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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM THE COURT OF COMMON PLEAS
COUNTY OF AIKEN
SECOND JUDICIAL CIRCUIT

Courtney Clyburn Pope, Circuit Court Judge

Appellate Case No. 2022-000546
Circuit Court Case No. 2021-CP-02-1306

REGIONS BANK.....Respondent,

v.

CDIC DEVELOPMENT COMPANY, LLC.....Petitioner.

PETITION FOR A WRIT OF CERTIORARI

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CERTIFICATION OF COUNSEL

Pursuant to Rule 242(d)(1) of the South Carolina Appellate Court Rules, the undersigned counsel for Petitioner certifies that a petition for rehearing was made and finally ruled on by the Court of Appeals on August 13, 2024.

On September 6, 2024, this Court issued an order extending the time to file a petition for writ of certiorari to October 2, 2024.

QUESTIONS PRESENTED

1. Did the Court of Appeals err when it ruled that the Federal Arbitration Act (FAA) does not apply to a contract that specifically provides that the FAA applies.

2. Did the Court of Appeals err when it ruled that Respondent is not barred from enforcing an arbitration award when Respondent missed the one-year statute of limitation in the FAA.

Petitioner CDIC Development Company, LLC, respectfully asks this Court to issue a writ of certiorari to review the Court of Appeals' final decision (Opinion No. 2024-UP-153, the "Opinion") in this case.

SPECIAL CONSIDERATIONS FOR GRANTING A WRIT OF CERTIORARI

This Petition contains two simple, straightforward questions. The first question is one of clear contract construction, which the Court of Appeals erroneously muddied by interjecting inapplicable common law principles to override the parties' express agreement. The second question is a novel one—but it's easy. The second question requires the statutory construction of a clear requirement of the Federal Arbitration Act, on which multiple federal courts have weighed-in by applying basic grammatical rules and elementary linguistics. The Court of Appeals' disregard of this Court's instruction—and the novel question of law it thereby avoided—both support review pursuant to Rule 242, SCACR.

Arbitration, both under federal and state law, is a frequent field of dispute in this State, and this Court has recently waded into the fray with important decisions bearing

on what it means for the law to "favor" arbitration. *E.g., Palmetto Constr. Grp., LLC v. Restoration Specialists, LLC*, 432 S.C. 633, 639, 856 S.E.2d 150, 153 (2021) ("Therefore, when considered in the proper context, our statements that the law 'favors' arbitration mean simply that courts must respect and enforce a contractual provision to arbitrate as it respects and enforces all contractual provisions. There is, however, no public policy—federal or state—'favoring' arbitration.") (emphasis added).

This Court's recent decisions bear on the significance of the parties' contract in the determination of their agreement to arbitrate in the first instance. *E.g., Sanders v. Savannah Highway Auto. Co.*, 440 S.C. 377, 892 S.E.2d 112, 118 (2023) (reiterating that "arbitration is a matter of consent"). But, **what happens in the aftermath?** Once an arbitration award is issued, there is little guidance from this Court on next steps—including the mechanism for confirmation and enforcement of an award.

This case, with its precise issues, is an opportunity for this Court to clarify for the bench and bar the question of which law—federal or state—applies to the enforcement of arbitration awards, including when there is a material difference between the FAA and the SCUAA. Moreover, the novel question pertaining to the construction of the FAA—which has been discussed by courts nationwide—should be answered by South Carolina's highest Court. Petitioner respectfully asks that this Court would issue a writ of certiorari to hold that the parties' contract continues to control the relationship of the parties for enforcement of an arbitration award, and that the FAA bars such a confirmation process after one year.

STATEMENT OF THE CASE

Petitioner CDIC appeals the circuit court's *Order Denying Respondent's Motion to Dismiss and Confirming Arbitration Award and For Entry of Judgment*, dated April 12, 2022, (R. p. 11) and the Court of Appeals' order affirming that ruling, dated May 1, 2024.

I. Factual Background

On January 10, 2008, CDIC entered into a Regions Business Line Agreement with Respondent Regions Bank (the "Note"). (R. p. 25). The Note contains an arbitration clause which specifies the Federal Arbitration Act as controlling:

Arbitration. Borrower and Lender agree that all disputes, claims and controversies between them whether individual, joint, or class in nature, arising from this Agreement or otherwise, including without limitation contract and tort disputes, shall be arbitrated pursuant to the Rules of the American Arbitration Association in effect at the time the claim is filed, upon request of either party. No act to take or dispose of any Collateral shall constitute a waiver of this arbitration agreement or be prohibited by this arbitration agreement. This includes, without limitation, obtaining injunctive relief or a temporary restraining order; invoking a power of sale under any deed of trust or mortgage; obtaining a writ of attachment or imposition of a receiver; or exercising any rights relating to personal property, including taking or disposing of such property with or without judicial process pursuant to Article 9 of the Uniform Commercial Code. Any disputes, claims, or controversies concerning the lawfulness or reasonableness of any act, or exercise of any right, concerning any Collateral, including any claim to rescind, reform, or otherwise modify any agreement relating to the Collateral, shall also be arbitrated, provided however that no arbitrator shall have the right or the power to enjoin or restrain any act of any party. Judgment upon any award rendered by any arbitrator may be entered in any court having jurisdiction. Nothing in this Agreement shall preclude any party from seeking equitable relief from a court of competent jurisdiction. The statute of limitations, estoppel, waiver, laches, and similar doctrines which would otherwise be applicable in an action brought by a party shall be applicable in any arbitration proceeding, and the commencement of an arbitration proceeding shall be deemed the commencement of an action for these purposes. The Federal Arbitration Act shall apply to the construction, interpretation, and enforcement of this arbitration provision.

(R. p. 27).

In 2018, pursuant to the Note's arbitration clause, the parties arbitrated a dispute over the Note. The arbitration culminated in a Joint Stipulation, based on which the arbitrator issued a Stipulated Final Arbitration Award on June 27, 2019. (R. p. 28).

The Note's arbitration provision allows that "[j]udgment upon any award rendered by an arbitrator may be entered in any court having jurisdiction." (R. p. 27). The Note's arbitration clause specifies that the Federal Arbitration Act ("FAA") applies to the enforcement of the arbitration provision. (*Id*.) The FAA specifies that a party has one year after the award is made to apply to the court for an order confirming the award. 9 U.S.C. § 9.

Regions Bank waited two years to file its petition to confirm the award with the circuit court (on June 22, 2021). CDIC argued to the circuit court that the petition should be denied under the one-year limitations period of the controlling FAA. The circuit court rejected that argument and confirmed the arbitration award, and this appeal ensued. The Court of Appeals affirmed the circuit court's order.

II. Procedural History

On June 22, 2021, Respondent Regions Bank ("Regions Bank") filed a petition to confirm arbitration award with the Court of Common Pleas, County of Aiken, South Carolina. (R. p. 22). On September 7, 2021, Petitioner CDIC Development Company, LLC ("CDIC") filed a response to Regions Bank's petition and a motion to dismiss. (R. p. 31).

On September 27, 2021, the circuit court issued an Order Confirming Arbitration Award and Entry of Judgment. (R. p. 1). On September 28, 2021, CDIC filed a motion to reconsider pursuant to Rule 59, SCRCP. (R. p. 36). On November 1, 2021, Regions Bank filed a memorandum in opposition to CDIC's motion to reconsider. (R. p. 39). CDIC filed a reply brief on November 3, 2021. (R. p. 45). The circuit court held a hearing on November 4, 2021, and on November 11, 2021, the circuit court issued an order granting CDIC's motion to reconsider and vacating its previous order. (R. p. 8).

On January 27, 2022, Regions Bank filed a memorandum in opposition to CDIC's motion to dismiss, and on January 28, 2022, CDIC filed a memorandum in support of its motion to dismiss. (R. pp. 52, 58). The motion to dismiss was argued before the circuit court on January 31, 2022. (R. p. 66: transcript). On April 12, 2022, the circuit court

entered an order denying CDIC's motion to dismiss and confirming Regions Bank's arbitration award. (R. p. 11).

On April 27, 2022, CDIC timely filed a notice of appeal with the Court of Appeals. On May 1, 2024, the Court of Appeals issued an order affirming the circuit court's order. On May 21, 2024, CDIC filed a petition for rehearing, which the Court of Appeals denied on August 13, 2024. On September 6, 2024, this Court issued an order extending the time to file a petition for writ of certiorari to October 2, 2024.

STANDARD OF REVIEW

"This Court may make its own ruling on a question of law without deferring to the circuit court." *Crossmann Cmties. of N.C., Inc. v. Harleysville Mut. Ins. Co.*, 395 S.C. 40, 717 S.E.2d 589 (2011); *see also Mims Amusement Co. v. S.C. Law Enforcement Div.*, 366 S.C. 141, 621 S.E.2d 344 (2005) (stating this Court may decide a novel question of law based on its own assessment of the reasoning that best comports with the law, public policy, and the Court's sense of law, justice, and right). "Determining the proper interpretation of a statute is a question of law . . . ." *Town of Summerville v. City of N. Charleston*, 378 S.C. 107, 110, 662 S.E.2d 40, 41 (2008). This Court reviews questions of law de novo. *Callawassie Island Members Club, Inc. v. Dennis*, 425 S.C. 193, 821 S.E.2d 667 (2018).

ARGUMENT

This was an action by Regions Bank for confirmation of an arbitration award against CDIC, which award was more than two years old at the time Regions Bank filed its Petition to Confirm Arbitration Award with the circuit court. Regions Bank petitioned the circuit court pursuant to the South Carolina Uniform Arbitration Act ("SCUAA"). But the contract between the parties specified that the Federal Arbitration Act controlled. The FAA contains a clear one-year limitations period in which a party may seek summary confirmation of an award. There is no dispute that Regions Bank went outside the one-year period, and the Court of Appeals therefore should have reversed the circuit court's order confirming the arbitration award.

I. The Federal Arbitration Act applies to a contract that specifically provides that the FAA applies.

There is a material, substantive difference between the SCUAA and the FAA as it pertains to the confirmation by courts of arbitration awards. The FAA requires a party to seek confirmation "within one year after the award is made." 9 U.S.C. § 9. In contrast, the SCUAA does not include a deadline for confirmation. Petitioner and Respondent contractually agreed that the FAA would govern the arbitration clause between them, including its provision permitting a party to seek court confirmation of an arbitration award. The Court of Appeals wrongly disregarded the express language of the contract between the parties.

Arbitration is a matter of contract, and contract law applies to the interpretation of agreements to arbitrate. *Parsons v. Homes*, 418 S.C. 1, 791 S.E.2d 128 (2016). The contract between CDIC and Regions Bank contains a clause entitled "Arbitration," which sets

forth the parties' agreement as to the arbitration of disputes between them—as well as their agreement as to the enforcement of any arbitration award. (R. p. 27, Ex. A to Regions Bank's Petition to Confirm, at p. 3). Within the arbitration clause, the parties identified the law that they chose and agreed would control: "The Federal Arbitration Act shall apply to the construction, interpretation, and enforcement of this arbitration provision." *Id.* The arbitration clause also states: "Judgment upon any award rendered by any arbitrator may be entered in any court having jurisdiction." *Id.* Reading these two provisions together, it is clear that the parties intended the FAA to apply to the process for having judgment entered on an arbitration award.

Ignoring the parties' contract and its choice-of-law provision, the circuit court wrongly found, and the Court of Appeals incorrectly affirmed, that SCUAA's procedural provisions trump the FAA, as a "general rule." For this proposition, the lower court cited the case of *Henderson v. Summerville Ford-Mercury, Inc.*, which held that as a "general rule . . . that the FAA does not preempt state procedural law relating to arbitration." 405 S.C. 440, 448, 748 S.E.2d 221 (2013). While this may indeed be the "general rule," **the general rule does not overpower the specific contract terms here**, which formed the basis of the parties' bargain.

Critically, the parties to this case deliberately chose the FAA as governing their contract's arbitration clause—including the portion of the clause that states: "Judgment upon any award rendered by any arbitrator may be entered in any court having jurisdiction." *Id.* In other words, the parties contracted to have the FAA apply to applications to the court for judgment on an arbitration award.

Contracting parties are free to select the law by which they agree to be bound. *See Team IA, Inc. v. Lucas*, 395 S.C. 237, 717 S.E.2d 103 (Ct. App. 2011) ("Choice of law clauses are generally honored in South Carolina."), *citing Nucor Corp. v. Bell*, 482 F. Supp. 2d 714, 728 (D.S.C. 2007) ("Generally, under South Carolina choice of law principles, if the parties to a contract specify the law under which the contract shall be governed, the court will honor this choice of law."). Notably, CDIC is a South Carolina corporation and Regions Bank is a large, multi-state corporation, with its headquarters in Alabama. It makes sense that Regions and CDIC would contract to be bound by federal law, and they indeed agreed that the FAA should apply to the enforcement and interpretation of their arbitration clause.

Within a thorough discussion of the history of arbitration in this State and Nation, this Court recently clarified the policy behind the construction and enforcement of private agreements to arbitrate. This Court explained that there is no policy favoring arbitration itself; instead, the policy favors the enforcement of a parties' contractual bargain. Thus, this Court emphasized that: "**courts must respect and enforce a contractual provision to arbitrate as it respects and enforces all contractual provisions.**" *Palmetto Constr. Grp., LLC v. Restoration Specialists, LLC*, 432 S.C. 633, 856 S.E.2d 150 (2021) (emphasis added), *citing Volt Information Sciences, Inc. v. Board of Trustees of Leland Stanford Junior University*, 489 U.S. 468, 476, 109 S. Ct. 1248, 103 L.Ed.2d 488 (1989) ("There is no federal policy favoring arbitration under a certain set of procedural rules; the federal policy is simply to ensure the enforceability, **according to their terms**, of private agreements to arbitrate.") (emphasis added).

Here, the express terms of CDIC's and Regions Bank's agreement specify that the FAA applies. The parties selected the FAA as the governing law, and the lower courts wrongly ignored their choice of law. This Court should grant certiorari because the lower courts' decisions conflict with this Court's clear directive that the parties' contract should determine the resolution of arbitration clause disputes. The parties' contract here requires the imposition of the FAA's limitation period—and therefore, correction of the Court of Appeals' error.

II. Regions Bank is barred from enforcing an arbitration award when it missed the one-year statute of limitation in the Federal Arbitration Act.

The Court of Appeals erred in applying the SCUAA, notwithstanding the parties' express agreement that the FAA controls. This is a distinction with a difference, and it presents exactly the sort of scenario that this Court anticipated in *Henderson* and *Simpson*. *Henderson*, 405 S.C. at 451 (shrugging its shoulders: "Moreover, we find the outcome would be the same under either the FAA or the UAA"); *citing Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 22 n. 1, 644 S.E.2d 663, 667 n. 1 (2007) (noting the UAA and the FAA provisions that applied to the issues were nearly identical so the analysis under either state or federal law was ultimately the same). Where there is a material difference between the arbitration acts, the parties' contractual preference must be honored.

The FAA contains a one-year limitations period in which a party may seek summary confirmation of an award. 9 U.S.C. § 9. Regions Bank went outside the one-year period, and the circuit court should therefore have dismissed the bank's petition for

confirmation of the award. This Court should reverse the Court of Appeals' error in affirming that incorrect order.

There is no South Carolina precedent on the interpretation of the 9 U.S.C. § 9 limitations period, and this a novel question for this Court. "Determining the proper interpretation of a statute is a question of law . . . ." *Town of Summerville*, 378 S.C. at 110, 662 S.E.2d at 41. This Court reviews questions of law de novo. *Id*. In interpreting a statute, the Court is to "read the contract or statute to determine if its meaning is clear and unambiguous." *Id*. There is no ambiguity in the FAA's requirement that a party seek confirmation of an arbitration award "within one year." 9 U.S.C. § 9.

Initially, there is no dispute that Regions Bank waited two years to petition the lower court for confirmation of its arbitration award against CDIC.[1] The question for this Court is simply whether the FAA's "within one year" requirement renders Regions Bank's petition untimely.

The arbitration clause within the Note permits Regions Bank to apply to a court for confirmation of its arbitration award against CDIC. However, the FAA plainly provides that a party to an arbitration has one year within which to seek summary confirmation of an arbitration award:

> If the parties in their agreement have agreed that a judgment of the court shall be entered upon the award made pursuant to the arbitration, and shall specify the court, then **at any time within one year after the award is made any party to the arbitration may apply to the court so specified for an order confirming the award**, and thereupon the court must grant such an order unless the award is vacated, modified, or corrected as prescribed in sections 10 and 11 of this title.

[1] Regions Bank's Petition to Confirm Arbitration Award states in Paragraph 8 that the award was issued on June 21, 2019. Regions Bank filed the Petition on June 22, 2021, more than two years later. (R. p. 22).

9 U.S.C. § 9 (emphasis added).

The circuit court wrongly found that this one-year statute of limitations within the FAA is "permissive," rather than mandatory. (Order, R. p. 14). The circuit court's order relied on a disfavored 30-year-old decision by the Federal Fourth Circuit, *Sverdrup Corp. v. WHC Constructors Inc.*, 989 F.2d 148, 156 (4th Cir. 1993). The *Sverdrup* Court found that 9 U.S.C. § 9's subsequent inclusion of the word "may" renders the entire provision permissive—despite the fact that the word "may" is only permissive in the context of permitting a party to apply ("any party . . . may apply"), and that the word "may" does not modify or linguistically bear on the prepositional phrase "at any time within one year."

The *Sverdrup* decision has been heavily criticized for its analysis, which disregards grammatical rules, basic linguistics, and the principles of statutory interpretation in order to get to the result that the FAA's "within one year" requirement is discretionary. *See Photopaint Technologies LLC v. Smartlens Corp.*, 335 F.3d 152 (2nd Cir. 2003) (holding that 9 U.S.C. § 9 contains a clear one-year limitation on the confirmation of arbitration awards, and finding the reasoning in *Sverdrup* has been subsequently contradicted by the Supreme Court); *see also Md. Transit Admin. v. Nat'l R.R. Passenger Corp.*, 372 F. Supp. 2d 478, 483-84 (D. Md. 2005) ("The court adheres to its view that *Sverdrup Corp*. is a candidate for reconsideration by the Fourth Circuit and, accordingly, shall dismiss without prejudice as untimely MTA's petition to enforce the first arbitration award."); *see also Climbzone, LLC v. Washington,* Case No.: GJH-18-2732, Opinion of February 10, 2020 (D. Md. 2020) (noting: "since [the *Sverdrup* opinion], however, at least one federal Court of

Appeals has interpreted an intervening Supreme Court decision to have rendered that reading untenable. In addition, former Judge Davis of this Court declined to follow the Fourth Circuit's decision in light of the conflict raised by the Second Circuit. This issue appears to remain unsettled.") (internal citations omitted); *FIA Card Servs., N.A. v. Gachiengu*, 571 F. Supp. 2d 799, 803-05 (S.D. Tex. 2008) (collecting cases).

The consensus—even among district courts within the Fourth Circuit—is that the *Sverdrup* decision on which the lower court relied is wrong. *Sverdrup* has been overshadowed by the Supreme Court's decision in *Cortez Byrd Chips, Inc. v. Bill Harbert Construction Co.*, 529 U.S. 193 (2000).[2] Federal courts are shifting away from the Fourth Circuit's grammatically questionable analysis in *Sverdrup*.

Instead, the majority of federal courts are adopting the Second Circuit's reasoning in *Photopaint*, which found that 9 U.S.C. § 9 contains a clear one-year limitation on the confirmation of arbitration awards. *See, e.g., General Elec. Co. v. Anson Stamping Co. Inc.,*

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[2] The Second Circuit found that *Cortez Byrd* rendered the Fourth Circuit's reasoning incorrect:

> *Cortez Byrd* considered whether the word "may" is used permissively in the context of the FAA's venue provisions, under which (whenever the parties do not specify otherwise) proceedings "may" be conducted in the district where the award was made. Although the Court held that the venue provisions are permissive, it expressly declined to rely on the permissiveness of "may" as a matter of plain meaning. Instead, *Cortez Byrd* relied on considerations particular to venue: the overall structure of the FAA (a narrow reading of the venue provisions would have created "needless tension" with other parts of the FAA, and the statutory history of the general federal venue provision, 28 U.S.C. § 112(a) (which was considerably more restrictive when the FAA was enacted, suggesting that Congress used "may" in § 9 to broaden venue under the FAA). And the Court rejected the idea that use of "may" in some provisions of the FAA (including § 9) — and not in others — carries definitive significance . . .

Photopaint Technologies LLC v. Smartlens Corp., 335 F.3d 152 (2nd Cir. 2003).

426 F. Supp. 2d 579 (W.D. Ky. 2006) (discussing at length—and agreeing with—the rationale behind the Second Circuit's conclusion that the plain language of the FAA imposes a one-year statute of limitations, and observing that "this extended discussion of *Photopaint* is offered, in part, because *Photopaint* is slowly being adopted by the lower federal courts."). *Photopaint*'s analysis is sound:

> One of the FAA's purposes is to provide parties with an effective alternative dispute resolution system which gives litigants a sure and expedited resolution of disputes while reducing the burden on the courts. Arbitration should therefore provide not only a fast resolution but one which establishes conclusively the rights between the parties. A one-year limitations period is instrumental in achieving this goal.

Photopaint, 335 F.3d at 158.

Mercifully, this Court does not need to agonize over federal decisions, nor spend its time trying to reconcile the split among the federal courts on the question . . . because the decisions of inferior federal courts are not precedent that binds this State Court.[3] *See*

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[3] *See Hall v. Pa. Bd. of Probation and Parole*, 851 A.2d 859, 578 Pa. 245 (Pa. 2004), for a thorough discussion of the decisions nationwide on the question of whether state courts are obligated to follow any federal precedent other than that of the United States Supreme Court:

> However, whether or not this Court has a responsibility to adhere to the pronouncements of inferior federal courts on matters of federal law, where the United States Supreme Court has not spoken, is less certain. There appear to be four schools of thought on this question: (1) a decision of an inferior federal court should be treated as persuasive, but not binding, authority; (2) a decision of an inferior federal court should be followed, if reasonably possible, to avoid a conflict between state and federal resolutions of the same question; (3) a decision of an inferior federal court binds the state court; and (4) if the decisions of the inferior federal courts are "numerous and consistent," the state court must follow their dictates.
>
> A vast majority of state supreme courts that have addressed this issue have adopted the first approach. *See, e.g., Totemoff v. State*, 905 P.2d 954 (Alaska 1995), *cert. denied*, 517 U.S. 1244, 116 S.Ct. 2499, 135 L.Ed.2d 190 (1996); *Custom Microsystems, Inc. v. Blake*, 344 Ark. 536, 42 S.W.3d 453 (2001); *Hill v. Thomas*, 973 P.2d 1246 (Colo.1999), *affirmed*, 530 U.S. 703, 120 S.Ct. 2480, 147 L.Ed.2d 597 (2000); *Macon-Bibb County Hospital Authority v. National Treasury Employees Union*, 265 Ga. 557, 458 S.E.2d 95

Walden v. Harrelson Nissan, Inc., 399 S.C. 205, 731 S.E.2d 324 (Ct. App. 2012) (federal decisions interpreting state law are not binding precedent).

This Court can come to its own conclusion as to what the FAA's plain language means, when it requires a party to apply for confirmation of any arbitration award "**at any time within one year after the award is made.**" 9 U.S.C. § 9 (emphasis added). CDIC urges this Court to read and interpret the FAA as it is plainly written, to impose a one-year statute of limitations on parties who wish to apply for summary confirmation of an arbitration award. Pursuant to this clear construction, Regions Bank's application—filed two years after the award at issue was made—was untimely.

Because Regions Bank filed its petition to confirm its arbitration award two years after the award was rendered, this Court should reverse the lower courts' confirmation and affirmance of the award.

(1995); *Indiana Department of Public Welfare v. Payne*, 622 N.E.2d 461 (Ind.1993); *Shell Oil Company v. Secretary, Revenue and Taxation*, 683 So.2d 1204 (La.1996); *ACE Property Casualty and Insurance Co. v. Commissioner of Revenue*, 437 Mass. 241, 770 N.E.2d 980 (2002); *In Re 3628 v. Street*, 262 Neb. 77, 628 N.W.2d 272 (2001); *Dewey v. R.J. Reynolds Tobacco Co.*, 121 N.J. 69, 577 A.2d 1239 (1990); *Custom Cabinet Factory of New York, Inc. v. Eighth Judicial District Court ex rel. County of Clark*, 119 Nev. 51, 62 P.3d 741 (2003); *Bogart v. CapRock Communications Corp.*, 69 P.3d 266 (Okla.2003); *State v. Austin*, 165 Vt. 389, 685 A.2d 1076 (1996); *Election Board of State of Wisconsin v. Wisconsin Manufacturers & Commerce*, 227 Wis.2d 650, 597 N.W.2d 721 (1999), *cert. denied*, 528 U.S. 969, 120 S.Ct. 408, 145 L.Ed.2d 318 (1999).

Hall, 851 A.2d at 863-864.

CONCLUSION

This case presents a meaningful opportunity for this Court to further clarify the application of the law as it pertains to arbitration. The Court of Appeals was wrong to deploy the common law to circumvent the parties' arbitration agreement and its clear choice-of-law provision. The parties' choice of the FAA presents a novel question of law: there is a material distinction between the SCUAA and the FAA when it comes to the confirmation of arbitration awards, and the FAA imposes a one-year limitations period on the process.

Petitioner CDIC respectfully requests that this Court would exercise its discretion to grant a writ of certiorari, and to review the Court of Appeals' error on these compelling, unanswered questions.

Respectfully submitted,

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