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WLF Calls on U.S. Supreme Court to Stamp Out Ninth Circuit's Arbitration Defiance Yet Again

(Bloomingdale's Inc. v. Vitolo)

“The Supreme Court has repeatedly held that federal law favors enforcement of arbitration agreements. But the Ninth Circuit continues to flout those rulings and search for ways to undermine the Federal Arbitration Act. The High Court needs to put a stop to this lawlessness.”

—Richard Samp, WLF Chief Counsel

WASHINGTON, DC—In its latest effort to vindicate federal arbitration law, Washington Legal Foundation asked the Supreme Court today to overturn a Ninth Circuit decision that renders arbitration agreements unenforceable. WLF’s *amicus* brief filed in *Bloomingdale’s Inc. v. Vitolo* argues that the Federal Arbitration Act (FAA) does not permit “representative actions” to thwart arbitration agreements.

The plaintiff in this case, Nancy Vitolo, was employed by Bloomingdale’s Inc. in the summer of 2008. Nearly one year after her employment ended, she filed a wage-and-hour lawsuit that invoked California’s Private Attorneys General Act (PAGA). Arbitration resulted in her suit being dismissed in 2014. However, Vitolo argued on appeal that the arbitration agreement should not be permitted to prevent her PAGA claims from being heard on a class-wide basis, and the Ninth Circuit agreed.

PAGA allows an employee to bring an action on behalf of herself and other employees for wage-related violations of California’s Labor Code. WLF’s brief explains how California and the Ninth Circuit have been using this procedural state statute and other state policy concerns to undermine the FAA and render all claims brought under PAGA inarbitrable. As a result, California has seen a significant increase in PAGA suits flooding the courts.

The FAA requires courts to enforce arbitration agreements strictly according to their terms. Although it contains a “saving clause” for state laws that do not single out arbitration for special negative treatment, PAGA claims are being used precisely to thwart arbitration clauses. WLF’s brief asks the Supreme Court to reinforce its faithful interpretation of the FAA and reverse the Ninth Circuit’s errant decision.

Felix Shafir, Jeremy B. Rosen, and John F. Querio of Horvitz & Levy LLP provided substantial *pro bono* assistance to WLF in preparing this *amicus* brief.

Celebrating its 40th year, WLF is America’s premier public-interest law firm and policy center advocating for free-market principles, limited government, individual liberty, and the rule of law.

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