



WHEN IT'S WORTH FIGHTING FOR

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S.C. SUPREME COURT

November 6, 2024

Patricia A. Howard, Clerk  
Supreme Court of South Carolina  
PO Box 11330  
Columbia, SC 29211

Re: *Intellectual Capital, Inc., v. Michael B. Spicer, et al. AND JMI Sports v. Michael B. Spicer, et al.*  
Appellate Case No. 2023-000667

Dear Ms. Howard:

Appellants write pursuant to SCACR 208(b)(7) to cite supplemental authorities that address the Court's questions in oral arguments on issues that the parties did not brief.

1. **5 U.S.C. § 575(a)(3)**: "An agency **may not require** any person to consent to arbitration **as a condition of entering into a contract.**" *Id.* (emphasis added). See also *Frost & Frost Trucking Co. v. Railroad Com. of California*, 271 U.S. 583 (1926) (The state may not require the relinquishment of constitutional rights as a condition of its favor.)
2. *Securities and Exchange Commission v. Jarkesy*, 144 S.Ct. 2117, 219 L.Ed.2d 650 (June 27, 2024). The government may not require a defendant to waive his right to jury trial on common law claims. "A defendant facing a fraud suit has the **right to be tried by a jury** of his peers before a neutral adjudicator." *Id.*, 144 S.Ct. at 2139 (emphasis added). The Court continued, "Rather than recognize that right, the dissent would permit Congress to concentrate the roles of prosecutor, judge, and jury in the hands of the Executive Branch. That is the **very opposite** of the separation of powers that the Constitution demands. Jarkesy and Patriot28 are **entitled to a jury trial** in an Article III court." *Id.* (emphasis added).
3. *Loper Bright Enterprises v. Raimondo*, 144 S.Ct. 2244 (June 28, 2024). The Executive Branch may not intrude into the province of the Courts. The Supreme Court reversed the *Chevron* doctrine (*Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 104 S.Ct. 2778, 81 L.Ed.2d 694 (1984)), which "sometimes required courts to defer to 'permissible' agency interpretations of the statutes those agencies administer—even when a reviewing court reads the statute differently." *Id.*, 144 S.Ct. at 2254. In *Loper*, the Supreme Court held that the *Chevron* doctrine had wrongfully surrendered the judicial function to the executive branch.

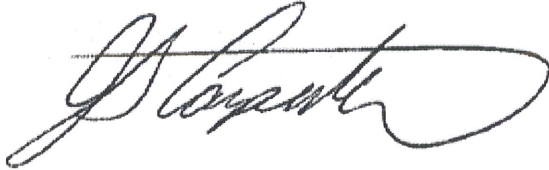
- a. **Separation of Powers.** Justice Thomas wrote a concurring opinion in *Loper*:

I write separately to underscore a more fundamental problem: *Chevron* deference also **violates our Constitution's separation of powers** . . . . To provide "practical and **real protections for individual liberty**," the Framers drafted a Constitution that divides the legislative, executive, and judicial powers between three branches of Government. *Perez*, 575 U.S. at 118, 135 S.Ct. 1199 (opinion of THOMAS, J.). *Chevron* deference compromises this separation of powers in two ways. It curbs the judicial power afforded to courts, and simultaneously expands agencies' executive power beyond constitutional limits. *Loper*, 144 S.Ct. at 2254 (Thomas, concurring) (emphasis added).

- b. ***Stare Decisis***. Justice Gorsuch's concurring opinion in *Loper* addresses *stare decisis* and the weight to be given to judicial opinions when they fall outside the mainstream. This citation relates to Appellants' request to argue against the precedent of the *Unisys* case.

Thank you for your consideration of these supplemental authorities. If you need anything else, please telephone me at 864-235-1269.

Respectfully submitted,



James G. Carpenter

CC: Manton Grier  
Michael Montgomery  
Boyd B. Nicholson, Jr.