

No. _____

IN THE

**Supreme Court of
The United States**

ALTERNATIVE ENTERTAINMENT, INC.,
Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

On Petition for Certiorari to the
United States Court of Appeals For the Sixth Circuit

PETITION FOR CERTIORARI

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I. Question Presented

Whether, notwithstanding the National Labor Relations Act (“NLRA”), arbitration agreements requiring employees to waive their rights to pursue class or collective action employment-related claims against their employers are enforceable pursuant to the Federal Arbitration Act (“FAA”)

II. Rule 29.6 Statement

Petitioner Alternative Entertainment, Inc. is a privately held corporation and has no parent corporations, subsidiaries or affiliates that have issued shares to the public.

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IV. Citations of Opinion and Order in This Case

National Labor Relations Board v. Alternative Entertainment, Inc., Case No. 16-1385 (6th Cir. 2017)

Alternative Entertainment, Inc. and James DeConner 363 NLRB No. 131 (2017)

V. STATUTES AT ISSUE

29 USC §157

Employees shall have the right to self-representation to form, join, or assist labor organizations to bargain collectively through representative of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other normal aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership to a labor organization, as a condition of employment as authorized in section 158(a)(8) of this title.

(July 6, 1985, c. 372 § 7, 49 Stat. 452; June 23, 1947, c. 120 Title I § 101 61 Stat. 140)

9 USC §2

A written provision in any other maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform in whole or any part thereof, or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction or refusal, shall be valid, irrevocable, and enforceable, save upon such grounds

as exist at law or in equity for the revocation of any contract.

VI. Statement of Basis for Jurisdiction

The Judgment from United States Court of Appeals for the Sixth Circuit for which review is sought was entered on May 26, 2017. On June 19, 2017 the Sixth Circuit issue on Order to Stay the mandate to allow time for a petition for certiorari.

The jurisdiction of this Court to review the Judgment of the Sixth Circuit is provided at 28 USC § 1254(1).

VII. STATEMENT OF THE CASE

Alternative Entertainment, Inc. (“AEI”) is a Washington corporation with a place of business in Bryon Center, Michigan. It employs cable television service technicians at its Michigan and other locations.

AEI requires all employees to sign a document called “Open Door Policy and Arbitration Program” (“Policy”). Under the subtitle, “What Rights Do I and ACI Waive Under This Agreement?” is the following language:

By signing this agreement, you and the Company give up the same important rights, such as filing or maintaining a lawsuit in Court, joining or participating in a class action, or representative action, acting as a Representative of others, having a jury decide a claim...

On February 22, 2016, the National Labor Relations Board issued its decision in *Alterative Entertainment, Inc. and James DeCommer*, 363 NLRB No. 131 (2016). The Board held that the class action waiver contained in AEI’s employee arbitration agreement violated the National Labor Relations Act because it interferes with employee’s rights to engaged in concerted activities pursuant to 29 USC §157.

On May 26, 2017, the Sixth Circuit issued a 2 to 1 split decision siding with the Board on the class action waiver issue. The Hon. J. Sutton dissented. The Sixth Circuit had jurisdiction pursuant to 29 USC § 160(e), the Sixth Circuit held that class action waivers violated the Section 7 NLRA 29 USC § 157.

VIII. ARGUMENT

I. **Certiorari is Sought Due to a Split Among the Circuits.**

Two Circuits have held that Class Action waivers like the one at issue here are lawful and enforceable. See *Murphy Oil USA v. NLRB*, 808 F3d 1013 (5th Cir 2013) and *Cellular Sales of MO, LLC v. NLRB* 824 F3d 772 (8th Cir. 2016).

The Sixth in this case and the Seventh, and Ninth Circuits have reached the opposite conclusion. See *Morris v. Ernest & Young, LLP*, 834 F3d 975 (9th Cir. 2016) and *Lewis v. Epic Systems Corp.* 823 F3d 1147 (7th Cir. 2016).

Of course, this Court has already recognized the importance of this issue and the necessity of resolving the split among the circuits by granting certiorari in *Ernest & Young, LLP at al v. Stephen Morris, et al*, 137 S. Ct. 809 (2017).

Since certiorari has already been granted to resolve this issue, the question that arises is why should it be granted in this case. The answer is to avoid a potential injustice that could arise from the unfortunate timing of the Sixth Circuit decision. Pursuant to the Sixth Circuit's order staying the mandate, if certiorari is not granted, the mandate will issue, and AEI will be required to rescind its employment agreements. There is a reasonable possibility that this Court would then rule that class action waivers are lawful and enforceable. AEI would then have been denied its rights under the law. If certiorari were granted, then after the Court issues its decision in *Ernest & Young v. Morris*, this case could be disposed of on motion pursuant to Rule 21.

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Dated: August 24, 2017

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