



February 12, 2018

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H-107, The Capitol  
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517 Hart Bldg.  
Washington, DC 20510

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H-204, The Capitol  
Washington, DC 20515

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322 Hart Bldg.  
Washington, DC 20510

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Minority Whip  
1705 Longworth Office Building  
Washington, DC 20515

Hon. Richard J. Durbin  
Minority Whip  
711 Hart Bldg.  
Washington, DC 20510

RE:Mandatory Arbitration of Sexual Harassment Disputes

Dear Congressional Leadership:

As the duly-elected and appointed Attorneys General and chief legal officers of our respective States, District of Columbia, and territories, we ask for your support and leadership in enacting needed legislation to protect the victims of sexual harassment in the workplace. Specifically, we seek to ensure these victims' access to the courts, so that they may pursue justice and obtain appropriate relief free from the impediment of arbitration requirements.

Access to the judicial system, whether federal or state, is a fundamental right of all Americans. That right should extend fully to persons who have been subjected to sexual harassment in the workplace. Yet, many employers require their employees, as a condition of employment, to sign arbitration agreements mandating that sexual harassment claims be resolved through arbitration instead of judicial proceedings.

These arbitration requirements often are set forth in clauses found within the "fine print" of lengthy employment contracts. Moreover, these clauses typically are presented in boilerplate "take-it-or-leave-it" fashion by the employers. As a consequence, many employees will not even recognize that they are bound by arbitration clauses until they have been sexually harassed and attempt to bring suit.

1850 M Street, NW  
Twelfth Floor  
Washington, DC 20036  
Phone: (202) 326-6000  
<http://www.naag.org/>

While there may be benefits to arbitration provisions in other contexts, they do not extend to sexual harassment claims. Victims of such serious misconduct should not be constrained to pursue relief from decision makers who are not trained as judges, are not qualified to act as courts of law, and are not positioned to ensure that such victims are accorded both procedural and substantive due process.

Additional concerns arise from the secrecy requirements of arbitration clauses, which disserve the public interest by keeping both the harassment complaints and any settlements confidential. This veil of secrecy may then prevent other persons similarly situated from learning of the harassment claims so that they, too, might pursue relief. Ending mandatory arbitration of sexual harassment claims would help to put a stop to the culture of silence that protects perpetrators at the cost of their victims.

We applaud Microsoft Corporation for recently announcing that it will discontinue arbitration requirements with respect to sexual harassment claims and for supporting legislation to ensure that victims of sexual harassment be accorded the right of access to our judicial system. As Microsoft's President and Chief Legal Officer has fairly noted, "[b]ecause the silencing of voices has helped perpetuate sexual harassment, the country should guarantee that people can go to court to ensure these concerns can always be heard."

Congress today has both opportunity and cause to champion the rights of victims of sexual harassment in the workplace by enacting legislation to free them from the injustice of forced arbitration and secrecy when it comes to seeking redress for egregious misconduct condemned by all concerned Americans. We are aware that the Senate and the House are considering legislation to address this issue. Whatever form the final version may take, we strongly support appropriately-tailored legislation to ensure that sexual harassment victims have a right to their day in court.


Sincerely,



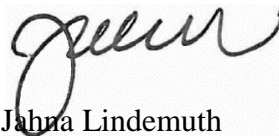
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Florida Attorney General



Steve Marshall  
Alabama Attorney General



Josh Stein  
North Carolina Attorney General



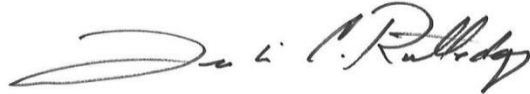
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Alaska Attorney General



Eleasalo V. Ale  
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Mark Brnovich  
Arizona Attorney General



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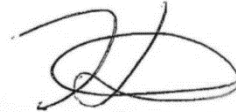
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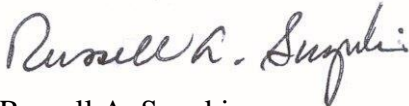
Karl A. Racine  
District of Columbia Attorney General



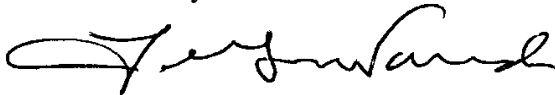
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