No. 24-712

In the

Supreme Court of the United States

DANIEL PETERSON,

Petitioner

v.

MINERVA SURGICAL, INC.

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

BRIEF OF AMICUS CURIAE LIFT OUR VOICES IN SUPPORT OF PETITIONER

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INTEREST OF AMICUS CURIAE[1]

LIFT OUR VOICES (LOV) is dedicated to transforming the American workplace into a safer and more equitable environment. Through collaboration with organizations, workers, elected officials, and other stakeholders, LOV raises awareness about the harmful impacts of silencing mechanisms, including forced arbitration and nondisclosure agreements (NDAs). Committed to ensuring that every worker has a voice, LOV submits this brief as amicus curiae on behalf of workers and the public.

GRETCHEN CARLSON, co-founder of LOV, is a journalist and internationally recognized advocate for women's rights whose bold actions against former Fox News Chairman Roger Ailes helped ignite the global #MeToo movement. A former CBS News and Fox News journalist and champion for workplace equality, Carlson was named one of Time magazine's *100 Most Influential People in the World*.

Her recent signature achievements include the passage of two historic laws during one of the most politically divided times in modern history: the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act and the Speak Out Act

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[1] Pursuant to Rule 37.2, notice of the intention to file an amicus brief was provided to the counsel of record for all parties at least 10 days prior to the February 3 filing deadline. Additionally, pursuant to Rule 37.6, amicus affirms that no counsel for any party authored this brief in whole or in part and no person or entity, other than amicus, its members, or its counsel has made a monetary contribution to its preparation or submission.

(2022). Passed with bipartisan support in Congress, these bills represent some of the most significant labor-related legal reforms in a generation.

Carlson earned her B.A. from Stanford University and studied at Oxford University.

JULIE ROGINSKY, co-founder of LOV, is a nationally recognized political consultant and a long-standing advocate for women's rights. She began her career at a prominent organization dedicated to electing more women to political office, establishing her commitment to advancing gender equality.

Since filing her lawsuit for sexual harassment and retaliation against Fox News, Roginsky co-founded LOV and dedicated herself to ending the silencing mechanisms that prevent survivors of workplace toxicity from speaking out.

Roginsky earned both her B.A. and M.A., graduating with honors from Boston University.

SUMMARY

This case highlights the urgent need to address the misuse of forced arbitration and NDAs as silencing mechanisms that undermine healthy workplaces, obstruct justice, and shield corporations from accountability and public scrutiny. Granting certiorari offers the Court an opportunity to examine a century of evolving judicial doctrine that has created court conflict, enabled misconduct, and eroded the principles of fairness and justice essential to an equitable legal system.

WHY THIS CASE MATTERS

I. Forced arbitration and NDAs can be used as tools to undermine justice.

The Federal Arbitration Act (FAA) places arbitration agreements on equal footing with other contracts, ensuring they are neither favored nor disfavored.[2] Nowhere in the FAA does it suggest courts should prioritize enforcement over fairness. As the Court has emphasized:

> [T]he text of the FAA makes clear that courts are not to create arbitration-specific procedural rules … [that] tilt the playing field in favor of (or against) arbitration.[3]

Yet, courts have increasingly tilted the playing field in favor of arbitration. The Tenth Circuit's opinion in this case starkly illustrates the problem, openly acknowledging that procedural rules governing arbitration have become so skewed that courts possess neither discretion nor power to provide meaningful review.

Peterson's petition highlights this alarming reality by directly quoting the Tenth Circuit's own admissions:[4]

> [T]he Tenth Circuit, despite its Article III powers, repeatedly acknowledged that it lacked discretion and power over arbitration awards:

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[2] *Morgan v. Sundance, Inc.*, 596 U.S. 411, 418 (2022).

[3] *Id.* at 419.

[4] Petition for Writ of Certiorari at 29–30, *Peterson v. Minerva Surgical*, No. 24-712 (U.S. Nov. 6, 2022).

- "[W]e *do not have discretion* to overturn them." App. 3 (emphasis added);
- "[F]ederal courts *do not have power* to review an arbitrator's factual findings." App. 8 (emphasis added);
- "A federal court *cannot* set aside an arbitration award based on legal error." App. 9 (emphasis added); and
- "[W]e have *no power* to review that finding." App. 10 (emphasis added).

This judicial abdication of power to arbitrators conflicts with federal policy aimed at balancing arbitration and litigation and undermines principles of fairness and justice. As a result, companies can misuse forced arbitration, often coupled with NDAs, to silence employees and shield corporate misconduct. These mechanisms erode trust in the legal system and threaten the principles of fairness and equity that Congress did not intend the FAA to diminish.

II. Accountability is needed to protect the public and foster healthy workplaces.

As a recognized leader in the fight to eliminate workplace toxicity, LOV played an instrumental role in securing two significant legislative victories. Signed into law on March 3, 2022, the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act ensures that survivors of sexual assault can bring their claims to open court, *even when bound by forced arbitration clauses in their employment contracts*. Later that year, on December 7, 2022, the Speak Out Act became law, prohibiting the use of NDAs to

silence survivors and witnesses of sexual harassment and assault.

Both bills received overwhelming bipartisan support, driven largely by the recognized need for accountability—something too often undermined by the secrecy inherent in arbitration and NDAs. These landmark laws embody Congress's understanding that accountability is essential to safeguarding public health and fostering equitable workplaces.

However, the issues in this case extend beyond legislative action to the judiciary's evolving interpretation of the FAA. When Congress enacted the FAA in February 1925, it established a framework under 9 U.S.C. § 2 for the enforcement of arbitration agreements as an alternative to litigation, declaring them "valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." The Act, however, is silent on the extent of deference courts must afford to arbitrators or whether enforcement should take precedence over fairness. Over the past century, judicial interpretations have filled the blanks, increasingly expanding the authority of arbitrators and diminishing the role of courts.

With February marking the centennial of the FAA, this case presents a timely opportunity for the Court to assess whether judicial interpretations have strayed too far from the Act's original intent. Such a review is critical to restoring the balance between accountability and fairness in arbitration and ensuring

that workplaces across the nation are healthier and more equitable.

III. Granting certiorari is a matter of national importance that warrants the Court's review on the merits.

As the Court's review on a writ of certiorari is discretionary, this amicus brief emphasizes the case's national importance beyond court conflict. While LOV supports Peterson, this submission seeks to amplify the voices of all individuals affected by forced arbitration agreements and NDAs—agreements frequently mandated as a condition of employment. These agreements not only strip workers of their ability to choose a judicial forum but also compel them into private arbitration proceedings, where the employer selects the arbitration company—often a for-profit entity paid for by the employer. The secrecy inherent in these proceedings is typically further reinforced by NDAs, enabling employers to shield misconduct and silence workers.

The numbers illustrate the urgency and scale of the issue:

Forced arbitration agreements:[5]

- "[M]andatory employment arbitration has become the predominant dispute resolution mechanism for employment rights today in the United States, with more employees being

[5] Alexander J.S. Colvin & Mark D. Gough, *Mandatory Employment Arbitration*, 19 Ann. Rev. L. & Soc. Sci. 131, 131–44 (2023).

subject to mandatory arbitration than have access to the courts."

- "Surveys over the last three decades, though employing several different survey methodologies, have charted a clear 'arbitration revolution.'"
- "From less than 10% in the 1990s to more than 50% today, mandatory employment arbitration is now the predominate forum for the resolution of employment claims and likely covers more than 60 million workers."
- "[L]ow-wage workers are subject to mandatory arbitration at higher rates than their higher-paid counterparts."
- "[M]andatory arbitration was more common in industries with higher proportions of women and of African American workers."
- "[M]andatory arbitration falls more heavily on groups that have suffered structural disadvantages in the labor force."

NDAs:[6]

- "[B]etween 33% and 57% of U.S. workers are bound by an NDA or similar mechanism."

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[6] Orly Lobel, *Supporting Market Accountability, Workplace Equity, and Fair Competition by Reining in Non-Disclosure Agreements*, Fed'n of Am. Scientists (Oct. 2021).

Additionally, recent articles bolster the broader stakes and far-reaching implications, particularly regarding whistleblower protections and public safety:

- "[T]he case could have major implications for other whistleblowers and the extent to which forced arbitration proceedings can be used to silence whistleblowers and retaliate against them without oversight."[7]
- Peterson … signed an employment contract with an arbitration provision. … Such issues … could cause patient injuries."[8]
- "What makes this case particularly interesting is how it illustrates the practical difficulty of meeting any of [the courts' FAA procedural] standards … [,e]ven with documentary evidence that appeared to show false testimony (the patent filings), and clear evidence the arbitrator applied the wrong legal standard to the whistleblower claim. … This creates a stark example of how extreme deference to arbitrators may allow parties to prevail through contradictory sworn statements without meaningful judicial oversight."[9]

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[7] Geoff Schweller, *Whistleblower Petitions Supreme Court to Review Retaliation Case Involving Mandatory Arbitration*, Whistleblower Network News (Jan. 12, 2025).

[8] Adam Lidgett, *High Court Urged to Take Whistleblower Medical Device Row*, Law360 (Jan. 6, 2025).

[9] Dennis Crouch, *Patents as Product Liability Admissions: A Cert Petition Highlights Novel Use of Patent Filings in Whistleblower Case*, Patently-O (Jan. 4, 2025).

At a minimum, the numbers and stakes underscore the importance of the Court, as the final arbiter of the law, ensuring that arbitration and NDAs are not misused to unfairly advantage companies requiring employees to agree to them as a condition of employment.

CONCLUSION

Granting certiorari would provide the Court with an opportunity to ensure arbitration functions as a fair and accountable process, consistent with the FAA's original intent and the principles of justice and equity that underpin our legal system.

For these reasons, and on behalf of the millions of workers silenced by forced arbitration and NDAs, we ask this Court to grant review in this case.

Respectfully submitted,

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