Nos. 25-CV-0237 & 25-CV-0243

IN THE

District of Columbia Court of Appeals

TRAVELERS UNITED, INC.,

Appellant,

v.

AVIS RENT A CAR SYSTEM, LLC,

Appellee,

&

TRAVELERS UNITED, INC.,

Appellant,

v.

BUDGET RENT A CAR SYSTEM, INC.,

Appellee.

Appeal from the D.C. Superior Court
Case Nos. 2024-CAB-5792 & 2024-CAB-005736
Hon. Shana Frost Matini

BRIEF OF THE U.S. CHAMBER OF COMMERCE AS AMICUS CURIAE IN SUPPORT OF AFFIRMING FOR APPELLEES

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CORPORATE DISCLOSURE STATEMENT

Pursuant to D.C. Court of Appeals R. 26.1, the U.S. Chamber of Commerce (the "Chamber") states that it is a non-profit, tax-exempt organization incorporated in the District of Columbia. The Chamber has no parent corporation, and no publicly held company has 10% or greater ownership in the Chamber.

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IDENTITY OF AMICUS CURIAE AND STATEMENT OF INTEREST[1]

The Chamber of Commerce of the United States of America (the "Chamber") is the world's largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than three million 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, including cases involving the application of the Federal Arbitration Act ("FAA"), 9 U.S.C. §§ 1–16, and state law relating to the enforceability and full vindication of arbitration agreements.

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[1] No party's counsel authored this brief in whole or in part. No person or entity other than amicus, its members, or its counsel contributed money intended to fund preparing or submitting this brief. All parties have consented to the filing of this brief.

Many of the Chamber's members regularly rely on arbitration agreements, structuring millions of contractual relationships around the use of arbitration. Arbitration allows them to resolve disputes promptly and efficiently while both sides avoid the costs associated with traditional litigation. Arbitration is speedy, fair, inexpensive, and less adversarial than litigation in court.

The Chamber's members and the broader business community have a strong interest in this case. Even though all of the rental car customers whose interests are invoked in this case entered into arbitration agreements with Defendants Budget Rent A Car System, Inc. and Avis Rent A Car System, LLC mandating that all disputes arising out of, related to, or connected with those agreements be resolved in individual arbitration, Plaintiff Travelers United, Inc. seeks to bypass these agreements by invoking a provision of the District of Columbia Consumer Protection Procedures Act ("CPPA"), D.C. Code §§ 28-3901 et seq., to bring a representative action on these customers' behalf in court.

The Superior Court correctly dismissed the case because the CPPA does not permit Plaintiff to do so. But the FAA independently

prohibits such a representative action anyway, even if the CPPA purported to authorize it. Allowing this action to proceed would violate the FAA and severely frustrate its objectives by effectively nullifying Budget's and Avis's agreements with its customers requiring individualized arbitration. This would embolden States hostile to arbitration, offering them a clear roadmap for attempting to circumvent consumer arbitration clauses and undermine the federal policy guaranteeing their full enforcement. This appeal is thus of vital importance to the Chamber and the nation's business community.

INTRODUCTION

The Federal Arbitration Act ("FAA"), 9 U.S.C. §§ 1–16, guarantees businesses and consumers the opportunity to resolve their disputes in private arbitration if they wish to do so. The FAA, reflecting Congress's strong pro-arbitration policy, broadly preempts any state law or judicial rule that undermines that opportunity or deprives parties who have agreed to private dispute resolution of the "fundamental attributes of arbitration" in their proceedings. *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 344 (2011).

This case involves a claim that two rental car companies—Budget Rent A Car System, Inc. and Avis Rent A Car System, LLC—mislead consumers as to the costs of renting a vehicle during the online reservation process. All of the rental contracts between those customers and Budget and Avis include arbitration clauses. *See* Op. 9. The contracts provide that all disputes "arising out of, relating to or in connection with [the] rental of a vehicle" be resolved in arbitration on an individual basis. App. 133, 176. It straightforwardly follows that this dispute belongs in individualized arbitration, not in court.

Plaintiff Travelers United, Inc., however, is trying to open a dangerous loophole that would nullify the arbitration clauses altogether. Plaintiff attempts to exploit the District of Columbia Consumer Protection Procedures Act ("CPPA") to bring a representative suit in court "on behalf of" the customers who would otherwise be required to pursue their claims in individual arbitration. The CPPA permits "a public interest organization" to bring such actions on behalf of consumers. But it does so only if the consumers could themselves bring suit under that statute. *See* D.C. Code § 28-3905(k)(1)(A), (k)(1)(D). Because the customers' rental agreements require them to

pursue individual arbitration and preclude them from bringing an action in court, Plaintiff cannot bring this representative action on their behalf. The Superior Court correctly dismissed the case on this basis. Plaintiff lacks standing. *See* Op. 10.

If this Court were to allow Plaintiff to proceed, it would eviscerate the arbitration clauses and represent an invalid end run around the FAA. Even though the parties contracted for private, individualized dispute resolution of the claims at issue, Plaintiff seeks to pursue the same claims on the same customers' behalf in court on an aggregate basis, directly contradicting both the parties' choice of an arbitral forum and their selection of an individual form of arbitration. Indeed, if allowed to go forward, this suit offers a template for attempting to bypass virtually any consumer arbitration agreement.

Neither the CPPA nor the FAA permits such a gambit. Subparagraphs (k)(1)(A) and (D) of the CPPA allow a public interest organization to step in on behalf of consumers only if those consumers could themselves pursue their claims in court. As a consequence, the public interest organization has no right of action if those consumers are bound to proceed in an arbitral tribunal, thus respecting the right

under the FAA to opt for individual arbitration. But Plaintiff is trying to disrupt this harmony by pressing an erroneous interpretation of the CPPA that, if permitted, would squarely contradict the FAA—which preempts any "device[]" or "formula" that interferes with parties' opportunity to contract for and obtain arbitration of a "traditionally individualized and informal nature." *Epic Sys. Corp. v. Lewis*, 584 U.S. 497, 506–09 (2018). The FAA would thus bar this action even if the CPPA did not.

This Court should affirm the Superior Court's decision on the simple ground that Plaintiff lacks standing. Not only does that result follow from the CPPA's text, but any contrary construction of the CPPA that would permit the suit to proceed is preempted.

ARGUMENT

I. The Trial Court Correctly Held That The CPPA Bars This Suit.

The text of the CPPA easily disposes of this case. Subparagraph (k)(1)(A) provides that "[a] consumer may bring an action seeking relief from the use of a trade practice in violation of a law of the District." D.C. Code § 28-3905(k)(1)(A). Subparagraph (k)(1)(D) adds that "a public interest organization may, on behalf of the interests of a

consumer or a class of consumers, bring an action seeking relief from the use by any person of a trade practice in violation of a law of the District," but only "if the consumer or class could bring an action under Subparagraph (A)" in their own right. D.C. Code § 28-3905(k)(1)(D); *see Animal Legal Def. Fund v. Hormel Foods Corp.*, 258 A.3d 174, 183 (D.C. 2021) (noting that the requirement that "the consumer or class of consumers must be capable of bringing suit in their own right" is an important limitation on an organization's "standing" under the CPPA).

The consumers on whose "behalf" Plaintiff seeks to sue all signed binding arbitration agreements with defendants Budget and Avis. *See* Op. 9. Those agreements uniformly provide: "[A]ll disputes between you and [Defendants] arising out of, relating to or in connection with your rental of a vehicle from [Defendants] and the Rental Agreement shall be exclusively adjudicated by binding arbitration." App. 133, 176. The agreements further provide that "any such arbitration shall be conducted on an individual basis and not in a class, consolidated or representative arbitration proceeding." *Id.*

As a result of these agreements, those consumers are barred from "bring[ing] an action under Subparagraph (A)" of the CPPA in their own

right. Instead of an "action under Subparagraph (A)" in court, their contracts oblige them to pursue claims "arising out of, relating to or in connection with [their] rental of a vehicle" from Budget or Avis in an arbitral forum on an individual basis.

Because the consumers cannot themselves bring an action as required by subparagraph (k)(1)(D), a "public interest organization" like Plaintiff cannot do so on their behalf. Such an organization lacks "standing." *Animal Legal Def. Fund*, 258 A.3d at 183. The trial court thus properly dismissed the case. The decision below should be affirmed for this simple reason, and the Court need go no further.

II. Permitting Plaintiff To Bring The Attempted Suit Would Violate The FAA.

If the Court were to entertain a construction of the CPPA that would permit Plaintiff to bring this suit, the result would contradict the FAA and be preempted. An interpretation of subparagraph (k)(1)(D) authorizing a public interest organization to stand in for consumers who are otherwise bound to seek relief in an arbitral forum would effectively nullify the arbitration agreements between Avis and Budget and the consumers on whose "behalf" the suit is purportedly brought. Such a result would impermissibly evade the FAA's mandate that

parties must be allowed to contract for traditional individualized arbitration instead of other forms of dispute resolution, as well as the Supreme Court's repeated instructions that States may not create devices that interfere with that federal right.

A. The FAA Guarantees An Opportunity For Parties To Contract For—And Receive—Individualized Arbitration.

The FAA "manifest[s] a liberal federal policy favoring arbitration agreements." *EEOC v. Waffle House, Inc.*, 534 U.S. 279, 289 (2002). The Act was designed to counteract "centuries of judicial hostility to arbitration agreements" and to require the enforcement of parties' private contractual commitments. *Scherk v. Alberto-Culver Co.*, 417 U.S. 506, 510 (1974). It "overrule[s] the judiciary's longstanding refusal to enforce agreements to arbitrate." *Morgan v. Sundance, Inc.*, 596 U.S. 411, 418 (2022); *see also D.C. Pub. Emp. Rels. Bd. v. Fraternal Ord. of Police/Metro. Police Dep't Lab. Comm.*, 987 A.2d 1205, 1209 (D.C. 2010) ("Just as Congress has declared a national policy favoring arbitration, so has the District of Columbia.") (citation omitted). It "direct[s] courts to abandon their hostility and instead treat arbitration agreements as 'valid, irrevocable, and enforceable.'" *Epic Sys.*, 584 U.S. at 505

(quoting 9 U.S.C. § 2). Congress adopted this policy "notwithstanding any state substantive or procedural policies to the contrary." *Concepcion*, 563 U.S. at 341, 346.

"Not only did Congress require courts to respect and enforce agreements to arbitrate; it also specifically directed them to respect and enforce the parties' chosen arbitration procedures." *Epic Sys.*, 584 U.S. at 506. The FAA thus "requires courts 'rigorously' to 'enforce arbitration agreements according to their terms, including terms that specify with whom the parties choose to arbitrate their disputes and the rules under which that arbitration will be conducted.'" *Id.* (quoting *Am. Express Co. v. Italian Colors Rest.*, 570 U.S. 228, 233 (2013)).

That includes an obligation to enforce agreements that call for "individualized" arbitration. *Id.* Indeed, the FAA specifically "envision[s]" an "individualized form of arbitration." *Lamps Plus, Inc. v. Varela*, 587 U.S. 176, 184 (2019); *see Epic Sys.*, 584 U.S. at 508. The FAA "protect[s] pretty absolutely" arbitration agreements that require "one-on-one arbitration" using "individualized ... procedures." *Epic Sys.*, 584 U.S. at 506.

The policy Congress adopted in the FAA benefits both parties. The "benefits of private dispute resolution" are myriad—including "lower costs" and "greater efficiency and speed." *Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp.*, 559 U.S. 662, 685 (2010). In passing the FAA, Congress recognized that "the costliness and delays of litigation … can be largely eliminated by agreements for arbitration." H.R. Rep. No. 68-96, at 2 (1924). Indeed, the "real benefits to the enforcement of arbitration provisions" that provide for traditional, bilateral arbitration include "allow[ing] parties to avoid the costs of litigation." *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105, 122–23 (2001); *see also, e.g.*, *14 Penn Plaza LLC v. Pyett*, 556 U.S. 247, 257 (2009) ("Parties generally favor arbitration precisely because of the economics of dispute resolution."). Benefits also include "the ability to choose expert adjudicators to resolve specialized disputes." *Stolt-Nielsen*, 559 U.S. at 685.

Individualized arbitration offers a "quicker, more informal, and often cheaper resolution[] for everyone involved." *Epic Sys.*, 584 U.S. at 505. By opting for such a mechanism, "parties forgo the procedural rigor and appellate review of the courts in order to realize the benefits

of private dispute resolution" on a streamlined basis. *Lamps Plus*, 587 U.S. at 184–85. For example, unlike court proceedings, which can take years to resolve, "the average consumer arbitration" is resolved "in six months, four months if the arbitration was conducted by documents only." *Concepcion*, 563 U.S. at 348.

Numerous studies have validated these judicial findings and demonstrated how arbitration benefits individual consumers through the reduction of process costs and the speedy, informal, and expeditious resolution of their disputes. *See, e.g.*, Nam D. Pham & Mary Donovan, *Fairer, Faster, Better III: An Empirical Assessment of Consumer and Employment Arbitration*, at 4–5, 9–11, 15 (2022); Andrea Cann Chandrasekher & David Horton, *Arbitration Nation: Data from Four Providers*, 107 Cal. L. Rev. 1, 51, 52, 65 (2019) (noting that "[a]rbitration has the potential to be an elegant shortcut to the court system," "is almost certainly faster than litigation," and "is surprisingly affordable for plaintiffs" and concluding that "[c]reating incentives for plaintiffs' lawyers to arbitrate is both good policy and dovetails" with the FAA's objectives of "promot[ing] arbitration") (quoting *Concepcion*, 563 U.S. at 345).

The Supreme Court has also reiterated that individual arbitration offers a full and fair avenue for consumers to obtain relief for valid claims. *See Italian Colors*, 570 U.S. at 236–37 ("[An] individual suit that was considered adequate to assure 'effective vindication' of a federal right before adoption of class-action procedures did not suddenly become 'ineffective vindication' upon their adoption."). And to the extent further consumer enforcement is needed, public enforcement authorities remain available to vindicate any remedies on behalf of the general public. *See Waffle House*, 534 U.S. at 291–92 (2002).

B. The FAA Broadly Preempts Applications Of State Law That Interfere With Its Core Protections Guaranteeing Enforcement Of Contracts For Individual Arbitration.

The FAA's federal mandate guaranteeing the right to contract for and receive individual arbitration displaces state law that would directly conflict with or otherwise circumvent that federal right. The FAA's preemptive scope is broad: "[S]tate law is preempted to the extent it 'stands as an obstacle to the accomplishment and execution of the full purposes and objectives' of the FAA." *Lamps Plus*, 587 U.S. at 183; *see also Concepcion*, 563 U.S. at 352 (The FAA preempts state laws that frustrate the FAA's "objectives.").

The FAA specifically preempts state-law rules that "interfere[]" with the "traditionally individualized and informal nature of arbitration." *Epic Sys.*, 584 U.S. at 508–09. *Concepcion* stands for the "essential insight" that "courts may not allow" state law "to reshape traditional individualized arbitration" or force parties into dispute resolution mechanisms they contracted to avoid. *Epic Sys.*, 584 U.S. at 509 (discussing *Concepcion*). In *Concepcion*, the Supreme Court rejected California's attempt to invalidate as unconscionable under a state-law judicial doctrine AT&T's arbitration agreement requiring customers to arbitrate disputes in their "individual capacity." 563 U.S. at 336. State-law rules, the Court held, are preempted to the extent they "interfere[] with fundamental attributes of arbitration." *Id.* at 344.

Federal preemption extends not only to state laws "discriminating on [their] face against arbitration," but also to those that "covertly accomplish[] the same objective by disfavoring contracts that … have the defining features of arbitration agreements." *Kindred Nursing Ctrs. Ltd. P'ship v. Clark*, 581 U.S. 246, 251–53 (2017). It does not matter what precise form a state law takes; nor does it matter whether it arises as a judicial doctrine or a statute. *See Concepcion,* 563 U.S. at 340–48

(FAA preempting a state judicial doctrine); *Southland Corp. v. Keating*, 465 U.S. 1, 16 (1984) (FAA preempting a state statute). *Any* "device[]" or "formula" interfering with the opportunity to contract for arbitration of a "traditionally individualized and informal nature" runs afoul of the FAA. *Epic Sys.*, 584 U.S. at 506–09.

Thus, a State may not mandate proceedings that "would take much time and effort, and introduce new risks and costs for both sides," or otherwise undermine "the virtues Congress originally saw in arbitration, its speed and simplicity and inexpensiveness." *Epic Sys.*, 584 U.S. at 509. If States could impose their own policy preferences on private dispute resolution contrary to the FAA, the opportunities for arbitration would dwindle and many parties would be stuck with the cumbersome "litigation [arbitration] was meant to displace." *Id.*

As the Supreme Court has explained, "[j]ust as judicial antagonism toward arbitration before the Arbitration Act's enactment 'manifested itself in a great variety of devices and formulas declaring arbitration against public policy,' … we must be alert to new devices and formulas that would achieve much the same result today." *Epic Sys.*, 584 U.S. at 509 (quoting *Concepcion*, 563 U.S. at 342). The FAA's

preemptive sweep protects against a "great variety of devices and formulas" by which state courts might frustrate Congress's mandate. *Concepcion*, 563 U.S. at 342 (citation and internal quotations omitted).

In sum, if the functional result of a state law is to pose an obstacle to the full enforcement of agreements requiring traditional individualized arbitration, it is preempted. If a court were to hold otherwise, it would impermissibly "substitute its preferred economic policies for those chosen by the people's representatives" in the FAA. *Epic Sys.*, 584 U.S. at 525.

C. Plaintiff's Attempted Invocation Of The CPPA, If Permitted, Would Be Preempted.

If the Court were to construe the CPPA in a way that would permit Plaintiff to proceed with this case, the resulting suit would severely frustrate—indeed, directly contradict—the FAA's fundamental guarantees and objectives, representing an end run around the statute and the Supreme Court's case law enforcing it.

As is their right under the FAA, the customers on behalf of whom Plaintiff brought this suit signed agreements with Avis and Budget to resolve disputes in individualized arbitration—not in court, and not on an aggregate basis either in court or arbitration. Every single one of

them agreed to arbitrate "all disputes … arising out of … [their] rental," and that "any such arbitration shall be conducted on an individual basis and not in a class, consolidated or representative arbitration proceeding." Op. 9; App. 133, 176.

Plaintiff now seeks to bring a representative suit on the customers' behalf in court and in the aggregate. This would eviscerate the customers' agreement to resolve disputes in individual arbitration. *See Concepcion*, 563 U.S. at 336, 344. And this suit would plainly be impermissible if brought by one of the customers themselves. If the same case could be brought in court in the aggregate simply by substituting in a public interest group, it would extinguish the "fundamental attributes of arbitration" protected in the parties' contracts, *Concepcion*, 563 U.S. at 344, and wholly undermine the objectives of the FAA.

Construing the CPPA in a manner that permits Plaintiff's effort would thus be squarely preempted. As explained above (at 14-15), the preemption analysis turns on the functional question of whether Plaintiff's invocation of the CPPA creates a procedural device that "interferes with fundamental attributes of arbitration and thus creates

a scheme inconsistent with the FAA." *Concepcion*, 563 U.S. at 344; *see Lamps Plus*, 587 U.S. at 188. It does exactly that. Permitting the suit would eliminate the "primary characteristic[s]" of the parties' arbitration agreements: arbitration instead of court; one-by-one instead of aggregate resolution. *See Kindred Nursing*, 581 U.S. at 251–53; *D.C. Pub. Emp. Rels. Bd.*, 987 A.2d at 1209.

Plaintiff's effort in this litigation sketches a roadmap for attempting to evade the FAA and the Supreme Court's precedents. If their preferred reading of the CPPA prevailed, States hostile to arbitration could attempt to circumvent the FAA with similar language. They could simply enact a statute that permitted public interest organizations to stand in for consumers who have contracted to arbitrate individually—at which point those organizations could bring class actions on behalf of those consumers in court, directly contravening the individual arbitration agreements. "*Concepcion* teaches that we must be alert to new devices and formulas" that would interfere with the ability of parties to freely contract for individual arbitration. *Epic Sys.*, 584 U.S. at 509 (citing *Concepcion*, 563 U.S. at 342). If adopted, Plaintiff's position "would make it trivially easy for

States to undermine the [FAA]—indeed, to wholly defeat it." *See Kindred Nursing*, 581 U.S. at 255.

Federal law does not permit that result. Fortunately, as the Superior Court held, neither does the CPPA. The Court should therefore hold that District law does not authorize this suit and affirm the Superior Court's order dismissing the case.

CONCLUSION

The decision of the Superior Court should be affirmed.

October 15, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that, on this 15th day of October, 2025, a true and correct copy of the foregoing was served via the Court's electric filing system upon all counsel of record.

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