April 8, 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 Hearing - "Small Print, Big Impact: Examining the Effects of Forced Arbitration"

Dear Chair Durbin and Ranking Member Graham:

The HR Policy Association (Association) is submitting this letter to be included in the record of the U.S. Senate Judiciary Committee Hearing on Tuesday, April 9, 2024, regarding "Small Print, Big Impact: Examining the Effects of Forced Arbitration." The Association also respectfully requests that this testimony before the U.S. House of Representatives Committee on Education and Labor on November 4, 2021, entitled "Closing the Courthouse Doors: the Injustice of Forced Arbitration Agreements" be included in the record for this hearing.

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 HRPA's 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.

GENERAL STATEMENT

Former U.S. Supreme Court Justice Stephen Breyer summarized the positive attributes of arbitration as follows:

> [Arbitration] is usually cheaper and faster than litigation; it can have similar procedural evidentiary rules; and normally minimized hostility and is less disruptive of ongoing and future business dealings among the parties; [and] it is often more flexible in regarding to scheduling times and places of hearing and discovery devices.[1]

The Association fully endorses the thinking of former Justice Breyer. Indeed, the Association is concerned that numerous legislative proposals introduced in the current Congress and past Congresses are attempting to either prohibit or significantly lessen the utilization of arbitration procedures and related class action waivers. As Committee members are well aware, the arbitrable process in this country plays a significant role in resolving disputes that arise in various areas, including issues between employers and employees, between employers and clients/ customers, and disputes involving other third-party entities. Indeed, arbitration has been an important part of the dispute resolution procedures ancillary to our nation's judiciary system, dating back to the enactment of the Federal Arbitration Act in 1925. Unfortunately, however, there is an organized effort to either eliminate or dismantle such arbitrable system in favor of bringing claims through the courts, particularly by class action litigation. Such an approach, for the reasons listed below, is not a practical solution or a sound policy approach and should be rejected by this Committee and members of Congress.

Specifically, the Association believes that arbitration procedures should not be significantly curtailed or eliminated for the following reasons:

- Courts already have overcrowded dockets and are not in a position to expeditiously and efficiently handle the increased docket that would occur if pre-dispute arbitration procedures or arbitration, generally, is prohibited or significantly curtailed.

- The judicial process in general, and class action claims specifically, involve many roadblocks that prevent parties from achieving expeditious and equitable outcomes.

- Arbitration is less expensive and more expeditious in resolving disputes than judicial procedures.

- Arbitration, on the whole, provides better outcomes for claimants.

- Arbitration provides more specific attention to claimants' individual situations.

- Arbitration provides a better understanding by claimants of the procedure involved and the outcome.

- Arbitration procedures are less adversarial in nature.

- Claimants retain concerted activity rights in arbitration proceedings.

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[1] *Allied Bruce Terminix Cos*. v. Dobson, 513 U.S. 265, 280 (1995).

- The Supreme Court and other courts have consistently upheld mandated arbitration agreements.

- Federal and state courts provide protection from onerous arbitration agreements that infringe upon claimants' rights.

- Confidentiality and related arguments to support the elimination of mandated arbitration are without merit.

Chair Durbin and Ranking Member Graham, thank you for including the Association letter and my previous testimony on this matter in the record for the hearing.

Sincerely,

G. Roger King
Senior Labor and Employment Counsel
HR Policy Association

CC Sheldon Whitehouse
Amy Klobuchar
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