US Supreme Court eliminates workers' right to collectively sue corporations

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The United States Supreme Court's 5–4 decision in *Epic Systems Corp. v. Lewis* eliminates the right of tens of millions of workers to bring class action lawsuits against their employers. With the bang of a gavel, the Supreme Court has effectively stripped workers of their legal rights and guaranteed the flow of even greater fortunes to the corporate and financial oligarchy, which controls America's legal and political system.

The majority opinion, written by Trump nominee Neil Gorsuch, upholds the legality of mandatory arbitration clauses that bar workers from filing lawsuits. This locks the courtroom doors for coal miners suffering from black lung, construction workers with mesothelioma, fast food workers cheated of overtime pay, farmworkers denied the minimum wage, waitresses sexually harassed by their bosses, and countless other workers suffering forms of workplace abuse and exploitation. It announces "open season" for intensified corporate exploitation at tens of thousands of workplaces across the country.

The decision revives the legal doctrine of the Gilded Age elaborated by the Supreme Court's 1905 decision *Lochner v. New York*, which overturned a state law limiting the workday to 10 hours on the absurd grounds that the regulations violated workers' "right" to work as long as they want. In reality, that ruling safeguarded the power of corporations to exploit workers without recourse.

Today's Supreme Court followed a similar logic, justifying its decision to eliminate workers' right to sue with the lie that workers are always free to negotiate better contracts with their corporate bosses.

According to the Economic Policy Institute, roughly 60 million workers—56 percent of all private-sector nonunion workers—now no longer have access to the courts. Arbitration is a sham process set up by the corporations to deprive workers of even the minimal protections afforded by the courts and to spare businesses the cost of litigation.

Arbitration forces workers to take their grievances to a private tribunal. Sixty percent of all arbitrators are lawyers who formerly represented corporations. Arbitrators develop corrupt relationships with corporate lawyers who regularly appear before their tribunals and almost always rule against workers. Due process is severely limited as the rules of the arbitration are written by the corporations themselves.

According to a 2015 study, workers prevail in only 20 percent of all claims brought to arbitration and win an average of just $23,548. By comparison, workers win 57 percent of cases in state court, with an average compensation of $328,008.

The majority opinion ruled that forcing workers to raise claims in this setting does not violate the National Labor Relations Act of 1935, even though Section 7 of the act guarantees, alongside collective bargaining and the right to strike, the right "to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection."

In her dissent, Justice Ruth Bader Ginsburg noted with concern that the ruling would bring the US back to the *Lochner* era. "The end of the 19th century and beginning of the 20th was a tumultuous era in the history of our nation's labor relations," she wrote.

The National Labor Relations Act, also known as the "Wagner Act" for its architect, New York Senator Robert Wagner, was passed in 1935 in an effort by the Democratic Party and the Roosevelt administration to control the Depression-era strike wave and direct it away from the prospect of socialist revolution and into a legal framework that the government and corporations could regulate and control. Section 7, the

hallmark of the bill, prevented employers from forcing workers—ostensibly under the "freedom of contract"—to sign "yellow dog contracts," which were pledges that they would not join a union.

The trade unions are terrified that the Supreme Court decision so nakedly exposes the courts as instruments of capitalist rule that workers will be encouraged to fight in defense of their interests outside of the legal system. A "friend of the court" supplemental brief was filed before the ruling by the AFL-CIO, the American Federation of Teachers, the National Education Association, the United Auto Workers and other unions.

In it, the unions jointly begged the Supreme Court:

"[I]f employers are allowed to impose contract terms that prohibit workers from challenging unlawful employer conduct except on an individual, one-on-one basis, Congress's statutory goals of minimizing industrial strife and maintaining labor peace will be set back more than a century."

The union brief continues by arguing that the New Deal-era labor laws like the Wagner Act were passed "not to further union organizing or collective bargaining for their own sake, but as instruments to further the broader statutory goal of reducing industrial strife and achieving economic stability."

Furthermore, the trade unions state, "When an employer engages in wrongful discrimination or violates other workplace statutory obligations, it is far less disruptive to allow the injured workers to pursue concerted legal action before a neutral decisionmaker than to force the workers to challenge that unlawful conduct through less effective and potentially more contentious form of group protest, such as strikes, that pit workers and employers directly against each other without the intermediary of a neutral pledged to apply the law fairly and impartially."

Such statements expose the chief role of unions as police arms of the corporations that work to prevent the working class from advancing their interests and threatening the profits of the corporations through "group protests, such as strikes." Contrary to what the unions' lawyers write, the methods of the class struggle are the only effective way to challenge the dictatorship of the union-corporate alliance.

This term, the Supreme Court will also rule on another case, *Janus v. AFSCME*, related to whether unions can require public workers to pay an "agency" or "union security" fee to fund the union even if they opt out of joining. During oral arguments before the Supreme Court in February, American Federation of State, County and Municipal Employees (AFSCME) lawyer David Frederick argued, "The key thing that has been bargained for in this contract for agency fees is a limitation on striking. And that is true in many collective bargaining agreements."

Fredrick continued, "Union security is the tradeoff for no strikes." If the court makes the decision to overturn prior precedent that allows states to mandate agency fees, he warned, "You can raise an untold specter of labor unrest throughout the country."

These are the statements of a labor police force. The union lawyers have good reason to fear the revolutionary implications of dismantling the long-established structure to suppress the class struggle and, with its most recent ruling, the exposure of the Supreme Court as a brazen instrument of class war.