No. 20-1143

In the Supreme Court of the United States

DENISE A. BADGEROW, PETITIONER

v.

GREG WALTERS, ET AL.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

BRIEF FOR THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENTS

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INTEREST OF *AMICUS CURIAE*[1]

The Chamber of Commerce of the United States of America is the world's largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than three 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

[1] Pursuant to S. Ct. Rule 37.6, counsel for all parties have consented to the filing of this brief. No counsel for a party authored this brief in whole or in part and no person or entity other than *amicus*, its members, or counsel made a monetary contribution to its preparation or submission.

concern to the nation's business community. See, *e.g.*, *GE Energy Power Conversion France SAS, Corp.* v. *Outokumpu Stainless USA, LLC*, 140 S. Ct. 1637 (2020).

Many members of the Chamber and the broader business community have found that arbitration allows them to resolve disputes promptly and efficiently while avoiding the costs associated with traditional litigation. In reliance on the policy reflected in the Federal Arbitration Act (FAA), 9 U.S.C. 1 *et seq.*, and this Court's consistent endorsement of arbitration, Chamber members have structured millions of contractual relationships around arbitration agreements.

The business community has a strong interest in ensuring that courts appropriately and consistently apply the FAA and that businesses can rely upon settled arbitration precedent that protects arbitration agreements and the awards that result therefrom. Businesses also have a particular interest in the availability of a federal forum for the review and enforcement of arbitral awards in disputes raising issues of federal law because it minimizes the risk of state courts engaging in "the kind of 'hostility to arbitration' that led Congress to enact the FAA" and which this Court has repeatedly stepped in to reject. *Kindred Nursing Ctrs. Ltd. P'ship* v. *Clark*, 137 S. Ct. 1421, 1428 (2017) (quoting *AT&T Mobility LLC* v. *Concepcion*, 563 U.S. 333, 339 (2011)); see, *e.g.*, *DIRECTV, Inc.* v. *Imburgia*, 577 U.S. 47 (2015).

SUMMARY OF ARGUMENT

Stripped of jargon, the question presented is whether a federal district court may confirm an arbitral award that resolved a federal question. The answer is yes.

1. a. Petitioner purports to advocate a "plain-text reading" of Sections 9 and 10 of the FAA. See Pet. Br. 13, 18, 23. But the text of Sections 9 and 10 (and 11) actually supports the opposite of the rule petitioner advocates. These provisions, on their face, suggest that federal district courts have jurisdiction to confirm *any* arbitral award covered by the FAA: Section 9 provides that a party to such an agreement "may" file a motion asking a "United States court" to confirm the award, and that court "must" grant the request "unless the award is vacated, modified, or corrected as prescribed in sections 10 and 11." 9 U.S.C. 9. Sections 10 and 11 specify narrow circumstances in which "the United States court … may" vacate or modify an award. 9 U.S.C. 10 and 11. That language is naturally read to empower—and indeed to command ("must")—the United States district court to confirm an award, unless one of the enumerated exceptions applies, in which case it is authorized ("may") to vacate or modify it.

The Chamber recognizes, however, that this Court has foreclosed this interpretation by holding that the FAA does not independently expand or contract federal-court jurisdiction, *e.g.*, *Vaden* v. *Discover Bank*, 556 U.S. 49 (2009), including in a case involving the scope and meaning of Sections 9 and 10, see *Hall St. Assocs., L.L.C.* v. *Mattel, Inc.*, 552 U.S. 576 (2008). But the fact that the text is naturally read to confer jurisdiction over *all* motions to confirm weighs in favor of interpreting any statutory ambiguity to allow jurisdiction over motions to confirm arbitral awards resolving federal-

question disputes. See *Apple* v. *Pepper*, 139 S. Ct. 1514, 1522 (2019) (interpreting ambiguity created by precedent in favor of the statutory text).

b. At a minimum, the FAA's text and structure indicate that a federal district court has jurisdiction to confirm an award that resolves a federal-question dispute because the court has jurisdiction to decide that dispute itself and to adjudicate motions that are incidental to its ultimate resolution. Congress has vested the district courts with jurisdiction to decide "all civil actions" arising under federal law or when there is diversity of citizenship and a sufficient amount in controversy. See 28 U.S.C. 1331 and 1332; see also 28 U.S.C. 1337. Federal jurisdiction accordingly depends on identifying the "civil action."

The FAA makes clear that the relevant "civil action" is the overarching action to resolve the substantive dispute between the parties. A private agreement to arbitrate does not divest a federal court of jurisdiction over the controversy. A federal court retains jurisdiction to decide that dispute itself, as well as to adjudicate an "application" to confirm or vacate arbitration filed pursuant to Sections 9 or 10. See 9 U.S.C. 9 and 10. Under the FAA, any "application" "shall be made and heard in the manner provided by law for the making and hearing of motions." 9 U.S.C. 6. And a "motion" does not constitute or initiate a freestanding "civil action" for purposes of assessing a court's jurisdiction under Sections 1331 or 1332. Instead, a "motion" is ordinarily understood to be an adjunct to some broader "action." See, *e.g.*, Fed. R. Civ. P. 7. A party thus can "ma[ke[" (and a court can "hear[]") a motion "in the manner provided by law," 9 U.S.C. 6, whenever the court has jurisdiction over the "action" between the parties. Each

individual motion that is a part of that "action" does not need to independently disclose a basis for jurisdiction.

Section 9 itself recognizes the distinction between a "motion" and a broader "action": It specifies that service upon a resident party "shall be made … as prescribed by law for service of notice of motion *in an action* in the same court." 9 U.S.C. 9 (emphasis added); see also 9 U.S.C. 12 (similar with reference to motions under Section 10). A federal court accordingly has jurisdiction to confirm or vacate an arbitral award under Sections 9 or 10 whenever it has jurisdiction over the broader "action," *i.e.*, whenever it could decide the substantive dispute between the parties.

The surrounding provisions of the FAA reinforce that understanding, as the same jurisdictional rule already applies under Sections 3 and 4 to motions filed before arbitration begins: A court can stay litigation pending arbitration under Section 3 whenever it has jurisdiction to decide the underlying dispute. See 9 U.S.C. 3. And this Court has held that a federal court may compel arbitration under Section 4 whenever it could decide the underlying dispute. See 9 U.S.C. 4; *Vaden*, 556 U.S. at 62. That interpretation is consistent with the FAA's coherent scheme for supporting arbitration as a simple and low-cost alternative to traditional litigation: Federal courts can support arbitration of disputes they could otherwise decide.

c. Conversely, petitioner's atextual diversity-only scheme would make the FAA incoherent and arbitrary. Despite claiming the mantle of the text, petitioner has identified no textual basis for believing that Congress provided *less* federal protection for confirming awards in federal-question disputes than awards in diversity disputes. Nor can petitioner plausibly suggest that—

even if Congress intended that rule—Congress would have achieved that bizarre result through an oblique negative inference.

Contrary to petitioner's thesis, the "save for" clause in Section 4 does not expand federal jurisdiction. It limits federal jurisdiction to compel arbitration to cases in which the court could decide the underlying dispute. The omission of that limiting language from Sections 9 and 10 thus is not a rational way for Congress to impose a novel additional constraint on federal jurisdiction in federal-question cases. Removing a limitation does not impose a constraint. If anything, omitting that limitation suggests that jurisdiction is *broader* under Sections 9 and 10, because it is not limited in the same way as under Section 4. Petitioner's inference is thus fundamentally backwards.

Moreover, petitioner's interpretation violates this Court's command that the FAA does not expand or contract federal-court jurisdiction, and creates arbitrary inconsistencies between jurisdiction before and after an arbitration. Even worse, parties could evade that limitation by filing a motion to compel before arbitration begins, thereby enabling the party after arbitration to file a motion to confirm in that same lawsuit. "Congress simply cannot be tagged with such a taste for the bizarre." *Cortez Byrd Chips, Inc.* v. *Bill Harbert Constr. Co.*, 529 U.S. 193, 201 (2000).

2. Petitioner's rule would harm the very commercial interests the FAA is meant to protect. Congress enacted the FAA to overcome state-court hostility to arbitration and facilitate the speedy and inexpensive resolution of disputes out of court. But petitioner's rule would expose businesses to greater risk of state-court hostility to arbitration and create a perverse incentive to engage in

gratuitous and wasteful litigation that needlessly clogs the federal dockets.

ARGUMENT

I. Federal Courts Have Jurisdiction To Confirm Awards That Resolve Federal-Question Disputes

A. Standing Alone, The Text Of Sections 9 And 10 Indicates That Federal Courts Are Empowered To Confirm Any Arbitral Award

1. Petitioner purports to offer a "plain-text reading" of Sections 9 and 10 to support the theory that federal courts may confirm arbitral awards arising from diversity disputes—where the jurisdictional predicates will ordinarily be evidenced on the face of a motion to confirm[2]—but not awards that resolve federal-question disputes. See Pet. Br. 13, 18, 23. But petitioner fails to quote the text of Sections 9 or 10 and instead relies on a contextual inference based on language that the provisions lack. *Id.* at 15–21. Petitioner's argument about language "Congress *didn't* use" should persuade this Court "of only one thing—that [it is] best served by focusing on the language [Congress] *did* employ." *BP P.L.C.* v. *Mayor & City Council of Baltimore*, 141 S. Ct. 1532, 1539 (2021).

The natural reading of Sections 9 and 10 (and 11) is that federal courts are empowered to resolve *any* motion to confirm, vacate, or modify an arbitral award involving commerce, without limitation. Section 9 provides that any party to an arbitration agreement "may apply to the court" selected in the agreement for an order confirming an award, and "the court must

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[2] As respondents note, determining whether a motion satisfies the requirements for diversity jurisdiction may be difficult in many cases. See Resp. Br. at 40–42.

grant such an order unless the award is vacated, modified, or corrected" pursuant to Sections 10 or 11. 9 U.S.C. 9. If the parties did not select a court, then such an application "may be made" to "the United States court in and for the district within which the award was made." *Ibid.* And such an application "shall" be served "as prescribed by law for service of notice of motion in an action in the same court." *Ibid.* Section 10 provides that "the United States court" in that district "may make an order vacating the award" in four narrow circumstances. 9 U.S.C. 10. And Section 11 provides that "the United States court … may" modify or correct the award in three narrow circumstances. 9 U.S.C. 11.

Those provisions are naturally read to mean what they say: Any party to a covered arbitral agreement "may" ask the relevant "United States court" to confirm an award; that federal court is, accordingly, empowered to hear that request and indeed "must" grant it unless a statutory exception applies, in which case the court "may" vacate or modify the award. 9 U.S.C. 9, 10, 11. See *Lopez* v. *Davis*, 531 U.S. 230, 231 (2001) ("may" indicates the actor is empowered to exercise authority); *Kingdomware Techs., Inc.* v. *United States*, 136 S. Ct. 1969, 1977 (2016) ("'shall' usually connotes a requirement"); *Solem* v. *Stumes*, 465 U.S. 638, 657 (1984) ("must" is "clear and mandatory").

Notably, there is no qualifier in Section 9 stating that the federal court may confirm an award only if there is diversity of citizenship and a sufficient amount in controversy such that jurisdiction would be available under 28 U.S.C. 1332 if the motion were treated as a freestanding civil action. Nor is there any exception in Section 10—which enumerates four grounds for refusing to confirm an award—stating that a federal

court can decline to confirm an award if it resolved a federal question but the arbitral contract is governed by state law. Section 10's listed exceptions "are exclusive," *Hall St.*, 552 U.S. at 578, and thus indicate that there are no additional unstated exceptions, *e.g.*, *Jennings* v. *Rodriguez*, 138 S. Ct. 830, 844 (2018) (interpreting an express statutory exception to foreclose the existence of an additional implied exception).

Courts and commentators have recognized that Sections 9 and 10 "could be read as granting the district courts jurisdiction for applications to enforce [or vacate] awards of arbitrators." 13D Charles Alan Wright & Arthur Miller, *Federal Practice & Procedure* § 3569 (3d ed. 2021); see, *e.g.*, *Ford* v. *Hamilton Invs., Inc.*, 29 F.3d 255, 257 (6th Cir. 1994) ("One can understand why [counsel] might have assumed … that this provision would suffice to confer federal jurisdiction over an action to vacate an arbitral award").

Petitioner's theory, if taken seriously, would lead to the same result. If federal jurisdiction were measured solely by looking at the motion to confirm or vacate in a vacuum, as petitioner contends, then each and every such motion would necessarily raise a federal question: whether the award should be confirmed or vacated under the substantive standards set forth in Sections 9 or 10. See *Grable & Sons Metal Prods., Inc.* v. *Darue Eng'g & Mfg.*, 545 U.S. 308, 312 (2005) ("[F]ederal-question jurisdiction is invoked by and large by plaintiffs pleading a cause of action created by federal law"). Treating the motion to confirm as analogous to a typical complaint, initiating a freestanding civil action in miniature, thus would support federal jurisdiction over all arbitral awards.

2. The Chamber recognizes, however, that this Court has consistently held that the FAA neither expands nor contracts federal-court jurisdiction. This Court has determined—including in a case interpreting Sections 9 and 10—that the FAA is "something of an anomaly in the field of federal-court jurisdiction," because it "bestow[s] no federal jurisdiction" but rather requires "an independent jurisdictional basis." *Hall St.*, 552 U.S. at 581–82 (citing *Moses H. Cone Mem'l Hosp.* v. *Mercury Constr. Corp.*, 460 U.S. 1, 25 n.32 (1983)); see *Southland Corp.* v. *Keating*, 465 U.S. 1, 15 n.9 (1984) (the FAA "does not create any independent federal-question jurisdiction under [Section 1331] or otherwise."); see also *Vaden*, 556 U.S. at 59 (same).

This Court's interpretation of a statute carries heavy *stare decisis* force, *e.g.*, *Kimble* v. *Marvel Entm't, LLC*, 576 U.S. 446, 456 (2015), and the Chamber does not ask this Court to depart from its precedent by holding that the FAA confers jurisdiction over all motions to confirm. Still, as this Court recently made clear in *Apple*, 139 S. Ct. 1514, "to the extent" this Court's precedents "leave[] any ambiguity" about how to resolve a residual interpretative question, this Court "should resolve that ambiguity in the direction of the statutory text." *Id.* at 1522. This Court accordingly should interpret any ambiguity in favor of finding federal jurisdiction over enforcement of awards that resolve federal questions—not by further narrowing federal-court jurisdiction.

B. At A Minimum, Federal Courts Have Jurisdiction To Hear Motions Under Sections 9 Or 10 Whenever The Court Has Jurisdiction To Decide The Underlying Action

Given this Court's precedent establishing that the FAA does not confer federal jurisdiction, it is imperative

to analyze the statutes that do—28 U.S.C. 1331 and 1332—to understand how motions under the FAA fit into that framework. That analysis indicates that, at a minimum, a federal court has jurisdiction to adjudicate motions under the FAA whenever the court would have jurisdiction to resolve the underlying substantive dispute between the parties. Federal courts therefore have jurisdiction to confirm arbitral awards in federal-question cases.

1. Federal Jurisdiction Is Determined On The Basis Of An Entire "Civil Action," Not On A Motion-By-Motion Basis

Congress has vested the district courts with original jurisdiction "of all civil actions" arising under federal law, 28 U.S.C. 1331, and "of all civil actions" in which there is diversity of citizenship and a sufficient amount in controversy, 28 U.S.C. 1332. See also 28 U.S.C. 1337 (vesting district courts with "original jurisdiction of any civil action or proceeding arising under any Act of Congress regulating commerce"). Federal jurisdiction under those bedrock jurisdictional grants thus extends to an entire "civil action," not just part of it. Cf. U.S. Const. art. III § 2 (extending the federal judicial power to "Cases" and "Controversies," not motions).

When Congress enacted the FAA, a "civil action" was ordinarily understood to mean a proceeding "instituted to compel payment, or the doing [of] some other thing which is purely civil," "which seeks the establishment, recovery, or redress of private and civil rights." *Black's Law Dictionary* 203 (2d ed. 1910); see John Bouvier, *Bouvier's Law Dictionary and Concise Encyclopedia* 129 (1914) ("Bouvier") (similar); see also *Black's Law Dictionary* (11th ed. 2019) (similar). The scope of a "civil action" therefore depends on what "private and civil

rights" are in dispute between the parties and the "payment" or other relief they seek. It does not depend on what particular modes of procedure will be used to resolve that dispute or what kinds of motions will be filed along the way towards determining what relief (if any) to provide.

2. The FAA's Text Indicates That Federal Jurisdiction Extends To The "Action" To Resolve The Parties' Dispute And Is Not Lost If An Individual "Motion" Does Not Disclose An Independent Basis For Jurisdiction

Under the FAA, arbitration supplies an alternative procedure for resolving a dispute, akin to a forum-selection clause. See 9 U.S.C. 2 (rendering enforceable an agreement "to settle by arbitration a controversy"). This Court has established that the choice to use arbitration rather than litigation to settle a controversy does not expand or contract a federal court's jurisdiction over the civil action or any motion filed incident thereto. See *Hall Street*, 552 U.S. at 581 ("As for jurisdiction over controversies touching arbitration, the Act does nothing."). The question therefore is what constitutes the relevant "civil action" when a party files a motion to confirm or vacate an arbitral award. Does adjudication of the motion under Section 9 or 10 itself qualify as a freestanding "civil action"? Or is the relevant "civil action" the broader action of resolving the underlying substantive controversy between the parties, of which the motion is a part?

The FAA's text weighs in favor of measuring jurisdiction by reference to the overarching "action," *i.e.*, the entire substantive dispute between the parties, and not by asking whether each and every "motion" filed along the way itself discloses an independent basis for

federal jurisdiction. Sections 9 and 10 (and 11) provide for the filing of an "application" to confirm, vacate, or modify an arbitral award. 9 U.S.C. 9, 10, 11. Section 6 of the FAA provides that "[a]ny application … shall be made and heard in the manner provided by law for the making and hearing of motions, except as otherwise herein expressly provided." 9 U.S.C. 6. An "application" to confirm or vacate is thus made by filing a "motion" in the usual manner "provided by law."

The usual manner "provided by law" for "ma[king] and hear[ing]" a motion is that a court has jurisdiction to hear that motion whenever it has jurisdiction over the action of which that motion is a component part. *Ibid.* A federal court does not lose jurisdiction to decide a "motion" simply because the motion, standing alone, does not independently disclose a basis for the court's jurisdiction. A court's jurisdiction over an action extends to the entire action, not just some parts of it.

A "motion" does not ordinarily constitute a freestanding "civil action." Rather, a "motion" is made *within* some broader action embracing the parties' controversy and upon which jurisdiction depends. See, *e.g.*, Fed. R. Civ. P. 12(b) (providing for motions to dismiss a civil action); see Bouvier 2265 (defining "motion" at the time of the FAA's enactment as "[a]n application to a court by one of the parties in a cause"); Walter A. Shumaker & George Foster Longsdorf, *Cyclopedic Law Dictionary* 673–74 (2d ed. 1922) (same). The word "motion" also has "never been commonly understood to denote a vehicle for initiating a new and free-standing lawsuit." *In re Wild*, 994 F.3d 1244, 1257 (11th Cir. 2021) (en banc), petition for cert. pending, No.21-351 (filed Aug. 31, 2021). Instead, a freestanding "civil action" is typically initiated by filing a "pleading"

or petition. See Fed. R. Civ. P. 7 (distinguishing pleadings from motions); see *id.* cmt. 1 (noting this distinction was "common in the state practice acts" before the Federal Rules' 1937 adoption); *e.g.*, 28 U.S.C. 2342 (petition for review of agency action).

It thus would mark a sharp departure from ordinary jurisdictional and linguistic principles for a "motion" under Section 9 or 10 to qualify as a freestanding "civil action" for purposes of assessing jurisdiction under Sections 1331 and 1332, such that a federal court would be divested of jurisdiction to decide that motion unless the motion independently discloses a freestanding basis for federal jurisdiction. Congress nowhere indicated in the FAA that it intended to depart from ordinary jurisdictional principles in that way.

Read in light of this Court's precedents, Section 9's text itself adopts the familiar distinction between a "motion" and the broader "action" of which it is a part. Section 9 provides that, "[i]f the adverse party is a resident of the district within which the award was made, [] service shall be made upon the adverse party … as prescribed by law for service of notice of motion *in an action in the same court*." 9 U.S.C. 9 (emphasis added). Section 12, too, distinguishes between a "motion" under the FAA and the "action" in which it resides with reference to motions to vacate or modify. See 9 U.S.C. 12 (explaining that a court may stay enforcement proceedings upon filing of a "motion" to vacate or modify to the extent that it "might make an order to stay the proceedings in an action brought in the same court"). The statutory text thus reflects the ordinary rule that a motion does not constitute an "action"; rather, as usual, the motion is a filing within

some preexisting and broader "action" by which federal jurisdiction is measured.

Accordingly, if an underlying dispute arises under federal law, then district courts have jurisdiction under Section 1331 to adjudicate that dispute as well as to adjudicate motions filed incident to its resolution, including motions to confirm or vacate an award under Section 9 or 10. Each individual motion filed in that same action does not need to state on its face an independent basis for federal jurisdiction.

3. The Statutory Context Indicates That Jurisdiction Applies To The Entire "Action"

The FAA's provisions "are best analyzed together." *Cortez Byrd Chips*, 529 U.S. at 198; see also *Bernhardt* v. *Polygraphic Co. of Am.*, 350 U.S. 198, 201 (1956) (interpreting the FAA's individual provisions as "integral parts of a whole"); *e.g.*, *Arthur Andersen LLP* v. *Carlisle*, 556 U.S. 624, 630 n.4 (2009) (holding that the term "parties" in Section 4 can be understood only by reference to its use in Section 3). Reading the FAA as a whole reinforces the result that federal courts have jurisdiction to enforce arbitral awards whenever they have jurisdiction to decide the underlying dispute between the parties.

Sections 3 and 4 embody the same rule that a federal court can resolve FAA motions if it could decide the underlying dispute. Section 3 provides that if a "suit or proceeding [is] brought" in federal court and the court is satisfied that the parties agreed to arbitrate the "issue involved in such suit or proceeding," then the court "on application of one of the parties" shall stay "the trial of the action" and refer it to arbitration to be resolved. 9 U.S.C. 3. Under Section 3, federal jurisdiction to grant a motion for a stay is thus coextensive with the court's

authority to decide the "action" that was "brought" in which that motion was filed.

Federal jurisdiction under Section 4 similarly depends on whether the court could decide the underlying action, via the so-called "look-through" rule. Section 4 provides that a party aggrieved by a failure to arbitrate may "petition any United States district court" to compel arbitration only if, "save for such agreement," the court "would have jurisdiction under title 28, in a civil action or in admiralty of the subject matter of a suit arising out of the controversy between the parties." 9 U.S.C. 4. Section 4 thus makes clear that jurisdiction to compel arbitration depends on whether the federal court has authority to decide the underlying dispute, and thus is not assessed merely by reference to the "petition" to compel filed in the district court. *Ibid.*; see *Vaden*, 556 U.S. at 62.

It is sensible to interpret the scope of jurisdiction under Sections 9 and 10 to be the same as under Sections 3 and 4 because those provisions each govern federal oversight over the same underlying dispute, just at different points of time. This Court has "long stressed the significance of the [FAA]'s sequencing," *New Prime Inc.* v. *Oliveira*, 139 S. Ct. 532, 538 (2019). As enacted in 1925, see Pub L. 401, 43 Stat. 883 (1925), the FAA is a short statute that sets forth the federal substantive policy in favor of arbitration and a step-by-step procedure for the enforcement of arbitral awards, which parallels the procedure for a court to decide a dispute in civil litigation.

In light of this Court's precedents, the FAA's scheme is best read to suggest that the same "action" consistently serves as the jurisdictional predicate throughout that process. See, *e.g.,* 9 U.S.C. 2 (making

enforceable agreements to settle "a controversy" by arbitration); 9 U.S.C. 3 (providing for a stay of litigation of "the trial" of that controversy); 9 U.S.C. 4 (providing for an order to compel arbitration of the dispute); 9 U.S.C. 5 (providing for a party "to the controversy" to seek appointment of an arbitrator); 9 U.S.C. 7 (summoning witnesses "in the case"); 9 U.S.C. 9 (motion to confirm "the award made pursuant to the arbitration"); 9 U.S.C. 10 and 11 (motion to vacate or modify "the award").

The continuity of the "action" is particularly clear when a party goes to federal court *before* arbitration begins. If the court has jurisdiction to decide the parties' dispute, then it has authority to stay litigation under Section 3 and to compel arbitration under Section 4. The same court would thereafter also have jurisdiction to enforce the award after arbitration is complete by deciding a motion to confirm or vacate under Section 9 or 10 that was filed in that preexisting suit—as was the case here. See Pet. App. 4a. To that end, in *Marine Transit Corp.* v. *Dreyfus*, 284 U.S. 263, 275 (1931), this Court stated it "d[id] not conceive it to be open to question that, where the court has authority under the statute … to make an order for arbitration, the court also has authority to confirm the award or to set it aside." So when a party files in federal court before arbitration, there is a single "action" throughout the FAA's beginning-to-end process. A federal court with jurisdiction before arbitration thus has jurisdiction after arbitration as well, giving it consistent authority to decide motions throughout the lifetime of the dispute. Cf. *Bernhardt*, 350 U.S. at 201 (finding "no intimation or suggestion" that Congress intended Sections 1 or 2 to "cover a narrower field" than Section 3).

4. Petitioner's Motion-By-Motion Approach Would Undermine The FAA's Purposes And Lead To Anomalous Asymmetries

As noted above, federal district courts have jurisdiction to decide actions that arise under federal law. But under petitioner's motion-by-motion approach, federal courts would have jurisdiction over only part of an action: They could compel arbitration of a dispute within their jurisdiction *before* arbitration, but would be powerless to enforce a federal-question award *after* arbitration was complete. That would create an inexplicable inconsistency between diversity-jurisdiction cases (where federal courts often could enforce an award, because the motion to confirm would often indicate that diversity jurisdiction is available) and federal-question cases (where federal courts would typically be powerless because agreements to arbitrate are typically governed by state law).

That incoherent approach would contravene the simple and consistent scheme Congress established. "Any reading of the [FAA] leading to substantive and procedural parts with differing applicability creates a monstrosity found nowhere else in the world of American arbitration." Ian R. Macneil, *American Arbitration Law: Reformation, Nationalization, Internationalization* 107 (1992). As this Court explained in *Vaden* when concluding that federal courts have jurisdiction to compel arbitration in federal-question disputes, the FAA must be interpreted to avoid the "curious practical consequences" that result from treating parties differently based on whether or not they had actually filed a court action embracing their dispute. 556 U.S. at 65. In light of *Vaden*, those

consequences would only be more curious if this Court rejected the same approach for Sections 9, 10, and 11.

First, adopting a patchwork jurisdictional approach would violate this Court's repeated recognition that the FAA neither expands nor contracts federal jurisdiction over arbitrable controversies. Interpreting federal jurisdiction to be narrower under Sections 9, 10, and 11 than under Section 4 would impermissibly mean either that Section 4 grants jurisdiction, or that Sections 9, 10, and 11 take it away. See *Quezada* v. *Bechtel OG & C Constr. Servs., Inc.*, 946 F.3d 837, 842 (5th Cir. 2020). That approach would "render[] the Act a 'patchwork of individual statutes bereft of any coherent plan,'" See *Bangor & Aroostock R.R. Co.* v. *Maine Cent. R.R. Co.*, 359 F. Supp. 261, 262–64 (D.D.C. 1973). It is, in part, for this reason that lower courts have previously rejected the more textually-grounded interpretation that federal courts always have jurisdiction under Sections 9 and 10. See *Harry Hoffman Printing, Inc.* v. *Graphic Comms. Int'l Union, Local 261*, 912 F.2d 608, 611 (2d Cir. 1990); see also *Gen Atomic Co.* v. *United Nuclear Corp.*, 655 F.2d 968, 969 (9th Cir. 1981) (such a rule "would work great mischief to the overall scheme"); cf. *Stroh Container Co.* v. *Delphi Indus., Inc.,* 783 F.2d 743, 747–48 n.7 (8th Cir. 1986) (finding it "anomalous to construe section 9 as affecting the scope of jurisdiction" when Sections 3 and 4 do not).

Second, interpreting the FAA to deprive federal courts of jurisdiction to enforce federal-question awards would create an arbitrary asymmetry between jurisdiction before and after arbitration, and would lead to wasteful protective litigation up front to circumvent limitations on jurisdiction on the back end. As noted above, Section 3 of the FAA requires a court to stay a

court action pending arbitration, and this Court in *Dreyfus* recognized that a court with jurisdiction before an arbitration may retain that jurisdiction after arbitration. 284 U.S. at 275–76. Adopting a patchwork jurisdictional approach would therefore create an incentive for parties to needlessly file lawsuits before arbitration simply to have the litigation stayed, in order to preserve a federal forum for enforcement of the award after arbitration is complete.

"Nothing … would be more clearly at odds with … the FAA's 'statutory policy of rapid and unobstructed enforcement of arbitration agreements'" than to encourage parties to clog the federal-court dockets with pointless motions. *Cortez Byrd Chips,* 529 U.S. at 201 (citation omitted). An incentive to engage in needless litigation would represent "the same perverse incentive and procedural incongruity identified [and rejected] by the *Vaden* Court." *Doscher* v. *Sea Port Grp. Sec., LLC*, 832 F.3d 372, 387 (2d Cir. 2016). And it would "encourage forum shopping and 'racing to the courthouse,' both of which are litigation maneuvers that undermine process efficiency and create procedural roadblocks." Kristen M. Blankley, *A Uniform Theory of Federal Court Jurisdiction Under the Federal Arbitration Act*, 23 Geo. Mason L. Rev. 525, 556 (2016).

Third, preventing federal courts from enforcing federal-question awards would give federal courts less authority over arbitration of federal-question disputes than they have over arbitrations involving diversity or admiralty. See Pet. Br. 18–19 (conceding federal jurisdiction to enforce admiralty awards). But it "seems a strange result" to infer that Congress intended to *disfavor* federal-question actions and allow parties to "bring this sort of action only in diversity (or perhaps

admiralty) cases." See *Kasap* v. *Folger Nolan Fleming & Douglas, Inc.*, 166 F.3d 1243, 1247 (D.C. Cir. 1999). Congress ordinarily prefers "the experience, solicitude, and hope of uniformity that a federal forum offers on federal issues." *Grable*, 545 U.S. at 312.

If anything, Congress should have a *weaker* interest in ensuring a federal forum in cases in which there is diversity of citizenship. The parties' consensual appointment of a private arbitrator obviates concerns of local favoritism, and thus eliminates the need to "secure a tribunal presumed to be more impartial than a court of the state in which one of the litigants resides." *Barrow S.S. Co.* v. *Kane*, 170 U.S. 100, 111 (1898); see Scott Dodson, *Beyond Bias in Diversity Jurisdiction*, 69 Duke L.J. 267, 271 (2019). Petitioner has identified no affirmative indication that Congress intended such an upside-down approach to federal authority.

C. Petitioner's Contrary Arguments Lack Merit

Petitioner instead relies on omissions, pointing to contextual clues to support a negative inference that federal courts lack jurisdiction to enforce federal-question awards. Pet. Br. 16–20. But those clues, properly understood, point in the opposite direction.

1. Petitioner's argument rests largely on the fact that Sections 9 and 10 lack the "save for" clause that appears in Section 4. See *id.* at 15–18. The proper inference, petitioner contends, is that the federal court should assess its jurisdiction under Section 9 and 10 by reference to the "motion" standing alone and not the broader action between the parties (and should ignore that every such motion raises a federal question about enforceability under the FAA). *Ibid.* But the omission of the "save for" clause would be, at best, an oblique way for Congress to depart from the ordinary rule that

jurisdiction is consistent across an entire "civil action" and is not lost on a motion-by-motion basis. See 28 U.S.C. 1331, 1332, and 1337. And that negative inference is particularly implausible when the statutory text, standing alone, actually suggests the opposite rule that federal jurisdiction is available to confirm *any* arbitral award. See pp. 7–10, *supra*.

Petitioner's argument further fails because it reads the "save for" clause as *expanding* federal jurisdiction. See Pet. Br. 17 n.4 (describing Section 4 as an "isolated jurisdictional grant"). But that is contrary to everything this Court has ever said about the FAA's non-jurisdictional cast. *See* p. 10, *supra* (collecting cases).

The "save for" clause does not expand jurisdiction; it *limits* jurisdiction. Without that qualifier, Section 4 would provide that a party "may petition *any* United States district court" for an order compelling arbitration, and that the court "*shall*" enter an order compelling arbitration under a valid agreement. 9 U.S.C. 4 (emphases added). "[R]ead naturally, the word 'any' has an expansive meaning." *Ali* v. *Fed. Bureau of Prisons*, 552 U.S. 214, 219 (2008) (citation omitted). Section 4 thus would naturally be read to initiate a new civil action in which the district courts would be empowered to compel arbitration under any contract involving commerce. The "save for" clause, however, limits district court authority to compel to situations in which the court could decide the underlying dispute. The "save for" qualifier thus makes clear that Section 4 does *not* confer jurisdiction.

Section 4's unique language and history further confirms why Congress included the "save for" clause in Section 4 but not in Sections 9 or 10. Congress copied Section 4's language nearly verbatim from Section 3 of

a prior New York statute, on which the FAA was modeled. Compare 43 Stat. 883–884, with 1920 N.Y. Laws, ch. 275; see Julius Henry Cohen & Kenneth Dayton, *New Federal Arbitration Law,* 12 Va. L. Rev. 265, 275 (1926).

Borrowing that language created distinct textual risks that federal jurisdiction to compel arbitration would be misunderstood to extend to all disputes involving commerce. First, a demand to compel occurs at the outset of the action, akin to a complaint. Second, the borrowed language referred to filing a "petition" to compel, with service "in the manner provided by law for … a summons," and provided for a summary proceeding with a possible jury trial to resolve disputes about formation or performance. 43 Stat. at 883–884.[3] Together, those features would have suggested that a demand to compel was a freestanding "civil action" over which district courts always had jurisdiction: "Petitions," unlike "motions," are a familiar way to initiate a civil action. See Bouvier 2578–79 (defining "petition"). A "summons" is ordinarily used at the start of a civil action. See *id.* at 3182 (defining "summons"). And a jury trial is the quintessential means for resolving an "action." Congress accordingly added the "save for" clause to Section 4 to limit federal jurisdiction to compel arbitration to the subset of cases in which federal courts could decide the underlying dispute.[4]

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[3] Congress has since amended Section 4 to provide for service "in the manner provided by the Federal Rules of Civil Procedure." Pub. L. 779, 68 Stat. 1226, 1233 (1954).

[4] For much the same reason, Congress likewise may have intended for Section 4's "save for" language to clarify the scope of venue available for petitions to compel arbitration. See Resp. Br. 23–25.

There was less need for Congress to include a similar limitation in Sections 9 and 10, which had no precursor in the New York arbitration law. See 1920 N.Y. Laws, ch. 275. In designing those provisions from scratch, Congress avoided all of those textual issues: Motions to confirm or vacate occur at the end of an action, not the beginning, and Congress did not refer in Sections 9 or 10 to a "petition", service by "summons", or a jury trial. Instead, Congress distinguished between "motions" under Sections 9 and 10 and the "action" of which those motions are a part. 9 U.S.C. 9.

Congress thus surgically modified Section 4's precursor by adding the "save for" clause to limit federal jurisdiction to compel arbitration to cases in which federal courts could decide the underlying dispute. Congress's omission of a similar limitation in Sections 9 and 10 could indicate that no such limitation applies to motions to confirm or vacate, and accordingly that federal courts have jurisdiction over all such motions (although this Court's precedent is to the contrary). See pp. 7–10, *supra*. But the *absence* of a limit on jurisdiction in Sections 9 and 10 does not support a negative inference that jurisdiction should be *narrower*. Cf. *Mission Prod. Holdings, Inc.* v. *Tempnology, LLC*, 139 S. Ct. 1652, 1664 (2019) (targeted Congressional intervention to preserve a general rule does not abrogate that rule where Congress has not intervened). Omitting a limitation is not a rational way for Congress to impose a novel constraint.

2. Petitioner notes that Section 8 of the FAA, as well as Chapters 2 and 3, each contain jurisdictional language that is absent from Sections 9 or 10. See Pet. Br. 18–20. But those provisions address "concerns unique to their statutory contexts," *BP*, 141 S. Ct. at

1540, so the absence of parallel language in Sections 9 or 10 sheds little light on how to identify the "civil action" in an arbitration case.

Specifically, Congress needed to add jurisdictional language to Section 8 to preserve existing jurisdiction to proceed against a vessel *in rem* while also pursuing arbitration under the FAA. See G. H. Robinson, *Arbitration in Admiralty*, 17 N.Y.U. L.Q. Rev. 573, 594–95 (1940); see also *Dreyfus*, 284 U.S. at 275. Chapters 2 and 3 are also inapposite. Congress enacted those Chapters long after Sections 9 and 10, and Congress needed to offer an alternative jurisdictional framework for *foreign* arbitrations because federal courts otherwise ordinarily lack jurisdiction to decide the "action" at issue. See 9 U.S.C. 201 *et seq.*; 9 U.S.C. 301 *et seq*. The absence of express jurisdictional language in Sections 9 and 10 thus provides no sound basis for concluding that Congress harbored a strange desire to give federal courts less authority over federal-question arbitrations than over diversity and maritime arbitrations.

3. Petitioner contends that allowing federal courts to enforce federal-question awards would lead to differential treatment of arbitral awards and settlement agreements. Pet. Br. 21–22 (citing *Kokkonen* v. *Guardian Life Ins. Co.*, 511 U.S. 375 (1994)). But as *Kokkonen* recognizes, a federal court may "'ret[ain] jurisdiction' over [a] settlement contract," 511 U.S. at 381, including when it resolves a federal-question dispute. It is thus unclear any significant disparity exists.

In any event, enforcement of an arbitral award under the FAA is fundamentally different from enforcement of a settlement agreement as a matter of state law. Unlike a state-law motion to enforce, a motion to confirm an arbitral award would necessarily be decided by

reference to a substantive federal-law rule of decision, namely, the rule stated in Sections 9 and 10. See pp. 7–9, *supra*. Sections 9 and 10 create a uniform and comprehensive mechanism for enforcing an arbitral award, which was previously "enforced as a judgment" like any other. See Julius Henry Cohen, *Law of Commercial Arbitration and the New York Statute*, 31 Yale L.J. 147, 149 (1921).

Petitioner contends that "Congress's predominant concern in passing the Act" was with enforcement of agreements to arbitrate, not the awards that result. Pet. Br. 23–24. But even if that was the "predominant" concern, that does not mean it was Congress's *only* concern. It was not. The very existence of Sections 9, 10, and 11 shows that "post-arbitration remedies were also a central component of the FAA structure." *Ortiz-Espinosa* v. *BBVA Sec. of Puerto Rico, Inc.,* 852 F.3d 36, 43 (1st Cir. 2017); see also *Doscher*, 832 F.3d at 387 ("The fact that Congress decided to enact substantive rules governing vacatur and modification makes as clear as one can imagine that Congress intended a substantive—albeit limited—review of certain arbitration awards."). The New York law on which the FAA was modeled did not contain analogs to Sections 9, 10, or 11. See p. 24, *supra*. Congress' inclusion of Sections 9, 10, and 11 thus reflects a deliberate choice to provide a uniform federal rule for enforcing awards after arbitration completes. Petitioner offers no good reason to drastically limit those provisions by denying federal-court enforcement of federal-question awards.

II. Depriving Federal Courts Of Authority To Enforce Federal-Question Awards Would Be Harmful To Business Interests

This Court, like the Congress that enacted the FAA, has recognized that arbitration confers many advantages over litigation. *Allied-Bruce Terminix Cos.* v. *Dobson*, 513 U.S. 265, 280 (1995); see, *e.g.*, *Concepcion*, 563 U.S. at 345 (arbitration "reduc[es] the cost and increas[es] the speed of dispute resolution"); *Stolt-Nielsen S.A.* v. *AnimalFeeds Int'l Corp.*, 559 U.S. 662, 685 (2010) ("lower costs" and "greater efficiency and speed"); *Mitsubishi Motors Corp.* v. *Soler Chrysler-Plymouth*, 473 U.S. 614, 628 (1985) (emphasizing arbitration's "simplicity, informality, and expedition"). It was to ensure that parties could enjoy arbitration's benefits and avoid courts' "'hostility to arbitration' that led Congress to enact the FAA." *Kindred Nursing Ctrs.*, 137 S. Ct. at 1428 (citation omitted).

Despite numerous warnings from this Court, state courts continue to devise "a great variety of devices and formulas" to flout the FAA's command. *Concepcion*, 563 U.S. at 342; see p. 2, *supra* (collecting cases). Petitioner's rule would leave more parties at the mercy of state courts, thereby depriving parties of the many benefits of arbitration.

First, denying federal courts the authority to enforce awards in federal-question disputes would undermine commercial parties' ability to rely on federal court protection when structuring contractual agreements, exposing them to the risk of disuniformity and anti-arbitration sentiment in state court. Second, petitioner's patchwork approach to jurisdiction under the FAA would invite gratuitous and wasteful litigation by which parties file extraneous actions and motions to preserve

federal-court jurisdiction. See pp. 19–20, *supra*. The added costs, complexities, and risks of denying a federal forum for the enforcement of federal-question arbitral awards would undermine the FAA's benefits and harm the commercial interests it was designed to advance.

Petitioner asserts that allowing federal courts to enforce federal-question awards would undermine "the significant role that state courts have always played in enforcing arbitration rights," and that pre-*Vaden* practice illustrates that there is no harm from narrowed federal-court jurisdiction over motions to enforce. Pet. Br. 24–25. But petitioner's rosy portrait of state-court practice is hard to square with real-world experience showing that numerous state courts continue to "come into conflict" with this Court on issues of arbitration enforcement. Lyra Haas, *The Endless Battleground: California's Continued Opposition to the Supreme Court's Federal Arbitration Act Jurisprudence*, 94 B.U. L. Rev. 1419, 1426 (2014); see, *e.g.*, *Kindred Nursing Ctrs.*, 137 S. Ct. 1421 (Kentucky); *DIRECTV, Inc.*, 577 U.S. 47 (California); *Marmet Health Care Ctr., Inc.* v. *Brown*, 565 U.S. 530, 531 (2012) (per curiam) (West Virginia); *Nitro-Lift Techs., L.L.C.* v. *Howard*, 568 U.S. 17, 20 (2012) (per curiam) (Oklahoma). Interpreting Sections 9 and 10 to have the same jurisdictional reach as Sections 3 and 4 would ensure that parties can indeed rely on federal courts to honor the FAA and their agreements, and in turn to save time, money, and effort by resolving federal-question disputes via arbitration rather than expensive litigation.

CONCLUSION

For the foregoing reasons, this Court should affirm.

Respectfully submitted.

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