

**Statement for the Record Submitted to
The House Subcommittee on Antitrust, Commercial and Administrative Law**

**For the Hearing Entitled:
Justice Restored: Ending Forced Arbitration and Protecting Fundamental Rights**

Submitted February 09, 2021

Dear Chairman Cicilline, Ranking Member Buck, and distinguished members of the subcommittee:

Thank you for holding this hearing today. My name is Tanuja Gupta and I am an engineering program manager at Google. While I work in the tech sector and am the person officially submitting this statement, I am writing on behalf of *all* workers in *all* sectors. And on behalf of all workers in America, I ask you to make arbitration **optional** and not forced by passing the Forced Arbitration Injustice Repeal Act, or FAIR Act.

While I submit this statement in a personal capacity and not on behalf of my employer, I cannot pretend that my path to today didn't start with my own employment at Google. In 2018, the mood of the country and my company were deeply affected by a number of factors. The MeToo movement had gone global, revealing just how much predatory behavior had been hidden by powerful corporations everywhere. A member of my company's leadership seemed to have gotten away with reprehensible behavior. And tech workers everywhere were starting to realize how unprotected they really were. We realized we were subject to the same imbalanced power structures that had been present in all other forms of labor in the past.

One of those structures is the practice of forced arbitration. The Federal Arbitration Act was passed in 1925 and for 60 years worked as intended. But starting in the 1980s, it has been reinterpreted to make it increasingly difficult for workers to hold their employers accountable for any form of wrongdoing. Today, the FAA tells workers they no longer have a choice as to whether or how they may hold their employers responsible for violating their rights. It tells workers "never mind your rights, your employer has already made this choice for you".

I ask you to remember this term 'choice', a real '**meaningful** choice'. The debate around the FAIR Act often shifts to the merits of arbitration. But today is not about whether arbitration is good or bad. It is about whether arbitration is forced or a choice. And I'm asking, on behalf of all workers in all sectors, to give us that choice back.

When we as workers face sexual harassment, racial discrimination, wage theft or wrongful termination, we want the choice on how to hold our employers accountable for their illegal practices. The longer we are denied this choice, the louder our voices will get.

I know this because in 2018, I helped [organize a walkout](#) of 20,000 people who refused to let their voices be unheard any longer. That year, when [news](#) broke about the sexual harassment at our company, something in me and many of my colleagues snapped. Any practice, such as forcing arbitration, that allowed this kind of behavior to flourish in secrecy could simply not be tolerated anymore. I want to fully acknowledge my privilege of deciding time was up for me at that particular moment, especially when it was up a long time ago for many Black and Latino workers. It was also an incredible privilege to think I could walk out on my job and be allowed to walk back on. Most workers don't have that privilege.

I realized that privilege in organizing the walkout, which made me even more ashamed that it took me so long to speak out against the practice of forced arbitration.

But assuming later really is better than never, I kept organizing. And after the walkout, Google [immediately changed its policy](#) to end forced arbitration for individual cases of sexual harassment. This was good, but not good enough. A company cannot pick and choose its way through harms like sexual harassment, racial discrimination or wage theft, deciding when workers get a choice to hold their wrongdoers accountable and when they do not. Never mind the absurdity of being half-way through a court case, only to be forced to bring the racial discrimination portion of your sexual harassment claim separately in arbitration.

So after the walkout, a group of us formed [Googlers for Ending Forced Arbitration](#). We spent months educating our colleagues and executives on how forcing arbitration erodes the system of checks and balances created by our government. We reminded tech workers that we were part of the 60 million workers and counting who have lost their choice when it comes to fighting discrimination, harassment and illegal practices in the workplace. And in the process, our group met workers across the country whose lives had been permanently altered by forced arbitration. We amplified the voices of these workers to anyone who would listen, and in February 2019, [Google ended forced arbitration for all types of claims for all its full-time employees](#). This changed policy finally reflected how interwoven harassment, discrimination, privacy, wage theft and retaliation are with one another, ensuring that all employees could hold the company accountable for rights violations.

But the thought of going company by company to advocate for workers rights is untenable. And I have only so much time on this Earth. So let me tell you about the workers I have met in my journey, and why you should end forced arbitration for all of them.

Congressman Issa and Congressman Swalwell, I met Navy reservist [Lieutenant Kevin Ziober](#) from your state of California who was fired after attending his own going away party from BLB Resources because of his military deployment, which is illegal under USERRA, the Uniformed Services Employment and Reemployment Rights Act of 1994. When he tried to hold his employer accountable in a court of law, he was forced into arbitration. Congressman Swalwell, this is why your vote to pass the FAIR Act in 2019 was so important. Congressman Issa, a Captain in the military yourself, what would you have done if that had happened to you?

Vice Chairman Neguse and Ranking Member Buck, have you met the women from your state of Colorado who were sexually harassed, paid less than their male counterparts and / or denied career advancement opportunities at [Sterling Jewelers](#) for years, only to have their reports of these civil rights violations forced into arbitration? Or be fired? Please remember these names: Kim Lavelly, Elsie Pinson, Kayla Simons and Melinda Small. They were all gagged from being able to speak about what happened to them due to the confidentiality requirements of forced arbitration. I have sat with multiple women from Sterling Jewelers who have waited over a decade to have their claims of systemic discrimination even *heard* in a courtroom.

Just ask Congressman Gaetz, who met [Heather Ballou](#) from the same group of 70,000 women who worked at Sterling Jewelers. Congressman Gaetz, I want to thank you for listening to her and for putting party differences aside to support the FAIR Act. If I may quote you back to yourself, [you summarized the FAIR Act best in 2019 when you said](#), "If people want to choose arbitration they still have that right. It is not accurate to say that this bill cuts off access to voluntary arbitration."

Congressman Steube, my sincere hope is that you will align with Congressman Gaetz, especially after I tell you the experience of Florida residents [Glenda and Peter Perez](#). I met Peter, Glenda and their three kids a year into their arbitration battle with Cigna. Glenda was accused of a data error with a large financial impact to the company. Her husband Peter, who also worked at the company, helped her investigate the error to realize that it was caused by other non-Hispanic workers. Glenda filed a complaint of racial discrimination that was forced into arbitration. Getting a lawyer to take an arbitration case is incredibly difficult because the [settlement awards are significantly lower in arbitration than in court](#), so they eventually went pro se. Meanwhile, Cigna had assigned three lawyers to the case. A few days before the scheduled hearing, Glenda received an email from the arbitrator giving in favor of Cigna for a judgement. It was a near copy and paste of what Cigna's attorneys originally filed and Glenda got nothing, not even having an arbitration hearing. A few weeks later, Peter found a picture of the lead Cigna attorney embracing the arbitrator at his 50th birthday party. So Glenda filed

a petition to vacate the award. One week after Cigna was served, Peter was fired. Congressman Steube, Glenda and Peter put everything into their case and drained their life savings. They had to foreclose on their home and depend on the government for services to live. Congresswoman Demings and Congressman Deutch, I thank you for already supporting the FAIR Act in 2019. Your support not only helps the Perez family, but also [Angela Gessa](#) who could not hold her Florida nursing home, Manor Care, accountable for negligence and all the residents in your district.

Congresswoman Spartz, have you met with [Maurice Bradley](#) from your home state of Indiana? You may have not because his wage theft claims were silenced by forced arbitration. He filed claims about how the home improvement store [Menards violated the Fair Labor Standards Act](#) by requiring him and his fellow workers to clock out for time to use the bathroom or get a drink of water. Menards compelled cases like his into arbitration time and time again until investigations by the National Labor Relations Board caused the company to drop forced arbitration clauses. But we can't do this company by company - and my sincere hope is that you will pass the FAIR Act for all workers in Indiana.

Congressman Jones and Congressman Jeffries, we are all New Yorkers. Our state is full of restaurants and fast food workers who live paycheck to paycheck. [Richard Heggins](#) is a fellow New Yorker, and is one of the thousands of workers Chipotle auto-clocked out of shifts without pay while he continued working & cleaning. Chipotle has been fighting claims of wage theft lodged in federal court by current and former workers since 2013. But in 2019, more than 2,800 of those workers were ejected from the court proceedings because their employment agreements contained a forced arbitration clause. That was not their choice. Congressman Jeffries, thank you for recognizing the importance of the FAIR Act by voting to pass it last session. Congressman Jones, I hope you'll join him.

To all members of the committee, I could tell you about workers in all of your states affected by forced arbitration all day. I can't tell you about all the workers we don't know about because they were unable to even find a lawyer to represent them in a forced arbitration case. But the other just as important reason to pass the FAIR Act is because no law matters until the FAIR Act is law. When companies are allowed to force arbitration, they create a 'legal moat' that lets them continue violating rights without being held accountable. They prevent precedent from being established so other workers do not find out what behavior is legally unacceptable. We know this by reviewing the increasingly broad scope of forced arbitration clauses in employment agreements today. [Most arbitration clauses](#) today typically include 7 things:

- First, a gag rule that prohibits a worker from publicly talking about her claim

- Second, a time frame by when a claim must be submitted
- Third, a payment structure that often requires the worker to pay an arbitration filing fee that's higher than the filing fee of a small claims court
- Fourth, the state of jurisdiction, which may differ from the worker's state
- Fifth, a requirement that the arbiter be picked and paid for by the very company the worker is complaining against
- Sixth, a ban on forming any kind of collective or class action lawsuit, which severely restricts workers' ability to piece together patterns of system wrongdoing
- And seventh, a laundry list of the types of claims that cannot be filed in court and must go through arbitration, such as any form of harassment, discrimination, wage theft, retaliation or other civil rights violations. And I'll note that for consumer clauses, this list turns to violations of privacy, product liability, public health, data breaches, fraud, illegal trading activity, overdraft fees and more.

So for example, Congressman Johnson, last year you sponsored the *Improve Well-Being for Veterans Act* to tackle the devastating problem of veteran suicides in this country. [The bill](#) explicitly listed environmental risks such as “unemployment, stressful life events, legal and financial troubles” as factors of suicide. Now as you already heard, forcing arbitration denies military members access to their USERRA rights and their ability to retain their employment. So what good would the *Improve Well-Being for Veterans Act* be if companies are [harming service members](#) at the same time with forced arbitration?

Congresswoman Fischbach, you're cosponsoring [H.R.649](#) which seeks to authorize the Office on Violence Against Women to improve the handling of crimes of domestic violence, dating violence, sexual assault, and stalking by incorporating a trauma-informed approach into the initial response to and investigation of such crimes. You don't need to wait for that bill to pass when you can reform the response to sexual harassment simply by passing the FAIR Act. You can give survivors like Gretchen the choice to pursue their violators and the companies that employ them in a court of law. It is precisely because forced arbitration denies access to the court system, laws are enforced by the press and larger and larger federal agencies like OVAW.

To all the Democratic members of this subcommittee who passed the *Raise the Wage Act* last year, I ask you - what does it matter if Congress raises the minimum wage when companies cannot be held accountable for wage theft in a court of law? The FAIR Act must become law for any other law to matter.

I've heard arguments that workers choose their employer and can walk away if they don't like an offer letter. But these forced arbitration clauses are ubiquitous. [By 2024, just three years](#)

[from now, more than 80 percent of private-sector, nonunion workers will have forced arbitration clauses in their employment agreements.](#) As workers, we do not choose our employers based on arbitration policies, we capitulate.

I had the luxury of a walkout and submitting this testimony without fear of retaliation. But others do NOT have this same privilege. It is for the millions of them I ask you - please, give workers their right to choose back. Pass the FAIR Act to end forced arbitration.