May 17, 2011

The Honorable Patrick Leahy, Chairman
The Honorable Chuck Grassley, Ranking Member
U.S. Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Letter in Support of the Arbitration Fairness Act of 2011, S. 987

Dear Chairman Leahy and Ranking Member Grassley:

We, the undersigned organizations, strongly support the Arbitration Fairness Act of 2011 (or "AFA"), S. 987, introduced in the Senate by Senator Al Franken (D-Minn.). This important legislation would end the predatory practice of forcing non-union employees and consumers to sign away their rights to legal protections and access to the courts by making pre-dispute binding mandatory arbitration ("forced arbitration") clauses unenforceable in civil rights and employment and consumer disputes. Forced arbitration is proliferating in employment and everyday consumer contracts for products and services such as credit cards, cell phones, home construction, mortgages, student loans, health insurance policies and nursing homes.

**Consumer, employee contracts with arbitration clauses are often non-negotiable.**

Corporations that place forced arbitration clauses in their standard contracts with consumers and non-union employees shield themselves from accountability for wrongdoing. The contracts typically state who the arbitrator will be, under what rules the arbitration will take place, the state the arbitration will occur in, and the payment terms for the arbitration. Arbitration clauses are often contained in non-negotiable contracts and a person has no choice but to acquiesce or forgo the goods, services and/or employment altogether.

**Forced arbitration erodes traditional legal safeguards as well as substantive civil rights and consumer protection laws.**

None of the safeguards of our civil justice system are guaranteed for persons attempting to enforce their employment, consumer and civil rights in forced arbitration. There is no impartial judge or jury, but rather arbitrators who rely on major corporations for repeat business. With nearly no oversight or accountability, businesses or their chosen arbitration firms set the rules for the secret proceedings, often limiting the procedural protections and remedies otherwise available to individuals in a court of law. For example, the ability to obtain key evidence necessary to prove one's case is restricted or eliminated. In addition, the exorbitant filing fees, continuous fees for procedures such as motions and written findings, and "loser pays" rules in arbitration are prohibitive to many individuals, particularly in this weak economy when so many Americans are struggling just to make ends meet.

Forced arbitration also weakens the value of federal and state laws intended to protect consumers and employees by removing individuals' ability to enforce those laws in court. For example, a cornerstone of hard-won civil rights protections is the right of victims of workplace discrimination or harassment to have their claims heard by an impartial judge and jury. Increasingly, employers strip this right away and require workers to agree to forced arbitration as a condition of hiring or continued employment. By being forced into binding mandatory arbitration, an estimated 30 million non-union workers have lost essential protections established by our nation's civil rights laws.[1]

Other laws at risk include provisions of the Civil Rights Acts of 1964 and 1991, the Age Discrimination in Employment Act, the Americans with Disabilities Act, the Family and Medical Leave Act, the Fair Labor Standards Act, the Equal Pay Act, the Uniformed Services Employment and Reemployment Rights Act, the Sherman Act, the Securities Act of 1933, the Securities Exchange Act of 1934, the Truth in Lending Act, and the civil provisions of the Racketeer Influenced and Corrupt Organizations Act.

Courts also have held that the Federal Arbitration Act (FAA) trumps state laws, even those intended to protect consumers, such as anti-predatory lending laws. Consequently, unscrupulous lenders use forced arbitration in subprime mortgages, payday loans, credit card contracts and nursing home contracts, thereby avoiding accountability.

On April 27, 2011, the U.S. Supreme Court dealt a devastating blow to consumers and employees, ruling that companies can ban class actions in the fine print of contracts. In *AT&T Mobility v. Concepcion*, the Court held that corporations may use arbitration clauses to cut off consumers and employees' right to join together through class actions to hold powerful corporations accountable.

The *AT&T Mobility v. Concepcion* ruling makes it all the more vital for Congress to pass the AFA to provide individuals with a choice to arbitrate a claim rather than forcing them into arbitration. The AFA would eliminate use of these pre-dispute clauses in consumer and employment contracts, returning the FAA to its original intent to facilitate private arbitration between sophisticated parties on equal footing.

**The AFA would allow consumers to choose arbitration after the dispute arises.**

The AFA does not seek to eliminate arbitration and other forms of alternative dispute resolution agreed to voluntarily after a dispute arises. Nor would it affect collective bargaining agreements that require arbitration between unions and employers. Its sole aim is to end the unscrupulous business practice of forcing consumers and employees into biased arbitrations by binding them long before any disputes arise.

We strongly support the Arbitration Fairness Act of 2011, which would restore access to our civil justice system and preserve important civil rights, employment and consumer protections. We urge you and the other members of Congress to pass S. 987.

Sincerely,

Alliance for Justice
American Association for Justice
American Association of University Women (AAUW)
American Civil Liberties Union
American Federation of Labor-Congress of Industrial Organizations (AFL-CIO)
American Federation of State, County and Municipal Employees (AFSCME)
Americans for Financial Reform
Arizona PIRG
Center for Responsible Lending
Citizen Works
ConnectiCOSH
Consumer Action
Consumers for Auto Reliability and Safety
Consumer Federation of America
Consumer Watchdog
Consumers Union
Empire Justice Center
Essential Information
Homeowners Against Deficient Dwellings
Home Owners for Better Building
Lawyers' Committee for Civil Rights
Leadership Conference on Civil and Human Rights
Legal Services of New Jersey
Maryland Consumer Rights Coalition (MCRC)
MASSPIRG
MYF Legal Services, Inc.
NAACP
National Association of Consumer Advocates
National Community Reinvestment Coalition
National Consumer Law Center (On behalf of its low income clients)
The National Consumer Voice for Quality Long-Term Care (formerly NCCNHR)
National Consumers League
National Council of La Raza
National Fair Housing Alliance
National Employment Law Project
National Employment Lawyers Association
National Women's Health Network
National Women's Law Center
Neighborhood Economic Development Advocacy Project
New Jersey Citizen Action
Public Citizen
Public Justice Center
The Rural Advancement Foundation International (RAFI-USA)
Sargent Shriver National Center on Poverty Law

Service Employees International Union (SEIU)
USAction
Union Plus
U.S. Public Interest Research Group

cc: Members of the Senate Judiciary Committee
Senate Majority Leader Harry Reid
Senate Minority Leader Mitch McConnell
Members of the House Committee on the Judiciary
House Speaker John A. Boehner
House Minority Leader Nancy Pelosi

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[1] *See* Alexander J.S. Colvin, *Empirical Research on Employment Arbitration: Clarity Amongst the Sound and Fury?*, 11 EMPLOYEE RTS. & EMP. POL'Y J. 405, 411 (2007)("[A] current estimate in the range of 15 to 25 percent of employers having adopted employment arbitration seems reasonable."). The 30 million figure is based upon a civilian labor force of 154.4 million Americans, as reported by the Bureau of Labor Statistics. Approximately 18.5 million American workers are unionized, leaving roughly 135 million non-union employees.