

Memorandum

To: Interested Parties
From: Lake Research Partners
Subject: National Study of Public Attitudes on Forced Arbitration¹
Date: April 27, 2009

Findings from a recent national survey of likely voters show a commanding majority of Americans opposes the practice of forced arbitration - otherwise known as binding mandatory arbitration.² Opposition to forced arbitration is broad and intense, translating into a groundswell of support for reform. Roughly six-in-ten support federal legislation - the Arbitration Fairness Act - which would prohibit forced arbitration in Terms of Employment and Terms of Agreement for goods and services.

Summary Findings

- A solid majority of Americans (59%) opposes forced arbitration clauses in the fine print of employment and consumer contracts, including both men and women and majorities of Democrats, independents, and Republicans.
- Similarly strong majorities (59%) support the Arbitration Fairness Act. Support for the Act also crosses traditional gender and political divides.
- Even after voters hear arguments in favor of, and opposed to, forced arbitration, opposition to the practice holds firm. Just one-third of the electorate supports the practice.
- Roughly three-quarters of Americans believe they can sue an employer or company should they be seriously harmed or have a major dispute arise – even if they are bound by forced arbitration terms.
- Most Americans are unaware of the rights being taken away from them. Approximately two-thirds cannot remember seeing anything about forced arbitration in either Terms of Employment or Terms of Agreement for goods and services.

¹ This research was commissioned by The Employee Rights Advocacy Institute For Law & Policy and Public Citizen, and funded by the Public Welfare Foundation.

² Lake Research Partners designed and administered this survey of 800 likely 2010 voters nationwide. Interviews were conducted between March 29th and April 2nd, 2009. The margin of error for this survey is +/- 3.4%.

Opposition to forced arbitration is strong and intense, and crosses traditional gender and partisan lines. A solid majority of Americans (59% to 30%) opposes forced arbitration (see description below). The intensity of the opposition is also remarkable, with 42% of Americans opposing forced arbitration *strongly*. Opposition is strong regardless of political leaning: there is very little difference among Democrats (60% oppose, 30% favor), independents (59%, 32%) and Republicans (59%, 30%) on this question. Both men (60%, 31%) and women (58%, 29%) oppose the forced arbitration.

DESCRIPTION OF BINDING MANDATORY ARBITRATION

Next I'm going to read you a short description of binding mandatory arbitration. Binding mandatory arbitration requires both sides to submit any future disputes to binding arbitration as a condition of having a job or buying a product or service. Binding mandatory arbitration is written into many Terms of Employment and Terms of Agreement for goods and services that you buy, including for insurance, home-building, car loans and leases, credit cards, retirement accounts, investment accounts, and nursing facilities, to name a few. Binding mandatory arbitration means that employees and consumers waive their rights to sue, to participate in class-action lawsuits, or to appeal. Having heard that, do you favor or oppose binding mandatory arbitration, or are you unsure?

Americans support the Arbitration Fairness Act by a margin of more than two-to-one, including majorities of men and women, as well as Democrats, independents, and Republicans. As a remedy to forced arbitration, Americans strongly support the Arbitration Fairness Act (59% favor, 26% oppose) with 37% favoring the Act *strongly* (see description of the Act below). Again, majorities of Democrats (68% favor, 20% oppose), independents (61%, 28%) and *even* Republicans (51%, 30%), along with majorities of men (61%, 28%) and women (58%, 25%) favor this legislation, which would prohibit forced arbitration in Terms of Employment and Terms of Agreement for goods and services.

DESCRIPTION OF THE ARBITRATION FAIRNESS ACT

Now I would like to read you a short description of legislation that has been introduced in Congress, called the "Arbitration Fairness Act." The "Arbitration Fairness Act" would end the practice of forcing employees and consumers to sign away their rights to legal protections and access to the courts. It would make binding mandatory arbitration unenforceable in civil rights, employment, consumer, and franchise disputes. The Act would not eliminate voluntary arbitration agreed to after a dispute arises, nor would it affect collective bargaining agreements. Having heard that, would you favor or oppose the "Arbitration Fairness Act," or are you unsure?

Majorities across major subgroups remain opposed to forced arbitration even *after* hearing arguments in favor of, and opposed to, the practice. A solid majority of Americans (56%) still opposes forced arbitration after hearing arguments both for and against the practice (40% oppose it *strongly*), while only 33% favor it (see text on next page). As with the initial question asking whether Americans support or oppose forced arbitration, solid majorities of men (56% oppose, 34% favor), women (56%, 33%), Democrats (57%, 32%), independents (56%, 36%) and Republicans (55%, 34%) oppose the practice after hearing arguments from both sides.

TEXT OF STATEMENTS SUPPORTING AND OPPOSING FORCED ARBITRATION³

STATEMENT OF SUPPORT

[Some/Other] people say employees and consumers have better, cheaper access to justice with arbitration, because it is faster and cheaper than going to court. Arbitration preserves the integrity of our justice system by protecting against frivolous lawsuits, such as people who spill coffee in their laps and sue because the coffee is too hot. These clog the courts, waste tax dollars, and result in higher prices for goods and services for the rest of us. The wealthy trial lawyers who want to eliminate arbitration fail to mention that there are already rules in place that protect consumers and employees from unfair arbitration. We need to strengthen these protections, not eliminate them. In this time of economic crisis, we simply cannot afford to make it more difficult for employees to find work, businesses to grow jobs, and consumers to make ends meet.

SPLIT SAMPLE C – STATEMENT AGAINST

[Some/Other] people say that binding mandatory arbitration means giving up a basic freedom guaranteed to every American: the right to equal justice under the law. This is not about frivolous lawsuits. Or about voluntary arbitration, which can be a positive way to resolve disputes. This is about losing your constitutional right to a judge and jury, and a chance to appeal, no matter if you or a member of your family has gone bankrupt from a credit scam, been sexually harassed or abused by an employer, or harmed or even killed by a company's negligence. With binding mandatory arbitration, we don't even have a choice to say no – simply by depositing a paycheck or using a product or service, you lose the option of going to court. Nobody should be forced to give up their basic rights to keep a job, put a roof over their head, or go to the doctor.

SPLIT SAMPLE D – STATEMENT AGAINST

[Some/Other] people say binding mandatory arbitration is another example of big business taking advantage of ordinary Americans. This is not about frivolous lawsuits. Or about voluntary arbitration, which can be a positive way to resolve disputes. This is about powerful industries, like insurance, banks, credit cards, and nursing home operators, avoiding responsibility when someone is defrauded, or even seriously hurt or killed by their negligence. Under binding mandatory arbitration, you are forced into a separate corporate legal system, designed and controlled by companies and their lawyers, with arbitrators who are paid by the company and don't even need to be lawyers or follow the law. There is no judge, no jury, no public record, and no appeal. Companies are stacking the deck and that's not right. Especially when people are hurting in this economic crisis, we need to level the playing field and ensure that companies are accountable for their actions.

Commanding majorities believe they have the right to sue a company or an employer should they be seriously harmed or have a major dispute arise – even if they are bound by forced arbitration terms. More than 72% of Americans believe they have a right to sue their employer, and 79% think they can sue a company, should they feel it necessary. Most do not know that these rights are being taken away from them through forced arbitration clauses, which are buried in the fine-print. **Approximately two-thirds (65%) cannot remember reading about an arbitration provision in Terms of Employment or in Terms of Agreement for goods and services.** Just 30% recall reading about arbitration in Terms of Employment, and only 33% remember arbitration Terms of Agreement for goods and services.

³ Survey respondents were split into two random samples of 400 each. The statement supporting forced arbitration was read to all 800 survey respondents, and the two statements opposing forced arbitration were each given to a random sample of 400 survey respondents. The results presented here reflect the total of both split samples combined.