

US Supreme Court Enforces No-Class-Action Arbitration (Again): *DIRECTV, Inc. v. Imburgia*

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In *DIRECTV, Inc. v. Imburgia* – decided on December 14, 2015 – the US Supreme Court enforced a no-class-action arbitration clause, shutting down a consumer class action.

The consumer contract at issue provided that “if the law of your state” did not allow waiver of class arbitration, the agreement to arbitrate as a whole was invalid. At the time *DIRECTV* drafted the contract, California law made class-arbitration waivers unenforceable. But the US Supreme Court later undid this in *AT&T Mobility LLC v. Concepcion*, which required California to enforce these waivers under US federal law – the Federal Arbitration Act (FAA).

Against this backdrop, the *DIRECTV* majority opinion navigates choice of law and the interplay between US state and federal law in a few discrete steps.

First, the parties could elect invalid California law as their choice of governing law. “In principle,” Justice Breyer indicates, writing for the majority, parties “might choose to have portions of their contract governed by the law of Tibet, the law of pre-revolutionary Russia, or (as is relevant here) the law of California ... irrespective of that rule’s invalidation in *Concepcion*”.

Second, the state court held that the parties had elected invalid California law. The state court has the final word on the interpretation of state law, and contract law is at the heart of this subnational prerogative. So the Supreme Court must live with the California state court’s holding that the contractual selection of “law of your state” included now-invalid California law (the last on Justice Breyer’s list above).

But, *third*, the state court’s interpretation singled out arbitration contracts, so was pre-empted by the Federal Arbitration Act.

The Supreme Court reasoned that the California state court decision must not

conflict with the FAA. In particular, it must put arbitration contracts on “equal footing” with all other contracts. According to the Supreme Court, the California court singled out arbitration when interpreting the phrase “law of your state”. Federal law accordingly pre-empted its decision and the arbitration agreement must be enforced.

The two dissenting opinions make very different points.

Justice Thomas would restrict the reach of the FAA so that it does not reach state courts.

A separate dissent by Justices Ginsburg and Sotomayor highlighted the underlying dynamics that have made this area of the law so controversial in the US and that perhaps have pushed the Supreme Court to revisit these questions repeatedly in recent years. In particular, the dissent decried the majority’s reading of the FAA to “deprive consumers of effective relief against powerful economic entities that write no-class-action arbitration clauses into their form contracts.” The dissent would not “disarm consumers, leaving them without effective access to justice”.