AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 1423
OFFERED BY MR. NADLER OF NEW YORK

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Forced Arbitration Injustice Repeal Act” or the “FAIR Act”.

SEC. 2. PURPOSES.

The purposes of this Act are to—

(1) prohibit predispute arbitration agreements that force arbitration of future employment, consumer, antitrust, or civil rights disputes, and

(2) prohibit agreements and practices that interfere with the right of individuals, workers, and small businesses to participate in a joint, class, or collective action related to an employment, consumer, antitrust, or civil rights dispute.

SEC. 3. ARBITRATION OF EMPLOYMENT, CONSUMER, ANTITRUST, AND CIVIL RIGHTS DISPUTES.

(a) IN GENERAL.—Title 9 of the United States Code is amended by adding at the end the following:
“CHAPTER 4—ARBITRATION OF EMPLOYMENT, CONSUMER, ANTITRUST, AND CIVIL RIGHTS DISPUTES

§ 401. Definitions

In this chapter—

“(1) the term ‘antitrust dispute’ means a dispute—

“(A) arising from an alleged violation of the antitrust laws (as defined in subsection (a) of the first section of the Clayton Act) or State antitrust laws; and

“(B) in which the plaintiffs seek certification as a class under rule 23 of the Federal Rules of Civil Procedure or a comparable rule or provision of State law;

“(2) the term ‘civil rights dispute’ means a dispute—

“(A) arising from an alleged violation of—

“(i) the Constitution of the United States or the constitution of a State;

“(ii) any Federal, State, or local law that prohibits discrimination on the basis of race, sex, age, gender identity, sexual orientation, disability, religion, national or-
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igin, or any legally protected status in edu-
cation, employment, credit, housing, public
accommodations and facilities, voting, vet-
erans or servicemembers, health care, or a
program funded or conducted by the Fed-
eral Government or State government, in-
cluding any law referred to or described in
section 62(e) of the Internal Revenue Code
of 1986, including parts of such law not
explicitly referenced in such section but
that relate to protecting individuals on any
such basis; and

“(B) in which at least 1 party alleging a
violation described in subparagraph (A) is one
or more individuals (or their authorized rep-
resentative), including one or more individuals
seeking certification as a class under rule 23 of
the Federal Rules of Civil Procedure or a com-
parable rule or provision of State law;

“(3) the term ‘consumer dispute’ means a dis-
pute between—

“(A) one or more individuals who seek or
acquire real or personal property, services (in-
cluding services related to digital technology),
securities or other investments, money, or credit
for personal, family, or household purposes includ-
ing an individual or individuals who seek cer-
tification as a class under rule 23 of the Federal Rules of Civil Procedure or a com-
parable rule or provision of State law; and

“(B)(i) the seller or provider of such prop-
erty, services, securities or other investments, money, or credit; or

“(ii) a third party involved in the selling, providing of, payment for, receipt or use of in-
formation about, or other relationship to any such property, services, securities or other in-
vestments, money, or credit;

“(4) the term ‘employment dispute’ means a dispute between one or more individuals (or their authorized representative) and a person arising out of or related to the work relationship or prospective work relationship between them, including a dispute regarding the terms of or payment for, advertising of, recruiting for, referring of, arranging for, or dis-
cipline or discharge in connection with, such work, regardless of whether the individual is or would be classified as an employee or an independent con-
tractor with respect to such work, and including a dispute arising under any law referred to or de-
scribed in section 62(e) of the Internal Revenue
Code of 1986, including parts of such law not explic-
itly referenced in such section but that relate to pro-
tecting individuals on any such basis, and including
a dispute in which an individual or individuals seek
certification as a class under rule 23 of the Federal
Rules of Civil Procedure or as a collective action
under section 16(b) of the Fair Labor Standards
Act, or a comparable rule or provision of State law;
“(5) the term ‘predispute arbitration agree-
ment’ means an agreement to arbitrate a dispute
that has not yet arisen at the time of the making
of the agreement; and
“(6) the term ‘predispute joint-action waiver’
means an agreement, whether or not part of a
predispute arbitration agreement, that would pro-
hibit, or waive the right of, one of the parties to the
agreement to participate in a joint, class, or collec-
tive action in a judicial, arbitral, administrative, or
other forum, concerning a dispute that has not yet
arisen at the time of the making of the agreement.

§ 402. No validity or enforceability
“(a) In General.—Notwithstanding any other pro-
vision of this title, no predispute arbitration agreement or
predispute joint-action waiver shall be valid or enforceable
with respect to an employment dispute, consumer dispute, 
antitrust dispute, or civil rights dispute.

“(b) APPLICABILITY.—

“(1) IN GENERAL.—An issue as to whether this 
chapter applies with respect to a dispute shall be de-
termined under Federal law. The applicability of this 
chapter to an agreement to arbitrate and the validity 
and enforceability of an agreement to which this 
chapter applies shall be determined by a court, rath-
er than an arbitrator, irrespective of whether the 
party resisting arbitration challenges the arbitration 
agreement specifically or in conjunction with other 
terms of the contract containing such agreement, 
and irrespective of whether the agreement purports 
to delegate such determinations to an arbitrator.

“(2) COLLECTIVE BARGAINING AGREEMENTS.—
Nothing in this chapter shall apply to any arbitra-
tion provision in a contract between an employer and 
a labor organization or between labor organizations, 
except that no such arbitration provision shall have 
the effect of waiving the right of a worker to seek 
judicial enforcement of a right arising under a provi-
sion of the Constitution of the United States, a 
State constitution, or a Federal or State statute, or 
public policy arising therefrom.”.
(b) **TECHNICAL AND CONFORMING AMENDMENTS.**—

(1) **IN GENERAL.**—Title 9 of the United States Code is amended—

(A) in section 1 by striking “of seamen,” and all that follows through “interstate commerce,” and inserting in its place “of individuals, regardless of whether such individuals are designated as employees or independent contractors for other purposes”,

(B) in section 2 by inserting “or as otherwise provided in chapter 4” before the period at the end,

(C) in section 208—

(i) in the section heading by striking “CHAPTER 1; RESIDUAL APPLICATION” and inserting “APPLICATION”, and

(ii) by adding at the end the following: “This chapter applies to the extent that this chapter is not in conflict with chapter 4.”, and

(D) in section 307—

(i) in the section heading by striking “CHAPTER 1; RESIDUAL APPLICATION” and
TION” and inserting “APPLICATION”,

and

(ii) by adding at the end the following: “This chapter applies to the extent that this chapter is not in conflict with chapter 4.”.

(2) TABLE OF SECTIONS.—

(A) CHAPTER 2.—The table of sections of chapter 2 of title 9, United States Code, is amended by striking the item relating to section 208 and inserting the following:

“208. Application.”.

(B) CHAPTER 3.—The table of sections of chapter 3 of title 9, United States Code, is amended by striking the item relating to section 307 and inserting the following:

“307. Application.”.

(3) TABLE OF CHAPTERS.—The table of chapters of title 9, United States Code, is amended by adding at the end the following:

“4. Arbitration of employment, consumer, antitrust, and civil rights disputes”.

SEC. 4. EFFECTIVE DATE.

This Act, and the amendments made by this Act, shall take effect on the date of enactment of this Act and
shall apply with respect to any dispute or claim that arises or accrues on or after such date.