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U.S. Supreme Court Undermines Workers' Rights

Today, the Supreme Court ruled in a 5-4 opinion that employers may use arbitration clauses to stop workers from joining forces to challenge workplace violations, at least in certain contexts. Such clauses—which may be buried in employment paperwork or a condition for someone to be hired—may now prohibit employees from working together to dispute unjust practices in the workplace, such as wage and hour violations.

The Supreme Court's decision today undermines important federal protections for employees by empowering corporations to prevent them from working together to remedy wage and hour violations. However, as Justice Ginsburg noted in her dissent, the majority opinion does not address whether employers may use such individual arbitration clauses to undermine discrimination claims. The NAACP Legal Defense and Educational Fund (LDF), The Impact Fund and Cohen Milstein filed an [amicus brief](#) in August 2017 focusing on that point. The brief stressed that collective action is essential for employees to identify and remedy workplace discrimination, for example when the nature of discrimination is clear only by looking at an employer's general pattern or practice with respect to a particular group of employees. Citing LDF's brief, Justice Ginsburg explained: "I do not read the Court's opinion to place in jeopardy discrimination complaints . . . that call for proof on a groupwide basis, which some courts have concluded cannot be maintained by solo complainants."

"We agree with Justice Ginsburg that the decision does not apply to discrimination claims because, as Justice Ginsburg noted, Congress has made clear that federal anti-discrimination laws are designed to 'eliminate, root and branch, class-based employment discrimination,'" said Raymond Audain, Senior Counsel at LDF and counsel of record on the brief.

Nonetheless, the Court's decision will seriously exacerbate the vulnerabilities workers face across the United States. According to a [recent study](#), more than 60 million American workers are subject to mandatory arbitration clauses, with nearly 25 million workers waiving their right to bring a collective action.

More than 30 nonprofits from across the country who use litigation to fight discrimination against racial minorities, women, seniors, people with disabilities, and LGBTQ communities joined LDF, The Impact Fund and Cohen Milstein in the amicus brief in *Epic Systems v. Lewis*, 16-285; *Ernst & Young v. Morris*, 16-300; and *NLRB v. Murphy Oil*, 16-307.

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Founded in 1940, the NAACP Legal Defense and Educational Fund, Inc. (LDF) is the nation's first civil and human rights law organization and has been completely separate from the National Association for the Advancement of Colored People (NAACP) since 1957—although LDF was originally founded by the NAACP and shares its commitment to equal rights. LDF's Thurgood Marshall Institute is a multi-disciplinary and collaborative hub within LDF that launches targeted campaigns and undertakes innovative research to shape the civil rights narrative. In media attributions, please refer to us as the NAACP Legal Defense Fund or LDF.