September 13, 2019

The Honorable Nancy Pelosi
Speaker of the House
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Kevin McCarthy
Minority Leader
U.S. House of Representatives
Washington, D.C. 20515

Dear Speaker Pelosi and Minority Leader McCarthy:

I write to share the National Retail Federation's opposition to H.R. 1423, the Forced Arbitration Injustice Repeal (FAIR) Act. NRF has significant concerns with the FAIR Act's sweeping elimination of arbitration agreements, which federal law has protected as an effective means of resolving disputes between businesses, employees and consumers for nearly a century. **Please note that NRF may consider votes on H.R. 1423 and related procedural motions as Opportunity Index Votes for our annual voting scorecard.**

NRF is the world's largest retail trade association, representing discount and department stores, home goods and specialty stores, Main Street merchants, grocers, wholesalers, chain restaurants and Internet retailers from the United States and more than 45 countries. Retail is the nation's largest private sector employer, supporting one in four U.S. jobs – 42 million working Americans. Contributing $2.6 trillion to annual GDP, retail is a daily barometer for the nation's economy.

The FAIR Act would prohibit the use of pre-dispute arbitration for employment, civil rights, consumer and anti-trust disputes, eliminating a viable path to justice for many plaintiffs. For decades, many retailers have utilized arbitration as an alternative method of efficiently, fairly and quickly resolving employment disputes. The process is easier to navigate and affords greater flexibility compared to the expensive, overburdened court system. Furthermore, plaintiffs can pursue the exact same remedies in arbitration as they can in court and the employer pays the cost of arbitration, ensuring no employee is denied the ability to pursue his/her claim.

The benefits of arbitration accrue to all parties, but notably employee-plaintiffs often fare better in arbitration than in court. For example, a recent study found employee-plaintiffs won three times more often in arbitration than in court and recovered approximately double the amount recovered by employees in court.[1] In addition, the study found that arbitration cases in which the employee-plaintiff prevailed averaged 569 days compared to an average of 665 days in court. Eliminating this beneficial means of resolving disputes will result in more class action lawsuits that directly benefit trial lawyers at the expense of employees, consumers and employers.

For the reasons stated above, NRF urges members to maintain the viability of pre-dispute arbitration as a fair and flexible method of resolving disputes and vote "Nay" on the FAIR Act.

Sincerely,

David French
Senior Vice President
Government Relations

[1] NDP Analytics, *Fairer, Faster, Better: An Empirical Assessment of Employment Arbitration* (May 2019).