



## Senate committee approves arbitration-reform bill

WOULD END FORCED ARBITRATION FOR SEXUAL ASSAULT AND HARASSMENT CLAIMS

### WASHINGTON UPDATE

I have excellent news to share with you. The Senate Judiciary Committee has approved, by a unanimous voice vote, a bill to end forced arbitration for sexual assault and sexual harassment survivors. The bill, Ending Forced Arbitration of Sexual Assault & Sexual Harassment Act (S. 2342), is bi-partisan and passed out of the Senate Judiciary Committee with Republican Senators Graham, Grassley, Blackburn, Kennedy, and Hawley being added as co-sponsors of the bill.

An untold number of assault and harassment survivors are forced into silence and stripped of their rights by forced arbitration. This bill would restore their rights by allowing them to hold their perpetrators and the corporations who enable them accountable in court. Your support of this bill has been critical. AAJ members helped us over the course of many years to advocate for ending forced arbitration. You've participated in AAJ Lobby Days, called members of Congress, spoken to reporters, written op-eds, encouraged your clients to work as survivor advocates, and more. As a result, this legislative effort is broadly bipartisan and has serious momentum.

### More positive news

AAJ remains committed to completely eliminating forced arbitration. On that front, I'm pleased to report that the House Judiciary Committee just marked up and passed out of committee H.R. 963, the Forced Arbitration Injustice Repeal (FAIR) Act. All the Democrats on the committee and Republican Representative Matt Gaetz (R-FL-1) supported this bill. H.R. 963 now has over 200 cosponsors and is bipartisan with recent cosponsor Rep. Gaetz (R).

Please help move this issue forward. Encourage your members of Congress to send this legislation to President Biden's desk by using this action item (<https://mobilize4change.org/ulvvMWt>) to send an email or tweet in support of the bill.

### AAJ Releases New Report on Forced Arbitration

AAJ has released a new report, "*Forced Arbitration in a Pandemic: Corporations Double Down*," examining the surge of consumer and employment arbitrations during the pandemic. At the

American Arbitration Association and JAMS, the two largest forced arbitration providers, not only did the number of arbitrations increase, but consumer and employee win rates *decreased*.

The report identifies one corporation in particular, Dollar Tree (the parent corporation of Family Dollar), as the biggest abuser of forced arbitration. AAJ's Research Department analyzed the two largest forced arbitration providers in the U.S. to arrive at these conclusions.

*The Washington Post* ran an exclusive on the new report titled, "*As closed-doors arbitration soared last year, workers won cases against employers just 1.6 percent of the time.*" The report is available at <https://www.justice.org/resources/research/forced-arbitration-in-a-pandemic>.

AAJ will continue the fight to end forced arbitration and protect your clients' rights. Watch this space for more information soon.

### Bankruptcy bill passes out of committee

As many of you know, J&J is attempting to use the "Texas Two-Step" or "divisive merger" to escape accountability for its misconduct regarding talc. In the House, the legislation, H.R. 4777, Nondebtor Release Prohibition Act, passed out of committee on November 3.

The three major threats to victims' rights in this space are: 1) divisive mergers; 2) non-consensual third-party stays; and 3) non-consensual third-party releases. There is legislation in both the House and Senate to eliminate abusive divisive mergers, non-consensual non-debtor stays, and non-consensual non-debtor releases in bankruptcy proceedings.

We will continue to push for more forward progress on the bill.

### Federal Rules update

#### **Formal comment period: Emergency rules and expert witnesses**

There are two rules in formal comment period (<https://www.uscourts.gov/rules-policies/proposed-amendments-published-public-comment>): Emergency Rules (creating new FRCP 87) and FRE 702 (Expert Witnesses). For both rules, written comments must be submitted by February 16, 2022. There are also virtual public hearings where the public testimony is heard.

- Written comments can be of any length, but please make sure you identify yourself as a lawyer with a plaintiff-side practice.

- The public hearing dates for emergency rules are: 1/6/22 and 2/4/22. The public hearing date for FRE 702 is 1/21/22. There is a 30-day notice requirement to testify virtually. Please consider signing up. Testimony is generally 5-7 minutes depending on the number of people who sign up. AAJ can help you prepare.
- AAJ has more information on the issues involved in the proposed rules, including some proposed issues for comments along with the proposed textual change and committee note explaining the change. Comments can focus on both the text and the committee note.

For emergency rules, it would be helpful to expand upon what other changes to the Federal Rules of Civil Procedure are needed for the courts to operate during a pandemic or other emergency.

On FRE 702, the corporate defense bar is seeking an opportunity to limit your experts. It is important for the jury, not judges, to determine the weight of the evidence.

#### **Informal comment period: Privilege logs and rules for juror questions**

This past summer, the Advisory Committee on Civil Rules requested comments informally on privilege logs and the idea of categorical logging. AAJ members pushed back. However, the Discovery Subcommittee, charged with examining the issue, is still considering a rule change. AAJ is forming a cross-practice working group to address the proposed amendment. A number of changes to the Federal Rules of Evidence are also being considered, including a new rule on how jurors can submit questions during trial. More information will be available on these rule changes next year.

If you have questions about submitting a comment, testifying at a public hearing, or any other questions pertaining to federal rules, please contact Sue Steinman at [susan.steinman@justice.org](mailto:susan.steinman@justice.org).

### Fighting for you and your clients

Thank you for your continued support as we continue to make our way forward during the ongoing pandemic. AAJ remains committed to fighting for access to justice for your clients. We will keep you informed about important developments and welcome your input. You can reach me at [advocacy@justice.org](mailto:advocacy@justice.org).