US Supreme Court threatens to limit class actions and access to jury trials

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The day after ruling that a police officer who shot and killed a motorist had "qualified immunity," which denied the survivors access to a jury trial, the Supreme Court heard oral arguments in a case that threatens to overturn almost seven decades of law by throwing out a jury verdict against a large corporation found to have denied workers legally required wages.

This week's hearing follows on the heels of a similar case last month during which other corporate lawyers argued that lower state courts cannot use rules of contract interpretation to protect consumers from unfair arbitration provisions that strip away the right to a jury for claims based on business overcharges.

Both cases are class actions, which have the potential to generate substantial fees for the law firms that bring them, but are the only means under the Federal Rules of Civil Procedure for groups of workers or consumers to aggregate their individually small claims into a sufficiently large amount to justify the huge expense of prosecuting civil actions against miscreant businesses.

Four years ago, the Supreme Court denied around one million female Wal-Mart workers their right to pursue a class action for alleged gender-based job discrimination, rejecting previously accepted statistically based methods for proving discriminatory patterns within a large workforce. Instead, Justice Antonin Scalia wrote, with his customary contempt for the working class that the female Wal-Mart workers had "little in common but their sex and this lawsuit."

Now the Supreme Court is considering whether to prohibit class actions based on statistical evidence of systemic wage theft. In *Tyson Foods v. Bouaphakeo*, the plaintiffs, a class composed of meat workers at an Iowa slaughterhouse, sued Tyson Foods, which has 115,000 workers and generates about $35 billion a year in sales, for unpaid time spent putting on and taking off special protective and sanitary clothing and gear.

The plaintiffs proved that workers were not allowed to punch the time clocks until they were dressed, and had to punch them before they undressed, a violation of federal labor law. Without records for how long individuals actually took to change, the jury had to rely on statistical estimates and averaging. After a full trial, the jury returned a $5.8 million verdict against Tyson Foods, roughly half the amount the plaintiffs requested.

The Supreme Court accepted the case to rule on whether differences among individual workers—some wore more special gear than others, some could change faster than others, and at trial it turned out that some wore none at all—invalidated the class-action process that led to the jury's verdict.

Because workers invariably suffer different losses depending on scheduling, work assignments and other factors, most commentators noted the obvious when the Supreme Court accepted the case: the justices were looking for more ways to limit federal class-actions as a mechanism to holding corporations responsible for wage theft.

The justices' comments during the argument gave little indication how the case would be resolved. A decision is expected to be filed sometime during the next several months.

In last month's mandatory arbitration case, *DIRECTV, Inc. v. Imburgia*, a lower California state court interpreted convoluted fine print in a consumer contract for television subscription services to invalidate DIRECTV's mandatory arbitration clause, thus allowing ripped-off customers to band together and present their case to a jury.

California state law has long protected people from mandatory arbitration clauses under the theory that consumers generally do not know they are surrendering

their right to a jury trial when purchasing goods or services.

In *AT&T Mobility v. Concepcion*, decided only a few months after the Wal-Mart class action, the Supreme Court ruled that a federal law allowing for businesses to impose mandatory arbitration preempts state laws protecting the right to a jury trial. So much for the right-wing doctrine of "state's rights."

DIRECTV is a subsidiary of AT&T, and has equity of almost $7 billion. The class action alleged that DIRECTV improperly assessed "termination fees" on tens of thousands of its customers. The case turns on whether lower courts can use traditional principles governing contract interpretation—traditionally within the purview of state rather than federal law—in a manner that, in Justice Samuel Alito's words, demonstrates "hostility to arbitration."

Again, a decision is expected within the next few months.

The fundamental democratic right to a jury trial in civil cases extends at least as far back as the reign of King Henry II (1154-1189). Attempts by the British crown to deny American colonists juries, particularly in civil claims under the hated British Navigation Acts, was a trigger of the American Revolution, listed among the grievances in the Declaration of Independence.

The right to a civil jury is spelled out in the Seventh Amendment to the US Constitution, a less commonly cited provision than some others, but still a cornerstone of the founders' conception of democratic rights.

Limitations on class actions and expansion of mandatory arbitration clauses are legal forms in which courthouse doors are being slammed in the face of workers and consumers who try to mount legal challenges against the rapaciousness and lawlessness of corporations.