

May 7, 2024

Dick Durbin
Chair
U.S. Senator
224 Dirksen Senate Office Building
Washington, DC 20510

Lindsey Graham
Ranking Member
U.S. Senator
224 Dirksen Senate Office Building
Washington, DC 20510

RE: U.S. Senate Judiciary Committee Consideration of the Protecting Older Americans Act, S. 1979

Dear Chair Durbin and Ranking Member Graham:

HR Policy Association writes in strong opposition to the Protecting Older Americans Act (S. 1979), which would limit the application of the Federal Arbitration Act (FAA) and undermine the benefits of pre-dispute arbitration in cases of workplace age discrimination.

The [HR Policy Association](#) is a public policy advocacy organization that represents the chief human resource officers of more than 350 of the largest corporations doing business in the United States and globally. Collectively, their companies employ more than 10 million employees in the United States – nearly 9 percent of the private sector workforce. Since its founding, one of HRPAs principal missions has been to ensure that laws and policies affecting human resources are sound, practical, and responsive to labor and employment issues arising in the workplace. Many Association members utilize various types of arbitration procedures covering consumer/client issues, issues with third party vendors/supplies, and labor and employment issues. Such procedures have been in place for decades and fairly and expeditiously resolve matters that may be in dispute with third parties and employees.

The Association remains concerned about the numerous legislative proposals introduced in the current Congress and past Congresses are attempting to limit or outright prohibit arbitration in the employment setting. The Association believes that employers and employees should be encouraged to continue to use arbitration to resolve employment disputes. Employment arbitration has long been a preferred alternative to litigation for many types of disputes because it avoids the delays that are associated with the courts, alleviates the burden on the court system, reduces expenses associated with traditional litigation, is more expeditious in resolving disputes than judicial procedures, provides better outcomes for claimants and importantly, employees sometimes wish to keep their claims confidential, and arbitration gives them the ability to make that choice.

Furthermore, the Supreme Court held over three decades ago that claims under the Age Discrimination in Employment Act (ADEA) are fully compatible with agreements for individual

arbitration. The Court rejected arguments that arbitration lacks fair procedures for the resolution of ADEA claims, explaining that such “attacks on arbitration rest on suspicion of arbitration as a method of weakening the protections afforded in the substantive law to would-be complainants,” and are therefore “far out of step with our current strong endorsement of the federal statutes favoring this method of resolving disputes.” Despite the Court’s position, there continues to be an organized effort to dismantle the arbitration system in favor of bringing claims in the class action litigation system.

Protecting victims of age discrimination is important, but enacting S. 1979 could adversely affect older employees' ability to seek redress in the event of a dispute. The bill would limit pre-dispute arbitration, potentially diminishing the opportunity for timely and cost-effective resolutions. The primary beneficiaries of this anti-arbitration proposal would be class action lawyers, who stand to profit from an increase in lawsuits, potentially providing minimal benefit to class members.

In closing, HR Policy Association strongly encourages the Committee and members of Congress to reject S. 1979.

Sincerely,



Chatrane Birbal
Vice President, Policy and Government Relations
HR Policy Association

CC Sheldon Whitehouse
Amy Klobuchar
Chris Coons
Richard Blumenthal
Mazie Hirono
Cory Booker
Alex Padilla
Jon Ossoff
Peter Welch
Laphonza Butler
Chuck Grassley
John Cornyn
Mike Lee
Ted Cruz
Josh Hawley
Tom Cotton
John Kennedy
Thom Tillis
Marsha Blackburn