

July 29, 2008

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

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

Dear Chairman Conyers and Ranking Member Smith:

The undersigned organizations strongly oppose the following pieces of anti-arbitration legislation: H.R. 3010, the “Arbitration Fairness Act;” H.R. 5312, the “Automobile Arbitration Fairness Act of 2008;” and H.R. 6126, the “Fairness in Nursing Home Arbitration Act of 2008.” These bills are unwarranted and would wreak havoc on a long-standing and effective form of alternative dispute resolution.

Even though arbitration has been used to amicably resolve disputes for more than 80 years, those who wish to dismantle the arbitration system are attempting to effectively abolish all pre-dispute arbitration by using anecdotes and a handful of poorly designed or inaccurate studies to validate their unfounded claim that the system is broken. However, the majority of studies validate that arbitration is an efficient, effective, and less expensive means of resolving disputes for consumers, employers, employees, investors, franchisees, and businesses of all sizes. 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 more than 70 percent of the time in arbitration. Moreover, their disputes were resolved in an average of 100 days, significantly shorter than the lengthy litigation process which takes, on average, two years.

Opponents have adopted a multi-faceted strategy aimed at eliminating pre-dispute arbitration clauses used in numerous sectors of the economy. If successful, these legislative efforts would effectively and retroactively declare unenforceable potentially millions of provisions for the orderly and economical resolution of disputes. Opponents of pre-dispute arbitration have neglected to realize that, if enacted, these provisions will actually *limit* the realistic opportunity for many average consumers, employees, and investors to obtain a remedy if a dispute arises. Evidence shows that arbitration can be very useful in the context of low-value claims.

Studies show that plaintiffs’ lawyers are reluctant to take cases involving relatively small claims because they seek larger potential attorneys’ fees than would likely result from these cases. According to one survey, plaintiffs’ employment lawyers said they would not take a case unless it was worth at least \$60,000, on average. Therefore, without the option of arbitration, consumers would be faced with two choices—to try to navigate the legal system on their own, or to abandon their claim. The

only real beneficiaries of these anti-arbitration provisions and bills would be plaintiffs' trial lawyers who would benefit from both the rare blockbuster claim and the possibility of bringing more lawsuits in court, including class actions. Such lawsuits ensure large payouts to attorneys, but only guarantee plaintiff's greater expenditures in time and effort.

These attacks on arbitration are unnecessary and would undermine a system that has benefited both contract parties for decades, and on which many of them now rely. Accordingly, we strongly oppose all of these bills and urge that they do not move forward out of Committee.

Sincerely,

Alliance of Automobile Manufacturers
American Bankers Association
American Financial Services Association
American Health Care Association
American Insurance Association
American International Automobile Dealers Association
American Seniors Housing Association
Business Roundtable
Consumer Bankers Association
Council for Employment Law Equity
Institute for a Drug-Free Workplace
International Franchise Association
National Association of Home Builders
National Association of Manufacturers
National Center for Assisted Living
National Retail Federation
Securities Industry and Financial Markets Association
Textile Rental Services Association of America
The Financial Services Roundtable
U.S. Chamber of Commerce
U.S. Chamber Institute for Legal Reform

Cc: Members of the Committee on the Judiciary