

On April 26, 2010, the United States Supreme Court heard oral arguments in a case addressing whether an arbitrator has authority to determine whether an arbitration clause is unenforceable due to unconscionability. The case, *Rent-A-Center, West, Inc. v. Jackson*, has far-reaching implications because it has been traditionally held that courts, rather than arbitrators, should decide the threshold issue of enforceability of arbitration clauses.

The plaintiff (Jackson) sued his employer, Rent-A-Center, West, Inc. for racial discrimination and retaliation. The defendant company moved to compel arbitration, citing an agreement it had required Jackson to sign as a condition of his employment. The plaintiff argued that the arbitration agreement was unenforceable because it was unconscionable and that a court should decide whether the agreement was valid. The agreement contained a provision purporting to require that challenges to enforceability be decided by an arbitrator, not a court. The trial court agreed with Rent-A-Center's arguments and dismissed the case, rejecting the argument that enforceability of the arbitration clause was a matter for the Court – rather than the arbitrator – to decide in the first instance. On appeal, a divided panel of the Ninth Circuit Court of Appeals reversed, ruling that “a compulsory submission to arbitration cannot precede judicial determination that the . . . agreement does in fact create such a duty.” Rent-A-Center then filed a Petition for Certiorari and the Supreme Court agreed to hear the case.

Consumer advocates fear that if the Supreme Court rules in favor of Rent-A-Center, consumers and employees required to sign arbitration agreements will be deprived of any ability to challenge enforceability of those agreements in court. Instead, arbitrators would be allowed to decide whether an agreement is valid and enforceable and, thus, that the dispute should remain before the arbitrator for hearing. A decision in the case is expected later this year.