IN THE SUPREME COURT OF THE UNITED STATES

No. 16-285

EPIC SYSTEMS CORPORATION, PETITIONER

v.

JACOB LEWIS

No. 16-300

ERNST & YOUNG LLP, ET AL., PETITIONERS

v.

STEPHEN MORRIS, ET AL.

No. 16-307

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

MURPHY OIL USA, INC., ET AL.

ON WRITS OF CERTIORARI
TO THE UNITED STATES COURTS OF APPEALS
FOR THE FIFTH, SEVENTH, AND NINTH CIRCUITS

MOTION OF THE UNITED STATES FOR LEAVE TO PARTICIPATE IN ORAL ARGUMENT AS AMICUS CURIAE AND FOR DIVIDED ARGUMENT

Pursuant to Rules 28.4 and 28.7 of the Rules of this Court, the Acting Solicitor General, on behalf of the United States, respectfully moves that the United States be granted leave to participate in the oral argument in these cases as amicus curiae supporting petitioners in Nos. 16-285 and 16-300 and supporting

respondents in No. 16-307 and that the United States be allowed ten minutes of argument time. Those parties have agreed to cede ten minutes of argument time to the United States and therefore consent to this motion.

1. At issue in these cases are arbitration agreements between individual employees and their employers that bar the employees from pursuing work-related claims on a collective or class basis. The question presented is whether such agreements limit the employees' right under the National Labor Relations Act (NLRA) to engage in "concerted activities," 29 U.S.C. 157, and whether the agreements are enforceable under the Federal Arbitration Act (FAA), 9 U.S.C. 2. The National Labor Relations Board (Board) has held that employers who require their employees to sign such agreements have engaged in an unfair labor practice in violation of the NLRA, 29 U.S.C. 158. See D.R. Horton, Inc., 357 N.L.R.B. 2277, 2277-2283 (2012), enforcement denied in relevant part, 737 F.3d 344 (5th Cir. 2013). The Board also has held that when such an agreement violates the NLRA, the FAA does not require its enforcement. See id. at 2277, 2283-2288.

2. Two courts of appeals, agreeing with the Board's position, rejected attempts by employers to enforce agreements with their employees to arbitrate disputes on a bilateral basis only. 16-285 Pet. App. 1a-23a; 16-300 Pet. App. 1a-25a.

Another court of appeals disagreed with the Board, overturning the Board's decision to sustain an unfair-labor-practice charge under the NLRA against an employer that sought to enforce a bilateral arbitration agreement with its employees. 16-307 Pet. App. 1a-16a.

This Court granted petitions for writs of certiorari in all three cases, including a petition filed by this Office on behalf of the Board (No. 16-307). The cases have been consolidated, and the Court has ordered petitioners in Nos. 16-285 and 16-300 and respondents in No. 16-307 (the employers in these cases) to file opening and reply briefs; it has ordered respondents in Nos. 16-285 and 16-300 (the employees) and petitioner in No. 16-307 (the Board) to file response briefs.

3. The United States has filed a brief as amicus curiae supporting petitioners in Nos. 16-285 and 16-300 and supporting respondents in No. 16-307. The brief argues that the FAA requires enforcement of arbitration agreements between individual employees and their employers that bar the employees from pursuing work-related claims on a collective or class basis. See 9 U.S.C. 2. The brief contends that, although enforcement is not required if the FAA's mandate has been overridden by a contrary congressional command or if enforcing the parties' agreement would deprive the plaintiff of a

substantive federal right, neither of those justifications for non-enforcement is applicable here.

4. The United States has a substantial interest in the Court's resolution of these cases. The United States and the Board have responsibility for enforcing the NLRA, and the Board filed a petition for a writ of certiorari in No. 16-307. The United States has often participated in oral argument as amicus curiae in cases involving the proper interpretation of the FAA and the NLRA. See, e.g., American Express Co. v. Italian Colors Rest., 133 S. Ct. 2304 (2013); 14 Penn Plaza LLC v. Pyett, 556 U.S. 247 (2009); Chamber of Commerce of the U.S. v. Brown, 554 U.S. 60 (2008); Mastrobuono v. Shearson Lehman Hutton, Inc., 514 U.S. 52 (1995). We therefore believe that oral presentation of the views of the United States would be of material assistance to the Court.

Respectfully submitted.

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