



PRESIDENT
RAKIM BROOKS

CHAIR
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October 27, 2021

The Honorable Jerrold Nadler
Chairman
U.S. House Committee on the Judiciary
2141 Rayburn Building
Washington, DC 20515

The Honorable Jim Jordan
Ranking Member
U.S. House Committee on the Judiciary
2141 Rayburn Building
Washington, DC 20515

RE: The Forced Arbitration Injustice Repeal (FAIR) Act

Dear Chairman Nadler and Ranking Member Jordan:

On behalf of Alliance for Justice (AFJ), a national association representing more than 130 public interest and civil rights organizations, I write to strongly support the Forced Arbitration Injustice Repeal (FAIR) Act. This critical legislation would end forced arbitration for consumers, workers, and small businesses and restore the ability of those harmed and those whose fundamental legal rights are violated to hold corporations publicly accountable.

Every American deserves access to justice and an even playing field. Yet, because of forced arbitration, workers, consumers, patients, and small businesses are too often required to challenge sexual harassment, discrimination, wage theft, unsafe working conditions, fraud, abuse and neglect, and other wrongdoings through an arbitration system that overwhelmingly favors corporations and is not bound by the rule of law. There is no judge or jury, nor a right to appeal. Arbitrators do not have to follow rules of procedure, discovery, or evidence. Further, companies often choose the arbitrator, which incentivizes arbitrators to rule for companies in order to facilitate future business. One major arbitration firm, for example, was found to rule against consumers an astounding 94 percent of the time.¹

Moreover, these proceedings are secret, allowing employers and businesses to hide misconduct from the public, evading accountability, and potentially continuing to place workers and consumers at risk. Consider that widespread sexual harassment and discrimination at the Sterling mega-chain of jewelry stores was hidden for years because affected employees were silenced by arbitration and nondisclosure agreements. When the story finally came to light in a report in the New York Times, hundreds of women who had suffered similar abuse found out, belatedly, they were not alone.

¹ Kate Hamaji, *Justice for Sale: How Corporations Use Forced Arbitration to Exploit Working Families*, CTR. FOR POPULAR DEMOCRACY (May 2017), https://populardemocracy.org/sites/default/files/Forced-Arbitration_web%20%283%29_0.pdf.

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An estimated 60 million employees—over half of all nonunion private sector workers—are subjected to forced arbitration clauses, and that number will keep growing unless the law is changed. AFJ has tracked how this trend decimates workers’ rights for the sake of corporate balance sheets, with women and people of color being disproportionately impacted.² Additionally, millions of consumers are at risk, as the proliferation of these clauses in the fine print of consumer contracts for items and services they need for everyday life and are not in a position to negotiate for, like cell phones and credit cards, is unabating. This ensures that individuals sign their rights away either without realizing or without meaningful recourse. Even if the clauses are known, consumers and employees are not in a position to negotiate when it is all that stands between them and a job or bank account. They are, instead, forced to choose between battling their employer or supporting themselves and their families.

Over the years, AFJ has prepared a number of reports, including a short documentary, “Lost in the Fine Print,” detailing the harmful effects of forced arbitration and highlighting the stories of everyday people who found themselves trapped in a system, with no recourse for the harms they faced, that favors large and powerful companies at the expense of hardworking Americans.³

One of these people was Nicole Mitchell, a highly decorated Air Force reserve officer who worked as an on-air personality for The Weather Channel. She was fired because her employers did not want to provide her with reasonable accommodations to do both, as required by law. Because her employment contract contained a forced arbitration clause, Mitchell could not make her case in court. Instead, she lost her job to the decision of an arbitrator she never even met—and her employment contract deprived her of the right to appeal the arbitrator’s decision in court.

AFJ also wrote about the families of residents at Kindred Nursing Centers, who sued the facility after their loved ones passed away following malnourishment and neglectful medical treatment. To keep their behavior as far from public view as possible, Kindred had required the families to sign forced arbitration agreements before allowing their relatives into the home, forcing them to choose between limiting their access to justice and securing care for their loved ones. Because of this, the families were shut out of court and denied any opportunity to demonstrate Kindred’s abusive treatment before a jury of their peers.

These individuals’ cases are emblematic of the experiences of many everyday Americans who have found themselves powerless at the hands of arbitrators.

But, the harm of forced arbitration goes beyond the individual workers and consumers whose rights cannot be vindicated; forced arbitration effectively gives large corporations the ability to overturn democratically enacted laws. Many of our most cherished rights—civil rights, safe workplaces, consumer protections—rest in statutes that depend on private lawsuits for effective enforcement. When Congress enacted these laws, it certainly never expected that violators could hide their misconduct through obscure contractual provisions. But in a series of flawed decisions that distort the Federal Arbitration Act, the Supreme Court has allowed corporate wrongdoers to block access to the courts, extinguish lawsuits, and avoid liability under these statutes, thwarting Congress’s ability to enact meaningful statutory protections. The result is a legal regime that empowers large

² Nan Aron & Celine McNicholas, *The Trump Administration is Decimating Workers’ Rights*, CNN (Aug. 27, 2019), <https://www.cnn.com/2019/08/27/perspectives/forced-arbitration/index.html>.

³ *Lost in the Fine Print*, ALLIANCE FOR JUSTICE (Oct. 1, 2014), <https://www.afj.org/article/lost-in-the-fine-print/>.

corporations at the expense of self-government. Hard-won legislative reforms are undermined, and individual rights go unprotected, because the rigged system of forced arbitration suppresses private enforcement in our courts.

As attorney Deepak Gupta said at a hearing before this Committee, “Forced arbitration is a fundamental threat to our democracy, and to our shared constitutional values . . . it replaces the laws that are written by Congress with private legislation written by corporations into the fine print of contracts that nobody reads and that nobody can negotiate . . . [and] makes sure that most consumers and workers’ claims simply disappear.”

Congress should not allow a corporate takeover of the legal system. It is long past time to restore our rights and pass the FAIR Act.

Sincerely,

A handwritten signature in black ink that reads "Rakim Brooks". The signature is written in a cursive, slightly slanted style.

Rakim Brooks
President, Alliance for Justice