

US Supreme Court undermines class action lawsuits in Wal-Mart ruling

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A decision Monday by the US Supreme Court represents a substantial further step in shutting down legal avenues through which corporations have traditionally been held accountable for their misconduct. The decision is one of the more brazen pro-corporate rulings by the Supreme Court in recent memory.

In the case of *Wal-Mart v. Dukes*, the Supreme Court held 5-4 that a large number of women who claimed they were the victims of unlawful sexual bias could not proceed collectively with a single lawsuit against Wal-Mart, but rather had to file lawsuits individually or in smaller groups.

Champagne corks were no doubt flying well into the night at Wal-Mart headquarters. The world's largest multinational corporation, Wal-Mart has an estimated 8,500 stores in 15 countries. The corporation—notorious for low wages and oppressive conditions—pulled in \$12.7 billion in profits last year. The Supreme Court ruling not only shuts down a major lawsuit against the corporation, but also makes it far more difficult for the corporation to be sued by large groups of its victims.

In a press-release, Wal-Mart denied it discriminates against women and announced, “We are pleased with today’s ruling and believe the Court made the right decision.”

In the year 2000, a number of women initiated a class action lawsuit against Wal-Mart on the grounds that an unhealthy corporate culture, in combination with local managers’ unchecked discretion over pay and promotions, led to widespread discrimination in favor of men. According to one study, female employees

made up 70 percent of Wal-Mart’s hourly paid workforce, but only 33 percent of its management.

The lawsuit claimed to involve the interests of as many as 1.5 million women who had previously worked in the massive corporation, and who had been the victims of sexual discrimination. Long-standing legal traditions permit class actions, in which large numbers of victims of misconduct combine their cases into one collective lawsuit.

From the start, Wal-Mart argued that the class action should not be permitted to go forward because the large number of women’s claims were not similar enough to warrant their combination into a single action. In 2009, the Ninth Circuit Court of Appeals held that the women could proceed. Wal-Mart sought review of the Ninth Circuit decision in the Supreme Court.

In a blustering opinion yesterday by Justice Antonin Scalia, the Supreme Court announced its agreement with Wal-Mart. The statistical evidence present by the victims was “world’s away from ‘significant proof’ that Wal-Mart operated under a general policy of discrimination,” Scalia wrote.

In effect, Scalia argues that in order to even bring the class action lawsuit, the female workers of Wal-Mart would have to demonstrate that there was a deliberate discrimination policy explicitly adopted by the company, and that this policy was imposed upon every one of its managers. This is, in fact, an impossibly high barrier to reach.

Taking Wal-Mart’s perverse reasoning to its logical conclusion, the Court decision declares that the larger a

corporation, the less susceptible it will be to class actions. The larger the number of employees, he argued, the more dissimilar the claims will be.

As a result of yesterday's opinion, as the Supreme Court well knows, the vast majority of the 1.5 million women will never have their day in court. Discouraged by eleven years of litigation, with all of the accompanying expense, many women will simply be unable to afford litigating an entire case against Wal-Mart's team of high-paid attorneys alone. Those women who do litigate their cases to the end will likely recover, if anything, only a pittance for themselves.

However, there is far more to the *Wal-Mart v. Dukes* ruling than the specific circumstances of the case. The Court did not rule that the Wal-Mart women were not discriminated against, *but that they did not have the power even to file a lawsuit to determine whether they were discriminated against*. As the dissent of Justice Ruth Bader Ginsburg noted, "The Court...disqualifies the class from the starting gate."

This has vast implications for other groups of workers who are seeking to bring legal action against corporations. Class actions are one of only a few surviving legal mechanisms which to any degree hold the most rapacious corporate tendencies in check.

These mechanisms are now under heavy attack, and are giving way one by one. In his opinion yesterday, Scalia, who together with Justice Clarence Thomas ranks among the most strident judicial mouthpieces for big business, went out of his way to scoff at the women who brought the case. He has repeatedly denounced so-called "abuses" of the class action mechanism.

Legal rules governing class actions have historically permitted large numbers of victims, for whom it would often not be economical to sue individually, to join forces where their cases are similar. Yesterday's ruling is only the latest in a long line of recent Supreme Court rulings undermining class actions.

Along with its 5-4 decision on whether a class action could proceed, the Supreme Court also ruled 9-0 that the women could not recover backpay. This component

of the ruling has the impact of strengthening the position of corporations against money claims by workers and other victims of corporate malfeasance.



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