The Corporate Court: Case Summaries

The Corporate Court Kicks Consumers and Workers Out of Court by Favoring Forced Arbitration Agreements and Limiting Class Actions

- In *AT&T v. Concepcion* (2011), the Supreme Court effectively immunized corporations for mass wrongdoing by sanctioning the use of forced arbitration agreements in consumer contracts, even when they're illegal under state law. Arbitration clauses, which are commonly buried in the fine print of consumer and employee agreements, block lawsuits by forcing plaintiffs into private arbitration proceedings set up by the very company that harmed them. Worse, they often prohibit plaintiffs from banding together and bringing claims in a class action. Without access to an impartial judge and jury, and without the resources to go it alone in arbitration, people typically abandon their claims and corporate wrongdoers are never held accountable. Many states enacted consumer protection laws to curtail the pernicious practice of forced arbitration, but in *Concepcion* the Supreme Court held that such laws are preempted by an old federal statute from 1925 called the Federal Arbitration Act (FAA). When it was enacted, the FAA was intended only to allow large companies with equal bargaining power to arbitrate claims against each other. But the corporate-friendly majority on the Supreme Court has expanded its meaning to generally "favor arbitration" in all contexts, leaving states unable to ensure their own residents' access to justice, and allowing powerful corporations to shirk accountability.

- Following its *Concepcion* decision, the Court ruled in *CompuCredit v. Greenwood*(2012) to uphold a forced arbitration clause against consumers who tried to sue credit providers for violating the Credit Repair Organization Act, even though the statute explicitly gives consumers a "right to sue" for violations of the act. Justice Ginsburg dissented and argued that consumers understand the words "right to sue" to mean the right to litigate in court, not in binding arbitration.

- In another post-*Concepcion* case, *American Express Co. v. Italian Colors* (2013), the Court upheld the use of forced arbitration clauses even if it made enforcing federal laws like the Sherman Act practically impossible. In dissent, Justice Kagan explained that the Court's decision allows "[t]he monopolist . . . to use its monopoly power to insist on a contract effectively depriving its victims of all legal recourse." The Court's message to those whose rights are trampled, according to Justice Kagan, is "Too darn bad."

- In *Wal-Mart v. Dukes* (2011), the Court delivered another victory to corporations by making it nearly impossible for a class of workers to sue for widespread corporate misbehavior that comes in the form of unwritten policies. The case involved a class of women who alleged systemic gender discrimination in Wal-Mart's pay and promotion practices. In denying class certification, the Court essentially re-wrote the class action rules and significantly raised the bar for workers trying to band together to bring class action suits based on discrimination that they faced at the discretion of their supervisors.

The Corporate Court Shields Corporations from Liability

- In *Kiobel v. Royal Dutch Petroleum* (2012), the Supreme Court overturned decades of settled federal law that addressed human rights abuses committed abroad by foreign corporations. The Court had long held that under the Alien Tort Statute, federal courts were open to remedy these abuses. The Court's decision in *Kiobel*scrapped that precedent, leaving victims of human rights abuses at the mercy of often unfair foreign tribunals where they have little to no chance at recovery. The Court further shielded corporations by ruling in *DaimlerChrysler AG v. Bauman* (2014) that U.S. courts do not have jurisdiction to hold foreign corporations accountable for human rights abuses committed abroad even if the foreign corporation has subsidiaries that operate in the U.S.
- In *Riegel v. Medtronic, Inc.* (2008), the Court ruled that a consumer who has been seriously injured by a defective medical device cannot sue the manufacturer if the product was approved by federal government regulators, even if the company knew the product was dangerous.
- In *Exxon Shipping v. Baker* (2008), after 19 years of legal battles, the Court allowed Exxon to escape full financial liability for the damage done by the Exxon-Valdez oil spill to communities and the environment, leaving over 30,000 people whose livelihoods and community were destroyed by the disaster with only a tenth of the original jury award for punitive damages—a sum completely inadequate to make up for their loss and address Exxon's culpability.

The Corporate Court Insulates Corporate Interests from Environmental and Antitrust Regulation

- In *Michigan v. Environmental Protection Agency* (2015), the Supreme Court sided with business groups in forcing the EPA to consider costs before deciding whether to initiate rulemaking on highly toxic mercury emissions by electric utility companies. The Court's decision places a premium on businesses' bottom lines over public health and limits the EPA's ability to regulate hazardous air pollutants over the objections of corporate interests.
- Two Supreme Court decisions, *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers* (2001) and *Rapanos v. United States* (2006), had the effect of taking many waterways outside the protection of the Clean Water Act—even though pollution from these waterways can dirty the drinking water of 117 million Americans. As a result of the Court's decision, 1,500 major pollution investigations have been halted, and EPA actions against water polluters have fallen by 50 percent.
- In *Leegin Creative Leather Products, Inc. v. PSKS, Inc.* (2007), five conservative justices overturned a century of antitrust law and decided that manufacturers and retailers could sometimes engage in price-fixing. In dissent, Justice Breyer cited studies estimating that this change in law would cost consumers $300 billion a year in increased prices on everyday items.

The Corporate Court Puts Elections Up for Sale

- In *Citizens United v. FEC* (2010), the five conservatives undermined a century of law to fundamentally change the rules governing election spending in order to favor the interests of big business. The Court went out of its way to toss aside several precedents to allow corporations to use unlimited funds from their general treasuries to influence federal elections—and held for the first time in American history that corporations have the same right as ordinary people to spend money on elections. As Justice Stevens wrote in dissent, "Essentially, five Justices were unhappy with the limited nature of the case before us, so they changed the case to give themselves an opportunity to change the law."
- In *Davis v. FEC* (2008), the five conservative Justices overturned the "Millionaire's Amendment," Congress's effort to level the playing field in the political process and reduce the influence of wealth on elections by increasing the contribution limits to candidates facing self-funded opponents.
- The Court further eroded campaign contribution limits in *McCutcheon v. FEC*(2014) by invalidating the aggregate contribution limits that were first put in place by the Federal Election Campaign Act of 1971. In doing so, the Court's conservative justices once again adhered to their naïve view, put forward in*Citizens United*, that the only corruption that matters and that can be properly regulated by Congress is *quid pro quo* corruption, thus ignoring the many ways that corporations and wealthy individuals can buy elections and unduly influence politicians.

The Corporate Court Makes It Easier for Companies to Discriminate Against Women and Minorities

- In *Hobby Lobby Stores, Inc. v. Sebelius* (2014), the Supreme Court took *Citizens United* and the mantra that "corporations are people" to a whole new level by essentially ruling that corporations can discriminate based on religious beliefs. The Court held that under the Religious Freedom Restoration Act, closely-held, for-profit corporations like Hobby Lobby (which employs thousands of people nationwide) are exempt from the Affordable Care Act's contraception coverage mandate based on the religious objections of the corporations' owners. This dealt a huge blow to women employed by these corporations who depend on the corporations' health benefits for their own private reproductive health needs, like birth control.
- In *Vance v. Ball State University* (2013), the Court narrowed the definition of "supervisor" and allowed employers to escape accountability for workplace harassment. Justice Ginsburg's dissent sharply criticized the majority for ignoring the realities of the workplace and making it easier for hostile work environments to go unchecked.
- In *Ledbetter v. Goodyear* (2007), a 5-4 decision, the Court ruled that a woman who had been paid less than her male peers for 20 years had no right to bring a lawsuit for equal pay because she failed to file suit within 180 days of the first discrimination—even though she had no way of learning about the discrimination until years later.
- In *Gross v. FBL Financial Services* (2009), the Court changed the long-standing evidentiary standard for proving age discrimination. These new rules make it much more difficult for plaintiffs to prevail in age discrimination suits, especially when going up against well-financed corporate defendants.