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Democrat Lawmakers Introduce Legislation to End Forced Arbitration Clauses

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Last week, two US Representatives introduced the Forced Arbitration Injustice Repeal (FAIR) Act. The goal of this bill is to increase Americans' rights to seek justice and accountability through jury trials in the Court system as opposed to corporate sanctioned arbitration. The NJ State Constitution provides for a jury trial in cases involving money damages under the Seventh Amendment.

The House Bill, if passed, would eliminate forced arbitration clauses in employment, consumer, and civil rights cases unless all parties enter them voluntarily. The bill comes after Google recently announced it would end forced arbitration for all disputes. Google employees appeared alongside lawmakers during the FAIR Act announcement.

Forced arbitration requires an employee or consumer to submit any dispute to binding arbitration, even under circumstances involving malpractice and personal injury. In arbitration, an arbitrator or panel decides the dispute which is binding and usually confidential.

Most arbitration awards are lower than those reached in Court, and the defendants or corporations cannot be forced to provide the evidence within their control to support the plaintiff's claims which can defeat them. Arbitration is a process that generally favors the corporation or entity over the individual.

Forced arbitration is particularly notorious in nursing home and assisted living facilities settings. Families often don't understand what they are agreeing to when they sign them, and often feel pressured into signing the myriad of documents presented to them so they can get their loved ones the care they need.

It is only after a family realizes a loved one has been neglected and attempts to sue the facility that they learn they have been forced into arbitration unknowingly, and given up their constitutional right to a jury trial.

In 2016, the Obama Administration attempted to prohibit the use of binding arbitration agreements as a condition of admission in nursing homes. Unfortunately, the regulation was in litigation when the Trump Administration took office and stopped supporting it. Passing the FAIR Act would eliminate these agreements and protect elderly residents and their loved ones.

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