Measuring the Mandate

State Enforceability Index for Mandatory Arbitration of Employment Disputes

Libby Ross '28

Research Advisor: Professor Abu Rizvi

The Question

If an employee has a mandatory arbitration agreement, how likely are they to be able to challenge that agreement and actually make it to court in different jurisdictions? In short, how likely are different states to enforce mandatory arbitration agreements?

The Background



What is mandatory arbitration?

A legal term referring to a clause in a contract that requires the parties to resolve disputes through private arbitration rather than the public court system

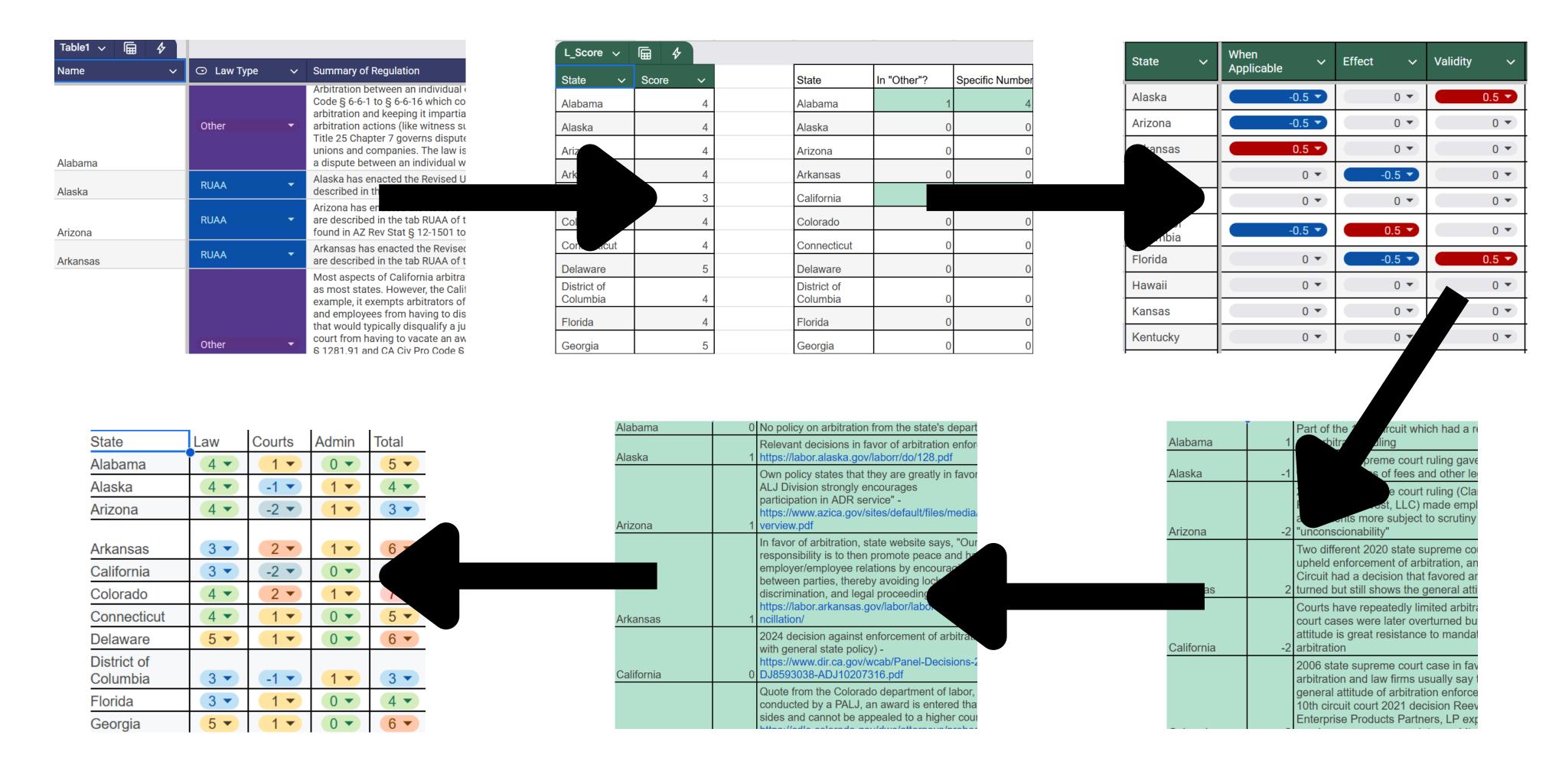
Why does this matter?

- Increasing prevalence in workplaces across the country--- **53.9% of workforce has a mandatory** arbitration agreement
- Key relationship to Hirschman's exit, voice, loyalty--- specifically limiting voice options

Relevant sources and literatures

- Colvin, Alexander J.S. "The growing use of mandatory arbitration: Access to the courts is now barred for
- more than 60 million American workers." Economic Policy Institute. 2018.
- Garmaise, Mark J . "Ties that Truly Bind: Noncompetition Agreements, Executive Compensation, and Firm Investment." Journal of Law, Economics, & Organization , August 2011, Vol. 27, No. 2 (August 2011), pp.
- Hirschman, Albert O. Exit, Voice, and Loyalty: Responses to Decline in Firms, Organizations, and States. Cambridge, Mass.: Harvard University Press, 1970

The Methods



- 1. Gathering the base data: summarized and categorized the state legislation
- 2. Creating the numerical scale: assigned a value 1-7 for each state law
- 3. Adding nuance to the scale: added or subtracted -1.5 to 1.5 based on small changes states made to popular template laws
- 4. Considering the court: added or subtracted -2 to 2 based on relevant case law
- 5. Considering the administration: added or subtracted -1 to 1 based on policy of state labor or arbitration boards
- 6. Taking the total: rounded the sum of the base number and all the adjustments to the nearest whole number for each state

The Final Result

The work resulted in this final index. "Less enforceable" means it is easier for an employee to challenge a mandatory arbitration agreement and vice versa for "more enforceable" states. Future research would explore the connection between the enforceability of mandatory arbitration in a state and economic performance indicators such as median household income and job sastisfaction.

More Less Enforceable Enforceable

