

July 28, 2023

To the Members of the United States Congress:

The undersigned organizations strongly oppose numerous bills attempting to prohibit arbitration and class action waiver provisions that have been introduced or proposed in the 118th Congress. Arbitration has been an important alternative dispute resolution mechanism since the enactment of the Federal Arbitration Act in 1925. Unfortunately, there is an organized effort underway to dismantle the arbitration system in favor of bringing claims in the broken class action litigation system.

Individualized contract-based arbitration is an efficient, effective, and less expensive means of resolving disputes for consumers, employees, and businesses. Multiple empirical studies have shown that those bringing claims in arbitration do just as well as or, in many circumstances better than in court.<sup>1</sup> By contrast, studies have also shown that class action settlements frequently provide only a pittance – or many times, nothing at all – to class members while millions of dollars are paid to their attorneys.<sup>2</sup>

Opponents of arbitration mischaracterize how arbitration works to paint its use as unfair. The reality is that arbitration providers and courts ensure that arbitration operates fairly and that arbitration agreements are enforced only if they meet basic guarantees of fairness and due process. For example, the American Arbitration Association (AAA), the country's largest arbitration provider, developed fairness rules for employment and consumer arbitrations. It will not accept a case unless the arbitration agreement complies with those standards. These rules require that arbitrators must be neutral and disclose any conflict of interest and give both parties an equal say in selecting the arbitrator; limit the fees paid by employees and consumers to \$350 and \$225 respectively – equal to or less than the filing fee in federal court; empower the arbitrator to order any necessary discovery; and require that damages, punitive damages, and attorneys' fees be awardable to the claimant to the same extent as in court. And the AAA rules require that consumers be given the option of resolving their dispute in small claims court. JAMS, another leading arbitration provider, requires similar protections—as do other arbitration providers.

The courts provide another layer of oversight. If an arbitration provision is unfair, courts can and do step in and declare those arbitration agreements unconscionable and unenforceable. Also, arbitration agreements cannot prevent consumers or employees from publicly discussing

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<sup>1</sup> See Fairer, Faster, Better III: An Empirical Assessment of Consumer and Employment Arbitration (March 2022) available at <https://institutelegalreform.com/research/update-an-empirical-assessment-of-consumer-employment-cases-in-arbitration-litigation/>.

<sup>2</sup> See Consumer Financial Protection Bureau, Arbitration Study: Report to Congress (March 2015) available at [https://files.consumerfinance.gov/f/201503\\_cfpb\\_arbitration-study-report-to-congress2015.pdf](https://files.consumerfinance.gov/f/201503_cfpb_arbitration-study-report-to-congress2015.pdf). Finding that 87% of resolved class actions resulted in no benefit to absent class members, and in the rare cases they did, the average settlement payment was no better than \$32.35 per class member, but attorneys' fees averaged \$1 million per case.

claims with government agencies nor can arbitrators' decisions be kept secret. Courts have invalidated arbitration agreements that purported to impose a "gag order." And courts consistently hold that either party may disclose the results of arbitration proceedings.

Despite a lack of evidence showing a systemic problem with arbitration, multiple bills and amendments have been introduced and proposed in the 118th Congress that attack the availability of arbitration and class action waivers in numerous contexts such as employment disputes, consumer contracts, data privacy, multiple types of discrimination claims, and antitrust disputes, among others.<sup>3</sup>

If successful, these legislative efforts would declare unenforceable potentially millions of arbitration provisions that allow for the orderly and economical resolution of disputes. Opponents of pre-dispute arbitration fail to acknowledge that, if enacted, these provisions and bills will limit the realistic opportunity for consumers and employees to obtain a remedy if a dispute arises. The only real beneficiaries of these anti-arbitration provisions will be class action lawyers who would benefit from the possibility of bringing more class action lawsuits that enrich them while providing little benefit to class members.

These attacks on arbitration are inaccurate, unnecessary, and would undermine an important alternative to litigation that has benefited consumers, employees, and businesses for decades, and on which many of them now rely. Accordingly, we strongly urge you to oppose attempts to prohibit arbitration or class action waivers.

Sincerely,

**National**

ACA International

American Financial Services Association

American Health Care Association

American International Automobile Dealers Association

American Property Casualty Insurance Association

American Securities Association

American Staffing Association

American Tort Reform Association

AMERICAN TRANSACTION PROCESSORS COALITION

Bank Policy Institute

Credit Union National Association

Cruise Lines International Association

CTIA

Electronic Transactions Association

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<sup>3</sup> See, e.g., H.R. 2953, H.R. 20, H.R. 4120, H.R. 3038, H.R. 2998, H.R. 731, H.R. 2701, proposed amendments 88 and 232 to H.R. 2670, S. 1376, S. 567, S. 1979, S. 1408, S. 220, S. 178, and S. 631. These are just some among the litany of proposed bills and amendments.

Foodservice Equipment Distributors Association  
HR Policy Association  
Independent Women's Forum  
Independent Women's Law Center  
Independent Women's Voice  
Lawyers for Civil Justice  
Littler Workplace Policy Institute  
National Association of Home Builders  
National Association of Manufacturers  
National Association of Mutual Insurance Companies  
National Club Association  
National Retail Federation  
Real Estate Services Providers Council, Inc. (RESPRO®)  
Reinsurance Association of America  
Retail Industry Leaders Association (RILA)  
Small Business & Entrepreneurship Council  
U.S. Chamber of Commerce  
Window & Door Manufacturers Association

### **Alabama**

Mobile Area Chamber of Commerce  
Shoals Chamber of Commerce  
SouthWest Mobile County Chamber of Commerce

### **Alaska**

Alaska Chamber

### **Arizona**

Apache Junction Area Chamber of Commerce  
Arizona Chamber of Commerce and Industry  
Buckeye Valley Chamber of Commerce  
Chandler Chamber of Commerce  
Greater Flagstaff Chamber of Commerce  
Greater Phoenix Chamber  
Green Valley Sahuarita Chamber of Commerce & Visitor Center  
Mesa Chamber of Commerce  
Nogales-Santa Cruz County Chamber of Commerce  
Prescott Valley Chamber of Commerce  
Surprise Regional Chamber of Commerce  
Tucson Hispanic Chamber of Commerce  
Tucson Metro Chamber

### **Arkansas**

Arkansas State Chamber of Commerce/AIA  
Little Rock Regional Chamber  
Rogers Lowell Area Chamber of Commerce

### **California**

Antelope Valley Chambers of Commerce  
Brea Chamber of Commerce  
California Business Roundtable  
California Chamber of Commerce  
Carlsbad Chamber of Commerce

Chino Valley Chamber of Commerce  
Civil Justice Association of California  
Coalition of California Chambers Orange  
County  
Danville Area Chamber of Commerce  
Fresno Chamber of Commerce  
The Greater Conejo Valley Chamber of  
Commerce  
Greater Riverside Chambers of Commerce  
LA Area Chamber of Commerce  
La Canada Flintridge Chamber of Commerce  
Long Beach Area Chamber of Commerce  
Modesto Chamber of Commerce  
Moorpark Chamber of Commerce  
Murrieta/Wildomar Chamber of Commerce  
Oceanside Chamber of Commerce  
Orange County Business Council  
Palm Desert Area Chamber of Commerce  
Port Hueneme Chamber of Commerce  
Rancho Cordova Area Chamber of  
Commerce  
San Diego Regional Chamber of Commerce  
San Juan Capistrano Chamber of Commerce  
Santa Barbara South Coast Chamber of  
Commerce  
Santa Clarita Valley Chamber of Commerce  
SGV Regional Chamber of Commerce  
Simi Valley Chamber of Commerce

South Orange County Economic Coalition  
Torrance Area Chamber of Commerce  
Tulare Chamber of Commerce  
West Ventura County Business Alliance  
Yorba Linda Chamber of Commerce

### **Connecticut**

The Connecticut Business & Industry  
Association (CBIA)

### **Florida**

Florida Chamber of Commerce Litigation &  
Regulatory Reform Center  
Greater Boca Raton Chamber of Commerce  
Lake City - Columbia County Chamber of  
Commerce  
Stuart/Martin County Chamber of  
Commerce  
Turkish American Chamber of Commerce of  
the South  
Venice Area Chamber of Commerce, Inc.

### **Georgia**

Charlton County Okefenokee Chamber of  
Commerce  
Dublin-Laurens County Chamber of  
Commerce  
Georgia Chamber of Commerce  
Habersham County Chamber of Commerce

### **Hawaii**

Chamber of Commerce Hawaii  
Hawaii Restaurant Association

## **Idaho**

Boise Metro Chamber

## **Illinois**

Chamber 630

The Greater Springfield Chamber of Commerce

Illinois Association of Mutual Insurance Companies

Illinois Chamber of Commerce

Joliet Region Chamber of Commerce & Industry

## **Indiana**

Greater Lafayette Commerce

Greater Lawrence Chamber

Indiana Chamber of Commerce

Kendallville Area Chamber of Commerce

South Bend Regional Chamber

## **Iowa**

Iowa Association of Business and Industry

## **Kansas**

Overland Park Chamber of Commerce

## **Kentucky**

Greater Louisville Inc. - The Metro Chamber of Commerce

Kentucky Chamber of Commerce

Northern Kentucky Chamber of Commerce

## **Louisiana**

The Louisiana Association of Business and Industry

Louisiana Legal Reform Coalition

## **Maryland**

Maryland Chamber of Commerce

## **Massachusetts**

Metro South Chamber of Commerce

## **Michigan**

Michigan Chamber of Commerce

## **Minnesota**

Greater Mankato Growth

Marshall Area Chamber of Commerce

## **Mississippi**

Mississippi Economic Council

## **Missouri**

Missouri Chamber of Commerce and Industry

Missouri Civil Justice Reform Coalition, Inc.

## **Montana**

Beaverhead Chamber of Commerce & Agriculture & Dillon Convention & Visitors Bureau (CVB)

Billings Chamber of Commerce

Montana Chamber of Commerce

## **Nebraska**

Kearney Area Chamber of Commerce

Nebraska Chamber of Commerce & Industry

Wahoo Chamber & Economic Development

Washington County Chamber of Commerce

### **Nevada**

Henderson Chamber of Commerce

Laughlin Chamber of Commerce

Laughlin Tourism Commission

Reno + Sparks Chamber of Commerce

Vegas Chamber

White Pine Chamber of Commerce

### **New Hampshire**

BIA of NH

### **New Jersey**

Greater Westfield Area Chamber of  
Commerce

New Jersey Civil Justice Institute

New Jersey State Chamber of Commerce

### **New Mexico**

New Mexico Chamber of Commerce

### **New York**

The Business Council of New York

Capital Region Chamber

Lawsuit Reform Alliance of New York

### **North Carolina**

Charlotte Regional Business Alliance

NC Chamber

Perquimans County Chamber of Commerce

### **North Dakota**

The Chamber Grand Forks / East Grand  
Forks

Greater North Dakota Chamber

### **Ohio**

Ohio Chamber of Commerce

### **Oregon**

Canby Area Chamber of Commerce

Gresham Area Chamber of Commerce

North Clackamas County Chamber of  
Commerce

Oregon Business & Industry

Oregon State Chamber

Salem Area Chamber of Commerce

### **Pennsylvania**

Hanover Area Chamber of Commerce

Pennsylvania Chamber of Business and  
Industry

Pennsylvania Coalition for Civil Justice  
Reform

Pittsburgh Airport Area Chamber of  
Commerce

Schuylkill Chamber of Commerce

Southern Chester County Chamber of  
Commerce

### **Puerto Rico**

Puerto Rico Chamber of Commerce

### **South Carolina**

Anderson Area Chamber of Commerce

Charleston Metro Chamber of Commerce  
Greenville Chamber  
Hilton Head Island - Bluffton Chamber of  
Commerce  
Myrtle Beach Area Chamber of Commerce  
South Carolina Chamber of Commerce  
Tri-County Regional Chamber of Commerce

### **South Dakota**

Greater Sioux Falls Chamber of Commerce

### **Tennessee**

Kingsport Chamber  
Tennessee Chamber of Commerce &  
Industry

### **Texas**

Fort Worth Chamber of Commerce  
Greater Arlington Chamber of Commerce  
Greater Tomball Area Chamber of  
Commerce  
Longview TX Chamber of Commerce  
North Texas Commission  
Texans for Lawsuit Reform  
Texas Association of Business

### **Utah**

Davis Chamber of Commerce  
The Salt Lake Chamber  
Utah Valley Chamber of Commerce

### **Virginia**

Blackstone Chamber of Commerce

Central Fairfax Chamber of Commerce  
ChamberRVA  
Loudoun County Chamber of Commerce  
Virginia Chamber of Commerce

### **Washington**

Burlington Chamber of Commerce  
Covington Chamber of Commerce  
Greater Lake Stevens Chamber of  
Commerce  
Greater Vancouver Chamber  
Lewis Clark Valley Chamber of Commerce  
Moses Lake Chamber of Commerce  
Tacoma-Pierce County Chamber  
Washington Retail Association

### **West Virginia**

West Virginia Chamber of Commerce

### **Wisconsin**

Wisconsin Manufacturers & Commerce

### **Wyoming**

Casper Area Chamber of Commerce  
Greater Cheyenne Chamber of Commerce  
Wyoming State Chamber of Commerce