Statement of Senator Patrick Leahy (D-Vt.),
Chairman, Senate Judiciary Committee
Hearing on
"The Federal Arbitration Act and Access to Justice: Will Recent Supreme Court Decisions Undermine the Rights of Consumers, Workers, and Small Businesses?"
December 17, 2013

Today's hearing focuses on an important issue that has been before the Committee for too long: the use of mandatory arbitration clauses in contractual fine-print that routinely deny American workers, small businesses and consumers their day in court.

The Supreme Court's recent decision in *American Express v. Italian Colors Restaurant* continued a troubling pattern that allows corporations to hide behind mandatory arbitration clauses that are inserted in contractual fine print that customers have no choice but to accept. In the 2011 case *ATT v. Concepcion*, customers who wished to join together to challenge their phone company's conduct were barred from doing so because their cell phone contracts forced them to individually arbitrate all claims. In *American Express v. Italian Colors*, small businesses found themselves in the same position when they were prevented from bringing a class action against their credit service provider, even though each plaintiffs' cost of individually arbitrating each claim would far exceed any potential recovery.

In each instance, the plaintiff was not only denied their Constitutional right to a jury trial; they were also found to have "waived" their right to bring their claims as a class action. The result gives corporations a free pass: since most victims' claims are too small to warrant pursuing individually, their injury goes unaddressed and corporate bad conduct goes undeterred.

When Congress passed the Federal Arbitration Act, it was intended to give sophisticated business interests an alternative venue to resolve their disputes. It was not intended to become a shield for large corporations to use against their individual customers so they may never obtain justice. Unfortunately, the Supreme Court's expansive rulings in these cases have done just that. Again and again, Americans are being denied their day in court or the power to bring their claims in a class action because of contractual clauses they have no choice but to accept. The Court has even held that State legislatures cannot act to prohibit such mandatory arbitration clauses, because they are preempted by the Federal Arbitration Act. In the financial services sector, corporations are using the same logic to challenge the Financial Industry Regulatory Authority (FINRA)'s effort to ban mandatory arbitration clauses, despite their clear impact on investors' ability to enforce their rights.

Every American should have meaningful legal recourse to resolve disputes. Arbitration may achieve that goal in some cases, but it is appropriate only when consumers enter into it knowingly and with true consent. I am proud to cosponsor the Arbitration Fairness Act to promote this policy.

We must continue to focus on this important issue that undermines consumer choice and allows corporations to shield themselves from accountability. I thank Senator Franken

for chairing this hearing and for his leadership on this important issue to protect American workers, businesses and consumers.

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