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Testimony – U.S. Senate Committee on the Judiciary

Small Print, Big Impact: Examining the Effects of Forced Arbitration

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Chairman Durbin, Ranking Member Graham, and distinguished committee members, it is truly an honor to be here. Thank you for the opportunity to tell you about how I was wrongfully terminated because of my age and how my former employer is attempting to use forced arbitration to further steal my rights, my voice, and my dignity.

As a nurse, starting my career in 1976, I have dedicated my life to helping others. If you, a spouse, a parent, or child has been in a hospital, you know what nurses do. Today, I am speaking for them.

After working hard for almost 50 years as a floor nurse, a Supervisor House RN, a Manager of Nursing Services, and the Director of Nursing Services, my health care system was acquired by Steward Health System. I continued as a Nurse Manager and then as a Patient Advocate. I loved being a Patient Advocate because it allowed me to speak up when a patient wasn't being heard. ... which is the same purpose I hope to serve here today – to speak for those that otherwise would be silenced by forced arbitration.

When Steward hired a new Director of Nursing in 2020, older nurses began experiencing overt ageism. What had once been a second home to me had now become a hostile work environment. Older employees were steadily being let go and replaced by younger employees. At least once per week, the Director of Nursing would ask me something like, "Why do you want to keep working at your age?" or "don't you think it would be a good time to retire?" She would address my age and medical conditions openly in meetings in an attempt to embarrass and shame me. As the frequency of the age harassment grew, I brought these issues to HR, which quickly dismissed my claims. Do you know what HR said? They called me an "old warrior." Old. It was a slap in the face.

Why would an HR representative feel so brazen and shameless to outright call me "old" and to not take my harassment seriously? After decades of service, in a career that I loved, I was actively being pushed out not because of my performance, but for no other reason than my age. I felt frustrated, ignored, and disrespected within a profession I hold so dear.

In February of 2022, I was hospitalized with Covid-19 and missed several weeks of work. Just before I returned to work, Steward posted a Nursing Manager position online. The job description made it very clear to me that this was my job, just with a different title. When I returned to work, I was told that my position had been "eliminated." Of course, mine was the only position which had been "reduced" as my former employer called it. But because the hospital needed someone in my position as a legal requirement, it was quickly filled by someone in their 20s, who did not even meet the baseline experience qualifications. My reduction in force was a simple lie to meet their goal of forcing me out.

In getting rid of more experienced nurses for no reason other than age, the hospital put patients' safety at risk. It also deprived younger nurses of learning from those of us who've seen every type

of situation you can imagine, and learn in a hands-on, experiential way from someone more seasoned.

I was devastated, confused, and heartbroken. Then I was mad. In getting rid of more experienced nurses, the hospital put patients' safety at risk. I hired a lawyer to help me file a lawsuit against Steward for age discrimination. I did not make the decision to file a lawsuit in order to get money – I love working, and I'd hoped to work as long as I could be useful and effective. I filed a case because I wanted to stop the pattern that I'd witnessed; I wanted to protect other older nurses and keep the patients safe. I'd hoped to effectuate change.

After we filed my age discrimination lawsuit in court, Steward moved to hide the claims by forcing everything into binding arbitration, even though I never signed a so-called "agreement" to arbitrate. We said, "show us a signed forced arbitration agreement." They could not. Instead, they pointed to my name on a list as having attended a training module about forced arbitration. I did not attend that training. They argued that by continuing to work after attending a training module, I lost my right to hold them publicly accountable and my right to have my case heard by a jury.

The wickedness of the alleged forced arbitration agreement did not stop there. They claim that the forced arbitration agreement allows my employer to pick the pool of potential arbitrators – which is made up of mainly defense oriented attorneys. They said that this forced arbitration agreement further rigs the process by only allowing me to call one witness from Stewart and limits me to requesting only 25 documents in order to prove my case. In court, I would be allowed to get information from the Director of Nursing, the HR representative, and the person that decided that a reduction in force was necessary. But in forced binding arbitration, I could call just one.

So, in summary, according to my former employer:

- I cannot find out what happened to prior nurses, because they were forced into secretive binding arbitration;
- I'm limited to less than 10 percent of the discovery I would get in court, which makes proving my case near impossible;
- My half-built case would likely be decided by a defense-oriented attorney; and
- If by chance I make it through this rigged gauntlet and win, no one will ever know and thus, no change can happen.

As long as Congress allows employers like Steward the ability to quietly sweep any accountability under the rug, they will; there will be no change; and nurses and patients will continue to suffer.

Now, I hope you understand why an HR representative feels so brazen and shameless to outright call me old. The ability to use the rigged system of forced arbitration empowers them to violate the law.

Through this experience, I've learned that forced arbitration is often used to silence employees, and shield corporations like Steward from public accountability. Because forced arbitration takes away my ability to hold Steward accountable for what they did to me, it essentially takes away the rights and protections you all – Congress – have passed into law to protect people like me. Forced arbitration takes away your power and it makes following the law optional. I never agreed to forced

arbitration, and yet, Steward now claims they get to decide how I can exercise my rights going forward.

The Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act was a landmark piece of legislation you passed into law last Congress that has finally returned power back to some victims of workplace harassment. Now it's time to restore the rights of the "old warriors" like me.

As more Americans remain in the workforce after reaching the age of 60 or 70, either because of financial concerns or simply because they desire to work, more needs to be done to ensure that our rights are protected. Older workers should not be forced into retirement or into arbitration – every American should be allowed the dignity to make those decisions for themselves.

Older Americans bring decades of experience and knowledge to the workplace that adds value. We add value. Unfortunately, instead of being appreciated and supported, many of us are subjected to ageism, pushed into retirement, and replaced by younger staff – many of whom we've trained and mentored.

I've worked long and hard enough to decide my own future. I wasn't ready to retire, but that didn't matter to Steward. They were ready to push me out. Ending forced arbitration for age discrimination leads to public accountability. Public accountability leads to changes in workplace culture that ensures protection for all workers, regardless of our age. I implore Congress to move forward legislation to end forced arbitration so older Americans who face age discrimination in the workplace can finally have our voices heard.

Thank you so much, Chair Durbin and Ranking Member Graham, for taking the time to hear my story today, for all your work supporting American workers, and thank you, Ranking Member Graham for your leadership on the Protecting Older Americans Act of 2023. I deeply appreciate the opportunity today to testify about why such legislation is needed and am happy to answer any questions you might have about my experience.