

July 27, 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.

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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.

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 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

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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.

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  
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

### **Alaska**

Alaska Chamber

### **Alabama**

Mobile Area Chamber of Commerce

Shoals Chamber of Commerce

SouthWest Mobile County Chamber of  
Commerce

### **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

## **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

## **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 York**

The Business Council of New York

Capital Region Chamber

Lawsuit Reform Alliance of New York

### **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