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U.S. SUPREME COURT UPHOLDS EMPLOYMENT AGREEMENTS FORBIDDING CLASS ACTIONS AND REQUIRING INDIVIDUAL ARBITRATION OF EMPLOYMENT DISPUTES

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In a 5-4 decision, a sharply divided U.S. Supreme Court today upheld the enforceability of widely used but controversial clauses in employment agreements, which require employees to forgo the possibility of proceeding collectively, and oblige them to resolve any disputes with their employers through individual arbitration.

In the case of *Epic Systems Corp. v. Lewis*, which was consolidated with *Ernst & Young LLP v. Morris*, and *National Labor Relations Board v. Murphy Oil USA*, the Court had to consider the issue of whether an agreement that requires an employer and an employee to resolve employment related disputes through individual arbitration, and waive class and collective proceedings, is enforceable under the Federal Arbitration Act of 1925 (FAA), notwithstanding the provisions of the National Labor Relations Act of 1935 (NLRB).

When weighing the two long-established laws, the Court had to resolve competing and apparently irreconcilable imperatives: while the FAA provides that arbitration agreements shall be "valid, irrevocable, and enforceable", the NLRA provides that employees are entitled to engage in "concerted activities" for "mutual aid or protection".

The Court's opinion reads the FAA as mandating that arbitration agreements should be enforced unless there is a clear contrary command from Congress, which was absent in this case.

Writing for the majority, Justice Neil Gorsuch, joined by Chief Justice Roberts, and Justices Kennedy, Thomas, and Alito observed that in enacting the FAA, Congress instructed courts to enforce agreements to arbitrate and "specifically directed them to respect and enforce the parties' chosen arbitration procedures."

The majority rejected the employees' argument that the NLRB trumps the FAA, noting that the NLRA "does not even hint at a wish to displace the Arbitration Act" and concluded that "[t]he policy may be debatable but the law is clear: Congress has instructed that arbitration agreements like those before us must be enforced as written."

In an impassioned and lengthy dissent, Justice Ruth Ginsberg, joined by Justices Breyer, Sotomayor, and Kagan, described the majority opinion as "egregiously wrong" and characterized today's ruling as inevitably leading to "the underenforcement of federal and state statutes designed to advance the well-being of vulnerable workers," because expense and the fear of retaliation will deter potential claimants from seeking individual redress.

The decision is in line with the Court's jurisprudence interpreting the FAA in recent years, including cases such as 2011's *AT&T Mobility v. Concepcion*, in which the Court upheld consumer contracts requiring individual arbitration of disputes.

While, for critics, the Court's decision is an unfortunate erosion of New Deal era labor protections, employers will almost certainly welcome today's decision as a major victory.

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