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February 25, 2015

The Honorable Trent Franks, Chairman
The Honorable Steve Cohen, Ranking Member
House Judiciary Subcommittee on the Constitution and Civil Justice
Washington, DC 20515

Re: Hearing titled "The State of Class Action Ten Years After the Enactment of the Class Action Fairness Act," February 27, 2015

Dear Chairman Franks and Ranking Member Cohen:

We write to share our views for the hearing, titled "The State of Class Action Ten Years After the Enactment of the Class Action Fairness Act," scheduled for February 27, 2015 before the House Judiciary Subcommittee on the Constitution and Civil Justice. The current state of class actions is dire for consumers and employees. The subcommittee should use the hearing to address the restrictions on individuals' access to justice.

In the last decade, it has become increasingly difficult for American consumers and employees to access the courts to seek remedies for predatory and illegal business practices, and particularly via class actions. Meanwhile, reckless business practices and slack corporate accountability caused a national crisis, including a record number of foreclosures, widespread unemployment and the unprecedented failure of longstanding financial institutions.

The subcommittee members should consider the detrimental impact that further restrictions on class actions in an already challenging system would have on their constituents and the American marketplace.

"Class Actions Are On the Ropes."
- Myriam Gilles, Professor of Law

Over the last decade, consumers' ability to band together to seek remedies in court has been stifled by a widespread corporate practice: terms in everyday non-negotiable employment contracts and consumer contracts—including cell phone service, nursing home admission, credit card accounts, banking, home construction, auto loans and leases, ecommerce—that require disputes to be settled in private arbitration instead of in open court. Because forced mandatory arbitration clauses are ubiquitous in these form

contracts, individuals have no choice but to accept the terms or relinquish the product, service, or job altogether.

In recent years, corporations expanded forced arbitration clauses in contracts to block consumers and employees from bringing class actions, forcing them to arbitrate disputes on an individual basis. Some courts tried to preserve class actions for consumers and employees under various state laws. But the U.S. Supreme Court's 2011 decision *AT&T Mobility v. Concepcion* (2011) held that the Federal Arbitration Act (FAA) preempts state laws that prohibit class action bans. Thus, corporations increasingly included class-action bans with forced arbitration clauses in their consumer and employment contracts.

Class actions are often the only economically feasible way for consumers and employees to seek redress, due to the small size of the individual claims such as illegal fees on monthly cell phone or cable bills; interest rates on loans that violate usury laws; or systemic discriminatory employment practices. Class actions also boost government enforcement of critical consumer protection laws without burdening the taxpayers. Indeed, the mere prospect of class actions deters unscrupulous and predatory conduct.

On the other hand, with class action bans, corporations are able to sidestep valid legal claims and evade answering for practices that cheat consumers, victimize employees and damage the American economy. The subcommittee must seriously consider the consequences of restricting class actions in any way, because without this critical consumer protection, corporations do not fear the repercussions of their risky business practices that ultimately affect us all.

Sincerely,

Public Citizen, Congress Watch division

Christine Hines
Consumer and Civil Justice Counsel

Lisa Gilbert
Director