Press Release

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WLF Asks Supreme Court to Enforce Employment-Related Arbitration Agreements

(Epic Systems Corp. v. Lewis)

> **"Arbitration depends on informal procedures for its success. That informality is destroyed if the arbitration is transformed into a class action, as NLRB demands for all employment-related disputes. Contrary to NLRB, federal law requires courts to enforce arbitration agreements as written."**
> **—Richard Samp, WLF Chief Counsel**

WASHINGTON, DC—Washington Legal Foundation filed an *amicus* brief Friday asking the United States Supreme Court to uphold the enforceability of arbitration agreements in employment-related disputes. The National Labor Relations Board (NLRB) has concluded that federal labor law prevents employers from seeking to enforce such agreements if the employee would prefer to file in court on behalf of an entire class of employees.

WLF's brief argues that the Federal Arbitration Act (FAA) establishes a federal policy of enforcing agreements to resolve disputes through one-on-one arbitration and that labor law does not override that policy. The Supreme Court is hearing three consolidated cases: *Epic Systems Corp. v. Lewis* and *Ernst & Young LLP v. Morris* (in which appeals courts held that labor law trumps the FAA) and *NLRB v. Murphy Oil* (in which an appeals court upheld enforcement of the arbitration agreements).

The National Labor Relations Act (NLRA) states that employees have a right to engage in "concerted activities" for their mutual benefit, such as organizing unions and collectively bargaining with their employer. WLF's brief argues that the "concerted activities" right does not include the right to file class-action lawsuits; indeed, the NLRA does not even mention litigation. The Supreme Court has held that the FAA creates a strong presumption that arbitration agreements should be enforced. To overcome that presumption, WLF argues, the party opposing arbitration must show that some other federal law contains an express contrary command, and that NLRB and its supporters have failed to point to any such command in the NLRA.

WLF's brief charges that the refusal of some appeals courts to enforce arbitration agreements in the employment context are the latest manifestations of judicial hostility to arbitration agreements. Arbitration agreements are meant to resolve disputes efficiently, predictably, and cost-effectively. WLF argues that requiring arbitrations to be conducted on a class-wide basis undermines that purpose.

Celebrating its 40th year, WLF is America's premier public-interest law firm and policy center advocating for free-market principles, limited government, individual liberty, and the rule of law.

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