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I. INTRODUCTION

After almost a century, the Federal Arbitration Act (FAA) continues to guide and change the arbitration landscape.[1] While greater focus has been placed on the FAA's substantive merits and evolution, the act's procedural role in outlining the relationship between arbitration and the federal court system plays an equally important role in alternate dispute resolution.[2] Notably, recent concerns regarding inconsistencies in the act's jurisdictional language may undermine the FAA's ability to provide a clear, efficient, and fair process for arbitration.[3]

The FAA contains 16 sections, which define the role of the judiciary in the arbitration process and provides procedures to enforce, review, and govern arbitration agreements.[4] Although in aggregate these sections may appear to simply serve as a comprehensive manual on the interplay of arbitration and courts, each section stands alone and is not bound by the language of neighboring sections.[5]

The United States Supreme Court's decision in *Badgerow v. Walters* may enflame that tension and highlight the difficulties of a non-uniform FAA.[6] *Badgerow*, expanding on the Court's 2009 decision in *Vaden v. Discover Bank*, found that the FAA's jurisdictional requirements were not uniform and that federal courts must assess claims raised under Section 4, to order arbitration, differently than other FAA claims.[7] In this determination, the Court gave substantial weight to language unique to Section 4 which requires courts to look towards a disputes underlying claim when assessing jurisdiction.[8] Consequently, the FAA as a whole does not endorse a jurisdictional approach but, rather, relies on each section to provide its own.[9]

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1. *See* Imre Szalai, *The Prevalence of Consumer Arbitration Agreements by America's Top* Companies, U.C. DAVIS L.R. ONLINE, 233, 233–35 (2019), https://lawreview.law.ucdavis.edu/online/vol52/52-online-Szalai.pdf.
2. *See id.*
3. *See* Badgerow v. Walters, 596 U.S. 1 (2022).
4. Federal Arbitration Act, 9 U.S.C. §§ 1–16 (2022).
5. *See id.*; s*ee also Badgerow*, 596 U.S. at 16–17.
6. *See generally Badgerow*, 596 U.S. 1.
7. *Id.* at 4–5.
8. *Id.*
9. *Id.* at 15.

With each section bearing its own jurisdictional requirements, practical concerns have emerged.[10] For example, as discussed by Justice Breyer's dissent in *Badgerow*, a district court could both have the jurisdiction to order a matter to arbitration and lack the ability to assign an arbitrator to the same case.[11] In these circumstances, a party would need to request a state court to appoint the arbitrator, complicating and elongating the arbitral process.[12] This artificial and seeming arbitrary delineation brings little practical benefit to the parties or courts, but instead simply serves as a complicating force.[13]

Furthermore, *Badgerow* is in tension with the judicial attempts to streamline jurisdictional issues.[14] Whereas the Court has traditionally encouraged the simplification of jurisdictional standards, *Badgerow* creates a new landscape which not only presents new jurisdictional pitfalls but may tie a party's ability to control a dispute's process to their knowledge of an arcane system.[15]

Section I of this Note will discuss the development of the FAA and how its jurisdictional standards were interpreted before *Badgerow*. Section II will discuss how the ruling in *Badgerow* interacts with these principles and the potential prudential effects it may have on arbitration procedures going forward.

II. BACKGROUND

To understand *Badgerow*, it is important to explore the FAA generally and the Supreme Court cases related to jurisdiction.

A. EARLY HISTORY OF THE FAA

Congress enacted the FAA in 1926 with bipartisan support.[16] Arbitration, although by no means novel, was experiencing a significant growth in popularity after the turn of the century and began supplementing the judicial system in many states.[17] Although the practice remained controversial for being substantively unconscionable due to concerns that arbitration agreements strip citizens of their ability to access courts, many states began passing laws requiring state courts to acknowledge and enforce these agreements.[18]

Yet, these laws did not control the federal judiciary.[19] Many federal judges continued holding that arbitration agreements were substantively unconscionable and would void agreements otherwise enforceable under state law.[20] In part to curtail

10. *Id.* at 22 (Breyer, J., dissenting).
11. *Id.*
12. *See Badgerow*, 596 U.S. at 22.
13. *See id.* at 21.
14. *See id.* at 20.
15. *See* Bissonnette v. LePage Bakeries Park St., LLC, 33 F.4th 650, 661 (2d Cir.) (Jacobs, J., concurring), *amended and superseded on reh'g*, 49 F.4th 655 (2d Cir. 2022).
16. *Arbitration of Interstate Commercial Disputes: Hearing of S. 1005 and H.R. 646 Before the J. Comm. of Subcomms. on the Judiciary*, 68th Cong. 16 (1924).
17. Frank Emerson, *History of Arbitration Practice and Law*, 19 CLEVELAND ST. L.R.,155, 159 (1970).
18. *Id.*; s*ee also* S. REP. NO. 536, at 3 (1924).
19. *See* Emerson, *supra* note 17, at 162.
20. *See* Max Birmingham, *You Be the Judge: Analyzing When the Federal Arbitration Act's Judicial Review Standards Apply in State Court*, 22 PEPP. DISP. RESOL. L.J. 95, 95–105 (2022).

the practice and fortify the blossoming arbitration industry, Congress created the FAA to guide courts on how to approach these agreements.[21] In essence, the FAA was intended to place arbitration agreements on equal footing with other contracts valid under state law.[22]

The general provisions of the FAA contain 16 distinct sections which, among other directives, detail the procedures needed to enforce arbitration agreements.[23] Of particular note, Section 3 allows the stay of a federal case while a matter is arbitrated.[24] Section 4 discusses when and the manner by which a federal judge is to order an issue to arbitration.[25] Meanwhile, a court's ability to appoint an arbitrator to adjudicate a matter is governed under Section 5. Moreover, Sections 9, 10, and 11 allow courts to review awards for breaches in procedure and, in rare cases, substance.[26] Although the discretion afforded to judges during these reviews are limited, Sections 9 and 10 allow federal courts some ability to oversee arbitration proceedings.[27]

For about 50 years, the FAA simply served to ensure federal courts enforced arbitration agreements.[28] During this period, the FAA had limited scope as a primarily procedural statute designed to control and guide federal courts.[29]

However, the substantive scope of the act would greatly expand in the 1980s. In 1983, the Supreme Court found the FAA was not a mere procedural guide but that it held substantive requirements as well.[30] Arbitration agreements were largely within the purview of state contract law until the Court in *Southland Corp. v. Keating* found that the FAA protected arbitration agreements from state regulation and held that state laws which materially limited these agreements were impermissible.[31] Future decisions would further facilitate the FAA's evolution into the cornerstone of arbitration it is today.[32]

After *Keating* and the evolution of the FAA's substantive scope, new scrutiny was placed on the act's procedural requirements as well.[33] Even so, cross-sectional conflicts did not assume a contentious role until the 2000s.[34]

B. The FAA's Jurisdictional Developments

As with most civil cases, a federal court only has the jurisdiction to preside over an arbitration dispute when the matter either raises a federal question or the

21. *See id.*
22. Buckeye Check Cashing, Inc. v. Cardegna, 546 U.S. 440, 443 (2006).
23. *See* 9 U.S.C §§ 1–16.
24. *Id.* § 3.
25. *Id.* § 4.
26. *Id.* § 5.
27. *Id.* §§ 9–10.
28. Matteo Godi, *Administrative Regulation of Arbitration*, 36 YALE J. ON REGUL. 853, 857 (2019).
29. *Id.* at 859.
30. *See* Southland Corp. v. Keating, 465 U.S. 1, 16 (1984).
31. *Id.* at 11–16.
32. *See, e.g.*, AT&T Mobility LLC v. Concepcion, 563 U.S. 333 (2011); Abernathy v. DoorDash, Inc., 438 F. Supp. 3d 1062 (N.D. Cal. 2020); Cortez Byrd Chips, Inc. v. Bill Harbert Constr. Co., 529 U.S. 193 (2000).
33. *See* Hall St. Assocs., L.L.C. v. Mattel, Inc., 552 U.S. 576 (2008).
34. *Id.* at 583.

parties are diverse.[35] The FAA does not independently grant federal courts the jurisdiction to hear a matter relating to arbitration.[36]

Although most sections do not extensively detail jurisdictional standards, Section 4 contains a "save for" provision which provides some guidance.[37] Section 4 provides "[a] party […] may petition any United States District Court, save for such agreement, would have jurisdiction under title 28" when the other party fails to perform on an agreement.[38] In contrast, no other section contains overt jurisdictional language.[39] However, although these incongruities were present from the act's enactment, the matter would not be brought before the Supreme Court for nearly a century.[40]

Given that the FAA supersedes state law in the governance of arbitration agreements, a question remained whether petitions filed under the FAA created a federal issue sufficient to support federal jurisdiction.[41] Although the presence of an arbitration alone could not raise a federal question, could a party still avail a matter to the district court through a petition to review an arbitration award under the FAA?[42] The Supreme Court would find the opportunity to address that issue in 2008.[43]

In *Hall Street Associates, LLC v. Mattel, Inc*, a landlord sued a tenant claiming that the tenant's manufacturing operations were damaging the property in contravention of the lease.[44] After the defendant removed the matter to federal court, the parties sought to bring the matter to arbitration.[45] In their arbitration agreement, the parties agreed that a court could review an award to determine if the arbitrator's conclusions of law were erroneous.[46] After the arbitrator found in favor of the defendant, the plaintiff moved for the district court to review the award.[47] The district court found the arbitrator's legal conclusions were flawed and sent the matter to be arbitrated again with a proper application of the law.[48] The arbitrator found in favor of the plaintiff in this second proceeding.[49]

The defendant appealed, arguing that despite sections 9 and 10 of the FAA allowing a court to review an arbitrator's decision and award, the district court lacked the subject-matter jurisdiction to review the claim.[50] They argued that the underlying claim was brought under state law and that the FAA did not unilaterally expand the scope of judicial review.[51]

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35. 28 U.S.C. §§ 1331–32.
36. *Hall St. Assocs.*, 552 U.S. at 582 (citing Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 25 n.32 (1983)).
37. 9 U.S.C. § 4.
38. *Id.*
39. *See id.* §§ 1–16.
40. *See* Vaden v. Discover Bank, 556 U.S. 49 (2009).
41. *See Hall St. Assocs.,* 552 U.S. at 581–82.
42. *Id.* at 590.
43. *See generally id.*
44. *Id.* at 579.
45. *Id.*
46. *Id.*
47. *See Hall St. Assocs.,* 552 U.S. at 580.
48. *Id.*
49. *Id.*
50. *Id.*
51. *Id.* at 581.

The Supreme Court found in favor of the defendant.[52] The FAA does not signify that arbitration agreements were a matter of federal question.[53] Rather, a district court must look towards other methods, such as the diversity of the parties, to assess whether they could adjudicate the matter.[54] In this matter, the Court remanded the case back to the district court to assess the parties' diversity.[55]

Even so, *Hall Street* does not suggest that FAA brings no unique jurisdictional challenges.[56] Rather, it held that the act, by itself, does not suggest that arbitration agreements would raise a per se federal question.[57] Instead, a district court must look towards other federal questions or diversity to determine if they have jurisdiction over a matter.[58] The Court did not rule, however, on what issue should be probed in a district court's jurisdictional analysis: the petition before the court, filed under the FAA, or the underlying complaint.[59]

The Court would clarify this issue the following year in *Vaden v. Discover Bank*. In *Vaden*, the Court held that a federal court should "look through" a Section 4 petition to the underlying complaint when assessing subject-matter jurisdiction regarding motions to compel arbitration.[60] In *Vaden*, a credit card company filed a complaint in Maryland state court to recover past-due charges and fees from a customer.[61] The customer then countersued, arguing the charges and fees of the agreement violated state law.[62] In response, the company filed a Section 4 petition in the district court to compel arbitration in accordance with its cardholder agreement.[63] The company argued that since federal banking law preempted the customer's counterclaims, the district court had subject matter jurisdiction over the petition.[64]

The United States Supreme Court found that Section 4 requires that a court employ the "look through" method to derive subject-matter jurisdiction.[65] The "look through" method allows a court to assess its jurisdiction by looking not to the Section 4 petition a party submits, but at the underlying complaint.[66] Section 4 stipulates that a party may petition "any United States district court which, save for the agreement, would have jurisdiction…of the subject matter of a suit arising out of a controversy between the parties."[67] The Court found that a strict reading of "save for the agreement" required that a district court look towards whether they had jurisdiction over the underlying dispute, not whether they had jurisdiction to entertain the defendant's Section 4 petition.[68] Practically, a district court conducting "look through" analysis should scour the underlying complaint to assess if the matter

52. *Id.*
53. *See Hall St. Assocs.,* 552 U.S. at 581–82.
54. *See id.* at 591.
55. *Id.* at 592.
56. *See id.*
57. *See id.*
58. *See id.*
59. *See Hall St. Assocs.,* 552 U.S. at 591–92.
60. *See* Vaden v. Discover Bank, 556 U.S. 49, 62 (2009).
61. *Id.* at 54.
62. *Id.*
63. *Id.* at 54–55.
64. *Id.* at 55.
65. *Id.* at 62.
66. *See Vaden*, 556 U.S. at 62.
67. *Id.*
68. *Id.*

invokes a federal question or if the matter could be seen through diversity.[69] Furthermore, the Court noted the practical difficulties a district court could encounter while a Section 4 petition for diversity jurisdiction, because the amount in controversy may not be immediately apparent, and noted that "look through" alleviated those concerns.[70]

That said, "look through" analysis also presents new difficulties for a district court. It requires that the court look to an issue which is not directly before them and that they may have insufficient means to properly adjudicate without a significant investment of time and resources.[71] However, the Court found themselves unable to ignore the textual significance of Section 4's "save for" language.[72] They reasoned that Congress would not have included the provision unless it intended it to provide guidance and that if that was not Congress's intent, it could amend the statute.[73]

After "look through" was established as the jurisdictional approach for Section 4 claims, a question remained if it was the proper analysis for matters brought under the FAA's other sections. Soon after the *Vaden* decision, a circuit split developed as to the reach of the "look through" method.[74]

For example, the United States Court of Appeals for the First Circuit addressed the issue in *Ortiz-Espinosa v. BBVA Securities of Puerto Rico, Inc*.[75] In *Ortiz-Espinosa*, a couple invested in two brokerage accounts with BBVA.[76] Three years later, they took action against BBVA alleging that the firm failed to exercise professional judgment in their investments.[77] The matter was brought in arbitration in accordance with the parties' brokerage agreement.[78] After seventeen hearings, the arbitration panel found for BBVA.[79] The plaintiff then filed a petition for award review in Puerto Rican court.[80] BBVA then moved to have the issue removed to a federal district court[81]

The First Circuit held that the district court had jurisdiction over the petition and that the "look through" analysis was appropriate for Section 9 and 10 claims.[82] Although Sections 9 and 10 lacked Section 4's "save for" provision, the court reasoned the FAA should be analyzed in a larger, more holistic context.[83] In essence, the First Circuit read Section 4's language as establishing a standard which applied to all future sections.[84]

69. *See id.*
70. *Id.* at 65.
71. *See, e.g.*, Badgerow v. Walters, 596 U.S. 1 (2022).
72. *Vaden,* 556 U.S. at 63.
73. *Id.* at 62–63.
74. *See* Ortiz-Espinosa v. BBVA Sec. of P.R., Inc., 852 F.3d 36, 46 (1st Cir. 2017) (holding the *Vaden* look-through test applies to sections 9, 10, and 11 of the Federal Arbitration Act) *abrogated by* Badgerow v. Walters, 596 U.S. 1 (2022); Goldman v. Citigroup Glob. Mkts. Inc., 834 F.3d 242, 255 (3d Cir. 2016) (holding the *Vaden* look-through test does not apply to section 10 of the Federal Arbitration Act); Godi, *supra* note 28, at 860.
75. *Ortiz-Espinosa*, 852 F.3d. at 49.
76. *Id.* at 40.
77. *Id.* at 49.
78. *Id.* at 40.
79. *Id.* at 41.
80. *Id.*
81. *Ortiz-Espinosa*, 852 F.3d. at 41.
82. *Id.* at 47.
83. *Id.*
84. *Id.*

However, not all circuits were as receptive to expanding the *Vaden* decision to other sections.[85] The Third Circuit, for example, held that *Vaden* rationale only applied to Section 4 petitions and that the language of one section would not influence another.[86] Although conflicts could emerge as a consequence of such a reading, the court held that those consequences could not supersede the text's clear directive.[87]

This circuit split primed for the Supreme Court's review.[88] The Court found opportunity to address the issue of *Vaden's* scope and the interplay of the FAA's jurisdictional language in *Badgerow*.[89]

III. *BADGEROW* AND ITS SCOPE

Badgerow would resolve the circuit split by restricting "look through" to Section 4 petitions.[90] Subheading A will discuss the Court's ruling in *Badgerow* and the considerations which influenced it. Subheading B will explore the ramifications of the FAA's incongruous sections and the undesired consequences which may emerge from the *Badgerow* ruling.

A. The Badgerow Decision

In *Badgerow*, a Louisiana resident initiated an arbitration action against her former employer, claiming that she was wrongfully terminated on the basis of gender.[91] She raised both state and federal law claims in the arbitration proceeding.[92] The matter was brought before an arbitrator because of an arbitration clause contained in her employment contract.[93] The plaintiff's efforts in arbitration were unsuccessful, with the arbitrator finding in favor of her employer.[94]

Dissatisfied with the result, the plaintiff filed suit in state court to vacate the arbitral decision.[95] Walters removed the case to federal district court on the basis that the court had the jurisdiction to review arbitration awards under Sections 9 and 10 of the FAA.[96] In this matter, the underlying dispute presented a federal question, the plaintiff's federal employment claims.[97] However, the petition itself did not raise any federal claims.[98] Similarly, the district court was unable to see the matter through diversity.[99] The defendant claimed that the Section 4 analysis in *Vaden* should apply to the FAA's other provisions.[100]

The plaintiff argued that the district court should have looked to an independent basis test to assess subject-matter jurisdiction for her claim as Sections 9 and 10

85. *See* Goldman v. Citigroup Glob. Mkts. Inc., 834 F.3d 242, 254 (3d Cir. 2016).
86. *Id.*
87. *Id.* at 252.
88. *See* Badgerow v. Walters, 596 U.S. 1 (2022).
89. *Id.* at 5.
90. *Id*.
91. *Id.*
92. *Id.*
93. *Id.*
94. *Badgerow*, 596 U.S. at 5.
95. *Id.*
96. *Id.*
97. *Id.* at 6.
98. *Id.*
99. *Id.* at 9.
100. *Badgerow*, 596 U.S. at 13.

lacked the "save for" provision present in Section 4.[101] Given that the parties were not diverse and the petition to review award did not raise a federal question, the plaintiff argued that a federal court could not review the issue.[102] The defendant, citing Vaden, claimed that "look through" was still the appropriate means for the court to assess jurisdiction because finding that the "save for" language only applied to a certain section could create anomalous results.[103] He argued that a streamlined FAA promoted "administrative simplicity" and, as the *Vaden* court discussed, "look through" eased some of the difficulties a district court may face by trying to assess the diversity of the parties via a petition alone.[104] Instead, the defendant encouraged a more holistic reading of the FAA where meaning significant to one section would reverberate through the act.[105]

Ultimately, the Supreme Court declined to extend *Vaden* to Section 9 and 10 claims and held that the district court did not have the jurisdiction to review the award.[106] Rather, a court must only look to the petition to derive jurisdiction.[107] The Court's decision in *Vaden* was predicated on a strict textual reading of Section 4.[108] The Court held that Section 4's "save for" language uniquely demarked "look through" as the appropriate standard for Section 4 petitions.[109] In contrast, Sections 9 and 10 do not contain "save for" provisions and contain no jurisdictional language that suggests that Congress intended that courts to use a unique approach to assess jurisdiction.[110] As such, a Section 9 or 10 petition must provide an independent basis for federal jurisdiction.[111]

The Court noted that the defendant accurately raised significant policy concerns with a disjointed FAA.[112] The FAA was largely intended to foster arbitration and facilitate the quick dispute resolution.[113] By adding unnecessary procedural complexities, the Court recognized their decision undermined that effort.[114] However, despite those issues, as clear statutory directives supersede even strong policy arguments, the Court refused to extend "look through."[115]

Justice Breyer's dissent suggested that the Court's determination, although textually sound, could have undesired consequences.[116] The dissent acknowledged that Section 4 contained jurisdictional language not present in the other sections.[117] However, the dissent argued that the Court has traditionally expressed a desire to keep jurisdictional standards simple and uncomplicated.[118] By creating separate standards for each section of the FAA, the Court invited an unnecessarily technical

101. *Id.*
102. *Id.* at 5–6.
103. *Id.* at 11–13.
104. *Id.* at 15.
105. *Id.* at 15–16.
106. *Badgerow*, 596 U.S. at 12.
107. *Id.* at 10.
108. *Id.*
109. *Id.* at 10–11.
110. *Id.* at 11.
111. *See id.* at 11–12.
112. *Badgerow*, 596 U.S. at 15.
113. *Id.* at 27 (Breyer, J., dissenting).
114. *Id.* at 16–17 (majority opinion).
115. *Id.*
116. *Id.* at 19 (Breyer, J., dissenting).
117. *Id.* at 21–22.
118. *Badgerow*, 596 U.S. at 22 (citing Hertz Corp. v. Friend, 559 U.S. 77, 94 (2010)).

requirements for jurisdictional analysis which runs contrary to this principle.[119] The dissent found these distinctions particularly problematic because parties frequently invoke multiple sections of the FAA over the lifecycle of a case.[120]

B. The Uncertain Road Ahead

The Court's decision in *Badgerow* extends beyond the review of arbitration awards in Sections 9 and 10 of the FAA. As noted in Justice Breyer's dissent, only Section 4 contains a "save for" provision, while the FAA's other sections are subject to the independent basis standard.[121] In a vacuum, sections with different jurisdictional standards may not be problematic if the sections were intended to address different issues and rarely overlapped.[122] However, the FAA governs the procedural means by which federal courts review and enforce arbitration agreements and, as such, many of its sections are jointly invoked.[123]

Perhaps the most striking incongruity between the sections can be found between Sections 4 and 7 of the FAA.[124] Section 4 allows a court to assign a matter for arbitration and, because of its "save for" provision, a district court should use "look through" analysis when assessing its jurisdiction.[125] In contrast, Section 7 permits an arbitrator to summon a witness to attend the arbitration.[126] It contains no "save for" provision and, therefore, an independent basis for subject matter jurisdiction is required.[127]

Justice Breyer's dissented noted that filing for a stay under Section 3 may serve as a practical remedy to some of the potential issues which may emerge from divergent sectional rules.[128] Section 3 allows a district court to stay a case while the matter is arbitrated.[129] If a party brings a federal claim before a district court and subsequently files a Section 4 petition, they may file a Section 3 petition to stay the federal case until the matter has been arbitrated.[130] Since the district court retains jurisdiction over the matter, they would be able to, for example, review awards under Section 9 and 10, regardless of whether a party's petition provided an independent basis for jurisdiction.[131] However, the rest of the Court did not address the merits of this approach and its use remains uncertain.[132]

The Court's holding in *Badgerow* allows for a district court to order a matter to arbitration, relying on "look through" for jurisdiction, without having the jurisdiction to assign an arbitrator to the matter under Section 5.[133] When faced with

119. *Id.* at 26–27.
120. *See id.* at 28–29.
121. *See id.* at 21–22.
122. *See id.* at 31.
123. *See id.* at 30.
124. *See Badgerow*, 596 U.S. at 30.
125. *See* 9 U.S.C. § 4.
126. *Id.* § 7.
127. *See id.*
128. *See Badgerow*, 596 U.S. at 26 (Breyer, J., dissenting).
129. 9 U.S.C. § 3.
130. *Id*.
131. *See id*.
132. *See generally Badgerow*, 596 U.S. 1.
133. *See generally id.* at 15–19.

such a scenario, the district court would either need to dismiss the matter or the parties would need to reach a separate agreement to resolve the issue.[134]

Moreover, *Badgerow* left additional unanswered questions. Notably, the Court refused to consider whether a federal court would have jurisdiction to rule on a Section 5 petition if it jointly filed with a Section 4 petition.[135] As such, the true scope of "look through" remains unaddressed.

Although there are at least potential means to circumvent the incongruities and conflicts discussed in Justice Breyer's dissent, muddle the already complicated issue of jurisdictional analysis.[136] Moreover, these remedies are only available to parties who are informed and deliberate in their filings. As it stands, *Badgerow* has altered the arbitration landscape by moving jurisdictional standards towards a less delineated and clear ruleset.

IV. ANALYSIS

Badgerow exemplifies a tension which exists between the concerns of Congress when drafting the FAA and its current use. Although always intended to provide procedural standards for federal courts to use when assessing arbitration agreements, the FAA was enacted to combat judicial disregard of arbitration, not narrowly delineate arbitration issues which a court can and cannot consider regarding the same matter.[137] As a result, the Court's reading places the statute's purpose at odds with its intent.

Furthermore, the ruling seems to be in friction with the Court's expressed desire to reduce the complexity of jurisdictional standards. The Court's ruling in *Badgerow* does not streamline the FAA but, instead, it creates further complications and contradictions.[138] The FAA was supposed to serve as an enabling statute, meant to guide courts and parties on how arbitration agreements should be handled by federal court.[139] If one section requires a separate standard to determine if a district court can review a matter, the FAA would be serving a needlessly technical and punitive purpose, punishing parties for not directly complying with, seemingly, arbitrary requirements. [140]

Likewise, even if practical solutions or work arounds are discovered, they do not fully alleviate the issues *Badgerow*'s ruling presents. Not only has the Court not expressly ruled on the role of Section 3 stays in locking in a district court's jurisdiction, using Section 3 lock in a district court's jurisdiction for future petitions seems to cut against Congress's purpose in providing each section different jurisdictional standards.[141] Likewise, relying on Section 3 petitions to lock in jurisdiction requires that the matter originate in district court, which burdens the courts with potentially unnecessary proceedings and, and presents a substantial risk that less informed litigants may inadvertently forfeit this opportunity.[142] Given the Court's

134. *See generally id.*
135. *See id.* at 16 n.6.
136. *Id.* at 31 (Breyer, J., dissenting).
137. *Id*. at 27.
138. *See Badgerow*, 596 U.S. at 28.
139. *Id.*
140. *Id.* at 27.
141. *See id.*
142. *Id.* at 16 (majority opinion).

desire to simplify jurisdictional standards, it seems as though this ruling undermines that effort.

Furthermore, it is difficult to ascertain the practical advantages of the FAA's inconsistent and narrowly delineated jurisdictional standards. The Court in *Badgerow* states that the petitions themselves are sufficient to tell a district court which mode of jurisdictional analysis to employ.[143] Furthermore, it contends that although hypothetical problems from inconsistent standards could arise, those problems are rarely, if ever, encountered in practice.[144] However, a district court's qualifications and ability to resolve these problems only alleviates issues the act itself created.

Nonetheless, that is not to suggest that the Court was incorrect in their textual analysis of the FAA, nor that their strict reading was unwarranted. Indeed, the Court acknowledged the challenges which could arise by assigning Section 4 a jurisdictional standard distinct from the others.[145] However, the Court held that the importance of following textual statutory directives was greater than addressing prudential or policy concerns.[146] To unilaterally ignore the presence of a unique statutory provision in one section would teeter on judicial policy making. As such, the risk of undesired repercussions do not weaken the Court's interpretation. Instead, the decision speaks to an underlying fragility of the FAA's statutory construction which was unearthed as the statute's application and scope grew.

Legislative action to simplify and standardize the FAA's structure would likely be the most practical manner to resolve these post-*Badgerow* conflicts. If the FAA was created with different Congressional concerns at issue, then it would be appropriate for Congress to modify it to address more contemporary concerns.

Although the defendant's arguments for unifying the FAA are prudent, their proposal for expanding Section 4's approach to the other sections is not.[147] The primary advantage of the "look through" approach, as the dissent in *Badgerow* and the Court in *Vaden* discussed, is that "look through" enables district courts to easily assess the value of a claim when looking for diversity jurisdiction.[148] However, the "look through" approach is an extension of Section 4's "save for" language and is an aberration in American civil procedure.[149] Amending Section 4 to omit its "save for" provision would both unify the FAA and allow Section 4 claims to be reviewed on the same standards as most other claims in federal court.[150] Indeed, the limited applicability of "look through" runs contrary to the Court's goals of simplifying jurisdictional standards.[151] Thus, although "look through" may ease the difficulties facing a district court in assessing the diversity of the parties, that benefit does not warrant a unique mode of jurisdictional analysis.

In essence, "look through" is to a unique jurisdictional requirement not found elsewhere in the law, that provides nominal value relative to the difficulties it creates.[152] Regardless of the merits of the Court's determination and the availability

143. *Id.* at 17.
144. *See Badgerow*, 596 U.S. at 17.
145. *See id.*
146. *See id.* at 16–17.
147. *See id.*
148. *See id.* at 19–31; *see also* Vaden v. Discover Bank, 556 U.S. 49 (2009).
149. *See Vaden*, 556 U.S. 49.
150. *See id.* at 62–63.
151. *See Badgerow*, 596 U.S. 1.
152. *See id.*; *see also Vaden,* 556 U.S. 49.

Section 3 lock in *Badgerow* uncovered a structural weakness in the FAA. To effectively avoid these absurd results and simplify, Congress should remove the "save for" language from Section 4.

V. CONCLUSION

Badgerow represents the faults in the FAA's jurisdictional standards. Although the FAA was created to serve a more limited and focused function than it serves today, the textual differences between sections creates discrepancies which are difficult to ignore or reconcile.[153] To support efforts to minimize jurisdictional complexity and technical defects, the legislature should revise the FAA to serve as a more comprehensive statute, with clear, simple, and uniform jurisdictional standards.

When addressing these issues with the FAA's structural weakness, Congress should remove the "save for" language from Section 4 to create a uniform method of jurisdictional analysis for the entire FAA.

153. *See Badgerow*, 596 U.S. 1; *see also* 9 U.S.C. §§ 1–16.