

March 8, 2010

The Honorable Stephen I. Cohen, Chairman  
The Honorable Trent Franks, Ranking Member  
Members, Subcommittee on Commercial and Administrative Law  
U.S. House of Representatives Committee on the Judiciary  
362 Ford House Office Building  
Washington, DC 20515

Re: Letter in Support of the Arbitration Fairness Act, H.R. 1020

Dear Chairman Cohen, Ranking Member Franks and Members of the Subcommittee:

We, the undersigned civil rights organizations, strongly support the Arbitration Fairness Act of 2009 (H.R. 1020) and urge you to immediately bring it to a vote in the Subcommittee on Commercial and Administrative Law.

As a result of forced arbitration, millions of Americans are denied the protection of cherished civil rights laws. Over the past ten years employers increasingly have inserted into their employment contracts, on a take-it-or-leave-it basis, forced arbitration clauses that deny workers their right to uphold civil rights laws in court before an impartial judge or a jury of their peers. Consequently, victims of workplace discrimination and harassment are being forced to pursue their claims in biased, secretive forums that favor corporations outright. Today an estimated 30 million non-union workers have lost essential protections established by our nation's civil rights laws.<sup>1</sup>

Forced arbitration undermines the enforcement of civil rights laws because the arbitrator is dependent on receiving repeat business from the employer. As a result, the arbitrator disproportionately decides cases in favor of the employer irrespective of the facts and the applicable law. Forced arbitration hinders the development of civil rights laws because the arbitrator may ignore the law when deciding cases, and he or she is not required to issue written decisions that help to establish precedent. Moreover, the discovery process necessary to uncover underlying discriminatory intent is often disregarded, and the victim is rarely afforded the right to appeal his or her case to a court following the arbitration proceeding.

Until Congress takes action and passes the Arbitration Fairness Act, employers will continue to circumvent such civil rights laws as the Civil Rights Acts of 1964 and 1991, the Age Discrimination in Employment Act (ADEA), the Americans with Disabilities Act (ADA), the Family and Medical Leave Act (FMLA), the Fair Labor Standards Act (FLSA), the Equal Pay

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<sup>1</sup> 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 nonunion employees.

Act, Section 1981, the Uniformed Services Employment and Reemployment Rights Act, and the Employee Retirement Income Security Act (ERISA).

Allowing employers to escape accountability for discrimination and harassment through the use of forced arbitration clauses in their employment contracts must be stopped. The Arbitration Fairness Act would restore access to our civil justice system and preserve important civil rights protections. We therefore urge you to support HR 1020 and to immediately bring it to a vote in the House Judiciary Subcommittee on Commercial and Administrative Law.

Sincerely,

A. Philip Randolph Institute  
American-Arab Anti-Discrimination Committee  
American Association of People with Disabilities  
American Civil Liberties Union  
Alliance for Justice  
American Association of University Women  
Asian American Justice Center  
Japanese American Citizens League  
Lawyers' Committee for Civil Rights Under Law  
Legal Momentum  
NAACP  
NAACP Legal Defense and Educational Fund, Inc.  
National Association of Human Rights Workers  
National Center for Transgender Equality  
National Council of La Raza  
National Council of Women's Organizations  
National Employment Law Project  
National Fair Housing Alliance  
National Partnership for Women and Families  
NCCNHR: The National Consumer Voice for Quality Long-Term Care  
Service Employees International Union  
The Leadership Conference on Civil & Human Rights  
The Legal Aid Society-Employment Law Center  
Women's Research & Education Institute

CC: Congressman John Conyers, Jr.  
Congresswoman Barbara Lee