No. 10-948

In the Supreme Court of the United States

COMPUCREDIT CORPORATION AND SYNOVUS BANK, PETITIONERS

v.

WANDA GREENWOOD, *ET AL.*, RESPONDENTS

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

BRIEF FOR *AMICUS CURIAE* DRI—THE VOICE OF THE DEFENSE BAR IN SUPPORT OF PETITIONERS

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QUESTION PRESENTED

Whether claims arising under the Credit Repair Organizations Act, 15 U.S.C. § 1679 *et seq.*, are subject to arbitration pursuant to an otherwise valid arbitration agreement.

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INTRODUCTION AND INTEREST OF *AMICUS CURIAE*[1]

Under the Federal Arbitration Act, an agreement to arbitrate is enforceable just like any other contract. This is no less true of agreements to arbitrate *statutory* claims, except where Congress has demonstrated otherwise. These important principles—repeatedly underscored by this Court's decisions—are the basis for the settled expectations of countless businesses and individuals who have incorporated arbitration clauses into their commercial agreements.

The decision below strikes a blow against those settled expectations. Over a forceful dissent, a panel of the Ninth Circuit has declined to enforce an arbitration agreement despite the absence of any specific indication that Congress intended to preclude arbitration of the statutory claim at issue. In so holding, the court not only created a square and acknowledged circuit split (see Pet. 10-14), but also followed an approach that undermines the predictability and clarity that are the focus of this Court's decisions and the Federal Arbitration Act itself.

As discussed below, the importance of this Court's review here is highlighted by the extensive use of arbitration agreements in U.S. commerce. See *infra* at 5-9. Many of these agreements are jeopardized by

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[1] No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No one other than DRI, its members, and its counsel made any financial contribution to the brief's preparation or submission. After receiving notice of DRI's intention to file, the parties consented to the submission of this brief. Letters of consent from both parties are on file with the Clerk.

the decision below, which would make arbitration agreements unenforceable for statutory claims where the statute merely (1) creates a private right of action and (2) provides that rights granted by the statute may not be waived. Based on those characteristics, the Ninth Circuit interpreted the Credit Repair Organizations Act ("CROA") to give plaintiffs a nonwaivable right to sue *in court*. Under that theory, however, *any* statute creating a private right of action and containing a nonwaiver provision can be interpreted as trumping an agreement to arbitrate—and there are many such statutes. *E.g.*, 15 U.S.C. §§ 3611, 3614 (Housing and Community Development Act of 1980's private right of action and nonwaiver provisions); 29 U.S.C. §§ 1854, 1856 (Migrant and Seasonal Agricultural Worker Protection Act's private right of action and nonwaiver provisions); 40 U.S.C. § 3133 (putting conditions on a "waiver of the right to bring a civil action on a payment bond," including prohibiting pre-performance waivers). The majority decision thus threatens to throw a significant number of contracts, in several contexts, into turmoil.

As we will show (at 9-17), this turmoil is wholly unnecessary and unwarranted in light of this Court's previous decisions. Given Congress's clear direction in the Federal Arbitration Act ("FAA"), this Court has repeatedly enforced arbitration agreements in the face of statutory reservations of rights far clearer than the one here—including statutes that reserve the right to bring "'a civil action *in any court* of competent jurisdiction.'" *Gilmer* v. *Interstate/Johnson Lane Corp.*, 500 U.S. 20, 29 (1991) (emphasis added) (interpreting 29 U.S.C. § 626(c)(1)). In light of Congress's policy judgment favoring arbitration, along

with the CROA's *silence* on that issue, the Ninth Circuit contravened this Court's precedents in holding the arbitration provision here unenforceable. Moreover, the Ninth Circuit adopted an approach that creates doubt about how courts should resolve the question of arbitrability for statutory claims more broadly.

DRI submits this brief to discuss this important issue from the perspective of civil defense lawyers and the clients they represent. DRI is an international organization of attorneys defending the interests of businesses and individuals in civil litigation. DRI frequently participates as an *amicus curiae* in this Court and elsewhere in cases of interest to its membership. Arbitration agreements are of great importance to the business dealings of many of DRI's members and clients. This Court's review is urgently needed to ensure that these clients will continue to receive the benefits of their bargains when the claim at issue arises from a statute that evinces no congressional intent to preclude arbitration.

STATEMENT

Petitioners market and service a credit card called Aspire Visa. Pet. App. 3a. When consumers apply for this card, they agree to arbitrate "[a]ny claim, dispute or controversy (whether in contract, tort, or otherwise) at any time arising from or relating to" their credit card accounts. *Id.* at 5a.

In 2008, a group of cardholders brought an action in the district court alleging, among other things, violations of the CROA. Petitioners moved to compel arbitration of these claims pursuant to the parties' agreements. The district court denied the motion, holding that the plain text of the CROA grants con-

sumers the "right to sue" and provides that this right cannot be waived. *Id.* at 45a.

The Ninth Circuit affirmed. Like the district court, it relied on the CROA's disclosure provisions, which require credit repair organizations to inform consumers of their "'right to sue.'" Pet. App. 9a (quoting 15 U.S.C. § 1679c(a)). Also like the district court, the Ninth Circuit relied on the CROA's statement that "'[a]ny waiver by any consumer of any protection * * * or any right'" is void. *Ibid.* (quoting 15 U.S.C. § 1679f(a)). As Petitioner has shown, the Ninth Circuit's decision creates a sharp and acknowledged split of authority with the Third and Eleventh Circuits, both of which have held that claims under the CROA may be subject to mandatory arbitration. Pet. 10-14; see also Pet. App. 17a (majority noting, "[w]e realize this decision is in conflict with that of two of our sister circuits").

Judge Tashima dissented, emphasizing that the CROA's disclosure provisions do not create any substantive rights but depend for their content on separate, substantive provisions. Pet. App. 25a. In particular, the right to sue is created by 15 U.S.C. § 1679g, which provides that "[a]ny person who fails to comply with any provision of this subchapter with respect to any other person shall be liable to such person." As Judge Tashima noted, however, "[n]owhere in the CROA * * * does Congress mandate a judicial forum for enforcement of the CROA's substantive provisions." Pet. App. at 26a. Moreover, the "'right to sue' does not necessarily mean the right to sue *in court*." *Id.* at 27a (emphasis in original). As he concluded: "We should not lightly create a circuit split on an issue of national application on the basis

of the flimsy evidence on which the majority relies." *Id.* at 27a-28a.

REASONS FOR GRANTING THE PETITION

I. Congress has expressed a strong federal policy in favor of arbitration, and that policy is reflected in the settled expectations of both businesses and consumers.

Under the FAA, "[a] written provision in any * * * contract evidencing a transaction involving commerce to settle by arbitration a controversy * * * shall be valid, irrevocable, and enforceable." 9 U.S.C. § 2. With this forceful endorsement from Congress, arbitration has become central to a wide range of commercial agreements. Indeed, "[t]he preeminent concern of Congress in passing the [Federal Arbitration Act in 1925] was to enforce private agreements." *Mitsubishi Motors Corp.* v. *Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 625 (1985). For this reason, it is well settled that "questions of arbitrability * * * be addressed with a healthy regard for the federal policy favoring arbitration." *Moses H. Cone Mem. Hosp.* v. *Mercury Constr. Corp.*, 460 U.S. 1, 24-25 (1983).

Arbitration is widely used in commercial contracts—including, as here, in contracts related to debt collection and credit. One recent study, for example, considers cases filed with the National Arbitration Forum in just over four years between 2003 and 2007. In that time, the Forum entertained 33,948 arbitrations. Sarah Rudolph Cole & Theodore H. Frank, *The Current State of Consumer Arbitration* 2 (2008). All but 15 of these were "collections" cases, in which the consumer typically owes the debt. *Ibid.* Thus, this figure does not even include *consumer-initiated* lawsuits, such as the one at issue here.

Contracts *between* businesses likewise rely heavily on arbitration. For example, a study of franchise agreements found that nearly half of the sample contained an arbitration clause. This number has remained steady for nearly ten years. Christopher R. Drahozal & Quentin R. Whittrock, *Is There a Flight from Arbitration?,* 37 Hofstra L. Rev. 71, 75 (2008). So too in other industries. A leading securities arbitration forum, for example, has seen over 4,614 arbitrations filed each year since 1996—with over 7,000 filed annually in 2002, 2003, 2004, and 2009. *FINRA Dispute Resolution Statistics* (January 2011).

Nor is the prevalence of arbitration a sign of any inequity. To the contrary, arbitration is favored because it is widely perceived as fair, while at the same time cheaper and faster than traditional in-court litigation. According to a study prepared by Ernst & Young LLP, consumers prevailed in 55 percent of the consumer-initiated cases that reached decision. Cole & Frank, *supra*, at 3 (citing Ernst & Young, *Outcomes of Arbitration: An Empirical Study of Consumer Lending Cases* (2004)). Another study found that consumers prevailed in consumer-initiated cases 65.5 percent of the time. *Ibid.* (citing Mark Fellows, *The Same Result as in Court, More Efficiently: Comparing Arbitration and Court Litigation Outcomes*, Metropolitan Corporate Counsel 32 (July 2006)). Still another study found that in collections cases, consumers won reductions of the award in 37.4 percent of cases that went to hearing. *Id.* at 3. Moreover, in over 20 percent of the cases in which the consumer defaulted, the arbitrator refused to award the entire amount of the claim. *Ibid.*

There can be no question that arbitration allows parties to resolve disputes more quickly than through

extensive court proceedings. According to government statistics, the median time from filing to disposition of civil cases in the twelve-month period ending March 31, 2010, was 23.3 months for cases disposed of by trial, and 8.2 months overall. Administrative Office of the United States Courts, *Federal Judicial Caseload Statistics: March 31, 2010*, Table C-5 (2010). By contrast, according to a study of 301 consumer arbitrations administered by the American Arbitration Association, the average time from filing to final award was 6.9 months—an improvement of nearly 20 percent over court cases resolved without trial, and a 70 percent improvement over those that are tried. Christopher R. Drahozal & Samantha Zyontz, *An Empirical Study of AAA Consumer Arbitrations*, 25 Ohio St. J. on Disp. Resol. 843, 845 (2010). Other advantages of arbitration include lower costs, greater adjudicator expertise, potentially greater confidentiality, and potentially less acrimony. See generally Randall Thomas et al., *Arbitration Clauses in CEO Employment Contracts: An Empirical and Theoretical Analysis*, 63 Vand. L. Rev. 959, 970-973 (2010) (summarizing reasons parties might prefer to arbitrate); accord 1 Domke on Commercial Arbitration § 1:4 (3d ed. 2010) (discussing the pros and cons of arbitration).

Arbitration also plays a significant role in employment disputes, as many of this Court's previous decisions have recognized. Among other advantages, arbitration gives both employees and employers an opportunity to resolve relatively small claims in a cost-effective way. Lewis L. Maltby, *Employment Arbitration & Workplace Justice*, 38 U.S.F. L. Rev. 105, 106-107 (2003). According to one study, 26 percent of AAA employment arbitrations in 2000 involved

claims of less than $25,000. *Id.* at 117. Further, from the employee's perspective, an arbitration may offer greater access to merits hearings, as relatively few cases in arbitration are resolved on summary judgment. *Id.* at 113.

One study of 551 employment contracts for Chief Executive Officers found that *half* contained an arbitration clause. When the sample was broken down by year, the study revealed that, but for a small dip in 2004, arbitration clauses had become more common every year since 1999, appearing in 60.4% of contracts by 2005. Thomas et al., *supra*, at 981. A CEO candidate, of course, is likely in a strong bargaining position relative to the business. But these candidates nevertheless often conclude that arbitration provisions are in their interest.

Given the importance of arbitration in modern commercial contracts—and Congress's longstanding policy of respecting and enforcing agreements to arbitrate—this Court has consistently required parties seeking to invalidate their agreements to show that Congress specifically intended to preclude arbitration of the particular claim at issue. *E.g.*, *Green Tree Fin. Corp.* v. *Randolph*, 531 U.S. 79, 90 (2000).

As discussed below, the Ninth Circuit's decision here gives short shrift to this important federal policy and the resulting expectation that agreements to arbitrate will be enforced. The Ninth Circuit found that claims under the CROA may not be subjected to mandatory arbitration under a private law arrangement, even though Congress did not mention arbitration at all when it enacted the CROA. The court based its decision merely on the fact that the CROA confers a private right of action and provides

that rights granted by the statute may not be waived. As discussed below, this approach to arbitrability not only threatens thousands of arbitration agreements; it is flatly contrary to the pro-arbitration policy embodied in the FAA and this Court's previous decisions.

II. The decision below interprets the CROA in a manner inconsistent with its own plain language and this Court's approach to similar statutes.

As this Court has recognized, "having made the bargain to arbitrate, [a] party should be held to it unless Congress itself has evinced an intention to preclude a waiver of judicial remedies for the statutory rights at issue." *Gilmer* v. *Interstate/Johnson Lane Corp.*, 500 U.S. 20, 26 (1991). "[T]he burden is on the party opposing arbitration to show that Congress intended to preclude a waiver of judicial remedies for the statutory rights at issue." *Ibid.*

The Ninth Circuit did not hold Respondents, Plaintiffs below, to that burden. Accordingly, the decision below stands in conflict both with this Court's approach to arbitrating statutory claims in general and with the decisions of the two federal courts of appeals that have considered arbitration under the CROA in particular. The Petition describes in detail the conflict among the Circuits (at 10-14); the discussion below focuses on the Ninth Circuit's approach to the CROA and compares it with this Court's approach to other statutes having similar characteristics.

1. By its plain terms, the CROA does not require that consumers be told they have a right to a *judicial* forum—only that they "have a *right to sue* a credit repair organization that violates the Credit Repair

Organization Act." 15 U.S.C. § 1679c(a) (emphasis added). The Ninth Circuit interpreted the "right to sue" language here by way of a three-step journey through *Black's Law Dictionary*, from "sue" to "lawsuit" to "suit." See Pet. App. 10a. For at least four independent reasons, this analysis was fundamentally misdirected.

First, as discussed at length in the Petition, the "right to sue" language is the wrong starting point. The disclosure provisions of the CROA do not themselves create any substantive rights; they merely incorporate the substantive rights conferred elsewhere in the statute. For present purposes, the relevant substantive provision is the civil liability provision, which states that "[a]ny person who fails to comply with any provision of [the CROA] with respect to any other person shall be liable to such person." 15 U.S.C. § 1679(g). The statute nowhere precludes credit repair organizations from also telling consumers that, if they wish to form a contract, any such "lia[bility]" must be resolved through arbitration.

Second, even if the "right to sue" language were itself significant, the *contracts themselves* defined the forum for exercising that "right to sue"—that is, in arbitration. Whatever "sue" may mean in a legal dictionary, the consumers who signed the contracts at issue here necessarily agreed that the term referred to arbitration. The CROA nowhere prohibits contracting parties from making such an agreement. Congress's silence in the CROA on this critical point—in the face of the FAA's nearly century-old command that arbitration agreements must be enforced—is indeed "the dog that did not bark." Pet. 22 (quoting *Chisom* v. *Roemer*, 501 U.S. 380, 396 n.23 (1991)). *Cf. Bruesewitz* v. *Wyeth LLC*, No. 09-152, at

8, 562 U.S. ___ (2011) (slip op.) (explaining that a statute's failure to mention a "classic and well known" basis for liability must be a matter of "deliberate choice, not inadvertence") (citation omitted). Given the crystal clear language of the FAA, the arbitration clauses must be enforced as written.

Third, even if "right to sue" could be read in isolation from the arbitration provision in these contracts (and it cannot), the words must be given their common, everyday meaning. *E.g.*, *Hamilton* v. *Lanning*, 130 S. Ct. 2464, 2471 (2010) ("When terms used in a statute are undefined, we give them their ordinary meaning.") (internal quotation marks and citation omitted). In determining *that* meaning, mainstream dictionaries are much more helpful than legal dictionaries—defining "sue" as "to seek justice or right from (a person) by legal process." *Webster's Ninth New Collegiate Dictionary* 1179 (1988); see also *Funk & Wagnalls Standard College Dictionary* 1338 (1973) ("To institute proceedings against for the recovery of some right or the redress of some wrong"); *Shorter Oxford English Dictionary* 3095 (6th ed. 2007) ("Institute a suit for, make a legal claim to"); *Random House Webster's Unabridged Dictionary* 1900 (2d ed. 2001) ("[T]o institute a process in law against; bring a civil action against"). Arbitration is undeniably a "legal process"; it is used to vindicate legal rights, and its awards are enforceable by law. Read in this commonsense way, the guarantee of a right to sue in no way limits the forum available. See Pet. App. 27a ("the mere mention of a "right to sue" does not necessarily mean the right to sue *in court*") (Tashima, J., dissenting) (emphasis in original); *Picard* v. *Credit Solutions, Inc.*, 564 F.3d 1249, 1255 (11th Cir. 2009) ("Although CROA requires credit repair organiza-

tions to inform consumers of their right to a private cause of action, such does not preclude arbitration under CROA."); *Gay* v. *CreditInform*, 511 F.3d 369, 377 n.4 (3d Cir. 2009) (noting that "the section does not specify the forum for the resolution of the dispute").

Fourth, even if "right to sue" is read in isolation and interpreted in a technical sense as the right to bring a legal action in court, that still does not foreclose the corresponding right of the party sued to raise affirmative defenses—such as an agreement to arbitrate. As the Third Circuit noted, "even if the use of the word 'sue' implies the availability of a judicial forum for an action against a credit repair organization, use of the word would not mean that the organization could not assert defenses that it had to such an action including the right to invoke a contractual arbitration provision to change the forum." *Gay,* 511 F.3d at 377 n.4. Thus, even assuming that Respondents had a right to sue in court, they have done so—which is the very reason that their case is and will remain in federal court, even as the merits of the dispute are sent to arbitration. See 9 U.S.C. § 3 (providing for "stay"—not dismissal—of proceedings in federal district courts when an issue in the proceeding is referable to arbitration). The mere fact that they had the ability to *file their lawsuit* in federal court does not mean that they cannot be held to their agreement to *resolve the merits of the liability* in arbitration. Yet the Ninth Circuit's reading of "right to sue" went well beyond the ability to file suit in court, further eviscerating the FAA's explicit protections of the right to arbitrate.

2. This conclusion is compelled by this Court's precedents, which have enforced arbitration agree-

ments in the face of statutes that refer far more explicitly to court actions. *E.g.*, *Gilmer*, 500 U.S. at 29. "By agreeing to arbitrate a statutory claim, a party does not forgo the substantive rights afforded by the statute; it only submits to their resolution in an arbitral, rather than a judicial, forum." *Mitsubishi Motors*, 473 U.S. at 628. Thus, although the CROA creates a private right of action, claims based on such statutory rights of action *are* subject to arbitration.

This is a matter of common sense, as well as legal precedent. Whenever Congress creates a private right of action, it necessarily contemplates that the party may proceed in court. See *Gay*, 511 F.3d at 383 n.10 (stating that "the rights to judicial forums and class action resolution of disputes exist outside of [CROA]"). Thus, it would be redundant for a statute creating a cause of action to add, "in court." That is assumed. But as this Court has repeatedly made clear, Congress's creation of a statutory right of action in court does not preclude enforcement of agreements to resolve those rights in arbitration.

For example, the ADEA provides that "[a]ny person aggrieved may bring a civil action *in any court* of competent jurisdiction." 29 U.S.C. § 626(c)(1) (emphasis added). Far from precluding arbitration, this Court held this provision fully consistent with arbitration, because "provision[s] for concurrent jurisdiction[] serve to advance the objective of allowing [claimants] a broader right to select the forum for resolving disputes." *Gilmer*, 500 U.S. at 29 (internal quotation marks and citation omitted) (second brackets in original). The CROA—which grants a private right of action but does not contain such direct language specifying where the action may be brought—is consistent with arbitration for the same reason. And

because the statute in *Gilmer* referred not merely to a "right to sue" but to a right to bring a civil action "in any court," this is an *a fortiori* case under *Gilmer*. See also *Rodriguez de Quijas* v. *Shearson/American Express Inc.*, 490 U.S. 477, 482 (1989) (statute provided for "broad venue provisions in the federal courts" and "concurrent jurisdiction in the state and federal courts"); *Shearson/American Express, Inc.* v. *McMahon*, 482 U.S. 220, 227 (1987) (statute vested "exclusive jurisdiction" in the "district courts of the United States"); 15 U.S.C. § 15(a) ("any person who shall be injured in his business or property * * * may sue therefor in any district court of the United States"); *id.* § 1640(e) ("[a]ny action under this section may be brought in any United States district court"). Moreover, since Congress enacted the CROA in 1996, after many of these decisions, it is deemed to know how such language would be interpreted. *Cf. South Dakota* v. *Yankton Sioux Tribe*, 522 U.S. 329, 351 (1998) ("Congress is aware of existing law when it passes legislation.").

Because there is no unqualified right to a judicial forum in the CROA, that statute's nonwaiver provision has no application here. See 15 U.S.C. § 1679f(a) (providing that "[a]ny waiver by any consumer of any protection provided by or any right of the consumer *under this subchapter*" is void) (emphasis added). To trump the FAA, Congress must affirmatively intend to preclude arbitration, and there is no evidence that Congress so much as considered precluding arbitration here. As discussed above, the only right provided by the CROA relevant here is the right to receive a contract offer stating that the consumer has the right to sue. The statute does not prohibit covered parties from *defining* that right as satisfied by arbitration.

And for that reason, none of the Respondents' rights here were waived by arbitration.

For similar reasons, this Court has declined to void arbitration agreements despite the presence of nonwaiver provisions in other statutes. In *McMahon*, for example, the statute at issue (the Securities Exchange Act of 1934) provided as follows: "The district courts of the United States * * * shall have exclusive jurisdiction of violations of this chapter or the rules and regulations thereunder, and of all suits in equity and actions at law brought to enforce any liability or duty created by this chapter or the rules and regulations thereunder." 15 U.S.C. § 78aa. Yet this Court upheld an agreement to arbitrate claims under the Act, *despite* a provision that declared void "'[a]ny condition, stipulation, or provision binding any person to waive compliance with any provision of [the Act].'" *McMahon*, 482 U.S. at 227 (brackets in original) (quoting 15 U.S.C. § 78cc(a)). Likewise, in *Rodriguez de Quijas*, the Court upheld such an agreement despite identical language in the Securities Act. *Id.* at 485. As the Court explained, the nonwaiver provision applied only to the substantive obligations imposed by the statutes, not to procedural provisions such as the right to a judicial forum. *Rodriguez de Quijas*, 490 U.S. at 482; *McMahon*, 482 U.S. at 228.

So too here. Like the nonwaiver provisions at issue in *McMahon* and *Rodriguez*, the CROA's nonwaiver provision appears in a provision guarding against "[n]oncompliance with this subchapter." 15 U.S.C. § 1679f. As in those cases, Congress here meant only to protect the substantive rights unique to the CROA. And those substantive rights do not include the unqualified right to litigate in court.

The majority below failed to distinguish these cases. It reasoned that the language of the CROA, prohibiting the waiver of "any protection" or "any right," was much broader than that of the 1934 Securities Exchange Act, which prohibited the waiver of noncompliance. Pet. App. 19a. But again, a nonwaiver provision cannot prevent waiver of rights that do not exist. And here, such protections and rights simply do not include the unqualified right to litigate in court. A right to sue, if it exists, is simply a right to seek redress in some forum. Here, that right will be fully vindicated in arbitration.

3. As this discussion shows, the Ninth Circuit has done more here than simply interpret the CROA. It has adopted an approach to arbitration of statutory claims that conflicts with how this Court has approached that same question in other contexts. Indeed, it is not uncommon for statutes to have both of the characteristics that the Ninth Circuit recognized in the CROA—an express private right of action and a nonwaiver provision. *E.g.*, 15 U.S.C. §§ 3611, 3614 (Housing and Community Development Act of 1980's private right of action and nonwaiver provisions); 29 U.S.C. §§ 1854, 1856 (Migrant and Seasonal Agricultural Worker Protection Act's private right of action and nonwaiver provisions); 40 U.S.C. § 3133 (putting conditions on a "waiver of the right to bring a civil action on a payment bond," including prohibiting pre-performance waivers). In the interest of promoting predictability in commercial contracts, this Court should intervene now to address the problems with the Ninth Circuit's statutory approach, rather than waiting for the same problem to arise for other statutes as well.

CONCLUSION

Since Congress enacted the FAA in 1925, this Court has repeatedly guarded the right to arbitration against encroachments by particular state and federal courts that have regarded the right with more skepticism. This Court's jurisprudence on this issue is consistent with—and has fostered—the common expectation that commercial contracts will be enforced according to their terms. The decision below undermines that expectation. It creates not only a split with the Third and Eleventh Circuits, but also doubt about how courts should resolve the question of arbitrability of statutory claims in general. *Amicus* DRI urges this Court to grant review to resolve the conflict and to ensure the courts' fidelity to Congress's longstanding policy favoring arbitration.

Respectfully submitted.

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