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The Supreme Court Stops State Laws From Covertly Disfavoring Arbitration, Allows State Courts to Narrowly Interpret Powers-of-attorney: a Comment on Kindred Nursing Centers ltd. Partnership v. Clark

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THE SUPREME COURT STOPS STATE LAWS FROM COVERTLY DISFAVORING ARBITRATION, ALLOWS STATE COURTS TO NARROWLY INTERPRET POWERS-OF-ATTORNEY: A COMMENT ON *KINDRED NURSING CENTERS LTD. PARTNERSHIP V. CLARK*

By
Micah Mayotte*

I. INTRODUCTION

In *Kindred Nursing Centers Ltd. Partnership v. Clark*[1] the Supreme Court held Kentucky's "clear statement" rule violated Section Two of the Federal Arbitration Act (FAA).[2] In *Kindred*, the Court addressed the issue of whether the FAA preempts a state law that "requir[es] a power of attorney to expressly refer to arbitration agreements before the attorney-in-fact can bind her principal to an arbitration agreement."[3] The Kentucky Supreme Court held that the clear statement rule did not violate the FAA because it does not "single out"[4] arbitration, but would affect any power-of-attorney authorizing an attorney-in-fact to "waive the principal's fundamental constitutional rights."[5] The Supreme Court expanded the scope of *AT&T Mobility LLC v. Concepcion*[6] by finding any state rule that "covertly" and disproportionately disfavors arbitration violates the FAA.[7]

II. BACKGROUND

Beverly Wellner held power-of-attorney for her husband Joe Wellner.[8] The power-of-attorney provided Ms. Wellner with the authority, on her husband's behalf, to "demand, sue for collect, recover and receive all debts, monies, interests and demands whatsoever now due or that may hereafter be or become due to [Mr. Wellner] (including the right to institute legal

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[1] Kindred Nursing Centers Ltd. Partnership v. Clark, 137 S. Ct. 1421, 1421-29 (2017).

[2] 9 U.S.C. § 2.

[3] Petition for Writ of Certiorari at *I, Kindred Nursing Centers Ltd. Partnership v. Clark, 137 S. Ct. 1421 (2017) (No. 16-32), 2016 WL 3640709.

[4] Extendicare Homes, Inc. v. Whisman, 478 S.W.3d 306, 320 (Ky. 2016).

[5] Petition for Writ of Certiorari at *7, Kindred, 137 S. Ct. 1421 (No. 16-32).

[6] AT&T Mobility LLC v. Concepcion, 563 U.S. 333, 333, 339 (2011) (holding courts must put arbitration agreements on "equal footing" with other contracts, and may not invalidate arbitration agreements based on legal rules that "apply only to arbitration").

[7] *Kindred*, 137 S. Ct. at 1426.

[8] *Id.* at 1423.

proceedings therefor). . . . To make . . . contracts of every nature."[9] Ms. Wellner used the power-of-attorney to sign admission documents for Mr. Wellner to reside at Winchester Centre,[10] a nursing home operated by Kindred Nursing Centers L.P.[11] Ms. Wellner also signed, on Mr. Wellner's behalf, an optional form, referred to by the court as the "Kindred Arbitration Agreement," which states, "[a]ny and all claims arising out of or in any way relating to . . . the Resident's stay . . . shall be submitted to alternate dispute resolution."[12] "Alternate dispute resolution" is defined in the agreement as including "binding arbitration."[13]

Additional relevant parties in the action included Olive and Janice Clark. Olive Clark granted her daughter, Janis Clark, "full power for me and in my name, place, and stead, in [Janis Clark's] sole discretion, to transact, handle, and dispose of all matters affecting me and/or my estate in any possible way . . . [and] [t]o institute or defend suits concerning my property or rights."[14] Janis Clark signed all necessary documents to admit Olive Clark to Winchester Centre, and also signed the optional "Kindred Arbitration Agreement."[15]

After Joe Wellner and Olive Clark died, Beverly Wellner and Janis Clark brought separate suits alleging personal injury, violations of Kentucky's Long Term Care Facilities Act, and wrongful death of a resident against Kindred Nursing Center L.P. in state court.[16] Kindred filed motions to dismiss and compel arbitration pursuant to the arbitration agreements signed by the plaintiffs. The trial court denied Kindred's motions to dismiss and compel arbitration.[17] The trial court reasoned that *Ping v. Beverly Enterprises, Inc.*, where the Kentucky Supreme Court stated, "[a]bsent . . . express authorization addressing dispute resolution, authority to make such a waiver [of the fundamental constitutional right to a trial] is not to be inferred lightly" commanded its decision.[18]

On appeal, the Kentucky Supreme Court consolidated the cases of Beverly Wellner and Janis Clark.[19] The Kentucky Supreme Court first considered the arbitration agreement as it related to the wrongful death allegations. The Kentucky Supreme Court has consistently interpreted Kentucky wrongful death law to mean that wrongful death claims "[do] not 'derive

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[9] *Extendicare Homes*, 478 S.W.3d at 319.

[10] *Id.* at 318.

[11] *Kindred*, 137 S. Ct. at 1423.

[12] *Extendicare Homes*, 478 S.W.3d at 317.

[13] *Id.*

[14] *Id.* at 317-18.

[15] *Id.* at 317.

[16] *Id.* at 312.

[17] *Kindred*, 137 S. Ct. at 1423.

[18] *Extendicare Homes*, 478 S.W.3d at 316 (quoting Ping v. Beverly Enterprises, Inc., 376 S.W.3d 581, 593 (Ky. 2012)).

[19] *Id.* at 312.

from any claim on behalf of the decedent.'"[20] Additionally, dispute resolution agreements do not bind wrongful death beneficiaries because "the wrongful death action is not derivative . . . [but] distinct from any [cause] that the deceased may have had if he had survived."[21] The Kentucky Supreme Court held that a decedent's arbitration agreements cannot bind beneficiaries, therefore, Kindred could not compel arbitration for the wrongful death allegation in this case.[22] However, unlike wrongful death claims, where the decedent has "no cognizable legal rights," personal injury and state law claims "belong to the decedents; and the respective estates."[23] The Kentucky Supreme Court reasoned that if the arbitration agreements were valid, then personal injury and state law claims should be arbitrated.[24] The Kentucky Supreme Court considered the text of the powers-of-attorney to determine if authority to enter arbitration agreements was granted to Ms. Wellner and Ms. Clark by their respective principals.[25] The court held that Ms. Wellner's power-of-attorney did not authorize her to enter arbitration agreements on Mr. Wellner's behalf, but Janis Clark's power-of-attorney did grant that authority.[26]

The Kentucky Supreme Court then considered whether the powers-of-attorney were consistent with state law. The Kentucky Constitution "declares the rights of access to the courts and trial by jury to be 'sacred.'"[27] Based on this language in the Kentucky Constitution, the Kentucky Supreme Court established the "clear statement" rule.[28] That rule states, "without a clear and convincing manifestation of the principal's intention to do so, we will not infer the delegation to an agent of the authority to waive a fundamental personal right so constitutionally revered as the 'ancient mode of trial by jury.'"[29] Therefore, Kentucky law requires an "explicit statement" in the power-of-attorney document for the agent to have the authority to relinquish the principal's fundamental constitutional rights.[30] The Kentucky Supreme Court held the arbitration agreements were not valid because neither Ms. Wellner nor Ms. Clark's powers-of-attorney entitled them to enter their respective principals into arbitration agreements.[31]

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[20] *Extendicare Homes*, 478 S.W.3d at 313 (quoting *Ping*, 376 S.W.3d at 600).

[21] *Id.* (quoting Moore v. Citizens Bank of Pikeville, 420 S.W. 2d 669, 672 (Ky. 1967)).

[22] *Id.* at 314.

[23] *Id.*

[24] *Id.*

[25] *Extendicare Homes*, 478 S.W.3d at 315.

[26] *Kindred*, 137 S. Ct. at 1423.

[27] *Id.*

[28] *Id.* at 1426.

[29] *Extendicare Homes*, 478 S.W.3d at 313 (citing Ky. Const. § 7).

[30] *See Kindred*, 137 S. Ct. at 1424; *Extendicare Homes*, 478 S.W.3d at 328.

[31] *Kindred*, 137 S. Ct. at 1423.

Kindred filed a motion to the Supreme Court requesting a Writ of Certiorari on the question of "[w]hether the FAA preempts a state-law contract rule that singles out arbitration by requiring a power of attorney to expressly refer to arbitration agreements before the attorney-in-fact can bind her principal to an arbitration agreement."[32] Kindred did not challenge the finding that wrongful death claims are "not within the scope of the arbitration agreement."[33] Kindred argued that the Kentucky Supreme Court's holding is preempted by *DIRECTV, Inc. v. Imburgia*, which requires "states to 'place[] arbitration contracts "on equal footing with all other contracts.'"'"[34]

III. COURT'S ANALYSIS

The Supreme Court of the United States granted certiorari to address whether Kentucky's clear statement rule singles out arbitration, in violation of the FAA.[35] The Court analyzed this case in three sections: (A) whether the clear statement rule "singles out" arbitration in a manner that violates the FAA;[36] (B) whether the FAA preempts any state rule that disfavors arbitration in the contract formation stage;[37] and (C) who should interpret the text of a power-of-attorney to determine whether it allows the agent to bind the principal to an arbitration agreement.[38]

A. *The Clear Statement Rule Violates the FAA because it Disproportionately Disfavors Arbitration.*

The Court began its analysis of the clear statement rule by citing Section Two of the FAA, which states that arbitration agreements are "valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract."[39] In *AT&T Mobility LLC v. Concepcion*, the Court held that a lower court may not invalidate an arbitration agreement based on legal rules that "apply only to arbitration or that derive their meaning from the fact that an agreement to arbitrate is at issue."[40] The Court also confirmed the *AT&T Mobility* standard, that a state law violates the FAA if it "prohibit[s] outright the arbitration of a particular type of claim."[41]

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[32] Petition for Writ of Certiorari at *I, Kindred, 137 S. Ct. 1421 (No. 16-32).

[33] *Id.* at *24 n.2.

[34] Petition for Writ of Certiorari at *I, Kindred, 137 S. Ct. 1421 (No. 16-32) (quoting DIRECTV, Inc. v. Imburgia, 136 S. Ct. 463, 468 (2015)).

[35] *Kindred*, 137 S. Ct. at 1424-25.

[36] *Id.* at 1426.

[37] *Id.* at 1428.

[38] *Id.* at 1429.

[39] *Id.* at 1426 (citing 9 U.S.C. § 2).

[40] *Kindred*, 137 S. Ct. at 1426 (quoting *AT&T Mobility*, 563 U.S. at 339).

[41] *Id.* (quoting *AT&T Mobility*, 563 U.S. at 341).

The Kentucky Supreme Court held that the clear statement rule does not violate the FAA because it does not single out arbitration, but would affect any contract regarding "fundamental constitutional rights."[42] The Kentucky Supreme Court distinguished this case from *Marmet Health Care Center, Inc. v. Brown*[43] and *AT&T Mobility* because the clear statement rule is not based on the validity of arbitration for a type of claim, but rather determines when the "agent[] [has] authority to waive his principal's constitutional right to access the courts and to trial by jury."[44] The Kentucky Supreme Court framed the clear statement rule as declaring "an attorney-in-fact cannot act beyond the powers granted in the power-of-attorney document."[45]

The Supreme Court of the United States rejected this argument because the intent of the clear statement rule is "hostil[e] to arbitration."[46] The Court reasoned that the clear statement rule is analogous to the hypothetical law illustrated in *AT&T Mobility* [47] that the Court stated would be invalid.[48] The Court reasoned that the other fundamental constitutional rights examples the Kentucky Supreme Court provided[49] are so infrequently litigated that the effect of the clear statement rule is "applicable to arbitration agreements and black swans."[50] Additionally, the Court reasoned that the Kentucky Supreme Court disproportionately disfavored arbitration because of the right to trial by jury.[51] Further, the intent of the Kentucky Supreme Court to single out arbitration is inferred, because the clear statement rule never applied to settlement agreements or bench trials in Kentucky.[52] Although the clear statement rule does not only apply to arbitration agreements, in a strict sense, the rule violates the spirit of the FAA by "covertly"

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[42] *Extendicare Homes*, 478 S.W.3d at 331.

[43] Marmet Health Care Center, Inc. v. Brown, 132 S. Ct. 1201, 1203 (2012) (holding that West Virginia's policy of not enforcing any "arbitration clause in a nursing home admission agreement adopted prior to an occurrence of negligence that results in a personal injury or wrongful death" violated the FAA).

[44] *Extendicare Homes*, 478 S.W.3d at 331.

[45] *Id.*

[46] *Kindred*, 137 S. Ct. at 1428 (quoting *AT&T Mobility*, 563 U.S. at 339).

[47] *AT&T Mobility*, 563 U.S. at 342 (illustrating that any consumer arbitration agreement that prohibited judicially monitored discovery would be unenforceable due to unconscionability or public policy, would have a "disproportionate impact on arbitration agreements" and would violate the FAA).

[48] *Kindred*, 137 S. Ct. at 1426.

[49] *Extendicare Homes*, 478 S.W.3d at 328 (stating the clear statement rule would apply to "waiv[ing] the principal's civil rights; or the principal's right to worship freely; or enter into an agreement to terminate the principal's parental rights; put her child up for adoption; consent to abort a pregnancy; consent to an arranged marriage; or bind the principal to personal servitude").

[50] *Kindred*, 137 S. Ct. at 1428.

[51] *Id.* at 1427 (citing Ky. Const. § 7 (stating that "[t]he ancient mode of trial by jury shall be held sacred, and the right thereof remain inviolate, subject to such modifications as may be authorized by this Constitution")).

[52] *Id.* at 1430 n.1 (stating no explicit authorization is needed for attorneys-in-fact to waive a principal's right to trial by jury in settlement agreements or bench trials).

discriminating against arbitration.[53] The Court held that the clear statement rule "hing[ed] on the primary characteristics of an arbitration agreement," therefore the rule failed to place arbitration agreements on equal footing, in violation of the FAA as interpreted in *DIRECTV*.[54]

B. *The FAA Must be Applied When Determining Contract Formation.*

The Supreme Court rejected the argument that "States have free rein to decide . . . whether [arbitration] contracts are validly created in the first instance."[55] The respondents argued that courts must first determine whether there is a valid arbitration agreement and then apply the FAA.[56] The Supreme Court reasoned that the text of the FAA requiring arbitration agreements be found "valid" except on "grounds as exist at law or in equity" must apply to contract formation.[57] In *AT&T Mobility* the Court stated that a duress defense, which involves the formation stage of a contract, would still violate the FAA if applied "in a fashion that disfavors arbitration."[58] The Court reasoned that applying the FAA to contract formation involving arbitration agreements is necessary to prevent states from completely undermining the FAA.[59] The Court noted that if the FAA did not apply to the formation stage, then states could "blatant[ly] discriminat[e] against arbitration" by "declaring *everyone* incompetent to sign arbitration agreements."[60] Therefore, the Court held that the clear statement rule violated the FAA by "imped[ing] the ability for attorneys-in-fact to enter arbitration agreements."[61]

C. *While States Can Determine What Authority is Granted by Power-Of-Attorney Documents, They Cannot Create Laws That Disfavor Arbitration.*

The Kentucky Supreme Court found that the text of Ms. Wellner's power-of-attorney was not broad enough to grant her authority to enter arbitration agreements on Mr. Wellner's behalf.[62] However, the court found that Janis Clark's power-of-attorney was broad enough to bind Olive Clark to arbitration but for the clear statement rule.[63] The Supreme Court reasoned

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[53] *Kindred*, 137 S. Ct. at 1426.

[54] *Id.* at 1424.

[55] *Id.* at 1428.

[56] *Id.*

[57] *Kindred*, 137 S. Ct. at 1430

[58] *Id.* at 1428 (citing *AT&T Mobility*, 563 U.S. at 341).

[59] *Id.*

[60] *Id.* at 1428-29.

[61] *Id.* at 1429.

[62] *Kindred*, 137 S. Ct. at 1429.

[63] *Id.*

that because the clear statement rule violates the FAA and was the only reason Kindred's motion was denied, the court "must now enforce the Clark-Kindred arbitration agreement."[64] The Court reached a different conclusion regarding Ms. Wellner's power-of-attorney because the lack of authority to bind Mr. Wellner to arbitration may have been "independent of the court's clear-statement rule."[65] The Court held that legal rules singling out an attorney-in-fact's authority regarding arbitration agreements fail to meet the FAA standard of "equal footing with all other contracts."[66]

IV. SIGNIFICANCE

The Supreme Court's decision in *Kindred* expands the FAA's reach into state laws that affect arbitration.[67] Before *Kindred*, *AT&T Mobility* limited state rules defining when "generally applicable contract defenses" affect arbitration agreements.[68] *AT&T Mobility* interpreted the FAA to restrict states from creating legal rules that "prohibit[] *outright* the arbitration of a particular type of claim" [emphasis added].[69] *AT&T Mobility* illustrated that arbitration did not have to be directly referred to for the state law to violate the FAA.[70] Rather, a state law violates the FAA if it "rel[ies] on the uniqueness of . . . arbitration" to determine the unenforceability of a contract.[71]

In *Kindred*, the Court applied an even broader interpretation, holding that "covertly" disfavoring arbitration violates the FAA.[72] Based on this expansion, the Court found it necessary to consider the intent behind the state law.[73] In determining intent, the Court considered whether case law or legislative history provided a purpose for the legal rule.[74] In this case, the Kentucky Supreme Court stated the purpose was to protect the "right to access the courts" because it is a "sacred" right under the Kentucky Constitution.[75] The Court also examined what other rights or litigation may be affected by the state's rule.[76] After finding that other rights may be affected, the

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[64] *Kindred*, 137 S. Ct. at 1429.

[65] *Id.*

[66] *Id.* (quoting *DIRECTV*, 136 S. Ct. at 468).

[67] *Kindred*, 137 S. Ct. at 1426.

[68] *Id.* (quoting AT&T Mobility, 563 U.S. at 339).

[69] *AT&T Mobility*, 563 U.S. at 341.

[70] *Kindred*, 137 S. Ct. at 1426.

[71] *Id.* (quoting *AT&T Mobility*, 563 U.S. at 341).

[72] *Id.*

[73] *Id.* at 1427.

[74] *Id.*

[75] *Kindred*, 137 S. Ct. at 1427 (quoting *Extendicare Homes*, 478 S.W.3d at 327).

[76] *Id.*

Court considered whether arbitration was affected disproportionately to the other rights.[77] Due to the unlikelihood that the other rights suggested by the Kentucky Supreme Court would ever be litigated, the Supreme Court described the clear statement rule's application to them as "utterly fanciful."[78] By delving this far into Kentucky case law to find any disfavor toward arbitration, the Court shows its continued intent to interpret the FAA to preempt any state law that "frustrates" arbitration's ability to "streamline[] proceedings and expedit[e] results."[79]

The instant case also clearly held that Section Two of the FAA preempts any state law that disfavors arbitration in the contract formation stage.[80] The Court discussed at length that the FAA reaches any state action that would allow states to "undermine" or "wholly defeat" the FAA.[81] The Court inferred, based on the reasoning in *AT&T Mobility* that arbitration of a "type of claim"[82] cannot be prohibited, and a class of individuals cannot be "incompetent to sign arbitration agreements."[83]

V. COMMENTARY

The Supreme Court's holding that the Clark-Kindred arbitration agreement must be enforced, but remand of the Wellner-Kindred arbitration agreement leaves a significant unanswered question.[84] The Supreme Court only ruled on the issue of whether the clear statement rule violated the FAA, but it did not analyze what must be included in a power-of-attorney document to grant authority to the agent to bind the principal to an arbitration agreement. Instead, the Court left that determination to the state courts, with the only added guidance of not applying the clear statement rule, or other similar state rules, when making the decision.[85] In Kindred's petition for a Writ of Certiorari, the respondents urged the Court to address the issue as state and federal courts conflict regarding authority granted in powers-of-attorney.[86] Kindred noted that it is "commonplace" for attorneys-in-fact to sign admission and arbitration documents for residents.[87] Kindred noted that the Kentucky Supreme Court did not rule that the Wellner-Kindred agreement was invalid because of the clear statement rule, but

[77] *Kindred*, 137 S. Ct. at 1427-28.

[78] *Id.* at 1428.

[79] Preston v. Ferrer, 552 U.S. 346, 357-358 (2008).

[80] *Kindred*, 137 S. Ct. at 1428.

[81] *Id.*

[82] *AT&T Mobility*, 563 U.S. at 341.

[83] *Kindred*, 137 S. Ct. at 1428.

[84] *Id.* at 1429.

[85] *Id.*

[86] Petition for Writ of Certiorari at *17-18, Kindred, 137 S. Ct. 1421 (No. 16-32).

[87] *Id.* at *17.

because the court found the principal's constitutional right to trial by jury was not "related" to "personal property."[88] However, Kindred failed to present this issue in the question presented to the Supreme Court.[89] Nonetheless, Kindred described the issue as "exceptionally important" because the state courts narrowly interpreting powers-of-attorney and federal courts applying a broad interpretation creates "unfairness to litigants . . . unable to remove cases from state to federal court."[90] This goes against the spirit of the FAA – creating a "uniform national policy favoring arbitration."[91] Justice Abramson's dissent in *Extendicare Homes* also addressed this issue.[92]

Justice Abramson noted, the majority's distinction that found the Wellner-Kindred agreement invalid (while the Clark-Kindred agreement was valid, but for the clear statement rule) was the power-of-attorney only granted Ms. Wellner authority to make "contracts of every nature *in relation* to both real and personal *property*" [emphasis added].[93] The majority reasoned that by limiting authority to property, the power-of-attorney did not relate to arbitration over negligence or injury.[94] The majority relied on the Restatement (Third) of Agency § 2.02 (2006)[95] and Restatement (Third) of Agency § 2.02 comment h. (2006)[96] in determining "there are some acts with such consequences for the principal that a reasonable agent would not believe that he or she had been authorized to engage in them." The majority found that a power-of-attorney that only contained "general language" or restricted the agent's authority to "property" did not allow the agent to enter arbitration agreements on the principal's behalf because it would create legal consequences that the agent should not believe the principal intended.[97] Justice Abramson argued that the majority erred in two ways with the application of the Restatement. First, Justice Abramson noted that the majority's interpretation singles out arbitration in a manner prohibited by the FAA.[98] Second, Justice Abramson argued that a power-of-attorney that relates only to

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[88] Petition for Writ of Certiorari at *16, Kindred, 137 S. Ct. 1421 (No. 16-32) (quoting *Extendicare Homes*, 478 S.W.3d at 326).

[89] *Id.* at *I.

[90] *Id.* at *17.

[91] *Id.* at *23.

[92] *Extendicare Homes*, 478 S.W.3d at 333, 338-340, 342, 348 (Abramson, J., dissenting).

[93] *Id.* at 347.

[94] *Kindred*, 137 S. Ct. at 1425.

[95] The Restatement (Third) of Agency § 2.02 (2006) states "an agent has actual authority to take action designated or implied in the principal's manifestations to the agent and acts necessary and incidental to achieving the principal's objectives."

[96] The Restatement (Third) of Agency § 2.02 comment h. (2006) states "some acts that are otherwise legal create legal consequences for a principal that are significant and separate from the transaction specifically directed by the principal. A reasonable agent should consider whether the principal intended to authorize the commission of collateral acts. . . ."

[97] *Extendicare Homes*, 478 S.W.3d at 317.

[98] *Extendicare Homes*, 478 S.W.3d at 342-43 (Abramson, J., dissenting).

property still grants authority to sign arbitration agreements.[99] A "chose in action" is defined in Black's Law Dictionary as "[a] proprietary right . . . such as . . . a claim for damages in tort."[100] Therefore, the agent has authority to bind the principal to arbitration for a tort claim, including personal injury, because "choses in action are personal property."[101] Justice Abramson concluded that courts must find "[t]he grant of an unqualified power to contract is necessarily 'express authorization' to agree to dispute resolution through arbitration agreement."[102] By not addressing this issue, the Supreme Court of the United States left the potential for state courts to "discriminat[e] against arbitration in the guise of application of general principles of state law."[103]

VI. CONCLUSION

In *Kindred*, the U.S. Supreme Court reversed the Kentucky Supreme Court's holding in favor of Clark. The Court found that the Kentucky Supreme Court erred in finding that the FAA did not preempt the clear statement rule. The Court found the Clark-Kindred agreement was valid, and the Kentucky Supreme Court must compel arbitration, per Kindred's request.[104] The Supreme Court remanded the Wellner action for the court to review whether preempting the clear statement rule disturbed the court's finding that Ms. Wellner's power-of-attorney did not grant authority to enter an arbitration agreement on Mr. Wellner's behalf.[105] The Court did not address how states should interpret whether a power-of-attorney is sufficiently broad to enter arbitration agreements. This omission will likely lead to additional litigation on the issue. The Court should hold, in accordance with the rule suggested by Justice Abramson, that the grant of contract power, without qualifications, sufficiently authorizes the agent to agree to dispute resolution.[106] This rule would prevent additional discrepancies between state and federal interpretation of principles of law and would further the creation of a uniform national policy favoring arbitration.

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[99] *Extendicare Homes,* 478 S.W.3d at 348 (Abramson, J., dissenting).

[100] *Id*. (citing Black's Law Dictionary, 275 (9th ed. 2009)).

[101] *Id.* (quoting Button v. Drake, 195 S.W.2d 66, 69 (Ky. 1946)); *see* Mullane v. Cent. Handover Bank & Trust Co., 339 U.S. 306, 313-14 (1950).

[102] *Extendicare Homes*, 478 S.W.3d at 342 (Abramson, J., dissenting).

[103] *Id.* at 343.

[104] *Kindred*, 137 S. Ct. at 1429.

[105] *Id.*

[106] *Extendicare Homes*, 478 S.W.3d at 342 (Abramson, J., dissenting).