No.

In The Supreme Court of the United States

COMCAST CABLE COMMUNICATIONS, LLC,

Petitioner,

v.

CHARLES RAMSEY.

ON PETITION FOR A WRIT OF CERTIORARI TO THE CALIFORNIA COURT OF APPEAL, SIXTH APPELLATE DISTRICT

PETITION FOR A WRIT OF CERTIORARI

Pratik A. Shah
Counsel of Record
AKIN GUMP STRAUSS HAUER & FELD LLP
2001 K Street N.W.
Washington, DC 20006
(202) 887-4210
pshah@akingump.com

Michael Weisbuch
AKIN GUMP STRAUSS HAUER & FELD LLP
100 Pine Street, Suite 3200
San Francisco, CA 94111
(415) 765-9500

Marshall Baker
AKIN GUMP STRAUSS HAUER & FELD LLP
1999 Avenue Of The Stars, Suite 600
Los Angeles, CA 90067
(310) 229-1000

Counsel for Petitioner

QUESTION PRESENTED

Under the Federal Arbitration Act (FAA), arbitration agreements are "valid, irrevocable, and enforceable." 9 U.S.C. § 2. Section 2's "saving clause" contemplates exceptions only "upon such grounds as exist at law or in equity for the revocation of any contract." *Id.* But the FAA preempts even such grounds if they interfere with "fundamental attribute[s] of arbitration." *Epic Sys. Corp. v. Lewis*, 584 U.S. 497, 508 (2018). In 2017, the California Supreme Court ruled that an arbitration provision waiving the ability to seek "public injunctive relief" in any forum is unenforceable. *McGill v. Citibank, N.A.*, 393 P.3d 85 (Cal. 2017). More recently, the California courts have held that to trigger that rule, a plaintiff need only request an injunction under California's Unfair Competition Law (UCL) or Consumers Legal Remedies Act (CLRA). The *McGill* rule thus renders standard arbitration agreements unenforceable under California law when a consumer-plaintiff seeks to enjoin virtually any allegedly unlawful business practice. The Ninth Circuit has held that the FAA would preempt such a sweeping rule—resulting in a square federal-state conflict.

The question presented is:

Whether the FAA preempts California's *McGill* rule.

PARTIES TO THE PROCEEDING

All parties to the proceeding are set forth in the caption.

RULE 29.6 STATEMENT

Comcast Cable Communications, LLC is an indirect wholly-owned subsidiary of Comcast Corporation, a publicly held corporation. No entity or person has an ownership interest of 10 percent or more in Comcast Corporation.

STATEMENT OF RELATED PROCEEDINGS

Pursuant to this Court's Rule 14.1(b)(iii), the following proceedings are directly related to this case:

Charles Ramsey v. Comcast Cable Communications, LLC, 317 Cal. Rptr. 3d 561 (Ct. App. 2023).

Charles Ramsey v. Comcast Cable Communications, LLC, Case No. 21CV384867 (Cal. Super. Ct., Santa Clara Cnty. 2022).

TABLE OF CONTENTS

QUESTION PRESENTED i
PARTIES TO THE PROCEEDING ii
RULE 29.6 STATEMENT ii
STATEMENT OF RELATED PROCEEDINGS iii
INTRODUCTION 1
OPINIONS BELOW 4
JURISDICTION 4
RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS 4
STATEMENT OF THE CASE 5
A. Legal Background 5
1. *FAA Preemption* 5
2. *The McGill Rule* 7
B. Factual Background And Procedural History 10
REASONS FOR GRANTING THE WRIT 12
I. THE FAA PREEMPTS THE *MCGILL* RULE UNDER THIS COURT'S PRECEDENTS 13
A. *McGill* Targets Arbitration And Interferes With Fundamental Attributes Of Arbitration 13

B. *McGill* Is Not A Ground For The "Revocation" Of Any Contract 21

II. REVIEW IS NECESSARY TO RESOLVE AN ENTRENCHED FEDERAL - STATE CONFLICT 23

A. The Ninth Circuit And California Courts Disagree About Whether The FAA Preempts The Latter's Application Of *McGill* 23

B. The California Courts' Expansion Of Section 2 Conflicts With Decisions Of Federal Courts Of Appeals 24

III. REVIEW IS WARRANTED IN THIS CASE 26

A. The Question Presented Is Exceptionally Important 26

B. The Legal Landscape Has Changed Since Prior Petitions 27

C. This Case Is A Good Vehicle 29

CONCLUSION 30

TABLE OF AUTHORITIES

CASES:

American Express Co. v. Italian Colors Rest.,
570 U.S. 228 (2013) 22

AT&T Mobility LLC v. Concepcion,
563 U.S. 333 (2011) 5, 6, 7, 8, 9, 15, 18, 22

Broughton v. Cigna Healthplans of Cal.,
988 P.2d 67 (Cal. 1999) 8, 14, 19, 20, 21

Califano v. Yamasaki,
422 U.S. 682 (1979) 16

Cedeno v. Sasson,
100 F.4th 386 (2d Cir. 2024) 17, 20

Cel-Tech Commc'ns, Inc. v. Los Angeles Cellular Tel. Co.,
973 P.2d 527 (Cal. 1999) 10

Cruz v. PacifiCare Health Sys., Inc.,
66 P.3d 1157 (Cal. 2003) 8, 14

Dean Witter Reynolds, Inc. v. Byrd,
470 U.S. 213 (1985) 21

Epic Sys. Corp. v. Lewis,
584 U.S. 497 (2018) 6, 7, 16, 22, 23

Ferguson v. Corinthian Colls., Inc.,
733 F.3d 928 (9th Cir. 2013) 8

Food & Drug Admin. v. Alliance for Hippocratic Med.,
602 U.S. 367 (2024) 16, 17

Granite Rock Co. v. International Brotherhood of Teamsters,
561 U.S. 287 (2010) 17

Halcon Int'l, Inc. v. Monsanto Austl. Ltd.,
446 F.2d 156 (7th Cir. 1971) 25

Hodges v. Comcast Cable Commc'ns, LLC,
21 F.4th 535 (9th Cir. 2021) 3, 19, 20, 21, 23, 24, 28, 29, 30

In re StockX Customer Data Sec. Breach Litig.,
No. 19-12441, 2021 WL 2434169 (E.D. Mich. June 15, 2021) 27

Iskanian v. CLS Transp. L.A., LLC,
327 P.3d 129 (Cal. 2014) 15

Kindred Nursing Centers Ltd. P'ship v. Clark,
581 U.S. 246 (2017) 6, 14

Labrador v. Poe ex rel. Poe,
144 S. Ct. 921 (2024) 16

Lamps Plus, Inc. v. Varela,
587 U.S. 176 (2019) 7

Maldonado v. Fast Auto Loans, Inc.,
275 Cal. Rptr. 3d 82 (Ct. App.
2021) 9, 24, 27, 28, 29, 30

McGill v. Citibank, N.A.,
393 P.3d 85 (Cal. 2017) 1, 2, 3, 8, 9, 10, 11,
12, 13, 14, 15, 16, 17, 18, 20, 21, 23, 24, 25, 26,
27, 28, 29, 30

McMullen v. Hoffman,
174 U.S. 639 (1899) 23

Mejia v. DACM Inc.,
268 Cal. Rptr. 3d 642 (Ct. App.
2020) 10, 24, 27, 28, 29, 30

Middlesex Cnty. v. Gevyn Constr. Corp.,
450 F.2d 53 (1st Cir. 1971) 25

*National R.R. Passenger Corp. v.
Consolidated Rail Corp.*,
892 F.2d 1066 (D.C. Cir. 1990) 25

Perry v. Thomas,
482 U.S. 483 (1987) 6

Rent-A-Center, West, Inc. v. Jackson,
561 U.S. 63 (2010) 5

*Shearson/American Express, Inc. v.
McMahon*,
482 U.S. 220 (1987) 21

Southland Corp. v. Keating,
465 U.S. 1 (1984) 6

Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp.,
559 U.S. 662 (2010) 18

Supak & Sons Mfg. Co. v. Pervel Indus., Inc.,
593 F.2d 135 (4th Cir. 1979) 26

Swanson v. H&R Block, Inc.,
475 F. Supp. 3d 967 (W.D. Mo. 2020) 27

Trump v. Hawaii,
585 U.S. 667 (2018) 17

Vaughn v. Tesla, Inc.,
303 Cal. Rptr. 3d 457 (Ct. App. 2023) 24, 29

Viking River Cruises, Inc. v. Moriana,
596 U.S. 639 (2022) 6, 7, 15, 16, 17, 18, 20, 21

Volt Info. Scis., Inc. v. Board of Trs. of Leland Stanford Junior Univ.,
489 U.S. 468 (1989) 17

CONSTITUTION AND STATUTES:

U.S. CONST. art. VI, cl. 2 4

9 U.S.C.
§ 2 .... 1, 4, 5, 9, 15, 21, 22, 25, 26
§ 4 .... 21, 22, 25

28 U.S.C.
§ 1257(a) 4

CAL. CIV. CODE
§ 1770(a) 10
§ 3509... 14
§ 3511... 14
§ 3513... 9, 15
§ 3514... 14
§ 3538... 14

OTHER AUTHORITIES:

Klein, Jeffrey S., *A Few Clauses to Help Lawyers Along*, L.A. TIMES (Sept. 14, 1989) 14

RESTATEMENT (SECOND) OF CONTRACTS (1979)
§ 178.. 23
§ 179.. 23

INTRODUCTION

The FAA eliminates barriers to private dispute resolution by mandating the enforcement of arbitration agreements according to their terms and preempting contrary state rules. 9 U.S.C. § 2. The FAA provides a narrow exception for grounds "for the revocation of any contract," *id.*, so long as they do not alter the fundamental attributes of arbitration. The California courts nevertheless have a storied history of crafting anti-arbitration rules—and have now put the finishing touches on another one.

The *McGill* rule first appeared in 2017, when the California Supreme Court announced that an arbitration agreement is not "enforceable insofar as it purports to waive [the] right to seek public injunctive relief in any forum." *McGill v. Citibank, N.A.*, 393 P.3d 85, 90 (Cal. 2017) (emphasis omitted). But for several years, the scope of the *McGill* rule—*i.e.*, which requested injunctions would trigger it and render arbitration agreements unenforceable—was unclear. That state-law uncertainty militated against this Court's review.

Now, the uncertainty is gone. Over the past few years, the California courts of appeal have uniformly held that to trigger the *McGill* rule, a plaintiff need only (i) seek a consumer-injunction under California's Unfair Competition Law (UCL) or Consumers Legal Remedies Act (CLRA), and (ii) not expressly limit the requested injunction to the plaintiff. The California Supreme Court has denied review of those decisions every time. And because the UCL and CLRA

encompass every conceivable claim that a consumer-plaintiff could assert, *McGill* is a death knell for bilateral arbitration of consumer claims alleging ongoing conduct.

Take this case as an example. Comcast offers new cable and internet subscribers promotional rates for fixed terms of service. When those terms expire, customers roll over to month-to-month subscriptions at non-promotional rates. Respondent Charles Ramsey alleges that when subscribers (including Ramsey himself) threaten to cancel or downgrade their subscriptions at the end of their promotional rate terms, Comcast sometimes offers them additional promotional rate terms. Ramsey seeks an injunction under the UCL and CLRA requiring Comcast to either stop that practice or affirmatively offer a new fixed-term contract with another promotional rate to all subscribers nearing the end of promotional rate terms (including those who do not threaten to cancel or downgrade).

It is undisputed that Ramsey and Comcast had agreed to arbitrate any disputes; Ramsey elected not to opt out of arbitration. Their agreement provides that "[t]he arbitrator may award injunctive relief only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that individual party's claim." But the trial court and Court of Appeal denied Comcast's petition to compel arbitration. In line with every other California court to address the issue, they held that the arbitration agreement was not enforceable because any request for a consumer-injunction under the UCL or CLRA that is not expressly limited to the plaintiff triggers

McGill's prohibition on waivers of "public injunctive relief."

This Court should clarify that the FAA does not tolerate California's anti-arbitration maneuvering. The *McGill* rule's purpose and effect are to prevent arbitration of garden-variety consumer claims, while interfering with fundamental attributes of arbitration. In 2021, the Ninth Circuit (applying another materially identical Comcast arbitration agreement) held that the *McGill* rule did not extend to virtually all claims for injunctions under the UCL and CLRA—but also held unequivocally that the *McGill* rule *could not* extend so broadly because the FAA would preempt it. *Hodges v. Comcast Cable Commc'ns, LLC*, 21 F.4th 535, 544 (9th Cir. 2021). The California courts of appeal (in direct conflict with the Ninth Circuit) uniformly have applied *McGill* in that broad manner while rejecting FAA preemption challenges, and the California Supreme Court consistently has declined to review their rulings. Although this Court previously denied petitions seeking to challenge *McGill* when the rule's broad scope was unclear, that is no longer the case. As a result, there is an entrenched federal-state conflict on FAA preemption that this Court should resolve.

This petition should be granted.

OPINIONS BELOW

The decision below of the California Court of Appeal is published at 317 Cal. Rptr. 3d 561 and is reproduced in the Appendix, *infra* at 1a-24a. The order of the Superior Court of California for Santa Clara County is not published but is reproduced in the Appendix, *infra* at 27a-41a. The California Supreme Court's denial of Comcast's petition for review is reproduced in the Appendix, *infra* at 42a.

JURISDICTION

This Court has jurisdiction pursuant to 28 U.S.C. § 1257(a). The California Court of Appeal filed its decision on December 29, 2023, and published its decision on January 29, 2024. App., *infra*, 1a, 25a. The California Supreme Court denied Comcast's timely petition for review on May 1, 2024. App., *infra*, 42a.

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

The Supremacy Clause of the United States Constitution provides: "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." U.S. CONST. art. VI, cl. 2.

Section 2 of the Federal Arbitration Act 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 or as otherwise provided in chapter 4." 9 U.S.C. § 2.

STATEMENT OF THE CASE

A. Legal Background

1. FAA Preemption

"The FAA was enacted in 1925 in response to widespread judicial hostility to arbitration agreements." *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 339 (2011). Under Section 2, such agreements "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. "The FAA thereby places arbitration agreements on an equal footing with other contracts, and requires courts to enforce them according to their terms." *Rent-A-Center, West, Inc. v. Jackson*, 561 U.S. 63, 67 (2010) (internal citations omitted).

Through the Supremacy Clause, the FAA preempts state-law contract defenses "that apply only to arbitration or that derive their meaning from the fact that an agreement to arbitrate is at issue." *Concepcion*, 563 U.S. at 339. For example, states cannot "prohibit[] outright the arbitration of a particular type of claim." *Id.* at 341. Accordingly, this Court held that the FAA preempted California rules

shielding wage-collection and state Franchise Investment Law claims from arbitration. *See Perry v. Thomas*, 482 U.S. 483, 492-493 (1987); *Southland Corp. v. Keating*, 465 U.S. 1, 10 (1984).

In addition to displacing such rules that expressly disfavor arbitration, the FAA "displaces any rule that covertly accomplishes the same objective by disfavoring contracts that (oh so coincidentally) have the defining features of arbitration agreements," *Kindred Nursing Centers Ltd. P'ship v. Clark*, 581 U.S. 246, 251 (2017), and any rule that "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of [the FAA]," *Concepcion*, 563 U.S. at 352. The latter category refers to rules that undercut the core aspects of arbitration: There "would not be a right to *arbitrate* in any meaningful sense if generally applicable principles of state law could be used to transform 'traditiona[l] individualized *** arbitration' into the 'litigation it was meant to displace.'" *Viking River Cruises, Inc. v. Moriana*, 596 U.S. 639, 651 (2022) (alteration and ellipsis in original) (quoting *Epic Sys. Corp. v. Lewis*, 584 U.S. 497, 509 (2018)).

The defining hallmarks of arbitration include its "individualized and informal nature," which promote the "virtues" of "speed and simplicity and inexpensiveness." *Epic*, 584 U.S. at 508-509. Another hallmark is customization: The "principal purpose of the FAA is to ensur[e] that private arbitration agreements are enforced *according to their terms*." *Concepcion*, 563 U.S. at 344 (alteration in original) (emphasis added) (internal quotation marks omitted). Parties can "shape such agreements to their liking" by

determining "the issues subject to arbitration" and "the rules by which they will arbitrate." *Lamps Plus, Inc. v. Varela*, 587 U.S. 176, 184 (2019); *see also Epic*, 584 U.S. at 514 (parties may adopt "individualized arbitration procedures of their own design").

One way a state may impermissibly attempt to transform traditional arbitration into quasi-litigation is to forbid the waiver of certain categories of claims or processes. States cannot "coerce parties into forgoing their right to arbitrate *** by conditioning that right on the use of a procedural format that makes arbitration artificially unattractive." *Viking River*, 596 U.S. at 656. For instance, California could not condition the enforceability of arbitration agreements on the availability of class action claims, because class procedures are incompatible with streamlined arbitration. *See Concepcion*, 563 U.S. at 344. Under such a rule, moreover, parties would be dissuaded from arbitrating because "the risk of an error" in the class action context, without judicial safeguards, "will often become unacceptable." *Id.* at 350.

Relatedly, because "arbitration is a matter of consent," states cannot condition the enforcement of arbitration agreements on the availability of "claims that the parties did not jointly agree to arbitrate"—which would result in "either judicial proceedings or an arbitral proceeding that exceeds the scope jointly intended by the parties." *Viking River*, 596 U.S. at 660, 661.

2. The McGill *Rule*

The rule applied below is the latest example of California courts seeking to circumvent the FAA—and

in fact derives from a judge-made California rule that targeted arbitration on its face.

For many years, California courts operated under the *Broughton-Cruz* rule: "Agreements to arbitrate claims for public injunctive relief" were deemed contrary to public policy and thus "not enforceable." *McGill*, 393 P.3d at 88-89; *see Cruz v. PacifiCare Health Sys., Inc.*, 66 P.3d 1157 (Cal. 2003); *Broughton v. Cigna Healthplans of Cal.*, 988 P.2d 67 (Cal. 1999). The California Supreme Court admitted that this Court had "rejected numerous efforts and arguments by state courts *** to declare certain classes of cases not subject to arbitration." *Cruz*, 66 P.3d at 1162. But the California Supreme Court reasoned that there was "an inherent conflict between arbitration and a statutory injunctive relief remedy designed for the protection of the general public." *Id.* at 1163. When it comes to such relief, "an arbitrator lack[s] the institutional continuity and appropriate jurisdiction to sufficiently enforce and, if needed, modify a public injunction." *Id.* at 1162. The California Supreme Court's solution to that "conflict" was to forbid the arbitration of claims seeking public injunctive relief. *Id.* at 1163.

On the heels of *Concepcion*, the Ninth Circuit held that the FAA preempted the *Broughton-Cruz* rule because the rule "prohibit[ed] outright the arbitration of a particular type of claim." *Ferguson v. Corinthian Colls., Inc.*, 733 F.3d 928, 934 (9th Cir. 2013) (quoting *Concepcion*, 563 U.S. at 341).

In *McGill*, rather than address that issue, the California Supreme Court endeavored to craft a new

workaround rule: "insofar as [an] arbitration provision *** purports to waive [the] right to request in any forum *** public injunctive relief, it is invalid and unenforceable under California law." 393 P.3d at 94. According to the court, the *McGill* rule followed from a "maxim[] of jurisprudence" (enacted by the California legislature in 1872) stating that "[a]ny one may waive the advantage of a law intended solely for his benefit. But a law established for a public reason cannot be contravened by a private agreement." CAL. CIV. CODE § 3513.

Apparently to avoid a conflict between that language and Section 2 of the FAA (which makes private agreements to arbitrate generally enforceable), the California Supreme Court cabined Section 3513 to apply only when a plaintiff seeks "public injunctive relief." *McGill*, 393 P.3d at 94. Such relief has "the primary purpose and effect of prohibiting unlawful acts that threaten future injury to the general public." *Id.* at 87.

California courts of appeal have since uniformly held that to trigger *McGill* (and thereby avoid a standard arbitration agreement that does not allow an arbitrator to award injunctive relief to non-parties), a plaintiff need only seek a consumer injunction under California's UCL or CLRA statutes. *See* App., *infra*, 1a-24a, *review denied* May 1, 2024; *Maldonado v. Fast Auto Loans, Inc.*, 275 Cal. Rptr. 3d 82, 90-91 (Ct. App. 2021), *review denied* Apr. 28, 2021; *Mejia v. DACM Inc.*, 268 Cal. Rptr. 3d 642, 651 (Ct. App. 2020), *review denied* Dec. 23, 2020.

But those statutes encompass virtually all consumer claims. The CLRA prohibits "unfair or deceptive acts or practices *** undertaken by any person in a transaction intended to result or that results in the sale or lease of goods or services to any consumer." CAL. CIV. CODE § 1770(a). And a plaintiff can plead a claim under the UCL for "any unlawful, unfair or fraudulent" business practice. *Cel-Tech Commc'ns, Inc. v. Los Angeles Cellular Tel. Co.*, 973 P.2d 527, 539-540 (Cal. 1999).

B. Factual Background And Procedural History

This case illustrates how *McGill* is thwarting arbitration of everyday consumer claims in California.

1. Comcast offers new subscribers promotional rates for fixed terms of service. App., *infra*, 2a-3a. At the end of those promotional terms, customers roll over to month-to-month subscriptions at higher non-promotional rates. Ramsey has been a Comcast subscriber since 2009. *Id.* at 2a. He alleges that when he nears the end of a term of service, he contacts Comcast and threatens to cancel or downgrade his subscription. *Id.* at 3a. Comcast has offered Ramsey similar promotional rates for new fixed terms of service, which Ramsey has accepted. *Id.* at 3a-4a, 6a. Ramsey calls these new promotional rates "secret discounts" and alleges they violate the UCL and CLRA. *Id.* at 4a-5a.

2. Ramsey and Comcast had agreed to arbitrate any disputes, with Ramsey electing not to opt out of arbitration. App., *infra*, 7a-8a, 46a. In doing so, they agreed that an arbitrator could not award injunctive

relief to non-parties: "[T]he arbitrator may award injunctive relief only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by the individual party's claim, and the arbitrator may not award relief for or against or on behalf of anyone who is not a party." *Id.* at 34a, 48a. In other words, Ramsey could assert his claims under the UCL and CLRA in arbitration, but if an arbitrator concluded that those claims were meritorious, the arbitrator could award injunctive relief only to Ramsey and only as necessary to provide Ramsey complete relief.

3. The trial court denied Comcast's petition to compel arbitration. The court held that the arbitration agreement was unenforceable because Ramsey "expressly request[ed] public injunctive relief" under the UCL and CLRA rather than injunctive relief that was "limited to him as an individual." App., *infra*, 38a-39a. The court also rejected Comcast's arguments that the FAA preempts the *McGill* rule, even as the rule was applied so broadly as to sweep in Ramsey's claims. *Id.* at 34a-35a.

4. The California Court of Appeal affirmed. It held that Ramsey's claims triggered *McGill* because (i) the arbitration agreement "permitted the arbitrator to grant only individual relief," (ii) Ramsey "allege[d] violations of California's consumer protection statutes—specifically, the CLRA and UCL," and (iii) Ramsey's complaint did not "limit the requested remedies to Ramsey himself or those similarly situated." App., *infra*, 2a, 12a, 17a. The Court of Appeal also held that the FAA does not preempt the

McGill rule under binding California Supreme Court precedent. *Id.* at 23a.

5. Comcast timely filed a petition for review with the California Supreme Court presenting the question whether the FAA preempts California's *McGill* rule. App., *infra*, 94a-157a. The California Supreme Court denied Comcast's petition for review on May 1, 2024, in an order without an opinion. *Id.* at 42a.

REASONS FOR GRANTING THE WRIT

This Court should resolve the recurring and important question—affecting nearly every consumer claim otherwise subject to arbitration in California—of whether the FAA preempts the *McGill* rule. The answer is yes. *McGill*'s prohibition on waivers of public injunctive relief—which amounts to a prohibition on bilateral arbitration of consumer claims seeking injunctions under California's expansive view—expressly targets arbitration agreements, interferes with the fundamental attributes of arbitration, and otherwise falls outside Section 2's saving clause.

Now is the right time, and this is the right case, to resolve that issue. California and the Ninth Circuit have divided on whether the FAA preempts *McGill*'s prevailing application in the California courts, and the California Supreme Court has made clear that the conflict will not abate absent this Court's intervention. Unlike when this Court denied earlier petitions challenging *McGill*, the rule's reach—extending to virtually any consumer case seeking an injunction—is now settled in the California courts, as the decision below confirms.

Time and again, this Court has stepped in to address California's efforts to circumvent the FAA. This case is no different. The Court should grant the petition.

I. THE FAA PREEMPTS THE *MCGILL* RULE UNDER THIS COURT'S PRECEDENTS

A. *McGill* Targets Arbitration And Interferes With Fundamental Attributes Of Arbitration

To comply with the FAA, California must not discriminate (expressly or covertly) against arbitration or interfere with the fundamental attributes of arbitration. The *McGill* rule flunks that test at each step. It derives its meaning from the fact that an arbitration agreement is at issue, disfavors arbitration, and interferes with arbitration's individualized, customizable, and procedurally simplified characteristics. Such a rule cannot withstand FAA preemption under this Court's precedents.

1. The *McGill* rule expressly targets arbitration agreements. *See* 393 P.3d at 87 ("[A] provision in a predispute arbitration agreement that waives the right to seek [public injunctive relief] in any forum *** is contrary to California public policy and is thus unenforceable under California law."). As a practical matter, moreover, the rule has been applied *only* to arbitration agreements; any application to other agreements is purely hypothetical. *McGill* thus functions "much as if it were made applicable to arbitration agreements and black swans." *Kindred Nursing*, 581 U.S. at 254.

McGill's history reinforces that it was invented to thwart arbitration. Once the California Supreme Court realized that the FAA clearly preempted the *Broughton-Cruz* rule, the court pivoted from its prior statements that public injunctive relief is "inherently incompatible" and in "conflict" with arbitration. *Broughton*, 988 P.2d at 74; *Cruz*, 66 P.3d at 1165. The court instead purported to derive the replacement *McGill* rule from 1872 "maxims of jurisprudence" that "aid in the[] just application" of the California Civil Code (but do not purport to supply freestanding rules). CAL. CIV. CODE § 3509. Although the maxims are sometimes used by courts "to help explain or reinforce a legal point," until recently they were "almost buried and forgotten," likely because they "can mean everything or nothing." Jeffrey S. Klein, *A Few Clauses to Help Lawyers Along*, L.A. TIMES (Sept. 14, 1989).[1] For example: "Where the reason is the same, the rule should be the same"; "One must so use his own rights as not to infringe upon the rights of another"; and "That is certain which can be made certain." CAL. CIV. CODE §§ 3511, 3514, 3538.

The maxim that *McGill* invoked—"a law established for a public reason cannot be contravened by a private agreement," Cal. Civ. Code § 3513—had not been applied to prevent the enforcement of an arbitration agreement for nearly a century-and-a-half (and has still never been applied as a ground "for the *revocation* of any contract," 9 U.S.C. § 2 (emphasis

---

[1] *Available at* https://www.latimes.com/archives/la-xpm-1989-09-14-vw-147-story.html.

added)).[2] That is presumably because the FAA mandates that (i) private agreements "to settle by arbitration a controversy" *can* contravene a law providing for some other form of dispute resolution, 9 U.S.C. § 2, and (ii) such agreements *can* include certain waivers to preserve the benefits of arbitration regardless of state law, *see, e.g.*, *Concepcion*, 563 U.S. at 344, 350. If a state rule could shield controversies from arbitration merely because the rule was (like any other law) "established for a public reason," there would be nothing left of the FAA's enforcement mandate. By arbitrarily cabining Section 3513 to claims for "public injunctive relief," the California Supreme Court may have confined this conflict with the FAA to a particular (broad) sphere—but the conflict remains.

2. In any event, the *McGill* rule plainly interferes with fundamental attributes of arbitration. As this Court has cautioned, "we must be alert to new devices and formulas" reflecting "judicial antagonism toward arbitration," including formulas that "interfere with *** arbitration's fundamental attributes." *Epic*, 584 U.S. at 508-509. Although the FAA does not require enforcement of every "waiver[] of substantive rights and remedies" in an arbitration agreement, the FAA

---

[2] The California Supreme Court cited Section 3513 in the arbitration context for the first time in *Iskanian v. CLS Transportation Los Angeles, LLC*, 327 P.3d 129, 148-149 (Cal. 2014) (holding, in part based on Section 3513, that "an employee's right to bring a PAGA [California Private Attorneys General Act] action is unwaivable"). This Court held that "the FAA preempts the rule of *Iskanian* insofar as it precludes division of PAGA actions into individual and non-individual claims through an agreement to arbitrate." *Viking River*, 596 U.S. at 662.

will not tolerate an anti-waiver regime "at odds with arbitration's basic form." *Viking River*, 596 U.S. at 653, 656. *McGill* is such a regime. It not only eliminates parties' ability to customize arbitration agreements to limit non-party relief, but also conflicts with the FAA by defining public injunctive relief broadly to include garden-variety consumer claims. At the same time, it requires adjudication of claims with a degree of procedural complexity that undermines the efficiency, and thus desirability, of arbitration.

a. As an initial matter, *McGill* unduly interferes with parties' ability to craft "individualized arbitration procedures of their own design." *Epic*, 584 U.S. at 514. Parties to arbitration agreements have good reason to preclude non-party relief. An Article III court lacks the authority to issue an injunction "more burdensome to the defendant than necessary to [redress]" the plaintiff's injuries. *Labrador v. Poe ex rel. Poe*, 144 S. Ct. 921, 923 (2024) (Gorsuch, J., concurring in the grant of stay) (alteration in original) (quoting *Califano v. Yamasaki*, 422 U.S. 682, 702 (1979)); *see also Food & Drug Admin. v. Alliance for Hippocratic Med.*, 602 U.S. 367, 402 (2024) (Thomas, J., concurring) ("[N]o party should be permitted to obtain an injunction in favor of nonparties."). But federal courts "have provided a workaround *** through the invention of the so-called 'universal injunction.'" *Alliance for Hippocratic Med.*, 602 U.S. at 401-402 (Thomas, J., concurring). Such injunctions are anything but *private*—rather than "resolve individual cases and controversies," they deal in "general questions of legality." *Trump v. Hawaii*, 585 U.S. 667, 719 (2018) (Thomas, J., concurring).

If the idea of *private* dispute resolution means anything, it means that contracting parties can at least incorporate Article III's traditional limitation on non-party relief in their arbitration agreements. And they routinely do. *See, e.g.*, *Cedeno v. Sasson*, 100 F.4th 386, 417 & n.17 (2d Cir. 2024) (Menashi, J., dissenting) (describing a similar agreement requiring such "individualized arbitration" as merely imposing a "familiar process of case-by-case adjudication" that reflects "how equitable remedies work"). That modest constraint prevents an arbitrator from entering a sweeping universal injunction without regard for the status of the actual parties to the arbitration agreement.

But *McGill* renders arbitration agreements containing such limitations unenforceable whenever a party requests a garden-variety consumer injunction. The result is that parties to an arbitration agreement are faced with an "unacceptable choice." *Viking River*, 596 U.S. at 651. Although "[a]rbitration is strictly 'a matter of consent,'" *Granite Rock Co. v. International Brotherhood of Teamsters*, 561 U.S. 287, 299 (2010) (quoting *Volt Info. Scis., Inc. v. Board of Trs. of Leland Stanford Junior Univ.*, 489 U.S. 468, 479 (1989)), parties that agreed their disputes would be resolved by an arbitrator who may not award non-party injunctive relief must acquiesce to either "judicial proceedings or an arbitral proceeding that exceeds the scope jointly intended by the parties," *Viking River*, 596 U.S. at 660-661. Put another way, *McGill* results in one of two unacceptable outcomes. *Option 1:* The parties face non-enforcement of their arbitration agreement whenever a party seeks a consumer

injunction. App., *infra*, 12a, 20a-21a. *Option 2:* The parties forgo their right to limit their dispute to preclude non-party relief, and thus face the prospect of an arbitrator awarding a "public" (*i.e.*, universal at least within California) injunction.

Accordingly, under *McGill*, if a party wishes to arbitrate at all, it must arbitrate massive-scale disputes without the protective (if cumbersome) "procedural rigor and appellate review of the courts." *Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp.*, 559 U.S. 662, 685 (2010). That makes "the risk of an error" without judicial safeguards "unacceptable." *Concepcion*, 563 U.S. at 350.

b. Like the class action claims discussed in *Concepcion*, claims for public injunctive relief (as broadly construed in California courts) often entail the sort of procedural complexity that the parties sought to avoid in arbitration. That reality undermines "the principal advantage of arbitration—its informality." 563 U.S. at 348.

The California Supreme Court previously held that claims for public injunctive relief are so antithetical to arbitration that they *could not be arbitrated*. *See Broughton*, 988 P.2d at 76. Although that rule flouts the FAA by prohibiting *arbitration* of such claims, the California Supreme Court's concerns confirm that prohibiting parties from agreeing to *waive* such claims *in arbitration* would improperly cramp their ability to keep private dispute resolution private.

For similar reasons, the Ninth Circuit has recognized that mandating the availability of

sweeping non-party injunctions under the UCL and CLRA would destroy basic features of arbitration. *See Hodges*, 21 F.4th at 547. As Judge Collins explained, "injunctions are not simply words on a page, and their compatibility with bilateral arbitration must be evaluated in light of how they would actually be *implemented*, as the California Supreme Court itself recognized in *Broughton*." *Id.* at 548 (citing 988 P.2d at 77). The implementation of public injunctions in UCL and CLRA cases would often "require evaluation of the individual claims of numerous non-parties," potentially including any member of the general public or (more commonly) a specific subset of the public not before the adjudicator. *Id.* at 547.

This case illustrates the problem. Administering an injunction that extends to members of the general public beyond the plaintiff would, at a minimum, require examining Comcast's communications with "each individual" present and future subscriber on a promotional term agreement. *Hodges*, 21 F.4th at 545. As to each, there would be questions about whether Comcast had an obligation to communicate pricing information and whether Comcast satisfied that obligation. The complications would multiply if either party sought modification or vacatur of the arbitral injunction, which may not even be possible. *See Broughton*, 988 P.2d at 75-76. All of this is "fundamentally incompatible with the sort of simplified procedures the FAA protects." *Hodges*, 21 F.4th at 548. "To say that such a rule is not preempted would flout Supreme Court authority." *Id.*

To be sure, this Court in *Viking River* stated that the FAA "do[es] not mandate the enforcement of

waivers of representative capacity as a categorical rule"—in particular, for "single-agent, single-principal representative suits" under PAGA. 596 U.S. at 657. But that predicate statement does not aid respondent here. The California Supreme Court in *McGill* itself recognized that a request for public injunctive relief under the California consumer protection statutes at issue here (unlike a PAGA claim) "does *not* constitute the pursuit of representative claims." *McGill*, 393 P.3d at 92-93 (emphasis added) (internal quotation marks and alterations omitted); *see also Cedeno*, 100 F.4th at 413, 416 (Menashi, J., dissenting) (emphasizing that *Viking River*'s statements about waivers of "single-principal representative-capacity suit[s]" are inapplicable to suits that "do[] not resemble any of the traditional types of representative actions that [*Viking River*] references"). At the same time, according to the California Supreme Court, a plaintiff seeking public injunctive relief sues "*not* to resolve a *private* dispute but to remedy a *public* wrong." *Broughton*, 988 P.2d at 76 (emphases added). Such a plaintiff does not merely "assert claims on behalf of absent principals," *Viking River,* 596 U.S. at 657, but rather asserts claims "for the benefit of the general public" more broadly, *Broughton,* 988 P.2d at 78.

Accordingly, as the Ninth Circuit recognized, public injunctive relief (as California courts uniformly construe it) entails a burdensome inquiry as to varied impacts on "numerous non-parties." *Hodges*, 21 F.4th at 547. The *McGill* rule thus does not qualify for *Viking River*'s (limited) PAGA-specific carve-out from FAA preemption for individual claims.

B. *McGill* Is Not A Ground For The "Revocation" Of Any Contract

The FAA preempts the *McGill* rule for the independent reason that under the plain text of Section 2, arbitration agreements are "*enforceable*, save upon such grounds as exist at law or in equity for the *revocation* of any contract." 9 U.S.C. § 2 (emphases added). This Court has repeatedly confirmed that the saving clause's plain text means what it says: "Absent a well-founded claim that an arbitration agreement resulted from the sort of fraud or excessive economic power that would provide grounds for the revocation of any contract," the FAA "provides no basis" for non-enforcement. *Shearson/American Express, Inc. v. McMahon*, 482 U.S. 220, 226 (1987) (internal quotation marks omitted); *see also Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 218 (1985) ("[A]greements to arbitrate must be enforced, absent a ground for revocation of the contractual agreement.").[3]

Grounds for the revocation of any contract must concern "the formation of the arbitration agreement." *Epic*, 584 U.S. at 525 (Thomas, J., concurring); *American Express Co. v. Italian Colors Rest.*, 570 U.S. 228, 239 (2013) (Thomas, J., concurring); *Concepcion*, 563 U.S. at 353 (Thomas, J., concurring). As Section 4 of the FAA states, "upon being satisfied that *the making of the agreement for arbitration* or the failure

[3] In *Epic*, this Court "[p]ut to the side the question of what it takes to qualify as a ground for 'revocation' of a contract" while holding on other grounds that the FAA required honoring the parties' arbitration agreement, suggesting (again) that the "revocation" question could be dispositive in an appropriate case. 584 U.S. at 507.

to comply therewith is not in issue," a court must order arbitration "in accordance with the terms of the agreement." 9 U.S.C. § 4 (emphasis added). "Reading §§ 2 and 4 harmoniously, the 'grounds *** for the revocation' preserved in § 2 would mean grounds related to the making of the agreement." *Concepcion*, 563 U.S. at 355 (Thomas, J., concurring) (ellipsis in original). "This would require enforcement of an agreement to arbitrate unless a party successfully asserts a defense concerning the formation of the agreement to arbitrate, such as fraud, duress, or mutual mistake." *Id.* "Contract defenses unrelated to the making of the agreement—such as public policy—could not be the basis for declining to enforce an arbitration clause." *Id.*

Those principles confirm that the FAA preempts the *McGill* rule. A rule that a "waiver[]" is "illegal *** is a public-policy defense." *Epic*, 584 U.S. at 525-526 (Thomas, J., concurring) (citing RESTATEMENT (SECOND) OF CONTRACTS §§ 178-179 (1979)); *McMullen v. Hoffman*, 174 U.S. 639, 669-670 (1899)). Indeed, in *McGill* itself the California Supreme Court (i) invoked "California public policy" and (ii) characterized its rule a ground for non-enforcement, *not* revocation. 393 P.3d at 87. There is no basis to conclude the *McGill* rule falls within the saving clause.

II. REVIEW IS NECESSARY TO RESOLVE AN ENTRENCHED FEDERAL - STATE CONFLICT

A. The Ninth Circuit And California Courts Disagree About Whether The FAA Preempts The Latter's Application Of *McGill*

The problem with the decision below is not simply that it is wrong. It also widens and cements an entrenched split between California courts and the Ninth Circuit on the question whether the prevailing application of *McGill* is preempted.

In 2021, the Ninth Circuit declined to read *McGill* to cover virtually "*any* injunction against future illegal conduct." *Hodges*, 21 F.4th at 547. But "even if we are wrong," the court explained, the Ninth Circuit would reject the "broader reading" applied by the California courts of appeal "for the independent and alternative reason" that the "rule is preempted by the FAA." *Id.* According to the Ninth Circuit, the conception of public injunctive relief adopted by the California courts and applied below "plainly interfere[s] with the informal, bilateral nature of traditional consumer arbitration." *Id.* at 544 (internal quotation marks omitted). And the Ninth Circuit so held in a nearly identical context: a motion to compel arbitration, under a Comcast agreement, of a plaintiff's attempt to seek public injunctive relief under California's UCL. *Id.* at 538.

In stark contrast to *Hodges*, the California courts of appeal (including in the decision below) have uniformly held that their broad application of the

McGill rule is not preempted and rejected the Ninth Circuit's contrary analysis, *see* App., *infra*, 18a-19a, 23a; *Maldonado*, 275 Cal. Rptr. 3d at 91 n.1, 93 (holding that the "FAA does not preempt" the Court of Appeal's holding that any request "to enjoin future violations of the CLRA and UCL" triggers *McGill*, while addressing an injunction that would prohibit a lender from charging unconscionable interest rates (emphasis omitted)); *Mejia*, 268 Cal. Rptr. 3d at 647, 653 (same as to an injunction that would require a motorcycle dealer to provide purchasers with financing terms in a single document); *see also Vaughn v. Tesla, Inc.*, 303 Cal. Rptr. 3d 457, 475 n.16 (Ct. App. 2023) (rejecting *Hodges*). The California Supreme Court has declined to disturb those decisions every time.

Accordingly, the Ninth Circuit will continue refusing to apply the California courts' broad reading of *McGill* on FAA preemption grounds. But the California courts will apply that reading and deny any conflict with the FAA. There is thus a solidified federal-state conflict on FAA preemption that this Court must resolve because the California Supreme Court has not—and there is no reason to think it will.

B. The California Courts' Expansion Of Section 2 Conflicts With Decisions Of Federal Courts Of Appeals

Contrary to *McGill* and the California decisions applying it, some federal courts of appeals have recognized that because "the saving clause *** is limited to 'revocation,'" it applies only to "an unmaking resulting from the mutual cancellation of the contract

*** or the voiding of the transaction due to fraud, mistake or duress." *Halcon Int'l, Inc. v. Monsanto Austl. Ltd.*, 446 F.2d 156, 159 (7th Cir. 1971); *accord Middlesex Cnty. v. Gevyn Constr. Corp.*, 450 F.2d 53, 56 (1st Cir. 1971) ("[T]he only grounds for revocation which meet the requirement of 9 U.S.C. § 2 are mutual agreement or a condition which vitiates the agreement *ab initio*, i.e., fraud, mistake, or duress," because "it is only this kind of 'revocation' which can be harmonized with adjudication directed to 'the making of the agreement for arbitration'" (quoting 9 U.S.C. § 4)).

Other federal courts of appeals have strongly suggested that the saving clause applies only to formation-related defenses. *See National R.R. Passenger Corp. v. Consolidated Rail Corp.*, 892 F.2d 1066, 1070 (D.C. Cir. 1990) (Section 2 indicates "that Congress created an exception to the general rule (that an arbitration clause will be enforced by its terms) only when there is a flaw in the formation of the agreement to arbitrate," "especially when read in conjunction with [Section] 4"); *Supak & Sons Mfg. Co. v. Pervel Indus., Inc.*, 593 F.2d 135, 137 (4th Cir. 1979) ("Section 2 dictates the effect of a contractually agreed-upon arbitration provision, but it does not displace state law on the general principles governing formation of the contract itself.").

These statements are irreconcilable with the *McGill* rule, which (as discussed) does not even purport to be a ground for the revocation of any contract.

III. REVIEW IS WARRANTED IN THIS CASE

A. The Question Presented Is Exceptionally Important

As noted, *McGill* renders standard bilateral arbitration agreements unenforceable when a plaintiff seeks a garden-variety injunction in a consumer case. Given the breadth of the UCL and CLRA, virtually any plaintiff alleging ongoing conduct can include a request for an injunction under those statutes and circumvent an arbitration agreement that does not allow an arbitrator to award injunctive relief to non-parties. Because such agreements are commonplace among parties seeking *private* and *bilateral* dispute resolution, the *McGill* rule—as expansively applied by the California courts—is all but eliminating consumer arbitration in California.

The effects of letting such a rule stand are felt not only in California but nationwide. California has the largest economy in the United States and fifth largest in the world. When California circumvents the FAA, companies must structure their operations and parties must structure their arbitration agreements around California's policies. That is particularly true because California law frequently applies in other states, whether because a transaction originated in California, as a matter of contract, under a choice-of-law analysis, or due to the breadth of the law itself. *See, e.g., In re StockX Customer Data Sec. Breach Litig.*, No. 19-12441, 2021 WL 2434169 (E.D. Mich. June 15, 2021) (holding that California law applies and denying motion to compel arbitration based on *McGill*); *Swanson v. H&R Block, Inc.*, 475 F. Supp. 3d

967, 970, 975 (W.D. Mo. 2020) (holding that California law applies but that *McGill* is preempted in action filed by California resident).

B. The Legal Landscape Has Changed Since Prior Petitions

In 2020 and 2021, this Court denied several certiorari petitions seeking to challenge the *McGill* rule. At that time, the rule's reach was much less clear as a matter of state law. For example, Comcast filed a petition before the California courts of appeal decided *Mejia*, *Maldonado*, and the decision below. *See Comcast Corp. v. Tillage*, No. 19-1066 (U.S. Feb. 27, 2020). As respondents in that case pointed out, it was uncertain then whether virtually all requested injunctions under the CLRA or UCL would trigger *McGill*, or whether California courts would apply a "detailed analysis" on a case-by-case basis to determine whether the requested injunction would primarily benefit the general public. *See* Br. in Opp. 30, *Comcast Corp. v. Tillage*, No. 19-1066 (U.S. Apr. 24, 2020).

Certiorari-stage briefing in *Maldonado* highlighted more of the same uncertainty. After the California Court of Appeal held that any request for a CLRA or UCL injunction would trigger *McGill*, and after a petition had been filed in this Court, the Ninth Circuit decided *Hodges*. As discussed above, *Hodges* construed *McGill* narrowly (while alternatively rejecting *Mejia* and *Maldonado*'s "broader reading" as preempted by the FAA). 21 F.4th at 547. Before this Court, the respondents in *Maldonado* endorsed the broad version of *McGill* as applied there, *i.e.*, that "any

injunction that prohibits future violations of California's consumer protection statutes constitutes a public injunction." Br. in Opp. 8, *Fast Auto Loans, Inc. v. Maldonado*, No. 21-31 (U.S. Nov. 8, 2021) (internal quotation marks omitted). But they pointed to *Hodges* as demonstrating "the unsettled scope of the state-law rule," which could have "present[ed] a serious impediment to intelligent resolution of the federal [FAA] issue." *Id.* at 3. The *Maldonado* respondents noted that a rehearing en banc petition with a request for certification to the California Supreme Court was pending in *Hodges*. *Id.* at 10. And they emphasized that this Court should not assume anything about the scope of *McGill* because the California Supreme Court had "not yet had an opportunity to (and may soon)" weigh in. *Id.* at 3; *see also id.* at 6 ("The California Supreme Court has not *yet* weighed in on this dispute" (emphasis added)), 26 (arguing this Court must wait for the California Supreme Court to "rule[] on what constitutes a public injunction").

Three years later, none of the *Maldonado* respondents' predictions have come to pass. The Ninth Circuit did not grant rehearing en banc or certify a question to the California Supreme Court. And the California Supreme Court has not granted review in any case concerning the *McGill* rule or otherwise indicated any intent to address its scope. Meanwhile, the California courts of appeal have uniformly held that a plaintiff need only seek a consumer injunction under the UCL or CLRA to trigger *McGill*. *See* App., *infra*, 12a, 20a-21a, *review denied* May 1, 2024; *accord Vaughn*, 303 Cal. Rptr. 3d

at 475 n.16, *review denied* April 12, 2023; *Maldonado*, 275 Cal. Rptr. 3d at 90-91, *review denied* Apr. 28, 2021; *Mejia*, 268 Cal. Rptr. 3d at 651, *review denied* Dec. 23, 2020. The opinion below encapsulated the California courts' consensus approach while rejecting *Hodges*: all "injunctions issued under the CLRA and UCL [are] injunctions that benefit the public." App., *infra*, 20a-21a.

For all practical purposes, that broad scope of *McGill* is settled as a matter of California law. The California Supreme Court has repeatedly declined to alter the status quo, which will continue as prevailing law in the California courts (but not the Ninth Circuit) without this Court's intervention.

C. This Case Is A Good Vehicle

Comcast has preserved all relevant FAA preemption arguments at every stage of this litigation. Those arguments were pressed and passed upon below. Because *McGill* itself rejected an FAA preemption challenge, the California courts of appeal (as in this case) simply cite that analysis. *See* App., *infra*, 23a; *Maldonado*, 275 Cal. Rptr. 3d at 93; *Mejia*, 268 Cal. Rptr. 3d at 706. So further percolation serves no purpose here. California courts will continue to follow their unbroken expansion of the *McGill* rule unless and until this Court steps in. Meanwhile, defendants sued in state court will have no recourse despite the Ninth Circuit's holding that the FAA preempts such an expansion—in the context of a materially identical Comcast arbitration agreement, no less. *See Hodges*, 21 F.4th at 538-539 & n.1. Indeed, the Court could not ask for a starker conflict:

the same defendant (Comcast) is subject to two diametrically opposed sets of rules and results in California depending on which court (state or federal) it is sued.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

Pratik A. Shah
Counsel of Record
Michael Weisbuch
Marshall Baker
AKIN GUMP STRAUSS
HAUER & FELD LLP

Counsel for Petitioners

September 27, 2024