Advocates Applaud House Passage of the FAIR Act

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*H.R. 963 would restore access to the courts, eliminate forced arbitration*

WASHINGTON – Advocates at the National Consumer Law Center applaud the passage by the U.S. House of Representatives of H.R. 963, the Forced Arbitration Injustice Repeal (FAIR) Act to eliminate forced arbitration clauses in contracts. The bill now moves to the Senate. The FAIR Act would restore access to the courts for consumers, servicemembers, workers, and small business owners harmed when they shop at, bank with, borrow from, work for, or do other business with companies that violate the law.

“Companies use fine-print forced arbitration clauses to keep disputes out of court – forcing the aggrieved into a closed-door forum before arbitrators who are typically paid by the company, and where individuals lose more than 90% of cases,” said Stuart Rossman, director of litigation at the National Consumer Law Center. “The FAIR Act stops forced arbitration and restores access to the court system, where seniors exploited by nursing homes, consumers ripped off by Wall Street or predatory lenders, and survivors of sexual harassment have a fighting chance.”

Often hidden in contract terms “signed” with a single mouse-click, forced arbitration clauses require that claims against the company be heard in private proceedings that prevent people from seeking justice in court before an impartial judge or jury. Also prevalent in forced arbitration clauses are provisions prohibiting wrong individuals from banding together in class actions to address widespread, systemic harm – deterring many from seeking legal remedies.

Forced arbitration clauses are far too common. In fact, a 2019 study found that 81 corporations in the Fortune 100, including subsidiaries or related affiliates, have used arbitration clauses in consumer transactions. The owner of a Jiffy Lube franchise recently claimed that an arbitration clause that it included in the receipt a consumer signed when she picked up her car prevented her from even making a complaint to the county consumer protection office about damage the auto shop had allegedly caused while servicing her car. And a majority of credit card and prepaid card companies, storefront payday and online lenders, cell phone and cable companies, for-profit colleges, and big banks also include arbitration clauses in their “take-it-or-leave-it” contracts.

Earlier this week, more than 90 organizations sent a letter to House leadership urging passage of the FAIR Act and asserting that “forcing consumers, workers, and small businesses into arbitration has played a significant role in allowing corporate wrongdoers to evade accountability because it allows them to keep systemic corporate misconduct secret and out of the public eye.”

“It is now incumbent upon the Senate to pass the FAIR Act to ensure fair access to our courts and uphold fundamental civil rights and consumer protections,” said Rossman. “People should have the choice whether to exercise their constitutional right to access the courts or take their dispute to an arbitrator.”

For additional information on the use and impact of forced arbitration clauses visit NCLC’s Forced Arbitration page.