No. 13-439

IN THE

Supreme Court of the United States

CARMAX AUTO SUPERSTORES CALIFORNIA, LLC, *et al.*,
Petitioners,
v.
JOHN WADE FOWLER, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the California Court of Appeal

BRIEF *AMICI CURIAE* OF THE EQUAL EMPLOYMENT ADVISORY COUNCIL, CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AND THE RETAIL LITIGATION CENTER, INC. IN SUPPORT OF PETITIONERS

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The Equal Employment Advisory Council, Chamber of Commerce of the United States of America, and the Retail Litigation Center, Inc. respectfully submit this brief *amici curiae* in support of the petition for a writ of certiorari.[1]

[1] Counsel of record for all parties received notice at least 10 days prior to the due date of the *amici curiae's* intention to file this brief. All parties have consented to the filing of this brief. Counsel for *amici curiae* authored this brief in its entirety. 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

INTEREST OF THE *AMICI CURIAE*

The Equal Employment Advisory Council (EEAC) is a nationwide association of employers organized in 1976 to promote sound approaches to the elimination of employment discrimination. Its membership includes over 250 major U.S. corporations, collectively providing employment to millions of workers. EEAC's directors and officers include many of industry's leading experts in the field of equal employment opportunity. Their combined experience gives EEAC a unique depth of understanding of the practical, as well as legal, considerations relevant to the proper interpretation and application of equal employment policies and requirements. EEAC's members are firmly committed to the principles of nondiscrimination and equal employment opportunity.

The Chamber of Commerce of the United States of America (Chamber) is the world's largest business federation. It represents 300,000 direct members and indirectly represents the interests of more than three million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files *amicus curiae* briefs in cases that raise issues of concern to the nation's business community.

The Retail Litigation Center, Inc. (RLC) is a public policy organization that identifies and engages in legal proceedings which affect the retail industry. The

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the preparation or submission of this brief. No person other than *amici curiae*, their members, or their counsel made a monetary contribution to its preparation or submission.

RLC's members include many of the country's largest and most innovative retailers. The member entities whose interests the RLC represents employ millions of people throughout the United States, provide goods and services to tens of millions more, and account for tens of billions of dollars in annual sales. The RLC seeks to provide courts with retail-industry perspectives on important legal issues, and to highlight the potential industry-wide consequences of significant pending cases.

All of *amici's* member companies and entities are strongly committed to equal employment opportunity and seek to establish and enforce internal policies that are consistent with federal employment nondiscrimination laws. This commitment extends to the prompt and effective resolution of employment disputes using a variety of tools, including arbitration and other forms of alternative dispute resolution. Many of them have adopted company-wide policies requiring the use of binding arbitration to resolve all employment-related disputes. Some of those arbitration agreements contain class action waiver provisions, which primarily are designed to preserve the benefits of arbitration, while at the same time avoiding costly, complex, and protracted class-based litigation.

The court below, relying on the California Supreme Court's decision in *Gentry v. Superior Court*, 165 P.3d 556 (Cal. 2007), refused to enforce a class action waiver provision contained in an employment arbitration agreement because the trial court had failed to determine whether class arbitration would be a more effective means than individual arbitration of vindicating the rights of the putative class members. Because many of their members and entities have a substantial, nationwide business presence and thus

have been defendants to employment litigation in numerous state courts, including California, *amici* have a direct and ongoing interest in the issues presented in this case regarding the extent to which a state may condition enforcement of an employment arbitration agreement on the availability of class procedures. Because of their experience in these matters, *amici* are well-situated to brief the Court on the concerns of the business community and the significance of this case to employers.

STATEMENT OF THE CASE

Petitioner CarMax maintains a dispute resolution program that requires employment-related disputes to be resolved using binding arbitration. Pet. App. 53a. The arbitration agreement contains a class waiver clause that provides, "The Arbitrator shall not consolidate claims of different Associates into one proceeding, nor shall the Arbitrator have the power to hear an arbitration as a class action (a class action involves an arbitration or lawsuit where representative members of a large group who claim to share a common interest seek collective relief)." *Id.*

John Wade Fowler was a sales consultant with CarMax. Pet. App. 4a. In April 2008, he filed a putative class action on behalf of himself and similarly situated sales consultants accusing the company of, among other things, violations of California's wage and hour laws. *Id.* Another group of employees filed a related action, which included an additional claim for civil penalties under California's Private Attorneys General Act of 2004 (PAGA), Cal. Lab. Code §§ 2698-2699.5. The two actions subsequently were consolidated. Pet. App. 5a.

On June 19, 2009, the trial court stayed the case pending a decision by the California Supreme Court in *Brinker Restaurant Corp. v. Superior Court*, 273 P.3d 513 (2012). On June 2, 2011, CarMax requested that the plaintiffs submit their claims to arbitration in light of *AT&T Mobility, LLC v. Concepcion*, 131 S. Ct. 1740 (2011), which had been decided on April 27, 2011. When the plaintiffs refused to submit voluntarily to arbitration, CarMax moved the court for an order vacating the stay and compelling individual arbitration. The plaintiffs opposed the motion, contending that (1) the company's actions in actively litigating the case to that point were inconsistent with an intention to arbitrate; (2) the arbitration agreement was unconscionable and therefore unenforceable; (3) *Concepcion* did not overrule *Gentry*; (4) the agreement violates the National Labor Relations Act (NLRA), 29 U.S.C. §§ 151-169; and (5) the plaintiffs' PAGA claims are not subject to arbitration. Pet. App. 6a. After a hearing, the trial court granted CarMax's motion, rejecting every one of the plaintiffs' arguments. The plaintiffs then appealed to the California Court of Appeal. Pet. App. 7a.

Despite finding that CarMax had not waived the right to compel arbitration, and that the arbitration agreement as a whole was not unconscionable, the Court of Appeal reversed, concluding that *Gentry* barred enforcement of the agreement's class waiver clause. In *Gentry*, it observed, the California Supreme Court held that an employment arbitration agreement containing a class waiver is unenforceable "under some circumstances in which such a provision would lead to a de facto waiver and would impermissibly interfere with employees' ability to vindicate unwaivable rights and to enforce overtime laws." Pet. App. 19a.

The court found that the *Gentry* rule requires "a different analysis than *Discover Bank's* rule of substantive unconscionability for consumer contracts of adhesion." Pet. App. 18a. It pointed out that the *Discover Bank* test is a "legal determination subject to de novo review, while *Gentry* is based on whether a class action is a significantly more effective practical means of vindicating unwaivable statutory rights, which is a discretionary determination subject to abuse of discretion review." *Id.* Furthermore, in the court's view, because *Concepcion* was not an employment case in which "an employee's unwaivable statutory rights were involved," it "does not preclude our application of a *Gentry* analysis." *Id.* at 19a. It thus reversed the trial court's order compelling arbitration and remanded the case for further proceedings. Both parties unsuccessfully petitioned the California Supreme Court for review. CarMax filed its petition for a writ of certiorari with this Court on October 8, 2013.

SUMMARY OF REASONS FOR GRANTING THE WRIT

This Court repeatedly has emphasized that a principal aim of the Federal Arbitration Act (FAA), 9 U.S.C. §§ 1-16, is to construe private arbitration agreements in accordance with the parties' intent. "[T]he FAA's proarbitration policy does not operate without regard to the wishes of the contracting parties." *Mastrobuono v. Shearson Lehman Hutton, Inc.*, 514 U.S. 52, 57 (1995). To the contrary, courts must "rigorously enforce agreements to arbitrate . . . in order to give effect to the contractual rights and expectations of the parties." *Green Tree Fin. Corp. v. Bazzle*, 539 U.S. 444, 458 (2003) (citations and internal quotations omitted).

In *AT&T Mobility, LLC v. Concepcion*, 131 S. Ct. 1740, 1745 (2011), this Court held that States may not condition the enforceability of consumer arbitration agreements on the availability of class arbitration procedures, recognizing that such a policy would undermine the FAA's expectation that agreements to arbitrate be enforced in accordance with their terms. Consistent with that principle, the Court last Term in *American Express Co. v. Italian Colors Restaurant*, 133 S. Ct. 2304 (2013), reversed a Second Circuit decision that held a class action waiver provision in a commercial arbitration agreement could not be enforced because requiring the plaintiffs to pursue their claims on an individual basis would be cost prohibitive and therefore would prevent them from effectively vindicating their rights. Read together, *Concepcion* and *Italian Colors* confirm the well-established principle that where the parties to an arbitration agreement have expressly waived the availability of certain procedures, such as class-wide arbitration, the FAA "leaves no place for the exercise of discretion by a district court, but instead mandates that district courts *shall* direct the parties to proceed to arbitration on issues as to which an arbitration agreement has been signed." *Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 218 (1985) (citation omitted).

The court below, relying on the California Supreme Court's ruling in *Gentry v. Superior Court*, 165 P.3d 556 (Cal. 2007), refused to enforce a class waiver contained in a valid employment arbitration agreement on the ground that class arbitration likely may "be a significantly more effective practical means of vindicating the rights of the affected employees than individual litigation or arbitration." Pet. App. 19a. Because it cannot be reconciled with *Concepcion* or

Italian Colors and conflicts with the FAA, the decision below must be reversed.

The California public policy expressed in the decision below makes it extremely difficult to enforce a class arbitration waiver in an employment arbitration agreement, and thus undermines the practical benefits that inure to employers and employees alike by agreeing to arbitrate workplace disputes. Not only does it impose the costly burdens and procedural complexities associated with class litigation that both employers and employees, by agreeing to arbitrate, sought to avoid, but it also undermines uniform application of multistate employers' alternative dispute resolution procedures. The prospect of having to litigate, from State to State, the enforceability of their arbitration agreements creates a chilling effect on employers' efforts to establish binding arbitration programs, which benefits not only them but also their employees. It also significantly undercuts the strong federal policy, as repeatedly endorsed by this Court, favoring private arbitration of employment disputes.

REASONS FOR GRANTING THE WRIT

I. THE DECISION BELOW CONFLICTS WITH THE FAA, AS CONSTRUED IN *CONCEPCION* AND *ITALIAN COLORS*

The Federal Arbitration Act (FAA), 9 U.S.C. §§ 1-16, "was enacted in 1925 in response to widespread judicial hostility to arbitration agreements." *AT&T Mobility, LLC v. Concepcion*, 131 S. Ct. 1740, 1745 (2011). The Act "declares as a matter of federal law that arbitration agreements 'shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.'" *Rodriguez de Quijas v. Shearson/American Express,*

Inc., 490 U.S. 477, 483 (1989) (quoting 9 U.S.C. § 2). Accordingly, only generally applicable contract defenses, such as fraud, duress, or unconscionability, can be used to invalidate an arbitration agreement.

A. The FAA Demands That Arbitration Agreements Be Enforced According To Their Terms

"Although § 2's saving clause preserves generally applicable contract defenses, nothing in it suggests an intent to preserve state-law rules that stand as an obstacle to the accomplishment of the FAA's objectives." *Concepcion*, 131 S. Ct. at 1748. Among the FAA's foundational principles is "that arbitration is a matter of consent, not coercion." *Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp.*, 559 U.S. 662, 681 (2010). Indeed, "'[the] preeminent concern of Congress in passing the Act was to enforce private agreements into which parties had entered,' a concern which 'requires that [courts] rigorously enforce agreements to arbitrate.'" *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 625-26 (1985) (quoting *Dean Witter Reynolds Inc. v. Byrd*, 470 U.S. 213, 221 (1985)). Thus, "[b]y its terms, the Act leaves no place for the exercise of discretion by a district court, but instead mandates that district courts *shall* direct the parties to proceed to arbitration on issues as to which an arbitration agreement has been signed." *Dean Witter Reynolds Inc.*, 470 U.S. at 218 (citations omitted).

In *Concepcion*, this Court addressed whether the "FAA prohibits States from conditioning the enforceability of certain arbitration agreements on the availability of classwide arbitration procedures." 131 S. Ct. at 1744. At issue in *Concepcion* was whether the

special rule set out by the California Supreme Court in *Discover Bank v. Superior Court*, 113 P.3d 1100 (Cal. 2005), governing enforcement of consumer arbitration agreements containing class waiver provisions was consistent with the FAA.

Responding with a resounding "no," this Court held that by "[r]equiring the availability of classwide arbitration," California's *Discover Bank* "creates a scheme inconsistent with the FAA" because it "interferes with fundamental attributes of arbitration." 131 S. Ct. at 1748. "The point of affording parties discretion in designing arbitration processes is to allow for efficient, streamlined procedures tailored to the type of dispute." *Id.* at 1749. Thus, parties can choose an arbitral decisionmaker or process that will make arbitration as efficient, informal, and cost-effective as possible. *Id.* at 1749-52. Although the arbitration agreement at issue in *Concepcion* arose in the consumer context, the Court did not limit its holding to the facts or to consumer arbitration agreements, nor did it suggest that it intended to protect the "fundamental attributes of arbitration" only in the consumer context to the exclusion of arbitration agreements between employer and employee. *Id.* at 1748.

Relying on the California Supreme Court's "*Gentry*" rule, the court below refused to enforce a class waiver contained in an employment arbitration agreement on the ground that class procedures could be significantly more effective than individual arbitration in vindicating the respondents' claims. Importantly, however, "[s]everal courts have concluded that the rule in *Gentry* is analogous to the *Discover Bank* rule, and

therefore is preempted under *Concepcion*." *Cunningham v. Leslie's Poolmart, Inc.*, 2013 BL 199888, at *4 (C.D. Cal. June 25, 2013). As one court pointed out:

> Like the *Discover Bank* rule, *Gentry* mandates the availability of class proceedings due to a California public policy favoring class actions for claims which would not otherwise be adjudicated due to social and economic obstacles that discourage individual claims. As other decisions have recognized, *Concepcion* is clear that such rules are preempted because they disfavor arbitration by mandating the use of class action procedures inconsistent with the nature of arbitration "envisioned by the FAA."

Id. As the trial court below similarly observed:

> What is common to both *Discover Bank* and *Gentry* is the reliance on the premise that the court can and should attempt to rate the likely effectiveness of an arbitration process according to its agreed terms to accomplish the state-law policy objectives deemed important to the court, e.g. the enforcement of nonwaivable statutory rights, before the court will give effect to the contract previously made by the parties. It is this core premise which flies in the face of the majority's reasoning in *Concepcion*.

Pet. App. 41a-42a.

To the extent that the lower court's rationale rests on a state court ruling that effectively precludes bilateral arbitration of employment disputes where a trial court determines that class litigation would be more "effective" in vindicating an employee's rights, it suffers from the same fundamental defect that this Court addressed in *Concepcion*: it "interferes with the

fundamental attributes of arbitration" in the employment context "and thus creates a scheme inconsistent with the FAA." 131 S. Ct. at 1748. For that reason, and like the state rule invalidated in *Concepcion*, the *Gentry* rule at the core of the decision below is contrary to the FAA and represents an irreconcilable conflict with this Court's FAA jurisprudence.

B. Mandating The Availability Of Class Procedures For Certain Types Of Claims On Policy Grounds Where There Exists No Contractual Basis For Doing So Contravenes The FAA

The court below refused to compel individual arbitration of the Respondents' claims out of a policy concern that doing so could deprive the putative class of the most effective means of ensuring compliance with state wage and hour laws. But since *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20 (1991), this Court has repeatedly reaffirmed the federal policy favoring enforcement of arbitration agreements in accordance with their terms. *See AT&T Mobility, LLC v. Concepcion*, 131 S. Ct. 1740 (2011); *Am. Express Co. v. Italian Colors Rest.*, 133 S. Ct. 2304 (2013); *see also Hall St. Assocs., LLC v. Mattel, Inc.*, 552 U.S. 576 (2008); *EEOC v. Waffle House, Inc.*, 534 U.S. 279 (2002); *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105 (2001); *Green Tree Fin. Corp.-Ala. v. Randolph*, 531 U.S. 79 (2000). Those decisions confirm that state rules like *Gentry*, which "subject petitions to compel arbitration to special scrutiny as to the perceived adequacy of such arbitration or deny arbitration of state-law claims in the belief that state law *can* prohibit arbitration of state-law claims," Pet. App. 24a (emphasis added), are incompatible with the FAA.

Last Term, the Court in *Italian Colors* held that a party's agreement to forego class arbitration must be enforced, even if it happens that the cost of prosecuting an individual case may be prohibitively expensive. *Am. Express Co. v. Italian Colors Rest.*, 133 S. Ct. 2304 (2013). The Second Circuit had refused to enforce a commercial arbitration agreement containing a class waiver clause, concluding that the plaintiffs presented sufficient evidence that the "only economically feasible means" of pursuing their antitrust claims is "via a class action," 133 S. Ct. at 2311, even though the underlying law contained a fee-shifting provision that allowed successful plaintiffs to recover their litigation costs. In doing so, the Second Circuit found *Concepcion* inapplicable, as it never reached the specific question "whether a class-action arbitration waiver clause is enforceable even if the plaintiffs are able to demonstrate that the practical effect of enforcement would be to preclude their ability to vindicate their federal statutory rights." *In re Am. Express Merchs.' Litig.*, 667 F.3d 204, 212 (2d Cir. 2012), *rev'd sub nom.*, *Am. Express Co. v. Italian Colors Rest.*, 133 S. Ct. 2304 (2013).

Reversing, this Court squarely rejected the notion that the FAA allows for a broad, "effective vindication" exception. 133 S. Ct. at 2310-11. The Court reasoned:

> The regime established by the Court of Appeals' decision would require—before a plaintiff can be held to contractually agreed bilateral arbitration—that a federal court determine (and the parties litigate) the legal requirements for success on the merits claim-by-claim and theory-by-theory, the evidence necessary to meet those requirements, the cost of developing that evidence, and the damages that would be recovered

> in the event of success. Such a preliminary litigating hurdle would undoubtedly destroy the prospect of speedy resolution that arbitration in general and bilateral arbitration in particular was meant to secure. The FAA does not sanction such a judicially created superstructure.

Id. at 2312. Because *Gentry* requires precisely the same inquiry, it must be rejected for the same reason. *See also id.* ("Truth to tell, our decision in *AT&T Mobility* all but resolves this case. … We specifically rejected [there] the argument that class arbitration was necessary to prosecute claims 'that might otherwise slip through the legal system.'" (quoting *Concepcion*, 131 S. Ct. at 1753)).

II. PERMITTING THE CALIFORNIA COURTS TO DISREGARD *CONCEPCION* AND *ITALIAN COLORS* WOULD UNDERMINE THE CONSIDERABLE BENEFITS OF INDIVIDUAL ARBITRATION IN THE EMPLOYMENT CONTEXT

California's *Gentry* rule, as applied by the decision below, effectively establishes a special exception to the enforcement of class action waivers contained in employment arbitration agreements, resulting in a strange anomaly in federal arbitration policy. Yet this Court has never relegated employment arbitration agreements to second-tier status warranting a departure from the general rule that the FAA requires arbitration agreements to be enforced in accordance with their terms. To the extent *Gentry* sets out to place *employment* arbitration agreements in particular on unequal footing with other types of contracts, it is displaced by the FAA.

A. There Is No Basis For Creating A Special Exception To *Concepcion* And *Italian Colors* For Employment Arbitration Agreements

Without clear direction from this Court, California courts likely will continue to devise ways in which to avoid enforcement of bilateral employment arbitration agreements. In *Sonic-Calabasas A, Inc. v. Moreno*, ("*Sonic I*"), for example, the California Supreme Court refused to compel individual arbitration of the plaintiff's state wage claims, concluding that doing so would deprive the plaintiff of his right to invoke a special, statutorily-created wage dispute resolution mechanism referred to as the "'Berman' hearing." 247 P.3d 130, 133 (Cal. 2011). The employer subsequently filed a petition for a writ of certiorari with this Court, which granted the petition, vacated the judgment, and remanded the case for reconsideration in light of *Concepcion*. *Sonic-Calabasas A. Inc. v. Moreno*, 132 S. Ct. 496 (2011).

On remand, the California Supreme Court on October 17, 2013 held, as it must, that "the FAA preempts *Sonic I's* rule requiring arbitration of wage disputes to be preceded by a Berman hearing …." *Sonic-Calabasas A, Inc. v. Moreno*, ("*Sonic II*"), 2013 BL 287605, at *24 (Cal. Oct. 17, 2013). It nevertheless refused to compel arbitration, concluding that further fact-finding was required regarding the plaintiff's contention that the agreement is unconscionable, and therefore unenforceable on that ground. The court further observed that evaluating the extent to which an arbitration agreement impermissibly stands in the way of a plaintiff's right to a Berman hearing does not interfere with the "fundamental attributes" of arbitration as described by this Court in *Italian Colors*, 133

S. Ct. at 2312, suggesting that a Berman hearing may indeed be "more streamlined" than arbitration. *Sonic II*, 2013 BL 287605, at *24.

Associate Justice Chin "disagree[d] with the majority that, so long as states and their courts do not interfere with fundamental attributes of arbitration, *Concepcion* allows them to invalidate arbitration agreements as unconscionable based on a policy judgment that the arbitration procedure is not adequately affordable and accessible." *Id.* at *59 (Chin, J., concurring in part and dissenting in part). To the contrary:

> [U]nder the FAA, a state court may not, based on principles of unconscionability, refuse to enforce an arbitration agreement according to its terms simply because the arbitration procedure lacks features the Legislature, as a matter of policy, established for "a particular class" – employees – to "mitigate the risks and costs of pursuing" wage claims or to make recovery of wages owed more "accessible, informal, and affordable." In enacting the FAA, Congress "intended to foreclose [such] legislative attempts to undercut the enforceability of arbitration agreements."

Id. at *60 (citations omitted). Because the decision below reflects the California courts' persistent, irrational hostility toward employment arbitration despite the FAA's clear command to enforce employment arbitration agreements as written, review and reversal by this Court is warranted.

Aside from the statutory mandate that arbitration agreements be enforced according to their terms, "[f]or parties to employment contracts … there are real benefits to the enforcement of arbitration provisions."

Circuit City Stores, Inc. v. Adams, 532 U.S. 105, 122-23 (2001). As this Court observed over a decade ago:

> We have been clear in rejecting the supposition that the advantages of the arbitration process somehow disappear when transferred to the employment context. Arbitration agreements allow the parties to avoid the costs of litigation, a benefit that may be of particular importance in employment litigation, which often involves smaller sums of money than disputes concerning commercial contracts.

Id. (citation omitted). Imposing class action procedures on parties who expressly agreed to waive such procedures in favor of bilateral arbitration changes the nature of arbitration to such a degree that it becomes a burden on the parties, rather than a means of resolving their dispute efficiently and in a less costly manner.

The risk is especially acute in the employment context. Indeed, for most of these disputes, the *only* realistic access to justice is through arbitration. If employees or small businesses with small individualized claims do not have access to simplified, low-cost arbitration and are forced into court, they could be priced out of the judicial system entirely. And it is not just employees with disputes who benefit from arbitration. The lower cost of dispute resolution reduces the costs of doing business, which manifests in lower prices for consumers and higher wages for employees. *See, e.g.*, Stephen Ware, *Paying the Price of Process: Judicial Regulation of Consumer Arbitration Agreements*, 2001 J. Disp. Resol. 89, 91 (2001); Steven Shavell, *Alternative Dispute Resolution: An Economic Analysis*, 24 J. Legal Stud. 1, 5–7 (1995).

In particular, class-based employment claims can be extremely complex and time-consuming to defend. Title VII damage claims, for instance, require particularized analysis of the facts and circumstances of each employment action, and of the degree of actual harm to each class member if liability is found. Attempting to resolve Title VII class-based claims in arbitration would not be particularly efficient or cost-effective. Moreover, allowing class arbitration of employment disputes would enable savvy plaintiffs to avoid the strict requirements of, and deny defendants the due process protections afforded by, the federal procedural rules governing class action litigation. *Cf. Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541 (2011).

B. *Gentry* Calls Into Question The Long-Term Viability Of Employment Arbitration Programs

If *Gentry* is allowed to stand, employers are all but assured that California courts will continue to deem arbitration agreements containing class action waivers unenforceable, contrary to the holdings and rationales in *Concepcion* and *Italian Colors*. This case presents an appropriate vehicle for this Court to clarify that *Concepcion* and *Italian Colors* apply fully in employment cases. Were it otherwise, employees and employers would lose the well-recognized benefits of alternative dispute resolution programs containing a bilateral arbitration component – an outcome that significantly undercuts the strong federal policy, as embodied in the FAA and repeatedly endorsed by this Court, favoring private arbitration of employment disputes.

CONCLUSION

Accordingly, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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