No. 15-1283

IN THE

Supreme Court of the United States

INITIATIVE LEGAL GROUP APC, ET AL.,

Petitioners,

v.

TERRI MAXON, SUCCESSOR-IN-INTEREST,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE
CALIFORNIA COURT OF APPEAL, FIRST APPELLATE
DISTRICT

BRIEF OF AMICUS CURIAE
NEW ENGLAND LEGAL FOUNDATION IN
SUPPORT OF PETITIONERS

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TABLE OF CONTENTS

TABLE OF AUTHORITIES ..............................................ii

INTEREST OF AMICUS CURIAE ................................. 1

SUMMARY OF ARGUMENT .............................................2

ARGUMENT ...............................................................4

   THIS COURT SHOULD GRANT CERTIORARI AND DECIDE THAT THE FEDERAL ARBITRATION ACT PREEMPTS A STATE COURT’S REFUSAL TO ENFORCE AN ARBITRATION PROVISION CONTAINED IN AN AGREEMENT THAT HAS BEEN VOIED UNDER STATE LAW ................................................ 4

CONCLUSION ............................................................ 11
# TABLE OF AUTHORITIES

## CASES

*Bloom v. Hazzard*,
37 P. 1037 (Cal. 1894) .................................. 10

*Buckeye Check Cashing, Inc. v. Cardegna*,
546 U.S. 440 (2006) .................................. 6, 7, 8, 9

*Chastain v. Robinson-Humphrey Co.*,  
957 F.2d 851 (11th Cir. 1992) .................. 9

*Granite Rock Co. v. Internat'l Brotherhood Of Teamsters*,  
561 U.S. 287 (2010) .................. 8, 9

*Nitro-Lift Techs., L.L.C. v. Howard*,  
133 S. Ct. 500 (2012) ................................. 6

*Prima Paint Corp. v. Flood & Conklin Mfg. Co.*,  
388 U.S. 395 (1967) .................................. 7

*Rent–A–Center, West, Inc. v. Jackson*,  
561 U.S. 63 (2010) ................................. 6, 7

*Stolt–Nielsen S.A. v. AnimalFeeds Int'l Corp.*,  
559 U.S. 662 (2010) ................................. 10

## STATUTES

9 U.S.C. §§ 1-16 .................................................*passim*

Cal. Bus. & Prof. Code § 6147(a) (Westlaw 2016) ..... 5

Cal. Bus. & Prof. Code § 6147(b) (Westlaw 2016) ..... 5

OTHER AUTHORITIES

17A C.J.S. Contracts § 169 (Westlaw 2016) ............ 9

92 C.J.S. Vendor and Purchaser § 39 (Westlaw 2016)

................................................................. 10
INTEREST OF AMICUS CURIAE

Amicus curiae New England Legal Foundation (“NELF”) seeks to present its views, and the views of its supporters, on whether certiorari should be granted in this case to decide whether the Federal Arbitration Act, 9 U.S.C. §§ 1-16 (“FAA”), permits a state court (here California) to refuse to enforce an arbitration provision that is contained in an agreement that the plaintiff has voided under state law.¹

NELF is a nonprofit, nonpartisan, public interest law firm, incorporated in Massachusetts in 1977, and headquartered in Boston. Its membership consists of corporations, law firms, individuals, and others who believe in NELF’s mission of promoting balanced economic growth in New England, protecting the free enterprise system, and defending economic rights. NELF’s members and supporters include both large and small businesses located primarily in the New England region.

Amicus is committed to holding state courts accountable to the FAA, which requires the enforcement of arbitration agreements according to their terms and which mandates that an arbitration

¹ Pursuant to Supreme Court Rule 37.6, NELF states that no counsel for a party authored this brief in whole or in part, and no person or entity, other than amicus, made a monetary contribution to the preparation or submission of the brief.

Pursuant to Supreme Court Rule 37.2(a), amicus states that it provided timely written notice of its intent to file this brief to counsel of record for all parties to this case, and that amicus has obtained written consent from all parties, copies of which are filed herewith.
provision is severable from the agreement that contains it. Therefore, the FAA should preempt any state court from refusing to enforce an arbitration provision when the party resisting arbitration has not challenged the enforceability of the arbitration provision itself.

In addition to this amicus brief, NELF has filed many other related amicus briefs in this Court, arguing for the enforcement of arbitration agreements according to their terms under the FAA.²

For these and other reasons discussed below, NELF believes that its brief will assist this Court in deciding whether to grant certiorari in this case.

**SUMMARY OF ARGUMENT**

This Court should grant certiorari and decide, once again, that the Federal Arbitration Act ("FAA") preempts a state court from refusing to enforce an arbitration provision when the party resisting arbitration has not challenged the enforceability of the arbitration provision itself but has, instead, sought to void the agreement containing the arbitration provision, here based on a technicality of state law. It is well settled under the FAA that an arbitration provision is severable from the agreement that contains it. Therefore, the arbitration provision must be enforced, even if its "container" agreement is voided under state law,

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unless the party resisting arbitration also targets the validity of the arbitration provision itself. Since the plaintiff in this case sought to void the container agreement only, and did not target the arbitration clause, the arbitration clause must be enforced.

While the California Court of Appeal acknowledged this Court’s clear severability precedent, the lower court attempted nonetheless to distinguish those cases, for reasons that are both unclear and unavailing. Apparently the lower court concluded that, while those cases involved a challenge to the validity of the overall agreement, the plaintiff in this case has effectively challenged the formation of the agreement, by exercising his right to void it under state law.

The lower court erred. This Court has held that the FAA applies to contracts that later prove to be void under state law. This means that the FAA requires courts to sever the arbitration provision from the voided contract, regardless of how state law may label the applicable contract defense. To be sure, this Court has recognized a narrow exception to the FAA’s severability rule when a party challenges the very formation of the container agreement, typically when the party resisting arbitration has not signed or otherwise ratified the agreement (not an issue here). But this Court has already established that a voidability challenge addresses a contract’s validity, not its formation, because a voided agreement still falls under the FAA’s severability rule. Moreover, a contract can only be voided after it has been formed. And there can be no dispute here that the parties formed a
binding agreement. Although the defendant law firm did not sign the parties’ contingency-fee agreement, the plaintiff client did sign it, and the law firm performed its contractual duties by representing its client in his wage-hour claims, through settlement. And it is black-letter law that a contract signed by only one of the parties is binding on both parties when, as here, the non-signing party has accepted the agreement by performing under it.

Therefore, certiorari should be granted to prevent a state court from evading the FAA’s mandate to enforce arbitration agreements according to their terms. As the facts of this case illustrate, the lower court’s decision gives a party with any basis for voiding a contract under state law the license to escape his contractual obligation to arbitrate disputes, presumptively on an individual basis only, and instead file a putative class action in court.

ARGUMENT

THIS COURT SHOULD GRANT CERTIORARI AND DECIDE THAT THE FEDERAL ARBITRATION ACT PREEMPTS A STATE COURT’S REFUSAL TO ENFORCE AN ARBITRATION PROVISION CONTAINED IN AN AGREEMENT THAT HAS BEEN VOIDED UNDER STATE LAW.

The question presented here is a familiar one. Does the Federal Arbitration Act, 9 U.S.C. §§ 1-16
(“FAA”) permit a state court to refuse to enforce an arbitration provision when the party resisting arbitration has not challenged the enforceability of the arbitration provision itself but has, instead, sought to void the agreement containing the arbitration provision, here based on a technicality of state law? The answer to this question is a resounding and well-settled no. Therefore, this case warrants summary disposition by the Court.

The late plaintiff, David Maxon (now succeeded in interest by his widow, Terri Maxon), signed a contingency-fee agreement with the defendant law firm, Initiative Legal Group (“ILG”), for the representation of Maxon in his wage-hour claims against his former employer. Appendix to Petition for Certiorari (“App.”) 3a-4a. The agreement contained a mandatory arbitration clause, in which the parties “agree[d] to submit all disputes between them to binding arbitration.” App.4a. While Maxon signed the agreement, ILG did not. Id. Nonetheless, ILG performed its legal services under the agreement and obtained a settlement of Maxon’s wage-hour claims. App.5a.

Subsequently, Maxon filed a putative class action in California state court, alleging that ILG mishandled the settlement of his claims. App.4a-5a. ILG moved to compel arbitration, pursuant to the parties’ agreement. App.6a. In response, Maxon’s counsel wrote ILG that Maxon was exercising his right, under state law, to void the agreement, including the arbitration provision, based on ILG’s
failure to sign it.\textsuperscript{3} \emph{Id.} In his opposition to ILG’s motion to compel, however, Maxon argued only that no agreement was ever formed, due to ILG’s failure to sign it. App.7a. The California trial court and Court of Appeal denied ILG’s motion to compel, but \textit{not} on the basis, argued by Maxon in opposition, that no agreement had been formed. App.7a, 11a.

Instead, the lower courts concluded that, when Maxon voided the agreement, he also extinguished his obligation to arbitrate disputes under that agreement \emph{Id.} The California Supreme Court denied further appellate review. Petition for Certiorari 8-9.

The FAA, however, preempts this type of state court interference with the enforcement of an arbitration provision. Under the FAA, an arbitration provision is severable from the agreement that contains it. This means that the arbitration provision must be enforced, even if its “container” agreement is voided under state law. “[A]s a matter of substantive federal arbitration law, an arbitration provision is severable from the remainder of the contract. . . . [This] include[s] contracts that later prove to be void.” \textit{Buckeye Check Cashing, Inc. v. Cardegna}, 546 U.S. 440, 445, 448 (2006) (emphasis added). This severability rule is mandated by the plain language of the FAA, which treats the arbitration clause independently of its “container” agreement. “[Section] 2 [of the FAA]

\textsuperscript{3} See Cal. Bus. & Prof. Code § 6147(a) (requiring attorney and client to sign contingency fee agreement), (b) (“Failure to comply with any provision of this section renders the agreement voidable at the option of the plaintiff, and the attorney shall thereupon be entitled to collect a reasonable fee.”).
states that a ‘written provision’ ‘to settle by arbitration a controversy’ is ‘valid, irrevocable, and enforceable’ without mention of the validity of the contract in which it is contained.” Rent–A–Center, West, Inc. v. Jackson, 561 U.S. 63, 70 (2010).

Therefore, unless a party targets the validity of the arbitration provision itself, the arbitration provision survives any state-law challenge to the validity of the container agreement and must be enforced. See Buckeye, 546 U.S. at 444-46 (challenge to loan agreement as usurious, and therefore void ab initio, did not affect enforcement of arbitration provision contained therein). See also Nitro-Lift Techs., L.L.C. v. Howard, 133 S. Ct. 500 (2012) (challenge to validity of noncompetition agreement did not affect enforcement of agreement’s arbitration provision); Rent–A–Center, West, Inc. v. Jackson, 561 U.S. 63, 70 (2010) (unconscionability challenge to clause defining scope of arbitration agreement did not affect enforcement of separate clause delegating such challenges to arbitrator); Prima Paint Corp. v. Flood & Conklin Mfg. Co. 388 U.S. 395 (1967) (challenge to overall agreement as induced by fraud did not affect enforcement of arbitration provision).

In this case, Maxon did not challenge the validity of the arbitration provision itself. Instead, he sought to void the entire contingency-fee agreement that contained the arbitration provision. Therefore, the arbitration provision must survive the voided container agreement and must be enforced. See Buckeye, 546 U.S. 440 at 446 (FAA’s rule of severability applies to contracts that are void or voided under state law). See also id. at 448 (FAA
applies to “contracts that later prove to be void.”); id. at 448 n.3 (FAA applies to “putative [container] agreements, regardless of whether they are legal.”) (emphasis added).

While the California Court of Appeal acknowledged this Court’s clear severability precedent, discussed above, the lower court attempted nonetheless to distinguish those cases, for reasons that are both unclear and unavailing. App.11a-16a. Apparently the lower court concluded that, while those cases involved a challenge to the validity of the overall agreement, Maxon effectively challenged the formation of the agreement, by exercising his right to void it under state law.

The lower court erred simply because the FAA applies to “contracts that later prove to be void” under state law. Buckeye, 546 U.S. at 448. See also id. at 446 (discussing same). This means that the FAA requires state courts to sever the arbitration provision from the voided contract and enforce it, regardless of how state law may label the applicable contract defense.

To be sure, this Court has recognized a narrow exception to the FAA’s severability rule when a party challenges the very formation of the container agreement, typically when the party resisting arbitration has not signed or otherwise ratified the agreement (not an issue here). 4 See Granite Rock Co. v. Internat’l Brotherhood Of Teamsters, 561 U.S. 287, 297 (2010)297 (court should

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4 It is undisputed that Maxon signed the contingency-fee agreement. App.4a.
decide formation issue of when labor union ratified collective bargaining agreement containing arbitration clause, to determine whether strike-related dispute was arbitrable; *Buckeye*, 546 at 444 n.1 (“The issue of the contract’s validity is different from the issue whether any agreement between the alleged obligor and obligee *was ever concluded.*”) (emphasis added). *See also id.* (citing, *inter alia*, *Chastain v. Robinson-Humphrey Co.*, 957 F.2d 851 (11th Cir. 1992) (securities customer challenged formation of arbitration agreement by arguing that she never signed agreement).

However, this Court has already established that a voidability challenge addresses a contract’s validity, not its formation, because a voided contract still falls under the FAA’s severability rule. *See Buckeye*, 446 U.S. at 446, 448 (FAA’s severability rule applies to contracts voided under state law). *See also id.* at 444 n.1 (“The issue of the contract’s *validity* is different from the issue whether any agreement between the alleged obligor and obligee *was ever concluded.* Our opinion today [discussing contracts voided under state law] addresses only the former . . . .”) (emphasis added).

Moreover, a contract can only be voided after it has been formed. *See 17A C.J.S. Contracts § 169* (Westlaw 2016) (“[A] voidable contract is one where one or more of the parties have the power . . . to avoid the legal relations *created by the contract.*”) (emphasis added). And there can be no dispute here that the parties formed a binding agreement. Although ILG did not sign the agreement, Maxon *did* sign it, and ILG performed its contractual duties
by representing Maxon in his wage-hour claims, through settlement. App.3a-4a. It is black-letter law that “a contract signed by one of the parties only may be binding on both, if accepted and acted on by the other . . . .” 92 C.J.S. Vendor and Purchaser § 39 (Westlaw 2016) (emphasis added).5

In sum, certiorari should be granted to prevent a state court from evading the FAA’s mandate to enforce arbitration agreements according to their terms. As the facts of this case illustrate, the lower court’s decision gives a party with any basis for voiding a contract under state law the license to escape his contractual obligation to arbitrate disputes, presumptively on an individual basis only, and instead file a putative class action in court. See Stolt–Nielsen S.A. v. AnimalFeeds Int’l Corp., 559 U.S. 662, 684 (2010) (no class arbitration “unless there is a contractual basis for concluding that the party agreed to do so.”). Certiorari should therefore be granted to guard against such efforts to undermine the FAA.

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5 In fact, Maxon’s state of California has even codified this general principle of contract formation in a by statute. See Cal. Civ. Code § 3388 (Westlaw 2016) (“A party who has signed a written contract may be compelled specifically to perform it, though the other party has not signed it, if the latter has performed . . . .”) (emphasis added). See also Bloom v. Hazzard, 37 P. 1037, 1038 (Cal. 1894) (“It was an agreement in writing signed and delivered by [the plaintiff] to the defendant [who did not sign it]. It was accepted by defendant, and was acted upon by both parties. This was a sufficient execution to make the writing a binding obligation . . . .”) (emphasis added). Indeed, the lower courts in this case apparently recognized that Maxon’s formation defense was unavailing because they declined to address it altogether. App.7a, 11a.
CONCLUSION

For the reasons stated above, NELF respectfully requests that this Court grant the petition for certiorari.

Respectfully submitted,

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