

Statement of

The Honorable Patrick Leahy

United States Senator

Vermont

June 18, 2008

Statement of Senator Patrick Leahy, Chairman

Senate Judiciary Committee

"S. 2838, the Fairness in Nursing Home Arbitration Act"

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I am pleased that Senator Kohl has called this joint hearing of the Judiciary and Aging Committees to examine the consequences of mandatory arbitration clauses in nursing home contracts.

The increasing prevalence of binding mandatory arbitration clauses in all manner of contracts for consumer goods and services is of great concern. The right of all Americans to access their judicial systems and their Seventh Amendment rights should not be summarily removed, yet that is what many companies are requiring their customers to do. In transactions as basic as mobile phone service or opening a brokerage account, companies are demanding that American consumers sign away their rights or forgo the goods and services. American citizens should be greatly concerned about what they are being forced to give up in their day-to-day transactions.

In the context of ordinary consumer disputes, binding mandatory arbitration clauses tilt an already uneven playing field in favor of the corporations that insist upon them. While arbitration can serve goals of efficiency and economy where parties are on equal footing, consumers should not be compelled to give up their rights to a transparent, objective process in front of neutral judge, and their rights to appeal, in order to purchase a product or service. Where the disparity in resources is so great between the average consumer and corporate America, retaining the option of a hearing before a neutral judge in a transparent court setting is crucial.

For example, a recent lawsuit brought by the City of San Francisco against the National Arbitration Forum raises serious questions about the fairness of these proceedings, and whether consumers forced into these proceedings can actually get a fair hearing. It is also unclear whether the average consumer

can afford to pay for the mandatory arbitration costs that do not exist in the civil justice system. Where uncertainties like these persist, consumers should have the choice of whether to submit to binding arbitration after the dispute arises.

Preserving this choice is especially important for our elderly citizens, many of whom place enormous trust in the healthcare facilities that provide elder care. The legislation the subcommittee examines today would be a strong first step toward returning meaningful choice to the hands of consumers. That is why I have cosponsored this important bill.

When families and individuals are in the process of making the difficult choices for themselves and their loved ones, the last thing they deserve is to be forced into giving up their rights. I commend Senators Kohl and Martinez for leading this effort and I look forward to a meaningful discussion about this legislation.

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