MARTIN & JONES PLLC
Attorneys at Law

A bill was recently introduced in the Senate which would prohibit corporations from including arbitration clauses in their standard contracts with consumers and non-union employees. Though the Federal Arbitration Act, passed in 1925, was originally intended to cover only certain types of disputes, such as those between merchants and where a specialized knowledge of a particular industry would aid in deciding disputes, arbitration clauses have proliferated to the extent that it is now nearly impossible to find any standard customer agreement that does not include an arbitration clause. This means that anytime a consumer signs up for a credit card, phone service, or otherwise seeks to obtain some service or product from a corporation, the fine print will most likely include an arbitration clause which deprives the consumer of important rights. Namely, the consumer almost always is forced to give up the right to pursue a class action or to even join his or her claim with other consumers who may have been subjected to the same unfair or deceptive trade practices by the corporation. The customer agreements almost always require that any dispute be submitted to binding arbitration and prevent a consumer from pursuing a lawsuit in court. An arbitrator, who may regularly decide cases involving the corporation, would hear the dispute and the result may be confidential and subject to only limited review by a court.

Nowadays, whenever a consumer has a grievance against a company over a service or product obtained through any standardized agreement, the consumer may only pursue his or her claim on an individual basis and only in arbitration. In most cases, the consumer would not be able to find a lawyer who would take on the case, meaning the consumer would have to pursue his or her claim against a large corporation and its team of attorneys in an arbitral forum in which the corporation is well-familiar because it has required any and all disputes with it to be heard in that setting. Corporations are now very frequently including arbitration clauses in their employment agreements with their employees, meaning that any employment issues would also be decided by an arbitrator as opposed to a jury of one's peers.

The Arbitration Fairness Act of 2011 would prevent corporations from requiring that consumer disputes and employment cases be heard in arbitration. Employees and consumers would have the right to have disputes heard in court if they so chose, with that choice being made after the dispute arose so that an informed decision about the individual's options could be made. The rights at stake with consumer and employment disputes are too important, both for the nation as a whole and for the individual employee or consumer, to have those matters decided by an

arbitrator with little oversight and without the openness that accompanies court proceedings. The Arbitration Fairness Act of 2011 would serve to protect critically important rights of employees and consumers. Concerned citizens should contact their representatives to urge support for the Arbitration Fairness Act of 2011. A copy of the **draft of the bill** can be accessed here.
