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Federalism Versus the Greater Good ... Should Powerful Franchisors Be Allowed to Contract for the Home Court Advantage Through Forum Selection Clauses?

*KKW Enterprises, Inc. v.
Gloria Jean's Gourmet Coffees Franchising Corp.*¹

I. INTRODUCTION

When Congress codified the Federal Arbitration Act ("F.A.A."), it sought to make arbitration a viable alternative to traditional litigation.² Since the enactment of the F.A.A., the United States Supreme Court has addressed and answered numerous issues regarding the functioning of the F.A.A.³ However, the Supreme Court has yet to determine whether the F.A.A. preempts state laws that invalidate forum selection clauses contained in franchise agreements.⁴ In *Gloria Jean's*, the First Circuit Court of Appeals squarely faced this issue and held that the F.A.A. preempts state laws that attempt to negate the terms contained in a forum selection provision of a franchise agreement.⁵

II. FACTS AND HOLDING

Gloria Jean's Gourmet Coffees Franchising Corporation ("Gloria Jean's"), an Illinois corporation with its principal place of business in Castroville, California, entered into several franchise agreements with KKW Enterprises, Inc., ("KKW") to operate Gloria Jean's franchises at several malls in Massachusetts and one in Vermont.⁶ Throughout the negotiations for the franchise agreements, both parties were represented by counsel and numerous changes and modifications were made to the agreements.⁷ During the negotiations, the parties specifically stated that "all disputes arising out of or relating to the franchise agreements, the validity of those

1. *KKW Enters., Inc. v. Gloria Jean's Gourmet Coffees Franchising Corp.*, 184 F.3d 42 (1st Cir. 1999).

2. Federal Arbitration Act, 9 U.S.C. §§ 1-208 (1994).

3. Jean R. Sternlight, *Panacea or Corporate Tool?: Debunking the Supreme Court's Preference for Binding Arbitration*, 74 WASH. U. L.Q. 637, 639-40 (1996).

4. James Zimmerman, *Restrictions on Forum-Selection Clauses in Franchise Agreements and the Federal Arbitration Act: Is State Law Preempted?*, 51 VAND. L. REV. 759, 766 (1998).

5. *Gloria Jean's*, 184 F.3d at 50-51.

6. *Id.* at 44-45.

7. *Id.*

agreements, or the parties' relationship" were to be submitted to arbitration at the office of the American Arbitration Association ("AAA") in Chicago, Illinois.⁸

KKW filed a complaint against Gloria Jean's on May 7, 1998, in the Superior Court of Rhode Island, which was subsequently removed to the United States District Court for the District of Rhode Island by Gloria Jean's on June 4, 1998.⁹ The complaint alleged that KKW relied on Gloria Jean's misrepresentations concerning: "(1) its ability to obtain favorable leases; (2) its ability to obtain certain types of store locations; and (3) the success of another franchise" in its decision to obtain four Gloria Jean's franchises.¹⁰ The complaint further sought damages and the rescission of two other franchise agreements.¹¹ Gloria Jean's made a motion to stay the district court action pending arbitration, as set forth in section 3 of the F.A.A.,¹² because the written franchise agreements encompassed all of KKW's claims set forth in its complaint.¹³ However, Gloria Jean's motion to stay the court's proceedings was denied by the district court.¹⁴ The district court stated that as a prerequisite to arbitration, a "demand" for arbitration must be made, not just a motion to stay the proceedings.¹⁵

Following the district court's denial, Gloria Jean's sent a Demand for Arbitration to the AAA in Chicago seeking KKW to submit all claims arising out of the parties' franchise and arbitration agreements, including the pending claims in the district court, to arbitration.¹⁶ Additionally, Gloria Jean's filed a Renewed Motion to Stay Proceedings Pending Arbitration in the district court and KKW countered by filing a motion to stay Gloria Jean's arbitration proceedings.¹⁷ On October 23, 1998, oral arguments were heard by the district court on both parties' motions and the court handed down an order on November 4, 1998, which: "(1) granted Gloria Jean's Renewed Motion to Stay Proceedings Pending Arbitration as to KKW's non-statutory claims; (2) denied the Motion as to KKW's statutory claims; (3) granted KKW's Motion to Stay the arbitration in Chicago, Illinois, as to KKW's statutory claims; and (4) denied that Motion as to the non-statutory claims."¹⁸

8. *Id.* at 45.

9. *Id.*

10. *Id.*

11. *Id.*

12. Section 3 of the Federal Arbitration Act provides:

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 referable 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.

9 U.S.C. § 3 (1994).

13. *Gloria Jean's*, 184 F.3d at 46 (citing 9 U.S.C. § 3 (1994)). On August 7, 1998, the court heard the motion and concluded that KKW's claims were encompassed by the written arbitration agreements. *Id.*

14. *Id.*

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.*

The First Circuit Court of Appeals only addressed the issue of whether the F.A.A. preempts section 19-28.1-14 of the Rhode Island Franchise Investment Act, which states “[a] provision in a franchise agreement restricting jurisdiction or venue to a forum outside [Rhode Island]” is unenforceable.¹⁹ The court of appeals explained that section 2 of the F.A.A.²⁰ preempted section 19-28.1-14 of the Rhode Island Franchise Investment Act (“R.I.F.I.A.”) because section 19-28.1-14’s jurisdiction and venue restriction is not “a generally applicable contract defense.”²¹ For these reasons, the court held that the forum selection clause in the parties’ franchise agreements should be enforced and that all claims should be submitted to arbitration in Chicago, Illinois, pursuant to the agreement.²²

III. LEGAL BACKGROUND

Under the F.A.A., if parties agree by contract to arbitrate their disputes, courts will stay judicial proceedings until the arbitration is completed.²³ In addition, the terms specified in the agreement will govern the functioning of the arbitration proceeding.²⁴ A term that is often disputed among parties who agree to arbitrate is the location or forum where the arbitration should take place.²⁵ These disagreements predominantly arise when one party seeks the protection of a state statute that invalidates the arbitration agreement’s forum selection clause and, instead, compels arbitration within the particular state.²⁶ Typically, lower courts facing this issue hold that the F.A.A. preempts the specific state statute and therefore, these courts have enforced the arbitration agreements according to their terms.²⁷ However, the United

19. *Id.* at 49 (quoting R.I. GEN. LAWS § 19-28.1-14 (1998)).

20. Section 2 of the Federal Arbitration Act provides:

A written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal, shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.

9 U.S.C. § 2 (1994).

21. *Gloria Jean's*, 184 F.3d at 52.

22. *Id.* The reasons relied on by the court of appeals for upholding this forum selection clause were: honoring the parties’ freely negotiated contracts, the Supremacy Clause of the United States Constitution mandated following the F.A.A. because section 19-28.1-14 of the R.I.F.I.A. encroached on section 2 of the F.A.A. and there were no significant, countervailing reasons which demanded voiding the forum selection clause. *Id.* at 49, 51-52.

23. 9 U.S.C. § 3 (1994). See *supra* note 12 for the full text of the statute.

24. 9 U.S.C. § 3 (1994).

25. See, e.g., *Perry v. Thomas*, 482 U.S. 483 (1987); *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614 (1985); *Southland Corp. v. Keating*, 465 U.S. 1 (1984); *KKW Enters., Inc. v. Gloria Jean's Gourmet Coffees Franchising Corp.*, 184 F.3d 42, 42 (1st Cir. 1999); *Doctor's Assocs., Inc. v. Hamilton*, 150 F.3d 157 (2d Cir. 1998); *McCarthy v. Providential Corp.*, No. C 94-0627 FMS, 1994 WL 387852 (N.D. Cal. July 19, 1994); *Dean Witter Reynolds Inc. v. Prouse*, 831 F. Supp. 328 (S.D.N.Y. 1993).

26. See, e.g., *Gloria Jean's*, 184 F.3d at 47. The Rhode Island General Assembly discussed a “strong policy against provisions that restrict jurisdiction or venue to a forum outside of this State” *Id.*

27. See *supra* notes 25 and 26.

States Supreme Court has yet to decide, "whether the F.A.A. preempts state laws that, as applied, invalidate arbitration agreements but are also applicable to contract clauses other than arbitration clauses."²⁸ More specifically, the United States Supreme Court has not decided if the F.A.A. preempts contrary state laws restricting the validity of forum selection clauses in franchise agreements.²⁹

A. Scope of the F.A.A.

The F.A.A. was enacted by Congress in 1925 in order to distill the common law notion that arbitration provisions were against public policy and thus deemed unenforceable.³⁰ Congress drafted the language of the F.A.A. using broad, sweeping language. For many years, however, courts limited the application of the F.A.A. solely to federal courts.³¹ Due to this narrow interpretation of the applicability of the F.A.A., state legislatures continued to impose restricting laws that invalidated arbitration agreements.³² This trend reversed its course in the early 1980's when courts began to scrutinize the text of the F.A.A. in congruence with the purpose of enacting the legislation.³³ Courts began to follow the notion that the F.A.A. should apply to state law as well as federal law.³⁴

In *Southland Corp. v. Keating*,³⁵ the United States Supreme Court explicitly found that the F.A.A. applied to both federal and state courts and held that the F.A.A. preempted the California Franchise Investment Law.³⁶ The California Supreme Court chose to enforce the state statute, which negated the forum selection clause in the parties' arbitration agreement.³⁷ The United States Supreme Court reversed the decision based on a Commerce Clause and a Supremacy Clause argument.³⁸

The Court announced that Congress had the power to enact the F.A.A. under its Commerce Clause power.³⁹ When Congress chooses to act under its Commerce

28. Zimmerman, *supra* note 4, at 766.

29. *Id.* The Supreme Court has never ruled on the validity of state laws that void arbitration agreements and other contract clauses, in light of the F.A.A. *Id.*

30. Thomas A. Diamond, *Choice of Law Clauses and Their Preemptive Effect Upon the Federal Arbitration Act: Reconciling the Supreme Court with Itself*, 39 ARIZ. L. REV. 35, 35-37 (1997).

31. Zimmerman, *supra* note 4, at 763.

32. *Id.*

33. See, e.g., *Doctor's Assocs., Inc. v. Casarotto*, 517 U.S. 681 (1996); *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614 (1985); *Southland Corp. v. Keating*, 465 U.S. 1 (1984); *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1 (1983). But see *Volt Info. Sciences, Inc. v. Board of Trustees of the Leland Stanford Junior Univ.*, 489 U.S. 468 (1989).

34. See *supra* note 33.

35. 465 U.S. 1 (1984).

36. *Id.* at 9, 12-13. The California Franchise Investment Law states: "Any condition, stipulation or provision purporting to bind any person acquiring any franchise to waive compliance with any provision of this law or any rule or order hereunder is void." CAL. CORP. CODE § 31512 (West 1997). The California Supreme Court refused to enforce the parties' agreement to arbitrate in a different state based on its interpretation of this statute. *Southland*, 465 U.S. at 9.

37. *Southland*, 465 U.S. at 9.

38. *Id.* at 11-16.

39. *Id.* at 11.

Clause power, the law it creates applies to both state and federal courts.⁴⁰ The Court explained that it would frustrate the purpose of the F.A.A. if it were only applicable when parties brought suit in federal court.⁴¹ The Court buttressed this analysis by stating that “since the overwhelming proportion of all civil litigation in this country is in the state courts, we cannot believe Congress intended to limit the F.A.A. to disputes subject only to federal court jurisdictions.”⁴²

The Court also found that the California statute was in direct conflict with the F.A.A.; therefore, under the Supremacy Clause, the F.A.A. should receive deference.⁴³ The Court stated that there existed only two limitations to the enforceability of arbitration agreements that fall under the F.A.A.: “they must be part of a written maritime contract or a contract ‘evidencing a transaction involving commerce’ and such clauses may be revoked upon ‘grounds as exist at law or in equity for the revocation of any contract.’”⁴⁴ After the Court declared these specific limitations, the Court further announced that it saw “nothing in the Act indicating that the broad principle of enforceability is subject to any additional limitations under State law.”⁴⁵

While most courts during this time were applying the F.A.A. to preempt contrary state laws, the United States Supreme Court “briefly halted its expansion of the F.A.A.’s reach”⁴⁶ in *Volt Information Sciences, Inc. v. Board of Trustees of the Leland Stanford Junior University*.⁴⁷ In *Volt*, the appellant argued that the choice of law provision in the California state statute violated the F.A.A. and was therefore preempted.⁴⁸ The Court stated that the “F.A.A. contains no express preemptive provision, nor does it reflect a congressional intent to occupy the entire field of arbitration.”⁴⁹ The Court distinguished this case from previous decisions holding that the F.A.A. preempted state laws by declaring that this California law did not undermine the F.A.A.’s goals and policies, and for this reason, the F.A.A. should not preempt the state law.⁵⁰

Since the decision in *Volt*, the United States Supreme Court has enlarged the scope of the F.A.A. in two ways: “(1) application of the F.A.A. to nearly all contracts, and (2) preemption of almost every conflicting state law that deals specifically with arbitration.”⁵¹ Most recently, in *Doctor’s Associates, Inc. v.*

40. *Id.* at 12 (citing *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 420 (1967) (Black, J., dissenting)).

41. *Id.* at 15-16.

42. *Id.* at 15. Approximately two percent of all civil litigation takes place in the federal courts. *Id.* at 15 n.8 (citing ADMINISTRATIVE OFFICE OF THE UNITED STATES COURT, ANNUAL REPORT OF THE DIRECTOR 3 (1982)).

43. *Id.* at 16.

44. *Id.* at 10-11 (quoting 9 U.S.C. § 1 (1976)).

45. *Id.* at 11.

46. Zimmerman, *supra* note 4, at 764.

47. 489 U.S. 468, 468-69 (1989).

48. *Id.* at 476.

49. *Id.* at 469.

50. *Id.* at 477-78. The Court explained that the California statute did not undercut the policies of the F.A.A. because it simply established a different procedure for enforcing an arbitration agreement and because the parties’ contract specified that state arbitration law would govern their agreement. *Id.* at 479.

51. Zimmerman, *supra* note 4, at 765.

Casarotto,⁵² the Supreme Court held that the F.A.A. preempted a Montana law requiring the first page of a contract to contain the arbitration provision in order for it to be effective.⁵³ The Court reaffirmed *Southland's* logic: courts are not permitted to invalidate arbitration provisions unless the defense applies to all contracts, not just arbitration provisions.⁵⁴ In reaching its holding, the Court stated, "[b]y enacting [section 2 of the F.A.A.], Congress precluded States from singling out arbitration provisions for suspect status, requiring instead that such provisions be placed upon the same footing as other contracts."⁵⁵

B. Application of the F.A.A. to Forum Selection Clauses

While the United States Supreme Court has not specifically addressed the issue of the F.A.A.'s preemptive effect on forum selection clauses contained in franchise agreements, several lower courts have shed light on the matter.⁵⁶ In *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*,⁵⁷ an automobile dealer (defendant) initiated a counterclaim against its manufacturer-supplier (plaintiff) alleging breach of contract and violation of state and federal laws.⁵⁸ The plaintiff requested arbitration of the counterclaims; the defendant then argued that the state law invalidated the arbitration provision contained within the parties' agreement.⁵⁹ The defendant argued that the arbitration clause contained in the parties' agreement was moot because Puerto Rican law does not recognize any arbitration provision that "obligates a dealer to . . . arbitrate . . . any controversy . . . regarding [the] dealer's contract outside of Puerto Rico, or under foreign law or rule of law . . ."⁶⁰ The court applied section 2 of the F.A.A. and declared that the Puerto Rican statute specifically singled out arbitration provisions and thus was preempted.⁶¹ Because the Puerto Rican statute voided remote forum selection clauses in dealership contracts, the court held that the F.A.A. preempted this infringing law.⁶²

In *Alphagraphics Franchising, Inc. v. Whaler Graphics, Inc.*,⁶³ the parties entered into a franchise agreement which contained a clause providing that all

52. 517 U.S. 681 (1996).

53. *Id.* at 681-82. The Montana statute specifies that an arbitration provision will be deemed unenforceable unless "[n]otice that [the] contract is subject to arbitration" is "typed in underlined capital letters on the first page of the contract." MONT. CODE ANN. § 27-5-114(4) (1995).

54. *Casarotto*, 517 U.S. at 682.

55. *Id.* (citing *Scherk v. Alberto-Culver Co.*, 417 U.S. 506, 511 (1974)).

56. See, e.g., *KKW Enters., Inc. v. Gloria Jean's Gourmet Coffees Franchising Corp.*, 184 F.3d 42 (1st Cir. 1999); *Doctor's Assocs., Inc. v. Hamilton*, 150 F.3d 157 (2d Cir. 1998); *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 723 F.2d 155 (1st Cir. 1983); *Alphagraphics Franchising, Inc. v. Whaler Graphics, Inc.*, 840 F. Supp. 708 (D. Ariz. 1993).

57. 723 F.2d 155 (1st Cir. 1983), *aff'd in part and rev'd in part on other grounds*, 473 U.S. 614 (1985). The F.A.A.'s preemption of the Puerto Rican law was not contested on appeal. See *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 622 n.8 (1985).

58. *Mitsubishi*, 723 F.2d at 157-58.

59. *Id.* at 158.

60. *Id.* (quoting P.R. LAWS ANN. tit. 10, § 278b-2 (1993)).

61. *Id.*

62. *Id.* at 157-58.

63. 840 F. Supp. 708 (D. Ariz. 1993).

disputes arising from the agreement should be arbitrated in Tucson, Arizona.⁶⁴ A dispute arose concerning the defendant's failure to make royalty payments, and after a "demand" for arbitration was made pursuant to the franchise agreement, the defendants refused to arbitrate in Tucson.⁶⁵ The court looked to the main purpose of the F.A.A., which is to enforce arbitration provisions according to their terms, and found that the state statute⁶⁶ limited the parties' means of arbitration and consequently was preempted.⁶⁷ In reaching this conclusion, the court noted that numerous judiciaries have determined that state statutes infringing on the logistics of arbitration should be struck down as violating of the F.A.A.⁶⁸ In each of these cases, the courts found that the F.A.A. preempted the state statutes because, "the state statute[s] placed greater restrictions on arbitration agreements than on other contracts"⁶⁹ More recently, in *Doctor's Associates, Inc. v. Hamilton*,⁷⁰ the defendant contended that the agreed upon forum selection clause contained in the parties franchise agreement was unenforceable due to New Jersey public policy.⁷¹ The defendant relied on a previous New Jersey Supreme Court decision that held that franchise agreements are invalid when they contain out of state forums for arbitration because they contravene New Jersey's Franchise Protection Act.⁷² However, the Second Circuit Court of Appeals rejected this argument and held the F.A.A. preempted the New Jersey statute.⁷³ In reaching this determination, the court first stated the strong policy in favor of strictly enforcing arbitration agreements that fall within the ambit of the F.A.A.⁷⁴ The court also acknowledged that the United States Supreme Court had previously declared "that the F.A.A. preempts all state law that impermissibly burden arbitration agreements."⁷⁵ Lastly, the court affirmed that

64. *Id.* at 709.

65. *Id.*

66. The Michigan Franchise Investment Law provides that:

THE STATE OF MICHIGAN PROHIBITS CERTAIN UNFAIR PROVISIONS THAT ARE SOMETIMES IN FRANCHISE DOCUMENTS. IF ANY OF THE FOLLOWING PROVISIONS ARE IN THESE FRANCHISE DOCUMENTS, THE PROVISIONS ARE VOID AND CANNOT BE ENFORCED AGAINST YOU.

.....
(f) A provision requiring that arbitration or litigation be conducted outside this state. This shall not preclude the franchisee from entering into an agreement at the time of arbitration to conduct arbitration at a location outside this state.

MICH. COMP. LAWS ANN. §§ 445.1508(3)(i) & 445.1527(f) (West 1998).

67. *Alphagraphics*, 840 F. Supp. at 710.

68. *Id.* See, e.g., *Saturn Distribution Corp. v. Williams*, 905 F.2d 719 (4th Cir. 1990), *cert. denied*, 498 U.S. 983 (1990); *Securities Indus. Ass'n v. Connolly*, 883 F.2d 1114 (1st Cir. 1989), *cert. denied*, 495 U.S. 956 (1990); *Webb v. R. Rowland & Co.*, 800 F.2d 803 (8th Cir. 1986); *Collins Radio Co. v. Ex-Cell-O Corp.*, 467 F.2d 995 (8th Cir. 1972); *Securities Indus. Ass'n v. Lewis*, 751 F. Supp. 205 (S.D. Fla. 1990); *Seymour v. Gloria Jean's Coffee Bean Franchising Corp.*, 732 F. Supp. 988 (D. Minn. 1990).

69. *Alphagraphics*, 840 F. Supp. at 710.

70. 150 F.3d 157 (2d Cir. 1998).

71. *Id.* at 161.

72. *Id.* at 162. See *Kubis & Perszyk Assocs., Inc. v. Sun Microsystems, Inc.*, 680 A.2d 618 (N.J. 1996).

73. *Hamilton*, 150 F.3d at 162.

74. *Id.*

75. *Id.*

only regular contract defenses, such as fraud or unconscionability, have the ability to void arbitration agreements without conflicting with section 2 of the F.A.A.⁷⁶

The First Circuit Court of Appeals followed the logic of these cases in *Gloria Jean's* by holding that the F.A.A. preempted the R.I.F.I.A.⁷⁷ Clearly, the trend among the lower courts is to invalidate those state laws that impede on the forum selection process in franchise agreements.⁷⁸ As this issue continues to arise in litigation, the United States Supreme Court will likely be faced with the question of whether a state law can restrict the ability of parties to choose an out-of-state forum in franchise agreements. When the Supreme Court finally addresses this issue, the rationale of *Gloria Jean's* will provide a solid analysis for which the Supreme Court may cite as precedent.⁷⁹

IV. INSTANT DECISION

In the instant case, the court first found that it properly had jurisdiction because a stay pending arbitration is immediately appealable.⁸⁰ The First Circuit Court of Appeals viewed the district court's order to stay pending arbitration as an injunction; thus, it had appellate jurisdiction over the subject matter.⁸¹ Bolstering its position, the court explained that this franchise agreement was governed by the F.A.A. Section 3 of the F.A.A. specifically states that "if suit is brought on an issue referable to arbitration under a written agreement, the court shall stay the matter until arbitration 'has been had in accordance with the terms of the Agreement.'"⁸² The F.A.A. further provides that an appeal can be sought from an order "refusing to stay any action under section 3 of this title."⁸³ KKW argued that *Gloria Jean's* had not acted pursuant to its agreement which required a "demand" for arbitration.⁸⁴ However, the court disagreed with the district court's assessment that *Gloria Jean's* failed to make a formal "demand" for arbitration as to statutory claims.⁸⁵ The court found that *Gloria Jean's* properly demanded arbitration as to both statutory and non-statutory claims.⁸⁶

KKW next argued that the district court's order granting arbitration on non-statutory claims and denying arbitration on statutory claims, was not "an order

76. *Id.* at 163.

77. *KKW Enters., Inc. v. Gloria Jean's Gourmet Coffees Franchising Corp.*, 184 F.3d 42, 52 (1st Cir. 1999).

78. Zimmerman, *supra* note 4, at 762.

79. See *Gloria Jean's*, 184 F.3d at 49-52.

80. *Id.* at 47.

81. *Id.* (quoting *PCS 2000 LP v. Romulus Telecomms., Inc.*, 148 F.3d 32, 34 (1st Cir. 1998)). 9 U.S.C. § 16(a)(2) permits an immediate appeal from "an interlocutory order granting . . . an injunction against an arbitration that is subject to this title." 9 U.S.C. § 16(a)(2) (1994).

82. *Gloria Jean's*, 184 F.3d at 47-48 (quoting 9 U.S.C. § 3 (1994)).

83. *Id.* at 48 (quoting 9 U.S.C. § 16 (1994)).

84. *Id.*

85. *Id.* at 46. Instead of demanding arbitration, *Gloria Jean's* originally made a motion to stay district court action pending arbitration. *Id.* The district court denied the motion stating that the condition precedent to arbitration, contained in the parties arbitration agreements, was a "demand" for arbitration, not merely a motion to stay. *Id.*

86. *Id.* at 48.

staying or enjoining arbitration but . . . [was] merely an order declining to enforce a forum selection clause."⁸⁷ The court disagreed with this logic.⁸⁸ Instead, the court examined the F.A.A. and stated that "the court must order the parties to arbitrate 'in accordance with the terms of the agreement'; one term of the agreement is the parties' forum selection clause."⁸⁹

Lastly, KKW argued that Gloria Jean's waived all rights to arbitration and forfeited its rights to appeal due to its pre-trial conference conduct, its tardiness concerning its attempt to stay the proceedings and continued requests for time extensions regarding responses and discovery.⁹⁰ The court stated that KKW provided no case law supporting its forfeiture of a pre-trial appeal argument and, therefore, rejected KKW's argument because it had no legal foundation.⁹¹ The court did not address the waiver argument raised by KKW because it found the issue was not presented in a timely manner.⁹²

The court next examined the proper standard of review for the case and found it had de novo review over both the district court's refusal of Gloria Jean's and KKW's motions to stay.⁹³ The court cited *Tejidos de Coamo, Inc. v. International Ladies' Garment Workers' Union*⁹⁴ and stated that while "[a]n order staying an arbitration proceeding is in substance, and often in form, a directive to the parties to cease the arbitration" and is a result "injunctive in character," the district court's order should not receive the normal abuse of discretion standard ordinarily given to injunctive relief.⁹⁵ According to the court, since the district court's order was only based on applicable law and the facts of the case were not pertinent, the de novo standard of review is applicable, regardless of the fact that the appeal concerned a preliminary injunction.⁹⁶

The court then addressed the central issue of the case: "whether [section] 19-28.1-14 of the R.I.F.I.A., which renders unenforceable '[a] provision in a franchise agreement restricting jurisdiction or venue to a forum outside [Rhode Island] . . . with respect to a claim otherwise enforceable under this Act,' is preempted by the F.A.A."⁹⁷ The First Circuit Court of Appeals disagreed with the district court's analysis⁹⁸ and found the F.A.A. applicable to the instant case, reasoning that

87. *Id.*

88. *Id.*

89. *Id.* (quoting *Snyder v. Smith*, 736 F.2d 409, 418 (7th Cir. 1984), *cert. denied*, 469 U.S. 1037 (1984)).

90. *Id.*

91. *Id.*

92. *Id.* The waiver issue was not brought up until December 23, 1998, nearly three weeks after Gloria Jean's sought an appeal and one month after the district court issued its Amended Order. *Id.*

93. *Id.* See *Haviland v. Goldman, Sachs & Co.*, 947 F.2d 601, 604 (2d Cir. 1991).

94. 22 F.3d 8, 10 (1st Cir. 1994).

95. *Gloria Jean's*, 184 F.3d at 48 (quoting *Tejidos de Coamo*, 22 F.3d at 10).

96. *Id.* (quoting *Thornburgh v. American College of Obstetricians & Gynecologists*, 476 U.S. 747, 757 (1986)).

97. *Id.* at 49.

98. The district court followed the R.I.F.I.A., and announced that the forum selection clause in the arbitration agreement was unenforceable with regards to KKW's statutory claims. *Id.* Furthermore, the district court propounded that "[t]he Federal Arbitration Act does not preempt provisions in an agreement to arbitrate that deal with the mechanics of arbitration, where are they to take place, where the arbitration is to take place and the like." *Id.*

interstate commerce was effected by these agreements.⁹⁹ The court emphasized that the F.A.A. strongly supports the proposition that arbitration agreements should be strictly enforced.¹⁰⁰ The court noted that the Supreme Court observed that "[t]he preeminent concern of Congress in passing the Act was to enforce private agreements into which parties had entered."¹⁰¹

The court then applied the Supremacy Clause of Article VI of the United States Constitution, which prohibits the states from encroaching on federal law and policy.¹⁰² The court quoted *Gade v. National Solid Wastes Management Ass'n*¹⁰³ for the proposition that "any state law, however clearly within a state's acknowledged power, which interferes with or is contrary to federal law, must yield."¹⁰⁴ The court declared that preemption may be compelled, regardless of whether Congress had specifically stated or indirectly implicated that federal law should govern over state law.¹⁰⁵ Further, the court asserted that "state law may nonetheless be preempted to the extent that it actually conflicts with federal law - - that is, to the extent that it 'stands as an obstacle to the full accomplishment and execution of the full purposes and objectives of Congress.'"¹⁰⁶

The court admitted that the F.A.A. does not contain a clause concerning preemption and that it does not attempt to cover the entire realm of arbitration.¹⁰⁷ However, the court emphasized that

to the extent that the Rhode Island Franchise Investment Act is construed to prohibit any provision in a franchise agreement which designates a forum for arbitration outside of Rhode Island, it presents an obstacle to the achievement of the full purposes and ends which Congress set out to accomplish in enacting the F.A.A. -- that "courts . . . [will] enforce privately negotiated agreements to arbitrate, like other contracts, in accordance with their terms."¹⁰⁸

The court stated that Gloria Jean's and KKW had an agreement to arbitrate; therefore, the F.A.A. encouraged adherence to the terms of the agreement.¹⁰⁹ The court further explained that section 3 of the F.A.A. provides that if a lawsuit is brought on an arbitrable issue, the court must stay the matter until it has been fully

99. *Id.* See also 9 U.S.C. § 1 (1994); *Societe Generale de Surveillance, S.A. v. Raytheon European Management & Sys. Co.*, 643 F.2d 863, 867 (1st Cir. 1981) (holding that the term "commerce" as used in the F.A.A. should be broadly construed).

100. *Gloria Jean's*, 184 F.3d at 49. See *Perry v. Thomas*, 482 U.S. 483, 490 (1987).

101. *Gloria Jean's*, 184 F.3d at 49 (quoting *Dean Witter Reynolds Inc. v. Byrd*, 470 U.S. 213, 221 (1985)).

102. *Id.* See *Louisiana Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 368 (1986).

103. 505 U.S. 88 (1992).

104. *Gloria Jean's*, 184 F.3d at 49 (quoting *Gade*, 505 U.S. at 108).

105. *Id.* (quoting *Gade*, 505 U.S. at 98).

106. *Id.* (quoting *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941)).

107. *Id.* (quoting *Volt Info. Sciences, Inc. v. Board of Trustees of the Leland Stanford Junior Univ.*, 489 U.S. 468, 477 (1989)).

108. *Id.* at 49-50 (quoting *Volt*, 489 U.S. at 478).

109. *Id.* at 50 (quoting *Vimar Seguros Y Reaseguros, S.A. v. M/V Sky Reefer*, 29 F.3d 727, 730 (1st Cir. 1995)).

arbitrated.¹¹⁰ The court acknowledged that the arbitration location is a "term" of an arbitration agreement.¹¹¹ The court concluded that the R.I.F.I.A. attempted to modify the terms of the agreement by nullifying the chosen arbitration site. Accordingly, the F.A.A. preempted this contrary state statute, assuming that the F.A.A. was applicable.¹¹²

Next, the court addressed the forum selection clause issue.¹¹³ Gloria Jean's asserted that the R.I.F.I.A. violated section 2 of the F.A.A. because it forbid all arbitration sites except those in Rhode Island.¹¹⁴ The Supreme Court has stated:

We discern only two limitations on the enforceability of arbitration provisions governed by the Federal Arbitration Act: they must be part of a written maritime contract or a contract "evidencing a transaction involving commerce" and such clauses may be revoked upon "grounds as exist at law or in equity for the revocation of any contract."¹¹⁵

The court further reasoned that the F.A.A.'s broad view of enforceability should not be contingent upon any additional state law restrictions.¹¹⁶

The court cited section 19-28.1-14 of the R.I.F.I.A. statute: "A provision in a franchise agreement restricting jurisdiction or venue to a forum outside this state . . . is void with respect to a claim otherwise enforceable under this act."¹¹⁷ It further stated that state law can only affect the enforceability of arbitration agreements without encroaching on section 2 of the F.A.A. if such state law applies to "the validity, revocability and enforceability of contracts generally."¹¹⁸ The court also supported this premise by stating, "only 'generally applicable contract defenses, such as fraud, duress or unconscionability, may be applied to invalidate arbitration agreements without contravening [section 2 of the F.A.A.]'"¹¹⁹ Applying this logic to the case at bar, the court concluded that section 19-28.1-14 of the R.I.F.I.A. violated section 2 of the F.A.A. Therefore, the court held that the R.I.F.I.A. was preempted by the F.A.A. because (i) it only applied specifically to venue clauses in franchise agreements and, as such, was not applicable to all contracts, and (ii) this section did serve as a "generally applicable contract defense."¹²⁰

110. *Id.* (quoting 9 U.S.C. § 3 (1994)). See *supra* note 12 for complete text of section 3 of the F.A.A.

111. *Gloria Jean's*, 184 F.3d at 50. "[U]nder [the F.A.A.], the court must order the parties to arbitrate 'in accordance with the terms of the agreement'; one such term of the agreement is the parties' forum selection clause." *Snyder v. Smith*, 736 F.2d 409, 418 (7th Cir. 1984), *cert. denied*, 469 U.S. 1037 (1984).

112. *Gloria Jean's*, 184 F.3d at 50.

113. *Id.*

114. *Id.*

115. *Id.* (quoting *Southland Corp. v. Keating*, 465 U.S. 1, 10-11 (1984) (quoting 9 U.S.C. § 2 (1994))). See *supra* note 20 for complete text of section 2 of the F.A.A.

116. *Gloria Jean's*, 184 F.3d at 50.

117. *Id.* at 50-51 (quoting R.I. GEN. LAWS § 19-28.1-14 (1998)).

118. *Id.* at 50 (quoting *Perry v. Thomas*, 482 U.S. 483, 492 n.9 (1987)).

119. *Id.* (quoting *Doctor's Assocs., Inc. v. Casarotto*, 517 U.S. 681, 687 (1996)).

120. *Id.* at 51.

The court bolstered its holding by citing its prior case law and persuasive authority from other jurisdictions that also held federal law to preempt state law.¹²¹ After the consideration given to the holdings of *Mitsubishi* and *Hamilton*,¹²² the court held:

Section 19-28.1-14's requirement that all claims arising under the Rhode Island Franchise Investment Act be brought in Rhode Island does not apply to all contracts and does not establish a generally applicable contract defense. Its prohibition of non-Rhode Island venues purports to restrict the enforcement of only one sort of contract provision, forum selection clauses, in only one type of contract, franchise agreements. Under [section] 2 of the F.A.A., that is impermissible.¹²³

The court stated that because both parties were represented by experienced counsel that "freely negotiated" at "arms-length" a franchise agreement that contained a forum selection clause, the parties' agreement should be enforced "absent some compelling and countervailing reason."¹²⁴ Because the parties chose Chicago, Illinois, as the forum for arbitration in their written franchise agreements, the court sought to enforce the parties' forum selection clause.¹²⁵ For these reasons, the court reversed the district court's order denying Gloria Jean's Motion to Stay Pending Arbitration and granting KKW's Motion to Stay Arbitration concerning the statutory claims under the R.I.F.I.A.¹²⁶

V. COMMENT

Throughout recent years, the number of franchise agreements containing arbitration clauses, more specifically forum selection provisions, has increased dramatically.¹²⁷ The enforceability of these forum selection provisions has received intense scrutiny because various state courts have chosen to follow their own state

121. *Id. See, e.g.,* Doctor's Assocs., Inc. v. Hamilton, 150 F.3d 157 (2d Cir. 1998); Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc., 723 F.2d 155 (1st Cir. 1984). In *Mitsubishi*, this court held that the F.A.A. preempted section 278b-2 of the Puerto Rico Dealer's Act under the circumstances because the rationale for the Puerto Rico law to void the parties' agreement was not a rationale that "exist[s] at law or in equity for the revocation of any contract." *Id.* at 157 (quoting 9 U.S.C. § 2 (1994)). In *Hamilton*, the Second Circuit Court of Appeals examined *Kubis & Perszyk Associates, Inc. v. Sun Microsystems, Inc.* and observed that the state law in that case "did not establish a 'generally applicable' contract defense that applies to 'any contract.'" *Hamilton*, 150 F.3d at 163 (discussing *Kubis & Perszyk Assocs., Inc. v. Sun Microsystems, Inc.*, 680 A.2d 618 (N.J. 1996)). After this examination, the Second Circuit held that, "[t]he *Kubis* decision applies to one sort of contract provision (forum selection) in only one type of contract (a franchise agreement). Therefore, to the extent that *Kubis* can be read to invalidate arbitral forum selection clauses in franchise agreements, it is preempted by the F.A.A." *Id.*

122. *See supra* note 121 for analysis of these two cases.

123. *Gloria Jean's*, 184 F.3d at 52.

124. *Id.* (quoting *Snyder v. Smith*, 736 F.2d 409, 419 (7th Cir. 1984), *cert. denied*, 469 U.S. 1037 (1984); *M/S Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 12 (1972)).

125. *Id.*

126. *Id.*

127. Zimmerman, *supra* note 4, at 762.

statutes rather than the F.A.A.¹²⁸ The recent trend followed by the state courts is to invalidate out-of-state forum selection provisions contained in franchise agreements; however, because the United States Supreme Court has broadly interpreted the F.A.A.'s preemptive power, "the question of a state law's ability to invalidate a foreign state arbitration agreement stands to be an important, and hotly contested issue in the near future."¹²⁹

Today, many large corporations choose to include forum selection provisions in their franchise agreements due to the Supreme Court's strong deference to the enforceability and acceptance of such clauses.¹³⁰ The parties to these agreements, at times, include these provisions because they want a convenient forum in which to settle their disputes.¹³¹ Also, a party may incorporate such a forum provision in order to "limit liability by increasing the barriers to litigation or arbitration."¹³² In actuality, the franchisor (usually the larger party) selects a very inconvenient forum which, in effect, inhibits the franchisee from seeking to resolve their disputes in a formal setting.¹³³ The franchisee often agrees to such confining terms because of the nature of a franchise agreement. The franchisor is usually a much larger company, represented by attorneys at the time the agreement is signed; whereas, the franchisee is often a single person unrepresented by legal counsel.¹³⁴ Due to this large disparity in resources, the franchisor is in a much better position to dictate the terms of the agreement and this often results in unequal bargaining power in favor of the franchisor.¹³⁵ Furthermore, due to this unequal bargaining power, the franchisor has the ability to "franchisee shop." In other words, if the franchisee does not agree to all the terms set forth by the franchisor in the franchise agreement, the franchisor can simply seek an alternative franchisee willing to acquiesce to the stated terms.¹³⁶ State

128. *Id.*

129. *Id.* State courts often invalidate the forum selection clauses based on their own state statutes which regulate the use of arbitration clauses. Margaret M. Harding, *The Clash Between Federal and State Arbitration Law and the Appropriateness of Arbitration as a Dispute Resolution Process*, 77 NEB. L. REV. 397, 398-99 (1998).

130. Zimmerman, *supra* note 4, at 760.

131. *Id.*

132. *Id.* (citing Edward A. Purcell, Jr., *Geography as a Litigation Weapon: Consumers, Forum-Selection Clauses, and the Rehnquist Court*, 40 UCLA L. REV. 423, 445-49 (1992)).

133. *Id.* See, e.g., *Vimar Seguros y Reaseguros, S.A. v. M/V Sky Reefer*, 515 U.S. 528 (1995) (forcing U.S. citizen to arbitrate in Japan); *Doctor's Assocs., Inc. v. Stuart*, 85 F.3d 975 (2d Cir. 1996) (upholding arbitration clause that required Illinois franchisee to arbitrate in Connecticut); see also Purcell, *supra* note 132.

134. Zimmerman, *supra* note 4, at 760-61. The unrepresented franchisee is often at a disadvantage without counsel because franchise agreements are usually very lengthy and therefore, the forum selection provision may be hidden beneath "boilerplate legalese." *Id.* at 761 (citing Donald B. Brenner, *There is a Developing Trend Among Courts of Making Choice of Forum Clauses in Franchise Agreements Presumptively Invalid*, 102 COM. L.J. 94, 94-95 (1997)).

135. *Id.* at 761.

136. *Id.* During the Congressional hearings discussing the proposed enactment of the F.A.A., concerns were voiced regarding the problem of unequal bargaining power amongst the parties to the franchise agreement. Harding, *supra* note 129, at 471-72. Senator Walsh stated:

The trouble about the matter is that a great many of these contracts that are entered into are really not voluntary things at all. . . . Well, there is nothing for the man to do except to sign it; and then he surrenders his right to have his case tried by the court, and has to have tried before a tribunal in which he has no confidence at all.

Id. at 472 (quoting A Bill Relating to Sales and Contracts to Sell Interstate and Foreign Commerce and

legislatures sought to regulate franchise agreements in order to protect franchisees by passing laws preventing the enforceability of forum selection clauses.¹³⁷ These statutes often require that any disputes arising from the franchise agreements shall be arbitrated or litigated in a convenient forum to the franchisee, i.e. the franchisee's home state.¹³⁸

In *Gloria Jean's*, the Rhode Island Legislature enacted the R.I.F.I.A., which regulated the enforceability of out-of-state forum selection clauses. The court faced the issue of whether the F.A.A. preempted the R.I.F.I.A.¹³⁹ The Supreme Court has consistently concluded, "that the F.A.A. was enacted precisely to prevent state legislative and judicial attempts to undercut the enforceability of predispute arbitration agreements."¹⁴⁰ However, the Supreme Court has yet to determine whether or not the F.A.A. should preempt contrary state laws that seek to prohibit the enforcement of arbitration agreements.¹⁴¹ Many lower courts, such as the First Circuit Court of Appeals in *Gloria Jean's*, have addressed this issue and have held the F.A.A. preempts contrary state laws due to the broad interpretation courts have given to the F.A.A.¹⁴²

The decision in *Gloria Jean's* is consistent with the Supreme Court's stated policy that arbitration agreements should presumably be enforced because they are arms-length contracts that include freely negotiated terms, one such term being the forum selection clause.¹⁴³ The First Circuit Court of Appeals correctly held the F.A.A. preempted the R.I.F.I.A.¹⁴⁴ The determination that the F.A.A. preempts state law regarding the enforceability of forum selection clauses can be justified by both the Supremacy Clause and the Commerce Clause in the U.S. Constitution.¹⁴⁵ The Supremacy Clause of Article VI of the Constitution inhibits the individual states from encroaching on federal law and policy.¹⁴⁶ Furthermore, infringement on federal law and policy can be both direct and indirect; if the state law "stands as an obstacle

A Bill to Make Valid and Enforceable Written Provisions or Agreements for Arbitration of Disputes Arising Out of Contracts, Maritime Transactions, or Commerce Among the States or Territories or with Foreign Nations: Hearing on S. 4213 and 4214 Before the Subcomm. of the Comm. on the Judiciary, 67th Cong., 4th Sess. 9 (1923) (testimony of Senator Walsh)). Despite these apprehensions, the bill was enacted without any language addressing these concerns. *Id.* (citing IAN R. MACNEIL, AMERICAN ARBITRATION LAW 15-24 (1992)).

137. Harding, *supra* note 129, at 399-400. State legislatures justify this ability to regulate the enforcement of arbitration provisions under their state police powers. *Id.* at 398-99.

138. Zimmerman, *supra* note 4, at 761.

139. *KKW Enters., Inc. v. Gloria Jean's Gourmet Coffees Franchising Corp.*, 184 F.3d 42 (1st Cir. 1999).

140. Harding, *supra* note 129, at 403. Justice Burger has stated: "In enacting [section] 2 of the federal Act, Congress declared a national policy favoring arbitration and withdrew the power of the states to require a judicial forum for the resolution of claims which the contracting parties agreed to resolve by arbitration." *Southland Corp. v. Keating*, 465 U.S. 1, 10 (1984).

141. Zimmerman, *supra* note 4, at 766.

142. *Id.* See, e.g., *KKW Enters., Inc. v. Gloria Jean's Gourmet Coffees Franchising Corp.*, 184 F.3d 42, 42 (1st Cir. 1999); *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 723 F.2d 155 (1st Cir. 1983); *Alphagraphics Franchising, Inc. v. Whaler Graphics, Inc.*, 840 F. Supp. 708 (D. Ariz. 1993); *Kubis & Perszyk Assocs., Inc. v. Sun Microsystems, Inc.*, 680 A.2d 618 (N.J. 1996).

143. *Gloria Jean's*, 184 F.3d at 49.

144. *Id.* at 42.

145. *Id.* at 49-50.

146. *Id.* at 49.

to the full purposes and objective of Congress," then the state law must yield to federal law.¹⁴⁷ Clearly such state legislation prohibiting out-of-state forums, selected by the parties, is directly contrary to Congress' intent and purpose of enacting the F.A.A. to enforce the terms of arbitration provisions agreed upon by parties to an arms-length contract. Bolstering this argument, the Supreme Court in *Southland Corp. v. Keating*,¹⁴⁸ held that the F.A.A. applied in state courts.¹⁴⁹ Therefore, contrary state laws should be preempted by the F.A.A.¹⁵⁰ Obviously, this result was the correct one because the drafters of the Constitution intended to bind state courts by applicable federal laws, even when deciding purely intra-state claims.¹⁵¹ Additionally:

[T]here has never existed doubt that state courts are obligated to consider and apply relevant principles of federal law which become applicable in the course of the adjudication of a state cause of action. . . . If the federal system is to function properly, a state court cannot be permitted to ignore federal constitutional and statutory principles that conflict with state law. The supremacy clause does not appear to permit any other result.¹⁵²

The Commerce Clause of the U.S. Constitution also vested Congress with the power to regulate commerce "among the several States."¹⁵³ It is well settled that the F.A.A. "rests on the authority of Congress to enact substantive rules under the Commerce Clause."¹⁵⁴ The Supreme Court found in *Prima Paint Corp. v. Flood & Conklin Manufacturing Co.*,¹⁵⁵ that the legislative history clearly proved the F.A.A. should extend to all cases involving interstate commerce.¹⁵⁶ Furthermore, in *Southland*, the Supreme Court declared there to be only two limitations to the enforceability of the F.A.A.: (i) the arbitration provision must be included in a maritime contract "evidencing a transaction involving commerce" and (ii) the arbitration provision can be negated only on "grounds as exist at law or in equity for the revocation of any contract."¹⁵⁷ The court of appeals in *Gloria Jean's* found the

147. *Id.* (quoting *Volt Info. Sciences, Inc. v. Board of Trustees of the Leland Stanford Junior Univ.*, 489 U.S. 468, 477 (1989)).

148. 465 U.S. 1 (1984).

149. *Id.* at 10.

150. Harding, *supra* note 129, at 440.

151. *Id.* at 460.

152. MARTIN H. REDISH, *FEDERAL JURISDICTION: TENSIONS IN THE ALLOCATION OF JUDICIAL POWER* 165 (2d ed. 1990).

153. U.S. CONST. art. I, § 8, cl. 3.

154. *Southland*, 465 U.S. at 11.

155. *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 405 (1967).

156. *Id.* The Court stated that the F.A.A. "is based upon . . . the incontestable federal foundation of 'control over interstate commerce and over admiralty.'" *Id.* See also Zimmerman, *supra* note 4, at 763.

157. *Gloria Jean's*, 184 F.3d at 50 (quoting *Southland*, 465 U.S. at 10-11).

franchise agreement substantially affected interstate commerce and thus determined that the R.I.F.I.A. could not inhibit the functioning of the F.A.A.¹⁵⁸

When looking at the Supremacy Clause and the Commerce Clause in concert, clearly the F.A.A. should preempt all state laws that inhibit any means which Congress finds are "necessary and proper" to effectuate its desired ends. In other words, courts should enforce arbitration provisions contained in franchise agreements, including forum selection clauses, that are freely entered into by negotiating parties. Since 1824, the Supreme Court has held Congress' regulating power under the Commerce Clause to be plenary,¹⁵⁹ and since most franchise agreements will affect commerce in some way, acts of Congress should presumably preempt contrary state laws. Based on this premise, the Supreme Court created two specific limitations that would permit a state law to avoid preemption by the F.A.A..¹⁶⁰ However, courts have found no other applicable state law limitations regarding the enforceability of arbitration provisions containing a forum selection clause.¹⁶¹

By declaring that the F.A.A. applied to both federal and state court systems, "Congress intended to foreclose state legislative attempts to undercut the enforceability of arbitration agreements."¹⁶² Adhering to this sound logic, the First Circuit Court of Appeals in *Gloria Jean's* correctly determined that the F.A.A. preempted the R.I.F.I.A. and stated the arbitration provision should be enforced according to its terms.¹⁶³ In the future, the Supreme Court will likely look to *Gloria Jean's* for guidance when it is faced with this issue due to the fact that it is the most recent opinion discussing this preemption issue.¹⁶⁴

VI. CONCLUSION

The *Gloria Jean's* decision clearly shows that the F.A.A. should preempt contrary state laws regarding the enforceability of forum selection clauses contained in arbitration provisions. This decision is consistent with the evolution of the United States Supreme Court's interpretation that the F.A.A. be broadly applied to arbitration provisions, specifically those contained in franchise agreements. The courts continue to give strong deference to the parties' agreed upon terms and should also continue to force parties to submit their disputes to the agreed upon forum voluntarily chosen for the resolution of the parties' disputes.

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158. *Id.* at 49. Courts have consistently construed the word "commerce" broadly in conjunction with Congress' Commerce Clause power. See, e.g., *Societe Generale de Surveillance, S.A. v. Raytheon European Management & Sys. Co.*, 643 F.2d 863, 867 (1st Cir. 1981).

159. *Gibbons v. Ogden*, 22 U.S. 1, 196 (1824). Chief Justice Marshall declared that the authority of Congress is, "the power to regulate; that is, to proscribe the rule by which commerce is to be governed." *Id.*

160. See note 115 and accompanying text.

161. *Southland*, 465 U.S. at 11.

162. *Id.* at 16.

163. *Gloria Jean's*, 184 F.3d at 51.

164. See *Gloria Jean's*, 184 F.3d at 49-52.