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*Kindred Nursing Centers L.P. v. Clark*, No. 16-32

The Federal Arbitration Act (FAA) requires courts to place arbitration provisions on an equal footing with other contract terms. In the decision under review, the Kentucky Supreme Court had refused to enforce two arbitration provisions executed by individuals holding powers of attorney, because the power-of-attorney documents did not specifically mention arbitration or the ability to waive the principals' right to trial by jury. The Kentucky court reached that conclusion even though Kentucky law permitted an attorney-in-fact to enter into other types of contracts without a specific mention of those contracts in the power of attorney documents.

Today, the Supreme Court held that Kentucky's rule violates the FAA by singling out arbitration agreements for disfavored treatment. In an opinion for seven Justices authored by Justice Kagan, the Court held that the FAA not only preempts any state-law rule that discriminates against arbitration on its face, but also "any rule that covertly accomplishes the same objective by disfavoring contracts that (oh so coincidentally) have the defining features of arbitration agreements." The Kentucky rule failed that test: while phrased in terms of the right to a jury trial, "the waiver of the right to go to court and receive a jury trial" is a "primary characteristic of an arbitration agreement."

The Court also underscored that the FAA applies to rules governing contract formation, not just rules governing contract enforcement. The Court explained that 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." And the Court pointed out that a contrary interpretation would make it "trivially easy" for courts hostile to arbitration to undermine the FAA—"indeed, to wholly defeat it."

Justice Thomas dissented, adhering to his view that the FAA does not apply in state courts. Justice Gorsuch did not participate in the case.

Mayer Brown represented the petitioner in the Supreme Court.