IN THE SUPREME COURT OF OHIO

CREDIT ACCEPTANCE CORPORATION,	:	Case No. 2025-0246
Appellee,	:	On Appeal from the Court of Appeals for Cuyahoga County, Eighth Appellate District
v.	:	
GLORIA BEARD, et al.,	:	Court of Appeals Case No. CA-24-113682
Appellants.	:	

BRIEF OF AMICI CURIAE OHIO CHAMBER OF COMMERCE AND AMERICAN FINANCIAL SERVICES ASSOCIATION, IN SUPPORT OF APPELLEE

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I. STATEMENT OF INTEREST OF AMICI CURIAE

A. Ohio Chamber of Commerce

Since 1893, the Ohio Chamber of Commerce has represented Ohio businesses ranging from small sole proprietorships to some of the largest companies in the United States. With over 8,000 members, the Chamber is Ohio's largest and most diverse business-advocacy organization. The Chamber works to promote and protect its members' interests while building a more favorable business client in Ohio by advocating for the interests of Ohio's business community on matters of statewide importance. By promoting its pro-growth agenda with policymakers and in the courts, the Ohio Chamber seeks a stable and predictable legal system that fosters a business climate where enterprise, and therefore Ohioans, prosper. The Ohio Chamber regularly files amicus briefs in cases important to its members. Many of the Chambers' members are parties to arbitration agreements in a wide range of business and commercial settings throughout the state.

B. American Financial Services Association

Founded in 1916, the American Financial Services Association ("AFSA") is the national trade association for the consumer-credit industry, protecting access to credit and consumer choice. AFSA members provide consumers with many kinds of credit, including traditional installment loans, mortgages, direct and indirect vehicle financing, payment cards, and retail-sales finance. AFSA has a broad membership, ranging from large international financial-services firms to single-office, independently owned consumer-finance companies. For over 100 years, AFSA has represented financial-services companies that hold leadership positions in their markets and conform to the highest standards of customer service and ethical business practices. AFSA supports financial education for consumers of all ages. AFSA advocates before legislative, executive, and judicial bodies on issues affecting its members' interests. AFSA has a vital interest in the outcome of this case. AFSA members expend considerable effort and expense in assuring that they comply

with applicable state and local laws in extending direct loans to consumers, in assuring similar compliance by sellers from whom they purchase retail installment sales contracts, and in assuring that arbitration clauses in its members' contracts are enforceable according to their terms.

The Chamber and AFSA urge the court to affirm the judgment of the Eighth District Court of Appeals in this case.

II. STATEMENT OF THE CASE AND FACTS

The Chamber and AFSA incorporate the statement of the case and facts of appellee, Credit Acceptance Corporation ("CAC").

III. ARGUMENT

Appellants' Proposition of Law No. 1: 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).

This court should reject appellants' proposition of law. The trial court's order staying proceedings and compelling arbitration under the Federal Arbitration Act ("FAA") was not immediately appealable under the FAA itself, nor under R.C. 2505.02, Ohio's generally applicable statute governing the appealability of interlocutory orders. Rather, the only way the trial court's order could be immediately appealed is if R.C. 2711.02, a state *arbitration law* that is part of the Ohio Arbitration Act ("OAA"), applied. Yet, the parties to the arbitration agreement in this case expressly said their agreement would be "governed by the FAA and not by any state arbitration law." Allowing an immediate appeal would therefore nullify the parties' express contractual choice of law to govern their dispute.

This is not a case about preemption but about preserving Ohioans' freedom to contract. This court has long protected that fundamental freedom, which has consistently included the right to waive an appeal. Moreover, Ohio law, federal law, and this court's longstanding precedent

require lower courts to enforce agreements to resolve disputes through arbitration—and to do so in accordance with the terms of the agreement reached by the parties in each individual case. Affirming the Eighth District's judgment in this case is crucial to protecting the freedom of all Ohioans to contract for an expeditious resolution of their disputes through arbitration and to do so under the provisions of the FAA or the OAA, as each may choose in their respective arbitration agreement.

A. The Freedom to Contract Is Every Ohioan's Fundamental Right

In Ohio, the freedom to contract is a fundamental right. Nearly 60 years ago, this Court said, "The right to contract freely with the expectation that the contract shall endure according to its terms is as fundamental to our society as the right to write and to speak without restraint." *Blount v. Smith*, 12 Ohio St.2d 41, 47 (1967). As recently as last month, the court reaffirmed this premise, in strong terms: " 'The freedom to contract is a deep-seated right that is given deference by the courts,' . . . and '[i]t has long been recognized that persons have a fundamental right to contract freely with the expectation that the terms of the contract will be enforced. . . .' " (Brackets sic.) *Huntington Natl. Bank v. Schneider*, 2025-Ohio-2920, ¶ 16, quoting *Cincinnati City School Dist. Bd. of Edn. v. Conners*, 2012-Ohio-2447, ¶ 15, and *Nottingdale Homeowners' Assn., Inc. v. Darby*, 33 Ohio St.3d 32, 36 (1987), respectively.

The right to have the terms of an agreement enforced bends only to fraud or other unlawfulness, *Huntington Natl. Bank* ¶ 16, and no such grounds exist in this case. Appellants did not assert, and the lower courts did not find, any fraud or other unlawfulness in connection with the parties' agreement to arbitrate. (*See* Eighth Dist. No. CA-24-113682, Opinion of Oct. 3, 2024, and Appellants' Brief of May 14, 2024.) Rather, appellants' sole argument in the Eighth District

was that CAC had waived its right to arbitrate by first suing appellants in municipal court. (*Id.*)[1] Barring any assertion, let alone a finding, that the arbitration agreement *itself* was unenforceable, the courts must apply it as the parties wrote it. *Rhoades v. Equitable Life Assur. Soc. of the U.S.*, 54 Ohio St.2d 45, 47 (1978) ("this contract provision must be enforced as written, unless held to be contrary to public policy").[2] The parties' are entitled to have the courts fully honor their freedom to contract.

B. Both Ohio and Federal Law Provide for the Arbitration of Disputes Under the Terms Chosen by the Parties

"This court has acknowledged that these statutes [i.e., the OAA and the FAA] express strong public policy in favor of arbitration agreements." *Sinley v. Safety Controls Technology, Inc.*, 2022-Ohio-4153, ¶ 14, citing *Taylor v. Ernst & Young, L.L.P.*, 2011-Ohio-5262, ¶ 18 ("The OAA expresses Ohio's strong public policy favoring arbitration, which is consistent with federal law supporting arbitration"); *see also Taylor Bldg. Corp. of Am. v. Benfield*, 2008-Ohio-938, ¶ 26 n.1 ("Ohio's strong policy favoring arbitration is consistent with federal law supporting arbitration").

Consistent with Ohio's view that freedom to contract is a fundamental right, this court has required lower courts to apply arbitration agreements only *as written by the parties*. If a claim is not included in the arbitration agreement, this court has held that arbitration of the claim is

[1] Appellants' assertion that CAC waived its statutory and contractual right to arbitrate is wholly inconsistent with, and in fact undermines, their argument that their choice of the FAA to govern their arbitration did not (or could not) waive any right to an immediate appeal that may have existed under an Ohio arbitration statute. As this court has acknowledged, parties *routinely* waive statutory rights when entering into arbitration agreements. *See Hayes v. Oakridge Home*, 2009-Ohio-2054, ¶ 36-41 (listing multiple statutes waived by a single party in one arbitration agreement); *State v. Butts*, 112 Ohio App.3d 683, 686 (8th Dist. 1996) ("Courts which have examined this issue have reasoned that since a constitutional right may be waived, the statutorily created right to appeal may also be waived"). Appellants' contention that a contract may not be "contrary to statute" is therefore unavailing. *See* Appellants' Merit Br. p. 12.

[2] The parties' choice to apply a provision of the FAA—an act of Congress that courts across the country and across Ohio regularly enforce—can hardly be viewed as contrary to public policy. In fact, as this court has stated, the FAA and Ohio's public policy are aligned: "Ohio's strong policy favoring arbitration is consistent with federal law supporting arbitration." *Taylor Bldg. Corp. of Am. v. Benfield*, 2008-Ohio-938, ¶ 26, fn.1, citing the FAA.

improper. *See Sinley* at ¶ 15 ("when deciding whether arbitration may be compelled by one of the parties to an agreement, courts must look to 'whether the parties actually agreed to arbitrate the issue' "), quoting *Taylor v. Ernst & Young* at ¶ 20.[3] Likewise, if a party is not included in the arbitration agreement, this court has held that arbitrating claims against that party is improper. *Peters v. Columbus Steel Castings Co.*, 2007-Ohio-4787, ¶ 7 ("only signatories to an arbitration agreement are bound by its terms"); *see also Taylor v. Ernst & Young* at ¶ 52.

This case presents the similar question whether, if a law is not included in the arbitration agreement (indeed, if it is specifically *excluded* from the agreement), arbitrating the parties' claims under that law is proper. In answering that question, this court should refer to its own prior guidance: "courts must not 'override the clear intent of the parties, or reach a result inconsistent with the plain text of the contract,' " *Taylor v. Ernst & Young* at ¶ 20, quoting *E.E.O.C. v. Waffle House, Inc.*, 534 U.S. 279, 282 (2002).

This court's statement in *Taylor* comports with the United States Supreme Court's resolution of an analogous issue: whether a court may apply a provision of state arbitration law that conflicts with the FAA, when the parties have specified in their agreement that state arbitration law will apply. *See Volt Information Sciences, Inc. v. Bd. of Trustees of Leland Stanford Junior Univ.,* 489 U.S. 468, 470 (1989). In *Volt*, the court held that the parties were free to choose

[3] The Chamber filed an amicus brief in *Sinley*, urging reversal. While this Court affirmed, the thrust of the Chamber's brief was that parties to an arbitration agreement should enjoy "the benefit of their bargain." Case No. 2020-1158, Brief of Amicus Curiae Ohio Chamber of Commerce, p. 5. Both the majority and the dissent in *Sinley* appear to have agreed with that point, *compare Sinley* ¶ 15 *with* ¶ 36 (Kennedy, now C.J., dissenting). The difference in the majority's and the dissent's preferred outcomes came down to a disagreement about what the parties' bargain *was*. *See Sinley* ¶ 39 (Kennedy, now C.J., dissenting) ("The question in this case, then, is a straightforward one: Does the collective-bargaining agreement clearly and unmistakably require the arbitration of Sinley's employer-intentional-tort claim? It does"). The Chamber's and AFSA's broad argument in this case is the same as before: courts should apply arbitration agreements as the parties wrote them. And in this case, in contrast to *Sinley*, there is no question about what the parties agreed to. Appellants admit in their merit brief, "As part of the motor vehicle sales contract entered into between them, the parties had agreed to arbitration under the terms of the Federal Arbitration Act." Appellants' Merit Br. p. 3. There is no question that the parties agreed the FAA would apply to their arbitration and the OAA would *not* apply. (Note also that the "clear and unmistakable" standard mentioned in *Sinley* applied in the context of collective-bargaining agreements, but it has no application here.)

whichever procedural provisions they would like to apply to their dispute, even though state arbitration law provided for a stay of arbitration pending resolution of related litigation, while the FAA did not. *Id*. The court explained (quoting with approval much of the language below from a lower court),

> [B]ecause the thrust of the federal law is that arbitration is strictly a matter of contract, the parties to an arbitration agreement should be at liberty to choose the terms under which they will arbitrate. Where, as here, the parties have chosen in their agreement to abide by the state rules of arbitration, application of the FAA to prevent enforcement of those rules would actually be inimical to the policies underlying state and federal arbitration law, because it would force the parties to arbitrate in a manner contrary to their agreement.

(Cleaned up.) *Id*. at 472. Put more succinctly, the court said, "There is no federal policy favoring arbitration under a certain set of procedural rules." *Id*. at 476. The United States Supreme Court then tied together limits of the types this court has previously imposed with the one this court faces today: "Just as [parties to an arbitration agreement] may limit by contract the issues which they will arbitrate, so too may they specify by contract the rules under which that arbitration will be conducted." (Citation omitted.) *Id*. at 479.

The United States Supreme Court's guidance on applying procedural provisions in arbitration agreements based on the parties' contractual choice comports with this court's precedent on the enforcement of choice of law provisions: "subject to very limited exceptions, the law of the state chosen by the parties to a contract will govern their contractual rights and duties." *Ohayon v. Safeco Ins. Co.*, 91 Ohio St.3d 474, 477 (2001). Moreover, under Ohio law, a party may exercise its freedom of contract by waiving its right to appeal. This is routine in criminal plea agreements. *See, e.g.*, *State v. Horton*, 2017-Ohio-8549, ¶ 17 (10th Dist.) ("under Ohio law a right to appeal is created by statute . . . [and] this statutorily-created right of appeal may be waived"). If a party may waive the right to appeal in the criminal context, where personal liberty is at stake, a party may do

so even more readily in a civil case. *See, e.g.*, *State v. Butts*, 112 Ohio App.3d 683, 686 (8th Dist. 1996) ("Courts which have examined this issue have reasoned that since a constitutional right may be waived, the statutorily created right to appeal may also be waived. . . . In the civil context, Ohio courts have permitted parties to waive the right to appeal, pursuant to agreements between the parties").

Under both Ohio and Unites States Supreme Court precedent, courts must honor the choice of procedural rules—including the availability of an appeal—set forth in an arbitration agreement.

C. Only a State Arbitration Law Provides for an Immediate Appeal of an Order Compelling Arbitration

Here, only a state arbitration law provides for an immediate appeal of an order staying a case and compelling arbitration. That law is R.C. 2711.02(C), which is part of the Ohio Arbitration Act, R.C. 2711.01 et seq. *See*, *e.g.*, *Maestle v. Best Buy Co.*, 2003-Ohio-6465, ¶ 14 (describing R.C. 2711.02 as part of the OAA). This portion the OAA was enacted in 1990 and provides that a party may immediately appeal an order granting or denying a motion to compel arbitration. 1990 S.B. 177.

By contrast, an order staying a case and compelling arbitration is not a final, appealable order under R.C. 2505.02, Ohio's general procedural statute governing the appealability of interlocutory orders. *Bellaire City Schools Bd. of Ed. v. Paxton*, 59 Ohio St.2d 65, 72 (1979).

Under the FAA, an order staying a case and compelling arbitration is not immediately appealable, 9 U.S.C. 16 (enacted in 1988), making that aspect of the FAA consistent with Ohio's R.C. 2505.02.

In other words, the FAA aligns with Ohio's general procedural law (R.C. 2505.02) on this question. The only law that could result in a valid immediate appeal (R.C. 2711.02) is specific to the Ohio Arbitration Act, i.e., a "state arbitration law."

D. The Court Must Affirm to Protect Ohioans' Freedom to Contract

In their contract for arbitration, the parties made a choice of law, stating, "[T]his Arbitration Clause is governed by the FAA and not by any state arbitration law." The Eighth District's decision ultimately hinged on this choice of law. That court concluded, "We cannot disregard the provisions of the FAA when it is clear that Ohio's arbitration statute is not applicable to this matter." Eighth Dist. No. 113682, Opinion of Oct. 3, 2024, at ¶ 13. The Eighth District reached the correct result. Any other outcome in this case would unduly infringe the parties' freedom to contract by applying a "state arbitration law" in direct contravention of their express contractual choice. This court must affirm the Eighth District's judgment so as not to chip away at the "deep-seated [and] fundamental" right of every Ohioan to have their contracts—including and especially their arbitration agreements—enforced and applied as written.

Affirming the Eighth District's judgment would be simply mirroring the United States Supreme Court's affirmance in *Volt*. In *Volt*, the court gave effect to the parties' choice to apply California law and not the FAA. And the court applied that choice to a pure question of procedure—whether a court may stay arbitration pending the outcome of related litigation—as to which state law and federal law differed. The court in *Volt* did so because parties to an arbitration agreement may "specify by contract the rules under which that arbitration will be conducted," and "enforcing those rules according to the terms of the agreement is fully consistent with the goals of the FAA, even if the result is that arbitration is stayed where the [FAA] would otherwise permit it to go forward." 489 U.S. at 479. The court concluded, "By permitting the courts to 'rigorously enforce' such agreements according to their terms, we give effect to the contractual rights and expectations of the parties, without doing violence to the policies behind by the FAA." *Id.*, quoting *Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 221 (1985).

In other words, giving effect to a choice of law that contravenes the FAA's procedural provisions is not only permissible but necessary in order to uphold the "FAA's primary purpose of ensuring that private agreements to arbitrate are enforced *according to their terms*." (Emphasis added.) *Id*. As this court has acknowledged, Ohio and federal policy favoring arbitration are the same. *Taylor Bldg. Corp. of Am.*, 2008-Ohio-938, at ¶ 26, fn.1. Therefore, as in *Volt*, the grander purpose of the OAA is fulfilled when courts apply the FAA's procedural rules, rather than the OAA's, when the parties have chosen the FAA to govern their arbitration.

Ohio's own Fourth District Court of Appeals followed *Volt* and reached this same conclusion in a case presenting the very question now facing this court. In *Ercevik v. Don Wood Hyundai, L.L.C.*, the question was whether R.C. 2711.02(C)'s provision allowing an immediate appeal of a motion compelling arbitration applied when the parties' arbitration agreement said, "This Arbitration Clause is governed by the FAA and not by any state arbitration law." 2025-Ohio-633, ¶ 1, 4 (4th Dist.) (i.e., the exact same language as in the arbitration agreement at issue in this case).

In *Ercevik*, the appellant argued that the FAA did not "preempt" R.C. 2711.02(C), but the Fourth District rejected that premise (indeed, it rejected preemption as a relevant consideration), because the parties' choice of the FAA and rejection of the OAA meant there was no question which law applied and therefore no reason to conduct a preemption analysis. The Fourth District said, "federal preemption analysis arises in cases where both state and federal law may be applicable and the court must determine whether federal law preempts the application of state law." *Ercevik* ¶ 15. Yet, "the parties here have agreed that the Federal Arbitration Act applies to their arbitration, therefore there is no need to engage in any sort of federal preemption analysis—the parties through their agreement have already decided that federal law will apply." *Id*. ¶ 16. The

Fourth District continued, "one key principle reflected in *Volt* is that the Federal Arbitration Act's principal purpose is to ensure that private arbitration agreements are enforced according to their terms and courts should not prevent the enforcement of the parties' choice of terms." *Id.* ¶ 18. It concluded, "The parties here have specified in their arbitration clause that the Federal Arbitration Act applies to their arbitration and this key fact distinguishes this case from other cases in which the parties have either made no specific choice of law or have specified that a state law governs their arbitration." *Id.* ¶ 19.

Here, just as in *Ercevik*, the parties' choice of the FAA to govern their arbitration prevents the application of R.C. 2711.02. Ohio's Fourth District is far from alone in reaching this conclusion. As CAC points out, courts in other states have ruled similarly. Moreover, as explained above, this court has required lower courts to give effect to parties' choices about which issues and parties will be part of the arbitration. *Sinley*, 2022-Ohio-4153, at ¶ 14; *Peters*, 2007-Ohio-4787, at ¶ 7. This court has also required lower courts to give effect to parties' choices about which law will govern the resolution of their disputes. Ohayon, 91 Ohio St.3d at 477. *Ercevik* is consistent with these principles, and the result should be the same here, for the same reasons.[4] The outcome should be especially clear in this case, in which the parties not only chose to apply the FAA but expressly chose to reject the OAA.

[4] The Eighth District's decision in this case likewise rejected appellants' "preemption" argument and hinged its decision on the parties choice of law: "Further, we find no merit to appellants' argument that the FAA does not preempt Ohio's arbitration statute and we should therefore rely on R.C. 2711.02(C) to determine whether a final, appealable order exists. The arbitration agreement specifically stated that it was 'governed by the FAA and not by any state arbitration law.' Appellants do not argue otherwise. We cannot disregard the provisions of the FAA when it is clear that Ohio's arbitration statute is not applicable to this matter." Eighth Dist. No. 113682, Opinion of Oct. 3, 2024, at ¶ 13.

It also bears noting that in the cases appellants cite for the proposition that Ohio courts have permitted interlocutory appeals despite the application of the FAA, no one appears to have raised 9 U.S.C. 16 or argued that the appeal was improper, so those courts did not have the occasion to consider (let alone decide) the issue now before this court (and expressly raised and decided in *Ercevik*). *See* Appellants' Merit Br. p. 13-14, citing *McCann v. New Century Mtge. Corp.*, 2003-Ohio-2752 (8th Dist.), *U.S. Bank, NA v. Wilkens*, 2012-Ohio-1038 (8th Dist.), and *EMCC Invest. Ventures v. Rowe*, 2012-Ohio-4462 (11th Dist.).

Both the FAA and the OAA are agnostic on procedure but uphold the parties' contractual choices as sacred scripture. Applying R.C. 2711.02—a state arbitration law—in contravention to the arbitration agreement would be tantamount to elevating Ohio's choices regarding arbitration procedure above the parties' choices regarding which law will govern their arbitration. And yet, "the courts must not 'override the clear intent of the parties, or reach a result inconsistent with the plain text of the contract, simply because the policy favoring arbitration is implicated.' " *Taylor v. Ernst & Young, L.L.P.*, 2011-Ohio-5262, at ¶ 20, quoting *Waffle House, Inc.*, 534 U.S. at 294. The FAA and the OAA, by themselves, place no burden on Ohioans' freedom to contract; in fact, they align with it. To protect and preserve that fundamental right, the court should affirm the Eighth District's judgment.

E. Appellants' Amici's Arguments Are off Track

Appellants' amici present a panoply of arguments that veer far off track from the true-north of this case: the parties' freedom to contract.

First, there is no question about the *enforceability* of the arbitration agreement in this case. Amicus curiae Legal Aid of Southeast and Central Ohio ("LASCO")'s opening argument that courts should closely scrutinize arbitration agreements in certain contexts before enforcing them, citing *Battle v. Bill Swad Chevrolet*, 140 Ohio App.3d 185, 192 (10th Dist. 2000), is therefore inapplicable. Appellants did not argue below that the agreement was unenforceable; they argued only that CAC had waived its (presumably otherwise enforceable) right to arbitrate. Additionally, this court accepted only one proposition of law, relating to the applicability of R.C. 2711.02(C). Neither the agreement's enforceability nor CAC's alleged waiver is before this court.

Second, this case does not present a conflict between state procedural rules and federal arbitration law. As explained above, the FAA and R.C. 2505.02 treat orders compelling arbitration the same. The arguments of both LASCO and amici curiae National Consumer Law Center,

National Association of Consumer Advocates, and Public Justice (collectively, "NCLC"), asserting variations on the theme that the Eighth District's decision is an affront to Ohio's procedural sovereignty, are misplaced.[5] Rather, this case presents the question whether to give effect to the parties' choice of one arbitration law—9 U.S.C. 16—over another arbitration law—R.C. 2711.02.

Volt demonstrates that the parties are free to make this choice. The procedural rule at issue in *Volt* (implicating the power of a court to issue a stay) is indistinguishable from the procedural rule at issue here (implicating the power of a court to hear an immediate appeal). To decide *Volt*, the United States Supreme Court assumed that the FAA's procedural provisions *could* apply in state court. 489 U.S. at 477. The court's decision then hinged on the parties' choice of which procedural law (state or federal) would govern, not on which law *had to*, or *could not*, apply. If it were impossible for the FAA's procedural provisions to apply in California's courts, the United States Supreme Court in *Volt* would not have needed (or been able) to reach its determination that the parties' choice of law controlled.[6] And, as CAC notes in its brief, other states *have* applied the FAA's procedural provisions in their courts. *Hernandez v. Sohnen Ents., Inc.*, 102 Cal. App.5th, 241-242 (Cal. Ct. App. 2024); *1745 Wazee, L.L.C. v. Castle Builders Inc.*, 89 P.2d 422, 425 (Colo. Ct. App. 2003). Doing so was not an affront to their sovereignty, nor to federalism. In fact, the arguments about sovereignty are merely another way to describe "preemption," and as the Fourth District cogently explained in *Ercevik*, "there is no need to engage in any sort of federal preemption

[5] Not only misplaced, but ill-sourced. Footnote 2 of *Badgerow v. Walters*, 596 U.S. 1 (2022), quoted (in part) on page 5 of NCLC's brief, goes on to state that "Section 2 [of the FAA, which is unquestionably applicable to the states] 'carries with it' a duty for States to provide certain enforcement mechanisms equivalent to the FAA's." And NCLC fails to mention that the quote from Justice O'Connor in *Southland Corp. v. Keating*, 465 U.S. 1 (1984), set forth on pages 5 and 6 of NCLC's brief, is from a dissent. *See* 465 U.S. at 33 (O'Connor, J., dissenting).

[6] A failure to hold that the FAA's procedural provisions *must* apply in state court is not tantamount to a statement that they *cannot* apply in state court.

analysis" when "the parties through their agreement have already decided that federal law will apply." 2025-Ohio-633 at ¶ 16.

Third, giving effect to the parties' choice of law will not facilitate forum shopping. LASCO's argument to the contrary relies on cases that are distinguishable from the facts in this case. Here, CAC did not attempt to invoke arbitration as an escape hatch from litigation that had started to go poorly, as was the concern in the cases LASCO relies on. *See, e.g., Am. Gen. Fin. v. Griffin*, 2013-Ohio-2909, ¶ 22 (8th Dist.) ("after obtaining unfavorable rulings on its removal to federal court, AGFS then filed the motion" to compel arbitration). Rather, CAC sought to arbitrate appellants' claims as soon as they were asserted. More to the point, concerns about forum shopping go to whether arbitration should be compelled, not what procedural rules should apply once it is. LASCO makes no connection between the FAA's provision regarding interlocutory appeals and the danger of forum shopping. It is doubtful that LASCO is suggesting the FAA *always* facilitates forum shopping. To do so would suggest a fundamental flaw in the FAA itself. It would therefore be absurd to suggest that the parties' choice to follow the FAA in this case, or in any other, by itself poses an increased risk of forum shopping.

Finally, the contract at issue expressly and specifically adopted the FAA and declined to adopt the OAA. NCLC's argument that the contract needed to be more specific to adopt the FAA's provision that differs from R.C. 2711.02 is based on nothing more than opinion. The agreement's statement that the FAA would govern was sufficient. *See, e.g.*, *Hernandez*, 102 Cal.App.5th at 241 ("this agreement is governed by the FAA" deemed a "broad" statement "encompassing both the procedural and substantive provisions of the FAA"). The argument to the contrary is especially puzzling in this case, where the agreement not only stated it would be governed by the FAA but that it would not be governed by "any state arbitration law." *See Ercevik*, 2025-Ohio-633, ¶ 4

(applying 9 U.S.C. 16 based on the same language used in the arbitration agreement in this case). However, while that language makes this an especially clear-cut case, it was not necessary to accomplish the choice given effect by the Eighth District. *See Hernandez* at 241. The parties' statement that the FAA would govern their arbitration was sufficient to effectuate their choice of law.

IV. CONCLUSION

The Eighth District Court of Appeals reached the correct result in this case, and no authority compels a contrary conclusion. The parties contracted to arbitrate their dispute under the Federal Arbitration Act, and they specifically agreed that no state arbitration law would apply. To apply R.C. 2711.02—a state arbitration law—and force the parties into an immediate appeal of the trial court's order compelling arbitration (in contravention of the FAA) would render their freedom to contract illusory. To protect and preserve that fundamental right, this court should affirm the Eighth District's judgment.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing Brief of Amici Curiae Ohio Chamber of Commerce and American Financial Services Association was served on all counsel of record (listed below) via electronic mail this 8th day of September, 2025.

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