Statement of

The Honorable Patrick Leahy

United States Senator
United States Senate
October 13, 2011

Today the Senate Judiciary Committee is once again highlighting how decisions of the Supreme Court affect hardworking Americans. The Court's arbitration decisions have denied thousands of Americans access to their courts and access to fair and impartial justice. I thank Senator Franken for taking the lead to address these decisions with critically important legislation, the Arbitration Fairness Act of 2011, and for chairing this timely hearing.

As I have noted before, in mandatory arbitration, there is no transparency. There is no independent arbitrator. There are no juries. There is no appellate review. Simply put, there is no rule of law and there is no justice.

Earlier this year, in AT&T v. Concepcion, the Supreme Court, in a narrowly divided 5-4 opinion, held that class action bans, if part of an arbitration clause, are enforceable, and any state law that says otherwise is preempted by the Federal Arbitration Act. The Supreme Court, once again, misinterpreted Congress' intent to favor corporations and further weaken protections for consumers.

Mandatory arbitration makes a farce of the right to a jury trial and the due process guaranteed to all Americans. But in its misinterpretation of statutes, the Supreme Court went beyond hampering just the rights of consumers by limiting their ability to bring claims against corporations. The Court twisted the intent of the Federal Arbitration Act to override the right of each state to protect its citizens.

Last year, in Rent-A-Center v. Jackson, the Supreme Court, in another 5-4 decision, held that courts do not retain the authority to hear claims that an arbitration agreement is unconscionable if the agreement delegates that determination to the arbitrator. That decision was a blow to our nation's historic civil rights laws and the protections that American workers have long enjoyed under those laws.

The four dissenting Justices noted that the question of whether a legally binding and valid arbitration agreement existed is an issue that the relevant statute assigns to the courts. When Congress passed the Federal Arbitration Act, it was clearly not intended to prevent employees from having access to an impartial court determination of whether the agreement was unconscionable. In this way, the ruling turns that purpose, and even the Court's own precedent, upside down. Justice Stevens, writing for the dissent, noted that he does "not think an agreement to arbitrate can ever manifest a clear and unmistakable intent to arbitrate its own validity."

Congress never intended the Federal Arbitration Act to become a hammer for corporations to use against consumers or American workers. Nor did Congress intend to limit Americans' ability to ban together in class proceedings. Class actions are an effective way to ensure consumer protection and protect hardworking Americans.

Now more than ever, Congress needs to respond to clarify the original intent of the Federal Arbitration Act and undo the damage the Supreme Court's misguided opinions have caused. Our laws must work for all working Americans, not just corporations. This effort should be

bipartisan. I am disappointed that thus far, it has not been.
I look forward to hearing from our witnesses.
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