

Class Actions Alert

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U.S. Supreme Court Confirms That the Federal Arbitration Act Protects Bilateral Arbitration

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Key Points

- The Supreme Court has once again affirmed that the Federal Arbitration Act (FAA) protects a party's right to individualized arbitration, and preempts state policy that would force resolution of broader, more complex disputes in arbitration.
- Its decision in *Lamps Plus, Inc. v. Varela*, No. 17-988 (April 24, 2019) affirms that a central benefit of the FAA is speedy and efficient arbitration on an individualized basis.
- State legal doctrines or notions of public policy that would require parties to forfeit this benefit are preempted by the FAA.

In *Lamps Plus*, the defendant had moved to compel individual arbitration of the claims of the plaintiff and putative class representative who allegedly had been victimized by a data hacking incident. The district court ordered the parties to classwide arbitration, even though the parties' arbitration agreement contained no express provision permitting such proceedings. The 9th Circuit found that the arbitration agreement was "ambiguous" as to class arbitration. Applying the state law doctrine of *contra proferentem*—which calls for ambiguous contract terms to be construed against the drafter—the 9th Circuit construed the agreement to authorize class arbitration, even though its drafter (*Lamps Plus*) had not expressly consented to such proceedings.

The Supreme Court granted certiorari to address whether the FAA permitted an order requiring class arbitration where the parties' agreement was ambiguous on that issue. Citing its decision last term in *Epic Systems, Inc. v. Lewis*, 138 S. Ct. 1612 (2018), the Court (Roberts, C.J.) affirmed 5-4 that "individualized arbitration as envisioned by the FAA" is fundamentally different from class arbitration, and that parties cannot be forced into class arbitration unless they have expressly consented to that procedure. Justices Breyer, Ginsburg, Kagan and Sotomayor each filed dissenting opinions.

As the Court explained, class arbitration not only imposes a slower and more costly process, but also raises "serious due process concerns by adjudicating the rights of absent members of the plaintiff class – again, with only limited judicial review." The Court noted that these same principles led to its holding in *Stolt-Nielsen, S.A. v.*

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AnimalFeeds Int'l Corp., 559 U.S. 662 (2010), that a court could not compel class arbitration where the parties' arbitration agreement was silent on the issue.

The Court also rejected the argument that state law doctrines grounded in public policy could be used to force a party to abandon its right to individualized arbitration under the FAA. The doctrine of *contra proferentem* is a hornbook example of such a policy, designed not to determine the mutual intent of the parties but rather to protect the party that did not draft or otherwise negotiate the contract. Such doctrines are in the category of state law policies that the Court in *Epic Systems* held could not be used to "reshape traditional individualized arbitration." It follows that the doctrine of *contra proferentem* cannot force class arbitration on a party who did not expressly consent thereto, or otherwise mandate a departure from the individualized arbitration envisioned by the FAA.

The *Lamps Plus* decision is a welcome reminder that the FAA protects the hallmarks of individualized arbitration as a bilateral, efficient and low-cost proceeding. The FAA of necessity precludes even black-letter state-law doctrines that would interfere with those attributes, or otherwise would require parties to rewrite their arbitration agreements to obtain judicial enforcement. The Supreme Court's continued attention to these matters is critical if the FAA is to fulfill its purpose of securing enforcement of agreements to arbitrate on a bilateral basis.

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