

June 23, 2010

The Honorable John Conyers, Jr.  
Chairman  
Committee on the Judiciary  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Lamar Smith  
Ranking Member  
Committee on the Judiciary  
U.S. House of Representatives  
Washington, DC 20515

Dear Chairman Conyers and Ranking Member Smith:

The undersigned members of the Coalition to Preserve Arbitration strongly oppose H.R. 1020, the “Arbitration Fairness Act” and H.R. 1237, the “Fairness in Nursing Home Arbitration Act.” These bills would effectively abolish pre-dispute arbitration agreements—agreements that provide for a fair, quick and efficient means of resolving consumer, employment, franchise and nursing home related contractual disputes, as well as disrupt commercial arbitration well beyond these bills’ advertised scope. As a result, they would harm businesses, their consumers, and employees. By needlessly increasing costs to all of these parties, it would impede economic recovery without any corresponding benefit. Therefore, we urge you to oppose H.R. 1020 and H.R. 1237.

These bills would radically change existing law. For instance, H.R. 1020 not only eliminates the use of pre-dispute arbitration clauses in future consumer, employment, and franchise contracts, it also nullifies pre-dispute arbitration clauses in existing contracts if a dispute arises under that contract after enactment of the legislation.

Consumers and employees will be harmed by these bills, not helped. Most, if not all, individuals with disputes that involve small amounts of money cannot find a lawyer willing to represent them. For example, a typical employee must establish at least \$60,000 in damages before a plaintiffs’ attorney will consider their case. For these individuals, arbitration provides an invaluable means to have their claims heard. But if compelled into the litigation system, many will be unable to proceed without a lawyer, and forced to abandon their claim.

As U.S. Supreme Court Justice Stephen Breyer has noted, without arbitration, “the typical consumer who has only a small damage claim (who seeks, say, the value of only a defective refrigerator or television set) [would be left] without any remedy but a court remedy, the costs and delays of which could eat up the value of an eventual small recovery.” And Ken Feinberg, who formerly oversaw the September 11th Victim Compensation Fund and has now been appointed to oversee the BP Gulf claims fund, has explained that the “Arbitration Fairness Act” is “a solution in search of a problem” that imposes “new, unnecessary restrictions on an effective public policy which has been championed by the federal government for over 75 years.”

H.R. 1020 and H.R. 1237 would also burden the economy, increasing litigation costs at a time when businesses are already struggling to create jobs and revive our economy. Arbitration

is indisputably less costly overall than litigation—no matter which party wins or loses. The wasteful additional costs that come from forcing cases into litigation do nothing to help consumers and employees, as shown by the best available studies. Yet it is inevitable that the increased costs associated with litigation will lead to higher consumer prices and lost jobs.

In short, without arbitration, fewer claims will be heard—but at higher costs.

Finally, these bills are simply unnecessary. Courts already police arbitration agreements for fairness under the existing protections of the Federal Arbitration Act. In countless hundreds of cases, courts have examined whether the arbitration procedures under particular agreements provide consumers and employees with a fair and effective means of dispute resolution. When confronting an arbitration clause that is unfair, courts have not hesitated to strike such an agreement down.

Accordingly, we urge you to oppose H.R. 1020 and H.R. 1237.

Sincerely,

Alliance for Quality Nursing Home Care  
Alliance of Automobile Manufacturers  
American Financial Services Association  
American Health Care Association  
American Insurance Association  
American Tort Reform Association  
Assisted Living Federation of America  
Council for Employment Law Equity  
Institute for a Drug-Free Workplace  
International Franchise Association  
International Institute for Conflict Prevention & Resolution  
National Association of Home Builders  
National Association of Manufacturers  
Securities Industry and Financial Markets Association  
Society for Human Resource Management  
U.S. Chamber Institute for Legal Reform  
U.S. Chamber of Commerce

Cc: The Members of the House Committee on the Judiciary