

September 16, 2024

The Honorable Dick Durbin, Chairman
The Honorable Lindsey Graham, Ranking Member
U.S. Senate Committee on the Judiciary
Washington, DC 20510

The Honorable Jim Jordan, Chairman
The Honorable Jerrold Nadler, Ranking Member
U.S. House Committee on the Judiciary
Washington, DC 20515

Re: Pass the FAIR Act

Dear Chairs Durbin and Jordan and Ranking Members Graham and Nadler:

The undersigned public interest organizations, appalled by the Walt Disney Company invoking its restrictive terms of use to evade accountability for the death of a consumer on its premises, write to urge your committees to immediately mark up the Forced Arbitration Injustice Repeal Act (the FAIR Act), S.1376 and H.R. 2953, and bring this legislation to a vote. The FAIR Act would ensure that Americans' fundamental legal freedoms are not stripped away in big corporations' fine print.

In February, Jeffrey Piccolo filed a wrongful death lawsuit against Walt Disney Parks & Resorts after his wife, Dr. Kanokporn Tangsuan, died of an allergic reaction at a restaurant on Disney grounds in Orlando, Florida. Mr. Piccolo alleged that the restaurant failed to heed the couple's numerous warnings and requests relating to Dr. Tangsuan's food allergies, and that, among other things, the couple relied on Disney statements that accommodating "persons with food allergies is a top priority at its parks and resorts."¹

Disney invokes terms of use to deny customers' right to sue

Disney initially responded by claiming that Mr. Piccolo could not proceed in court due to a forced arbitration clause in the terms of a Disney+ trial subscription and separate Disney online account that Mr. Piccolo created five years earlier. Both accounts were clearly unrelated to the dispute, but Disney contended that their terms of use blocked Mr. Piccolo's access to the public court system.²

According to Disney's broad terms, consumers must resolve claims against it, "by binding individual arbitration" for all disputes, "including any related disputes involving The Walt Disney Company, its subsidiaries, or its affiliates..."³ Disney properties include its parks, streaming services, vacations services, merchandise, cable and broadcast networks, affecting tens of millions of customers.

Predispute forced arbitration clauses in corporate terms and conditions undermine consumers' ability to enforce their rights when harmed in the marketplace and shield corporations from being held accountable. Forced arbitration removes consumers' critical choice to go to court and to be heard by a judge and jury. Instead, this constitutional right is displaced by private, secret arbitration proceedings that lack due process protections of a public court, including rules of evidence and the right to appeal decisions. Unlike the court system, privately hired arbitrators, who have a financial incentive to favor corporate repeat players, have free rein over the process. And in forced arbitration, wrongdoing is too often kept secret from the public.

Following extensive public backlash and media coverage, Disney announced that it would allow Mr. Piccolo's legal claims to go forward in court.⁴ The visceral public reaction appeared to have shamed the giant entertainment corporation into reversing course in Mr. Piccolo's case. But unfortunately, millions of other consumers are regularly deprived of this essential right to seek justice in court.

Big businesses enjoy immunity at the expense of individuals' personal freedoms

¹ Complaint, *Piccolo v. Great Irish Pubs Florida, Inc. and Walt Disney Parks and Resorts*, Cir. Ct of 9th Judicial Circuit, Orange Cty, FL, filed Feb. 22, 2024.

² Defendant Walt Disney Parks and Resorts U.S., Inc.'s Motion to Compel Arbitration and Stay Case, *Piccolo v. Great Irish Pubs Florida, Inc.*, Cir. Ct of 9th Judicial Circuit, Orange Cty, FL, p. 3-5, May 31, 2024.

³ The Walt Disney Company Terms of Use, <https://disneytermsofuse.com/>.

⁴ Jessie Yeung and Jon Passantino, *Disney reverses course on bid to block wrongful death lawsuit by widower who had Disney+*, CNN, Aug. 20, 2024, <https://www.cnn.com/2024/08/19/business/disney-arbitration-wrongful-death-lawsuit-intl-hnk/index.html>; Marlene Lenthang, *Disney backpedals on saying man can't sue over wife's death because he signed up for Disney+*, NBC NEWS, Aug. 20, 2024, <https://www.nbcnews.com/news/us-news/disney-backpedals-saying-man-cant-sue-wifes-death-signed-disney-rcna167310>.

It's not just Disney. For too long, big businesses have used one-sided, nonnegotiable terms and conditions to suppress their customers' legal protections. These terms are so broad that they typically cover all their products and services, as well as any conceivable claims or disputes that a consumer may rightfully have against a business.

Meanwhile, consumers generally are aware of a product's use and price when they sign up for it, but they are typically unaware of the accompanying take-it-or-leave-it terms that expand corporations' rights and privileges while eradicating theirs. Empirical evidence demonstrates that consumers have a very low level of consent and awareness of the fine print or that it requires them to surrender their personal freedom to go to court.⁵ For the relatively few that are aware, they lack choice and the ability to meaningfully consent due to the wide corporate use of these restrictions.

True freedom of contract only exists when consumers can meaningfully consent to terms that affect their substantive legal rights, particularly their right to choose to go to court after a dispute arises. The FAIR Act will protect fundamental rights in contracts. Congress, by passing the FAIR Act, would ensure that American families can exercise their constitutional right when they need it.

We urge you to schedule a committee markup and vote on the FAIR Act.

Thank you for your consideration. If you have any questions, please contact christine@consumeradvocates.org.

Sincerely,

Alliance 85
Americans for Financial Reform Education Fund
California Employment Lawyers Association
Center for Auto Safety
Center for Justice & Democracy
Center for Responsible Lending
Church State Council
Citizen Works
Committee to Support the Antitrust Laws
Consumer Action
Consumer Reports
Consumer Federation of America
Consumers for Auto Reliability and Safety
Delaware Community Reinvestment Action Council, Inc.
Earthjustice
Founder of Googlers for Ending Forced Arbitration
Georgia Advancing Communities Together, Inc.
Georgia Watch
Impact Fund
Indiana Community Action Poverty Institute
Katharine & George Alexander Community Law Center
Long Term Care Community Coalition
The Military / Veterans Coalition of Indiana
National Association of Consumer Advocates
National Center for Law and Economic Justice
National Consumer Law Center (on behalf of its low income clients)
National Consumers League
National Disability Rights Network (NDRN)
National Employment Law Project

⁵ Roseanna Sommers, *What do consumers understand about predispute arbitration agreements? an empirical investigation*. PLoS ONE 19(2): e0296179, 2024, <https://doi.org/10.1371/journal.pone.0296179>.

Oregon Consumer Justice
Oregon Consumer League
People's Parity Project
Progressive Leadership Alliance of Nevada
Public Citizen
Public Good Law Center
Public Justice
Public Justice Center
Texas Watch
Tzedek DC
Virginia Citizens Consumer Council
Virginia Poverty Law Center