

## Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

**SUPREME COURT OF THE UNITED STATES**

## Syllabus

KINDRED NURSING CENTERS LIMITED  
PARTNERSHIP, DBA WINCHESTER CENTRE FOR  
HEALTH AND REHABILITATION, NKA FOUNTAIN  
CIRCLE HEALTH AND REHABILITATION, ET AL. *v.*  
CLARK ET AL.

## CERTIORARI TO THE SUPREME COURT OF KENTUCKY

No. 16–32. Argued February 22, 2017—Decided May 15, 2017

Respondents Beverly Wellner and Janis Clark—the wife and daughter, respectively, of Joe Wellner and Olive Clark—each held a power of attorney affording her broad authority to manage her family member’s affairs. When Joe and Olive moved into a nursing home operated by petitioner Kindred Nursing Centers L. P., Beverly and Janis used their powers of attorney to complete all necessary paperwork. As part of that process, each signed an arbitration agreement on her relative’s behalf providing that any claims arising from the relative’s stay at the facility would be resolved through binding arbitration. After Joe and Olive died, their estates (represented by Beverly and Janis) filed suits alleging that Kindred’s substandard care had caused their deaths. Kindred moved to dismiss the cases, arguing that the arbitration agreements prohibited bringing the disputes to court. The trial court denied Kindred’s motions, and the Kentucky Court of Appeals agreed that the suits could go forward.

The Kentucky Supreme Court consolidated the cases and affirmed. The court initially found that the language of the Wellner power of attorney did not permit Beverly to enter into an arbitration agreement on Joe’s behalf, but that the Clark document gave Janis the capacity to do so on behalf of Olive. Nonetheless, the court held, both arbitration agreements were invalid because neither power of attorney *specifically* entitled the representative to enter into an arbitration agreement. Because the Kentucky Constitution declares the rights of access to the courts and trial by jury to be “sacred” and “in-

## Syllabus

violate,” the court determined, an agent could deprive her principal of such rights only if expressly provided in the power of attorney.

*Held:* The Kentucky Supreme Court’s clear-statement rule violates the Federal Arbitration Act by singling out arbitration agreements for disfavored treatment. Pp. 4–10.

(a) The FAA, which makes arbitration agreements “valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract,” 9 U. S. C. §2, establishes an equal-treatment principle: A court may invalidate an arbitration agreement based on “generally applicable contract defenses,” but not on legal rules that “apply only to arbitration or that derive their meaning from the fact that an agreement to arbitrate is at issue,” *AT&T Mobility LLC v. Concepcion*, 563 U. S. 333, 339. The Act thus preempts any state rule that discriminates on its face against arbitration or that covertly accomplishes the same objective by disfavoring contracts that have the defining features of arbitration agreements.

The Kentucky Supreme Court’s clear-statement rule fails to put arbitration agreements on an equal plane with other contracts. By requiring an explicit statement before an agent can relinquish her principal’s right to go to court and receive a jury trial, the court did exactly what this Court has barred: adopt a legal rule hinging on the primary characteristic of an arbitration agreement. Pp. 4–7.

(b) In support of the decision below, respondents argue that the clear-statement rule affects only contract formation, and that the FAA does not apply to contract formation questions. But the Act’s text says otherwise. The FAA cares not only about the “enforce[ment]” of arbitration agreements, but also about their initial “valid[ity]”—that is, about what it takes to enter into them. 9 U. S. C. §2. Precedent confirms the point. In *Concepcion*, the Court noted the impermissibility of applying a contract defense like duress “in a fashion that disfavors arbitration.” 563 U. S., at 341. That discussion would have made no sense if the FAA had nothing to say about contract formation, because duress involves “unfair dealing at the contract formation stage.” *Morgan Stanley Capital Group Inc. v. Public Util. Dist. No. 1 of Snohomish Cty.*, 554 U. S. 527, 547. Finally, respondents’ view would make it trivially easy for States to undermine the Act. Pp. 7–9.

(c) Because the Kentucky Supreme Court invalidated the Clark-Kindred arbitration agreement based exclusively on the clear-statement rule, the court must now enforce that agreement. But because it is unclear whether the court’s interpretation of the Wellner document was wholly independent of its rule, the court should determine on remand whether it adheres, in the absence of the rule, to

Syllabus

its prior reading of that power of attorney. Pp. 9–10.  
478 S. W. 3d 306, reversed in part, vacated in part, and remanded.

KAGAN, J., delivered the opinion of the Court, in which ROBERTS, C. J., and KENNEDY, GINSBURG, BREYER, ALITO, and SOTOMAYOR, JJ., joined. THOMAS, J., filed a dissenting opinion. GORSUCH, J., took no part in the consideration or decision of the case.

Opinion of the Court

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D. C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

**SUPREME COURT OF THE UNITED STATES**

No. 16–32

KINDRED NURSING CENTERS LIMITED PARTNER-  
SHIP, DBA WINCHESTER CENTRE FOR HEALTH  
AND REHABILITATION, NKA FOUNTAIN  
CIRCLE HEALTH AND REHABILITA-  
TION, ET AL., PETITIONERS *v.*  
JANIS E. CLARK ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF  
KENTUCKY

[May 15, 2017]

JUSTICE KAGAN delivered the opinion of the Court.

The Federal Arbitration Act (FAA or Act) requires courts to place arbitration agreements “on equal footing with all other contracts.” *DIRECTV, Inc. v. Imburgia*, 577 U. S. \_\_\_, \_\_\_ (2015) (slip op., at 6) (quoting *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U. S. 440, 443 (2006)); see 9 U. S. C. §2. In the decision below, the Kentucky Supreme Court declined to give effect to two arbitration agreements executed by individuals holding “powers of attorney”—that is, authorizations to act on behalf of others. According to the court, a general grant of power (even if seemingly comprehensive) does not permit a legal representative to enter into an arbitration agreement for someone else; to form such a contract, the representative must possess specific authority to “waive his principal’s fundamental constitutional rights to access the courts [and] to trial by jury.” *Extendicare Homes, Inc. v. Whisman*, 478

## Opinion of the Court

S. W. 3d 306, 327 (2015). Because that rule singles out arbitration agreements for disfavored treatment, we hold that it violates the FAA.

## I

Petitioner Kindred Nursing Centers L. P. operates nursing homes and rehabilitation centers. Respondents Beverly Wellner and Janis Clark are the wife and daughter, respectively, of Joe Wellner and Olive Clark, two now-deceased residents of a Kindred nursing home called the Winchester Centre.

At all times relevant to this case, Beverly and Janis each held a power of attorney, designating her as an “attorney-in-fact” (the one for Joe, the other for Olive) and affording her broad authority to manage her family member’s affairs. In the Wellner power of attorney, Joe gave Beverly the authority, “in my name, place and stead,” to (among other things) “institute legal proceedings” and make “contracts of every nature in relation to both real and personal property.” App. 10–11. In the Clark power of attorney, Olive provided Janis with “full power . . . to transact, handle, and dispose of all matters affecting me and/or my estate in any possible way,” including the power to “draw, make, and sign in my name any and all . . . contracts, deeds, or agreements.” *Id.*, at 7.

Joe and Olive moved into the Winchester Centre in 2008, with Beverly and Janis using their powers of attorney to complete all necessary paperwork. As part of that process, Beverly and Janis each signed an arbitration agreement with Kindred on behalf of her relative. The two contracts, worded identically, provided that “[a]ny and all claims or controversies arising out of or in any way relating to . . . the Resident’s stay at the Facility” would be resolved through “binding arbitration” rather than a lawsuit. *Id.*, at 14, 21.

When Joe and Olive died the next year, their estates

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.