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LEGISLATIVE ACTION ALERT

Supreme Court sides with employers in class action arbitration cases

By Ariane de Vogue and Maegan Vazquez, CNN - May 21, 2018

Washington (CNN) In a victory for employers and the Trump administration, the Supreme Court on Monday said that employers could block employees from banding together as a class to fight legal disputes in employment arbitration agreements.

Justice Neil Gorsuch delivered the opinion for the 5-4 majority, his first major opinion since joining the court last spring and a demonstration of how the Senate Republicans' move to keep liberal nominee Merrick Garland from being confirmed in 2016 has helped cement a conservative court. "This is the Justice Gorsuch that I think most everyone expected," said Steve Vladeck, CNN contributor and professor of law at the University of Texas School of Law. "Not only is he endorsing the conservative justices' controversial approach to arbitration clauses, but he's taking it an important step further by extending that reasoning to employment agreements, as well." Justice Ruth Bader Ginsburg took the rare step of reading her dissent from the bench, calling the majority opinion in Epic Systems Corp. v. Lewis "egregiously wrong."

"The court today holds enforceable these arm-twisted, take-it-or-leave-it contracts -- including the provisions requiring employees to litigate wage and hours claims only one-by-one. Federal labor law does not countenance such isolation of In the majority opinion, Gorsuch maintained the "decision does nothing to override" what Congress has done. "Congress has instructed that arbitration agreements like those before us must be enforced as written," he said. As the dissent recognizes, the legislative policy embodied in the (National Labor Relations Act) is aimed at 'safeguard[ing], first and foremost, workers' rights to join unions and to engage in collective bargaining.'"

"Those rights stand every bit as strong today as they did yesterday," he added. Gorusch, responding to Ginsburg's claim that the court's decision would resurrect so-called "yellow dog" contracts which barred an employee from joining a union, said that "like most apocalyptic warnings, this one proves a false alarm." The case pitted two federal laws against each other. One, the National Labor Relations Act (NLRA), gives employees the right to self organization to "engage in concerted activities for the purpose of mutual aid or protection" the other, the 1925 Federal Arbitration Act (FAA) allows employers to "settle by arbitration."

Lawyers for employers, who have long backed arbitration as a means of resolving disputes, argued that class action waivers are permissible under the 1925 law. They say the NLRA does not contain a congressional command precluding enforcement of the waivers. The Trump administration supported the employers in the case, a switch from the Obama administration's position. "Today's ruling is a major blow for the rights of employees, who almost never have enough of an interest, by themselves, to take the time and resources to litigate claims against their employers -- especially claims concerning underpayment of wages," Vladeck said.