



February 3, 2016

BY ELECTRONIC DELIVERY

The Honorable Patrick J. Leahy
United States Senate
Washington, D.C. 20510

RE: Introduction Of The Restoring Statutory Rights Act

Dear Senator Leahy:

On behalf of the National Employment Lawyers Association (NELA), we commend and thank you for your leadership in introducing the Restoring Statutory Rights Act. This bill demonstrates a deep commitment to workers across the United States who, increasingly, as a condition of employment are forced by their employers to give up their rights to access the courts when faced with illegal treatment in the workplace. We applaud your vision of a future in which workers will not be denied access to our public civil justice system unilaterally by employers who violate America's civil rights, employment, and labor laws.

Founded in 1985, NELA is the largest professional membership organization in the country comprising lawyers who represent employees in civil rights, employment, and labor disputes. NELA advances employee rights and serves lawyers who advocate for equality and justice in the American workplace. With 69 circuit, state, and local affiliates, NELA has a membership of over 4,000 attorneys working on behalf of those who have faced illegal treatment in the workplace.

Congress has passed laws to protect America's workers from discrimination, harassment, retaliation, wage theft, and unsafe workplaces. All of these laws exemplify our nation's values that everyone should be treated equally, paid fairly, provided safe working conditions, and be able to access the courts when their rights are violated. When there is wrongdoing in the workplace, access to the courts is essential for effective

vindication of the rights of employees facing illegal treatment. Allowing employers to use forced arbitration to shield themselves from public accountability when they break the law undermines the enforcement of our civil rights, employment, and labor laws. Unlike America's public civil justice system, the private and confidential nature of forced arbitration conceals illegal employer conduct and prevents corrective actions that can be taken by the courts and Congress to ensure that our country's workplace laws are enforced as Congress intended.

There has been unanimity among our members for nearly 20 years that ending forced arbitration in employment is a top legislative priority. NELA has advocated for the Arbitration Fairness Act since it was first introduced in 2007. Our members have testified before Congress that forced arbitration fails to provide important procedural guarantees of fairness and due process that are the hallmarks of courts of law.¹ NELA supported and provided technical assistance to Senator Al Franken (D-MN) in 2009 regarding his amendment to the Defense Appropriations Act for Fiscal Year 2010 (Pub. L. No. 111-118), often referred to as the "Franken Amendment." As you know, the Franken Amendment prohibits DOD contractors and subcontractors receiving federal contracts of \$1 million or more from forcing their employees to arbitrate claims under Title VII of the Civil Rights Act of 1964 and any tort related to or arising out of sexual assault or harassment. In 2009, NELA, along with its sister organization The Employee Rights Advocacy Institute For Law & Policy² and Public Citizen, commissioned a "National Study of Public Attitudes on Forced Arbitration" (Study). The Study found that 59% of Americans oppose forced arbitration clauses in the fine print of employment and consumer contracts regardless of gender or political affiliation.³

Introduction of the Restoring Statutory Rights Act affirms that access to the courts by employees to seek resolution of employment disputes is fundamental to achieving fairness and justice in the workplace. Indeed, employees whose workplace rights are violated by their employers should not also be robbed of their day in court by employer-imposed forced arbitration clauses.

¹ Palefsky, Cliff, "Mandatory Binding Arbitration: Is It Fair And Voluntary?," testimony, September 15, 2009 before the House of Representatives Committee on the Judiciary, Subcommittee on Commercial and Administrative Law, available at <http://judiciary.house.gov/files/hearings/pdf/Palefsky090915.pdf>

² The Employee Rights Advocacy Institute For Law & Policy is NELA's related 501(c)(3) organization founded in 2008 and dedicated to advocating for employee rights by advancing equality and justice in the American workplace through innovative legal strategies, policy development, grassroots advocacy, and public education.

³ "National Study of Public Attitudes on Forced Arbitration," April 2009, survey conducted by Lake Research Partners, available at <http://www.employeerightsadvocacy.org/fmd/files/Forced%20Arbitration%20Study%200409.pdf>

On behalf of our 4,000 members, 69 affiliates, and the hundreds of thousands of employees they represent, NELA strongly supports this legislation to protect the hard-won statutory workplace rights of America's workers and to prohibit the unjust employer practice of forced arbitration. We look forward to working closely with you and your staff to gain passage of the Restoring Statutory Rights Act in the 114th Congress.

Sincerely,

A handwritten signature in black ink, appearing to read "Terisa E. Chaw". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Terisa E. Chaw
Executive Director