

No. 04-1264

IN THE
Supreme Court of the United States

BUCKEYE CHECK CASHING, INC.,
Petitioner,

v.

JOHN CARDEGNA, *et al.*,
Respondents.

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF FLORIDA

**BRIEF FOR THE CHAMBER OF COMMERCE
OF THE UNITED STATES OF AMERICA AND THE
AMERICAN FINANCIAL SERVICES ASSOCIATION
AS *AMICI CURIAE* IN SUPPORT OF PETITIONER**

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INTEREST OF *AMICI CURIAE*¹

The Chamber of Commerce of the United States of America ("the Chamber") is the world's largest business federation, representing an underlying membership of more than three million businesses, state and local chambers of commerce, and professional organizations. Chamber members operate in every sector of the economy and transact business throughout the United States. A central

¹ Letters of consent from both parties have been filed with the Clerk of the Court. Pursuant to Rule 37.6, *amici* state that no counsel for a party authored any part of this brief, and no person or entity other than *amici*, their members, or their counsel made a monetary contribution to the preparation or submission of this brief.

function of the Chamber is to represent the interests of its members in important matters before the courts, Congress, and the Executive Branch. To that end, the Chamber has filed *amicus curiae* briefs in numerous cases that have raised issues of vital concern to the nation's business community. For example, the Chamber has previously filed briefs concerning arbitration issues before this Court in *Green Tree Financial Corp. v. Bazzle*, 539 U.S. 444 (2003), and *PacifiCare Health Systems, Inc. v. Book*, 538 U.S. 401 (2003).

The American Financial Services Association ("AFSA") was organized in 1916 and represents more than 300 companies that engage in lending and sales financing amounting to approximately twenty percent of all consumer credit in the United States. These companies range from independently-owned consumer finance firms to the nation's largest financial services, retail, and automobile sales finance companies. AFSA's membership includes national and state banks that operate multi-state consumer credit programs. Like the Chamber, AFSA represents the interests of its members in cases of importance to its members, and has filed *amicus* briefs in a number of cases involving arbitration issues, including *Bazzle*, 539 U.S. 444, and *Green Tree Financial Corp.-Alabama v. Randolph*, 531 U.S. 79 (2000).

Many of the members, constituent organizations, and affiliates of the Chamber and AFSA have adopted, as standard features of their business contracts, provisions that provide for the arbitration of disputes arising from or related to such contracts. They use arbitration because it is a fast, fair, and inexpensive method of resolving disputes with consumers and other contracting parties. Because the Chamber and AFSA members who utilize arbitration agreements may be sued in a wide range of state and federal courts, they rely on the protection afforded by the Federal Arbitration Act to ensure that their arbitration agreements are enforced consistently.

SUMMARY OF THE ARGUMENT

The only question in this case is whether a court or an arbitrator should resolve an allegation that a contract is void for illegality when that contract contains an arbitration provision. This Court answered that question in *Prima Paint Corp. v. Flood & Conklin Manufacturing Co.*, 388 U.S. 395 (1967). Quoting the Federal Arbitration Act ("FAA"), the *Prima Paint* Court found that the arbitrator should resolve contractual issues as long as "the making of the agreement for arbitration" was not at issue. *Id.* at 403 (quoting 9 U.S.C. § 4).

In this case, the Florida Supreme Court failed to follow *Prima Paint*. Instead, it held that an allegation that a contract is void (rather than voidable) should always be heard by a court—even when the parties unquestionably agreed to arbitrate any disputes. This effort to redraw the line between litigation and arbitration conflicts with *Prima Paint* in at least three ways. First, it is circular: it assumes that plaintiffs will prove the contract is void in order to justify litigation of the claim the contract is void. Second, the void/voidable distinction conflicts with the analysis required under *Prima Paint* when applied to claims that a contract is void because a particular contractual provision is illegal. Third, the Florida Supreme Court's approach improperly exalts state-law considerations over the federal substantive law governing arbitrability.

The ruling below also conflicts with the purposes of the FAA by slowing enforcement of arbitration agreements when the FAA seeks to "move the parties . . . into arbitration as quickly and easily as possible." *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 22 (1983). As the dissent below pointed out (Pet. App. 23a), it evidences "a basic mistrust of arbitration," at odds with the "liberal federal policy favoring arbitration agreements." *Moses H. Cone*, 460 U.S. at 24. And the reliance on state-law distinctions between void and voidable contracts introduces substantial uncertainty and variability for

businesses that rely upon the FAA to ensure the consistent enforcement of arbitration agreements.

ARGUMENT

I. *PRIMA PAIN* REQUIRES ENFORCEMENT OF ARBITRATION AGREEMENTS UNLESS THE MAKING OF THE ARBITRATION AGREEMENT IS CHALLENGED

This case centers on the question of whether a court should enforce an arbitration provision when a party claims the contract in which the provision is found is void. While most contractual provisions may be enforced (or not) *after* the resolution of claims that the contract is void, an arbitration provision can have its intended effect only if enforced *prior* to such a resolution. This timing problem means that a decision about the enforceability of an arbitration provision cannot rest upon the resolution of the voidness claim, but instead requires a policy choice about when arbitration provisions should be enforced.

Through the FAA, "Congress has provided an explicit answer" to this policy question. *Prima Paint*, 388 U.S. at 403. The FAA requires that a court "order arbitration to proceed once it is satisfied that 'the making of the agreement for arbitration or the failure to comply [with the arbitration agreement] is not in issue.'" *Id.* (quoting 9 U.S.C. § 4) (alteration in original). Accordingly, "an issue which goes to the 'making' of the agreement to arbitrate," *id.*, such as forgery or lack of authority to enter into the arbitration agreement, may be adjudicated by the court. All other claims must be arbitrated. *See id.* at 403-404. As this Court explained in *Prima Paint*, "in so concluding, we not only honor the plain meaning of the statute but also the unmistakably clear congressional purpose that the arbitration procedure, when selected by the parties to a contract, be speedy and not subject to delay and obstruction in the courts." *Id.* at 404.

Applying the FAA to the fraud claim before it, the Court in *Prima Paint* concluded that a court should hear a claim of fraud "in the inducement of the arbitration clause

