

Testimony of Congressman Henry C. "Hank" Johnson  
Arbitration Hearing on "Mandatory Binding Arbitration: Is it Fair and Voluntary?"  
September 15, 2009

Thank you, Chairman Cohen, for the opportunity to testify today before the Commercial and Administrative Law Subcommittee. Forced arbitration has been a concern of mine for many years and I firmly believe that Congress must act in this instance to protect consumers.

In the 110<sup>th</sup> Congress, I introduced the Arbitration Fairness Act, a bill that would prevent *all* forced pre-dispute arbitration clauses. That bill passed favorably out of this Subcommittee. I re-introduced my legislation in this Congress, and am proud to have the Chairman of the Full Judiciary and three other fine members of this Subcommittee as original cosponsors. In fact, this bipartisan bill already has over 90 cosponsors.

The Arbitration Fairness Act does not forbid arbitration clauses. It merely prevents *forced pre-dispute* arbitration clauses. Consumers may still opt to arbitrate a dispute with a company. But only when that consumer determines that it is the appropriate forum at the time the conflict arises and not before.

As Chairman of the Judiciary Committee Subcommittee on Courts and Competition Policy, I believe it is vital that consumers continue to have access to the courts and not be foreclosed from litigation by the constraints of a pre-dispute forced arbitration clause.

Major arbitration companies, including the National Arbitration Forum and American Arbitration Association have recognized that the arbitration process, in its mandatory form, is unfair to consumers. Recently, Bank of America voluntarily dropped its mandatory arbitration program for credit-card disputes, deposit account disputes and disputes involved loans for automobiles, recreational vehicles and boats.

These small steps towards eliminating forced arbitration clauses only underscores the need for Congress to enact my legislation along with Representative Sanchez's Fairness in Nursing Home Arbitration Act. Pre-dispute forced arbitration agreements are nearly always the product of unequal bargaining power between the consumer and the business. The scales of justice ought not to be so weighted.

I recently wrote a letter to the Attorney General of the State of Georgia addressing the need for close scrutiny of arbitration clauses in home builder contracts. The personal harm alleged by several of my constituents pertains to just one company's abuse of the arbitration process. However, the abusive practices that harmed these victims of arbitration is indicative of a much larger problems where consumers are forced to sign arbitration clauses that strongly favor the company to the detriment of the consumer.

Arbitration agreements remain in many other consumer, employment, and franchisee agreements. Congress must act to prohibit forced arbitration *before* consumers suffer any more harm.

Again, I thank Chairman Cohen for the opportunity to testify before the Commercial and Administrative Law Subcommittee today.