



PRESS RELEASE

Attorney General Frosh Leads Coalition of 17 States in Filing Amicus Brief in U.S. Supreme Court in Support of Employees' Rights

BALTIMORE, MD (August 16, 2017) – Maryland Attorney General Brian E. Frosh led a coalition of 17 states today in filing an amicus brief in the United States Supreme Court in support of the National Labor Relations Board (“NLRB”) and several employees who are alleging violations of their legal rights. In these three consolidated cases—*Epic Systems Corp. v. Lewis*, *NLRB v. Murphy Oil USA*, and *Ernst & Young v. Morris*—the Supreme Court will decide whether employers may force their employees, as a condition of employment, to sign arbitration agreements that bar them from joining together to pursue work-related claims on any collective or class basis.

“Employees – particularly vulnerable and low-wage employees – have a right to join together to enforce violations of state and federal employment laws,” said Attorney General Frosh. “Big companies try to use mandatory arbitration agreements to divide and conquer. They know that individual employees don’t have the resources to protect their rights.”

In the [Amicus Brief filed today](#), the states argue that their residents have long held a “fundamental right” under the National Labor Relations Act (“NLRA”) to engage “in concerted activities” for their “mutual aid or protection.” As the states explain, Congress has dictated in the NLRA and the 1932 Norris-LaGuardia Act that individual employees may not be forced to sign away this fundamental right to act collectively merely to earn a living. Similarly, “many states have enshrined that same right in our own labor statutes and have rendered unenforceable in state court any contract that requires an individual employee to waive the ability to engage in concerted activities.” Together, these statutes ensure that employees may act collectively to assert their legal rights.

The states also contend that the right of employees to join together to bring legal claims is necessary to vindicate workers’ rights under other vital workplace statutes, including minimum-wage and overtime laws as well as anti-discrimination provisions: Because the federal government and the states, the states write, “do not have the resources to enforce every violation of these laws, we rely on individual employees to help. In turn, these private enforcers often depend on their ability to join together to assert their rights. Experience shows that without that ability to join together, many fewer employees will pursue claims, thus placing additional burdens on already over-burdened state regulators and leading to the under-enforcement of state and federal workplace protections.”

The states conclude that employer-imposed bans on collective legal action allow many employers to insulate themselves from liability for their legal violations, and they urge the Supreme Court not to “sanction employers’ efforts to ‘free themselves to violate wage and hour laws, to discriminate, to impose

unsafe working conditions, and to otherwise violate federal and state labor and employment laws with impunity.’”

The states that joined in the filing of today’s amicus brief include: California, Connecticut, the District of Columbia, Delaware, Iowa, Illinois, Massachusetts, Minnesota, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, Washington, Virginia and Vermont.

BACKGROUND

In *NLRB v. Murphy Oil*, the Fifth Circuit held that an employment contract requiring an employee to resolve all disputes through individual arbitration, and thereby waiving any ability to proceed collectively, is enforceable pursuant to the Federal Arbitration Act, despite language in the National Labor Relations Act giving employees the right to engage in “concerted activities.”

In *Epic Systems Corp. v. Lewis* and *Ernst & Young LLP v. Morris*, the Seventh Circuit and the Ninth Circuit came to the opposite conclusion, finding that a similar arbitration agreement was not enforceable under the National Labor Relations Act. These two courts reasoned that there was no conflict between the Federal Arbitration Act and the National Labor Relations Act because the Federal Arbitration Act includes a “saving clause,” which provides that an agreement to arbitrate “shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.” These courts held that when an agreement is illegal under federal labor law, that constitutes such a ground for the revocation of any contract.