SEP 30 2018

OFFICE OF THE GOVERNOR

To the Members of the California State Assembly:

I am returning Assembly Bill 3080 without my signature.

This bill prohibits an applicant for employment or employee from being required to waive his or her right to a judicial forum as a condition of employment or continued employment.

In my veto message of a similar bill in 2015, I referred to recent court decisions that invalidated state policies which unduly impeded arbitration. I also wanted to see how future United States Supreme Court decisions developed before endorsing a broad ban on mandatory arbitration agreements.

The direction from the Supreme Court since my earlier veto has been clear – states must follow the Federal Arbitration Act and the Supreme Court's interpretation of the Act. *DIRECTV, Inc. v. Imburgia*, 136 S. Ct. 463, 468 (2015).

This bill is based on a theory that the Act only governs the enforcement and not the initial formation of arbitration agreements and therefore California is free to prevent mandatory arbitration agreements from being formed at the outset. The Supreme Court has made it explicit this approach is impermissible. In 2017 Justice Kagan, an appointee of President Obama, writing on behalf of a near-unanimous Supreme Court, clearly rejected the assertion that the Federal Arbitration Act has no application to contract formation issues:

> "By its terms, . . . the Act cares not only about the "enforce[ment]" of arbitration agreements, but also about their initial "valid[ity]"—that is, about what it takes to enter into them. Or said otherwise: A rule selectively finding arbitration contracts invalid because improperly formed fares no better under the Act than a rule selectively refusing to enforce those agreements once properly made. Precedent confirms that point."

Kindred Nursing Centers Ltd. Partnership v. Clark, 137 S. Ct. 1421, 1428 (2017).

Since this bill plainly violates federal law, I cannot sign this measure.

Sincerely,

Edmund G. Brown Jr.