No. 12-746

IN THE

Supreme Court of the United States

D.R. HORTON, INC., *ET AL.*,

Petitioners,

v.

LOREN LYNDOE, *ET AL.*,

Respondents.

On Petition for a Writ of Certiorari to the Court of Appeals of New Mexico

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether an intermediate New Mexico appellate court erred in permitting consolidated arbitration under an arbitration agreement that explicitly incorporated a New Mexico statute allowing consolidated arbitration.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases:

Statutes:

INTRODUCTION

D.R. Horton's petition for a writ of certiorari buries the most significant fact of this case: The arbitration agreement at issue explicitly provides for arbitration in accordance with New Mexico's Uniform Arbitration Act (UAA). The UAA, in turn, expressly authorizes consolidated arbitration unless an arbitration agreement prohibits it, which Horton's agreement does not. By choosing to incorporate New Mexico law in its arbitration agreement, Horton agreed to the procedures available under the UAA, including the consolidated arbitration procedure ordered by the state courts below.

Given the terms of Horton's agreement, the state courts' decision to order consolidated arbitration under the UAA does not in any way conflict with the Federal Arbitration Act (FAA). As this Court explained in *Volt Information Sciences v. Board of Trustees of Leland Stanford Junior University*, application of arbitration procedures called for by a state statute "is not pre-empted by the Federal Arbitration Act … in a case where the parties have agreed that their arbitration agreement will be governed by the law of [the state]." 489 U.S. 468, 470 (1989). Thus, even if the question whether this Court's decision in *Stolt-Nielsen S.A. v. AnimalFeeds International Corp.*, 130 S. Ct. 1758 (2010), applies to consolidated arbitration might otherwise merit review by this Court in a case where the parties had *not* agreed to arbitrate under a state statute authorizing such proceedings, there is no conceivable reason to address the issue here.

Whether the FAA as construed in *Stolt-Nielsen* prohibits consolidated arbitration absent affirmative agreement by the parties is in any event not an issue

that requires review by this Court. Horton identifies no decisions from any other courts that have considered *Stolt-Nielsen*'s applicability to consolidated arbitration under a state arbitration law, let alone decisions that have reached a different result from the one below on that issue. Particularly in light of the substantial differences between consolidated arbitration and class arbitration, there is no reason for the Court to reach out to review an intermediate state court decision in the absence of any conflict among federal or state appellate courts over *Stolt-Nielsen*'s reach in this area.

But in any event, this case provides no occasion to consider *Stolt-Nielsen*'s potential application to consolidated arbitration because the parties' agreement here expressly incorporated New Mexico's UAA, which provides for consolidation. Under *Volt*, the application of state law specified in the parties' arbitration agreement is not preempted by the FAA. Period.

JURISDICTION

Horton invokes this Court's jurisdiction under 28 U.S.C. § 1257. Section 1257 provides jurisdiction only over "[f]inal judgments or decrees" of state courts, and this Court has emphasized that § 1257 "establishes a firm final judgment rule." *Jefferson v. City of Tarrant*, 522 U.S. 75, 81 (1997). The Court has explained that an order in a pending action compelling arbitration is *not* a final judgment unless it simultaneously resolves or dismisses all claims pending before the court, which did not occur here. *See Green Tree Fin. Corp. v. Randolph*, 531 U.S. 79, 85-89 (2000). Nor does this case fit within any of the four categories of interlocutory state-court orders that this Court treats as final under its ruling in *Cox Broad-*

casting Corp. v. Cohn, 420 U.S. 469 (1975). The only one of those categories that even arguably could apply is the fourth, reserved for those cases where declining immediate review would "seriously erode federal policy." *Id.* at 482-83. But compelling arbitration in accordance with the law chosen by the parties to govern their arbitration agreement would not erode federal policy at all. This Court therefore lacks jurisdiction over Horton's petition.

STATEMENT

Respondents are the owners of 37 homes built by Horton in the 202-home Sagebrush subdivision at Huning Ranch in the Village of Los Lunas, New Mexico, south of Albuquerque. Respondents' homes were built and sold by Horton from 2006 to 2009. Since 2008, respondents' homes have experienced various deficiencies, many of which were caused by the settlement of subsurface soils. At the time the district court ordered a consolidated arbitration in 2010, Horton's own engineer had confirmed that at least seven homes in the subdivision had experienced maximum floor level differentials exceeding typical construction tolerances of 0.5 to 1.5 inches, as a result of the compaction and settlement of soils underneath the houses.[1] Floor level differentials in excess of typical construction tolerances have caused cracking in dry wall, separation between baseboards and floors, cracking in windows and window frames, cracking in ceramic tiles, separation along tile grout joints, bulging and

[1] Homes in Huning Ranch have continued to settle during the pendency of Horton's appeal. There are now at least 30 homes built by Horton in Huning ranch that have floor level differentials exceeding 0.5 to 1.5 inches.

cracking of stucco due to framing movement and distortion, and sticking and cracking of doors, cabinets and shelves. Homeowners have also suffered significant damage to sidewalks and driveways.

The purchase agreements between Horton and homeowners who bought houses in Huning Ranch from Horton contain an arbitration clause that provides:

> ARBITRATION: THIS CONTRACT IS SUBJECT TO ARBITRATION *UNDER THE NEW MEXICO UNIFORM ARBITRATION ACT* AND THE FEDERAL ARBITRATION ACT. … Buyer and Seller agree that any disputes or claims between the parties … shall be settled by binding arbitration in accordance with the American Arbitration Association ("AAA") "Construction Industry Arbitration Rules" except as specifically modified herein or dictated by applicable statutes *including the New Mexico Uniform Arbitration Act* and/or the Federal Arbitration Act.

Pet. App. 82-83 (emphasis added.)

New Mexico's UAA, in turn, provides that unless an arbitration agreement prohibits consolidated arbitration, a court may order consolidation of arbitrations under separate agreements if the claims arise out of related transactions and involve common issues of law or fact, and if the benefits of consolidation to the parties outweigh any prejudice that might result:

> (a) Except as otherwise provided in subsection (c), upon motion of a party to an agreement to arbitrate or to an arbitration proceeding, the court may order consolidation of separate arbitration proceedings as to all or some of the claims if:

(1) there are separate agreements to arbitrate or separate arbitration proceedings between the same persons or one of them is a party to a separate agreement to arbitrate or a separate arbitration proceeding with a third person;

(2) the claims subject to the agreement to arbitrate arise in substantial part from the same transaction or series of related transactions;

(3) the existence of a common issue of law or fact creates the possibility of conflicting decisions in the separate arbitration proceedings; and

(4) prejudice resulting from a failure to consolidate is not outweighed by the risk of undue delay or prejudice to the rights of or hardship to parties opposing consolidation.

(b) The court may order consolidation of separate arbitration proceedings as to some claims and allow other claims to be resolved in separate arbitration proceedings.

(c) The court may not order consolidation of the claims of a party to an agreement to arbitrate if the agreement prohibits consolidation.

N.M. Stat. Ann. § 44-7A-11. Nothing in the Horton arbitration clauses prohibits consolidated arbitration.

In September 2009, the original group of respondents owning 14 homes notified Horton of their intent to proceed with claims for defects in their homes, and they requested copies of any contracts of sale and arbitration agreements that would pertain to their claims. Horton refused to provide this documentation,

asserting that no pending litigation or arbitration required such production. Therefore, in November 2009, respondents filed suit. Upon receiving some documentation from Horton, including sales agreements containing arbitration clauses, those respondents who purchased their homes directly from Horton amended their complaint to seek an order compelling arbitration pursuant to the sales agreements. In March 2010 the original-purchaser respondents filed a motion to compel consolidated arbitration pursuant to New Mexico's UAA, seeking an order requiring arbitration under the terms of the purchase agreements and consolidating the resulting arbitration proceedings before a single arbitrator as permitted under the UAA.

Respondents supported their motion to compel consolidated arbitration with photographs and reports from Horton's engineer, demonstrating that their claims had a common factual and legal basis because the damages to their homes were the result of a common defect—the compaction and settlement of subsurface soils for which Horton was responsible.

The district court granted respondents' motion to compel consolidated arbitration. The court found that the claims met all the UAA criteria for consolidation: They arose under separate agreements to arbitrate but involved the same series of related transactions and involved common issues of law or fact, and any prejudice from ordering consolidation would be outweighed by prejudice from not consolidating. As to the latter criterion, the trial judge found that "having one arbitrator will be able to facilitate the arbitrations and move the case along as opposed to potentially 28 arbitrators, and at the very least, 21 arbitrators, making inconsistent rulings."

Horton appealed, and the New Mexico Court of Appeals affirmed in July 2012. The court held that the consolidation order was proper under the UAA because the claims arose from a related series of transactions and presented common issues of fact concerning the damage to respondents' homes, the resolution of which in multiple separate arbitrations could lead to inconsistent decisions. Pet. App. 10-13. The court agreed with the district judge that the efficiency and fairness of consolidated proceedings outweighed any prejudice Horton might claim to suffer, and it rejected Horton's contention that ordering consolidation would "compromise[]" its "contractual rights." *Id.* at 13. As the court noted, "it was Horton that drafted the arbitration agreements, and it could have easily included a provision prohibiting consolidation," as permitted by the UAA. *Id*.

In addition to rejecting a number of other state-law procedural arguments offered by Horton, the court addressed Horton's claim that compelling consolidated arbitration was prohibited by the FAA as construed by this Court in *Stolt-Nielsen*, which held that "a party may not be compelled under the FAA to submit to class arbitration unless there is a contractual basis for concluding that the party agreed to do so." 130 S. Ct. at 1775. The court pointed out that in *Stolt-Nielsen*, unlike this case, the parties did not contract against the backdrop of a state statute that provided for the challenged procedure. Pet. App. 17 (citing 130 S. Ct. at 1768-69). Moreover, the court observed that "a consolidated arbitration involving specific, named parties" is very different from a class proceeding, as it does not decide the rights of absent parties and proceeds under criteria completely distinct from rules governing class actions. *Id*. The court

therefore rejected Horton's claim that the consolidated arbitration ordered in this case "fundamentally changed the nature of the arbitration to such a degree that it cannot be presumed the parties consented to it." *Id*. at 16.

Finally, the court considered Horton's argument that "[t]he district court's misinterpretation of [the consolidation statute] must be addressed by this Court to prevent the creation of public policy by the arbitrator." *Id*. at 18. According to Horton, consolidated arbitration would give the arbitrator "too much discretion" to resolve matters affecting more than one home. *Id*. The court rejected Horton's policy argument:

> We fail to see how an arbitrator's control over the procedural aspects of the consolidated arbitration will result in the creation of public policy. Instead, the arbitrator can reasonably orchestrate the arbitration to streamline the process, avoid duplication of effort, and resolve the individual claims in a consistent manner. In our view, consolidation of the individual homeowners' arbitrations is consistent with the purpose of arbitration, which is "to further judicial economy by providing a quick, informal, and less costly alternative to judicial resolution of disputes."

Id. at 18-19 (citation omitted).

The Supreme Court of New Mexico denied review in September 2012. Pending the filing and disposition by this Court of the instant petition for a writ of certiorari, however, Horton has continued to resist the appointment of an arbitrator to decide respondents' claims. Horton's litigation tactics have now delayed respondents' efforts to arbitrate their claims in ac-

cordance with the terms of the arbitration clause and the UAA procedures that it incorporates for more than three years.[2]

REASONS FOR DENYING THE WRIT

I. The Application of New Mexico's UAA to an Arbitration Agreement That Expressly Calls for Its Application Raises No Issue of FAA Preemption.

Horton asserts that this Court should review the decision below solely because of Horton's view that it is inconsistent with this Court's decisions—in particular, with *Stolt-Nielsen*'s holding that the FAA does not permit class arbitration absent a contractual basis for finding that the parties agreed to class proceedings. However, Horton ignores the inconvenient fact that *its* arbitration agreement *expressly* calls for the application of New Mexico's UAA, which provides for consolidated arbitration in circumstances such as those here unless an arbitration agreement forecloses it. This Court has squarely held that when an arbitration agreement calls for the application of a state arbitration statute, the FAA does not bar the use of procedures called for by the state statute even if they would otherwise be unavailable under the FAA. Ra-

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[2] Some homeowners included in the consolidated arbitration ordered by the district court in 2010 could not wait for a decision on their claim during Horton's lengthy appeal. Master Sergeant Samuel Hauge, USAF, and his wife Ms. Misty Hauge, and Mr. Lou Acanfrio proceeded with their claims in separate arbitrations before two respected former state district court judges sitting as arbitrators. Both arbitrators found that Horton was negligent and breached its sales contracts in the construction of homes in Huning Ranch, and ordered rescission and other damages.

ther, the application of the state procedural law specified in the arbitration agreement is fully consistent with "the FAA's primary purpose of ensuring that private agreements to arbitrate are enforced according to their terms." *Volt*, 489 U.S. at 479.

In *Volt*, this Court considered an arbitration agreement with a choice-of-law provision calling for the application of California law. Construing the choice of law provision to call for application of California's Arbitration Act as well as California substantive law, the California courts had stayed an arbitration under the agreement pending the resolution of related litigation. Such a stay was permitted under California's Arbitration Act, but would not be available under the FAA. *See id.* at 472. In this Court, the party seeking to proceed with the arbitration argued that the FAA preempted application of the California Arbitration Act's stay provision.

This Court emphatically held that the preemption argument "fundamentally misconceives the nature of the rights created by the FAA." *Id.* at 472. As the Court explained, "the FAA does not confer a right to compel arbitration of any dispute at any time; it confers only the right to obtain an order directing that 'arbitration proceed *in the manner provided for in [the parties'] agreement.*'" *Id*. at 474-75 (emphasis and alteration by the Court). "There is no federal policy favoring arbitration under a certain set of procedural rules; the federal policy is simply to ensure the enforceability, according to their terms, of private agreements to arbitrate." *Id*. at 476. Nor, the Court held, does the FAA "occupy the entire field of arbitration" and prohibit states from enacting laws providing parties the option to choose arbitration under proce-

dures that might not otherwise be available under the FAA itself. *Id*. at 477.

Thus, the FAA does "not prevent[] the enforcement of agreements to arbitrate under different rules than those set forth in the Act itself. Indeed, such a result would be quite inimical to the FAA's primary purpose of ensuring that private agreements to arbitrate are enforced according to their terms." *Id*. at 479. That purpose, the Court concluded, is advanced rather than hindered by the application of state law procedures when an arbitration agreement calls for their application, even if those procedures are different from, or opposite to, those that might apply under the FAA absent the parties' choice to incorporate state law in their agreement: "Where, as here, the parties have agreed to abide by state rules of arbitration, enforcing those rules according to the terms of the agreement is fully consistent with the goals of the FAA, even if the result is that arbitration is stayed where the Act would otherwise permit it to go forward." *Id*.

Volt controls this case. The arbitration agreement here is even more explicit than the one in *Volt*: There, the agreement merely had a choice-of-law provision specifying application of California law, which had been *construed* to include California's Arbitration Act. Here, the agreement *expressly* provides that arbitration shall proceed under the rules of the American Arbitration Association except to the extent that "applicable statutes including the New Mexico Uniform Arbitration Act" provide for different procedures. The UAA specifically provides for consolidated arbitration under the circumstances of this case. Under *Volt*, the use of that UAA procedure, based on Horton's own

choice to select the New Mexico UAA as governing law in the arbitration clause, is not preempted *even if* the FAA would otherwise preclude consolidated arbitration.

No decision of this Court suggests that *Volt* is not controlling here. Indeed, both *Stolt-Nielsen* and *AT&T Mobility LLC v. Concepcion*, 131 S. Ct. 1740 (2011), the two decisions on which Horton principally relies, repeatedly invoke *Volt*'s holding that arbitration agreements must be enforced according to their terms. *See Stolt-Nielsen*, 130 S. Ct. at 1773, 1774, 1775; *Concepcion*, 131 S. Ct. at 1748, 1749. And both decisions reiterate the point that governs here: Under *Volt*, parties "may agree … to arbitrate according to specific rules." *Id.* at 1748-49; *see Stolt-Nielsen*, 130 S. Ct. at 1774. Horton cites no decision by this Court or any other that has accepted its argument that the FAA preempts the parties' choice to arbitrate under procedures called for by a state arbitration statute.

In the face of the arbitration agreement's choice of procedures called for by the UAA, Horton's insistence that it did not *subjectively* intend to permit consolidated arbitration (Pet. 7) adds nothing to its claim of preemption under *Stolt-Nielsen*. In contract law, both generally and in New Mexico, "what is operative is the objective manifestations of mutual assent by the parties, not their secret intentions." *Pope v. Gap, Inc.*, 961 P.2d 1283, 1287 (N.M. Ct. App. 1998). Here, regardless of what its personnel may have thought about whether it was agreeing to consolidated arbitration, Horton objectively manifested its consent to that procedure when it drafted and imposed on its customers an arbitration agreement that expressly calls for application of the procedures provided for by the New

Mexico UAA, which include consolidated arbitration unless an agreement says otherwise. Horton may not have understood the meaning of its own contract, but that is irrelevant: It chose to arbitrate under New Mexico's UAA. Under *Volt* as well as *Stolt-Nielsen* and *Concepcion*, the FAA does not preempt that choice, but requires its enforcement.

II. The Question Whether *Stolt-Nielsen* Applies to Consolidated as Well as Class Arbitration Does Not Merit Review in Any Event.

Even if Horton's claim of preemption were not foreclosed by *Volt* in light of the arbitration agreement's express incorporation of New Mexico's UAA, the question whether *Stolt-Nielsen* requires preemption of state statutes providing for *consolidated*—as opposed to *class*—arbitration would not merit review. Horton itself cites *no* decisions other than the one in this case that have even addressed *Stolt-Nielsen*'s application to consolidated arbitration. A handful of reported decisions that have touched on *Stolt-Nielsen*'s applicability to consolidated arbitration—albeit in different procedural contexts not involving application of a state statute authorizing a court to order consolidation—have agreed that the substantial differences between consolidation of individual arbitrations and class arbitration indicate that *Stolt-Nielsen*'s reasoning is not fully applicable to consolidated arbitration.[3]

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[3] *See Blue Cross Blue Shield of Mass., Inc. v. BCS Ins. Co.*, 671 F.3d 635, 640 (7th Cir. 2011); *Anwar v. Fairfield Greenwich Ltd.*, 728 F. Supp. 2d 462, 477 (S.D.N.Y. 2010); *see also Safra Nat'l. Bank of N.Y. v. Penfold Inv. Trading, Ltd.*, 2011 WL 1672467, at *4-*5 (S.D.N.Y. April 20, 2011); *Medicine Shoppe*

(*Footnote continued*)

Thus, not only is there no conflict among federal or state appellate courts about whether *Stolt-Nielsen* should be extended to consolidated arbitration, but the lower courts have barely begun to flesh out the issue. Nor is it apparent whether the issue is likely to be a recurring one that will have broad importance beyond this case. Horton has presented no reason why this Court should reach out now to consider an intermediate state-court decision on the subject.

Horton does cite two pre-*Stolt-Nielsen* decisions that addressed consolidated arbitration: *Government of United Kingdom v. Boeing Co.*, 998 F.2d 68 (2d Cir. 1993), and *Glencore, Ltd. v. Schnitzer Steel Products Co.*, 189 F.3d 264 (2d Cir. 1999). Neither, however, involved consolidated arbitration under a state arbitration law that authorized a court to order consolidation, let alone under an arbitration agreement specifically calling for application of such a state statute. Indeed, the court in *Boeing* specifically distinguished the situation in which an applicable state arbitration law authorized consolidation, and cited another appellate decision approving consolidation in those circumstances. *See* 998 F.2d at 72 n.2 (citing *New England Energy Inc. v. Keystone Shipping Co.,* 855 F.2d 1 (1st Cir. 1988)).

Int'l, Inc. v. Bill's Pills, Inc., 2012 WL 1660958, at *2-*4 (E.D. Mo. May 11, 2012). All these cases involved the question whether, *absent* a statute authorizing court-ordered consolidation, an arbitrator had authority to consider the question of consolidation. *See also Underwood v. Palms Place, LLC*, 2011 WL 1790463, at *5 (D. Nev. May 10, 2011) (holding that a state statute authorizing consolidated arbitration does not authorize class arbitration because of the differences between the two types of proceedings).

Horton's claim that the decision below "conflicts" directly with *Stolt-Nielsen* and *Concepcion* founders on the substantial differences between consolidated arbitration involving specific individual claimants and the class proceedings at issue in those cases. Consolidated arbitration raises none of the thorny issues concerning the involvement of absent class members that so concerned the Court in *Concepcion* and *Stolt-Nielsen*. *See Concepcion*, 131 S. Ct. at 1750-52; *Stolt-Nielsen*, 130 S. Ct. at 1775-76. Consolidation, unlike class arbitration, does not require class-certification proceedings about which "arbitrators are not generally knowledgeable," *Concepcion*, 131 S. Ct. at 1750, nor does it require the "procedural formalit[ies]," such as classwide notice, the right to opt out, and adequate representation by a class representative, that are necessary to bind absent class members. *Id.*

The consolidation of proceedings involving the owners of 37 homes who are jointly represented also poses no threat of making "[c]onfidentiality … more difficult," *id*., than it would be if those 37 claims were arbitrated separately. And consolidated arbitration involving a few dozen specific, named claimants who have come forward to assert their rights does not raise the specter of "bet the company" litigation (*Concepcion*, 131 S. Ct. at 1752) that may be present when a single representative presents claims on behalf of thousands of others who otherwise might never come forward. When all the individual claims will be arbitrated in any event, and when a later arbitrator could afford collateral estoppel effect to a pro-claimant ruling in an earlier arbitration, "[c]onsolidating the … claims does not change the stakes," but only offers the potential for "simpler and cheaper" proceedings. *Blue Cross*, 671 F.3d at 639.

In short, consolidation does not "change the nature of arbitration." *Stolt-Nielsen*, 130 S. Ct. at 1775. As Judge Easterbrook has put it:

> Consolidation of suits that are going to proceed anyway poses none of these potential problems [of class actions]. … Just as consolidation under Rule 42(a) does not change the fundamental nature of litigation, so consolidation … would not change the fundamental nature of arbitration.

Blue Cross, 671 F.3d at 640; *accord Anwar*, 728 F. Supp. 2d at 477.

Nor does consolidation deprive parties of "the benefits of private dispute resolution: lower costs, greater efficiency and speed, and the ability to choose expert adjudicators to resolve specialized disputes." *Stolt-Nielsen*, 130 S. Ct. at 1775. Consolidation is a means of *realizing* those benefits, and it is Horton's wooden insistence that each of these claimants present the same evidence to 37 separate arbitrators in 37 separate proceedings that threatens to deprive the parties of those benefits. (Indeed, it has already done so to a great extent.) Unlike the question whether class proceedings should be allowed, the issue of consolidation is truly a "simple" question of "what 'procedural mode' [is] available to present [the parties'] claims." *Id*. at 1776. *Stolt-Nielsen* itself recognizes that the FAA imposes no requirements of specific intent by the parties to consent to such procedures. *Id*.

Moreover, *Stolt-Nielsen* stresses that the parties in that case did not contract against the backdrop of any state-law rule that specified the consequences of contractual silence with respect to class proceedings. *See id*. at 1770. By contrast, where, as here, a state statute provides that absent an agreement to exclude con-

solidation, consolidated arbitration is permissible, there is a legal basis for finding contractual intent with respect to the availability of consolidation that was absent in *Stolt-Nielsen* with respect to the question of class proceedings. *See id*. Thus, even if state law were not expressly incorporated in the parties' contract—and even if *Stolt-Nielsen*'s requirement of a contractual basis for finding that the parties intended to allow class arbitration applied equally to consolidation—*Stolt-Nielsen* would permit a finding that there was a contractual basis for consolidation where the parties contracted against the background of a state statutory default rule favoring consolidation.

These are all reasons why the question whether *Stolt-Nielsen* applies to consolidated arbitration under a state arbitration statute does not merit review. In light of *Volt*, however, the Court need not even consider that question in this case. *Volt* establishes unequivocally that where, as here, the parties select state law to govern their arbitration proceedings, the FAA does not preempt application of state law in accordance with the parties' agreement.

III. The Decision Below Reflects No Hostility Toward Arbitration.

Horton wrongly contends that the court of appeals' decision reflects "hostility" toward arbitration, Pet. 5, as well as the state court's "elevat[ion of] its view of arbitration's purpose over the clear directives of this Court." Pet. 18. But in this case, whether the claims at issue are subject to arbitration has never been the issue. It is the respondents who moved to proceed with arbitration of their claims under the arbitration agreement and the UAA procedures that it incorporates, and *Horton*, despite its professed prefer-

ence for arbitration, that has resisted every step of the way. Neither respondents' efforts to pursue their claims efficiently through a consolidated arbitration as allowed by the New Mexico UAA nor the lower courts' application of the UAA reflect hostility toward arbitration. They reflect the application of a *pro-arbitration* statute, the UAA, to the arbitration agreement and the factual circumstances in this case.

Horton's assertion that the court of appeals "elevated its view of arbitration's purpose over the clear directives of this Court," Pet. 18, is based on language from the lower court's opinion that Horton has wrenched from its context. The passage Horton cites, in which the court of appeals points out that consolidated arbitration is "consistent with the purpose of arbitration, which is 'to further judicial economy by providing a quick, informal and less costly alternative to judicial resolution of disputes,'" Pet. 18 (quoting Pet. App. 18-19), was not part of the court's explanation of why *Stolt-Nielsen* did not apply here. Rather, it was a response to Horton's own policy argument that allowing consolidated arbitration under state law would give the arbitrator too much authority to establish "public policy." Pet. App. 18. That the state court invoked its view of the purposes of arbitration to answer *Horton*'s misguided policy argument provides no ground for criticizing its decision.

Moreover, contrary to Horton's assertion, the state court's account of the purposes of arbitration does not "totally miss[] the mark," Pet. 19—it is *exactly* the same view expressed by the Court in *Stolt-Nielsen* and *Concepcion*. *See Concepcion*, 131 S. Ct. at 1751 (quoting *Stolt-Nielsen*, 130 S. Ct. at 1775). Of course, it is also true, as this Court held in *Volt*, that the FAA

seeks to achieve the benefits of arbitration by enforcing arbitration agreements "according to their terms." 489 U.S. at 479. But with respect to that objective of the FAA, it is *Horton* that ignores the clear directive of this Court in *Volt*: "[W]here, as here, the parties have agreed to abide by state rules of arbitration, enforcing those rules according to the terms of the agreement is fully consistent with the goals of the FAA." *Volt*, 489 U.S. at 479.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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