**EPIC SYSTEMS CORP. v. LEWIS EMPLOYEE ARBITRATION AGREEMENTS**

**THE DECISION** in Epic Systems continues the onward march of the presumption in favor of arbitration in the Supreme Court. This trend, now several decades old, has extended to fields as varied as employment discrimination, antitrust, consumer protection, admiralty and securities regulation. In each of these fields, the court has interpreted the Federal Arbitration Act to require enforcement of arbitration agreements in the face of arguments that doing so would be inconsistent with competing federal duties or state laws. In Epic Systems, ironically enough, this presumption returns to where it began—in labor arbitration decisions from the 1930s. Those earlier decisions, however, favored workers and unions, while Epic Systems goes in the opposite direction, favoring employers and management. The court rejected the argument that the right to mutual aid and protection under the National Labor Relations Act prevented the enforcement of arbitration clauses that waived any right to proceed in collective proceedings, such as class actions.

—GEORGE RUSSELL

**HUSTED v. PHILIP RANDOLPH INSTITUTE VOTER REGISTRATION**

**AMENDED** and in the stormy seas of law and politics, Ohio mails cards to registered voters who fail to vote in an election. Voters do not return the cards and do not vote in the registration rolls. Does Ohio’s voter “purge” comply with a pair of federal statutes? The conservative majority of the court said yes, emphasizing one of statutory language. The liberal minority said no, emphasizing another slice of language, in this case of Justice Sonia Sotomayor, the sordid history of voter suppression. The meaning of the federal statutes is clearer than before, but the wisdom of Ohio’s practice—is it sound governance or partisan debacle?

—MICHAEL GIBERT

**JANUS v. AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES UNIONS AND THE FIRST AMENDMENT**

“IN JANUS v. APSCF the Supreme Court held that union members were not required to pay agency fees to public-sector unions. The decision was one of the most significant on collective bargaining in decades and overturned 46-year-old Abood v. Detroit Board of Education that held that nonmembers could be required to pay agency fees to unions, in order to prevent their benefiting from union negotiations while free-riding on others’ dues. (The Abood decision also held that agency fees could not be used for political purposes but only for collective bargaining.) The back-face in Abood is a sign of the increasing reach of the First Amendment.”

—LESLE KENDRICK ‘06

**MASTERPIECE CAKESHOP LTD. v. COLORADO CIVIL RIGHTS COMMISSION RELIGIOUS LIBERTY, CIVIL RIGHTS**

“THE GROUND of decision was narrow, but not as narrow as many commentators will claim. It was based exclusively on the free exercise clause, the Supreme Court did not rule on the free speech claim. Excessive reliance on free exercise narrows this case to sincere religious objects, excluding simple bigots. And it helps narrow the decision to religious contexts, with wiccans as the overhanging dominant example. The court made nothing of these points. What more obviously narrows the decision is that the Supreme Court based it on the state’s hostility to the baker’s religious faith. As evidence, the court pointed not to hostile comments from members of the Colorado Civil Rights Commission and to the commissioner’s incontinent treatment of religious discrimination and sexual orientation discrimination.”

—DOUGLAS LAYCOCK and Thomas Berg, co-authors of an influential amicus brief that supported the court’s decision to narrow the case.

**ORTIZ v. U.S. SEPARATION OF POWERS**

“The framers of the Constitution limited the Supreme Court’s original and appellate jurisdiction primarily because of the burdens that travel to a centralized court placed on U.S. citizens in the 18th century. Rather than require litigants to journey long distances to a central court in the first instance, the Constitution contemplates some local adjudication, followed by an appeal to the ‘one Supreme Court’ in our modern era, the constitutional text has remained the same while advances in transportation capabilities have happily reduced, though by no means eliminated, this concern. These advances do not diminish Ortiz’s jurisprudential importance, but they limit, in some ways, the consequences of Ortiz’s precise holding about the Supreme Court’s appellate jurisdiction.”

—ADITYA BANZAI who argued the case as an independent amicus, writing in Lawfare

**RUBIN v. ISLAMIC REPUBLIC OF IRAN SEIZING PROPERTY FROM NATIONAL SPONSORS TERROR**

“In interpreting the Foreign Sovereign Immunities Act, the court took a cautious approach to the scope of a court’s authority to seize property belonging to a foreign state to enforce a judgment based on support for terrorism. The court read the statute as keeping in place the limitations on seizes powers generally applicable with respect to other kinds of judgments permitted by the act. The effect was to make it harder for successful plaintiffs (here the beneficiaries of default judgments) to collect against these sovereigns.”

—PAUL STEPHAN ‘77

**SOUTH DAKOTA v. WAFER TAXATION OF E-COMMERCE**

“The decision’s implications for e-commerce are totally clear yet. Wayfair knocked down the anachronistic and judicially created physical-presence test, which said that an out-of-state seller was not obliged to collect sales tax if it lacked physical presence in the state. … [States may try to join the Streamlined Sales and Use Tax Agreement] and duplicate South Dakota’s thresholds [for tax collection—at least $100,000 in sales in a year]. On Congress may attempt to impose uniform sales tax standards. Some states may try to impose sales tax collection obligations retroactively, which would generate more litigation. What is clear, however, is that online sellers can no longer make billions of sales in states while avoiding obligations to collect sales taxes.”

—RUTH MASON co-author of amicus brief urging the court to grant cert and overturn the physical-presence test