

If Democrats Controlled the House...

A Weekly Taste of Their Legislative Agenda

October 26, 2012



What sort of legislation might Democrats enact if they control the House? There is little need to speculate—just look at what they are introducing this Congress while in the minority. Below is another example of a bill the Democrats might try to move if given the opportunity.

Proposal: H.R. 1873, Arbitration Fairness Act

Sponsor: Rep. Henry C. Johnson Jr. (D-GA)

Summary: This legislation would invalidate any contract agreement provisions which required arbitration of an employment, consumer, or civil rights dispute, with an exception for labor unions.

Problems with the Bill: With federal legislation, the first question of importance is the constitutional authority of a particular proposed law. Unfortunately H.R. 1873 at best leaves its own legal authority unclear, as the Constitutional Authority Statement simply reads “Article I, Sec. 8, Cl. 3” without explanation. A thorough explanation of the legal authority of Congress to ban a certain provision from all contracts would have added greatly to this bill. However even ignoring the unresolved congressional authority for this bill, this legislation would be bad policy.

The idea of a mutual contract, entered into willingly by both parties, is a fundamental basis of a free market. Both parties in the contract have a chance to weigh the risks and rewards to themselves, and once they have deemed the contract to be mutually beneficial, each party can sign it. Legislation like this violates such a concept, and abuses the limited legitimate role of the federal government over the economic actions of a free people. It is neither the federal government’s legitimate role nor the correct policy to stipulate that arbitration provisions cannot exist in employment, consumer, or similar contracts. The underlying basis of this legislation is the view that Americans cannot be trusted when it comes to making their own economic decisions. The logical extensions of banning contracts from including these arbitration requirements (which, again, people can reject or renegotiate if they deem it important enough) indicate a troubling nanny-state agenda which allows Washington to determine the economic interests of individual Americans. This bill does not present a legitimate solution, and should not be passed into federal law.

Reminder: RSC staffers and interns are encouraged to send other examples of questionable legislation to Rick.Eberstadt@mail.house.gov.