

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
IN AND FOR THE FIRST APPELLATE DISTRICT**

John Doe, *a minor*
represented by his court-
appointed guardian ad litem,
Charles Jonas,

Plaintiff-Respondent,

v.

Discord, Inc.; Roblox Corp.

Defendants-Appellants

Case No. A175211,
A175220, A175379

***AMICUS CURIAE* BRIEF OF U.S. SENATORS IN
SUPPORT OF PLAINTIFF-RESPONDENT**

Consolidated Appeals from the Superior Court of California
County of San Mateo (Hon. Nina Shapirshtyen, Presiding)
Case No. 25-CIV-01193

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IDENTITY AND INTEREST OF AMICI CURIAE

Amici are the following bipartisan group of current Members of the United States Senate (collectively, “Senators”):

- U.S. Sen. Richard Blumenthal
- U.S. Sen. Richard Durbin
- U.S. Sen. Kirsten Gillibrand

Senators submit this brief to clarify the reach of the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act (“EFAA”). The EFAA prohibits companies from compelling arbitration in any case which relates to a sexual assault or sexual harassment dispute. 9 U.S.C. § 402(a). As Senators, amici helped enact the EFAA, and have a stake in how it is interpreted and enforced. Amici therefore have a paramount interest in ensuring that the EFAA is interpreted and applied according to Congress’s intended scope. This dispute presents a direct inquiry into the EFAA’s reach. Amici have thus chosen to assist the Court by providing the necessary legislative context to properly interpret the EFAA in a manner that dovetails with its text and, concurrently, its purpose: providing a voice to and securing justice for survivors of sexual assault and sexual harassment.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

Congress enacted the EFAA to supply survivors of sexual assault and sexual harassment with a choice of forum to adjudicate disputes. Legislators recognized that the use of arbitration clauses is ubiquitous in consumer and employment contracts. Far beyond the workplace, arbitration clauses govern whether and where plaintiffs can bring claims alleging corporate misconduct and abuse. In the context of disputes involving sexual assault and harassment, Congress recognized that enforcing arbitration clauses carries grave consequences. In the settling of sexual assault and harassment disputes, companies were enforcing arbitration clauses in ways that allowed them to effectively evade accountability for assault and harassment by restricting employees' and consumers' access to courts.

Accordingly, the text of the statute “is clear on [the] point” that the law prohibits arbitration of disputes involving sexual assault or sexual harassment. 168 Cong. Rec. S626 (Sen. Dick Durbin). Congress’s intent was sweeping, and it manifested itself in sweeping language. Amici urge this Court not to create major exceptions that would effectively narrow the effect of this broad language; the language is broad because the Congress intended for it to be broad. *See Bostock v. Clayton Cnty.*, (2020) 590 U.S. 644, 673–74 (the Supreme Court “has explained many times over

many years that, when the meaning of the statute’s terms is plain, [its] job is at an end”); *Lopez v. Sony Elecs., Inc.*, (2018) 5 Cal. 5th 627, 634 when the “statutory language is clear and unambiguous, [the] inquiry ends”). It resolves this disagreement in favor of exempting the entire case. *See* 9 U.S.C. § 402(a).

As this brief will establish, Congress understood that arbitration clauses all too often barred survivors from enforcing their rights under state and federal laws. Instead, the use of arbitration incentivized companies to protect offenders; in the context of sexual assault and harassment, arbitration clauses enabled corporate misconduct that in turn fostered even more abuse and it prevented survivors from sharing their experiences and warning others about dangerous companies and repeat offenders.

As a result, Congress amended the Federal Arbitration Act (“FAA”), enacting the EFAA to ensure that survivors could choose to proceed in court with any case alleging a dispute related to sexual assault and sexual harassment. This case—a sexual assault dispute—fits squarely within Congress’s intended scope for the EFAA. Adopting an unduly narrow interpretation of the EFAA that excludes this case from the statute’s reach goes against the intent of Congress in passing this Act and would entrench the exact harms Congress meant to remedy. In doing so, this Court would contravene Congress’s desire and ability to secure survivors’

rights and hold companies accountable. Accordingly, Amici urge this Court to affirm the decision below.

ARGUMENT

I. Congress Identified Arbitration Clauses for Survivors of Sexual Assault and Sexual Harassment as a Widespread Problem

The enforcement of arbitration clauses has seriously harmed survivors of sexual assault and sexual harassment. Whether consumers or employees, when survivors could not choose to proceed with their cases in court, they were forced to leave judicial fora where they can effectively seek redress, where their voices can be heard by others, and where companies may actually be held responsible for misconduct. Congress was aware of and intended to address this problem for the universe of disputes involving sexual assault and harassment through the EFAA. As Senator Susan Collins stated at the time the Senate passed the bill, “survivors of sexual assault and harassment should not be forced to pursue their claims through private arbitration, rather than in court.” Press Release, U.S. Sen. Susan Collins, Senate Passes Collins Co-Sponsored Bill to Empower Sexual Assault and Harassment Survivors, (Feb. 15, 2022).

Congress explicitly recognized that the use of arbitration clauses hurt consumers and employees with respect to sexual assault and harassment cases. Congress recognized that arbitration clauses were “virtually

ubiquitous in everyday” consumer and employment contracts. H.R. Rep. No. 117-234, at p. 3.

Legislators were especially cognizant that this practice was “widespread in consumer contracts.” H.R. Rep. No. 117-234, at p. 8; *see also* 168 Cong. Rec. H984 (arbitration clauses are now “largely ... between very large companies and individual consumers”) (Rep. Jerry Nadler). Consumers are “routinely forced” to sign arbitration clauses in “take-it-or-leave it agreements” as a condition of “purchasing a good or service, often through language buried in fine print.” 168 Cong. Rec. H985 (Rep. Nadler) (Letter from Am. Ass’n for Justice, et al. entered in the Record) (internal quotations omitted). And consumers are almost always “unaware” of the clauses themselves. H.R. Rep. No. 117-234, at p. 8 (fine print is not only found on paper, but within digital “privacy policies”).

Unsurprisingly, the bill’s sponsor made clear that the “bad actors” protected by arbitration clauses “aren’t just at workplaces.” 168 Cong. Rec. H986 (Rep. Cheri Bustos). “[M]illions of Americans have signed away their rights through property leases, ride-share applications, moving companies, nursing homes, [and] grocery deliveries.” *Id.* The legislative record specifically refers to the “terms and conditions box that we have all simply checked off after downloading an app.” *Id.* Congress understood that companies enforce arbitration clauses across the entire

spectrum of consumer contracts, including those in this dispute. Senator Durbin, similarly, spoke on the Senate Floor about how consumers at a therapeutic massage company were being compelled into arbitration. 168 Con Rec. S625.

Again and again, Congress exhibited its concern that in the context of disputes involving sexual assault and harassment, the use of arbitration clauses allowed companies to effectively “[opt] out of the legal system” and misbehave “without reproach.” H.R. Rep. No. 117-234, at p. 6. Largely designed and funded by companies themselves, in the settling of disputes involving sexual assault and harassment, the use of arbitration clauses “deprives millions of Americans of their day in court to enforce state and federal rights.” *Id.* at p. 3; *see also id.* at p. 5 (arbitration is a “means of suppressing legal claims”). Relegated out of court and into closed arbitration proceedings, disputes involving sexual assault and harassment are “often shielded from public scrutiny.” *Id.* at p. 3. And, in addition to employees, the consequences of compelling *consumers* into arbitration extend beyond the proceedings themselves. Congress specifically highlighted that arbitration clauses often “dissuade consumers from adjudicating disputes altogether.” *Id.* at p. 6.

In sum, the legislative record plainly indicates that Congress was conscious of the extensive scope of the problem

it sought to limit through the EFAA: “arbitration has transferred the rights of workers *and consumers* to a secretive, closed, and private system designed by corporate interests to evade oversight and accountability.” *Id.* (emphasis added).

Congress recognized that the problems with enforcement of arbitration clauses are most “evident . . . in sexual violence and sexual harassment cases.” *Id.* at p. 9. When compelled into arbitration, survivors were “often unable to seek justice in a court of law, enforce their rights under state and federal legal protections, or even simply share their experiences.” *Id.* at p. 3; *see also id.* at p. 4 (arbitration clauses incentivize “the corporate protection of rapists and other serial harassers”). And because the use of arbitration clauses shields disputes “from public scrutiny,” it “prevent[s] future victims from being warned about dangerous companies and individuals.” *Id.* at pp. 3, 4; *see also id.* at p. 3 (survivors also cannot access and are often unaware of “a repeat offender’s history of sexual violence or harassment”). As Senator Durbin noted, “forced arbitration clauses not only deny survivors their right to a day in court, they also conceal their allegations from public view.” 168 Cong. Rec. S626.

Congress heard from consumers—survivors—who were compelled into arbitration. *See id.* at p. 8. As one survivor

who, along with hundreds of others, was compelled into arbitration after bringing a sexual assault dispute against a national massage chain expressed to legislators, “[i]t’s just horrifying that they would allow this to happen and then take steps to cover up what is happening.” H.R. Rep. No. 117-234; *see also* 168 Cong. Rec. S626 (Sen. Durbin).

And legislators were acutely aware that this coverup was all too often perpetuated by “apps” like Roblox and Discord, armed with their “terms and conditions” and “ready to strip away your right to go to court if you have been sexually harassed or sexually assaulted.” 168 Cong. Rec. H986 (Rep. Bustos) (referring to arbitration clauses imposed by apps). Nowhere did Congress say that the problem was limited to cases in which a company or its employees were the perpetrator. Such a requirement would contradict the very concern animating the EFAA in the first place: companies enforce arbitration to silence and deny justice to survivors of sexual assault and sexual harassment.

II. Congress Corrected for this Widespread Problem by Enacting the EFAA

Amending the FAA, Congress enacted the EFAA to cover any “case which . . . relates to [a] sexual assault dispute or [a] sexual harassment dispute.” 9 U.S.C. § 402(a); *see also Olivieri v. Stifel, Nicolaus & Co., Inc.*, (2d Cir. 2024) 112 F.4th 74, 84 (the EFAA is “codified directly into the FAA”). As Senator Durbin remarked, the Act “will ensure

that survivors of . . . sexual assault can reach for a lifeline in a moment of crisis and seek justice against their abusers.”

168 Cong. Rec. S625.

The EFAA is a “bipartisan piece of legislation” whose “premise” is “simple.” 168 Cong. Rec. H992 (Rep. Jackson Lee); 168 Cong. Rec. S626 (Sen. Durbin); *see also* 168 Cong. Rec. H989 (Rep. Ken Buck). The Act “empower[s] survivors of sexual assault and sexual harassment by allowing” them to choose to “to file a case in court rather than be forced into arbitration.” 168 Cong. Rec. H985 (Rep. Nadler). Amici urge this Court to affirm the decision below and align itself with the EFAA’s intended reach.

The bill’s sponsor made the EFAA’s scope clear. The Act would invalidate “any forced arbitration clause in any contract or agreement” when applied to a case relating to a sexual assault or sexual harassment dispute. 168 Cong. Rec. H986 (Rep. Bustos). Across the legislative record, Members of Congress repeatedly reaffirmed the Act’s extensive reach. *See, e.g.*, 168 Cong. Rec. H988 (the EFAA “will not allow any pre-dispute arbitration agreement . . . to be valid or enforceable”) (Rep. Lee); 168 Cong. Rec. H992 (“[A]nything related to sexual harassment or assault . . . is covered by this bill”) (Rep. Nadler). The EFAA was enacted accordingly. *See* 9 U.S.C. § 402(a).

Congress intended the EFAA to cover this case. Aware that, among many consumer contracts, “downloading an

app” and checking off a “terms and conditions box” gave companies the “unchallenged” ability to “strip away” survivors’ right to go to court, Congress corrected for the problem. H.R. Rep. No. 117-234, at p. 5; 168 Cong. Rec. H986 (Rep. Bustos). As the legislative record makes clear, Congress sought to empower survivors—including children abused on digital platforms—“to make a choice between arbitration and going to court.” 168 Cong. Rec. H989 (Rep. Buck); *see also* H.R. Rep. No. 117-234, at pp. 3, 9. And it wanted to put companies—including those that make and operate apps—“on notice that if they don’t clean up their act, they are going to have a big problem” and ensure that companies could not “[sweep] an issue like this under the carpet.” 168 Cong. Rec. H989 (Rep. Buck).

Here, the survivor of a sexual assault perpetrated on Roblox and Discord has chosen to go “to court” and allege claims that relate to the sexual assault. *Id.* Instead of hiding behind the veil of arbitration, Roblox and Discord can be held accountable for their misconduct: misleading parents into thinking their platforms are safe and failing to protect children from sexual abuse. Because of Plaintiffs’ suit, Roblox and Discord cannot sweep the issue “under the carpet” and must instead seriously address it. *Id.* This case therefore plainly falls within Congress’s intended scope of the EFAA. Arbitration ought not be enforced here. *See Polen v. API Grp. Life Safety USA, LLC* (D. Or. Nov. 21, 2025)

2025 WL 3251349, at p. *2 (“Arbitration agreements are invalid to the extent that they interfere with other federal laws when those laws have clearly expressed a congressional intent to prohibit arbitration.”).

But if this Court were to interpret the EFAA to exclude this dispute, it would further entrench the exact harms Congress meant to remedy. The survivor would be “unable to seek justice” in court and “enforce their rights” against Roblox and Discord. H.R. Rep. No. 117-234, at p. 3. The dispute would be “shielded from public scrutiny” and potential “future victims”—the millions of children who use both platforms—would not be “warned about [two] dangerous companies.” *Id.* at pp. 3, 4. And Roblox and Discord would continue to enable sexual assault on their platforms “without reproach.” *Id.* at p. 6. This Court should not go against what Congress intended the EFAA to cover.

What’s more, courts interpreting the EFAA have repeatedly given it sweeping reach and rejected arguments for narrowing it in various ways. *See, e.g., Polen, supra*, at *4 (the EFAA’s definition of sexual assault dispute “does not include any causal link between the defendant and the underlying sexual assault, such as requiring that a plaintiff allege conduct by the defendant that caused or enabled the sexual assault. It also contains no limitation regarding who committed the sexual assault, where it was committed, or when it was committed.”); *Delirium TV, LLC v. Dang*, (Tex.

App. 2024) 714 S.W.3d 640, 649 (the EFAA does not “specify anything about how the assault must have occurred, or who perpetrated the assault”); *Childress v. Moore*, (M.D. Fla. 2026) 2026 WL 1618598, at p. *5 (holding that the EFAA covers a case against a company involving sexual assault committed by a third party because the company allegedly enabled conduct constituting a sexual assault and the case relates to that dispute). Consistent with these decisions—themselves aligned with Congress’s intended scope for the EFAA—this Court should do the same.

In the legislative record, Congress brought up a handful of specific cases of sexual assault and harassment—in which a company or its employee committed the abuse—that would fall within the Act’s reach. But there is no reason for this Court to assume that Congress only intended for the Act to cover carbon copies of some of the illustrative cases it identified. First, because Congress understands that courts look beyond such specific examples to discern a statute’s scope. *See Ornelas v. Randolph*, (1993) 4 Cal.4th 1095, 1101 (list of examples provided by the Legislature does not necessarily limit the meaning of a term in a statute). Second, because Congress never declared, or even intimated, this intent. If Congress wanted to limit the EFAA to only cover “conduct occurring between parties to an arbitration agreement,” as in some of the examples it brought up, “it certainly knew how” and “could have easily added any of

those limitations.” *Polen, supra*, at *4; *see also Ste. Marie v. Riverside Cnty. Reg’l Park & Open-Space Dist.*, (2009) 46 Cal.4th 282, 292 (rejecting the argument that a property statute was limited to easements because “nothing” in the legislative history “suggests the Legislature understood” it was imposing this limitation). It chose not to do so. (*See Bruce v. Adams & Reese, LLP*, (6th Cir. 2026) 168 F.4th 367, 384 (Congress “did not take obvious alternative paths in [the EFAA’s] drafting”). Instead, Congress *expressly contemplated* a much broader application of the EFAA than some of the examples it provided *See, e.g.*, 168 Cong. Rec. H986 (discussing apps as companies who enforce arbitration of sexual assault and sexual harassment disputes) (Rep. Bustos). And it enacted the statute to reach beyond such examples. *See* 9 U.S.C. § 402(a).

To the extent there was any disagreement between Members of Congress, it was over whether an entire case would be exempt from arbitration when only some claims relate to a sexual assault or sexual harassment dispute. This disagreement is irrelevant to the present case, which directly relates to a sexual assault dispute.

Accordingly, numerous courts that have considered the EFAA’s legislative history on this distinct issue have reached the conclusion that the statute once again sweeps very broadly. *See, e.g., Diaz-Roa v. Hermes L., P.C.* (S.D.N.Y.

2024) 757 F. Supp. 3d 498, 541 (citing legislative history for the proposition that “the EFAA covers not only complaints that fall within the four corners of a tort for sexual assault or sexual harassment” but also the entire case brought by the plaintiff and denying motion to compel arbitration); *Ding v. Structure Therapeutics, Inc.*, 755 F. Supp. 3d 1200, 1219 (N.D. Cal. 2024) (same); *Polen, supra*, at *4 & n.3 (collecting cases).

Congress intended the EFAA to cover any case which relates to a sexual assault or sexual harassment dispute. Consistent with congressional intent, this case fits squarely within the Act’s scope. Amici urge the Court to prevent Roblox and Discord from forcing the Plaintiff into arbitration. Survivors of sexual assault “deserve their day in court.” 168 Cong. Rec. S626 (Sen. Durbin).

CONCLUSION

This Court should affirm the decision below.

CERTIFICATE OF WORD COUNT

I hereby certify that, pursuant to Local Rule 8.204(c)(1), the foregoing document complies with the 14,000-word limit according to the word processing system used to process this document.

/s/ F. Paul Bland

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