").

This all adds up to arbitrations that are nothing like the individualized, streamlined, and low-cost proceedings the FAA envisions. *See, e.g.*, *Concepcion*, 563 U.S. at 348. Although the FAA does not categorically "require courts to enforce contractual waivers of substantive rights and remedies," *McGill*'s requirement that parties cannot waive non-individualized claims for public injunctions does exactly what this Court's precedents forbid: It "transform[s] traditional individualized arbitration into the litigation it was meant to displace through the imposition of procedures at odds with arbitration's informal nature." *Viking River Cruises*, 596 U.S. at 651, 653 (quotation marks, brackets, and ellipses omitted). As with other rules that favor coercion over consent, the *McGill* rule is preempted.

CONCLUSION

The petition for a writ of certiorari should be granted and the decision reversed.

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