

**Hearing on
"Small Print, Big Impact: Examining the Effects of Forced Arbitration"
U.S. Senate
Committee on the Judiciary**

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**Statement of Gretchen Carlson
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Chairman Durbin, Ranking Member Graham, and distinguished members of the committee, thank you so much for the opportunity to appear today to testify about my experience with forced arbitration.

In 2016, I sued my boss, former Fox News chairman and CEO Roger Ailes, for sexual harassment. This was not an easy decision to make, but like most women who have encountered workplace harassment, I'd had enough and felt like I had no other choice. However, due to a forced arbitration clause in my employment contract, my story could easily have been swept under the rug.

No one starts a new job - particularly one so public facing - expecting sexual harassment. I know I didn't. And, in the face of a job opportunity, few people are willing or even able to walk away from a job because of the paperwork or the fine print in an employee handbook. Even in the very rare circumstance that an employee understands that a forced arbitration clause will strip him or her of their rights to make future decisions, they are still left with a false choice. An employer can refuse to hire people who do not sign or "agree" to forced arbitration clauses. How is that "choice" for any employee?

When a sexual assault or harassment case is forced into the rigged process of arbitration, there is no public accountability from the corporation and there is no justice for the victim or survivor. Most people don't realize that in forced arbitration, the corporation against which a person files a case hand picks the forced arbitration provider, there are virtually no appeals, there are severe limits on discovery which stop survivors from getting access to the information they need to prove their case, and arbitrators' rationales for their decisions aren't public. Worse, and perhaps the most inherent characteristic of the system, is that forced arbitration providers come back for repeat business from the corporations who handpick them - providers know they are only going to be chosen again if they cater to corporate interests. If we had judges openly and repeatedly handpicked by the same defendant, and that defendant were allowed to choose all the rules that applied in the courtroom, I'd imagine that every member of this committee would be outraged - and yet that's exactly what's being allowed to happen in forced arbitration.

After the secretive, one-sided process of forced arbitration is completed, the injustice does not stop there. Because the process was secret, the employee may find themselves blacklisted, demoted, or fired with little recourse. Worst of all, the perpetrator will likely get to stay on the job - free to harass again and again. This is how unspeakable sexual harassment and abuse was permitted to continue at major corporations across this country for years.

When I first learned that a forced arbitration clause in my employment contract could potentially stop me from seeking justice and speaking out, I began this quest to change the law for all survivors. My first step was to get my story and the truth out there in whatever way I could.

Public reaction to my lawsuit was swift. Fortunately, the backlash that I received for speaking out has been greatly surpassed by the overwhelming amount of public support that I have received over the last eight years. I could not have imagined in 2016 that my story would help propel Congress to start examining forced arbitration in a meaningful way.

Since my case, a tidal wave of women have joined me in courageously speaking out against workplace harassment and discrimination and thanks to the members of this committee and other champions in Congress hailing from both sides of aisle, survivors of sexual harassment and sexual assault are now empowered to seek justice, and brave survivors are now able to come forward as a result of the new law. Watching the President sign the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act into law was one of the proudest moments of my life.

An enduring lesson that I have learned from this journey is that courage is contagious, and the “Ending Forced Arbitration for Sexual Assault and Sexual Harassment” law is helping survivors of sexual harassment and sexual assault obtain justice and shine a light on sexual misconduct. This law simply allows survivors the choice of filing a case in court to hold employers and corporations accountable when they break the law, and it is already making a significant impact in the lives of countless survivors.

Last year, Kirsten Tiger a former bartender at a prestigious country club was able to bring a sexual harassment lawsuit¹ in court. Kirsten, who was just 24 years old when she began bartending at the country club alleged that she was subjected to sexual harassment by multiple club members as well as by a security guard. Her employer’s attempt to silence her voice through a petition to compel forced arbitration was denied because of the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act. Kirsten was able to hold her employer accountable in court, receive justice, and make workplace conditions safer for women in the future.

In August of last year, a federal judge in Texas declined to grant Blaze Media’s Motion to Dismiss after one of its employees, political commentator Sydney Watson alleged sexual harassment in the workplace². Watson's sexual harassment case against her former employer, Blaze Media, is allowed to continue in court rather than forced arbitration thanks to the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act. While employed by Blaze Media, Watson reports facing continuous sexual harassment from her on air co-star. She alleges she routinely reported inappropriate behavior and was terminated around July of

¹ <https://www.ranchosantafereview.com/news/story/2023-06-27/former-bartender-receives-300k-settlement-in-sexual-harassment-lawsuit-against-rancho-santa-fe-country-club>

² <https://rbr.com/blaze-media-request-to-dismiss-sexual-harassment-claim-denied/>

2022. The judge who declined to grant Blaze Media's motion to compel forced arbitration ruled that she qualified for protection under the new law.

Indeed, survivors of harassment and assault across the country are now allowed the dignity of having the right to decide for themselves whether to file a case in court, go to arbitration, or take another path altogether. When someone's rights have been violated, it should be that person's right to decide for themselves whether, when, and how to seek justice. And while I feel endless gratitude towards this Committee for restoring the rights of survivors of sexual abuse, after spending years talking to victims of all types of abuse and discrimination, I am now surer than ever before that every American deserves this same right.

The same characteristics of forced arbitration that allowed decades of workplace sexual assault and harassment to continue in secrecy are the same characteristics that are currently denying the rights of black NFL coaches to take their claims of civil rights violations and discriminatory hiring practices into a public court of law, that are depriving countless families who have had their loved one die of horrific abuse and neglect in a nursing home of the dignity of being able to file a case in court, that are denying our service men and women like Kevin Ziober their right to file a case under the Uniformed Services Employment and Reemployment Rights Act, that are depriving the right of Tesla employees subject to constant and pervasive race discrimination and harassment to file a case in court, and that are denying any American over 40 the right to adjudicate age discrimination cases outside of the secrecy of arbitration. All Americans are equally deserving of the same rights now restored to sexual misconduct survivors.

This is why I am a champion for the bipartisan forced arbitration bill introduced last June - the Protecting Older Americans Act. I'm proud to say the bill is co-sponsored by the same bipartisan leaders in the Senate I've worked with for the last several years; Ranking Member Graham and Senator Gillibrand, with thanks to Chair Durbin, Senator Chuck Grassley, and many members of this committee for also co-sponsoring the bill. This is also why I'm so grateful to Senator Booker for introducing the Ending Forced Arbitration of Race Discrimination Act along with Senator Gillibrand.

The need for legislation to restore the rights of all Americans is dire. Consider, for example, the circumstance of when families are facing one of the most stressful and chaotic times in their lives - admitting a loved one into a nursing home. Should they be forced into unknowingly signing away their rights? If that facility causes the death, harm, or abuse of a loved one, it is families—not the federal government or the nursing home—that should be able to decide whether and how to seek accountability. And yet, Bonnie Walker's family had to spend additional time and resources, three years, just to fight forced arbitration before her case could even be heard in court.

From June to July 2016, case documents indicate that Bonnie was a resident of Brookdale Charleston, an assisted living facility in Charleston, South Carolina. Bonnie had a known history of wandering, sleepwalking, and she required constant monitoring and supervision. Yet on July 27, 2016, from 12:15 am until 7:15 am the following morning, rather than keeping

Bonnie safe, the Brookdale facility had no idea where Bonnie was. In fact, it was Bonnie's granddaughter who eventually discovered Bonnie's remains floating in the pond behind the facility - remains, which had been dismembered by an alligator. Instead of immediately being able to hold Brookdale accountable in court, Bonnie's family spent the next three years, from 2017 to 2020, fighting the facility's attempts to force them into arbitration. Both the lower court and the appeals court agreed that Bonnie's granddaughter who brought the case did not sign a forced arbitration clause, but this fight goes to show how long a powerful corporation with vastly more resources can choose to delay justice.³

And in a different example, if it weren't for the California Human Rights Commission's lawsuit in 2022, Tesla's reported racially hostile work environment might have remained hidden from the public because of forced arbitration. I want to share the stories of two out of many employees who've tried to bring cases against Tesla, Jasmine Wilson and Kabiru Alowonle. Both report experiencing racist treatment at the Tesla plant in California, including racist graffiti that said "KKK," the n-word, and swastikas. Despite reporting this conduct to supervisors and HR, no remedial action was taken. When Kabiru reports being put on a hiring panel with other management personnel, he immediately noticed and pointed out that African American candidates were not given the same opportunities despite being more qualified than other candidates. Again, Tesla reportedly did nothing about this, and Kabiru was never given an explanation. Instead, according to his case filings, he was told he acted "professional" and "well-spoken" which was unexpected of people like him, and people of color were regularly denied promotions.

Jasmine also reports experiencing many instances of cat-calling and racially offensive language while employed at Tesla. One of her managers reportedly told her to "get [her] black ass up" while another commented on her nails and eyelashes, saying "your type of girls love wearing long nails and eyelashes." When Jasmine reported these incidents, she reports that the retaliation began. Both Jasmine and Kabiru ending up resigning from jobs they very much wanted because they felt they had no other choice. And yet, when they, along with 12 other employees sued Tesla, they were forced into arbitration.⁴

If your grandmother can be eaten by an alligator because she wasn't properly cared for, and a major employer such as Tesla can be accused of rampant, ongoing race discrimination, and in both cases forced arbitration severely restricts or eliminates any path towards justice and accountability, then something must be terribly wrong with our system.

I thank you for holding this hearing and my hope is that when the members of this committee consider the stories of abuse, loss of life, and discrimination that is allowed to flourish within the secrecy and immunity forced arbitration ensures, you will recognize that this is an endeavor worth taking again, this time on behalf of all Americans.

³ See Complaint, *Weaver v. Brookdale Senior Living, Inc.*, No. 2017CP103130, 2017 WL 10350803 (S.C.Com.Pl. Sep. 28, 2017); *Weaver v. Brookdale Senior Living, Inc.*, 431 S.C. 223, 847 S.E.2d 268 (Ct. App. 2020).

⁴ See Complaint, *Jasmin Wilson v. Tesla*, filed with California Superior Court on June 29, 2022.