No. 24-246

IN THE

Supreme Court of the United States

JAMES W. MILLER,

Petitioner,

v.

MBC DEVELOPMENT, LP, MBC MANAGEMENT, LLC, MBC PROPERTIES, LP, JAMES L. MILLER, AND MILLER PROPERTIES MANAGEMENT, LLC,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA, MIDDLE DISTRICT

REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

DEAN F. PIERMATTEI
JILL N. WEIKERT
COMPASS LEGAL GROUP LLC
2205 Forest Hills Drive,
Suite 10
Harrisburg, PA 17112

HOWARD J. BASHMAN
Counsel of Record
500 Office Center Drive,
Suite 400
Fort Washington, PA 19034
(215) 830-1458
hjb@hjbashman.com

Counsel for Petitioner

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

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INTRODUCTION

The parties to this dispute entered into Limited Partnership Agreements expressly providing that "[a]ny dispute or controversy arising under or in connection with this Agreement shall be settled exclusively by arbitration in accordance with the rules of the American Arbitration Association in effect at the time of submission to arbitration," language that appeared in those agreements under the heading of "Mandatory Arbitration." Pet. App. 3a.

The brief in opposition does not once quote from or otherwise refer to this all-encompassing Mandatory Arbitration agreement. Nor does the brief in opposition contend that the Federal Arbitration Act, 9 U.S.C. §2, has no applicability to this dispute. Rather, respondents advance several insubstantial grounds in the hope of avoiding review, incorrectly contending that the Supreme Court of Pennsylvania failed to "adequately address[]" the question of Federal Arbitration Act preemption and that this case raises an "isolated issue" of non-compliance with FAA preemption principles involving a "unique" Pennsylvania statute not deserving of this Court's review and correction. Br. in Opp. at 2, 6.

Neither of these supposed "vehicle problems" has merit. The Supreme Court of Pennsylvania squarely considered and rejected the argument that the FAA preempted the Pennsylvania statutes at issue, which that court construed to require "court review" in place of the parties' agreed-upon remedy of arbitration. Pet. App. 30a-31a. And this Court has not refrained from rooting out and correcting even the most inventive state

law efforts to deny enforcement of the parties' chosen remedy of arbitration under the FAA's preemptive force. The Pennsylvania statutes at issue in this case are similar to uniform laws enacted in numerous states,[1] and those Pennsylvania statutes share a great deal in common with various state laws that this Court has already held to be preempted under the FAA. That same result necessarily follows here.

Lastly, the brief in opposition notes that the Supreme Court of Pennsylvania's majority opinion based the anti-arbitration result that court reached here on this Court's holding in *Volt Info. Sciences, Inc.* v. *Trustees of Leland Stanford Junior Univ.*, 489 U.S. 468 (1989), given that the parties' limited partnership agreements contained a Pennsylvania choice-of-law clause.

Yet the brief in opposition fails to argue that the Federal Arbitration Act does not preempt the Supreme Court of Pennsylvania's construction of Pennsylvania's Uniform Limited Partnership Act to preclude arbitration under the circumstances of this case. Rather, respondents misread this Court's decision in *Volt*, in common with the majority opinion of the Supreme Court of Pennsylvania, Pet. App. 27a-31a, to hold that the parties' choice of Pennsylvania law meant that they agreed that the Uniform Limited Partnership Act's preclusion of arbitration under the circumstances of this case would take precedence

1. The committee comment to 15 Pa. Cons. Stat. Ann. §8694 explains that the provision is patterned on the 2006 version of the Uniform Limited Liability Company Act, which according to the Uniform Law Commission has thus far been enacted in 22 States and the District of Columbia.

over the parties' express agreement for "Mandatory Arbitration" of all disputes arising between them. Pet. App. 3a.

Nowhere in their brief in opposition do respondents grapple with the fact that their attempt to justify the Supreme Court of Pennsylvania's rejection of FAA preemption is directly contrary to this Court's holding in *DIRECTV, Inc.* v. *Imburgia*, 577 U.S. 47, 57 (2015), and numerous other decisions from this Court recognizing that the FAA preempts any "state law prohibit[ing] outright the arbitration of a particular type of claim." *AT&T Mobility LLC* v. *Concepcion*, 563 U.S. 333, 341 (2011).

Because the FAA likewise preempts Pennsylvania's Uniform Limited Partnership Act's requirement of "court review" where the parties have otherwise agreed to mandatory arbitration, the parties' choice of Pennsylvania law does not allow that otherwise preempted state law provision to take precedence over the parties' agreement to mandatorily arbitrate all disputes arising between them. *See Imburgia*, 577 U.S. at 57.

For these reasons, this Court should either grant plenary review, to resolve the tensions between *Southland Corp.* v. *Keating*, 465 U.S. 1 (1984), and *Volt* that this case presents, or summarily reverse the Supreme Court of Pennsylvania's plainly incorrect decision rejecting FAA preemption.

ARGUMENT

I. This Court Possesses Jurisdiction To Review The Decision Of The Supreme Court Of Pennsylvania, Which Considered And Resolved Whether The Federal Arbitration Act Preempts The State Law That Precluded Arbitration Here

The brief in opposition is demonstrably incorrect in asserting that the "question presented was neither preserved for appellate review nor adequately addressed below." Br. in Opp. at 2.

The Supreme Court of Pennsylvania's majority opinion expressly addressed and rejected "[a]ppellee's suggestion that interpreting the term 'court' in the PULPA to preclude arbitration 'runs afoul of the FAA.'" Pet. App. 27a (citing Son's Pa. S. Ct. Br. for Appellee at 28-30). Moreover, the majority opinion considered at length the interplay between this Court's decisions in *Southland* and *Volt*. Pet. App. 27a-31a. Whether the Supreme Court of Pennsylvania correctly understood and applied those decisions to require no FAA preemption of a state statute precluding arbitration of a particular substantive claim is the question presented in this case. Pennsylvania's highest court concluded its discussion of FAA preemption with the following explicit holding: "Accordingly, as in *Volt*, enforcing the parties' agreement here does not violate the FAA." Pet. App. 31a.

For the brief in opposition to characterize the majority's holding below as *dicta* on the issue of FAA preemption is thus incorrect. Pennsylvania's highest court considered the issue preserved and expressly resolved it against petitioner and against FAA preemption.

As the Court has explained, "[i]t is irrelevant to this Court's jurisdiction whether a party raised below and argued a federal-law issue that the state supreme court actually considered and decided." *Cohen* v. *Cowles Media Co.*, 501 U.S. 663, 677 (1991).

Respondents unsupported contention that the Supreme Court of Pennsylvania did not adequately address the issue of FAA preemption is without merit and presents no obstacle to this Court's review.

II. This Court Has Recognized That The Federal Arbitration Act Preempts A Variety Of State Laws That Improperly Disfavor Or Discriminate Against Arbitration

Respondents next argue that review is unjustified because "the state supreme court decision was on a narrow question special to Pennsylvania and its unique laws." Br. in Opp. at 6. That argument is incorrect, and in any event this Court's FAA preemption case law does not support denying review for such reasons. This Court's jurisprudence began by applying FAA preemption to state laws, such as the one at issue in this case, that expressly refused to allow arbitration of certain types of substantive claims rooted in impermissible anti-arbitration animus contrary to the principles at the very heart of the Federal Arbitration Act. *See Southland*, 465 U.S. at 10 ("In enacting §2 of the federal Act, Congress declared a national policy favoring arbitration and withdrew the power of the states to require a judicial forum for the resolution of claims which the contracting parties agreed to resolve by arbitration").

Thereafter, states became more creative, attempting to impose obstacles to arbitration in more ingenious and less obvious ways, yet this Court was up to the task, finding that such methods intended to thwart or preclude agreements to arbitrate likewise were impermissible under the FAA. *See*, *e.g.*, *Viking River Cruises, Inc.* v. *Moriana*, 596 U.S. 639 (2022) (FAA preempts California law precluding arbitration of individual Private Attorney General Act claims); *Kindred Nursing Ctrs. Ltd. P'ship* v. *Clark*, 581 U.S. 246, 248 (2017) (FAA preempts Kentucky's "clear statement rule" limiting when holder of power-of-attorney can agree to arbitration); *Marmet Health Care Ctr., Inc.* v. *Brown*, 565 U.S. 530, 533 (2012) (per curiam) (FAA preempts West Virginia's prohibition against predispute agreements to arbitrate personal injury or wrongful death claims).

Contrary to respondents' suggestion that "[a] decision by this Court on the merits [of this case] thus would seem to have little application nationwide," Br. in Opp. at 6, the committee comment to 15 Pa. Cons. Stat. Ann. §8694 explains that the statute is patterned on the 2006 version of the Uniform Limited Liability Company Act, which according to the Uniform Law Commission has been enacted in 22 States and the District of Columbia, and counting. The Court's decision reviewing and reversing the judgment of the Supreme Court of Pennsylvania in this case would make clear that *Volt* was not intended to immunize from FAA preemption state laws precluding the arbitration of certain types of substantive claims so long as a choice-of-law provision applying that State's law was included in the parties' contract.

The question of how to interpret this Court's decisions in *Southland* and *Volt* was the subject of sharp disagreement between the majority and the dissenting Justices of the Supreme Court of Pennsylvania in this case. Pet. App. 27a-31a (majority opinion); *id.* at 46a-56a (dissenting opinion). Only this Court can definitively resolve that disagreement, and a decision doing so would be of tremendous assistance to lower courts in future cases.

III. The Supreme Court Of Pennsylvania's Decision Applying State Law To Preclude Arbitration Of The Claims At Issue Here, Which The Parties Expressly Agreed To Arbitrate, Conflicts With This Court's Precedents

Respondents lastly attempt to depict as correct on the merits the Supreme Court of Pennsylvania's decision holding that the FAA did not preempt the Pennsylvania Uniform Limited Partnership Act's requirement of "court review," *see* 15 Pa. Cons. Stat. Ann. §8692(a)(3); 15 Pa. Cons. Stat. Ann. §8694(f), in place of arbitration, notwithstanding the parties' express agreement to mandatorily arbitrate all disputes between them arising from the limited partnership agreements at issue. Pet. App. 3a.

In common with the majority opinion below, Pet. App. 27a-31a, respondents assert that this Court's opinion in *Volt* justified the Supreme Court of Pennsylvania's decision to disregard the parties' express agreement to arbitrate all disputes between them without running afoul of FAA preemption.

As both the petition for writ of certiorari and Justice Wecht's persuasive dissent below made clear, this Court's decision in *Volt* does not support the Supreme Court of Pennsylvania's holding that the FAA fails to preempt Pennsylvania's Uniform Limited Partnership Act's requirement of "court review" in place of arbitration. Pet. App. 46a-56a.

Volt concerned a dispute between various parties, some who had agreed to arbitration and others who had not. *See* 489 U.S. at 470-72. Under California law, which applied in *Volt*, a generally applicable state arbitration statute provided that, in those circumstances, an arbitration proceeding among the parties who had agreed to arbitrate would be stayed so that a court could first resolve the dispute as to the parties not bound by that agreement. *See* Cal. Civ. Proc. Code Ann. §1281.2(d)(4) (permitting a court to "stay arbitration pending the outcome of the court action or special proceeding"). Then, once the dispute as to the parties who had not agreed to arbitrate was resolved by a court, the arbitration proceeding involving the parties who had agreed to arbitrate would go forward. *See id.*

This case, by contrast, shares nothing in common with *Volt* except for the fact that it involves a Pennsylvania, rather than a California, choice-of-law provision. But this case, unlike *Volt*, does not involve some generally applicable law governing arbitration in Pennsylvania specifying the order in which arbitration and court resolution should proceed where not all parties have agreed to arbitration.[2]

2. Of course, this Court has made clear that "even rules that are generally applicable as a formal matter are not immune to preemption by the FAA." *Viking River*, 596 U.S. at 650. This

Rather, this case involves substantive statutes providing that a certain type of claim under Pennsylvania's Uniform Limited Partnership Act can never be subject to arbitration, *see* 15 Pa. Cons. Stat. Ann. §8692(a)(3); 15 Pa. Cons. Stat. Ann. §8694(f), even where, as here, the parties have expressly agreed to mandatorily arbitrate every conceivable sort of dispute arising from the limited partnership agreements between them. Pet. App. 3a.

Unlike in *Volt*, the stay of arbitration that issued in this case was not *temporary*, subject to expiration after the California trial court in *Volt* resolved the dispute as to those parties who had not agreed to arbitrate. Rather, in this case the trial court's stay of arbitration was *permanent*, because Pennsylvania's Uniform Limited Partnership Act required "court review" instead of arbitration to resolve the substance of the parties' dispute. *See* 15 Pa. Cons. Stat. Ann. §8692(a)(3); 15 Pa. Cons. Stat. Ann. §8694(f). The state law at issue in *Volt* concerned the timing of when arbitration would proceed; by contrast, the state laws at issue here preclude arbitration altogether between parties who have expressly agreed to arbitrate all disputes arising from their limited partnership agreements. Pet. App. 3a.

The view of respondents and the majority below—that because both *Volt* and this case involve a choice-of-law clause means that any state statute precluding arbitration in violation of the FAA can lawfully be enforced—is directly contrary to this Court's holding in *DIRECTV, Inc.* v. *Imburgia*, 577 U.S. 47 (2015). In *Imburgia*, this

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case, however, does not involve such a generally applicable rule, but rather involves Pennsylvania statutes that preclude arbitration of a particular substantive claim, in clear violation of this Court's FAA precedents.

Court ruled that the parties' inclusion of a California choice-of-law clause did not require enforcement of a California statute precluding arbitration under the specific circumstances of that case, given that the California statute in question was itself preempted by federal law under the FAA. *Id.* at 57.

The parties in this case did everything in their power to ensure that disputes between them arising from the limited partnership agreements at issue here would be resolved through binding mandatory arbitration. Pet. App. 3a. Except, according to respondents and the majority opinion, below, for the fact that they also included a Pennsylvania choice-of-law provision in those agreements. That choice-of-law provision, according to the Supreme Court of Pennsylvania, sufficed to prevent the FAA from preempting Pennsylvania statutes that clearly and impermissibly preclude the arbitration of a certain sort of substantive claim in violation of a substantial amount of this Court's FAA preemption precedents. *See*, *e.g.*, *Kindred*, 581 U.S. at 251 ("FAA . . . preempts any state rule discriminating on its face against arbitration—for example, a law prohibiting outright the arbitration of a particular type of claim") (internal quotations omitted); *Concepcion*, 563 U.S. at 341 ("When state law prohibits outright the arbitration of a particular type of claim, the analysis is straightforward: The conflicting rule is displaced by the FAA.").

Here, Pennsylvania's highest court held that a general choice-of-law clause means that any state law on the subject of arbitration is part of the contract, whether or not that law is otherwise preempted by the FAA. Yet that ruling is directly contrary to this Court's decision

in *Imburgia*, 577 U.S. at 57. In spite of *Imburgia*, the lower court said that under *Volt*, decided decades earlier, a generic choice-of-law clause requires the enforcement of any state law precluding arbitration regardless of its validity absent the clause. If *Volt* had held that, *Imburgia* abrogated it, and *Volt* itself never held any such thing. This case vividly demonstrates that lower courts need clarity on the effect of choice-of-law clauses on FAA preemption and the status of *Volt*.

The Supreme Court of Pennsylvania's ruling in this case is flatly contrary to this Court's decisions in *Southland*, *Volt*, *Imburgia*, *Kindred*, and *Concepcion*, to name just a few. The petition for writ of certiorari should be granted, or this Court should summarily reverse the Supreme Court of Pennsylvania's clearly erroneous decision in this case.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,

Dean F. Piermattei
Jill N. Weikert
Compass Legal Group LLC
2205 Forest Hills Drive,
Suite 10
Harrisburg, PA 17112

Howard J. Bashman
Counsel of Record
500 Office Center Drive,
Suite 400
Fort Washington, PA 19034
(215) 830-1458
hjb@hjbashman.com

Counsel for Petitioner