

**22-1218 SMITH V. SPIZZIRRI**

DECISION BELOW: 62 F.4th 1201

LOWER COURT CASE NUMBER: 22-16051

**QUESTION PRESENTED:**

This case presents a clear and intractable conflict regarding an important statutory question under the Federal Arbitration Act (FAA), 9 U.S.C.1-16.

The FAA establishes procedures for enforcing arbitration agreements in federal court. Under Section 3 of the Act, when a court finds a dispute subject to arbitration, the court "shall on application of one of the parties *stay the trial of the action* until [the] arbitration" has concluded. 9 U.S.C. 3 (emphasis added). While six circuits read Section 3's plain text as mandating a stay, four other circuits have carved out an atextual "exception" to Section 3's stay requirement-granting district courts discretion to *dismiss* (not stay) if the entire dispute is subject to arbitration. In the proceedings below, the Ninth Circuit declared itself bound by circuit precedent to affirm the district court's "discretion to dismiss," despite "the plain text of the FAA appear[ing] to mandate a stay."

The panel candidly acknowledged the 6-4 circuit conflict, and a two-judge concurrence emphasized "the courts of appeals are divided," asserted the Ninth Circuit's position is wrong, and urged "the Supreme Court to take up this question"-an issue this Court has twice confronted but reserved in the past.

The question presented is:

Whether Section 3 of the FAA requires district courts to stay a lawsuit pending arbitration, or whether district courts have discretion to dismiss when all claims are subject to arbitration.

CERT. GRANTED 1/12/2024