

Fair Arbitration NOW

End Forced Arbitration – www.FairArbitrationNow.org

May 15, 2013

U.S. House Judiciary Committee
Subcommittee on Immigration and Border Security
U.S. House of Representatives
Washington, DC 20515

Re: Opposition to Section 6 of the Agricultural Guestworker Act, H.R. 1773

Dear Subcommittee Chairman Gowdy, Ranking Member Lofgren and Members of the Committee:

The Fair Arbitration Now coalition, a group of civil rights, consumer, employment, labor and health organizations, urges you to oppose H.R. 1773, a bill that aims to deprive agricultural guest workers of their access to legal remedies. Section 6 permits employers to force agricultural workers into pre-dispute binding mandatory arbitration to settle disputes. Not only is this provision redundant – as forced arbitration clauses are already permitted in employment contracts – it virtually would ensure that workers could not seek redress in the legal system. The coalition’s focus on Section 6 should not be read as implicit approval of any other aspect of this bill.

Forced arbitration clauses, hidden in the fine print of many types of consumer and employment contracts, are an unjust practice that Congress should eliminate, not encourage. Currently, these clauses are used to force America’s workers and consumers into privatized proceedings where the corporation chooses the arbitrator, the venue, and the rules governing the process, and where the arbitrator is not held to any standards. These arbitrators view the corporations as their “clients,” and depend on them for repeat business, which inevitably leads to biased decisions against individual workers and consumers.

Section 6 of H.R. 1773 would have similar or even more harmful effects on temporary agricultural workers. The bill further stacks the deck against a guest worker by requiring that the employer and worker split arbitration costs and that the worker be responsible for his own attorney fees, regardless of whether the employer committed illegal acts that harmed the worker. Arbitrators are typically paid hundreds of dollars by the hour. The average American worker can hardly afford the costs of private arbitration; an average low-wage earning agricultural worker is even less likely to do so. Consequently, this provision would effectively grant employers the freedom to operate outside the law, mistreating workers and flouting worker protections without fear of accountability.

Congress has previously recognized the perils of arbitration in the agricultural context. In 2008, Congress passed the Food, Conservation, and Energy Act of 2008 (“the farm bill”), which included provisions to ensure that poultry companies could not force poultry producers or

growers into arbitration over contract disputes, but rather that arbitration would be voluntary on the part of both parties. Temporary agricultural workers should have the same legal protection.

We strongly urge the Subcommittee to eliminate the unnecessary and cruel proposal in Section 6 of H.R. 1773.

Sincerely yours,

American Association for Justice
Center for Justice & Democracy at New York Law School
Citizen Works
Consumer Action
Consumers for Auto Reliability and Safety
Homeowners Against Deficient Dwellings
National Association of Consumer Advocates
National Consumers League
National Employment Lawyers Association (NELA)
National Employment Law Project (NELP)
Public Citizen