No. 06-1463

In the Supreme Court of the United States

ARNOLD M. PRESTON,

Petitioner,

v.

ALEX E. FERRER

Respondent.

On Writ of Certiorari to the Court of Appeal of the State of California, Second Appellate District, Division One

BRIEF OF CTIA—THE WIRELESS ASSOCIATION® AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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BRIEF OF CTIA—THE WIRELESS ASSOCIATION® AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

CTIA—The Wireless Association® submits this brief as *amicus curiae* in support of petitioner Arnold M. Preston.[1]

INTEREST OF THE *AMICUS CURIAE*

CTIA—The Wireless Association®, formerly known as the Cellular Telecommunications & Internet Association ("CTIA"), represents all sectors of the wireless communications industry. Members of CTIA include service providers, manufacturers, wireless data and internet companies, as well as other contributors to the wireless universe. CTIA frequently participates in regulatory and judicial proceedings and coordinates efforts to educate government agencies and the public about wireless issues.

Many of CTIA's members have adopted as standard features of their business contracts provisions that in appropriate circumstances mandate the arbitration of disputes arising from or relating to those contracts. They use arbitration because it is a prompt, fair, inexpensive, and effective method of resolving disputes. CTIA sponsored the Wireless Industry Arbitration Rules (see http://www.adr.org/sp.asp?id=22214), which are administered by the American Arbitration Association and which have been incorpo-

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[1] Pursuant to Rule 37.6, *amicus* affirms that no counsel for a party authored this brief in whole or in part and that no person other than *amicus*, its members, and its counsel made a monetary contribution to this brief's preparation or submission. The parties' letters consenting to the filing of this brief have been filed with the Clerk's office.

rated in the arbitration agreements of many members of the industry.

CTIA is concerned about efforts by California and other States to deem certain disputes or claims to be non-arbitrable. Accordingly, CTIA has a strong interest in urging this Court to make clear once and for all that only Congress, not the States, may exempt claims from the Federal Arbitration Act ("FAA") or impose pre-conditions to the enforcement of agreements to arbitrate disputes.

SUMMARY OF ARGUMENT

The FAA establishes "a liberal federal policy favoring arbitration agreements, notwithstanding any state substantive or procedural policies to the contrary." *Moses H. Cone Mem'l Hosp.* v. *Mercury Constr. Corp.*, 460 U.S. 1, 24 (1983). Despite the longstanding existence of this liberal federal policy and the numerous decisions of this Court applying it, a number of States—most notably, California—continue to construct obstacles to the enforcement of private agreements. The California Talent Agencies Act ("CTAA") is but the latest such obstacle.

The CTAA specifies that cases arising under the Act must first be submitted to the California Labor Commissioner, whose decision will then be reviewed de novo by the Superior Court. The statute allows disputes to be arbitrated, but only if the parties' arbitration agreement (i) requires the parties to notify the Labor Commissioner of the time and place of all arbitration hearings and (ii) authorizes the Commissioner to attend all hearings. These limitations on the right to arbitrate cannot be reconciled with this Court's clear holdings that States may not declare disputes or claims off limits to arbitration (*South-*

land Corp. v. *Keating*, 465 U.S. 1, 10 (1984); *Perry* v. *Thomas*, 482 U.S. 483, 491 (1987)) or condition the enforceability of arbitration agreements on compliance with special requirements that are not applicable to contracts generally (*Doctor's Assocs., Inc.* v. *Casarotto*, 517 U.S. 681, 687 (1996)).

The premise of the California courts that States may nonetheless make a dispute or claim non-arbitrable whenever they decide that arbitration is "inherently inconsistent" with the achievement of the purposes of the statute is simply wrong. This Court has said that Congress may make that judgment, but it turns the Supremacy Clause on its head to suggest that States may do so.

Indeed, this and other California decisions amply demonstrate that the "longstanding judicial hostility to arbitration" that the FAA was enacted to reverse more than eighty years ago (*Gilmer* v. *Interstate/Johnson Lane Corp.*, 500 U.S. 20, 24 (1991)) remains alive and well in that State. We accordingly urge the Court to take this opportunity to reaffirm in strong and clear terms that States have no power to place any dispute or claim off limits to arbitration and that the FAA preempts any state law that imposes special requirements or limitations on agreements to arbitrate. A broad holding to that effect is necessary to avoid repeated, burdensome litigation over the validity of state statutes and common-law doctrines that are contrary to the FAA but nonetheless remain in force in California and elsewhere. See *Allied-Bruce Terminix Cos.* v. *Dobson*, 513 U.S. 265, 275 (1995) (the FAA should be interpreted so as to avoid "breeding litigation from a statute that seeks to avoid it").

ARGUMENT

The decision below is part of a much broader pattern of attacks on arbitration in California. The California Legislature and courts have for decades demonstrated distrust of arbitration by seeking to declare various disputes or claims to be non-arbitrable or, as in this case, arbitrable only if certain onerous conditions are satisfied.[2]

First, the California Legislature tried to make claims under the Franchise Investment Law non-arbitrable. This Court held that effort preempted by the FAA. *Southland*, 465 U.S. at 10. Next, the Legislature tried to place certain wage-collection claims under the California Labor Code off limits to arbitration. This Court struck down that effort too. *Perry*, 482 U.S. at 491.

Undeterred, the California Supreme Court held that claims for so-called "public" injunctive relief under the Consumer Legal Remedies Act ("CLRA") and Unfair Competition Law ("UCL") are non-arbitrable. See *Broughton* v. *Cigna Healthplans of Cal.*, 988 P.2d 67, 71 (Cal. 1999) (CLRA); *Cruz* v. *Pacificare Health Sys., Inc.*, 66 P.3d 1157, 1159 (Cal. 2003) (UCL). And during the same time frame, it held that discrimination claims brought under the Fair Employment and Housing Act are arbitrable only if the arbitration agreement in question provides for, *inter alia*, "more than minimal" discovery and a written

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[2] For a detailed discussion of California's hostility to arbitration, see Stephen P. Broome, *An Unconscionable Application of the Unconscionability Doctrine: How California Courts Are Circumventing the Federal Arbitration Act*, 3 HASTINGS BUS. L.J. 39 (2006).

ruling. *Armendariz* v. *Found. Health Psychare Servs., Inc.*, 6 P.3d 669, 682-689 (Cal. 2000).

Most recently, the California Supreme Court held that in cases seeking redress for the failure to pay statutorily required overtime, courts should refuse to enforce an arbitration provision calling for individual arbitration of disputes "if a trial court determines * * * that class arbitration would be a significantly more effective way of vindicating the rights of affected employees than individual arbitration." *Gentry* v. *Superior Court*, 165 P.3d 556, 559 (Cal. 2007).

The same mistaken premise underlies *Broughton*, *Cruz*, *Armendariz*, *Gentry*, and the decision below: that the State is free to declare certain disputes or claims to be non-arbitrable as a matter of public policy or to impose conditions on the enforcement of arbitration provisions whenever it believes that such conditions are necessary to advance "unwaivable statutory rights" (*Gentry*, 165 P.3d at 559). According to the California Supreme Court, this Court has acknowledged that if there is an "inherent conflict" between arbitration and a statute's underlying purpose, a dispute or claim under that statute may be declared non-arbitrable. *Broughton*, 988 P.2d at 73-74. But this premise is valid only when the statute is a *federal* one. The persistent failure of the California courts to recognize that only *Congress*—not the State of California—has the constitutional authority to displace the FAA requires reversal of the decision below and condemnation of the line of cases of which it is part.

A. The FAA Preempts Any State Law That Either Imposes Special Requirements On Arbitration Agreements Or Declares Disputes Or Claims Non-Arbitrable.

As this Court has explained on several occasions, Congress's purpose in enacting the FAA "was to reverse the longstanding judicial hostility to arbitration agreements that had existed at English common law and had been adopted by American courts, and to place arbitration agreements upon the same footing as other contracts." *Gilmer*, 500 U.S. at 24. Nearly a quarter of a century ago, this Court declared that "Section 2 [of the FAA] is a congressional declaration of a liberal federal policy favoring arbitration agreements, *notwithstanding any state substantive or procedural policies to the contrary*." *Moses H. Cone*, 460 U.S. at 24 (emphasis added). Its "effect * * * is to create a body of federal substantive law of arbitrability, applicable to any arbitration agreement within the coverage of the Act" and "to establish[] that, as a matter of federal law, any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration." *Id.* at 24-25.

Applying these principles, this Court has already twice rejected efforts by the State of California to render certain disputes non-arbitrable. In *Southland*, the California Supreme Court had construed the California Franchise Investment Law to render claims under that law non-arbitrable. *Keating* v. *Superior Court*, 645 P.2d 1192, 1198-1203 (Cal. 1982). This Court reversed, declaring that "[s]o interpreted the California Franchise Investment Law directly conflicts with § 2 of the Federal Arbitration Act and violates the Supremacy Clause." *Southland*, 465 U.S. at 10. The Court explained that, "[i]n enacting [Sec-

tion] 2 * * *, Congress * * * withdrew the power of the States to require a judicial forum for the resolution of claims which the contracting parties agreed to resolve by arbitration." *Ibid.* In doing so, Congress "intended to foreclose state legislative attempts to undercut the enforceability of arbitration agreements." *Id.* at 16. Thus, whenever an arbitration agreement involves interstate commerce and does not implicate a ground that existed at law or equity for the revocation of "any contract," Section 2's "broad principle of enforceability" is *not* "subject to any additional limitations under state law." *Id.* at 10-11.

Just three years later, the Court was again called on to review an attempt by California to make certain claims non-arbitrable—this time, claims under the wage-collection provisions of the California Labor Code. *Perry*, 482 U.S. 483. The Court forcefully reiterated the "clear federal policy" established in, *inter alia*, *Moses H. Cone* and *Southland* (*Perry*, 482 U.S. at 489-90) and held that "[t]his clear federal policy places [the FAA] in unmistakable conflict with" California's "requirement that litigants be provided a judicial forum for resolving wage disputes" (*id.* at 491). "Therefore, under the Supremacy Clause, the state statute [had to] give way." *Ibid.* In the concluding footnote of its opinion, the Court emphasized that "state law, whether of legislative or judicial origin is applicable *if* that law arose to govern issues concerning the validity, revocability, and enforceability of contracts generally." *Id.* at 493 n.9 (emphasis by the Court). However, "[a] state law-principle that takes its meaning precisely from the fact that a contract to

arbitrate is at issue does not comport with * * * [Section] 2." *Ibid.*[3]

The Court's subsequent decisions have also made clear that the FAA's preemptive scope is *not* limited to state statutes that render certain claims or disputes per se non-arbitrable. Rather, Section 2 also preempts laws that "condition[] the enforceability of arbitration agreements on compliance with special * * * requirement[s] not applicable to contracts generally." *Casarotto*, 517 U.S. at 687. Citing *Perry*, the *Casarotto* Court again emphasized that courts simply "may not * * * invalidate arbitration agreements under state laws applicable *only* to arbitration provisions." *Ibid.* (emphasis by the Court). Applying these principles, the Court struck down a Montana statute that made arbitration provisions unenforceable unless notice of the provision was typed in underlined capital letters on the first page of the parties' agreement. *Id.* at 683, 688.

B. Only Congress, Not State Courts Or Legislatures, Can Limit The Scope Of FAA Preemption.

Over the past two decades, plaintiffs have argued that claims under a wide range of *federal* statutes are non-arbitrable. This Court never once has agreed

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[3] See also, *e.g.*, *Allied-Bruce*, 513 U.S. at 281 (internal quotation marks omitted):

> States may regulate contracts, including arbitration clauses, under general contract law principles * * *. What States may not do is 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. The Act makes any such state policy unlawful, for that kind of policy would place arbitration clauses on an unequal footing, directly contrary to the Act's language and Congress' intent.

that the policies underlying the particular statute at issue could not be adequately vindicated in arbitration. Instead, the Court has consistently held that arbitration is a favored method of resolving "even claims arising under * * * statute[s] designed to further important social policies." *Green Tree Fin. Corp.* v. *Randolph*, 531 U.S. 79, 90 (2001) (holding that claims under the Truth in Lending Act are arbitrable). This is because, "[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." *Mitsubishi Motors Corp.* v. *Soler-Chrysler Plymouth, Inc.*, 473 U.S. 614, 628 (1985) (holding that claims under the Sherman Act are arbitrable). It is also because generalized "suspicion of arbitration as a method of weakening the protections afforded in the substantive law" has "fallen far out of step with [the Court's] current strong endorsement" of arbitration. *Rodriguez de Quijas* v. *Shearson/Am. Express, Inc.*, 490 U.S. 477, 481 (1989) (holding that claims under the Securities Act of 1933 are arbitrable).

The Court has, of course, acknowledged that, "[l]ike any statutory directive, the [FAA's] mandate can be overridden by a contrary *congressional* command." *Shearson/Am. Express, Inc.* v. *McMahon*, 482 U.S. 220, 226 (1987) (emphasis added) (holding that RICO claims and claims under the Securities Exchange Act of 1934 are arbitrable). Nonetheless, "[h]aving made the bargain to arbitrate, [a] party should be held to it unless *Congress itself* has evinced an intention to preclude a waiver of judicial remedies for the statutory rights at issue." *Mitsubishi*, 473 U.S. at 628 (emphasis added); accord *Randolph*, 531 U.S. at 90 ("statutory claims may be arbitrated"

unless "*Congress* has evinced an intention to preclude a waiver of judicial remedies") (emphasis added); *Gilmer*, 500 U.S. at 26 ("the burden is on [the party resisting arbitration] to show that *Congress* intended to preclude a waiver of a judicial forum") (emphasis added).

Overlooking basic principles of federal supremacy, the California Supreme Court asserted in *Broughton* that this Court "has never directly decided whether a [state] legislature may restrict a private arbitration agreement when it inherently conflicts with a public statutory purpose that transcends private interests." 988 P.2d at 78. Having concluded that the issue remained open, the *Broughton* court proceeded to declare it "perverse to extend the policy [favoring enforcement of arbitration provisions] so far as to preclude states from passing legislation the purposes of which make it incompatible with arbitration, or to compel states to permit the vitiation through arbitration of the substantive rights afforded by such legislation." *Id.* at 79. The California courts accordingly have felt themselves free to find "inherent conflicts" and to displace the FAA in case after case. See pages 4-5, *supra*; cf. Pet. App. 11 (holding that the FAA does not preempt a state "statute vesting [a state] agency with exclusive original jurisdiction to decide a challenge based on specific grounds").

This attempted end run around *Southland* and *Perry* is fundamentally wrongheaded. Indeed, *Southland* and *Perry* necessarily rejected the notion that the States have the power to trump the FAA. See *Circuit City Stores, Inc.* v. *Adams*, 532 U.S. 105, 123-124 (2001) ("[T]he argument here is that a state statute ought not be denied state judicial enforce-

ment while awaiting the outcome of arbitration. That matter, though, was addressed in *Southland* and *Allied-Bruce*, and we do not revisit the question here."); see also *Buckeye Check Cashing, Inc.* v. *Cardegna*, 546 U.S. 440, 446 (2005) (*Southland* "rejected the proposition that the enforceability of the arbitration agreement turned on the state legislature's judgment concerning the forum for enforcement of the state-law cause of action"); *Mitsubishi*, 473 U.S. at 623 n.10 ("any contention that the local antitrust claims [arising under Puerto Rico law] are nonarbitrable would be foreclosed by this Court's decision in *Southland* * * *, where we held that the Federal Arbitration Act 'withdrew the power of the states to require a judicial forum for the resolution of claims which the contracting parties agreed to resolve by arbitration'") (citation omitted). The contrary view—that States retain some measure of discretion to place certain issues or disputes beyond the FAA's reach or otherwise to regulate arbitration agreements—has not prevailed. See, *e.g.*, *Perry*, 482 U.S. at 494-495 (O'Connor, J., dissenting); *Southland*, 465 U.S. at 18, 20-21 (Stevens, J., concurring in part and dissenting in part).

Southland and *Perry* aside, the notion that States can "surgically excise[]" particular categories of arbitration agreements from the coverage of the FAA so as to put them "beyond congressional reach" is inconsistent with the fundamental nature of preemption of state law under the Supremacy Clause. *Gonzalez* v. *Raich*, 545 U.S. 1, 29-30 (2005). "The Supremacy Clause unambiguously provides that if there is any conflict between federal and state law, *federal law* shall prevail." *Id.* at 29 (emphasis added). Thus, "[i]t is beyond peradventure that federal power over commerce is superior to that of the States to

provide for the welfare or necessities of their inhabitants, however legitimate or dire those necessities may be." *Ibid.* (citations and internal quotation marks omitted).[4]

As one academic who focuses on arbitration issues has tersely put it, "[t]he difference between the federal and state source of rights is not mere happenstance, but is the centerpiece of federal preemption doctrine under the Supremacy Clause." Christopher R. Drahozal, *Federal Arbitration Act Preemption*, 79 IND. L.J. 393, 416 (2004). Therefore, only Congress, not California or any other State, has the power to create exceptions to the FAA by declaring certain claims or disputes to be non-arbitrable. Likewise, the FAA withdraws the States' authority to condition the enforcement of arbitration agreements on compliance with special requirements that are not applicable to contracts generally.

C. The CTAA's Anti-Arbitration Provisions Are Preempted By The FAA.

As just discussed, the implicit premise of the decision below—that California may arrogate to itself the power to displace the FAA—is manifestly false. It follows inexorably that the decision below is unsus-

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[4] There are, of course, Commerce Clause limitations on Congress's power, but "[j]ust as state acquiescence to federal regulation cannot expand the bounds of the Commerce Clause, so too state action cannot circumscribe Congress' plenary commerce power." *Raich*, 545 U.S. at 29 (citation omitted); accord *United States* v. *Darby*, 312 U.S. 100, 114 (1941) (the commerce "power can neither be enlarged nor diminished by the exercise or non-exercise of state power"); cf. *Maryland* v. *Wirtz*, 392 U.S. 183, 196-97 (1968) ("valid general regulations of commerce do not cease to be regulations of commerce because a State is involved").

tainable and that the FAA requires enforcement of the parties' agreement to arbitrate.

The CTAA provides that agreements to arbitrate disputes under that law are enforceable only if they require the parties to notify the California Labor Commissioner of the time and place of all arbitration hearings and authorize the Commissioner to attend (and presumably play a role in) all hearings. Pet. App. 8a-9a & n.2 (describing CAL. LABOR CODE § 1700.45).[5] If an arbitration agreement does not comply with these requirements, the parties must litigate their dispute before two successive tribunals: first, the California Labor Commissioner and, following the Commissioner's decision, the Superior Court, "where the [case] shall be heard de novo." CAL. LABOR CODE § 1700.44.

There can be no question that, standing alone, the requirement that disputes arising under the CTAA be adjudicated in an administrative agency and then in court would be preempted by the FAA. See pages 6-8, *supra*. The fact that California created a limited exemption for arbitration agreements that satisfy the statute's requirements changes nothing.

To begin with, an arbitration provision is enforceable under the CTAA only "[i]f [it] is contained in a contract between a talent agency and" an artist. CAL. LABOR CODE § 1700.45(a). Because petitioner has consistently maintained that he is *not* a talent agent and accordingly is not subject to the CTAA, the statute puts him in a classic Catch-22: He can invoke his right to arbitrate only by making a judicial

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[5] If the Commissioner were to attend an arbitration hearing and express a view on the merits, it is hard to imagine the arbitrator not being influenced thereby.

admission that is fatal on the merits. In other words, in this case and all others like it, the exception is meaningless and might as well not exist.

More fundamentally, the prerequisites to arbitration imposed by the CTAA are not meaningfully distinguishable from the notice requirement that this Court held to be preempted in *Casarotto*. Indeed, they are more burdensome and interfere to a significantly greater extent with contracting parties' freedom under the FAA "to structure their arbitration agreements as they see fit." *Volt Info. Scis.* v. *Bd. of Trs., Leland Stanford Jr. Univ.*, 489 U.S. 468, 479 (1989). Whereas the notice requirement at issue in *Casarotto* merely required the inclusion of a boilerplate notice clause in the parties' contact, the CTAA directly regulates the arbitration proceeding itself, conditioning the enforcement of the arbitration agreement on the parties' amenability to the State's presence (and presumably interference) at the arbitration hearing. As such, there can be no doubt that the CTAA "conditions the enforceability of arbitration agreements on compliance with special * * * requirement[s] not applicable to contracts generally." *Casarotto*, 517 U.S. at 687. It is therefore in direct conflict with this Court's holding in *Casarotto* that States "may not * * * invalidate arbitration agreements under state laws applicable *only* to arbitration provisions." *Ibid.* (emphasis by the Court); see also Drahozal, *supra*, 79 IND. L.J. at 425 ("Some fundamental principles of FAA preemption are resolved: State laws that single out arbitration are preempted when they invalidate arbitration agreements[.]").

The California Court of Appeal's nullification of the parties' arbitration agreement on the ground that this case "involve[s] an administrative agency

with exclusive jurisdiction over a disputed issue" (Pet. App. 10a) is singularly unpersuasive. To begin with, this Court has already held that "the mere involvement of an administrative agency in the enforcement of a statute is not sufficient to preclude arbitration." *Gilmer*, 500 U.S. at 28-29; see also *Saturn Distrib. Corp.* v. *Paramount Saturn, Ltd.*, 326 F.3d 684, 687 (5th Cir. 2003) ("Even if [the state motor vehicle board had exclusive jurisdiction of automobile dealership franchise disputes], the strong federal policy favoring arbitration preempts state laws that act to limit the availability of arbitration.").

Moreover, the theory that States can avoid FAA preemption by assigning disputes to agencies rather than courts is fundamentally devoid of logic. If, as is now clear, the FAA preempts state statutes that preclude arbitration and require litigation in state *courts*, then it necessarily follows that it also preempts statutes that preclude arbitration and require litigation before state *agencies*. The federally protected right to arbitration is no less violated by the former than by the latter; indeed, the violation is greater. "By agreeing to arbitrate," a party "trades the procedures and opportunity for review of the courtroom for the simplicity, informality, and expedition of arbitration." *Mitsubishi*, 473 U.S. at 628. The CTAA, however, thoroughly frustrates this tradeoff by requiring not only litigation before the Labor Commission but also a de novo hearing in the Superior Court.[6]

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[6] The California Court of Appeal stated that "[t]he fact that the losing party will have a right to a de novo hearing [in the Superior Court], involving additional time and money, does not

Indeed, because the Labor Commissioner's decision is subject to de novo review, the Labor Commissioner is the functional equivalent of a magistrate judge issuing proposed findings and a recommended ruling. Under *Southland* and *Perry*, there can be little doubt that a state statute would be preempted if it provided that statutory claims could not be arbitrated but instead must be heard by a magistrate judge subject to de novo review in a court of general jurisdiction. Because the process established by the CTAA is functionally indistinguishable, the result should be no different. Ultimately, if the Court were to "accept[] [the Court of Appeal's] analysis, states could wholly eviscerate congressional intent to place arbitration agreements upon the same footing as other contracts simply by passing statutes such as the [CTAA]." *Southland*, 465 U.S. at 17 n.11.

To the extent that the Court of Appeal's decision relies on the Labor Commissioner's "expertise in applying the [CTAA]" (Pet. App. 7a (quoting *Styne* v. *Stevens*, 26 P.3d 343, 354 (Cal. 2001)), it fails both under this Court's precedent and on its own terms. "By agreeing to arbitrate," the parties indicated that the "simplicity, informality, and expedition of arbitration" (*Mitsubishi*, 473 U.S. at 628) was more important to them than the expertise of the Labor Commissioner, and federal law requires state courts to respect and enforce that choice. In *Southland*, the Court squarely "rejected the proposition that the enforceability of [an] arbitration agreement turn[s] on

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excuse the defendant from the legal requirement to exhaust his administrative remedies." Pet. App. 12a. Nothing could more clearly confirm the conflict between California law and the FAA. But contrary to the Court of Appeal's implicit assumption, it is California law, not the FAA, that must give way.

the state legislature's judgment concerning the forum for enforcement of [a] state-law cause of action." *Buckeye*, 546 U.S. at 446. "In any event, adaptability and access to expertise are hallmarks of arbitration. The anticipated subject matter of the dispute may be taken into account when the arbitrators are appointed, and arbitral rules typically provide for the participation of experts either employed by the parties or appointed by the tribunal." *Mitsubishi*, 473 U.S. at 633.

Finally, the Court of Appeal's attempt to frame the issue in terms of "jurisdiction" is also unavailing. To begin with, there can be no serious argument that a state legislature may avoid this Court's rulings in *Southland*, *Perry*, and *Buckeye* simply by vesting "exclusive jurisdiction" over the disputes in state courts. Moreover, this Court has held that claims are arbitrable despite being subject to exclusive federal jurisdiction. See *McMahon*, 482 U.S. at 227-28; see also *Mitsubishi*, 473 U.S. at 654 (Stevens, J., dissenting) ("The determination that [Sherman Act claims] are 'too important to be decided otherwise than by competent tribunals' surely cannot allow private arbitrators to assume a jurisdiction that is denied to courts of the sovereign States.") (footnote omitted; quoting *Univ. Life Ins. Co.* v. *Unimarc Ltd.*, 699 F.2d 846, 850-51 (7th Cir. 1983) (Posner, J.)).

In short, the CTAA's requirement that disputes arising under that statute must be brought first to the Labor Commissioner and then to the Superior Court is every bit as preempted by the FAA as were California's previous efforts to put disputes off limits to arbitration in *Southland* and *Perry*. The Court should make clear—yet again—that California lacks the constitutional authority to trump the FAA.

CONCLUSION

The decision of the Court of Appeal should be reversed.

Respectfully submitted.

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