

October 6, 2009

The Honorable Patrick J. Leahy, Chairman
The Honorable Jeff Sessions, Ranking Member
Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Letter in Support of the Arbitration Fairness Act, S. 931

Dear Chairman Leahy and Ranking Member Sessions:

We, the undersigned organizations, strongly support the Arbitration Fairness Act of 2009, S. 931, introduced by Senator Russ Feingold (D-WI). This important legislation would end the predatory practice of forcing employees, consumers and franchise owners to sign away their rights to legal protections and access to the courts by making forced arbitration clauses unenforceable in civil rights, employment, consumer, and franchise disputes.

Buried in the fine print of credit card billing inserts, cellular phone service disclosures, employee handbooks, investor and brokerage agreements, and nursing home admissions contracts are forced arbitration clauses that eliminate Americans' access to the courts, and force them instead into a private system set up by corporations to favor corporations. Corporations that place these forced arbitration clauses in their contracts shield themselves from accountability for wrongdoing. With no oversight, businesses or their private arbitration firms set the rules for the secret proceedings, often limiting the protections otherwise available to individuals in a court of law. By having total power over the process, corporations ensure that none of the safeguards of our court system are guaranteed for persons attempting to enforce their employment, consumer, investor and civil rights under forced arbitration. Rather, individuals are left only with arbitrators who rely on the corporations for repeat business. Unsurprisingly, arbitration outcomes heavily favor the corporation over the individual.

Forced arbitration weakens the value of laws passed by Congress and state legislatures intended to protect consumers and employees. Forced arbitration means giving up the most fundamental legal protection: the right to equal justice under the law. Americans fought hard for dozens of laws that protect us against discrimination based on age, sex, religion, race, disability, and unequal pay for equal work, such as the Civil Rights Act and the Equal Pay Act. *But these laws are meaningless if unenforceable in court.* By being forced into arbitration, an estimated 30 million non-union workers have lost essential protections established by our nation's civil rights laws.¹ It's time to close the arbitration loophole that lets corporations ignore their workers' civil rights.

The Arbitration Fairness Act would also restore hard-fought statutory rights for the roughly 18.5 million unionized workers by reversing a recent Supreme Court decision, *14 Penn Plaza, LLC v. Pyett*,² holding that unions can waive workers' rights to sue under

federal antidiscrimination laws in collective bargaining agreements. This decision both reversed the Court's long-standing precedent of over a quarter-century, as well as significantly set back the ability of civil rights laws to act as a bulwark against discrimination in the workplace by depriving workers of the right to their day in court. Antidiscrimination protections contained in collective bargaining agreements were never intended to eliminate a worker's individual right to choose whether to pursue her statutory claim in a court of law. The Arbitration Fairness Act would restore the individual statutory rights of organized workers, and ensure that no union is forced to bargain those rights away.

Forced arbitration also hurts American consumers. Banks use forced arbitration to prey on consumers and shield themselves from laws like the Truth in Lending Act. Two recent studies found that seventy-five percent of everyday consumer contracts studied—for products and services such as credit cards, cell phones, mortgages, student loans, health insurance policies and nursing homes—contained arbitration provisions.³ The anti-predatory lending laws passed in some states are ineffective to deal with the abuse of forced arbitration because courts hold that the Federal Arbitration Act trumps state laws, even those intended to protect consumers. Especially in today's economic climate, it's time to put an end to this practice that takes advantage of people who are just trying to make ends meet.

The Arbitration Fairness Act does not seek to eliminate arbitration and other forms of alternative dispute resolution agreed to voluntarily after a dispute arises. 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 2009, which would preserve important civil rights, employment and consumer protections. A solid majority of Americans—59 percent—also opposes forced arbitration clauses being hidden in the fine print of employment and consumer contracts, and supports the Arbitration Fairness Act.⁴ This number includes majorities of men, women, Democrats, independents, and Republicans. We urge you and the other members of Congress to pass S. 931.

Sincerely,

The 3.5.7 Commission
A New Way Forward
Alliance for Justice
American Association for Justice
American Association of University Women (AAUW)
American Civil Liberties Union
American Federation of State, County and Municipal Employees (AFSCME)
American Rights at Work
Americans for Democratic Action
Americans for Fairness in Lending
Americans for Financial Reform

Arizona Consumers Council
Arizona PIRG
Asian American Justice Center
Bazelon Center for Mental Health Law
Brotherhood of Locomotive Engineers and Trainmen
Brotherhood of Maintenance of Way Employees Division (BMWED)
Campaign for Contract Agriculture Reform
Center for Justice and Democracy
Center for Legal Empowerment, Accountability and Reform (CLEAR)
Center for Responsible Lending
Change to Win
Coalition of Labor Union Women
Consumer Watchdog
Consumer Federation of America
Consumers for Auto Reliability and Safety
Consumers Union
Empire Justice Center
Equal Opportunity Professional Services
Florida Legal Services
Government Accountability Project
Home Owners for Better Building
Homeowners Against Deficient Dwellings
Jacksonville Area Legal Aid, Inc.
Kentucky Equal Justice Center
Laborers' International Union of North America (LiUNA!)
Lambda Legal Defense and Education Fund
Lawyers' Committee for Civil Rights Under Law
Leadership Conference on Civil Rights
Legal Assistance Resource Center of Connecticut
Legal Services of New Jersey
Mid Minnesota Legal Assistance
National Association of Human Rights Workers
National Consumer Law Center (on behalf of its low income clients)
National Consumers League
National Employment Law Project (NELP)
National Employment Lawyers Association
National Fair Housing Alliance
National Health Law Program
National Judicial Conduct and Disability Law Project
National Partnership for Women & Families
National Senior Citizens Law Center
National Women's Law Center
NCCNHR: The National Consumer Voice for Quality Long-Term Care
Neighborhood Economic Development Advocacy Project (NEDAP)
New Jersey Citizen Action
Policyholders of America

POPULAR, Inc. (Power Over Poverty Under Laws of America Restored)
Public Citizen
Rural Advancement Foundation International-USA (RAFI-USA)
Service Employees International Union (SEIU)
South Carolina Fair Share
Take Back Your Rights PAC
CWA-UAW Legislative Alliance
United Food and Commercial Workers International Union (UFCW)
US PIRG
Virginia Citizens Consumer Council
Women Employed
Workplace Fairness

cc: Members of the Senate Committee on the Judiciary
Senate Majority Leader Harry Reid
Senate Minority Leader Mitch McConnell

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.

² 129 S.Ct. 1456 (Apr. 1, 2009).

³ See Jonathan D. Glater, *Companies Unlikely to Use Arbitration With Each Other*, N.Y. TIMES, Oct. 6, 2008, at B4 ("The findings by Professor Eisenberg, whose co-authors on the most recent study were Geoffrey P. Miller of New York University School of Law and Emily Sherwin of Cornell Law School, might prove provocative . . . included contracts by 21 different telecommunications and financial services companies. They found that companies included mandatory arbitration clauses in 75 percent of consumer agreements but in just 24 percent of contracts over all. Every consumer contract with an arbitration clause also waived possible group, or class, arbitration."); see also PUBLIC CITIZEN, FORCED ARBITRATION: UNFAIR AND EVERYWHERE 1 (2009) *available at* <http://www.citizen.org/documents/UnfairAndEverywhere.pdf>.

⁴ Lake Research Partners, National Study of Public Attitudes on Forced Arbitration: Findings from a Survey of 800 Likely 2010 Voters Nationwide 4, 7 (2009) *available at* <http://www.fairarbitrationnow.org/uploads/Forced%20Arbitration%20Study%20Slides%200409.pdf>.