



SUPPORT THE FAIR ACT

The “Forced Arbitration Injustice Repeal Act” - A Bill to Restore Consumer, Worker, and Small Business Rights

Buried in the fine print of everything from nursing home admissions forms and credit card “agreements,” to online click-through “terms and conditions” and employee handbooks, forced arbitration enables corporations to break the law and never be held accountable. Forced arbitration means that when a corporation violates the rights of their workers or consumers, they cannot enforce their rights. Forced arbitration lets corporations funnel aggrieved workers and consumers into a private and secret system which is designed by the corporation to be so rigged that most people are forced to give up their rights altogether. And because corporations know that most individuals will simply give up when faced with a forced arbitration, there is virtually no incentive for corporations to follow the law, or to quickly and fairly handle consumer or worker claims.

The FAIR Act would restore the rights of workers and consumers by making forced arbitration between individuals and corporations illegal—meaning that individuals will be returned the choice as to how to pursue their rights against a corporation. It also means that corporations will know that when they violate the law, they can be held publicly accountable, thereby returning to corporations the powerful incentive to follow the law in the first place and to treat people justly and fairly. Notable, the bill also applies to small businesses seeking to protect their rights under federal antitrust laws.

Consumers, Workers, and Small Businesses are Hurt by Forced Arbitration

- **One-sided System.** Corporations write the clauses to be so rigged so most people give up pursuing their rights altogether. Corporations choose the forced arbitration provider, the rules under which the forced arbitration will take place, the state in which the forced arbitration proceeding will occur, and the payment terms. Most people don’t know about forced arbitration but even those that do have no say in the process and, because these clauses apply to most jobs, products, and services, a person has no choice but to live with the total deprivation of their rights via forced arbitration or give up the job/product/service altogether.
- **Secretive Proceedings and a Private System.** Forced arbitration is a private, secretive system without any enforceable standards or legal protections. There is no public review of decisions to ensure the arbitrator got it right. Federal law does not even require that arbitrators have any legal training or even follow the law and the entire system is unaccountable to the public.
- **Applies to ALL Fundamental Rights.** American heroes fought hard for fundamentally important laws—such as federal antidiscrimination laws and laws to protect servicemembers and their families—but these laws are now unenforceable. It’s time to close the forced arbitration loophole that gives corporations the power to ignore the laws Congress enacted.

Leveling the Playing Field: Case Examples Prove the Urgent Need to Enact the FAIR Act

The Supreme Court held that corporations are allowed to force individuals into arbitration because of an arcane federal law—the Federal Arbitration Act, which was passed in 1925—wipes out all rights under all other laws unless and until Congress updates that law. Thus, The FAIR Act simply amends the Federal Arbitration Act to make clear that workers and consumers cannot be forced into arbitration against their will. This prohibition on forced arbitration would apply to all workers (no matter how they are classified by their employer), consumers, and small businesses seeking to enforce their rights under antitrust laws.

The Public Is Opposed to Forced Arbitration

National polling clearly demonstrates that the public thinks this is wrong. Specifically, 81% of registered voters polled are opposed to allowing nursing homes to force residents into arbitration to settle disputesⁱ and 75% of voters polled are opposed to victims of driverless car crashes being forced into arbitrationⁱⁱ. Because these take-it-or-leave-it clauses apply to nearly every product and service area, Americans have no choice but to be stripped of their rights. Recent examples include:

- **The Sexual Assault Survivors of Uber:** Numerous women who claim they were sexually assaulted by Uber drivers attempted to file a class action lawsuit in order to hold Uber accountable; alleging that the company failed to properly screen its drivers. Uber’s terms and conditions for passengers include a forced arbitration clause which the company sought to enforce against the women. After much public outcry, Uber announced a policy change which led some people to believe the company had abandoned forcing its users into arbitration. A statement by the women’s attorney, Jeanne M. Christensen, explains why this was not the case:
 - *“Uber duped the media and public when it claimed to allow Jane Does 1-9 access to court two weeks ago. At the same time that Uber was making its public ‘announcement’ about not forcing these victims to arbitrate assault and battery claims, its lawyers were busy filing a motion to compel to arbitration for all of the other claims in the lawsuit. If successful, Uber achieves the result it wanted all along – to silence female victims’ voices on a collective basis. Such a result also allows Uber to keep secret the data about the countless other incidents of sexual assault by Uber drivers.”*
- **Race Discrimination Suit Blocked Against Airbnb:** In 2016, Gregory Selden filed a class action lawsuit on behalf of all Airbnb users who had suffered race discrimination by Airbnb hosts. Mr. Seldon was unable to book a specific listing in Philadelphia, only to have the same booking request accepted after representing himself as a Caucasian male, rather than an African-American male. However, Airbnb has a forced arbitration clause contained in its terms of service which mandates claims against the company be heard in private arbitration and which blocks users from participating in class-actions.
- **A Supreme Court Decision of Epic Proportions for Workers:** In May 2018, the Supreme Court issued a 5-4 decision in *Epic Systems v. Lewis* allowing employers to force employees into arbitration, stripping them of the right to bring class actions for labor law violations. The employees sought to band together to hold their employers accountable for wage theft allegations; claims which the employees would never be able to pursue on an individual basis. The decision allows corporations to exploit workers and violate federal law by hiding behind secretive forced arbitration.
- **Roger Ailes & Fox News – Forced Arbitration Silences Survivors** – Fox News anchor Gretchen Carlson was prevented from having her case against Fox News founder Roger Ailes heard in an open court because of a forced arbitration clause. Carlson brought a sexual harassment case against Ailes in 2016, but Ailes invoked an arbitration clause within her employment agreement with Fox News, which required absolute secrecy, stating “all filings, evidence and testimony connected with arbitration, and all relevant allegations and events leading up to the arbitration, shall be held in strict confidence.”ⁱⁱⁱ

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ⁱ GarinHartYang Research Group, Survey on civil justice issues among 1,000 registered voters, December 5-12, 2017, available: <https://www.justice.org/civiljusticesurvey>.

ⁱⁱ Simpson, John, *As Americans Hit the Road for Memorial Day, Consumer Watchdog Poll Finds Voters Want Congress to Apply the Brakes on Driverless Cars*, May 22, 2018, available: <https://www.consumerwatchdog.org/privacy-technology/americans-hit-road-memorial-day-consumer-watchdog-poll-finds-voters-want>

ⁱⁱⁱ Noam Scheiber and Jessica Silver-Greenberg, *Gretchen Carlson’s Fox News Contract Could Shroud Her Case in Secrecy*, New York Times, July 13, 2016, <https://www.nytimes.com/2016/07/14/business/media/gretchen-carlsons-contract-could-shroud-her-case-in-secrecy.html>