IN THE SUPREME COURT OF OHIO

CREDIT ACCEPTANCE CORP.	*	**CASE NO. 2025-0246**
APPELLEE	*	**On Appeal from the Cuyahoga County Court of Appeals, Eighth Appellate**
-vs	*	**District, Case No. 113682**
GLORIA BEARD, et al.	*	
APPELLANTS	*	

BRIEF OF AMICI CURIAE NATIONAL CONSUMER LAW CENTER, NATIONAL ASSOCIATION OF CONSUMER ADVOCATES, AND PUBLIC JUSTICE IN SUPPORT OF APPELLANTS

Matthew L. Alden (0065178)
(Counsel of Record)
The Legal Aid Society of Cleveland
1223 West Sixth Street
Cleveland, Ohio 44113
P: 216-861-5659
F: 216-861-0704
malden@lasclev.org

Philip D. Althouse (0051956)
The Legal Aid Society of Cleveland
1530 West River Rd. North, Suite 301
Elyria, OH 44035
P: 216-861-5710
F: 216-861-0704
pdalthouse@lasclev.org

Counsel for Appellants Gloria Beard and Jasmine Beard

James W. Sandy (0084246)
(Counsel of Record)
McGlinchey Stafford PLLC
3401 Tuttle Road, Suite 200
Cleveland, Ohio 44122
P: 216- 378-9911
F: 216-916-4162
jsandy@mcglinchey.com

Counsel for Appellee Credit Acceptance Corporation

Brian D. Flick (0081605)
Andrew M. Engel (0047371)
Marc E. Dann (0039425)
DANNLAW
15000 Madison Avenue
Lakewood, Ohio 44107
(216) 373-0539
Fax: (216) 373-0536
notices@dannlaw.com

Counsel for Amici Curiae National Consumer Law Center, National Association Of Consumer Advocates, And Public Justice

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases **Page**

Statutes

Constitutions

STATEMENT OF INTEREST OF AMICI CURIAE

National Association of Consumer Advocates

The National Association of Consumer Advocates (NACA) is a nonprofit association of more than 1,600 attorneys and consumer advocates committed to representing consumers' interests. NACA's members are private and public sector attorneys, legal services attorneys, law professors, and law students whose primary focus is the protection and representation of consumers. They have represented hundreds of thousands of consumers in small-damages actions and consumer class actions. As a national organization fully committed to promoting justice for consumers, with an emphasis on those of modest means or those who are otherwise especially vulnerable, NACA's members have also long advocated to ensure that consumers have remedy and means of redress of injuries caused by unfair practices.

NACA supports reversal of the court of appeals decision in this case.

National Consumer Law Center

Since 1969, the nonprofit National Consumer Law Center (NCLC) has worked for consumer justice and economic security for low income and other disadvantaged people in the U.S. through its expertise in policy analysis and advocacy, publications, litigation, expert witness services, and training. NCLC publishes a 21-volume Consumer Credit and Sales Legal Practice Series, including Consumer and Worker Arbitration Provisions (9th ed. 2024), and has particular expertise concerning state consumer protection laws and arbitration. NCLC has conducted numerous trainings on consumer protection laws in more than 20 states and testifies regularly before Congress, federal agencies, and state legislative bodies on consumer protection topics. NCLC frequently appears as amicus curiae in consumer law cases throughout the country.

NCLC supports reversal of the court of appeals decision in this case.

Public Justice

Public Justice is a national public interest advocacy organization that specializes in precedent-setting, socially significant civil litigation, with a focus on fighting to preserve access to justice for victims of corporate and governmental misconduct. The organization maintains an Access to Justice Project, which seeks to remove procedural barriers that unduly restrict the ability of workers, consumers, and other civil litigants from seeking redress in the civil court system. To that end, Public Justice has a longstanding practice of fighting against the unlawful use of mandatory arbitration clauses that deny workers and consumers their day in court. As part of that work, Public Justice has developed substantial expertise around Federal Arbitration Act preemption.

Public Justice supports reversal of the court of appeals decision in this case.

STATEMENT OF THE CASE AND FACTS

Amici curiae fully adopt the Statement of the Case and Facts in the merit brief of Appellants.

ARGUMENT

> PROPOSITION OF LAW: For cases brought in Ohio courts where the parties have agreed to arbitration proceedings governed by the Federal Arbitration Act, a trial court order granting a motion to stay the proceedings and compel arbitration is a final order subject to appellate review under R.C. 2711.02(C)

The court of appeals dismissed Ms. Beard's appeal for two reasons. First, it refused to apply R.C. 2711.02(C) and held that the Federal Arbitration Act (FAA) does not permit appeal from an order compelling arbitration. *Credit Acceptance Corp. v. Beard,* 2024-Ohio-4799, ¶ 13 (8th Dist.).

Second, the court held that by agreeing that the FAA governed in the contract, Ms. Beard could not avail herself of the appeal provided for in R.C. 2711.02(C). *Id*.

The appellate decision is based on a misreading of the FAA and the applicability of its terms to state-court procedural matters. It also misinterprets the contractual language it relied on to apply the appeal provision of the FAA, § 16, to this case.

"The Federal Arbitration Act (FAA) sets forth procedures for enforcing arbitration agreements in federal court." *Smith v. Spizzirri*, 601 U.S. 472, 473 (2024). The substantive law provision of the Act is § 2, which the U.S. Supreme Court—and this Court—understands applies regardless of forum. *Volt Info. Scis., Inc. v. Bd. of Trustees of the Leland Stanford Jr. Univ*., 489 U.S. 468, 477, fn. 6 (1989) ("we have held that the FAA's 'substantive' provisions -- §§ 1 and 2 -- are applicable in state as well as federal court."). Section 2 sets forth the requirement that, in contracts involving interstate commerce, arbitration provisions are to be enforced like all other contracts. 9 U.S.C. § 2.[1] Because it is substantive, § 2 controls both federal and state court in their construction and enforcement of arbitration provisions. *Southland Corp. v. Keating*, 465 U.S. 1, 14-15 (1984).

However, the application of § 2 of the FAA—i.e., the substantive requirement that arbitration agreements be enforced to the same extent as other contracts—was not in issue before the court of appeals. The issue presented was, as a matter of procedure, whether Ms. Beard was entitled, under R.C. 2711.02(C), to appeal the trial court's decision compelling arbitration. Or put another way, does § 16 of the FAA preempt application of R.C. 2711.02(C).

A. Section 16 applies to federal appellate jurisdiction.

Section 16 of the FAA "references and informs" federal appellate jurisdiction granted by

[1] The text of § 2 makes the provision applicable to transactions in "commerce," however, the term "commerce" is defined in 9 U.S.C. § 1 to mean, generally, "interstate commerce."

28 U.S.C. § 1291. *Diaz v. Macys W. Stores, Inc.,* 101 F.4th 697, 701, fn. 2 (9th Cir. 2024) (quoting *Pac. Reinsurance Mgmt. Corp. v. Ohio Reinsurance Corp*., 935 F.2d 1019, 1021 (9th Cir. 1991)); *see also, Griswold v. Coventry First LLC*, 762 F.3d 264, 269 (3d Cir. 2014) (finding it had appellate jurisdiction to hear an appeal from a federal district court under § 16). And it addresses only appeals taken from federal court decisions. Nothing about § 16 can be interpreted to apply to appeals taken from state-court orders.

Nonetheless, in reaching its decision in this case, the court of appeals relied on § 16 in stating "[t]he FAA further provides that an interlocutory order granting a stay of any action under 9 U.S.C. 3 is not appealable. 9 U.S.C. 16(b)." *Beard*, ¶ 11. It concluded, "[a]ccordingly, the FAA does not provide for an appeal of an interlocutory order granting a motion compelling arbitration. The trial court's order in this case was not a final order." *Id*., ¶ 11. However, there is a major and obvious flaw the court's reasoning. Section 16 bars such appeals to federal court, and only when the order granting the stay is issued by a federal court.

Most importantly, § 16 addresses only the appealability of judgments issued under the FAA by federal courts. For instance, as is relevant here, § 16(b) bars appeal from a decision granting a motion to stay pending arbitration under § 3 of the FAA. 9 U.S.C. § 3(b) ("Except as otherwise provided in section 1292(b) of title 28, an appeal may not be taken from an interlocutory order– (1) granting a stay of any action under section 3 of this title").

Section 3 of the FAA does not, however, apply to a state-court orders granting a motion to compel arbitration. It applies only to a suit "brought in any of the courts of the United States." 9 U.S.C. § 3; s*ee also Moses H. Cone Memorial Hospital v. Mercury Construction Corp*., 460 U.S. 1, 25 fn. 32 (1983) ("Section 3 likewise limits the federal courts to the extent that a federal court cannot stay a suit pending before it unless there is such a suit in existence."); *Southland Corp.*, 465

U.S. at 16 n.10 ("In holding that the Arbitration Act preempts a state law that withdraws the power to enforce arbitration agreements, we do not hold that §§ 3 and 4 of the Arbitration Act apply to proceedings in state courts."); *Volt Info. Scis.,* 489 U.S. at 477 n.6 ("we have never held that §§ 3 and 4, which by their terms appear to apply only to proceedings in federal court . . . are nonetheless applicable in state court").

The Supreme Court reiterated this point in *Badgerow v. Walters*, 596 U.S. 1 (2022):

> This Court has held that the FAA's core substantive requirement—Section 2's command to enforce arbitration agreements like other contracts—applies in state courts, just as it does in federal courts. *See Southland Corp*., 465 U. S., at 12-16, 104 S. Ct. 852, 79 L. Ed. 2d 1. We have never decided whether the FAA's more procedural provisions, including Sections 4 and 9 through 11, also apply in state courts.

Id., at 8 n. 2; *see also World Fresh Mkt. v. P.D.C.M. Assocs., S.E.,* 2011 V.I. Supreme LEXIS 29, **6-7 (V.I Sup. Ct. Aug. 25, 2011) (gathering state cases holding the same).

Thus, in the present case, the predicate for application of § 16—an appeal from a decision issued by a federal court—is missing. Therefore, § 16 is not applicable in this instance and cannot bar the appeal.

B. To hold that § 16 preempts state court jurisdiction raises serious federalism concerns.

Federalism concerns include the need for the federal government to respect a state's control of its courts. *See People v. Express Scripts, Inc*., 139 F.4th 763, 768 (9th Cir. 2025). Respect for the states is at its apex when confronted with a claim that federal law requires a State to undertake something as fundamental as restructuring the operation of its courts. *Johnson v. Fankell*, 520 U.S. 911, 922 (1997). Indeed, Justice O'Connor expressed federalism concerns regarding the application of the FAA to states. "The general rule, bottomed deeply in belief in the importance of state control of state judicial procedure, is that federal law takes the state courts as it finds them. . . .

Some differences in remedy and procedure are inescapable if the different governments are to retain a measure of independence in deciding how justice should be administered." *Southland Corp.,* 465 U.S. at 33 (quoting Hart, The Relations Between State and Federal Law, 54 Colum. L. Rev. 489, 508 (1954)); *See also Erie R. Co. v. Tompkins*, 304 U.S. 64, 78-79 (1938) ("The constitution of the United States . . . recognizes and preserves the autonomy and independence of the states—independence in their legislative and judicial departments. Supervision over either the legislative or the judicial action of the states is in no case permissible except as to matters by the constitution specifically authorized or delegated to the United States.").

As if bringing Justice O'Connor's concerns to life, the court of appeals held that § 16 of the FAA deprived it of its appellate jurisdiction over this case, i.e., that Congress expressly overrode the General Assembly's grant of judicial power to Ohio's appellate courts. Such a finding has serious implications.

Article IV, Section 3(B)(2), of Ohio's Constitution grants Ohio's appellate courts subject-matter jurisdiction to "review and affirm, modify, or reverse" a lower court's final order. *In re M.M.,* 2013-Ohio-1495, ¶ 21. "But the General Assembly—and the General Assembly alone—has the authority to provide by law the method of exercising that jurisdiction." *Id*. (*quoting Cincinnati Polyclinic v. Balch*, 92 Ohio St. 415, paragraph one of the syllabus (1915)). And that is what the General Assembly did in enacting R.C. 2711.02(C). It granted Ohio's appellate courts jurisdiction to hear appeals from decisions on motions to compel arbitration.

Even putting aside that Congress could not, as a matter of federalism, dictate state-court procedures, Congress has not indicated its intent to preempt state-court procedures here. For preemption, the question is whether in enacting § 16, Congress intended to constrain state courts in the exercise of their constitutional and statutory jurisdiction. "In deciding whether Congress has

occupied a field for exclusive federal regulation, we begin, based on concerns of federalism, with a sturdy 'presumption against preemption.' " *Rosenberg v. DVI Receivables XVII, LLC*, 835 F.3d 414, 419 (3d Cir. 2016). That presumption is overcome only when "a Congressional purpose to preempt . . . is clear and manifest." *In re Fed.-Mogul Glob. Inc.,* 684 F.3d 355, 365 (3d Cir. 2012) (citations omitted). "To discern the preemptive intent of Congress, [the Court] must look to the text, structure, and purpose of the statute and the surrounding statutory framework." *Rosenberg, at* 419 (*quoting Medtronic, Inc. v. Lohr*, 518 U.S. 470, 486 (1996)).

To be sure, the Supreme Court has held that in enacting § 2 of the FAA, Congress created a substantive rule to "foreclose state legislative attempts to undercut the enforceability of arbitration agreements." *Southland Corp*., 465 U.S. at 16. But as set forth above, there is no indication that Congress intended state courts to apply the FAA's procedural rules, including § 16. By their plain language, §§ 3 and 4 of the FAA are not applicable to state court proceedings. *Volt Info. Scis.,* 489 U.S. at 477 n.6. And the Supreme Court has held "'[t]here is no federal policy favoring arbitration under a certain set of procedural rules; the federal policy is simply to ensure the enforceability, according to their terms, of private agreements to arbitrate.' " *Volt Info. Scis.,* 489 U.S. at 476; *see also*, *Xaphes v. Mowry*, 478 A.2d 299, 301 (Me. 1984) (state court "not compelled" to apply federal courts' jurisdictional rule merely because action filed under FAA; therefore, "question of appealability depends on this Court's interpretation of state procedural requirements"); *McClellan v. Barrath Constr. Co*., 725 S.W.2d 656, 658 (Mo. Ct. App. 1987) (because state courts are not bound by FAA's procedural provisions, they may look to state law to determine appealability of order compelling arbitration).

Ohio courts should be loathe to surrender their duties to the litigants who are haled before them, and principles of federalism prohibit them from doing so. Regardless, the United States

Supreme Court has so far failed to find clear congressional intent to displace state-law procedures, and nothing in the FAA or its interpretive case law should lead this Court to a different conclusion.

C. The parties' contract did not incorporate the procedural provisions of the FAA.

The court of appeals relied heavily on the contract language that made the transaction subject to the substantive, but not procedural, provisions of the FAA. That provision stated: "It is expressly agreed that this Contract evidences a transaction in interstate commerce. This Arbitration Clause is governed by the FAA and not by any state arbitration law." From this language, the court of appeals seemingly concluded that the entirety of the FAA was brought to bear to the parties' arbitration proceedings. In other words, the court of appeals viewed the contract's reference to the FAA as a choice of law provision.

However, missing from the contract is any language that incorporated the FAA's procedural provisions. The FAA's substantive law is found in § 2. *Moses H. Cone Memorial Hospital*, 460 U.S. at 24-25. The balance of the Act governs federal court procedure. *See Spizzirri*, 601 U.S. at 473. However, "[i]n choice-of-law situations, the procedural laws of the forum state . . . are generally applied." *Unifund CCR Partners Assignee of Palisades Collection, LLC v. Childs*, 2010-Ohio-746, ¶ 14 (2d Dist.) (citations omitted); *see also*, *Lima Ref. Co. v. Linde Gas N. Am., LLC*, 2022-Ohio-2185, ¶ 6 (3rd Dist.) ("In contractual choice-of-law situations, the law of the chosen state is applied to resolve the substantive issues in the case, while the law of the forum state will govern procedural matters.") (quoting *Citibank (South Dakota), N.A. v. Perz*, 2010-Ohio-5890, ¶ 28 (6th Dist.)); *Philpott v. Pride Techs. of Ohio, LLC*, 2015-Ohio-4341 (1st Dist.) ("the law of the forum state controls procedural remedies"); *Phelps v. McClellan*, 30 F.3d 658, 662 (6th Cir. 1994) (quoting *Federal Deposit Ins. Co. v. Petersen*, 770 F.2d 141, 142 (10th Cir. 1985)) ("While parties are generally free to contract choice of law, such 'provisions in contracts are generally

understood to incorporate only substantive law, not procedural law such as statutes of limitations.'").

The court of appeals ignored this principle and jumped to the conclusion that § 16 governed Ms. Beard's appeal. But because the FAA does not mandate the use of a particular set of procedural rules for its vindication, the court of appeals should have relied on R.C. 2711.02(C) and heard Mr. Beard's appeal.

D. To incorporate § 16 into the parties' contract, the Court would need to rewrite the agreement.

Section 16 prohibits an appeal from a grant of a motion to compel arbitration only if that motion was granted under 9 U.S.C. § 3. In other words, the grant must have been issued by a federal court. Thus, because the parties were not in federal court, the contract provision did not incorporate § 16 and did not prohibit Ms. Beard's right to appeal under R.C. 2711.02(C).

The arbitration provision in this case does not mention appeals from state court decisions. Neither does it state that the parties waive the right to appeal a grant of a motion to compel arbitration. Further, the provision does not say the FAA will apply as if it were rewritten in a way that would make it applicable to state court proceedings. It simply says the FAA governs. But the FAA cannot govern something it does not, by its terms, govern.

Simply put, the language of the arbitration provision is inadequate to incorporate § 16 restrictions on certain appeals applicable to this case. Thus, because the procedural aspects of the FAA were not incorporated into the parties' agreement, the court of appeals was obligated to apply R.C. 2711.02(C).

E. Credit Acceptance chose to avail itself of Ohio's court system.

Credit Acceptance is a publicly traded company that finances automobiles throughout the United States. It works with over 15,000 car dealers around the country and has financed millions

of cars. *See* Learn About Credit Acceptance, https://www.creditacceptance.com/about (last visited July 21, 2025). The company inserts arbitration provisions into virtually every one of its consumer lending contracts. Nonetheless, it files hundreds, if not thousands, of collection actions in Ohio courts every year. And it is entitled to do so. But it is undeniable that Credit Acceptance uses Ohio's court system as part of its business model. *See Taylor v. First Resolution Invest. Corp.*, 2016-Ohio-3444, ¶¶ 2-6.

In this case, it chose to file this suit in the Parma Municipal Court. And it did so knowing that it could instead institute an arbitration proceeding to enforce its rights. Instead, it willingly subjected itself to the jurisdiction of the Ohio court system. It is disingenuous of Credit Acceptance to now claim having its case heard in accordance with Ohio law is somehow unfair or improper.

Credit Acceptance's conduct is nothing more than forum shopping and gamesmanship. It is using and abusing Ohio's court system, and the Court should not condone such behavior.

CONCLUSION

For the foregoing reasons, amici curiae request that the Court reverse the decision of the court of appeals and find that the FAA, and specifically § 16 of the FAA, does not bar an appeal under R.C. 2711.02(C) from an order compelling arbitration.

Respectfully submitted,

/s/ Andrew M. Engel
Brian D. Flick (0081605)
Andrew M. Engel (0047371)
Marc E. Dann (0039425)
DANNLAW
15000 Madison Avenue
Lakewood, Ohio 44107
(216) 373-0539
Fax: (216) 373-0536
notices@dannlaw.com

Counsel for Amici Curiae National Consumer Law Center, National Association Of Consumer Advocates, And Public Justice

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served via email this 21st day of July, 2025 upon James Sandy, MCGLINCHEY STAFFORD, 3401 Tuttle Road, Ste 200, Cleveland, OH 44122, jsandy@mcglinchey.com.

/s/ Andrew M. Engel
Andrew M. Engel