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, 2022 L 010057
The Honorable **Patrick T. Stanton**, Judge Presiding.

BRIEF OF *AMICI CURIAE* CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AND ILLINOIS CHAMBER OF COMMERCE IN SUPPORT OF DEFENDANTS-APPELLEES

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INTEREST OF THE *AMICI CURIAE*

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.

The Illinois Chamber of Commerce (the "Illinois Chamber") is a non-profit organization composed of businesses and organizations of all types and sizes across the State of Illinois. The Illinois Chamber is the unifying voice of the varied Illinois business community and represents businesses in all components of Illinois's economy, including mining, manufacturing, construction, transportation, utilities, finance and banking, insurance, gambling, real estate, professional services, local chambers of commerce, and other trade groups and membership organizations. Members include many small to mid-sized businesses as well as large international companies headquartered in Illinois.

The Illinois Chamber works collaboratively with trade organizations on specific policy issues and in specific areas of activity. It is dedicated to strengthening Illinois's business climate and economy for job creators. Accordingly, the Illinois Chamber provides businesses with a voice as it works with state lawmakers to make business-related policy decisions. The Illinois Chamber also operates an Amicus Briefs Program to bring attention to specific cases and provide additional information for the Court to consider. Over the last few

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years, the Illinois Chamber has appeared before federal and state courts in matters of significant importance to its members.

Many of *amici*'s members conduct substantial business online. Indeed, e-commerce transactions in the United States accounted for over $300 billion during the third quarter of 2025 alone, and currently account for over $1 trillion per year. See U.S. Census Bureau, Quarterly Retail E-Commerce Sales, 3rd Quarter 2025 (Dec. 18, 2025).[2] The enforceability of online contracts is therefore of critical importance to *amici* and their members, as well as to the Nation's economy more generally.

Moreover, many of *amici*'s members regularly employ arbitration agreements in their online contracts with consumers. Arbitration allows parties to resolve promptly and efficiently any disputes that may arise while avoiding the high costs associated with traditional litigation in court. Studies repeatedly confirm that arbitration is just as fair—in addition to being speedier, less expensive, and less adversarial—compared to litigation in court. In reliance on the legislative policy embodied in the Federal Arbitration Act ("FAA") and the U.S. Supreme Court's consistent affirmation of the legal protection that the FAA provides for arbitration agreements, many of *amici*'s members have structured millions of contractual relationships—including enormous numbers of online contracts—to include arbitration agreements. Many members also routinely contract with their users to delegate disputes over arbitrability to an arbitrator in order to avoid time-consuming litigation over the scope and enforceability of those agreements. Arbitration of these issues is faster and less expensive than litigation in court.

[2] https://www.census.gov/retail/mrts/www/data/pdf/ec_current.pdf.

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Amici have a strong interest in this case and in affirmance of the judgment below. The position advocated by plaintiff would undermine the enforceability of these widely used agreements that are protected under federal law—depriving businesses and claimants alike of their mutual benefits and injecting significant cost and uncertainty into a major sector of our Nation's economy.

INTRODUCTION

Amici submit this brief to explain the negative impact that a decision in plaintiff-appellant's favor would have on businesses in Illinois, and across the Nation, that regularly agree with consumers to refer disputes to arbitration—including by delegating disputes over arbitrability to an arbitrator. *Amici* believe they can assist the Court with understanding the nature and role of delegation clauses in arbitration agreements, as well as the ways that plaintiff's position would threaten those clauses and undermine binding law.

Delegation clauses are an important feature of many consumer contracts. In a nutshell, they are antecedent arbitration agreements, legally distinct from a broader arbitration agreement, that typically require any disputes over the enforceability or applicability of an arbitration agreement to be resolved by the arbitrator rather than by a court. They are exceedingly common, and many of *amici*'s members have agreed with millions of consumers to resolve any disputes in that way. Delegation of arbitrability benefits both parties by preventing expensive and time-consuming collateral litigation over threshold issues from swallowing arbitration's mutual benefits for both businesses and consumers.

The Supreme Court of the United States repeatedly has affirmed that the FAA protects the contracting parties' choice to delegate arbitrability. The Court also has established two important rules ensuring that, in cases (like

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this one) controlled by the FAA, delegation clauses will be enforced: *First*, a court may not short-circuit a delegation clause and keep the arbitrability question from the arbitrator just because the court thinks that the parties' dispute likely is not arbitrable. In *Henry Schein*, the Court held that a lower court must enforce a delegation clause *even if* the court considers the asserted basis for arbitrability "wholly groundless." *Second*, delegation provisions remain severable from the main arbitration agreement. As explained in *Rent-A-Center* and related cases, they are legally distinct arbitration agreements that are separately enforceable and must be *specifically* challenged and analyzed. Plaintiff's position in this appeal threatens to undermine both rules.

First, plaintiff argues that a court must decide that a dispute is sufficiently related to, and not overly remote from, the parties' broader agreement before enforcing a delegation clause. That rule would nullify delegation clauses by reviving the "wholly groundless" exception that *Henry Schein* rejected.

Courts in other jurisdictions have recognized as much and routinely reject similar efforts. This Court should not take a different path. Doing so would inject serious unpredictability into millions of delegation clauses and increase the risks and costs of providing services in Illinois, burdening both local and national businesses.

Second, plaintiff argues that the arbitration agreement in this case is unconscionable. If this Court were to agree, that holding would threaten a huge swath of ordinary electronic consumer contracts. The terms of use in this case are, in *amici*'s experience, commonplace throughout the economy. The manner in which this contract was formed is also commonplace. An unconscionability holding would implicate billions of dollars of e-commerce per year.

But this Court need not—and, indeed, should not—reach unconscionability at all. Under *Rent-A-Center*, the only thing that matters for delegation

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purposes is enforceability *of the delegation provision*. And plaintiff did not separately challenge it. The substance of plaintiff's arguments concern the parties' primary arbitration agreement alone or their broader contract. As a result, under the delegation clause, unconscionability of the primary arbitration agreement remains for the arbitrator to decide, not the court.

ARGUMENT

I. Delegation provisions simplify threshold disputes about arbitration—to the benefit of consumers and businesses alike.

The Federal Arbitration Act reflects the basic principle that "arbitration is a matter of contract," and that arbitration agreements must be enforced "according to their terms." *Rent-A-Center West, Inc.* v. *Jackson*, 561 U.S. 63, 67 (2010). "[P]arties can form multiple levels of agreements concerning arbitration." *Coinbase, Inc.* v. *Suski*, 602 U.S. 143, 148 (2024). Accordingly, it is well settled that "parties may agree to have an arbitrator decide not only the merits of a particular dispute but also 'gateway' questions of 'arbitrability,' such as whether the parties have agreed to arbitrate or whether their agreement covers a particular controversy." *Henry Schein, Inc.* v. *Archer & White Sales, Inc.*, 586 U.S. 63, 67–68 (2019) (cleaned up). Such a higher-level arbitration agreement—known as a "delegation" agreement or clause—is "simply an additional, antecedent agreement" about who should decide these arbitrability questions. *Rent-A-Center*, 561 U.S. at 69. A delegation agreement is legally distinct from the parties' primary arbitration agreement, but "the FAA operates on this additional arbitration agreement just as it does on any other." *Id.* In short, a delegation clause is just an arbitration agreement about arbitrability.

Delegation provisions are extremely common. They appear in standard templates for commercial contracts contemplating alternative dispute resolution. See, *e.g.*, *Alternative Dispute Resolution (ADR) Clauses: Standard*

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Arbitration Clauses, JAMS.[3] They appear in a variety of contractual settings, from those involving internet service customers, *Blanks* v. *TDS Telecomms. LLC*, 294 So. 3d 761, 762 (Ala. 2019), to employees, *Bossé* v. *New York Life Ins. Co.*, 992 F.3d 20, 24–25 (1st Cir. 2021), to patent licensees, *Agere Sys., Inc.* v. *Samsung Elecs. Co.*, 560 F.3d 337, 338–340 (5th Cir. 2009)).

As merely a type of arbitration agreement regarding arbitrability, delegation provisions provide to consumers and businesses alike the same mutual benefits of cheap, quick, and simple dispute resolution. Indeed, empirical research shows that arbitration produces better and faster substantive results for consumer claimants. See generally Nam D. Pham, Ph.D. & Mary Donovan, *Fairer, Faster, Better III: An Empirical Assessment of Consumer and Employment Arbitration* (Mar. 2022) (reporting, based on an analysis of more than 60,000 arbitrations and 260,000 lawsuits, that consumer-claimants received awards that were, on median, three times higher in arbitration than litigation; prevailed 42% of the time in arbitration compared with 29% in litigation; and reached resolution, on median, 50 days sooner in arbitration).[4]

Many of *amici*'s members routinely agree with their users or customers to delegate arbitrability questions to arbitrators in order to avoid time-consuming collateral litigation over the scope and enforceability of their primary arbitration agreements—which can blunt or swallow those benefits of arbitration. Initial arbitrability disputes in court stretch parties between two forums, potentially involve intrusive and unwarranted discovery, inject delays, and generate additional appeals. For example, the briefing schedule alone on a dispute over arbitrability can swallow the average time savings, and the money

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[3] https://www.jamsadr.com/clauses/#Standard.

[4] https://instituteforlegalreform.com/wp-content/uploads/2022/03/Fairer-Faster-Better-III.pdf.

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spent briefing that arbitrability dispute can easily outweigh the average difference in damages. See Pham & Donovan, *supra*, at 4. The entire point of a delegation clause is to "insulate and protect the arbitration process" from costly rounds of pre-arbitration litigation. 1 Martin Domke et al., Domke on Commercial Arbitration § 15:12 (Nov. 2025 update). Channeling gatekeeping disputes through courts despite the parties' clear agreement to the contrary "sacrifices the principal advantage of arbitration" by "mak[ing] the process slower, more costly, and more likely to general procedural morass." *AT&T Mobility LLC* v. *Concepcion*, 563 U.S. 333, 348 (2011).

For those reasons, countless Illinois businesses have entered arbitration agreements containing delegation provisions—not just with other businesses, but with customers or employees—in order to avoid time-consuming litigation.

II. Plaintiff's proposed "remoteness" or "relatedness" requirement is contrary to U.S. Supreme Court precedent.

Plaintiff's brief spends considerable time arguing (at 20–36) that, before a court can enforce a delegation provision, it must first determine that the parties had "a valid agreement to arbitrate *the particular dispute*." Appellant Br. 35 (emphasis added). She proposes, in other words, that a court must determine that the arbitration agreement is not "unrelated or remote" from the substantive legal controversy underlying both the delegation provision and the parties' primary arbitration agreement. *Id.* at 36. But that "remoteness" or "relatedness" rule would make delegation clauses illusory. The whole point of a delegation clause is that an *arbitrator* decides whether a validly formed arbitration agreement between the parties was "to arbitrate the particular dispute." Plaintiff cannot reconcile that proposal with the decision of the Supreme Court of the United States in *Henry Schein*. That case did away with the

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"wholly groundless" exception to the enforcement of delegation agreements, which plaintiff tries to resurrect in all but name.

Plaintiff's proposed rule conflicts with *Henry Schein*, would make Illinois a harmful outlier (Section II.A), and would undermine consumer contracts more broadly (Section II.B).

A. Plaintiff's position would create an Illinois-specific end-run around *Henry Schein*'s straightforward rule protecting delegation clauses.

1. Plaintiff's threshold "relatedness" or "remoteness" rule would revive under another name the "wholly groundless" exception to the enforcement of delegation clauses that *Henry Schein* rejected.

Before *Henry Schein*, some courts would ignore delegation clauses and refuse to compel arbitration if they deemed the parties underlying substantive dispute so remote from the scope of their primary arbitration agreement that any argument for arbitration would be "wholly groundless." In doing so, those courts examined the "scope of the arbitration clause and the precise issues that the moving party asserts are subject to arbitration." *InterDigital Commc'ns, LLC* v. *ITC*, 718 F.3d 1336, 1346 (Fed. Cir. 2013) (citation omitted).

That old (rejected) approach asked the exact scope question that plaintiff asks here: whether the underlying substantive dispute was sufficiently related to the contract. For example, in *Douglas* v. *Regions Bank*, the Fifth Circuit refused to compel arbitration as "wholly groundless" despite a delegation clause because "the events leading to [the plaintiff's] claim … have nothing to do with her checking account [associated with the arbitration agreement] opened years earlier." 757 F.3d 460, 464 (5th Cir. 2014). Likewise, the court in *IQ Products Co.* v. *WD–40 Co.*, 871 F.3d 344 (5th Cir. 2017), considered whether the dispute "ar[ose] out of, or relat[ed] to" the contract containing the arbitration agreement. *Id.* at 351. The court in *Evans* v. *Building Materials*

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Corporation of America, 858 F.3d 1377 (Fed. Cir. 2017), similarly described the "wholly groundless" inquiry as a question of "scope" and asked whether claims "aris[e] under" or have a "significant relationship" to contract in question. *Id.* at 1381. In *Turi* v. *Main Street Adoption Services, LLP*, 633 F.3d 496 (6th Cir. 2011), the court reasoned that delegation "applies only to claims that are at least *arguably* covered by the agreement." *Id.* at 507, 511 (emphasis in original); see also *id.* at 507 ("A dispute that plainly has nothing to do with the subject matter of an arbitration agreement, for example, would not give the arbitrator the authority to decide the arbitrability of this wholly unrelated claim.").

In other words, the "wholly groundless" test often turned on relatedness. And *Henry Schein* cited those very relatedness cases and disavowed their approach. 586 U.S. at 67 (citing *Douglas* and *Turi*, among others). The U.S. Supreme Court made clear that a "court possesses no power to decide the arbitrability issue" where "the parties' contract delegates the arbitrability question to an arbitrator." *Id.* at 68. That is true "even if the court thinks that the argument that the arbitration agreement applies *to a particular dispute* is wholly groundless." *Id.* (emphasis added).

Henry Schein holds that the *existence* of an arbitration agreement between the parties is generally a threshold issue for a court, but the *application* of that agreement to a particular dispute is for the arbitrator if the parties agreed to delegate such arbitrability questions. 586 U.S. at 69. Plaintiff here insists that *Henry Schein* requires "a valid agreement to arbitrate *the particular dispute*" before enforcing a delegation clause. Appellant Br. 35 (emphasis added). That is wrong. *Henry Schein* says only that, "before referring a dispute to an arbitrator, the court determines whether a valid arbitration agreement exists." 569 U.S. at 69. The U.S. Supreme Court unambiguously held that "if a

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valid agreement exists, and if the agreement delegates the arbitrability issue to an arbitrator, [then] a court *may not decide* the arbitrability issue." *Id.* (emphasis added). That is so even if the court disagrees that "the arbitration agreement applies to a particular dispute." *Id.* at 68.

Many courts have since acknowledged that *Henry Schein* rules out any "relatedness" exception to a delegation provision—and have rejected arguments very similar to plaintiff's here. See, *e.g.*, *Bossé*, 992 F.3d at 30–31 (rejecting argument about relatedness of the dispute to arbitrability); see also *Airbnb, Inc.* v. *Rice*, 518 P.3d 88, 91–92 (Nev. 2022) (rejecting argument seeking to avoid delegation on ground that "the arbitration agreement clearly is unrelated to the dispute"); *McLeod* v. *Parekh*, No. 0957-23-4, 2025 WL 1298143, at *7 (Ct. App. Va. May 6, 2025) (rejecting attempt to avoid delegation because the "claims do not arise out of their membership" associated with the contract); *BuzzFeed Media Enters., Inc.* v. *Anderson*, No. 2023-0377, 2024 WL 2187054, at *18 (Del. Ch. May 15, 2024) (rejecting argument seeking to avoid delegation on the ground that claims "aris[e] out of a different agreement" because "courts may not ignore a delegation of arbitrability even if the arbitration claims as pled appear to be wholly groundless"); *Florida Gas Transmission Co.* v. *Texas Brine Co.*, 285 So.3d 1093, 1097–1098, 1101 (Ct. App. La. 2019) (rejecting argument about whether claim "relat[es] to" contract containing arbitration agreement in view of delegation clause under *Henry Schein*); *Bank of Holly Springs* v. *Purear ex rel. Est. of Brown*, 309 So.3d 598, 602–604 (Ct. App. Miss. 2020) (rejecting argument about whether "claims are not within the scope of the agreement" in view of delegation clause under *Henry Schein*); *Revis* v. *Schwartz*, 192 A.D.3d 127, 141–142 (N.Y. App. Div. 2020) (refusing to analyze whether "the various causes of action … come within the scope of their arbitration agreement" in view of delegation clause under *Henry Schein*);

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McGee v. *Armstrong*, 941 F.3d 859, 866–867 (6th Cir. 2019) (enforcing delegation clause because *Henry Schein* rejected first considering whether "claims … are at least arguably covered by the agreement" (citation omitted)).[5]

Those courts have properly understood *Henry Schein*'s "straightforward rule": "once the parties subject *some set of issues* to an arbitrator for resolution, and once the parties clearly and unmistakably assign to an arbitrator the authority to decide *whether disputes fit within that set of issues*, the question whether a particular dispute is arbitrable is strictly for the arbitrator, not a court." *Communication Workers of Am.* v. *AT&T Inc.*, 6 F.4th 1344, 1349 (D.C. Cir. 2021) (emphases added). That is the overwhelming majority approach that plaintiff asks this court to reject.

2. The cases plaintiff relies on do not support a threshold "remoteness" or "relatedness" condition on the enforcement of delegation clauses after *Henry Schein*:

- *Lloyd's Syndicate 457* v. *FloaTEC, L.L.C.*, 921 F.3d 508 (5th Cir. 2019), did not involve a question of relatedness or scope. *Id.* at 514 n.3. It turned on whether any contract existed at all with respect to a party who had not actually signed *any* agreement (delegation clause *or* arbitration agreement). *Id.* at 514–515 & n.3.

[5] See also *Dahdah* v. *Rocket Mortgage, LLC*, __ F.4th ___, No. 24-1910, 2026 WL 194455, at *13 (6th Cir. Jan. 26, 2026) (rejecting, under *Henry Schein*, argument that claims did not fall within scope of arbitration agreement); *Carroll* v. *Castellanos*, 281 So.3d 365, 370–371 (Ala. 2019) ("In sum, although questions remain about whether the claims at issue fall within the scope of the arbitration provision[,] … here those questions have been delegated to the arbitrator by virtue of the arbitrability clause."); *Samuel* v. *Islam*, 233 A.D.3d 632, 632–633 (N.Y. App. Div. 2024) (rejecting, under *Henry Schein*, argument against arbitrability of "plaintiff's presence in a Lyft that he did not order" using his own account and contract).

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- *Metropolitan Life Insurance Co.* v. *Bucsek*, 919 F.3d 184 (2d Cir. 2019), turned on whether a delegation agreement existed at all because the contract was silent about that. *Id.* at 190–191. It was not about the scope or relatedness of an arbitration agreement.

- *Moritz* v. *Universal City Studios LLC*, 54 Cal. App. 5th 238 (2020), involved a conflict among multiple agreements, as the Nevada Supreme Court acknowledged. *Rice*, 518 P.3d at 92 (distinguishing *Moritz* on that ground). *Slaughter* v. *National Railroad Passenger Corp.*, 460 F. Supp. 3d 1 (D.D.C. 2020) also concerned a conflict between multiple contracts—of which the *controlling* one lacked a delegation clause. *Id.* at 2–3, 7. And *T3 Enterprises, Inc.* v. *Safeguard Business Systems, Inc.*, 435 P.3d 518 (Idaho 2019) involved interpretation of the contract in view of flatly contradictory language in the contract—a battle between a clause purporting to delegate validity and one broadly reserving interpretation-related issues for the court. *Id.* at 526–527. The issue was not relatedness of the underlying dispute to the scope of the arbitration agreement. The contract-conflict issue, presented also in *Suski*, 602 U.S. at 145, is not relevant here.

- *First Options of Chicago, Inc.* v. *Kaplan*, 514 U.S. 938, 944 (1995), also did not involve a relatedness analysis. *First Options* explained that parties could delegate "the arbitrability question itself" to the arbitrator, but that a court would decide arbitrability if they did not. *Id.* at 943. It did not articulate a predicate exception to delegation if a court deems a dispute insufficiently related to the parties' underlying substantive agreement.

- *Litton Financial Printing Division* v. *NLRB*, 501 U.S. 190, 205 (1991), does not stand for the proposition that "arbitration agreements apply 'only where a dispute has its real source in the contract.'" Appellant Br. 30. *Litton* concerned only the presumption that arbitration obligations under a labor

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collective-bargaining agreement continue after the agreement expires. That issue is irrelevant here. That case did not involve delegation, instead holding that the specific continuation presumption at issue—not arbitration agreements in general—"appl[ies] only where a dispute has its real source in the contract." But in all events, the *arbitrability* dispute "has its real source in the contract." *Litton*, 501 U.S. at 205.

- *Gibbs v. Stinson*, 421 F. Supp. 3d 267 (E.D. Va. 2019), did not involve a challenge to "the arbitrability or non-arbitrability of issues within the agreement"; the parties instead contested the validity "of the delegation clause" itself. *Id.* at 290–291.

- Plaintiff most forcefully relies on *Peterson* v. *Devita*, but that case directly flouts *Henry Schein*. *Peterson* expressed frustration with *Henry Schein* and so imposed a new threshold relatedness requirement that "a dispute has its real source in the contract." 2023 IL App (1st) 230356, ¶ 35. *Peterson* thus did exactly what *Henry Schein* held was off-limits. The dissent recognized that problem. See 2023 IL App (1st) 230356, ¶¶ 57–58 (Lavin, J., dissenting). And *Peterson* does not reflect a consensus of the Illinois Appellate Court. See, *e.g.*, *Eska* v. *Jack Schmitt Ford, Inc.*, 2023 IL App (5th) 220812-U, ¶¶ 7, 14, 18 (rejecting under *Henry Schein* argument about "whether the agreement covers a particular controversy (scope)" in view of delegation clause—and in particular "whether the dispute related to the oil change" for which the contract was made). This Court should expressly disapprove of and overrule *Peterson* because it so clearly flouts *Henry Schein* and creates confusion and uncertainty for parties to arbitration agreements containing delegation clauses, including *amici*'s members.[6]

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[6] Plaintiff cites (at 31) *Gaines* v. *Ciox Health, LLC*, 2024 IL App (5th) 230565, ¶ 27, and *Matthew-Ajayi* v. *Airbnb, Inc.*, No. CV ADC-23-3035, 2024 WL

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In short, plaintiff's position would make this jurisdiction a clear outlier in a field of law that should be uniform.

B. Adopting plaintiff's argument would inject serious unpredictability into commonplace consumer contracts.

There are also serious policy considerations that weigh against plaintiff's invitation to create a new "relatedness" condition on the enforcement of delegation clauses.

For one, *amici*'s members have executed millions of contracts including delegation provisions, which are standard fare in arbitration agreements. *Supra* at 5–7. Those delegation provisions often closely resemble the one at issue here. The sheer volume of contracting that involves delegation clauses creates a serious reliance interest in the terms being enforced as written. The differences in fees and costs alone between arbitration and litigation underscore the potential burden. Moreover, a "relatedness" requirement in this State would create an unworkable jurisdictional patchwork. As noted above, State and Federal courts have rejected similar efforts to effectively undo *Henry Schein*. *Supra* at 8–11. Adopting plaintiff's position would make Illinois an outlier. An identically written contract would mean a different thing in Illinois courts than it would elsewhere.

Illinois is a major market for many of *amici*'s members. Millions of its residents depend on and seek services from *amici*'s members in diverse sectors of the economy. But uncertainty surrounding enforceability increases cost and risk. And in *amici*'s experience, those kinds of costs and risks make offering new services less economically sensible than investing in a jurisdiction that enforces contracts as written. Those costs also make those services more

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1769186, at *2 (D. Md. Apr. 24, 2024), as "approv[ing]" *Peterson*. Not so. *Gaines* simply quoted part of *Peterson* for its legal standard in a way that *endorses* delegation, and *Matthew-Ajayi* made no mention of any delegation argument.

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expensive and less accessible to consumers. Coupled with the evidence that arbitration does not yield lower awards to plaintiffs, plaintiff's proposed rule would make everyone worse off. See Pham & Donovan, *supra*, at 9, 11, 13 (reporting empirical evidence that consumers are much more likely to win in arbitration than in court—42% versus 29%—and with generally three-times higher awards).

C. Even assuming a general relatedness requirement for arbitration agreements, the arbitration of all arbitrability disputes pursuant to a delegation clause easily satisfies that requirement.

For argument's sake, assume a general relatedness or nexus requirement, applicable to all arbitration agreements, that prohibits the arbitration of disputes too remote from the parties' underlying contract regardless of the arbitration agreement's terms. Even then, the typical delegation clause at issue here easily satisfies such a requirement, properly understood and applied to the *correct level agreement*.

Recall that the parties here have three levels of agreements (two of which are arbitration agreements): (1) the parties' underlying substantive contract; (2) their primary arbitration agreement; and (3) their secondary arbitration agreement (the delegation clause) requiring the arbitration of all arbitrability disputes. A delegation clause is just an "additional, antecedent" arbitration agreement about arbitrability, equally enforceable under the FAA as any other arbitration agreement. *Henry Schein*, 586 U.S. at 68. So for purposes of analyzing whether a delegation clause satisfies such a relatedness requirement, the relevant connection is *only one level down*: the connection between the parties' arbitrability dispute (which must be arbitrated under the delegation clause at level three) and their primary arbitration agreement (at level two). This connection could not possibly be closer or more direct. There is

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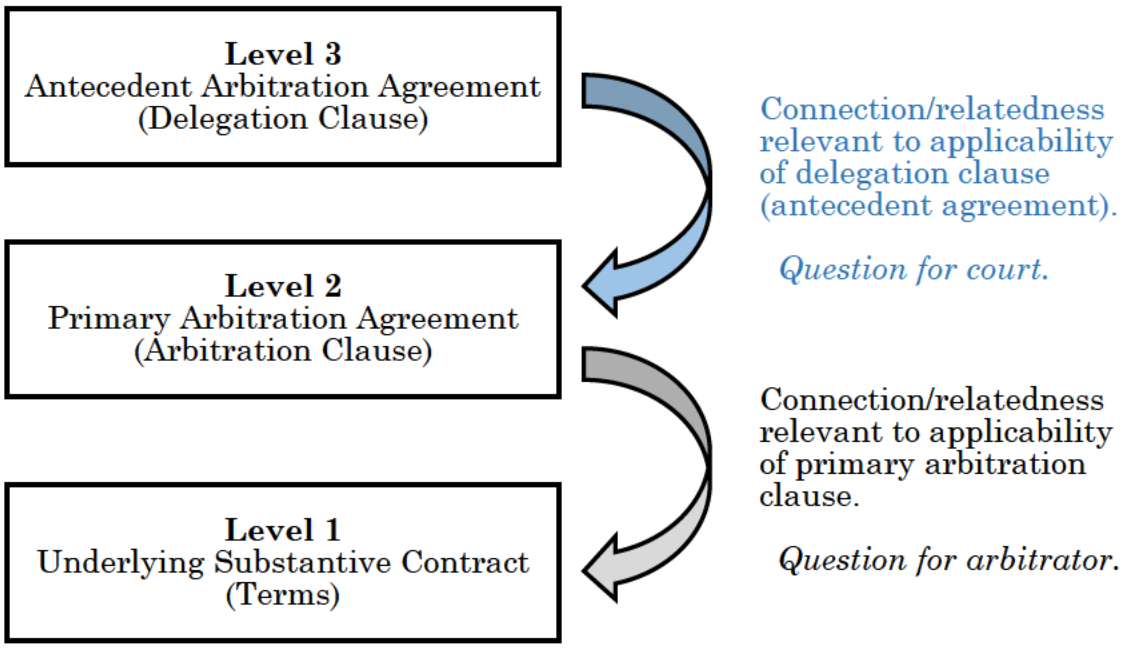
necessarily a perfect one-to-one connection between the parties' arbitrability dispute about the scope of their primary arbitration agreement and that agreement itself.



As a result, a delegation clause requiring the arbitration of all the parties' arbitrability disputes inherently satisfies a hypothetical relatedness requirement—*regardless* of the relatedness of the parties' ultimate dispute (potentially subject to arbitration under the parties' primary arbitration agreement at level two) and their substantive contract (at level one) underlying both arbitration agreements. This lower-level connection (between the parties' ultimate dispute potentially arbitrable at level two and substantive contract at level one) may be relevant to the *arbitrator*, who—pursuant to the delegation clause—would apply the hypothetical relatedness test to determine the arbitrability of the parties' underlying dispute. But that connection is entirely *irrelevant* for this Court to decide whether such arbitrability disputes covered by the delegation clause (at level three) are sufficiently related to *the parties' primary arbitration agreement* (at level two). And the latter is the only

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connection that potentially matters for purposes of analyzing the delegation clause's enforceable scope (again, assuming a relatedness requirement for argument's sake). That higher-level relatedness question remains for a court to decide, but a typical delegation clause, like the one at issue here, easily satisfies such a requirement.

Plaintiff thus asks the entirely wrong relatedness question, focusing on the wrong level dispute between the parties. She contends that the ultimate *merits* question in her lawsuit remains too remote from her broader user agreement with Uber to be arbitrable. But she does not dispute—and therefore tacitly concedes—that the delegated disputes about the scope and unconscionability of the parties' primary arbitration agreement have a sufficiently close nexus to *that* agreement. Nor could she possibly dispute this, because the connection is self-evident.

Plaintiff objects that a party could be compelled to arbitrate the threshold arbitrability issue even in cases where the ultimate controversy remains far removed from the parties' substantive contract underlying their arbitration agreements. That is true, but as *Henry Schein* explained, arbitrators are as capable as judges at "efficiently dispos[ing] of frivolous cases by quickly ruling that a claim is not in fact arbitrable," assuming *arguendo* that a relatedness requirement generally limits the scope of arbitration agreements. 586 U.S. at 71. Regardless, this is not a significant concern. "We are not aware," the Supreme Court observed in *Henry Schein*, "that frivolous motions to compel arbitration have caused a substantial problem." *Id.*

III. The Court should not reach unconscionability.

This Court should not reach the question of unconscionability of the overall contract and arbitration agreement (*infra* Section III.A). That is because the parties delegated that issue to the arbitrator. The effect of even

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reaching the issue would spill beyond this case in two respects (*infra* Section III.B). First, even considering the issue would undermine the force of delegation provisions in other contracts and subvert both *Henry Schein* and *Rent-A-Center*. And if this Court were to adopt plaintiff's unconscionability argument, it would throw into limbo a common kind of contract. As defendants have thoroughly explained, this arbitration agreement was not unconscionable.

A. Under *Rent-A-Center*, a delegation clause requires the arbitrator to decide the unconscionability of the parties' primary arbitration agreement.

A delegation provision is a separate, "antecedent" arbitration agreement that operates separately from the overall arbitration agreement. *Rent-A-Center*, 561 U.S. at 70. It is separately enforceable—or "severable." *Id.* The validity of a delegation clause therefore "does not depend on the substance of the remainder of the contract." *Id.* at 72. When parties agree to arbitrate gateway questions through a delegation clause, "the FAA operates [directly] on this additional arbitration agreement" and requires its independent enforcement. *Id.* at 70, 72. So when a party tries to avoid arbitrating arbitrability despite a delegation clause, it must make arguments "specific to the delegation provision" showing that the delegation *itself* is unenforceable, separate from any defects in the broader agreements. *Mohamed* v. *Uber Techs., Inc.*, 848 F.3d 1201, 1210 (9th Cir. 2016); *Rent-A-Center*, 561 U.S. at 74.

This appeal should be resolved by a straightforward application of that settled severability principle. The delegation provision here referred to the arbitrator questions of validity and enforceability of the arbitration agreement:

> The Arbitrator shall also be responsible for determining all threshold arbitrability issues, including issues relating to *whether the Terms are* applicable, *unconscionable* or illusory and any defense to arbitration, including waiver, delay, laches, or estoppel. *If there is a dispute about whether this Arbitration*

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> *Agreement can be enforced* or applies to a dispute, you and Uber agree that *the arbitrator will decide that issue*.

2025 IL App (1st) 241458-U, ¶ 9 (emphases added). The law is clear that parties may delegate enforceability issues to an arbitrator. See, *e.g.*, *Rent-A-Center*, 561 U.S. at 71–72. They did so here.

Plaintiff has made no challenge to the delegation clause *specifically*. To be sure, the unconscionability portion of her brief acknowledges the delegation agreement three times in conclusory fashion and insists that she *did* challenge it. But in truth, she did not.

Plaintiff's brief mentions the delegation provision only with respect to substantive unconscionability (and in a side argument about contracts of adhesion). She directs the procedural unconscionability argument to the arbitration agreement and the "terms of use" as a whole. Appellant Br. 39, 44. What's more, the substance of plaintiff's substantive unconscionability argument concerns the primary arbitration agreement, not delegation. See *id.* at 37–50. Plaintiff cites an alleged lack of consideration, *id.* at 45, the supposed "unfair surprise" of the "arbitration agreement," *id.* at 46, the alleged "one-sided" nature of other terms, *id.* at 47, and other considerations like mutuality and the lack of a damages cap, *id.* at 47–48. None of that relates to the delegation clause or has anything to do with the only argument that a court may consider under *Henry Schein*: why it would be unfair or oppressive to allow the arbitrator to decide arbitrability.

The court below incorrectly held that it needed to decide whether the entire arbitration agreement is unconscionable. This Court should be careful not to endorse that error because the reasoning below misreads *Coinbase* v. *Suski* and basically nullifies *Henry Schein*.

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Citing *Coinbase* v. *Suski*, the Appellate Court concluded that the Supreme Court of the United States "has indicated that a delegation clause cannot delegate the general validity of an arbitration agreement to the arbitrator." 2025 IL App (1st) 241458-U, ¶ 20 (citing 602 U.S. 143). The court then held that "when a party challenges the validity of an arbitration agreement, the court *must* consider the challenge … even if a delegation clause purports to resolve that issue for the arbitrator." *Id.* (cleaned up).

That was error. *Suski* did not overrule *Rent-A-Center* and did not roll back or qualify the severability principle. On the contrary, *Suski* reaffirmed the severability principle and quoted *Rent-A-Center* with approval. *Suski*, 602 U.S. at 150–151. And its application of that principle turned on a factual quirk that this case lacks: a battle of two contracts. *Id.* at 145, 151. In *Suski*, the party opposing arbitration insisted that the first contract, including its delegation provision, was inoperative because it was superseded by a second contract. *Id.* at 151. And so "whether the[] parties agreed to arbitrate arbitrability c[ould] be answered only by determining which contract applie[d]." *Id.* at 150. That was the key question. *Suski* made clear that it did not alter the *Rent-A-Center* analysis in cases like this one: "In cases where parties have agreed to only one contract, and that contract contains an arbitration clause with a delegation provision, then, absent a successful challenge *to the delegation provision*, courts must send all arbitrability disputes to arbitration." *Id.* at 152 (emphasis added).[7]

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[7] Critical to the delegation issue in *Suski* was the fact that the defendant had forfeited its argument that the validity of the delegation provision had not been challenged with sufficient specificity. 602 U.S. at 151 n.*. Under those particular facts, the challenger *had* challenged the validity of the delegation agreement, so the severability principle did not prevent the court from deciding that issue. *Id.*

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For the same reason, plaintiff cannot evade the delegation clause by framing her unconscionability argument as a challenge to whether a "valid arbitration agreement exists." Appellant Br. 35. That argument is squarely foreclosed by *Rent-A-Center*, because plaintiff has not challenged the validity of the severable delegation clause *specifically*. For purposes of a delegation analysis, the *delegation provision* is the agreement to arbitrate. See *Rent-A-Center*, 561 U.S. at 71–72 (explaining that the "arbitration provision[] sought to be enforced" in an arbitrability dispute is the delegation clause, not the overall arbitration agreement). Because plaintiff never directed an unconscionability challenge specifically to the delegation clause itself—that is, never argued that the delegation clause itself was unfairly procured or that delegating her unconscionability challenge to the arbitrator would be oppressive—she failed to raise a validity challenge that a court must resolve.

For that reason, if this Court does reach unconscionability, it should do so only with respect to the delegation clause. So long as *that clause* remains valid and enforceable, plaintiff's broader unconscionability challenge to the arbitration agreement itself must be resolved by the arbitrator. See, *e.g.*, *Aggarwal* v. *Coinbase, Inc.*, 685 F. Supp. 3d 867, 879–882 (N.D. Cal. 2023) (analyzing unconscionability of delegation clause specifically but referring other issues to arbitration).

B. Deciding unconscionability of the arbitration agreement would have broad, harmful consequences.

There would be broad, harmful ramifications if this Court were to reach unconscionability in this case. That is true for three reasons.

1. Deciding unconscionability would undermine contracting parties' choice to arbitrate.

Deciding whether the parties' entire arbitration agreement is unconscionable would nullify the clear contractual language delegating that issue to

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the arbitrator. See 2025 IL App (1st) 241458-U, ¶ 9 ("The Arbitrator shall also be responsible for determining all threshold arbitrability issues, including issues relating to *whether the Terms are* applicable, *unconscionable* or illusory and any defense to arbitration, including waiver, delay, laches, or estoppel." (emphases added)). That would be significant because—as noted above—the delegation clause in this case is typical. Considering the unconscionability challenge would deprive the parties to many contracts—including many of *amici*'s members—of the benefit of delegation provisions in the very same way that plaintiff's overly broad relatedness argument would.

Amici's members have a strong reliance interest in uniform application of the law governing the FAA. Endorsing an inquiry into unconscionability of the parties' whole arbitration agreement would also create an Illinois-specific exception to the well-established principle that parties may delegate "threshold arbitrability questions to the arbitrator," *Henry Schein*, 586 U.S. at 69, including questions of unconscionability, *Rent-A-Center*, 561 U.S. at 66, 70–72.

2. Plaintiff's unconscionability arguments have no basis in precedent and would devastate modern commerce.

If the Court does wade into the unconscionability of the arbitration provision overall, it should also keep in mind that the terms here are not remotely unusual for contracts of this kind. In *amici*'s experience, the arbitration agreement in this case is representative of the kinds of arbitration agreements that many of its members enter with users of online platforms. Indeed, plaintiff has not argued that the terms here are unusual for consumer contracts in online or app-based services. Holding the terms or the electronic method of agreement unconscionable, as she urges, would throw millions of contracts into doubt and would significantly undermine the stability of businesses inside the State.

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The danger of plaintiff's position is underscored by the immense economic importance of online contracts like this one. E-commerce transactions are rapidly growing: "[t]he Internet's prevalence and power have changed the dynamics of the national economy," as "e-commerce grew at four times the rate of traditional retail" in 2016, "and it shows no sign of any slower pace." *South Dakota* v. *Wayfair, Inc.*, 585 U.S. 162, 191, 185 (2018) (cleaned up). Many people use their smartphones daily to engage in e-commerce. The explosion in the use of smartphones is well documented. Courts have echoed that "'[m]odern cell phones … are now such a pervasive and insistent part of daily life that the proverbial visitor from Mars might conclude they were an important feature of human anatomy.'" *Meyer* v. *Uber Techs., Inc.*, 868 F.3d 66, 77 (2d Cir. 2017) (alteration in original; quoting *Riley* v. *California*, 573 U.S. 373, 385 (2014)). Two-thirds of American adults owned a smartphone as of 2015 (*id.*)—a figure that has since grown to 91%. See Pew Research Center, Mobile Fact Sheet (November 20, 2025).[8] And e-commerce transactions currently account for more than $1 trillion per year in the United States. See U.S. Census Bureau, Quarterly Retail E-Commerce Sales, 3rd Quarter 2025 (Dec. 18, 2025).[9]

The countless businesses that engage in mobile and e-commerce transactions need clear and uniform standards governing the formation of agreements with consumers and other users of their websites or mobile applications. A patchwork approach would be especially problematic in the context of arbitration agreements governed by the FAA, given the importance of uniformity of federal law and "Congress'[s] intent" in the statute "to move the parties to an arbitrable dispute out of court and into arbitration as quickly and easily as possible." *Preston* v. *Ferrer*, 552 U.S. 346, 357 (2008) (citation omitted).

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[8] http://www.pewinternet.org/fact-sheet/mobile/

[9] https://www.census.gov/retail/mrts/www/data/pdf/ec_current.pdf.

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3. It is not unconscionable to condition a consumer service on agreement to terms of use.

The commonplace, important nature of standardized contracts like this one also confirms why plaintiff's unconscionability arguments are both meritless and unprecedented. Accepting those arguments would harm both consumers and service providers.

a. Plaintiff's arguments (at 39–44) of procedural unconscionability would threaten the ordinary commercial practice of (1) conditioning access to a service on acceptance of terms, and (2) conditioning further access to a platform on acceptance of updated terms. That would deeply unsettle a huge number of industries because the manner of these Terms' presentation and their acceptance was entirely ordinary for the millions of electronic contracts in common use today. Updates to terms of use also are exceptionally common, and it is good policy not to prohibit parties from exchanging the benefit of future access for agreement to updated terms. See, *e.g.*, *Hughes* v. *Uber Techs., Inc.*, 718 F. Supp. 3d 571, 576–577, 579–580 (E.D. La. 2024) (upholding validity of updated terms presented to user by same method); *Saeedy* v. *Microsoft Corp.*, 757 F. Supp. 3d 1172, 1119–1202 (W.D. Wash. 2024) (upholding validity of updated terms presented to user who continued afterward to use service).

Plaintiff also asserts a lack of notice based on nitpicked details of the formatting of the terms. Her argument is more or less an attack on contracting by means of a smartphone altogether, which is out of step with the ubiquity of smartphones, the ease and frequency with which people now read documents on them, and the growing segment of service and retail contracting done on them.[10] Regardless, the court below correctly concluded that the arbitration

[10] Even as of 2012, more than one-fifth of American adults had read an e-book within the previous year, and 29% "consume their books on their cell phones." *The Rise of E-reading*, Pew Rsch. Ctr. (Apr. 4, 2012), pewrsr.ch/2Q7V52g.

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clause was prominently identified right upfront to anyone who bothered to look. 2025 IL App (1st) 241458-U, ¶ 24. Plaintiff chose not to review the terms, even though she had an incentive to read them. Accepting plaintiff's argument would create incentives for consumers to deliberately avoid reviewing contracts, and it would undermine widespread reliance interests in them.

Finally, plaintiff insists that she lacked a meaningful choice simply because she could not negotiate particular terms with Uber. That argument is not remotely correct. Our Nation is built on innovation and competition. To no surprise, plaintiff had other options for transportation. See, *e.g.*, *Larned* v. *First Chi. Corp.*, 264 Ill. App. 3d 697, 700 (1994) (rejecting procedural unconscionability argument where consumer "freely chose to obtain this Visa card from among a number of other credit cards offering similar benefits" and therefore "did not lack meaningful choice"). She could walk away from the contract with Uber altogether. The "meaningful choice" concept is meant to address circumstances far afield from everyday commercial contracts and app sign-ups—like not being given the terms until after agreeing, *e.g.*, *Razor* v. *Hyundai Motor Am.*, 222 Ill. 2d 75, 100–101 (2006), or having no real alternative because of duress, *e.g.*, *In re Marriage of Labuz*, 2016 IL App (3d) 140990, ¶¶ 40–45. Courts routinely reject complaints of procedural unconscionability of standardized commercial contracts on similar facts. See, *e.g.*, *Song fi, Inc.* v. *Google Inc.*, 72 F. Supp. 3d 53, 60–62 (D.D.C. 2014) ("Though YouTube is undoubtedly a popular video-sharing website, it is not the case that Plaintiffs lacked any kind of meaningful choice as to whether to upload their video to the YouTube website and agree to the conditions set forth by YouTube. Plaintiffs could have publicized the LuvYa video by putting it on various other file-sharing websites or on an independent website."); *Mackey* v. *Airbnb, Inc.*, 745 F. Supp. 3d 455, 463 (S.D. Miss. 2024) ("There are numerous online booking

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services Mackey could have contracted with. At all times, he had a meaningful choice to reject Airbnb's terms and contract elsewhere."). At bottom, plaintiff could have reviewed the terms at her leisure before signing up—and if she disliked them, she could have used another service.

b. Apart from her procedural-unconscionability argument, plaintiff separately contends (at 44–45) that the agreement was an adhesion contract. But adhesion contracts are enforceable in Illinois, as she admits (at 44). *Zuniga* v. *Major League Baseball*, 2021 IL App (1st) 201264, ¶ 15. That is good policy, and holding otherwise would have serious ramifications. *Amici*'s members depend on the efficiency of standardized contracts, and consumers benefit immensely from the access, speed, and cost savings they provide. Imagine the alternative—negotiating every detail with a lawyer for every app you use, every hotel you book, and every concert you attend. Plaintiff admits (at 44) that unconscionability of an adhesion contract requires that the offeror commit some form of wrongdoing. See *Zuniga*, 2021 IL App (1st) 201264, ¶ 15. Yet plaintiff shows no such thing. The terms were presented the same way they are in countless app or service sign-ups every day—with the opportunity to review the terms, and to choose a different provider if they were unsuitable. That is a routine, widespread practice in the industry. It is not wrongdoing.

c. Plaintiff also contends (at 45–49) that the Terms were substantively unconscionable. But because her argument inordinately focuses on the very fact of having an arbitrator rather than a court decide the issues, it is in effect a contention that *any* agreement to arbitrate is unconscionable. That, of course, is directly contrary to the FAA and Supreme Court precedent. Under the FAA, a court may not invalidate an arbitration agreement based on "legal rules that 'apply only to arbitration or that derive their meaning from the fact that an agreement to arbitrate is at issue.'" *Kindred Nursing Centers Ltd. v. Clark*, 581

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U.S. 246, 251 (2017) (quoting *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 339 (2011)); see 9 U.S.C. § 2 (making arbitration agreements "valid, irrevocable, and enforceable, save upon such grounds as exist in equity for the revocation of any contract"). Courts routinely uphold bilateral arbitration agreements in consumer contracts, rejecting claims of substantive unconscionability. And the Terms here are hardly unusual—much less "oppressive" or "unfair[ly] surpris[ing]." 2025 IL App (1st) 241458-U, ¶ 28 (collecting cases). Their obligations are bilateral, and they do not limit recovery. *Id.* ¶¶ 28–32. In *amici*'s experience, they are representative of the balanced, bilateral terms that appear in standard arbitration agreements for users of services. There are extensive reliance interests in their validity because of how common they are.

Plaintiff points to a handful of miscellaneous provisions whose specific fairness she quibbles with, but the validity of those provisions is not at issue in this case—plaintiff has attacked none of them as unlawful or unconscionable itself. And even if particular unrelated provisions were unconscionable, the remedy would be severance of those specific provisions (a remedy that plaintiff did not request and has forfeited). At base, plaintiff has no meaningful argument that the *arbitration* clause is unlawfully unfair.

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CONCLUSION

Robust commerce demands uniform application of the Federal Arbitration Act and predictable enforcement of ordinary consumer contracts. Delegation provisions simplify litigation, with mutual benefits for consumers and businesses alike. For the reasons described above, the Court should (1) reject a threshold "remoteness" or "relatedness" condition on the enforcement of delegation clauses contradicting *Henry Schein* and (2) decline to reach unconscionability at all because the parties delegated that issue to an arbitrator.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

The undersigned certifies that the foregoing brief conforms to the requirements of Rule 341 and Rule 345(b). The length of the brief, excluding the pages and words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 7,805 words:

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