

CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

R. BRUCE JOSTEN
EXECUTIVE VICE PRESIDENT
GOVERNMENT AFFAIRS

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WASHINGTON, D.C. 20062-2000
202/463-5310

June 29, 2016

The Honorable Johnny Isakson
Chairman
Committee on Veterans' Affairs
United States Senate
Washington, DC 20510

The Honorable Richard Blumenthal
Ranking Member
Committee on Veterans' Affairs
United States Senate
Washington, DC 20510

Dear Chairman Isakson and Ranking Member Blumenthal:

The U.S. Chamber of Commerce strongly values servicemembers and their contributions both at home and abroad. However, the Chamber opposes S. 3042, the "Justice for Servicemembers Act of 2016," about which the Committee will hear testimony at today's hearing, which would make it harder for servicemembers to obtain relief pursuant to the Uniformed Services Employment and Reemployment Rights Act (USERRA) by effectively eliminating arbitration as an available means of resolving USERRA disputes.

Arbitration provides a simple, effective, and low-cost mechanism for vindicating servicemembers' rights under USERRA. Arbitration procedures are more flexible than the court system; indeed, individuals often can proceed without retaining a lawyer. Arbitration is also a quicker way to resolve disputes, putting money into servicemembers' pockets sooner. And studies demonstrate that individuals do at least as well in arbitration as they do in court. In short, arbitration allows servicemembers to obtain relief more easily—without being dependent on plaintiffs' lawyers.

Removing arbitration and forcing class actions on servicemembers' attempts to resolve USERRA appears intended to profit trial lawyers, rather than servicemembers. Claims brought as class actions rarely yield real benefits for class members. Most class actions are settled without any benefit to the class members, and even when class members are eligible to receive a settlement payment, they rarely bother to file a claim. Thus, the primary beneficiaries of class actions are not class members, but plaintiffs' lawyers—who receive a sizable cut of every settlement in fees, even when very little benefit is received by the class members.

Furthermore, removing arbitration provisions would have serious harm for servicemembers because so many USERRA claims are individualized and therefore ineligible for class adjudication. In such cases, in order to sue in court, a servicemember would be forced to obtain a lawyer—but many USERRA claims are too small to attract the attention of a contingency-fee lawyer. And even if a servicemember manages to obtain a lawyer, the lawyer

may demand such a share of any recovery in addition to fees awarded under the statute's fee-shifting provision that any amount awarded to a service member would be seriously curtailed.

Attached is a copy of recent testimony by Andrew J. Pincus, counsel to the U.S. Chamber and the Chamber's Institute for Legal Reform, before the House Financial Services Committee's Subcommittee on Financial Institutions and Consumer Credit explaining in greater detail the benefits of arbitration, the significant obstacles to pursuing claims in court, and the false promise of class actions.

The proponents of the bill will surely claim that it preserves arbitration by allowing parties to agree to arbitrate after a dispute arises. But that possibility is entirely illusory; employers cannot afford to make arbitration available if they must also face the possibility of class action lawsuits, and in any event, once a dispute has arisen, parties almost never agree to arbitration. Thus, servicemembers must retain the option to agree to arbitration before disputes arise.

The Chamber urges you and the other members of the Committee to oppose S. 3042 in its current form.

Sincerely,

A handwritten signature in black ink, appearing to read "Bruce R. Josten", written in a cursive style.

Bruce R. Josten

Attachment

cc: Members of the Committee on Veterans' Affairs