No. 25-___

IN THE

Supreme Court of the United States

ROBERT ZEIDMAN
Petitioner,

v.

LINDELL MANAGEMENT, LLC,
Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Eighth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

In *Hall Street Associates, LLC v. Mattel, Inc.*, this Court held that the statutory grounds expressly enumerated in 9 U.S.C. § 10 are the Federal Arbitration Act's "exclusive grounds" for vacating an arbitration decision. 552 U.S. 576, 584 (2008). Two years later, in *Stolt-Nielsen S.A. v. AnimalFeeds International Corp.*, this Court did "not decide whether 'manifest disregard' survives our decision in *Hall Street Associates* . . . as an independent ground for review or as a judicial gloss on the enumerated grounds for vacatur set forth at 9 U.S.C. § 10." 559 U.S. 662, 672 n.3 (2010). Since then, the lower courts have sharply divided on the question this Court left open in *Stolt-Nielsen*, with six circuits and three state supreme courts holding that manifest disregard remains a valid basis for vacatur and three circuits and two state supreme courts holding that it does not.

In the decision below, the Eighth Circuit ordered an arbitration decision vacated based on the "extra-statutory standard[]" that the arbitrators manifestly disregarded the law. Pet. App. 12a, 16a.

The question presented is:

Whether the Federal Arbitration Act allows a court to vacate an arbitration decision on the ground that the decision was based on a manifest disregard of the law.

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OPINIONS BELOW

The opinion of the United States Court of Appeals for the Eighth Circuit (Pet. App. 1a) is reported at 145 F.4th 820. The opinion of the United States District Court for the District of Minnesota (Pet. App. 17a) is reported at 718 F.Supp.3d 934.

JURISDICTION

The United States Court of Appeals for the Eighth Circuit entered its judgment on July 23, 2025. Jurisdiction in this Court is proper under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The Federal Arbitration Act provides in pertinent part:

> (a) In any of the following cases the United States court in and for the district wherein the award was made may make an order vacating the award upon the application of any party to the arbitration—
>
> > (1) where the award was procured by corruption, fraud, or undue means;
> >
> > (2) where there was evident partiality or corruption in the arbitrators, or either of them;
> >
> > (3) where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced; or

> (4) where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

9 U.S.C. § 10(a).

INTRODUCTION

The court of appeals' decision vacated an arbitration award on the sole ground that, in its view, the arbitrators "committed legal error" that amounted to a "manifest disregard of the law." That holding deepens an entrenched and intractable division of authority among the federal courts of appeals and state supreme courts on whether the manifest disregard standard remains viable after this Court's decision in *Hall Street Associates, LLC v. Mattel, Inc.*, 552 U.S. 576 (2008). The Court there concluded that the Federal Arbitration Act's expressly enumerated grounds in 9 U.S.C. § 10 are the Federal Arbitration Act's "exclusive grounds" for vacating an arbitration decision. *Id.* at 584. And this Court acknowledged but did not decide the open question "whether 'manifest disregard' survives" *Hall Street* in *Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp.*, 559 U.S. 662, 672 n.3 (2010).

Since *Hall Street*, six courts of appeals and three state supreme courts have held that "manifest disregard of the law" remains a viable basis for vacating an arbitration decision, even though that standard appears nowhere in the text of Section 10. Three courts of appeals and two state supreme courts, by contrast, have recognized that this Court's decision in *Hall Street* squarely forecloses

overturning an arbitrator's decision on that atextual basis. That severe split among the lower courts requires this Court's intervention. As the Fourth Circuit recently explained, "the question of whether the manifest disregard theory survives [*Hall Street*] has caused an entrenched circuit split" and "the Supreme Court or Congress will have to resolve the issue." *Warfield v. Icon Advisers, Inc.*, 26 F.4th 666, 669 n.3 (4th Cir. 2022) (citing *Bangor Gas Co., LLC v. H.Q. Energy Servs. (U.S.) Inc.*, 695 F.3d 181, 187 n.3 (1st Cir. 2012) (collecting cases)).

As courts, commentators, and litigants have recognized, this recurring issue is exceptionally important. Since *Hall Street*, hundreds of cases have reached the courts of appeals addressing the manifest disregard standard and nearly two thousand cases in the district courts have cited it. The lingering presence of the manifest disregard standard thus eviscerates the "national policy favoring arbitration with just the limited review needed to maintain arbitration's essential virtue of resolving disputes straightaway," "open[ing] the door to the full-bore legal and evidentiary appeals that can render informal arbitration merely a prelude to a more cumbersome and time-consuming judicial review process, and bringing arbitration theory to grief in post arbitration process." *Hall Street*, 552 U.S. at 588 (citation modified).

The petition presents an ideal case for the Court to decide whether the manifest disregard standard remains a valid basis for vacating an arbitration award. The question presented was dispositive to the decision of the court of appeals, which explicitly relied on the manifest disregard standard in vacating the arbitration award. The court held that the

standard was satisfied because the award rested on an improper application of Minnesota contract law, and there is no suggestion that there is any other basis for vacating the award aside from that alleged legal error.

The Court should grant the petition.

STATEMENT

A. The Federal Arbitration Act

1. Congress enacted the Federal Arbitration Act (FAA) "[t]o overcome judicial resistance to arbitration," "embod[ying] the national policy favoring arbitration." *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 443 (2006). Consistent with that goal, the FAA provides that a federal court "*must* grant . . . an order" confirming an arbitration award "*unless* the award is vacated, modified, or corrected as prescribed in sections 10 and 11" of the statute. 9 U.S.C. § 9 (emphases added).[1] Section 10(a) enumerates strictly limited grounds on which a district court may vacate an arbitration award: (1) if "the award was procured by corruption, fraud, or undue means"; (2) if "there was evident partiality or corruption in the arbitrators"; (3) if "the arbitrators were guilty of misconduct in refusing to postpone the hearing," "refusing to hear [relevant] evidence," or other "misbehavior"; or (4) if "the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon

[1] Section 11 authorizes a federal court to "modify" or "correct" an arbitration award on certain specified grounds that are not relevant to this case.

the subject matter submitted was not made." 9 U.S.C. § 10(a)(1)-(4).

2. In *Hall Street Associates, LLC v. Mattel, Inc.*, this Court "h[e]ld that §§ 10 and 11 respectively provide the FAA's exclusive grounds for expedited vacatur and modification." 552 U.S. 576, 584 (2008). The arbitration agreement in that case sought to supplement the statutory grounds by purporting to authorize a district court to vacate an award "(i) where the arbitrator's findings of facts are not supported by substantial evidence, or (ii) where the arbitrator's conclusions of law are erroneous." *Id.* at 579. The Court rejected Hall Street's argument that its prior decision in *Wilko v. Swan*, 346 U.S. 427 (1953), established that the statutory grounds for vacating an arbitration award are not exclusive. In Hall Street's view, *Wilko* recognized "manifest disregard of the law" as an additional, unenumerated ground for vacatur when it remarked that "the interpretations of the law by the arbitrators in contrast to manifest disregard [of the law] are not subject, in the federal courts, to judicial review for error in interpretation." *Hall Street*, 552 U.S. at 584 (quoting *Wilko*, 346 U.S. at 436–437). The Court acknowledged that "some Circuits have read" *Wilko* "as recognizing 'manifest disregard of the law' as a further ground for vacatur on top of those listed in § 10." *Id.* at 584–585 (citing *McCarthy v. Citigroup Global Markets, Inc.*, 463 F.3d 87, 91 (1st Cir. 2006); *Hoeft v. MVL Group, Inc.*, 343 F.3d 57, 64 (2d Cir. 2003); *Prestige Ford v. Ford Dealer Computer Servs., Inc.*, 324 F.3d 391, 395–396 (5th Cir. 2003); and *Scott v. Prudential Securities, Inc.*, 141 F.3d 1007, 1017 (11th Cir. 1998)).

In rejecting Hall Street's argument, however, the Court first noted that *Wilko*'s statement "expressly rejects . . . general review for an arbitrator's legal errors," the precise ground that Hall Street sought to impose via contract. *Hall Street*, 552 U.S. at 585. It then explained that "the vagueness of *Wilko*'s phrasing" rendered Hall Street's reliance on it "too much for *Wilko* to bear." *Id.* The Court acknowledged that "[m]aybe the term 'manifest disregard' was meant to name a new ground for review," but countered that "maybe it merely referred to the § 10 grounds collectively, rather than adding to them." *Id.* (citation omitted). It further recognized the additional possibility that, "as some courts have thought, 'manifest disregard' may have been shorthand for § 10(a)(3) or § 10(a)(4), the paragraphs authorizing vacatur when the arbitrators were 'guilty of misconduct' or 'exceeded their powers.'" *Id.* (citing *Kyocera Corp. v. Prudential–Bache Trade Servs., Inc.*, 341 F.3d 987, 997 (9th Cir. 2003)). The Court concluded that, in contrast to Hall Street's permissive interpretation, the FAA's judicial review provisions "substantiat[e] a national policy favoring arbitration with just the limited review needed to maintain arbitration's essential virtue of resolving disputes straightaway," and the "statutory text gives [it] no business to expand the statutory grounds" for vacatur. *Id.* at 588–589.

3. Two Terms later, this Court again confronted the "manifest disregard" standard. In *Stolt-Nielsen S.A. v. AnimalFeeds International Corp.*, it held that "an arbitration decision may be vacated under § 10(a)(4) of the FAA on the ground that the arbitrator 'exceeded [his] powers'" if "what the arbitration panel did was simply to impose its own

view of sound policy regarding class arbitration." 559 U.S. 662, 672 (2010). The parties had stipulated that the arbitration clause was "silent" with respect to class arbitration and "[a]ll the parties agree[d] that . . . there's been no agreement that has been reached on that issue." *Id.* at 668–669. Because "arbitration 'is a matter of consent, not coercion,'" the Court held that "a party may not be compelled under the FAA to submit to class arbitration unless there is a contractual basis for concluding that the party *agreed* to do so." *Id.* at 681, 684 (quoting *Volt Information Sciences, Inc. v. Board of Trustees of Leland Stanford Junior Univ.*, 489 U.S. 468, 479 (1989)). And because the parties had stipulated that there was no such agreement with respect to class arbitration, the Court concluded that the arbitrators exceeded their powers so the court could vacate their decision under 9 U.S.C. § 10(a)(4). *Id.* at 676.

Because the lower courts had decided the case based on whether the arbitration decision manifestly disregarded the law, the Court noted the application of that standard by reserving the question. The Court explained that it "d[id] not decide whether 'manifest disregard' survives our decision in *Hall Street Associates* . . . as an independent ground for review or as a judicial gloss on the enumerated grounds for vacatur set forth at 9 U.S.C. § 10." *Id.* at 672 n.3. The Court "[a]ssum[ed], *arguendo*, that such a standard applies," and found "it satisfied" for the same reasons that supported its conclusion that the arbitrators exceeded their powers. *Id.*

B. Proceedings Below

1. Petitioner Robert Zeidman is a software developer with over four decades of experience as an

expert in that field. He holds an undergraduate degree in physics and a graduate degree in electrical engineering. He has served as an expert witness in numerous cases involving intellectual property regarding computer software and hardware. He holds more than two dozen patents in computer software, hardware, electronic communications, and related fields.

Respondent Lindell Management LLC (LMC) is owned and operated by Michael Lindell. Lindell is an entrepreneur and political activist. Mr. Lindell's activism has focused on election security. After the 2020 election, Mr. Lindell believed that he received data that supported his views about security flaws in that election. In August of 2021, he organized a "Cyber Symposium" that would focus on that data. As part of the Cyber Symposium, Lindell established a "contest" that invited participants to test whether the data supported his views. If an entrant won the contest, Mr. Lindell would pay the winner $5 million.

As relevant here, the contest was governed by the following rules:

> 1. Overview. Lindell Management, LLC. ("Lindell") has created a contest where participants will participate in a challenge to prove that the data Lindell provides, and represents reflects information from the November 2020 election, unequivocally does NOT reflect information related to the November 2020 election (the "Challenge") . . .
>
> 5. Participants must submit all of their evidence in writing to a three member panel selected by Lindell who will determine whether the submission proves to a 100% degree of certainty

> that the data shown at the Symposium is not reflective of November 2020 election data. . . .
>
> 9. Arbitration. You and Lindell agree that in the event of any claim, dispute, or controversy (whether in contract, tort, or otherwise) arising out of, relating to, or connected in any way with the Challenge, or the breach, enforcement, interpretation, or validity of these Terms & Conditions ('Claim'), such claim will be resolved exclusively by final and binding arbitration.

Pet. App. 36a–37a, 4a–6a.

Mr. Zeidman attended the Cyber Symposium and submitted an entry in the contest. His entry demonstrated that the data provided by Lindell was not "packet data," the only type of data that could have been captured from internet data transfers, and thus it could not be the sort of data that Lindell claimed it was. The contest's "judges determined that Zeidman had not provided sufficient proof that the data unequivocally was not election data." Pet. App. 4a. LMC accordingly refused to pay Mr. Zeidman the $5 million reward.

2. Mr. Zeidman filed a demand for arbitration. The parties agreed that the contest rules formed a contract, that the rules were unambiguous, and that their interpretation is governed by Minnesota contract law. The arbitration panel recognized that it "should consider extrinsic evidence only if the document itself is ambiguous." Pet. App. 45a (citing *Blattner v. Forster*, 322 N.W.2d 319, 321 (Minn. 1982)). It also recognized that under Minnesota law, "[w]ords or phrases found in a contract should not be interpreted out of context, but rather by a process of synthesis in which the words and phrases are given a

meaning in accordance with the obvious purpose of the contract as a whole." *Id.* (quoting *Cement, Sand & Gravel Co. v. Agricultural Ins. Co.*, 30 N.W.2d 341, 345 (Minn. 1947)). Finally, it noted that a "contract's terms should not be construed to lead to a harsh or absurd result." *Id.* (citing *Brookfield Trace Ctr., Inc. v. County of Ramsey*, 584 N.W.2d 390, 394 (Minn. 1998)).

The arbitration panel determined that the contest's rules "require [that] the data not merely be about the election, but must be from the election process itself." Pet. App. 46a. The panel explained that Mr. Zeidman's claim required it to reconcile two provisions of the contest's rules. Section 1 of the rules required an entrant to "prove" that the data "unequivocally does NOT reflect information related to the November 2020 election." Pet. App. 44a. Section 5 of the rules required an entrant to "prove[] to a 100% degree of certainty that the data shown at the Symposium is not reflective of November 2020 election data." Pet. App. 44a, 48a. The panel reasoned that "[d]efining data as being merely 'about the election' or 'relating to the election' ignores the Contest rules' reference to data 'from the election' and reference to 'election data.'" Pet App. 46a. It further explained that it would be "unreasonable to conclude that any data file containing" information like "[n]ewspaper articles and broadcast news about the election" counts as "election data." Pet. App. 46a–47a.

Based on that analysis, the panel determined that "election data" necessarily comes in the form of packet capture data, or "PCAP" data. The panel then concluded that Mr. Zeidman "proved that the files provided were not in PCAP format; therefore, they

were not election data." Pet. App. 9a. The panel's decision mentioned several statements outside the contest's rules, including LMC's advertisement of the contest, Mr. Lindell's statements to the press, and oral testimony. Pet. App. 9a. For example, the panel noted that "Mr. Lindell and his cyber-expert witnesses admitted that data to be provided from the election was to be in the form of packet data or PCAP data." Pet. App. 8a, 46a. The panel awarded Mr. Zeidman the $5 million reward. Pet. App. 57a.

3. Mr. Zeidman and LMC filed petitions to confirm or vacate the arbitrators' award. The district court agreed with the panel's interpretation of the contract to require the "election data" to be from the "election process." Pet. App. 25a–26a. But the court also stated its view that it was "quite a leap that the only possible data that could constitute 'election data' would be packet capture data." Pet. App. 26a. In particular, the district court found that the panel's purported reliance on "extrinsic evidence" to interpret the contract may have been a "serious legal error." Pet. App. 26a. But "[b]ecause the panel was arguably interpreting and applying the contract, even the potentially serious legal error of using extrinsic evidence to interpret an unambiguous term is not enough to vacate the award." Pet. App. 27a. Accordingly, the district court confirmed the arbitration award. Pet. App. 29a.

4. The court of appeals reversed. The court recognized that it was "not authorized to reconsider the merits of an award even though the parties may allege that the award rests on errors of fact or on misinterpretation of the contract." Pet. App. 11a (quoting *Alvey, Inc. v. Teamsters Loc. Union No. 688*, 132 F.3d 1209, 1211 (8th Cir. 1997)). But it also

stated that "an arbitration award may be vacated if it evidences 'manifest disregard for law'—if the panel based its decision on 'some body of thought, or feeling, or policy, or law that is outside the contract.'" Pet. App. 12a (quoting *CenterPoint Energy Res. Corp. v. Gas Workers Union, Loc. No. 340*, 920 F.3d 1163, 1167 (8th Cir. 2019)). It elaborated that, under this "extra-statutory standard[]," "'an arbitration decision only manifests disregard for the law where the arbitrators clearly identify the applicable, governing law and then proceed to ignore it.'" Pet. App. 12a–13a (quoting *Hoffman v. Cargill, Inc.*, 236 F.3d 458, 462 (8th Cir. 2001)).

The court of appeals made clear that it was applying the manifest disregard standard in vacating the arbitration award: "Under our controlling decisions, the panel exceeded its authority because it 'clearly identif[ied] the applicable, governing law and then proceed[ed] to ignore it.'" Pet. App. 15a. (quoting *Hoffman*, 236 F.3d at 462 (alterations in original)). The court acknowledged that the arbitration panel "[p]urport[ed] to be interpreting the Official Rules." *Id.* But it noted that the arbitration panel determined that "'if data is not PCAP data, it is not from the election, and it therefore cannot be 'related to the November 2020 election'" even though "'packet capture' and 'PCAP data' are not mentioned in the Official Rules." *Id.* According to the court of appeals, the arbitration panel "based this conclusion almost entirely on extrinsic evidence." *Id.* The court reasoned that "[f]rom the four corners of the Challenge contract as defined by the Official Rules, there is no way to read 'information related to the November 2020 election' as meaning only information that is 'PCAP data.'" Pet. App. 16a.

Based on that reasoning, it ordered the district court to vacate the arbitrators' decision.

This petition followed.

REASONS FOR GRANTING THE WRIT

I. The Lower Courts are Deeply Divided on the Question Presented.

A. The Conflict Among the Courts of Appeals is Entrenched and Intractable.

The decision below further entrenches a deep and intractable division among the courts of appeals on the question presented. In the wake of this Court's decision in *Hall Street*, six circuits—the Second, Fourth, Sixth, Eighth, Ninth, and Tenth Circuits—hold that the manifest disregard theory remains a valid basis for vacating an arbitration decision, and all but one of those circuits has vacated an award under that standard. By contrast, three circuits—the Fifth, Seventh, and Eleventh Circuits—have expressly rejected the manifest disregard standard based on this Court's decision in *Hall Street*.

1. Circuits Recognizing Manifest Disregard.

Second Circuit. In *Stolt-Nielsen SA v. AnimalFeeds International Corp.*, the Second Circuit applied the manifest disregard standard in confirming an arbitration decision. 548 F.3d 85, 91–92 (2d Cir. 2008). The court acknowledged that "since *Hall Street* was decided, courts have begun to grapple with its implications for the 'manifest disregard' doctrine." *Id.* at 94. It determined that *Hall Street* did not "abrogate the 'manifest disregard' doctrine altogether." *Id.* at 95. It thus concluded that manifest disregard is "a judicial gloss on the specific grounds for vacatur enumerated in section 10 of the

FAA" and "remains a valid ground for vacating arbitration awards." *Id.* at 94. Although this Court reversed the Second Circuit's decision on other grounds, *see Stolt-Neilsen S.A. v. AnimalFeeds Int'l Corp.*, 559 U.S. 662, 672, the Second Circuit continues to hold that the manifest disregard standard remains viable. *See, e.g.*, *Smarter Tools Inc. v. Chongqing SENCI Imp. & Exp. Trade Co.*, 57 F.4th 372, 383 (2d Cir. 2023) (applying manifest disregard standard); *Weiss v. Sallie Mae, Inc.,* 939 F.3d 105, 107 (2d Cir. 2019) (vacating and remanding arbitration decision because court was "unable to identify whether the arbitrator abided by applicable substantive law . . . and, consequently, whether the arbitral award was issued in manifest disregard of the law").

Fourth Circuit. In *Dewan v. Walia*, the Fourth Circuit held that an arbitration decision was "the product of a manifest disregard of the law by the Arbitrator" and "[a]ccordingly . . . remand[ed] [the case] to the district court with instructions to vacate the award." 544 F. App'x 240, 241 (4th Cir. 2013). The court acknowledged that "[i]n the wake of the Supreme Court's decision in *Hall Street*," the Fourth Circuit "has recognized that considerable uncertainty exists 'as to the continuing viability of extra-statutory grounds for vacating arbitration awards.'" *Id.* at 246 n.5. (quoting *Raymond James Fin. Servs., Inc. v. Bishop*, 596 F.3d 183, 193 n.13). The court determined, however, that the Fourth Circuit had held that "'manifest disregard continues to exist' as a basis for vacating an arbitration award, either as 'an independent ground for review or as a judicial gloss' on the enumerated grounds for vacatur set forth in the FAA." *Id.* (quoting *Wachovia Secs., LLC v. Brand*,

671 F.3d 472, 483 (4th Cir. 2012)). *See also Warfield v. Icon Advisers, Inc*, 26 F.4th 666, 669 (4th Cir. 2022) ("In addition to the very narrow statutory grounds for vacating an arbitral award found in 9 U.S.C. § 10(a), we have recognized, either 'as an independent ground for review or as a judicial gloss on the [narrow] enumerated grounds for vacatur set forth' in § 10(a), that a district court may vacate an arbitral award that rests upon a 'manifest disregard' of the law." (quoting *Wachovia*, 671 F.3d at 483)).

Sixth Circuit. In *Coffee Beanery, Ltd. v. WW, LLC*, the Sixth Circuit vacated an arbitration decision on the ground that "that the Arbitrator's award show[ed] a manifest disregard of the law" because in its view "[t]he Arbitrator expressly chose not to follow clearly established law." 300 F. App'x 415, 419, 421 (6th Cir. 2008). The court recognized that *Hall Street* "significantly reduced the ability of federal courts to vacate arbitration awards for reasons other than those specified in 9 U.S.C. § 10." *Id.* at 418. But it reasoned that "[i]n light of the Supreme Court's hesitation to reject the 'manifest disregard' doctrine in all circumstances . . . it would be imprudent to cease employing such a universally recognized principle." *Id.* at 419. Accordingly, it concluded that this Court's decision "did not foreclose federal courts' review for an arbitrator's manifest disregard of the law." *Id.* at 418. *See also In re Romanzi*, 31 F.4th 367, 375 (6th Cir. 2022) ("Section 10(a)(4) also allows an arbitration award to be vacated if it was made in 'manifest disregard of the law.'" (citing *Grain v. Trinity Health, Mercy Health Servs. Inc.*, 551 F.3d 374, 380 (6th Cir. 2008))).

Ninth Circuit. In *Comedy Club, Inc. v. Improv W. Associates*, the Ninth Circuit held that "the

arbitrator's ruling that [the contract] is a valid covenant not to compete ignores [California law] and thus is in manifest disregard of the law." 553 F.3d 1277, 1293 (9th Cir. 2009). The court explained that this Court had vacated and remanded the panel's prior decision in the case "in light of *Hall Street*." *Id.* at 1281. The panel "determine[d] that *Hall Street Associates* does not undermine [the Ninth Circuit's] prior precedent" embracing the manifest disregard standard and thus "an arbitrator's manifest disregard of the law remains a valid ground for vacatur of an arbitration award under § 10(a)(4) of the Federal Arbitration Act." *Id.* (citing *Kyocera Corp. v. Prudential–Bache T. Servs.*, 341 F.3d 987 (9th Cir. 2003) (en banc)). *See also HayDay Farms, Inc. v. FeeDx Holdings, Inc.*, 55 F.4th 1232, 1240 (9th Cir. 2022) ("Vacatur under § 10(a)(4) is warranted when an arbitration award exhibits a manifest disregard of law or is completely irrational.").

Tenth Circuit. In *Dish Network L.L.C. v. Ray*, the Tenth Circuit affirmed an arbitration award by concluding that "the arbitrator in this case did not manifestly disregard Colorado law when he concluded that he was authorized to conduct class arbitration." 900 F.3d 1240, 1252 (10th Cir. 2018). *See also Goldgroup Res., Inc. v. DynaResource de Mexico, S.A. de C.V.*, 994 F.3d 1181, 1186 (10th Cir. 2021) ("'Errors in the arbitrator's interpretation of law or findings of fact do not merit reversal' of the award unless the arbitrator's decision is based on 'manifest disregard of the law.'" (quoting *Bowles Fin.*

Grp., Inc. v. Stifel, Nicolaus & Co., 22 F.3d 1010, 1012 (10th Cir. 1994))).[2]

2. Circuits Rejecting Manifest Disregard.

In contrast to the Eighth Circuit's decision here, the Fifth, Seventh, and Eleventh Circuits have expressly rejected manifest disregard as a valid basis for vacating an arbitral decision after this Court's decision in *Hall Street*. Had Mr. Zeidman brought his petition in any of those circuits, the court of appeals would have confirmed the arbitration award in his favor.

Fifth Circuit. In *United States Trinity Energy Servs., L.L.C. v. Southeast Directional Drilling, L.L.C.*, the Fifth Circuit held that a court "cannot substitute [its] judgment in place of an arbitration panel's decision by recognizing 'manifest disregard of the law' as a basis for vacatur embedded within § 10(a)(4)." 135 F.4th 303, 310 (5th Cir. 2025). The court explained that "[g]rafting 'manifest disregard of the law' as a basis for a losing party at arbitration to prevail under § 10(a)(4) would risk tension with *Hall*

[2] In addition to these circuits squarely holding that the manifest disregard standard remains viable after *Hall Street*, the First, Third, and D.C. Circuits have assumed without deciding that the standard survives *Hall Street*. *See, e.g.*, *Hoolahan v. IBC Advanced Alloys Corp.*, 947 F.3d 101, 111 n.14 (1st Cir. 2020); *Facta Health Inc. v. Pharmadent LLC*, No. 23-2224, 2024 WL 4345299, at *6 n.5 (3d Cir. Sept. 30, 2024); *Metro. Municipality of Lima v. Rutas De Lima S.A.C.*, 141 F.4th 209, 219 (D.C. Cir. 2025). As a result, litigants in these circuits continue to bring arguments under the manifest disregard standard, ensuring the flood of post-arbitration litigation that this Court has recognized undermines the efficiencies of arbitration. *See Hall Street*, 552 U.S. at 588.

Street . . . by forcing us to conduct a less deferential review of a panel's award than the FAA contemplates." *Id.* It reasoned that adopting the manifest disregard standard "would rewrite the question a judge must ask from 'whether the arbitrators construed the contract at all' to 'whether they construed it correctly.'" *Id.* As a result, the court concluded, "[i]n its proper form, § 10(a)(4) is supposed to provide relief when an arbitrator refuses to even consider a contract's basic commands while protecting the arbitrator's virtue of resolving disputes straightaway—not provide a backdoor for a party to seek judicial review of the arbitrator's interpretations." *Id. See also Citigroup Glob. Markets, Inc. v. Bacon*, 562 F.3d 349, 358 (5th Cir. 2009) ("In the light of the Supreme Court's clear language [in *Hall Street*] that, under the FAA, the statutory provisions are the exclusive grounds for vacatur, manifest disregard of the law as an independent, nonstatutory ground for setting aside an award must be abandoned and rejected.").

Seventh Circuit. In *Affymax, Inc. v. Ortho-McNeil-Janssen Pharmaceuticals*, the Seventh Circuit rejected the argument that it could vacate an arbitration decision on the ground that it displayed a manifest disregard for the law. 660 F.3d 281, 284 (7th Cir. 2011). The court held that Section 10(a)'s "list is exclusive; neither judges nor contracting parties can expand it" and that "[d]isregard of the law is not on the statutory list." *Id.* (citing *Hall Street*, 552 U.S. at 584–589).

Eleventh Circuit. In *Frazier v. CitiFinancial Corp., LLC*, the Eleventh Circuit "h[e]ld that [its] judicially-created bases for vacatur" of an arbitration decision, including manifest disregard, "are no longer

valid in light of *Hall Street*." 604 F.3d 1313, 1324 (11th Cir. 2010). *See also Payne v. Savannah Coll. of Art & Design, Inc.*, 81 F.4th 1187, 1196 (11th Cir. 2023) ("Following *Hall Street*, . . . [we] foreclose[ed] wide-ranging challenges to arbitration awards [including manifest disregard]").

B. State Supreme Courts are Split on the Question Presented.

The division in authority on whether the Federal Arbitration Act permits a court to vacate an arbitration award based on manifest disregard extends to state courts. Since this Court decided *Hall Street*, three state supreme courts—Alaska, Nevada, and South Carolina—have held that the manifest disregard theory remains viable. Two state supreme courts—Alabama and West Virginia—have held that this Court's decision in *Hall Street* eliminated manifest disregard as a basis for vacating an arbitration decision. Countless more intermediate state appellate courts have divided on the question.

1. State Supreme Courts Recognizing Manifest Disregard.

Alaska. In *Dunham v. Lithia Motors Support Servs., Inc.*, the Alaska Supreme Court relied on Ninth Circuit caselaw to conclude that "[u]nder federal case law, an arbitrator exceeds his power by deciding an issue not within his power, manifestly disregarding the law, or issuing a completely irrational award." No. S-15068, 2014 WL 1421780, at *7 (Alaska Apr. 9, 2014). Applying that standard, the court affirmed the arbitration decision because the party challenging the award had alleged only legal errors, not that the panel "intentionally decided not to apply" the correct legal rule. *Id.*

Nevada. In *Matter of CLA Props. LLC*, the Supreme Court of Nevada affirmed an arbitration award on the ground that it "[could not] say that the arbitrator's construction of the contract was a manifest disregard of the law." 138 Nev. 924, 506 P.3d 323 (2022). The court qualified this Court's statement in *Oxford Health Plans LLC v. Sutter*, 569 U.S. 564 (2013), that "'[t]he arbitrator's construction holds, however good, bad, or ugly'" with the caveat that this deference holds only "provided the arbitrator does not manifestly disregard the law." 138 Nev. 924, 506 P.3d 323 (2022) (quoting *Oxford Health*, 569 U.S. at 573 and citing *Sanchez v. Elizondo*, 878 F.3d 1216, 1223 (9th Cir. 2018)).

South Carolina. In *Gissel v. Hart*, the Supreme Court of South Carolina acknowledged that "[g]enerally, an arbitration award is conclusive and courts will refuse to review the merits of an award" but added that "[a]n arbitrator's award may be vacated when the arbitrator exceeds his or her powers and/or manifestly disregards or perversely misconstrues the law." 382 S.C. 235, 241, 676 S.E.2d 320, 323 (2009) (citations omitted). Applying that standard, it held that the defendants' contention that the complaint established they were not named in their individual capacities was "irrelevant to the determination of whether or not the arbitrator manifestly disregarded the law." *Id.* at 243.

2. State Supreme Courts Rejecting Manifest Disregard.

Alabama. In *Hereford v. D.R. Horton, Inc.*, the Supreme Court of Alabama concluded that "[u]nder the Supreme Court's decision in *Hall Street Associates* . . ., manifest disregard of the law is no

longer an independent and proper basis under the Federal Arbitration Act for vacating, modifying, or correcting an arbitrator's award." 13 So. 3d 375, 380–81 (Ala. 2009).

West Virginia. In *Cunningham v. LeGrand*, the Supreme Court of Appeals of West Virginia held that after *Hall Street*, "manifest disregard of the law is not recognized as a valid statutory basis for challenging an arbitration award made pursuant to the provisions of the Federal Arbitration Act." 237 W. Va. 68, 75, 785 S.E.2d 265, 272 (2016).

* * *

This conflict is intractable. There is no realistic prospect that the lower courts will reach a consensus on the question presented. As the Fourth Circuit recently noted, "[s]ince *Hall St. Associates*, the question of whether the manifest disregard theory survives has caused an entrenched circuit split. . . . At some point, the Supreme Court or Congress will have to resolve the issue. We see little value in adding to this confusion now." *Warfield v. Icon Advisers, Inc.*, 26 F.4th 666, 669 n.3 (4th Cir. 2022) (citing *Bangor Gas Co., LLC v. H.Q. Energy Servs. (U.S.) Inc.*, 695 F.3d 181, 187 n.3 (1st Cir. 2012) (collecting cases)).

The Court should grant the petition to ensure the uniform interpretation of the Federal Arbitration Act.

II. The Decision Below is Incorrect.

The decision of the court of appeals was gravely mistaken. Whether understood as an independent, non-statutory basis for vacatur or as a judicial gloss on Section 10(a)'s enumerated grounds, the manifest

disregard standard cannot be reconciled with the text of the Federal Arbitration Act, with this Court's cases, or with Congress's clear purpose in establishing a national policy favoring arbitration. This Court should grant the petition to correct the court of appeals' misinterpretation of federal law.

The Federal Arbitration Act's plain text compels the conclusion that the manifest disregard standard cannot serve as an independent, non-statutory basis for vacating an arbitration decision. Section 9 provides that a federal court "*must* grant . . . an order" confirming an arbitration award "*unless* the award is vacated, modified, or corrected *as prescribed in sections 10 and 11*" of the statute. 9 U.S.C. § 9 (emphases added). As this Court explained in *Hall Street*, "[t]here is nothing malleable about 'must grant,' which unequivocally tells courts to grant confirmation in all cases, except when one of the 'prescribed' exceptions applies." 552 U.S. at 587. For that reason, the Court concluded, "the statutory text gives [it] no business to expand the statutory grounds" which therefore "provide exclusive regimes for the review provided by the statute." *Id.* at 589–590. The Court's holding addressed an attempt by the parties to expand the scope of judicial review, but there is no reason why the rule the Court articulated would permit courts to supplement the statute's "exclusive grounds" where parties cannot. *Id.* at 584. The statute's text and this Court's cases thus firmly foreclose adding the manifest disregard standard as an extra-statutory avenue of review.

Nor can the manifest disregard standard serve as a judicial gloss on Section 10(a)'s explicitly enumerated grounds. Those grounds are not just exclusive; they are intentionally and exceptionally

narrow. The statute permits a court to vacate an arbitrator's decision "only in very unusual circumstances." *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 942, (1995). As this Court noted in *Hall Street*, Section 10(a) "addresses egregious departures from the parties' agreed upon arbitration: 'corruption,' 'fraud,' 'evident partiality,' 'misconduct,' misbehavior,' [and] 'exceed[ing] . . . powers.'" 552 U.S. at 586. The Court explained that "[g]iven this emphasis on extreme arbitral conduct," "a statute with no textual hook for expansion cannot authorize contracting parties to supplement review for specific instances of outrageous conduct with review for just any legal error. 'Fraud' and a mistake of law are not cut from the same cloth." *Id. See also Stolt–Nielsen*, 559 U.S. at 671 ("It is not enough . . . to show that the [arbitrator] committed an error—or even a serious error.").

As a result, this Court has consistently understood Section 10(a)(4)'s authorization for a court to vacate an arbitration decision when the "arbitrators exceeded their powers" to exclude second-guessing arbitrators' legal conclusions. "Because the parties 'bargained for the arbitrator's construction of their agreement,' an arbitral decision 'even *arguably* construing or applying the contract' must stand, regardless of a court's view of its (de)merits." *Oxford Health*, 569 U.S. at 564 (quoting *Eastern Associated Coal Corp. v. Mine Workers*, 531 U.S. 57, 62 (2000)) (emphasis added). Instead, "the sole question for [a court] is whether the arbitrator (even arguably) interpreted the parties' contract, not whether he got its meaning right or wrong." *Id.* at 569. *See also United States Trinity Energy Servs.*, 135 F.4th at 310 (adopting manifest disregard

standard as gloss on Section 10(a)(4) "essentially would rewrite the question a judge must ask from 'whether the arbitrators construed the contract at all' to 'whether they construed it correctly.'").

The manifest disregard standard flouts these fundamental principles of arbitration law. As the court of appeals understood the standard, an arbitration decision "manifests disregard for the law where the arbitrators clearly identify the applicable, governing law and then proceed to ignore it." Pet. App. 13a (quoting *Hoffman v. Cargill, Inc.*, 236 F.3d 458, 462 (8th Cir. 2001)). In case after case, including this one, courts applying this standard confront not situations where an arbitration panel intentionally and explicitly disavowed its duty to apply the law, but rather cases where the court considers whether the arbitrators "ignore[d]" the law simply by misapplying it. In these cases, "to overturn [the arbitrator's] decision, [the court] would have to rely on a finding that he misapprehended the parties' intent. But [Section] 10(a)(4) bars that course: It permits courts to vacate an arbitral decision only when the arbitrator strayed from his delegated task of interpreting a contract, not when he performed that task poorly." *Oxford Health*, 569 U.S. at 571–72.

The court of appeals' decision in this case illustrates the danger of the manifest disregard standard that it applied. The court acknowledged that the arbitration panel "[p]urport[ed] to interpret[] the Official Rules" and that LMC's argument was that the panel "committed legal error." Pet. App. 14a–15a. It recognized that the arbitrators recited the essential principles of Minnesota law governing the interpretation of a contract, including the rule that extrinsic evidence

should not be considered in the interpretation of unambiguous contracts. Pet. App. 14a. It noted that the arbitration panel "explained that it needed to interpret two key phrases in the Official Rules" to resolve the claim before it. But in the court's view, the panel rested its interpretation "almost entirely on extrinsic evidence." Pet. App. 15a. The court concluded that such consideration of extrinsic evidence was "contrary to Minnesota law," and it proceeded to substitute its own interpretation of the contest's rules for the arbitrators'. Pet. App. 15a–16a.

That bald-faced review for alleged legal error is inconsistent with the deferential review that Congress established in Section 10(a) and that this Court has consistently enforced. As the Court has explained, "convincing a court of an arbitrator's error—even his grave error—is not enough. So long as the arbitrator was 'arguably construing' the contract—which this one was—a court may not correct his mistakes under [Section] 10(a)(4)." *Oxford Health*, 569 U.S. at 572 (quoting *Eastern Associated Coal*, 531 U.S. at 62). "Under [Section] 10(a)(4), the question for a judge is not whether the arbitrator construed the parties' contract correctly, but whether he construed it at all. Because he did, [he] therefore did not 'exceed his powers' . . . ." *Id.* at 573. "The arbitrator's construction holds, however good, bad, or ugly." *Id*. *See also United Steelworkers of Am. v. Enter. Wheel & Car Corp.*, 363 U.S. 593, 599 (1960) ("It is the arbitrator's construction which was bargained for; and so far as the arbitrator's decision concerns construction of the contract, the courts have no business overruling him because their interpretation of the contract is different from his.").

This Court's cases, including three unanimous decisions just last Term, consistently reject atextual tests that, like the manifest disregard standard, purport to add a gloss on a federal statute. *See A.J.T. v. Osseo Area Schs., Ind. Sch. Dist. No. 279*, 605 U.S. 335, 338, 343–345 (2025) (rejecting the atextual "bad faith or gross misjudgment" standard the Eighth Circuit imposed for suits concerning educational services under the ADA and holding the phrase "any person" is "expansive and unqualified," and thus applies to every person, "without distinction or limitation"); *Ames v. Ohio Dep't of Youth Servs.*, 605 U.S. 303, 305–306, 308–11 (2025) (rejecting the atextual "background circumstances" test five circuits imposed on "majority-group plaintiffs"); *id.* at 313–319 (Thomas, J., concurring) (noting atextual rules "have a tendency to distort the underlying statutory text, impose unnecessary burdens on litigants, and cause confusion for courts"); *CC/Devas (Mauritius) Ltd. v. Antrix Corp. Ltd.*, 145 S. Ct. 1572, 1576, 1579–81 (2025) (rejecting a minimum-contacts standard that went "beyond the [statutory] text" and declining "to add in what Congress left out").

The Court should grant the petition to correct the court of appeals' dramatic departure from the text of the Federal Arbitration Act and this Court's clear commands.

III. This Case is an Ideal Vehicle to Resolve a Recurring Issue of Great Importance.

The petition presents an ideal case for this Court's review. The question presented was dispositive to the decision of the court of appeals, which explicitly relied on the manifest disregard standard in vacating the arbitration award. The

court held that the standard was satisfied because the award rested on an improper application of Minnesota contract law, and there is no suggestion that there is any other basis for vacating the award aside from that alleged legal error. The decision below makes clear that the court relied on the manifest disregard standard, first explaining the contours of this "extra-statutory standard[]," and then directing the district court to vacate the arbitral decision "because it" violated that standard. Pet. App. 12a–13a (quoting *Hoffman*, 236 F.3d at 462). There are no factual disputes that might complicate this Court's review. If this Court holds that manifest disregard of the law is no longer a valid basis for a court to vacate an arbitration decision, then it must reverse the decision below and order the lower courts to reinstate the arbitrators' award to Mr. Zeidman.

This case is a prime opportunity to resolve the question presented. Courts confronting an argument that an arbitration decision was the product of manifest disregard of the law often hold that the arbitrators' alleged errors did not satisfy that demanding standard. As a result, in most cases the viability of manifest disregard as a basis for vacatur is not dispositive to the case, and therefore most cases are not appropriate for this Court's review.

But the fact that courts often affirm arbitration decisions under the manifest disregard standard does not mean that its continued application in the lower courts is harmless. Since this Court decided *Hall Street*, hundreds of cases have reached the courts of appeals litigating whether an arbitrator's alleged legal error amounted to manifest disregard. During that time, almost two thousand district court cases have cited the standard. That flood of litigation

undermines the very purpose of arbitration—to provide a less formal, less expensive, and less protracted alternative to traditional litigation in courts. *See* Stuart M. Boyarsky, *The Uncertain Status of the Manifest Disregard Standard One Decade After* Hall Street, 123 DICK. L. REV. 167, 212 (2018) ("The availability of the manifest disregard standard renders arbitration a mere prelude to meaningless litigation, destroys efficiency, and increases expenses.") (citations omitted).

The lingering presence of the manifest disregard standard thus eviscerates the "national policy favoring arbitration with just the limited review needed to maintain arbitration's essential virtue of resolving disputes straightaway," "open[ing] the door to the full-bore legal and evidentiary appeals that can render informal arbitration merely a prelude to a more cumbersome and time-consuming judicial review process, and bringing arbitration theory to grief in post arbitration process." *Hall Street*, 552 U.S. at 588 (citation modified). Without this Court's intervention, the lower courts will continue to undermine the Federal Arbitration Act by ensuring precisely the type of post-arbitration litigation that this Court has repeatedly recognized is incompatible with Congress's purpose in enacting it.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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October 2025

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APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT, FILED JULY 23, 2025

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 24-1608

ROBERT ZEIDMAN,

Petitioner-Appellee,

v.

LINDELL MANAGEMENT LLC,

Respondent-Appellant.

Appeal from United States District Court
for the District of Minnesota

Submitted: October 23, 2024
Filed: July 23, 2025

Before LOKEN, SMITH, and GRASZ, Circuit Judges.

LOKEN, Circuit Judge.

Minnesota entrepreneur Michael Lindell prominently challenged the results and legitimacy of the 2020 presidential election. On news networks, internet news sources, and his streaming channel, Lindell repeatedly claimed to possess data showing that China interfered

with the election in multiple states and that his view was informed by experts who had analyzed the data. Lindell also created Lindell Management LLC ("LMC") to host a "Cyber Symposium" in South Dakota in August 2021, during which LMC would provide cyber data and packet captures from the 2020 election that would prove election interference. LMC advertised a "Prove Mike Wrong Challenge" in which contestants would attempt to "[f]ind proof that this cyber data is not valid data from the November Election. For the people who find the evidence, 5 million [dollars] is their reward."

Robert Zeidman, who has 45 years of software development experience, was invited to the Symposium after LMC vetted his credentials. Zeidman entered the Challenge, signing its Official Rules. After reviewing eleven data files LMC provided, claiming they were from the November 2020 election, Zeidman submitted a fifteen-page report concluding that the data "unequivocally does not contain packet data of any kind and do[es] not contain any information related to the November 2020 election." The Challenge judges concluded Zeidman had not provided sufficient proof that the data was not unequivocally election data and denied his claim for the $5 million reward.

In accordance with the Official Rules, Zeidman filed an arbitration demand. After a three-day hearing, the arbitration panel (the panel) unanimously found that Zeidman won the Challenge Contest and ordered LMC to pay the $5 million reward. The panel concluded the contract requirement that participants "unequivocally"

prove that the cyber data provided was not "related to the November 2020 election" was unambiguous and Zeidman unequivocally proved the cyber data was not "packet capture data." Zeidman filed a motion in the district court to confirm the panel's award; LMC filed a state court action to vacate the award, which Zeidman removed to federal court. Applying the "very limited" judicial review of arbitration awards under Sections 9 and 10 of the Federal Arbitration Act ("FAA"), 9 U.S.C. §§ 9-10, the district court confirmed the panel's decision and denied LMC's motion to vacate, concluding the panel "arguably interpreted and applied the contract." LMC appeals. We conclude that the panel effectively amended the unambiguous Challenge contract when it used extrinsic evidence to require that the data provided was packet capture data, thereby violating established principles of Minnesota contract law and our arbitration precedents. Accordingly, we reverse the grant of Zeidman's motion to confirm because "the arbitrators exceeded their powers." 9 U.S.C. § 10(a)(4).

I. Background

Publications promoting the Cyber Symposium said that Mr. Lindell would reveal "cyber data and packet captures from the 2020 November election" to prove China's interference in that election. Before the Challenge, LMC gave the data it would provide contestants to a group of software professionals for their review. The experts were surprised and raised concern to LMC that the data format they received was not packet capture data (or "PCAP files"). The panel opinion explained that data

format concerns how computer networks transfer data. When packet capture data is transferred, the contents are sent in packets with binary data that specifies the IP address of the machine that sent the data, the IP address of the recipient, and the dates of sending and receipt. Packet data is typically stored in PCAP files because, as a Challenge judge explained, "everything on the internet is in packets. So when you capture it, it's a packet capture."

Zeidman entered the Challenge and signed the contest's Official Rules. There was no entry fee. The Contest provided him eleven files, a portion of the total data. After reviewing each file, Zeidman submitted a fifteen-page report explaining that "the data Lindell provides . . . unequivocally does not contain packet data of any kind and do[es] not contain any information related to the November 2020 election." The Challenge judges determined that Zeidman had not provided sufficient proof that the data unequivocally was not election data.

A. The Official Rules. The Challenge's Official Rules that Zeidman signed provide as relevant here (emphasis added):

> 1. **Overview**. [LMC] has created a Challenge where participants will participate in a challenge to *prove that the data [LMC] provides, and represents reflects information from the November 2020 election, unequivocally does NOT reflect information related to the November 2020 election* (the "Challenge"). . . .

Appendix A

5. **Contest Entry Period** .... Participants must submit all of their evidence in writing to a three member panel selected by [LMC] who will determine whether the submission *proves to a 100% degree of certainty that the data shown at the Symposium is not reflective of November 2020 election data.*

6. **Winners**. The winners will be determined on August 12, 2021 by 8:00 pm CDT. The three-member panel selected by [LMC] will identify the winners based on their professional opinion that *the submission proves to a 100% degree of certainty that the data shown at the Symposium is not reflective of November 2020 election data. . . .*

7. **General Conditions** . . . . In the event there is an alleged or actual ambiguity, discrepancy or inconsistency between disclosures or other statements contained in any Challenge-related materials and/or these Official Rules (including any alleged discrepancy or inconsistency in these Official Rules), it will be resolved in [LMC]'s sole discretion. . . .

8. **Governing Law**. *This Contest and any dispute arising under or related thereto (whether for breach of contract, tortious conduct, or otherwise) will be governed by the internal laws of the State of Minnesota . . . .*

> 9. **ARBITRATION**. YOU AND LINDELL AGREE THAT IN THE EVENT OF ANY CLAIM, DISPUTE, OR CONTROVERSY (WHETHER IN CONTRACT, TORT, OR OTHERWISE) ARISING OUT OF, RELATING TO, OR CONNECTED IN ANY WAY WITH THE CHALLENGE, *OR THE BREACH, ENFORCEMENT, INTERPRETATION, OR VALIDITY OF THESE TERMS & CONDITIONS ("CLAIM")*, SUCH CLAIM *WILL BE RESOLVED EXCLUSIVELY BY FINAL AND BINDING ARBITRATION*. ARBITRATION IS MORE INFORMAL THAN A LAWSUIT IN COURT AND USES A NEUTRAL ARBITRATOR INSTEAD OF A JUDGE OR JURY. *ARBITRATION IS SUBJECT TO VERY LIMITED REVIEW BY COURTS, BUT ARBITRATORS CAN AWARD THE SAME DAMAGES AND RELIEF THAT A COURT CAN AWARD.* THE ARBITRATION WILL BE CONDUCTED UNDER THE THEN CURRENT RULES OF THE AAA AND CONDUCTED IN ENGLISH. . . .

B. The Arbitration Award. Zeidman, in accordance with these Rules, filed an arbitration demand. The parties submitted three specific issues for determination by the panel: (1) whether Zeidman won the Challenge and LMC was in breach of contract by not paying the $5 million reward; (2) whether the Official Rules were unconscionable; and (3) whether LMC violated the Minnesota Consumer

Fraud Act by designing a contest knowing there would not be a winner and by failing to provide promised data. Applying Minnesota law and limiting its review to the eleven data files provided to Zeidman and cited in his report, the panel determined that Zeidman performed under the Official Rules, LMC breached the contract by not paying him the reward, and the remaining two tort issues were therefore moot.

To decide the breach of contract claim, the panel explained that it needed to interpret two key phrases in the Official Rules. The first phrase was that a winning contestant must "prove that the data [LMC] provides . . . unequivocally does NOT reflect information related to the November 2020 election." The second key phrase was "whether the [participant's] submission proves to a 100% degree of certainty that the data shown at the Symposium is not reflective of *November 2020 election data*." The panel then addressed the governing principles of Minnesota contract law that it must apply:

> The intent of the parties is determined from the plain language of the written agreement, so long as the agreement is clear and unambiguous. The Panel should consider extrinsic evidence only if the document itself is ambiguous. [Citations omitted.]
>
> * * * *
>
> Both parties contend that the rules are unambiguous, and no parol evidence is required

> for contract interpretation. Lindell LLC argues that one need only consult a dictionary to interpret the contract. . . . It argues that the data need only be connected to or about the election in some way. . . .
>
> Mr. Zeidman argues that definition is far too broad and is "neither reasonable nor consistent with Mr. Lindell's claims about the data."
>
> The Panel has determined that the Contest rules are directed to data "from the election" also referred to as "election data."
>
> These terms require the data not merely be about the election, but must be from the election process itself. . . . [T]his would be packet capture data. Thus, if data is not PCAP data, it is not from the election, and it therefore cannot be "related to the November 2020 election". . . .
>
> . . . [T]here is not, in the Panel's view, any ambiguity, discrepancy, or inconsistency to be resolved here, and the parties have both stated the contract is unambiguous.

The panel further noted that Mr. Lindell and his cyber-expert witnesses "admitted that data to be provided from the election was to be in the form of packet data or PCAP data." LMC argued that Zeidman and other witness acknowledged that election data could be in another

form than PCAP data. "It is, however, undisputed," the panel noted, "that election data that is captured from the internet, which Mr. Lindell said he would provide, would be in packets. This is because all data delivered over the internet is in the form of packets."

The panel then examined in detail the proof Zeidman presented regarding the eleven files, his expert's support for the analysis, and LMC's experts' responses. The panel concluded that Zeidman proved that the files provided were not in PCAP format; therefore, they were not election data. Because Zeidman performed under the Official Rules, the panel awarded him the $5 million reward.

C. The District Court Decision. After removal and consolidation of the competing FAA petitions to vacate or to confirm the panel's decision, LMC argued that the district court should vacate the arbitration award because "the panel acted outside the scope of its authority by modifying the Challenge rules . . . [by] inputting the requirement of packet capture data and reversing the burden such that it rested with [LMC]." The court agreed with the panel that its interpretation of the Official Rules -- requiring that data specifically be from the election process -- harmonized the contract. But the court "[found] it to be quite a leap that the only possible data that could constitute 'election data' would be packet capture data." The court inferred that the panel used extrinsic evidence to reach this interpretation of unambiguous contract language, contrary to Minnesota contract law. But "even the potentially serious legal error of using extrinsic evidence to interpret an unambiguous term is not enough

to vacate an award" because the panel "was arguably interpreting and applying the contract." Accordingly, the district court granted Zeidman's motion to confirm the award, denied LMC's motion to vacate the award, and awarded Zeidman $5 million. This appeal followed.

II. Discussion

The FAA "establishes a liberal federal policy favoring arbitration agreements." *Epic Sys. Corp. v. Lewis*, 584 U.S. 497, 505, 138 S. Ct. 1612, 200 L. Ed. 2d 889 (2018) (quotation omitted). "Where parties agree to arbitrate, a court cannot substitute a judicial determination for the arbitrator's decision." *Gas Aggregation Servs., Inc. v. Howard Avista Energy, LLC*, 319 F.3d 1060, 1064 (8th Cir. 2003). Deference is not unlimited. Section 10(a) of the FAA, 9 U.S.C. § 10(a)(1)-(4), sets forth statutory limits on an arbitrator's discretion, providing that an award may be vacated if the reviewing court determines (1) that "the award was procured by corruption, fraud, or undue means;" (2) "there was evident partiality or corruption"; (3) "the arbitrators were guilty of [specified types of procedural misconduct];" or (4) "the arbitrators exceeded their powers . . . ." LMC seeks vacatur of the panel's decision under § 10(a)(4), arguing the arbitration panel exceeded its authority in interpreting the parties' contract.

"[A]n arbitrator's authority is contractual. Therefore, the threshold question whether the parties to the Arbitration Agreement agreed to arbitrate a particular dispute -- the dispute's 'substantive arbitrability' -- is a

question for the court (unless the parties agreed that the arbitrator should decide arbitrability)." *Brown v. Brown-Thill*, 762 F.3d 814, 818 (8th Cir. 2014), citing *First Options of Chicago, Inc. v. Kaplan* 514 U.S. 938, 942-44, 115 S. Ct. 1920, 131 L. Ed. 2d 985 (1995). As the Supreme Court has noted, "so-called 'questions of arbitrability' . . . which include certain gateway matters, such as whether parties have a valid arbitration agreement at all or whether a concededly binding arbitration clause applies to a certain type of controversy . . . are presumptively for courts to decide." *Oxford Health Plans LLC v. Sutter*, 569 U.S. 564, 569 n.2, 133 S. Ct. 2064, 186 L. Ed. 2d 113 (2013). Here, however, substantive arbitrability is not at issue. Section 9 of the Official Rules provides that "any claim, dispute, or controversy . . . arising out of, relating to, or connected in any way with the challenge, or the breach, enforcement, interpretation, or validity of these [Rules] . . . will be resolved exclusively by final and binding arbitration." Zeidman and LMC jointly submitted to the arbitration panel the issue whether Mr. Zeidman won the Prove Mike Wrong Challenge contest, so that LMC breached its contract with Zeidman by not paying him $5 million reward.

Rather than arbitrability, LMC argues the panel "exceeded its authority" by imposing a new obligation on LMC and ignoring unambiguous contract terms. As the district court recognized, "courts are not authorized to reconsider the merits of an award even though the parties may allege that the award rests on errors of fact or on misinterpretation of the contract." *Alvey, Inc. v. Teamsters Loc. Union No. 688*, 132 F.3d 1209, 1211 (8th

Cir. 1997) (quotation omitted). "[A]s long as the arbitrator is even arguably construing or applying the [agreement] and acting within the scope of his authority, that a court is convinced he committed serious error does not suffice to overturn his decision." *Associated Elec. Co-op., Inc. v. Int'l Bhd. of Elec. Workers, Loc. No. 53*, 751 F.3d 898, 901 (8th Cir. 2014), quoting *United Paperworkers Int'l Union v. Misco, Inc.*, 484 U.S. 29, 38, 108 S. Ct. 364, 98 L. Ed. 2d 286 (1987).

However, an arbitrator may not ignore the plain language of the contract or impose his own notions of "industrial justice." *See, e.g., United Steelworkers of Am. v. Enter. Wheel & Car Corp.*, 363 U.S. 593, 597, 80 S. Ct. 1358, 4 L. Ed. 2d 1424 (1960) (an award "must 'draw its essence' from the [agreement], not merely reflect '[the panel's] own brand of industrial justice.'"), quoting *United Steelworkers of Am. v. Enter. Wheel & Car Corp.*, 363 U.S. 593, 597, 80 S. Ct. 1358, 4 L. Ed. 2d 1424 (1960). Likewise, an arbitration award may be vacated if it evidences "manifest disregard for law" -- if the panel based its decision on "some body of thought, or feeling, or policy, or law that is outside the contract." *CenterPoint Energy Res. Corp. v. Gas Workers Union, Local No. 340*, 920 F.3d 1163, 1167 (8th Cir. 2019), quoting *Ethyl Corp. v. United Steelworkers of Am.*, 768 F.2d 180, 185 (7th Cir. 1985).

In *Hoffman v. Cargill, Inc.*, which involved arbitration of a commercial dispute, we held:

> These extra-statutory standards are extremely narrow: An arbitration decision may only be

> said to be irrational where it fails to draw its essence from the agreement, and an arbitration decision only manifests disregard for the law where the arbitrators clearly identify the applicable, governing law and then proceed to ignore it.

236 F.3d 458, 462 (8th Cir. 2001); *see St. John's Mercy Med. Ctr. v. Delfino*, 414 F.3d 882, 884 (8th Cir. 2005) (an arbitration award evidences manifest disregard for the law only when "an arbitration panel cites relevant law, then proceeds to ignore it") (quotation omitted). When evaluating whether the panel exceeded its powers, we ask whether the award "draws its essence" from the Challenge agreement. *PSC Custom, LP v. United Steel, Paper & Forestry, Rubber, Mfg., Energy, Allied Indus. & Serv. Workers Int'l Union, Loc. No. 11-770*, 756 F.3d 627, 630 (2014).

As the arbitration panel recognized, under Minnesota law when a written contract is unambiguous, the intent of the parties is to be determined from the plain language of the contract alone. *See Travertine Corp. v. Lexington-Silverwood, Ltd. P'ship*, 683 N.W.2d 267, 271 (Minn. 2004); *Alpha Real Est. Co. of Rochester v. Delta Dental Plan of Minn.*, 664 N.W.2d 303, 312-13 (Minn. 2003). Our decisions reviewing arbitration awards adhere to these principles. *See Trailmobile Trailer, LLC v. Int'l Union of Elec., Elec., Salaried, Mach. & Furniture Workers*, 223 F.3d 744, 747 (8th Cir. 2000) ("the arbitrator may not disregard or modify unambiguous contract provisions"); *Excel Corp. v. United Food & Com. Workers*, 102 F.3d 1464, 1468 (8th

Cir. 1996) ("The arbitrator's reliance on parol[] evidence was erroneous because the plain language in the applicable portions of the CBA is clear and unambiguous."); *Keebler Co. v. Milk Drivers & Dairy Emps. Union, Loc. No. 471*, 80 F.3d 284, 288 n.4 (8th Cir. 1996) ("An arbitrator may not ignore the plain language of the contract because that would, in effect, amend the contract."); *Inter-City Gas Corp. v. Boise Cascade Corp.*, 845 F.2d 184, 187 (8th Cir. 1988) ("if the arbitrator interprets unambiguous language in any way different from its plain meaning, the arbitrator amends or alters the agreement and acts without authority") (cleaned up).

LMC argues the panel exceeded its authority (committed legal error) when it interpreted the Official Rules to "require the data not merely be about the election, but must be from the election process itself," rejecting LMC's contention that a winning contestant must prove that the data provided did not "reflect information *related to*" or was not "*reflective of*" the election. LMC reasons that Official Rule 8 provides that "any dispute arising under . . . will be governed by the internal laws of the State of Minnesota." The parties agreed that the Rules are unambiguous, and Minnesota law provides that, in interpreting unambiguous contracts, the intent of the parties must be determined from the language of the contract alone without resort to extrinsic evidence. We agree.

A general choice of law provision does not modify the Federal Arbitration Act's limited standard for judicial review of arbitration awards. *See UHC Mgmt. Co. v.*

Computer Sciences Corp., 148 F.3d 992, 998 (8th Cir. 1998). But here, the panel explicitly agreed with the parties that the relevant contract terms were unambiguous, recognized that Minnesota law governed and therefore barred the use of extrinsic evidence to interpret the unambiguous provisions, and then used extrinsic evidence to rule that Zeidman won the Challenge Contest because the data LMC provided contestants was not "PCAP data." Under our controlling decisions, the panel exceeded its authority because it "clearly identif[ied] the applicable, governing law and then proceed[ed] to ignore it." *Hoffman*, 236 F.3d at 462.

Purporting to be interpreting the Official Rules, the panel determined, though "packet capture" and "PCAP data" are not mentioned in the Official Rules, that "if data is not PCAP data, it is not from the election, and it therefore cannot be 'related to the November 2020 election.'" It based this conclusion almost entirely on extrinsic evidence -- Lindell's pre-Challenge publicity describing the data and the views of experts who had analyzed the data; LMC's advertising of the Challenge Contest; that the software engineers retained to review the data expected it to be packet capture data; and Zeidman's report opining that the data provided "do not contain any information related to the November 2020 election." In the panel's view, LMC's contention that the term "relating to the election" should be broadly construed "would be unreasonable" because then "the Contest would not really be a contest at all." Whatever one might think of the logic of the panel's reasoning, it is contrary to Minnesota law. When a contract is unambiguous, "evidence of the

circumstances surrounding the [agreement's] negotiation and formation" is extrinsic and may not be considered. *Minn. Vikings Football Stadium, LLC v. Wells Fargo Bank, Nat'l Ass'n*, 193 F. Supp. 3d 1002, 1012 n.5 (D. Minn. 2016).

From the four corners of the Challenge contract as defined by the Official Rules, there is no way to read "information *related to* the November 2020 election" as meaning only information that is "PCAP data." The panel thus did more than construe an ambiguous contract term. Adding a form-of-data requirement imposed a new obligation upon LMC, effectively "amending the [contract]." *Keebler*, 80 F.3d at 288. Fair or not, agreed-to contract terms may not be modified by the panel or by this court. On this record, "[t]he conclusion is inescapable that the panel simply imposed its own conception of sound policy." *Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp.*, 559 U.S. 662, 675, 130 S. Ct. 1758, 176 L. Ed. 2d 605 (2010).

For the foregoing reasons, the judgment of the district court is reversed and the case is remanded with directions either to grant LMC's Motion to Vacate Arbitration Award or for further proceedings not inconsistent with this opinion.

APPENDIX B — MEMORANDUM OPINION AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MINNESOTA, FILED FEBRUARY 21, 2024

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Civil No. 23-1433 (JRT/DJF)

ROBERT ZEIDMAN,

Plaintiff,

v.

LINDELL MANAGEMENT LLC,

Defendant.

MEMORANDUM OPINION AND ORDER CONFIRMING ARBITRATION AWARD

Plaintiff Robert Zeidman responded to Defendant Lindell Management LLC's ("Lindell LLC") "Prove Mike Wrong Challenge" ("Challenge") concerning November 2020 election fraud allegations. Zeidman presented his findings to the Challenge judges and upon receipt of an unfavorable outcome, he filed an arbitration demand. The arbitration panel ("panel") unanimously found Zeidman won the Challenge and ordered Lindell LLC to pay Zeidman the $5 million reward. Both parties have asked the Court to review the arbitration award. Because the panel arguably interpreted and applied the contract, the Court will confirm the arbitration award and deny Lindell LLC's motion to vacate the award.

Appendix B

BACKGROUND

I. FACTS

Zeidman has 45 years of software development experience. (Decl. David E. Schlesinger ("Schlesinger Decl.") ¶ 3, Ex. B ("Arb. Award") at 3, May 19, 2023, Docket No. 2-2.)[1] Lindell LLC is a Minnesota LLC owned and operated by Michael Lindell. (*Id.*) Lindell is widely known to have disputed the 2020 election results. (*Id.* at 3-4.) Under suspicions of Chinese involvement in the 2020 presidential election, Lindell LLC hosted a Cyber Symposium which included a "Prove Mike Wrong Challenge." (*Id.* at 3-4.) A participant who proved "that this cyber data is not valid data from the November Election" would be awarded $5 million. (*Id.* at 5.)

Zeidman signed the Challenge rules, which included mandatory arbitration. (*Id.* at 6; Schlesinger Decl. ¶ 2, Ex. A ("Challenge Official Rules") ¶ 9, May 19, 2023, Docket No. 2-1.) The relevant Challenge rules stated:

> 1. Overview. Lindell Management, LLC. ("Lindell [LLC]") has created a Challenge where participants will participate in a challenge to prove that the data Lindell [LLC] provides, and represents reflects information from the November 2020

1. The parties agreed that the record for the Court's review is the uncontested factual record from the arbitration proceedings. (Joint Stipulation Factual R. at 1, July 31, 2023, Docket No. 21.)

election, unequivocally does NOT reflect information related to the November 2020 election (the "Challenge"). ...

5. Participants must submit all of their evidence in writing to a three member panel selected by Lindell [LLC] who will determine whether the submission proves to a 100% degree of certainty that the data shown at the Symposium is not reflective of November 2020 election data.

6. Winners. The winners will be determined on August 12, 2021 by 8:00 pm CDT. The three-member panel selected by Lindell [LLC] will identify the winners based on their professional opinion that the submission proves to a 100% degree of certainty that the data shown at the Symposium is not reflective of November 2020 election data. ...

7. ... In the event there is an alleged or actual ambiguity, discrepancy or inconsistency between disclosures or other statements contained in any Challenge-related materials and/or these Official Rules (including any alleged discrepancy or inconsistency in these Official Rules), it will be resolved in Lindell [LLC]'s sole discretion. ...

(Arb. Award at 6 (omission in original).)

Appendix B

Before the Challenge, Lindell LLC had a group of software professionals review the data. (*Id.* at 7.) The format of the data surprised the professionals as they expected it to be packet capture data, or PCAP files. (*Id.*) "Most or all" of the data originated from Dennis Montgomery who claimed to have captured the data from internet traffic. (*Id.* at 8.) Data extracted in real time from the internet is expected to be packet capture data or PCAP files. (*Id.*)

Lindell LLC provided Zeidman with 11 files, only a portion of the total data. (*Id.* at 9-10.) After reviewing the files, Zeidman presented a 15-page report explaining that each file he received lacked packet capture data. (*Id.* at 10.) After considering Zeidman's response, the Challenge judges determined he had not provided enough information to unequivocally prove the data was not election data. (*Id.* at 11.) In response, Zeidman filed an arbitration demand. (*Id.*)

The panel limited its decision to whether Zeidman won the Challenge, whether the Challenge rules were unconscionable, and whether Lindell LLC violated the Minnesota Consumer Fraud Act. (*Id.*) The panel further limited itself to the 11 files Zeidman analyzed. (*Id.* at 11.)

The panel determined Minnesota contract law applied to the legal issues. (*Id.*) The panel began by interpreting two phrases: (1) "prove that the data Lindell [LLC] provides, and represents reflects ***information from the November 2020 election***, unequivocally does NOT reflect information related to the November 2020 election," and

(2) "whether the submission proves to a 100% degree of certainty that the data shown at the Symposium is not reflective of ***November 2020 election data***." (*Id.* at 12-13 (emphasis in Arb. Award).)

The parties and the panel agreed that the language in the Challenge rules was unambiguous, and thus interpretation required no parole or extrinsic evidence. (*Id.* at 13, 15.) The panel determined that "from the election" unambiguously meant data specifically "from the election process itself," rather than any data broadly "related to" or "about" the election as Lindell LLC argued. (*Id.* at 13-14.) While unambiguous contract terms are to be given their plain meaning, the panel explained that the meaning still must be reasonable in the context of the entire contract, construed with the parties' intent in mind, and the panel feared the reading proposed by Lindell LLC would render the Challenge unwinnable and thus unreasonable. (*Id.* at 13-15.) The panel also concluded that the only possible election data would be packet capture data, so if the participant concluded it was not that type of data, they would have proven it cannot be "related to the November 2020 election." (*Id.* at 14.)

With the meanings of the unambiguous terms established, the panel then looked at Zeidman's proof for each file, his expert support, and the responses of Lindell LLC's experts. (*Id.*) The panel concluded that Zeidman proved that each file did not include packet capture data and thus was not related to the November 2020 election, so he had satisfied the Challenge rules, and was entitled to the $5 million reward. (*Id.* at 15-22.) The panel then disposed

of the unconscionability and Minnesota Consumer Fraud Act claims. (*Id.* at 23.)

II. PROCEDURAL HISTORY

Lindell LLC filed a motion in state court to vacate the arbitration award. (*See* Order at 1, Jun. 22, 2023, Docket No. 1.) Zeidman filed this current action to confirm the arbitration award. (Pet., May 19, 2023, Docket No. 1.) The state action was removed to federal court and consolidated with this action. (*See* Order at 2-3.)

DISCUSSION

I. STANDARD OF REVIEW

A court's review of an arbitration award is very limited. *Lee v. Chica*, 983 F.2d 883, 885 (8th Cir. 1993). Where parties agree to arbitrate, a court cannot substitute a judicial determination for the arbitrator's decision. *United Paperworkers Int'l Union, AFL-CIO v. Misco, Inc.*, 484 U.S. 29, 40-41 n.10, 108 S. Ct. 364, 98 L. Ed. 2d 286 (1987). Courts may not review the merits of an arbitration award "even though the parties may allege that the award rests on errors of fact or on misinterpretation of the contract." *Bureau of Engraving, Inc. v. Graphic Commc'n Int'l Union, Loc. 1B*, 284 F.3d 821, 824 (8th Cir. 2002) (quoting *Misco*, 484 U.S. at 36). Even if the Court is convinced that the arbitrator committed serious factual or legal error, so "long as the arbitrator is even arguably construing or applying the contract and acting within the scope of his authority," arbitration awards must be confirmed. *Id.* (quoting *Misco*, 484 U.S. at 38).

Although extremely limited, arbitration awards are not entirely free from judicial review. The Federal Arbitration Act ("FAA") provides limited grounds on which an arbitration award may be vacated. 9 U.S.C. § 10. The FAA requires that an arbitration be upheld unless it is obtained by "corruption, fraud, or undue means," where there is "evident partiality or corruption in the arbitrators," where there was misconduct by the arbitrators, or where the arbitrators exceeded their powers. *Id.* §§ 10(a)(1)-(4). The Eighth Circuit has held that beyond the grounds provided in the FAA, an arbitration award will be vacated only where it is "completely irrational or evidences a manifest disregard for the law." *Hoffman v. Cargill, Inc.*, 236 F.3d 458, 461 (8th Cir. 2001) (citation omitted).

II. ANALYSIS

Lindell LLC challenges the arbitration award on only one ground; that the panel acted outside the scope of its authority by modifying the Challenge rules.

A. Contract Interpretation Under Minnesota Law

The arbitration clause of the Challenge rules allowed the panel to interpret the contract and apply it to Zeidman's performance. The primary goal in interpreting a contract is "to determine and enforce the intent of the parties." *Staffing Specifix, Inc. v. TempWorks Mgmt. Servs., Inc.*, 913 N.W.2d 687, 692 (Minn. 2018) (quotation omitted). Whether a contract is ambiguous, and the interpretation of an unambiguous term are questions of law. *Denelsbeck v. Wells Fargo & Co.*, 666 N.W.2d

339, 346 (Minn. 2003). "A contract is ambiguous only if its language is reasonably susceptible to more than one interpretation." *Winthrop Res. Corp. v. Sabert Corp.*, 567 F. Supp. 2d 1084, 1091 (D. Minn. 2008) (citing *Art Goebel, Inc. v. N. Suburban Agencies, Inc.*, 567 N.W.2d 511, 515 (Minn. 1997)). The interpretation of an ambiguous term is a factual question. *See Denelsbeck*, 666 N.W.2d at 346. Because the parties and the panel agree that the Challenge rules are unambiguous, the interpretation is a matter of law for the panel to decide.

Unambiguous terms in a contract are to be given their plain and ordinary meaning. *Minneapolis Pub. Hous. Auth. v. Lor*, 591 N.W.2d 700, 704 (Minn. 1999). The contract terms are also to be interpreted as a whole, within the context of the entire contract, to meet the parties' intent and harmonize all contract provisions. *Trebelhorn v. Agrawal*, 905 N.W.2d 237, 242 (Minn. Ct. App. 2017). Unambiguous provisions cannot be rewritten, modified, or limited in effect by a specific construction. *Storms, Inc. v. Mathy Constr. Co.*, 883 N.W.2d 772, 776 (Minn. 2016) (citation omitted). Additionally, extrinsic evidence cannot be used when the contract is unambiguous. *Trebelhorn*, 905 N.W.2d at 243. When the contract term is unambiguous, the parties' intent must be determined from the "language of the written contract alone." *Minnesota Vikings Football Stadium, LLC v. Wells Fargo Bank, Nat'l Ass'n*, 193 F. Supp. 3d 1002, 1011 (D. Minn. 2016) (citation omitted).

B. Contract Modification

Lindell LLC argues the panel modified the Challenge rules in two ways: inputting the requirement of packet capture data and reversing the burden such that it rested with Lindell LLC. Arbitrators are not entitled to deference when their interpretation does not "draw its essence" from the contract such that its interpretation of an unambiguous term is "expressly contrary to the terms of the agreement." *United States Postal Serv. v. Am. Postal Workers Union, AFL-CIO*, 907 F. Supp. 2d 986, 993-94 (D. Minn. 2012) (citation omitted).

i. Language Modification

The panel began its analysis of the Challenge rules by accepting the proposition of both parties that the language was unambiguous and thus could be interpreted without the use of extrinsic evidence. When it identified the provisions requiring interpretation, its focus was less on the term "related to" and more on the overall concept of "information from the November 2020 election" and "November 2020 election data."

The panel's conclusion that the contract referred to data specifically from the election process considered the fact that anything even remotely connected to the election, as Lindell LLC proposed, could include newspaper articles and broadcast news which would effectively negate the purpose of having a challenge to begin with. The Court finds this step in the interpretation to logically honor

and harmonize the contract. Thus, the panel did not modify the contract or exceed its scope by imposing this interpretation.

The panel took its interpretation a step further by finding packet capture data was the only possible type of election data. The panel justified this finding with the fact that the data was captured from the internet and the only possible way to capture data live from the internet is through packets. The panel cited to the statement by Dr. Douglas Frank, one of Lindell LLC's experts and a Challenge judge, and statements by Lindell himself that claimed the data would be in packet form and if it was not in packet form, it could not be election data. The panel also referenced the source of "most or all" of the data, Dennis Montgomery, who "captured the data from internet traffic." (Arb. Award at 7.) All this information together led the panel to the conclusion that if the data were to relate to the election, it would have to be packet capture data and thus proof that the data was in any other form proved it was not election data.

The Court tracks the path interpreting "election data" but finds the panel loses focus on its discussion of packet capture data. Admittedly, the panel was tasked with the difficult job of interpreting a poorly written contract, but in evaluating the same information, the Court finds it to be quite a leap that the only possible data that could constitute "election data" would be packet capture data.

However, the Court's potential disagreement with the outcome is not the standard upon which to review an arbitration award. The Court must only decide if the

panel was arguably applying the contract. *Horton, Inc. v. NSK Corp., Inc.*, 544 F. Supp. 2d 817, 823 (D. Minn. 2008). There are two explanations for the panel's outcome that align with the legal standard of review. First, it is possible that the insertion of packet capture data was simply an application of the law to the facts in this case. More likely, although the panel and parties agreed the language was unambiguous, the panel used extrinsic evidence.

Under Minnesota contract law, in interpreting unambiguous terms, the use of extrinsic evidence is not permitted. *Trebelhorn*, 905 N.W.2d at 243. But even a serious legal error is not a reason to vacate the award. *Horton*, 544 F. Supp. 2d at 823. Because the panel was arguably interpreting and applying the contract, even the potentially serious legal error of using extrinsic evidence to interpret an unambiguous term is not enough to vacate the award. As such, the Court will not vacate the award despite the fact that it may have reached a different outcome if reviewing the case *de novo*.[2]

ii. Burden Shift

Lindell LLC's burden shift argument stems from the panel's interpretation of the language stating that Challenge participants must "prove that the data Lindell [LLC] provides, and represents reflects ***information from the November 2020 election***, unequivocally does

2. To be clear, the Court's disagreement with the panel is limited to the technical matter of contract interpretation. It will not entertain any unproven theories of election fraud or interference and its position here should not be understood as even the slightest endorsement of Lindell's broader election related claims.

NOT reflect information related to the November 2020 election." (Arb. Award at 12-13 (emphasis in Arb. Award).) The dispute is over whether the first clause can be read into the Challenge rules or if it is merely a predecessor statement to contextualize what the participants must do.

Lindell LLC argues that the panel's decision that Zeidman need only insert doubt about the data Lindell LLC presented is not the same as proving that the data is unequivocally not from the election thus shifting the burden and modifying the contract. Lindell LLC's argument may be a compelling alternative interpretation but the standard for reviewing an arbitration award does not weigh competing interpretations. The Court is not at liberty to review the outcome of an arbitration award simply because one party believes it to be incorrect. Retrial of the issues is not within the purview of the Court. *St. Mary's Med. Ctr. v. Int'l Union of Operating Eng'rs, Local 70*, No. 11-1641, 2013 U.S. Dist. LEXIS 89445, 2013 WL 3270388, at *2 (D. Minn. June 26, 2013) (citing *Oxford Health Plans LLC v. Sutter*, 569 U.S. 564, 569, 133 S. Ct. 2064, 186 L. Ed. 2d 113 (2013)). Thus, Lindell LLC's burden shifting argument is insufficient to vacate the arbitration award when the panel's result conforms with its authority to interpret the contract.

CONCLUSION

The Court's responsibility in reviewing an arbitration award is not to reevaluate the merits but rather ensure that the panel acted appropriately. Lindell LLC's only basis for Court action was that the panel acted outside

the scope of its authority in issuing the award. Even though the Court may have reached a different outcome given an independent initial review of the information, the Court fails to identify evidence that the panel exceeded its authority. Under the Court's narrow review, it will confirm the arbitration award.

ORDER

Based on the foregoing, and all the files, records, and proceedings herein, **IT IS HEREBY ORDERED** that:

1. Plaintiff's Motion to Confirm Arbitration Award [Docket No. 22] is **GRANTED**.

2. Defendant's Motion to Vacate Arbitration Award [Docket No. 35] is **DENIED**.

3. Plaintiff is awarded $5 million plus post-judgment interest beginning April 19, 2023, to be paid within 30 days of issuance of this Order, per the Arbitration Award.

LET JUDGMENT BE ENTERED ACCORDINGLY.

DATED: February 21, 2024
at Minneapolis, Minnesota.

/s/ John R. Tunheim
JOHN R. TUNHEIM
United States District Judge

APPENDIX C — JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MINNESOTA, FILED FEBRUARY 22, 2024

UNITED STATES DISTRICT COURT
District of Minnesota

Case Number: 23-cv-1433 JRT/DJF

ROBERT ZEIDMAN,

Petitioner(s),

v.

LINDELL MANAGEMENT LLC,

Respondent(s).

JUDGMENT IN A CIVIL CASE

☐ **Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

☒ **Decision by Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED THAT:

1. Plaintiff's Motion to Confirm Arbitration Award [Docket No. 22] is **GRANTED.**

2. Defendant's Motion to Vacate Arbitration Award [Docket No. 35] is **DENIED.**

3. Plaintiff is awarded $5 million plus post-judgment interest beginning April 19, 2023, to be paid within 30 days of issuance of this Order, per the Arbitration Award.

Date: 2/22/2024 KATE M. FOGARTY, CLERK

APPENDIX D — DECISION AND AWARD OF THE AMERICAN ARBITRATION ASSOCIATION, COMMERCIAL ARBITRATION TRIBUNAL, FILED APRIL 19, 2023

American Arbitration Association
International Center for Dispute Resolution

American Arbitration Association
Commercial Arbitration Tribunal

In the Matter of the Arbitration between

Case Number: 01-21-0017-1862

ROBERT ZEIDMAN,

Claimant,

v.

LINDELL MANAGEMENT LLC,

Respondent.

Reasoned Decision and Final Award

The undersigned Panel of Arbitrators ("Panel") have been designated in accordance with the arbitration clause in paragraph 9 of the parties' August 10, 2021, Agreement. An evidentiary hearing was held beginning on January 17 and concluding January 19, 2023, in Minneapolis, Minnesota before Arbitrators David Allgeyer, Gary Benton, and David Hashmall. The parties submitted post-hearing briefs and arguments.

Appendix D

Brian Glasser, Cary Joshi, and Lori Bullock, Bailey & Glasser, LLP, appeared for Claimant. Alec Beck and Andrew Parker, Parker Daniels & Kibort, LLC appeared for Respondent.

The Panel has determined pursuant to AAA Commercial Arbitration Rule R-46 (2013) that a Reasoned Award is appropriate in this case. Thus, having been duly sworn and heard the proof and allegations of the parties, the Panel makes the following Reasoned Decision and issues the following Final Award.

Background

Claimant Robert Zeidman ("Mr. Zeidman") initiated this arbitration against Respondent Lindell Management LLC ("Lindell LLC"), claiming he won the Prove Mike Wrong Challenge contest ("the Contest") in August of 2021, entitling him to the contest prize of $5 million. He also claims that, if the Contest rules are interpreted in the way Lindell LLC interprets them, they are unconscionable. Finally, he also claims that Lindell LLC violated the Minnesota Consumer Fraud Act, Minn. Stat. § 325F.69 (1988) by, among other things, creating a contest knowing it would not declare a winner and failing to provide 2020 election data as promised. Lindell LLC asserts that Mr. Zeidman simply failed to win the Contest under the Contest rules and denies any fraud.

The Parties

Mr. Zeidman has a master's degree in electrical engineering, an undergraduate degree in physics, and over

45 years of experience in software development. He holds over two dozen patents in computer software, hardware, communications, and similar fields. He has served on many occasions as an expert witness in intellectual property cases involving computer software and hardware.

Lindell LLC is owned and operated by Michael Lindell ("Mr. Lindell"). Mr. Lindell is a Minnesota-based businessman and political activist. He has been involved in issues involving election security and with litigation involving election security.

The Symposium and Contest

Mr. Lindell claimed he possessed a great deal of data, which he was advised had been captured from the internet during voting in the November 20, 2020 U.S. election. He says he believes that the data shows that China had interfered with the November 2020 election in several states.

He repeatedly stated this belief in his appearances on news networks, internet news sources, and on his streaming channel, Frank Speech. Mr. Lindell readily conceded at the hearing he does not have the ability to analyze software data and says that he therefore relied on experts to analyze the data. He says the experts assured him that the data was real and proved China's interference with the election.

Mr. Lindell testified that he was frustrated that his statements about China's election interference were not being taken seriously, and so decided to hold a "Cyber

Symposium." The purpose of the symposium was to provide the data he had to prove China's interference in the November 2020 election. He invited the press, politicians, and cyber experts to attend the symposium, which took place in Sioux Falls, South Dakota, on August 10 and 11, 2021.

Publications promoting the event said that he would reveal "cyber data and packet captures from the 2020 November election." These packet captures and data, he testified, are like watching a movie of the election data in real time. He said that, to cyber experts who understand how to read this data – much as someone can read a foreign language – this data proves interference with the election. Among other things, it includes time stamps and internet addresses of the sender and receiver that can be checked by cyber experts to verify its authenticity. In an interview in June of 2021, he said that "when we show them these packet captures, we're gonna just give them out to all them cyber guys so they can have their own guy go, 'How many votes were flipped here in Tampa?' Here you go. Boom." He made other statements to the same effect.

As part of the Cyber Symposium, Lindell LLC also announced a contest called the "Prove Mike Wrong Challenge" ("the Contest"). The announcement said that the participants "have one goal. Find proof that this cyber data is not valid data from the November Election. For the people who find the evidence, 5 million is their reward."

At the hearing, Mr. Lindell reiterated that the data he had was like a movie of the election data, if one knows how to translate it. He further noted that it couldn't be

altered without cyber experts being able to detect the alteration. That, he testified, was the data to be presented at the Contest.

Mr. Zeidman Enters the Contest

Mr. Zeidman learned of the Prove Mike Wrong Challenge. He testified that he was interested in the claims that there had been interference in the 2020 election and wanted access to the data as promised to see "history in the making, perhaps to see an election overturned." Mr. Zeidman told his friends that he was unlikely to win because Mr. Lindell would not offer a $5 million prize if Mr. Lindell had not had his own experts vet all the data to be presented.

He secured an invitation to the symposium, having been vetted by Lindell LLC and its consultants as having the right credentials. Entering the Contest was free, so Mr. Zeidman decided to do so. To enter, participants were required to sign the Contest rules, which had been provided to Mr. Zeidman after he had traveled to Sioux Falls. He signed the rules.

The Contest Rules

The challenge presented by the Contest rules was, essentially, to prove the data presented was not "from the November 2020 election." Specifically, the rules provided:

> 1. Overview. Lindell Management, LLC. ("Lindell") has created a contest where participants will participate in a challenge

> to prove that the data Lindell provides, and represents reflects information from the November 2020 election, unequivocally does NOT reflect information related to the November 2020 election (the "Challenge") . . .
>
> 5. Participants must submit all of their evidence in writing to a three member panel selected by Lindell who will determine whether the submission proves to a 100% degree of certainty that the data shown at the Symposium is not reflective of November 2020 election data.
>
> 6. Winners. The winners will be determined on August 12, 2021 by 8:00 pm CDT. The three-member panel selected by Lindell will identify the winners based on their professional opinion that the submission proves to a 100% degree of certainty that the data shown at the Symposium is not reflective of November 2020 election data. . . .
>
> 7. . . . In the event there is an alleged or actual ambiguity, discrepancy or inconsistency between disclosures or other statements contained in any Contest-related materials and/or these Official Rules (including any alleged discrepancy or inconsistency in these Official Rules), it will be resolved in Lindell's sole discretion. . . .

Thus, the rules provided that, to win the Contest, a participant must prove "that the data Lindell provides, and represents reflects information ***from the November***

2020 election, unequivocally does NOT reflect information related to the November 2020 election . . . ," in one formulation. (Emphasis added.) In a later provision, the rules required that a participant provide a written submission that "proves to a 100% degree of certainty that the data shown at the Symposium is not reflective of **November 2020 election data**." (Emphasis added.)

The Contest rules focused on the authenticity of the data rather than on what the data did or did not prove about any interference by China. Per Lindell LLC, this was done because there were multiple terabytes of data, and it would take months to analyze and to come to conclusions about interference in the election. Mr. Lindell testified he was convinced by the cyber experts he hired that he could not lose the contest because the data he had been provided was genuine election data.

The Red Team Prepares the Data

Lindell LLC assembled the Red Team, a group of software professionals, to review the data that would be presented to Contest participants. Members of the Red Team protested that the data was not at all what they expected. They had expected to be provided with packet capture data that could be examined and authenticated to evaluate whether the data files provided were genuine or had been tampered with or altered.

Packet capture data relates to the way computer networks send data. Data is sent in the form of packets. Packets are small packages of binary data, i.e. 1s and 0s. They include information that acts like an envelope,

specifying the IP address of the machine that sent the data, the IP address of the recipient, and the dates of sending and receipt. Included within the packet is the content to be sent, analogous to the letter or other content in an envelope. That could include text, pictures, or the like. To facilitate network traffic, many packets must be sent for one message. These packets are then reassembled on the recipient's computer or other device according to information that accompanies the packet to facilitate reassembly. The content may be encrypted. If so, it must be decrypted. The 1s and 0s must be translated for the data to be readable by humans. Packet data is typically stored in PCAP format. Data that is extracted from the internet in real time would be expected to be in PCAP format. This is so because, as Dr. Douglas Frank, a cyber expert relied on by Mr. Lindell and a Contest judge explained, "everything on the Internet is in packets. So when you capture it, it's a packet capture."

The alleged source of most or all the data Lindell LLC received and presented at the Contest was Dennis Montgomery. Allegedly, Mr. Montgomery claimed to have captured the data from internet traffic using software tools called Hammer and Scorecard.

Josh Merritt, a member of the Red Team, explained that none of the Red Team cyber experts were able to open the files and obtain packets from the data Lindell LLC provided.[1] Mr. Merritt, in fact, testified that he had

1. There was testimony at the hearing that Mr. Merritt had hoped to win the Contest himself, although he was ineligible to enter because he was a member of the Red Team. He was later

advised Mr. Lindell to call the Contest off. Mr. Douglas Gould, Lindell LLC's expert witness, who attended the Cyber Symposium, also expected to see packet captures.

Dr. Frank was not a member of the Red Team, but as previously mentioned, was a cyber expert relied on by Mr. Lindell and served as a Contest judge. He explained how the data was generally prepared for the Contest participants. First, he said, there was too much data to provide it all to participants. So, they were given a "slice" of the data. Second, he testified that he believed they needed to be sure to avoid providing sensitive private information, which could include passwords and sign-ins. That could be illegal. Third, he said that they put a "simple cipher" in place for at least one file to "separate the men from the boys." That is, to have participants demonstrate their "sleuthing" skills. Participants would have to find the cypher and de-cypher the data, thus demonstrating their skill. Fourth, some data was presented in encrypted form that apparently could be opened only using cExtractor, a software tool designed for that purpose. A video excerpt of someone using cExtractor was provided to participants, without explanation. cExtractor was not provided as part of the Contest data, although it may have been provided

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directed to leave the Cyber Symposium because he was suspected of leaking information to the press. Allegations of Mr. Merritt's wrongdoing, apparently presented to undermine Mr. Merritt's credibility, were all based on second-hand information. His testimony regarding the data expected is also consistent with the testimony of Todd Sanders, a Contest judge, and Mr. Gould, both of whom also expected packet data and were disappointed Lindell LLC did not provide such data.

in a group of hundreds of files later given to participants by Mr. Merritt.

Mr. Zeidman's Findings and Report

On the first day of the Contest, Mr. Zeidman was provided with seven files. It is unclear who created or named these files. The files were:

1. cExtract.mp4
2. Chinese_SourceIP_HEX.txt
3. Election Process Taxonomy.pdf
4. FinalReult_2020_HEX.txt
5. rnx-000001.bin
6. Targets_HEX.txt
7. Target_MachineID_HEX.tx

On the second day of the Contest, Mr. Zeidman was given four more files:

1) mx-000123.csv
2) Summary.rtf
3) rnx-000002.bin
4) rnx-000003.bin

After receiving and analyzing the files, Mr. Zeidman believed he would be able to win the Contest. He wrote and presented a 15-page report explaining his conclusion that "the data Lindell provides, and represents reflects information from the November 2020 election, unequivocally does not contain packet data of any kind and do not contain any information related to the November 2020 election." The report also contains exhibits of printouts and the like from the data in support of his conclusions.

Judging the Report

As noted, the Contest rules provided that Contest winners would be determined on August 12, 2021, by 8:00 pm CDT by a three-member panel selected by Lindell LLC. The Contest panel consisted of Dr. Frank, Mr. Sanders, and Kurt Olsen. Dr. Frank and Mr. Sanders have educational, technical, and practical backgrounds relating to software security. Mr. Olsen is Lindell LLC's attorney. He says he wrote the Contest rules with input from cyber experts. He was included in the Contest panel to provide a legal perspective.

Dr. Frank and Mr. Sanders said they gave serious consideration to Mr. Zeidman's report, but concluded Mr. Zeidman had not won the Contest. Dr. Frank authored a report sometime after the decision on the Contest, perhaps after Mr. Zeidman filed his arbitration demand. Mr. Sanders provided notes on his decision, which were provided to Mr. Olsen and edited for submission.

Appendix D

Disappointed in the Contest panel's failure to declare him a winner and award him $5 million, Mr. Zeidman filed this arbitration.

Discussion

The Issues for Decision

The issues presented to the Panel for decision are narrow. The first is whether Mr. Zeidman won the Prove Mike Wrong Challenge contest, so that Lindell LLC breached its contract with him by not paying him $ 5 million. The second is whether the Contest rules were unconscionable. The third is whether Lindell LLC violated the Minnesota Consumer Fraud Act by, among other things, creating a contest knowing it would not declare a winner and failing to provide 2020 election data as promised.

The Panel was not asked to decide whether China interfered in the 2020 election. Nor was the Panel asked to decide whether Lindell LLC possessed data that proved such interference, or even whether Lindell LLC had election data in its possession. The focus of the decision is on the 11 files provided to Mr. Zeidman in the context of the Contest rules.

The Law

Minnesota law applies to the legal issues in this dispute. Contest rules, ¶ 8

Appendix D

A. The Breach of Contract Claim

Contests and their rules are evaluated under general contract principles. *Rogalski v. Poker League*, No. A10-1067, at 3 – 4 (Minn. Ct. App. Feb. 22, 2011); *see Mooney v. Daily News Co.*, 116 Minn. 212 (Minn. 1911). A contract was formed when Mr. Zeidman entered the Contest. *See Rogalski*, No. A10-1067 at 4.

To succeed on his breach of contract claim, Mr. Zeidman must prove that (1) a contract was formed; (2) he performed any conditions precedent; and (3) Lindell LLC breached the contract. *Commercial Assocs., Inc. v. Work Connection, Inc.*, 712 N.W.2d 772, 782 (Minn. Ct. App. 2006).

Interpretation of the Agreement / Contest rules

To decide whether Lindell LLC breached its agreement with Mr. Zeidman by not declaring him a Contest winner and paying him $5 million, the Panel must first interpret the terms of the contract contained in the Contest rules. At issue are two key phrases: (1) "prove that the data Lindell provides, and represents reflects ***information from the November 2020 election***, unequivocally does NOT reflect information related to the November 2020 election," and (2) "whether the submission proves to a 100% degree of certainty that the data shown at the Symposium is not reflective of ***November 2020 election data***." (Emphasis added.)

The intent of the parties is determined from the plain language of the written contract, so long as the agreement

is clear and unambiguous. *Travertine Corp. v. Lexington-Silverwood*, 683 N.W.2d 267, 271 (Minn. 2004). The Panel should consider extrinsic evidence only if the document itself is ambiguous. *Blattner v. Forster*, 322 N.W.2d 319, 321 (Minn. 1982).

"Words or phrases found in a contract should not be interpreted out of context, but rather by a process of synthesis in which the words and phrases are given a meaning in accordance with the obvious purpose of the contract as a whole." *Cement, Sand & Gravel Co. v. Agricultural Ins. Co.*, 225 Minn. 211, 216, 30 N.W.2d 341, 345 (Minn. 1947); *Clapp v. Haferman Water Conditioning, Inc.*, 380 N.W.2d 838, 841 (Minn. Ct. App. 1986). A contract's terms should not be construed to lead to a harsh or absurd result. *Brookfield Trace Ctr., Inc. v. County of Ramsey*, 584 N.W.2d 390, 394 (Minn. 1998).

Both parties contend that the rules are unambiguous, and no parol evidence is required for contract interpretation. Lindell LLC argues that one need only consult a dictionary to interpret the contract. "Relating to," according to Webster's Dictionary means, "connected to" or "about." It argues that the data need only be connected to or about the election in some way. For example, it need only reference the candidates' names or polling places.

Mr. Zeidman argues that definition is far too broad and is "neither reasonable nor consistent with Mr. Lindell's claims about the data."

The Panel has determined that the Contest rules are directed to data "from the election" also referred to as

"election data." The Contest did not require participants to disprove election interference. Thus, the contestants' task was to prove the data presented to them was not valid data from the November 2020 election.

As noted above, Mr. Lindell and his cyber-expert witnesses admitted that data to be provided from the election was to be in the form of packet data or PCAP data.[2] This is important, as Mr. Lindell explained, because such data can be examined by experts based on time stamps, addresses and other information from the packet to determine whether it was genuine.

Defining data as being merely "about the election" or "relating to the election" ignores the Contest rules' reference to data "from the election" and reference to "election data." These terms require the data not merely be about the election, but must be from the election process itself. As admitted by Mr. Lindell, this would be packet capture data. Thus, if data is not PCAP data, it is not from the election, and it therefore cannot be "related to the November 2020 election."

In fact, it would be unreasonable to conclude that any data about the election is "election data." Newspaper

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2. Lindell LLC emphasized at the closing argument that Mr. Zeidman testified that election data could be in another form than PCAP data. Of course, that could be true of election data that was not captured from the internet. It is, however, undisputed that election data that is captured from the internet, which Mr. Lindell said he would provide, would be in packets. This is because all data delivered over the internet is in the form of packets, as Dr. Frank explained.

articles and broadcast news about the election are transmitted as data over the internet, for example. It is unreasonable to conclude that any data file containing those accounts – or excerpts from such a file – would qualify as election data in a contest. If such data qualified, the Contest would not really be a contest at all.

Lindell LLC notes that the Contest rules provide that "an alleged or actual ambiguity, discrepancy or inconsistency between disclosures or other statements contained in any Contest-related materials and/or these Official Rules (including any alleged discrepancy or inconsistency in these Official Rules), . . . will be resolved in Lindell's sole discretion." But there is not, in the Panel's view, an ambiguity, discrepancy, or inconsistency to be resolved here, and the parties have both stated the contract is unambiguous.[3] Thus, the contract is to be construed with due regard for the intent of the parties as expressed in the language of the agreement referring to information "from the election" and "election data."

As noted, the Contest rules provide that "[t]he three-member panel selected by Lindell will identify the winners

3. If there were an inconsistency to be resolved in Lindell LLC's discretion, its interpretation would apply only if it were reasonable. *See Craig v. Pillsbury Non-Qualified Pension Plan*, 458 F.3d 748, 752 (8th Cir. 2006) (Noting that, "where one party is granted discretion under the terms of the contract, that discretion must be exercised in good faith — a requirement that includes the duty to exercise the discretion reasonably," and upholding rejection of a pension plan's interpretation.) As discussed above, an interpretation that any data that is simply about the election in some way suffices would be unreasonable.

based on their professional opinion that the submission proves to a 100% degree of certainty that the data shown at the Symposium is not reflective of November 2020 election data." The parties agree that this arbitration Panel is to now decide, based on the Contest rules, whether Mr. Zeidman met the challenge, entitling him to payment. No party contended otherwise in its pleadings, briefing, or argument.

Analysis of the Data

The Panel will analyze Mr. Zeidman's alleged proof and the responses of Lindell LLC and its experts below.

1. cExtract.mp4

As noted, Mr. Zeidman was provided the, cExtract. mp4 file, Ex. J-8, on the first day of the Contest. In his report, Mr. Zeidman noted that this file is a video file with no sound. It shows manipulation of software source code on a capture of a computer screen with no further explanation. He concluded it does not contain information about the November 2020 election. Mr. Zeidman' s expert witness, Dr. Michael Brogioli, concurs.

Lindell LLC's expert witness, Mr. Gould, disagrees, as did the Contest judges. He notes the file demonstrates extraction of data. From this, he concludes Mr. Zeidman should have understood the video showed how to use the cExtractor tool to decode the data. He further notes that the source code shown in the video, although incomplete, is related to the election.

Dr. Frank, one of Mr. Lindell's advisors, testified the cExtractor tool could be used to decode election data. Mr. Sanders, one of the Contest judges, says he was able to learn how to use cExtractor from the video and used it to extract data from .bin files provided to contestants. A .bin file is a binary file. The Panel has not been provided with whatever such extraction would have shown, although Mr. Sanders testified it would be similar to Exhibit J-13, without headings. J-13 is discussed below, as are the .bin files and Mr. Sanders claimed extraction of data from .bin files.

We conclude that Mr. Zeidman has shown that the cExtract.mp4 does not constitute election data. Instead, it is a demonstration of a tool used to extract data. This tool could have some role in extracting data from other files, as discussed below. But standing alone, it does not reflect election data, as the Panel has construed that term, and it therefore also does not relate to the November 2020 election.

2. Chinese_SourceIP_HEX.txt

This file, Ex. J-15, included hexadecimal data. Mr. Zeidman converted it to be able to read it. It contains, according to Mr. Zeidman, only IP addresses and numbers ranking the addresses from high to low. He notes that it is not packet data because it has no packets and no data. He thus concluded it does not contain 2020 election data.

Dr. Brogioli, concurs that the file cannot contain packet data because it is a rich text file, once converted.

Packet data is transmitted in PCAP files – not rich text files. The rich text file contains no time stamps, recording of votes, names of voters, or evidence it contains election data. It is not in a format that a cyber expert could use to verify that the data was election data. Therefore, it cannot, Dr. Brogioli argues, be election data.

Mr. Gould disagrees. He claims that IP addresses in the file "resolve . . . to addresses in Mainland China . . ." He also notes that "it was alleged on stage at the symposium in the presentations that China was a source of election interference with the 2020 election." Because the challenge was to prove unequivocally that the data does not reflect information related to the 2020 election, he concludes Mr. Zeidman did not meet the challenge.[4]

We disagree. Mr. Gould uses a construction of "election data" in the Contest rules that is unreasonable. He would appear to adopt a construction that if the data could in some way possibly be about the election, it is election data. But, under our construction, the rules require that a participant prove that the data provided is not from the November 2020 election. We conclude that Mr. Zeidman met that requirement as to the Chinese_SourceIP_HEX.txt file, and therefore he also has shown that the file also does not relate to the November 2020 election.

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4. Mr. Gould also contends Mr. Zeidman's method for interpreting the data was unnecessarily complicated. This may or may not be true, but it is of little interest here. The requirement is to prove the absence of election data. The proof need not be made in the easiest or most elegant way possible.

3. File ElectionProcessTaxonomy.pdf

Mr. Zeidman found that this file, Ex. J-5,contains a graphic depiction of voting machines and network connections, which is not election data. Not surprisingly, it does not appear Lindell LLC claims that this is election data from the November 2020 election. We conclude Mr. Zeidman has proven this file does not contain election data that meets the Panel's definition.

4. FinalReult_2020_HEX.txt

This file, Ex. J-17, also contained hexadecimal data. Mr. Zeidman was able to display the file using the same technique as for the file labeled Chinese_SourceIP_HEX.txt, Ex. 15, noted above. Even after he translated the file to rich text format, it remained unreadable, and it appeared to be encrypted or perhaps just gibberish. It may be that it was unreadable because a cypher was placed on the file by those preparing the data for the Contest. In any event, Mr. Zeidman has shown this file does not include packet data, and it therefore cannot contain election data, from the November 2020 election. Mr. Gould, Lindell LLC's expert, did not address this file in his report.

5. rnx-000001.bin

This file is one of three .bin files provided and will be analyzed with the other two below.

6. Targets_HEX.txt

This file, Ex. J-18, is also a hexadecimal file Mr. Zeidman was able to translate and view as a rich text file. Upon translation, it did not reflect election data. More specifically, Mr. Zeidman has shown this file does not contain packet data, and it therefore cannot be election data from the November 2020 election. Mr. Gould does not address this file in his report.

7. Target_MachineID_HEX.tx

This file, Ex. J-19, is also a hexadecimal file. Again, Mr. Zeidman was able to translate and view as a rich text file. Upon translation, it did not reflect election data. More specifically, Mr. Zeidman has shown this file does not contain packet data, and it therefore cannot be election data from the November 2020 election. . Mr. Gould does not address this file in his report.

8. mx-000123.csv

This file, Ex. J-13, is a very large spreadsheet. It contains, among other things, columns with headings that reference dates on or around the election, names of cities, and "source" and "target" IP addresses, and the names of candidates Trump and Biden.

Mr. Zeidman noted in his report that the information in the spreadsheet does not include anything identifiable as packet capture data or the like. Nor does it, he further notes, provide any information about what the information

represents or how it was obtained. It includes the names of most, if not all, of the Fortune 500 companies.

The spreadsheet generated from the file appears to be a summary of data. At least part of the spreadsheet has had information added, including headers and additional columns. But it is unknown who added that information or whether any of it is even a genuine summary of collected data. The spreadsheet contained numerous inconsistencies that would cause any reasonable person to question its authenticity.

Mr. Gould testified that the information in Ex. J-13 is something that would be worth pursuing given the dates involved, IP addresses of polling places, and other information. He therefore concluded it had data that was related to the election.

But again, Mr. Gould uses a broader definition of election data than the Panel has concluded is appropriate in this case. Mr. Gould testified that he had expected Lindell LLC to reveal packet capture data of the sort Mr. Lindell had testified he had that would show the election data captured in real time, "like a movie." Mr. Lindell LLC admitted that the data to be provided for the Prove Mike Wrong contestants was to be they type of data that could not be altered without the alteration being detected by cyber experts. But the mx-000123.csv file just contained a purported summary of data on a spreadsheet, which apparently had been edited by someone to add headings and a significant volume of other information.

In short, Mr. Zeidman showed that the mx-000123.csv file is not from the election and that it therefore also does not relate to the November 2020 election.

9. Summary.rtf

As Lindell LLC notes in its closing brief, this file, Ex. J- 11, is simply a summary of the day two files. No claim is made that it meets the proper definition of election data.

10. rnx-000002.bin and rnx-000003.bin

These two files, along with rnx-000001.bin, are exceptionally large binary data files, that is, strings of 1s and 0s. Mr. Zeidman at first approached these files as packet data capture files, remembering Mr. Lindell had said he was planning to provide such files. As noted, Mr. Gould and members of the Red Team were also expecting such files. Mr. Zeidman used a tool known as Wireshark, which is commonly used to open .bin files, but it returned only an error message. Mr. Zeidman then looked for information within the data in the files to try to learn what could be used to translate them, but found nothing. Dr. Brogioli confirmed at the hearing and in his report that this approach was correct, and that no data could be extracted from these files

Lindell LLC argues that Mr. Zeidman failed to use cExtractor, as taught in the cExtract.mp4 video, Ex. J-8, to open the .bin files. Mr. Sanders testified that, if Mr. Zeidman had used cExtractor, he would have been able

to create something very much like the mx-000123.csv spreadsheet file, Ex. J-13, but without the headings. Mr. Sanders further testified that he was able to do this during the hearing using cExtractor. As noted, the Panel was not presented with the spreadsheet Mr. Sanders claimed to have created.

None of this, however, shows that Mr. Zeidman has not proven that the .bin files did not contain what the Panel has defined as data from the election.

First, cyber experts would not be expected to analyze data that could only be extracted with a tool they did not have. There is testimony that cExtractor may have been provided outside the Contest in one of hundreds of files provided by Josh Merritt, a member of the Red Team. But the data at issue is the data provided to contestants as part of the Contest, not some data in hundreds of files informally provided later.

Second, if it is true, as Mr. Sanders says, that the .bin data yields a spreadsheet like Ex. J-13, but without column headings, we have already concluded that such a spreadsheet does not meet the definition of election data.

Throughout its arguments, Lindell LLC focuses on processes used to decode the data. But that only goes to whether the spreadsheets came from the source files provided – not whether the information on the spreadsheets comes from the election.

Based on the foregoing analysis, Mr. Zeidman performed under the contract. He proved the data Lindell LLC provided, and represented reflected information from the November 2020 election, unequivocally did not reflect November 2020 election data. Failure to pay Mr. Zeidman the $5 million prized was a breach of the contract, entitling him to recover.

B. Unconscionability Claims

In light of the foregoing, Mr. Zeidman's claim that he should recover because the rules of the Contest were unconscionable need not be further addressed. The Panel has concluded that the Contest rules cannot reasonably be read in the way Lindell LLC claims, and so are not unconscionable.

C. Minnesota Consumer Fraud Act

Mr. Zeidman claimed that Lindell LLC violated the Minnesota Consumer Fraud Act, Minn. Stat. § 325F.69 (1988) by, among other things, creating a contest knowing it would not declare a winner and failing to provide 2020 election data as promised. Mr. Zeidman conceded at post-hearing arguments, however, that this claim need not be further considered if Mr. Zeidman prevails on his contract claim. Accordingly, this claim is denied as moot.

D. Attorneys' Fees

The parties agree that that Contest rules do not provide for recovery of attorneys' fees and the only

basis for an award of fees would be under the Minnesota Consumer Fraud Act. As no relief is provided under the statute, no fees are awarded.

Award

1. Robert Zeidman's claim against Lindell Management LLC for breach of contract is granted. Accordingly, within 30 days of issuance of this Award, Lindell Management LLC shall pay $5 million to Robert Zeidman.

2. Mr. Zeidman's unconscionability claim is denied.

3. Mr. Zeidman's claim under the Minnesota Consumer Fraud Act is denied as moot.

4. Mr. Zeidman's request for attorneys' fees and costs is denied.

5. The administrative fees and expenses of the American Arbitration Association totaling $16,175.00 and the Panel's compensation will be borne as incurred.

6. This Award is in full settlement of all claims submitted to the Panel in this Arbitration. All claims not expressly granted herein are denied.

This Award may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall constitute together one and the same instrument.

Appendix D

April 19, 2023

/s/ David A. Allgeyer
David A. Allgeyer, Panel Chair

/s/ Gary L. Benton
Gary L. Benton, Arbitrator

/s/ David L. Hashmall
David L. Hashmall, Arbitrator