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In the Supreme Court of Pennsylvania

Docket No. 24 EAP 2023

Jennifer Santiago and Samuel Santiago;

Appellees,

vs.

Philly Trampoline Park, LLC, I/P/A Sky Zone, D/B/A Sky Zone Trampoline Park D/B/A Sky Zone Philadelphia, Sky Zone Philadelphia, Inc., Sky Zone Trampoline Park A/K/A/ Sky Zone Philadelphia;

Appellants.

On petition for allowance of appeal, granted September 13, 2023, from an opinion and order of the Superior Court of Pennsylvania, Docket Nos. 2615 EDA 2021 and 664 EDA 2022, dated March 21, 2023, affirming an order entered January 25, 2022, in the Court of Common Pleas of Philadelphia County at Docket No. 200701660

BRIEF OF *AMICI CURIAE* GET AIR MANAGEMENT, INC.; PENNSYLVANIA COALITION FOR CIVIL JUSTICE REFORM; PENNSYLVANIA MANUFACTURERS' ASSOCIATION; and NATIONAL FEDERATION OF INDEPENDENT BUSINESS, INC. SUPPORTING THE SKY ZONE APPELLANTS

GA BIBIKOS LLC

George A. Bibikos
5901 Jonestown Rd. #6330
Harrisburg, PA 17112
(717) 580-5305
gbibikos@gabibikos.com

Counsel for Amici Get Air, PCCJR, PMA, and NFIB

December 7, 2023

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I. INTRODUCTION

Amici Get Air Management, Inc. ("Get Air") and the Pennsylvania Coalition for Civil Justice Reform ("PCCJR"); the Pennsylvania Manufacturers' Association ("PMA"); and the National Federation of Independent Business, Inc. ("NFIB") ("Associations") urge the Court to reverse the Superior Court's decision and hold that parents or guardians have the authority to bind their minor child to an arbitration agreement.[1]

II. INTERESTS OF *AMICI*

Get Air provides management services to Get Air brand name trampoline parks. It helps manage a myriad of trampoline parks throughout the nation, including two locations in Pennsylvania. Get Air's trampoline parks feature wall-to-wall trampolines, dodgeball courts, basketball lanes, and obstacle courses. In the past five years, Get Air has grown into a recognizable national brand.

PCCJR is a statewide, nonpartisan alliance of organizations and individuals representing health care providers, professional and trade associations, businesses, nonprofit entities, taxpayers, and other

[1] No person or entity other than the *amici*, their members, or their counsel either paid in whole or in part for the preparation of the *amici's* brief or authored in whole or in part the *amici's* brief.

perspectives. PCCJR is dedicated to bringing fairness to litigants by elevating awareness of civil justice issues and advocating for reform.

PMA has served as a leading voice for Pennsylvania manufacturing, its 540,000 employees on the plant floor, and the millions of additional jobs in supporting industries. PMA seeks to improve the Commonwealth's competitiveness by promoting pro-growth public policies that reduce the cost of creating and keeping jobs in Pennsylvania. PMA has forcefully advocated for civil justice reforms that will bring balance and stability to Pennsylvania's legal system.

NFIB is the nation's leading small business association. NFIB's mission is to promote and protect the right of its members to own, operate, and grow their businesses. NFIB represents, in Washington, D.C., and all 50 state capitals, the interests of its members.

Amici have a significant interest in this case. *Amici* operate in a wide range of commercial industries throughout the Commonwealth and provide goods or services to minor children. In Get Air's case in particular, most of its patrons at its trampoline parks are minor children. The *amici* companies frequently have agreements with their patrons –

on which they rely to conduct their business – that call for arbitration of claims but may not differentiate between claims of adults or minors.

In this case, a panel of the Superior Court, in a reported opinion, declined to enforce an agreement signed by a minor's parent that requires arbitration of the minor's personal injury claim against Sky Zone, even though (a) the parent agreed to arbitration on the minor's behalf and (b) the claim indisputably falls within the scope of the agreement. Among other things, the panel reasoned that an agreement signed by a parent or guardian to arbitrate the child's claim essentially is the same as waiving the child's claim.

The Court should reverse. Arbitration serves a vital role in the civil justice system in this Commonwealth. It provides an efficient, economic, and effective forum for resolving disputes. There is no reason to disavow an arbitration agreement simply because it involves a minor's claim. If a parent or guardian signs an agreement that requires their minor child to arbitrate claims and the claim otherwise falls within the scope of the agreement, then the courts should enforce that agreement. Once the panel here determined that the minor child's claims fell within the scope

of the arbitration agreement, the panel was duty bound to enforce it. But the panel did not.

The Panel's decision erodes the policy favoring arbitration, incorrectly focuses on principles of agency and other concepts that should not affect the court's analysis, rests on a flawed presumption that a prospective selection of arbitration is the same as waiving a child's cause of action altogether, and engenders significant concerns for *amici* by calling into question agreements signed by parents or guardians to resolve their children's claims by arbitration rather than in the court. The Court should reverse and hold that parents or guardians have the authority to bind their minor child to an arbitration agreement.

III. ARGUMENT

The Sky Zone appellants will no doubt address the points of law and authorities that compel the Court to reverse the panel's decision. *Amici* write to provide additional perspectives in support of the Sky Zone appellants for the Court's consideration.

A. The Court should hold that parents or guardians can bind their minor child to an arbitration agreement.

At the outset, this case is *not* about waiving a minor's cause of action. *Amici* understand that certain exculpatory agreements are

disfavored, but that is not the case here. This case involves whether a parent or guardian can agree, on his or her child's behalf, to submit their minor child's claim to arbitration. As properly framed, the answer to the question presented in this case should be yes based on the public policy under federal and state law favoring arbitration agreements to resolve disputes. The Court should reverse the panel's contrary decision.

1. Public policy favors arbitration.

This Court has long held that public policy favors arbitration agreements. *Capecci v. Joseph Capecci, Inc.*, 139 A.2d 563, 565 (Pa. 1958) ("The public policy of this State is to give effect to arbitration agreements."). That public policy is embodied in statutes at both the federal and state level. *See, e.g.*, Federal Arbitration Act ("FAA"), 9 U.S.C. § 2; 42 Pa.C.S. § 7301 *et seq.*; *see also Provenzano v. Ohio Valley Gen. Hosp.*, 121 A.3d 1085, 1095 (Pa. Super. 2015).

There is a strong presumption in favor of enforcing arbitration agreements. The FAA, for example, requires courts to make every reasonable effort to enforce arbitration agreements. *Dickler v. Shearson Lehman Hutton, Inc.*, 596 A.2d 860, 863 (Pa. Super. 1991) ("[W]hen the

parties agree to arbitration in a clear and unmistakable manner, then every reasonable effort will be made to favor such agreements.").

The same is true under Pennsylvania law. This Court has long upheld the strong presumption in favor of enforcing arbitration agreements:

> Settlement of disputes by arbitration are no longer deemed contrary to public policy. In fact, our statutes encourage arbitration, and with our dockets crowded and in some jurisdictions congested, arbitration is favored by the courts.
>
> Contracts that provide for arbitration are valid, enforceable and irrevocable, save upon such grounds as exist in law or in equity for the revocation of any other type of contract. This is equally true of both common law arbitration and the arbitration provided in the Act of 1927.

See Mendelson v. Shrager, 248 A.2d 234, 235 (Pa. 1968).

This is so because arbitrations serve a critical role in the civil justice system. To illustrate:

- *Benefits to Judiciary.* Arbitrations ease the burden on the judiciary by reducing its case load substantially. *See Mendelson, supra*, at 235 ("[W]ith our dockets crowded, and in some jurisdictions congested, arbitration is favored by the courts."); *see also* Soia Mentschikoff, *The Significance of Arbitration,* 17 LAW & CONTEMP. PROBS. 698 (1952).

- *Cost Savings.* Arbitrations provide an efficient and economic dispute resolution option for parties. Indeed, "[p]arties generally favor arbitration precisely because of the economics of dispute resolution." *See, e.g.*, *14 Penn Plaza LLC v. Pyett*, 556 U.S. 247, 257 (2009).

- *Efficiency and Predictability.* Arbitration agreements help assure a more predictable, efficient, and economic mechanism to resolve disputes when they arise. *See AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 346 (2011) (the "fundamental attributes of arbitration" are "lower costs, greater efficiency and speed, and the ability to choose expert adjudicators to resolve specialized disputes").

In addition to cost savings, arbitrations tend to be faster, more convenient for the parties, more flexible and less formal than court proceedings, and provide a level of privacy that public court proceedings cannot guarantee. The informality of arbitration, in particular, contributes to its efficiency and cost-effectiveness. These benefits are among the reasons why Congress passed the FAA to change the then-existing anti-arbitration sentiment espoused by courts. *See Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 415 (1967).

2. The same policy favoring arbitration still applies even if claims of minor children are involved.

In light of the policy favoring arbitration, the question becomes whether courts should ignore the import of that policy – as the panel seemingly did in this case – when parents or guardians agree to submit their minor child's claim to arbitration. The answer is no.

The same policy favoring arbitration agreements should hold true when parents or guardians agree that their minor child's claim should be

resolved by arbitration rather than in the courts. If an agreement to arbitrate otherwise is enforceable and the claim is within the scope of the agreement, *see Saltzman v. Thomas Jefferson Univ. Hosp., Inc.*, 166 A. 3d 465, 472 (Pa. Super. 2017), there is no meaningful reason the courts should disavow it merely because a parent or guardian made a decision for their child to submit claims to arbitration instead of the courts.

Although this Court has yet to weigh in, courts of last resort and other appellate courts in other states addressing this issue agree that (a) a parent or guardian has the authority to sign an arbitration agreement on behalf of their minor child, and (b) the courts are duty bound to enforce the agreement:

- *Hojnowski v. Vans Skate Park*, 901 A.2d 381 (N.J. 2006) (enforcing arbitration agreement signed by parent as condition of attending skate park).
- *Global Travel Mktg., Inc. v. Shea*, 908 So.2d 392, 405 (Fla. 2005) (enforcing arbitration agreement signed by parent as condition of attending safari).
- *Cross v. Carnes*, 724 N.E.2d 828, 836 (Ohio Ct. App. 1998) (enforcing arbitration agreement signed by parent as condition of attending television show as guest).
- *Leong ex rel. Leong v. Kaiser Foundation Hosps*., 788 P.2d 164, 166 (Haw. 1990) (enforcing arbitration agreement signed by parent as condition of group health insurance plan contract) .

- *Doyle v. Giuliucci*, 401 P.2d 1, 3 (Cal. 1965) (enforcing arbitration agreement signed by parent as condition of providing health care to child).

- *Sayre by Sayre v. Sky Zone LLC*, No. A-0553-21, 2022 WL 1920410, at *4 (N.J. Super. Ct. App. Div. June 6, 2022) (enforcing arbitration agreement signed by parent as condition of attending trampoline park).

- *Pandya v. Sky Zone Lakewood*, No. A-5064-18T4, 2020 WL 2036645, at *4 (N.J. Super. Ct. App. Div. Apr. 28, 2020) (enforcing arbitration agreement signed by parent as condition of attending trampoline park).

- *Cutway v. S.T.A.R. Programs, Inc.*, 904 N.Y.S.2d 806, 807 (N.Y. App. Div. 2010) (holding that arbitration agreement signed by parent on behalf of parent's minor child is valid and binding as to minor).

- *Hustead v. Ashland Oil, Inc.*, 475 S.E.2d 55, 58 (W. Va. 1996) (parents have right to waive minor children's future right to jury trial).

- *Mayorga v. Ridgmar Urban Air, LLC*, No. FBT-CV22-6113435, 2023 WL 1246280, at *3 (Conn. Super. Ct. Jan. 23, 2023) (enforcing arbitration agreement signed by parent as condition of attending trampoline park).

- *Simmons Hous., Inc. v. Shelton*, 36 So.3d 1283, 1286 (Miss. 2010) (holding minors may be bound to arbitration agreement signed by parent on child's behalf).

- *In re SSP Partners*, 241 S.W.3d 162, 169 (Tex. App. 2007) (under certain circumstances, parent may enter into arbitration agreements on their minor child's behalf).

- *Townsend v. Quadrant Corp.*, 268 P.3d 917, 922 (Wash. 2012) (holding non-signatory minor can be bound to arbitration clause under theory of equitable estoppel).

In these cases, the courts based their decisions on (a) the policy favoring arbitration; (b) contract interpretation and enforcement principles; (c) the right of parents to make decisions for their children; and (d) the distinction between waiving a minor child's claim *versus* agreeing to arbitration as the forum for resolving the claim.

The reasoning of the courts in New Jersey, Ohio, Florida, California, Hawaii and other states is sound. The decisions strike an appropriate balance that fosters the public policy in favor of arbitrations, enforces arbitration agreements, honors the choices of parents or guardians acting on behalf of their children, and expressly preserves a minor's right to pursue his or her claim. Pennsylvania will be setting a disconcerting precedent if it upholds the panel's outlier decision disavowing arbitration agreements involving claims of minor children.

There is yet another reason why the courts should enforce agreements signed by parents or guardians to arbitrate claims of their minor children. There is a strong presumption that parents or guardians act in their child's best interest. *See Troxel v. Granville*, 530 U.S. 57, 68 (2000) ("[T]here is a presumption that fit parents act in the best interests of their children."). That presumption stems from a parent's fundamental

liberty interest protected by the Due Process Clause in the care, custody, and management of their children. *Meyer v. Nebraska*, 262 U.S. 390 (1923). And parents or guardians (like all contracting parties) are presumed to understand the contracts they sign, including ones on behalf of their minor children. *Cardinal v. Kindred Healthcare*, 155 A.3d 46, 50 (Pa. Super. 2017) ("[A] signed document gives rise to the presumption that it accurately expresses the state of mind of the signing party.").

Thus, if a parent or guardian agrees on a child's behalf to arbitrate his or her claims, knowing (as the courts must presume) that the arbitration agreement waives the child's right to sue in court, that decision is entitled to deference and should not be disturbed. Even if the courts have philosophical differences about arbitration agreements, including those involving minors, those differences are irrelevant when compared to the public policy favoring arbitration embodied in both federal and state law. *See* 9 U.S.C. § 2 and 42 Pa.C.S. § 7301 *et seq*.

In this particular case, for example, parents and guardians elected to take their children to trampoline parks. The parents' agreement to submit personal injury claims sustained by the minor child to arbitration is a condition of entering the trampoline park. That parental decision is

entitled to deference, and the agreement to arbitrate should be enforced to preserve the autonomy and decision-making authority of parents and families. Parents or guardians can always say no to the trampoline park (or any other activities involving the potential risk of physical injury that require an arbitration agreement as a condition of participation). That decision surely would be entitled to the same deference.

Accordingly, the Court should (a) hold that parents or guardians may agree on their children's behalf to arbitrate their claims, consistent with public policy, and (b) bring Pennsylvania in line with a majority of other states on this important issue.

B. The panel erred when it declined to enforce the arbitration agreement in this case.

Notwithstanding the case law and public policy, the panel held that a parent or guardian does not have authority to bind a minor child to an arbitration agreement even if the parent or guardian consents and even if the dispute falls squarely within the scope of the arbitration agreement. That decision should not stand for many reasons.

1. The panel's decision erodes the policy in favor of enforcing arbitration agreements.

The panel's decision is fundamentally at odds with public policy that favors arbitration. Indeed, there is no dispute that the agreement here unambiguously applies to personal injury claims of minors whose parents consented to arbitration and voluntarily attended the Sky Zone trampoline parks. The panel here cast public policy aside and reached for reasons to render the agreement unenforceable. But that analysis is backwards. The courts are duty bound to enforce arbitration agreements, not seek reasons to set them aside. *Provenzano*, 121 A.3d at 1097-98. The Court could reverse the panel's decision on that basis alone.

2. The panel's decision puts Pennsylvania at odds with other states on this important issue.

The panel departed from the rationale of other states despite their resolution of the question involved here. This Court's jurisprudence compels a result aligned with Pennsylvania's sister states.

Although *amici* recognize that decisions from other states do not bind this Court, there is no meaningful reason to reject their holdings and rationales on this important issue. The courts in other states based

their decisions on the very same policies and principles that pervade this Court's jurisprudence, such as:

- The policy favoring arbitration. *See Capecci, supra*.
- The black-letter rule requiring courts to enforce contracts as written (without questioning the wisdom of the agreement or the motivation behind it) when the terms are not ambiguous. *See Gene & Harvey Builders, Inc. v. Pa. Mfrs. Ass'n Ins.* Co., 517 A.2d 910, 913 (1986) ("Where the language of the contract is clear and unambiguous, a court is required to give effect to that language").
- The constitutional right of parents to make decisions for their children. *Green Appeal*, 292 A.2d 387 (Pa. 1972) ("It is beyond question that both the state and federal constitutions protect a parent's right to make important decisions for and on behalf of their minor children.").

Amici certainly acknowledge the state's interest in fostering the best interests of minor children. But there are competing interests here the Court should evaluate. Whereas the decisions of other courts struck an appropriate balance of competing public policies, the panel's decision here dishonors arbitration agreements signed by parents or guardians on their children's behalf and dishonors the presumption in favor of parents or guardians acting in their child's best interests. That is incorrect.

The case law in this Commonwealth dictates a policy favoring arbitration, favoring parental rights to make important decisions for their children, and enforcing unambiguous contracts as written.

Consequently, there is no meaningful reason to depart from the conclusions in cases from other states which clearly demonstrate a trend towards enforcing arbitration agreements that involve claims of minor children consistent with the FAA, Pennsylvania law, and public policy.

Accordingly, the Court should reverse the panel's decision in light of the sound reasoning of other courts that is based on the very same policies and principles reflected in this Court's jurisprudence.

3. The panel's decision rests on a flawed premise that agreeing to arbitrate a minor's claim is the same as waiving the minor's claim.

Most critically, the panel concluded that arbitration (rather than litigation in court) somehow deprives a minor child of his or her claim. The panel erred.

As the courts in *Hojnowski*, *Cross*, *Shea* and others confirm, there is a distinction between waiving a child' claim *versus* selecting a forum to resolve the claim. *Hojnowski*, 901 A.2d at 384; *Shea*, 908 So.2d at 405; *Cross*, 724 N.E.2d at 836. The distinction is critical here, yet the panel's analysis largely ignores it.

An arbitration agreement does not deprive parties of their cause of action or substantive rights. *Mitsubishi Motors Corp. v. Soler Chrysler–*

Plymouth Inc., 473 U.S. 614, 628 (1985). Rather, an arbitration agreement constitutes a prospective choice of forum which "trades the procedures and opportunity for review of the courtroom for the simplicity, informality, and expedition of arbitration." *Id.* at 628; *see also, e.g.*, *Kindred Nursing Centers v. Clark*, 581 U.S. 246, 248 (2017) (state law invalidating arbitration agreements preempted by FAA; arbitration agreement enforceable despite being signed by agent on behalf of the principal; and agreement did not violate right to trial by jury).

By rejecting this distinction, the panel suggests that the only way to protect a minor is to assure his or her claim gets resolved in court rather than arbitration; otherwise, the minor has waived the claim itself. That conclusion cannot stand.

The courts are not the only appropriate place to resolve a minor's claim when disputes arise. There is no absolute right to have a claim originate in a court as opposed to some other forum. There are many important matters affecting minors resolved outside the courts, such as (for example) certain aspects of a child's public education or other matters left to the administrative agencies to resolve. *See, e.g.*, 22 Pa. Code § 14.162 (administrative hearing for independent education plan for

students). If the state can determine that some matters involving children may be adjudicated in administrative agencies, then surely parents and guardians may agree to have their child submit claims to arbitration rather than the courts.

The panel also overlooked the benefits of arbitrating claims of minors. The benefits of arbitrating claims of minors mirror the benefits that courts have acknowledged when endorsing the policy in favor of arbitrations. Indeed, the panel did not consider whether arbitration could promote the best interests of the child; the panel seemingly presumed arbitration must not be in the best interests of the child. But there is no basis to reach that conclusion.

Arbitration may be in a child's best interests. As noted throughout this brief, arbitrations offer a fast, economic, flexible, and private forum for resolving disputes. Arbitrations also tend to foster cooperation among the parties and often lead to faster settlements. Court proceedings, by contrast, take considerable time; may be emotionally taxing for minors; may not be flexible enough to provide for child-friendly procedures; are generally open to the public (thereby subjecting the minor to potential public exposure); and generally foster a more adversarial environment.

The notion that the court is the only (or best) place in which a minor's rights may be adjudicated, lest the claim be waived, is manifestly incorrect. The Court should hold that the arbitration agreements here are enforceable and confirm that arbitration agreements do not, in and of themselves, result in a waiver of a minor's cause of action.

4. The panel overstepped its role by creating an exception to arbitration for minors.

The panel created what appears to be a *de facto* rule precluding arbitrations involving claims of minor children. The panel's decision therefore calls into question any arbitration agreement in the Commonwealth that may involve resolution of a minor's claim. Although the panel did not address the issue, the FAA preempts state laws that discriminate against arbitration agreements and in any event the panel's new rule is not one the panel has authority to create.

a. The FAA preempts state laws that treat agreements differently merely because they call for arbitration.

The policy underlying the FAA and Pennsylvania's Uniform Arbitration Act as revised (including its provisions on common-law arbitration) is not the only reason the Court should hold that parents or guardians may bind their minor children to arbitration. The FAA

preempts state laws – including judicial decisions – that discriminate against agreements merely because they call for arbitration of claims.

To illustrate, the FAA provides that arbitration agreements "shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." *See* 9 U.S.C. § 2. Thus, as this Court has recognized, "[t]he only exception to a state's obligation to enforce an arbitration agreement is provided by the savings clause, which permits the application of generally applicable state contract law defenses such as fraud, duress, or unconscionability, to determine whether a valid contract exists." *See Taylor v. Extendicare Health Facilities, Inc.,* 147 A.3d 490, 509 (Pa. 2016).

In *Taylor*, this Court disavowed Pennsylvania Rule of Civil Procedure 213(e) because it required the consolidation of survival and wrongful death actions for trial. When the trial court denied a motion to bifurcate and compel arbitration of the survival claims (upheld on appeal to the Superior Court), this Court reversed because the rule did not fall within the FAA's savings clause.

In other words, this Court held that the procedural rule did not reflect a generally applicable contract defense but a procedural

mechanism to foster the state's competing interest in resolving wrongful death and survival actions at once at trial in court. Despite the public policy underlying the rule, the FAA preempted the rule to the extent it barred arbitration of claims subject to an otherwise valid arbitration agreement. The Court's explanation is instructive:

> This directive [the preemption language in the FAA] is mandatory, requiring parties to proceed to arbitration on issues subject to a valid arbitration agreement, even if a state law would otherwise exclude it from arbitration.
>
> * * *
>
> [A]lthough states generally may regulate contracts, ***they may not decline to enforce arbitration agreements solely because they are arbitration agreements***. By striking down state laws targeting arbitration agreements, the Supreme Court has limited the role of state courts to regulating contracts to arbitrate under general contract law principles in accord with the savings clause, under which it has held that only "generally applicable contract defenses, such as fraud, duress, or unconscionability, may be applied to invalidate arbitration agreements without contravening § 2." … These cases instruct that courts are obligated to enforce arbitration agreements as they would enforce any other contract, in accordance with their terms, and ***may not single out arbitration agreements for disparate treatment***.

Taylor, 147 A.3d at 503–04 (cleaned up; emphasis added).

Applying these principles here, the panel did not disavow the arbitration agreement based on fraud, duress, or unconscionability. Rather, the panel did not enforce the agreement because it involved

parental or guardian consent to arbitration of their minor child's claims. In fact, the only apparent reason the panel disavowed the arbitration agreement here is because it involves a minor child's personal injury claim. The fact that a parent signs an agreement on behalf of a minor child is not, in and of itself, a basis for courts to disavow the agreement as the panel did here. Indeed, *amici* are unaware of a situation in which courts held that an agreement is *per se* unenforceable merely because it involves a parent signing it on behalf of a minor child.

As in *Taylor*, the panel's decision here creates a rule essentially preventing arbitration of a minor child's claims, even when parents or guardians agree on the child's behalf to arbitrate the claims, presumably to foster the state's interest in having courts decide claims of minor children. Stated another way, the panel's decision discriminates against arbitration agreements when they involve claims of minor children. Under the FAA and case law interpreting that statute, the FAA preempts a rule like the one created by the panel here, which prevents arbitration under an otherwise enforceable agreement, merely because it requires arbitration of a minor child's claims. That decision should not stand.

The Court should reverse and hold that arbitration agreements signed by parents or guardians on behalf of their minor children are enforceable. In doing so, the Court will avoid creating a common-law rule that would be preempted by the FAA.

b. The panel does not have authority to create a new rule that precludes arbitration of a minor's cause of action.

Even if the FAA does not preempt the panel's rule that effectively precludes arbitration agreements involving minors, there is yet another reason the panel erred as a matter of law. The panel overstepped its role as a court of error-correction.

This Court has held that the political branches of government generally set policy in the state, not the courts. *See, e.g., Martin v. Unemployment Comp. Bd. of Review,* 466 A.2d 107, 111-13 (Pa. 1963) (""[C]ourts must take great care in wading deeply into questions of social and economic policy, which we long have recognized as fitting poorly with the judiciary's institutional competencies.").

Setting to one side the FAA's preemption provision, the General Assembly has not exercised the prerogative to prohibit arbitration of a minor's claims through legislation (presumably because it may violate

the FAA). If the legislature has not carved out an exception to arbitration for minors, a panel of an intermediate appellate court – as a court of error-correction – lacks the authority to do so unilaterally. Although *amici* acknowledge this Court's prerogative to set judicial policy in the Commonwealth, an order affirming the panel's decision here would violate the extant public policy favoring arbitrations.

Accordingly, the Court should reverse and enforce the arbitration agreements signed by parents or guardians on behalf of their minor children in this case because the panel overstepped its role in creating a *de facto* prohibition against arbitration agreements involving minors.

5. The panel's decision engenders significant concerns for *amici* and the business community.

From a practical standpoint, the panel's decision has the potential to affect the enforceability of numerous arbitration agreements throughout the Commonwealth.

In particular, the panel's decision calls into question arbitration agreements that public, private, and non-profit entities use when offering sporting, recreational, educational, and other activities where certain physical risks may exist. If arbitration is unavailable to resolve disputes that may arise during these activities, these entities may be unwilling or

unable to provide children with many opportunities to engage in these types of fulfilling and essential activities. *See, e.g.*, *Zivich v. Mentor Soccer Club, Inc.*, 696 N.E.2d 201, 205 (Ohio 1998) (enforcing pre-injury waiver of negligence claims for minors to foster the policy of promoting non-profit organizations and volunteers offering sporting, recreational, educational, and other activities where certain physical risks may exist).

In the case of Get Air, for example, the company relies on its agreements with patrons who attend the parks to fully inform adults and children alike of the physical nature of activities involved. Get Air rightfully seeks parental consent and agreement to various terms before voluntarily attending the parks, including an agreement to select arbitration in the event incidents arise. Without arbitration agreements in place, disputes over relatively minor injuries may take years and thousands upon thousands of dollars or more to resolve through the court system, whereas arbitration may resolve the claim in a fraction of the time and cost.

The panel's decision goes beyond the agreements at issue in this case. The decision also casts doubt on other agreements that parents sign on behalf of their minor children, which can (and often do) include

arbitration provisions. Parents or legal guardians often sign various contracts or give written (or oral) consent on behalf of minors on which the business community understandably relies as part of their business operations. These include (for example) contracts for a minor child's health care, insurance coverage, attendance at sporting events, his or her participation in recreational activities, use of social media applications, or consumption of other goods and services.

Without the ability to resolve claims efficiently and economically, companies like Get Air and other member companies of the Associations engaged in the business of offering goods or services to children may lose the benefit of arbitration provisions in a wide variety of contracts. They may find themselves in multiple, years-long proceedings before the courts resolving claims of minors when arbitration could have resolved those claims in a fair and economical way for all parties in only a fraction of the time and cost for the benefit of all parties involved.

Accordingly, courts should enforce arbitration agreements signed by parents or guardians on behalf of their minor children to avoid a ruling that may affect a great many contracts in the Commonwealth that call for arbitration of claims, including claims of minor children.

C. The panel's decision may disincentivize business investment in the Commonwealth.

Finally, Get Air and the member companies of the Associations are multi-state and multi-national employers who invest capital in the Commonwealth based in substantial part on the certainty and predictability of statutes, regulations, and case law that affect their business. The panel's decision disrupts that framework.

At present, the policy in this Commonwealth is to enforce arbitration agreements, and that policy should apply equally when a parent or guardian elects to submit their minor child's claims to arbitration. At a time when the Commonwealth has pursued multiple initiatives to promote business investment in the Commonwealth, including permit reform and other initiatives, *see, e.g.*, Executive Order 2023-07, *Building Efficiency in the Commonwealth's Permitting, Licensing, and Certification Processes*; *see also* Executive Order 2023-05, *Pennsylvania Office of Transformation and Opportunity*, the courts should not be rendering decisions undercutting the renewed effort to make Pennsylvania more friendly to businesses.

Among the most significant concerns for the business community is the rise in costs if courts disregard arbitration agreements with impunity

merely because they involve claims of minor children. Whereas litigation can and often does take years, arbitration moves more quickly. "On average, U.S. district court cases took more than 12 months longer to get to trial than cases adjudicated by arbitration (24.2 months vs 11.6 months)." *See* American Arbitration Association, Measuring the Costs of Delays in Dispute Resolution, *available here* (last visited Nov. 30, 2023).

The costs engendered by delays when cases are tried in courts *versus* arbitration are significant. "Direct losses associated with additional time to trial required for district court cases as compared with AAA arbitration were approximately $10.9-$13.6 billion between 2011 and 2015, or more than $180 million per month." *See* American Arbitration Association, Measuring the Costs of Delays in Dispute Resolution, *available here* (last visited Nov. 30, 2023).

In the end, the panel's decision removes the uniformity, predictability, and certainty embodied in the public policy favoring arbitration agreements on which businesses place great value when they decide whether and in which states they will invest their capital. In addition, the potential increase in costs to resolve claims by way of arbitration instead of litigation in the courts may disincentivize business

investment in the Commonwealth. The Court should not endorse a holding that may lead to any of these results.

IV. CONCLUSION

The Court should reverse.

December 7, 2023

Respectfully submitted,

GA BIBIKOS LLC

/s George A. Bibikos
George A. Bibikos (PA 91249)
5901 Jonestown Rd. #6330
Harrisburg, PA 17112
(717) 580-5305
gbibikos@gabibikos.com

Counsel for Amici Get Air, PCCJR, PMA, and NFIB

CERTIFICATE OF COMPLIANCE

I hereby certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

/s George A. Bibikos
George A. Bibikos

WORD-COUNT CERTIFICATION

In accordance with Pa.R.A.P. 531(b)(3), I certify that the attached contains 6,513 words, excluding the portions identified in the rules that do not count towards the word limitation, as calculated by the word-count feature of Microsoft Word.

/s George A. Bibikos
George A. Bibikos

CERTIFICATE OF SERVICE

I hereby certify that on this day I caused a copy of the foregoing to be served on the parties via PACFile, which service satisfies the requirements of Pa.R.A.P. 121.

/s George A. Bibikos
George A. Bibikos