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TESTIMONY BEFORE THE U.S. SENATE COMMITTEE ON THE JUDICIARY SUBCOMMITTEE ON CRIME AND COUNTERTERRORISM

Roblox and Online Gaming: Digital Playgrounds Endangering America's Children

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Chairman Hawley, Ranking Member Durbin, and distinguished members of the Subcommittee:

Thank you for inviting me to participate in this important hearing. My name is Myriam Gilles, and I am the Catharine Waugh McCulloch Professor of Law at Northwestern Pritzker School of Law. Since 2005, I have written extensively about the harmful effects of forced arbitration clauses – the "take-it-or-leave-it" terms buried in standard-form contracts and terms and conditions that strip people of their right to file a case in court and force them instead into a private, secret forum of the company's choosing.[1] I have testified about the effects of these provisions before the Senate Judiciary Committee in 2013, 2017, 2019 and 2024, before the Senate Banking Committee in 2022, and before the House Judiciary Committee twice in 2021. Each time, I described how forced arbitration silences victims, survivors and workers.

I never expected to appear before this body to describe the use of forced arbitration against nine-year-olds.

But that is where we are. Roblox – an online platform on which, by the company's own count, more than a third of age-checked daily users are under thirteen[2] – requires every user to "agree" to a binding, individual, confidential forced arbitration clause. Discord, the messaging service where so

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[1] *See, e.g.*, Myriam Gilles, *Opting Out of Liability: The Forthcoming, Near-Total Demise of the Modern Class Action*, 104 MICH. L. REV. 373 (2005); Myriam Gilles & Gary Friedman, *After Class: Aggregate Litigation in the Wake of* AT&T Mobility v. Concepcion, 79 U. CHI. L. REV. 623 (2012); Myriam Gilles, *The Day Doctrine Died: Private Arbitration and the End of Law*, 2016 U. ILL. L. REV. 371; Myriam Gilles, *Arbitration's Unraveling*, 172 U. PA. L. REV. 1063 (2024); Myriam Gilles, *Arbitration Exceptionalism*, 112 VA. L. REV. 409 (2026); Myriam Gilles, *Arbitration In Name Only*, 121 NW. U. L. REV. 423 (2026).

[2] Matt Kaufman & Rajiv Bhatia, *Moving Beyond Self-Reported Age*, ROBLOX NEWSROOM (Feb. 5, 2026), https://about.roblox.com/newsroom/2026/02/moving-beyond-self-reported-age (reporting that among age-checked daily active users, "35% are younger than 13, 38% are age 13 to 17, and 27% are 18 or older").

many children groomed on Roblox are taken next by predators, does the same.[3] And now that hundreds of children and their families have filed cases against these companies, alleging that the platforms' design delivered them into the hands of predators who raped, kidnapped, sextorted and exploited them, both Roblox and Discord have moved to force arbitration in every case in which they are named.[4] The parents of children who were coerced into producing child sexual abuse material ("CSAM") on these platforms are being told that, by tapping a button on a sign-up screen, their children agreed to have their cases heard in a secret system *chosen and designed by the platforms.*[5]

Through my testimony, I hope to make one simple point: no child, and no parent, should be forced into arbitration. Whether and where to bring a case for a child's injuries should be the family's choice – not the platform's. Only Congress can solve this, as the Supreme Court has made plain that it will "rigorously enforce" forced arbitration clauses according to their terms unless the Federal Arbitration Act's ("FAA") mandate is "overridden by a contrary congressional command."[6] The Forced Arbitration Injustice Repeal ("FAIR") Act would supply that command. It passed the House in 2022, has been reintroduced in both chambers this Congress, and would restore every American's right to choose a courtroom over a secret, private forum in consumer, employment, antitrust and civil rights disputes – including the cases of children and families injured on platforms like Roblox and Discord. I urge the Senate to enact the FAIR Act, or any other legislation that would protect children and their families from being forced into arbitration.

My testimony proceeds in four parts. Part I describes the forced arbitration regime that Roblox and Discord impose on children, and the appalling arguments these companies are making in court to enforce it. Part II explains why forced arbitration is uniquely harmful in these cases – not only to the individual children and families who are denied the right to seek accountability in court, but to the public, to parents, and to this body, which depends on information obtained in public litigation to learn how these platforms actually operate. Part III explains why the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021 ("EFAA"), while a landmark achievement, does not reach most of these cases – and in particular, does not clearly reach children exploited entirely online, including children deceived and coerced into producing child sexual abuse material ("CSAM"). Finally, Part IV explains why only Congress can protect children and their families from forced arbitration, identifies what legislation must do to work in practice, and explains why comprehensive

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[3] *See* Discord Inc., Terms of Service, (eff. Sept. 29, 2025) (binding individual arbitration and class-action waiver for U.S. users); Motion in Supp. of Def. Discord Inc.'s Am. Mot. to Compel Arbitration & Stay Litig. at 6, *Doe v. Roblox Corp.*, No. 25-civ-05901 (Cal. Super. Ct. San Mateo Cnty. filed Jan. 27, 2026) [hereinafter *Discord Reply*].

[4] *See* Defendant Roblox's Omnibus Motion to Compel Arbitration, ECF No. 452, *In re Roblox Corp. Child Sexual Exploitation & Assault Litigation*, No. 3:25-md-03166-RS (N.D. Cal. Sept. 22, 2026).

[5] *Id.* at pp. 29-33.

[6] *Am. Express Co. v. Italian Colors Rest.*, 570 U.S. 228, 233 (2013) (quoting *CompuCredit Corp. v. Greenwood*, 565 U.S. 95, 98 (2012)); *see also Epic Sys. Corp. v. Lewis*, 584 U.S. 497, 506 (2018).

nationwide statutory protection against forced arbitration is a necessary complement to the civil remedies in the STOP CSAM Act.

PART I
FORCED ARBITRATION OF CHILDREN'S CASES

A. *The Platforms and the Children Who Use Them*

Roblox is an online platform built for, marketed to, and populated by children. In February 2026, Roblox reported that 45% of its 144 million daily active users had completed an age check. Of those users, 35% were younger than thirteen and another 38% were between thirteen and seventeen – meaning that nearly three-quarters of Roblox's age-verified users were minors.[7] Earlier public filings told the same story: in 2023, Roblox reported that 21% of its daily users were under the age of nine.[8]

But despite marketing itself as safe for even the "youngest users," children are not safe on the Roblox platform.[9] Roblox's own reports to the National Center for Missing and Exploited Children ("NCMEC") of suspected child sexual exploitation rose dramatically from 675 in 2019 to 13,316 in 2023[10] – reaching 65,381 in 2025, according to this Subcommittee's August 12 letter. [11] That is a nearly hundredfold increase in six years.

The pattern described in the lawsuits now pending against Roblox is grimly consistent: an adult poses as a child on Roblox, builds trust over weeks or months – often using Roblox's virtual currency, "Robux," as a lure or a reward – and then moves the child to Discord, Snapchat or another service, where the grooming escalates to demands for sexually explicit images, to sextortion, and in many cases to in-person meetings, abduction and rape.[12]

Consider just a few of the children whose cases are now pending:[13]

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[7] Kaufman & Bhatia, *supra* note 2.

[8] Complaint ¶ 23, *Doe v. Roblox Corp.*, No. 3:25-cv-05753 (N.D. Cal. July 9, 2025) (citing Roblox's 2023 Annual Report: 21% of daily active users under nine, and another 21% aged nine to twelve).

[9] *Id.* ¶¶ 49-50 (quoting Roblox Chief Safety Officer Matt Kaufman's statements that Roblox works to make the platform safe for "the youngest users" and has a "track record of putting the safety of the youngest and most vulnerable people on our platform first").

[10] *Id.* ¶ 130 (citing NCMEC, CyberTipline Reports by Electronic Service Providers (2019, 2023)).

[11] *See* Letter from Sen. Josh Hawley, Chairman, & Sen. Richard J. Durbin, Ranking Member, S. Comm. on the Judiciary, Subcomm. on Crime & Counterterrorism, to David Baszucki, CEO, Roblox Corp. (Aug. 12, 2026),https://www.hawley.senate.gov/hawley-durbin-launch-investigation-into-child-sexual-abuse-on-roblox/; *U.S. Senate Launches Investigation into Roblox*, PC GAMER (Aug. 14, 2026). Note: these figures count reports, not distinct victims, and some of the increase may reflect changes in Roblox's detection and reporting practices.

[12] *See generally* Complaint, *Doe v. Roblox*, *supra* note 8; Defs. Omnibus Motion to Compel Arbitration *supra* note 4, at 5 (summarizing plaintiffs' allegations). *See also* Hindenburg Research, *Roblox: Inflated Key Metrics for Wall Street and a Pedophile Hellscape for Kids* (Oct. 8, 2024).

[13] These descriptions are drawn from publicly filed complaints and court orders. *See* N.N. ex rel. S.E. v. Roblox Corp., No. 3:26-cv-00360 (N.D. Cal.) (Utah); J.S. ex rel. D.H. v. Roblox Corp., No. 6:25-cv-3254 (W.D.

- A thirteen-year-old girl in Andalusia, Alabama was targeted on Roblox by an adult posing as a peer, who groomed her using Robux, moved her to Discord, and then traveled from another state to meet her. Law enforcement arrived to find him attempting to rape her.[14]
- A ten-year-old girl in California was groomed on Roblox for two days and then moved to Discord, where the predator coerced her into revealing her home address. He drove to her house, kidnapped her, and held her overnight in his car in a hotel parking lot before police found her.[15]
- A ten-year-old girl in Utah was coerced by an adult posing as a teenager into sending sexually explicit images, and when she tried to stop, he threatened to kill her mother. He turned out to be part of a sex-trafficking ring; by the time of his arrest, images of the ten-year-old had already been shared on the dark web.
- A fifteen-year-old autistic boy in Missouri, functioning at a third- or fourth-grade level, was manipulated by a predator posing as a teenage girl into producing sexually explicit images of himself. Law enforcement believes the scheme was designed to obtain and circulate CSAM, but the predator has never been caught.
- A fifteen-year-old boy in Texas was groomed on Roblox and Discord by a predator who, when the boy resisted, threatened to harm himself. The boy took his own life in December 2023.

B. *The Contract*

Every one of these children, Roblox incredibly maintains, entered into a binding contract. Roblox's Terms of Use run nearly 14,000 words – and incorporate by reference a host of additional terms, policies and standards.[16] More than 9,000 words in, the user arrives at Section 11, which provides that any dispute "arising under or relating in any way to" the Terms "or the Services" will be resolved by "binding, individual arbitration" administered by a private provider selected by Roblox.[17] The provision is a catalog of the devices I have described to this Committee in the past, now deployed against children:

- **Secrecy.** "[T]he arbitration proceeding and all records pertaining to it – including … the hearing, the decision, and the arbitration award – will be confidential."[18]

Mo.), *consolidated in* MDL No. 3166 (Missouri); Jane Doe M.S. v. Roblox Corp., No. 5:25-cv-00165 (E.D. Tex.), *consolidated in* MDL No. 3166 (Texas).

[14] Complaint, *Doe v. Roblox*, *supra* note 8, at ¶ 6.

[15] Order Denying Def. Discord Inc.'s Am. Mot. to Compel Arbitration & Stay Litig. at 1-2, *Doe v. Roblox Corp.*, No. 25-civ-05901 (Cal. Super. Ct. San Mateo Cnty. Feb. 20, 2026) [hereinafter *Discord Order*].

[16] Roblox Corp., Terms of Use (eff. Apr. 30, 2026) [hereinafter *Roblox April 2026 Terms*]. The User Terms alone exceed 13,800 words; together with the Creator Terms and appendices that the User Terms state "apply to all Users," the document provided runs to 94 pages. Note that earlier this month, Roblox updated its Terms of Use; *see infra* note 26.

[17] *Id.* § 11 & § 11(b)(i).

[18] *Id.* § 11(b)(iv).

- **Delegation.** The arbitrator – not any court – has "exclusive authority" to decide whether the agreement is "void or voidable."[19] In other words, the platforms seek to move a central legal protection for minors out of court and into the private process the child is trying to avoid.
- **Claim-splitting.** If a court holds that some claim cannot be arbitrated, "that claim must be severed," and the remainder must still go to forced arbitration.[20] This divides claims arising from the same abuse between court and arbitration, increasing expense, delay and the burden on the child and family.
- **Delay and procedural tripwires.** Before filing anything, the user must send written notice to Roblox's legal department by certified mail or Federal Express and complete a "Mandatory Informal Dispute Resolution" process lasting up to sixty days. A claim filed without completing that process "shall be deemed frivolous."[21]
- **A one-year limitations period.** "[A]ny cause of action arising out of or related to the Services must commence within one (1) year after the cause of action arises or it is permanently barred."[22] As anyone who works with survivors of child sexual abuse knows, children often do not disclose abuse for years – and Congress itself has recognized this by eliminating the limitations period for civil cases by child victims of federal sex offenses.[23]
- **An illusory opt-out.** A user may escape forced arbitration only by mailing a signed "Arbitration Opt-Out Notice" to Roblox's legal department within thirty days of first signing up.[24] It is extraordinarily unlikely that any nine-year-old in America has ever done so.

How does a child come to be bound by all this? Until this month, Roblox's answer was a pair of legal fictions. First, its terms required every user to "affirm[] that [they] have reached the legal age of majority."[25] Roblox knew that statement was false for most of its users; the company's own data say so. Second, the terms provided that "[b]y permitting a minor to use the Services, a minor's parent or guardian becomes subject to the Roblox Terms."[26] Roblox's new terms, effective November 1, abandon the first fiction but keep the second: a parent now "must accept these Roblox Terms on [the child's] behalf," and is bound simply "by allowing [the] minor to use the Services" – even as the terms permit accounts for children as young as five.[27] But the children now in court signed up under the old

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[19] *Id.* § 11(b)(vii).

[20] *Id.* § 11(b)(viii).

[21] *Id.* § 11(a)(i)-(v).

[22] *Id.* § 11(c).

[23] 18 U.S.C. § 2255(b) (as amended by the Eliminating Limits to Justice for Child Sex Abuse Victims Act of 2022, Pub. L. No. 117-176).

[24] *Roblox April 2026 Terms*, *supra* note 16, § 11(b)(ix).

[25] *Id.* at preamble.

[26] *Id.*

[27] Roblox Corp., Terms of Use §§ 2.1, 2.1.1 (eff. Nov. 1, 2026) (permitting accounts for "[u]sers ages 5 and older" and providing that a minor's "parent or legal guardian must accept these Roblox Terms on your behalf" and that "by allowing your minor to use the Services, you are also subject to the Roblox Terms").

terms, and Roblox is holding them to every word. In one wrongful-death case, Roblox maintains that a girl who first clicked "I agree" when she was eight years old – and who took her own life when she was thirteen – bound herself and her parents to arbitrate, and "agreed" again, along with her "responsible adult," more than a dozen times, including each time Robux were purchased.[28]

C. *What the Companies Are Arguing in Court*

If there were any doubt about how these clauses are being deployed, the companies' litigation positions should dispel it. Take the case of the ten-year-old California girl described above in Part I.A, who was kidnapped by a man she met on Roblox. When her family sued, Discord moved to compel arbitration, arguing that she had "assented" to Discord's terms "on at least three separate occasions, including after filing suit."[29] Discord told the court that "minors have capacity to contract under California law," and that the child's "conclusory assertion that she categorically could not have understood the Terms because she is a minor is irrelevant."[30] Indeed, Discord argued, "[f]ailing to read and understand the Terms is immaterial," because the Terms themselves instruct a user who does not understand them to "ask your parent or legal guardian for help and ask them to read these terms with you."[31] And when the child – through her guardian – disaffirmed the contract, as the law of every state permits a minor to do, Discord argued that (i) under the delegation clause, only the arbitrator could decide whether her disaffirmance was effective, and (ii) her disaffirmance failed anyway, because she had continued to use Discord.[32]

Pause for a moment on that last argument. Grooming can create dependencies that make it difficult for a child to stop returning to a platform. Continued use in those circumstances should not be mistaken for an informed decision to surrender access to court. The case files are full of parents who removed devices, installed monitoring software, even took the doors off their children's bedrooms – only to discover that their children had found their way back to the predators who had made themselves the children's sole source of affection.[33] The companies' position is that every such return is a fresh act of "agreeing" to a forced arbitration clause.

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[28] *See* Mot. to Compel Arbitration, *Seitz v. Roblox Corp.*, No. 2:25-cv-00166 (E.D. Ky.); *see also* Mike Curly, *Roblox Says Suicide Suit Must Be Arbitrated or Dismissed*, LAW360, Oct. 7, 2026; *Mother Says Teen Unknowingly Waived Right to Sue Roblox, Discord, TikTok Before Death*, FOX19 (Aug. 24, 2026).

[29] Discord Reply, *supra* note 3, at 6, *Doe v. Roblox Corp.*, No. 25-civ-05901 (Cal. Super. Ct. San Mateo Cnty. filed Jan. 27, 2026).

[30] *Id.* at 6.

[31] *Id.* at 10-11.

[32] *Id.* at 11-12. Discord relied on federal appellate decisions holding that a minor's disaffirmance defense must be sent to the arbitrator under a delegation clause. *See K.F.C. v. Snap Inc.*, 29 F.4th 835, 837-8 (7th Cir. 2022). Roblox has made similar arguments. *See, e.g.,* Defendant Roblox Corporation's Memorandum of Law In Support of Motion For Reconsideration, *Mercado v. Roblox Corp.*, 2:25-cv-05925 (E.D. Pa. 2025) ("[T]he question of whether Plaintiff effectively disaffirmed is delegated to the arbitrator.").

[33] *See, e.g.*, Complaint, *Mary Doe ex rel. Jane Doe v. Roblox Corp.*, No. 3:25-cv-08350 (N.D. Cal. Oct. 1, 2025).

Discord also argued that the federal EFAA did not apply because the complaint alleged a kidnapping, but did not specifically allege the sexual contact that followed[34] – a position the trial court rejected as a "hyper-literal, hair-splitting argument."[35] And Discord argued that the EFAA reaches only claims against a predator himself or against the survivor's employer – "the only parties Congress intended the Act to reach."[36] On that view, a platform whose design allegedly delivered a child to her abuser stands in the same shoes as a car manufacturer whose vehicle was driven by a drunk driver.[37]

The California court denied Discord's motion. So did another California court in a separate case.[38] But these were largely pyrrhic victories: both companies immediately appealed and sought to stay proceedings while the appeals are pending.[39] And meanwhile, in the federal MDL, Roblox and Discord have told the court that they will move to compel arbitration against every child, have proposed a "bellwether" process for doing so, and have asked that all discovery be stayed until those motions are resolved – even though two of their co-defendants, Snap and Meta, have told the court that they do not intend to move to compel arbitration at all.[40] And Roblox and Discord have even suggested that if they succeed, "the rationale for a MDL may no longer hold."[41] In other words, the goal is not merely to move each child's case into a private, forced forum; it is to dismantle the coordinated proceeding through which these families are able to share information and hold the platforms to account.

Nor are Roblox and Discord outliers. Courts have compelled arbitration of minors' claims against Facebook, Epic Games and Roblox in other contexts,[42] and after one such ruling against Roblox in February 2026, a defense-side law firm circulated an alert titled, "Recent Decision Provides a Roadmap to Compel Arbitration of Claims Asserted by Minors."[43] The roadmap is now in use.

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[34] *Discord Reply*, *supra* note 3, at 13.

[35] *Discord Order*, *supra* note 15, at 4.

[36] *Discord Reply*, *supra* note 3, at 6.

[37] *Id.* at 13 ("If a plaintiff sued an automobile manufacturer after a drunk driver injured her, the existence of drunk driving in the factual background would not create a 'drunk driving dispute' between the plaintiff and the manufacturer.").

[38] *Discord Order*, *supra* note 15; Order, *Doe v. Roblox Corp.*, No. 25-civ-01193 (Cal. Super. Ct. San Mateo Cnty. Nov. 13, 2025).

[39] *See Doe v. Discord, Inc.*, Nos. A175211, A175220, A175379 (Cal. Ct. App. 1st Dist.) (appeal from Nov. 13, 2025 order).

[40] Defendant Roblox's Omnibus Motion to Compel Arbitration, *supra* note 4, at 10-11, 15-16; *id.* at 10 n.7 ("Defendants Snap and Meta do not at this time intend to move to compel arbitration.").

[41] *Id.* at 10.

[42] *See, e.g.*, *Whalen v. Facebook, Inc.*, 2022 WL 19934419 (N.D. Cal. Apr. 11, 2022); *Courtright v. Epic Games, Inc.*, 766 F. Supp. 3d 873 (W.D. Mo. 2025); *Garcia v. Roblox Corp.*, 2:25-cv-03476-WLH-AJR, 2026 WL 413636 (C.D. Cal. Feb. 11, 2026).

[43] Zachary Mossburg & Richard Tilghman IV, *Recent Decision Provides Roadmap to Compel Arbitration of Claims Asserted by Minors*, VEDDER (Feb. 24, 2026), https://www.vedder.com/insights-events/recent-decision-provides-roadmap-to-compel-arbitration-of-claims-asserted-by-minors/.

PART II
WHY FORCED ARBITRATION IS UNIQUELY HARMFUL HERE

A. *Delay is the Strategy*

Even when children and their parents win the forced arbitration fight, they lose time – and time is the one thing these families cannot get back. Under the FAA, a company whose motion to compel arbitration is denied may appeal immediately, as of right.[44] And in 2023, the Supreme Court held in *Coinbase, Inc. v. Bielski* that such an appeal automatically stays all proceedings in the district court – no showing of likely success or irreparable harm required.[45] Roblox and Discord have already flagged *Coinbase* in the MDL.[46] The upshot is that a company can freeze a child's case for a year or more simply by filing a motion to compel arbitration, losing it, and filing a notice of appeal.

For a child survivor, delay is not a neutral inconvenience. These children are in intensive therapy, inpatient psychiatric care, outpatient programs; some have attempted suicide. Every month a case is frozen is a month in which the child cannot obtain discovery, move toward resolution or be told that the system has heard her. And for cases in which the predator is never caught – and there are many – the civil case may be the only accountability these families will ever see.

B. *Concealing Misconduct & Abuse Only Leads to More Misconduct & Abuse*

I have testified before that forced arbitration keeps corporate wrongdoing secret, and that concealing misconduct and abuse only leads to more misconduct and abuse.[47] Nowhere is that truer than here. The central factual questions in the Roblox litigation are questions the public urgently needs answered: What did these companies know about predators on their platforms, and when? Why, as the victims allege, did Roblox for years allow any adult to message any child in the same game? What did internal safety teams recommend, and why were those recommendations rejected? How did the platforms weigh child safety against engagement and growth metrics?[48]

In public litigation, those questions are answered through discovery, motions, and trial – on a public record available to parents, state legislators and attorneys general, regulators and this body. Court proceedings can produce a public record of corporate conduct while protecting children's identities and sensitive records. Arbitration generally lacks that public record. Roblox's clause makes "all records" of the forced arbitration confidential, including "any documents prepared or produced" in it.[49] So every internal document that one child's lawyers pry loose stays in that child's file. The next

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[44] 9 U.S.C. § 16(a)(1)(B).

[45] *Coinbase, Inc. v. Bielski*, 599 U.S. 736, 740-41 (2023).

[46] Defendant Roblox's Omnibus Motion to Compel Arbitration, *supra* note 4.

[47] Testimony of Myriam Gilles Before the S. Comm. on the Judiciary, *Small Print, Big Impact: Examining the Effects of Forced Arbitration* (Apr. 9, 2024), Part II(i).

[48] *See generally* Complaint, *Doe*, No. 4:25-cv-05753; Hindenburg Research, *supra* note 12.

[49] *Roblox April 2026 Terms*, *supra* note 16, § 11(b)(iv).

family starts from zero. And the parent deciding tonight whether to let her eight-year-old download Roblox knows nothing at all.

This is not speculation. Congress enacted the EFAA precisely because it found that forced arbitration "prevent[s] future victims from being warned about dangerous companies and individuals."[50] The same logic applies with even greater force when the victims are children and the dangerous product is one their parents are being told is safe. Roblox has publicly announced a series of safety changes – age checks to access chat, restrictions on messaging for younger users – against a backdrop of public reporting, public litigation and public pressure.[51] That is the pressure that accountability brings to bear. Secret arbitration is designed to prevent precisely this sort of reckoning and reform.

C. *Children Cannot Meaningfully Consent – and the Law Has Always Known It*

The common law has long recognized that children lack the judgment and experience to bind themselves to contracts, which is why the law generally permits minors to disaffirm their own contracts, subject to exceptions.[52] Congress has embraced the same principle in the online context: the Children's Online Privacy Protection Act rests on the recognition that children under thirteen cannot meaningfully consent to the collection of their personal information without verifiable parental consent.[53] It would be strange indeed if a child who cannot consent to the collection of her email address could, by the same tap of a button, waive her or her parents' constitutional right to a jury trial over her own rape.

Yet that is precisely the result the current regime produces. Because of the Supreme Court's expansive reading of the FAA, states that have tried to protect children from these clauses face a serious risk of preemption.[54] And because of the Court's delegation decisions, even the question of whether a child's disaffirmance is effective may be taken away from courts and handed to an arbitrator.[55]

D. *The Data on Forced Arbitration Apply with Special Force*

The general evidence on forced arbitration, which I have summarized for this Committee before, is sobering: once forced into individual arbitration, most victims and survivors simply abandon their cases, and the few who decide to proceed face a forum structurally tilted toward repeat-player

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[50] H.R. REP. NO. 117-234, at 3-4 (2022).

[51] *See* Kaufman & Bhatia, *supra* note 2 (describing age-check requirement to chat introduced January 2026).

[52] *See, e.g.*, RESTATEMENT (SECOND) OF CONTRACTS § 14 (1981); CAL. FAM. CODE § 6710.

[53] 15 U.S.C. §§ 6501-6506; *see also* Complaint, *Doe*, No. 4:25-cv-05753, ¶ 116.

[54] *See AT&T Mobility LLC v. Concepcion*, 563 U.S. 333 (2011); *Kindred Nursing Ctrs. Ltd. P'ship v. Clark*, 581 U.S. 246 (2017).

[55] *Rent-A-Center, W., Inc. v. Jackson*, 561 U.S. 63 (2010); *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 586 U.S. 63 (2019).

corporate defendants that typically have far greater wealth and power.[56] Each of those dynamics is magnified here. A child cannot file an arbitration demand. A traumatized family is far less likely than a commercial counterparty to navigate a certified-mail notice requirement, a sixty-day informal dispute process, and a one-year contractual limitations period. And a company that faces hundreds of nearly identical claims – each involving the same platform design choices – is the paradigmatic repeat player. Roblox's clause even anticipates this, providing that if five or more claims are filed by coordinated counsel, a special "mass arbitration" framework will apply.[57] Companies imposing forced arbitration never intended these provisions to be used for claims like these; they intended them to make cases like these go away.[58]

PART III
THE EFAA IS CRITICAL – BUT NOT SUFFICIENT

In 2022, Congress enacted the EFAA with overwhelming bipartisan support, amending the FAA to give survivors of sexual assault and sexual harassment the right to choose whether to bring their cases in court or be bound by their forced arbitration clauses.[59] Members of this Committee, on both sides of the aisle, were instrumental in that achievement. The EFAA is the central reason the two California courts were able to deny Roblox's and Discord's motions – and I commend Senators Durbin, Blumenthal and Gillibrand for filing an amicus brief explaining to the California Court of Appeal that the statute was intended to reach exactly these cases.[60]

But the early litigation reveals that while the EFAA provides a powerful basis for keeping these cases in court, its protection may not extend to every kind of harm children may suffer. There are at least four gaps.

First, the EFAA may not clearly reach sexual exploitation that occurs entirely online. The EFAA's definition of sexual assault incorporates federal definitions of sexual acts and contact, while also referring to similar Tribal and State law; the Act separately reaches qualifying sexual harassment disputes.[61] Whether those avenues protect a child whose abuse consists of online coercion, solicitation, sextortion, or production of criminal images without a completed physical assault remains uncertain and may depend on applicable law. Congress should remove that uncertainty.

Many – indeed, most – of the children in the Roblox cases were never physically touched by their abusers. They were groomed, sexually solicited, coerced into producing images and videos of

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[56] *See* Gilles 2024 Testimony, *supra* note 47, Part I (collecting studies); CONSUMER FIN. PROT. BUREAU, ARBITRATION STUDY: REPORT TO CONGRESS (2015).

[57] *Roblox April 2026 Terms*, *supra* note 16, § 11(b)(iv).

[58] *See* Gilles, *Arbitration's Unraveling*, *supra* note 1.

[59] Pub. L. No. 117-90, 136 Stat. 26 (2022), codified at 9 U.S.C. §§ 401-402.

[60] Amicus Curiae Br. of U.S. Senators in Supp. of Pl.-Resp't, *Doe v. Discord, Inc.*, Nos. A175211, A175220, A175379 (Cal. Ct. App. 1st Dist. Aug. 28, 2026).

[61] 9 U.S.C. § 401(3)-(4); 18 U.S.C. § 2246(2)-(3).

themselves, and sextorted with threats against themselves and their families. The companies contend that conduct short of a completed physical assault falls outside the statute,[62] and whether a child coerced over a webcam into abusing herself has suffered a "sexual act" or "sexual contact" within the meaning of § 2246 is, at best, a contested legal question. No child or family should have to litigate that question through two layers of appellate court review. The cruel irony is that the children at the center of today's hearing – victims and survivors of online CSAM production and sextortion – are the ones most likely to fall through this gap.

Second, courts are divided on whether the EFAA reaches claims against platforms whose design enabled the abuse. Some courts have read the statute, as written, to cover any case that "relates to" a sexual assault dispute, without regard to who committed the assault or where.[63] Others have confined it to claims against employers or businesses where the assault occurred, holding it inapplicable to claims against a telephone carrier that disclosed a user's number to a stalker and a dating app used by a predator.[64] In making every attempt to enforce these forced arbitration clauses against survivors and families, Roblox and Discord have placed these competing lines of authority front and center in the MDL.[65]

Third, the EFAA does not clearly address claims that do not involve sexual misconduct at all – such as the claims of children groomed into self-harm or violent extremism on these platforms, or the wrongful-death claims of parents whose children took their own lives.[66] Roblox has moved to compel arbitration in at least one such case.[67] Consider where this perverse argument leaves children and families: if a child is sexually assaulted in a way that meets federal definitions of sexual assault, her case may ultimately escape forced arbitration; but if she is groomed into self-harm, or driven to take her own life, her family's case may not.

Fourth, the companies are already testing the EFAA's edges. Discord has argued that because the ten-year-old California victim created a new account and clicked through the terms *after* filing suit, the agreement was no longer a "pre-dispute" agreement and the EFAA did not apply.[68]

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[62] *See* Roblox's Omnibus Motion to Compel Arbitration, *supra* note 4, at pp. 38-39 (raising physical contact objection).

[63] *See Polen v. API Grp. Life Safety USA, LLC*, 2025 WL 3251349, at *4 (D. Or. Nov. 21, 2025) (definition "contains no limitation regarding who committed the sexual assault, where it was committed, or when it was committed"); *Delirium TV, LLC v. Dang*, 714 S.W.3d 640, 649 (Tex. App. 2024); *Childress v. Moore*, 2026 WL 1618598, at *5 (M.D. Fla. June 5, 2026); *C.N. v. Sigma Delta Tau Society,* 2026 N.Y. Slip Op. 05405 (2d Dep't Sept. 23, 2026) (rejecting arbitration of a negligence claim against a non-assailant sorority).

[64] *M.D. v. Verizon Commc'ns Inc.*, 2025 WL 2712831, at *2-3 (E.D.N.C. Sept. 23, 2025); *Farnham v. Grindr, LLC*, 2025 WL 3062698, at *2 (M.D. Fla. Nov. 3, 2025).

[65] Roblox's Omnibus Motion to Compel Arbitration, *supra* note 4.

[66] *See, e.g.*, *Seitz*, *supra* note 27; *Jane Doe M.S.*, *supra* note 12.

[67] *See supra* Part I, discussing *Seitz*.

[68] *Discord Reply*, *supra* note 3, at 6, 14. The trial court rejected the argument. *Discord Order*, *supra* note 15, at 9.

Taken seriously, that argument would allow any platform to escape the EFAA simply by requiring users to re-accept its terms – which, of course, every platform already does.

To be clear, none of this is a criticism of the drafters of the EFAA. As I testified in 2024, the early decisional law under that statute has revealed the limits of any effort to carve out a single category of cases from a regime that applies by default to nearly everything.[69] But the gaps identified here are not hypothetical. They are being litigated right now, against children, by two of the largest online platforms in the country. The FAIR Act would close the main gaps by covering consumer disputes involving digital services without making protection depend on the particular form of abuse.

PART IV
ONLY CONGRESS CAN PROTECT CHILDREN & PARENTS FROM FORCED ARBITRATION

Congress is the only body that can act in this space to protect children from forced arbitration. The Supreme Court has expanded the preemptive reach of the Federal Arbitration Act ("FAA") to the point where this nation's most vulnerable citizens are routinely without legal rights for serious violations of federal and state laws. In case after case, slim majorities on the Court have held that it does not matter that individual citizens are unable to vindicate their rights in forced arbitration – i.e., that countless cases will "slip through the legal system," leaving serious corporate misconduct unaddressed.[70] And the Court has made plain that it will continue to "rigorously enforce" all the remedy-stripping terms that private companies insert in their forced arbitration clauses – never mind the consequences – unless the FAA's mandate is "overridden by a contrary congressional command."[71]

Congress previously recognized that it must act – and did – to protect survivors and victims of sexual assault and sexual harassment when it passed the EFAA. And it surely must recognize that it is, once again, the only body that can act to remedy the injustices of forced arbitration against our most vulnerable population: children. I implore Congress to pass the FAIR Act, and any other legislation that directly prevents forcing children and their parents into a secretive process against the family's will.

A. *What Any Legislation Must Do*

Whatever vehicle Congress chooses, the lesson of the Roblox litigation – and of the EFAA's first years – is that the details determine whether a child ever reaches a courtroom. Any legislation that would protect children and families from forced arbitration should do five things:

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[69] Gilles 2024 Testimony, *supra* note 47, Part III (discussing *Johnson v. Everyrealm, Inc.*, 657 F. Supp. 3d 535 (S.D.N.Y. 2023), and the division among courts over whether the EFAA applies to entire cases or individual claims).

[70] *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 351 (2011); *see also Italian Colors*, 570 U.S. at 233-39.

[71] *Id.* at 233 (quoting *CompuCredit*, 565 U.S. at 98).

- **Reach the platform, whatever the harm.** Protection should not turn on whether a predator physically touched a child, or on whether a third party also contributed to the injury. The FAIR Act does this by reaching every consumer dispute between a family and the platform.[72]
- **Disregard a parent's purported "agreement."** A parent who merely permits a child to play should not thereby forfeit the family's rights – and a child's click should not bind her parents.
- **Leave the question to courts.** Whether the statute applies must be decided by a judge, notwithstanding any delegation clause – as both the EFAA and the FAIR Act provide.[73]
- **Keep cases whole.** Protection should attach to the entire case, not claim by claim, so that no child must litigate the same facts in two forums.
- **Reach the children already harmed.** The statute should expressly cover cases pending on, or filed after, enactment, including cases based on earlier conduct and agreements. An explicit rule would prevent families already harmed from being excluded by disputes over when a claim accrued or a dispute arose. The legislation should also specify how it applies when a court has already ordered arbitration. Because such legislation governs only the forum in which claims are heard, applying it to pending cases raises none of the fairness concerns that animate the presumption against retroactivity.[74]
- **Preserve genuinely voluntary post-dispute arbitration.** The statute should also ensure that continued use of a platform, a routine terms update, or setting up a new account cannot be treated as a voluntary agreement to arbitrate. It can do this by requiring a separate, informed agreement specifically addressing any existing disputes. For minors, the statute should specify who can give that consent and whether judicial approval is required.

B. *The Arbitration Fix and the STOP CSAM Act*

Finally, I want to emphasize the relationship between the FAIR Act, and other bills seeking to protect children from forced arbitration, and the STOP CSAM Act – sponsored by Chairman Hawley and Ranking Member Durbin – which this Committee advanced unanimously and which would give victims of online child sexual exploitation a civil remedy against platforms that knowingly or recklessly promote, facilitate or host CSAM.[75] I strongly support that remedy. But Congress must ensure that the civil remedies it creates can be pursued in court at the survivor's election. A new right to sue should not leave platforms free to dictate a private forum through standard-form terms. Roblox's and

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[72] Forced Arbitration Injustice Repeal Act of 2025, H.R. 5350, 119th Cong. (2025) (proposed 9 U.S.C. §§ 501(3), 502(a)); *see also* S. 2799, 119th Cong. (2025); H.R. 963, 117th Cong. (as passed by House, Mar. 17, 2022).

[73] 9 U.S.C. § 402(b); H.R. 5350 (proposed 9 U.S.C. § 502(b)(1)).

[74] H.R. 5350, § 4; *cf.* Pub. L. No. 117-90, § 3, 136 Stat. 26, 28 (2022). *See Landgraf v. USI Film Prods.*, 511 U.S. 244, 275 (1994) ("Changes in procedural rules may often be applied in suits arising before their enactment without raising concerns about retroactivity.").

[75] STOP CSAM Act of 2025, S. 1829, 119th Cong. (2025). In July 2026, the bill's sponsors secured its inclusion in the manager's amendment to the Senate's FY2027 NDAA, S. 4784, which the Senate has not yet passed.

Discord's clauses already purport to cover any dispute "arising under or relating in any way to" the services, "regardless of the legal theories involved."[76] The forced arbitration fix is not an add-on to Congress's child-safety agenda; it is the precondition for that agenda to work.

The FAIR Act would empower all Americans to choose how to hold corporate wrongdoers accountable. But the children and families in these cases cannot wait for the broader debate on forced arbitration to conclude. Whether through the FAIR Act or other legislation that protects families, Congress should act now. With public accountability comes greater public awareness and industry reform, both of which are desperately needed when it comes to the online sexual exploitation and abuse of children.

CONCLUSION

Forced arbitration does not accomplish what its proponents claim: it doesn't channel cases into an alternative system that's cheaper or faster. Instead, it was designed to make cases disappear – and with them, the public record of what went wrong and why. In these cases, what is disappearing is the record of how children were found, groomed and exploited on platforms built and marketed towards them. The families in the Roblox litigation should not have to win a prolonged fight over fine print before a court can hear what happened to their children. Congress should ensure that the choice of whether to arbitrate belongs to the family, after the dispute arises -- not to a platform when a child opens an account.

Thank you again for the opportunity to testify. I am happy to answer any of your questions.

[76] *Roblox April 2026 Terms*, *supra* note 15, § 11 & § 11(b)(i).