H. R. _____

To amend title 9 of the United States Code with respect to arbitration.

IN THE HOUSE OF REPRESENTATIVES

Mr. JOHNSON of Georgia introduced the following bill; which was referred to the Committee on

A BILL

To amend title 9 of the United States Code with respect to arbitration.

Be it enacted by the Senate and House of Representa-
tives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Forced Arbitration In-
justice Repeal Act of 2023” or the “FAIR Act of 2023”.

SEC. 2. PURPOSES.

The purposes of this Act are to—
(1) prohibit predispute arbitration agreements that force arbitration of future employment, consumer, antitrust, or civil rights disputes; and

(2) prohibit agreements and practices that interfere with the right of individuals, workers, and small businesses to participate in a joint, class, or collective action related to an employment, consumer, antitrust, or civil rights dispute.

SEC. 3. ARBITRATION OF EMPLOYMENT, CONSUMER, ANTITRUST, AND CIVIL RIGHTS DISPUTES.

(a) IN GENERAL.—Title 9 of the United States Code is amended by adding at the end the following:

“CHAPTER 5—ARBITRATION OF EMPLOYMENT, CONSUMER, ANTITRUST, AND CIVIL RIGHTS DISPUTES

“§ 501. Definitions

“In this chapter—

“(1) the term ‘antitrust dispute’ means a dispute—

“(A) arising from an alleged violation of the antitrust laws (as defined in subsection (a) of the first section of the Clayton Act) or State antitrust laws; and
“(B) in which the plaintiffs seek certification as a class under rule 23 of the Federal Rules of Civil Procedure or a comparable rule or provision of State law;

“(2) the term ‘civil rights dispute’ means a dispute—

“(A) arising from an alleged violation of—

“(i) the Constitution of the United States or the constitution of a State;

“(ii) any Federal, State, or local law that prohibits discrimination on the basis of race, sex, age, gender identity, sexual orientation, disability, religion, national origin, or any legally protected status in education, employment, credit, housing, public accommodations and facilities, voting, veterans or servicemembers, health care, or a program funded or conducted by the Federal Government or State government, including any law referred to or described in section 62(e) of the Internal Revenue Code of 1986, including parts of such law not explicitly referenced in such section but that relate to protecting individuals on any such basis; and
“(B) in which at least one party alleging a violation described in subparagraph (A) is one or more individuals (or their authorized representative), including one or more individuals seeking certification as a class under rule 23 of the Federal Rules of Civil Procedure or a comparable rule or provision of State law; “(3) the term ‘consumer dispute’ means a dispute between—

“(A) one or more individuals who seek or acquire real or personal property, services (including services related to digital technology), securities or other investments, money, or credit for personal, family, or household purposes including an individual or individuals who seek certification as a class under rule 23 of the Federal Rules of Civil Procedure or a comparable rule or provision of State law; and “(B)(i) the seller or provider of such property, services, securities or other investments, money, or credit; or “(ii) a third party involved in the selling, providing of, payment for, receipt or use of information about, or other relationship to any
such property, services, securities or other investments, money, or credit;

“(4) the term ‘employment dispute’ means a dispute between one or more individuals (or their authorized representative) and a person arising out of or related to the work relationship or prospective work relationship between them, including a dispute regarding the terms of or payment for, advertising of, recruiting for, referring of, arranging for, or discipline or discharge in connection with, such work, regardless of whether the individual is or would be classified as an employee or an independent contractor with respect to such work, and including a dispute arising under any law referred to or described in section 62(e) of the Internal Revenue Code of 1986, including parts of such law not explicitly referenced in such section but that relate to protecting individuals on any such basis, and including a dispute in which an individual or individuals seek certification as a class under rule 23 of the Federal Rules of Civil Procedure or as a collective action under section 16(b) of the Fair Labor Standards Act, or a comparable rule or provision of State law;

“(5) the term ‘predispute arbitration agreement’ means an agreement to arbitrate a dispute
that has not yet arisen at the time of the making
of the agreement; and

“(6) the term ‘predispute joint-action waiver’
means an agreement, whether or not part of a
predispute arbitration agreement, that would pro-
hibit, or waive the right of, one of the parties to the
agreement to participate in a joint, class, or collec-
tive action in a judicial, arbitral, administrative, or
other forum, concerning a dispute that has not yet
arisen at the time of the making of the agreement.

“§ 502. No validity or enforceability

“(a) IN GENERAL.—Notwithstanding any other pro-
vision of this title, no predispute arbitration agreement or
predispute joint-action waiver shall be valid or enforceable
with respect to an employment dispute, consumer dispute,
antitrust dispute, or civil rights dispute.

“(b) APPLICABILITY.—

“(1) IN GENERAL.—An issue as to whether this
chapter applies with respect to a dispute shall be de-
termined under Federal law. The applicability of this
chapter to an agreement to arbitrate and the validity
and enforceability of an agreement to which this
chapter applies shall be determined by a court, rather
than an arbitrator, irrespective of whether the
party resisting arbitration challenges the arbitration
agreement specifically or in conjunction with other
terms of the contract containing such agreement,
and irrespective of whether the agreement purports
to delegate such determinations to an arbitrator.

“(2) Collective bargaining agreements.—
Nothing in this chapter shall apply to any arbitra-
tion provision in a contract between an employer and
a labor organization or between labor organizations,
except that no such arbitration provision shall have
the effect of waiving the right of a worker to seek
judicial enforcement of a right arising under a provi-
sion of the Constitution of the United States, a
State constitution, or a Federal or State statute, or
public policy arising therefrom.”.

(b) Technical and conforming amendments.—
(1) In general.—Title 9 of the United States
Code is amended—

(A) in section 1 by striking “of seamen,”
and all that follows through “interstate com-
merce” and inserting in its place “of individ-
uals, regardless of whether such individuals are
designated as employees or independent con-
tractors for other purposes”;,

(B) in section 2 by striking “chapter 4”
and inserting “chapter 4 or 5”;
(C) in section 208 by striking “chapter 4” and inserting “chapter 4 or 5”; and

(D) in section 307 by striking “chapter 4” and inserting “chapter 4 or 5”.

(2) TABLE OF CHAPTERS.—The table of chapters of title 9 of the United States Code is amended by adding at the end the following:

“5. Arbitration of Employment, Consumer, Antitrust, and Civil Rights Disputes ................................................................. 501”.

SEC. 4. EFFECTIVE DATE.

This Act, and the amendments made by this Act, shall take effect on the date of enactment of this Act and shall apply with respect to any dispute or claim that arises or accrues on or after such date.

SEC. 5. RULE OF CONSTRUCTION.

Nothing in this Act, or the amendments made by this Act, shall be construed to prohibit the use of arbitration on a voluntary basis after the dispute arises.