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# Forced Arbitration Injustice Repeal (FAIR) Act

**Public Citizen SUPPORTS**

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## Overview

Forced arbitration clauses, which are usually hidden in the fine print of “take-it-or-leave-it” agreements, are ubiquitous in contracts governing bank accounts, student loans, cell phones, employment, small business merchant accounts, and even nursing home admissions. These clauses deprive people of their right to seek justice in court before an impartial judge or jury when they are harmed.

Forcing workers, consumers, and small businesses into arbitration makes it extremely difficult for them to vindicate their rights. Contracts that include forced arbitration clauses typically designate:

- The arbitration provider, who often relies on the company for repeat business and therefore may be biased in the company’s favor;
- The arbitration rules, which provide few of the legal safeguards that protect individuals who bring their claims in courts of law, including their ability to obtain key evidence necessary to prove those claims;
- The state in which the arbitration is to occur; and
- The payment terms, which can include exorbitant filing fees, continuous fees for procedures such as motions and written findings, and “loser pays” rules that make arbitration prohibitively expensive for many harmed individuals.

Congress passed the Federal Arbitration Act (FAA) in 1925 to give companies of relatively equal bargaining power the ability to settle commercial disputes outside of court. Unfortunately, for the past thirty years, the U.S. Supreme Court has reinterpreted the FAA to drastically expand its scope of coverage. As a result, big corporations now use arbitration clauses as a blank check to block workers’ and consumers’ access to courts, hide systemic wrongdoing from the public, and minimize corporate accountability.

According to the Economic Policy Institute, individual consumers seeking relief in arbitration win just *9 percent* of the time.<sup>1</sup>

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<sup>1</sup> Heidi Shierholz, Econ. Policy Inst., *Correcting the Record: Consumers Fare Better Under Class Actions than Arbitration* 1 (2017), available at <https://www.epi.org/files/pdf/132669.pdf>.

## Why Public Citizen Supports the FAIR Act

More than 60 million workers are subject to forced arbitration.<sup>2</sup> By 2024, more than 80 percent of private-sector, nonunion workers will be subject to forced arbitration.

The FAIR Act would prohibit forced arbitration for employment, consumer, antitrust and civil rights disputes. It would keep companies from forcing individuals, workers, and small businesses to agree to be bound by arbitration before a dispute has occurred. Rather, every person would have the choice to agree to arbitration post-dispute. In addition, the FAIR Act would not affect collective bargaining agreements that require arbitration between unions and employers.

## Overwhelming Public Support for the FAIR Act

According to a national survey, 84 percent of the public supports federal legislation that ends the practice of forcing consumers and workers into arbitration. Republicans support the legislation more than Democrats (87% to 83%).<sup>3</sup>

## What's Next

The FAIR Act was introduced in the House of Representatives (H.R. 1423)<sup>4</sup> by Rep. Hank Johnson (D-GA) and in the Senate (S. 610)<sup>5</sup> by Sen. Richard Blumenthal (D-CA). A committee markup and floor vote in the House is expected soon.

Public Citizen strongly supports the FAIR Act, which would restore access to our civil justice system, preserve civil rights, and safeguard important employment and consumer protections.

## Contact

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<sup>2</sup> Alexander J.S. Colvin, Econ. Policy Inst., *The Growing Use of Mandatory Arbitration: Access to the Courts Is Now Barred for More than 60 Million American Workers* 2 (2018), available at <https://www.epi.org/files/pdf/144131.pdf>.

<sup>3</sup> Memorandum from Hart Research Assocs. to Interested Parties 1 (Feb. 28, 2019), available at <https://www.justice.org/sites/default/files/2.28.19%20Hart%20poll%20memo.pdf>.

<sup>4</sup> Forced Arbitration Injustice Repeal Act, H.R. 1423, 116th Cong. (2019), available at <https://www.congress.gov/116/bills/hr1423/BILLS-116hr1423ih.pdf>.

<sup>5</sup> Forced Arbitration Injustice Repeal Act, S. 610, 116th Cong. (2019), available at <https://www.congress.gov/116/bills/s610/BILLS-116s610is.pdf>.