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## Support Legislation to End Forced Arbitration

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### Overview

Many Americans assume that they have a Constitutional right to their day in court, only to discover that predispute forced arbitration clauses take away the right to have their claims heard in a public court. The ability to access the courts is critical for individuals to seek relief for corporate or government wrongdoing. Pursuing claims in the judicial system, however, has become increasingly difficult for consumers and employees because corporations have worked hard to shield themselves from accountability, including by inserting forced arbitration clauses in a wide array of consumer and employment contracts.

- **Forced arbitration clauses are provisions inserted in contracts that specify that any *future* disputes with the company must be addressed by an arbitration firm and cannot be brought in court.** These clauses are ubiquitous in a large variety of nonnegotiable contracts, including many employment agreements, credit-card agreements, cellphone agreements, and countless other types of contracts. Forced arbitration clauses also typically include language prohibiting the worker or consumer from bringing any future claims as class actions, making it easier for companies to get away with unlawful or unfair practices that harm many people but would not be efficient to challenge individually.
- **Arbitration proceedings are notoriously secretive.** Proceedings and decisions are, with few exceptions, not made public or required to be reported to state or federal courts or agencies. Arbitrators are not required to follow state and federal court procedures, and traditional rules of discovery do not apply. Arbitration firms generally lack diverse arbitrators, making it especially difficult for consumers of color and consumers from disadvantaged communities to be heard by an arbitrator with similar life experiences.
- **Forced arbitration clauses typically leave consumers and employees with no dispute-resolution alternatives and favors corporations.** Forced arbitration clauses often name a specific arbitration firm, and because arbitration firms rely on return-business to make a profit, arbitrators have an incentive to rule in favor of the corporation to cultivate a happy return-customer relationship.
- **Corporations can, and often do, update their terms of service with limited or no prior notice to the consumer or employee.** Sometimes, corporations will update their terms of service in anticipation of a legal dispute, allowing them to adopt more favorable terms for themselves.

Public Citizen has a [long history](#) of fighting companies' use of forced arbitration in contracts with consumers and employees and advocating for legislation that would give employees and consumers the right to decide in what forum to bring their claims.

Congress has taken some steps to limit the use of forced on vulnerable communities. For example, in 2022 Congress enacted legislation protecting victims via the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act, which allowed individuals alleging sexual assault or harassment to choose between pursuing claims in court or arbitration.

### **The FAIR Act**

**The Forced Arbitration Injustice Repeal (FAIR) Act would amend Title 9 of the United States Code to prohibit forced arbitration for employment, consumer, antitrust, and civil rights disputes.** When enacted, the FAIR Act would make it possible for employees and consumers to pursue their cases in public court if they choose. The FAIR Act would similarly prohibit bans on class actions that interfere with the right of individuals, workers, and small businesses to band together to bring lawsuits, allowing people with low-dollar claims a means of seeking redress. At the same time, the FAIR Act would allow parties to choose arbitration after a dispute arises. On September 15, 2025, the FAIR Act was [reintroduced](#) in the House by Rep. Johnson (D-GA) (H.R. [5350](#) ) and in the Senate by Sen. Blumenthal (D-CT) (S. [2799](#)).

### **Other Arbitration Legislation Public Citizen Supports**

**Protecting Older Americans Act 2025** (S. [2703](#), Gillibrand (D-NY), & H.R. [5115](#), Lawler (R-NY)), would prohibit the enforcement of predispute arbitration agreements and predispute joint-action waivers in employment agreements, with respect to disputes involving age discrimination.

**Ending Forced Arbitration of Race Discrimination Act of 2023** (S. [1408](#), Sen. Booker (D-NJ), & H.R. [6172](#), Rep. Bell (D-MO)), would make pre-dispute arbitration agreements unenforceable in cases concerning race discrimination.

**Investor Choice Act of 2024** (S. [3715](#) , Merkley (D-OR) & H.R. [7168](#) Foster (D-IL)), would prohibit broker-dealers and investment advisers from including mandatory arbitration, forum selection restrictions, or restrictions on which court(s) or arbitration providers can hear a claim, and would also prohibit bans on class action suits in customer or client agreements. The bill would also prohibit issuers of securities from including forced arbitration provisions in shareholder agreements. (This bill has not yet been reintroduced in the 119<sup>th</sup> Congress.)

***Members of Congress must take action to address the problem of forced arbitration and we urge them to support proposals to increase access to the courts.***

### **Contact**

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