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# COMPETITIVENESS

**Oral Testimony of Travis Norton**  
**U.S. Chamber of Commerce**  
**May 5, 2016**

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Thank you for the opportunity to testify today.

This morning, the Bureau released a proposed regulation to enrich class action trial lawyers at the expense of the consumers the Bureau is charged with protecting. That is because the regulation will have the practical effect of eliminating consumer arbitration and replacing it with class action litigation.

To be sure, the Bureau is not proposing to ban arbitration directly. After all, the Bureau's own 2015 arbitration study demonstrates the real-world consumer benefits of arbitration, like its low costs, speed, and effectiveness in resolving complaints.

Instead, the Bureau's regulation is a back-door attack on arbitration, taking the form of a prohibition on class action waivers. But let's be clear: this rule is no more in the public interest than a direct prohibition on arbitration. If companies that currently subsidize arbitration programs for their customers are also forced to reserve millions for class action defense, many are going to stop funding their arbitration programs. No rational company is going to pay more to provide customers less.

Today, after four hearings and a Bureau study on arbitration, I would think that an agency that acknowledges the demonstrable benefits of arbitration would at least care about how its rule will impact it—if not an instinct to preserve it. Where is that research and analysis?

The Bureau will say “oh we aren’t touching arbitration, we are just allowing class actions.” That doesn’t pass the smell test. A farmer who takes in a fox can’t feign surprise when he wakes up one day to find his chicken coop is empty.

The reality is that arbitration will go away, and the Bureau knows it. I glanced at the rule this morning. The Bureau seems to say “arbitration is effective but underused, so even if it goes away, consumers won’t miss it.” If that’s the train of thought, there’s a train wreck ahead for consumers. Why not educate consumers about arbitration? The Bureau is killing the caterpillar because it doesn’t look like a butterfly.

I would think that the Bureau would have considered the experience of the consumer in a world without arbitration. Did the ATM fail to credit your deposit? Was your interest calculated incorrectly? These are claims with unique facts; they cannot be classed, so a class action is off the table. And if not to arbitration, where does that consumer go?

There are serious, real-world problems with the Bureau’s approach. It is one thing for the Bureau to have a vision for this rule, but it must first make all relevant information visible.

Rather than rush this rule to completion, the Bureau should suspend this rulemaking while it address these and other issues and publishes its analysis. Businesses that use arbitration would welcome the opportunity to understand what problems the Bureau is trying to address and work with the Bureau on regulatory policy that benefits customers.

After all, consumers literally cannot afford for the Bureau to get this one wrong.