SUPREME COURT OF THE UNITED STATES

No. 07–581

14 PENN PLAZA LLC, ET AL., PETITIONERS *v.*
STEVEN PYETT ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

[April 1, 2009]

JUSTICE STEVENS, dissenting.

JUSTICE SOUTER's dissenting opinion, which I join in full, explains why our decision in *Alexander* v. *Gardner-Denver Co.*, 415 U. S. 36 (1974), answers the question presented in this case. My concern regarding the Court's subversion of precedent to the policy favoring arbitration prompts these additional remarks.

Notwithstanding the absence of change in any relevant statutory provision, the Court has recently retreated from, and in some cases reversed, prior decisions based on its changed view of the merits of arbitration. Previously, the Court approached with caution questions involving a union's waiver of an employee's right to raise statutory claims in a federal judicial forum. After searching the text and purposes of Title VII of the Civil Rights Act of 1964, the Court in *Gardner-Denver* held that a clause of a collective-bargaining agreement (CBA) requiring arbitration of discrimination claims could not waive an employee's right to a judicial forum for statutory claims. See 415 U. S., at 51. The Court's decision rested on several features of the statute, including the individual nature of the rights it confers, the broad remedial powers it grants federal courts, and its expressed preference for overlapping remedies. See *id.*, at 44–48. The Court also noted the problem of entrusting a union with certain arbitration decisions

given the potential conflict between the collective interest and the interests of an individual employee seeking to assert his rights. See *id.*, at 58, n. 19. That concern later provided a basis for our decisions in *Barrentine* v. *Arkansas-Best Freight System, Inc.*, 450 U. S. 728, 742 (1981), and *McDonald* v. *West Branch*, 466 U. S. 284, 291 (1984), which similarly held that a CBA may not commit enforcement of certain rights-creating statutes exclusively to a union-controlled arbitration process. Congress has taken no action signaling disagreement with those decisions.

The statutes construed by the Court in the foregoing cases and in *Wilko* v. *Swan*, 346 U. S. 427 (1953), have not since been amended in any relevant respect. But the Court has in a number of cases replaced our predecessors' statutory analysis with judicial reasoning espousing a policy favoring arbitration and thereby reached divergent results. I dissented in those cases to express concern that my colleagues were making policy choices not made by Congress. See *Mitsubishi Motors Corp.* v. *Soler Chrysler-Plymouth, Inc.*, 473 U. S. 614, 640 (1985); *Rodriguez de Quijas* v. *Shearson/American Express, Inc.*, 490 U. S. 477, 486 (1989); *Gilmer* v. *Interstate/Johnson Lane Corp.*, 500 U. S. 20, 36 (1991); and *Circuit City Stores, Inc.* v. *Adams*, 532 U. S. 105, 124 (2001).

Today the majority's preference for arbitration again leads it to disregard our precedent. Although it purports to ascertain the relationship between the Age Discrimination in Employment Act of 1967 (ADEA), the National Labor Relations Act, and the Federal Arbitration Act, the Court ignores our earlier determination of the relevant provisions' meaning. The Court concludes that "[i]t was Congress' verdict that the benefits of organized labor outweigh the sacrifice of individual liberty" that the system of organized labor "necessarily demands," even when the sacrifice demanded is a judicial forum for asserting an individual statutory right. *Ante*, at 22. But in *Gard-*

ner-Denver we determined that "Congress' verdict" was otherwise when we held that Title VII does not permit a CBA to waive an employee's right to a federal judicial forum. Because the purposes and relevant provisions of Title VII and the ADEA are not meaningfully distinguishable, it is only by reexamining the statutory questions resolved in *Gardner-Denver* through the lens of the policy favoring arbitration that the majority now reaches a different result.*

Under the circumstances, I believe a passage from one of my earlier dissents merits repetition. The Court in *Rodriguez de Quijas* overruled our decision in *Wilko* and held that predispute agreements to arbitrate claims under the Securities Act of 1933 are enforceable. 490 U. S., at 484; see also *id.*, at 481 (noting *Wilko*'s reliance on "the outmoded presumption of disfavoring arbitration proceedings"). I observed in dissent:

> "In the final analysis, a Justice's vote in a case like this depends more on his or her views about the respective lawmaking responsibilities of Congress and this Court than on conflicting policy interests. Judges who have confidence in their own ability to fashion public policy are less hesitant to change the law than those of us who are inclined to give wide latitude to the views of the voters' representatives on nonconsti-

---

*Referring to the potential conflict between individual and collective interests, the Court asserts that it "cannot rely on this judicial policy concern as a source of authority for introducing a qualification into the ADEA that is not found in its text." *Ante*, at 21. That potential conflict of interests, however, was a basis for our decision in several pertinent cases, including *Alexander* v. *Gardner-Denver Co.*, 415 U. S. 36 (1974), and *Gilmer* v. *Interstate/Johnson Lane Corp.*, 500 U. S. 20, 35 (1991), and in the intervening years Congress has not seen fit to correct that interpretation. The Court's derision of that "policy concern" is particularly disingenuous given its subversion of *Gardner-Denver*'s holding in the service of an extratextual policy favoring arbitration.

> tutional matters. Cf. *Boyle* v. *United Technologies Corp.*, 487 U. S. 500 (1988). As I pointed out years ago, *Alberto-Culver Co.* v. *Scherk*, 484 F. 2d 611 (CA7 1973) (dissenting opinion), rev'd, 417 U. S. 506 (1974), there are valid policy and textual arguments on both sides regarding the interrelation of federal securities and arbitration Acts. None of these arguments, however, carries sufficient weight to tip the balance between judicial and legislative authority and overturn an interpretation of an Act of Congress that has been settled for many years." *Rodriguez de Quijas*, 490 U. S., at 487 (footnote and citation omitted).

As was true in *Rodriguez de Quijas*, there are competing arguments in this case regarding the interaction of the relevant statutory provisions. But the Court in *Gardner-Denver* considered these arguments, including "the federal policy favoring arbitration of labor disputes," 415 U. S., at 59, and held that Congress did not intend to permit the result petitioners seek. In the absence of an intervening amendment to the relevant statutory language, we are bound by that decision. It is for Congress, rather than this Court, to reassess the policy arguments favoring arbitration and revise the relevant provisions to reflect its views.