

denial or delay. Now that's normally where the clause stops. That clause has been used to strike down arbitration clauses in contracts and used to strike down the 1987 act that this Legislature passed authorizing predispute arbitration clauses and agreements. So since that is the clause that has been used to stop these arbitration agreements in contracts, that's the place where we add this language, "except that the Legislature may provide for the enforcement of mediation, binding arbitration agreements, and other forms of dispute resolution which are entered into voluntarily and which are not revocable other than upon such grounds as exist at law or in equity for the revocation of any contract." What that means is that should the constitutional amendment be passed, power would devolve to this group to write an authorizing statute with respect to mediation or binding arbitration and thereby creating its pattern of usage in this state. It is not a self-executing provision which would mean that you could immediately begin to write predispute resolution clauses without reference to what the Legislature would say. This is a grant of authority to us. The grant of authority to us would be to write a law that would allow for the enforcement of mediation, binding arbitration and other dispute resolution systems. We could not write a law that would authorize a contract that was not entered into voluntarily. We can't go that far. In other words, constitutionally, volunteerism would have to be part of any contract in which one of these agreements was made. Secondly, we could not go so far as to deny the defenses of law and equity to apply to a contract that had an arbitration clause in it. In other words, there are a series of defenses that have arisen in contract law, defenses like duress, undue influence, fraud in the execution, unconscionability, those are all defenses you can use on contracts and this clause of the constitution says and any of those defenses would apply to binding mediation, binding arbitration clauses, other forms of dispute resolution and the Legislature could not go so far as to do away with those defenses. We are one of three states that does not permit predispute arbitration. It has been the norm around the country for 40 or 50 years. It has certainly been the norm in interstate commerce since 1925 when the federal government passed the Federal Arbitration Act. It has been used as a separate system of justice that operates in a similar way but not exactly the same as going to court. It is similar in that you have a decision-maker, a judge, here called an arbitrator, could be one, could be three. Although that's a similarity, a distinction is you pick your own judge rather than waiting to