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Supreme Court Further Undermines *D.R. Horton*'s Shaky Foundation

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Just a few days following the NLRB's controversial decision in *D.R. Horton* that called into question the validity of employment arbitration provisions, the United States Supreme Court issued a ruling that may spell trouble for the NLRB's position. By issuing an 8-1 vote on Jan. 11, 2012, the Supreme Court reversed the Ninth Circuit and reaffirmed its position that the FAA established a federal policy favoring arbitration. *CompuCredit Corp. v. Greenwood*.

CompuCredit involved a purported conflict between the FAA and the Credit Repair Organization Act (CROA). At issue was whether the grant of a private right of action in CROA constituted a “Congressional command” that the FAA policy favoring arbitration be overruled. After examining the provisions of the CROA and the Supreme Court precedent under the FAA, the Court held that the general language of the CROA providing for a "right-to-sue" and maintenance of class actions did not supercede the FAA policy. Instead, the Supreme Court held that the "right to sue" language only created a cause of action, which could be vindicated in multiple forums, including arbitration.

While *CompuCredit* did not arise under the NLRA, its reasoning seems to provide a route for attack of the NLRB's *D.R. Horton* decision. Given the NLRA's lack of an express Congressional command prohibiting arbitration and the Supreme Court precedent with respect to class arbitration, it may be easy for reviewing courts to connect the dots and find that the NLRB was out in left field when it held that arbitration agreements with class claim prohibitions violate federal law.

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