Dear Chairwoman Sánchez and Ranking Member Cannon:

The U.S. Chamber of Commerce, the world’s largest business federation representing more than three million businesses and organizations of every size, sector, and region, strongly opposes H.R. 3010, the “Arbitration Fairness Act;” H.R. 5312, the “Automobile Arbitration Fairness Act of 2008;” and H.R. 6126, the “Fairness in Nursing Home Arbitration Act of 2008.” These bills would effectively abolish pre-dispute arbitration agreements in a variety of contracts including, but not limited to, consumer, employee, franchise, automobile, and nursing home contracts. The Chamber urges you to oppose all of these bills during markup which is scheduled for July 15, 2008, in the Subcommittee on Commercial and Administrative Law.

These bills are unwarranted. Arbitration is an effective, efficient, and less expensive means of resolving disputes, and it has been for more than 80 years. Opponents of arbitration are attempting to take away the right to enter into pre-dispute arbitration by using anecdotes and a handful of misleading studies to validate their claim that arbitration is unfair to consumers. In fact, arbitration is more likely to result in positive outcomes for consumers and employees. For example, the California Dispute Resolution Institute, part of the University of San Francisco’s Leo T. McCarthy Center for Public Service and the Common Good, found that consumers prevailed more than 70 percent of the time in arbitration. The National Workrights Institute found that employees were almost 20 percent more likely to win employment cases in arbitration than those litigated in court. Resolving disputes in arbitration is also more timely—taking on average 100 days, where as litigation can continue for years.

Also, it is important to note that the American public disfavors the attempted overhaul of the arbitration system that is being spearheaded by the trial lawyers’ lobby. In a recent poll conducted for the U.S. Chamber Institute for Legal Reform, 71 percent of likely voters oppose efforts by Congress to remove arbitration agreements from consumer contracts, and 82 percent prefer arbitration to litigation as a means to settle a serious dispute with a company.
Opponents of arbitration have also neglected to realize that, if enacted, these bills will actually limit an aggrieved party’s chance to obtain a remedy for many common claims. Evidence shows that arbitration is most commonly utilized for low-value claims—usually less than $60,000. With that, surveys show that plaintiffs’ lawyers are hesitant to take cases with such a low value, because they are not cost-effective for their business. Without an attorney, any potential claim would likely be abandoned by the consumer, as enactment of any of these bills would dissolve any realistic chance of the consumer having an effective forum available to them in which to resolve their claim. The only beneficiaries of these bills would be the plaintiffs’ trial lawyers who support them, at the expense of consumers, for their independent financial gain.

H.R. 3010, H.R. 5312, and H.R. 6126 are the unfortunate result of the trial bar pushing for a solution without there actually being a problem. To disrupt a system that both contract parties have relied on for decades would be inherently unfair. Accordingly, the Chamber strongly opposes all of these bills and asks that they are not voted out of Subcommittee.

Sincerely,

R. Bruce Josten

Cc: Members of the House Subcommittee on Commercial and Administrative Law