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Supreme Court Upholds Inclusion of Arbitration Clauses that Preclude Class Actions in Employment Agreements

Yesterday, in *Epic Systems Corp.* v. *Lewis*, a 5-4 majority of the Supreme Court again reaffirmed that the Federal Arbitration Act ("FAA") requires "courts to enforce arbitration agreements according to their terms—including terms providing for individualized proceedings." Justice Gorsuch's majority opinion followed his predecessor Justice Scalia in emphasizing the contractual nature of arbitration, and held that, even if the policy of permitting employers and employees to agree to resolve their disputes in one-on-one arbitration (rather than in collective or class actions) may be debatable, "the law is clear" that such agreements "must be enforced as written."

To begin, the Court ruled that the FAA's savings clause, which allows courts to refuse to enforce arbitration agreements based on generally applicable contract defenses that apply to "any contract," failed to support the argument that class and collective action waivers were illegal. The Court explained that "an argument that a contract is unenforceable *just because it requires bilateral arbitration*" is "one that impermissibly disfavors arbitration." Moreover, the opinion reiterated the "essential insight," outlined by Justice Scalia in *AT&T Mobility*, that "courts may not allow a contract defense to reshape traditional arbitration by mandating classwide arbitration procedures without the parties' consent."

In addition, the Court rejected the argument that the National Labor Relations Act ("NLRA") conflicts with and overrides the FAA. Noting that it had "heard and rejected efforts to conjure conflicts between the [FAA] and other federal statutes" in the past, the Court found no conflict between the FAA and the NLRA. In particular, the Court noted "the absence of any specific statutory discussion of arbitration or class actions" in the NLRA and compared that with its prior holding in *CompuCredit*, in which even another federal statute's references to a "right to sue" and "class action[s]" was still insufficient to displace the FAA.

Finally, the Court denied "*Chevron* deference" to a 2012 interpretation of the National Labor Relations Board ("NLRB"). In so holding, the Court stressed that "on no account might we agree that Congress implicitly delegated to an agency [here, the NLRB] authority to address the meaning of a second statute [here, the FAA] it does not administer."

In dissent, Justice Ginsburg urged "Congressional correction of the Court's elevation of the FAA over workers' rights to act in concert." However, absent legislative action, the decision in *Epic Systems* indicates that, despite Justice Scalia's passing, a majority of the current Supreme Court will continue to uphold arbitration agreements—and waivers of class actions therein—as drafted.

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