

# LABOR AND WORKFORCE DEVELOPMENT

Resolution LWD-20-27

## A RESOLUTION ON RESTORING STATE AUTHORITY TO PROTECT OUR CITIZENS

WHEREAS, the 1925 Federal Arbitration Act (“FAA”) was designed principally to permit businesses involved in international maritime trade and bona fide interstate commerce to enter into binding arbitration agreements to resolve disputes among them;

WHEREAS, the FAA was originally intended to allow, on a voluntary negotiated basis, arbitration agreements between merchants of roughly equal bargaining power to arbitrate commercial disputes, and excluded from such agreements employment contracts of workers engaged in foreign or interstate commerce;

WHEREAS, in recent decades, court decisions have interpreted the FAA in an increasingly expansive manner, allowing businesses to force employees, consumers and others to accept binding arbitration agreements that override their rights to engage in civil actions, seek criminal penalties, or any other legal remedies, outside of the arbitration procedures selected by the businesses, in cases of violations by the businesses of a growing range of laws, including labor, civil rights and environmental laws;

WHEREAS, recent court decisions have ruled in favor of mandatory arbitration agreement which not only prevent worker and consumers from using the courts, but also bar class actions, even in the employer’s own arbitration procedures, putting individual workers and consumers at a great disadvantage when challenging large companies;

WHEREAS, the exemption in the FAA of employment contracts of workers “engaged” in foreign or interstate commerce from FAA requirements has, in recent years, been narrowly interpreted as applying only to transportation workers, leaving most workers potentially subject to mandatory arbitration under the act;

WHEREAS, under these broad new interpretations of the FAA, the percent of non-unionized companies which impose mandatory arbitration agreements on their employees grew from 2% in 1992 to 54% in 2017;

WHEREAS, 56% of all private non-unionized employees are now subject to mandatory employment arbitration procedures, which means 60 million American workers no longer have access to the courts to protect their legal rights under laws including Title VII of the Civil Rights Act, the Americans with Disabilities Act, the Family and Medical Leave Act, the Fair Labor Standards Act, and many state and local laws;

WHEREAS, the current interpretation of the FAA has severely reduced the legal remedies of citizens across the nation, leaving them vulnerable to a growing range of abuses, including wage theft and other employment law violations, unfair consumer contracts, sexual harassment, and employment and other discrimination based on race, sex, and other protected characteristics; and

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WHEREAS, court interpretations that the FAA pre-empts most state actions means that it is up to Congress to make the statutory changes in the FAA needed to provide relief for citizens from the burden of involuntary mandatory arbitration often imposed under that act.

THEREFORE BE IT RESOLVED, that the National Black Caucus of State Legislators (NBCSL) urges and encourages the Congress of the United States to enact legislation amending the Federal Arbitration Act to limit its application to transactions between commercial businesses, and end the growing use under that act of mandatory arbitration imposed by businesses on employees, consumers, and other individuals, and thus protect the right of citizens to legal recourse under employment, anti-discrimination, and other state and federal laws;

BE IT FURTHER RESOLVED, that the NBCSL is deeply concerned about the current state of Federal Arbitration Act as it undermines the ability of state governments to make enact meaningful protections in states and urges Congress to remove this loophole that limits state authority; and

BE IT FINALLY RESOLVED, that a copy of this resolution be transmitted to the President of the United States, the Vice President of the United States, members of the United States House of Representatives and the United States Senate, and other federal and state government officials as appropriate.

**SPONSOR: Senator Ronald L. Rice (NJ)**

**Committee of Jurisdiction: Labor and Workforce Development Policy Committee**

**Certified by Committee Co-Chair: Senator Ronald L. Rice (NJ)**

**Ratified in Plenary Session: Ratification Date is December 6, 2019**

**Ratification is certified by: Representative Gilda Cobb-Hunter (SC), President**