

February 4, 2016

The Honorable Patrick J. Leahy
Ranking Member, U.S. Senate Judiciary Committee
United States Senate
Washington, DC 20510

Re: The Restoring Statutory Rights Act

Dear Senator Leahy:

The undersigned organizations, advocates of consumer and worker rights and other protections, write to express our strong support of S. 2506, the Restoring Statutory Rights Act of 2016. The legislation would ensure that fine-print terms of corporate contracts, specifically predispute binding (or forced) arbitration clauses, no longer suppress the rights and remedies guaranteed to individuals in consumer protection, civil rights, and other state and federal laws.

Increasingly, corporations insert forced arbitration terms in non-negotiable contracts with their customers and workers that require disputes to be resolved in private arbitration proceedings instead of in court. Many of these forced arbitration clauses also prohibit individuals from participating in class actions. Numerous types of consumer and worker claims arise out of some form of contract, and many claims of wrongdoing are based on violations of state and federal law.

Most products and services as well as worker rights and conditions are subject to state and federal laws that guard against industry practices and conduct that mislead, defraud, abuse and otherwise harm individuals.¹ Many of these laws include specific terms that grant a harmed consumer or worker the right to seek redress when the laws are violated. However, the rights and remedies set forth in these laws have been compromised and constrained by the use of forced arbitration.

The U.S. Supreme Court has broadly interpreted a federal law, the Federal Arbitration Act (FAA), to permit the use of forced arbitration in consumer and worker contracts, even when claimants seek to enforce their rights and remedies under laws. As a result, corporate wrongdoers have exploited the FAA to obstruct the effectiveness of other state and federal laws.

Private arbitration proceedings are not suited to fairly resolving claims based on violations of democratically-enacted laws. For example, arbitrators have little responsibility to apply potentially-relevant laws to their decision-making. And even if an arbitrator's decision is clearly wrong, the decision cannot be appealed or challenged in most cases. Further, arbitration's secrecy prevents other consumers, and the legal system generally, from benefiting or learning from previous decisions. Forced arbitration hinders the development of laws by preventing courts from clarifying and explaining the law for similar disputes.

In addition, most arbitration clauses require workers and consumers to bring claims individually, undermining laws that consider the rights of individuals to band together in class actions to seek accountability for widespread violations of those laws.² Contract terms that force arbitration and prohibit class actions effectively eliminate these explicit statutory remedies. Further, even if a group of individuals have suffered from serious and widespread violations of a consumer protection law, for example, they may never be brought or heard at all because each claim may be too small to pursue individually in arbitration. As a result, the individuals harmed by the conduct will be absolutely unable to vindicate their legal rights.

The Restoring Statutory Rights Act would ensure that parties intended to be protected by established state and federal rights and remedies are not forced to relinquish those rights in the fine print of contracts, before a dispute arises. It would also make clear that the Federal Arbitration Act does not preempt states' laws that provide rights and remedies for their residents.

¹ See, e.g., Fair Credit Reporting Act (15 USC § 1681n); Fair Debt Collection Practices Act (15 USC § 1692k(a)); False Claims Act (31 USC § 3730); Sherman Antitrust Act (15 USC § 15(a)); Fair Labor Standards Act (29 USC § 216(b)); Family Medical Leave Act (29 USC § 2617(a)(2)).

²See, e.g., Credit Repair Organizations Act (15 USC § 1679g(a)); Truth in Lending Act (15 USC § 1640(a)).

Thank you for your work to safeguard consumer and worker protections and to restore individuals' access to court. We look forward to working with you to enact this legislation.

Sincerely,

**Alliance for Justice
Americans for Financial Reform
California Reinvestment Coalition
Center for Economic Justice
Center for Justice and Democracy
Committee to Support the Antitrust Laws
Consumer Federation of America
Consumers for Auto Reliability and Safety
Consumer Action
Consumers Union
Consumer Watchdog
Earthjustice
Empire Justice Center
Homeowners Against Deficient Dwellings
National Association of Consumer Advocates
National Consumer Law Center (on behalf of its low income clients)
National Consumer Voice for Quality Long-Term Care
National Employment Lawyers Association
Public Citizen
Take Back Your Rights PAC
Woodstock Institute**

cc: Senate Judiciary Committee