

The United States Supreme Court ruled against a class of current and former female employees of Wal-Mart who had sued the nation's largest private employer for employment discrimination. In ruling in favor of Wal-Mart, the court continued a disturbing trend of siding with big business and against individuals. In reversing lower courts which had allowed the case to proceed as a class action, the court imposed new and additional requirements on those seeking to pursue class claims.

In the case of Wal-Mart Stores, Inc. v. Dukes, the plaintiffs sued Wal-Mart and sought relief on behalf of a nationwide class of some 1.5 million female employees who had worked at Wal-Mart at any time since December 1998. The plaintiffs alleged that Wal-Mart discriminates on the basis of gender in pay and promotions. The plaintiffs presented evidence that even though women fill 70 percent of the hourly jobs in the retailer's stores, only 33 percent of management positions are filled by women. There was anecdotal evidence of widespread discrimination against female employees. The plaintiffs' evidence also included a report by a committee of female Wal-Mart executives that concluded that "stereotypes limit the opportunities offered to women" and expert testimony that the pay and promotions disparities at Wal-Mart "can be explained only by gender discrimination and not by . . . neutral variables." The trial court and the Ninth Circuit Court of Appeals previously ruled that the plaintiffs had presented a proper class action and that a jury should decide the merits of the case. The Supreme Court, however, ruled in favor of Wal-Mart in a sweeping 5-4 decision.

In siding with Wal-Mart, the Supreme Court significantly raised the threshold for class certification, noting that there must be some "glue" holding together the claims of a would-be class. The court provided little guidance on what showing will be required to pursue class-wide relief. The decision continues a series of rulings in favor of corporate interests and against individuals in recent years.

In case after case, when presented the opportunity, the Supreme Court has made it more difficult for individuals to pursue employment and consumer claims in which corporate interests are on the other side of the case. In this instance, the Supreme Court has effectively prevented a class of women from pursuing damages totaling approximately \$1,100 per year per person. For the individual workers who have been the victims of discrimination, those damages are significant, but not enough to entice good lawyers to pursue litigation against a behemoth like

Wal-Mart on an individual basis. Without the ability to group their claims together and pursue them in a class action, the claims cannot be effectively pursued and the discriminatory practices will continue. The decision in Wal-Mart Stores, Inc. v. Dukes unfortunately continues a string of pro-business, anti-individual rulings by our nation's highest court, which has been recently derided as "The Corporate Court" because of its bias in favor of big business.