No. _____

In the Supreme Court of the United States

NITRO-LIFT TECHNOLOGIES, L.L.C.,
Petitioner,

v.

EDDIE LEE HOWARD and
SHANE D. SCHNEIDER,
Respondents.

On Petition for Writ of Certiorari to the Supreme Court of the State of Oklahoma

PETITION FOR WRIT OF CERTIORARI

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May 14, 2012

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QUESTION PRESENTED

Whether the Supreme Court of Oklahoma's holding that a state court may review an underlying employment agreement based upon a state statute restricting covenants not to compete, notwithstanding the presence of a valid arbitration clause, is foreclosed by the Federal Arbitration Act and 45 years of authority from this Court (particularly *Buckeye Check Cashing v. Cardegna*).

PARTIES TO THE PROCEEDING

Petitioner Nitro-Lift Technologies, L.L.C. was Defendant/Appellee in the Supreme Court of Oklahoma. Respondents Eddie Lee Howard and Shane D. Schneider were Plaintiffs/Appellants before that court.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, Petitioner Nitro-Lift Technologies, L.L.C. states that it has no parent corporation and that no publicly traded company owns 10% or more of its stock.

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The Supreme Court of Oklahoma's decision is reported at 273 P.3d 20 (Okla. 2011), and reprinted in the Appendix ("App.") at 1a-26a. The Supreme Court of Oklahoma's decision denying Nitro-Lift's petition for clarification and/or rehearing is reprinted at 32a-33a. The unreported decision of the District Court of Johnston County, Oklahoma ("trial court") granting Nitro-Lift's motion to dismiss is reprinted at App. 29a-31a.

JURISDICTION

The Supreme Court of Oklahoma rendered its decision on November 22, 2011. App. 1a. Nitro-Lift's timely petition for rehearing and clarification was denied by that court on February 13, 2012. App. 32a. Sup. Ct. R. 13(2). This Court has jurisdiction under 28 U.S.C. § 1257(a). *See, e.g., Southland Corp. v. Keating*, 465 U.S. 1, 6-8 (1984).

CONSTITUTIONAL AND SATUTORY PROVISIONS INVOLVED

The Supremacy Clause of the Constitution, Art. VI, cl. 2, provides in pertinent part:

> The Constitution, and the Laws of the United States which shall be made in Pursuance thereof * * * 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.

Section 2 of the Federal Arbitration Act ("FAA"), 9 U.S.C. § 2, provides in pertinent part:

> A written provision in * * * a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, * * * or an agreement in writing to submit to arbitration an existing controversy arising out of such 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.

STATEMENT OF THE CASE

This case arises from the Supreme Court of Oklahoma's defiance of this Court's repeated holding that "unless the challenge is to the arbitration clause itself, the issue of the contract's validity is considered by the arbitrator in the first instance." *Buckeye Check Cashing v. Cardegna*, 546 U.S. 440, 445-46 (2006). Forty-five years ago in *Prima Paint Corp. v. Flood & Conklin Mfg.*, 388 U.S. 395 (1967), the Court held that the FAA does not allow a party to avoid arbitration by claiming that the underlying contract containing an arbitration clause (but not the arbitration clause itself) was fraudulently induced. Instead, the *Prima Paint* Court held that such a claim must be decided by the arbitrator. The Court has not receded from this holding. *See, e.g., Rent-A-Center, West, Inc. v. Jackson,* 561 U.S. __, ___, 130 S. Ct. 2772, 2778 (2010); *Preston v. Ferrer*, 552 U.S. 346, 349 (2008).

Nonetheless, in justifying its decision to ignore the arbitration clause and decide the validity of the agreement as a whole based on Oklahoma law, the Oklahoma court broadly held: **"We determine that the existence of an arbitration agreement in an employment contract does not prohibit judicial review of the underlying agreement."** App. 6a, 16a. (emphasis supplied). Emphasizing Oklahoma public policy, Respondents and the Supreme Court of Oklahoma maintain that because the underlying agreement was allegedly invalid under Oklahoma's statute restricting covenants not to compete in employment agreements, the state court had the power to ignore the arbitration agreement and apply the state statute. The state court did not base its decision on any infirmity in the arbitration clause itself.

The Oklahoma decision directly conflicts with this Court's precedents mandating that "questions concerning the validity of the entire contract are to be resolved by the arbitrator in the first instance, not by a federal or state court." *Preston*, 552 U.S. at 349; *see also AT&T Technologies, Inc. v. Communications Workers of Am.*, 475 U.S. 643, 649 (1986)("[I]n deciding whether the parties have agreed to submit a particular grievance to arbitration, a court is not to rule on the potential merits of the underlying claims."). In essence, the Supreme Court of Oklahoma has crafted a rule based upon Oklahoma public policy that prohibits arbitration in disputes involving employment agreements containing covenants not to compete. "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." *AT&T Mobility LLC v. Concepcion*, 563 U.S. __, __, 131 S. Ct. 1740, 1747 (2011).

Because the Oklahoma court's decision is irreconcilable with this Court's decisions in *Prima Paint, Buckeye Check Cashing*, and *Preston,* Nitro-Lift respectfully requests that the Court grant the petition for certiorari, summarily reverse the decision below, and remand for further proceedings not inconsistent with these precedents. *See, e.g., Marmet Health Care Ctr., Inc. v. Brown*, 565 U.S. __, 132 S. Ct. 1201 (2012) (per curiam) (summarily reversing enforcement of West Virginia statute barring arbitration in personal injury nursing home cases); *KPMG LLP v. Cocchi*, 565 U.S. __, 132 S.Ct. 23 (2011) (per curium) (summarily reversing enforcement of state court failure to address whether all claims were nonarbitrable); *Citizens Bank v. Alafabco*, 539 U.S. 52 (2003) (summarily reversing misapplication of this Court's FAA precedent). Alternatively, the Court should grant plenary review.

A. Factual Background

Petitioner Nitro-Lift is a Louisiana-incorporated company that provides energy companies with a service to stimulate the flow of hydrocarbons from a well. Oil or gas rises to the surface naturally for a time after a well is drilled. That natural lift inevitably slows or stops. Nitro-Lift contracts with the well operator to provide enhanced production using proprietary equipment and techniques to inject compressed gasses, such as nitrogen, into the well to reinvigorate production.

Nitro-Lift hired Petitioners Howard and Schneider at its office in Tishomingo, Oklahoma. App. 7a-8a. Both employees entered into and signed an identical Confidentiality/Non-Compete Agreement ("Agreement") that contains an arbitration provision stating:

> Any dispute, difference or unresolved question between Nitro-Lift and the Employee (collectively the "Disputing Parties") shall be settled by arbitration by a single arbitrator mutually agreeable to the Disputing Parties in an arbitration proceeding conducted in Houston, Texas in accordance with the rules existing at the date hereof of the American Arbitration Association.

App. 8a, 10a, n.9. The Agreement also contains a separate choice of law provision providing that the Agreement "shall, in all respects be subject to and be interpreted, construed and enforced in accordance with the laws in effect in the State of Louisiana, without regard to its conflict of laws principles." App. 10a, n. 9. (all caps in original). Respondents worked for Nitro-Lift on wells in at least Oklahoma, Texas, and Arkansas. *Plaintiffs' Application for Temporary Injunction Affidavit ¶ 5* (Oct. 14, 2010). Both respondents resigned their positions and took employment with a direct competitor of Nitro-Lift.

B. The Proceedings Below

Nitro-Lift served respondents with an arbitration demand in July 2010 alleging breach of the Agreement and seeking a decision prohibiting respondents from (1) disclosing or using Nitro-Lift's confidential

information; (2) inducing Nitro-Lift's employees to leave Nitro-Lift to work for its competitor; and (3) competing or interfering with Nito-Lift's business relationships or soliciting its customers. App. 9a.

After the arbitrator was selected and Nitro-Lift had advanced arbitration fees for all parties, respondents filed suit in state court on October 14, 2010. App. 11a. In their complaint, respondents sought an order declaring the Agreement null and void and an injunction prohibiting its enforcement. Id. On the same day they filed suit, respondents obtained an ex parte temporary restraining order enjoining Nitro-Lift from prosecuting the arbitration claims. Id. Thereafter, Nitro-Lift explained to the trial court that the complaint should be dismissed and respondents were not entitled to an injunction because respondents' merely challenged the validity of the underlying Agreement as opposed to the arbitration provision itself. *See Nitro-Lift's Response to Application for Temporary Restraining Order and Temporary Injunction, pp. 4-5* (Nov. 10, 2010); *Nitro-Lift's Motion to Dismiss, pp. 7-8* (Nov. 10, 2010). Citing this Court's authority in *Prima Paint* and *Southland*, Nitro-Lift argued that the validity of the non-compete Agreement must be decided by the arbitrator, not the court. Id. The trial court agreed, held the arbitration provision was valid on its face, dismissed respondents' complaint, and denied injunctive relief. App. 29a-31a.

Respondents appealed the trial court's decision. The appeal was to be heard under Oklahoma's accelerated appeal procedure, meaning the appellate court would render a decision without appellate briefing. Okla. Sup. Ct. R. 1.36. Respondents filed a

motion asking the Supreme Court of Oklahoma to retain the appeal, which the court granted. App. 11a.

The Supreme Court of Oklahoma then entered an order noting that the parties' filings in the trial court had not addressed 15 O.S. § 219A governing covenants not to compete. The court then directed the parties to "show cause why this matter should not be resolved by application of 15 O.S. 2001 § 219A." App. at 11a, 27a-28a. Respondents filed a brief arguing, in essence, that the underlying Agreement is invalid under Oklahoma public policy expressed in section 219A and the court, as opposed to the arbitrator, should decide the case based on the statutory language. *Appellants' Brief* (October 28, 2011). Nitro-Lift again argued that the arbitrator, not the court, must decide whether or to what extent the underlying Agreement violated section 219A. *Brief to Show Cause Regarding Application of 15 O.S. 2001 § 219A* (October 31, 2011).

On November 22, 2011, the Oklahoma court issued its unanimous opinion reversing the trial court's order dismissing the complaint and denying the temporary injunction of the arbitration proceedings. App. 1a-26a. The court made short shrift of the arbitration provision. The court broadly held: **"We determine that the existence of an arbitration agreement in an employment contract does not prohibit judicial review of the underlying agreement."** App. 6a (emphasis supplied). It then analyzed the underlying Agreement, not the arbitration provision, under section 219A and found it to be overbroad, invalid, and unenforceable.

Specifically, the court stated that "employers rely upon United States Supreme Court jurisprudence.

The employees assert that jurisdiction lies in this Court based on our pronouncements addressing the issue. We agree with employees." App. 13a. While the court did not undertake its own analysis of this Court's precedent, it found "most instructive" its prior analysis in *Bruner v. Timberlane Manor Ltd. P'ship*, 155 P.3d 16 (Okla. 2006), which the court characterized as containing an "exhaustive overview" of the Supreme Court's precedent, including *Prima Paint* and *Buckeye Check Cashing*. App. 14a-15a & n. 20. *Bruner* unanimously rejected the arbitration of a nursing home wrongful death claim under the FAA because it found that the transaction did not involve interstate commerce. Of course, *Bruner* is directly at odds with this Court's February decision in *Marmet Health Care Ctr., Inc. v. Brown*, 565 U.S. __, 132 S. Ct. 1201 (2012) (per curiam), summarily rejecting nearly identical decisions from the Supreme Court of Appeals of West Virginia. Without even conducting the interstate commerce analysis of the obviously interstate facts of this case, the court in this case footnoted its reliance upon *Bruner's* secondary holding that the specific anti-arbitration provisions in the Oklahoma Nursing Home Care Act governed over "the more general statute favoring arbitration." App. 15a, n. 21. The court failed to identify any specific anti-arbitration provision in 15 O.S. § 219A similar to that contained in the act at issue in *Bruner* (and *Marmet)* or identify whether "the more general statute" being displaced by section 219A was the Oklahoma Uniform Arbitration Act (OUAA) or the FAA.

On December 12, 2011, Nitro-Lift petitioned for clarification and/or rehearing. It sought clarification of which general statute (the FAA or the OUAA) was being overridden by section 219A. It pointed out the

erroneous comparison of *Bruner's* analysis to this case and the fact that *Buckeye Check Cashing* directly prohibits state public policy as a basis for ignoring an arbitration clause. On February 13, 2012, the court denied the petition for clarification or rehearing. App. 32a.

This petition follows.

REASONS FOR GRANTING THE WRIT OF CERTIORARI

I. Forty-Five Years Of Settled Supreme Court Precedent Forecloses Oklahoma's Rule That State Courts May Ignore An Arbitration Clause And Decide The Validity Of The Underlying Agreement Based On State Public Policy.

The rule adopted by Oklahoma allowing courts to review an underlying agreement's validity notwithstanding the presence of an arbitration clause defies this Court's settled precedent on the preemptive effect of the FAA, even in employment contracts. As initially set forth in *Prima Paint*, courts do not have authority to entertain a challenge to the validity of a contract that is not directed at "the making of the agreement to arbitrate . . ." 388 U.S. at 404. This is a matter of "federal substantive law of arbitrability." *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24 (1983).

Contrary to the decision of the Oklahoma court, the decisions in *Buckeye Check Cashing* and it progeny directly control this matter. In *Buckeye Check Cashing,* this Court rejected a Florida court's ruling that a court

rather than an arbitrator should resolve a claim that a contract is void under the state's usury laws. In so holding, this Court described the fundamental arbitrability rules established in *Prima Paint* and *Southland*:

> First, as a matter of substantive federal arbitration law, an arbitration provision is severable from the remainder of the contract. Second, unless the challenge is to the arbitration clause itself, the issue of the contract's validity is considered by the arbitrator in the first instance. Third, this arbitration law applies in state as well as federal courts.
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> * * *
>
> Applying them to this case, **we conclude that because respondents challenge the Agreement, but not specifically its arbitration provisions, those provisions are enforceable apart from the remainder of the contract. The challenge should therefore be considered by an arbitrator, not a court.**

546 U.S. 445-46 (emphasis supplied). The Court specifically rejected the Florida court's reasoning that the arbitration agreement had to fall with the contract as a whole because the contract was void as a matter of state public policy. "[W]e cannot accept the Florida Supreme Court's conclusion that enforceability of the arbitration agreement should turn on "'Florida public policy and contract law.'" *Id.* at 446 (citations omitted).

The Court reiterated this holding in *Preston v. Ferrer*, 552 U.S. 346 (2008), where it considered whether a state rule requiring the exhaustion of administrative proceedings involving the validity of talent agent contracts required a stay of pending arbitration. This Court held that *Buckeye Check Cashing* clarified that "all disputes arising under [the parties'] contract, concerning the validity of the entire contract are to be resolved by the arbitrator in the first instance, not by a federal or state court. *Id.* at 349. The Court further reiterated that the FAA "declares a national policy favoring arbitration", which policy applied to the state courts and "forecloses state legislative attempts to undercut the enforceability of arbitration agreements." *Id.* at 353 (citations omitted). Notwithstanding the public policy of California to regulate talent contracts, the Court held to its prior decisions and directed that "attacks on the validity of an entire contract, as distinct from attacks aimed at the arbitration clause, are within the arbitrator's ken." *Id.*

The Oklahoma court's broadly-stated rule allowing the review of the validity of underlying employment agreements containing an arbitration provision has also been expressly rejected by this Court. In *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105 (2001), the Court reversed the holding of the United States Court of Appeals for the Ninth Circuit that all employment contracts were beyond the FAA's reach. There, the Court found that arbitration did not diminish the rights of employees, emphasizing that "'[b]y 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.'" *Id.* at 123 (quoting *Gilmer v.*

Interstate/Johnson Lane Corp., 500 U.S. 20, 26 (1991)).

Later, although addressing the scope of an arbitration clause in an employment agreement, the Court confirmed that the severability principles of *Prima Paint* and *Buckeye Check Cashing* apply in the context of employment agreements. In *Rent-A-Center, West, Inc. v. Jackson,* 561 U.S. __, ___, 130 S. Ct. 2772 (2010), the plaintiff employee brought employment discrimination and retaliation claims under 42 U.S. § 1981. In its analysis of whether the claims were subject to the parties' arbitration agreement, the Court reaffirmed the general rule that courts may only hear challenges specifically aimed at the arbitration agreement and that challenges aimed at the agreement as a whole must go to the arbitrator. *Id.* at 2778. "Thus, a party's challenge to another provision of the contract, or to the contract as a whole does not prevent a court from enforcing a specific agreement to arbitrate." *Id.* "Thus, in an employment contract many elements of alleged unconscionability applicable to the entire contract (outrageously low wages, for example) would not affect the agreement to arbitrate alone. But, even where that is not the case – as in *Prima Paint* * * * -- we nonetheless require the basis of the challenge to be directed specifically to the agreement to arbitrate before the court will intervene." *Id.*

The Supreme Court of Oklahoma's refusal to submit to arbitration the validity of the Agreement under 15 O.S. § 219A conflicts with long-standing authority of this Court.

II. The Supreme Court Of Oklahoma Has Created A Rule Barring Arbitration Of An Entire Class Of Cases And Exhibits The Historical Hostility Toward Arbitration The FAA Was Designed To End.

The FAA was enacted to "reverse the longstanding judicial hostility to arbitration agreements," "to place [these] agreements upon the same footing as other contracts," and to "manifest a liberal federal policy favoring arbitration agreements." *EEOC v. Waffle House, Inc.*, 534 U.S. 279, 289 (2002); *see also Hall Street Assocs., L.L.C. v. Mattel, Inc*., 552 U.S. 576, 581 (2008). As a result, this Court repeatedly has granted review to strike down state rules prohibiting the arbitration of a particular type of claim. *See, e.g., Marmet Health Care Ctr.*, 132 S. Ct. at 1203-04 (FAA preempts state statutory bar to arbitration in nursing home injury cases); *Concepcion*, 131 S. Ct. at 1747 (FAA preempts state rule prohibiting class action waivers in arbitration agreements); *Preston*, 552 U.S. at 356 (FAA preempts state law granting state commissioner exclusive jurisdiction to decide issue the parties agreed to arbitrate); *Mastrobuono v. Shearson Lehman Hutton, Inc.*, 514 U.S. 52, 56 (1995) (FAA preempts state law requiring courts to hear punitive damage claims); *Perry v. Thomas*, 482 U.S. 483, 491 (1987) (FAA preempts state law requirement that courts decide wage disputes); *Southland Corp.*, 465 U.S. at 10 (FAA preempts state statute prohibiting arbitration of claims under financial statute).

In bolded-text, the Supreme Court of Oklahoma illustrated its ongoing defiance of this Court's precedent and its clear intent to continue to do so in the future. The court stated:

> Our jurisprudence controls this issue. *Wyatt-Doyle & Butler Engineers, Inc. v. City of Eufala*, 2000 OK 74, 13 P.3d 474 held that the Uniform Arbitration Act . . . **did not prohibit this Court from reviewing a contract submitted to arbitration where one party asserted the underlying agreement was void and unenforceable.** In *Cardiovascular Surgical Specialists, Corp. v. Mammana*, 2002 OK 27, 61 P.3d 210, we relied on *Wyatt-Doyle* in determining that **an arbitrator's review of a contract would not prevent this Court from considering the contract's validity. Furthermore, we re-emphasized a principle first enunciated in *Wyatt-Doyle*, that the public right to be free from restraint of trade "cannot be waived by the parties' agreement to submit the issue of the validity of a contract provision to arbitration. A void provision provides no legal basis for enforcement whether through arbitration or judicial pronouncement." We reviewed an underlying employment contract** in *Thompson v. Bar-S Foods Co.*, 2007 OK 75, 174 P.3d 567 and **held that no arbitration was required where the agreement was not based on a valid contract.**

App. 14a. (emphasis in original opinion).

As the court did not reject the application of the FAA to this controversy (or even conduct an interstate commerce analysis), there can be no doubt it intends its holding to be a proclamation applicable to all arbitrable controversies in Oklahoma courts. Lest

there be any doubt, the court stated: "The **Supreme Court decisions** discussed therein [in *Bruner*],[1] and relied upon by Nitro-Lift here, **were found not to inhibit our review of the underlying contract's validity."** App. 15a. (emphasis in original opinion).[2]

Here, where Oklahoma has created a per se rule allowing courts to decide the vaidity of employment

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[1] As discussed supra page 8, the Oklahoma court's primary reliance upon its own decision in *Bruner v. Timberlane Manor Ltd. P'ship* further highlights its hostility to arbitration. *Bruner* was summarily rejected by this Court in *Marmet Health Care Ctr.*, 132 S. Ct. 1203-04, when the Court struck down the application of a nearly identical West Virginia anti-arbitration provision. Equally important, the *Bruner* decision contained a detailed (although erroneous) discussion of whether the agreement involved interstate commerce. Yet, on the wholly distinguishable facts of this case, the court here did not even attempt such an analysis. Moreover, the court relied upon *Bruner* after an Oklahoma federal district court rejected the commerce clause analysis in *Bruner* and enjoined the state health care department from enforcing the anti-arbitration provision of that act. *See Rainbow Health Care Ctr. v. Crutcher*, 07-cv-194-IHP, 2008 WL 268321 at *6 (N.D. Okla. Jan. 29, 2008) (unpublished). Yet, the court in this case did not so much as mention that decision.

[2] In rejecting this Court's prior FAA authority, the Supreme Court of Oklahoma also relied upon its prior decision in *Cardiovascular Surgical Specialists, Corp. v. Mammana*, 61 P.3d 210 (Okla. 2003). There, the state court gave no deference to the arbitration award and found that it could independently review the validity of the underlying non-compete agreement. 61 P.3d at 212-13. While it was unclear whether the court was applying federal or state arbitration law, that decision was squarely at odds with this Court's decisions governing the limited judicial review of arbitration awards. *See, e.g., Major League Baseball Players Ass'n v. Garvery,* 532 U.S. 504, 509 (2001).

contracts in the first instance, the decision should be summarily reversed by this Court.

III. The Decision Below Is Exceptionally Important.

In recent Terms this Court has reaffirmed that state-law rules prohibiting arbitration of a class of cases are outright preempted by the FAA. In this case, the Supreme Court of Oklahoma has formulated and published a rule so broad it would allow the court to extend judicial review of an underlying agreement in any arbitrable case, especially employment disputes. Given its head-on conflict with this Court's simple, clear statements of the law, Oklahoma's rule is inconsistent with this Court's fundamental role in our judicial system. The Supremacy Clause mandates that "the Judges in every state shall be bound" by federal law. U.S. Const. Art. VI, cl. 2. "It is this Court's responsibility to say what a statute means, and once the Court has spoken, it is the duty of other courts to respect that understanding of the governing rule of law." *Rivers v. Roadway Exp., Inc.*, 511 U.S. 298, 312 (1994).

The threat that Oklahoma will apply its broad rule to cases beyond the covenant-not-to-compete context is bolstered by the state court's silence as to any limiting principle. Further, the state court's reliance on cases involving all manner of disputes shows that it does not intend to be bound by the facts of this case. Indeed, by relying primarily upon the *Bruner* nursing home injury case, it has exhibited a willingness to review underlying contracts containing arbitration agreements in any context whatsoever. It is important for this Court to put an end to Oklahoma's judicial

encroachment into areas clearly preempted by the FAA.

It is readily apparent that the Supreme Court of Oklahoma does not believe arbitrators can uphold Oklahoma law and public policy as well as Oklahoma courts. *See* App. 14a ("[T]he public right to be free from restraint of trade 'cannot be waived by the parties' agreement to submit the issue of the validity of a contract to arbitration.'") (citation omitted). The decision in this case is a prime example of the judicial hostility the FAA was designed to end. *Mastrobuono*, 514 U.S. at 56. Rather than fulfill the purposes of the FAA, Oklahoma's rule "will unnecessarily complicat[e] the law and breed[] litigation from a statute that seeks to avoid it." *Allied-Bruce Terminex Cos. v. Dobson*, 513 U.S. 265, 275 (1995).

CONCLUSION

The petition for a writ of certiorari should be granted. The Court may wish to consider summary reversal.

Respectfully submitted,

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