No. 17-1279

IN THE

Supreme Court of the United States

BERNSTEIN, SHUR, SAWYER & NELSON, P.A., *ET AL.*,

Petitioners,

v.

SUSAN R. SNOW,

Respondent.

On Petition for a Writ of Certiorari to the
Maine Supreme Judicial Court

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the Federal Arbitration Act preempts a state-law rule that requires informed consent to significant terms of attorney-client agreements.

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INTRODUCTION

Maine's Rules of Professional Conduct (MRPC) require informed consent in any agreement between lawyer and client that implicates significant client interests. When, for example, a Maine attorney agrees to transact business with a client or accept compensation from a third party for a client's representation, the attorney must obtain informed consent because those agreements threaten a client's right to conflict-free representation. Without informed consent, an attorney-client agreement that creates a conflict of interest violates the MRPC and is therefore unenforceable under Maine law.

Agreements to arbitrate legal malpractice clams similarly involve significant interests of the client that may differ from those of the lawyer. Here, the Maine Supreme Judicial Court, sitting as the Law Court, concluded that, without informed consent, such an agreement was unenforceable. But the same basis for voiding the contract is equally applicable to any number of other kinds of agreements between attorneys and clients—including agreements that do not require arbitration but waive the right to a jury trial or contain forum selection clauses; agreements that waive the prohibition on an attorney's use of client confidences for his own purposes; and agreements that waive conflicts of interest.

In this case, the Law Court determined that petitioner Bernstein, Shur, Sawyer & Nelson, P.A., could not enforce an arbitration agreement against its client, respondent Susan Snow, because the undisputed facts demonstrate that the law firm did not obtain informed consent. Pet. App. 15a ("[T]he undisputed evidence supports the conclusion that Bernstein did not

fully inform Snow as to the scope and effect of the agreement to arbitrate."). The court further held that the Federal Arbitration Act (FAA) does not preempt the application of the general informed-consent principle governing attorney-client contracts to agreements containing arbitration provisions. Pet. App. 16a-18a.

Petitioners present no reason for review by this Court of the state court's factbound application of FAA preemption principles. Their assertion that the decision conflicts with this Court's FAA jurisprudence is unavailing: The rule applied by the Law Court does not "impermissibly disfavor[] arbitration," *Epic Sys. Corp. v. Lewis*, No. 16-285, slip op. at 9 (U.S. May 21, 2018), because it does not "'apply only to arbitration or … derive [its] meaning from the fact that an agreement to arbitrate is at issue," *id.* at 7 (citation omitted). It does not "target arbitration either by name or by more subtle methods," *id.*, but even-handedly applies to arbitration agreements the same standard of informed consent that applies to other transactions between attorneys and clients that involve significant matters in which the parties have potentially conflicting interests.

Nor does this case implicate a conflict among state and federal appellate decisions, let alone an intractable conflict between the federal and state courts in Maine, as petitioners suggest. Petitioners cite no decisions holding that the FAA preempts an even-handed application of the requirement of informed consent to attorney-client agreements affecting significant interests. And their claim that the federal and state courts in Maine now apply differing views of FAA preemption is based on dicta in a non-precedential district court opinion that led to a First Circuit decision that rested

entirely on *state-law* grounds. The Law Court's authoritative state-law ruling lays to rest any possibility that the First Circuit's decision could lead to a different result in a case brought in a Maine federal court.

Once petitioners' erroneous claims of decisional conflict are set aside, there are no important reasons for review of this case. Although the ABA opined more than 15 years ago that the principle of informed consent should apply to attorney-client arbitration agreements, only a handful of cases have addressed the issue. The paucity of case law suggests that the subject is not one on which this Court's guidance is urgently needed and that a decision by this Court would have relatively little real-world impact. The requirement of informed consent, moreover, is one that lawyers are familiar with and can readily satisfy, so it should prove no obstacle to truly voluntary agreements if lawyers and their clients choose to enter into them.

STATEMENT

In May 2012, respondent Susan R. Snow (Snow) retained petitioner Bernstein, Shur, Sawyer & Nelson P.A. (Bernstein Shur) to represent her in a civil action. Pet. App. 2a. To formalize the representation, Bernstein Shur presented Snow with an engagement letter setting forth the scope of its representation. Pet. App. 2a. Appended to Bernstein Shur's engagement letter was a separate document captioned "Standard Terms of Engagement for Legal Services" (Terms of Engagement). Pet. App. 2a. The final page of this document contains the following arbitration agreement:

> If you disagree with the amount of our fee, please take up the question with your principal attorney contact or with the firm's managing partner. Typically, such disagreements are resolved to the

satisfaction of both sides with little inconvenience or formality. In the event of a fee dispute that is not readily resolved, you shall have the right to submit the fee dispute to arbitration under the Maine Code of Professional Responsibility. Any fee dispute that you do not submit to arbitration under the Maine Code of Professional Responsibility, and any other dispute that arises out of or relates to this agreement or the services provided by the law firm shall also, at the election of either party, be subject to binding arbitration. Either party may request such arbitration by sending a written demand for arbitration to the other. If a demand for arbitration is made, you and the firm shall attempt to agree on the arbitrators. If no agreement can be reached within 30 days of receipt of the demand, the party demanding arbitration may designate an arbitrator by sending a written notice to the other party. Within two weeks of that initial designation, the other party shall designate an arbitrator in writing. Thereafter, those two designated arbitrators shall meet promptly to select a third arbitrator. The arbitrators shall conduct the arbitration proceedings according to the procedures under the commercial arbitration rules of the American Arbitration Association and shall hold the arbitration hearing in Maine. The arbitrators shall be bound by and follow applicable Maine substantive rules of law as if the matter were tried in court. Either party shall have the right to appeal a decision of the arbitrators on the grounds that the arbitrators failed to properly apply applicable law.

Pet. App. 20a-21a. Snow signed the letter. Pet. App. 4a. But at no time before or after obtaining her signature did Bernstein Shur inform Snow that she was waiving her right to resolve disputes with Bernstein Shur, including malpractice claims, through the court system. Pet. App. 4a.

On August 17, 2016, Snow filed the Complaint in this matter, alleging legal malpractice and seeking to recover the resultant damages. Pet. App. 4a. In response to Bernstein Shur's arbitration demand, Snow moved to stay arbitration. Pet. App. 4a. Bernstein Shur, on the other hand, sought to compel arbitration. Pet. App. 4a.

The Maine Superior Court granted Snow's Motion and denied Bernstein Shur's. Pet. App. 31a. Relying on the MRPC and the relevant commentary, opinions of the Maine Professional Ethics Commission, and ABA Formal Ethics Opinion 02-425 (2002), the trial court concluded that Maine's general requirement that lawyers provide their clients with sufficient information to make informed decisions about their representation applied to attorney-client arbitration agreements. Pet. App. 29a (citing M.R. Prof. Conduct 1.4(b)). Because there was no factual dispute—on affidavits submitted by Snow and Bernstein Shur—that Bernstein Shur did not provide Snow with any information about arbitration beyond the language in the engagement letter, Pet. App. 4a, 29a-30a, the court determined that Bernstein Shur failed to comply with the MRPC and that the agreement to arbitrate was unenforceable under Maine law. Pet. App. 29a.

Like the Law Court, the trial court considered the issues of FAA preemption, but concluded that

> The rule that lawyers must provide adequate information and explanation to obtain "informed consent" of their clients does not apply "specifically and solely" to arbitration provisions but applies generally to any instance in which a lawyer seeks the client's assent and agreement. Accordingly, the applicable provisions of the Maine Rules of Professional Conduct do not single out arbitration provisions for special treatment and are not preempted under the Federal Arbitration Act.

Pet. App. 29a-30a.

In affirming the trial court, the Law Court adopted a similar analysis. After reviewing M.R. Prof. Conduct 1.8, ABA Formal Opinion 02-425, and an opinion of Maine's own Ethics Commission requiring informed-consent in the similar context of attorney-client agreements that waive the right to a jury trial, the court determined that arbitration, like an agreement to limit a lawyer's liability or waive the right to a jury trial, could significantly impact a client's rights. The court accordingly applied the requirement of informed consent to such agreements. Pet. App. 12a.

Although the court recognized that arbitration's consequences—including the waiver of a right to a jury trial—placed it in the same category as other agreements affecting significant client interests subject to Maine's informed-consent requirement, nothing in the Law Court's decision hinges on arbitration's threat to constitutional rights. The court's requirement of informed consent does not apply solely to a client's decision to waive the right to a jury trial or even specifically to constitutional rights. The court, instead, described informed consent as an obligation

"rooted in principles unrelated to arbitration: namely, that as a general matter, an attorney—who stands as a fiduciary to his client—should fully inform the client as to the scope and effect of her decision to waive significant rights." Pet. App. 17a.

Because Bernstein Shur undisputedly did not provide informed consent, the Law Court affirmed the trial court's decision declining to enforce the attorney-client arbitration agreement. Pet. App. 17a-18a.

REASONS FOR DENYING THE WRIT

I. The Maine court's decision adheres to the principles established by this Court's FAA decisions.

Despite conceding that an informed consent requirement would not violate the FAA if it applied uniformly to all material terms in an attorney-client agreement, petitioners seek review on the flawed premise that the Law Court's decision conflicts with this Court's FAA precedents—in particular, *Kindred Nursing Ctrs. Ltd. P'ship v. Clark*, 137 S. Ct. 1421 (2017). Seizing on the court's statement that an attorney "should fully inform the client as to the scope and effect of her decision to waive significant rights," petitioners attempt to couch the Law Court's decision as another attempt by a state court to skirt the FAA on the pretense of protecting the right to a jury trial.

But the Law Court's decision does not single out or disfavor arbitration; nor does it "hing[e]" on the waiver of the right to a jury trial. *See id.* at 1427 (holding that a state court cannot adopt a rule "hinging" on a primary characteristic of an arbitration agreement—waiver of the right to a jury trial). Instead, the court conscientiously and correctly considered this

Court's FAA preemption jurisprudence and ultimately concluded that informed consent—a concept entirely unrelated to arbitration—applies generally to all agreements between Maine lawyers and their clients that potentially impact clients' significant interests. Because such a rule, as petitioners concede (*see* Pet. 16), merely places arbitration on the same footing as other attorney-client agreements, the Law Court's decision does not conflict with the FAA.

This Court's FAA jurisprudence precludes states from invalidating an otherwise enforceable arbitration agreement by explicitly targeting arbitration, or by enforcing generally-applicable state law contract defenses in a "fashion the disfavors arbitration." *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 339 (2011).

In *Kindred*, the Court reiterated the latter requirement in reviewing the Kentucky Supreme Court's decision to invalidate an arbitration agreement made under the authority of a power of attorney. 137 S. Ct. at 1426 (citing *Concepcion*, 563 U.S. at 339). There, the state court, in declining to enforce the arbitration agreement, declared that an "agent could deprive her principal of an adjudication by judge or jury" only if the power of attorney "expressly so provided." *Extendicare Homes, Inc. v. Whisman*, 478 S.W. 3d 306, 329 (Ky. 2015).

Citing *Concepcion*, this Court held that the FAA preempted the Kentucky Supreme Court's specific-authority requirement because the rule "hing[ed] on the primary characteristic of an arbitration agreement—namely, a waiver of the right to go to court and receive a jury trial." *Kindred*, 137 S. Ct. at 1427. That the Kentucky's specific-authority rule could

hypothetically apply to other contracts did not save it from singling out arbitration, the Court concluded. *Id.* at 1427-28. The Kentucky court's attempts to characterize its rule as a generally-applicable contract defense failed to identify any practical application beyond arbitration: Nowhere, for example, did the state court caution "that an attorney-in-fact would now need a specific authorization to, say, sell her principal's furniture or commit her principal to a non-disclosure agreement." *Id.* "[F]anciful" and unlikely theoretical agreements cannot convert an otherwise arbitration-targeting state law into a generally-applicable contract defense. *Id.*

Here, petitioners attempt to frame the Law Court's informed-consent requirement as a state law rule that, like the specific-authority rule in *Kindred*, singles out arbitration under the guise of protecting an important constitutional right and on the "fanciful" pretense that there are non-arbitration applications that would never actually occur.

Unlike *Kindred*, however, the Law Court did not create a rule premised on the protection of constitutional rights. Providing informed consent in the context of an agreement to arbitrate will necessarily involve a discussion of a client's right to a trial by jury, Pet. App. 13a, but the court did not limit the scope of its informed-consent requirement to a client's waiver of constitutional rights. Instead, the informed-consent requirement applies broadly to any attorney-client agreement that implicates significant rights—regardless of whether those rights are constitutional in nature. Pet. App. 17a. In applying that principle here, the Law Court has only subjected attorney-client arbitration agreements to exactly the same requirements that apply to other agreements in which a client

waives significant interests, such as the interest in conflict-free representation, preservation of client confidences, or right to trial by jury.

These rights are not hypothetical, far-fetched, or invoked by a state court solely to invalidate an arbitration agreement, as in *Kindred*. Rather, the rights at issue govern Maine attorneys' conduct on a daily basis, and, importantly, the informed-consent requirement applies to every attorney-client agreement implicating those rights.

The informed-consent requirement applies generally to all significant aspects of the attorney-client relationship. *See* M.R. Prof. Conduct 1.4(b) ("[a] lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions about the representation."). More specifically, it applies in a variety of situations in which clients agree with lawyers to waive otherwise applicable rights. *See*, *e.g.*, M.R. Prof. Conduct 1.2(c) (requiring informed consent to limit the scope of representation); M.R. Prof. Conduct 1.6(a) (requiring informed consent to disclose client confidences); M.R. Prof. Conduct 1.7(b)(2) (requiring informed consent with regard to waivable current conflicts of interest); M.R. Prof. Conduct 1.8(a)(3), (f)(1) (requiring informed consent to engage in a business transaction or to accept compensation for representing one client from another). Attorney-client arbitration agreements are no exception to this generally applicable requirement. M.R. Prof. Conduct 1.8(h) cmt. 14 "[Rule 1.8(h)] does not … prohibit a lawyer from entering into an agreement with the client to arbitrate legal malpractice claims, provided the agreements are enforceable and the client is fully informed of the scope and effect of the agreement."). Any agreement made in violation of the MRPC is void for

the same reasons that the Law Court invalidated the arbitration agreement in this case. Pet App. 7a ("A contract is against public policy if it clearly appears to be in violation of some well established rule of law, or that its tendency will be harmful to the interests of society.").

Recognizing that arbitration involves as "significant" an effect on client interests as other matters to which the requirement of informed consent applies does not uniquely *disfavor* arbitration. Rather, it merely avoids making arbitration agreements more enforceable than other comparable agreements between attorney and client, and thus is consistent with the Court's insistence that the FAA requires that "arbitration agreements [be] as enforceable as other contracts, but not more so." *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 404 n. 12 (1967).

Similarly, the Law Court's informed consent requirement does not disproportionately apply to arbitration agreements. Petitioners contend that Maine's rule applies to every attorney-client contract with an arbitration agreement, but not to every non-arbitration attorney-client contract. This argument again ignores the source of the court's informed-consent requirement—the MRPC. To name a few situations beyond an attorney-client agreement to arbitrate, the informed-consent requirement applies to:

- Every agreement to limit the scope of representation;
- Every agreement to transact business with a client;
- Every agreement to split a contingency fee;
- Every agreement to limit a lawyer's liability;

- Every agreement to disclose a client's confidential information for an attorney's benefit;
- Every agreement to accept compensation from someone besides a client;
- Every agreement that requires the lawyer to explain a matter to the extent reasonably necessary to permit the client to make informed decisions about the representation.

Any of these commonly arising circumstances is likely to trigger Maine's informed-consent requirement much more frequently than attorney-client agreements to arbitrate legal malpractice claims. Every day, for instance, Maine lawyers accept compensation from insurance companies to represent their insureds. This arrangement, pursuant to M.R. Prof. Conduct 1.8(f), requires that the lawyer obtain informed consent—in one-hundred percent of insurance defense attorney-client agreements. Similarly, lawyers regularly divide contingency fees and enter into limited representation agreements. Only a single Maine law firm, on the other hand, has to our knowledge ever attempted to enforce an attorney-client arbitration agreement against their client.

Ignoring these obvious and explicit situations in which the court's informed-consent requirement applies to non-arbitration agreements, petitioners point to the lack of Maine decisional law requiring informed consent in other contexts. The lack of informed-consent precedent, however, only shows that most Maine lawyers are not in the business of attempting to enforce agreements with their clients that violate the MRPC. If a Maine attorney attempted to enforce an agreement that limited a lawyer's liability, involved the sale of a client's business to the lawyer, or

disclosed a client's confidential information without a client's informed consent, Maine courts would certainly decline to enforce those agreements—*and* the attorney would likely face disciplinary action.

What petitioners ask is that the Court read into the FAA a requirement to place arbitration agreements on a plane above all other contracts. Because nothing in this Court's FAA preemption jurisprudence requires such a result, and because the Law Court's informed-consent requirement treats arbitration agreements identically to other attorney-client agreements implicating comparably significant rights, there is no conflict with federal law.

II. This case involves no conflict of state and federal appellate authority.

Petitioners contend that the Law Court's decision creates a conflict among federal and state appellate decisions, but they cite no precedent holding that application of an informed-consent requirement to attorney-client agreements involving significant client interests—including arbitration agreements—is preempted by the FAA. The absence of such authority is particularly striking given that the ABA issued its formal ethics opinion applying the informed-consent principle to attorney-client arbitration agreements more than 15 years ago. In that time, no court has held that an even-handed application of the informed-consent principle to attorney-client arbitration agreements is preempted by the FAA.

Petitioners attempt to conjure up a conflict between the Law Court's opinion and precedents of the Third Circuit, but both Third Circuit cases cited by petitioners miss the mark. The non-precedential opinion in *Smith v. Lindemann* does not reach the issue of

whether a state can invalidate an attorney-client arbitration agreement for lack of informed consent, 710 Fed. Appx. 101, 104 (3d Cir. 2017) ("We need not decide that question, however, because she fails to explain why a written or oral warning that explicitly uses the word 'malpractice' is necessary as a matter of New Jersey law."). The opinion states that the FAA *would* preempt a categorical rule prohibiting arbitration of attorney-client disputes altogether, *id*. at 103, but there is no suggestion that the Maine court adopted such a rule in this case. The *Lindemann* court further suggested—in dicta given that it found the case did not present the issue—that a rule that singled out arbitration agreements for different treatment from other comparable attorney-client agreements would be preempted, *see id.* at 104, but, again, the Maine Law Court did not single out arbitration for unequal treatment: It imposed the same requirements on attorney-client arbitration agreements as on other matters involving waiver of significant client interests.

Petitioners' invocation of the Third Circuit's decision in *Morales v. Sun Constructors, Inc.*, is even further afield, as *Morales* does not involve an attorney-client agreement, but instead addresses an argument that arbitration agreements generally require a heightened level of consent—an argument that, unlike the Law Court's decision, would single out arbitration agreements for different treatment from other agreements based on unique characteristics of arbitration. 541 F.3d 218, 222 (3d Cir. 2008).[1]

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[1] *Awuah v. Coverall N. Am., Inc.*, 703 F.3d 36 (1st Cir. 2012), and *Mortensen v. Bresnan Commc'ns*, 722 F3d 1151 (9th Cir. 2013), are irrelevant for the same reason.

Indeed, the only precedential appellate authority petitioners cite that is remotely on point is *Smith v. JEM Group, Inc.*, which held, consistent with the decision in this case, that an informed-consent rule that does not single out arbitration for disfavored treatment is *not* preempted by the FAA. 737 F.3d 636, 641 (9th Cir. 2013) ("Washington law does not unduly burden arbitration."). As the court in *JEM Group* explained, the informed-consent requirement imposed by Washington law on material terms in attorney-client agreements—including arbitration clauses—"is not specifically aimed at arbitration clauses," but "merely clarifies that an arbitration clause is among the material provisions in an [attorney retainer agreement] that an attorney, acting as a fiduciary, must disclose to his client." *Id.* at 642. As explained above, the decision below in this case applies exactly the same type of rule, applying to attorney-client arbitration agreements the same informed-consent requirement that applies to a wide range of agreements affecting significant client interests or waiving significant client rights.

Tellingly, Petitioners do not argue that the holding of *JEM Group* is incorrect or that it conflicts with other appellate authority. Their only argument for preemption in this case is that the Maine court, unlike the court in *JEM Group*, applied a rule that discriminates against arbitration—which, as demonstrated by Maine's broad application of informed consent in the attorney-client context, is incorrect. The consistent holdings of the only on-point, precedential appellate rulings that petitioners cite—*JEM Group* and the decision below—underscore the absence of any reason for review by this Court.

III. There are no other important reasons for review of this case.

Absent a conflict of appellate authority worthy of this Court's resolution, petitioners seek to elevate the importance of review by pointing to another legal malpractice case in which they successfully enforced an attorney-client arbitration agreement in a Maine federal court. *See Bezio v. Draeger*, No. 2:12-CV-00396-NT, 2013 U.S. Dist. LEXIS 99291 (D. Me. July 16, 2013). Relying on this unreported decision, petitioners contend that without this Court's review, an unacceptable split between state and federal courts in Maine will trigger "particularly heated" races to the courthouse and forum shopping. This purported conflict is inconsequential for several reasons.

First, the district court decision in *Bezio* is not binding precedent in any court. The only decision of precedential weight to arise out of the *Bezio* case is the First Circuit's decision on appeal, which affirmed the district court purely on state-law grounds, not based on FAA preemption. *See Bezio v. Draeger*, 737 F.3d 819, 825 (1st Cir. 2013). Specifically, the First Circuit affirmed on the supposition (now established to be erroneous by the decision below) that, as a matter of state law, Maine had not adopted, and would not adopt, an informed-consent requirement for attorney-client arbitration agreements. *Id.* ("At present we see no basis to conclude that Maine has adopted [an informed-consent requirement] or that it ever will."). Now that Maine's Law Court has spoken, the First Circuit's state-law predictions are no longer relevant, and the decision holds nothing about FAA preemption.

Second, even if the *Bezio* district court's statements about preemption had any weight as precedent,

they were based on incorrect assumptions about what an informed-consent requirement under Maine law would look like. Issued prior to the Law Court's decision in this case, the district court opinion in *Bezio* was premised on the erroneous view that Maine's informed-consent requirement would apply only to arbitration agreements. *Bezio*, 2013 U.S. Dist. LEXIS 99291 at **7-10. The decision below, however, does not bear out the district court's assumption: It applies the informed-consent requirement even-handedly to a wide range of attorney-client transactions. Pet. App. 17a, 18a. Without a clear understanding of the generally applicable Maine contract defense subsequently recognized in this case, the *Bezio* district court could not properly evaluate whether that defense fits within the FAA's saving clause. With Maine law now clearly defined, the district court would likely reconsider its prior, unreported decision.

Third, as a practical matter, it is unlikely that the disagreement between the state and federal courts in Maine that petitioners hypothesize would have any real impact. Maine's ethical obligations unequivocally require informed consent in attorney-client arbitration agreements—regardless of whether such agreements are enforceable as a matter of federal law. Responsible Maine attorneys are thus unlikely to engage in large-scale imposition of arbitration agreements without ensuring informed consent by their clients, so it is unlikely that there will be a spate of litigation over the issue, or that efforts to enforce attorney-client arbitration agreements will lead to divergent results in the state and federal court systems even if the federal courts take the view that the informed-consent requirement violates the FAA. Indeed, ethical Maine attorneys would be likely to continue to comply with

the Law Court's informed-consent standard even if this Court granted the writ and accepted petitioners' preemption argument.

Fourth, a search of records for the United States District Court, District of Maine indicates that a total of four cases classified as legal malpractice proceedings have been filed in or removed to that forum since 2005—and for the past five years that number is zero. Given these statistics, petitioners' warning of a "particularly heated" race to the courthouse involving premature suits and forum shopping is overstated to say the least—as is the likelihood that a law firm might assert federal counterclaims in response to a state law professional negligence claim.

Beyond petitioners' insubstantial concern about conflict between state and federal courts in Maine, there is no reason of national importance for this Court to review the Maine court's decision. Although the ABA recommended more than a decade ago that informed consent be required for enforcement of attorney-client arbitration agreements, the question whether application of informed-consent principles in this context raises FAA preemption issues has rarely arisen, as the paucity of relevant case law cited by petitioners striking demonstrates. The infrequency of litigation over the subject may reflect that arbitration agreements have not been widely used in this setting. It may also suggest that attorneys know how to, and typically do, comply with the familiar informed-consent requirements applicable to attorney-client transactions that involve significant client interests. Such compliance is not an onerous burden, nor would it prove an obstacle to enforcement of arbitration agreements if attorneys and their clients knowingly and voluntarily chose to enter into them. Absent the

development of some real decisional conflict on the point, there is no pressing reason for this Court to consider whether the FAA prevents states from imposing the same ethical standards on attorney-client arbitration agreements that they commonly apply to comparable matters.

In reality, this case is important only to the parties. And the enforceability of the Law Court's informed-consent requirement is relevant only to practicing Maine attorneys and their clients.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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