



TO: Mr. Jerrold Nadler, Chair, Ms. Madeleine Dean, Vice Chair, and Honorable Members of the Committee on the Judiciary

FROM: Marci Hamilton, Founder & CEO, CHILD USA; Professor, University of Pennsylvania, and Kathryn Robb, Executive Director, CHILD USA Advocacy

RE: The Forced Arbitration Injustice Repeal Act

DATE: October 26, 2021

Thank you for allowing us to offer our support of the Forced Arbitration Injustice Repeal Act (FAIR Act) for the purpose of ensuring that survivors of sexual violence have fair access to justice.

By way of introduction, my name is Marci Hamilton, and I am the Founder & CEO of CHILD USA, an interdisciplinary think tank dedicated to the prevention of child abuse and neglect at the University of Pennsylvania, where I am a Professor in the Fels Institute of Government and a Senior Resident Fellow in the Program for Research on Religion. I am also the author of *Justice Denied: What America Must Do to Protect Its Children* (Cambridge University Press 2008, 2012), which makes the case for statute of limitations (SOL) reform in the child sex abuse arena, and am the leading expert on the history and constitutionality of SOL reform. CHILD USA is the leading national nonprofit think tank dedicated to the prevention of child abuse and neglect. It is also the leader in the field of statute of limitations reform, as well as other cutting-edge issues related to child protection.

Kathryn Robb is the Executive Director of CHILD USA Advocacy, a 501(c)(4) advocacy organization dedicated to protecting children's civil liberties and keeping children safe from abuse and neglect. CHILD USA Advocacy draws on the combined expertise of the nation's leading experts and child advocates, specifically at its sister organization, CHILD USA, to advocate for more protective laws and policies in the States and at the federal level. Kathryn is also an outspoken survivor of child sex abuse.

We commend you for taking up H.R. 963, the FAIR Act, which would strengthen the nation's arbitration laws by outlawing forced arbitration, ensuring that individuals, including those who are exposed to sexual violence, are afforded a choice in their avenue for justice. The FAIR Act also serves the public's interest by preventing perpetrators and institutions that enable sexual violence from hiding behind the nondisclosure that results from forced arbitration.

I. Victims of Sexual Violence Suffer When Forced into Arbitration

Sexual violence is a widespread public policy crisis. In the United States, roughly 1 in 5 girls and 1 in 13 boys are sexually abused before the age of 18¹ and roughly 81% of women and 43% of men



experience some form of sexual harassment and/or assault at one point in their lives.ⁱⁱ The trauma stemming from sexual assault is complex and individualized, and it impacts victims throughout their lifetimes.ⁱⁱⁱ

Historically, a wall of ignorance and secrecy has been constructed around sexual violence, which is strengthened by forced arbitration agreements that prevent victims from having their day in court. Indeed, forced arbitrations benefit perpetrators and institutions by enabling them to hide their wrongdoing behind closed arbitration doors, which effectively silences the victims and shields the abusers from public scrutiny.

II. Repealing Forced Arbitration Affords Victims of Sexual Violence Agency Over Their Claims and Informs the Public About the Prevalence of Sexual Violence and Its Harms

When victims of sexual violence courageously come forward, they often find healing and empowerment in knowing they are safe and knowing they are heard, and are motivated by a burning conviction that no person ever again be harmed by the individual or institution that hurt them.^{iv} When forced into arbitration, a victim of sexual violence is robbed of this healing and empowerment; they are deprived of even the choice of how to resolve their claims and are unable to expose how the sexual abuse or sexual assault happened to the public in a court of law.

As well as providing victims of sexual violence a choice in their path to justice, forced arbitration reform protects society at large. By allowing victims to prosecute their cases in open court, hidden predators are brought into the light and are prevented from committing further harm.^v Such prevention also educates the public about who commits sexual violence and how it happens. It is certainly in society's interest to have victims identify hidden predators to the public, whenever they are ready.

III. Conclusion

Once again, we commend you for considering this legislation, which is desperately needed to help victims of sexual assault and harassment. America's sexual assault victims and the American public deserve the repeal of forced arbitration to protect them today and into the future. Please do not hesitate to contact us if you have questions or if we can be of assistance in any other way.

Sincerely,



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ⁱ G. Moody, et. al., *Establishing the international prevalence of self-reported child maltreatment: a systematic review by maltreatment type and gender*, 18(1164) BMC PUBLIC HEALTH (2018) (finding a 20.4% prevalence rate of child sexual abuse among North American girls); M. Stoltenborgh, et. al., *A Global Perspective on Child Sexual Abuse: Meta-Analysis of Prevalence Around the World*, 16(2) CHILD MALTREATMENT 79 (2011) (finding a 20.1% prevalence rate of child sexual abuse among North American girls); N. Pereda, et. al., *The prevalence of child sexual abuse in community and student samples: A meta-analysis*, 29 CLINICAL PSYCH. REV. 328, 334 (2009) (finding a 7.5% and 25.3% prevalence rate of child sexual abuse among North American boys and girls respectively).

ⁱⁱ HOLLY KEARL, THE FACTS BEHIND THE #METOO MOVEMENT: A NATIONAL STUDY ON SEXUAL HARASSMENT AND ASSAULT 7 (2018), <https://www.nsvrc.org/sites/default/files/2021-04/full-report-2018-national-study-on-sexual-harassment-and-assault.pdf>.

ⁱⁱⁱ VAN DER KOLK, B. THE BODY KEEPS THE SCORE: MEMORY & THE EVOLVING PSYCHOBIOLOGY OF POSTTRAUMATIC STRESS, HARVARD REV. OF PSYCHIATRY (1994) 1(5), 253-65; Jim Hopper, *Why Can't Christine Blasey Ford Remember How She Got Home?*, SCIENTIFIC AMER. (Oct. 5, 2018), available at <https://blogs.scientificamerican.com/observations/why-cant-christine-blasey-ford-remember-how-she-got-home/>; see also Hoskell, L. & Randall, M., *The Impact of Trauma on Adult Sexual Assault Victims*, JUSTICE CANADA 30 (2019), available at https://www.justice.gc.ca/eng/rp-pr/jr/trauma/trauma_eng.pdf (hereinafter "Hoskell").

ⁱⁱⁱ Jacobs-Kayam, A. and Lev-Weisel, R., *In Limbo: Time Perspective and Memory Deficit Among Female Survivors of Sexual Abuse*, FRONTIERS IN PSYCHOL. (April 24, 2019) available at <https://www.frontiersin.org/articles/10.3389/fpsyg.2019.00912/full>.

^{iv} Jill Laurie Goodman & Dorchen A. Leidholdt, *Lawyer's Manual on Human Trafficking*, NY STATE JUD. COMM. ON WOMEN IN THE CTS 169-82 (2013), http://ww2.nycourts.gov/sites/default/files/document/files/2018-07/LMHT_0.pdf

^v See *A Preliminary Report on the New York Child Victims Act*, CHILDUSA.ORG (Aug. 23, 2021), <https://childusa.org/wp-content/uploads/2021/08/A-Preliminary-Report-on-the-New-York-Child-Victims-Act.pdf>.

