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# United States Federal Circuit Court Practice: Stay versus Dismissal on Motions to Dismiss and Compel Arbitration

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# UNITED STATES FEDERAL CIRCUIT COURT PRACTICE: STAY *VERSUS* DISMISSAL ON MOTIONS TO DISMISS AND COMPEL ARBITRATION

*By Jesse Ransom*<sup>1</sup>

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## INTRODUCTION

As a creature of contract, arbitration is an alternative for parties who wish to settle disputes outside of the judicial system.<sup>2</sup> Yet, parties often attempt to bring claims they agreed to arbitrate into the judicial system instead of honoring the arbitration agreement. It is not surprising nor shocking for parties to an arbitration agreement to seek relief before the courts. In fact, there are many instances in which resorting to the courts

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<sup>2</sup> ALAN REDFERN & MARTIN HUNTER, LAW AND PRACTICE OF INTERNATIONAL COMMERCIAL ARBITRATION 1 (2004).

may be the only viable option to help the arbitral procedure.<sup>3</sup> In other instances, if the arbitration agreement fails to cover an issue that is at dispute between the parties, it is perfectly legitimate for the aggrieved party to seek redress within the judicial system. Unfortunately, some parties often use and abuse of the judicial system in attempt to bypass their arbitral duties. Be it to obtain a more favorable outcome or to resort to dilatory tactics and hinder the overall resolution of the dispute, such methods should be strongly discouraged by the courts for they attack the very efficacy of the arbitral process.

Efficacy and dilatory tactics lie at the heart of the debate regarding whether courts should issue stay of proceedings or dismissal or proceedings. Whereas the question presents little interest on its face, the consequences of choosing one rather than the other may severely impact the conduct of the arbitration. Usually, such question arises when a party files a claim covered by an arbitration agreement before a court. The opposing party—wanting to arbitrate the dispute as agreed upon—will often respond by submitting a motion to dismiss or stay the proceedings to compel the other party to arbitrate. Such a question is theoretically disposed of under section 3 of the Federal Arbitration Act (hereinafter “FAA”).<sup>4</sup> Yet, many circuit courts continue to disagree on how to approach requests to stay or dismiss litigation.<sup>5</sup> Specifically, courts of appeal disagree on the practice of issuing a stay *in lieu* of a

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<sup>3</sup> Parties must have recourse to the courts when they seek to compel arbitration, nominate arbitrators, seek interim measures, or enforce an award. In all the enumerated situations, the courts are there to help enforce the parties’ intent to arbitrate their dispute.

<sup>4</sup> Federal Arbitration Act (FAA), 9 U.S.C.A. §§ 1-307 (West). The FAA is U.S. federal law that covers arbitration and arbitration proceedings. Individual states also have state specific arbitration laws that apply to state related arbitration proceedings. This paper focuses specifically on motions to stay arbitration and motions to dismiss arbitration in federal courts as governed by the FAA; it will not discuss state arbitration laws or state-federal conflict of laws.

<sup>5</sup> See 9 U.S.C.A. § 3 (West & Supp. 2011) (mandating courts to issue a stay of litigation when a party motions to stay proceedings and compel arbitration); see also 9 U.S.C.A. § 16 (West) (stating that a court issued stay of litigation on a motion to stay or dismiss is non-appealable).

dismissal,<sup>6</sup> some courts interpreting § 3 of the FAA as a strict obligation to order stays while other circuits interpret § 3 as allowing discretion to issue either dismissals or stays.

This Article argues that courts should interpret § 3 of the FAA as a strict mandate to only issue stays. It reasons that the plain language of the FAA, congressional intent, and the potential for undue burden on a party trying to enforce a valid arbitration agreement favor such an outcome. First, Part II of this Article will provide background with respect to legislative and jurisprudential practice of dismissing or staying proceedings. It will also describe the circuit court split as well as shed some light on the underlying justifications that animate both sides. Part III will then analyze and argue in favor of issuing stays rather than a dismissal, and how such a position is the only outcome that truly satisfies the FAA's statutory language, congressional intent, and the overarching objectives of arbitration.

## I. Background

The FAA refers specifically to suits or proceedings brought before a court in the United States.<sup>7</sup> Its objective was to overcome historical hostility toward arbitration and create a favorable environment for parties to choose this means of dispute resolution mechanism in contractual agreements.<sup>8</sup> Congress also intended for the FAA to allow parties to quickly,

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<sup>6</sup> Showmethemoney Check Cashers, Inc. v. Williams, 27 S.W.3d 361, 365 (Ark. 2000); Anthony v. Kaplan, 918 S.W.2d 174, 177 (Ark. 1996); Birkey Design Group, Inc. v. Egle Nursing Home, Inc., 687 A.2d 256, 258 (Md. Ct. Spec. App. 1997); see also Richard A. Bales and Melanie A. Goff, *An Analysis of an Order to Compel Arbitration: To Dismiss or Stay?*, 115 PENN ST. L. REV. 539 (Winter 2011) (addressing a circuit split on the question of whether courts “must stay” or “may dismiss” a motion to stay or dismiss arbitration in conjunction with a motion to compel arbitration); Angelina M. Petti, *Judicial Enforcement of Arbitration Agreements: The Stay-Dismissal Dichotomy of FAA § 3*, 34 HOFSTRA L. REV. 565-92 (2005) (addressing the circuit court split on the question of whether courts should stay or dismiss under FAA § 3).

<sup>7</sup> 9 U.S.C.A. § 3.

<sup>8</sup> *Id.*; see *Accenture LLP v. Spreng*, 647 F.3d 72, 74 (2d Cir. 2011) (“Congress enacted the Federal Arbitration Act (“FAA”) to reverse the longstanding judicial hostility to arbitration agreements that had existed at English common law and had been adopted by American courts. The FAA’s provisions manifest a liberal federal policy favoring arbitration agreements.” (citations and quotations omitted)). Section 16 of the FAA “furthers [the FAA’s] aim of eliminating barriers to arbitration by promoting appeals from orders barring arbitration and limiting appeals from orders directing arbitration.” *Ermenegildo Zegna Corp. v. Zegna*, 133 F.3d 177, 180 (2d Cir. 1998) (internal quotation marks and brackets omitted)).

efficiently, and effectively pursue arbitration proceedings.<sup>9</sup> Section 3 of the FAA furthers these objectives by mandating that courts stay proceedings that should be in arbitration.<sup>10</sup> Specifically, the FAA provides that if any suits which are brought into any U.S. court relate to claims that have been agreed to be arbitrated, that court “shall . . . stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement.”<sup>11</sup>

Congress has generally favored efficient arbitration proceedings and shown explicit preference to granting a stay to proceed with arbitration.<sup>12</sup> In enacting the FAA, Congress was also serious about limiting judicial interference with arbitration proceedings. In fact, Congress explicitly provided in the FAA that all final decisions are appealable except those compelling arbitration or a stay of any action.<sup>13</sup> This shows that Congress preferred a stay of judicial proceedings (or an order compelling arbitration) to dismissal. The difference between the two turns on their appealability. Whereas stays—in a large number of scenarios—are not appealable, dismissals are.<sup>14</sup> By showing a preference for the former, Congress intended to avoid bogging down parties under a long appeals process.

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<sup>9</sup> See *Green Tree Fin. Corp.-Alabama v. Randolph*, 531 U.S. 79, 85 (2000) (explaining that the policy behind the FAA favoring arbitration agreements also included moving parties through proceedings as quickly and efficiently as possible).

<sup>10</sup> 9 U.S.C.A. § 3.

<sup>11</sup> *Id.*

<sup>12</sup> See S. Rep. No. 536, 68th Cong., 1st Sess., 3 (1924) (reasoning, in favor of the FAA, that society wants to speedily and efficiently settle disputes without the large cost of litigation, and have a way to enforce written arbitration agreements); see also Brief for Respondent at 13, *Dean Witter Reynolds Inc. v. Byrd*, 470 U.S. 213 (1985) (No. 83-1708), 1984 WL 566049 (arguing that the supreme court does not need to examine or rely on legislative history because the language of the statute is clear and unambiguous and that following a plain reading would lead to an absurd or unreasonable result or lead to an outcome at odds with the statute).

<sup>13</sup> 9 U.S.C.A. § 16.

<sup>14</sup> *Evans v. United States*, 504 U.S. 255, 259-260 (1992); see *Green Tree Fin. Corp.-Alabama*, 531 U.S. at 86 (explaining that § 16(a)(3) provides for the appeal of final decisions because of the longstanding understanding that a final decision effectively the “ends the litigation on the merits and leaves nothing more for the court to do but execute the judgment.”); see also *Moses H. Cone Mem’l Hosp. v. Mercury Const. Corp.*, 460 U.S. 1, 26 (1983) (discussing the court decision to accord “final decision” its ordinary meaning because the FAA does not specifically define the term in arbitration context “moreover, state courts, as much as federal courts, are obliged to grant stays of litigation under § 3 of the Arbitration Act.”).

Although it has not directly addressed the question of whether district courts should be allowed to dismiss suits or claims on their discretion, the U.S. Supreme Court has affirmed the general intent of Congress to preserve the efficiency of arbitration proceedings and avoid undue delay.<sup>15</sup> Yet, circuit courts remain split on this issue; on one end are those that mandate a stay and on the other those that allow district courts discretion to dismiss<sup>16</sup>—although the circuit split is not completely clear.<sup>17</sup>

### A. The Supreme Court's Interpretation of Section 3 of the FAA

The Supreme Court has not directly resolved the question of whether lower courts must issue a stay under § 3 or if they have discretion to dismiss. However, in *Dean Witter Reynolds, Inc. v. Byrd*, the Court explained that in drafting section 3, Congress intended to enforce private agreements and to encourage “efficient and speedy dispute resolution.”<sup>18</sup> The Supreme Court's view on § 16 of the FAA is helpful in illuminating its understanding of § 3. The Court in *Green Tree Fin. Corp.-Alabama v. Randolph* held that § 3 should be read plainly and that affirming a motion to compel arbitration and then dismissing a motion to stay proceedings is a final judgment under that section.<sup>19</sup> *Green Tree* solidifies a general trend of the Court favoring arbitration and a plain reading of the FAA; however it does not specifically address the question

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<sup>15</sup> See *Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 221 (1985) (explaining Congress' intent in enacting the FAA was to enforce private agreements and to promote speedy dispute resolution); *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 404 (1967) (supporting a holding that federal courts can only consider issues relating to the making and performance of an arbitration agreement and not on other issues covered by the arbitration agreement the court argued that “[i]n 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.”).

<sup>16</sup> See *infra* Part II.B-C.

<sup>17</sup> See *infra* Part II.D.

<sup>18</sup> *Dean Witter Reynolds, Inc.* 470 U.S. at 221 (White, J., concurring) (highlighting that the “heavy presumption should be that the arbitration and the lawsuit will each proceed in its normal course”).

<sup>19</sup> *Green Tree Fin. Corp.-Alabama*, 531 U.S. at 85 (“[T]he FAA's policy favoring arbitration agreements and its goal of [moving] the parties to an arbitrable dispute out of court and into arbitration as quickly and easily as possible.” (quotations and citations omitted)); *id.* at 88-89 (“Certainly the plain language of the statutory text [of § 16] does not suggest that Congress intended to incorporate . . . [other] distinctions.”).

of whether it is mandatory for courts to issue a stay on a motion to stay or dismiss proceedings under § 3.<sup>20</sup>

In perhaps what is the closest ruling on § 3, in *Shearson/Am. Exp., Inc. v. McMahon*, the Court, in dicta, stated that § 3 “provides that a court must stay its proceedings if it is satisfied that an issue before it is arbitrable under the agreement.”<sup>21</sup> The Supreme Court has expressed that the FAA should be read plainly, and that the impetus behind § 3 and other parts of the act was to enforce contractual agreements and make arbitration proceedings as efficient and speedy as possible; although it has not directly addressed the circuit split over § 3.<sup>22</sup>

### **B. Circuits that Allow District Courts Discretion to Dismiss Proceedings**

Despite the Supreme Court favoring a plain reading of the FAA, many circuit courts have allowed lower courts the discretion to dismiss claims rather than mandate a stay.<sup>23</sup> In a recent ruling on a contractual dispute between a dialysis center and a medical management firm, the First Circuit affirmed the district court’s decision to dismiss rather than stay the suit stating that “[t]he district court had the discretion to do so

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<sup>20</sup> *Id.* at 82 (“In this case we first address whether an order compelling arbitration and dismissing a party’s underlying claims is a “final decision with respect to an arbitration” within the meaning of § 16(a)(3) of the Federal Arbitration Act, 9 U.S.C. § 16(a)(3), and thus is immediately appealable pursuant to that Act.”).

<sup>21</sup> *Shearson/Am. Exp., Inc. v. McMahon*, 482 U.S. 220, 226 (1987) (deciding whether claims brought under the Securities Exchange Act of 1934 and the Racketeer Influenced and Corrupt Organizations Act (RICO) are arbitrable under the FAA); *see also* *Moses H. Cone Mem’l Hosp. v. Mercury Const. Corp.*, 460 U.S. at 26 (“Moreover, state courts, as much as federal courts, are obliged to grant stays of litigation under § 3 of the Arbitration Act.”).

<sup>22</sup> *See Green Tree Fin. Corp.-Alabama*, 531 U.S. at 85, 88-89. Although the Supreme Court is discussing § 16 of the FAA and not § 3, the same rationale for a plain reading should apply to § 3. The fact that Congress used the well established statutory term “shall” in § 3 and declines to indicate any language that would grant district courts discretion to dismiss a motion to stay leads to a strong argument that if faced with this question the Supreme Court would opt for a plain reading of § 3 like it did for § 16 in *Green Tree*.

<sup>23</sup> *Dialysis Access Ctr. v. RMS Lifeline, Inc.*, 638 F.3d 367 (1st Cir. 2011); *see* *Choice Hotels Int’l, Inc. v. BSR Tropicana Resort, Inc.*, 252 F.3d 707, 709-10 (4th Cir. 2001) (“Notwithstanding the terms of § 3, however, dismissal is a proper remedy when all of the issues presented in a lawsuit are arbitrable.”); *Alford v. Dean Witter Reynolds, Inc.*, 975 F.2d 1161, 1164 (5th Cir. 1992); *Green v. Ameritech Corp.*, 200 F.3d 967, 973 (6th Cir. 2000).

upon finding that all claims before it were arbitrable.”<sup>24</sup> The Fifth Circuit as well as the Sixth, mirroring the interpretation of the First Circuit, have consistently held that “[i]f all of the issues raised before the district court are arbitrable, dismissal of the case is not inappropriate.”<sup>25</sup> Courts have argued that staying proceedings serves no purpose and that any future post-arbitration remedies are limited to a review of the award, and therefore, retaining jurisdiction is not important.<sup>26</sup>

### C. Circuits that Mandate that District Courts Stay Proceedings

Many circuits have read § 3 as a mandate to issue a stay and denying courts discretion to dismiss.<sup>27</sup> In a contractual dispute between a pipefitter and a refinery over alleged discrimination, wrongful discharge, and other civil wrongs that was tried on appeal in the Third Circuit in *Lloyd v. HOVENSA, LLC.*, the Court reversed the district court’s dismissal of the refinery’s motion to stay proceedings pending arbitration, stating that the “plain language of § 3 affords a district court no discretion to

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<sup>24</sup> *Dialysis Access Ctr.*, 638 F.3d at 372-73 (articulating a clear holding that district courts have “discretion to [dismiss the claim,] finding that all claims before it were arbitrable.”).

<sup>25</sup> *Pleasant v. Houston Works USA*, 236 F. App’x 89, 93 (5th Cir. 2007). See also *Dean Witter Reynolds, Inc.*, 975 F.2d at 1164 ; *Fedmet Corp. v. M/V BUYALYK*, 194 F.3d 674, 678 (5th Cir. 1999) (“Although the express terms of § 3 provide that a stay is mandatory upon a showing that the opposing party has commenced suit upon any issue referable to arbitration under an agreement in writing for such arbitration . . . , we have interpreted this language to mean only that the district court cannot deny a stay when one is properly requested. This rule, however, was not intended to limit dismissal of a case in the proper circumstances. If all of the issues raised before the district court are arbitrable, dismissal of the case is not inappropriate.” (citations omitted)); see *Ameritech Corp.*, 200 F.3d at 973 (holding that a district court can dismiss a claim rather than stay).

<sup>26</sup> See *Service, Inc. v. Sea-Land of Puerto Rico, Inc.*, 636 F. Supp. 750, 757 (D.P.R. 1986) (explaining that once all the issues in an action are deemed arbitrable, there is no reason for the court to retain jurisdiction by staying the action).

<sup>27</sup> *Salim Oleochemicals v. M/V SHROPSHIRE*, 278 F.3d 90, 93 (2d Cir. 2002); *Lloyd v. HOVENSA, L.L.C.*, 369 F.3d 263 (3d Cir. 2004); *Adair Bus Sales, Inc. v. Blue Bird Corp.*, 25 F.3d 953, 955 (10th Cir. 1994); see *LaPrade v. Kidder Peabody & Co., Inc.*, 146 F.3d 899, 902 (D.C. Cir. 1998) (“Section 3 empowers a district court only to stay an action, leaving to the claimant the choice of arbitrating the claims or abandoning them.”).

dismiss a case . . . .”<sup>28</sup> Similarly, in *Klay v. All Defendants*, the Eleventh Circuit, in a protracted dispute between a doctor and various health maintenance organizations, stated that “[f]or arbitrable issues, the language of section 3 indicates that the stay is mandatory.”<sup>29</sup> Additionally, the Seventh Circuit has held that dismissal is not an option where a valid arbitration agreement exists and the issues fall within the scope of that agreement.<sup>30</sup> Such courts have generally found inspiration in the liberal policy in favor of arbitration as well as the plain language of § 3.<sup>31</sup>

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<sup>28</sup> See *HOVENSA, L.L.C.*, 369 F.3d at 269 (“In accordance with the Supreme Court’s instruction in *Green Tree*, we apply the plain language of the statutory text in interpreting the FAA. Here, the plain language of § 3 affords a district court no discretion to dismiss a case where one of the parties applies for a stay pending arbitration. The directive that the Court “shall” enter a stay simply cannot be read to say that the Court shall enter a stay in all cases except those in which all claims are arbitrable and the Court finds dismissal to be the preferable approach. On the contrary, the statute clearly states, without exception, that whenever suit is brought on an arbitrable claim, the Court “shall” upon application stay the litigation until arbitration has been concluded.” (citations omitted)).

<sup>29</sup> See *Klay v. All Defendants*, 389 F.3d 1191, 1204 (11th Cir. 2004) (citing *Shearson/Am. Express, Inc. v. McMahon*, 482 U.S. 220, 226 (1987)). The question presented in this case was whether the district court abused its discretion under § 3 in dismissing a motion to stay litigation on nonarbitrable claims. The Court of Appeals held that the district court did not abuse its discretion because the claims were nonarbitrable and did not fall under § 3. Although not fully on point, the Eleventh Circuit was clear that if all claims are arbitrable, as per the requirements of § 3, then a stay is mandatory.

<sup>30</sup> *Volkswagen Of Am., Inc. v. Sud’s Of Peoria, Inc.*, 474 F.3d 966, 971 (7th Cir. 2007) (“For arbitrable issues, a § 3 stay is mandatory.”); *Merit Ins. Co. v. Leatherby Ins. Co.*, 581 F.2d 137, 142 (7th Cir.1978) (“If the agreement to arbitrate is valid the court has no further power or discretion to address the issues raised in the complaint but must order arbitration . . .”).

<sup>31</sup> *Green v. SuperShuttle Int’l, Inc.*, 653 F.3d 766 (8th Cir. 2011) (Shepherd, J., Concurring) (“Nothing in the statute gives the court discretion to dismiss the action when all of the issues in the case are arbitrable. Moreover, when Congress uses the word “shall,” it normally creates an obligation impervious to judicial discretion. Although this rule of statutory construction is not absolute, no language in § 3 indicates a contrary legislative intent.”(citations and internal quotations omitted)); *Salim Oleochemicals v. M/V SHROPSHIRE*, 278 F.3d 90, 93 (2d Cir. 2002) (“District courts should continue to be mindful of this liberal federal policy favoring arbitration agreements when deciding whether to dismiss an action or instead to grant a stay.” (citations omitted)).

## D. Splits Within the Split

The split between the Circuits is not as clean as it would seem, where some courts have issued vague and ambiguous holdings that fail to clearly delineate for district courts to follow.<sup>32</sup> Other Circuits have explicitly favored a stay over a dismissal without mandating that district courts issue a stay.<sup>33</sup> In yet another interpretation, the Tenth Circuit has taken the position that when a party petitions for a stay, it must be granted; however if a party motions for a dismissal the court is not out of order granting that dismissal.<sup>34</sup>

The Fourth Circuit has confused and generated contradictory case law that highlights the need for Supreme Court clarification. In *BSR Tropicana Resort, Inc.*, the Fourth Circuit held that “[n]otwithstanding the terms of section 3, however, dismissal is a proper remedy when all of the issues presented in a lawsuit are arbitrable,” thus granting district

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<sup>32</sup> *SuperShuttle Int’l, Inc.*, 653 F.3d at 766 (“The FAA generally requires a federal district court to stay an action pending an arbitration, rather than to dismiss it.”) (emphasis added).

<sup>33</sup> *Compare* *Tierra Right of Way Services, Ltd. v. Abengoa Solar Inc.*, CV-11-00323-PHX-GMS, 2011 WL 2292007 (D. Ariz. June 9, 2011) (“The Ninth Circuit favors a stay over a dismissal. Furthermore, a stay is warranted by the language of the [9 U.S.C. § 3] . . .”), and *Bushley v. Credit Suisse First Boston*, 360 F.3d 1149, 1153 (9th Cir. 2004) (“Unnecessary delay of the arbitral process through appellate review is disfavored.”), *with* *Sparling v. Hoffman Const. Co., Inc.*, 864 F.2d 635, 638 (9th Cir. 1988) (“[S]ection 3 gives a court authority, upon application by one of the parties, to grant a stay pending arbitration, but does not preclude summary judgment when all claims are barred by an arbitration clause. Thus, [9 U.S.C. § 3] [does] not limit the court’s authority to grant a dismissal . . .” (citing *Martin Marietta Aluminum, Inc. v. General Electric Co.*, 586 F.2d 143 (9th Cir.1978))).

<sup>34</sup> *See* *Adair Bus Sales, Inc. v. Blue Bird Corp.*, 25 F.3d 953, 955 (10th Cir. 1994) (holding that, under §3, the proper course when a party motions for a stay of proceedings is to issue a stay). *Compare* *Parrish v. Valero Retail Holdings, Inc.*, 727 F. Supp. 2d 1266, 1281 (D.N.M. 2010) (“The Tenth Circuit has cautioned that, when one of the parties petitions the court to stay an action pending compulsory arbitration, the mandatory language of 9 U.S.C. § 3 is binding, and it is error for the court to dismiss the action.”), *with* *THI of New Mexico at Las Cruces, L.L.C. v. Fox*, 727 F. Supp. 2d 1195, 1206 (D.N.M. 2010) (“When, however, the party seeking to compel arbitration asks the court for dismissal, and there is no evidence in the record of any party requesting a stay, it is not error for the district court to dismiss the case.”), and *Armijo v. Prudential Ins. Co. of Am.*, 72 F.3d 793, 797 (10th Cir. 1995) (holding that a district court was not in error in granting a motion to dismiss and compel arbitration when there was no record of any request for a stay).

courts discretion to dismiss claims.<sup>35</sup> However, in *Adkins v. Labor Ready, Inc.*, the Fourth Circuit stated that the stay-of-litigation provision in section 3 is mandatory and therefore “[a] district court . . . has no choice but to grant a motion to compel arbitration where a valid arbitration agreement exists and the issues in a case fall within its purview.”<sup>36</sup> Although *Adkins* was dealing with a motion to compel arbitration and *BSR Tropicana Resort, Inc.* dealt with a motion to dismiss, the reliance on the text of § 3 in reaching contradictory conclusions is troubling.<sup>37</sup>

## II. Section 3 of the FAA mandates Stay rather than Dismissals of Proceedings

Although each circuit has individual trends, the majority of circuits tend to favor the issuing of stays and have made it expressly clear that district courts should issue stays whenever the arbitration clause is valid and the claim falls within the clause’s scope. The Supreme Court seems to agree with that trend although it has not officially ruled on the issue. If the Supreme Court were to rule on whether district courts have the discretion to dismiss under § 3 it should hold that courts must stay motions to stay or dismiss when the disputes come under the purview of a valid arbitration agreement. The three most compelling reasons for federal courts to stay proceedings rather than dismissing them are: first, the plain language of § 3 mandates a stay, second, Congress favored a stay over a dismissal when drafting the FAA, and third, a stay prevents undue delay and excessive litigation in resolving disputes.

### A. The Plain Reading of the FAA favors Stays in lieu of Dismissals

The plain reading of the text of § 3 mandates that district courts issue a stay of proceedings.<sup>38</sup> The word “shall” leaves little room for

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<sup>35</sup> *Hotels Int’l, Inc. v. BSR Tropicana Resort, Inc.*, 252 F.3d 707, 709-10 (4th Cir. 2001).

<sup>36</sup> *Adkins v. Labor Ready, Inc.*, 303 F.3d 496, 500 (4th Cir. 2002). *See* *B. Fleet Co., Inc. v. Aspen Ins. UK Ltd.*, 743 F. Supp. 2d 575, 582 (W.D. Va. 2010) (“Under the [FAA], a court is required to stay ‘any suit or proceeding’ pending the arbitration of ‘any issue referable to arbitration under an agreement in writing for such arbitration.’”).

<sup>37</sup> *Adkins* 303 F.3d at 499; *Hotels Int’l, Inc* 252 F.3d at 709.

<sup>38</sup> *Lloyd v. HOVENSA, L.L.C.*, 369 F.3d 263, 269 (3d Cir. 2004) (interpreting § 3 to mean that in cases involving arbitration claims, courts are required to stay litigation pending a final arbitration decision).

judicial interpretation.<sup>39</sup> By being so explicit in the wording of the statute, Congress tried to take any decision out the court's hands.<sup>40</sup> With the plain meaning of the statute, courts should not have to look to the intent of Congress in making any determination regarding § 3.<sup>41</sup>

In general, a court may look outside the plain wording of the statute for help in understanding and interpreting the language in several restricted instances.<sup>42</sup> The three primary instances are: first, if the language of the statute is unclear or ambiguous<sup>43</sup>; second, if following the language or wording would lead to an absurd or unreasonable result if applied<sup>44</sup>; and third, if following the statute literally would "bring about an end completely at variance with the statute. . . ."<sup>45</sup> The language in § 3 is clear and unambiguous and does not fall into any of the above categories; federal courts should stay all motions to stay litigation pending arbitration as per § 3's clear meaning.<sup>46</sup>

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<sup>39</sup> 9 U.S.C.A. § 3; Angelina M. Petti, *supra* note 4, at 584 (2005) (explaining that the clear and precise language of § 3, specifically referring to the word "shall," does not allow "courts leeway to dismiss a case where one of the parties applies for a stay pending arbitration.").

<sup>40</sup> Volkswagen Of Am., Inc. v. Sud's Of Peoria, Inc., 474 F.3d 966, 971 (7th Cir. 2007) (pointing out that the plain meaning of § 3 suggests that courts must stay the entire case—not just a part of it whenever there is an arbitrable issue).

<sup>41</sup> Green v. SuperShuttle Int'l, Inc., 653 F.3d 766, 766 (8th Cir. 2011) (Shepherd, J., Concurring) ("Nothing in the statute gives the court discretion to dismiss the action when all of the issues in the case are arbitrable. Moreover, when Congress uses the word "shall," it normally creates an obligation impervious to judicial discretion. Although this rule of statutory construction is not absolute, no language in § 3 indicates a contrary legislative intent.") (citations and internal quotations omitted).

<sup>42</sup> Brief for Respondent *supra* note 14, at 13; Angelina M. Petti, *supra* note 4, at 583 (2005) (arguing that courts should only look beyond the plain meaning of a statute if it produces a result demonstrably at odds with the intent of the drafters).

<sup>43</sup> See *United States v. Missouri Pacific R.R. Co.*, 278 U.S. 269, 278 (1929) (arguing against using certain legislative history that would have benefited one of the parties the court held that ". . . where the language of an enactment is clear, and construction according to its terms does not lead to absurd or impracticable consequences, the words employed are to be taken as the final expression of the meaning intended.").

<sup>44</sup> *United States v. American Trucking Associations*, 310 U.S. 534, 543-44 (1940) ("When [the] meaning [of a statute] has led to absurd or futile results . . . this Court has looked beyond the words to the purpose of the act.").

<sup>45</sup> See *United Steel Workers v. Weber*, 443 U.S. 193, 201-02 (1979) (holding that parts of a statute regarding affirmative action that would bring about an end completely at variance to the purpose of the statute "must be rejected").

<sup>46</sup> See Brief for Respondent *supra* note 14, at 13.

## **B. Congressional Intent Favors Orders Issuing Stays in lieu of Dismissals**

Allowing courts discretion to dismiss does little to advance the policy behind the FAA, and in fact goes against the intended outcome of the legislation.<sup>47</sup> The policy behind the FAA, as previously mentioned, is to reverse the historical animosity toward arbitration, grant parties the choice on how to settle their disputes, and create an environment that furthers efficient arbitration.<sup>48</sup> Dismissing a suit not only allows parties to continue litigation in the judicial system, but also forces them to reestablish jurisdiction post-arbitration.<sup>49</sup> Clearing the court's docket of disputes that it cannot adjudicate creates harm for the parties that outweighs the benefit it provides to the courts.

## **C. Stays of Proceedings Prevent Undue Delay and Excessive Litigation**

Granting courts the discretion to dismiss will allow parties to continue in lengthy appeals processes.<sup>50</sup> Sections 3 and 16 of the FAA were drafted to circumvent the lengthy appeals process and allow parties to resolve their disputes through arbitration.<sup>51</sup> When a motion to stay litigation pending arbitration is dismissed, it becomes a final judgment

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<sup>47</sup> See Angelina M. Petti, *supra* note 4, at 591 (2005) (formulating that dismissing a motion to stay will deprive parties the ability to proceed directly to arbitration).

<sup>48</sup> See S. Rep. No. 536, 68th. Cong., 1st Sess., 2 (1924) (noting that arbitration agreements, historically, were ineffectual and often left one party with no adequate remedy to enforce the agreement); *Accenture LLP v. Spreng*, 647 F.3d 72, 74 (2d Cir. 2011).

<sup>49</sup> See Angelina M. Petti, *supra* note 4, at 587 (2005) (arguing that a stay is more appropriate than a dismissal because it preserves the court's authority over issues that may arise during the arbitration and allows them to retain jurisdiction for post-arbitration proceedings). *But see* Richard A. Bales, *supra* note 4 at 555 (2011) (arguing that judicial involvement in arbitration proceedings should be limited and that continued judicial supervision may invite parties to file motions thus delaying the arbitration proceeding).

<sup>50</sup> See Halah Touryalai, *Motion To Dismiss In Arbitration? Not So Fast*, Registered Rep. (Jan 8, 2009 5:15 PM), available at [http://registeredrep.com/news/motion\\_to\\_dismiss\\_0108/](http://registeredrep.com/news/motion_to_dismiss_0108/) ("Theodore G. Eppenstein, a New York-based securities attorney says motions to dismiss are an area of great abuse by broker/dealers. "They have slowed down plaintiffs cases," he says. Eppenstein says he's been handling one specific arbitration case since 2005 due to four motions to dismiss filed by the responding party. "The whole concept of arbitration is to be able to have a hearing," he says.").

<sup>51</sup> See S. Rep. No. 536, 68th. Cong., 1st Sess., 2-3 (1924).

subject to the appeals process. A stay on the other hand is an interlocutory order that is not subject to the appeals process.<sup>52</sup> The party whose stay was rejected must either continue to proceed with the litigation or file an appeal to have the dismissal overturned, which will cost time and money. Quite cynically, it behooves a plaintiff to engage in a lengthy appeals process when it refuses to submit the dispute to arbitration. The subsequent appeals process from a dismissal, although potentially beneficial to some, draws out litigation, increases costs, and goes against the contractual agreement of the parties.<sup>53</sup> By mandating that courts issue a stay in all proceedings that satisfy the standard of § 3, the Supreme Court would not only clear up confusion but also reduce the time parties spend in court prior to arbitration.

### CONCLUSION

Should the Supreme Court grant certiorari, it should hold that district courts must stay instead of dismiss proceedings. The plain reading of § 3 mandates a stay and provides little room for courts to have

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<sup>52</sup> See *infra* Part II; Angelina M. Petti, *supra* note 4, at 589-90 (2005).

<sup>53</sup> See Angelina M. Petti, *supra* note 4, at 590 (2005) (commenting on the fact that allowing parties to continue in the appeals process by denying a motion to stay contravenes the purpose of the FAA to promote speedy dispute resolution and denies one of the parties the ability to enforce the arbitration agreement). *But see* Richard A. Bales, *supra* note 4, at 555-56 (2011) (arguing that allowing courts to dismiss rather than stay would decrease litigation by denying parties to the arbitration to file motions during the arbitration proceedings as no court would have supervisory jurisdiction over the claim); *id.* at 557 (noting that allowing courts to dismiss would lead to a subsequent appeal but that arbitration is not completely foreclosed upon). Richard Bales and Melanie Goff do raise two important issues in their argument against Angelina Petti's reasoning for mandating a stay. The first is that the lack of judicial oversight denies the parties a forum for motions outside of the arbitration proceeding thus protecting the parties from undue delay. The second argument for allowing courts to dismiss is that a final appealable order allows a second court to reevaluate the situation and potentially correct any mistakes thus protecting the parties overall. While both important considerations, the authors fail to discuss the issues of undue delay and added cost of an appeals process and fail to explain how a dismissal furthers the goal of the FAA in promoting speedy and efficient trials. Overall, the underlying argument that more judicial involvement in arbitration may play into the current federal court litigation / arbitration problem is important and not without merit. However, the plain language of § 3 and supporting legislative history make it difficult to see how the Supreme Court could grant federal courts the discretion to dismiss claims rather than mandate a stay.

discretion to dismiss. Congress' favor toward allowing parties to resolve disputes through arbitration and ensuring that arbitration proceedings are efficient and timely is well documented. Allowing courts the discretion to dismiss proceedings does little to further this objective. Other than removing the proceedings from the court's docket and from the judicial sphere, a dismissal can stifle proceedings, increase litigation costs, and create an undue delay—precisely what the FAA was meant to combat.