IN THE SUPREME COURT
STATE OF GEORGIA

Case No. S25C0969

SUNTRUST BANK,

Petitioner,

v.

CHARLES DANIEL BICKERSTAFF, as executor of the Estate of JEFF BICKERSTAFF, JR., on behalf of himself and all persons similarly situated,

Respondent.

BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AND THE GEORGIA CHAMBER OF COMMERCE AS *AMICI CURIAE* IN SUPPORT OF SUNTRUST BANK'S PETITION FOR CERTIORARI

Submitted by:

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IDENTITY AND INTEREST OF *AMICI CURIAE*

The Chamber of Commerce of the United States of America ("Chamber") is the world's largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than 3 million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files *amicus curiae* briefs in cases, like this one, that raise issues of concern to the nation's business community.

The Georgia Chamber of Commerce, Inc. ("Georgia Chamber") serves the unified interests of its nearly 50,000 members—ranging in size from small businesses to Fortune 500 corporations—covering a diverse range of industries across all of Georgia's 159 counties. The Georgia Chamber is the State's largest business advocacy organization and is dedicated to representing the interests of both businesses and citizens in the State. Established in 1915, the Georgia Chamber's primary mission is creating, keeping, and growing jobs in Georgia. The Georgia Chamber

pursues this mission, in part, by aggressively advocating the business and industry viewpoint in the shaping of law and public policy to ensure that Georgia is economically competitive nationwide and in the global economy.

Amici represent businesses with an interest in the fair and consistent contractual interpretation of arbitration clauses. Many of amici's members regularly rely on arbitration agreements because arbitration is speedy, fair, inexpensive, and less adversarial than litigation in court. Amici's members have entered into millions of contractual relationships providing for arbitration precisely to achieve those benefits. They also have an interest in preventing the class-action procedural device from being abused to alter contracting parties' substantive rights.

The decision of the Court of Appeals has improperly allowed the class-action device to be used to create new substantive rights, and it has thwarted the contractual relationship between the parties by ignoring the language of their arbitration clauses. Amici and their members have a strong interest in this case and in reversal of the decision below.

INTRODUCTION AND SUMMARY OF ARGUMENT

The rapid growth in the number of cases that are allowed to proceed as class actions raises serious concerns that courts are failing to enforce essential class-action requirements and turning a blind eye to abuse. Businesses in Georgia and across the United States have a strong interest in enforcing the important requirements that apply before a case may proceed as a class action, especially where (as in this case) parties have agreed to arbitrate their disputes individually. Although the petitioner, SunTrust Bank, raises several important issues, this brief focuses on the fifth question presented in SunTrust's petition for certiorari, which raises issues of critical importance to the business community more broadly.

The Court of Appeals erred by failing to enforce the parties' arbitration agreement according to its distinct terms. It instead accepted the trial court's summary conclusion that *Bickerstaff v. SunTrust Bank* (*Bickerstaff II*), 299 Ga. 459 (2016), was controlling, even though the putative class members addressed in that case were bound by materially different contractual obligations than the depositors at issue here. This Court's earlier interpretation of one set of class members' rights under one contract should not be used to remake the rights of a different set of

potential class members under a different contract. The misinterpretation of the parties' contract by the Court of Appeals violates conventional understandings of arbitration agreements, produces unnecessary delay through protracted litigation, robs contracting parties of their choices regarding arbitration, and nullifies arbitration's mutual benefits.

This "grav[e]" error bears on issues of "importance to the public," warranting certiorari. Ga. Sup. Ct. R. 40. It applies a theory of representative litigation that has no analogue at equity and violates the principles this Court just announced in *Wasserman v. Franklin County*, 911 S.E.2d 583 (Ga. 2025). Left uncorrected, the Court of Appeals' decision will undermine the value of arbitration clauses in Georgia and establish dangerous precedent allowing plaintiffs to abuse the class-action process to gain new substantive rights to which they are not entitled. This Court should grant certiorari to preserve the value of arbitration agreements and properly construe the limits of the class-action device.

ARGUMENT

I. Courts must honor textual differences in arbitration clauses and enforce them according to their plain terms.

The Court of Appeals erred by affirming the trial court's refusal to enforce the arbitration clause in the parties' revised deposit agreement

implemented in 2013. That amended agreement—which excludes the possibility that a depositor could opt out of arbitration by filing a lawsuit—should have been read and enforced according to its plain meaning. Instead, the Court of Appeals ignored the distinctions between different sets of depositors subject to different preconditions for filing suit based on a sweeping understanding of this Court's decision in *Bickerstaff II*. *See* Petition Exhibit 1, Opinion, Consol. Nos. A24A1700, A24A1701, A24A1702, at 7–8 (Ga. Ct. App. Feb. 20, 2025) ("Op."). Relying on the law-of-the-case doctrine, the Court of Appeals incorrectly concluded that *Bickerstaff II* applies with equal force to all depositors, no matter what their deposit agreements say and no matter whether they were added to the class before or after *Bickerstaff II*. *Id.* That error effectively negates the arbitration clauses that apply to depositors subject to the 2013 revised deposit agreement, which materially differs from the agreement this Court considered in *Bickerstaff II*. Under controlling state and federal law, the arbitration clause in the 2013 deposit agreement must be enforced according to its terms.

A. The trial court's decision ignores the parties' contract and thus violates the Federal Arbitration Act.

SunTrust amended its deposit agreement several times between June 2010 and March 2013. In the March 2013 deposit agreement, SunTrust amended its terms to provide explicitly that a depositor cannot opt out of the arbitration provision by "filing . . . a lawsuit." V11-5655[1] (quotation marks omitted); *see* V16-8518. To reject an arbitration provision, a depositor subject to the 2013 agreement must instead provide "express, personal written notice [opting out of arbitration] to SunTrust within 45 days of opening the account." V11-5655. The failure of the Court of Appeals to account for this key change from the version of the arbitration agreement this Court considered in *Bickerstaff II* results in an opt-out default for arbitration for all class members instead of the opt-in default specified in the 2013 deposit agreement: That approach violates basic principles of contract interpretation and of federal and state law.

The Federal Arbitration Act ("FAA"), which controls the interpretation and enforcement of arbitration agreements, *see DirecTV, Inc. v. Imburgia*, 577 U.S. 47, 53–54 (2015), requires courts to enforce such

[1] All record appendix citations are to case number A24A1700 unless otherwise noted.

agreements according to their own terms. As the U.S. Supreme Court has explained, "the law is clear: Congress has instructed that arbitration agreements . . . must be enforced as written." *Epic Sys. Corp. v. Lewis*, 584 U.S. 497, 525 (2018); *accord Am. Express Co. v. Italian Colors Rest.*, 570 U.S. 228, 233 (2013) ("[C]ourts must 'rigorously enforce' arbitration agreements according to their terms" (quoting *Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 221 (1985))). Indeed, "the FAA requires enforcement of a wide range of arbitration agreements and leaves to the parties the discretion to craft an appropriate arbitration procedure," including preconditions or requirements that must be satisfied "prior to actual arbitration." *Caley v. Gulfstream Aerospace Corp.*, 428 F.3d 1359, 1370 n.11 (11th Cir. 2005). And this Court has been equally clear that the FAA requires courts to enforce arbitration agreements faithfully according to their terms. *See Am. Gen. Fin. Servs. v. Jape*, 291 Ga. 637, 640 (2012) ("The FAA thus requires courts, both federal and state, to enforce arbitration agreements in [commercial] contracts . . . in accordance with their terms.").

Contrary to these settled principles, the Court of Appeals concluded that an act that the depositors agreed in the 2013 deposit agreement

would be insufficient to reject arbitration—filing a lawsuit—sufficed to allow class members to opt out of arbitration. *See* Op. 8. That conclusion disregards the plain language of the March 2013 revised arbitration provision, which specifies that filing a lawsuit is insufficient to reject arbitration. V11-5655. The Court of Appeals erred by refusing to enforce this unambiguous requirement.

B. *Bickerstaff II* does not apply to class members who executed SunTrust deposit agreements after March 2013.

This Court's decision in *Bickerstaff II* did not consider or address the March 2013 amended deposit agreement or depositors subject to it. The Court of Appeals thus erred by assuming, without any textual evidence or other support, that *Bickerstaff II* applied to those depositors.

The "proposed class" that Bickerstaff had pled as of *Bickerstaff II* consisted of Georgia citizens who had not been refunded for an overdraft payment made to SunTrust in the four years before the filing of Bickerstaff's complaint (that is, between July 2006 and July 2010). 299 Ga. at 461–62; A24A1701 V2(2)-17; *see also* V3-775 n.9 (on remand, Bickerstaff acknowledging that depositors "with no overdraft before July 1, 2011 [were] not in the class"). There is no basis to assume, as the Court of Appeals did, that this class could extend to those bound by the 2013

deposit agreement. On the contrary, the date range for the class that Bickerstaff had pled as of *Bickerstaff II* closed nearly three years before the March 2013 date of that deposit agreement. *See* 299 Ga. at 461. The later depositors are subject to a different agreement that contains different contractual rights from the agreement to which the depositors at issue in *Bickerstaff II* were subject.

This Court in *Bickerstaff II* addressed only the arbitration provision in the 2010 deposit agreement, not the revised arbitration provision in the March 2013 agreement. *See id.* at 460. And this Court in *Bickerstaff II* did not purport to conclusively resolve the arbitrability of any potential class members' claims. SunTrust moved to compel arbitration for depositors subject to the 2013 deposit agreement *after* the *Bickerstaff II* decision was issued, so this Court could not possibly have considered the arbitrability of those depositors' claims in *Bickerstaff II*. *See* V24-13546–47; *see also Bickerstaff v. SunTrust Bank*, 340 Ga. App. 43, 44 (2017) (the Court of Appeals denying Bickerstaff's motion seeking a determination that *Bickerstaff II* mooted the need for further rulings on arbitrability given that no class has been certified, so "[t]he trial court

ha[d] not ruled on the issue of whether SunTrust waived a right to compel arbitration against putative class members other than Bickerstaff").

With respect to the arbitrability of their claims, the class members here are thus situated very differently from those whose claims were considered in *Bickerstaff II*. The agreement's plain language means that *Bickerstaff II* does not control. Unlike Bickerstaff himself and the class members whose claims were at issue in the earlier appeal, the mere filing of a lawsuit could not operate to exercise opt-out rights on behalf of class members who are subject to 2013 version of the deposit agreement. *See* V11-5655 (explicitly providing that depositors subject to the 2013 agreement cannot opt out of the arbitration provision by "filing . . . a lawsuit" (quotation marks omitted)).

The Court of Appeals failed to appreciate this critical distinction. Instead, it concluded that filing a complaint was sufficient to opt all class members out of arbitration, regardless of the wording of their deposit agreements. *See* Op. 7–8. But that reasoning is flawed. This Court previously allowed Bickerstaff to satisfy certain preconditions to filing suit (such opting out of arbitration) on behalf of "existing depositors" because that class of depositors held *the same* opt-out rights as he did. *Bickerstaff*

II, 299 Ga. at 460, 463 (observing that "a class representative may satisfy contractual notice requirements"); *id.* at 468–69 (discussing how Bickerstaff's filing of the complaint can toll the time until others ratify the action, thus making it as if they too filed a complaint). This Court decided that the class representative, Bickerstaff, had authority to act on behalf of *similarly situated* class members. *See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 615 (1997) (class-action procedures are meant to "promote . . . uniformity of decision *as to persons similarly situated*, without sacrificing procedural fairness or bringing about other undesirable results" (emphasis added) (quoting Fed. R. Civ. P. 23(b) advisory committee's note to 1966 amendment)); *Schorr v. Countrywide Home Loans, Inc.*, 287 Ga. 570, 573 (2010) ("[T]he general rule allow[s] the named plaintiffs in a class action to satisfy preconditions for suit on behalf of the entire class."). But depositors subject to the 2013 deposit agreement are not similarly situated to Bickerstaff in terms of the arbitrability of their claims: they *do not* have the same rights to opt out of arbitration as Bickerstaff. And Bickerstaff did not engage in the necessary act to opt out on their behalf under the revised 2013 agreement, *i.e.*, notifying SunTrust directly in writing within 45 days of opening his account.

Bickerstaff II simply does not govern the set of depositors subject to the 2013 deposit agreement—that decision considered the rights of different litigants subject to a different opt-out provision. Accordingly, *Bickerstaff II*'s holding is not "law of the case" as to depositors subject to the 2013 deposit agreement. *See Shadix v. Carroll County*, 274 Ga. 560, 562–63 (2001) (holding that "the 'law of the case' rule" applies only to "those issues actually considered and ruled upon by th[e] Court" (quoting *Sec. Life Ins. Co. v. Clark*, 273 Ga. 44, 46 (2000))). This Court has not considered or ruled upon the arbitrability of the claims of depositors subject to the 2013 deposit agreement because these post-March 1, 2013, depositors were not part of the contemplated class before the Court in *Bickerstaff II*. *See id.*

The class-action device provided in Georgia law allows for nonparties to be subject to a court's judgment only when a nonparty is adequately represented by a party with the same interests. *See S. LNG, Inc. v. MacGinnitie*, 294 Ga. 657, 663 n.12 (2014). Bickerstaff did not have the same interests—or the same rights—as depositors after March 1, 2013, the arbitrability of whose claims is controlled by an arbitration provision that differs materially from the provision that applies to

Bickerstaff. It was therefore wrong for the lower courts to apply *Bickerstaff II* to sweep in a group of depositors that the decision plainly did not address. These depositors are subject to a distinct agreement—one which should be read and enforced as it is written—and they should be compelled to submit their claims to arbitration.

II. Strong policy considerations support limiting the reading of *Bickerstaff II* and enforcing arbitration clauses as written.

This case demonstrates the excesses that can result from procedural innovations that take Georgia courts afield from traditional understandings of the judicial power vested in them by the Georgia Constitution. *See* Ga. Const. art. VI, § 1. The Court should grant review to restore the limits that are necessary to ensure that the class-action device is used consistently with constitutional requirements, and to address the growing problem of class-action abuse.

A. The Court should grant review to enforce the limitations on the judiciary's proper role.

The damages class-action device created under Georgia law by O.G.C.A. § 9-11-23(b)(3) was an innovation that allowed courts to amass and resolve through representative litigation damages claims that do not involve common rights or common funds. *See Vest Monroe, LLC v. Doe*, 319 Ga. 649, 652 (2024); *see also Windsor*, 521 U.S. at 614–15 (describing

the analogue to § 9-11-23(b)(3) in Federal Rule of Civil Procedure 23(b)(3) as an "adventuresome innovation" that was framed for situations in which "class-action treatment [was] not as clearly called for" (quotation marks omitted)); *cf. Sons of Confederate Veterans v. Henry Cnty. Bd. of Comm'rs*, 315 Ga. 39, 47–48 (2022) ("Resolving private-rights disputes," *i.e.*, disputes over rights "*belonging to an individual as an individual*," "has been historically recognized as the core of judicial power" under the Georgia Constitution's common law backdrop. (emphasis added) (quotation marks omitted))). Section 9-11-23(b)(3) gives Georgia courts greater authority than courts at law or equity historically possessed to resolve claims by groups of individuals who are not fully joined as parties and whose rights are distinct from the rights of those who are parties. *See O'Jay Spread Co. v. Hicks*, 185 Ga. 507, 512–13 (1938) (describing the traditional criteria for representative litigation); *Herring v. Ferrell*, 233 Ga. 1, 3–4 (1974) (Hall, J., dissenting) (describing the equitable evolution of representative litigation in Georgia); Joseph Story, Commentaries on Equity Pleadings, ch. IV, § 120 (2d ed. 1840) ("[I]n all [these cases] there always exists a common interest or a common right, which the Bill seeks

to establish and enforce, or a general claim or privilege, which it seeks to establish, or to narrow, or take away.").

To prevent Georgia courts from straying beyond the traditional judicial power "to redress harms that defendants cause plaintiffs" into the realm of exercising a quasi-regulatory "freewheeling power to hold defendants accountable for legal infractions," *TransUnion LLC v. Ramirez*, 594 U.S. 413, 427 (2021), this Court has recognized that the burden of proof lies with the party seeking to take advantage of the class action device and, "if doubts remain," the "presumption is against class certification." *Vest Monroe*, 319 Ga. at 653 (quotation marks omitted). It is therefore essential to examine carefully the proposed inclusion of class members in damages class actions to confirm that their interests and rights are sufficiently similar to those of a party before the court—in this case, the class representative. *See Bowden v. Med. Ctr., Inc.*, 309 Ga. 188, 193 (2020) (a "rigorous analysis" is required to ensure compliance with O.C.G.A. § 9-11-23 (quoting *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 351 (2011))).

This Court's decision in *Bickerstaff II* did not address the importance of these principles. Instead of carefully considering material

variations among putative class members' rights and interests and insisting that all class members demonstrate that, like the class representative, they have satisfied contractual preconditions to filing suit, *Bickerstaff II* built a further construct on top of the already aggressive innovation of the § 9-11-23(b)(3) damages class device. In particular, it effectively permitted courts to attribute and extend the class representative's satisfaction of a precondition to filing suit to nonparties who had not satisfied that precondition themselves. 299 Ga. at 464, 467. In taking that approach, *Bickerstaff II* countenanced even greater dissimilarity between the class representative and members of the putative class than would ordinarily exist in a damages class action, in which the extent of the harm suffered by different class members will vary.

The Court of Appeals impermissibly allowed even wider variation within the class by interpreting *Bickerstaff II* expansively. The Court of Appeals did not examine whether different categories of depositors included in the putative class were similarity situated or consider whether a broad interpretation of *Bickerstaff II* would push the damages class device beyond its limits. Instead, the Court of Appeals ignored the differences in the preconditions that apply to different sets of depositors and

read the *Bickerstaff II* decision to encompass not just putative class members whose contractual preconditions to filing suit are identical to the class representative's, but *all* class members. *See* Op. 7–8.

In this case, the net effect of this series of innovations, expansions, and stretches is a damages class in which a class representative seeks recovery on behalf of a class that includes parties who could not possibly have pursued claims against SunTrust in court through individually filed lawsuits. If a depositor subject to the 2013 deposit agreement filed her own suit against SunTrust in court, she would have no credible argument that filing a lawsuit alone—without providing the specific written notice required by the deposit agreement—opted her out of arbitration. Any such argument would be foreclosed by the express language of the applicable deposit agreement. But because the Court of Appeals included this set of depositors in this damages class action, class members subject to the 2013 deposit agreement have acquired a unique substantive right to avoid contractual preconditions to filing suit that would otherwise apply to them. That transforms the innovative device created by § 9-11-23 from a mechanism for resolving the varying damages claims of parties who are

similarly situated into a means of *creating* new rights that otherwise would not exist in a set of class members.

The Court of Appeals' innovations cannot be squared with this Court's recent decision in *Wasserman v. Franklin County*. In *Wasserman*, this Court held that the judicial power vested in Georgia courts did not permit a plaintiff to assert the rights of third parties who were not before the court. 911 S.E. 2d at 600–01. Just as one party does not acquire the ability to pursue the claims of another party by filing suit in a Georgia court, *see id.*, a class representative should not acquire the ability to create new substantive rights for third parties merely by adding them as members of a damages class. That would stretch the judicial power far beyond the traditional limits on representative litigation—but it is precisely the result of the decision below.

B. The Court should grant review to address the growing problem of class-action abuse.

The flawed reasoning of the Court of Appeals contributes to the growing problem of class-action creep—*i.e.*, the proliferation of ever-expanding class actions that do little to help consumers who allegedly suffered judicially cognizable harm, while depriving the parties of the benefit of the bargain they struck by agreeing to arbitrate disputes. The

mutual benefits of arbitration are well-recognized by scholars and the Supreme Court alike: "lower costs, greater efficiency and speed, and the ability to choose expert adjudicators to resolve specialized disputes." *Lamps Plus, Inc. v. Varela*, 587 U.S. 176, 185 (2019) (quoting *Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp.*, 559 U.S. 662, 685 (2010)); *see also* Brian Farkas, *Arbitration at the Supreme Court: The FAA from RBG to ACB*, 42 Cardozo L. Rev. 2927, 2945 (2021). By contrast, the "typical class action" is characterized by "procedural complexity and slow pace." John C. Coffee, Jr., *Understanding the Plaintiff's Attorney: The Implications of Economic Theory for Private Enforcement of Law Through Class and Derivative Actions*, 86 Colum. L. Rev. 669, 710 (1986); *see also* Brian T. Fitzpatrick, *An Empirical Study of Class Action Settlements and Their Fee Awards*, 7 J. Empirical Legal Stud. 811, 820 (2010).

Refusal to enforce arbitration clauses as written robs both businesses and their customers of the chance to opt into a more efficient dispute resolution option. Recent analysis demonstrates that arbitration remains "fairer, faster, and better" than litigation for both consumers and employees. Nam D. Pham & Mary Donovan, U.S. Chamber of Com., Inst. for Legal Reform, Fairer, Faster, Better III: An Empirical Assessment of

Consumer and Employment Arbitration (Mar. 2022). Consumers prevail more often in arbitration terminated with awards (41.7%) as compared to litigation that terminated with awards (29.3%). *See id.* at 4. Consumer received larger awards through arbitration ($79,945) as compared to awards through litigation ($71,354). *See id.* And consumers spent less time (on average) in arbitration (321 days) than in litigation (439 days). *See id.*

The decision below also robs businesses of predictability that can be used to cabin risk. A primary benefit of arbitration agreements is that they allow businesses to know with certainty which parties will enter into arbitration. But when the text of an agreement is ignored, parties simply cannot know who will or will not be added to the class and who will honor their decision to arbitrate. Delays arising from this uncertainty defeat the very purpose of arbitration. "Belated enforcement of [an] arbitration clause . . . significantly disappoints the expectations of the parties and frustrates the clear purpose of their agreement." *Dean Witter Reynolds*, 470 U.S. at 225 (White, J., concurring); *see also In re Piper Funds, Inc., Institutional Gov't Income Portfolio Litig.*, 71 F.3d 298, 303 (8th Cir. 1995)

(observing that a party's "contractual and statutory right to arbitrate may not be sacrificed on the altar of efficient class action management").

For this reason, the FAA encourages "efficient and speedy dispute resolution." *Dean Witter Reynolds*, 470 U.S. at 221; *see also Coinbase, Inc. v. Bielski*, 599 U.S. 736, 743–44 (2023) (affirming that courts must stay proceedings pending an appeal of a motion to compel arbitration). The U.S. Supreme Court has even held state laws that impede "streamlined proceedings and expeditious results" are preempted. *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 346 (2011) (quoting *Preston v. Ferrer*, 552 U.S. 346, 357 (2008)). Far from aiding in the streamlined process, the decision of the Court of Appeals places arbitration agreements in disfavored status by refusing to read and enforce them according to their plain meaning. This is error. *See Italian Colors Rest.*, 570 U.S. at 232–33 (noting that the FAA sought to correct the "widespread judicial hostility to arbitration" by requiring courts to "rigorously enforce arbitration agreements according to their terms" (quotation marks omitted)).

The decision below is particularly concerning because it discourages parties from including opt-out clauses in arbitration agreements. Opt-out provisions have social utility because they provide consumers greater

choice while simultaneously limiting uncertainty for businesses by adopting procedures and time limits governing opt-outs. *Cf. Hopkins v. World Acceptance Corp.*, 798 F. Supp. 2d 1339, 1346 (N.D. Ga. 2011) (concluding that the presence of an opt-out provision undermines any argument that the arbitration agreement was unconscionable). This balance benefits both parties, and as a result, opt-out provisions are becoming more common. For example, more than a quarter of credit-card contracts contain opt-out clauses. *See* Peter B. Rutledge & Christopher Drahozal, *Contract and Choice*, 2013 B.Y.U. L. Rev. 1, 23 (2013).

Judicial failure to honor clear opt-out provisions has far-reaching implications. If opt-out language is not respected, businesses would have no way to enforce any arbitration agreement against any contracting partner who could someday be added to a class-action lawsuit. The ensuing uncertainty would skew litigation incentives and create unacceptable risk for industry. *See Coopers & Lybrand v. Livesay*, 437 U.S. 463, 476 (1978) ("Certification of a large class may so increase the defendant's potential damages liability and litigation costs that [the defendant] may find it economically prudent to settle and to abandon a meritorious defense."); *Honig v. Comcast of Ga. I, LLC*, 537 F. Supp. 2d 1277, 1289 (N.D.

Ga. 2008) (observing that "[c]ourts have stressed the importance of such opt-out provisions in enforcing class action waivers in arbitration agreements," which are an "integral part of modern commerce" (quotation marks omitted)).

The better path—and the one this Court should take—is to enforce opt-out provisions as written, which promotes consumer choice while at the same time mitigates risk to businesses.

CONCLUSION

The Court of Appeals made a serious error that undermines policies favoring arbitration and improperly uses the class-action procedure to create new substantive rights. This Court should grant certiorari and reverse.

Respectfully submitted this 18th day of April 2025.

This submission does not exceed the word-count limit imposed by Rule 20.

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