

No. 25-790

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**In the Supreme Court of the United States**

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

*v.*

BRIAN FLORES

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

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**REPLY BRIEF FOR THE PETITIONERS**

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The court of appeals held in this case that federal law prohibits the enforcement of an arbitration agreement governing disputes in a professional sports league because the parties knowingly selected the league commissioner to serve as the default arbitrator and to develop arbitral procedures. That holding is unprecedented, and it cannot be squared with the Federal Arbitration Act or this Court’s precedents. The Act forecloses the court of appeals’ conclusion that an agreement to resolve disputes before a party-affiliated arbitrator does not provide for “arbitration” subject to the Act’s protections. And this Court’s precedents preclude the court of appeals’ broad application of the effective-vindication doctrine. Unsur-

prisingly, the decision below conflicts with numerous decisions that have upheld the validity of similar commissioner-based sports-arbitration regimes. And it has critical implications for the enforcement of arbitration agreements more broadly.

Respondent's attempts to minimize the case for review fall flat. Respondent's principal response is to incant that the decision below implicates only the arbitration of federal statutory employment-discrimination claims before the employer's chief executive. But simply saying that many times does not make it true. The court of appeals' interpretation of the word "arbitration" in no way depended on the type of claims to be arbitrated. The court did not focus on the employment-related nature of the dispute when applying the effective-vindication doctrine. And no part of the decision below rested on a finding that the National Football League—as opposed to the member clubs with whom respondent entered employment agreements—was respondent's employer.

Respondent's remaining arguments against review are insubstantial. Contrary to respondent's assertions, the decision below jeopardizes not only a time-honored method for resolving sports-related disputes, but also the very uniformity and certainty regarding the enforcement of arbitration agreements that the Arbitration Act was designed to ensure. Nor did the court of appeals provide truly independent grounds for affirmance; the court expressly relied on the "same reasons" to decline to enforce the arbitration agreements at issue under both the Arbitration Act and the effective-vindication doctrine.

Parties should be free to adopt arbitration procedures of their own choosing. Because this case presents the Court with an ideal vehicle to consider a critical question concerning that principle, 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**

As petitioners have explained (Pet. 10-18), the court of appeals erred by holding that the NFL Constitution does not provide for “arbitration” within the meaning of the Arbitration Act and that it violates the effective-vindication doctrine as applied to federal statutory claims. Respondent’s contrary arguments lack merit.

1. Respondent does not come to grips with the history demonstrating that, at the time of the Arbitration Act’s enactment, courts routinely enforced arbitration agreements that selected an arbitrator affiliated with one of the parties—even an arbitrator that *was* one of the parties. See Pet. 11-13. Instead, respondent dismisses that history on the ground that arbitration was “historically used to resolve contract and commercial disputes,” whereas this case involves “federal statutory employment discrimination claims.” Br. in Opp. 14.

That argument does not withstand scrutiny. As an initial matter, the court of appeals’ holding that the NFL Constitution does not provide for “arbitration” under the Arbitration Act was not limited to claims involving federal statutory rights; it also applied to claims under state and local law. See Pet. App. 16a-23a. Indeed, the court did not so much as mention the fact that the claims were related to employment discrimination in that portion of its opinion. See *ibid.*

In any event, respondent provides no reason to think that whether a particular dispute-resolution procedure constitutes “arbitration” depends on the cause of action to be arbitrated. To the contrary, at the time of the Arbitration Act’s enactment, “arbitration” was understood to refer simply to the resolution of a dispute by one or more individuals elected by the parties, instead of by a judicial tribunal. See Pet. 11-12.

The Court’s modern precedents also refute respondent’s suggestion that special rules should govern the arbitrability of federal employment-discrimination claims. The Court has long made clear—even before *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20 (1991), contra Br. in Opp. 14—that federal statutory claims are presumptively arbitrable and that the ordinary rules governing the enforcement of arbitration agreements presumptively apply to the arbitration of those claims. See *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 626 (1985). Respondent identifies nothing in any federal employment-discrimination statute that reverses those presumptions.

Respondent nevertheless contends that courts have held that a “neutral and impartial” arbitral forum is required when “federal statutory rights are at stake.” Br. in Opp. 14. But respondent cites no decision holding that an impartial arbitrator is required in order for a dispute-resolution procedure to qualify as “arbitration” under the Arbitration Act. To the extent the decisions cited by respondent (Br. in Opp. 14-15) actually resolved neutrality challenges to arbitration agreements, each applied either the effective-vindication doctrine (incorrectly, see pp. 6-8, *infra*) or state contract law to do so. The court of appeals’ decision went much further, setting up the question of neutrality as a threshold requirement for deciding whether the Arbitration Act applies at all. That was wrong.

This Court’s precedents further undermine respondent’s argument on this score. The Court has reiterated that courts may not “presum[e]” that contracting parties cannot be trusted to select the appropriate arbitrator to resolve their disputes. See *Gilmer*, 500 U.S. at 30 (citation omitted). Respondent also fails to grapple with the Court’s repeated admonition that courts must respect

“*with whom* the parties choose to arbitrate their disputes and the *rules* under which that arbitration will be conducted.” *Epic Systems Corp. v. Lewis*, 584 U.S. 497, 506 (2018) (emphasis in original); see *American Express Co. v. Italian Colors Restaurant*, 570 U.S. 228, 233 (2013).

Relatedly, courts have long adhered to the principle that the parties to an arbitration agreement “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); see Pet. 13-14. Respondent attempts to distinguish the decisions relying on that principle as involving “neutral or collectively bargained arbitral forums.” Br. in Opp. 16. But none of those decisions held that the type of arbitral forum dictates a party’s ability to second-guess its previous agreement to particular arbitration procedures. Instead, as respondent readily admits, each case applied the principle where a party “later attempted to challenge the fairness of the forum it had agreed to.” *Ibid.* The principle plainly applies here, where respondent—a highly compensated, sophisticated party who signed multiple NFL coaching agreements over the course of his career—is attempting to unwind his agreement to arbitrate his claims before the NFL Commissioner.

Respondent separately dismisses petitioners’ reliance on 9 U.S.C. 10(a)(2), which permits courts to vacate an award “where there was evident partiality \* \* \* in the arbitrators.” See Pet. 16-17. According to respondent, that provision “presupposes the existence of a valid arbitration agreement” in “post-award challenges,” whereas this case concerns the “enforceability” of an arbitration agreement “from the start.” Br. in Opp. 12-13. That misses the point. Even if this case involves the enforceability of an arbitration agreement at the outset, Section

10(a)(2) demonstrates that a proceeding with a biased arbitrator still constitutes an “arbitration” under the Arbitration Act. Were it otherwise, it is hard to see how Section 10(a)(2) could ever apply to an award by a non-neutral arbitrator; after all, the proceeding resulting in the award would not constitute arbitration to which the Act could apply.\*

2. Respondent’s defense of the court of appeals’ expansive application of the effective-vindication doctrine (Br. in Opp. 10-13) fares no better.

Respondent depicts the court of appeals’ effective-vindication decision as reflecting only a “straightforward application of settled law” to the NFL Constitution. Br. in Opp. 11. Not so. This Court has made clear that the doctrine applies only to arbitration agreements that waive a “party’s *right to pursue* statutory remedies.” *American Express*, 570 U.S. at 235 (emphasis in original). Reflecting the narrowness of that “judge-made exception” to the enforceability of arbitration agreements, the Court has stated that the exception applies only to agreements truly “forbidding” the assertion of statutory rights—and only “perhaps” to those mandating the payment of fees that “make access to the forum impracticable.” *Id.* at 235-236. The decision below is irreconcilable with that narrow understanding.

Respondent contends that, at times, this Court’s opinions have “articulated the doctrine more generally” to allow for an unbounded inquiry into whether a litigant can effectively vindicate its rights in a particular arbitral forum. Br. in Opp. 12. The Court rejected that understand-

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\* Respondent suggests (Br. in Opp. 15) that petitioners do not dispute that the NFL Constitution provides for a biased arbitral forum. Petitioners strongly dispute that assertion but are not asking the Court to address that fact-specific issue. See Sup. Ct. R. 10.

ing in *Italian Colors*, explaining that the “dictum” respondent quotes means only that the exception applies to agreements that altogether waive a party’s right to pursue statutory remedies. See 570 U.S. at 235-236. Regardless, respondent fails to explain how the NFL Constitution is “incompatible with meaningful enforcement” of statutory rights beyond the circular argument that it “does not permit effective vindication.” Br. in Opp. 11.

Respondent argues that the decision below is consistent with other decisions holding that an “employer’s control over the arbitral forum” makes an arbitration provision unenforceable. Br. in Opp. 12. The court of appeals’ decision, however, does not rely on the notion that the NFL is respondent’s employer. Indeed, the district court never made such a factual finding, and petitioners vigorously dispute that they ever employed respondent. As any football fan knows, the NFL is an “unincorporated membership association” made up of the “member clubs” that employed respondent, Pet. App. 4a-5a, and each club is a “substantial, independently owned, and independently managed business.” *American Needle, Inc. v. NFL*, 560 U.S. 183, 196 (2010).

Respondent cites *Walker v. Ryan’s Family Steak Houses, Inc.*, 400 F.3d 370 (6th Cir. 2005), and *McMullen v. Meijer, Inc.*, 355 F.3d 485 (6th Cir. 2004), in support of his expansive conception of the effective-vindication doctrine. See Br. in Opp. 12. But both of those cases predate *Italian Colors* and considered arbitration agreements that failed to give the parties notice of who the decisionmaker would be or what his potential biases were. See *Walker*, 400 F.3d at 386-387; *McMullen*, 355 F.3d at 494. That is far afield from the arbitration agreement here, which gave respondent full and fair notice of the NFL Commissioner’s role as arbitrator. The other cases cited by respondent (Br. in Opp. 12) were decided on

state-law grounds, not the federal effective-vindication doctrine.

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

In addition to being incompatible with the Arbitration Act and the Court's precedents, the decision below contravenes numerous decisions upholding the authority of sports-league commissioners to serve as arbitrators for disputes arising out of the operation of sports leagues. See Pet. 18-22. Respondent's attempts to distinguish away the resulting conflict are unpersuasive.

Respondent's primary refrain is that the decision below is distinguishable from the decisions of other courts of appeals because it involved "the chief executive of an employer" arbitrating "statutory employment discrimination claims." Br. in Opp. 6; see *id.* at 1, 7-8, 10, 16. That distinction does not hold for reasons already explained: the court of appeals did not rely on the nature of the claims at issue when interpreting the Arbitration Act, nor did it rely on a finding that the NFL was respondent's employer (as opposed to the member clubs). See pp. 3, 7, *supra*.

Respondent makes no other effort to reconcile the decision below with the Seventh Circuit's decision in *Charles O. Finley & Co. v. Kuhn*, 569 F.2d 527 (1978). Respondent characterizes *Kuhn* as involving a "non-statutory intra-league governance dispute." Br. in Opp. 7. But the decision in *Kuhn* did not turn on the fact that the claims at issue were non-statutory in nature. Instead, the Seventh Circuit relied on the broad principle that "informed parties, freely contracting, may waive their recourse to the court" in rejecting a challenge to an agreement to have all disputes "related in any way to professional baseball" be

heard before the Commissioner of Baseball. 569 F.2d at 543-544 (internal quotation marks and citation omitted).

Respondent attempts to distinguish *Williams v. NFL*, 582 F.3d 863 (8th Cir. 2009), on the ground that it involved “collectively bargained labor disputes governed by the Labor Management Relations Act.” Br. in Opp. 7. But respondent cannot point to any language in *Williams* suggesting that its holding depended on the fact that labor arbitration was at issue. And as petitioners have explained (Pet. 21-22), this Court has applied the same principles to arbitration agreements governed by the Labor Management Relations Act and those governed by the Arbitration Act. *See, e.g., Viking River Cruises, Inc. v. Moriana*, 596 U.S. 639, 651 (2022); *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 944 (1995).

As for *NFL Players Association v. NFL*, 831 F.3d 985 (8th Cir. 2016), respondent attempts to distinguish it on the ground that it involved “post-award review of disciplinary decisions.” Br. in Opp. 7. Yet the decision there turned on the principles that the NFL Commissioner’s “actual or apparent conflict of interest” was “foreseeable” at the time the parties entered the arbitration agreement, and that parties to an arbitration agreement “can ask no more impartiality than inheres in the method they have chosen.” 831 F.3d at 998 (internal quotation marks and citation omitted). Respondent does not explain why those principles would apply differently on the front end than the back end. And none is apparent. *See also* pp. 5-6, *supra* (discussing 9 U.S.C. 10(a)(2)).

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

The decision below significantly threatens the arbitration regimes of American professional sports leagues, and there are no meaningful impediments to review of the

question whether agreements to arbitrate disputes under those regimes are enforceable. See Pet. 22-25. Respondent’s contrary arguments are incorrect.

1. Respondent contends that the question presented is unimportant and does not implicate any “broader concerns” about the enforcement of arbitration agreements because it involves a question specific to “employment relationships in the professional sports leagues industry.” Br. in Opp. 9. In the decision below, however, the court of appeals held that some dispute-resolution procedures apparently do not provide for “arbitration” under the Arbitration Act, based on an amorphous conception of procedural adequacy that has no roots in the Act’s text or history. See Pet. App. 17a-23a. That is hardly a narrow holding.

In any event, this Court routinely grants certiorari to consider questions of federal law that pose particular significance to a specific industry. See, e.g., *Great Lakes Insurance SE v. Raiders Retreat Realty Co.*, 601 U.S. 65 (2024) (maritime insurance); *Ysleta del Sur Pueblo v. Texas*, 596 U.S. 685 (2022) (tribal gaming in Texas); *NCAA v. Alston*, 594 U.S. 69 (2021) (college athletics). The decision below, if allowed to stand, threatens to destabilize an arbitral scheme that is integral to dispute resolution in professional sports—one of America’s most important industries. See Andy Serwer, *How Pro Football Became America’s National Obsession*, Wall St. J. (Feb. 3, 2026) <[tinyurl.com/NFLrevenuestory](https://www.nytimes.com/2026/02/03/sports/football/nfl-revenue-story.html)>.

Echoing his now-familiar refrain, respondent argues that the decision below does not concern “commissioner-based arbitration systems generally” because it addressed only “statutory employment discrimination claims.” Br. in Opp. 10. That argument fails for now-familiar reasons. See pp. 3, 7, 8, *supra*.

Respondent also downplays (Br. in Opp. 9) the significant discretion that the court of appeals' rule would provide if adopted more broadly. But the decision below contains no inherent limiting principle; it mints a novel federal unconscionability doctrine that allows a court to declare an arbitration agreement unenforceable whenever it finds the procedures to be “unworthy” of the Arbitration Act's protection. See Pet. App. 17a-18a (internal quotation marks and citation omitted). The obvious consequences of the broad adoption of such a rule are highly unlikely to be “hypothetical,” see Br. in Opp. 9, if the Court denies review.

2. Respondent also argues that this case provides a poor vehicle for addressing the question presented for two reasons. Neither is substantial.

To begin with, respondent suggests that this case is unworthy of review because the court of appeals' reliance on both the meaning of the word “arbitration” in the Arbitration Act and the effective-vindication doctrine provide “independent” bases for affirmance. See Br. in Opp. 5, 13, 17. But the court of appeals expressly noted in the decision below that its holding under the effective-vindication doctrine was based on the “same reasons” as its holding that the NFL Constitution did not provide for “arbitration” under the Arbitration Act. Pet. App. 24a. Those two holdings are thus inextricably intertwined, and the question presented encompasses both of them.

Finally, respondent notes that, if the Court were to grant certiorari and reverse, it would need to remand the case for the court of appeals to resolve “additional, unresolved grounds for affirmance” of the district court's order. Br. in Opp. 10; see *id.* at 6. But that is a recurring feature of the Court's merits docket. See, e.g., *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 583 (2022); *Brownback v.*

*King*, 592 U.S. 209, 215 n.3 (2021); *Manuel v. City of Joliet*, 580 U.S. 357, 372 (2017). Respondent has identified no meaningful obstacle to the Court’s review.

\* \* \* \* \*

The decision below upended the parties’ knowing and voluntary agreement, based on an interpretation of the Arbitration Act that is inconsistent with the Act’s text and history and the decisions of numerous courts. The petition for a writ of certiorari should be granted.

Respectfully submitted.

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