

February 7, 2008

The Honorable Patrick Leahy  
Chairman  
Committee on the Judiciary  
United States Senate  
224 Dirksen Senate Office Building  
Washington, DC 20510

The Honorable Arlen Specter  
Ranking Member  
Committee on the Judiciary  
United States Senate  
224 Dirksen Senate Office Building  
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Specter:

The undersigned members of the Coalition to Preserve Arbitration strongly oppose S. 1782, the “Arbitration Fairness Act.” This legislation would retroactively declare unenforceable potentially millions of existing arbitration provisions—and would prohibit the use of pre-dispute arbitration agreements—in consumer, employment, brokerage, and franchise contracts. In addition, it would call into question arbitration agreements relating to “contracts or transactions between parties of unequal bargaining power.” The bill will effectively raise the cost of dispute resolution for both consumers and businesses and eliminate the ability of consumers and employees to obtain redress for many types of wrongdoing, and increase the caseload of our already overburdened courts as well as the price of consumer services and products for all Americans.

Since 1925, the Federal Arbitration Act has embodied a strong federal policy that favors the use of arbitration as an efficient, effective, and less expensive means of resolving disputes. The Supreme Court has repeatedly endorsed the use of arbitration, and in particular, has recognized the cost-savings that arbitration affords consumers and employees. Moreover, as court dockets have exploded and the costs of litigation have risen, the use of alternative dispute resolution methods, including arbitration, has served as an essential release valve for the nation’s overburdened civil justice system. By eliminating the vast majority of arbitration agreements, S. 1782 would not only rewrite potentially millions of contracts, but also would likely send a significant number of cases into the already too-crowded federal and state courts.

The drastic changes that S. 1782 would make are entirely unwarranted. The evidence shows that arbitration is faster and cheaper than going to court and consumers and employees are more likely to succeed in arbitration than in court. For example, the California Dispute Resolution Institute, part of the University of San Francisco’s Leo T. McCarthy Center for Public Service and the Common Good, found that consumers prevailed slightly over 70% of the time in arbitration. Moreover, their disputes were resolved in an average of 100 days—much less than the months, if not years, that it takes to resolve civil litigation in courts.

Far from ensuring that consumers and employees will have access to the courts, the legislation will have the unintended—but predictable—consequence of denying such individuals access to *any* meaningful forum for resolving their disputes. Studies show that plaintiffs’ attorneys are unlikely to take cases unless they offer a combination of

sufficiently large potential damages and a relatively high likelihood of success, thus leaving consumers with insurmountable obstacles in pursuing their claims in court. The only beneficiaries of this legislation would be class action lawyers who would benefit from more class action lawsuits—lawsuits that provide little benefit to class members while ensuring large payouts to class action attorneys.

In short, S. 1782 would effectively eliminate a dispute resolution system that consumers, employees, and businesses have successfully relied on for decades and would retroactively alter potentially millions of contracts. Accordingly, we strongly urge you to oppose S. 1782.

Sincerely,

American Bankers Association  
American Financial Services Association  
American General Financial Services  
American Health Care Association/National Center for Assisted Living  
American Insurance Association  
American Meat Institute  
AT&T  
Business Roundtable  
Comcast Cable Communications  
Coors Brewing Company  
CTIA – The Wireless Association®  
Financial Services Roundtable  
International Franchise Association  
Jackson Lewis, LLC  
National Association of Home Builders  
National Association of Manufacturers  
National Retail Federation  
Retail Industry Leaders Association  
ROCKWELL AUTOMATION, Inc.  
Securities Industry and Financial Markets Association  
T-Mobile USA  
The Council for Employment Law Equity  
The Institute for a Drug-Free Workplace  
U.S. Chamber of Commerce  
U.S. Chamber Institute for Legal Reform  
Verizon Wireless

Cc: Members of the U.S. Senate Judiciary Committee