To limit the judicial enforceability of predispute nondisclosure and nondisparagement contract clauses relating to disputes involving sexual assault and sexual harassment.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Speak Out Act”.

SEC. 2. FINDINGS.

The Congress finds the following:

(1) Sexual harassment and assault remain pervasive in the workplace and throughout civic society, affecting millions of Americans.
(2) Eighty-one percent of women and 43 percent of men have experienced some form of sexual harassment and/or assault throughout their lifetime.

(3) One in 3 women has faced sexual harassment in the workplace during her career, and an estimated 87 to 94 percent of those who experience sexual harassment never file a formal complaint.

(4) Sexual harassment in the workplace forces many women to leave their occupation or industry, or pass up opportunities for advancement.

(5) In order to combat sexual harassment and assault, it is essential that victims and survivors have the freedom to report and publicly disclose their abuse.

(6) Nondisclosure and nondisparagement provisions in agreements between employers and current, former, and prospective employees, and independent contractors, and between providers of goods and services and consumers, can perpetuate illegal conduct by silencing those who are survivors of illegal sexual harassment and assault or illegal retaliation, or have knowledge of such conduct, while shielding perpetrators and enabling them to continue their abuse.
(7) Prohibiting predispute nondisclosure and nondisparagement clauses will empower survivors to come forward, hold perpetrators accountable for abuse, improve transparency around illegal conduct, enable the pursuit of justice, and make workplaces safer and more productive for everyone.

SEC. 3. LIMITATION ON JUDICIAL ENFORCEABILITY OF PREDISPUTE NONDISCLOSURE AND NON-DISPARAGEMENT CONTRACT CLAUSES RELATING TO SEXUAL ASSAULT DISPUTES AND SEXUAL HARASSMENT DISPUTES.

(a) In General.—With respect to a sexual assault dispute or sexual harassment dispute, no predispute nondisclosure clause or predispute nondisparagement clause shall be judicially enforceable in instances in which conduct is alleged to have violated Federal, Tribal, or State law.

(b) Continued Applicability of State Law.—This Act shall not be construed to supersede a provision of State law that establishes, implements, or continues in effect a requirement or prohibition except to the extent that such requirement or prohibition prevents the application of this Act.

(c) Continued Applicability of Federal, State, and Tribal Law.—This Act shall not be con-
strued to supersede a provision of Federal, State, or Tribal Law that governs the use of pseudonyms in the filing of claims involving sexual assault or sexual harassment disputes.

SEC. 4. DEFINITIONS.

For purposes of this Act:

(1) PREDISPUTE NONDISCLOSURE CLAUSE.—The term “predispute nondisclosure clause” means a provision in a contract or agreement agreed to before a lawsuit is filed under Federal, State, or Tribal law, that requires the parties to the contract or agreement not to disclose or discuss conduct, the existence of a settlement involving conduct, or information covered by the terms and conditions of the contract or agreement.

(2) PREDISPUTE NONDISPARAGEMENT CLAUSE.—The term “predispute nondisparagement clause” means a provision in a contract or agreement that requires 1 or more parties to the contract or agreement not to make a negative statement about another party that relates to the contract, agreement, claim, or case.

(3) SEXUAL ASSAULT DISPUTE.—The term “sexual assault dispute” means a dispute involving a nonconsensual sexual act or sexual contact, as
such terms are defined in section 2246 of title 18 of
the United States Code, or similar applicable Tribal
or State law, including when the victim lacks capac-
ity to consent.

(4) SEXUAL HARASSMENT DISPUTE.—The term
“sexual harassment dispute” means a dispute relat-
ing to conduct that is alleged to constitute sexual
harassment under applicable Federal, Tribal, or
State law.

SEC. 5. APPLICABILITY.

This Act shall apply with respect to a claim that is
filed under Federal, State, or Tribal law on or after the
date of the enactment of this Act.