Public Hearing for H.B. 6475 – Testimony by Steve Kennedy, PPP- UConn Law

Written Testimony in Support of H.B. 6475: An Act Concerning Public Enforcement Actions and Forced Arbitration Agreements

Distinguished members of the Committee on Labor and Public Employees, my name is Steve Kennedy. I am the President of the UConn School of Law chapter of the People's Parity Project (PPP), an organization dedicated to equalizing power imbalances under the law, with a particular focus on workers' rights. I write today concerning H.B. 6475, An Act Concerning Forced Arbitration Agreements.

In the majority of cases, an employee entering into an employment agreement is at an extreme disadvantage to their employer in terms of bargaining power over contract details. Although there may be some room for negotiation of salary or some benefits, the broad terms of the contract and specific provisions such as non-compete or pre-dispute arbitration clauses are non-negotiable. Proponents of forced arbitration state that the model is mutually beneficial to employer and employee. However, employee win rates are significantly lower in arbitration than in either state or federal court, and when employees do win, they receive lower compensation[1].

Many employees may not be aware of these clauses in their contracts, and even those who are may not realize what a disadvantage this puts them at. However, even if they did not want to consent to forced arbitration, the only alternative would be to refuse the job. When 3040% of American workers are covered by forced arbitration clauses, and some industries have rates as high as 99% of employers requiring arbitration, turning down the job over forced arbitration may not be an option.

Arbitration is meant to reduce costs and improve fairness of outcomes for disputes between parties of equal power. When used to prevent employees with significantly less power in an employment agreement, arbitration becomes a tool to silence the voices of the marginalized.

Many forced arbitration clauses include a waiver of rights to class action, which means that not only can multiple disputes arising from the same set of facts be tried over and over again in arbitration, defeating the purposes of cost savings and judicial economy, they allow employers to continue unjust or illegal practices unnoticed. The right to a public trial to address wrongdoing is fundamental to our understanding of fairness in this country. The only way that such a right

should be waived is when there is assurance of equal bargaining power and full knowledge of the rights that are being waived.

By following the whistleblower model, H.B. 6475 provides a tested method for uncovering and correcting wrongdoing within a company. By allowing employees to file suit on behalf of the state, this bill would add actual teeth to Connecticut's workers' rights laws. The bill strikes a fair balance between allowing employees with intimate knowledge of the company and the incident in question to bring a suit, while also allowing state agencies to filter out any frivolous or doubtful claims.

By allowing employees to bring suit even if they have been misled or coerced into signing a forced arbitration agreement, this bill ensures that our citizens may pursue their rights in court. Connecticut has been a leader in advancing employee rights. It is time to take action to ensure that those rights are secured and bringing an end to the abuse of forced arbitration. We urge you to pass this bill and lighten the load on Connecticut's workers.

1. Center for Popular Democracy, “Justice for Sale: How Corporations Use Forced Arbitration to Exploit Working Families,” April 2017.