
DIRECTV, Inc. v. Imburgia, No. 14-462

In *AT&T Mobility LLC v. Concepcion*, 131 S. Ct. 1740 (2011), the Supreme Court held that the Federal Arbitration Act ("FAA") preempts state-law rules barring enforcement of an arbitration agreement if the agreement does not permit the parties to utilize class procedures in arbitration or in court. Before *Concepcion*, the law of California included that limitation on the enforceability of arbitration agreements, but *Concepcion* declared that rule invalid as a matter of federal law. Today, in *DIRECTV, Inc. v. Imburgia*, No. 14-462, the Supreme Court held that Section 2 preempts a state-law interpretation of an arbitration agreement based on a legal rule that the state's courts had applied only in the arbitration context, concluding that the state-law ruling "does not rest 'upon such grounds as exist . . . for the revocation of any contract.'"

Petitioner DIRECTV, Inc. ("DTV") moved to compel arbitration of respondent Imburgia's class action after *Concepcion* clarified that state law could not invalidate the arbitration agreement on the ground that it barred class procedures. The state trial court denied DTV's motion, and the California Court of Appeal affirmed. The agreement, which provided that the FAA governed its terms and contained a class-waiver, provided that it was invalid if the "law of your state" would nonetheless require class arbitration. The Court of Appeal held that this reference to state law meant that the parties had agreed that California law—without regard to the FAA's preemptive effect—would govern. Because California law required class procedures, the court held the arbitration invalid, even though that California law was preempted by *Concepcion*.

By a 6-3 vote, the Supreme Court, in an opinion by Justice Breyer, reversed the California court's decision and remanded the case. The Court started with the "elementary point of law" that "[n]o one denies that lower courts must follow this Court's holding in *Concepcion*" because the FAA "is a law of the United States, and *Concepcion* is an authoritative interpretation of the Act." Citing the Supremacy Clause, the Court explained that "[c]onsequently, the judges of every State must follow it."

The Court recognized the possibility that parties to arbitration agreements could select any governing law they wished, suggesting fanciful examples such as "the law of Tibet," "the law of pre-revolutionary Russia," or (perhaps nearly as fanciful) pre-*Concepcion* California law that would invalidate the arbitration agreement's core feature—arbitration on an individual basis. And the Court acknowledged that how to interpret the arbitration agreement's selection of governing law is a question of state law. But it underscored that any such interpretation must comply with the FAA's mandate that only generally-applicable state law principles—ones that "in fact rest[] upon 'grounds as exist in law or equity for the revocation of any contract'"—may be applied to interpret an arbitration contract.

Accordingly, the Court explained, the question before it was whether the Court of Appeal's interpretation of the phrase "law of your state" to "include[] *invalid* California law" was one that is generally applicable to all contracts. The answer is no: "[W]e conclude that California courts would not interpret contracts other than arbitration contracts the same way"; "nothing in the Court of Appeal's reasoning suggests that a California court would reach the same interpretation of 'law of your state' in any context other than arbitration." Justice Breyer pointed to multiple factors:

- The "ordinary meaning" of a reference to state law is "*valid* state law," and there accordingly was nothing ambiguous about the reference that would make "*invalid*" state law a reasonable alternative.
- In other settings, California law would interpret contract language to incorporate retroactive changes in the law.
- The California Court of Appeal's rule was arbitration-specific; "we can find nothing in that opinion (nor in any other California case) suggesting that California would generally interpret words such as 'law of your state' to include state laws held invalid because they conflict with, say, federal labor statutes, federal pension statutes, federal antidiscrimination laws, the Equal Protection Clause, or the like."
- It was "unlikely" that California courts would "accept as a general matter and to apply in other contexts" the "view that state law retains independent force even after it has been authoritatively invalidated by this Court."

For these reasons, the Court concluded that California's interpretation of the phrase "law of your state" does not place arbitration contracts 'on equal footing with all other contracts'" and, accordingly, that the lower court's decision was preempted by the FAA.

Justice Thomas filed a dissenting opinion reiterating his longstanding opposition to the application of the FAA to cases in state courts.

Justice Ginsburg, joined by Justice Sotomayor, filed a separate dissent. In her view, the arbitration provision's reference to "law of your state" was ambiguous, and that ambiguity should have been construed against the drafter. Her dissent also catalogued a number of policy criticisms of arbitration, relying in part on a recent *New York Times* article. (Those criticisms have been the subject of an extensive and ongoing debate.)

The impact of today's decision—especially notable because it was authored by Justice Breyer, who wrote the dissent in *Concepcion*—is to make clear that states may not apply idiosyncratic interpretations of contract provisions in order to evade the FAA. At the same time, businesses that use arbitration provisions should seek to draft those provisions carefully to avoid the possibility that a court will subject the provisions to such interpretations in the first place.

Any questions about the case should be directed to Andrew J. Pincus (+1 202 263 3220) or Archis A. Parasharami (+1 202 263 3328) in our Washington office.

In addition to the one business case discussed in Friday's docket alert, the Supreme Court granted certiorari on Friday in five other cases. Mayer Brown LLP serves as counsel of record in four of those cases.

In *Bernard v. Minnesota*, *Birchfield v. North Dakota*, and *Beylund v. Levi*, the Court will decide whether a state may criminalize a motorist's refusal to "consent" to a blood or breath test that seeks to determine whether the motorist is intoxicated. Charles Rothfeld, Andy Pincus, Paul Hughes, and Michael Kimberly represent the petitioners.

In *Ross v. Blake*, the Court will consider the extent to which "special circumstances" alleviate a prisoner's obligation to exhaust his or her administrative remedies in compliance with the Prison Litigation Reform Act. Reg Goeke, Catherine Bernard, Paul Hughes, and Michael

Kimberly represent Mr. Blake.