October 8, 2025

To the Members of the United States Congress:

The undersigned organizations strongly oppose numerous bills that have been introduced or proposed in the 119th Congress which attempt to prohibit arbitration and class action waiver provisions. Arbitration has been an important alternative dispute resolution mechanism since the enactment of the Federal Arbitration Act in 1925. Unfortunately, there continues to be an organized effort to dismantle the arbitration system in favor of bringing claims in the broken class action litigation system.

Individualized contract-based arbitration is an efficient, effective, and less expensive means of resolving disputes for consumers, employees, and businesses. Multiple empirical studies have shown that those bringing claims in arbitration do just as well as or, in many circumstances, better than in court.[1] By contrast, studies have also shown that class action settlements frequently provide only a pittance – or many times, nothing at all – to class members while millions of dollars are paid to their attorneys.[2]

Opponents of arbitration mischaracterize how arbitration works to paint its use as unfair. The reality is that arbitration providers and courts ensure that arbitration operates fairly and that arbitration agreements are enforced only if they meet basic guarantees of fairness and due process. For example, the American Arbitration Association (AAA), the country's largest arbitration provider, developed fairness rules for employment and consumer arbitrations. It will not accept a case unless the arbitration agreement complies with those standards.

These rules require that arbitrators be neutral and disclose any conflict of interest and give both parties an equal say in selecting the arbitrator; limit the fees paid by employees and consumers to $350 and $225, respectively – equal to or less than the filing fee in federal court; empower the arbitrator to order any necessary discovery; and require that damages, punitive damages, and attorneys' fees be awardable to the claimant to the same extent as in court. And the AAA rules require that consumers be given the option of resolving their dispute in small claims court. JAMS, another leading arbitration provider, requires similar protections—as do other arbitration providers.

The courts provide another layer of oversight. If an arbitration provision is unfair, courts can and do step in and declare those arbitration agreements unconscionable and unenforceable. Also, arbitration agreements cannot prevent consumers or employees from publicly discussing claims with government agencies nor can arbitrators' decisions be kept

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[1] *See* Fairer, Faster, Better III: An Empirical Assessment of Consumer and Employment Arbitration (March 2022) available at https://instituteforlegalreform.com/research/update-an-empirical-assessment-of-consumer-employment-cases-in-arbitration-litigation/.

[2] *See* Consumer Financial Protection Bureau, Arbitration Study: Report to Congress (March 2015) available at https://files.consumerfinance.gov/f/201503_cfpb_arbitration-study-report-to-congress-2015.pdf. Finding that 87% of resolved class actions resulted in no benefit to class members, and in the rare cases they did, the average settlement payment was no better than $32.35 per class member, but attorneys' fees averaged $1 million per case.

secret. Courts have invalidated arbitration agreements that purported to impose a "gag order." And courts consistently hold that either party may disclose the results of arbitration proceedings.

Despite a lack of evidence showing a systemic problem with arbitration, multiple bills and amendments have been introduced and proposed in the 119th Congress that attack the availability of arbitration and class action waivers in numerous contexts such as employment disputes, consumer contracts, data privacy, multiple types of discrimination claims, and antitrust disputes, among many others.[3]

If successful, these legislative efforts would declare unenforceable potentially millions of arbitration provisions that allow for the orderly and economical resolution of disputes. Opponents of pre-dispute arbitration fail to acknowledge that, if enacted, these provisions and bills will limit the realistic opportunity for consumers and employees to obtain a remedy if a dispute arises. The only real beneficiaries of these anti-arbitration provisions will be class action lawyers who would benefit from the possibility of bringing more class action lawsuits that enrich them while providing little benefit to class members.

These attacks on arbitration are inaccurate, unnecessary, and would undermine an important alternative to litigation that has benefited consumers, employees, and businesses for decades, and on which many of them now rely. Accordingly, we strongly urge you to oppose attempts to prohibit arbitration or class action waivers.

[3] *See, e.g.,* H.R. 5350, S. 2799, H.R. 4966, H.R. 4587, S. 2640, S. 2703, H.R. 5115, S. 2367, S. 2031, S. 2026, H.R. 3036, H.R. 2889, S. 1060, S. 130, S. Amendment 3451, S. Amendment 2789. These are just some among the litany of proposed bills and amendments that contain various forms of anti-arbitration and/or pro-class action provisions.