

City of Philadelphia



Council of the City of Philadelphia
Office of the Chief Clerk
Room 402, City Hall
Philadelphia

(Resolution No. 180568)

RESOLUTION

Urging the United States Congress to respond to the Supreme Court ruling in *Epic Systems Corp. v. Lewis* by passing legislation that guarantees the right of workers to pursue class action lawsuits in Federal Court.

WHEREAS, On May 21, 2018, the Supreme Court banned certain workers from collectively bargaining for their rights in federal court. In a 5-4 decision delivered by Justice Neil Gorsuch, the Supreme Court sided with businesses by barring class action lawsuits for federal labor violations. The majority ruled that the 1925 Arbitration Act, which allows employers to prohibit employees from pursuing collective legal actions, trumps the 1935 Labor Relations Act. Under this ruling, private sector employees who sign arbitration contracts must make federal claims on an individual basis; and

WHEREAS, The ruling was issued to decide three separate cases in which employees attempted to collectively sue their respective companies, claiming violations of the Fair Labor Standards Act related to underpayment of employees. The cases involved tens of thousands of nonunion employees. In all three cases, employees tried to use class-action lawsuits because the amount they could obtain from individual law suits would be overshadowed by the legal fees they would be required to pay; and

WHEREAS, This Supreme Court decision greatly impacts the ability of workers to assert their claims in federal court. Supreme Court Justice Ruth Bader Ginsberg, joined by Justices Breyer, Sotomayor and Kagan, wrote a dissenting opinion in which she called court's decision "egregiously wrong." According to the dissent, the ruling opinion by the Supreme Court returns the country to a time in the late 19th century when workers were forced into so-called "yellow dog contracts", in which workers were forced to take jobs strictly on the employer's terms and were forbidden from joining labor unions. She also asserted that the decision was antithetical to eighty years of labor laws designed to protect the rights of employees; and

WHEREAS, Worker wage claims are generally minuscule compared to the legal fees required to pursue an individual lawsuit against a private sector company. For example, a

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typical employee filing suit against one of the named defendants would likely have to spend \$200,000 in legal fees to recover approximately \$1900 in underpayments. Justice Ginsberg stated that the decision will result inevitably in the under enforcement of federal and state laws designed to protect the rights and well-being of vulnerable workers. Employees facing discrimination on the basis of race, gender, religion, sexual orientation and other protected categories will also be unable to file claims in a class action lawsuit because of this decision, even though employees often pursue discrimination claims in a collective manner out of fear of facing retaliation from their employers; and

WHEREAS, A study by Economic Policy Institute shows the 56% of nonunion private sector employees are currently subject to mandatory individual arbitration procedures under the 1925 Arbitration Act. This means that millions of workers are now barred from collectively suing their employers for federal labor law violations. Experts have concluded that the number of workers barred from collective bargaining will increase given the Supreme Court decision. Employment lawyer Ron Chapman asserted that the decision “gives employers the green light to eliminate their single largest employment law risk with the stroke of a pen”; and

WHEREAS, Both the ruling and dissenting opinion by the Supreme Court agree that it the United States Congress has the power to protect the rights of workers to pursue claims in class action lawsuits; now, therefore, be it

RESOLVED, BY THE COUNCIL OF THE CITY OF PHILADELPHIA, That we hereby urge the United States Congress to respond to the Supreme Court ruling in *Epic Systems Corp. v. Lewis* by passing legislation that guarantees the right of workers to pursue class action lawsuits in federal court.

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CERTIFICATION: This is a true and correct copy of the original Resolution, Adopted by the Council of the City of Philadelphia on the seventh day of June, 2018.

Darrell L. Clarke
PRESIDENT OF THE COUNCIL

Michael A. Decker
CHIEF CLERK OF THE COUNCIL

Introduced by: Councilmembers Reynolds Brown and Parker

Sponsored by: Councilmembers Reynolds Brown, Parker, Green, Gym, Greenlee, Quiñones Sánchez, Oh, Blackwell, Johnson and Bass