U.S. CHAMBER OF COMMERCE

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Overturning the CFPB's Anti-Arbitration Rule

After seven long years of fighting back against the Consumer Financial Protection Bureau's (CFPB or Bureau) arbitration rule, President Trump issued the final blow on November 1, 2017 when he signed into law a Congressional Review Act (CRA) resolution Congress passed to overturn the rule. To promote this final resolution, the U.S. Chamber Institute for Legal Reform (ILR) and Center for Capital Markets Competitiveness (CCMC) led a multi-faceted campaign challenging the rule, dating back to before the CFPB was established. This campaign included advocating directly to the CFPB, crafting earned and paid media initiatives, working closely with Capitol Hill, researching and writing comment letters, holding events with arbitration experts, conducting studies, and challenging the rule in court.

From start to finish, the U.S. Chamber led the way so consumers could retain the option of arbitration because, as we know, the CFPB's own study found that consumers receive more money and have quicker resolution on average with arbitration than class actions. By overturning the rule, Congress reeled in a rogue agency, supported businesses, preserved already burdened judicial resources, and fostered economic growth.

In 2010, the U.S. Chamber voiced our opposition to the Dodd-Frank Act, through which the CFPB was created, and throughout the last seven years the U.S. Chamber has engaged in a comprehensive effort to fight against the arbitration rule, which would have harmed consumers and businesses alike. We are pleased that after almost a decade of hard work, the rule was rejected.

Now, for a look down memory lane…

2010 – 2012: The Dodd-Frank Act Passed with Arbitration Provision

The U.S. Chamber's effort against the CFPB began in 2010 by opposing the Dodd-Frank Act, which established the CFPB. Through Section 1028, the newly created CFPB would have the authority to restrict mandatory pre-dispute arbitration. Within its first year, the CFPB issued a request for information regarding the scope, methods, and data sources for conducting a study of pre-dispute arbitration agreements. The U.S. Chamber emphasized the importance of ensuring the study was constructed in a transparent manner that would produce unbiased results. Through meetings with the Bureau and

formal comments, the U.S. Chamber called on the CFPB take into account stakeholder views to determine the scope and elements of the anticipated study.

2013: Field Hearing and Flawed Research

On December 12, 2013, the U.S. Chamber participated in a field hearing in Dallas, TX where the CFPB released their initial findings on the use of arbitration clauses in connection with consumer financial products and services, as part of their larger study on arbitration.

The U.S. Chamber again submitted comments to the CFPB regarding their proposed "Telephone Survey Exploring Consumer Awareness of and Perceptions Regarding Dispute Resolution Provisions in Credit Card Agreements, " that was part of the Bureau's broader study on various dispute resolution systems, including arbitration. The comment letter urged the Bureau to provide transparency regarding the broader study plan, which they had failed to do.

2014: The Telephone Survey

After the CFPB released the proposed survey, CCMC and ILR sent a letter explaining the survey would produce irrelevant and even misleading results that could be misused in public policy debates about arbitration. While the CFPB proceeded to remove some of the most troublesome questions from the survey, there was still concern regarding the CFPB's approach. In a follow-up letter the U.S. Chamber reiterated our apprehension and expressed why the availability of arbitration as a system for resolving disputes expeditiously and fairly is important to both businesses and their customers.

2015: The Study

In early 2015, the CFPB released the final arbitration study results and subsequently unveiled its regulatory framework for an arbitration rule. CCMC's President and CEO David Hirschmann strongly criticized the framework, saying in a statement that "consumers will have fewer avenues and a longer process for resolving their disputes" under a CFPB ban on pre-dispute arbitration and that "a ban on 'pre-dispute' arbitration is effectively a ban on all consumer arbitration." In an effort to show the flaws in the study, the U.S. Chamber dispelled the CFPB's myths in an AD and ILR published a blog post highlighting considerable flaws in five key findings in the study.

U.S. Chamber, along with four other associations, also sent a letter to the CFPB urging them to solicit public comment on its recently-issued arbitration study before deciding whether to initiate a rulemaking. The letter laid out five reasons why a formal comment period is essential, including the significant length of the CFPB's study, limited outreach, lack of transparency around the study, and significant defects in the study's analysis.

2016: The Proposal

After five years of a flawed process, the CFPB moved forward in 2016 without taking much – if any – feedback from stakeholders into consideration. After the CFPB released its arbitration proposal, the U.S. Chamber quickly sent a detailed and highly critical letter calling on it to withdraw its proposal. The letter describes how the Bureau "closed its eyes to the inevitable real-world consequences of its proposed rule" and "has been driving this regulatory process to a predetermined conclusion" that would "harm both consumers and businesses without any public benefit." In addition, the U.S. Chamber led a group of twenty-seven trade associations in submitting a joint letter of opposition. These efforts generated significant media attention including a joint piece by Hirschmann and Lisa Rickard, President of ILR, published in *The Hill*. The editorial starkly lays out the choice the CFPB has made to use the rule to enrich trial lawyers at consumers' expense. Hirschmann and Rickard called on the Bureau to "live up to its name" and not finalize a rule that will harm the very consumers it was created to protect.

In The News

- *The Hill*, August 22, 2016, CFPB Arbitration Rule will Enrich Trial Lawyers, not Protect Consumers
- *Forbes*, August 23, 2016, CFPB Estimates 1,200 More Class Actions A Year Under Anti-Arbitration Rule
- Reuters, July 17, 2017, Republican Senator Hopes to Kill Class-Action Rule within Weeks
- *New York Times*, October 24, 2017, Consumer Bureau Loses Fight to Allow More Class-Action Suits
- *Bloomberg*, October 25, 2017, Consumer Bureau's Arbitration Rule Overturned by Senate Vote

2017: The Final Rule, Congressional Review Act, and Litigation

In July 2017, the CFPB finalized its long-awaited and disputed arbitration rule. Building on the groundwork we laid during the rulemaking process, we quickly shifted to a two prong approach:

1. Advocate to pass a Congressional Review Act (CRA) resolution overturning the rule; and
2. Investigate judicial options in the event a legal challenge is necessary.

Upon the release of the final rule, Rickard and Hirschmann, issued a statement saying "the CFPB's brazen finalization of the arbitration rule is a prime example of an agency gone rogue. CFPB's actions exemplify its complete disregard for the will of Congress, the administration, the American people, and even the courts, who have ruled that its structure is unconstitutional."

To build support for the CRA, the U.S. Chamber hosted Senator Tom Cotton (R-AR) and a panel of arbitration experts at an event the week after the rule was finalized. In his remarks, Senator Cotton strongly advocated for Congress to overturn the rule, and cited the CFPB's flawed process and findings for doing so.

Within a week of the event, the House passed the CRA disapproving of the rule, H.J. Res. 111, which would be the first step in rolling back the rule. The U.S. Chamber issued a key vote letter and joined ten other trades on a letter in support of the resolution. After passing the CRA, the U.S. Chamber thanked the House for their leadership working to overturn the rule, and called on the Senate to follow suit.

The U.S. Chamber's Senate advocacy was a multi-faceted approach consisting of directed communications, grassroots, coalition, and lobbying efforts. Never limiting ourselves to one path, the U.S. Chamber, and a coalition of associations, filed a lawsuit on September 29 and followed with a preliminary injunction on October 19.

Advocacy in Action

Grassroots: more than **12,000 emails and over 250 calls to the Senate.**

Grasstops: an array of letters from state chambers of commerce, and instrumental engagement from important state officials.

Advertising Initiative: television, print, digital, and radio advisements.

Digital Advertisements: alone targeting the Senate delivered **over 550,000 impression on Twitter, 80,000 on Politico and over 52,000 on Facebook**.

No further legal action was necessary though. On October 23, the U.S. Chamber sent a key vote letter to members of the Senate and later that night the Senate voted to reject the CFPB's arbitration rule by passing H.J. Res. 111. A week later, the President signed the CRA into law and, in turn, abolished the CFPB's arbitration rule.

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From the initial statute to the repealing signature, the U.S. Chamber led the effort to effectuate positive change for Americans and the business community by repealing a misguided rule based on flawed analysis. The arbitration campaign, like many at the U.S. Chamber, unwaveringly employed a broad array of tools and tactics until success was finally achieved.