IN THE
SUPREME COURT OF THE UNITED STATES

No. ___

THE RAMS FOOTBALL COMPANY, LLC and
E. STANLEY KROENKE,

Applicants,

v.

ST. LOUIS REGIONAL CONVENTION AND SPORTS COMPLEX AUTHORITY, et al.,

Respondents.

APPLICATION FOR STAY OF MANDATE OF THE MISSOURI COURT OF APPEALS PENDING DISPOSITION OF A PETITION FOR WRIT OF CERTIORARI

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TO THE HONORABLE NEIL M. GORSUCH, ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE EIGHTH CIRCUIT:

This case marks the latest effort by a lower court to subject an arbitration agreement covered by the Federal Arbitration Act (FAA) to disfavored treatment. When the Rams (Applicants) relocated from Los Angeles to St. Louis back in 1995, they entered into a broad arbitration agreement with various St. Louis entities (Respondents), which provided that virtually any dispute between them would be arbitrated under the rules of the American Arbitration Association (AAA) "then existing" at the time of the dispute. That language did not consign the parties to arbitrate in perpetuity under the AAA rules that existed in 1995. To the contrary, the "then" in "then existing" plainly references the time the dispute is submitted to arbitration and makes the AAA rules in existence at that time applicable. And in all events, the rules in existence in 1995 themselves provided that "any amendment" to the rules would govern disputes submitted to arbitration after the effective date of the amendment.

In 2003, long before the dispute at issue here, the AAA amended its rules to provide that arbitrators would decide "gateway" questions of arbitrability—*i.e.*, arbitrators, not judges, would decide whether an arbitration agreement even applies to a dispute. After the Rams decided to return to Los Angeles in 2016, however, Respondents bypassed arbitration altogether and filed a lawsuit in state court, seeking substantial damages on the novel theory that the Rams violated a 1984 internal guidance document unilaterally promulgated by the NFL Commissioner. The Rams moved to compel arbitration, but the Missouri Court of Appeals refused to

allow the question of arbitrability to go to the arbitrators on the alarming theory that the parties could not agree in 1995 to incorporate future rule changes reserving arbitrability questions for the arbitrator, no matter how clearly they incorporated the rules in effect at the time the dispute was submitted to arbitration. Having arrogated the arbitrability question to itself, the court then refused to send any of Respondents' claims to arbitration, and the Supreme Court of Missouri denied review. Adding insult to injury, last week, the Court of Appeals refused to stay its mandate to allow this Court the opportunity to consider a petition for writ of certiorari in the ordinary course.

This case readily warrants a stay of the mandate pending the filing of a petition for writ of certiorari, as the decision below is plainly wrong under this Court's precedent interpreting the FAA and represents a classic example of the kind of judicial hostility to arbitration that the FAA was designed to counteract. Indeed, arbitration is tailor made for cases like this, where local passions run high. The use of dubious reasoning and clever stratagems to evade a clear agreement to arbitrate (including questions of arbitrability) just when that agreement is most needed strikes at the heart of the basic guarantees of the FAA.

This past Term, this Court reiterated that, under the FAA, contracting parties may agree to delegate "gateway" questions of arbitrability and courts must respect clear agreements to that effect. *See Henry Schein, Inc. v. Archer & White Sales, Inc.*, 139 S. Ct. 524 (2019). And not long before that, the Court reiterated that state courts may not apply contracting rules that uniquely discriminate against arbitration. *See*

Kindred Nursing Ctrs. Ltd. P'ship v. Clark, 137 S. Ct. 1421 (2017). The decision below is irreconcilable with those precedents. General contracting law, including in Missouri, permits agreements by incorporation. And courts across the country have widely agreed that incorporation of the AAA rules, which have clearly delegated arbitrability questions to the arbitrator for more than 15 years, constitutes a valid delegation of gateway questions to the arbitrator, whether or not the original agreement was entered into before or after the 2003 revision of the AAA rules to clearly delegate arbitrability to the arbitrator. Yet the decision below freezes an arbitration agreement in time and limits the parties to the then-extant version of the arbitration rules expressly incorporated by reference—even though both the agreement and the AAA rules themselves expressly provide for prospective amendments. That decision cannot be reconciled with decisions from numerous other courts. In fact, a federal district court in Missouri that examined the *same arbitration agreement* at issue here has reached the opposite conclusion, as have other federal courts that have reviewed similar arbitration agreements governed by Missouri law. Thus, the decision below not only differs from that federal-court authority, but deprives defendants of arbitration when it may be most needed—in a dispute in state court concerning issues where local passions run high.

It would, of course, be one thing if Missouri law actually saddled all contracting parties with a perverse but generally applicable rule that prevented parties from agreeing to incorporate a set of rules subject to improving amendments. But no such rule exists. As a general matter, contracting parties in Missouri are free to

incorporate rules or codes that are not frozen in time. The court below instead claimed authority to manufacture an arbitration-specific rule out of this Court's precedents requiring "clear and unmistakable" evidence that the parties intended to delegate threshold questions of arbitrability to an arbitrator. App.14a-19a; *see First Options of Chi., Inc. v. Kaplan*, 514 U.S. 938, 944-45 (1995). In other words, the court below concluded that this Court has empowered it to subject agreements to delegate arbitrability to the arbitrator to rules of interpretation that apply in no other contracting context. That approach badly misreads this Court's precedents and conflicts with the many cases in which lower courts have enforced arbitration agreements (including those governed by Missouri law) that are similar (or even identical) to the one here. In short, the decision below blatantly singles out arbitration agreements for disfavored treatment, and its effort to locate that arbitration-only rule in this Court's precedents underscores the need for this Court's review.

A stay of the mandate is warranted because Applicants will suffer irreparable harm without a stay. Arbitration agreements exist for cases like this, where the alternative to streamlined proceedings before neutral arbitrators picked from a nationwide pool is burdensome discovery before state courts and juries who are hardly neutral on the question whether the Rams should play in California or Missouri. The issuance of the mandate of the Missouri Court of Appeals would mean this case returns to the Missouri trial court for proceedings on the merits. Applicants will be expected to participate in burdensome discovery, and just this past week,

Respondents signaled their interest in initiating such discovery *immediately*, and before this Court even has the chance to review a petition for writ of certiorari. Moreover, Respondents' ultimate goal is a public trial on the merits before a St. Louis jury, which will decide whether the Rams should pay damages for moving the jury's hometown NFL team to California. As numerous courts have concluded, subjecting a party to court proceedings even in garden-variety litigation forever deprives the party of its bargained-for right to arbitration and thereby inflicts irreparable harm—in much the same way that subjecting a party to court proceedings constitutes irreparable harm when that party is entitled to qualified immunity. Depriving the Rams of their bargained-for right to arbitration in the context of this particular dispute will inflict the *non plus ultra* of that irreparable injury. On the other side of the ledger, Respondents will suffer no irreparable harm from a modest further delay to the trial-court proceedings while this Court considers the petition, as Respondents are seeking only monetary damages that are by definition reparable. And the public interest will be served by allowing this Court to determine whether the decision below is consistent with Congress' emphatic policy pronouncements in favor of arbitration.

This Court granted a stay just this past year in another arbitration case in which the court below committed elementary violations of the FAA. *See Henry Schein, Inc. v. Archer & White Sales, Inc.*, 138 S. Ct. 1185 (2018) (mem.). The Court should do so here as well, for all of the traditional stay factors are satisfied. There is at least a reasonable probability that the Court will grant review, and there is at least a fair prospect that the Court will reverse the decision below. Applicants will suffer

irreparable harm in the absence of a stay, and the equities favor a stay. The Court should therefore grant the application to afford itself the time to review this case on the same unencumbered terms that the Missouri courts had.

OPINIONS AND ORDERS BELOW

The Missouri Court of Appeals' order denying a stay of the mandate is reproduced at App.1a-2a. The Supreme Court of Missouri's order denying Applicants' second transfer application is reproduced at App.3a-4a. The Missouri Court of Appeals' order denying Applicants' second transfer application is reproduced at App.5a-6a. The Missouri Court of Appeals' second opinion is reproduced at App.7a-24a. The Supreme Court of Missouri's order sustaining Applicants' first transfer application is reproduced at App.25a-26a. The Missouri Court of Appeals' opinion denying Applicants' first transfer application is reproduced at App.27a-29a. The Missouri Court of Appeals' first opinion is reported at App.30a-43a. The Missouri Circuit Court's opinion is reproduced at App.44a-50a.

JURISDICTION

This Court has jurisdiction under 28 U.S.C. §1257(a) and 28 U.S.C. §2101(f).

STATEMENT OF THE CASE

A. Legal Background

"Congress adopted the Arbitration Act in 1925 in response to a perception that courts were unduly hostile to arbitration." *Epic Sys. Corp. v. Lewis*, 138 S. Ct. 1612, 1621 (2018). Section 2 of the Act is the "primary substantive provision," *Rent-A-Ctr., W., Inc. v. Jackson*, 561 U.S. 63, 67 (2010), and it provides that "[a] written provision in … a contract evidencing a transaction involving commerce to settle by arbitration

a controversy thereafter arising out of such contract … shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract," 9 U.S.C. §2. Thus, pursuant to the FAA, "arbitration is a matter of contract, and courts must enforce arbitration contracts according to their terms." *Henry Schein*, 139 S. Ct. at 529. That approach reflects "the national policy favoring arbitration and places arbitration agreements on equal footing with all other contracts." *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 443 (2006). That national policy exists for good reason: Arbitration agreements allow for "streamlined proceedings and expeditious results," *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 633 (1985), and help to "avoid the costs of litigation," *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105, 123 (2001); *see also Epic*, 138 S. Ct. at 1621 ("in Congress's judgment arbitration had more to offer than courts recognized—not least the promise of quicker, more informal, and often cheaper resolutions for everyone involved").

This Court has recognized that parties to an arbitration contract may agree to submit to arbitration not only the merits of the dispute, but also "'gateway' questions of 'arbitrability,' such as whether the parties have agreed to arbitrate or whether their agreement covers a particular controversy." *Rent-A-Ctr.*, 561 U.S. at 68-69. After all, "an 'agreement to arbitrate a gateway issue is simply an additional, antecedent agreement the party seeking arbitration asks the federal court to enforce,'" so "'the FAA operates on this additional arbitration agreement just as it does on any other.'" *Henry Schein*, 139 S. Ct. at 529. Enforcement of such agreements

is critical because the precise judicial hostility to arbitration that precipitated the FAA can manifest itself in deciding this "gateway" question.

To be sure, in determining whether contracting parties have delegated threshold questions of arbitrability to an arbitrator, this Court looks for "clear and unmistakable" evidence that they did so, *First Options*, 514 U.S. at 944-45, which this Court has described as a "heightened" standard, *Rent-A-Ctr.*, 561 U.S. at 69 n.1. But the standard is not an invitation to deviate from the basic rule that ordinary contract law applies. Instead, it is heightened only as compared to the presumption that a court is supposed to apply when deciding whether a dispute falls within the scope of an arbitration agreement. *See, e.g.*, *First Options*, 514 U.S. at 944-45 (explaining that "the law treats silence or ambiguity about the question '*who* (primarily) should decide arbitrability' differently from the way it treats silence or ambiguity about the question '*whether* a particular merits-related dispute is arbitrable," and noting that as to the latter, "doubts … should be resolved in favor of arbitration"). The "clear and unmistakable" standard does not justify deviation from generally applicable rules for contract interpretation or give rise to some special arbitration-only rule that makes delegation of arbitratability to arbitrators well nigh impossible.

Indeed, this Court has repeatedly emphasized that state courts may *not* apply any contracting "rule [that] singles out arbitration agreements for disfavored treatment"—*i.e.*, they may not impose a heightened standard on arbitration agreements alone—because such a rule "violates the FAA." *Kindred Nursing*, 137 S. Ct. at 1425. That principle applies not only to "any state rule discriminating on its

face against arbitration," but also to any state "rule that covertly accomplishes the same objective." *Id.* at 1426; *see also AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 339 (2011) (explaining that §2 of the FAA "permits agreements to arbitrate to be invalidated by 'generally applicable contract defenses, such as fraud, duress, or unconscionability,' but not by defenses that apply only to arbitration"). In this way, the Court has sought to "put arbitration agreements on an equal plane with other contracts," *Kindred Nursing*, 137 S. Ct. at 1427, and thereby "overcome [the] judicial resistance to arbitration" that gave rise to the FAA, *Buckeye Check Cashing*, 546 U.S. at 443.

Contracting parties generally are free to address issues by incorporating all manner of third-party rules or codes (including subsequent improving amendments), and decisions to delegate arbitrability questions to the arbitrator are no exception. Rather, they may, and often do, accomplish that objective by incorporating into their agreement arbitration rules that clearly and unmistakably delegate arbitrability to the arbitrator. The commercial rules of the AAA do just that. Since 2003, the AAA rules have provided that "[t]he arbitrator shall have the power to rule on his or her own jurisdiction, including any objections with respect to the existence, scope, or validity of the arbitration agreement." AAA Commercial R-7(a); *see also Henry Schein*, 139 S. Ct. at 528 ("The rules of the American Arbitration Association provide that arbitrators have the power to resolve arbitrability questions.").

Moreover, the AAA rules have long made clear that incorporation of those rules will not freeze those rules in time or commit the parties to arbitrate under outmoded

rules. To the contrary, since at least 1993, the rules have expressly provided that "[t]hese rules *and any amendment of them* shall apply in the form obtaining at the time the demand for arbitration or submission agreement is received by the AAA." AAA Commercial R-1 (1993) (emphasis added). Thus, post-1993 and pre-2003 agreements that incorporate the rules, by their plain terms, incorporate the 2003 amendment on arbitrability (and all subsequent improvements) as well. Not surprisingly, then, the overwhelming majority of courts nationwide (including courts applying Missouri law) have concluded (with a few notable exceptions discussed below) that arbitration agreements incorporating the AAA rules clearly and unmistakably delegate arbitrability to the arbitrator, whether the original agreement was entered into before or after the delegation provision. *See, e.g.*, *Fallo v. High-Tech Inst.*, 559 F.3d 874, 878 (8th Cir. 2009) (collecting cases); *Wells Fargo Advisors, LLC v. Sappington*, 884 F.3d 392, 397 (2d Cir. 2018); Memorandum and Order at 3-4, *McAllister v. St. Louis Rams, LLC*, No. 16-cv-172 (E.D. Mo. Nov. 17, 2017), ECF No. 276; *Hodge v. Top Rock Holdings, Inc.*, 2011 WL 1527010, at *5 (E.D. Mo. Apr. 20, 2011).

B. Factual and Procedural Background

1. Applicants are the Rams Football Company and its owner, E. Stanley Kroenke (collectively, the Rams). Respondents are the St. Louis Regional Convention and Sports Complex Authority (RSA), the City of St. Louis, and St. Louis County. This lawsuit arises from the Rams' 2016 decision to relocate their NFL football team from St. Louis to Los Angeles—a politically charged issue in the state of Missouri, and in St. Louis in particular.

The Rams Football Club was founded in 1936, and between 1946 and 1994, the Rams called Los Angeles area home. However, by the end of the 1994 NFL season, they were playing in "one of the worst sports facilities in the country." D17 at 8, D19.[1] St. Louis officials therefore approached the Rams about occupying the new Trans World Dome in St. Louis beginning with the 1995 NFL season. *See St. Louis Convention & Visitors Comm'n v. NFL*, 154 F.3d 851, 853 (8th Cir. 1998). The RSA owned the stadium and managed the public funds used to construct it, *see id.*, while the St. Louis Convention & Visitors Commission (CVC), a government-controlled body whose members are appointed by the St. Louis mayor and county executive, held the rights to lease it, Mo. Rev. Stat. §67.601; D18 at 2. Negotiations culminated in detailed agreements governing the Rams' tenure in St. Louis. Based on the Rams' experience in Anaheim, the negotiations and the detailed agreements focused heavily on (1) the required upkeep, improvements, and quality of the stadium into the future; (2) the Rams' rights and remedies if the St. Louis entities failed to provide a top tier stadium at the St. Louis entities' expense; and (3) the processes for resolving any disputes involving those rights and other issues under or related to the agreements. *See* D15; D16; D21.

2. As relevant here, the Rams and Respondents are parties to a relocation agreement and a 30-year stadium lease (collectively, the 1995 Contracts) that they signed when the Rams moved to St. Louis in 1995. The 1995 Contracts contain a

[1] "D" refers to the record before the Missouri Court of Appeals.

broad arbitration clause, which requires "[a]ny controversy, dispute or claim between or among any of the parties … to this Amended Lease, related to this Amended Lease, including, without limitation, any claim arising out of, in connection with, or in relation to the interpretation, performance or breach of this Amended Lease," to be "settled by arbitration." D16 §25; D15 §8.10. The parties agreed in the 1995 Contracts to arbitrate future disputes "in accordance with the most applicable *then existing* rules of the American Arbitration Association." D16 §25 (emphasis added). The 1993 AAA rules were in effect at the time of contracting.

Respondents promised in the 1995 Contracts to provide the Rams a "first tier" stadium, meaning one ranking in the top 25% of all NFL stadiums on 15 metrics. D21 §§1.1.1, 1.3.1. The Rams had just one remedy if Respondents did not meet that standard: the option to convert the lease to an annual tenancy and "to relocate … as of the end of any year." D16 §16(e)(i); D15 §8.5 (merger and integration clause). Respondents concededly did not meet the first-tier requirement. Negotiations reached an impasse in 2012, and in accordance with the 1995 Contracts, the parties then submitted their dispute for arbitration under the "most applicable then existing" AAA commercial arbitration rules—*i.e.*, the then-current 2009 rules, not the 1993 rules that governed in 1995. *See* D20; D58 at 13-14. After an arbitral panel unanimously ruled for the Rams, D20 at 7, the RSA told the Rams that it did not intend to satisfy the first-tier requirement, acknowledging that the Rams would in turn "exercise any and all rights … under the Lease." D28 at 2; D29 at 2. In 2016, the Rams exercised their contractual right "to relocate." D16 §16(e)(i).

3. On April 12, 2017, notwithstanding the arbitration agreement and the prior arbitration, Respondents sued the Rams in state court in St. Louis, along with the NFL, all NFL clubs, and all club owners. D2. Respondents purported to sue based on the 1984 NFL Relocation Policy—an internal guidance document that was unilaterally promulgated by the NFL Commissioner—which contains a list of "factors that may be considered in evaluating [a] proposed" relocation. D3 at 3-4. Count I of the complaint alleges that this internal document is a binding contract, that Respondents are third-party beneficiaries of it, and that the Rams breached it. D2 ¶17. Count II alleges that the Rams were unjustly enriched, including by the Rams' "use of a publicly-funded stadium under team-friendly [lease] terms." D2 ¶¶24, 66. Counts III and IV allege that various statements to the public and the media about Respondents' ongoing stadium negotiations with the Rams were fraudulent. D2 ¶¶77, 87-90. And Count V alleges that the Rams, including Kroenke, tortiously interfered with "a probable future business relationship between the Rams and Plaintiffs." D2 ¶99. The complaint sought monetary relief only.

The Rams promptly applied to compel arbitration based on the 1995 Contracts. Among other things, Respondents' response did not dispute that (1) they were all parties to the 1995 Contracts and their validly executed, enforceable, broad arbitration clause; and that (2) the arbitration clause incorporated the AAA rules. In addition, Respondents did not dispute that, if the court concluded that the 1995 Contracts did not delegate arbitrability to the arbitrator, then the court would have to consider both Respondents' claims and the Rams' defenses to determine if the

dispute "touches matters covered by" the 1995 Contracts and is therefore arbitrable. D41. The trial court nevertheless denied the Rams' application in its entirety. *See* App.45a-50a. Without offering any explanation, the court stated that "there is no clear and unmistakable evidence … that the parties agreed to arbitrate arbitrability." App.50a. And even though it was undisputed that the Rams have raised defenses arising out of the 1995 Contracts, it further held that all of Respondents' claims fell outside the scope of the parties' arbitration agreement because Respondents purported not to sue based on the 1995 Contracts. App.49a.

4. The Rams appealed the trial court's decision to the Missouri Court of Appeals, emphasizing that the parties' incorporated the AAA rules into the arbitration agreement and that those rules clearly and unmistakably delegate threshold issues of arbitrability to the arbitrator. The Court of Appeals affirmed. Instead of answering the threshold question—*i.e.*, whether the agreement delegated to question of arbitrability to the arbitrators—the Court of Appeals instead simply ruled on the merits of arbitrability itself. App.38a, 41a.

The Rams applied for "transfer" to the Supreme Court of Missouri in light of that decision, but the Court of Appeals denied the application. In doing so, that court issued a further opinion stating that it "considered [the Rams'] 'artfully pleaded' defenses and did not find they required arbitration." App.29a. The Rams then applied for transfer directly with the Supreme Court of Missouri. On January 29, 2019, the Supreme Court of Missouri sustained the application and ordered the case retransferred to the Court of Appeals "for reconsideration in light of" this Court's

decision in *Henry Schein* and a recent decision from the Supreme Court of Missouri, both of which made clear that courts must respect the parties' agreement to delegate arbitrability to the arbitrator. *See* App.26a.

5. On remand, without additional briefing or argument, the Court of Appeals issued a new opinion, which again affirmed the trial court. The Court of Appeals relegated *Henry Schein* to a footnote, explaining that it "does not impact our analysis" because the AAA delegation rule "first appearing in 2003 could not provide 'clear and unmistakable' evidence of the parties' affirmative contractual intent in 1995" to delegate arbitrability. App.9a, 16a & n.5. According to the Court of Appeals, "the face of this contract … does not clearly and unmistakably incorporate AAA rules on exclusive jurisdiction by reference, merely whatever rules are in use by AAA … at the time of a dispute." App.18a. It continued: "The jurisdictional delegation language necessary to 'clearly and unmistakably' evidence a delegation of arbitrability to an arbitrator would not be present in the AAA commercial rules for nearly a decade." App.18a. Finding that the AAA rules could not operate "as a time machine," and because the AAA delegation rule "did not exist" at the time of contracting, the Court of Appeals held that the Rams and Respondents "did not 'clearly and unmistakably' enter into an antecedent agreement in 1995 to delegate to arbitrators the power to decide whether [Respondents'] claims must be arbitrated." App.18a-19a.

In reaching that conclusion, the Court of Appeals did not mention that the AAA rules in existence at the time of contracting in 1995 themselves expressly incorporated any later amendment to the rules; nor did it cite any generally

applicable rule of Missouri law that barred parties from agreeing to address matters via incorporation of a set of rules that may change over time. Moreover, although the Court of Appeals acknowledged that the U.S. District Court for the Eastern District of Missouri had considered the same arbitration agreement in the 1995 Contracts and had concluded that the agreement provided clear and unmistakable evidence of the intent to delegate arbitrability to the arbitrator, the court refused to follow that decision on the ground that it was "distinguishable and unpersuasive." App.17a (discussing *McAllister v. The St. Louis Rams, LLC*, No. 16-cv-172 (E.D. Mo. Nov. 17, 2017)). The court said nothing of the numerous other courts that have reached the same conclusion as the *McAllister* court in materially identical circumstances over the past 20 years. *See* App.16a-17a.

Turning to the arbitrability question itself, the Court of Appeals again declined to discuss the Rams' defenses. Instead, it simply held that all of "[t]h[e] counts are based on the [Rams'] alleged failure to comply with their obligations under the NFL Policy, not the 1995 Lease or 1995 Relocation Agreement," and that Respondents' "claims do not require reference to or construction of those contracts." App.21a-22a.

6. The Rams promptly sought transfer to the Supreme Court of Missouri for a second time, but the Court of Appeals denied that application on May 20, 2019. *See* App.6a. The Rams then sought transfer directly with the Supreme Court of Missouri, but that court likewise denied review on September 3, 2019. *See* App.4a. Because the issuance of the Court of Appeals' mandate would allow discovery and other judicial proceedings to begin in the trial court, the Rams filed a motion with the Court

of Appeals seeking a stay its mandate to allow this Court to consider a promptly filed petition for certiorari in the ordinary course. Last week, the Court of Appeals denied that motion without explanation.[2] *See* App.2a.

REASONS FOR GRANTING THE APPLICATION

This Court may stay the mandate of a lower court whose judgment is subject to review by this Court "to enable the party aggrieved to obtain a writ of certiorari." 28 U.S.C. §2101(f). "To obtain a stay pending the filing and disposition of a petition for a writ of certiorari, an applicant must show (1) a reasonable probability that four Justices will consider the issue sufficiently meritorious to grant certiorari; (2) a fair prospect that a majority of the Court will vote to reverse the judgment below; and (3) a likelihood that irreparable harm will result from the denial of a stay." *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010) (per curiam); *see also Philip Morris USA Inc. v. Scott*, 561 U.S. 1301, 1302 (2010) (Scalia, J., in chambers). "In close cases," the Court will also "balance the equities and weigh the relative harms to the applicant and to the respondent." *Hollingsworth*, 558 U.S. at 190 (per curiam).

This Court has granted stays in cases raising questions regarding the FAA that are similar to those in this one, *see Henry Schein*, 138 S. Ct. 1185, and it should follow

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[2] The Rams did not seek a stay of the mandate from the Supreme Court of Missouri because that court had no power to grant such a stay. Because the Supreme Court of Missouri court denied "transfer" after the Court of Appeals issued the decision below, *see* App.4a, it never took jurisdiction over the case. Accordingly, the mandate always remained with the Court of Appeals, and therefore only that court could have stayed it. *See, e.g.*, 24 Daniel P. Card II et al., *Mo. Prac., Appellate Practice* §11.13 (2d ed.) ("The application for stay of the mandate should be presented to the appellate court that actually decided the case, i.e., the appropriate district of the Missouri Court of Appeals or the Missouri Supreme Court. The request for a stay must be made promptly following the Missouri Supreme Court's denial of the application for transfer, or, if the case had been pending in the Missouri Supreme Court, from that court's order denying rehearing.").

course here, as each of the traditional stay factors is amply satisfied. The decision of the Missouri Court of Appeals flatly contradicts the FAA and this Court's precedent, as it applies especially demanding arbitration-only rules in assessing whether parties delegated the question of arbitrability to an arbitrator. A federal court looking at the exact same agreement reached the opposite conclusion by applying generally applicable contracting rules. This Court often grants certiorari and reverses when lower courts exhibit the kind of judicial hostility to arbitration the FAA was designed to eliminate and embrace novel arbitration-only rules that enable them to refuse to enforce arbitration agreements according to their terms. There is a reasonable probability that it will do so here.

In the meantime, Applicants will suffer irreparable harm in the absence of a stay, for they will lose their bargained-for right to arbitrate and will instead be subjected to burdensome discovery and judicial proceedings in state courts in a case where the benefits of neutral arbitration as opposed to local courts are particularly pronounced given the natural disappointment when a franchise relocates. Meanwhile, Respondents will suffer no irreparable harm whatsoever, as they have sought only monetary relief and will still be able to obtain such relief should this Court grant a stay but ultimately decline review. And the equities favor a stay, as there is a strong national policy that favors arbitration and no offsetting policy that favors the waste of judicial resources, which is all that returning this case to the

Missouri trial court is likely to accomplish. The application should therefore be granted.[3]

I. There Is A Reasonable Probability That This Court Will Grant Certiorari And Reverse The Judgment Below.

This case plainly satisfies the first two factors in this Court's stay analysis, as there is both "a reasonable probability" that the Court will grant certiorari to review this case on the merits, and a "fair prospect" that the Court will vacate or reverse the decision below after doing so. Indeed, this Court routinely grants review when lower courts embrace novel arbitration-specific rules that reflect the judicial hostility to arbitration that the FAA was designed to eliminate. *See, e.g.*, *Kindred Nursing*, 137 S. Ct. 1421; *AT&T Mobility*, 563 U.S. 333. The profoundly flawed decision below, which makes it all but impossible for parties to enforce an agreement to delegate arbitrability to the arbitrator, is no less deserving of this Court's review and reversal.

1. The FAA "establishes 'a liberal federal policy favoring arbitration agreements,'" *Epic*, 138 S. Ct. at 1621, and it reflects the "fundamental principle that arbitration is a matter of contract," *Rent-A-Ctr.*, 561 U.S. at 67. Consistent with these principles, courts must "place[] arbitration agreements on equal footing with all other contracts," *Buckeye Check Cashing*, 546 U.S. at 443, and they are "require[d] to

[3] While Applicants submit that the most appropriate course of action at this juncture is to stay the mandate of the lower court pending the filing and disposition of a petition for writ of certiorari, Applicants have no objection should this Court prefer to construe this application as a petition for writ of certiorari and set this case for prompt merits briefing and argument. In the alternative, given the basic errors committed by the court below, this Court may wish to summarily reverse. *See, e.g.*, *Wearry v. Cain*, 136 S. Ct. 1002, 1007 (2016) (per curiam) (explaining that the Court has "not shied away" from summarily reversing cases when "lower courts have egregiously misapplied settled law").

"enforce" arbitration agreements "according to their terms," *Rent-A-Ctr.*, 561 U.S. at 67. As this Court reiterated only a few months ago, that approach applies with equal force when parties "agree to have an arbitrator decide … gateway questions of arbitrability, such as whether the parties have agreed to arbitrate or whether their agreement covers a particular controversy." *Henry Schein*, 139 S. Ct. at 529. After all, an "agreement to arbitrate a gateway issue is simply an additional, antecedent agreement the party seeking arbitration asks the federal court to enforce." *Id.* "[T]he FAA operates on this additional arbitration agreement just as it does on any other." *Id.*

To be sure, contracting parties must delegate arbitrability in a manner that is "clear and unmistakable." *Id.* at 530. But that is not an invitation to fashion arbitration-specific rules that preclude a delegation to an arbitrator via the incorporation of the AAA rules which clearly and unmistakably delegate arbitrability to the arbitrator, when other contracts address all manner of issues clearly and unmistakably via incorporation. This Court has never questioned the consensus that parties may clearly manifest their intent to delegate arbitrability by incorporating rules that delegate arbitrability to the arbitrator. Nor would there be any viable basis for challenging that consensus, as parties are generally free to assent to all sorts of other contract terms through incorporation by reference. *See First Options*, 514 U.S. at 944; *Rent-A-Ctr.*, 561 U.S. at 69 n.1. A rule precluding parties from employing the same approach as to arbitrability thus would violate Congress' command to "put

arbitration agreements on an *equal* plane with other contracts." *Kindred Nursing*, 137 S. Ct. at 1427 (emphasis added).

Those principles should have made this an easy case. The 1995 Contracts, which are governed by Missouri law, require arbitration of all disputes "in accordance with the most applicable *then existing rules of the American Arbitration Association*." D16 §25; *see also Dunn Indus. Grp., Inc. v. City of Sugar Creek*, 112 S.W.3d 421, 435 n.5 (Mo. 2003) (en banc) (per curiam) ("In Missouri, matters incorporated into a contract by reference are as much a part of the contract as if they had been set out in the contract in haec verba."). The "then" in "then existing" is plainly a reference to the time the dispute is submitted to arbitration. And since 2003, the AAA rules have made clear that arbitrators—not the courts—"shall have the power to rule on … the arbitrability of any claim." AAA Commercial R-7; *see also Henry Schein*, 139 S. Ct. at 528 ("The rules of the American Arbitration Association provide that arbitrators have the power to resolve arbitrability questions."). But if there were any doubt that "then existing" somehow referred to the rules in existence in 1995, it would still not help Respondents, as the 1993 AAA rules in effect at the time of contracting in 1995 also stated that they would apply as amended at the time of the demand for arbitration. *See* AAA Commercial R-1 (1993) ("These rules *and any amendment of them* shall apply in the form obtaining at the time the demand for arbitration or submission agreement is received by the AAA." (emphasis added)). The parties' agreement thus made doubly clear and unmistakable that any disputes would be governed by the AAA rules in place when the demand for arbitration was made.

Here, Respondents filed the underlying lawsuit in 2017, and the Rams moved to compel arbitration shortly thereafter—*i.e.*, after it had been clear for almost 15 years that the AAA rules delegated arbitrability to the arbitrators. There can thus be no serious question that the arbitrator has the authority under the parties' agreement to decide in the first instance whether Respondents' claims are arbitrable. The Missouri Court of Appeals accordingly should have "respect[ed] the parties' decision as embodied in the contract" by recognizing that it has "no power to decide the arbitrability issue." *Henry Schein*, 139 S. Ct. at 528-29. Indeed, as this Court recently reiterated, that conclusion would hold even if the court believed that "the argument that the arbitration agreement applies to the particular dispute is 'wholly groundless.'" *Id.*at 528; *see also AT&T Mobility*, 475 U.S. at 649-50 (explaining that a court may not "rule on the potential merits of the underlying" claim that is assigned by contract to an arbitrator, "even if it appears to the court to be frivolous"). Here, of course, the agreement is clear that the AAA rules at the time of the demand govern; those rules are clear that arbitrability questions are for the arbitrator; and it is clear that the dispute (including the Rams' defenses) is subject to arbitration. In short, the arbitrability question here is not a close one.

In fact, a federal district court in Missouri has reviewed the *very same arbitration agreement* at issue here and concluded that it clearly and unmistakably delegated arbitrability to the arbitrator. In *McAllister v. The St. Louis Rams, LLC*, No. 16-cv-172 (E.D. Mo. Nov. 17, 2017), the Eastern District of Missouri—in a case involving the Rams and the CVC, the government-controlled entity that held the

rights to lease the St. Louis stadium to the Rams—also considered claims involving the Rams' relocation to Los Angeles. *See* ECF No. 276 at 1-2. Invoking the 1995 Contracts, the Rams moved to compel arbitration, including the threshold question of arbitrability, and the district court granted that motion. In doing so, the court squarely rejected the CVC's "suggest[ion]" that the "then existing" language in the arbitration agreement referred to "the AAA rules that existed at the time the [arbitration agreement] signed."[4] *Id.* at 3. Instead, the court agreed with the Rams that the plain text of the arbitration agreement confirmed that the "then existing" phrase referenced "the time the arbitration demand is made," such that arbitration demands filed after 2003 would be governed by the AAA rule delegating questions of arbitrability to the arbitrator. *Id.* at 3-4. And for good measure, the court concluded that the CVC's quibbling made "no practical difference," as "the 1993 Rules (that were in effect when the [arbitration agreement] was signed in 1995) state that 'these rules and any amendment[s] of them shall apply in the form obtaining at the time the demand for arbitration … is received by the AAA.'" *Id.* at 4. Accordingly, the court concluded, "even the 1993 Rules require the use of the Rules currently in existence." *Id.* It therefore granted the motion to compel arbitration, "including as to the threshold question of arbitrability." *Id.*[5]

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[4] Indeed, that "suggestion" would have been correct only if the 1995 Contracts incorporated the "now existing" AAA rules—*i.e.*, the 1993 rules.

[5] Because decisions to compel arbitration (including as to questions of arbitrability) are not immediately appealable, *see* 9 U.S.C. §16(b) (noting that appeals from orders compelling arbitration are permissible only under the rules of 28 U.S.C.§1292(b)), there was no appeal to the Eighth Circuit in *McAllister*, and the district court decision likely reflects the definitive view of federal courts in the Eighth Circuit on the meaning of this particular arbitration agreement.

As a result of *McAllister* and the Missouri Court of Appeals' decision below, there is now a square conflict between federal and state courts over the exact same arbitration agreement. Making matters worse, the decision below conflicts with decisions from numerous other federal courts that have reached materially identical conclusions to *McAllister* when applying Missouri law in similar circumstances. For instance, in *Hodge v. Top Rock Holdings, Inc.*, 2011 WL 1527010 (E.D. Mo. Apr. 20, 2011), the court considered whether a 1979 arbitration agreement, which was later incorporated into a contract formed in 1996, delegated threshold questions of arbitrability insofar as it stated that arbitration must be conducted "in accordance with the Rules of the American Arbitration Association." *Id.* at *4. The court had little trouble concluding that the answer was yes. As it explained, in both 1979 and 1996, the AAA rules provided that "[t]hese rules and any amendment of them shall apply in the form obtaining at the time the demand for arbitration or submission is received by the AAA," and at the time of defendants' motion to compel arbitration, the AAA rule delegating questions of arbitrability to the arbitration had already taken effect. *Id.* at *4-*5. If the "parties wanted to carve out this provision from the arbitration clause so that it would not operate to validate any subsequent amendments to the AAA Rules," the court continued, "they could have done so," but "[s]uch was not done." *Id.* at *5.

Consistent with those decisions, the vast majority of courts across the country have concluded that parties who incorporate the AAA rules do not somehow incorporate rules frozen in time, but rather clearly and unmistakably agreed to be

bound by the later amendment that plainly delegates arbitrability to the arbitrator. *See, e.g.*, *Grynberg v. BP P.L.C.*, 585 F. Supp. 2d 50, 55 (D.D.C. 2008); *Pikes Peak Nephrology Assocs. v. Total Renal Care, Inc.*, 2010 WL 1348326, at *6-7 (D. Colo. Mar. 30, 2010); *Congress Constr. Co. v. Geer Woods, Inc.*, 2005 WL 3657933, at *3 (D. Conn. Dec. 29, 2005); *Brandon, Jones, etc. v. MedPartners, Inc.*, 203 F.R.D. 677, 684-85 (S.D. Fla. 2001); *Ex parte Johnson*, 993 So. 2d 875, 884, 887 (Ala. 2008).

The Second Circuit's decision in *Wells Fargo Advisors, LLC v. Sappington* is illustrative. *See* 884 F.3d 392. In that case, the Second Circuit considered arbitration clauses signed between 2011 and 2014, which were "governed by Missouri law" and which incorporated the 1993 AAA rules by reference. *Id.* at 394. "Applying Missouri's arbitration and contract law to those arbitration clauses," the Second Circuit concluded "that there [was] clear and unmistakable evidence that the parties … intended to arbitrate all questions of arbitrability." *Id.* at 396. In arriving at that conclusion, the court acknowledged that, although "the 1993 Rules do not by themselves authorize arbitrators to resolve questions of arbitrability," "Rule 1 of the 1993 Rules provides that '[t]hese rules and any amendment of them shall apply in the form obtaining at the time the demand for arbitration ... is received by the AAA.'" *Id.* at 396-97.

This case is *a fortiori*, as the evidence regarding delegation of arbitrability is decidedly more "clear and unmistakable" in the 1995 Contracts as compared to the contracts considered in *Hodge* and *Wells Fargo*. In this case, the parties not only incorporated Rule 1 of the AAA rules, but also stated in the text of the arbitration

agreement itself that they would adhere to the version of the AAA rules "then existing" at the time of a future dispute. The net result, then, is that this case obviously does not belong in court. It instead belongs before the arbitrators, whom the parties tasked with determining in the first instance whether disputes between them should arbitrated or not. That is the only approach that honors the arbitration agreement here "according to [its] terms, including terms that specify *with whom* the parties choose to arbitrate their disputes and *the rules* under which that arbitration will be conducted." *Epic*, 138 S. Ct. at 1621.

2. The Missouri Court of Appeals reached the contrary conclusion only by exhibiting the kind of judicial hostility to arbitration that the FAA was designed to eradicate and applying special arbitration-only rules in deciding whether the incorporation of the AAA rules sufficed to delegate arbitrability questions to the arbitrators. In the Court of Appeals' view, because this Court has said that there must be "clear and unmistakable" evidence that the parties intended to delegate arbitrability, *First Options*, 514 U.S. at 944-45, courts may disregard traditional contracting principles in analyzing that question, and demand something more than what would manifest the parties' intent in other contexts. Thus, according to the Court of Appeals, "an arbitration rule first appearing in 2003" simply cannot "provide 'clear and unmistakable' evidence of the parties' … intent… for an arbitrator to have exclusive jurisdiction to decide arbitrability." App.9a; *see also* App.18a-19a ("Because AAA Rule 7(a) did not exist at the time, we conclude the Plaintiffs, the Rams, and Kroenke did not 'clearly and unmistakably' enter into an antecedent agreement in

1995 to delegate to arbitrators the power to decide whether Plaintiffs' claims must be arbitrated."). In other words, no matter how clear the parties were in manifesting their intent to have disputes governed by the AAA rules in effect at the time of a demand for arbitration, and no matter how clearly those rules delegate arbitrability to the arbitrators, the Rams are forever bound by the AAA rules as they existed in 1993.

The Court of Appeals did not purport to ground that conclusion in any "generally applicable rule of law" providing that contracting parties who are governed by Missouri law are incapable of binding themselves to an external body of rules that may change over time. *Kindred Nursing*, 137 S. Ct. at 1428 n.2. Nor could it have done so, for no such rule exists. In fact, far from disfavoring incorporation by reference, Missouri law provides that "matters incorporated into a contract by reference are as much a part of the contract as if they had been set out in the contract in haec verba." *Dunn*, 112 S.W.3d at 435 n.5. And Missouri recognizes no exception to that rule when it comes to incorporating laws, rules, or terms that may evolve over time, as evidenced by the fact that contracts governed by Missouri law routinely include terms of just that nature. *See, e.g.*, *City of St. Joseph v. Lake Contrary Sewer Dist.*, 251 S.W.3d 362, 367-69 (Mo. Ct. App. 2008) (discussing contracts that incorporated "ordinances now in effect or hereafter enacted and any amendments thereto"); *Griffin v. First Cmty. Bank of Malden*, 802 S.W.2d 168, 170 (Mo. Ct. App. 1990) (discussing a bank account contract that "shall be subject to service and maintenance charges heretofore adopted by this bank and now in effect, and to such

charges as may hereafter be adopted by this bank" (emphasis omitted)); *St. Louis Realty Fund v. Mark Twain S. Cty. Bank 21*, 651 S.W.2d 568, 573 (Mo. Ct. App. 1983) (discussing bank note that "states clearly that the interest rate would be P + 1½% 'which interest rate shall change as and when the prime rate shall change'").

Indeed, the Eastern District of Missouri and the Second Circuit have considered arbitration agreements that incorporated later amendments to a body of rules—including the same arbitration agreement here, no less—and they failed to uncover any generally applicable rule of law that would justify the decision below. There is a simple explanation for that discrepancy: No such principle exists under Missouri law—or anywhere else. *See, e.g.*, 11 Richard A. Lord, *Williston on Contracts* §30:23 (4th ed. 1990) (parties may incorporate future changes to rules if contract language "clearly indicates such to have been intention of parties"); *DIRECTV, Inc. v. Imburgia*, 136 S. Ct. 463, 469 (2015) (contracts governed by California law "incorporate the California Legislature's power to change the law retroactively"). The decision below thus plainly "singles out arbitration agreements for disfavored treatment," in clear violation of the FAA and this Court's precedent. *Kindred Nursing*, 137 S. Ct. at 1425.

Unfortunately, that decision does not stand alone. In addition to the Missouri Court of Appeals, at least two other state appellate courts have concluded that incorporating AAA rules by reference is insufficient to delegate arbitrability to the arbitrator under the "clear and unmistakable" standard. For instance, in *Flandreau Public School District No. 50-3 v. G.A. Johnson Construction, Inc.*, 701 N.W.2d 430

(S.D. 2005), the South Dakota Supreme Court considered an arbitration agreement that incorporated by reference the AAA construction industry rules, which contain the same delegation-of-arbitrability rule as the AAA commercial rules. *See id.* at 432 (discussing AAA construction industry rule that "provided that the arbitrator had 'the power to rule on his or her own jurisdiction, including any objections with respect to the existence, scope or validity of the arbitration agreement'"). Despite that incorporation, South Dakota's highest court refused to allow the arbitrator to consider any arbitrability questions, reasoning that the arbitration agreement "contain[ed] no language agreeing to arbitrate arbitrability"—that is, "there [was] no clear and unmistakable evidence of intent to arbitrate arbitrability." *Id.* at 436-37 (citing *First Options*, 514 U.S. at 944). In doing so, the court acknowledged that other courts had held that incorporating the delegation rule by reference was sufficient, but it declined to follow that approach on the ground that the text of an arbitration agreement must *itself* include the delegation language. *Id.* at 437 n.6; *see also id.* (rejecting a "per se" rule that parties could manifest their "intent to arbitrate arbitrability based solely upon the incorporation of [the] AAA [arbitrability rule] in the agreement").

Likewise, in *Gilbert Street Developers, LLC v. La Quinta Homes, LLC*, 94 Cal. Rptr. 3d 918 (Cal. App. 2009), the California Court of Appeal addressed an arbitration agreement signed in 1998, which provided that arbitration was to be "conducted in accordance with the Rules of the American Arbitration Association existing at the date thereof." *Id.* at 919. When the parties signed that agreement, the AAA rules "had no rule providing that arbitrators had jurisdiction to rule on their own

jurisdiction," but those rules did include Rule 1, which "contemplated future amendment of the rules." *Id.* at 920. Moreover, when the dispute between the parties arose in 2008, the amendment to the AAA rules that delegated arbitrability to the arbitrator had taken effect. *Id.* at 919-20. The California Court of Appeal held, however, "that a contract which contains the mere possibility that American Arbitration Association rules might one day in the future provide that arbitrators would have the power to decide their own jurisdiction does *not* 'clearly and unmistakably' provide that arbitrators will determine their own jurisdiction." *Id.* at 919. In arriving at that result, the court interpreted this Court's precedent to mean that "it is not enough that ordinary rules of contract interpretation simply yield the result that arbitrators have power to decide their own jurisdiction." *Id.* at 922. Rather, according to the court, the "clear and unmistakable" standard requires contracting parties to "specially focus[]" on arbitrability, meaning that "what is being incorporated must actually exist at the time of the incorporation." *Id.* at 924, 926 (emphasis omitted); *see also id.* at 922 ("*First Options* specifically *contrasted* (a) 'ordinary state-law principles that govern the formation of contracts' with (b) the clear and unmistakable rule").

As these decisions illustrate, the lower courts are divided on the question of what the "clear and unmistakable" language in this Court's cases requires. Some courts, including the courts below, interpret that language as an exception to the FAA's basic command to treat agreements to arbitrate like other contracts. The vast majority of courts, conversely, simply require clear and unmistakable evidence

applying generally applicable contract law, which allows for the incorporation of third-party rules, including rules that expressly provide that they may change over time. The majority rule is plainly correct, and the disagreement among the courts, a minority of which are misreading this Court's precedents, plainly warrants this Court's review.

While the Missouri courts' decision to impose an exceedingly demanding standard may be explained by the politically charged nature of the parties' dispute, that only underscores the need for this Court's review. Arbitration agreements that are disregarded when arbitration is most vital to ensuring a neutral forum and when obtaining a fair verdict in local courts is most difficult are little better than no arbitration agreements at all. Indeed, parties insist on arbitration, including on the threshold question of arbitrability, with the prospect of disputes like this in mind. And this should have been a particularly straightforward case, as the parties *twice* made clear their intention to be bound by future amendments to the AAA rules—first in the 1995 Contracts, which explicitly state that the parties will arbitrate pursuant to the AAA rules "then existing" at the time of a future dispute, and second in the 1993 AAA rules, which themselves incorporate "any amendment" to those rules. It is little surprise, then, that not even *Respondents* have abided by the Court of Appeals' characterization of the 1995 Contracts; after all, when the parties arbitrated in 2012 pursuant to those very contracts, Respondents did not dust off their copies of the 1993 AAA rules, but rather arbitrated under the 2009 AAA rules, which were the "then existing" rules. *See* p.12, *supra*.

In short, the Court of Appeals' decision can be explained only by the kind of judicial hostility to arbitration that the FAA was enacted to root out. There is thus at least a "reasonable probability" that this Court will grant certiorari in this case, and a "fair prospect" that it will reverse the decision below if it does. *Hollingsworth*, 558 U.S. at 190. As virtually every court to consider the question has concluded, incorporating the AAA rules by reference into an arbitration agreement (including the pre-2003 rules) is sufficiently clear and unmistakable to validly delegate threshold questions of arbitrability to the arbitrator. The Missouri Court of Appeals arrived at the contrary determination only by twisting this Court's "clear and unmistakable" language to demand the application of contracting rules that would not be applied "in any context other than arbitration."[6] *DIRECTV*, 136 S. Ct. at 469. That "unduly hostile" approach to arbitration cannot be squared with the "liberal federal policy favoring arbitration agreements" or this Court's precedent. *Epic*, 138 S. Ct. at 1621. The first two stay factors thus are readily satisfied.

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[6] And that was not the only error committed below. After refusing to delegate the threshold question of arbitrability to the arbitrator, the court then concluded on the merits of arbitrability that *none* of Respondents' claims should be sent to arbitration. *See* App.19a-24a. In reaching that conclusion, the court did not consider whether the Rams' defenses would implicate the 1995 Contracts (and they do), as both the FAA and this Court's precedent require (and as Respondents' themselves did not dispute). *See, e.g.*, *AT&T Techs., Inc. v. Commc'ns Workers of Am.*, 475 U.S. 643, 650 (1986) (explaining that, under the FAA, courts must compel arbitration "unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute" and that "[d]oubts should be resolved in favor of coverage"); D58 at 54 ("It's correct that the Court has to look at our claims and also their potential defenses."). That principle exists to avoid the prospect that plaintiffs could avoid binding arbitration agreements through the simple expedient of clever pleading. Accordingly, the decision below is doubly wrong.

II. Applicants Will Suffer Irreparable Harm In The Absence Of A Stay, And The Equities Favor A Stay.

A stay of the mandate is likewise warranted because, in the absence of a stay, Applicants are certain to suffer irreparable harm. Without a stay, this case will return to the Missouri trial court, where the parties will be required to proceed with discovery and a resolution on the merits. Indeed, just last week, Respondents reiterated their interest in initiating discovery at the earlier possible stage and before this Court has an opportunity to consider a petition for certiorari. *See* Pls.-Respondents Suggestions in Opp'n to Appellants Mot. for a Stay of the Mandate Pending the Filing and Disposition of a Pet. for Writ of Cert. in the U.S. Sup. Ct. at 7, *St. Louis Reg'l Convention and Sports Complex Auth. v. Nat'l Football League*, No. ED10682-01 (Mo. Ct. App. filed Sept. 11, 2019) (opposing motion to stay the mandate in part on ground that "allowing discovery to finally begin while the Rams file their long-shot petition for certiorari review will not result in any inefficiencies or wasted expense"). And of course, Respondents' ultimate goal is a trial before a St. Louis jury, which would be charged with deciding whether the Rams wrongfully moved St. Louis' only NFL team to Los Angeles.

But subjecting the Rams to such court proceedings would defeat the very right the Rams seek to vindicate in this Court—namely, the bargained-for right to resolve this case *outside of court*—and do so in a case where the bargained-for right to a neutral forum is of the most value. That constitutes irreparable harm. Indeed, Congress itself recognized as much in allowing parties to file interlocutory appeals from district court decisions that are adverse to a party seeking arbitration—but not

the other way round. *See* 9 U.S.C. §16(a)(1)(A)-(C). So has Missouri, which is why the state courts allowed this appeal to progress all the way through the state courts before litigation on Respondents' claims could commence. *See* Mo. Rev. Stat. §§435.355.4, 435.440.2 (similar rules under Missouri law).

Numerous courts also have concluded that the benefits of arbitration are lost if parties to an arbitration agreement are compelled to litigate in court—a rationale that applies throughout the entirety of the appellate process. *See, e.g.*, *Levin v. Alms & Assocs., Inc.*, 634 F.3d 260, 264 (4th Cir. 2011) ("[A]llowing discovery to proceed would cut against the efficiency and cost-saving purposes of arbitration."); *Blinco v. Green Tree Servicing, LLC*, 366 F.3d 1249, 1251 (11th Cir. 2004) ("By providing a party who seeks arbitration with swift access to appellate review, Congress acknowledged that one of the principal benefits of arbitration, avoiding the high costs and time involved in judicial dispute resolution, is lost if the case proceeds in both judicial and arbitral forums."); *Bradford-Scott Data Corp. v. Physician Comput. Network, Inc.*, 128 F.3d 504, 505 (7th Cir. 1997) ("Continuation of proceedings in the district court largely defeats the point of the appeal and creates a risk of inconsistent handling of the case by two tribunals."); *Alascom, Inc. v. ITT N. Elec. Co.*, 727 F.2d 1419, 1422 (9th Cir. 1984) ("If [a] party must undergo the expense and delay of a trial before being able to appeal, the advantages of arbitration—speed and economy—are lost forever."). As the Tenth Circuit has explained, for instance, interlocutory appeals in the arbitration context are "similar to" "interlocutory appeals on the basis of the denial of qualified immunity," as "the failure to grant a stay pending either type of

appeal results in a denial or impairment of the appellant's ability to obtain its legal entitlement to avoidance of litigation, either the constitutional entitlement to qualified immunity or the contractual entitlement to arbitration." *McCauley v. Halliburton Energy Servs., Inc.*, 413 F.3d 1158, 1162 (10th Cir. 2005).

By contrast, Respondents would suffer no irreparable harm if this Court were to grant a stay. Respondents have sought only monetary damages in this litigation, not injunctive relief. If this Court grants a stay but ultimately denies review on the merits, Respondents will retain the ability to seek that same relief. To be sure, Respondents may have to wait a little longer to begin discovery, but the entire point of this litigation is to determine whether they have a right to any discovery in court in the first place. The Missouri courts had the opportunity to consider the arbitrability questions here without the distraction of parallel proceedings in the trial court; there is no reason why this Court should be denied that same opportunity.

Finally, a stay is in the public interest. That much is reflected in the FAA itself, which established a firm "national policy favoring arbitration." *Buckeye Check Cashing*, 546 U.S. at 443; *see also AT&T Mobility*, 563 U.S. at 344; *Mitsubishi Motors Corp.*, 473 U.S. at 631. Moreover, it is always in the public interest to avoid the potential waste of judicial resources. *See also Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 404 (1967) (discussing "the unmistakably clear congressional purpose that the arbitration procedure, when selected by the parties to a contract, be speedy and not subject to delay and obstruction in the courts"). And there is a high likelihood that such waste would occur here in the absence of a stay: If this Court

were to grant certiorari and reverse the Court of Appeals' decision—and, for the reasons provided above, that is the most likely outcome—any proceedings in the trial court that occur in the interim will have been for naught. There is no reason in law or logic to invite that risk. Instead, this Court should stay the mandate of the Missouri Court of Appeals and give itself breathing room to consider the critically important questions of federal law presented in this case.

CONCLUSION

For the foregoing reasons, Applicants respectfully request that this Court grant this application for a stay of the mandate of the Missouri Court of Appeals pending the timely filing and disposition of a petition for writ of certiorari.

Respectfully submitted,

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