

**Epic Systems Corp. v. Lewis**  
**584 U.S. \_\_\_ (2018)**

JUSTICE GORSUCH delivered the opinion of the Court.

Should employees and employers be allowed to agree that any disputes between them will be resolved through one-on-one arbitration? Or should employees always be permitted to bring their claims in class or collective actions, no matter what they agreed with their employers?

As a matter of policy these questions are surely debatable. But as a matter of law the answer is clear. In the Federal Arbitration Act, Congress has instructed federal courts to enforce arbitration agreements according to their terms—including terms providing for individualized proceedings. Nor can we agree with the employees’ suggestion that the National Labor Relations Act (NLRA) offers a conflicting command. It is this Court’s duty to interpret Congress’s statutes as a harmonious whole rather than at war with one another. And abiding that duty here leads to an unmistakable conclusion. The NLRA secures to employees rights to organize unions and bargain collectively, but it says nothing about how judges and arbitrators must try legal disputes that leave the workplace and enter the courtroom or arbitral forum. This Court has never read a right to class actions into the NLRA—and for three quarters of a century neither did the National Labor Relations Board. Far from conflicting, the Arbitration Act and the NLRA have long enjoyed separate spheres of influence and neither permits this Court to declare the parties’ agreements unlawful.

**I**

The three cases before us differ in detail but not in substance. Take *Ernst & Young LLP v. Morris*. There Ernst & Young and one of its junior accountants, Stephen Morris, entered into an agreement providing that they would arbitrate any disputes that might arise between them. The agreement stated that the employee could choose the arbitration provider and that the arbitrator could “grant any relief that could be granted by . . . a court” in the relevant jurisdiction. The agreement also specified individualized arbitration, with claims “pertaining to different [e]mployees [to] be heard in separate proceedings.”

After his employment ended, and despite having agreed to arbitrate claims against the firm, Mr. Morris sued Ernst & Young in federal court. He alleged that the firm had misclassified its junior accountants as professional employees and violated the federal Fair Labor Standards Act (FLSA) and California law by paying them salaries without overtime pay. Although the arbitration agreement provided for individualized proceedings, Mr. Morris sought to litigate the federal claim on behalf of a nationwide class under the FLSA’s collective action provision, [29 U. S. C. §216\(b\)](#). He sought to pursue the state law claim as a class action under [Federal Rule of Civil Procedure 23](#).

Ernst & Young replied with a motion to compel arbitration. The district court granted the request, but the Ninth Circuit reversed this judgment. The Ninth Circuit recognized that the Arbitration Act generally requires courts to enforce arbitration agreements as written. But the court reasoned that the statute’s “saving clause,” see [9 U. S. C. §2](#), removes this obligation if an arbitration agreement violates some other federal law. And the court concluded that an agreement requiring individualized arbitration proceedings violates the NLRA by barring employees from engaging in the “concerted activit[y],” [29 U. S. C. §157](#), of pursuing claims as a class or collective action.

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Although the Arbitration Act and the NLRA have long coexisted—they date from 1925 and 1935, respectively—the suggestion they might conflict is something quite new. Until a couple of years ago, courts more or less agreed that arbitration agreements like those before us must be enforced according to their terms. ...

## II

We begin with the Arbitration Act and the question of its saving clause.

Congress adopted the Arbitration Act in 1925 in response to a perception that courts were unduly hostile to arbitration. No doubt there was much to that perception. Before 1925, English and American common law courts routinely refused to enforce agreements to arbitrate disputes. But in Congress’s judgment arbitration had more to offer than courts recognized—not least the promise of quicker, more informal, and often cheaper resolutions for everyone involved. *Id.*, at 511. So Congress directed courts to abandon their hostility and instead treat arbitration agreements as “valid, irrevocable, and enforceable.” [9 U. S. C. §2](#). The Act, this Court has said, establishes “a liberal federal policy favoring arbitration agreements.”

Not only did Congress require courts to respect and enforce agreements to arbitrate; it also specifically directed them to respect and enforce the parties’ chosen arbitration procedures.

On first blush, these emphatic directions would seem to resolve any argument under the Arbitration Act. The parties before us contracted for arbitration. They proceeded to specify the rules that would govern their arbitrations, indicating their intention to use individualized rather than class or collective action procedures. And this much the Arbitration Act seems to protect pretty absolutely. See *AT&T Mobility LLC v. Concepcion*, [563 U. S. 333 \(2011\)](#); *Italian Colors, supra*; *DIRECTV, Inc. v. Imburgia*, 577 U. S. \_\_\_ (2015). You might wonder if the balance Congress struck in 1925 between arbitration and litigation should be revisited in light of more contemporary developments. You might even ask if the Act was good policy when enacted. But all the same you might find it difficult to see how to avoid the statute’s application.

Still, the employees suggest the Arbitration Act’s saving clause creates an exception for cases like theirs. By its terms, the saving clause allows courts to refuse to enforce arbitration agreements “upon such grounds as exist at law or in equity for the revocation of any contract.” §2. That provision applies here, the employees tell us, because the NLRA renders their particular class and collective action waivers illegal. In their view, illegality under the NLRA is a “ground” that “exists at law . . . for the revocation” of their arbitration agreements, at least to the extent those agreements prohibit class or collective action proceedings.

The problem with this line of argument is fundamental.

[The clause] can’t [apply] because the saving clause recognizes only defenses that apply to “any” contract. In this way the clause establishes a sort of “equal-treatment” rule for arbitration contracts. The clause “permits agreements to arbitrate to be invalidated by ‘generally applicable contract defenses, such as fraud, duress, or unconscionability.’” *Concepcion*. At the same time, the clause offers no refuge for “defenses that apply only to arbitration or that derive their meaning from the fact that an agreement

to arbitrate is at issue.” *Ibid.* Under our precedent, this means the saving clause does not save defenses that target arbitration either by name or by more subtle methods, such as by “interfer[ing] with fundamental attributes of arbitration.” *Id.*

This is where the employees’ argument stumbles. They don’t suggest that their arbitration agreements were extracted, say, by an act of fraud or duress or in some other unconscionable way that would render *any* contract unenforceable. Instead, they object to their agreements precisely because they require individualized arbitration proceedings instead of class or collective ones. And by attacking (only) the individualized nature of the arbitration proceedings, the employees’ argument seeks to interfere with one of arbitration’s fundamental attributes.

We know this much because of *Concepcion*. There this Court faced a state law defense that prohibited as unconscionable class action waivers in consumer contracts. The Court readily acknowledged that the defense formally applied in both the litigation and the arbitration context. But, the Court held, the defense failed to qualify for protection under the saving clause because it interfered with a fundamental attribute of arbitration all the same. It did so by effectively permitting any party in arbitration to demand classwide proceedings despite the traditionally individualized and informal nature of arbitration. This “fundamental” change to the traditional arbitration process, the Court said, would “sacrific[e] the principal advantage of arbitration—its informality—and mak[e] the process slower, more costly, and more likely to generate procedural morass than final judgment.” *Id.*

Of course, *Concepcion* has its limits. The Court recognized that parties remain free to alter arbitration procedures to suit their tastes, and in recent years some parties have sometimes chosen to arbitrate on a classwide basis. *Id.*, at 351. But *Concepcion*’s essential insight remains: courts may not allow a contract defense to reshape traditional individualized arbitration by mandating classwide arbitration procedures without the parties’ consent. Just as judicial antagonism toward arbitration before the Arbitration Act’s enactment “manifested itself in a great variety of devices and formulas declaring arbitration against public policy,” *Concepcion* teaches that we must be alert to new devices and formulas that would achieve much the same result today. 563 U. S., at 342 (internal quotation marks omitted). And a rule seeking to declare individualized arbitration proceedings off limits is, the Court held, just such a device.

... Illegality [under the NLRA], like unconscionability, may be a traditional, generally applicable contract defense in many cases, including arbitration cases. But an argument that a contract is unenforceable *just because it requires bilateral arbitration* is a different creature. A defense of that kind, *Concepcion* tells us, is one that impermissibly disfavors arbitration whether it sounds in illegality or unconscionability. The law of precedent teaches that like cases should generally be treated alike, and appropriate respect for that principle means the Arbitration Act’s saving clause can no more save the defense at issue in these cases than it did the defense at issue in *Concepcion*. At the end of our encounter with the Arbitration Act, then, it appears just as it did at the beginning: a congressional command requiring us to enforce, not override, the terms of the arbitration agreements before us.

[preemption discussion omitted]

#### IV

The dissent sees things a little bit differently. In its view, today’s decision ushers us back to the *Lochner* era when this Court regularly overrode legislative policy judgments. The dissent even suggests we have resurrected the long-dead “yellow dog” contract. But like most apocalyptic warnings, this one proves a false alarm.

Our decision does nothing to override Congress’s policy judgments. As the dissent recognizes, the legislative policy embodied in the NLRA 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. And rather than revive “yellow dog” contracts against union organizing that the NLRA outlawed back in 1935, today’s decision merely declines to read into the NLRA a novel right to class action procedures that the Board’s own general counsel disclaimed as recently as 2010.

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The policy may be debatable but the law is clear: Congress has instructed that arbitration agreements like those before us must be enforced as written. While Congress is of course always free to amend this judgment, we see nothing suggesting it did so in the NLRA—much less that it manifested a clear intention to displace the Arbitration Act. Because we can easily read Congress’s statutes to work in harmony, that is where our duty lies. The judgments in *Epic* and *Ernst & Young* are reversed, and the cases are remanded for further proceedings consistent with this opinion. The judgment in *Murphy Oil* is affirmed.

So ordered.