

February 9, 2022

Dear Majority Leader Schumer and Minority Leader McConnell:

We, the undersigned groups, support passage of the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act (H.R. 4445/S. 2342), as passed by the House overwhelmingly by a vote of 335-97.¹ This bipartisan bill would empower survivors of sexual assault and sexual harassment by allowing survivors of sexual harassment and sexual assault to file a case in court rather than be forced into arbitration. Survivors of sexual assault and sexual harassment would be able to hold perpetrators and institutions accountable outside of closed-door arbitration proceedings and shine light on systemic issues of wrongdoing. According to actor Eliza Dushku, one of several witnesses who testified under the protection of congressional subpoenas, at a powerful hearing last November in the House Judiciary Committee,² forced arbitration “protects the harassers, the abusers, the corporations, and it isolates the victims...[it] creates a culture of silencing.”³

Many of the undersigned groups oppose the use of forced arbitration against all consumers and workers. Predispute binding arbitration clauses and class action waivers, together known as forced arbitration clauses, are typically buried in “take-it-or-leave it” agreements that waive an individual’s fundamental rights to seek accountability in court when they are hurt or when their rights are violated. These clauses deprive people of the opportunity to hold wrongdoers accountable, no matter how widespread or egregious the misconduct may be; and they also allow all types of abuse, discrimination, and fraud to go unchecked.

In the privatized system of forced arbitration, there is no judge or jury, and the right to appeal is severely limited. Arbitrators do not have to follow the law or precedent. And proceedings take place behind a veil of secrecy that insulates perpetrators from public accountability. That is why thousands of Google workers around the world walked off the job in late 2018 to protest, among other things, Google’s use of forced arbitration clauses to hide mistreatment of workers who alleged harassment and discrimination against high-level executives.⁴ Also in 2018, in a rare gesture of bipartisanship, all 56 attorneys general (in every state, the District of Columbia, and territories) urged Congress to immediately enact legislation that would ban forced arbitration for

¹ The bill was introduced by Rep. Cheri Bustos, Rep. Morgan Griffith, Rep. Pramila Jayapal, Sen. Dick Durbin, Sen. Kirsten Gillibrand, and Sen. Lindsey Graham.

² Hearing: How Forced Arbitration Keeps Victims of Sexual Violence and Sexual Harassment in the Shadows, YOUTUBE (Nov. 16, 2021), https://www.youtube.com/watch?v=JC5y1GbfUVk&list=PLStrNx2NtyMOUt5Y0Mflbw0-Xcc6nH_9o&index=22.

³ Nojan Aminoshare, “Eliza Dushku: ‘I Can’t Go Back To A System that Requires Me To Sign Away My Rights,’” HARPER’S BAZAAR (Nov. 22, 2021), available at <http://www.harpersbazaar.com/culture/features/a38271034/eliza-dushku-forced-arbitration-cbs-bull-harassment-congressional-testimony/>.

⁴ Claire Stapleton et al., “We’re the Organizers of the Google Walkout. Here Are Our Demands,” N.Y. MAG. (Nov. 1, 2018), available at <https://www.thecut.com/2018/11/google-walkout-organizers-explain-demands.html>.

sexual harassment claims.⁵ The letter said, “Victims of such serious misconduct should not be constrained to pursue relief from decision makers who are not trained as judges, are not qualified to act as courts of law and are not positioned to ensure that such victims are accorded both procedural and substantive due process.”

The legislation, which was voted out of the Senate Judiciary Committee on a voice vote, has ten Republican co-sponsors,⁶ and support continues to grow. Conservative commentator and women’s rights advocate Gretchen Carlson, who has been a vocal opponent of the way forced arbitration clauses are used to silence victims of sexual harassment,⁷ recently said that passing this legislation “will be a victory for American workers and I am incredibly optimistic this is going to be the law of the land.”

The Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act has widespread, bipartisan support inside and outside the walls of Congress. We urge all Members of the Senate to vote for this important legislation. Your staff should feel free to reach out to Remington A. Gregg at rgregg@citizen.org should you have any questions.

Sincerely,

American Association for Justice
American Civil Liberties Union
Alliance for Justice
American Family Voices
Americans for Financial Reform
Center for Disability Rights
Center for Economic Justice
Center for Justice & Democracy
CHILD USA
CHILD USA Advocacy
Citizen Works
Consumer Action
Consumer Federation of America
Consumer Reports
Consumer Watchdog
Consumers for Auto Reliability and Safety
Center for Progressive Reform

⁵ Letter to Congressional Leadership from National Association of Attorneys General (Feb. 18, 2018), <https://bit.ly/3u6EqiS>.

⁶ Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021, H.R. 4445, 117 Cong. (2021).

⁷ Gretchen Carlson, “How Arbitration Clauses Allow Sexual Harassment to Continue,” TIME (March 10, 2017), available at <https://time.com/4698538/gretchen-carlson-sexual-harassment-arbitration-clauses/>.

Disability Rights Education & Defense Fund
Earthjustice
Economic Policy Institute
Essential Information
FORGE, Inc.
Googlers for Ending Forced Arbitration
Human Rights Campaign
Impact Fund
Justice for Migrant Women
The Leadership Conference on Civil and Human Rights
Maryland Consumer Rights Coalition
Mazzoni Center
National Association of Consumer Advocates
National Black Justice Coalition
National Consumer Law Center (on behalf of its low-income clients)
National Consumers League
National Disability Rights Network (NDRN)
National Employment Law Project
National Organization for Women
People's Parity Project
Public Citizen
Public Good Law Center
Public Law Center
SC Appleseed Legal Justice Center
Service Employees International Union (SEIU)
Texas Watch
The Army of Survivors
URGE: Unite for Reproductive & Gender Equity
Women Employed
Woodstock Institute
Workplace Fairness
YWCA USA

Cc: Members, United States Senate