

No. 25-0994

In the Supreme Court of Texas

CHILD ADVOCATES, INC.,

Petitioner,

v.

CHIFFON BROWN,

Respondent.

On Petition for Review from the
Fourteenth Court of Appeals at Houston, Texas
No. 14-24-00012-CV

**BRIEF OF *AMICUS CURIAE*
CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA
IN SUPPORT OF PETITIONER**

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STATEMENT OF INTEREST*

The Chamber of Commerce of the United States of America is the world's largest business organization. As the nation's leading advocate for business, the Chamber represents companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files *amicus curiae* briefs in cases, like this one, that raise issues of concern to the nation's business community.

This case is of particular concern to the Chamber due to its implications for businesses statewide, if not beyond. Many members of the Chamber and the broader business community have found that arbitration allows them to resolve disputes promptly and efficiently while avoiding the costs associated with traditional litigation in court. The decision below, however, threatens the enforceability of countless electronically signed arbitration agreements throughout Texas. Because this case presents questions that uniquely affect the Texas business community, the

* No counsel for a party authored this brief in whole or in part, and no counsel for a party made a monetary contribution intended to fund the preparation or submission of this brief. No person or entity other than *amicus curiae*, its members, and its counsel made a monetary contribution to this brief's preparation or submission. See Tex. R. App. P. 11.

Chamber respectfully submits this brief to explain why this case is important to the jurisprudence of the State, *see* Tex. Gov’t Code § 22.001(a), and to assist the Court in its consideration of the issues presented.

INTRODUCTION

Onboarding employees with electronic agreements has become standard practice for employers nationwide. It was only five years ago that this Court recognized the burgeoning practice of e-signatures: “Contracts are increasingly signed electronically, with an online click for every kind of transaction imaginable—from simple, everyday retail purchases to complex matters of great consequence.” *Aerotek, Inc. v. Boyd*, 624 S.W.3d 199, 200 (Tex. 2021). That is undoubtedly even more true today. As of 2025, one source reports, between 60–80 percent of organizations across industries have adopted some form of e-signature technology.¹ Suffice it to say that electronic contracts and e-signatures have become the norm, not the exception, for everyday commercial transactions, including for employment agreements like the one in this case.

At the same time, Texas has become a magnet for employers and a hub of economic growth, due in large part to its lower taxes, less burdensome regulations,

¹ Bjoern Meyer, *Adoption of Electronic vs. Paper Signatures in 2025*, TEXT CONTROL (Apr. 15, 2025), <https://www.textcontrol.com/blog/2025/04/15/adoption-of-electronic-vs-paper-signatures-in-2025/>.

and lower cost of living.² In fact, because of its growing population and favorable business climate, Texas now has the eighth largest economy in the world, ahead of Italy, Russia, and Canada.³ All the more important, then, that Texas maintain a clear and predictable legal framework for enforcing contracts, and electronic contracts in particular, as it will directly affect the business and employment decisions of companies worldwide.

The court of appeals' decision below, however, is anything but clear and predictable. Instead, the court's holding injects instability and uncertainty into a relatively settled area of law, raising doubts about the validity of numerous electronic employment agreements. If, as the court of appeals held, self-serving declarations attesting to subjective intentions and lack of memory are sufficient to trigger an evidentiary hearing on the validity of an electronic arbitration agreement, the benefits of the agreement become illusory. Guidance from this Court is especially important now because the court of appeals' holding, if left undisturbed,

² Robert Haigney and Soo Jee Choi, *Texas: job openings and labor turnover state spotlight*, U.S. BUREAU OF LABOR STATISTICS (Nov. 2022), <https://www.bls.gov/opub/btn/volume-11/texas-job-openings-and-labor-turnover-state-spotlight.htm>.

³ Monica Murphy, David Green, and Dan Olsen, *Texas GDP among the top in the world*, Fiscal Notes (updated June 2026), <https://comptroller.texas.gov/economy/fiscal-notes/economics/2024/big-map/>.

threatens serious harm to the Texas business community that relies on the enforceability of electronically signed agreements.

SUMMARY OF ARGUMENT

Texas law has long evaluated assent to contracts using objective criteria, assessing the parties' conduct and surrounding circumstances rather than their uncommunicated subjective intentions. Likewise, this Court has consistently held that signatories to a contract are deemed to know its contents, regardless of whether they read, understood, or remembered those contents. The court of appeals' decision defies these two fundamental principles of contract law. It held that Brown's self-serving declaration, in which she stated that she "never intended" to enter into the arbitration agreement and had "no recollection" of signing it, sufficed to warrant an evidentiary hearing on the issue of consent. Neither statement possesses any legal significance under Texas law. What a signatory to a contract may have subjectively intended at the time of contracting, or what a signatory fails to remember, has never been enough to unravel an otherwise binding contract. Neither the analysis nor the result differs just because the contract and its signatures happen to be in electronic form.

The court of appeals' decision to the contrary departs not only from longstanding principles of Texas law but also from virtually every other court to consider similar evidentiary issues. Indeed, the judicial consensus holds that a

party's memory lapse about whether they signed an agreement is insufficient to create a fact issue on contract formation. Instead, an employee must either affirmatively deny signing the agreement or otherwise demonstrate how their signature could not have been validly placed on the agreement—attestations conspicuously missing in this case. The reason for the distinction is sound: whether a party agreed to a contract can be meaningfully disputed and adjudicated; whether a party *remembers* agreeing to a contract cannot.

The court of appeals' outlier holding undermines the whole purpose of arbitration agreements. The rule it announces—that a no-recollection declaration triggers an evidentiary hearing on consent—transforms the passage of time and fading memories into an acute threat to the enforceability of valid agreements. It also imposes substantial costs, in both time and money, on parties who bargained for the efficiency of arbitration. The efficiency gains from selecting an arbitral forum are nullified if the parties must undergo substantial litigation at the outset over spurious issues of consent. Protracted litigation over the validity of arbitration agreements, electronic or otherwise, has no place in Texas law. Because the decision below holds otherwise, the Court should grant the petition for review and reverse.

ARGUMENT

I. The court of appeals’ decision defies basic principles of contract law.

A contract is a contract, whether it is signed electronically or with wet ink. Use of an electronic signature does not change the nature of the contract or the principles governing its formation. That straightforward proposition was codified in the Uniform Electronic Transactions Act, *see* Tex. Bus. & Com. Code § 322.007, and confirmed by this Court in *Aerotek, Inc. v. Boyd*, 624 S.W.3d 199, 205 (Tex. 2021).

The court of appeals disregarded basic principles of contract formation and held electronically signed agreements to an altogether different standard. In concluding that an evidentiary hearing “on the issue of consent” was necessary, the court of appeals gave legal force to the allegations that Brown “never intended to enter a binding arbitration agreement” and that she “had no recollection of signing an arbitration agreement.” *Brown v. Child Advocs., Inc.*, No. 14-24-00012-CV, 2025 WL 1107095, at *3 (Tex. App.—Houston [14th Dist.] Apr. 15, 2025). But these purported reasons for questioning the arbitration agreement’s validity are legally immaterial under Texas law.

It is well established that Texas courts evaluate the existence of mutual assent to enter into a contract *objectively*, disregarding whether a party may have had a different subjective intent. This Court articulated the rule decades ago in *Haws &*

Garrett General Contractors, Inc. v. Gorbett Bros. Welding Co., explaining that “mutual agreement” is assessed by how a “reasonable person” would view “the surrounding circumstances.” 480 S.W.2d 607, 609 (Tex. 1972) (quoting 1 S. Williston, *Contracts* § 22A (1957)). This Court stated the rule just as plainly in the ratification context, instructing courts to “look to objective evidence of intent, such as the party’s conduct.” *BPX Operating Co. v. Strickhausen*, 629 S.W.3d 189, 197 (Tex. 2021). Until this case, the courts of appeals have followed suit, holding that “[w]hether mutual assent exists as to a contract’s subject matter and essential terms is an objective inquiry, turning on what the parties said and did, not on their subjective states of mind.” *StubHub, Inc. v. Ball*, 676 S.W.3d 193, 199 (Tex. App.—Houston [14th Dist.] 2023, no pet.).⁴ They have accordingly shunned “[u]nexpressed subjective intent [as] irrelevant.” *Chubb Lloyds Ins. Co. of Tex. v. Buster & Cogdell Builders, LLC*, 668 S.W.3d 145, 151 (Tex. App.—Houston [1st Dist.] 2023, no pet.).

Under this bedrock principle, Brown’s declaration that she “did not intend to enter” into the arbitration agreement has no bearing on the agreement’s validity.

⁴ See also, e.g., *Harrison v. Williams Dental Grp., P.C.*, 140 S.W.3d 912, 916 (Tex. App.—Dallas 2004, no pet.) (“This is because questions of contract formation must be resolved on objective standards, looking to the ‘meaning reasonably conveyed by the parties’ actions and words, rather than their uncommunicated subjective intentions.”) (quoting *Fuqua v. Fuqua*, 750 S.W.2d 238, 245 (Tex. App.—Dallas 1988, writ denied))).

What matters is objective indicia of an intent to be bound, such as her signature. *See Baylor Univ. v. Sonnichsen*, 221 S.W.3d 632, 635 (Tex. 2007) (“Evidence of mutual assent in written contracts generally consists of signatures of the parties”). Giving weight to Brown’s backward-looking statement that she did not intend to be bound by the arbitration agreement, *see Brown*, 2025 WL 1107095, at *3, cannot be squared with the unbroken line of cases treating contract formation as an objective inquiry.

The court of appeals’ aberrant approach undermines the predictable enforcement of written instruments. As this Court recently recognized in *Van Dyke v. Navigator Group*, courts do not inquire into the parties’ subjective or secretive intentions because “[m]erely indulging that question . . . would invite a flood of unreliable and destabilizing extrinsic evidence” and thus violate “the rights of parties to have their documents’ meaning measured objectively without being undermined by a later (perhaps *much* later) subjective inquiry.” 668 S.W.3d 353, 361 (Tex. 2023). The court of appeals’ contrary holding invites that very result, elevating the parties’ *post hoc* claims about subjective intent into a costly, time-consuming evidentiary hearing.

Brown’s assertion that she had “no recollection of signing an arbitration agreement” is likewise irrelevant. If, as this Court held in *Aerotek*, an affirmative *denial* of an electronic signature is not enough to create a fact issue on the validity of an electronic employment agreement, it follows *a fortiori* that merely a memory

lapse regarding a signature does not either. *See* 624 S.W.3d at 209 (explaining that employees’ affidavits denying their signature on their electronic employment agreements did not create a fact issue after the employer proved the employees’ signatures and its security procedures); *see also APC Home Health Servs., Inc. v. Martinez*, 600 S.W.3d 381, 390 (Tex. App.—El Paso 2019, no pet.) (“Not recalling executing a document is different from denial of execution.”). As the Court plainly stated: “Mere denials do not suffice.” *Aerotek*, 624 S.W.3d at 209.

The conclusion also follows from the longstanding principle that a person who signs a contract is deemed to know its contents, regardless of whether the person in fact knows, understands, or remembers its contents. *See Royston, Rayzor, Vickery, & Williams, LLP v. Lopez*, 467 S.W.3d 494, 500 (Tex. 2015) (“[O]ne who signs a contract is deemed to know and understand its contents and is bound by its terms.”); *In re McKinney*, 167 S.W.3d 833, 835 (Tex. 2005) (“Absent fraud, misrepresentation, or deceit, a party is bound by the terms of the contract he signed, regardless of whether he read it or thought it had different terms.”); *see also ReadyOne Indus., Inc. v. Casillas*, 487 S.W.3d 254, 258 (Tex. App.—El Paso 2015, no pet.) (“Although a party may argue a contract was never formed, by signing a contract, he is presumed to have read it and grasped its contents and legal effects.”). The same rule applies to arbitration agreements. *See EZ Pawn Corp. v. Mancias*, 934 S.W.2d 87, 90 (Tex. 1996) (“[The plaintiff’s] failure to read the agreement does

not excuse him from arbitration. We presume a party, like [the plaintiff], who has the opportunity to read an arbitration agreement and signs it, knows its contents.”).⁵

No contract would be worth the paper it is written on, or the pdf that is clicked on, if it could be repudiated by nothing more than the signatory’s purported memory lapse. One court made a similar point almost a century ago: “To permit a party, when sued on a written contract, to admit that he signed it but to deny that it expresses the agreement he made, or to allow him to admit that he signed it but did not read it or know its stipulations, would absolutely destroy the value of all contracts.” *Freeman v. B. F. Goodrich Rubber Co.*, 127 S.W.2d 476, 479 (Tex. Civ. App. 1939, writ dism’d by agr.). That is no less true when, as here, a party claims no memory of agreeing to arbitrate but does not affirmatively deny signing such an agreement.⁶

⁵ Notably, all the employees in *Aerotek* “took only a few minutes to complete the hiring application,” even though the application consisted of multiple contracts, including an arbitration agreement. 624 S.W.3d at 202 n.4. Whether the employees actually could have read, understood, or remembered the terms of all those contracts based on their exceptionally quick review played no role in the Court’s analysis of whether those contracts were enforceable. *See generally id.* at 204–09.

⁶ Brown’s related claim (at BOM 23) that she could not confirm whether the signature on the arbitration agreement was hers is likewise insufficient to create a fact issue on contract formation. *See, e.g., Pankau v. Pack*, No. 01-01-00084-CV, 2002 WL 1721806, at *1 (Tex. App.—Houston [1st Dist.] July 25, 2002, no pet.) (a party’s affidavit that he did “not recall signing the Promissory Note” and that he was “unsure that the purported signature” was his failed to create a “genuine issue of fact concerning the authenticity of the promissory note”); *Northpointe LTC, Ltd. v. Durant*, No. 01-22-00215-CV, 2022 WL 17835223, at **4–6 (Tex. App.—Houston

II. Texas should not be an outlier on this issue.

The court of appeals’ deviation from deeply rooted, Texas-law contract principles provides ample reason for review and reversal. But there is more. The decision below also appears to be out of step with virtually every non-Texas court that has confronted a similar issue. Indeed, courts across the country overwhelmingly reject the notion that a mere lapse of memory suffices to create a fact issue on contract formation.

Just last year, the Fifth Circuit affirmed an order granting a motion to compel arbitration despite an employee’s assertion that he “ha[d] no recollection of signing” the arbitration agreement with his employer. *Yanez v. Dish Network, L.L.C.*, 140 F.4th 626, 630 (5th Cir. 2025). “[T]o contest his agreement,” the Fifth Circuit explained, the employee “was required to both ‘unequivocally deny’ that he agreed to arbitrate and produce ‘some evidence’ supporting his position.” *Id.* (internal brackets omitted) (quoting *Chester v. DirecTV, L.L.C.*, 607 F. App’x 362, 364 (5th Cir. 2015)). The employee’s assertion of no recollection did neither. *Id.*

Other circuit courts are in accord. For example, the Sixth Circuit (applying Michigan law) held in an employment-arbitration case like this one that “convenient

[1st Dist.] Dec. 22, 2022, no pet.) (observing that the employee “merely speculated that the signature could be inauthentic” and holding that the employee’s failure to recall signing the agreement did not create a fact issue on the existence of a valid arbitration agreement (internal quotation marks omitted)).

memory lapses do not create factual disputes that are genuine.” *Boykin v. Fam. Dollar Stores of Michigan, LLC*, 3 F.4th 832, 839 (6th Cir. 2021) (citing *Fed. Home Loan Mortg. Corp. v. Anchrum*, 782 F. App’x 782, 786 n.11 (11th Cir. 2019); *Genger v. Genger*, 663 F. App’x 44, 49 n.4 (2d Cir. 2016); *Mucha v. Village of Oak Brook*, 650 F.3d 1053, 1056 (7th Cir. 2011); *Provident Life and Accident Ins. Co. v. Goel*, 274 F.3d 984, 993–94 (5th Cir. 2001); *Hatfield v. Occidental Chem. Corp.*, 1988 WL 25249, at *4 (4th Cir. Mar. 21, 1988)). Thus, the Sixth Circuit explained, a party “cannot expect to obtain a trial under § 4 [of the Federal Arbitration Act] simply by testifying that the party does not ‘remember’ signing an arbitration contract or receiving information about arbitration.” *Id.* at 840.

The law is the same in the Seventh Circuit. In *Tinder v. Pinkerton Security*, an employee argued that she could not be bound by her employer’s arbitration agreement because she swore that she did “not recall seeing or reviewing” any brochure that the employer had sent out introducing the new arbitration program. 305 F.3d 728, 736 (7th Cir. 2002). The court (applying Wisconsin law) concluded that the employee’s affidavit was insufficient, explaining that the employee “asserted only that she does not remember receiving or seeing the brochure, whereas the uncontroverted affidavits of [the employer] indicate that the brochure was definitely sent and presumably received with her paycheck.” *Id.* Thus, the court

held, the employee’s affidavit “does not raise a genuine issue whether the brochure was distributed to her.” *Id.*

Courts in the Second Circuit follow suit. In *Gonder v. Dollar Tree Stores, Inc.*, an employee challenged an electronic arbitration agreement contained in an employee handbook, arguing that “because he [did] not recall signing the Agreement . . . a question of fact exists as to whether [he] entered into the Agreement at all.” 144 F. Supp. 3d 522, 527 (S.D.N.Y. 2015). The court rejected this argument based on “generally accepted principles of contract law.” *Id.* at 526. The employee “does not allege that he *did not* sign such an agreement,” the court emphasized, “but that he *does not recall* signing. *Id.* at 528 (emphasis in original). “A mere assertion that one does not recall signing a document does not, by itself, create an issue of fact as to whether a signature on a document is valid—especially in the absence of any evidence the document was fabricated.” *Id.* (citing *Vardanyan v. Close-Up Int’l, Inc.*, 315 F. App’x 315, 317 (2d Cir. 2009) (in which the Second Circuit held that a party’s affidavit stating that “he could not remember signing the shareholder agreement” did not “create a triable issue of fact as to the authenticity of the shareholder agreement.”)). “There is no question of fact,” the court thus concluded, the employee “signed the Agreement.” *Id.*

* * *

As this brief survey shows, the court of appeals' holding that Brown's declaration created a fact issue contradicts contract principles honored in both Texas and its sister states. Neither Brown nor the court of appeals offers a compelling reason for Texas to stand alone on this issue. This Court should not impose a unique burden on Texas employers that would disadvantage them vis-a-vis their counterparts in other states.

III. The court of appeals' decision is unworkable and will undermine the purpose of arbitration.

Beyond its departure from settled law, the court of appeals' decision is unworkable and contrary to Texas's policy in favor of arbitration. Under the court of appeals' easily manipulable evidentiary standard, litigants and trial courts will inevitably become ensnared in unnecessary litigation on threshold issues of electronic contract formation. And this morass will thwart the employer's attempt to create an efficient alternative forum for resolving employment disputes.

These looming problems stem directly from the court of appeals' rationale. In purporting to apply a summary judgment-like standard, the court of appeals held that Brown's declaration regarding her subjective intent and lack of recollection warranted an "evidentiary *Tipps* hearing" in which "the trial court must resolve the question of consent." *Brown*, 2025 WL 1107095, at *4. A rule that permits the lack of recollection to operate as a *de facto* denial of consent means that the mere passage of time progressively undermines the enforceability of valid arbitration contracts.

The enforceability of a contract does not fade along with a signatory’s memory. *Cf. Rankin v. Naftalis*, 557 S.W.2d 940, 943 (Tex. 1977) (quoting Sir Edward Coke for the proposition that contracts must not “be left to slippery memory”).

The economic implications of such a rule are stark. An employee who files a declaration stating that she cannot remember signing the contract will be automatically entitled to an evidentiary hearing—with all its attendant costs. That means discovery, witness preparation, and more attorneys’ fees, all of which arbitration was meant to mitigate. As this Court observed in *In re Olshan Foundation Repair Co.*, “[t]he desire to avoid steep litigation expense—including the costs of longer proceedings, more complicated appeals on the merits, discovery, investigations, fees, and expert witnesses—is the purpose of arbitration in the first place.” 328 S.W.3d 883, 894 (Tex. 2010).

A delay in reaching the arbitral forum carries real costs, too. Idling in a crowded district court docket while litigating spurious issues of contractual consent destroys the efficiency gains that arbitration promises to provide. This Court recognized as much just a few years ago. “Federal and state policies favor arbitration for its efficient method of resolving disputes,” this Court explained, and “[p]rotracted litigation over the validity of an arbitration agreement thwarts those policies.” *In re Whataburger Restaurants LLC*, 645 S.W.3d 188, 198 (Tex. 2022). The efficiency arbitration is designed to provide is undermined when parties must

litigate at length simply to reach the agreed arbitral forum. Indeed, even as the court of appeals ordered a “*Tipps* hearing” on flimsy grounds, it overlooked *Tipps*’ own warning against depriving contracting parties “of the benefits of the arbitration clause [they] contracted for,” lest “the purpose of providing a rapid, inexpensive alternative to traditional litigation . . . be defeated.” *Jack B. Anglin Co. v. Tipps*, 842 S.W.2d 266, 272–73 (Tex. 1992). The savings in time and expense promised by an arbitration contract would be quickly eroded if the parties must endure an evidentiary hearing whenever one party claims lack of memory and subjective intent.

While the phenomenon of e-signatures post-dates *Tipps*, this Court followed the same course in *Aerotek, Inc. v. Boyd*, 624 S.W.3d 199 (Tex. 2021). There, the Court recognized that “[t]he utility of digital contracts depends heavily, of course, on their enforceability as a matter of law.” *Id.* at 200. To uphold their utility and “facilitate those transactions,” the Court observed, “[c]ourts cannot unnecessarily stand in the way” by allowing electronic contracts to be “unnecessarily invalidated.” *Id.* at 209–10. The decision below sends the opposite message: it erects a gratuitous judicial barrier to the enforcement of electronic agreements that the Legislature intended to support. *See* Tex. Bus. & Com. Code § 322.006(1), .007(a) (directing that the Uniform Electronic Transactions Act “must be construed and applied . . . to facilitate electronic transactions” and providing that a “record or signature may not be denied legal effect or enforceability solely because it is in electronic form”).

Texas businesses engaged in electronic transactions, whether for employment agreements or commercial transactions or both, need stable and predictable legal rules to flourish. *Cf. Elephant Ins., LLC v. Kenyon*, 644 S.W.3d 137, 156 (Tex. 2022) (Young, J., concurring) (noting that stable common-law rules and judicial commitment “to private rights and exchange” is critical for “economic growth” and “sustained prosperity” (internal quotation marks omitted)). The court of appeals’ decision fails that test. Employers in Texas will be hamstrung if the law requires expensive and time-consuming evidentiary hearings every time an employee cannot recall clicking on a pdf.

CONCLUSION

For these reasons, the Chamber respectfully requests that the Court grant the petition for review, reverse the court of appeals’ judgment, and render judgment reinstating the trial court’s order compelling arbitration and confirming the arbitration award in favor of Child Advocates, Inc.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Texas Rule of Appellate Procedure 9.4(i)(2)(B) because, according to the Microsoft Word for Microsoft 365 word-count function, it contains 4,010 words, excluding the parts of the brief exempted by Texas Rule of Appellate Procedure 9.4(i)(1).
2. This brief complies with the typeface requirements of Texas Rule of Appellate Procedure 9.4(e) because it has been prepared in a proportionally spaced typeface using Microsoft Word for Microsoft 365 in Times New Roman 14-point font in text and Times New Roman 14-point font in footnotes.

Dated: October 23, 2026

/s/ Daniel Rankin

Daniel Rankin

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