No. 14-462

IN THE

Supreme Court of the United States

DIRECTV, INC.,

Petitioner,

v.

AMY IMBURGIA, *et al.*,

Respondents.

On Writ of Certiorari to the California Court of Appeal Second District

BRIEF OF WASHINGTON LEGAL FOUNDATION AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

CORY L. ANDREWS
Counsel of Record
MARK S. CHENOWETH
WASHINGTON LEGAL FOUNDATION
2009 Mass. Ave. N.W.
Washington, D.C. 20036
(202) 588-0302
candrews@wlf.org

June 5, 2015

QUESTION PRESENTED

Whether the California Court of Appeal erred by holding, in direct conflict with the Ninth Circuit, that a reference to state law in an arbitration agreement governed by the Federal Arbitration Act requires the application of state law preempted by the Federal Arbitration Act.

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

CASES:

Page(s)

Page(s)

CONSTITUTIONAL PROVISIONS

STATUTES

OTHER AUTHORITIES

Page(s)

INTEREST OF *AMICUS CURIAE*[1]

Washington Legal Foundation (WLF) is a public-interest law firm and policy center with supporters in all 50 states. WLF devotes a substantial portion of its resources to defending and promoting free enterprise, individual and business civil liberties, a limited, accountable government, and the rule of law. To that end, WLF regularly appears as *amicus curiae* before this and other federal courts to support the rights of private parties to enter into binding agreements to arbitrate disputes arising between them, as a quicker and more efficient alternative to civil litigation. *See, e.g., Arthur Andersen LLP v. Carlisle*, 556 U.S. 624 (2009); *Green Tree Fin. Corp. v. Bazzle*, 539 U.S. 444 (2003).

In addition, WLF's Legal Studies Division, the publishing arm of WLF, frequently produces articles and sponsors media briefings on a variety of legal issues related to arbitration. *See, e.g.,* Mark C. Morril, *Party Autonomy Reigns Supreme: Arbitration & Class Actions in the High Court's October 2012 Term*, WLF LEGAL BACKGROUNDER (Sep. 13, 2013); Andrew J. Pincus & Evan M. Tager, *Arbitration after* AT&T v. Concepcion*: Judicial, Regulatory, & Strategic Legal Responses to the High Court's 2011*

---

[1] Pursuant to Supreme Court Rule 37.6, *amicus* WLF states that no counsel for a party authored this brief in whole or in part; and that no person or entity, other than WLF and its counsel, made a monetary contribution intended to fund the preparation and submission of this brief. All parties have consented to the filing of this brief; blanket letters of consent have been lodged with the Clerk.

Ruling, WLF WEB SEMINAR (May 8, 2012).

WLF believes that the California Court of Appeal's refusal to enforce the parties' agreement to arbitrate their dispute represents an ill-conceived departure from settled law and undermines the sound policies of the Federal Arbitration Act. In addition to openly flouting this Court's precedents, the holding below promotes precisely the type of protracted litigation disfavored by federal law and which the parties' agreement was designed to avoid. If allowed to stand, the appeals court's decision will impede and potentially deny a host of parties the right to arbitrate their disputes when the governing law would otherwise entitle them to do so, imposing substantial costs on those who voluntarily seek to resolve disputes through arbitration. Because these increased costs will ultimately be borne by consumers and society as a whole, WLF urges the Court to reverse the decision below.

STATEMENT OF THE CASE

Petitioner DIRECTV is a leading broadcast satellite service provider that broadcasts, through satellite transmissions, licensed video and audio programming to paid subscribers. DIRECTV's standard customer agreement, which sets forth the basic terms and conditions of DIRECTV's service, contains an arbitration provision (Section 9) that states "if we cannot resolve a Claim informally, any Claim either of us asserts will be resolved only by binding arbitration. The arbitration will be conducted under the rules of JAMS that are in effect at the time the arbitration is initiated … and under the Rules set forth in this Agreement." Pet. App. 4a.

The arbitration provision further specifies that "[n]either you nor we shall be entitled to join or consolidate claims in arbitration by or against other individuals or entities, or arbitrate any claim as a representative member of a class or in a private attorney capacity. Accordingly, you and we agree that the JAMS Class Action Procedures do not apply to our arbitration. If, however, the law of your state would find this agreement to dispense with class arbitration procedures unenforceable, then this entire Section 9 is unenforceable." Pet. App. 5a.

DIRECTV's customer agreement also contains a choice-of-law provision (Section 10(c)), which provides in relevant part that "Section 9 shall be governed by the Federal Arbitration Act." Pet. App. 5a. As relevant here, Section 10(d) of the customer agreement contains a standard severability clause, which states: "If any provision is declared by a competent authority to be invalid, that provision will be deleted or modified to the extent necessary, and the rest of the Agreement will remain enforceable."

In 2008, Respondents filed separate putative class-action lawsuits against DIRECTV, alleging that DIRECTV violated California law by charging Respondents an early cancellation fee when they prematurely cancelled their service. Pet. App. 3a. The cases were later consolidated in Los Angeles Superior Court. *Id.*

At the time of Respondents' suits in 2008, the California Supreme Court had adopted a rule that invalidated as unconscionable (under California law) nearly all consumer arbitration agreements

containing class-action waivers. *See Discover Bank v. Superior Ct.*, 36 Cal. 4th 148, 157-63 (Cal. 2005). Accordingly, DIRECTV did not move to compel arbitration after the suits were filed, but proceeded in court until 2011, when this Court held in *AT&T Mobility LLC v. Concepcion*, 131 S. Ct. 1740 (2011), that a state law requiring the availability of class-wide arbitration "interferes with fundamental attributes of arbitration" and thus is preempted by the Federal Arbitration Act (FAA). 131 S. Ct. at 1748.

Following this Court's opinion in *Concepcion*, DIRECTV moved to compel arbitration consistent with Section 9 of the customer agreement. The Los Angeles Superior Court denied the motion, concluding that the arbitration provision was unenforceable under *Brown v. Ralph's Grocery Co.*, 128 Cal. Rptr. 3d 854 (Cal. Ct. App. 2011), a representative action alleging labor code violations under California's Private Attorney General Act of 2004. Pet. App. 17a-20a.

On appeal, the California Court of Appeal affirmed on different grounds. Pet. App. 2a-16a. The Court's opinion relied on the arbitration provision's non-severability clause, which stipulates that if "the law of your state would find this agreement to dispense with class arbitration procedures unenforceable, then this entire Section 9 is unenforceable." *Id.* at 6a. The appeals court interpreted the phrase "the law of your state" to mean "the (nonfederal) law of your state without considering the preemptive effect, if any, of the FAA." *Id.* at 14a. In other words, the Court concluded that Section 9's non-severability clause

required application of California law, even if contrary to federal law, and even if contrary to the customer agreement's own choice-of-law provision, which explicitly states that "Section 9 shall be governed by the Federal Arbitration Act." *Id.* Accordingly, the appeals court found the class-action waiver invalid under California law and then refused to enforce the arbitration agreement based on the non-severability clause. *Id.* at 15a.

The Court of Appeal did not dispute that its holding directly conflicted with the Ninth Circuit's prior decision in *Murphy v. DIRECTV, Inc.*, 724 F.3d 1218, 1226 (9th Cir. 2013), which interpreted the same language in the same arbitration agreement at issue here as *requiring* arbitration and dismissed as "nonsensical" the very reasoning adopted by the Court of Appeal. Rather, the Court of Appeal dismissed the Ninth Circuit's decision as "unpersuasive," insisting that "*Murphy* provides no basis for concluding that the parties intended to use the phrase 'the law of your state'" to mean ordinary state law subject to the Supremacy Clause. Pet. App. 13a.

DIRECTV petitioned the California Supreme Court to resolve the resulting conflict between the California Court of Appeal and the Ninth Circuit. Over Justice Baxter's dissent, the California Supreme Court denied review. Pet. App. 1a.

SUMMARY OF ARGUMENT

In domestic and international commerce, countless parties depend upon the availability of arbitration as a means for controlling costs, streamlining processes, and lending certainty to contractual relationships. Congress and the federal courts have recognized the important public policy values inherent in arbitration and have acted affirmatively to further them. Here, the California Court of Appeal's contumacious refusal to enforce the parties' unequivocal agreement to arbitrate their dispute undermines those important values and should be reversed.

Courts must enforce arbitration agreements, like all other contracts, according to their terms. Because the parties to this case expressly agreed to arbitrate their disputes through binding arbitration, rather than through litigation, the courts below should have compelled Respondents to arbitrate their claims. Instead, the California Court of Appeal contrived a highly idiosyncratic reading of the phrase "the law of your state" in the arbitration agreement's non-severability clause to find the entire arbitration agreement unenforceable. This interpretation cannot withstand even the slightest scrutiny. It not only ignores the clear "contractual rights and expectations of the parties," *Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp.*, 559 U.S. 662, 682 (2010), but it also flies in the face of basic principles of federal preemption. Indeed, this Court has already decided that the FAA preempts any "state law" that would invalidate a consumer arbitration agreement because it contains a class-action waiver. *Concepcion*, 131 S. Ct. at 1748.

Moreover, the appeals court's conclusion that "the law of your state" means "the (nonfederal) law of your state without considering the preemptive effect, if any, of the FAA," Pet. App. 14a, betrays a fundamental misunderstanding of state and federal law. Strictly speaking, there is no such thing as abstract "state law," free from the preemptive force of federal law. Because state law that has been preempted is a legal nullity, it is not "law" in any meaningful sense of the word. More fundamentally, this Court has long made clear that federal law is as much the "law of the several States" as are the laws passed by state legislatures. Although the FAA was adopted by Congress and not the California state legislature, it is just as much a part of California law as the California civil code. Because the FAA is unquestionably part of the "Law of the Land" in California, the California Court of Appeal's holding below was clearly erroneous and should be reversed.

ARGUMENT

I. The Court Should Enforce the Parties' Agreement According to Its Terms

A court confronted with an arbitration agreement must "give effect to the contractual rights and expectations of the parties." *Stolt-Nielsen*, 559 U.S. at 682. Arbitration agreements, like all other contracts, must be enforced according to their terms. *Volt Info. Sciences, Inc. v. Bd. of Trs. of Leland Stanford Jr. Univ.*, 489 U.S. 468, 469 (1989) ("[T]he federal policy is simply to ensure the enforceability, according to their terms, of private agreements to arbitrate."). Here, it is undisputed that the

DIRECTV customer agreement's choice-of-law provision requires that the parties' arbitration agreement "shall be governed by the Federal Arbitration Act." Pet. App. 5a. The FAA provides that an agreement to arbitrate arising from a transaction in interstate commerce "shall be valid, irrevocable, and enforceable, save upon such grounds that exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2. This Court's prior cases have confirmed that a court asked to compel arbitration has the limited task of determining whether the parties' dispute is within the scope of a valid arbitration agreement. If the parties agreed to arbitrate the dispute, that is the end of the matter, and the court must honor the parties' agreement.

For reasons explained below, the appeals court's refusal to honor the parties' agreement to arbitrate departs wildly from this Court's precedents and should be reversed.

A. Federal Arbitration Law Is Based On Freedom of Contract

The most fundamental precept of federal arbitration law is freedom of contract. Indeed, the singular purpose of the FAA is "to overcome courts' refusals to enforce agreements to arbitrate," *Allied-Bruce Terminix Cos. v. Dobson*, 513 U.S. 265, 838 (1995), by placing those agreements on "the same footing as other contracts." *Gilmer v. Interstate/ Johnson Lane Corp.*, 500 U.S. 20, 24 (1991). The FAA thus creates "at bottom a policy guaranteeing the enforcement of private contractual agreements." *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 625 (1985). Accordingly, this

Court has long held that courts must "enforce privately negotiated agreements to arbitrate, like other contracts, in accordance with their terms." *Volt*, 489 U.S. at 478; *Concepcion*, 131 S. Ct. at 1752 ("Arbitration is a matter of contract, and the FAA requires courts to honor parties' expectations.") (citation omitted).

It is likewise understood that parties "are generally free to structure their arbitration agreements as they see fit." *Volt*, 489 U.S. at 469 (citations omitted); *see also Barvati v. Josephthal, Lyon & Ross, Inc.*, 28 F.3d 704, 409 (7th Cir. 1994) ("[P]arties are as free to specify idiosyncratic terms of arbitration as they are to specify any other terms in their contract."). "The point of affording parties discretion in designing arbitration processes is to allow for efficient, streamlined procedures tailored to the type of dispute." *Concepcion*, 131 S. Ct. at 1749. Accordingly, this Court has never hesitated to give full effect to "the contractual rights and expectations of the parties." *Volt*, 489 U.S. at 479 (noting that courts must "rigorously enforce" arbitration agreements according to their terms); *CompuCredit Corp. v. Greenwood*, 132 S. Ct. 665, 669 (2012) (requiring "courts to enforce agreements to arbitrate according to their terms").

And because federal law requires "rapid and unobstructed enforcement of arbitration agreements," a court's role in determining arbitrability is limited. *Cortez Byrd Chips, Inc. v. Bill Harbert Constr. Co.*, 529 U.S. 193, 201 (2000) (internal quotation omitted). When asked to compel arbitration of a particular dispute, a court must determine whether the dispute is within the scope of

a valid arbitration agreement. *See Mitsubishi*, 473 U.S. at 626. If it is, the court's work is done—it must refer the dispute to arbitration. As this Court has emphasized repeatedly, "[c]ontracts to arbitrate are not to be avoided by allowing one party to ignore the contract and resort to the courts." *Southland Corp. v. Keating*, 465 U.S. 1, 7 (1984).

In the absence of "fraud or overwhelming economic power that would provide grounds "for the revocation of any contract,'" *Mitsubishi*, 473 U.S. at 627, all doubts concerning the applicable scope of an arbitration agreement "should be resolved in favor of arbitration." *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24-25 (1983). Having made "a bargain to arbitrate, … part[ies] 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." *Mitsubishi*, 473 U.S. at 628. Otherwise, this Court has recognized that arbitration "should not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible [to] an interpretation that covers the asserted dispute." *AT&T Tech., Inc. v. Commc'ns Workers of Am.*, 475 U.S. 643, 650 (1986) (internal quotation omitted).

Consistent with longstanding freedom-of-contract principles, a court may not rewrite the parties' agreement by usurping the role assigned to the arbitrator. Nor may a court "decide that a contract is fair enough to enforce all its basic terms (price, service, credit), but not fair enough to enforce its arbitration clause." *Allied-Bruce Terminix*, 513 U.S. at 281. In this vein, a court asked to compel arbitration is precluded from delving into the

"potential merits of the [parties'] underlying claims." *Id.* at 649. Other than determining which disputes are within the scope of arbitration, a court has no authority to interpret the provisions of the parties' substantive agreement. *See, e.g., John Wiley & Sons, Inc. v. Livingston*, 376 U.S. 543, 557 (1964) ("'[P]rocedural' questions which grow out of the dispute and bear on its final disposition should be left to the arbitrator."). As this Court has noted, "[s]uch a course could lead to prolonged litigation, one of the very risks the parties, by contracting for arbitration, sought to eliminate." *Southland*, 465 U.S. at 7.

B. The Parties' Binding Agreement to Arbitrate Should Be Enforced

In this case, application of this Court's settled principles is straightforward. It is undisputed that the customer agreement between Petitioner and Respondents contains a binding arbitration provision, which provides "if we cannot resolve a Claim informally, any Claim either of us asserts will be resolved *only* by binding arbitration." Pet. App. 4a (emphasis added). Nor do Respondents dispute that their legal challenge to DIRECTV's early cancellation fee constitutes precisely the sort of "Claim" expressly contemplated by the agreement.

The parties' arbitration provision further specifies that "[n]either you nor we shall be entitled to join or consolidate claims in arbitration by or against other individuals or entities, or arbitrate any claim as a representative member of a class or in a private attorney capacity." *Id.* at 5a. To eliminate any possibility of class-wide arbitration, the parties

included the following non-severability clause: "If, however, the law of your state would find this agreement to dispense with class arbitration procedures unenforceable, then this entire Section 9 is unenforceable." *Id.* Accordingly, because the language of the agreement is sufficiently broad to cover Respondents' claim, and because Respondents are foreclosed from proceeding as a class, the appeals court should have enforced the parties' agreement and compelled Respondents to arbitrate their claims individually.

Respondents avoided this straightforward result by convincing the appeals court that the phrase "the law of your state" in the arbitration agreement's non-severability clause means "the law of your state *without considering* the preemptive effect, if any, of the FAA." *Id.* at 8a (emphasis added). The appeals court then went on to apply California law—which this Court in *Concepcion* squarely held was preempted by the FAA—to find the parties' entire arbitration agreement unenforceable under the non-severability clause. This interpretation is clearly erroneous for two basic reasons.

1. The parties never would have specified that their arbitration agreement is governed by the FAA if they intended to bind themselves to state law inconsistent with the FAA.

By effectively reading the parties' choice-of-law provision—which provides "Section 9 shall be governed by the Federal Arbitration Act," Pet. App.

5a—out of the parties' agreement, the appeals court's ruling violates basic principles of contract interpretation. In order to circumvent the parties' choice-of-law selection, the appeals court concluded that preempted California law should apply, without regard to the FAA, because the reference to "the law of your state" in the non-severability provision is somehow more "particular and specific" than the express FAA choice-of-law provision in § 10(b). *See* Pet. App. 8a-9a ("[T]he particular and specific provision is paramount to the general provision."). But even under California law, that principle of contract construction applies *only* where "the provisions in question are truly inconsistent." *Boghos v. Certain Underwriters at Lloyd's of London*, 36 Cal. 4th 495, 504 (2005).

Here, no inconsistency exists between the parties' selection of the FAA as the governing law of the arbitration agreement and the reference to the "law of your state" in the non-severability clause. This Court has consistently emphasized the "cardinal principle of contract construction: that a document should be read to give effect to all its provisions and to render them consistent with each other." *Mastrobuono v. Shearson Lehman Hutton, Inc.*, 514 U.S. 52, 63 (1995). The mere fact that the arbitration agreement's non-severability clause refers to "the law of your state" in no way permits the appeals court to simply ignore the express choice-of-law provision, which by its terms applies to the entirety of § 9, *including the non-severability clause* itself. Simply put, the parties never would have agreed to have their arbitration agreement governed by the FAA if they intended to bind

themselves to state law inconsistent with (and preempted by) the FAA.

Read in harmony, then, "the law of your state" applies only to the extent that it is consistent with the FAA. As the Ninth Circuit correctly concluded in construing the same language in the same arbitration agreement, "there is no conflict between the reference to 'the law of your state' in Section 9 of the Customer Agreement and the reference to the FAA in Section 10." *Murphy*, 724 F.3d at 1228. It is neither necessary nor appropriate for the appeals court to rewrite the parties' agreement to give Respondents benefits for which they did not bargain.

2. The appeals court's ruling betrays a deeply flawed understanding of preemption under the FAA.

The Supremacy Clause provides that "[t]his 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." U.S. Const. art. VI, cl. 2. This Court has already decided under the Supremacy Clause that the FAA preempts any "state law" that would invalidate a consumer arbitration agreement because it contains a class-action waiver. *Concepcion*, 131 S. Ct. at 1748 ("Requiring the availability of classwide arbitration interferes with fundamental attributes of arbitration and thus creates a scheme inconsistent with the FAA."). Simply put, "States cannot require a procedure that

is inconsistent with the FAA, even if it is desirable for unrelated reasons." *Id.* at 1753.

The Court has long recognized that the FAA "create[s] a body of federal substantive law of arbitrability, applicable to any arbitration agreement within the coverage of the Act." *Moses H. Cone*, 460 U.S. at 24. Accordingly, "in applying general state-law principles of contact interpretation to the interpretation of an arbitration agreement … due regard must be given to the federal policy favoring arbitration, and ambiguities as to the scope of the arbitration clause itself resolved in favor of arbitration." *Volt*, 489 U.S. at 475-76 (internal quotations omitted).

By construing "the law of your state" to mean California state law in an imaginary legal universe in which the Supremacy Clause does not exist, the appeals court placed the parties' arbitration agreement "on an 'unequal footing,' directly contrary to the Act's language and Congress'[s] intent." *Allied-Bruce Terminix*, 513 U.S. at 281. In doing so, the court radically transformed a provision manifesting the parties' unmistakable intent to *ensure* that their arbitration agreement would be interpreted and enforced in a manner consistent with the FAA into a poison pill that would *preclude* operation of the FAA altogether. That interpretation, as the Ninth Circuit has recognized, is "nonsensical." *Murphy*, 724 F.3d at 1226. Because the California Court of Appeal's refusal to defer to the parties' choice of law reflects precisely the type of "judicial suspicion of the desirability of arbitration" that this Court long ago rejected, *Mitsubishi*, 473 U.S. at 626-27, the decision below should be reversed.

II. The Decision Below Rests on a Fundamental Misunderstanding of the Interplay Between State and Federal Law

At bottom, the California Court of Appeal's decision in this case rests entirely on its tendentious construction of the phrase "the law of your state" to mean "the (nonfederal) law of your state without considering the preemptive effect, if any, of the FAA." Pet. App. 14a. But that interpretation "presupposes what in legal contemplation does not exist." *Mondou v. New York, N.H. & H. R.R.*, 223 U.S. 1, 57 (1912). Contrary to the view of the appeals court, there is simply no such thing as hermetically sealed "state law," immune from the preemptive force of federal law. To begin with, "it has long been settled that state laws that conflict with federal law are *without effect*." *Mut. Pharm. Co. v. Bartlett*, 133 S. Ct. 2466, 2473 (2013) (emphasis added). Because state law that has been preempted is a legal nullity, it is not "law" in any meaningful sense of the word. Of course, the interpretation of arbitration agreements governed by the FAA routinely involves a hybrid of both state *and* federal law, and this court has long recognized a "presumption of concurrent jurisdiction that lies at the core of our federal system." *Yellow Freight Sys., Inc. v. Donnelly*, 494 U.S. 820, 826 (1990).

In refusing to give effect to the parties' federal choice-of-law selection, the California Court of Appeal expressed a clear preference for the preempted state law of California over the federal law of the FAA, declining to give effect to the latter

because it differed substantively from the former. This Court has repeatedly refused to allow state courts to ignore federal law when construing state law. *Howlett v. Rose*, 496 U.S. 356 (1990) ("The Supremacy Clause forbids state courts to disassociate themselves from federal law because of disagreement with its content or a refusal to recognize the superior authority of its source."). In other words, "although States retain substantial leeway to establish the contours of their judicial systems, they lack authority to nullify a federal right or cause of action they believe is inconsistent with their local policies." *Haywood v. Drown*, 556 U.S. 729, 734 (2009).

In all events, the California Court of Appeal's conflating "state law" with "nonfederal law," Pet. App. 14a, reflects a fundamental misconception of the nature of laws adopted by Congress. As this Court has recognized, the "disposition to regard the laws of the United States as emanating from a foreign jurisdiction is founded on erroneous views of the nature and relations of the State and Federal government." *Claflin v. Houseman*, 93 U.S. 130, 137 (1876). Although the FAA was adopted by Congress and not the California state legislature, it is just as much a part of California law as the California civil code. And "state courts as well as federal courts are entrusted with … the vindication of federal rights." *Haywood*, 556 U.S. at 734. As this Court declared more than a century ago:

> The laws of the United States *are* laws in the several States, and just as much binding on the citizens and courts thereof as the State laws are. … The

> two together form one system of jurisprudence, which constitutes the law for the State; and the Courts of the two jurisdictions are not foreign to each other, nor to be treated by each other as such, but as courts of the same country, having jurisdiction partly different and partly concurrent.

Claflin, 93 U.S. at 136-37 (emphasis added). More recently, the Court elaborated on the crucial interplay between state and federal law:

> Federal law is enforceable in state courts … because the Constitution and laws passed pursuant to it are as much laws in the States as laws passed by the state legislature. The Supremacy Clause makes those laws "the supreme Law of the Land," and charges state courts with a coordinate responsibility to enforce that law according to their regular modes of procedure.

Howlett, 496 U.S. at 367; *Haywood*, 556 U.S. at 734 ("This Court has long made clear that federal law is as much the law of the several States as are the laws passed by their legislatures."); *Mondou,* 223 U.S. at 57 (congressional "policy is as much the policy of [a State] as if the act [of Congress] had emanated from its own legislature, and should be respected accordingly in the courts of the States."); *People v. Sischo*, 144 P.2d 785, 791-92 (Cal. 1943) (per curiam) ("The Constitution of the United States and all laws enacted pursuant to the powers conferred by it on the Congress are the supreme law of the land to the

same extent as though expressly written into every state law.") (internal citation omitted).

Because the FAA is part of the "Law of the Land" in California, no reason exists to think that the parties chose to forgo their federal arbitration rights by reference to an *imaginary* state law immune from federal preemption as opposed to *actual* state law that necessarily includes the FAA. And because the FAA is just as binding on the citizens and courts of California as the State's own laws are, the California Court of Appeal's insubordinate holding below should be reversed.

CONCLUSION

For the foregoing reasons, *amicus curiae* Washington Legal Foundation respectfully requests that the Court reverse the holding of the California Court of Appeal.

Respectfully submitted,

CORY L. ANDREWS
Counsel of Record
MARK S. CHENOWETH
WASHINGTON LEGAL FOUNDATION
2009 Mass. Ave. N.W.
Washington, D.C. 20036
(202) 588-0302
candrews@wlf.org

June 5, 2015