

Error Correction and the Supreme Court's Arbitration Docket

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Abstract:

Supreme Court Justices from William Taft to Stephen Breyer have repeated the maxim that the “Supreme Court is not a court of error correction.” When it comes to arbitration law, however, a number of the Court’s cases do little more than correct errors by lower courts. So why has error correction played such a significant role in the Court’s arbitration docket? One important factor is ongoing resistance to the Court’s arbitration decisions in the lower courts, to which a number of the Court’s error correcting decisions are a direct response. Another is that cases involving standards rather than rules necessarily require fact-based determinations, and the nature of the Court’s case selection process can result in the Court reviewing cases with one-sided facts that make little law. But, in addition, the generalist legal background of Supreme Court Justices (and their law clerks) leads them to overlook important nuances in the facts of arbitration cases before the Court on certiorari. These nuances give rise to several simple steps the Court could take to avoid some of its more limited decisions, including: (1) reviewing state court cases only when the issue presented does not also arise in cases in federal courts; (2) avoiding cases arising out of post-dispute arbitration agreements; and (3) choosing cases with typical arbitration clauses, not atypical ones.