

THE SUPREME COURT HAS GRANTED REVIEW FOR ARBITRATION STAYS IN
EMPLOYMENT CASES: SMITH V. SPIZZIRRI

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The Supreme Court has granted review to address a circuit split on whether cases should be paused or thrown out after they are moved to arbitration.¹ The courts are split six to four, four allowing lawsuits to be dismissed when underlying allegations must go through mandatory arbitration.² The case is from the Ninth Circuit, on the allowance side of the split, *Smith v. Spizzirri*, with the petition granted 1/12/24.³ It addresses the language in a section of the Federal Arbitration Act (“FAA”).⁴ The section of the Act under review states: “If any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is preferable to arbitration under such an agreement, shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement, providing the applicant for the stay is not in default in proceeding with such arbitration.”⁵

The Ninth Circuit held that there was binding precedent for its ruling despite what other courts found to be clear text in the statute.⁶ Plaintiffs in *Smith* argued in favor of stay because it would come with administrative benefits.⁷ The Court is expected to follow the text of the statute

¹ Steven K. Davidson et al., “Should I Stay or Should I Go?” *Supreme Court to Address Circuit Clash Over Arbitration Procedures*, STEPTOE (Feb. 6, 2024), <https://www.steptoelaw.com/en/news-publications/should-i-stay-or-should-i-go-supreme-court-to-address-circuit-clash-over-arbitration-procedures.html>, [https://perma.cc/M66U-HB4W].

² *Id.*

³ *Id.*

⁴ 9 U.S.C.A. §3.

⁵ *Id.*

⁶ Philip J. Loree Jr., *Status of Arbitration- Law Cases Pending Before SCOTUS this Term*, LOREE L. FIRM (Feb. 12, 2024), <https://loreelawfirm.com/blog/> [https://perma.cc/3A6J-3YVH].

⁷ Lee Williams, *Stay or Dismiss? The Supreme Court Grants Cert on Its Third Arbitration Case This Term*, CPR (Jan. 15, 2024),

and rule that dismissal is inappropriate, and that the case should be stayed.⁸ But the opposition argues that the intent of the FAA is to promote efficient dispute resolution, which dismissal would promote.⁹

A dismissal order can be appealed, but a stay cannot.¹⁰ If the Court rules that dismissal is appropriate, an influx of appeals could result in delays and increased costs.¹¹ Arbitration is intended as a more efficient alternative to traditional courtroom litigation, and a slowdown could have a negative impact on the process of arbitration and on public perception of alternative dispute resolution (“ADR”).¹²

A ruling favoring arbitration could set a new precedent for prioritizing ADR.¹³ The Court has been tending towards ruling for arbitration.¹⁴ In *Coinbase v. Bielski*, the Court held that “a district court must stay its proceedings in a case pending an appellate court decision on whether that case belongs in arbitration or district court.”¹⁵ The Court’s pro-arbitration interpretation of the FAA is attributed to their support of business interests, which benefit from the efficiency and private nature of ADR.¹⁶ Over sixty million American workers are subject to mandatory

<https://www.cpradr.org/news/stay-or-dismiss-the-supreme-court-grants-cert-on-its-third-arbitration-case-this-term>
[<https://perma.cc/9PSZ-JYFN>].

⁸ Stefanie Jackman, *Supreme Court to Decide Whether District Courts Have the Discretion to Dismiss Cases Subject to Arbitration*, JDSUPRA (Jan. 22, 2024), <https://www.jdsupra.com/legalnews/supreme-court-to-decide-whether-6996562/> [<https://perma.cc/T9CA-KJ8Q>].

⁹ Rizwan Shah, *Supreme Court to Decide Fate of Arbitration Remedies in Smith v. Spizzirri*, BNN (Feb. 14, 2024), <https://bnnbreaking.com/courts-law/law/supreme-court-to-decide-fate-of-arbitration-remedies-in-smith-v-spizzirri> [<https://perma.cc/X2ZZ-8YNA>].

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ Shah, *supra* note 9.

¹⁴ See Roland Potts, *U.S. Supreme Court Rules in Favor of Arbitration Potentially Altering Legal Strategies for Wide Range of Cases*, FOLEY (Jun. 29, 2023), <https://www.foley.com/insights/publications/2023/06/us-supreme-court-rules-favor-arbitration/> [<https://perma.cc/9XR7-ZMJZ>].

¹⁵ *Id.*

¹⁶ Pamela K. Bookman, *The Arbitration-Litigation Paradox*, 72 VAND. L. REV. 1119 (2019).

arbitration contracts.¹⁷ In such cases, where employees' claims are subject to this mandatory arbitration agreement, dismissal could take away administrative benefits.

It also may have an impact on subject matter jurisdiction ("SMJ"). If the Court rules in favor of allowing cases to be stayed, then parties could have a stronger SMJ claim in that jurisdiction.¹⁸ Under the newly decided *Badgerow*, a court needs a "jurisdictional anchor" outside of federal question jurisdiction.¹⁹ If a court is able to stay a case, then it creates that jurisdictional anchor outside of federal question, allowing the court to keep its SMJ and use it to grant motions.²⁰ If the Court rules in favor of allowing stays in *Smith*, it may be easier for parties to assert SMJ.

A ruling for arbitration stays in this case would have implications for the enforceability of arbitration agreements by removing the option of dismissal. The lasting ramifications for future employment arbitration agreements could put plaintiffs in a challenging situation. A dismissal would require plaintiffs to file a new action, potentially having to face a different judge.²¹ The defendant party would be able to file appeals immediately, removing the appellate-review process and disrupting the arbitration.²²

This Court granting review for *Smith v. Spizzirri* demonstrates the rising power of arbitration in the legal world. Since the 1980s, litigation has been falling out of fashion, replaced by its more efficient alternative.²³ A ruling in favor of arbitration stays without fallback to litigation would continue the Court's precedent of promoting ADR methods.

¹⁷ Alexander J.S. Colvin, *The Growing Use of Mandatory Arbitration*, ECON. POL'Y INST. (Apr. 6, 2018), <https://www.epi.org/publication/the-growing-use-of-mandatory-arbitration-access-to-the-courts-is-now-barred-for-more-than-60-million-american-workers/> [https://perma.cc/V9KE-E6KY].

¹⁸ Loree Jr., *supra* note 6.

¹⁹ *Id.*

²⁰ *Id.*

²¹ Davidson et al., *supra* note 1.

²² *Id.*

²³ *Id.*