

IN THE SUPREME COURT

STATE OF ARIZONA

MARKETECH INTERNATIONAL
CORPORATION USA, INC.,

Petitioner,

v.

PROCESS SERVICE SPECIALISTS,
L.L.C.,

Respondent.

Supreme Court
No. CV-25-0290-PR

Court of Appeals
No. 1 CA-SA 25-0039

Maricopa County Superior Court
No. CV2024-018710

**BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES
OF AMERICA AND THE ARIZONA CHAMBER OF COMMERCE &
INDUSTRY AS *AMICI CURIAE* IN SUPPORT OF NEITHER PARTY
AND FILED WITH WRITTEN CONSENT OF ALL PARTIES**

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INTERESTS OF *AMICI CURIAE*

Amici are the Chamber of Commerce of the United States of America (the “Chamber”) and the Arizona Chamber of Commerce & Industry (the “Arizona Chamber”) (collectively, “Amici”).¹

The Chamber 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.

The Arizona Chamber is a non-profit, non-partisan organization advocating for free-market public policies and working to ensure economic growth and prosperity for all Arizonans. Its membership includes businesses of all shapes and sizes operating across Arizona that wish to

¹ No person or entity, other than Amici, contributed funds or resources that were directed to funding this brief. [Ariz. R. Civ. App. P. 16\(b\)\(3\)](#).

speak with a common voice on a range of issues relating to the Arizona Chamber's purpose.

Amici have a strong interest in this case because their members routinely rely on arbitration agreements, which offer a faster, less costly, and more flexible alternative to litigation. More broadly, their members depend on the freedom of contract, a principle deeply rooted in Arizona law and protected by [article II, section 25 of the Arizona Constitution](#). Businesses can plan, invest, and grow only when they can trust that courts will honor the terms to which parties freely agree.

INTRODUCTION

For six decades, the U.S. Supreme Court has interpreted the Federal Arbitration Act (“FAA”) to mandate that arbitration agreements “are ‘separable’ from the contracts in which they are embedded.” [*Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 402 \(1967\)](#). That rule governs in “state as well as federal courts.” [*Preston v. Ferrer*, 552 U.S. 346, 349 \(2008\)](#). And it is doubly binding here: “Arizona law,” like the FAA, “codifies the separability doctrine.” [*Hamblen v. Hatch*, 242 Ariz. 483, 487 ¶ 16 \(2017\)](#).

The separability doctrine mandates that, when faced with a challenge to the validity of an arbitration agreement, courts should separate the arbitration agreement from the broader contract and intervene *only if* the challenge is specific to the separate arbitration agreement. Courts must leave any broader contractual dispute to the arbitrator, including claims that the “contract as a whole” is invalid. [*Id.* at 487 ¶ 14](#) (citation modified). In other words, courts must treat the arbitration agreement and the separate host contract as distinct agreements—and so long as the former is valid, any question about the latter must be arbitrated.

That separability doctrine is essential to honor the policy choice—made by the U.S. Congress via the FAA and by the Arizona Legislature via

the Revised Uniform Arbitration Act—strongly “favoring arbitration.” See [*Moses H. Cone Mem’l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24 \(1983\); Hamblen](#), 242 Ariz. at 491 ¶ 34 (same). By permitting courts to pass only on disputes that *specifically* concern whether the parties agreed to arbitrate, the doctrine prevents a party from renouncing its agreement by simply claiming that the entire contract is illegal or void. That party instead must argue that it never agreed *to arbitrate* the question whether the contract is enforceable.

Despite giving lip service to the separability doctrine, the Court of Appeals effectively rejected it here by treating the arbitration agreement as inseparable from the “context and purpose” of the underlying contract. [Appendix to Petition for Review \(“PAPP”\) 035 ¶ 17; PAPP039 ¶ 26](#). That improperly collapsed two contracts—the construction contract and the *separate* arbitration contract—into one. A proper analysis would consider the arbitration agreement on its own terms, resolve only those challenges (if any) that apply specifically to that agreement, and leave broader validity challenges to the arbitrator.

Although Amici take no position on the ultimate outcome of this action, a straightforward application of the separability doctrine requires this Court to answer the question presented “no”: A court may not refuse to

compel arbitration based on a finding that the underlying contract is illegal and void, when the arbitration agreement itself is not illegal or void.

ARGUMENT

I. Courts must separate challenges to an arbitration agreement from challenges to the underlying contract.

Through the FAA, “Congress has provided an explicit answer” to the question that arises when a contracting party claims that the contract is illegal or void, yet the contract (if enforceable) mandates arbitration. [*Prima Paint*, 388 U.S. at 403](#). Even when embedded within a broader contract, an arbitration agreement is treated as an “additional, antecedent agreement.” [*Rent-A-Center, W., Inc. v. Jackson*, 561 U.S. 63, 70 \(2010\)](#). The FAA requires that a court “order arbitration to proceed once it is satisfied that ‘the making of the agreement for arbitration or the failure to comply (with the arbitration agreement) is not in issue.’” [*Prima Paint*, 388 U.S. at 403](#) (quoting [*9 U.S.C. § 4*](#)).

Challenges to arbitrability can thus “be divided into two types.” [*Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 444 \(2006\)](#). One “challenges *specifically* the validity of the agreement to arbitrate.” [*Id.*](#) (emphasis added). Another “challenges the contract as a whole.” [*Id.*](#) Courts

adjudicate the former; arbitrators, the latter. [*Id.* at 444–46](#); [*Preston*, 552 U.S. at 353](#) (“[A]ttacks on the validity of an entire contract, as distinct from attacks aimed at the arbitration clause, are within the arbitrator’s ken.”). And because Arizona law “codifies the separability doctrine . . . endorsed in *Prima Paint*,” all of this is true as a matter of state law, as well. [*Hamblen*, 242 Ariz. at 487 ¶ 16](#) (citation modified).

The U.S. Supreme Court’s decision in [*Preston v. Ferrer*](#) is instructive. There, the party resisting arbitration argued that his adversary “was a talent agent who operated without a license in violation of” California law, rendering their contract—including its embedded arbitration agreement—“void.” [552 U.S. at 352](#). Concluding that the separability doctrine as explained in “*Buckeye* largely, if not entirely, resolve[d]” the case, the Court squarely rejected the challenger’s request of “California courts to override the contract’s arbitration clause on a ground that *Buckeye* requires the arbitrator to decide in the first instance.” [*Preston*, 552 U.S. at 354](#). As the Court explained, the separability doctrine “forecloses state legislative attempts to undercut the enforceability of arbitration agreements” and therefore requires state courts to allow the arbitrator to decide the contractual validity challenge. [*Id.* at 353](#) (citation modified). In other words,

even if a contract might ultimately be void under state law, the separability doctrine asks “simply who decides” that issue; when the parties agree to arbitration, the answer is the arbitrator. [*Id.* at 352](#).

Courts across the nation have applied this same rule: When a litigant seeks to avoid an arbitration contract because the underlying *substantive* contract is illegal or void, the separability doctrine rejects that maneuver and requires arbitration of that contract-interpretation question. That is true of licensing cases—just like *Preston*—where a party seeks to avoid arbitration on the grounds that its adversary lacked the required license to enter into the underlying substantive contract. *See, e.g., Snowden v. CheckPoint Check Cashing*, 290 F.3d 631, 637 (4th Cir. 2002) (compelling arbitration despite plaintiff’s “allegations of . . . non-licensure” of check-cashing lender because those challenges “do not relate specifically to the Arbitration Agreement”); [*Ferrandino & Son Inc. v. WMG Dev. LLC*, No. 23-cv-679, 2023 WL 3985520, at *1 \(W.D. La. June 13, 2023\)](#) (compelling arbitration of dispute arising under a “Construction Contract,” despite litigant’s assertion that the contract was “void” because “Plaintiff did not have an active contractor’s license”). So, too, when a litigant claims that the underlying contract is void for illegality. *See, e.g., Jenkins v. First Am. Cash Advance of Ga., LLC*, 400 F.3d 868, 876 (11th

[Cir. 2005](#)) (whether contract was void as “procedurally oppressive” was “for an arbitrator . . . to resolve” because that challenge went to the “contract generally”); [Williams v. Eaze Sols., Inc., 417 F. Supp. 3d 1233, 1237, 1240 \(N.D. Cal. 2019\)](#) (compelling arbitration of dispute arising under contract to “facilitate the selling and distribution of marijuana, which is illegal under federal law,” because “the terms of service arbitration agreement can be severed and enforced even if [the] underlying contract . . . has an unlawful object”).

The purpose of this separability doctrine is to prevent a Trojan-horse attack on arbitration, smuggling matters into court that the parties committed to an arbitrator. In other words, the doctrine prevents parties who have committed to arbitrate contract claims from using a general validity challenge to avoid their commitment to arbitrate. Because arbitration agreements are severable from their host contracts, courts separate the arbitration agreement from the broader contract to evaluate whether the challenge is *specifically* to the validity of the arbitration agreement. See [Buckeye, 546 U.S. at 445–46](#). When that exercise reveals that the challenge is to “the *precise* agreement to arbitrate at issue,” the court “must consider the challenge before ordering compliance with that

agreement.” [*Rent-A-Center*, 561 U.S. at 71](#) (emphasis added). But “a party’s challenge to another provision of the contract, or to the contract as a whole,” must be resolved by an arbitrator, just as the parties agreed. [*Id.* at 70](#). In sum, “the basis of challenge [must] be directed specifically to the agreement to arbitrate before the court will intervene.” [*Id.* at 71](#).

That makes sense. If courts could pass on the validity of entire contracts whenever a party argued that an arbitration agreement was ineffective merely because the separate host agreement is unlawful or void, there would be no point in referring to arbitrators disputes about the validity of the host agreement. A court’s resolution of the threshold contractual-validity issue would ensure that by the time the court compelled arbitration of a validity dispute, there would be no validity question left for the arbitrator to decide. That anomalous result would be contrary to “the national policy favoring arbitration,” [*Buckeye*, 546 U.S. at 443](#), which is shared by this State, see [*Hamblen*, 242 Ariz. at 491 ¶ 34](#). And it would frustrate Congress’s and Arizona’s shared policy goal of “mov[ing] the parties” who agree to arbitrate “into arbitration as quickly and easily as possible.” [*Moses H. Cone*, 460 U.S. at 22](#); see [*Hamblen*, 242 Ariz. at 491 ¶ 34](#) (observing that the separability doctrine “aligns with the general underlying goals of

arbitration” and advances “fundamental policies” favoring arbitration). Indeed, it would invite parties who become dissatisfied with their earlier agreement to arbitrate to cause “considerable duplication of effort, and require additional time and expense” litigating the very contractual disputes that they themselves assigned to an arbitrator. [*Hamblen*, 242 Ariz. at 491 ¶ 34.](#)

The costs to businesses of litigating contractual validity disputes — which a proper application of the separability doctrine would route to arbitration — would be considerable. What was true when Congress enacted the FAA over a century ago remains the case today: “arbitration saves time, saves trouble, [and] saves money. . . . It preserves business friendships. . . . It maintains business honor, prevents unnecessary litigation, and eliminates the law’s delay by relieving our courts.” [*Joint Hrgs. Before the Subcomms. of the Comms. on the Judiciary on S. 1005 and H.R. 646*, 68th Cong., 1st Sess. 7 \(1924\)](#) (Statement of Charles L. Bernheimer, Chamber of Commerce New York). Recent data confirms that high-value business disputes, like this one, are resolved nearly twice as fast in arbitration as compared to civil litigation. See [*Peter Vey, Arbitration vs. Litigation: Key Differences, Benefits, and Considerations*, Am. Arb. Ass’n \(Aug. 6, 2026\)](#) (reporting an 18.7-month

median time to resolve business-to-business disputes with claims over \$1 million in arbitration, compared to 34.1 months in U.S. district courts).²

The Court should answer the question presented “no” and reassure businesses that the benefits of arbitration—benefits that they contracted to receive—cannot be vitiated by an opposing party’s general assertion of contractual invalidity. Both the FAA and Arizona law demand as much.

II. Arizona’s contractor-licensing statutes relate—at most—to the validity of the construction contract, not the separate arbitration agreement.

The Court of Appeals acknowledged the separability doctrine in name. See [PAPP038 ¶ 25](#) (“True, arbitration clauses must be treated as separable.”). But the court’s application of the rule cannot be reconciled with how this Court and the U.S. Supreme Court have explained the separability doctrine.

A. The Court of Appeals’ analysis of “context and purpose” failed to treat the arbitration agreement as distinct from the underlying contract.

As explained above, the essence of the separability doctrine is that an arbitration agreement should be taken on its own terms; its connection to the host contract is irrelevant. But here, the Court of Appeals ignored that

² Available at <https://www.adr.org/news-and-insights/arbitration-vs-litigation/>.

distinction. In relying on the contract's "context and purpose" as an "agreement to arbitrate disputes involving a construction contract," the court erroneously determined that the "separate arbitration contract" fell "within the ambit" of the contractor-licensing requirement of [A.R.S. § 32-1151](#). [PAPP038 ¶ 25](#), [PAPP039 ¶ 26](#). Because [A.R.S. § 32-1153](#) states that no unlicensed contractor may seek "collection of compensation" in court based on a contract for services "for which a license is required," the court concluded that an unlicensed contractor effectively could never agree to *arbitrate* a construction dispute, either. [PAPP038 ¶ 25](#).

The Court of Appeals' principal error was believing that these contractor-licensing statutes are relevant at all. Under a correct application of the separability doctrine, the licensing requirement of [Section 32-1151](#) and the limitation of remedies in [Section 32-1153](#) have nothing to do with the separate issue of whether the parties validly agreed to arbitrate. Indeed, the Court of Appeals appeared to recognize that "an agreement to arbitrate in a general transaction does not require a contractor's license to be valid." [PAPP038 ¶ 25](#) (citing [A.R.S. §§ 12-1501, -3003](#)). The Court of Appeals should have stopped there.

But even if these statutes somehow were relevant, both the Court of Appeals and Marketch misconstrue them – albeit for different reasons. The Court of Appeals viewed these contractor-licensing statutes as forming the “context and purpose” of the arbitration agreement within the broader contract. [PAPP039 ¶ 26](#). But that is precisely the inquiry that the separability doctrine forbids: “Application of the severability rule does not depend on the substance of the remainder of the contract.” [Rent-A-Center, 561 U.S. at 72](#).

Attempting to rehabilitate that faulty reasoning, Marketch reimagines the dispute as concerning an unlicensed contractor’s “capacity” to contract, a word the Court of Appeals itself never used. *E.g.*, [Suppl. Br. of Pet’r Marketch Int’l Corp. at 13, 18 \(Sept. 28, 2026\)](#). But whether Sections 32-1151 and 32-1153 say anything about capacity to enter into a construction contract—a question on which Amici take no position—is irrelevant. Arizona law cannot tie an agreement to arbitrate disputes arising under a construction contract to the licensing requirements that allegedly are necessary for that construction contract to be valid. Doing so would both violate the separability doctrine, [Preston, 552 U.S. at 354](#), and “prohibit[] arbitration of a particular type of claim,” which the FAA forbids, [Marmet](#)

[*Health Care Ctr., Inc. v. Brown*, 565 U.S. 530, 533 \(2012\)](#); accord [Suppl. Br. of Resp't Process Service Specialists, L.L.C. at 16 \(Sept. 28, 2026\)](#) (same).

To be clear, the Court need go no further than to hold that all questions about the host contract's enforceability must go to the arbitrator. For this reason, Amici take no position on any of the follow-on analysis of whether Arizona law in fact makes the underlying construction contract void or voidable, or any other similar question that an arbitrator is perfectly capable of resolving. If, as the question presented assumes, the *arbitration* agreement is not itself illegal or void, "*Buckeye* requires the arbitrator to decide" those issues and any others "in the first instance." [Preston, 552 U.S. at 354](#).

B. The possibility of a subsequent enforcement proceeding cannot justify the Court of Appeals' departure from the separability doctrine.

The Court of Appeals' misapplication of separability principles was also driven by its concern about future enforcement proceedings in court. Specifically, it reasoned that any potential future proceeding to confirm an arbitration award *could* violate [Section 32-1153](#), which forbids an unlicensed contractor from seeking "compensation" in court for acts "for which a license is required." [PAPP038 ¶ 25](#), [PAPP039 ¶ 26](#). But that reasoning puts

the cart before the horse and is premised on a fundamental misunderstanding of separability.

The whole point of separability is to answer a single question: “who — court or arbitrator — decides”? [*Buckeye*, 546 U.S. at 444](#). Enforcement of the arbitration agreement would therefore not represent a judicial determination that the contract *as a whole* is valid. Indeed, “the *Prima Paint* rule permits a court to enforce an arbitration agreement in a contract that the arbitrator later finds to be void.” [*Id.* at 448](#). And Arizona courts have confirmed that arbitrators are “authorized — indeed, required — to apply Arizona law, including § 32-1153.” [*Smith v. Pinnamaneni*, 227 Ariz. 170, 175 ¶ 14 \(App. 2011\)](#). Accordingly, if a challenger raises Section 32-1153 as a defense in arbitration and the arbitrator finds the underlying contract to be invalid, there would be no enforcement proceeding and thus no Section 32-1153 enforcement issue. And if the arbitrator finds that the contract does not violate Section 32-1153, neither would an enforcement proceeding. See [*id.* at 174 ¶¶ 12-13](#) (recognizing that arbitrators may conclusively resolve issues of Arizona law, including Section 32-1153 challenges). Either way, the Court of Appeals’ concern is unfounded, and the arbitrator must make these determinations in the first instance.

CONCLUSION

The Court should answer the question presented “no.” Consistent with the U.S. Supreme Court’s and this Court’s precedent, a court must compel arbitration when the parties agreed to a valid arbitration provision, regardless of the potential illegality or voidness of the underlying contract.

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Respectfully submitted,

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