

MEMORANDUM

TO: American Association For Justice
FROM: Peter D. Hart Research Associates, Inc.
DATE: May 1, 2008
RE: Legal Arbitration And The Arbitration Fairness Act

From April 17 to 21, 2008, Peter D. Hart Research Associates, Inc., conducted a national telephone survey for the American Association for Justice among 833 adults nationwide (margin of error is ± 3.5 percentage points). The survey explored the general public's views on binding arbitration provisions in consumer contracts and the "Arbitration Fairness Act." This executive summary reviews the survey's key findings.

1 Americans generally disapprove of binding arbitration provisions in consumer contracts as an alternative to civil legal proceedings involving a judge or jury.

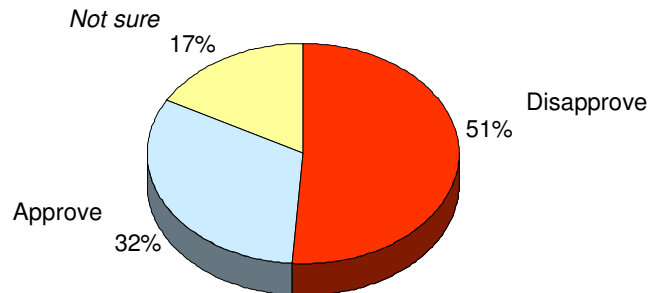
By five to three, American adults say they disapprove (51%) rather than approve (32%) of consumer contracts with binding arbitration provisions. Registered voters are just as disapproving (53%). To explain the concept of binding arbitration, the following question text was used:

As you may know, consumers are sometimes required to sign a contract with a company when they buy certain services or products such as automobiles, cell phones, or nursing home care. Today, these contracts often include a binding arbitration provision, which says that the consumer agrees to have any dispute with the company decided by an independent arbitrator in binding arbitration, rather than by a judge or jury in a civil legal proceeding. Do you approve or disapprove of these binding arbitration provisions in consumer contracts?

Majority disapproval for both parties. A majority of both Democrats (54%) and Republicans (51%) disapprove of arbitration.

Opposition outweighs support. Feelings about binding arbitration vary by subgroups, but a plurality disapproves in all major demographic breaks. Disapproval varies slightly by gender (men +14 percentage points, women +25 percentage points), but more significantly by age: adults over 50 years old are the most disapproving (+30), among younger adults more divide on the issue (35-to-49-year-olds +14, 18-to-34-year-olds +3). Across regions, disapproval is highest in the South (+26) and Midwest (+26), but lower in the West (+13) and the Northeast (+8).

Strong Disapproval Of Binding Contract Arbitration



2 A majority of those who were initially supportive or unsure of binding arbitration disapprove of arbitration when important information is given about common provisions in consumer contracts. With added information, Americans *overwhelmingly* disapprove of binding arbitration.

Big shift among binding arbitration supporters. Those who said they approve of, or were not sure about binding arbitration were presented the three following facts:

- a. The arbitrator who decides the outcome of the dispute will be selected by the company
- b. The consumer may never take legal action against the company over the dispute
- c. Binding arbitration applies even in cases where the consumer has been seriously injured by the product or service

When presented with this information, two in three (66%) disapprove of binding arbitration and only one in five (21%) approve. Among those who initially said they were unsure, disapproval is very high (64% disapprove, 6% approve). Disapproval is high even among those who initially approved of arbitration (67% disapprove, 28% approve).

After learning the specifics of contract provisions, Americans overwhelmingly are against binding arbitration. When initial and final disapproval ratings are combined, binding arbitration loses by more than eight to one (81% initial/final disapproval, 10% final approval).

3 Voters feel very favorable toward the proposed “Arbitration Fairness Act”. A strong majority support extends across political parties and regions.

By a 38-point margin, Americans very much are in favor of the “Arbitration Fairness Act” (64% favor, 26% oppose, 10% not sure). Survey respondents were told the following information about the legislation:

Now I would like to ask you about a proposal being debated in Congress called the “Arbitration Fairness Act.” This proposal would give consumers a choice, if they have a dispute with a company, between going to arbitration and taking legal action to resolve the dispute. Companies could no longer include provisions in contracts that require binding arbitration and prohibit consumers from taking legal action. Do you strongly favor, somewhat favor, somewhat oppose, or strongly oppose this proposal?

In addition, the legislation enjoys very strong support across party lines with no statistically significant differences between Democrats (+38-point margin), independents (+40), and Republicans (+37). Also, support is strong and spread relatively evenly across regions: +42 point margin in the Midwest, +40 in the West, +39 in the South, and +33 in the Northeast.

Support For The “Arbitration Fairness Act”			
	<u>Favor</u>	<u>Oppose</u>	<u>Difference</u>
	<u>%</u>	<u>%</u>	<u>%</u>
All Voters	64	26	+38
Democrats	65	27	+38
Independents	64	24	+40
Republicans	63	26	+37
Men	63	27	+36
Women	65	25	+40
Age 18 to 34	68	23	+45
Age 35 to 49	68	26	+42
Age 50 to 64	65	24	+41
Age 65 and over	53	32	+21
Northeast	63	30	+33
South	64	25	+39
Midwest	65	23	+42
West	66	26	+40

4 Public support for binding arbitration provisions reported in a recent Institute for Legal Reform (ILR) survey reflects the use of incomplete and biased question wording, not public sentiment.

A recent survey conducted on behalf of the ILR purports to show that the public supports binding arbitration provisions in consumer contracts and opposes efforts by Congress to prohibit these provisions. However, a careful reading of the actual questions asked in the survey reveals that many crucial facts about binding arbitration were omitted, while biased language favoring arbitration was included. We include the full text of the relevant ILR survey questions here so readers can compare them to our questions and make their own judgment about the relative accuracy and fairness of the question wording. Consider first how the ILR survey compares arbitration to civil lawsuits:

Now suppose for a moment you had to sign a contract with a company when you purchased their goods or services. If you could choose the method by which any serious dispute would be settled between you and the company, which would you choose? Arbitration, which does not require going to court ...or... Litigation, which does require a lawsuit and going to court. [ILR Survey]

While the question asks people which method they would choose to resolve a dispute, it fails to inform them that binding arbitration provisions do not allow consumers any choice. They must submit to arbitration and they give up any right to take civil legal action against the company. A general preference for arbitration, even if real (and other flaws in the question raise doubts about that), does not mean people want to permanently give up their right to file a lawsuit in all circumstances. In addition, the question wording includes the following flaws:

- Omits the word “binding,” further obscuring the fact that binding arbitration provisions preclude other methods of resolving the dispute;
- Makes litigation sound unattractive by specifying that it means “going to court,” while arbitration involves only “not....going to court;”
- Makes the debatable assertion that the arbitrator will be “neutral,” without informing respondents that the company will pick the arbitrator or the arbitration company.
- Incorrectly implies that arbitrators are required to “use rules of evidence and procedure,” without explaining to respondents that arbitrators are not uniformly bound by any legal procedures or rules of evidence.

The ILR survey then provides respondents with more information about arbitration—presented in a uniformly pro-arbitration manner—before asking about legislation that would prohibit arbitration provisions. Again, respondents are steered toward a predictable response:

“Just so everyone we talk to this evening has the same information, please listen as I read you a statement that describes what arbitration is and how it works. Arbitration is a non-court procedure for resolving disputes using one or more neutral third parties—called the arbitrator or arbitration panel. Arbitration uses rules of evidence and procedure that are less formal than those followed in trial courts. Now, there are lots of products and services you buy where you are required to sign a

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contract with the company providing the good or service. In some of these contracts there is an arbitration agreement, so when you sign the contract you agree to resolve any disputes with the company through the process of arbitration. Now, some officials in Congress would like to remove these arbitration agreements from the contracts consumers sign with companies providing goods and services. How about you, do you think Congress should or should not remove arbitration agreements from contracts consumers sign with companies providing goods and services?"

Despite using 171 words, the question writers fail to clearly indicate what consumers are giving up under arbitration agreements, which is their right to take legal action. Respondents also are not informed that the legislation would still permit arbitration in cases where a consumer voluntarily agreed to it, while also preserving their right to take legal action. In fact, by saying the legislation is going to "remove these arbitration agreements...for the contracts consumers sign," the question clearly implies—incorrectly—that arbitration would be prohibited.