

NATIONAL REVIEW

Not Quite So Epic

Ramesh Ponnuru

May 23, 2018

Under the headline “The Supreme Court vs. Your Paycheck,” David Leonhardt assails the Supreme Court’s 5-4 decision in Epic Systems v. Lewis, which held that by statute companies can require employees to submit certain claims against them to arbitration. The case is supposedly part of a decades-long trend of Supreme Court decisions that have strengthened corporate power, which in turn has supposedly lowered wages. That’s a lot of argumentative weight for this decision to carry — especially when you consider that the Court, as it explained, was re-affirming the interpretation of the National Labor Relations Act that had prevailed from its adoption in 1935 until the Obama-era National Labor Relations Board came up with a different interpretation in 2012.

Leonhardt doesn’t mention that fact. He also entirely ignores the question of which side had the legal merits on his side, which also seems relevant. If, that is, the Court got the law right but the law itself harms workers’ paychecks, it can’t be right to treat the justices in the majority as bad actors.

Read Walter Olson for more on this topic.