No. 25-311

IN THE

Supreme Court of the United States

GENESIS FINANCIAL SOLUTIONS, INC.,
Petitioner,

v.

STEVE FORD; SPRING OAKS CAPITAL SPV, LLC.,
Respondents.

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

BRIEF OF THE AMERICAN BANKERS ASSOCIATION AS AMICUS CURIAE IN SUPPORT OF PETITIONER

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INTEREST OF AMICUS CURIAE[1]

Amicus Curiae American Bankers Association ("*Amicus*" or "ABA") respectfully submits this brief in support of Petitioner Genesis Financial Solutions, Inc. The ABA is the principal national trade association of the financial services industry in the United States. Founded in 1875, the ABA is the voice of the nation's $24.1 trillion banking industry and its 2.1 million employees. ABA members provide banking services, including credit card lending, in each of the 50 states and the District of Columbia. Among them are nationally chartered and state-chartered banks and savings associations of all sizes.

Review by this Court of the Fourth Circuit's decision below, which followed directly from *Johnson* v. *Continental Financial Co.*, 131 F.4th 169 (4th Cir. 2025),[2] is critical to ABA members, constituent organizations, and affiliates (collectively, "Members"). The

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[1] No counsel for a party authored the brief in whole or in part. No party, counsel for a party, or any person other than *amicus* and their counsel made a monetary contribution intended to fund the preparation or submission of the brief.

[2] Although the *Johnson* petition for certiorari (Case No. 25-34) is pending before this Court and presents a similar question, further briefing on the *Johnson* petition has been delayed, and the petition will likely be voluntarily dismissed, because the parties "have reached agreement on the terms for settling the underlying class action and are currently in the process of seeking the approval of the settlement from the United States District Court for the District of Maryland." Joint Letter to Clerk, *Cont'l Fin. Co.* v. *Johnson*, No. 25-34 (U.S. July 28, 2025). If those certiorari proceedings end up going forward in *Johnson*, the Court should consider this case together with *Johnson*.

Fourth Circuit struck down credit card agreements merely because they contained industry-standard clauses addressing arbitration and change-of-terms—all in the service of a Maryland rule that impermissibly requires independent contract consideration for arbitration provisions separate from any consideration underlying the contract as whole. *Cheek* v. *United Healthcare of Mid-Atl., Inc.*, 835 A.2d 656 (Md. 2003). If that ruling stands, it will cause widespread disruption for *Amicus* Members and their customers in exactly the way the Federal Arbitration Act ("FAA") should prevent.

Amicus Members rely on arbitration and change-in-terms clauses to structure their operations effectively. Arbitration offers a predictable, efficient mechanism for resolving disputes arising from consumer transactions, and *Amicus* Members rely heavily on the FAA and this Court's prior decisions protecting the equal footing of arbitration agreements in conducting business nationwide. Moreover, change-in-terms clauses enable *Amicus* Members to adapt contract terms to changes in market conditions and the regulatory landscape, among other developments. That is particularly vital for consumer credit cards and other open-ended credit agreements. Without change-in-terms clauses, credit card issuers would be forced to continually rescind agreements and re-offer them to consumers on new terms as the credit and/or regulatory environment evolves, imposing costs and disruption on both issuers and consumers. Nevertheless, in Maryland and in cases applying Maryland law, plaintiffs may evade otherwise routine and enforceable arbitration agreements based only on a standard change-in-terms clause, subjecting *Amicus*

Members to costly and unnecessary litigation that undermines the efficiencies of arbitration that the FAA was enacted to protect.

The First, Second, Third, Sixth, and Eighth Circuits have correctly recognized that the FAA prohibits separate and heightened consideration requirements for arbitration clauses, while the Fourth Circuit alone has held that the FAA does not preempt the *Cheek* rule. *See* Pet. 10-13. Accordingly, whether an *Amicus* Member can enforce exactly the same arbitration agreement depends on whether the Member operates in Maryland or has a Maryland customer base. Not only does this encourage gamesmanship and forum-shopping, but it also undercuts the uniformity and predictability of the enforcement of arbitration agreements that the FAA was intended to protect. The important question presented by Petitioner is thus nationwide in scope, affecting *Amicus* Members across the country and millions of consumer arbitration agreements. For these reasons, *Amicus* and its Members have a strong interest in the outcome of this case.

INTRODUCTION AND SUMMARY OF ARGUMENT

The FAA preempts unfavorable "legal rules that 'apply only to arbitration.'" *Kindred Nursing Ctrs. Ltd. P'ship* v. *Clark*, 581 U.S. 246, 251 (2017) (quoting *AT&T Mobility LLC* v. *Concepcion*, 563 U.S. 333, 339 (2011)). Maryland's *Cheek* rule plainly violates that equal-treatment command by holding arbitration clauses to a special independent consideration requirement that does not apply to any other type of

contractual term. Rather than strike down that facially discriminatory rule as preempted by the FAA, the Fourth Circuit applied *Cheek* to invalidate the arbitration clause in a credit card agreement based solely on an industry-standard change-in-terms clause. By endorsing the *Cheek* rule, the Fourth Circuit has defied this Court's FAA precedents and split from every other court of appeal to consider the issue.

The question presented by Petitioner has important nationwide implications for *Amicus* Members and other businesses. There are an estimated 754 million open credit card accounts in the United States, each subject to a credit card agreement. In many of those agreements, credit card issuers rely on change-in-terms clauses to nimbly adapt contractual terms to market forces and on arbitration provisions as a cost-effective and efficient way to resolve disputes. As Judge Niemeyer noted in dissent from the related *Johnson* decision, the Fourth Circuit's endorsement of Maryland's discriminatory rule upends a "legal and widespread commercial arrangement" that is core to the "credit card industry." *Johnson*, 131 F.4th at 183-84 (Niemeyer, J., concurring in part and dissenting in part). The *Cheek* rule undermines the predictability of enforcement of arbitration clauses for financial institutions who operate in Maryland or have a Maryland customer base. Such uneven enforcement defeats the efficiency of arbitration and contravenes the national policy favoring arbitration that is embodied in the FAA. Given the important nationwide implications of the question presented, this Court should grant certiorari to resolve the split of authority and restore fidelity to the FAA.

ARGUMENT

I. The Special Requirement of Separate Contract Consideration for Arbitration Clauses Violates the FAA.

The FAA "requires courts to place arbitration agreements 'on equal footing with all other contracts.'" *Kindred Nursing*, 581 U.S. at 248 (quoting *DIRECTV, Inc.* v. *Imburgia*, 577 U.S. 47, 54 (2015)). That command is codified in Section 2, which permits challenges to an arbitration agreement only "upon such grounds as exist at law or in equity for the revocation of *any* contract." 9 U.S.C. § 2 (emphasis added). This Court has repeatedly interpreted this savings clause to "permit[] agreements to arbitrate to be invalidated by 'generally applicable contract defenses, such as fraud, duress, or unconscionability,' but not by defenses that apply only to arbitration or that derive their meaning from the fact that an agreement to arbitrate is at issue." *Concepcion*, 563 U.S. at 339 (quoting *Doctor's Assocs., Inc.* v. *Casarotto*, 517 U.S. 681, 687 (1996); citing *Perry* v. *Thomas*, 482 U.S. 483, 492-93, n.9 (1987)); *see also Rent-A-Ctr., West, Inc.* v. *Jackson*, 561 U.S. 63, 67-68 (2010) (same). The inquiry under Section 2 is not what "grounds that the [state] court might have offered but rather [what] it did in fact offer." *DIRECTV*, 577 U.S. at 54.

Here, Maryland's *Cheek* rule plainly "takes its meaning precisely from the fact that a contract to arbitrate is at issue." *Perry*, 482 U.S. at 492 n.9. *Cheek* requires arbitration clauses, but no other contractual provisions, to contain their own independent contrac-

tual consideration separate from any underlying exchange of consideration that supports the rest of the contract. *Cheek* purports to derive that rule from *Prima Paint Corp.* v. *Flood & Conklin Manufacturing Co.*, 388 U.S. 395, 403 (1967), which held that a dispute over whether an entire contract was fraudulently induced could be delegated to an arbitrator because it does not put "the making" of the contract's arbitration clause, in particular, "in issue." 388 U.S. at 403-04. In other words, "an arbitration provision is severable from the remainder of the contract" when determining whether that provision was validly formed, *Buckeye Check Cashing, Inc.* v. *Cardegna*, 546 U.S. 440, 445 (2006), but "a party's challenge to another provision of the contract, or to the contract as a whole, does not prevent a court from enforcing a specific agreement to arbitrate," *Rent-A-Ctr*, 561 U.S. at 70.

Cheek misreads this narrow severability rule to mean that an arbitration clause must *always* constitute an independent contract containing its own unique consideration and may *never* draw consideration from a "larger" contractual exchange, like the payment of money for services. 835 A.2d at 664-66, 669. That confused sufficiency with necessity. As Justice Harrell noted in dissent, "Although it has been held that arbitration agreements may stand apart from the contracts of which they may be a part, if supported by independent consideration, they nonetheless also may be supported by the consideration that supports the contract as a whole." *Cheek*, 835 A.2d at 672-73 (Harrell, J., dissenting) (citing cases). By misreading *Prima Paint* in that way, *Cheek* violated the

FAA by imposing a heightened consideration test specific to arbitration clauses.

Every other court of appeal to have confronted the question has correctly diagnosed the problem with *Cheek*'s rule. *See* Pet. 10-13 (citing cases). For example, recognizing that a similar state-law standard "appears to have relied on a misreading of *Prima Paint*," the Tenth Circuit held that the rule was an "arbitration-specific law [that] is not the sort of *general* state law applicable under 9 U.S.C. § 2." *In re Cox Enters., Inc. Set-top Cable Television Box Antitrust Litig.*, 835 F.3d 1195, 1212 (10th Cir. 2016) (declining to enforce Arizona rule). The Sixth Circuit too has held that an interpretation of *Prima Paint* "as implying that an arbitration clause is an independent contract that is separable from the main contract in which it is found and therefore must have all of the essential elements of a contract, including consideration" would "clearly be inappropriate given" this Court's FAA precedents. *Wilson Elec. Contractors, Inc.* v. *Minnotte Contracting Corp.*, 878 F.2d 167, 169 (6th Cir. 1989); *see also Doctor's Assocs., Inc.* v. *Distajo*, 66 F.3d 438, 452-53 (2d Cir. 1995) (noting that reading *Prima Paint* to hold that "an arbitration clause is separable from its underlying contract, and therefore must be supported by separate consideration" "might risk running afoul of" the FAA).

The Fourth Circuit's contrary reasoning cannot be squared with this Court's construction of Section 2. The Fourth Circuit held that *Cheek* was not preempted by the FAA because "all *Cheek* does is treat an arbitration provision like any stand-alone con-

tract, requiring consideration," and "[l]ack of consideration is clearly a generally applicable contract defense." *Noohi* v. *Toll Bros. Inc.*, 708 F.3d 599, 612 (4th Cir. 2013).[3] What the Fourth Circuit failed to recognize is that "treat[ing] an arbitration provision like a[] standalone contract" is arbitration-specific, not "generally applicable." *Id.* Maryland law does not treat any other type of contractual promise as a standalone contract requiring independent consideration.

Rather, the generally applicable rule is that "[a] benefit to the promisor"—such as the credit made available to the consumer here—"is sufficient valuable consideration to support *a contract*" as a whole, including each of its constituent clauses. *Vogelhut* v. *Kandel*, 517 A.2d 1092, 1096 (Md. 1986) (emphasis added). "If the requirement of consideration is met, there is no additional requirement of … mutuality of obligation" for individual promises. Restatement (Second) of Contracts § 79 (1981); *see also* 3 Williston on Contracts § 7:54 (4th ed.) ("A single performance or return promise may … furnish consideration for any number of promises."). These well-established principles of contract law "would ordinarily govern" the sufficiency of consideration for a contractual promise, *DIRECTV*, 577 U.S. at 56, and nothing in *Cheek* calls their general applicability to other contracts in Maryland into question, *see* 835 A.2d at 661 (recounting Maryland contract law). Rather, *Cheek*'s "conclusion appears to reflect the subject matter at issue here (arbitration), rather than a general principle that would

[3] The decision below relied exclusively on *Noohi* in deciding the preemption issue. *See* Pet. App. 2a n.*.

apply to contracts." *DIRECTV*, 577 U.S. at 56; *see supra* pp. 5-6.

II. The Question Presented Has Nationwide Implications for Financial Institutions.

Every one of the roughly 754 million credit cards open in the United States is governed by a credit card agreement.[4] With 82 percent of U.S. adults owning a credit card, credit payments have become near ubiquitous among U.S. households.[5] This widespread adoption is no surprise—credit cards are safe, reliable, secure, and almost universally accepted by merchants around the world and online. Both consumers and businesses accrue substantial benefits from using and accepting credit card payments.

The agreement struck down by the Fourth Circuit—containing an arbitration clause and general change-in-terms clause—was "consistent with the general contractual structure employed in the credit card industry." *Johnson*, 131 F.4th at 183 (Niemeyer, J., concurring in part and dissenting in part). If the Fourth Circuit's erroneous decision stands, that standard contractual structure would effectively be

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[4] Consumer Finance Protection Bureau, *The Consumer Credit Card Market* 87 ("2023 Consumer Credit Card Report") (Oct. 2023), https://perma.cc/2G2Y-L4C4 ("By year-end 2022, there were 548 million open general purpose card accounts [and] 206 million open private label accounts.").

[5] Kevin Foster, Claire Greene & Joanna Stavins, *2023 Survey & Diary of Consumer Payment Choice: Summary Results* 7, Fed. Rsrv. Bank of Atlanta, Research Data Report, No. 24-1 (2024), https://perma.cc/L8BH-PBDY.

banned for Maryland businesses or out-of-state businesses dealing with Maryland consumers, unsettling "legal and widespread commercial arrangement[s]" that underpin a critical sector of the U.S. financial services industry. *Id.* at 184.

A. Credit Card Lending Is a Nationwide Business.

Credit card lending is a prevalent source of credit for Americans. Credit cards offer consumers convenience,[6] financial flexibility, and protection of their purchases. Most Americans use credit cards, *see supra* p. 9, and a strong majority of those consumers are happy with their credit cards.[7] As of 2022, there were 754 million open credit card accounts in the United States.[8] U.S. consumers spend over $3 trillion through credit cards each year, and the total amount of credit available was $5.1 trillion in 2022.[9]

About 4,000 financial institutions, many of them *Amicus* Members, offer credit cards to consumers.[10] The Fourth Circuit's erroneous decision will have a disparate impact on the operations of the dozens of

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[6] In a recent survey, 94 percent of consumers reported that they value the convenience of using their credit cards. ABA, *New Consumer Polling Data: Americans Oppose Policy Changes that Threaten Credit Card Reward Programs* ("2025 ABA Survey") (Apr. 9, 2025), https://perma.cc/S6LP-Q9PR.

[7] *See* 2025 ABA Survey.

[8] 2023 Consumer Credit Card Report*, supra*, at 87.

[9] *Id.* at 31, 89.

[10] *Id.* at 18.

financial institutions based in Maryland.[11] Although many credit card issuers are not based in Maryland, most make credit cards available nationally.[12] Thus, many of the estimated 3.95 million Maryland residents who are credit card consumers[13] likely hold a credit card from an out-of-state institution. As detailed below (pp. 17-18), and in light of the Fourth Circuit's unwillingness to enforce the card agreement's choice of law provision (a separate error), the question presented therefore has nationwide implications, as many institutions attempting to operate a nationwide business will be forced to contend with the Maryland rule.

B. Open-Ended Credit Issuers Must Have the Flexibility to Change the Terms of Credit Agreements.

Every credit card account is subject to a credit agreement between the issuer and consumer.[14] Unlike closed-end credit (such as a mortgage or car loan), open-end credit plans (such as credit cards) have no

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[11] *See* iBanknet, *Maryland – Financial Institutions* (June 30, 2025), https://perma.cc/FM68-RH64 (sourced from data from the FDIC, FRB, NCUA, OCC, SEC, and U.S. Department of Treasury).

[12] 493 (87%) of the 566 credit cards in a 2024 survey were offered nationally. *See* CFPB, *Terms of Credit Card Plans Survey Results for June 30, 2024 – December 31, 2024*, https://perma.cc/LXU9-NUX4.

[13] Capital One Shopping Research, *How Many Americans Have Credit Cards* (June 3, 2025), https://perma.cc/NC47-TJK5.

[14] *See, e.g.*, CFPB, *Know Before You Owe: Credit Cards* (Dec. 12, 2024), https://perma.cc/DN5Y-ZPD6.

finite term and instead contemplate repeated, revolving extensions going forward. 15 U.S.C § 1602(j). Typically, either party is free to terminate a credit card agreement at any time.

The indefinite nature of open-end credit plans requires that issuers be afforded flexibility in adjusting terms of the contract. Issuers must be able to adapt to changes in market conditions, the regulatory landscape, consumer spending trends, and the like. Issuers thus need to change terms such as the annual percentage rate, fees, and credit limits, which most card agreements permit, subject to regulatory notification provisions. For example, certain fees may be subject to regulatory limitations that can change over time due to changes in the applicable regulations or inflation adjustments.[15] Issuers may also use credit line management to respond to default risk revealed after origination or changes in nationwide economic conditions.[16]

That is where change-in-terms clauses play a vital role. *See* 17A Am. Jur. 2d Contracts § 496 ("Parties to a contract are not forever locked into its terms, but have the right to amend their contract by mutual consent."). Without the ability to efficiently modify open-end credit agreements via change-in-terms clauses, issuers would be forced to effect modifications by terminating plans and re-offering them to consumers on new terms.

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[15] *See, e.g.,* 12 C.F.R. § 1026.52.

[16] 2023 Consumer Credit Card Report, *supra*, at 93.

But such a draconian method would be cumbersome and costly for both issuers and borrowers. Consumers generally want to keep their accounts open, as closure of a credit card account can reduce access to needed liquidity, interfere with preauthorized transfers, and generally inconvenience cardholders. Indeed, only two percent of accounts are closed each year.[17] And issuers would be forced to bear unnecessary transaction costs: U.S. consumers submitted over 160 million credit card applications in 2022,[18] and that number would multiply if issuers were forced to continuously terminate and re-open customer accounts instead of modifying their terms. The law does not require such inefficiency. *Accord* 12 C.F.R. § 1026.9(c)(2) (federal regulations contemplating changes in terms of open-end credit agreements with sufficient notice).

Given the need for flexibility in open-ended credit arrangements, change-of-terms clauses are ubiquitous in credit card agreements. The change-in-terms clause in this case used language standard in the industry, authorizing the issuer to change terms after any notice "required by applicable law" and making those changes enforceable if the consumer consents by continuing to use the card.[19]

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[17] 2023 Consumer Credit Card Report, *supra*, at 96.

[18] *Id.* at 77.

[19] *Compare* Pet. App. 8a-9a ("Subject to the limitations of applicable law, we may, at any time, change or remove any of the terms and conditions of, or add new terms or conditions to, this Agreement. If required by applicable law, we will mail written

Ordinarily, nothing about that arrangement calls into question whether the issuer has provided contractual consideration. Issuers extend credit to consumers, and that is more than enough to provide consideration for the credit card agreement and its constituent terms. Indeed, numerous courts of appeals have enforced agreements with this sort of change-in-terms language. *See, e.g.*, *Larsen* v. *Citibank FSB*, 871 F.3d 1295, 1317 (11th Cir. 2017) ("We reserve the right to change or add to the terms and conditions of this Agreement or change the terms of your Account at any time. We will give you such notice of the change as we determine is appropriate … and as required under applicable law."); *Carroll* v. *Stryker Corp.*, 658 F.3d 675, 678 (7th Cir. 2011) ("[The company] may add, change, or rescind any of the policies, benefits, or practices listed, with or without advance notice, at the discretion of management."); *Goff* v. *Nationwide Mut. Ins., Co.*, 825 F. App'x 298, 300 (6th Cir.

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notice of such a change to you in the manner required by such law."), *with e.g.*, CFPB, *Apple Card Customer Agreement* 2 ("Apple Card Customer Agreement") (June 30, 2025), https://perma.cc/DB8U-U6TF ("Subject to applicable law, we may change any term of this Agreement, or add new provisions, at any time in our sole discretion."); CFPB, *Discover Cardmember Agreement* 1 ("Discover Cardmember Agreement") (June 30, 2025), https://perma.cc/7XML-7EHX ("We may add or delete any term to this Agreement. If required by law, we will give you advance written notice of the change(s) and a right to reject the change(s)."); CFPB, *Cardmember Agreement for U.S. Bank National Association American Express Credit Card Accounts* 6 ("U.S. Bank Cardmember Agreement") (June 30, 2025), https://perma.cc/HRR4-X93V ("Account and Agreement terms are not guaranteed for any period of time; we may change the terms of your Agreement, including APRs and fees, in accordance with applicable law and the terms of your Agreement.").

2020) ("Nationwide shall have the right to change, alter, amend or otherwise modify such Arbitration Procedures and/or the Nationwide Arbitration Rules at any time and from time to time and Agent acknowledges and agrees that any such change, alteration, amendment or limitation shall become effective on the date published by Nationwide.").

C. The Fourth Circuit's Decision Unevenly Undermines the Enforcement of Valid Arbitration Clauses.

The Fourth Circuit's decision creates a profound disruption to that settled status quo. By unlawfully requiring arbitration provisions to contain their own independent consideration, and then ruling that an exchange of promises to arbitrate does not suffice if it is subject to a standard change-in-terms provision, the Fourth Circuit has imperiled the use of arbitration and "undermine[d] the universal practice of allowing credit card companies to make changes so long as they provide credit card holders with notice and the opportunity to accept or reject the changes." *Johnson*, 131 F.4th at 185 (Niemeyer, J., concurring in part and dissenting in part).

For many *Amicus* Members and other institutions, arbitration is a faster, more efficient, and more cost-effective method of resolving disputes than court litigation. It minimizes the disruption and loss of goodwill that often results from litigation and is more convenient for both *Amicus* Members and their customers. This Court has long recognized such benefits. *See, e.g.*, *Stolt-Nielsen S.A.* v. *AnimalFeeds Int'l Corp.*, 559 U.S. 662, 685 (2010) ("In bilateral arbitration,

parties forgo the procedural rigor and appellate review of the courts in order to realize the benefits of private dispute resolution: lower costs, greater efficiency and speed, and the ability to choose expert adjudicators to resolve specialized disputes.").

Following the Court's blessing of the use of arbitration in consumer contracts in *Concepcion* in 2011, credit card issuers and many other businesses began to add arbitration clauses to their agreements as an efficient means of dispute resolution. By 2020, 75 percent of the 20 largest bank issuers and almost 60 percent of other banks included arbitration clauses in their credit card agreements.[20]

As with the credit card agreement struck down by the Fourth Circuit, many arbitration clauses are subject to a standard change-in-terms clause.[21] Although many changes in terms do not pertain to arbitration, *see supra* p. 12, there are frequent developments in the law of arbitration that may require businesses to amend their arbitration clauses. Just as with a change in interest rate, it would be costly and cumbersome to require an issuer to terminate a credit agreement and re-offer the same product to the consumer with an amended arbitration clause. Change-in-terms clauses avoid such inefficiency to benefit both issuers and consumers. *See supra* pp. 12-13.

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[20] CFPB, *The Consumer Credit Card Market* 125-26 (Sept. 2021), https://perma.cc/U86P-YM9L.

[21] *See, e.g.*, Apple Card Customer Agreement, *supra*, at 18-19; Discover Cardmember Agreement, *supra*, at 2-3; U.S. Bank Cardmember Agreement, *supra*, at 7.

By invalidating an arbitration clause based solely on the presence of a standard change-in-terms contract clause, the *Cheek* rule may force issuers to give up their rights under the FAA to use arbitration against a subset of consumers. The prospect of such uneven enforcement of their arbitration clauses threatens the ability of issuers to conduct uniform nationwide operations.

That concern is particularly acute given the additional uncertainty introduced by the Fourth Circuit's recent refusal to honor choice-of-law provisions in credit card agreements. *See Johnson*, 131 F.4th at 178. *Johnson*, for example, held that Maryland law applied because Maryland was where the cardholder "accepted and used the card," despite the parties' designated choice of Utah and Missouri law. *Id.* at 179 (internal quotation marks omitted). That approach will expand the impact of the Fourth Circuit's erroneous arbitration rulings, with Maryland consumers empowered to invoke the *Cheek* rule despite their contractual promises to be bound by a different state's contract law. Such unpredictability in enforcement further undermines the FAA's purposes and squanders the efficiency of alternative dispute resolution. *See Southland Corp.* v. *Keating*, 465 U.S. 1, 15 (1984) (declining to "encourage and reward forum shopping" and "attribute to Congress the intent, in drawing on the comprehensive powers of the Commerce Clause, to create a right to enforce an arbitration contract and yet make the right dependent for its enforcement on the particular forum in which it is asserted").

CONCLUSION

For the foregoing reasons and the reasons set forth by Petitioner, *Amicus Curiae* respectfully requests that the Petition be granted.

Respectfully submitted,

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