No. 17-988

In the Supreme Court of the United States

LAMPS PLUS, INC., ET AL.,
Petitioners,

v.

FRANK VARELA,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF AMICUS CURIAE AMERICAN ASSOCIATION FOR JUSTICE IN SUPPORT OF THE RESPONDENT

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INTEREST OF AMICUS CURIAE[1]

The American Association for Justice, formerly known as the Association of Trial Lawyers of America, was established in 1946 to safeguard victims' rights, strengthen the civil-justice system, and protect access to the courts. With members in the United States, Canada, and abroad, AAJ is the world's largest trial bar.

AAJ files this brief for two reasons. First, we highlight a threshold question under the Federal Arbitration Act: whether the district court had authority to dismiss the case after referring the respondent's claims to arbitration. Although the parties have given it little attention, the issue bears on this Court's jurisdiction in this case, has deeply split the courts of appeals, and has profound effects on parties' ability to obtain appellate review of orders compelling arbitration. Second, this brief explains how the extreme view of the Federal Arbitration Act urged by Lamps Plus would, if adopted by this Court, upset decades of settled expectations about the proper interpretation of arbitration agreements under state law.

Based on its members' expertise in both arbitration and class action litigation—and its organizational concern for the development of the law on those issues—AAJ is well positioned to offer a unique perspective on these questions.

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[1] No party's counsel authored any part of this brief, and no party or party's counsel contributed money intended to fund its preparation or submission. All parties have provided written consent to the brief's filing.

INTRODUCTION AND SUMMARY OF ARGUMENT

This brief highlights a threshold question of jurisdiction separate from the jurisdictional issue discussed in the parties' briefs: whether the Federal Arbitration Act gave the district court below authority to dismiss the case after referring Varela's claims to arbitration. That question implicates important policy issues under the FAA, including the statute's potentially conflicting goals of allowing parties to obtain review of erroneous arbitration orders and of ensuring quick and easy enforcement of arbitration agreements.

Section 3 of the FAA provides that a district court, when referring a plaintiff's claims for arbitration, "shall … *stay*" the case pending the conclusion of that arbitration. 9 U.S.C. § 3 (emphasis added). Several courts of appeals have interpreted that language as *requiring* a district court to stay a case after referring it to arbitration. But other courts, including the Ninth Circuit, have held that a district court in appropriate circumstances has discretion to instead *dismiss* the case. The difference matters for purposes of appellate jurisdiction: Under § 16 of the FAA, an order compelling arbitration and staying the case is not immediately appealable, but an order compelling arbitration and dismissing the action is.

Resolution of the question whether the district court had authority to dismiss the case is necessary to determine this Court's jurisdiction. If the district court lacked that authority, its decision to enter an unauthorized dismissal could not have converted what would otherwise have been an unappealable interlocutory decision into an appealable final one. And if the court of appeals lacked jurisdiction to review the district court's arbitration order, this Court would likewise lack jurisdiction to review the decision of the court of appeals.

Nevertheless, the parties did not brief the question below, and the panel's opinion does not address it. Nor do the parties' briefs in this Court directly address the issue. Rather than wading into important and delicate issues of law and policy under the FAA without the benefit of briefing, the Court may wish to dismiss the writ as improvidently granted and instead follow its customary practice of awaiting a case in which the issue has been properly presented and decided and is fully addressed in the parties' briefs in this Court.

Assuming, however, that the Court decides to resolve the question presented, it should affirm the court of appeals' decision. In deciding that the parties' arbitration agreement permits class arbitration, the court did exactly what this Court has repeatedly instructed it and other lower courts to do: It looked to the language of the agreement in light of ordinary state-law contracts principles. Lamps Plus's argument that the Court should disregard California's venerable rule requiring contracts to be construed against the drafter would risk usurping the states' previously unquestioned authority to interpret their own laws—an authority fundamental to our federal system—in favor of a new, federalized law of contracts. This Court should decline to start down that dangerous path.

ARGUMENT

I. This Court cannot decide the question presented without first deciding whether it has jurisdiction.

A. Every federal court "has a special obligation to satisfy itself not only of its own jurisdiction, but also that of the lower courts in a cause under review." *Bender v. Williamsport Area Sch. Dist.*, 475 U.S. 534, 541 (1986).

This Court accordingly has an "obligation to notice defects in a court of appeals' subject-matter jurisdiction." *Id.* at 541. The Court is required to address such issues that come to its attention, whether or not the issues were raised by the parties or passed on by the courts below. *See FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 230–31 (1990).

The discussion of jurisdiction in the parties' briefs focuses on the question whether the district court's decision to compel arbitration was appealable given the FAA's prohibition on interlocutory appeals of orders compelling arbitration. But the parties have not addressed a distinct question bearing on the jurisdiction of the court of appeals below: whether the district court had authority under the FAA to turn its interlocutory arbitration decision into an appealable final one by dismissing the case after referral to arbitration.[2]

Section 3 of the FAA provides that, when referring claims for arbitration, a district court "shall on application of one of the parties *stay*" the case pending the arbitration's conclusion. 9 U.S.C. § 3 (emphasis added). Whether, in appropriate circumstances, § 3 also authorizes district courts to *dismiss* a case is a question that has evenly divided the courts of appeals. *See Katz*, 794 F.3d at 345. The Second, Third, Seventh, Tenth, and Eleventh Circuits hold that the FAA authorizes district courts only to stay the case, not to dismiss it. The First, Fifth, Sixth, and Ninth Circuits, on the other hand, have

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[2] Varela's brief does note the holding of some courts that a dismissal of arbitral claims is improper, but does not link that issue with the question of appellate jurisdiction over the district court's order compelling arbitration. Resp. Br. 16. (citing *Katz v. Cellco P'ship*, 794 F.3d 341, 344–47 (2d Cir. 2015)).

held that, at least after referring all of a plaintiff's claims to arbitration, a district court has discretion to dismiss the case. *See* Alessandra Rose Johnson, *Oh, Won't You Stay with Me?: Determining Whether § 3 of the FAA Requires A Stay in Light of Katz v. Cellco Partnership*, 84 Fordham L. Rev. 2261 (2016) (discussing the circuit split).[3]

Resolution of the question is critical to the jurisdiction of the court of appeals below. As courts of limited jurisdiction, the courts of appeals have "only the power that is authorized by Article III of the Constitution and the statutes enacted by Congress." *Bender*, 475 U.S. at 541. Congress delineated the authority of the courts of appeals to review orders compelling arbitration in § 16 of the FAA. *See* 9 U.S.C. § 16(a)(3), (b). Assuming that § 3 authorizes the district court to dismiss the case after referring it to arbitration, § 16 would provide a court of appeals with jurisdiction over the arbitration order as a "final decision with respect to an arbitration." 9 U.S.C. § 16(a)(3); *see Green Tree Fin. Corp. v. Randolph*, 531 U.S. 79, 87 n.2 (2000). If, however, § 3 requires the district court to instead enter a stay, the arbitration order would be interlocutory and unappealable. *See* 9 U.S.C. § 16(b) ("[A]n appeal may not be taken from an interlocutory order … granting a stay of any action under section 3 of this title … .").

If the district court lacked authority to enter a dismissal, the fact that it nevertheless purported to dismiss the case would not affect appealability. As this Court

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[3] The Fourth Circuit has identified competing panel decisions on the question, which it has thus far declined to reconcile. *Aggarao v. MOL Ship Mgmt. Co.*, 675 F.3d 355, 376 n.18 (4th Cir. 2012).

recently held, an order that is properly interlocutory is not converted to an appealable final order any time a district court is persuaded to "issue an order purporting to end the litigation." *Microsoft Corp. v. Baker*, 137 S. Ct. 1702, 1715 (2017). If it were otherwise, district courts would have discretion to freely bypass § 16's strict limits on appellate jurisdiction just by designating their orders as dismissals. *Cf. id.* (rejecting the finality of a voluntary dismissal that would have "severely undermined" the appellate rules).

B. Those circuits that have held that § 3 of the FAA requires district courts to stay a case rather than dismiss it have relied primarily on the section's plain language. Although recognizing the advantage of dismissals to a district court's ability to manage its docket, these courts nevertheless hold that § 3's language stating that a district court "shall" stay proceedings makes the stay mandatory. *See Katz*, 794 F.3d at 345.[4]

The courts holding dismissals to be improper have also expressed concern that to allow such orders would be inconsistent with the structure of § 16. Subsections (a)(1) and (a)(2) of that section are designed to "permit immediate appeal of orders hostile to arbitration"—*i.e.*, orders preventing arbitration from proceeding or denying a stay pending arbitration. *Katz*, 794 F.3d at 346. Subsection 16(b), on the other hand, is designed to "*bar[]* appeal of interlocutory orders *favorable* to arbitration"—*i.e.*, orders *requiring* arbitration to

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[4] *See also Cont'l Cas. Co. v. Am. Nat'l Ins. Co.*, 417 F.3d 727, 732 n.7 (7th Cir. 2005); *Lloyd v. Hovensa, LLC*, 369 F.3d 263, 269 (3d Cir. 2004); *Adair Bus Sales, Inc. v. Blue Bird Corp.*, 25 F.3d 953, 955 (10th Cir. 1994); *Bender v. A.G. Edwards & Sons, Inc.*, 971 F.2d 698, 699 (11th Cir. 1992).

proceed or *granting* a stay. *Id.* (emphasis added). But if a district court could dismiss a case after referring it to arbitration, it could convert an order favorable to arbitration—like an order compelling arbitration—into a "final decision with respect to an arbitration" that is immediately appealable under 9 U.S.C. § 16(a)(3). District courts could thus choose to permit immediate appeals of orders *favorable* to arbitration, which would conflict with § 16's pro-arbitration scheme.

Allowing a district court to use a dismissal to create an appealable order would also, according to these courts, contradict "the FAA's underlying policy 'to move the parties to an arbitrable dispute out of court and into arbitration as quickly and easily as possible.'" *Id.* at 346 (quoting *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 22 (1983)). Section 16's limits to judicial review are designed to "maintain arbitration's essential virtue of resolving disputes straightaway." *Hall Street Assoc., L.L.C. v. Mattel, Inc.*, 552 U.S. 576, 588 (2008). But the ability of district courts to create immediately appealable orders compelling arbitration would inevitably "provok[e] additional litigation" in the courts of appeals that would have to be resolved before the ordered arbitration could proceed. *Katz*, 794 F.3d at 343, 346. Parties seeking arbitration would thus "be deprived of an important benefit which the FAA intended [them] to have—the right to proceed with arbitration without the substantial delay arising from an appeal." *Lloyd*, 369 F.3d at 270–71.

In contrast to those decisions, the district court below relied on Ninth Circuit precedent in holding that a dismissal was proper. Pet. App. 23a (citing *Sparling v. Hoffman Constr. Co.*, 864 F.2d 635, 638 (9th Cir. 1988)). In *Sparling*, the Ninth Circuit held that, although § 3

"gives a court *authority* … to grant a stay pending arbitration," it "does not preclude" dismissal in cases where a district court has referred *all* of a plaintiff's claims to arbitration, leaving the court nothing more to decide. 864 F.2d at 638 (emphasis added).[5]

Although courts following the Ninth Circuit's approach acknowledge that § 3's language "seems to direct that the action 'shall' be stayed pending completion of arbitration," they hold that dismissals are permissible "notwithstanding [that] language." *Johnmohammadi v. Bloomingdale's, Inc.*, 755 F.3d 1072, 1073–74 (9th Cir. 2014); *see also Fedmet Corp.*, 194 F.3d at 678 (holding that, although "the express terms of § 3" require a stay, that language "was not intended to limit dismissal of a case in the proper circumstances."). These courts have not always been clear about the textual basis for that conclusion. As one commentator has explained, however, the only stay that § 3's plain language appears to require is a stay of "the trial of the action." Richard A. Bales & Melanie A. Goff, *An Analysis of an Order to Compel Arbitration: To Dismiss or Stay?*, 115 Penn St. L. Rev. 539, 542 (2011). Thus, "[t]here is no clear prohibition in the FAA against dismissing claims when there is nothing left for the court to consider, *e.g.,* when there is nothing left to make a 'trial of the action.'" *Id.* at 543.

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[5] *See also Dialysis Access Ctr., LLC v. RMS Lifeline, Inc.*, 638 F.3d 367, 372 (1st Cir. 2011) ("Where one side is entitled to arbitration of a claim brought in court, in this circuit a district court can, in its discretion, choose to dismiss the law suit, if all claims asserted in the case are found arbitrable."); *Green v. Ameritech Corp.*, 200 F.3d 967, 973 (6th Cir. 2000); *Fedmet Corp. v. M/V Buyalyk*, 194 F.3d 674, 678 (5th Cir. 1999) (same).

Courts adopting this approach recognize that it would "serve no purpose" for a district court to stay a case, and thus retain jurisdiction, once all of a plaintiff's claims have been referred to arbitration. *Fedmet Corp.*, 194 F.3d at 678. Dismissal in those circumstances can not only "prevent a waste of judicial resources," but also reduce the potential for judicial interference in pending arbitrations and thus advance "the independence of the arbitral forum." Bales & Goff, *An Analysis of an Order to Compel Arbitration*, 115 Penn St. L. Rev. at 560.

Moreover, these courts recognize that prohibiting district courts from entering dismissals would in many cases leave arbitration orders effectively unreviewable. *Id.* at 556–57. Plaintiffs, for example, would be prevented from appealing an order compelling arbitration until the arbitration is complete, even if the basis for their appeal would have been that the arbitration agreement makes arbitration effectively impossible by forbidding the assertion of certain rights or by imposing impracticable fees. *See Am. Express Co. v. Italian Colors Rest.*, 570 U.S. 228, 236 (2013). Permitting a district court to dismiss gives the court a tool to address that problem. When a case raises a "genuine legal question concerning arbitrability," a dismissal order "allow[s] that question to be determined promptly on appeal." *ATAC Corp. v. Arthur Treacher's, Inc.*, 280 F.3d 1091, 1101 (6th Cir. 2002). When, on the other hand, there is "little legal dispute," the court "can speed along [the] arbitration" by "staying the action rather than dismissing it." *Id.*

C. The question of whether the FAA authorized the district court's dismissal below determines whether the court of appeals had jurisdiction over the appeal of the court's arbitration order. If a district court has authority to dismiss a case after referral to arbitration, the order

would be appealable as a "final decision with respect to an arbitration" under 9 U.S.C. § 16(a)(3). If, however, the district court under the FAA lacked authority to enter an appealable dismissal, the parties could not have evaded that limitation simply by persuading the district court to issue the order anyway.[6]

That is the principle established by this Court's recent decision in *Microsoft v. Baker*, 137 S. Ct. 1702. The plaintiffs in *Baker* sought to appeal a district court order denying certification of a class. *Id.* at 1706–07. Under Federal Rule of Appellate Procedure 23(f), plaintiffs can ordinarily bring such an appeal only with the court of appeals' permission. But the plaintiffs in *Baker*, who had been denied permission to appeal, tried to circumvent that denial by stipulating to a voluntarily dismissal of their claims. *Id.* The voluntary dismissal, they argued, was an appealable "final decision" under 28 U.S.C. § 1291. *Id.* And in their appeal of that order, they would be free to also seek review of the order denying class certification.

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[6] This Court's holding in *Randolph* that an order dismissing a case in favor of arbitration was appealable under § 16(3) does not suggest otherwise. 531 U.S. 79. *Randolph* left undecided the question whether the district court's dismissal was proper under the FAA or whether the court should have instead entered a stay. *Id.* at 86–87 & 87 n.2. Because the parties in *Randolph* did not argue, and this Court did not consider, the effect of an unauthorized dismissal on appellate jurisdiction, the case is not precedential on that question. *See Lewis v. Casey*, 518 U.S. 343, 352 n.2 (1996) ("[T]he existence of unaddressed jurisdictional defects has no precedential effect."). "[W]hen questions of jurisdiction have been passed on in prior decisions sub silentio, this Court has never considered itself bound when a subsequent case finally brings the jurisdictional issue before [it]." *Hagans v. Lavine*, 415 U.S. 528, 533 n.5 (1974).

This Court rejected the plaintiffs' attempt to manufacture appellate jurisdiction in that way. Plaintiffs, the Court held, "cannot transform a tentative interlocutory order into a final judgment … simply by dismissing their claims with prejudice." *Id.* at 1705. To permit such a tactic would be to "undermine § 1291's firm finality principle, designed to guard against piecemeal appeals, and subvert the balanced solution Rule 23(f) put in place for immediate review of class-action orders." *Id.* at 1707. Section 1291's final-judgment rule, the Court concluded, "is not satisfied whenever a litigant persuades a district court to issue an order purporting to end the litigation." *Id.* at 1715.

The same principle controls here. Section 16(a)(3) of the FAA, like § 1291, creates appellate jurisdiction only over "final decisions." Despite that jurisdictional limit, Lamps Plus, like the plaintiffs in *Baker*, seeks review of an *interlocutory* order that the statutory scheme expressly deems unappealable. *See* 9 U.S.C. § 16(b)(2)–(3) (prohibiting appeals of interlocutory orders compelling arbitration or directing it to proceed). As in *Baker*, Lamps Plus seeks to obtain appellate review despite that statutory bar by "transform[ing]" the interlocutory order into a final decision. 137 S. Ct. at 1715. And it seeks to do so based on a district court order "purporting to end the litigation"—an order that Lamps Plus itself "persuade[d] [the] district court to issue." *Id. Baker* compels the conclusion that Lamps Plus cannot, with this simple expedient, subvert the statutory appellate-jurisdiction scheme that Congress wrote into the FAA.[7]

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[7] *See also Sullivan v. Finkelstein*, 496 U.S. 617, 628 n.7 (1990) ("The label used by the District Court of course cannot control the order's appealability in this case, any more than it could when a

To be clear, our point is only that an improper dismissal under the FAA cannot create appellate discretion to review an *order compelling arbitration*, for which the FAA would otherwise have precluded appellate review. *See Baker*, 137 S. Ct. at 1712 (holding that the courts of appeals lacked jurisdiction under § 1291 "*to review an order denying class certification* … after the named plaintiffs have voluntarily dismissed their claims with prejudice" (emphasis added)). That is not to say that the courts of appeals would necessarily also lack jurisdiction in proper cases to review the propriety of the *dismissal order* itself, which—whether or not the district court had authority to grant it—is ordinarily an appealable final decision under § 1291. Otherwise, parties genuinely aggrieved by the improper dismissal of their claims would have no means to challenge that disposition on appeal. Here, however, Lamps Plus "sought review of only the inherently interlocutory order" compelling arbitration. *Baker*, 137 S. Ct. at 1715. It "did not complain of the 'final' order that dismissed the case," and a reversal of that order would not relieve it of any injury. *Id.* The logic of *Baker* prohibits the company from relying on a dismissal designed to manufacture jurisdiction over an otherwise unappealable order.

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district court labeled a nonappealable interlocutory order as a 'final judgment.'"); *Liberty Mut. Ins. Co. v. Wetzel*, 424 U.S. 737, 741–42 (1976) (holding that a district court's "recital" that order was a "final judgment" could not make an interlocutory order immediately appealable). *Cf. Moses H. Cone*, 460 U.S. at 933 n.8 (rejecting the "artificiality of resting appealability on an otherwise substanceless distinction between stays and dismissal"); *United States v. Wallace & Tiernan Co.*, 336 U.S. 793, 794 n.1 (1949) (holding that the label attached to dismissal order does not affect appealability).

To allow such a ploy to succeed would invite endless manipulation of appellate jurisdiction under the FAA. Indeed, circuits holding that the FAA allows dismissals after referral to arbitration view the resulting discretion of district courts to create or destroy appellate jurisdiction as a feature of their approach. *See Arthur Treacher's, Inc.*, 280 F.3d at 1101 (describing the resulting "case-management advantage"). And parties have seized on that discretion as a means of obtaining a litigation advantage by persuading district courts to allow or prevent interlocutory appeals. As one litigator advised: "[A]n early tactical decision on whether to seek a stay or a dismissal will either enable or hinder an adversary's ability to appeal immediately." Stephen H. McClain, *Moving in Style*, L.A. Law., June 2001, at 39.[8]

D. Accordingly, the question of whether the court of appeals had jurisdiction to review the district court's order compelling arbitration turns on whether the FAA authorized the court to render that order appealable by dismissing the case. And if the court of appeals lacked jurisdiction to review the arbitration order, this Court likewise lacks jurisdiction to review it: This Court's certiorari jurisdiction is limited to cases properly "in" the court of appeals, 28 U.S.C. § 1254, and it thus has no authority to decide issues that fall outside the scope of the lower courts' appellate jurisdiction.

This Court therefore cannot decide the case without first addressing the threshold question of the district

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[8] *See also*, *e.g.*, Donald J. Querio, *So, You Won Your Arbitration Motion And Thought You Were Done—Think Again!*, Summer 2017, *available at* https://perma.cc/LHY4-S5DB ("Whether an order compelling arbitration is ripe for appeal will depend on whether the district court can be convinced to enter [a dismissal].").

court's authority to dismiss the case—a question that was not passed on by the court of appeals or addressed by the parties either in this Court or below. This Court does not generally decide issues not argued or decided below, especially where the issue has not been briefed in this Court. *See Bank Markazi v. Peterson*, 136 S. Ct. 1310, 1322 n.16 (2016). To avoid the need to decide that uncertain question without the benefit of briefs by the parties, the Court may wish to dismiss the writ as improvidently granted. *Adarand Constructors, Inc. v. Mineta*, 534 U.S. 103, 109 (2001) (per curiam) (dismissing writ).

II. The court of appeals correctly interpreted the arbitration agreement under California law.

In the event that this Court reaches the merits of the question presented, it should affirm the court of appeals' decision that the agreement at issue here authorizes class arbitration. And regardless of what result the Court reaches, it should tread carefully in addressing Lamps Plus's invitation to interpret the agreement without reference to California law. To do so would not only conflict with this Court's well-established precedents requiring arbitration agreements to be interpreted in light of state contract law, but would call into question the core principles of federalism on which those precedents are based.

A. The court of appeals' holding that the arbitration agreement in this case authorizes class arbitration was a straightforward application of this Court's precedents under the FAA. First, the court correctly identified what this Court has held to be the key question in cases like this one: "whether the parties *agreed to authorize* class arbitration." *Stolt-Nielsen S.A. v. AnimalFeeds Int'l*

Corp., 559 U.S. 662, 687 (2010). That is precisely the question that the court of appeals sought to answer.

Moreover, the court went about answering that question in precisely the way this Court has repeatedly held that a court should. The court began its analysis by "construe[ing] the contract (focusing, per usual, on its language)." *Oxford Health Plans LLC v. Sutter*, 569 U.S. 564, 571 (2013). It then interpreted that language in light of "ordinary state-law principles that govern the formation of contracts." *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 944 (1995). In California, those state-law principles require that ambiguities be construed against the drafter, especially in a case involving a contract of adhesion. *See Sandquist v. Lebo Auto., Inc.*, 376 P.3d 506, 514 (Cal. 2016). That rule of construction has been recognized by the California Supreme Court as a "familiar maxim of the law" since the earliest years of that court and was codified by the California legislature nearly 150 years. *See Hooper v. Wells, Fargo & Co.*, 27 Cal. 11, 16 (1864); Cal. Civ. Code § 1654 (1872). It is unquestionably the sort of ordinary state-law principle on which a court may properly rely.

Accordingly, the only issue left for this Court to review is the correctness of the court of appeals' conclusion that the particular language of the agreement at issue here is ambiguous on the question of class arbitration. The court based that conclusion in part on its view that the phrase "civil legal proceedings"— which the agreement subjects to arbitration—can easily be read in the context of the agreement to include class proceedings. Pet. App. 3a. The court's holding that California law thus requires that language to be construed against Lamps Plus to permit class arbitration is eminently reasonable.

B. Lamps Plus argues that California's contract law cannot justify the court of appeals' interpretation, relying on this Court's holding in *Stolt-Nielsen* that a class arbitration agreement requires a "contractual basis" beyond "the fact of the parties' agreement to arbitrate." 559 U.S. at 685, 697. But Lamps Plus goes far beyond *Stolt-Nielsen* when it claims that the required "contractual basis" cannot be supplied by contract-interpretation principles under state law. Pet. Br. 18 ("State law rules do not control whether the agreement satisfies that federal principle."). According to Lamps Plus, the result in *Stolt-Nielsen* depended instead on "federal principle[s]" regarding class arbitration that lie beyond the control of state law.

That gets *Stolt-Nielsen* backward. There, this Court held that an arbitral panel erred when, in the face of a stipulation that the parties lacked "any agreement on the issue," the panel nevertheless required class arbitration based only on its own view that "class arbitration is beneficial." *Id.* at 673–74. In so holding, *Stolt-Nielsen* emphatically did not, as Lamps Plus suggests, reject reliance on neutral principles of state contract law in determining whether parties have such an agreement. On the contrary, the Court held that the arbitration panel should have looked to state contract law to supply the missing term. *Id.* at 673 (holding that the panel's "proper task" was to identify whether the relevant contract law "contains a 'default rule' under which an arbitration clause is construed as allowing class arbitration in the absence of express consent"). *Stolt-Nielsen* thus reaffirmed the principle that interpretation of an arbitration agreement "is generally a matter of state law," not an externally imposed "policy preference." *Id.* at 676, 681.

Since Congress enacted the FAA in 1925, this Court has never read the statute to require courts to ignore neutral principles of state contract law in interpreting arbitration agreements. To adopt that reading now would require this Court to throw out its longstanding precedents holding that the FAA does not displace the states' authority to "regulate contracts, including arbitration clauses, under general contract law principles." *Allied-Bruce Terminix Cos. v. Dobson*, 513 U.S. 265, 281 (1995). And setting aside that established understanding would in turn run up against the core principle of federalism that "state courts are the ultimate expositors of state law." *Mullaney v. Wilbur*, 421 U.S. 684, 691 & n.11 (1975). For those reasons, this Court should decline Lamps Plus's invitation to federalize "the interpretation of private contracts"—"a question of state law, which this Court does not sit to review." *Volt Info. Scis., Inc. v. Bd. of Trs. of Leland Stanford Junior Univ.*, 489 U.S. 468, 474 (1989).

CONCLUSION

The Court should either dismiss the writ of certiorari as improvidently granted or affirm the judgment of the court of appeals.

Respectfully submitted,

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