No.

In the Supreme Court of the United States

NEW YORK FOOTBALL GIANTS, INC., ET AL.,
PETITIONERS

v.

BRIAN FLORES

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether an arbitration agreement governing disputes in a professional sports league is categorically unenforceable under the Federal Arbitration Act because it designates the league commissioner as the default arbitrator and permits the commissioner to develop arbitral procedures.

PARTIES TO THE PROCEEDING AND CORPORATE DISCLOSURE STATEMENT

Petitioners are New York Football Giants, Inc.; Houston NFL Holdings, L.P.; Denver Broncos Team, LLC; and the National Football League.

Petitioner New York Football Giants, Inc., has no parent corporation. No publicly held company owns a 10% or greater interest in New York Football Giants, Inc.

Petitioner Houston NFL Holdings, L.P., has no parent corporation. No publicly held company owns a 10% or greater interest in Houston NFL Holdings, L.P.

Petitioner Denver Broncos Team, LLC, is a wholly owned indirect subsidiary of Broncos Partners, LLC, which is controlled by Penner Sports Group, LLC. No publicly held company owns a 10% or greater interest in Penner Sports Group, LLC.

Petitioner National Football League is an unincorporated association, and it has no parent corporation.

Respondent is Brian Flores.

RELATED PROCEEDINGS

United States District Court (S.D.N.Y.):

Brian Flores, et al. v. *National Football League, et al.*, Civ. No. 22-871 (Mar. 1, 2023) (order granting in part and denying in part motion to compel arbitration and stay proceedings)

Brian Flores, et al. v. *National Football League, et al.*, Civ. No. 22-871 (July 25, 2023) (order denying cross-motions for reconsideration)

United States Court of Appeals (2d Cir.):

Brian Flores v. *New York Football Giants, Inc., et al.*, No. 23-1185 (Aug. 14, 2025) (opinion affirming portion of order denying motion to compel arbitration)

Steve Wilks, et al. v. *New York Football Giants, Inc., et al.*, No. 23-1225 (Apr. 11, 2024) (dismissing cross-appeal)

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New York Football Giants, Inc.; Houston NFL Holdings, L.P.; Denver Broncos Team, LLC; and the National Football League respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (App., *infra*, 1a-27a) is reported at 150 F.4th 172. The opinion of the district court granting in part and denying in part petitioners' motion to compel arbitration and stay proceedings (App., *infra*, 28a-63a) is reported at 658 F. Supp. 3d 198.

JURISDICTION

The judgment of the court of appeals was entered on August 14, 2025. A petition for rehearing was denied on October 6, 2025. App., *infra*, 84a-85a. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTORY PROVISION INVOLVED

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

> A written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal, shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.

STATEMENT

This case presents an important question concerning the scope of the Federal Arbitration Act. The Arbitration Act makes "arbitration" agreements valid and enforceable on the same conditions as other contracts, and it requires courts to "respect and enforce" not only the parties' choice to arbitrate but also their "chosen arbitration procedures." *Epic Systems Corp.* v. *Lewis*, 584 U.S. 497, 506 (2018). Like many other sports leagues, petitioner National Football League (NFL) is an unincorporated membership association governed by a constitution that designates the league commissioner as the agreed-upon default arbitrator for various disputes within the league, including those between the NFL's member clubs and the employees of those clubs. The question presented is

whether an arbitration agreement governing disputes in a professional sports league is categorically unenforceable under the Arbitration Act because it designates the league commissioner as the default arbitrator and permits the commissioner to develop arbitral procedures.

Respondent is a veteran NFL coach who has worked for multiple NFL clubs over the course of his career. For each of his coaching positions, respondent signed an employment agreement that, as relevant here, incorporated by reference the NFL Constitution, including its provision requiring respondent and his employer to arbitrate any dispute involving the League or its clubs before the NFL Commissioner. Nevertheless, respondent filed a putative class-action lawsuit in federal court against the NFL and six of its member clubs (three of which are petitioners here), alleging employment discrimination. The district court granted a motion to compel arbitration as to some of the claims, but it declined to compel arbitration of other claims on grounds not relevant to this petition.

The court of appeals affirmed the partial denial of the motion to compel arbitration. Invoking a ground never raised by respondent—either in the district court or on appeal—and not discussed at oral argument, the court of appeals held that the arbitration provision in the NFL Constitution does not provide for "arbitration," and thus is unenforceable, under the Arbitration Act. In the court's view, that was because the provision designates the NFL Commissioner as the default arbitrator and allows the Commissioner to develop arbitral procedures. For essentially the same reasons, the court also held that the arbitration provision did not allow respondent effectively to vindicate his statutory rights, preventing enforcement of the provision.

The court of appeals' unprecedented decision is irreconcilable with the text and history of the Arbitration Act,

and it is contrary to decisions from numerous other courts that have rejected arguments that the arbitration provision in the NFL Constitution, and similar provisions of other professional sports leagues, are unenforceable because they designate the league commissioner as the arbitrator. The question presented is also exceptionally important. By creating a novel federal unconscionability doctrine that gives judges free-floating discretion to deem arbitration agreements unenforceable based solely on their subjective determinations that certain arbitral procedures are unfair, the court of appeals' decision undermines the very predictability and uniformity that the Arbitration Act was designed to protect. Because this case presents an ideal vehicle for resolving an important question of federal law, the petition for a writ of certiorari should be granted.

A. Background

1. Congress enacted the Arbitration Act in 1925 to "reverse the longstanding judicial hostility to arbitration agreements." *Gilmer* v. *Interstate/Johnson Lane Corp.*, 500 U.S. 20, 24 (1991). As this Court has repeatedly recognized, the Arbitration Act reflects "both a liberal federal policy favoring arbitration and the fundamental principle that arbitration is a matter of contract." *AT&T Mobility LLC* v. *Concepcion*, 563 U.S. 333, 339 (2011) (internal quotation marks and citations omitted).

Section 2 of the Arbitration Act—its "primary substantive provision," *Moses H. Cone Memorial Hospital* v. *Mercury Construction Corp.*, 460 U.S. 1, 24 (1983)—provides that "[a] written provision in * * * a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract * * * shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the

revocation of any contract." 9 U.S.C. 2. Consistent with that express mandate and the broader policy underlying the Arbitration Act, courts must place "arbitration agreements on an equal footing with other contracts and * * * enforce them according to their terms." *Rent-A-Center, West, Inc.* v. *Jackson*, 561 U.S. 63, 67 (2010) (citations omitted).

That principle extends to the arbitral procedures selected by the parties. As this Court has explained, "[n]ot only did Congress require courts to respect and enforce agreements to arbitrate; it also specifically directed them to respect and enforce the parties' chosen arbitration procedures." *Epic Systems*, 584 U.S. at 506. To that end, the Arbitration Act "requires courts rigorously to enforce arbitration agreements according to their terms, including terms that specify *with whom* the parties choose to arbitrate their disputes and *the rules* under which that arbitration will be conducted." *Ibid.* (internal quotation marks and citation omitted).

2. Notwithstanding the "liberal federal policy favoring arbitration agreements," *Concepcion*, 563 U.S. at 339, there are narrow circumstances in which courts may decline to enforce agreements to arbitrate under the Arbitration Act. Most prominently, Section 2 of the Arbitration Act expressly authorizes courts to invalidate arbitration agreements based on "generally applicable contract defenses, such as fraud, duress, or unconscionability." *Ibid.*

In addition, this Court has acknowledged a "judge-made exception" to the Arbitration Act for arbitration agreements that prevent the "effective vindication" of a federal statutory right. *American Express Co.* v. *Italian Colors Restaurant*, 570 U.S. 228, 235 (2013). Although the Court has recognized two circumstances in which that exception might apply—where an arbitration agreement

"forbid[s] the assertion of certain statutory rights" or imposes "administrative fees * * * so high as to make access to the forum impracticable"—the Court has never applied the exception itself, and it has declined to extend it to new contexts. See *id.* at 235-236.

B. Facts And Procedural History

1. The NFL, a petitioner here, is an unincorporated association of 32 separately owned member clubs, governed by the NFL Constitution and Bylaws. The NFL Constitution establishes the position of League Commissioner and "broadly empowers" the Commissioner "to manage the league's affairs." App., *infra*, 5a. The Commissioner is responsible for (among other things) "interpret[ing]" and "establish[ing]" League "policy and procedure" and taking disciplinary action to protect the NFL from "conduct detrimental to the welfare of the League or professional football" by club owners, players, coaches, and other club employees. C.A. App. 604, 606. The Commissioner must be a "person of unquestioned integrity" and may not have any "financial interest, direct or indirect, in any professional sport." *Id.* at 603.

The NFL Constitution also delegates to the Commissioner "full, complete, and final jurisdiction and authority to arbitrate" a variety of disputes within the League, including "any dispute between any * * * coach * * * and any member club." App., *infra*, 9a (internal quotation marks, citation, and alteration omitted). Although the NFL Constitution designates the Commissioner as the default arbitrator for such disputes, the Commissioner has the authority to select an arbitrator other than himself and has often done so in the past. See, *e.g.*, C.A. App. 501-502; *NFL Players Association ex rel. Peterson* v. *NFL*, 831 F.3d 985, 990 (8th Cir. 2016).

Respondent is a veteran NFL coach. Since 2008, he has worked for the New England Patriots, the Miami Dolphins, and the Pittsburgh Steelers, and he is currently employed by the Minnesota Vikings. Respondent also interviewed for coaching jobs with the Denver Broncos, New York Giants, and Houston Texans (each a petitioner here). App., *infra*, 37a.

Respondent's employment agreements with the Patriots, Dolphins, and Steelers each included an arbitration provision requiring any disputes between him and the club to be "referred to the NFL Commissioner for binding arbitration," consistent with the NFL's arbitration guidelines. C.A. App. 220, 497, 520. Respondent also agreed in each of his employment agreements to "comply at all times with, and to be bound by, the NFL Constitution"—including its arbitration provision—which was expressly "made a part of" those agreements. *Ibid.* Respondent further acknowledged in each of his employment agreements that he had "read the NFL Constitution * * * and underst[ood] [its] meaning." *Ibid.*; see App., *infra*, 33a.

2. In 2022, respondent filed a putative class action, later joined by two other former NFL coaches, asserting claims under 42 U.S.C. 1981 and various state laws for alleged systematic racial discrimination in employment by the NFL and several of its member clubs. Petitioners and the other member clubs named in the complaint moved to compel arbitration under the coaches' employment agreements and the NFL Constitution. App., *infra*, 29a-34a.

The district court granted the motion to compel arbitration in part and denied it in part. App., *infra*, 28a-63a. In granting the motion with respect to certain claims, the court rejected the arguments that the designation of the NFL Commissioner as the default arbitrator rendered the arbitration provisions unconscionable under state law

and violated the effective-vindication doctrine. *Id.* at 56a-62a, 65a. The court explained that "[a]rbitration is a matter of contract, and consequently, the parties to an arbitration can ask for no more impartiality than inheres in the method they have chosen." *Id.* at 53a (citation omitted). The court further reasoned that the Arbitration Act "cautions against judicial intervention at this early stage" where the parties have "agreed to a particular arbitration structure," and the Act provides for judicial review at the end of the arbitral proceedings where there is evidence of "evident partiality or corruption" by the arbitrator. *Id.* at 54a-55a (quoting 9 U.S.C. 10(a)(2)).

The district court denied the motion to compel arbitration, however, with respect to respondent's claims against the Broncos, Giants, and Texans, as well as his related claims against the NFL. App., *infra*, 62a. The court held that the arbitration provision in the NFL Constitution, as incorporated in respondent's employment agreement with the Patriots, was illusory under Massachusetts law, because it purportedly gave the NFL the authority to amend the provision unilaterally. *Id.* at 52a-53a. The court separately held that the arbitration provision in the NFL Constitution was invalid as incorporated in respondent's employment agreement with the Steelers, because defendants had originally failed to provide the court with the version of the agreement evidencing the Commissioner's approval (which was later provided to the court). *Id.* at 42a-44a, 68a.

3. The parties filed cross-motions for reconsideration, which the district court denied. App., *infra*, 63a-83a. As is relevant here, the court reiterated that "speculation that the NFL Commissioner will necessarily be biased as an arbitrator" constituted an insufficient basis to decline to enforce the arbitration agreements. *Id.* at 79a-80a.

4. Petitioners appealed the partial denial of the motion to compel arbitration. See 9 U.S.C. 16(a). The court of appeals affirmed on different grounds from the district court—the first of which respondent had never raised in either court and which was not discussed at oral argument. App., *infra*, 1a-27a.

The court of appeals first held that the arbitration provision in the NFL Constitution provided for "arbitration in name only" and thus was not enforceable under the Arbitration Act. App., *infra*, 16a-23a. Because the arbitration provision designates the NFL Commissioner as the default arbitrator, the court reasoned that it "lack[s] the requisite independence between parties and arbitrator that is fundamental to the [Arbitration Act's] conception of arbitration." *Id.* at 19a. The court further noted that the arbitration provision in the NFL Constitution does not specify particular arbitral procedures but rather leaves them for the Commissioner to develop, which the court recognized the NFL had already done. *Id.* at 20a. Based on those features, the panel concluded that the arbitration provision in the NFL Constitution "falls outside of the [Arbitration Act's] protection." *Id.* at 18a.

The court of appeals also held that the arbitration provision violated the effective-vindication doctrine. App., *infra*, 23a-25a. The panel noted, however, that its holding on the effective-vindication doctrine was "closely linked," and followed from the "same reasons," as its holding that the Arbitration Act did not apply to the arbitration provision in the first place. *Id.* at 23a n.65, 24a.

5. A petition for rehearing was denied without recorded dissent. App., *infra*, 29a-30a.

REASONS FOR GRANTING THE PETITION

This case presents the question whether an arbitration agreement governing disputes in a professional sports

league is categorically unenforceable under the Federal Arbitration Act because it designates the league commissioner as the default arbitrator and permits the commissioner to develop arbitral procedures. The text and history of the Arbitration Act make clear that the Act protects not only the parties' decision to arbitrate but also their chosen arbitration procedures, including their choice of arbitrator. In holding that the longstanding arbitration provision in the NFL Constitution does not even provide for "arbitration" under the Act, the court of appeals violated that fundamental principle and impermissibly overrode the parties' knowing and voluntary choices. The decision below also conflicts with decisions from other courts nationwide, which have rejected arguments that the arbitration agreements of sports leagues are unenforceable under the Arbitration Act simply because they identify the league commissioner as the default arbitrator. Worse still, the court of appeals minted a novel and amorphous federal unconscionability doctrine that threatens to undermine arbitration agreements of all kinds.

The court of appeals' decision cannot be correct. Given the importance of safeguarding the Arbitration Act's protection of arbitration agreements and ensuring uniformity in its application, the Court's intervention is necessary to correct the decision below. The petition for a writ of certiorari should be granted.

A. The Decision Below Is Irreconcilable With The Text And History Of The Arbitration Act

This Court has long recognized that the Federal Arbitration Act reflects the fundamental principle that arbitration is a matter of contract. See, *e.g.*, *Rent-A-Center, West., Inc.* v. *Jackson*, 561 U.S. 63, 67 (2010). If parties agree to submit their disputes to arbitration, a court must scrupulously respect and enforce that choice according to

the terms of the parties' agreement, including the parties' chosen procedures. See, *e.g.*, *Epic Systems Corp.* v. *Lewis*, 584 U.S. 497, 506 (2018); *AT&T Mobility, LLC* v. *Concepcion*, 563 U.S. 333, 339 (2011). In the decision below, however, the court of appeals refused to enforce the parties' agreement to arbitrate. The court held that the longstanding arbitration provision in the NFL Constitution provides for "arbitration in name only," because it designates the NFL Commissioner as the default arbitrator and allows the Commissioner to develop arbitral procedures. For essentially the same reasons, the court also held that the provision violated the effective-vindication doctrine. Neither holding can be reconciled with the Arbitration Act.

1. The court of appeals' sua sponte holding that the arbitration provision in the NFL Constitution does not even provide for "arbitration" under the Arbitration Act is completely unmoored from the Act's text and history.

a. Enacted in 1925, the Arbitration Act directs courts to recognize the validity and enforceability of agreements to resolve disputes "by arbitration," 9 U.S.C. 2, and places such agreements "on equal footing with all other contracts," *Buckeye Check Cashing, Inc.* v. *Cardegna*, 546 U.S. 440, 443 (2006). At the time of the Act's enactment, "arbitration" had long been understood to refer simply to "the hearing and determination of a cause between parties in controversy by a person or persons chosen by the parties * * * instead of by the judicial tribunal." *Webster's New International Dictionary* 115 (1927); see, *e.g.*, *Gordon* v. *United States*, 74 U.S. (7 Wall.) 188, 194 (1868); *Burchell* v. *Marsh*, 58 U.S. (17 How.) 344, 349-350 (1855); *Midwest Securities Corp.* v. *City of Des Moines*, 202 N.W. 565, 567 (Iowa 1925); *Black's Law Dictionary* 134 (3d ed. 1933) (defining "arbitration" as "[t]he investigation and

determination of a matter or matters of difference between contending parties, by one or more unofficial persons, chosen by the parties").

Consistent with that broad definition, in the years leading up to the enactment of the Arbitration Act, courts and commentators consistently recognized that the parties to an arbitration could designate an arbitrator who was affiliated with one of the parties. See, *e.g.*, 3 Samuel Williston, *The Law of Contracts* § 1929a, at 3277-3278 (1920); *Keachie* v. *Starkweather Drainage District*, 170 N.W. 236, 238 (Wis. 1919); *Marsch* v. *Southern New England Railroad Corp.*, 120 N.E. 120, 123 (Mass. 1918); *State* v. *Bowlby*, 132 P. 723, 724 (Wash. 1913); *Duvall* v. *Sulzner*, 155 F. 910, 918-919 (C.C.W.D. Pa. 1907); *Strong* v. *Strong*, 63 Mass. 560, 573 (1852). Such "partiality, interest, or relationship to the adverse party" was "not an adequate reason for attacking an award when the facts were known prior to the arbitration." Williston § 1929a, at 3277. That rule reflected the straightforward principle that parties who knowingly and voluntarily agreed to submit their claims to a particular arbitrator could hardly object when a court honored that contractual choice. See, *e.g.*, *Keachie*, 170 N.W. at 238. As one often-cited opinion explained: "If, indeed, parties in controversy choose to waive the right of impartial trial, and purposely and avowedly select as arbitrators persons * * * known to have partialities for and against the respective parties, the court, without commending, will not set aside the award merely because of the character of the arbitrators." *Strong*, 63 Mass. at 573.

Courts and commentators also recognized that the parties could agree to have one of the *parties* itself serve as arbitrator and still have a valid arbitration agreement. See, *e.g.*, *Commonwealth* v. *Eastern Paving Co.*, 8 Pa. D. & C. 357, 361-362 (Com. Pl. 1926) (discussing cases), aff'd,

136 A. 853 (Pa. 1927); *Bowlby*, 132 P. at 723-724; *Haskins* v. *Royster*, 70 N.C. 601, 608-610 (1874) (collecting authorities); John T. Morse, Jr., *The Law of Arbitration and Award* 105 (1872) (Morse); Francis Russell, *A Treatise on the Power and Duty of an Arbitrator, and the Law of Submissions and Awards* 128 (1849) (Russell); James Stamford Caldwell, *A Treatise of The Law of Arbitration* 37-38 (1822) (Caldwell). As one commentator observed, that was because "[e]ven the rule that a party cannot be a judge in his own cause, may be disregarded by parties in choosing an arbitrator," and, if "two disputants agree that one of them shall finally determine the matter in issue," "his award will be good, though it be in his own favor." Morse 105; see Caldwell 37-38. Once selected, moreover, the arbitrator had "discretionary power * * * in the whole conduct of the case"; a court would "not review [that] discretion provided he act[ed] according to the principles of justice, and behave[d] fairly to each party." Russell 165-166; see Morse 115-116.

There is no reason to believe that the Arbitration Act—which Congress enacted to "reverse the longstanding judicial hostility to arbitration agreements"—abrogated those well-recognized principles. *Gilmer* v. *Interstate/Johnson Lane Corp.*, 500 U.S. 20, 24 (1991). In the words of Judge Learned Hand, parties that have agreed to arbitration under the Act "must be content with its informalities," and "they may not hedge it about with those procedural limitations which it is precisely its purpose to avoid." *American Almond Products Co.* v. *Consolidated Pecan Sales Co.*, 144 F.2d 448, 451 (2d Cir. 1944). Or as Judge Posner explained, "[t]he parties to an arbitration choose their method of dispute resolution, and can ask no more impartiality than inheres in the method they have chosen." *Merit Insurance Co.* v. *Leatherby Insurance*

Co., 714 F.2d 673, 679 (7th Cir.), cert. denied, 464 U.S. 1009 (1983).

This Court has recognized the same principles, explaining that procedural informality is the hallmark of arbitration and that the Arbitration Act was enacted precisely to protect that fundamental attribute from judicial interference. See, *e.g.*, *Epic Systems*, 584 U.S. at 505; *Concepcion*, 563 U.S. at 345. Consistent with Congress's "emphatic directions," the Court has explained that courts must "respect and enforce" not just the parties' choice to arbitrate, but also their "chosen arbitration procedures." *Epic Systems*, 584 U.S. at 506.

Those principles should carry particular force here given the "specialized nature" of professional sports leagues. *Oakland Raiders* v. *NFL*, 32 Cal. Rptr. 3d 266, 284 (Ct. App. 2005). As courts have recognized, there is "significant danger that judicial intervention * * * will have the undesired and unintended effect of interfering with the [l]eague's autonomy in matters where the [league] and its commissioner have much greater competence and understanding than the courts." *Ibid.*; see, *e.g.*, *Charles O. Finley & Co.* v. *Kuhn*, 569 F.2d 527, 537 (7th Cir.), cert. denied, 439 U.S. 876 (1978); *Wildfire Productions, L.P.* v. *Team Lemieux LLC*, Civ. No. 2021-1072, 2022 WL 2342335, at *13 (Del. Ch. June 29, 2022). For good reasons, then, the NFL's member clubs and their employees have long agreed to vest the NFL Commissioner with broad authorities, including to serve as the default arbitrator for various disputes within the League. See p. 6, *supra*.

b. Despite the Arbitration Act's text and history—and respondent's failure to raise the issue, see, *e.g.*, *Clark* v. *Sweeney*, No. 25-52, 2025 WL 3260170, at *1-*2 (Nov. 24, 2025); *United States* v. *Sineneng-Smith*, 590 U.S. 371, 375-376 (2020)—the court of appeals held that the Act

does not even apply to the arbitration provision in the NFL Constitution, because it purportedly provides for "arbitration in name only." App., *infra*, 19a. In the court's view, that was because the arbitration provision designates the NFL Commissioner as the default arbitrator and leaves the arbitral procedures for the Commissioner to develop. *Id.* at 18a-21a.

The court of appeals did not cite any historical or contemporary sources showing that those features render a dispute-resolution procedure something other than "arbitration." Instead, the court relied primarily on this Court's observations in *Viking River Cruises, Inc.* v. *Moriana*, 596 U.S. 639 (2022), that there is a "norm of bilateral arbitration"—as opposed to "class or collective arbitration"—and that arbitration agreements are "a specialized kind of forum-selection clause that posit[] not only the situs of suit but also the procedure to be used in resolving the dispute." *Id.* at 653, 656-658 (internal quotation marks and citations omitted); see App., *infra*, 14a. But in *Viking River*, the Court said nothing about a requirement that arbitrators must be independent from the parties in order for a dispute-resolution procedure to qualify as "arbitration," particularly where the parties have knowingly and voluntarily agreed to a specific default arbitrator.

In any event, the court of appeals did not explain why an arbitration agreement that appoints an arbitrator affiliated with one of the parties and authorizes him to specify certain arbitral procedures fails to provide for "bilateral arbitration" or "the procedure to be used in resolving the dispute." *Viking River*, 596 U.S. at 653, 656 (citation omitted); see *Howsam* v. *Dean Witter Reynolds, Inc.*, 537 U.S. 79, 84 (2002) (explaining that "procedural questions which grow out of the dispute * * * are presumptively * * * for an arbitrator[] to decide" (internal quotation marks

and citation omitted)). As Judge Posner colorfully put it, "short of authorizing trial by battle or ordeal or, more doubtfully, by a panel of three monkeys, parties can stipulate to whatever procedures they want to govern the arbitration of their disputes; parties are as free to specify idiosyncratic terms of arbitration as they are to specify any other terms in their contract." *Baravati* v. *Josephthal, Lyon & Ross, Inc.*, 28 F.3d 704, 709 (7th Cir. 1994); see, *e.g.*, *UHC Management Co.* v. *Computer Sciences Corp.*, 148 F.3d 992, 997 (8th Cir. 1998); *Ford* v. *NYLCare Health Plans of Gulf Coast, Inc.*, 141 F.3d 243, 247-248 (5th Cir. 1998); *Davis* v. *Prudential Securities, Inc.*, 59 F.3d 1186, 1193 (11th Cir. 1995). In other words, under the Arbitration Act, courts generally lack the power to substitute their judgment for the parties' choice of arbitration procedures.

In support of its holding, the court of appeals also pointed to Section 10 of the Arbitration Act, which allows a court to vacate an arbitration award "where there was evident partiality * * * in the arbitrators." 9 U.S.C. 10(a)(2). The court reasoned that Section 10 reinforced its conclusion that parties cannot be compelled to arbitrate in an allegedly partial forum. App., *infra*, 19a. But if anything, that gets it exactly backwards. As courts have consistently recognized, Section 10 does not authorize a judge to scrutinize an arbitrator's bias or partiality until the arbitrator has issued the award. See, *e.g.*, *Gulf Guarantee Life Insurance Co.* v. *Connecticut General Life Insurance Co.*, 304 F.3d 476, 490 (5th Cir. 2002); *Aviall, Inc.* v. *Ryder Systems, Inc.*, 110 F.3d 892, 895 (2d Cir. 1997). Section 10 thus demonstrates that even a proceeding with a biased arbitrator is still an "arbitration" under the Act. Indeed, Section 10 simply "states the presumptive rule, subject to variation by mutual consent," since "parties are entitled to waive the protection of [Section] 10(a)(2), as

they can waive almost any other statutory entitlement." *Sphere Drake Insurance Ltd.* v. *All American Life Insurance Co.*, 307 F.3d 617, 620 (7th Cir. 2002) (Easterbrook, J.), cert. denied, 538 U.S. 961 (2003); see *Certain Underwriting Members of Lloyds of London* v. *Florida, Department of Financial Services*, 892 F.3d 501, 508-510 (2d Cir. 2018).

Finally on this point, the court of appeals cited several decisions from other circuits. See App., *infra*, 22a n.62. But none of those decisions involved an arbitration provision in which the parties agreed to a specific, disclosed arbitrator or left the arbitral procedures to be developed by the arbitrator—let alone held that such an arrangement does not qualify as "arbitration" under the Arbitration Act. Accordingly, the court of appeals erred by adopting a novel theory of "arbitration" that lacks any basis in the Arbitration Act's text or history.

2. The court of appeals also erred by concluding that the parties' arbitration agreement violated the effective-vindication doctrine. See App., *infra*, 23a-25a. As an initial matter, the court expressly acknowledged that its holding under the effective-vindication doctrine followed from the "same reasons" as its holding that the Arbitration Act did not cover the arbitration agreement altogether. *Id.* at 25a. The court's holding on the effective-vindication doctrine thus lacks merit for the same reasons as well. See pp. 11-17, *supra*.

In addition, the decision below erroneously expanded the effective-vindication doctrine beyond its narrow limits. That judge-made exception to the Arbitration Act invalidates an arbitration agreement only if it prospectively waives "a party's *right to pursue* statutory remedies"—a high bar that this Court has never found met. *American Express Co.* v. *Italian Colors Restaurant*, 570 U.S. 228,

235 (2013) (internal quotation marks and citation omitted). This Court has recognized only two circumstances in which the doctrine might apply: (1) where an arbitration agreement "forbid[s] the assertion of certain statutory rights," and (2) where it imposes arbitration fees "so high as to make access to the forum impracticable." *Id.* at 236. The arbitration provision in the NFL Constitution implicates neither concern.

The court of appeals nevertheless concluded that the designation of the NFL Commissioner as the default arbitrator and the NFL Constitution's failure to specify arbitral procedures would prevent respondent from effectively vindicating his statutory claims in the arbitral forum. App., *infra*, 23a-25a. But the court cited no authority for that bold expansion of existing doctrine, and its reasoning more closely resembles that of the dissent in *Italian Colors* than the majority opinion. See 570 U.S. at 245, 247 (Kagan, J., dissenting); cf. *id.* at 236 (majority opinion); App., *infra*, 82a. The reasoning also amounts to a premature determination of arbitral bias, contrary to Section 10 of the Arbitration Act. See p. 16, *supra*. The decision below thus disregards the doctrine's narrow confines, turning a circumscribed judicial exception into an expansive federal unconscionability doctrine that has no basis in this Court's precedents.

B. The Decision Below Is Inconsistent With The Decisions Of Other Lower Courts

The decision below also conflicts with decisions from other lower courts around the country. The court of appeals framed its analysis as flowing from a "basic principle" of arbitration. App., *infra*, 14a. But in disputes involving professional sports leagues stretching back decades, lower courts have upheld the authority of sports-league commissioners to serve as default arbitrators. The

decision below has thus introduced disruptive uncertainty into the time-tested structure of sports arbitration. Only this Court can remedy the conflict.

1. The Eighth Circuit has twice rejected challenges to the NFL's arbitration provisions where the NFL Commissioner was the default arbitrator. In *Williams* v. *NFL*, 582 F.3d 863 (2009), cert. denied, 562 U.S. 1029 (2010), the NFL Commissioner, in his capacity as the default arbitrator, designated the NFL's general counsel to serve as the arbitrator of a dispute involving the NFL Players Association. See *id.* at 871. Before his designation as arbitrator, the general counsel had provided an NFL team with legal advice related to the dispute. See *id.* at 870. The Players Association argued that the general counsel's alleged bias meant that the arbitral awards against certain players should be vacated under the Arbitration Act. See *id.* at 883. But the Eighth Circuit disagreed, reasoning that the parties to an arbitration "can ask no more impartiality than inheres in the method they have chosen" and that the Players Association had knowingly and voluntarily agreed that "the Commissioner or his designee" would preside over arbitrations such as the one at issue. *Id.* at 885 (citation omitted).

The Eighth Circuit reached the same conclusion in *NFL Players Association ex rel. Peterson* v. *NFL*, 831 F.3d 985 (2016). There, the court rejected a "virtually identical" challenge to the NFL Commissioner's designation of an allegedly partial arbitrator. See *id.* at 990, 998. The court emphasized that the parties had "bargained for" the procedure under which the Commissioner or his designee would serve as the arbitrator and that the "actual or apparent conflict of interest" was "foreseeable" at the time the parties did so. *Id.* at 998. And as in *Williams*, the court explained that, when "parties to a contract elect to resolve disputes through arbitration, the parties "can

ask no more impartiality than inheres in the method they have chosen." *Ibid* (citation omitted).

2. The Seventh Circuit took a similar approach with respect to Major League Baseball in *Kuhn*, *supra*. That case concerned a challenge to the structure of baseball's arbitration system, under which the parties waived recourse to the courts and agreed to have "all disputes and controversies related in any way to professional baseball between the clubs" be heard in arbitration before the commissioner. 569 F.2d at 543 (citation and alteration omitted). "Considering the waiver of recourse clause in its function of requiring arbitration by the [c]ommissioner," the court explained, "its validity [could not] be seriously questioned" under state law or the Federal Arbitration Act. *Ibid.* The court acknowledged that arbitration provisions might be invalid where "the waiver of rights is not voluntary, knowing or intelligent, or * * * freely negotiated by parties." *Ibid.* But the court stressed that "informed parties, freely contracting, may waive their recourse to the court." *Id.* at 544 (citation omitted).

3. Other federal and state courts have likewise enforced arbitration provisions used by major sports leagues that designate the league commissioner as the default arbitrator. See, *e.g.*, *New York Knicks, LLC* v. *Maple Leaf Sports & Entertainment Ltd.*, Civ. No. 23-7394, 2024 WL 3237563, at *11-*12 (S.D.N.Y. June 28, 2024) (National Basketball Association); *Wildfire Productions,* 2022 WL 2342335, at *12-*13 (National Hockey League); *Henry* v. *New Orleans Louisiana Saints L.L.C.*, Civ. No. 15-5971, 2016 WL 2901775, at *9 (E.D. La. May 18, 2016) (NFL); *Hanson* v. *Cable*, A138208, 2015 WL 1739487, at *2-*3, *8 (Cal. Ct. App. Apr. 15, 2015) (NFL); *Alexander* v. *Minnesota Vikings Football Club LLC,* 649 N.W.2d 464, 466-467 (Minn. Ct. App. 2002) (NFL). Those decisions reflect the general rule that, where parties have

given their "informed and knowledgeable consent" to an arbitrator, a court should respect that choice. *Wildfire Productions*, 2022 WL 2342335, at *13 (citation omitted).

4. The decision below stands alone in holding that an arbitration provision cannot be enforced as a matter of federal law because it designates a commissioner of a sports league as the default arbitrator and leaves the arbitration procedures for the commissioner to develop. Indeed, even in the rare cases in which courts have declined to allow the NFL Commissioner to serve as the default arbitrator as a matter of state unconscionability doctrine, they have not questioned that such a dispute-resolution procedure still constituted "arbitration" or that the parties could effectively vindicate their rights as a matter of federal law. See, *e.g.*, *NFL* v. *Gruden*, 573 P.3d 1240, 2025 WL 2317407, at *1-*3 (Nev. 2025); *State ex rel. Hewitt* v. *Kerr*, 461 S.W.3d 798, 805-806, 811-813 (Mo. 2015).

The court of appeals purported to distinguish some of the contrary cases on the grounds that the "rights at issue" were "contractual, not federal statutory rights," and that the arbitration arose "according to the terms of a collectively bargained for arbitration agreement." App., *infra*, 25a n.72. But the court provided no explanation for its conclusion that whether a procedure qualifies as "arbitration" turns on whether the dispute involves statutory claims or the procedure results from a collective bargaining agreement. To the contrary, this Court has long made clear that "statutory claims may be the subject of an arbitration agreement" just like other types of claims. *Gilmer*, 500 U.S. at 26. And it has long treated matters under the Arbitration Act and the Labor Management Relations Act, which applies to labor arbitrations, as governed by the same principles. *See*, *e.g.*, *Viking River*, 596 U.S. at 651 (citing *Granite Rock Co.* v. *Teamsters*, 561 U.S. 287, 299 (2010)); *First Options of Chicago, Inc.* v.

Kaplan, 514 U.S. 938, 944 (1995) (discussing *AT&T Technologies, Inc.* v. *Communications Workers*, 475 U.S. 643, 649 (1986)). There is no valid reason that those distinctions should matter for present purposes.

C. The Question Presented Is Exceptionally Important And Warrants Review In This Case

1. The question presented in this case is one of substantial legal and practical importance. As this Court has repeatedly recognized, the fundamental benefit of arbitration is the opportunity it gives parties to forgo the costly and timely process of formal litigation in favor of "simplicity, informality, and expedition." *14 Penn Plaza LLC* v. *Pyett*, 556 U.S. 247, 269 (2009) (internal quotation marks and citation omitted); see, *e.g.*, *Coinbase, Inc.* v. *Bielski*, 599 U.S. 736, 743 (2023). To maximize those benefits, parties commonly elect "streamlined procedures tailored to the type of dispute" at issue. *Concepcion*, 563 U.S. at 344. The Arbitration Act safeguards those choices by ensuring that courts rigorously respect and enforce them, moving the parties "into arbitration as quickly and easily as possible" without judicial obstruction or interference. *Moses H. Cone Memorial Hospital* v. *Mercury Construction Corp.*, 460 U.S. 1, 22 (1983).

The decision below threatens to disrupt that central principle of the Arbitration Act. It permits a court to deem an arbitration agreement unenforceable under the Arbitration Act based on nothing more than a subjective determination that the parties' chosen arbitral procedures are unfair. If the decision is allowed to stand, judges will predictably view that boundless discretion as a license to find arbitration agreements of all kinds inapplicable based on an amorphous and standardless invocation of procedural inadequacy. That will not only "unnecessarily complicat[e] the law and breed[] litigation from a

statute that seeks to avoid it," *Allied-Bruce Terminix Cos.* v. *Dobson*, 513 U.S. 265, 275 (1995), but also jeopardize the very benefits of arbitration, transforming a speedy and informal process predicated on the parties' agreements into a cumbersome one predicated on expansive and uncertain judicial review. At bottom, the decision mints a novel federal unconscionability doctrine that precisely models the judge-made "devices and formulas declaring arbitration against public policy" that the Arbitration Act was enacted to eradicate. *Concepcion*, 563 U.S. at 342 (internal quotation marks and citations omitted).

That novel doctrine threatens to undermine arbitration agreements of all varieties. But it will be particularly disruptive for one of America's most important industries, professional sports. Multiple other professional sports leagues—including Major League Baseball, the National Basketball Association, and the National Hockey League—have long used materially similar arbitration systems. *See*, *e.g.*, *Costello* v. *Olson*, 379 So. 3d 536, 538-539 (Fla. Dist. Ct. App. 2023); *New York Knicks*, 2024 WL 3237563, at *1-*2; *Wildfire Productions*, 2022 WL 2342335, at *5. And they have done so given the unique competence of league commissioners to resolve disputes that arise within the league. See p. 14, *supra*. Under the logic of the decision below, however, those systems have never provided for "arbitration" under the Arbitration Act. If allowed to stand, the decision is thus certain to have "ripple effects" across the industry of professional sports. Beth Wang, *Second Circuit's NFL Arbitration Ruling Extends To The Boardroom*, Bloomberg Law (Aug. 18, 2025) <tinyurl.com/floresdecision> (Wang).

The decision below is also bound to produce forum shopping and disuniformity in federal arbitration law more broadly. Because all of the major professional

sports leagues are headquartered in New York, the decision below may allow any party to avoid an arbitration provision in the league's constitution through the simple expedient of filing suit within the Second Circuit. See Wang, *supra*. And lacking any meaningful guidelines, courts employing the logic of the decision below will naturally reach wildly disparate determinations about the sufficiency of the parties' chosen arbitral procedures. Courts with greater skepticism of the procedural informalities inherent to arbitration will conclude that the parties' chosen procedures are insufficiently rigorous, while others will find the same provisions worthy of protection under the Arbitration Act. Plaintiffs seeking to avoid being held to their bargain will inevitably seek out the former courts.

Such disparity will fundamentally undermine the Arbitration Act's main purpose: to create a consistent "national policy favoring arbitration." *Buckeye Check Cashing*, 546 U.S. at 443. It is thus no surprise that this Court has frequently intervened when a lower court issues a decision so at odds with federal arbitration law, even with an underdeveloped conflict (or no conflict at all) in the lower courts. See, *e.g.*, *Viking River*, *supra*; *Kindred Nursing Centers Ltd. Partnership* v. *Clark*, 581 U.S. 246 (2017); *DIRECTV, Inc.* v. *Imburgia*, 577 U.S. 47 (2015).

2. This case is also an ideal vehicle for the Court to clarify a critical question about the scope of the Federal Arbitration Act. The question whether the arbitration provision in the NFL Constitution is enforceable under the Arbitration Act is a pure question of law, and it was the sole basis for the decision below. As such, there are no impediments to reviewing and resolving that question in this case. The question is also ripe for this Court's review. Numerous courts nationwide have considered the legality of sports-league arbitration systems that designate the league commissioner as the default arbitrator,

and they have reached fundamentally different conclusions than the court below.

In sum, the decision below has no basis in the Act's text or history; it summarily disregards this Court's repeated and emphatic instruction for lower courts to enforce arbitration agreements according to their terms; and it conflicts with the decisions of other courts on an important question of federal law. The Court's intervention is amply warranted.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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