

H.R. 4445, the “Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act”

H.R. 4445, the “Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act,” would allow sexual harassment and sexual assault survivors to elect to file a case in a court of law rather than be subject to mandatory, pre-dispute arbitration (“forced arbitration”) provisions in cases involving sexual harassment or sexual assault disputes. This critically important, bipartisan bill would restore access to justice for millions of survivors who are currently stripped of their rights to seek accountability and can only attempt to bring their cases against their abusers in a private system of arbitration that systematically disfavors survivors.

- **Forced Arbitration Clauses Are Ubiquitous, Depriving Americans of Their Rights to Hold Corporations Publicly Accountable.** Over the past several decades, forced arbitration clauses have become commonplace in everyday contracts, employment agreements, and click-through clauses. Often buried deep within the fine print of employment and consumer paperwork, forced arbitration deprives millions of Americans of the right to seek judicial enforcement of their state and federal rights. According to a 2017 report by the Economic Policy Institute, 60.1 million workers—the majority of non-union employees in the private sector—have signed away their rights through forced arbitration clauses.
- **Forced Arbitration Circumvents Fundamental Statutory Rights and Protections.** Many survivors of systemic sexual harassment are unable to enforce their rights due to forced arbitration provisions imposed on them as a condition of employment or doing business. In this respect, as Professor Myriam Gilles of Cardozo School of Law observes, “forced arbitration is not an alternative regime for resolving claims, it is a means of suppressing legal claims altogether.” Judge William G. Young, who was appointed by President Ronald Reagan, likewise stated that the proliferation of forced arbitration clauses means that “business has a good chance of opting out of the legal system altogether and misbehaving without reproach.”
- **Forced Arbitration is a Secretive Process Without Adequate and Enforceable Legal Safeguards.** Unlike in the justice system, the results of forced arbitration cases are often secret. As a coalition of 50 state attorneys general have noted, this perpetuates “a culture of silence that protects perpetrators at the cost of their victims.” In forced arbitration, a company may limit discovery, formal civil procedure rules, access to counsel, the right to bring similar claims jointly, or increase the expense of even bringing a claim. The party imposing forced arbitration often selects the presiding arbitrator, creating a conflict of interest in which the “neutral” arbitrator may be motivated more by the prospect of obtaining repeat business from the company than by providing a fair assessment of the claim.

H.R. 4445 is supported by a coalition of survivors of sexual harassment or assault and their allies, including the National Center on Domestic and Sexual Violence, the National Coalition Against Domestic Violence, the National Network to End Domestic Violence, RAINN, and the Sexual Violence Prevention Association, among others. It is also supported by numerous public interest and advocacy organizations, such as Public Citizen and the American Association of Justice.