National Labor Relations Board v. Murphy Oil, USA, Inc.; Lewis v. Epic Systems Corp.; and Morris v. Ernst & Young, LLP (consolidated as Nos. 16-307, 16-285, & 16-300).

All three cases present the question of whether employers can lawfully mandate that employees relinquish their right to challenge employment disputes through class or collective action. These waivers are in agreements that (1) require an individual employee to submit all employment disputes to binding arbitration, and (2) bar him or her from pursuing any such claim on a class or collective basis in any forum. The employee position is that such an agreement constitutes an unfair labor practice under the National Labor Relations Act, because it limits the employee’s right to engage in “concerted activities with other employees for “mutual aid or protection” and is therefore unenforceable under the Federal Arbitration Act’s “saving clause.” The employer position is that the class waivers are not substantive rights but procedural devices, and that the prohibition of class waivers disfavors arbitration in violation of the FAA. Neither the text, the legislative history, nor policy considerations permit the NLRA to override the FAA.

The Circuits are split. The Fifth (and the Second and Eighth) v. the Seventh and Ninth.

1. NLRB v. Murphy Oil, 808 F.3d 1013 (5th Cir. 2015) (For the Employer)

Sheila Hobson worked for Murphy Oil in Alabama. At the start of her employment, she signed a “Binding Arbitration Agreement and Waiver of Jury Trial,” in which she agreed to: (i) resolve all employment disputes through binding arbitration; and (ii) give up the right to pursue class or collective claims in either an arbitral or judicial forum (the “Agreement”). Two years later, she and three other employees filed a collective action against Murphy Oil in U.S. District Court for the N.D. of Alabama, alleging violations of the Fair Labor Standards Act. Murphy moved to dismiss and enforce the arbitration agreement. While the issue was pending, Hobson also filed an unfair labor charged with the National Labor Relations Board (“Board”), alleging that the Agreement interfered with her Section 7 rights under the NLRA.

In another case, the Board found that a contract like the Agreement signed by Hobson constituted an unfair labor practice, in that it restricted employees’ Section 7 rights to engage in protected concerted activity. D.R. Horton, Inc., 357 N.L.R.B. 184 (2012). The Fifth Circuit reversed Horton in 2013, however. It found that the NLRA does not contain a “congressional command overriding the Federal Arbitration Act (“FAA”), and that the use of class action procedures was not a substantive right under the NLRA, Section 7. D.R. Horton v. NLRB, 737 F.3d 344 (5th Cir. 2013).

Despite this holding by the Fifth Circuit, the Board did not acquiesce. Instead, the Board issued a decision in Murphy, finding that the Agreement, which mandated that employees waive their
right to all concerted legal action, violated the NLRA. In short, it reaffirmed its 2012 Horton decision.

The Fifth Circuit stood firm: “Our decision was issued not quite two years ago; we will not repeat its analysis here. Murphy Oil committed no unfair labor practice by requiring employees to relinquish their right to pursue class or collective claims in all forums by signing the arbitration agreements at issue here.”

2. Lewis v. Epic Systems, 823 F.3d 1147 (7th Cir. 2016) (For the Employee)

Jacob Lewis worked for Epic Systems, a health care software company. In April 2014, Epic sent an email to its employees that contained an agreement providing that employees could only bring all wage/hour claims through individual arbitration actions, and that they had waived their right to participate in or receive any monies/relief from any “class, collective, or representative proceeding” (the “Agreement”). Continued employment was deemed to be acceptance of the agreement. Lewis clicked twice. Later, however, when he had a dispute with Epic, he sued in federal court, alleging violations of the FLSA, that he claimed resulted in the loss of overtime for Lewis and fellow technical employees. Epic sought to enforce the Agreement. The district court denied Epic’s motion, on the ground that the Agreement interfered with the employees’ right to engage in concerted activity.

The Seventh Circuit agreed. It held that the plain language of Section 7 the NLRA protects “concerted activities for the purpose of . . . other mutual aid or protection.” “Concerted activities” include “resort to administrative and judicial forums,” such as filing a collective or class action suit constitutes or a lawsuit to achieve more favorable terms or conditions of employment. Section 7 has an intentionally broad sweep. Congress was aware of class, representative, and collective legal proceedings when it enacted the NLRA in 1935 (and the FLSA in 1938). Moreover, the Seventh Circuit continued, even if the language were ambiguous, the Board’s interpretation was entitled to judicial deference.

The FAA provides that written contracts to settle a matter by arbitration “shall be valid, irrevocable, and enforceable, saving upon such grounds as exist at law or in equity for the revocation of any contract.” 9 U.S.C. § 2. Yet the mandate that no matter where the claim is brought, the plaintiff cannot use collective procedures “runs straight into the teeth of Section 7.” Contracts that “stipulate away” employees’ Section 7 rights or otherwise require actions unlawful under the NLRA are unenforceable, i.e., unlawful under the FAA’s saving clause.

Epic argued that the FAA trumped the NLRA.

The Seventh Circuit held that it did not. The two federal laws were compatible through the saving clause language. The agreement to arbitrate/relinquish collective action is unlawful under the NLRA (from the moment of formation, that is “void ab initio”); it thus meets the criteria of the clause for non-enforcement.

Epic argued, as the Fifth Circuit held in Horton, that there was an unresolvable conflict between arbitration (protected under the FAA) and collective action (protected under the NLRA).
The Seventh Circuit held that there was no such conflict. In fact, the NLRA is pro-arbitration. “If Epic’s provision had permitted collective arbitration, it would not have run afoul of Section 7 either. But it did not, and so it ran up against the substantive right to act collectively that the NLRA gives to employers.”

Epic argued that if the NLRA protected the right to class/collective action, the right is procedural not substantive.

The Seventh Circuit held that the right to collective action “lies at the heart of the restructuring of employer/employee relationships that Congress meant to achieve in the statute.” Section 7 is the NLRA’s only substantive section; all other provisions operate to enforce it. It reviewed cases that routinely “invalidate arbitration provisions that interfere with substantive statutory rights,” including arbitration agreements that precluded certain kinds of damages available under Title VII. Like these, arbitration agreements that force waiver of a party’s right to vindicate a statute’s core purpose were not enforceable.

Finally, Epic argued that other employment statutes that allow for Rule 23 class actions do not provide a substantive right to a class action, i.e., *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 26 (1991) (ADEA); and *D.R. Horton*, 737 F.3d 344, 357 (5th Cir. 2013) (FLSA).

The Seventh Circuit distinguished the ADEA/FLSA from the NLRA. The former laws allow for class/collective action, but do not guarantee the collective process itself. The NLRA does. It compared the NLRA with the First Amendment: “It would be odd indeed to consider associational rights, such as the one guaranteed by the First Amendment to the U.S. Constitution, non-substantive.”

3. *Morris v. Ernst & Young*, 834 F.3d 975 (9th Cir. 2016) (For the Employee)

Stephen Morris and Kelly McDaniel worked for the accounting firm, E&Y. As a condition of their employment, they were required to sign agreements requiring them to pursue legal claims only through arbitration and in separate legal proceedings (that is, separate from each other) (the “Agreement”). The effect was to bar any “concerted legal claims” in any tribunal. The two employees nonetheless brought a class/collective action claim in New York, alleging misclassification under the FLSA. The case was transferred to CA, where E&Y moved to compel arbitration. The district court enforced the Agreement, ordered individual arbitration, and dismissed the FLSA case.

The Ninth Circuit (with a dissent) disagreed.

“Concerted action,” which is the right of employees to act together, is an essential substantive right under the NLRA. E&Y interfered with that right through the Agreement, and thereby violated the NLRA.

Like the Seventh Circuit, the two-person majority of the Ninth Circuit found that the language of the NLRA itself was clear. “Concerted employee activity” under Section 7 includes the right “to seek to improve working conditions through resort to administrative and judicial forums.” Under
Section 8, an employer may not defeat the right by requiring employees to pursue all work-
related legal claims individually.

The FAA did not dictate a contrary result. That law requires that courts treat arbitration
contracts on “equal footing” with all other contracts. Yet the illegality of the provision requiring
that employees bring only separate proceedings “has nothing to do with arbitration as a forum. .
. . The same infirmity would exist if the contract required disputes to be resolved through casting
lots, coin toss, duel, trial by ordeal, or any other dispute resolution mechanism, if the contract (1)
limited resolution to that mechanism and (2) required separate individual proceedings.

And again: “The contract here would face the same NLRA troubles if [E&Y] required its
employees to use only court, or only rolls of the dice or tarot cards, to resolve workplace disputes
– so long as the exclusive forum provision is coupled with a restriction on concerted activity in
that forum.”

The problem with the provision was that it defeated the “substantive federal right” to pursue
“concerted work-related legal claims” under the NLRA. That constraint made the contract
illegal because substantive rights cannot be waived in arbitration agreements. “By agreeing to
arbitrate a statutory claim, a party does not forgo the substantive rights afforded by the statute; it
only submits their resolution to an arbitral, rather than a judicial, forum.”

Like the Seventh Circuit, the Ninth Circuit majority held that analogies to cases involving waiver
of procedural rights were inapposite. Gilmer was a judicial choice of forum case, for example.
There was a distinction between a waivable procedural right, to use court for class claims rather
than arbitration, and a non-waivable substantive right, to be free from age discrimination. The
procedural but not the substantive right can be waived.

One panel member strongly disagreed with the majority holding, writing that the “decision [was]
breathtaking in its scope and in its error: it is directly contrary to Supreme Court precedent” and
was on the “wrong side of the circuit split.” Instead of seeking to harmonize the FAA and the
NLRA, it looked to see if the NLRA contained an express “contrary congressional command”
that overrode the FAA. And it concluded that in every case that has used this approach, the
Supreme Court has allowed the arbitration agreement to be enforced according to its terms.

Nothing in the NLRA met the rigorous test of a clear “contrary command” to override. The
NLRA provisions (sections 7 and 8) “neither mention arbitration nor specify the right to take
legal action at all, whether individually or collectively.” Moreover, nothing in section 7/8
“creates a substantive right to the availability of a class-wide claims that might be contrary to the
FAA mandate. The NLRA protects “concerted activity” only. This could be “joint legal
strategies, shared arguments and resources, hiring the same attorneys, or even requesting the
Department of Labor to bring an independent action against the employer.” Yet is did not
expressly protect the right of the employee to litigate or arbitrate together. Employees could do
everything except file together.
Comment

At the heart of this dispute is the question of whether employees will be able to maintain any form of collective legal action. The Court has steadily eroded that power, elevating arbitration and then individualized arbitration, on the so-called basis of efficiency and mutual preference. But making the arbitral remedy a part of the “employment package” is not really an offer subject to true negotiation between parties with their powers in balance. The employee must accept the waiver to get the job and will thereafter likely find himself or herself alone in the arbitral forum when the employer systematically engages in unlawful conduct.

The parties’ briefs draw the debate into stark relief. Epic Systems and Murphy Oil argue that the FAA and the NLRA can co-exist. But that co-existence means this, in their view: the FAA mandates enforcement of waivers and the NLRA doesn’t stop it. Employees can do all kinds of “concerted” activities but they can’t do one thing: they can’t litigate together. “Though Section 7 protects a right to ‘engage in . . . concerted activities,’ those activities do not include class proceedings.” Class proceedings involve judges and tribunals, and Section 7 does not include obligations of third parties. And again, they say: Section 8 “does not unambiguously prohibit employers from channeling concerted activities into a particular procedural forum.” The NLRA does not mention adjudication or arbitration at all. Congress enacted the law prior to the development of class actions under Rule 23, or the FLSA, in 1938. Class arbitrations were not widely used until the 21st century.

And the most telling argument of all: “Class waivers leave employees free to work together at every step of the judicial or arbitral process. Employees may cooperate in hiring a lawyer, drafting their complaints, developing their legal strategies, finding and preparing witnesses, writing briefs, and seeking appellate review. They may even pool their financial and legal resources and present the exact same case in the exact same way for every plaintiff. . . . To be sure, a class waiver may channel their ‘concerted activities’ into a different procedural forum, but their exercise of the substantive right remains the same.”

The NLRB hit back hard. Federal law labor developed in response to the very same tactic deployed by the employers here: the use of the individual “contract” to impede (actually eviscerate) employees’ efforts to band together to advance their interests. There were “yellow dog contracts” and federal court labor injunctions. Since then, the Board, with court approval has rejected prospective individual waivers of Section 7 rights. “The need to enjoin the use of individual agreements that prospectively obstruct protected concerted employee activity is as great today as it was prior to the passage of the Norris-LaGuardia Act. Decreasing union density has made the concerted efforts of unorganized employees to enforce minimum statutory standards more central to protecting and improving their work lives. Meanwhile, employers burgeoning use of the individual-arbitration agreements threatens to foreclose such concerted legal activity, just as employers’ use of individual employment contracts, decades ago, impaired employees’ attempts at self-organization until the NLRA made those contracts unlawful.”

The waivers demanded of employees here are prospective, collective, and public. Once signed, employees forfeit their right to join in any collective legal action, without regard to whether the
forum is judicial or arbitral, regardless of the force of their coworkers’ appeals. The employees leave the table, one by one, from the group lawsuit. The loss of each person diminishes the power of the right until it is meaningless.

As sketched above, and as outlined in the parties’ excellent briefs, the import of the matter here, while seemingly technical and procedural, has enormous significance. If “concerted activities” under Section 7 of the NLRA includes “resort to administrative and judicial forums,” such as filing a collective or class action suit to achieve more favorable terms or conditions of employment, then it is difficult to reconcile the FAA, as interpreted by the Court to date, with Section 7. In Concepcion, the Supreme Court held that class-based arbitration undermined the purpose of arbitration, a holding with which the dissent in that case strongly disagreed. In that case, which issued in 2011, a conservative majority held that “requiring the availability of class-wide arbitration interferes with the fundamental attributes of arbitration and thus creates a scheme inconsistent with the FAA.” This pronouncement was the death knell for collective legal action, particularly in employment (although Concepcion itself was a consumer fraud case involving allegedly “free” sales of a cell phones by AT&T).

The NLRB argument is a challenge to the majority premise in Concepcion. The NLRB argued that the class waiver run afoul of the NLRA not because they require arbitration, but because they compelled employees to relinquish any collective legal action in any forum – including the arbitral setting. We shall soon see if the liberal minority has enough power to resist this effort to diminish the force of employees’ concerted activity through legal action.

**Advocate Health Care Network v. Stapleton, 137 S. Ct. 1652 (2017)**

This case presented the question of whether the Employee Retirement Income Security Act (“ERISA”) exempts benefit plans from its comprehensive regulation when such plans are not established by a church but maintained by an organization the purpose of which is to manage the benefit plan for employees of churches. The entities offering the defined benefit plans at issue were three church-affiliated nonprofits that run hospitals (“Hospitals”). The employees claimed that the Hospital plans were not so exempt under a reading of the relevant ERISA provision; the Hospitals responded that the plans were exempt.

In an opinion in which all Members of the Court joined (with Justice Gorsuch not participating), the Court agreed with the Hospitals.

The specific statutory language parsed by Justice Kagan provided that an exempt “church plan”

> [e]stablished and maintained for its employees . . . by a church . . . includes a plan maintained by an organization . . . the principal purpose or function of which is the administration or funding of a plan or program for the provision of retirement benefits or welfare benefits, or both, for employees of a church or convention or association of churches . . . .

Current and former employees of the Hospitals argued that their pension plans were not exempt because that exemption only applied if the churches established the plans. Using an array of interpretative arguments and examples, as well as common sense, the Court found that ERISA “treats the terms ‘establish’ and “maintain’ interchangeably,” and that the exemption applied.

The practical consequences of this decision are good for church-affiliated hospitals but not their employees. Although such hospitals can lawfully avoid the expense of compliance with ERISA regulations, the ERISA regulations protect employees, who may be at risk that their pensions will not be able to fund the benefits promised.

*California Public Employees’ Retirement System v. ANZ Securities, Inc., 137 S. Ct. 2042 (2017).*

The case presented the question of whether a plaintiff member of a putative class in a class action that later elected to withdraw and proceed in a separate suit could lawfully proceed in this individual suit or was barred because the filing was more than three years after the triggering event defined in a statutory time bar. The plaintiff was California Public Employees’ Retirement System (“CalPERS”), the largest public pension fund in the nation. It had purchased securities in an offering by Lehman Brothers. In and around the same time that Lehman filed for bankruptcy, in 2008, a putative class action was filed against certain respondents in the Southern District of New York, alleging that the registration statements for certain of Lehman’s 2007 and 2008 securities offerings included material misstatements or omissions in violation of the Securities Act of 1933. CalPERS was not a named plaintiff but was a member of the putative class. It filed a separate complaint in the Northern District of California, alleging identical securities fraud violations as the class-action complaint. That separate complaint was filed more than three years after the relevant transactions occurred. When the putative class reached a proposed settlement, CalPERS opted out, convinced it could obtain more favorable recovery in its separate suit.

The respondents, various financial institutions, sought to dismiss CalPERS individual suit on the ground that the filing was untimely under a 3-year time bar under the statute. Both the district court and the appeals court agreed. The Court agreed as well.

In an opinion by Justice Kennedy, and over a dissent authored by Justice Ginsburg and joined by Justices Breyer, Sotomayor and Kagan, the Court held that the 3-year bar was a “statute of repose,” the purpose of which was to afford defendants “a complete defense to any suit after a certain period.” The specific language was unequivocal: “In no event shall any such action be brought to enforce a liability created under [§11] more than three years after the security was bona fide offered to the public.” 15 U.S.C. § 77m. “This instruction admits of no exception and on its face creates a fixed bar against future liability.”

The Court rejected CalPERS’ argument that the 3-year bar is subject to tolling under *American Pipe & Constr. Co. v. Utah*, 414 U.S. 538 (1974). There, a timely class-action was filed asserting various violations of federal antitrust law. The trial court denied class certification
(because of a lack of “numerosity”), and various individuals who would have been members sought to intervene directly. The district court rejected that effort as outside the statute of limitations, but the appeals court reversed. It held that the commencement of the class action suspends the applicable limitations period, a conclusion endorsed by the Supreme Court.

Here, the Court held that the rationale of American Pipe did not apply to the CalPERS case, however, in part because the 3-year bar is a statute of repose rather than a statute of limitations, and in part because the American Pipe analysis was not grounded on a clear legislative enactment. Here, the “text, purpose, structure, and history of the statute all disclose the congressional purpose to offer defendants full and final security after three years.” This certainty, it concluded, is “a necessity in a marketplace where stability and reliance are essential components of valuation and expectation for financial actors.”

The dissent had a powerful argument, namely that respondents had the requisite “notice” that animates the statute of repose rationale once the putative class action was filed: “But whether CalPERS stayed in the class or eventually filed separately, respondents would have known, within the repose period, of their potential liability to all putative class members.” The class complaint identified the essential information to determine both the subject matter and size of the prospective litigation. The respondents could not have been in a “state of repose” once served with the claim.

**Bristol-Myers Squibb Co. v. Superior Court, 137 S. Ct. 1773 (2017).**

The case presented the question of whether the California courts had the power to adjudicate an action filed by more than 600 plaintiffs, most of whom were not California residents. In an opinion authored by Justice Alito and joined by all but Justice Sotomayor, the Court said: “No.”

The plaintiffs sued Bristol-Meyers Squibb Company (BMS) alleging a variety of claims from Plavix. More than 50% of BMS’ work force in the U.S. is in New York and New Jersey. It does employ 160 persons in five research and laboratory facilities and has 250 sales representatives in California. But it did not develop Plavix in California, did not create a marketing strategy for Plavix in California, and did not manufacture, label, package, or work on the regulatory approval in California. Its sales of Plavix in California amount to a little over 1% of the company’s nationwide sales revenue.

The plaintiffs included 592 residents from 33 states other than California. These nonresident plaintiffs did not claim that they had obtained Plavix from California physicians or form any other California source. They also did not claim that they were injured by Plavix in California or were treated for injuries in California.

The Court reviewed basic principles regarding the power of courts to assert jurisdiction over defendants. The limit on that power is the Fourteenth Amendment. Jurisdiction by a state court exposes the defendants to the state’s “coercive power.” For a state to assert what is known as “specific jurisdiction,” the lawsuit itself must arise out of the defendants’ contacts with the forum state. There must be some “affiliation” between the forum and the underlying controversy, i.e.,
an activity or occurrence that takes place in the forum state and is therefore subject to the state’s regulation. It is not sufficient if the defendant has extensive contacts with forum that are unrelated to the claims at issue.

The California Supreme Court had advanced a “sliding scale” approach: the more wide ranging the defendant’s contacts, the more readily is the personal jurisdiction mandate satisfied. Because BMS had extensive contacts with California, and the claims of nonresidents were similar to those of California (over whom specific jurisdiction was clear), BMS was exposed to suit in California for the nonresident claims.

This case is not an employment case but has implications in cases where groups of employees seek to bring a class action against their employer or against a third party in a product liability lawsuit alleging injuries from exposure to toxic substances or other dangerous products at work. The result is part of trend making it harder for plaintiffs to band together to sue corporations. Commentators have observed the steady erosion of the more generous standard for specific jurisdiction over the non-resident defendants.

Justice Sotomayor, in dissent, took issue with the majority’s parsing of the relationship between BMS and California. The non-residents’ claims “relate to” the defendants’ forum conduct because they were injured by the same conduct as the resident plaintiffs, namely the “marketing and distribution of Plavix, which it undertook on a nationwide basis in all 50 States.” The advertising and distribution efforts were for all practical purposes the same.

Justice Sotomayor wrote: “The majority’s rule will make it difficult to aggregate the claims of plaintiffs across the country whose claims may be worth little alone. It will make it impossible to bring a nationwide mass action in state court against defendants who are “at home” in different States. And it will result in piecemeal litigation and bifurcation of claims. None of this is necessary. A core concern in this Court’s personal jurisdiction cases is fairness. And there is nothing unfair about subjecting a massive corporation to suit in a State for nationwide course of conduct that injures both forum residents and nonresidents alike.”


The case presented the question of whether an individual, Somers, who had reported suspected securities law violations to senior management, but not to the Securities Exchange Commission (“SEC”), enjoyed the protection of the anti-retaliation provisions of the 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd Frank”). The Court delivered the answer: “No.” In an opinion by Justice Ginsburg, the Court looked to the plain language of Dodd Frank.

Like the Sarbanes-Oxley Act of 2002, Dodd Frank, seeks to root out corporate fraud. Dodd Frank, however, protects a more limited class: it defines “whistleblower” to mean a person who provides “information relating to securities laws to the Commission.” Sarbanes-Oxley, in contrast, applies to all employees who report misconduct to the SEC/Commission, or to any other federal agency, Congress, or an internal supervisor. Congress passed Dodd Frank in the
wake of the 2008 fiscal crisis; it implemented a whistleblower program the purpose of which was to motivate people to report specifically to the SEC.

Somers worked for Digital Realty Trust. He alleged that he was terminated in retaliation for reporting to senior management at Digital suspected securities-law violations by the company. He did not make a report to the SEC, however. He brought suit in the Northern District Court of California, which rejected Digital’s argument that Somers’ failure to report to the SEC stripped him of Dodd Frank protection. The Ninth Circuit affirmed but the Supreme Court reversed.

Dodd Frank is powerful. It provides immediate access to the courts (an employee can file in court without the requirement that he/she exhaust administrative process with an initial complaint to the Secretary of Labor), a generous statute of limitations (6 years), and significant monetary awards (double backpay with interest). Yet to fall within its ambit the employee must report to the SEC. The data reported by the Court suggest that this mandate is not difficult to fulfill: the Solicitor General reported that 80% of the whistleblowers who received awards in 2016 reported internally before reporting to the Commission.


The case presented the question of whether the word “tolling” in the Supplemental Jurisdiction statute, 28 U.S. § 1367 means that the state limitations period is suspended, *i.e.*, stopped, during the pendency of the federal suit, or that the limitations period continues to run but the plaintiff has a grace period of 30 days to refile in state court after dismissal of the federal claim.

The plaintiff was a health inspector for the District of Columbia. She sued under Title VII, alleging sex discrimination, and additionally asserted three state law claims. The district court granted the District’s motion for summary judgment on the Title VII claim (the sole federal claim), but declined to exercise supplemental jurisdiction on the state law claims under 28 U.S.C. § 1367(c)(3). Fifty-nine days later, Artis filed in state court, which granted the District’s motion to dismiss, holding that Artis’ claims were time-barred because they came 29 days too late. When Artis initially filed in federal court, nearly two years remained on the applicable three-year statute of limitations. Two and one-half years passed before the federal court relinquished jurisdiction, however. If section 1367(d) did not stop the limitations clock, then Artis only had 30 days to refile, a deadline she had failed to meet.

In an opinion authored by Justice Ginsberg (and over a dissent by Justices Gorsuch, Kennedy, Thomas, and Alito), the Court looked to various sources, including *Black’s Law Dictionary*, Court precedent, and legislative distinctions between “tolling” and “grace periods,” to hold that “tolling” means what it has been understood to mean over the years: “stop the clock.” The Court concluded that the “stop the clock” finding was “suited to the primary purposes of limitations statutes: ‘preventing surprises’ to defendants and ‘barring a plaintiff who has slept on his rights.’” The defendants will have notice of plaintiff’s claims. And the plaintiff will not have “slept on her rights.”