No. 132066

In the

Supreme Court of Illinois

GLORIA S. GELLER, as Independent Administrator
of the Estate of Mark Geller, Deceased,

Plaintiff-Appellant,

v.

UBER TECHNOLOGIES, INC. and RASIER, LLC,

Defendants-Appellees,

and

ERIN MURPHY, as Special Representative
of the Estate of Ejaz Rathore, Deceased,

Defendant.

On Appeal from the Appellate Court of Illinois,
First Judicial District, No. 1-24-1458.
There Heard on Appeal from the Circuit Court of Cook County, Illinois,
County Department, Law Division, No. 2022 L 010057.
The Honorable **Patrick T. Stanton**, Judge Presiding.

BRIEF OF *AMICUS CURIAE* WOMEN'S BAR ASSOCIATION OF ILLINOIS AMICUS COMMITTEE

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INTEREST OF AMICI CURIAE

Amici are a coalition of survivor-advocacy organizations, women's rights associations, and public-interest legal groups that advocate for individuals subjected to sexual assault, harassment, and other forms of gender-based violence. They appear in this case because the issues presented strike at the heart of a critical federal civil-rights protection: the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2022 ("EFAA").

In 2022, Congress enacted the EFAA due to overwhelming evidence that arbitration suppresses reporting, suppresses recovery, and suppresses accountability: survivors forced into arbitration were less likely to come forward, less likely to succeed, and received significantly lower awards, while the secrecy of arbitration perpetuated a "culture of silence" that protected perpetrators and insulated institutions from public scrutiny. H.R. Rep. No. 117-234, at 3–6 (2021). In 2022, the EFAA restored survivors' right to seek justice in court, rather than being forced into private, secretive arbitration, by providing that "at the election of the person alleging conduct constituting a sexual harassment dispute or sexual assault dispute…no pre-dispute arbitration agreement…shall be valid or enforceable" in cases brought under federal, tribal, or state law. 9 U.S.C. § 402(a).

By declaring these clauses not unconscionable and adopting an overly broad delegation rule, *Geller* reaches the opposite of what both Illinois law and the EFAA require. The result of the opinion is the denial of the rights of substantial category of Illinois survivors, whose claims are timely under state

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law but fall outside the Act's temporal window, the very access to a public court that Congress sought to guarantee.

The Amici include:

- The Women's Bar Association of Illinois
- Illinois Coalition Against Sexual Assault
- Victim Rights Law Center

Amici's interests are not abstract. In Illinois, approximately 14.1% of adult women report having experienced one or more completed forcible rapes in their lifetime,[1] and statewide rape-crisis centers served over 37,000 sexual violence victims between 2011 and 2015 (roughly 10,200 annually).[2] Between 2001 and 2018, more than 55,600 individuals in Illinois accessed services for domestic or sexual violence in a single year.[3] Most survivors served were female (89.4%) and most knew their perpetrators (86%).[4] And these figures capture only a fraction of the true prevalence of sexual violence: studies

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[1] Ill. Coal. Against Sexual Assault, *Adult Victims of Sexual Assault: Facts & Statistics* (2020), https://icasa.org/uploads/documents/Stats-and-Facts/adult-victims-of-sexual-assault-2020.pdf

[2] Ill. Crim. Just. Info. Auth., *An Examination of Illinois Sexual Violence Victims* (2018), https://icjia.illinois.gov/researchhub/articles/an-examination-of-illinois-sexual-violence-victims

[3] Ill. Crim. Just. Info. Auth., *Illinois Victim Needs Assessment* (2018), app. 2, https://vpp.icjia.cloud/Appendix2NeedsAssessment.pdf

[4] Ill. Crim. Just. Info. Auth., *An Examination of Illinois Sexual Violence Victims* (2018), https://icjia.illinois.gov/researchhub/articles/an-examination-of-illinois-sexual-violence-victims

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consistently show that the majority of survivors never report their assault to law enforcement or service providers due to fear, shame, retaliation concerns, and institutional distrust, meaning the documented numbers represent only the visible tip of a far larger iceberg.[5] These numbers underscore how many Illinois survivors depend on meaningful access to the courts, not private, hidden forums, to seek accountability and enforce their rights. Because survivors face structural barriers to seeking relief, even seemingly neutral doctrines about arbitration or delegation can have profound real world consequences. Amici therefore have a compelling interest in ensuring that Illinois courts do not interpret arbitration law in a way that reduces the "certain remedy" guaranteed by Article I, § 12 of the Illinois Constitution to a hollow promise.

That interest is heightened here because the EFAA applies only to claims or disputes that arise or accrue on or after March 3, 2022. Pub. L. No. 117-90 § 3. Illinois, however, has long recognized that survivors, particularly survivors of childhood sexual abuse, require expanded access to civil justice. In

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[5] See, e.g., M. Wieberneit, *Silenced Survivors: A Systematic Review of the Barriers to Reporting Sexual Violence*, Trauma, Violence & Abuse (2024) (finding that most sexual-violence survivors do not report due to fear, stigma, and institutional distrust); Brennan Ctr. for Justice, *Sexual Assault Remains Dramatically Underreported* (Oct. 4, 2018), https://www.brennancenter.org/our-work/analysis-opinion/sexual-assault-remains-dramatically-underreported(noting that "unreported assaults are all too common"); J. Murphy-Oikonen et al., *Unfounded Sexual Assault: Women's Experiences of Not Reporting* (2020), https://pmc.ncbi.nlm.nih.gov/articles/PMC9136376/ (reporting that fewer than 5% of sexual assaults are estimated to be reported to authorities).

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2014, the 98th General Assembly amended 735 ILCS 5/13-202.2 to extend the statute of limitations for childhood sexual abuse to 20 years after the survivor turns 18, reflecting legislative judgment that survivors must have a meaningful opportunity to pursue claims when they are ready, safe, and supported. But the Legislature's recognition of delayed reporting is not limited to childhood abuse. Through the doctrine of fraudulent concealment (735 ILCS 5/13-215), Illinois gives survivors five years from the discovery of a concealed claim, regardless of how long ago the abuse occurred. And under Illinois' longstanding delayed-discovery rule, the limitations period does not begin to run until the survivor knows, or reasonably should know, that she was injured and that the injury was wrongfully caused. Together, these statutes and doctrines create two large categories of Illinois survivors whose claims are timely, yet fall outside the EFAA:

1. survivors of childhood sexual abuse whose claims may extend back thirty-five years;

2. survivors whose filing was delayed by institutional cover-ups, coercive control, misplaced trust in authority figures, or deliberate misconduct that concealed the wrongdoing.

In each category, a survivor may have a timely Illinois claim today yet be told she or he must litigate their rights in secret arbitration because the underlying conduct predates the EFAA.

This loophole creates a perverse incentive: bad actors who conceal abuse or delay a survivor's awareness of wrongdoing can simultaneously embed arbitration clauses into service contracts, employment agreements, housing

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leases, school enrollment forms, or digital app terms of use. These provisions can force survivors, years after the abuse and years after the institutional cover-up, to unknowingly “agree” to give away their constitutional access to a public court system for claims that had not yet been discovered and could not have been understood. That outcome weaponizes contractual fine print against the very individuals Illinois and Federal law seeks to protect. It also rewards institutions that engaged in concealment by allowing them to funnel survivors into private, unreviewable proceedings.

Even Uber has acknowledged the dangers of such secrecy. In 2018, following widespread reports of rideshare-related sexual assaults, Uber publicly announced it was “turning the lights on” by ending the use of forced arbitration for sexual assault and sexual harassment claims. Uber recognized that these claims, because they involve coercion, trauma, public safety risks, and institutional accountability, must be aired in a transparent judicial forum. Yet the holding in *Geller* threatens far more than Uber claims: it affects survivors sexually assaulted by healthcare providers, religious leaders, landlords, or at elementary schools universities, hotels, sports organizations, or their workplaces—many of which continue to use mandatory arbitration clauses and delegation provisions as barriers to public accountability.

Because many Illinois childhood sexual abuse cases, delayed-discovery cases, and fraudulent concealment cases involve conduct occurring well before March 3, 2022, a massive category of survivors, spanning multiple decades,

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falls into a statutory gap: their claims remain timely under Illinois law, yet the EFAA does not shield them from forced arbitration. As a result, thousands of survivors whose claims Illinois expressly preserved for judicial resolution may still be compelled to arbitrate under standard-form contracts they signed, often without meaningful notice or bargaining power. If Illinois courts adopt the broad delegation reading of *Geller*, these survivors could be forced to litigate whether the EFAA applies in arbitration itself, under the authority of the very contractual provision Congress sought to neutralize. That result would directly undermine the EFAA's protections and collide with Illinois' constitutional command that "every person shall find a certain remedy in the laws…and obtain justice by law, freely, completely, and promptly." Ill. Const. art. I, § 12.

If this Court does not correct *Geller*, survivors whose claims accrued before March 3, 2022, even when timely under Illinois law, will be forced into secret arbitration under a standard click-wrap agreement, because the EFAA does not reach pre-accrual claims. The current decision has much broader implications than just personal injury litigation. For the hundreds of thousands of Illinois survivors, at least 400,000 women statewide who have experienced rape or attempted rape, and the tens of thousands who seek support through Illinois rape crisis centers each year, these questions are not academic. They determine whether survivors will receive the transparent adjudicatory process and public accountability that Congress, the Illinois Legislature, and the Illinois Constitution explicitly promise. Amici urge this

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Court to interpret delegation and arbitrability in a manner that protects, rather than dilutes, these essential rights.

NATURE OF THE CASE

This appeal stems from the Circuit Court of Cook County's partial denial of Uber's motion to compel arbitration in a wrongful death action brought by Gloria Sheridan Geller after her husband was killed in an accident involving an Uber driver. Sheridan asserted survival claims on behalf of her husband's estate and her own claims under the Illinois Wrongful Death Act. Uber moved to compel arbitration based on the standard click-wrap terms of use that both Sheridan and her husband accepted when creating Uber accounts. Those terms include a sweeping delegation clause assigning all threshold arbitrability questions, including scope, enforceability, and defenses, to the arbitrator.

The circuit court compelled arbitration of the survival claims but declined to compel arbitration of Sheridan's individual wrongful death claim, finding that her claim did not arise from her own use of the Uber platform and therefore fell outside the scope of her agreement. The court did not address, or apply, the delegation clause. Uber appealed under Rule 307(a)(1), and the First District reversed. It held that the delegation clause requires an arbitrator, not a court, to decide whether Sheridan's wrongful death claim is arbitrable because she did not specifically challenge the delegation provision itself. The case was remanded with instructions to refer all arbitrability issues to the arbitrator.

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Although this case concerns wrongful death, the Appellate Court's reasoning has far broader implications. By allowing delegation clauses in mass-market consumer contracts to route all arbitrability questions to a private arbitrator, *Geller* threatens to expand delegation doctrine in a way that undermines Congress's purpose in the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act (EFAA). Because the EFAA protects only survivors whose claims accrued on or after March 3, 2022, a large category of Illinois survivors, those with timely claims preserved by the Illinois Legislature's extended limitations period for childhood sexual abuse and those survivors whose ability to file was delayed by fraudulent concealment or the delayed-discovery rule, fall into a statutory gap. *Geller's* reasoning, if left unchecked, would allow companies to force even these survivors into private arbitration simply by having embedded a delegation clause in their terms of service.

Amici submit this brief to highlight these implications and to urge the Court to interpret delegation and arbitrability consistently with Illinois's constitutional guarantee of open courts and Congress's express intent to preserve survivors' access to a public judicial forum.

ARGUMENT

I. *Geller* Conflicts With the EFAA and Revives the Very Harms Congress Sought to End

The Appellate Court's reasoning in *Geller v. Uber Technologies, Inc.*, 2025 IL App (1st) 241458-U, elevates formalistic assent over meaningful

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consent. By deeming Uber's non-negotiable click-wrap arbitration and delegation provisions "not unconscionable" simply because they were "clear and conspicuous," the court embraced a purely procedural understanding of fairness that ignores the real-world coercion inherent in digital adhesion contracts. For survivors, especially survivors of childhood sexual abuse who are only able to come forward years later, this is not a theoretical concern. It is a barrier to justice.

That approach directly conflicts with the legislative findings that led Congress to enact the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021 ("EFAA"). Pub. L. No. 117-90, 136 Stat. 26 (2022). Congress recognized that survivors were routinely "forced into an arbitration system that is secretive, closed, and private—designed to evade oversight and accountability." H.R. Rep. No. 117-234, at 6 (2021). The EFAA's purpose is to restore survivors' ability to seek justice in public courts "where they could enforce their rights…access the transparency and precedential guidance of the justice system, and even simply share their experiences." *Id.* at 3.

Yet *Geller* resurrects the very doctrine Congress sought to dismantle: the legal fiction that consumers knowingly and voluntarily waive fundamental rights through passive acceptance of boilerplate contract language. And as explained below, *Geller* threatens two major categories of Illinois survivors who all fall outside the EFAA's temporal scope, despite having timely, legislatively preserved state-law claims.

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II. Illinois Preserves Timely Claims for Two Major Categories of Survivors Who All Fall Outside the EFAA – Yet Geller Would Force Each Into Arbitration

Illinois law preserves timely claims for two major groups of survivors who fall completely outside the EFAA's protections and who stand to lose the most if *Geller* is allowed to stand. The first group is survivors of childhood sexual abuse. Illinois extends their time to file until age 38 under 735 ILCS 5/13-202.2 because the Illinois Legislature recognized what every major study and survivor-facing organization has confirmed for decades: children cannot reasonably report or make sense of their abuse until much later in life. Many do not disclose until adulthood, therapy, or a later event that finally allows them to understand what was done to them. Their claims are timely because delayed disclosure is not an exception in childhood sexual abuse cases. It is the norm.

The second group includes survivors whose ability to come forward was delayed by fraudulent concealment or by the delayed-discovery rule. Illinois law specifically protects these survivors. Under 735 ILCS 5/13-215, when a defendant or institution conceals a cause of action, the survivor has five years from the date she discovers the truth, no matter how long ago the assault occurred. This doctrine applies to a wide range of misconduct, including institutions that hide prior complaints, destroy evidence, misrepresent a perpetrator's history, or otherwise prevent survivors from understanding what happened to them. Illinois' discovery rule serves a similar function. The limitations period begins only when a survivor knows, or reasonably should

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know, that she was injured and that the injury was wrongfully caused. The law recognizes that trauma, grooming, coercive control, institutional betrayal, and psychological survival responses often delay this understanding. Many survivors do not, and cannot, connect the dots until years later.

Together, these protections create a large and important population of Illinois survivors with timely claims today. They include survivors of childhood abuse who are only now able to seek justice, and adults whose abuse remained hidden because of institutional cover-ups or because the survivor could not recognize the wrongful cause of the harm until much later. Illinois law keeps the courthouse doors open for them because the barriers they face are real, predictable, and often created by the very institutions that harmed them.

None of these survivors are protected by the EFAA if their claims accrued before March 3, 2022. Geller would nevertheless allow companies to force these survivors into arbitration simply by having placed arbitration and delegation clauses in mass-market consumer contracts. Under *Geller's* framework, even these survivors, whose claims Illinois deliberately preserves for public adjudication, could be required to litigate the applicability of the EFAA in private arbitration before the very decisionmakers Congress sought to remove from sexual assault cases. That result turns both state and federal intent on its head. Illinois law expands access to the courts. *Geller* allows private contracts to strip it away.

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Illinois' fraudulent concealment statute, its discovery rule, and its constitutional guarantee of a certain remedy reflect a firm commitment to shining light on claims that were buried, hidden, or delayed. Forcing those same survivors back into the shadows of private arbitration, through contracts Congress meant to neutralize, directly contradicts that commitment.

III. Allowing Delegation Clauses to Decide Arbitrability Invites Arbitrators to Nullify the EFAA

Geller held that Uber's delegation clause required an arbitrator, not a court, to decide whether a non-signatory's claims fall within an arbitration agreement. But allowing a private arbitrator to decide this threshold question would undermine the structure Congress created in the EFAA. The statute gives survivors the choice to litigate in court, and it assigns courts, not arbitrators, the responsibility to safeguard that choice. 9 U.S.C. section 402(a).

Under Geller's logic, an arbitrator would decide the very question Congress told courts to answer: whether a claim relates to a sexual assault or sexual harassment dispute and is therefore exempt from forced arbitration. That approach directly conflicts with the Supreme Court's instruction that before compelling arbitration, a court must determine whether the Federal Arbitration Act applies at all. *New Prime Inc. v. Oliveira*, 139 S. Ct. 532, 538 (2019). New Prime makes the point unmistakable. A delegation clause cannot give an arbitrator power to decide a statutory exclusion. That decision belongs to the courts.

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The risk is especially pronounced in Illinois, where many survivors fall outside the EFAA's protection but still hold valid state-law claims. These include survivors of childhood sexual abuse whose claims may reach back decades, and survivors whose ability to file was delayed by fraudulent concealment or delayed discovery, including those misled by institutions that hid prior misconduct or prevented them from understanding the wrongful cause of their injuries. None of these survivors are covered by the EFAA if their claims accrued before March 3, 2022. Yet each retains a fully timely claim under Illinois law.

Under Geller, these survivors could be forced to litigate the EFAA question in private arbitration simply because they clicked "I agree" on a standard-form contract long before the abuse occurred and long before they could have understood the rights they were purportedly giving up. This is precisely the danger Congress identified. Congress found that arbitration in sexual assault cases is secretive, closed, and insulated from oversight, and that it silences survivors while protecting perpetrators and institutions from public accountability. H.R. Rep. No. 117-234, at 6 (2021). Handing arbitrators the authority to decide whether survivors can access a courtroom would hollow out the purpose of the EFAA and revive the very culture of silence Congress sought to dismantle.

In short, *Geller* gives private arbitrators a gatekeeping power that Congress reserved for courts. And for Illinois survivors with timely claims but

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no EFAA shield, the consequences are profound. Corporate actors could bar these survivors from the public justice system through a boilerplate click-wrap agreement signed years before the assault, shutting the courthouse doors in precisely the cases where Illinois law and the EFAA insist they must remain open.

CONCLUSION

Survivors in Illinois whose claims fall outside the EFAA's temporal protection, including survivors of childhood sexual abuse and survivors whose ability to file was delayed by fraudulent concealment or delayed discovery, deserve the public and transparent adjudication that both Congress and the Illinois Legislature intended them to have. Allowing arbitration and delegation clauses in agreements signed long before the abuse to dictate whether these survivors may enter a courtroom would undermine these protections and revive the secrecy Congress sought to end. Such provisions are especially unconscionable when used to bar survivors with timely state-law claims from the courts the Legislature has deliberately kept open to them. Amici therefore respectfully urge this Court to hold that courts, not private arbitrators, must decide whether a statutory exclusion applies, to interpret Illinois law in a manner that preserves survivors' access to the public justice system, and to recognize that enforcing these types of arbitration agreements against this population of survivors is unconscionable.

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Respectfully Submitted,

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SUPREME COURT RULE 341(c) COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and points of authorities, the Rule 341(c) certificate of compliance, notice of filing and proof of service, and those matters to be appended to the brief under Rule 342(a), is 14 pages.

Respectfully Submitted,

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NOTICE OF FILING and PROOF OF SERVICE

In the Supreme Court of Illinois

Gloria S. Geller, as Independent Administrator Of the Estate of Mark Geller, Deceased, *Plaintiff-Appellant,* v. Uber Technologies, Inc. and Raiser, LLC, *Defendants-Appellees* and Erin Murphy, as Special Representative of the Estate of Ejaz Rathore, Deceased	))))))))))))))	No. 132066

The undersigned, being first duly sworn, deposes and states that on November 19, 2025, there was electronically filed and served upon the Clerk of the above court the Brief of Amicus Curiae. Service of the Brief will be accomplished electronically through the filing manager, Odyssey EfileIL, to the following counsel of record:

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Within five days of acceptance by the Court, the undersigned states that 13 paper copies of the Brief bearing the court's file-stamp will be sent to the above court.

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Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.

/s/ Molly Condon Wells
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