

Consumer, Labor & Civil Rights Groups Support the Arbitration Fairness Act

July 26, 2010

The Honorable John Conyers Jr., Chairman
The Honorable Lamar Smith, Ranking Member
U.S. House of Representatives Committee on the Judiciary
362 Ford House Office Building
Washington, DC 20515

Dear Chairman Conyers and Ranking Member Smith:

We, the undersigned organizations, strongly support the Arbitration Fairness Act of 2009, H.R. 1020, introduced in the House by Representative Hank Johnson (D-GA). This important legislation would end the predatory practice of forcing non-union employees, consumers and franchise owners to sign away their rights to legal protections and access to the courts by making pre-dispute binding mandatory arbitration (“forced arbitration”) clauses unenforceable in civil rights, employment, consumer, and franchise disputes.

Corporations that place forced arbitration clauses in their contracts with consumers, non-union employees, and franchisees, shield themselves from accountability for wrongdoing. None of the safeguards of our civil justice system are guaranteed for persons attempting to enforce their employment, consumer and civil rights in forced arbitration. There is no impartial judge or jury, but rather arbitrators who rely on major corporations for repeat business. With nearly no oversight or accountability, businesses or their chosen arbitration firms set the rules for the secret proceedings, often limiting the procedural protections and remedies otherwise available to individuals in a court of law. For example, the ability to obtain key evidence necessary to prove one’s case is restricted or eliminated. In addition, the exorbitant filing fees, continuous fees for procedures such as motions and written findings, and “loser pays” rules in arbitration are prohibitive to many individuals, particularly in the current economic crisis when so many Americans are struggling just to make ends meet.

Forced arbitration also weakens the value of laws passed by Congress and state legislatures intended to protect consumers and employees by stripping many individuals of their ability to enforce those laws in court. For example, a cornerstone of hard-won civil rights protections is the right for victims of workplace discrimination or harassment to have their claims heard by an impartial judge and jury in the civil justice system. Increasingly, employers strip this right away from workers and require them to agree to forced arbitration as a condition of hiring or continued employment. By being forced into binding mandatory arbitration, an estimated 30 million non-union workers have lost essential protections established by our nation’s civil rights laws.¹

Other laws at risk include other provisions of the Civil Rights Acts of 1964 and 1991, the Age Discrimination in Employment Act, the Americans with Disabilities Act, the Family and Medical Leave Act, the Fair Labor Standards Act, the Equal Pay Act, the Uniformed Services Employment and Reemployment Rights Act, the Sherman Act, the Securities Act of 1933, the Securities

Exchange Act of 1934, the Truth in Lending Act, and the civil provisions of the Racketeer Influenced and Corrupt Organizations Act.

Forced arbitration is also proliferating in everyday consumer contracts for products and services such as credit cards, cell phones, mortgages, student loans, health insurance policies and nursing homes. Over seventy-five percent of consumer contracts examined in one study published last year contained arbitration provisions.²

Forced arbitration particularly disadvantages the most vulnerable consumers, such as victims of predatory lending. Unscrupulous lenders use forced arbitration in subprime mortgages, payday loans, credit card contracts and nursing home contracts, thereby avoiding accountability. The anti-predatory lending laws passed in some states are ineffective to deal with the abuse of forced arbitration because courts hold that the Federal Arbitration Act trumps state laws, even those intended to protect consumers.

The crisis in our financial markets has taught us that predatory business practices do not just harm consumers; they threaten the soundness of the entire economy. The Arbitration Fairness Act would empower individuals to prevent many such abuses from occurring in the first place and redress financial losses that they suffer from others.

The Arbitration Fairness Act does not seek to eliminate arbitration and other forms of alternative dispute resolution agreed to voluntarily after a dispute arises. Nor would it affect collective bargaining agreements that require arbitration between unions and employers. Its sole aim is to end the unscrupulous business practice of forcing consumers and employees into biased arbitrations by binding them long before any disputes arise.

We strongly support the Arbitration Fairness Act of 2009, which would restore access to our civil justice system and preserve important civil rights, employment and consumer protections. We urge you and the other members of Congress to pass H.R. 1020.

Sincerely,

A New Way Forward

American Federation of State, County and Municipal Employees (AFSCME)

Alliance for Justice

American Association for Justice

American Association of University Women

American Civil Liberties Union

American Federation of Labor-Congress of Industrial Organizations (AFL-CIO)

Americans for Fairness in Lending

American Rights at Work

Arizona Consumer Council

Arizona Public Interest Research Group

Center for Responsible Lending

Chicago Consumer Coalition

Citizen Works

Communication Workers of America
Community Reinvestment Association of North Carolina
Consumer Action
Consumer Assistance Council
Consumers for Auto Reliability and Safety
Consumer Federation of America
Consumers Union
Consumer Watchdog
Government Accountability Project
Homeowners Against Deficient Dwellings
Home Owners for Better Building
International Brotherhood of Teamsters (IBT)
Lawyers Committee for Civil Rights Under Law
Leadership Conference on Civil and Human Rights
Maryland Consumer Rights Coalition
Massachusetts Consumers' Council
MASSPIRG
NAACP
National Association of Consumer Advocates
National Consumer Law Center (On behalf of its low income clients)
National Consumers League
National Council of La Raza
National Council of Women's Organizations
National Fair Housing Alliance
National Employment Law Project
National Partnership for Women & Families
National Senior Citizens Law Center
National Women's Law Center
Neighborhood Economic Development Advocacy Project
New York Public Interest Research Group
Public Citizen
Sargent Shriver National Center on Poverty Law
Service Employees International Union (SEIU)
Take Back Your Rights PAC
The National Consumer Voice for Quality Long-Term Care (formerly NCCNHR)
U.S. Public Interest Research Group
Virginia Citizens Consumer Council
Wider Opportunities for Women
Workplace Fairness

cc: Members of the House Committee on the Judiciary
House Speaker Nancy Pelosi
House Minority Leader John A. Boehner
Members of the Senate Judiciary Committee
Senate Majority Leader Harry Reid
Senate Minority Leader Mitch McConnell

¹ See Alexander J.S. Colvin, *Empirical Research on Employment Arbitration: Clarity Amongst the Sound and Fury?*, 11 EMPLOYEE RTS. & EMP. POL'Y J. 405, 411 (2007)("[A] current estimate in the range of 15 to 25 percent of employers having adopted employment arbitration seems reasonable."). The 30 million figure is based upon a civilian labor force of 154.4 million Americans, as reported by the Bureau of Labor Statistics. Approximately 18.5 million American workers are unionized, leaving roughly 135 million non-union employees.

² See Jonathan D. Glater, *Companies Unlikely to Use Arbitration With Each Other*, N.Y. TIMES, Oct. 6, 2008, at B4 ("The findings by Professor Eisenberg, whose co-authors on the most recent study were Geoffrey P. Miller of New York University School of Law and Emily Sherwin of Cornell Law School, might prove provocative . . . included contracts by 21 different telecommunications and financial services companies. They found that companies included mandatory arbitration clauses in 75 percent of consumer agreements but in just 24 percent of contracts over all. Every consumer contract with an arbitration clause also waived possible group, or class, arbitration.").